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# Appeal Decision

Inquiry opened on 7 February 2017

**by David Spencer BA(Hons) DipTP MRTPI**

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

**Decision date: 27 March 2017**

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**Appeal Ref: APP/X2410/W/16/3152082**

**Land to the east of Seagrave Road, Sileby, Leicestershire.**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure of Charnwood Borough Council to give notice within the prescribed period of a decision on an application for outline planning permission.
  - The appeal is made by Hallam Land Management Ltd & Trustees of the Skertchly Trust.
  - The application Ref P/15/0047/2, is dated 8 January 2015
  - The development proposed is residential development of up to 195 new dwellings together with new areas of public open space, landscaping, access and surface water attenuation (all matters reserved save for access).
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## Decision

1. The appeal is dismissed.

## Procedural Matters

2. The full extent of the appeal site can be readily viewed from the public domain in Seagrave Road and from public footpath I43 along the valley floor of the Sileby Brook. On this basis and with the agreement of the main parties an accompanied site visit was not deemed necessary. However, for completeness I have also visited the representative viewpoints appended to the main Statement of Common Ground (SOCG). With regard to the voluble local concern regarding highway safety I have also visited, at various times, the local highway network in the vicinity of the appeal site, within the historic core of the village and various connecting routes to the A6 and A46.
3. The application was submitted in outline with all matters reserved except access. The appellant has provided an illustrative masterplan to indicate in broad terms how the site could be developed. In considering its putative reasons for refusal the Council assessed the appeal proposal on this basis and so shall I.
4. A draft Section 106 agreement (S106) was presented at the opening of the Inquiry containing a number of planning obligations covering affordable housing, open space, transport and community infrastructure (health, police, household waste and libraries). A signed and executed S106 was submitted after the inquiry had closed. These proposed contributions would need to be assessed against the statutory tests set out in the Community Infrastructure Levy (CIL) Regulations 2010.
5. Three separate signed and dated SOCGs were presented within the Inquiry papers including one with the Local Planning Authority (LPA) dated 17 January 2017. This SOCG did not dispute the housing need/requirement and focused

on matters of difference relating to components of housing land supply. On the 27 January 2017 the Leicestershire Housing and Economic Development Needs Assessment (HEDNA)<sup>1</sup> was published containing a new figure<sup>2</sup> for the Objectively Assessed Need (OAN) for all authorities within the wider Leicestershire housing market area, including Charnwood. The appellant submits this OAN to be significant new evidence such that at the Inquiry there was no longer agreement on the starting point for determining housing land supply calculations.

6. The Housing White Paper was published on the first day of the Inquiry. It was dealt with at the event and in closing submissions. Neither main party requested additional time to consider its content and/or make further submissions. As a white paper it is a communication of government's intention for future legislation and is therefore a material consideration which I must take into account.
7. The appeal proposal has been determined not to require an Environmental Impact Assessment.

### **Main Issues**

8. This is an appeal against the LPA's non-determination of the planning application. Whilst the application was submitted in outline it was nonetheless accompanied by a raft of supporting technical documentation. This material is broadly accepted by technical consultees and demonstrates that a number of matters are capable of being satisfactorily dealt with either by condition or planning obligation. Accordingly, the LPA in July 2016 submitted two putative reasons for refusal. Firstly conflict with the development plan and secondly highway safety.
9. The second reason relating to highway safety was withdrawn in December 2016. Although not a sustained putative reason for refusal by either the LPA or the local highway authority, having heard the strong submissions from the local community I consider that highway safety should be considered as a main issue in this appeal. This matter has been addressed in some detail in the submissions before me, including by the appellant's transport witness at the Inquiry.
10. Therefore, the main issues in this appeal are as follows:
  - 1) Whether or not the LPA can demonstrate a five year supply of deliverable housing land;
  - 2) The degree of conflict and/or consistency with the policies of Development Plan;
  - 3) The effect of the appeal proposal on the safety of vehicular and pedestrian traffic in and around Sileby; and
  - 4) The planning balance, including the weight to be attached to the benefits of the appeal proposal.

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<sup>1</sup> Published by and on behalf of the nine Leicestershire authorities including Charnwood Borough Council.

<sup>2</sup> Based on the latest 2014 ONS population and DCLG household forecasts

## Reasons

### *Location*

11. The site is located on arable farmland at the edge of Sileby a large village with a range of services and facilities including regular bus and rail links to Leicester and Loughborough. The historic core of the village remains well defined but it is evidently a settlement that has appreciably expanded since the mid Twentieth Century. This includes recent housing developments on Seagrave Road including the Bellway Homes site (135 dwellings) immediately to the south of the appeal site and the Miller (Pevenil) Homes site (180 dwellings) further to the north-west. More established housing along the ridge on Seagrave Road also adjoins the appeal site to the west.

