



Appeal Decision

Hearing held on 5 December 2012

Site visit made on 5 December 2012

by Kay Sheffield BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 14 February 2013

Appeal Ref: APP/F2415/A/12/2179844

Land north of Bill Crane Way, Lutterworth, Leicestershire.

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with a condition subject to which a previous planning permission was granted.
 - The appeal is made by William Davis Limited against the decision of Harborough District Council.
 - The application Ref 12/00613/VAC, dated 26 April 2012, was refused by notice dated 4 July 2012.
 - The application sought outline planning permission for residential development with associated infrastructure, public open space and provision of vehicular and pedestrian access without complying with a condition attached to planning permission Ref 11/00117/OUT, dated 23 January 2012.
 - The condition in dispute is No 3 which states that: The development hereby approved shall be carried out in general accordance with the plan "Indicative Site Layout B" (Drawing Ref: 10-116 SK09).
 - The reason given for the condition is: To ensure a satisfactory form of development that mitigates impact on the character and appearance of the countryside and the Conservation Area settlement of Bitteswell and to accord with Policies IN/1, EV/5, EV/11 and EV/16 of the Harborough District Local Plan and the aims and objectives of PPS1 "Delivering Sustainable Development", PPS3 "Housing" and PPS5 "Planning for the Historic Environment".
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Decision

1. The appeal is allowed and planning permission is granted for residential development with associated infrastructure, public open space and provision of vehicular and pedestrian access at land north of Bill Crane Way, Lutterworth, Leicestershire in accordance with the application Ref 12/00613/VAC dated 26 April 2012, without compliance with condition number 3 previously imposed on planning permission Ref 11/00117/OUT dated 23 January 2012 but subject to the other conditions imposed therein, so far as the same are still subsisting and capable of taking effect and subject to the following new condition:

The development hereby approved shall be carried out in general accordance with the plan entitled Indicative Site Layout A 10-116 SK08 with regard to the extent of the area of the site to be used for the erection of housing.

Procedural matters

2. The outline planning permission for the residential development of the appeal site restricted the area which could be built upon in order to mitigate the effect of the development on the character and appearance of the countryside and the Bitteswell Conservation Area. In imposing the condition which placed this

restriction on the development the Council relied on policies of the Harborough District Local Plan, 2001 (the LP) and various Planning Policy Statements (PPS) in force at the time. However, subsequent to the granting of the outline permission the Council adopted the Harborough District Local Development Framework Core Strategy, 2011 (the CS) and whilst the Council's reasoning behind the refusal of the application to vary the condition reflected the reason for its initial imposition, it relied on policies of the CS which has replaced most of the LP.

3. In addition the PPS's cited by the Council in the reason for imposing the condition on the outline permission have been cancelled by the National Planning Policy Framework, 2012 (the Framework). The Framework reaffirms the statutory duty to determine planning applications and appeals in accordance with the development plan unless material considerations indicate otherwise. It also indicates that for 12 months from the date of its publication decision-takers may continue to give full weight to relevant policies adopted since 2004 even if there is a limited degree of conflict with the Framework. Since the Council relied on policies of the CS in refusing permission and this was only adopted in 2011 full weight can be attributed to them in the determination of the appeal.
4. Therefore, in determining the appeal, regard has been had to extant policies of the LP, policies of the CS and the guidance in the Framework.
5. On 11 December 2012 the Government made an Order in Parliament to revoke the Regional Strategy for the East of England with effect from 3 January 2013. Whilst the Regional Strategy forms part of the development plan, none of its policies have been relied on in evidence by the parties. I am therefore satisfied that the revocation of the Regional Strategy does not alter my conclusions in respect of the appeal.

Main Issue

6. The main issue is the effect the variation of the condition to allow a greater part of the site to be built upon would have on the character and appearance of the countryside and whether it would preserve or enhance the setting of the Bitteswell Conservation Area.

Reasons

The appeal site and its surroundings

7. The appeal site is undeveloped land in the open countryside but lies at the edge of the built development of Lutterworth. The southern and eastern boundaries of the site are marked by Bill Crane Way and Leicester Road respectively and to the north and west are open fields, Bitteswell Brook forming the western boundary. To the south of the site is a modern residential estate set back from the carriageway of Bill Crane Way behind landscaped verges. To the south west lies the settlement of Bitteswell, a large proportion of which is designated as a Conservation Area and within which the Church of St Mary, a Grade II* Listed Building, is located.
8. The appeal site currently consists of three open fields with the ground levels falling in an east to west direction across the site, dropping down towards Bitteswell Brook. The extent of the built development as allowed by the condition which is in dispute is restricted to the largest of these fields which

would leave land at the western end open. The variation of the condition proposes extending the built development into part of this open area which would bring the development closer to Bill Crane Way along a greater part of the site frontage with the highway and would reduce the distance between the built development and Bitteswell Brook.

