



Appeal Decision

Hearing Held on 20 August 2019

Site visits made on 19 and 20 August 2019

by Jillian Rann BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 September 2019

Appeal Ref: APP/K2420/W/19/3222266

Land south of Amber Way, Burbage

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Miss Louise Wells (Persimmon Homes North Midlands) against the decision of Hinckley & Bosworth Borough Council.
 - The application Ref 18/00302/FUL, dated 19 March 2018, was refused by notice dated 18 October 2018.
 - The development proposed is the erection of 40 dwellings and associated infrastructure.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of 40 dwellings and associated infrastructure at land south of Amber Way, Burbage in accordance with the terms of the application, Ref 18/00302/FUL, dated 19 March 2018, subject to the conditions in the attached schedule.

Preliminary Matters

2. The address in the banner heading above is taken from the appeal form, and is consistent with that used on the Council's publicity and decision notice. Accordingly, and as I consider it to accurately describe the location of the site, I have also used that address.
3. Before the hearing, the Council confirmed that it wished to withdraw its third reason for refusal, relating to the effect of the development on the capacity of the local highway network. The agreed Statement of Common Ground confirms this, with reference to the absence of objection from the local highway authority (LHA) subject to various contributions and conditions. A completed legal agreement (S106 agreement) has been received and includes, amongst other things, obligations relating to those contributions referred to by the LHA. I have taken those matters into account, together with the other obligations set out in the S106 agreement.
4. The site is within the area covered by the draft Burbage Neighbourhood Plan (NP). At the time of the hearing, the Council anticipated that the NP would be submitted to it within the week, with a 6 week consultation period to take place subsequently. As it remains subject to further consultation and may still change, the weight I afford to the NP is limited. However, I have had regard to the NP insofar as specific matters raised within it have been brought to my attention.

Main Issues

5. Although the Council withdrew its third reason for refusal, that was on the basis of obligations in the S106 agreement. Therefore, and as there are a number of representations from interested parties relating to the effect of the development on the nearby highway network, it remains a main issue for consideration. Accordingly, the main issues are:
 - whether housing development on this site is an appropriate use given the availability of local retail and community uses;
 - the effect of the proposed development on the character and appearance of the appeal site and its surroundings; and
 - the effect of the proposed development on the safety and convenience of highway users.

Reasons

Whether housing development is an appropriate use

6. The appeal site is one of several sites which, together, form Allocation BUR02 of the Site Allocations and Development Management Policies Development Plan Document (the SADMP). Policy SA3 of the SADMP states that development proposals for BUR02 should ensure a mixed-use development which, amongst other things, delivers a Neighbourhood Centre comprising retail units (A1-A5) and a minimum of 46 dwellings. However, the policy does not define the term 'Neighbourhood Centre' and is not prescriptive about the location, nature or amount of the required retail units within the wider site.
7. The land within the BUR02 allocation was part of an outline planning permission which covered a much larger area, granted in August 2011. A masterplan included as part of that outline permission set out a scheme for the development of that wider area which included the retention of existing employment uses, new employment development and new housing, most of which has now been delivered.
8. The masterplan also included the provision of a local centre, as part of a mixed-use development on an area which includes the appeal site and adjoining sites within what became Allocation BUR02. However, the outline permission has now lapsed. The weight I afford to that masterplan, and the floorspaces of the various A1-A5 units permitted at that stage, is therefore limited. Nonetheless, it is useful as an indication of the amount of such development that was envisaged to accompany and support the housing which has subsequently been delivered on other nearby sites.
9. The aims of Policy SA3 are consistent with the National Planning Policy Framework (the Framework), which requires planning decisions to plan positively for the provision and use of community facilities such as local shops, to ensure an integrated approach to considering the location of housing and community facilities and services, and to promote social interaction, for example through mixed-use developments and strong neighbourhood centres.
10. The Council suggested at the hearing that a Neighbourhood Centre should incorporate shops and services that offer day-to-day facilities for local residents. Policy SA3 is not prescriptive about the nature of the A1-A5 units

required. However, it is clear that the policy stemmed from the desire to provide local facilities of an appropriate size and nature to cater for the housing and employment uses approved as part of the outline permission. Therefore, I agree with the Council's interpretation that any such units should principally serve the day-to-day needs of those living or working in that immediate local area.