### *Development Plan*

12. The development plan for the area comprises the 2015 Core Strategy<sup>3</sup> and those saved policies of the 2004 Local Plan<sup>4</sup>. The Core Strategy was found sound in September 2015 and adopted by the Council in November 2015. Its primary function is to provide the vision, objectives, strategy and strategic policies to deliver growth over the period to 2028. It was prepared and examined in the context of the National Planning Policy Framework (NPPF) and Planning Practice Guidance (PPG). Policy CS1 sets the development strategy including assignment of growth levels. Sileby is identified as one of seven Service Centre villages where at least 3,000 new homes are planned between 2011 and 2028.
13. At the time of its examination and adoption the Core Strategy was intended as the first in a suite of documents to make up the Charnwood Local Plan to 2028. A Site Allocations and Development Management Development Plan Document (the SADMDPD)<sup>5</sup> was intended to follow. The LPA's latest Local Development Scheme<sup>6</sup> (LDS) confirms that a new composite Local Plan for the period 2011-2036 is now being prepared. That work is at an early stage and there is no prematurity issue. The nub of the Core Strategy matter in this appeal is the application of Policy CS1 as it relates to Service Centre villages.
14. A number of saved Local Plan policies are confirmed at Appendix 5 of Core Strategy including two policies referred to in the LPA's putative reason for refusal (Policies CT/1 and CT/2). It is accepted that the reason for refusal omits reference to Policy ST/2 by way of an oversight and both main parties have made submissions with regard to this policy.
15. Sileby has been recently designated a Neighbourhood Area for the purposes of preparing a Neighbourhood Plan for the parish. The Parish Council advised that initial consultation on shaping the preliminary content of the Plan is very shortly to commence. As such there is no draft Neighbourhood Plan before me and given the very early stage of the Neighbourhood Plan process in Sileby I attach negligible weight to the nascent Neighbourhood Plan efforts.

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<sup>3</sup> Charnwood Local Plan 2011 to 2028 Core Strategy Adopted November 2015

<sup>4</sup> Borough of Charnwood Local Plan 1991-2006 Adopted January 2004

<sup>5</sup> Charnwood Local Plan 2006 to 2028- Site Allocations & Development Management Policies DPD Issues & Options Consultation document February 2014

<sup>6</sup> ID10

### ***Whether or not there is a Five Year Housing Land Supply***

16. The NPPF at paragraph 47 seeks to ensure that the supply of housing is boosted significantly. It requires local planning authorities to ensure that the Local Plan meets the full OAN and that a deliverable supply of sites sufficient to provide for 5 years' worth of the housing requirement is identified. If the authority cannot do so then policies for the supply of housing should not be considered to be up-to-date. There is no dispute that all of the policies on which the LPA relies, are relevant to the supply of housing.

#### *Housing Requirement*

17. The Core Strategy contains a housing requirement of 13,940 dwellings to 2028 equivalent to 820 dwellings per annum (dpa). I have considered carefully the Core Strategy Inspectors report at paragraphs 38-49 and note that the 820dpa was the "upper end of the range for OAN" (paragraph 38) and "statistically robust" for the plan period (paragraph 41). The Inspector's recommendation at paragraph 49 to modify the Plan's housing requirement as being "at least" would appear to be a general insurance that the plan is "positively prepared" rather than any particular concern with the robustness of the 820dpa figure.

18. The Core Strategy was adopted just 15 months ago. Consequently, Charnwood is in the reputable position of having a post NPPF Core Strategy adjudged to be consistent with national policy, including, critically, paragraph 47 of the NPPF. As such the recent Core Strategy housing requirement must be considered a forceful figure. As such, applying the 820dpa figure from the Core Strategy the total five year requirement as of 1 April 2016 would be 5,813 dwellings<sup>7</sup>.

19. The 2014 based ONS population and DCLG household projections were released in 2016. These have informed the HEDNA outputs showing that Charnwood's full OAN would increase to 1031dpa or 994dpa depending on whether a 2031 or 2036 time period is adopted. I have considered the LPA's submissions that some reappportionment of the housing need may occur in response to future jobs in Melton and North West Leicestershire. It is far from certain that Charnwood's requirement would be reduced and if so by any appreciable quantum close to the 820dpa. Overall it is hard to refute that the HEDNA has now increased markedly Charnwood's OAN.

20. There is no disagreement that the HEDNA represents an up-to-date starting point. This definitely applies to the current Local Plan preparation in Charnwood and in that context, as described in the PPG<sup>8</sup> it would be a meaningful change. It would be tested through the Local Plan process as would a separate housing requirement figure.

21. I recognise that the HEDNA figure has been co-operatively prepared and that the constituent Councils accept that they would need very strong reasons not to follow its advice<sup>9</sup>. That statement must be seen, however, in the context that the primary function of the HEDNA is to inform Local Plan work. I have some difficulty extending an untested OAN figure to having the effect of immediately recalibrating the housing requirement on which to determine the housing land supply. In my judgment there are two cogent reasons why this difficulty arises.

