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# Appeal Decision

Inquiry held on 11-13 December 2012

Site visit made on 14 December 2012

**by A J Davison BA(Hons) LLB(Hons) MSc MBA DipLD RIBA FRTPi**

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

**Decision date: 22 January 2013**

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## **Appeal Reference: APP/K2420/A/12/2181080/NWF**

### **Land east of Groby cemetery, Ratby Road, Groby**

- 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 Bloor Homes east Midlands Ltd against the decision of Hinckley & Bosworth Borough Council.
  - The application Reference 12/00250/FUL, dated 19 March 2012, was refused by notice dated 27 July 2012.
  - The development proposed is the erection of 91 dwellings with garages, parking spaces, open space, landscaping and associated infrastructure.
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### **Decision**

1. The appeal is dismissed.

### **Main Issues**

2. There are two main issues in the appeal. The first is the adequacy of the supply of housing in the Borough. The second is the effect of the proposed development on the character and appearance of the Rothley Brook Meadow Green Wedge. A further consideration in each of these issues is the impact of the appeal proposals on the emerging *Site Allocations and Generic Development Control Policies Development Plan Document (SAGDCP)*.

### **Reasons**

3. The 4.4ha appeal site is in the Green Wedge that separates the villages of Groby and Ratby. Although within Ratby Parish, it borders residential development in Groby and there is open land between the site and Ratby village. There have been several unsuccessful planning applications for housing development on the site, the most recent resulting in a dismissed appeal in 2011. The Appellants have also sought to promote the site for housing at the local Inquiries into the Local Plan and Core Strategy.

### *Housing Supply*

4. The *Hinckley and Bosworth Core Strategy* was adopted in December 2009. It envisages that the majority of housing development will be provided in the urban area or through sustainable amendments to the settlement boundary and in two Sustainable Urban Extensions (SUEs), with a proportion distributed around rural areas in order to meet local needs. The Core Strategy requires the provision of 9000 homes in the Borough between 2006 and 2026, at an average of 450 homes a year.

5. Policy 8 identifies Groby as one of the Key Rural Centres, where the Council will aim to allocate land for such housing. The parties agree (Statement of Common Ground paragraph 7.1) that at least 110 new dwellings will be needed in Groby and that this will involve the use of land outside the existing settlement boundary. The land to be allocated will be identified in the SAGDCP. That document, which is currently at Consultation Draft stage, identifies the appeal site as one of the preferred options.
6. The 2011 appeal was decided in the light of the 2009 Core Strategy and at a time when the Council did not have a five year supply of housing land. Since then, in March 2012, the *National Planning Policy Framework* (NPPF) has been issued. The Appellants have drawn attention to paragraph 49 of the NPPF, which says that housing supply policies should not be considered up to date if the local planning authority can not demonstrate a 5 year supply of deliverable housing sites.
7. The calculation of housing land supply is not an exact science. The dispute between the parties relates largely to the choice of predictive models. The Council prefers the "Liverpool" method, which spreads any shortfall in a given year over the remainder of the Plan period and is appropriate where there is not a severe shortage. On that basis the Council can show a supply of housing land extending to 5.27 years or 5.02 years if a 5% buffer is applied.
8. The Appellants prefer the "Sedgefield" model, which seeks to meet any shortfall earlier in the Plan period, on the basis that this approach accords with the views of the government, as set out in paragraph 47 of the NPPF with regard to boosting housing supply. They draw attention to a number of appeal decisions where this approach has been adopted. They also suggest that the 5% buffer is insufficient and that a 10% or 20% buffer would be more appropriate. This approach has some force given that the Council can only show a supply marginally in excess of five years.
9. Nonetheless, the Liverpool model is a recognised way of calculating housing supply. The Core Strategy Inspector anticipated that there would be shortfalls in housing land supply in the early years and that these would be made up later in the Plan period when, for example, the SUEs came on stream. It is clear from the Council's evidence that progress has been made with the Earl Shilton and Barwell SUEs and that planning permission for the Barwell SUE is likely to be granted in the spring of this year.
10. The Appellants point out that the Core Strategy Inspector's conclusions were based on the expectation that sites would be brought forward in the SAGDCP, the production of which has been delayed by several years. That situation was, however, known to the Inspector dealing with the 2011 appeal.
11. Given the inherent uncertainties in any prediction of future supply and the fact that it is a method that chimes with the approach in the Core Strategy, I consider that it does provide a reasonable basis for assessing future supply. On that basis I conclude that the Council has shown that it has a five year supply of housing land. Furthermore, it is clear that the Council is not averse to boosting the supply of housing. Specifically, it is proposing to allocate land for housing in Groby. In the context of this appeal, it is not the amount of housing that is in dispute but its location.