11. Within the area covered by Policy SA3, a pub and restaurant has been built, and is operational, on Amber Way opposite the site. A development of seven commercial units has also been permitted on the opposite side of Rugby Road, which were under construction at the time of my visit.
12. Three of those units would have a mixed A1/B8 use, and thus include an element of use outside the A1-A5 uses referred to in Policy SA3. Of those, one is intended to be occupied by a tile retailer, and another by a plumbing supplies retailer. Neither would comprise uses meeting the day-to-day needs of local residents, and I afford those units little weight in terms of their contribution to meeting the requirements of Policy SA3. The third unit is intended to be occupied by a charity as a sorting warehouse with an attached small retail unit and would, I consider, make some contribution to the neighbourhood retail function.
13. The remaining units would comprise a Co-op convenience store, a Greggs sandwich and snack shop, a dry cleaner and a coffee shop. All are uses which would principally serve the day-to-day needs of those living or working in the immediate area. The size of the units would be proportionate to that local 'neighbourhood' retail function, with some variety in their floor areas, providing flexibility in their use should the demand for alternate retail uses to serve the neighbourhood arise in the future. The pub and restaurant on Amber Way, whilst larger and likely to attract custom from a wider area, would also nonetheless provide a facility for the use of the local community.
14. If the tile and plumbing units are discounted, the total 'retail' floorspace (A1-A5 as defined in Policy SA3) across those two adjacent sites would fall below the total A1-A5 floorspace permitted in the outline application. However, insofar as I afford that outline permission any weight, I am also mindful that the floorspace thereby permitted was a maximum limit, imposed to protect the vitality and viability of nearby town centres, rather than a minimum requirement. In any event, the shortfall would be relatively limited, the units which are proposed would serve the day-to-day needs of the immediate neighbourhood, and the site is relatively close to other retail units beyond the railway line. Therefore, overall I consider that the uses already permitted would achieve a balance between meeting a local neighbourhood need, including convenience shopping and opportunities for meeting and socialising, and protecting the vitality and viability of the nearby town centre.
15. The permitted A1-A5 uses do not extend onto the appeal site as was originally envisaged. However, on the basis of the evidence before me, and in the absence of a prescriptive policy with regard to the size or location of the units required as part of the Neighbourhood Centre, I consider that the pub/restaurant and other commercial units which have already been permitted would fulfil that requirement in this case.
16. The proposed development would result in the provision of 34 more dwellings on site BUR02 than the minimum of 46 set out in Policy SA3, and 40 more

dwelling than was originally permitted in the wider area covered by the outline application. However, for the reasons given, I consider the range of uses already permitted would be sufficient to meet the day-to-day needs of the immediate locality. Therefore, and having regard to the site's relative proximity to other retail units beyond the railway line, and to Hinckley town centre, I consider that the addition of 30-40 houses more than was originally envisaged would not place a significant additional burden on those permitted uses or justify the withholding of permission on those grounds.

17. The outline permission also included an element of D1 (community) use, which has not subsequently been delivered. However, that D1 use was not carried forward as a specific requirement in Policy SA3. In the absence of a development plan policy, and as the outline permission has lapsed, the weight I afford to such a requirement is therefore limited.
18. The S106 agreement includes provision for contributions towards the improvement or extension of facilities at a local health centre, library and schools. I recognise the desires expressed by local residents for a community use or greenspace on the site, reference to perceived deficiencies in such provision in the area, and frustration at their having understood that community provision would be included on the site. However, I have not been provided with substantive evidence to demonstrate a particular unmet need with regard to D1 or other community provision beyond those identified as part of the application, and for which proportionate mitigation is included in the S106. The site is also close to areas of outdoor public open space, including the adjacent beck and Rugby Road recreation ground, and contributions towards improvement to the recreation ground are also included within the S106 agreement. Therefore, on the basis of the evidence before me, I do not consider it reasonable to withhold permission on the basis of no further community use having been provided on the appeal site.
19. For the reasons given, I consider that adequate provision has been made for retail uses to fulfil the Neighbourhood Centre requirement in Policy SA3. Given that and the availability of existing public open space in the vicinity of the site, I consider that adequate provision has been made for local retail and community facilities to serve the existing houses.
20. It is common ground between the main parties that the Council is unable to demonstrate a 5 year supply of deliverable housing sites. In that context, the provision of 40 further dwellings would make a valuable contribution to housing land supply in the district. Contributions towards existing community infrastructure, including healthcare, education, library facilities and open space, would be secured through the S106 agreement, thus ensuring appropriate improvements to those services and facilities, proportionate to the scale of the development proposed. Therefore, and as I consider that the A1-A5 units permitted and delivered on adjacent sites would be sufficient to cater for the existing and proposed development, I conclude that housing development on this site is an appropriate use given the availability of local retail and community uses. The proposal would therefore not conflict with the requirements of Policy SA3 of the SADMP or the Framework, as set out above.

Character and appearance

21. The site is in a mixed-use area which includes other housing, public open space and industrial and commercial uses, including a pub/restaurant on Amber Way,

and the retail units which are currently under construction on the opposite side of Rugby Road.