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<sup>7</sup> Factoring in the shortfall since 2011, a 20% buffer and the Sedgfield approach

<sup>8</sup> PPG ID reference: Paragraph 2a-016-20150227

<sup>9</sup> ID11, paragraph 4

22. Firstly, as a starting point the HEDNA OAN is far from being the separate and final housing requirement figure in the new Local Plan, which is programmed to be adopted in 2019<sup>10</sup>. It is a figure that has yet to be consulted on at any formal stage of plan-making in the Borough. That in my view limits any weight to be attached to it. The HEDNA OAN should not be seen as a proxy for a final housing requirement. Nor should it be seen as an automatic invalidation of the housing numbers in a Core Strategy that has so recently been adjudged to be consistent with the NPPF.
23. Secondly, and related, there is the matter of the invariable tension between keeping plans up-to-date against a rolling programme of household projections every 2 years. This is not a new or unique scenario in the NPPF landscape. It was grappled with at the time of the 2012 household projections in both the ministerial correspondence to the Inspectorate<sup>11</sup> and the amendment to the PPG<sup>12</sup>. Both documents clearly expect new OAN evidence to prompt revisions to housing requirements in Local Plans, as part of keeping plans up-to-date, in a plan-led system. As the latest LDS shows Charnwood is progressing a new Local Plan and there would be no full OAN hiatus.
24. Accordingly, the PPG<sup>13</sup> advises that “considerable weight should be given to the housing requirement figures in adopted Local Plans, which have successfully passed through the examination process unless significant new evidence comes to light.” The next sentence in the PPG is then important as to how this is to be applied. In the case of Charnwood, the Core Strategy housing requirement is not based on projections that date back several years, it is not drawn from a revoked regional strategy and it has been recently examined as adequately reflecting current needs for the plan period. Charnwood is not an authority that has abdicated its responsibility to plan for significantly higher levels of growth to reflect a full OAN as required by the NPPF. Critically, Charnwood is materially different to the scenarios expounded in *Hunston*<sup>14</sup> and more recently in *West Berkshire*<sup>15</sup>.
25. I accept the HEDNA OAN points to a higher housing need and had the Council not been in possession of an up-to-date Core Strategy or making good progress on a new Local Plan I may well have been obliged to apply it. The NPPF, however, reaffirms the importance of a plan-led system. That relies on plans having a reasonable shelf-life (the Housing White Paper advocates five years). To so quickly cast aside the recent Core Strategy housing requirement would corrosively undermine the value, confidence and importance of a plan-led system. Accordingly, the full OAN informed Core Strategy housing requirement of 820dpa remains the most appropriate figure on which to determine the adequacy or not of the supply.

### *Housing Supply*

26. The LPA has adjusted its supply figures from its annual monitoring baseline of 31 March 2016<sup>16</sup> to a revised position as of 31 December 2016. This adjustment is mainly a reflection of revised trajectories on the strategic sites in

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<sup>10</sup> By which time the 2016 based projections would coincide with the submission and examination of the Plan  
<sup>11</sup> ID.5

<sup>12</sup> 2a-016-20150227

<sup>13</sup> PPG Reference ID: 3-030-20140306

<sup>14</sup> ID.19

<sup>15</sup> ID.20

<sup>16</sup> A supply of 6,902 dwellings, equivalent to 5.93 years' supply.

- the Core Strategy. There is no lapse rate and no allowance for windfalls as agreed by the Core Strategy inspector and I am not invited to find otherwise. On the LPA revised figures, there would be a supply of 6,159 dwellings, equivalent to 5.3 years' supply. This amounts to a small surplus of 346 units.
27. The issue on supply is narrow and relates to the trajectories on the 3 strategic sites in the Core Strategy. The LPA recognises that slippage has occurred since the Core Strategy examination but has assembled considerable up-to-date intelligence from site promoters and developers which is before me. The PPG<sup>17</sup> advises that such advice will be important in assessing lead-in times and build-out rates by year and the Council has taken this into account as required.
28. The appellant takes a more wary view of the timescales at which these large greenfield sites are likely to yield particularly the lag times between various stages, notably the signing of Section 106 agreements, approval of reserved matters and construction on site. In this regard I am referred to the appellant's experience of delivering development sites and independent analysis of delivery timeframes on larger housing sites<sup>18</sup>. The appellant's more guarded assessment against the Core Strategy requirement would result in a reduced supply of 5,492 dwellings equivalent to a 4.72 years' supply.
29. Three recent appeals have had to address this very same dimension of housing supply in Charnwood<sup>19</sup>. In all three cases it has been held that the LPA's assessment of the strategic site trajectories is generally realistic and that a five year supply could be demonstrated. I am also aware that some of the same analytical evidence of delivery on larger sites referred to in this case by the appellant was also before the Nanpantan Road inspector. The additional evidence at this appeal does not persuade me to come to an alternative view of those of my colleagues regarding delivery at the 3 strategic sites, which now have momentum following the certainty of the adopted Core Strategy.
30. It is accepted that some further very slight slippage has occurred since the Nanpantan Road appeal but I share the view of the LPA that this does not render the anticipated overall scale of delivery from these sites in the next 5 years doubtful. I do, however, share the view of my colleague at the latest Seagrave appeal<sup>20</sup> that the anticipated delivery of 60 units at the West of Loughborough strategic site in 2017/18 is too optimistic. However, even when factoring this modest downward adjustment I am confident that the Council can still demonstrate the requisite five year supply.
31. It is arguable that the level of supply could be defined as "fragile" but it is important not to lose sight that Charnwood's approach has cautiously not included any windfall allowance. The figure before me is that some 78dpa has reliably accrued from this source. There is little evidence to suggest that this cushioning supply from windfall will diminish. This adds to my confidence that there is a deliverable supply coming forward to meet the housing requirement.