Planning Policy

9. The Council acknowledged that at the time it took the decision to refuse to vary the condition, it did not have a five year supply of housing land. However, recently published figures confirmed that at 30 September 2012 a supply in excess of five years and including a 5% buffer as required by paragraph 47 of the Framework was available.
10. Nevertheless Policy CS2 of the CS requires at least 700 dwellings to be provided in Lutterworth over the plan period. In addition Policy CS14 of the CS indicates that in the provision of new housing, any extensions to the settlement boundary will take place to the north of the town. Whilst the appellant contended that there would be a shortfall in the number of dwellings, the evidence does not indicate that the target for Lutterworth would not be met. Notwithstanding this, there is no reason to resist development which may result in this figure being exceeded, particularly in light of the guidance in the Framework which seeks to boost significantly the supply of housing.
11. The use of the appeal site for residential development has been established by the outline planning permission and although the Council has an adequate supply of housing land, it is considered that there are no policy reasons with regard to housing land supply to resist an increase in the number of dwellings by increasing the area of the site which could be built upon.
12. The coalescence of Bitteswell with Lutterworth has evidently been of long standing concern to the Council and extant Policy EV/3 of the LP identifies an area between the settlements within which development that would adversely affect the open character of the land or result in a reduction in the existing open land separating them would be resisted. The western end of the appeal site abuts the northern boundary of the separation area. Policy CS14 of the CS maintains the principle of a separation area and states in the justification of the policy that the proximity of Lutterworth and Bitteswell demands an approach which in seeking appropriate location for additional housing development, avoids coalescence.
13. In the Council's Areas of Separation Review, 2011 consideration has been given to the designation of the separation area in the light of the policy context set by the CS. This document is a technical report which will provide evidence to help inform the preparation of the Council's Allocations Plan and it is acknowledged that as part of this process the extent of the separation area may alter.
14. However, the likely location of new development has been taken into account in assessing where existing separation may be threatened. Although the land to the south of the appeal site, which is currently within the separation area, and that to the west are both recommended in the report to be considered for allocation within an Area of Separation, the appeal site has not been identified for inclusion. In addition the extent of the built development proposed would be offset from the boundaries of the site with the separation area ensuring

open land would be directly adjacent to it. Although the extent of the separation area will be subject to further consideration as part of the development plan, a need to keep any part of the appeal site free from development has not been highlighted in the Review and given that open space retained within the site would continue to support the Council's aim to ensure that the coalescence of Lutterworth and Bitteswell does not take place, it is considered that there is insufficient reason to warrant dismissal of the appeal on these grounds.

Effect on character and appearance

15. At present there are clear views from the site and its immediate surroundings towards Bitteswell, its Conservation Area, the church and the mature trees which form a prominent feature of the Conservation Area and the surrounding landscape. However, these views would change and become more restricted by the development allowed by the outline permission and it is therefore the additional effect of the increased development being sought by the variation of the condition which needs to be assessed.
16. The appeal site is reviewed in the Council's Lutterworth and Broughton Astley Landscape Character Assessment and Landscape Capacity Study, 2011 which will be used to inform the Council's Local Development Documents. It gives a detailed analysis of the sensitivity of the land around the edge of Lutterworth and assesses the capacity to accommodate future development, particularly residential. Although it may have some bearing on further consideration given by the Council to the extent of the separation area in the preparation of the Allocations Plan, limited weight can be attributed to it in the determination of this appeal.
17. The study identifies the part of the appeal site on which development is allowed by the outline permission as having a medium capacity for development and the land on which the additional built development is being sought as having a low capacity. The study recognises that there are important views from Bill Crane Way towards Bitteswell which show the open countryside to the north west and the separation between Lutterworth and Bitteswell. It also considers that the development of this land would not relate well to the existing residential development on the northern edge of Lutterworth or to Bitteswell and would compromise the separation between the two settlements. The study concludes that given the prominent nature of the slopes within the parcel, their visibility from the surrounding area and their importance in the setting of Bitteswell it is not considered appropriate to develop this area of land.
18. However these comments are made in relation to an area of land which stretches along Bitteswell Brook and includes part of the separation area set out in the Areas of Separation Review, 2011. The appeal site forms only a small part of its eastern edge and development on it would be seen not only in the context of existing built development but also in the context of the development allowed by the outline permission which itself will restrict views of the open countryside to the north west and will be highly visible from the surrounding area.
19. The main effect of the proposed increase in the area of the built development on the surrounding area would be in views from Bill Crane Way looking in a westerly direction from its junction with Leicester Road. The extent of the built development being sought would bring the development closer to the frontage