22. Surrounding buildings vary in their appearance, reflecting the variety in their uses. However, much of the nearby housing is of recent construction and, despite some variety in the size of dwellings, is of a relatively consistent character and appearance, including with regard to its detailing and materials.
23. The site is adjacent to Rugby Road, a main route between the M69 and the centre of Hinckley. However, the alignment of Rugby Road and the layout of the gyratory adjacent to the site are such that, when travelling towards the town centre from the motorway, distant views towards the site are very limited, and it is screened by existing housing on Rugby Road to the south of the gyratory. The site only comes into view quite suddenly upon reaching the gyratory, and after having passed an almost continuous frontage of housing on the western side of Rugby Road before it, which continues around the initial part of the gyratory and onto Crimson Way to the south of the site. As a result, whilst viewed against a backdrop of industrial and commercial buildings on Amber Way and beyond the nearby railway line, the site is also visually connected to the areas of housing which surround it to the south and west.
24. The proposed development would be outward-facing, with buildings primarily oriented towards the various roads and footpaths which surround the site to all sides, and towards the roads within the development itself. As a result, the development would have a strong presence and would integrate positively into those existing streetscapes, providing natural surveillance and a sense of activity to all of its surrounding frontages.
25. The part of the site adjacent to the gyratory would be occupied by three small blocks of houses and flats, which would step gradually around the corner from the gyratory onto Amber Way, and would be set back from the road frontage behind railings and small front gardens. Those dwellings would be similar in scale, appearance and layout to the existing terrace of houses which faces the gyratory to the south of the site, beyond Sketchley Brook. Those existing houses are, similarly, oriented at an angle in relation to the gyratory and neighbouring properties, following the frontage of Rugby Road as it turns towards the junction with Crimson Way, and serve to draw the eye around the gyratory as views open up towards the site. In that context, the development would therefore appear as an attractive and positive continuation of that existing residential frontage, on one of the widest parts of the gyratory and opposite the open space on its eastern side, and before the road narrows and the road frontage becomes more commercial and industrial in character as it approaches the railway bridge and the commercial properties beyond.
26. The development would have houses facing the open space within the adjacent Sketchley Brook, in a similar layout and pattern to the housing on Crimson Way, on the opposite side of the Brook. Part of that southern frontage would be formed of a parking court, and a road would run alongside part of the footpath adjacent to the site. However, the parking court would be broken up to some degree by small areas of landscaping, including some new tree planting, within it, and a continuous belt of new trees is proposed within a verge which would run the full length of that southern frontage. Those areas of planting would serve to separate and screen the vehicle access and parking areas from the adjacent footpath, softening and minimising the appearance of those

hard-surfaced areas to a level sufficient to ensure that the development would be appropriately assimilated without harm to the character or appearance of that adjacent greenspace. Tree planting and landscaping within front garden areas would soften and break up the building frontages and areas of hard surfacing elsewhere within the site.

27. The houses would be built of materials similar to those used in other surrounding housing. The use of a number of different roofing materials, together with variations in the height of buildings along the various street scenes, and the incorporation of features such as porches, canopies, pitched roof dormers and chimneys to selected plots would add interest and articulation to the buildings' elevations and variety to those street scenes. In those respects, the proposed houses would also be consistent with, and sympathetic to, the character and appearance of existing housing in the vicinity of the site. The development would therefore not conflict with Policy DM10 of the SADMP which, amongst other things, requires that development complements or enhances the character of the surrounding area with regard to scale, layout, design, materials and architectural features, that the use and application of building materials respects the materials of existing adjoining/neighbouring buildings, and incorporates a high standard of landscaping.
28. The Council and interested parties have referred to the site and the adjacent pub and new retail unit sites as forming a 'gateway' at the entrance to Hinckley, and to design aspirations in the outline masterplan for those sites to form a mixed-use 'hub', distinctive in height and appearance to other surrounding commercial and residential uses.
29. The site does form part of a wider vista across the gyratory and towards the railway bridge, and is seen in the context of those adjacent sites. However, both the pub and the partly-built retail units, which were envisaged as part of that wider 'hub', are a similar height to existing surrounding buildings, including other houses further along Amber Way, and other commercial buildings nearby. Furthermore, whilst larger in footprint, the pub is built in similar materials and is not dissimilar in appearance and detailing to existing nearby housing, and I heard nothing to suggest that the retail units would be finished in materials dissimilar to those used on other surrounding commercial buildings. Therefore, I am not convinced that those existing buildings have set a benchmark for the proposed development to follow in terms of providing a coherent, self-contained 'hub', distinctive from other surrounding development in its height, detailing and materials, as was envisaged in the masterplan.
30. The Framework states that permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area, taking into account any local design standards. However, it also states that, where the design of a development accords with clear expectations in plan policies, design should not be used by the decision-maker as a valid reason to object to the development.
31. The proposed houses would not necessarily appear distinctive compared with other surrounding housing, as was originally envisaged. However, the development would bring a vacant site into use with a development of new housing which, for the reasons given, would be sympathetic in character and appearance to existing surrounding housing, and would thus accord with the requirements of the relevant development plan policy as set out above.