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<sup>17</sup> PPG Reference ID 3-023-20140306

<sup>18</sup> The Hourigan Connolly report for Gladmans, 2014 and the Savills report for Barratt Homes Ltd 2014

<sup>19</sup> Nanpantan Road, Loughborough (Jan 2017), Muckle Gate Lane, Seagrave (June 2016) & Swan Street, Seagrave (February 2017)

<sup>20</sup> ID.6 paragraphs 16 & 17

### *Conclusion on Housing Land Supply*

32. In conclusion on this matter, the figure in the Core Strategy continues to provide an appropriate basis for the calculation of a five year supply of deliverable housing land. Accordingly, the LPA can demonstrate a five year supply of deliverable housing land as required by paragraph 47 of the NPPF. It can do so in the context of development plan policies which are delivering a housing requirement which significantly boosts the supply of housing to meet a full OAN. Accordingly, in applying the test at paragraph 49 of the NPPF, relevant policies for the supply of housing in the Borough are to be considered up-to-date.

### ***What is the degree of conflict and/or consistency with the policies of Development Plan?***

#### *Core Strategy – Policy CS 1*

33. The Core Strategy is the most up-to-date component of the development plan reflecting the NPPF's presumption in favour of sustainable development. It seeks to deliver growth in a way which is threaded by the three key strands of sustainability found at paragraph 7 of the NPPF. As the development strategy, Policy CS1 is at the heart of what the plan, as a whole, is seeking to achieve.
34. Within Policy CS1 over half of the Plan's housing growth is directed to three strategic sites, two on the edge of Leicester and one west of Loughborough (7,035 homes). It also envisages significant housing growth at Loughborough and Shepshed (5,000 homes (including 2,440 in the figure for strategic sites). Below this, Policy CS1 identifies a tier of Service Centres, including Sileby. In terms of positively planning for these communities, the first applicable bullet point of CS1 states that the Council will do this by "...providing for at least 3,000 new homes and approximately 7 hectares of employment land within and adjoining our Service Centres between 2011 and 2028;".
35. As stated above I find little to substantiate that the Core Strategy provision of 13,940 homes (820dpa) under-estimated the Borough's full housing need at the time of the plan was submitted and examined. The expression of the Borough's overall housing requirement and the constituent apportionments in the tiers of the hierarchy as minimums would appear to be no more than judicious flexibility rather than an underlying signal that the figures could be comprehensively exceeded.
36. The Core Strategy recognises at the time of adoption that 3,500 homes were already committed to Service Centres. Accordingly, the guideline of "at least" 3,000 new homes at this tier of the strategy has been invoked. There will also be the reality of further small-scale windfall developments within these larger villages above and beyond the 3,500 homes. As things stand the planning system is delivering at Service Centres in line with the adopted strategy.
37. The appellant was reluctant to quantify what scale of development may be permissible at Service Centres under CS1 but made reference to paragraph 4.19 of the Core Strategy which refers to broadly a " a smaller scale" of development at Service Centres (compared to higher order locations). There are issues with this nebulous approach.
38. Firstly, the NPPF at paragraph 150 states that Local Plans must reflect the visions and aspirations of local communities. There appears to be little local