12. Paragraph 12 of the NPPF states that it does not change the statutory status of the development plan as the starting point for decision making and that development proposals that conflict with an up to date Plan should be refused unless other material considerations indicate otherwise. One of the 12 core principles set out in paragraph 17 is that planning should be genuinely plan led, empowering local people to shape their surroundings with succinct local and neighbourhood plans setting out a positive vision for the future of the area and providing a practical framework within which decisions on planning applications can be made with a high degree of predictability and efficiency.
13. The consultation period for the SAGDCP Preferred Options Report ended in April 2009 and the document is in the process of being amended in the light of the responses received. A pre-submission draft is due to be published in August of this year, followed by submission to the Secretary of State at the beginning of 2014. The fact that the Council has identified the appeal site as a preferred option for housing development is clearly a factor that lends support to the Appellants' position. Nevertheless, as in 2011, the weight to be attached to it is limited by the fact that the document in question is a consultation draft.
14. The local community, both as individuals and through the Parish Councils, have been actively involved in the consultation process. It may be that this process will result in the appeal site being allocated for housing development. To grant planning permission at this time, however, would pre-empt a decision that should properly be made through the development plan process. It would render futile the work done by the Council and the contributions made by the local community, thereby reducing public confidence in the planning process and would be contrary to the spirit of paragraphs 12 and 17 of the 2012 NPPF.
15. In conclusion I consider that the Council has an up to date development plan in the form of the 2009 Core Strategy, that it has shown the existence of a five year supply of housing land and that it would be premature to grant planning permission for the development of the appeal site in advance of the adoption of the SAGDCP.

### *Green Wedge*

16. Green Wedge Policies have their origin in the 1987 *Leicestershire Structure Plan* and have been repeated in one form or another in successive development plans including the Core Strategy. Core Strategy Policy 9 seeks to protect the Green Wedges and lists various uses that would be acceptable within them. Since housing is not one of them, the appeal proposal conflicts with the Policy.
17. Policy 9 requires the carrying out of a Green Wedge Review which, along with the *Strategic Housing Land Availability Assessment* (SHLAA), will inform the SADPD. In July 2011 a methodology for the review was agreed by the various Leicestershire Authorities. This set out four objectives for the Green Wedges. They were to prevent the merging of settlements, guide urban form, provide a "green lung" and act as a recreation resource.
18. The review is currently in progress and will establish how much land should be released from different parts of the Green Wedge and allocated for development. The emphasis is on identifying land where development would have a limited impact on the Green Wedge while being in a sustainable location in terms of transport and access to services.

19. The site has been considered at three separate Inquiries, starting with the Local Plan Inquiry in 1996/97 followed by the Inquiry into the 2009 Core Strategy and that into the 2011 appeal decision. The approach taken by Inspectors - that development would detract from the open character and appearance of the area and would conflict with Core Strategy Policy 9 - has been consistent.
20. The appeal site is bounded to the east by a stream, beyond which is a public footpath that runs along the embankment of a disused railway line and currently marks the edge of the built up area of the village. To the south is a strip of open land lying between the site and Sacheverall Way. The northern boundary is formed by a stream, beyond which is a terrace of three houses, known as Brookvale Cottages. To the west is the road linking Ratby and Groby, a single large house, Ashdale, and the Groby Village cemetery. A public footpath runs between the cemetery and the appeal site.
21. In purely physical terms the proposed development would reduce the gap between Ratby and Groby. Although the site adjoins an extensive area of suburban housing, this is effectively screened by the railway embankment, which forms a logical boundary to the built up area. The Appellants point out, with reference to the 2011 appeal decision, that openness for its own sake is not one of the four objectives of the Green Wedge. However, the character of the land in question clearly has a bearing on its contribution to those objectives. The appeal site has an open and rural character while the cemetery and nearby school playing fields, though less rural in character, also have an open aspect that helps to emphasise the separation of the two villages.
22. The Appellants draw attention to the fact that the public do not have a right of access onto the site and say that it can not, therefore, have any recreational value. I see no reason, however, to restrict the definition of recreation to sporting or other activities taking place on the land itself. Recreation can also include walking and general enjoyment of the countryside. There are well used public footpaths along two of the site boundaries and the site provides an attractive complement to their use. In my view the site is, in that respect, a valuable informal recreation resource, the importance of which is enhanced by its proximity to the built up area.
23. The fact that the Council has included the site as one of the preferred options for housing development in Groby is clearly a material consideration and is one that favours the Appellants' proposals. The weight to be attached to it is, however, reduced by the fact that the SAGDCP and Green Wedge Review are still at draft stage. It may well be that the outcome of the process will be to amend the Green Wedge boundary in the area and allocate the site for housing but that is far from being a foregone conclusion.
24. While taking account of the possible future changes to the boundary of the Green Wedge in this area, I must consider the appeal proposal in the light of the development plan as it stands at present. I consider that the proposed development would detract from the character and appearance of the area and would conflict with Policy 9 of the Core Strategy. The Core Strategy is up to date, having been adopted in 2009, and I see no reason to disagree with the conclusion reached in the 2011 appeal decision.