32. The outline planning permission has lapsed, and the design aspirations in the masterplan have not been carried forward into any development plan policy or supporting guidance that I have been made aware of. The weight I afford to those aspirations and criteria as a material consideration is thus very limited, particularly as other developments envisaged as part of the same gateway have not notably achieved the distinctiveness that was originally envisaged. Therefore, and in the context of the development which has been permitted on those adjacent sites, I consider that the development is not of a poor design, and that it would take some opportunity to enhance the character and quality of the area, even if not fully achieving the original aspiration.
33. Therefore, for the reasons given, and having regard to relevant policies in the development plan as set out above, and the Framework taken as a whole, I conclude that the proposed development would not cause harm to the character or appearance of the appeal site and its surroundings.

Highways

34. The appeal scheme would result in 40 houses more than were permitted under the original outline permission, which included such highway works as were necessary to cater for the level of development approved at that stage. The additional vehicle movements associated with 40 further houses may be relatively limited. However, the LHA consider the nearby highway network to be already at capacity, and have referred to recognised and established congestion on this part of the network as justification for the need for subsequent developments to adequately mitigate their impact and prevent its further deterioration. That was not contested by the appellant with reference to any substantive evidence. Numerous local residents have also made reference to existing issues with heavy traffic and queueing at certain times around junctions in the vicinity of the site.
35. In that context, and also having regard to the potential for smaller developments to have a cumulative impact, I consider that even a relatively limited increase in traffic on that network would have an unacceptable impact on highway safety. Therefore, the requirement for any additional impact arising from the appeal proposal to be mitigated as part of the scheme is reasonable and necessary to make the development acceptable in planning terms.
36. In recognition of those existing capacity issues, the LHA has identified a programme of improvements to junctions near the site, and secured government funding towards those works. The S106 includes a Highways Contribution towards the remaining cost of those works once that government funding has been deducted. The contribution sum is based on the additional traffic anticipated on the local highway network to 2026 (the year used in the LHA's modelling), and the proportion of that additional traffic which would arise from the proposed development based on the developer's Transport Statement figures, which were not disputed by the Council or the LHA. Accordingly, I am satisfied that the contribution sought would be proportionate and reasonably related in scale and kind to the proposed development.
37. The proposed works are intended to improve capacity at the junction of Rugby Road and Hawley Road, and the junction of Rugby Road and Brookside. The site lies close to and between those two junctions. Their location on Rugby Road, which leads to the town centre in one direction and the M69 junction in the other, means that both are highly likely to be used by future residents of

- the proposed houses. Those works would therefore be directly related to the proposed development and would help to mitigate its effects.
38. The LHA confirmed at the hearing that it was committed to the delivery of the junction improvement works, and would forward-fund them, with contributions sought retrospectively from subsequent nearby developments, such as the current appeal scheme, thus allowing the necessary infrastructure to be delivered alongside or in advance of those developments. The works are programmed to start on site within a year, and would thus be likely to be completed at around the same time as the majority of the proposed development was being occupied. Therefore, I am satisfied that the necessary mitigation would be provided and completed within a reasonable period relative to the completion and occupation of the proposed development.
39. The S106 also includes an obligation requiring a sum to fund a Traffic Regulation Order (TRO) to extend existing waiting restrictions along parts of the site frontage on Rugby Road, and on Amber Way, where parked vehicles have been identified as an existing constraint to traffic flows by nearby residents. The waiting restrictions (double yellow lines) would protect visibility around the main entrance to the site and individual drives onto Amber Way. They would therefore be directly related and fairly and reasonably related in scale and kind to the development, and necessary to ensure satisfactory access to and from the development and thus make it acceptable in planning terms.
40. The S106 includes obligations requiring sums to pay for each new dwelling to be provided with two 6-month adult bus passes and a travel pack containing information regarding sustainable travel choices in the area. Those obligations are consistent with Policy DM17 of the SADMP, which refers to developments seeking to make the best use of existing public transport services, and are necessary to ensure compliance with that policy and thus make the development acceptable in planning terms. The sums are based on the cost per dwelling of providing those items, and are thus directly related, and related in scale and kind to the proposed development.
41. The obligations set out above would comply with Policies DM3 and DM17 of the SADMP. Amongst other things, those policies state that, where appropriate, improvements will be required to the highways network to limit any significant impacts arising from the development and that, where development will create a need to provide additional or improved infrastructure, developers will be expected to make such provision through the appropriate funding mechanism. The obligations would also be consistent with Leicestershire County Council's planning obligations policy, which refers to the provision of required infrastructure where a development would lead to an unacceptable increase in traffic on the network. Therefore, and for the reasons given, I conclude that each of those obligations meets the tests set out in paragraph 56 of the Framework and Regulation 122(2) of the Community Infrastructure Levy Regulations 2010 (as amended) (the CIL Regulations).
42. Interested parties expressed a desire for parking to be provided on the site for visitors to nearby public open space. However, no such requirement is identified in policy SA3, and I have not been presented with any substantive evidence to demonstrate a need for such further parking. The Council confirmed at the hearing that the levels of parking proposed for the new houses would be acceptable and in accordance with Policy DM18 of the SADMP,

having regard to the site location, type of housing and other modes of transport available. The Council also confirmed that the site layout is acceptable, including with regard to bin storage and turning facilities for large vehicles such as refuse trucks. On the basis of the evidence before me I agree, and consider the proposal to be acceptable in those respects.