- appetite for additional growth beyond that expressed in the Core Strategy. If it was intended that decidedly higher levels of growth than 3,000 or even the 3,500 were envisaged then the phraseology “at least” seems a very ambiguous and opaque way of sanctioning this.
39. In my view, the ceiling for service centres villages in this plan was never intended to be that far from the 3,000 floor in the policy. Paragraphs 67-69 of the Core Strategy Inspector’s Report echo this view and he was clearly attentive to the notable levels of commitments that had already accrued in Service Centres. If the intended consequence of CS1 was to allow for a higher figure of say 4,000 or more homes, it seems odd that the policy was not modified and a higher figure inserted for transparency.
40. Secondly, and related, the Core Strategy process considered a number of alternative development strategies. The LPA submits that one such alternative was a ‘trend-based’ scenario which would have resulted in a greater quantum of housing allocated to the service centre settlements. That option was appraised for its sustainability and did not emerge as the preferred option. Therefore, in accordance with paragraph 182 of the NPPF the Core Strategy inspector<sup>21</sup> concluded that the strategy in Policy CS 1, including the apportionment to Service Centres, was justified<sup>22</sup>.
41. The appellant submits that the third limb of Policy CS1 in relation to Service Centres would ensure that any growth above the 3,000 home threshold would be sustainable by virtue of being rooted to the strategic objectives of the Plan such that only a certain number of proposals would qualify. I have also noted that there is no concern that the appeal proposal would harm delivery on the strategic sites. Neither of these points persuasively satisfies my concerns regarding what can reasonably be meant by at least 3,000 homes in the context of the Core Strategy’s clear vision for its communities and the unfavourable sustainability appraisal at the Core Strategy stage of an option akin to the appellant’s laissez-faire interpretation of Policy CS1.
42. In my view the appeal proposal, cumulatively with the 3500 commitments plus the likelihood of additional policy compliant windfall, would result in a spatial scenario that would be distinctly adrift from the Core Strategy. Significant harm would result from the appreciable degree of deviation and resultant lack of certainty that could be replicated elsewhere. Accordingly, I am concerned that communities that have engaged in the recent Core Strategy would take a harmfully mordant view of whether or not there was a genuinely plan-led system if growth levels edged well above the 3500 figure. This would be particularly so at a time when the strategy is delivering a full and tested OAN.
43. Turning to “within and adjoining” the appellant invites a literal interpretation that by virtue of adjoining the settlement boundary the appeal proposal, on that measure, would be consistent with Policy CS1. The appellant accepts that other housing schemes approved adjoining the settlement boundary when the LPA could not demonstrate a five year supply are of limited weight. I agree and consider the Policy CS1 should be read as when it was examined and adopted against the requirement to have a five year supply, as can be demonstrated now.

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<sup>21</sup> Paragraph 72

<sup>22</sup> “the most appropriate strategy, when considered against the reasonable alternatives”, NPPF paragraph 182

44. I have similar concerns that the appellant's interpretation of "adjoining" is too flexible and would create considerable uncertainty at the edge of Service Centre villages. I do not consider that such a degree of flexibility was the intended outcome of the construction and examination of this policy for development management purposes. Accordingly, "adjoining" should be seen as a more curbed term. My reasoning for this is as follows.
45. The appellant has referred to the case law in *Tesco v. Dundee*<sup>23</sup>. I have no evidence that the LPA has inconsistently applied Policy CS1 or that its position in this appeal is anyway a vacillation. In my view, Policy CS1 when read in the context of the plan as a whole is clearly effecting a spatial vision<sup>24</sup> where the role of villages such as Sileby is about providing homes to meet local needs, particularly affordable housing, and retaining a strong sense of village identity. When read in that context I find it hard to accept that the Core Strategy is countenancing a facilitation of additional large scale windfall sites at the edge of service centres.
46. In my view, "adjoining" has reasonable and flexible applications which are illuminated by the supporting text at paragraphs 4.45 and 4.46. Small-scale windfall could include local needs housing on greenfield sites (i.e. affordable housing exception sites adjoining the settlement boundary) as submitted by the LPA. I am satisfied that "adjoining" in Policy CS 1 would also allow for additional employment land proposals subject to other policies in the Plan.
47. 'Small-scale' is not explained at paragraph 4.45 nor is it defined in the glossary to the Core Strategy. The appellant proffered that the appeal proposal would be of a smaller scale in comparison to the proposed strategic sites in the Core Strategy. Whilst that may be factual, given the substantial scale of the strategic sites, it is an unhelpful comparison. Whilst the LPA acknowledges that 200 additional houses would not be out of scale or character in Sileby, there have been numerous approved housing developments in Silesby the largest that has been brought to my attention has been the 180 dwelling scheme to the north-east of the appeal site. On this measure, and on any reasonable interpretation, the appeal site would not be the small-scale windfall development envisaged in the Core Strategy.
48. Another basis for "adjoining" would be to recall that part of the function of Policy CS1 was to guide the preparation of the now rescinded SADMDPD as explained at the penultimate sentence of paragraph 4.46. This refers to a "remainder" of development to also be provided for through the SADMDPD and through Neighbourhood Plans. From the evidence before me, there is little to point to a pressing need at the time of the Core Strategy examination for additional land releases for housing adjoining service centre villages but it seems sensible to me that Policy CS1 contained some flexibility should adjoining land be needed through the SADMDPD process.
49. The 2014 SADMDPD document pre-dates the Core Strategy examination and matters have clearly moved on. It is clear that the SADMDPD was at an early stage in 2014 such that "...some of the sites may not be needed and others may prove not to be sensible options..." (paragraph 3.10). The appeal site is identified as an "option" in Table 11 and the appellant has demonstrated at the Inquiry that its sustainability credentials have improved since its assessment at

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<sup>23</sup> ID.22

<sup>24</sup> Articulated on pages 14-15 of the Core Strategy

that time. That said, the appeal site's inclusion as a 'reasonable alternative' and not as a 'preferred option' in this early and now revoked plan document does not provide a basis for now authorising large-scale development adjoining the settlement boundary.