### *Other Matters*

25. The reason for refusal relating to infrastructure contributions was withdrawn prior to the Inquiry as the Council was satisfied with the figures in the Appellant's Unilateral Undertaking. The Parish Councils, however, remained unconvinced that this made adequate provision for education and health and maintained their objections. Following separate discussions between the County and Parish Councils during the Inquiry Groby Parish Council, withdrew its objection. I consider that the provisions made in the Unilateral Undertaking are adequate and meet the requirements of the CIL Regulations.
26. During the Inquiry Ratby Parish Council drew attention to the fact that, although the site is in Ratby Parish, the Appellants' contribution to the provision of open space was (Document 22) to be spent on facilities in Groby. However, the contribution would be made to the Borough Council as planning authority and the way in which the contribution would be best employed is primarily a matter for that Council to decide. As the site adjoins Groby it would seem sensible to provide the facilities there rather than in Ratby, which is some distance away.
27. I have also taken account of representations made by Groby parish Council to the effect that, although residents would be likely to use facilities in Groby rather than Ratby because of the location of the site, any financial benefit from the scheme in terms of the Parish Council precept and New Homes Bonus would accrue to Ratby. I do not, however, regard that as a planning consideration.
28. I have also taken account of the benefit accruing from the contribution that the development would make to the supply of affordable housing in the area. It seems to me, however, that this contribution is one that should be expected of any similar development.

### **Conclusion**

29. Having regard to all of the above, I consider that the appeal proposal would harm the character and appearance of the Green Wedge and would conflict with Policy 9 of the 2009 Core Strategy. While taking account of the possible changes to the Green Wedge boundary resulting from consideration of the SAGDCP, I concur with the Council's view that the appeal proposal is premature. I do not accept that the housing supply situation is such as to require the granting of planning permission on this site in advance of decisions on the draft SAGDCP and the Green Wedge Review, both of which are well advanced. To do so would effectively pre-empt those decisions, overriding the public consultation process and contravening the aims of the 2012 NPPF.
30. For the reasons given above and having regard to all other matters raised, I conclude that the appeal should be dismissed.

*Anthony J Davison*

Inspector

## APPEARANCES

### FOR THE APPELLANT:

Jeremy Cahill	Queens Counsel
He called	
Anthony Bateman BA(Hons)	Managing Director
TP MRICS MRTPI MCI MIoD	Pegasus Group

### FOR THE LOCAL PLANNING AUTHORITY:

Timothy Leader	Of Counsel
He called	
Erica Whettingsteel	Managing Director
BA(Hons) DipTP DipUD MRTPI	EJW Planning Limited

### FOR LEICESTERSHIRE COUNTY COUNCIL:

John Prendergast	Senior Solicitor, Leicestershire County Council
He called	
Andrew Tyrer BA(Hons)	Developer Contributions Officer Leicestershire County Council
Sharon Townsend	Strategy Officer for Schools Administration and People Services, Leicestershire County Council
Stephen Kettle	Modernising Services Manager for Adults and Communities, Leicestershire County Council
Ian Braker	Senior Waste Officer Leicestershire County Council

### FOR GROBY PARISH COUNCIL:

Simon Stanion	Solicitor, Marrons
He called	
Mr Coley	Chairman, Groby Parish Council

### FOR RATBY PARISH COUNCIL:

Linda Fogg	Clerk to the Council, Ratby Parish Council
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### INTERESTED PERSONS:

Peter Batty	Councillor Hinckley and Bosworth Borough Council
Ozzy O'Shea	Councillor Hinckley and Bosworth Borough Council

Chris Boothby	Councillor Hinckley and Bosworth Borough Council
Martin Cartwright	Councillor Hinckley and Bosworth Borough Council
Stuart Bray	Leader of Council Hinckley and Bosworth Borough Council

## **DOCUMENTS**

- 1 Lists of persons attending the Inquiry
- 2 Appellant's Opening Statement
- 3 The Council's Opening Statement
- 4 The Council's Document EJW11: Blaby District Core Strategy EIP Note from Inspector on modifications required for soundness
- 5 The Council's Document EJW12: Housing Supply – Permissions Granted
- 6 The Council's 2009 Core Strategy
- 7 The Planning System: General Principles (ODPM 2005)
- 8 Appellant's Rebuttal of Groby Parish Council's proof of evidence
- 9 Planning permissions relating to Martinshaw County Primary School
- 10 Documents relating to appeal at Stephenson Way, Coalville
- 11 Councillor Batty's written statement
- 12 *Hands Off Our Land*; press report on statement by David Cameron
- 13 Groby Parish Council observations on the Core Strategy
- 14 Minutes of Council Scrutiny Commission meeting, 8 December 2011
- 15 Minutes of Council meeting, 20 January 2009
- 16 Documents relating to Primary Schools in walking distance of appeal Site
- 17 Councillor O'Shea's written statement
- 18 Groby and Field Head Community Project Parish Plan, October 2005
- 19 Introduction to the draft Site Allocations DPD
- 20 R v Rochdale MBC ex parte Milne
- 21 The Appellant's S106 Unilateral Undertaking
- 22 Groby Parish Council's documents relating to off-site open space provision
- 23 The Council's revised list of planning conditions
- 24 Closing submissions on behalf of Ratby Parish Council
- 25 Closing submissions on behalf of Groby Parish Council
- 26 Closing submissions on behalf of the Council
- 27 Closing submissions on behalf of the Appellant