43. Therefore, for the reasons given, I conclude that the proposed development would not have an adverse effect on the safety and convenience of highway users. The proposal would therefore not conflict with the requirements of Policies DM3, DM17 and DM18 of the SADMP as set out above. Those policies are consistent with the Framework, which states that in assessing specific applications for development, it should be ensured that safe and suitable access to the site can be achieved for all users, that appropriate opportunities to promote sustainable transport modes have been taken up, and that any significant impacts on the transport network (in terms of capacity and congestion) can be cost effectively mitigated to an acceptable degree.

Other Matters

Legal Agreement

44. The S106 makes provision for the delivery of on-site affordable housing, the amount and type of which would be consistent with Policy 15 of the Core Strategy. I have been referred to shortfalls in affordable housing on other recent housing schemes nearby. However, no requirement has been identified for the appeal proposal to make compensatory provision in that respect with reference to substantive evidence regarding affordable housing provision in the area. Accordingly, I consider that the obligation is necessary to make the development acceptable in planning terms, directly related to the development, and fairly and reasonably related in scale and kind to the development.
45. The S106 includes provision for: a health facilities contribution towards facilities at Burbage Surgery; an education contribution towards facilities at such primary and junior schools as will accommodate pupil growth from the development (Hinckley Westfield Infant and Junior Schools are specifically referred to by the Local Education Authority in that respect); and an off-site open space contribution towards the provision of equipped children's play space, a casual/informal play area and outdoor sports provision at Rugby Road Recreation Area.
46. Those contributions have been calculated based on the number of dwellings proposed (and thus the anticipated number of new patients, pupils, or open space users), and using established multipliers, including those in the Council's Open Space and Recreation Study, which were not disputed by either main party. In identifying the infrastructure required, it is evident that account has been taken of the facilities most likely to cater for future residents and the existing capacity of those facilities. All relate to a need to provide additional or improved infrastructure to mitigate the effects of the development, as referred to in SADMP Policy DM3 and, with specific reference to green space and play provision, Core Strategy Policy 19. I am therefore satisfied that those contributions would be directly related and fairly and reasonably related in scale and kind to the development, and necessary to make it acceptable in planning terms.

47. The S106 also makes provision for a civic amenity contribution to be used towards the development of a new recyclables area at Barwell Civic Amenity Site, and a library contribution to be used towards facilities at Hinckley Library. Both are identified as the nearest such facilities to the appeal site and thus those most likely to be used by future residents. The development would increase the use of those facilities, and would exceed the 10 dwelling/'major' residential development thresholds for contributions to such facilities as set out in Leicestershire County Council's Planning Obligations Policy. Therefore, and as the required contributions have been calculated on a per-dwelling basis, I consider them to be directly related and fairly and reasonably related in scale and kind to the development, and necessary to make it acceptable in planning terms.
48. The S106 includes an obligation for a contribution towards Leicestershire County Council's costs of monitoring those obligations in the S106 which fall within its jurisdiction, specifically the Civic Amenity, Education, Library, Travel Packs, Bus Pass, TRO and Highway contributions. Regulation 122 (2A) of the CIL Regulations makes provision for a sum to be paid to a local planning authority in respect of the cost of monitoring in relation to the delivery of planning obligations in its area, subject to conditions.
49. The County Council is not the local planning authority. However, as it is clear that it would be responsible for monitoring those obligations identified above, it is reasonable for those relevant provisions of the CIL Regulations to also be applied to the County Council in this case. The main parties agreed at the hearing that the monitoring sums set out in the S106 were fairly and reasonably related in scale and kind to the development. The parties also agreed that the sums were consistent with the provisions of Leicestershire County Council's Planning Obligations Policy, and there was no suggestion that those sums would exceed the authority's estimate of its cost of monitoring the development over the lifetime of those planning obligations. Accordingly, I consider the obligation to meet the tests in the CIL Regulations.
50. In all other respects, I agree with the Council that the S106 agreement would be effective in securing the various obligations. Therefore, for the reasons given, I consider that each of the obligations set out therein would meet the relevant tests for planning obligations as set out in the Framework and Regulation 122 of the CIL Regulations.