50. I do not accept the appellant's point that applying paragraph 4.45 on the Council's interpretation could negate the need for a SADMDPD where a five year housing land supply exists. The SADMDPD was intended to serve a number of functions and it could have rationalised settlement boundaries and made allocations within the built fabric in a way which was consistent with paragraph 4.45. I have little evidence that greenfield allocations, particularly in Sileby, were an inevitable outcome of this now abandoned process which the appellant accepted was of no more than limited weight.
51. The appellant is resolute that paragraphs 4.45 and 4.46 to Policy CS1 are no more than expectations and not expressly policy requirements. It is clear, however, that paragraphs 4.45 and 4.46 apply to Policy CS1 in relation to service centres and positively assist in how to sensibly interpret the policy<sup>25</sup>. These paragraphs have been through the scrutinising lens of a recent examination. To read Policy CS1 in isolation, as the appellant contends, would harmfully misconstrue the objective of the policy when considered in the context of the Plan and its spatial vision as a whole. The appellant's interpretation of Policy CS1 would result in sizeable, ad hoc, speculative development. There is nothing in the Core Strategy to support this assertion. It would harmfully run counter to both the NPPF<sup>26</sup> and recent white paper<sup>27</sup>.
52. The appellant refers to the fairly recent Shepshed appeal<sup>28</sup> as an example where Policy CS1 housing figures have not been applied as a cap in the overall context of boosting supply when a five year supply could be demonstrated. Shepshed, however, is at a higher tier in the Core Strategy which the development strategy, and Core Strategy inspector, recognised would be one of only a few locations where housing growth would be focused. Consequently, I find the comparison to this decision to be of little value at a Service Centre location.

#### *Conclusion on Core Strategy Policy CS1*

53. Drawing this altogether, I find the appeal proposal would be contrary to Policy CS1 of the Core Strategy when interpreted objectively and in its proper context, which is the Plan taken as a whole. It would unacceptably skew the clear development strategy and would not comprise the small-scale windfall housing development, focused within the settlement boundary, which the policy seeks to positively plan for at communities like Sileby. The policy is consistent with the NPPF, is up-to-date and should be accorded full and substantial weight in any balance.

#### *Saved Local Plan – Policies ST/2, CT/1 & CT/2*

54. Policy ST/2 is a policy of restraint, confining development to within "Limits to Development" unless there are specific exceptions. It is a policy that seeks to protect the countryside per se from unwarranted development and to reinforce

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<sup>25</sup> ID17, paragraph 21

<sup>26</sup> Paragraph 17, first bullet point

<sup>27</sup> ID14, paragraph 1.6

<sup>28</sup> CD9.9 APP/X2410/W/15/3007980

- the overall strategy of the plan by relating scales of development to the existing settlement pattern. Policy CT/1 sets general principles for the wider countryside including a strict control of development in generally open areas of land. Policy CT/2 sets parameters for those developments that necessarily would need a countryside location. The appeal site is outside the settlement boundary for Sileby and for the purposes of the development plan is countryside. The appeal proposal would therefore conflict with these policies.
55. A couple of recent appeal decisions<sup>29</sup> in the Borough, since the adoption of the Core Strategy, have considered these policies in the context of paragraph 215 of the NPPF. They have concluded that these policies should be given little weight due to findings that they are not consistent with the NPPF, relate to a development strategy and plan period that covered the period 1991-2006 and do not accord with strategic aspirations of the Core Strategy. In contrast two other appeal decisions<sup>30</sup> concluded that with regard to paragraph 215 these policies should be accorded full or significant weight. All of these decisions found that a five year housing land supply could be demonstrated.
56. Having considered these decisions, I find myself looking more to the very recent Nanpantan Road decision, which has provided the most in-depth analysis of the wording and genesis of the saved Local Plan policies against the NPPF. Each case is to be treated on the particular evidence but given the cogency of this inquiry appeal decision on this matter I would need persuasive reasoning to come to a contrary view that more than limited weight should be ascribed to these saved Local Plan policies.
57. The LPA submits that there is an inherent dependency of implementation between Core Strategy Policy CS1 and in particular Policy ST/2. On this second point the LPA direct me to the Local Plan Regulations 2012<sup>31</sup> and in particular Regulation 8(5) given that Policies ST/2, CT/1 and CT/2 were not superseded by the Core Strategy and remain extant. There is, however, very little in the Core Strategy Inspector's Report to support the LPAs submission on this point. I was not directed to, and nor could I find, an explicit recognition by the Inspector that Policy ST/2 would have the particular practical effect the LPA avers. As the appellant points out the only reference in the Core Strategy is that the saved Local Plan policies are to be read alongside it<sup>32</sup>.
58. I agree with my colleagues that the approach in Policies ST/2 and CT/1 is not fully consistent with the nuanced approach to the countryside now contained in the NPPF and that by virtue of relating to a development strategy to 2006 they are time expired. The same, by extension, applies to Policy CT/2. On this basis, and having regard to paragraph 215 of the NPPF all three policies should not be accorded full or substantial weight.
59. The LPA also makes the important point that these saved Local Plan policies, including tightly drawn settlement boundaries, are not constraining the supply of housing. More generally, the planning concept of settlement boundaries is a development management tool of predictability which accords with the NPPFs core principle of efficient, plan-led decision-making. I find some particular