with Bill Crane Way which would reduce the extent of the view of Bitteswell, its church and the Conservation Area. However, the development would relate well to both the existing and proposed developments and although views towards Bitteswell would be reduced, when these are considered in the light of the restriction which would be placed on them by the development already permitted it is considered any additional harm which may be caused to the character or appearance of the area or the setting of the Conservation Area would not be significant.

20. The northern boundary of the appeal site is marked by a mature hedge and it is proposed that this would be supplemented by a belt of tree planting which would break up views of the built development from this direction. In addition the properties would be seen against the backdrop of the existing residential development to the south. Also in views from Bitteswell the properties, which would be set on lower ground, would be seen against the backdrop of the development allowed by the outline permission as well as in the context of existing development. Although the distance between the development and the Bitteswell Conservation Area would be reduced, ample separation would be retained to ensure that the effect of the additional built development would not cause harm to its setting.
21. Similarly from the south, a relatively wide section of open land would remain on the western boundary of the site which would allow views through to the open countryside beyond. Although the outline permission would allow a greater expanse of open space, it is considered that the reduction as part of the appeal proposal would still ensure that adequate separation between the two settlements would remain and that the setting of the Conservation Area and Bitteswell Brook would be preserved, particularly in views from the public footpath which crosses the western end of the appeal site on a line parallel to the brook.
22. In addition, the permission for the development of the site was granted in outline and although the submitted drawings showed an indicative layout of the site, this is a matter which, together with the design of the dwellings, requires approval. Although the Council is of the opinion that the design and layout of the development would not satisfactorily mitigate its effect on its surroundings, there is no definitive evidence that the detailed design of the overall scheme would not ensure that views of the open countryside and towards the Conservation Area from significant viewpoints both outside the site and from within the development would not be treated sensitively.
23. The evidence therefore leads me to conclude that the effect of the additional built development would not be detrimental to the character and appearance of the countryside and would preserve the setting of the Bitteswell Conservation Area, in accord with Policies CS11, CS14 and CS17 of the CS which seek to ensure development respects the context in which it is taking place.

Unilateral Undertaking

24. A signed Unilateral Undertaking (UU) under Section 106 (s106) of the Town and Country Planning Act, 1990 was submitted to the hearing. It covers the same range of contributions as the s106 agreement in respect of the outline planning permission although the level of the contributions has been adjusted to reflect the increase in the number of dwellings as a consequence of the increased area to be developed.

25. The UU would not replace the s106 agreement already in place thus ensuring that contributions would be required whichever permission was implemented. However, its wording makes some matters dependent on the UU being found to be compliant with the tests set out in Regulation 122 of the Community Infrastructure Levy Regulations, 2010 (the CIL Regulations). These tests are whether the UU is necessary to make a development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind to the development.
26. The UU covenants in favour of the Council contributions in respect of the provision and maintenance of open space as part of the development and towards allotments, cemetery provision, policing services, medical facilities, recycling, community facilities and the provision of 30% of the units as affordable housing. The UU also covenants in favour of the Leicestershire County Council financial contributions towards education, public transport measures including bus stops, travel packs and bus passes, and library provision.
27. Whilst the Council and the County Council confirmed that the terms of the submitted UU were acceptable, the appellant questioned whether the contribution in respect of policing was compliant with the tests set out in the CIL Regulations. The appellant suggests that there is no evidence that the proposed development would result in a need for increased police resources. It is also argued that there should be no automatic assumption that the development should bear the cost of the provision of additional policing since the anticipated growth of such costs in this area could have been budgeted for and the new residents will generate Council Tax revenue.
28. However, it is recognised by both the County Council and the Council's guidance¹ that a contribution towards policing could be triggered if there is a need arising from the development. The guidance therefore establishes the principle of a contribution although there needs to be clear evidence that the level of contribution would be justified having regard to the tests set out in the CIL Regulations.
29. The written evidence submitted by Leicestershire Police detailed the impact the proposed development would have on policing, forecasting the number of potential incidents and the anticipated effect this would have on staffing, accommodation, vehicles and equipment. In view of the requirement of national planning policy to create safe and accessible environments where crime and disorder, and the fear of crime, do not undermine quality of life, it is considered that, on the evidence before me, a contribution towards policing is necessary to make the development acceptable in planning terms.
30. Whilst the additional staff, accommodation, vehicles and equipment detailed by the Police could not be regarded as being for the exclusive use of the development, they would be necessary to provide for the effective policing of and to attend incidents on the site. In addition the number of staff and level of resources required to police the development has been based on the number of incidents estimated to be generated by the site. In respect of policing services the UU makes provision for the payment of £426 per dwelling and this is the figure sought by Leicestershire Police. The level and range of the mitigation