Other considerations

51. I have not been referred to any specific policies from the emerging NP. However, I have been referred to concerns raised in the NP that the current rate of housing development may not be sustainable without investments in infrastructure such as health, education, access to open space and to the road network. Via the S106 agreement, the development would make provision for contributions towards health facilities, education, and improvements to open space and highway capacity, as well as other community facilities. Those measures would be proportionate to the scale of development proposed, and would mitigate its effects on those items of infrastructure.
52. Notwithstanding references made by interested parties to the potential effect on heritage assets, it was agreed by both main parties at the hearing that the proposed development would not affect any listed buildings or conservation

areas. On the basis of the evidence before me, I have no reason to reach a different conclusion on this matter.

53. The site has some small trees and shrubs around parts of its boundaries, and was somewhat overgrown at the time of my visit. However, it contains little by way of any substantial planting at present. Therefore, and on the basis of the evidence before me, I have no reason to believe that the site makes a significant contribution to biodiversity or contains features likely to suggest its use by protected species. The development would incorporate new planting, including a belt of new trees along its frontage adjacent to the Sketchley Beck. I therefore consider that it would not harm, and may even enhance, biodiversity compared with the existing situation.
54. Due to the height and layout of the proposed houses, and the separation distances between them and other surrounding dwellings, the development would not cause harm to the living conditions of nearby residents with regard to privacy or light. I have not been presented with any compelling evidence to support concerns raised that the development of further housing would result in an increase in crime in the area, and thus have no reason to conclude that such an effect would occur. I have been referred to gradients within the gardens of other recently constructed dwellings being so steep as to compromise their usability. However, as the appeal site is relatively flat, I am satisfied that similar issues would not arise on this site.
55. The main parties agreed that deficiencies in broadband provision could be addressed through the imposition of a condition requiring the provision of electronic communications infrastructure, including fibre broadband, to the houses within the development. On the basis of the evidence before me I have no reason to doubt that such provision could be achieved.
56. I have been referred to instances of flooding in the area and concerns regarding the drainage of the site. The appellant has submitted a Flood Risk Assessment and Drainage Strategy. On the basis of that document, none of the Council's drainage consultees has raised any objection to the proposal in principal, subject to conditions requiring the specific details of the drainage proposals to be approved. Accordingly, in the absence of any substantive evidence to the contrary, and subject to those conditions, I am satisfied that an appropriate drainage scheme could be achieved for the site, and I have no reason to conclude that the development would increase flood risk elsewhere.
57. Matters relating to wayleaves for gas equipment within the site are private matters between the relevant parties. Planning is concerned with land use in the public interest and the protection of private interests, such as property values, is not a consideration to which I give weight.

Conditions

58. I attach a condition specifying the approved plans, for certainty. As the approved plans include a drawing which sets out the development levels, a separate condition relating to levels is not necessary.
59. Conditions requiring the approval and implementation of a scheme of site remediation, and covering the eventuality of unexpected contamination, are necessary to ensure that the site is safe and suitable for the intended residential use. I attach conditions requiring the approval and implementation

of a surface water drainage strategy to ensure that the site is suitably drained and prevent surface water flood risk within the site and elsewhere. A condition relating to construction management is necessary in the interests of highway safety and the living conditions of nearby residents. In specifying those matters to be included, I have set out only those I consider necessary and proportionate to the scale and nature of the development proposed. As that would include a requirement to specify working hours, a separate condition in that respect is not necessary. These are required to be pre-commencement conditions as it is fundamental to have the details approved prior to the development commencing on site.

60. A condition requiring a scheme to protect future occupants of the proposed dwellings from noise from Rugby Road is necessary in the interests of their living conditions. Conditions relating to construction materials, landscaping and boundary treatments are necessary to protect character and appearance and to ensure satisfactory levels of privacy for future occupants of the development.
61. I attach conditions requiring the provision and retention of vehicular access areas and relevant visibility splays in accordance with the approved plans, and before the development is occupied, in the interests of highway safety. A condition requiring any gates or barriers to individual drives to be set back from the highway and hung to open inwards is necessary to prevent obstruction to the highway or footpaths within and around the site.
62. A condition requiring the approval and implementation of a scheme for the provision of electronic communications, including full fibre broadband connections to all plots, is necessary to ensure the provision of a high quality and reliable communications infrastructure network, consistent with the requirements of the Framework.
63. It was agreed by the main parties at the hearing that no exceptional circumstances existed to justify the removal of permitted development rights for certain plots. I agree, and that a condition to that effect would not be necessary or reasonable in this case.
64. I have made some amendments to the format and wording of those conditions suggested which I have included, for precision. The appellant has confirmed their agreement to those conditions which are pre-commencement.

Conclusion

65. For the reasons given, and having regard to all other matters raised, the appeal is allowed.

Jillian Rann
INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the approved plans listed in the Schedule of Plans below.
- 3) Development shall not commence until a scheme for the remediation and validation of identified land contamination on the site has been submitted to and approved in writing by the local planning authority. The approved remediation scheme shall be carried out, and any necessary verification or validation report shall be submitted to and approved in writing by the local planning authority, before any part of the development is first occupied.