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<sup>29</sup> CD9.9 (Shepshed – paragraph 23) and CD9.11 (Nanpantan Road, Loughborough – paragraphs 39-44).

<sup>30</sup> ID.12 (Muckle Gate, Seagrave - paragraph 22).

<sup>31</sup> ID.13 Town & Country Planning (Local Planning) (England) Regulations 2012

<sup>32</sup> Core Strategy paragraph 1.4

force to these points. Accordingly, I cannot go as far to say these policies only have very limited weight in this appeal.

60. I note that both the Nanpantan Road decision and the appellant consider these saved policies as being "out-of-date" despite a five year housing land supply. As such a route to the enhanced presumption at paragraph 14 of the NPPF would open up. Having read the case law<sup>33</sup> presented to me in this appeal I am cautious to conclude these policies are "out-of-date". NPPF paragraphs 214-216 in terms of weight to policies make no reference to "out-of-date" in applying that judgement. NPPF paragraph 49 refers to "up-to-date" in the context of a deliverable supply. The only reference to "out-of-date" in the NPPF is at paragraph 14 in the context of "relevant policies", the same terminology found at paragraph 49.
61. Having concluded above that a five year supply can be demonstrated, these policies, which are relevant to the supply of housing, whilst time expired and not fully consistent with the NPPF, cannot be said to be "out-of-date". It remains, however, that the conflict with them can carry only moderate weight in any planning balance for the reasoning above.

#### *Highway Safety*

62. The appellant has undertaken a Transport Assessment (TA) the findings of which are agreed in a separate SOCG with Leicestershire County Council. The TA has also been verified by an independent third party on behalf of the LPA. It remains, however, that the local community is concerned with the primary issues of the number of vehicle movements likely to be generated by the proposal and the ensuing effect for all highway users in and around Sileby.
63. The appellant's TA applies a number of assumptions to inform its modelling and draws on traffic survey data, including traffic speed and junction queue surveys in Sileby. The TA's modelling applies the TRICS database which is a recognised dataset to which the appellant has also applied some sensitivity testing. This is an appropriate basis for modelling.
64. The appellant's 10% modal shift is also reasonable given the routes and frequency of public transport provision and proximity of day-to-day services including primary schools. It is recognised that there is a gradient to Seagrave Road but from my site visits I observed numerous people ascending on foot what is a relatively short incline. I am not persuaded that it is a significant deterrent to pedestrians or cyclists. In any event an alternative flatter route to the site exists along footpath I43 from Swan Street. Generally, I found the footpath connections to be of reasonable width and quality and with lighting such that they would provide attractive alternatives to using the car.
65. There is local concern about the assignment in the TA of 41% of vehicular traffic from the appeal site heading north via Seagrave rather than through the village. Given this route provides straightforward access to the A46 it seems realistic that a good proportion of traffic from the site would head in this direction. I have no evidence that it is divergent from the County Council's 2016 Sileby & Barrow-upon-Soar Traffic & Transport Study (SBTTS) modelling in this regard.

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<sup>33</sup> CD9.7 Suffolk Coastal – paragraph 47; CD9.3 Daventry – paragraph 52; CD9.2 Crane - paragraph 71