¹ Leicestershire County Council Statement of Requirements for Developer Contributions in Leicestershire, 2006 and Harborough District Council Planning Obligations Developer Guidance Note, 2009.

would therefore appear to be directly related to the development and also to be fairly and reasonably related in scale and kind to it.

31. I have had regard to the fact that the s106 Agreement, dated 18 January 2012, in respect of the existing outline planning permission makes provision for a contribution of £606 per dwelling for policing. The appellant has indicated that this agreement was concluded under time pressure and the police have had a change in policy since, under which only major developments would be targeted for contributions. However, the report also states that contributions would be pursued where a significant impact on policing is foreseen and can be quantified. It would appear that the most relevant implication of the change in policy is that the contribution required by the police in respect of this appeal was reduced following quantification of the anticipated effect of the development. This affirms my view that the UU before me meets the CIL tests.
32. Reference has been made to a number of appeal decisions where it has been concluded that the police contributions failed to meet the tests and others where a contrary conclusion has been reached. However, I am not aware of the scope of the evidence provided in these cases and a comparison with the appeal cannot therefore be made.
33. On the basis of the evidence before me, therefore, I am satisfied that the contribution towards policing set out in the UU is necessary, directly related to the development and fairly and reasonably related to it in scale and kind – as required by the tests set out in the CIL Regulations. I conclude the same with regard to the elements of the UU which are not in dispute and I have taken the UU into consideration in reaching my decision.

Conclusions

34. For the reasons given above, and having had regard to all other matters raised, it is concluded that the variation of the condition to allow a greater part of the site to be built upon would not be detrimental to the character or appearance of the countryside and would preserve the setting of the Bitteswell Conservation Area. The appeal is therefore allowed and planning permission is granted.

Kay Sheffield

Inspector

APPEARANCES

FOR THE APPELLANT:

Mark Flood BA(Hons) DipTP MRTPI	Insight Town Planning Limited.
Simon Roper-Pressdee BSC(Hons) PGCert MIHBC PIFA	Senior Associate Director, CgMs Consulting.
Phil Rech BA(Hons) BPhil MLI	Director, FPCR Environment and Design Limited.
Elizabeth Marjoram LLB	Partner, Bird, Wilford and Sale Solicitors.

FOR THE LOCAL PLANNING AUTHORITY:

Nicholas White	Planning Officer.
Adrian Eastwood MRTPI	Development Control Manager.

INTERESTED PERSONS:

Andrew Tyrer BS(Hons) MRTPI	Development Contributions Officer, Leicestershire County Council.
John Prendergrast	Principal Solicitor, Leicestershire County Council.
Steve Kettle	Modernising Services Manager, Leicestershire County Council.

DOCUMENTS

- 1 Council's notification letter dated 1 November 2012 and circulation list regarding the arrangements for the hearing.
- 2 Statement submitted by Andrew Tyrer on behalf of Leicestershire County Council.
- 3 Signed Section 106 Unilateral Undertaking.
- 4 Plan showing the boundary of the Bitteswell Conservation Area.
- 5 Planning Obligations Developer Guidance Note, 2009.
- 6 Assessment of Local Community Provision and Developer Contribution, 2010.
- 7 Decision letter in respect of Appeal Ref: APP/T2405/A/10/2125563, Land off Huncote Road, Stoney Stanton, Leicestershire, LE9 4DH.
- 8 Areas of Separation Review, December 2011.