If any contamination is found during the course of construction of the approved development that was not previously identified, no further development shall take place until a scheme for the investigation, remediation and validation of that contamination has been submitted to and approved in writing by the local planning authority. Any remediation works so approved shall be carried out, and any necessary any necessary verification or validation report shall be submitted to and approved in writing by the local planning authority, before any part of the development is first occupied.

- 4) Development shall not commence until a scheme to provide a surface water drainage system for the development has been submitted to and approved in writing by the local planning authority. The scheme shall be in accordance with the principles in the Drainage Strategy reference FW1329/DS/001-v2, prepared by Farrow Walsh Consulting and dated May 2018, and shall include the following:
 - a) details relating to the management of surface water on the site during the construction of the development;
 - b) an assessment of the potential for the suitability of the site for the use of infiltration drainage, including the carrying out of infiltration testing, and the updating of the Drainage Strategy as necessary;
 - c) a management and maintenance plan for any proposed sustainable surface water drainage system for the lifetime of the development; and
 - d) measures to prevent the drainage of surface water into the public highway.

The surface water drainage works shall be carried out and completed in accordance with the details thereby approved before any part of the development is first occupied or brought into use, and shall thereafter be managed or maintained in accordance with any management and maintenance plan thereby approved.

- 5) No development shall take place, including any site clearance or preparation works, until a Construction Management Plan has been submitted to and approved in writing by the local planning authority. The Plan shall provide for:
 - a) the parking of vehicles of site operatives and visitors within the site for the duration of the site preparation and construction works, including a timetable for the provision of such facilities;

- b) wheel washing facilities within the site for the duration of the site preparation and construction works, including a timetable for their provision;
- c) measures to mitigate the effects on the living conditions of nearby residential properties for the duration of site preparation and construction works, including with regard to dust, vibration, light and noise;
- d) details of the hours during which site preparation and construction works are to be carried out.

The construction of the development shall be carried out in accordance with the details and timetables thereby approved.

- 6) No development shall take place above slab level until a scheme of measures to protect future occupants of the dwellings hereby permitted from noise from Rugby Road has been submitted to and approved in writing by the local planning authority. No dwelling shall be occupied until any necessary protection or mitigation measures for that dwelling have been carried out and completed in accordance with the details thereby approved.
- 7) The materials to be used on the external surfaces of the dwellings, garages and boundary walls of the development hereby approved shall be in accordance with the details on Materials Plan drawing PS/BC/ML revision C.
- 8) The hard and soft landscaping of the development hereby approved shall be carried out in accordance with the details on Soft Landscape Proposals drawing P17-1256_01F, Soft Landscape Proposals drawing P17-1256_02F and Hard Landscape Zone Proposals drawing P17-1256_03E.

No development shall take place above slab level until a timetable for the carrying out of those hard and soft landscaping works has been submitted to and approved in writing by the local planning authority. The works shall be carried out in accordance with the timetable thereby approved.

All soft landscaping works shall be maintained in accordance with the approved details for a period of five years following the date of their planting. During that period, any trees or shrubs which die or are damaged, removed or seriously diseased shall be replaced in the next planting season by trees or shrubs of a similar size or species to those originally planted.

- 9) No dwelling shall be occupied until the boundaries of the rear garden of that dwelling have been enclosed by 1.8m high solid close-boarded timber fencing or brick walls in accordance with the details on Materials Plan drawing PS/BC/ML revision C and Hard Landscape Zone Proposals drawing P17-1256_03E. Those boundary treatments shall be retained in accordance with the approved details thereafter.
- 10) The development hereby permitted shall not be occupied or brought into use until all vehicular accesses, vehicular and pedestrian routes within the site, communal parking areas, vehicle turning areas and visibility splays have been laid out and been surfaced with tarmacadam or other hard bound materials, in accordance with the details on Site Layout drawing MJ/COMP-01 revision U and Hard Landscape Zone Proposals drawing P17-1256_03E. Once provided, those accesses, routes, parking and turning areas and visibility splays shall be retained as such thereafter.

11) No dwelling shall be occupied until:

- a) the parking, access and turning areas for that dwelling have been laid out and surfaced with tarmacadam or other hard bound materials in accordance with the details on Site Layout drawing MJ/COMP-01 revision U and Hard Landscape Zone Proposals drawing P17-1256_03E; and
- b) 1.0 metre by 1.0 metre pedestrian visibility splays have been provided on the highway boundary on both sides of the access to that dwelling, with nothing within those splays higher than 0.6 metres above the level of the adjacent footway/verge/highway.

Once provided, those parking, access and turning areas and visibility splays shall be retained as such thereafter. Any vehicular access gates, barriers, bollards, chains or other such obstructions installed on those access or parking areas shall be set back a minimum distance of 5 metres behind the highway boundary and shall be hung so as not to open outwards towards the highway.

- 12) No part of the development shall be occupied or brought into use until full details of a scheme for the provision of electronic communications networking to serve the development, including full fibre broadband connections to each dwelling, and a timetable for implementation, have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the details and timetable thereby approved.

Schedule of Plans

Site Location Plan 1:2500 at A3, dated March 2018, received by the local planning authority 10 April 2018.

Site Layout drawing MJ/COMP-01 revision U.

Planning Engineering Layout drawing FW1329 120A.

Soft Landscape Proposals drawing P17-1256_01F.

Soft Landscape Proposals drawing P17-1256_02F.

Hard Landscape Zone Proposals drawing P17-1256_03E.

Materials Plan drawing PS/BC/ML revision C.

Plan & Elevations drawings received by the local planning authority 14 September 2018:

- Plot 2 (Type B7P-R (AS)) drawing BURB/B7P-R/P-01AS.
- Plot 9 (Type B7P-R (Dual Aspect) (OP)) drawing BURB/B7P-R/P-02OP.
- Plot 10 (Type B7P-S (OP)) drawing BURB/B7P-S/P-01OP.
- Plot 11 (Type B7P-G (AS)) drawing BURB/B7P-G/P-01AS.
- Plot 12 (Type B7P-G (OP)) drawing BURB/B7P-G/P-01OP.
- Plot 13 (Type B7P-P (Dual Aspect) (OP)) drawing BURB/B7P-P/P-01OP.
- Plot 17 (Type B7P-Q (AS)) drawing BURB/B7P-Q/P-01AS.
- Plot 18 (Type B7P-T (AS)) drawing BURB/B7P-T/P-02AS.
- Plot 19 (Type B7P-T (OP) (Chimney)) drawing BURB/B7P-T/P-02OP.
- Plot 22 (Type B7P-S (AS) (Chimney)) drawing BURB/B7P-S/P-02AS.
- Plot 28 (Type B7P-P (Dual Aspect) (AS)) drawing BURB/B7P-P/P-01AS.
- Plot 30 (Type B7P-S (AS)) drawing BURB/B7P-S/P-01AS.
- Plot 34 (Type B7P-W (Dual Aspect) (AS)) drawing BURB/B7P-W/P-02AS.
- Plot 36 (Type B7P-W (AS)) drawing BURB/B7P-W/P-01AS.
- Plots 1, 21, 31 (Type B7P-N (Dual Aspect-Chimney) (OP)) drawing BURB/B7P-N/P-01OP.
- Plots 14, 26, 32 (Type B7P-L (OP)) drawing BURB/B7P-L/P-01OP.
- Plots 20, 23 (Type B7P-L (Dual Aspect) (OP)) drawing BURB/B7P-L/P-02OP.
- Plots 27, 29 (Type B7P-M (OP)) drawing BURB/B7P-M/P-01OP.
- Plots 3, 7 (Type B7P-E (AS)) drawing BURB/B7P-E/P-01AS.
- Plots 33, 35 (Type B7P-W (Dual Aspect-Chimney) (OP)) drawing BURB/B7P-W/P-01OP.
- Plots 37-38 (Type B7P-Y (AS)) drawing BURB/B7P-Y/P-01AS.
- Plots 39-40 (Type B7P-Y (OP)) drawing BURB/B7P-Y/P-01OP.
- Plots 4, 8 (Type B7P-E (OP)) drawing BURB/B7E-P/P-01OP.
- Plots 5, 15, 24 (Type B7P-T (OP)) drawing BURB/B7P-T/P-01OP.
- Plots 6, 16, 25 (Type B7P-T (AS)) drawing BURB/B7P-T/P-01AS.

APPEARANCES

FOR THE APPELLANT:

Laura McCombe	Senior Planner, Boyer Planning
Nigel Harris	Director, Boyer Planning
Chris May	Planning Solicitor, Howes Percival

FOR THE LOCAL PLANNING AUTHORITY:

Carol Grant	Senior Planner, Hinckley and Bosworth Borough Council
Councillor Paul Williams	Ward Councillor, Burbage, Sketchley and Stretton Ward
David Hunt	Senior Transportation Engineer, Leicestershire County Council
Councillor David Bill	Planning Lead, Hinckley and Bosworth Borough Council
Helen Nightingale	Principal Planning Officer, Major Projects, Hinckley and Bosworth Borough Council

INTERESTED PERSONS:

Natasha Jolob	Local resident.
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DOCUMENTS SUBMITTED AT THE HEARING

1. Signed S106 Agreement, dated 19 August 2019.
2. Full set of Floor Plan and Elevation drawings on which the Council's decision was based.
3. Red Line Boundary drawing reference P001 and Sketchley Brook Masterplan drawing reference 8411 P004-B from outline planning permission reference 10/00518/OUT.
4. Copy of decision notice, outline planning permission 10/00518/OUT.