66. Paragraph 4.8 of the SBTTs has created local concern regarding the ability of the local highway network to accommodate additional development where it states that further large developments (over 10 dwellings) will be resisted unless a nil-detriment position over existing traffic conditions can be demonstrated. For the avoidance of doubt, it is quite clear that the appeal proposal was factored into the SBTTs baseline. As such I do not consider the SBTTs presents a moratorium on highways grounds for the appeal proposal.
67. In terms of impacts it is recognised that traffic generated from the appeal proposal would add additional loads such that by 2019 the Brook Street/High Street junction would experience some capacity issues. I note the agreement of the local highway authority in the SOCG that the impact "would not be detrimental to the operation of this junction". I give significant weight to this professional opinion.
68. I have also taken into account that the Peashill Farm development which was also factored into the SBTTs baseline has not come to fruition following a refusal of planning permission and that the latest version of TRICS indicates appreciably lower trip generation in peak periods. Accordingly, I am satisfied that the appellants' TA has adopted a robustly cautious approach which has not sought to underestimate the traffic impacts. Overall, I am satisfied that the appeal proposal would not result in a severe impact on junction capacity in the historic core of the village
69. From the appeal site, vehicles, pedestrians and cyclists are more likely to use Seagrave Road to Swan Street or King Street to access the village core and beyond to the A6. Parts of Seagrave Road, most of Swan Street and parts of King Street have well-used on-street parking which results in single traffic flows observing an ad hoc give-way protocol. The appellant has provided 5 years' worth of police accident data<sup>34</sup> which shows no recorded collisions on Seagrave Road or Swan Street. As such I am satisfied that the appeal proposal would not have a severely detrimental effect on highway safety for all users on this corridor. This includes pedestrians including school children accessing either Highgate or Redlands primary schools.
70. Local residents have also raised concern about traffic pressures on Mountsorrel Lane and Slash Lane as connecting routes to the A6 and their propensity to flooding from the Soar. I understand flooding is a reasonably regular occurrence but I have very little evidence that alternative routes cannot intermittently safely accommodate the displaced traffic flows.
71. There is no definition of "severe" in terms of the NPPF paragraph 32 but I agree with the appellant's interpretation that "severe" does not preclude highways conditions worsening when considered against the wider objective of the NPPF to secure the homes, jobs and infrastructure that the country needs. Any worsening of current junction capacities would be only marginal and there is no substantiated evidence that wider highway safety would be impaired by the appeal proposal.
72. Accordingly, I am satisfied that the appeal proposal would be acceptable in highway safety terms and conclude that the residual cumulative effects would not be severe in accordance with paragraph 32 of the NPPF. The appeal

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<sup>34</sup> ID.4 (covering period 1 September 2011 to 31 August 2016)

proposal would therefore not conflict with Core Strategy Policy CS17 and saved Local Plan Policy TR/17.

### *Other Matters*

73. Local residents have expressed concern regarding loss of countryside and loss of agricultural land. The appellant has undertaken a detailed Landscape and Visual Impact Assessment (LVIA) prepared in accordance with the latest guidance<sup>35</sup>. The appeal site does not comprise of good landscape quality held to characterise the wider Soar Valley landscape character area. Nor is it a prominent valley slope location, visible in the wider landscape.
74. Whilst the loss of the sloping arable farmland would have some innate landscape harm, this can be considered to be very localised and limited given development on the valley sides is a feature of this landscape character area as illustrated adjoining the appeal site.
75. From the representative viewpoints I accept that in the distant views the appeal site would be largely concealed by landform and vegetation. In closer views, notably those on Seagrave Road and the public footpath I find the immediate visual impact would be moderately adverse for receptors using these routes, especially when heading north away from the village. The impact would, however, be reasonably contained and over time with landscaping it would dissipate and reduce. Accordingly, I find that the visual harm to the rural character at this village edge location would be only limited.
76. In respect of agricultural land the technical evidence<sup>36</sup> before me demonstrates that the site is entirely Grade 3b. It is therefore not to be considered as being best or most versatile land. Nor is there any national or local planning policy that requires agricultural land to be protected for the nation's food security. In agricultural terms the loss of the appeal site would not be harmful.
77. The appellant has indicatively calculated that approximately 40% of the site area would be built on and preliminary attenuation measures have been scaled to manage the run-off given the requirement not to exacerbate flood risk elsewhere, including downstream on the Sibley Brook. Evidence is before me<sup>37</sup> challenging the appellant's attenuation calculations. However, the likely rate of on-going discharge from any SUDS also needs to be taken into account. In any event this technical matter and the detail of any SUDS scheme could be dealt with by condition. I attach significant weight to the fact that there is no objection to the appeal proposal from either the Environment Agency or the lead Flood Authority<sup>38</sup> to the principle of the proposed drainage strategy.
78. The appellant has submitted a signed and dated Section 106 agreement which contains a number of planning obligations providing for the affordable housing and the provision and management of on-site open space. I am satisfied from the evidence before me that these obligations would meet development plan requirements and the 3 tests in the CIL regulations. I have therefore taken them into account.

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<sup>35</sup> GLIVIA 3<sup>rd</sup> edition

<sup>36</sup> Soils report of Land Research Associates Ltd dated 24 September 2014

<sup>37</sup> ID15 handed in on 9 February 2017

<sup>38</sup> Leicestershire County Council

79. From the evidence presented to me I am satisfied that the proposed financial contributions in respect of recreational open space and allotments, highway works (bus stop improvements), travel planning, the local household waste site and library services would be lawful against the requirements of the CIL Regulations including whether or not there have been five or more related contributions since 6 April 2010. On this basis I have therefore taken the obligations into account.
80. With respect to capital costs for health provision, the position regarding physical capacity constraints for the Banks surgery is clearly evidenced but I have insufficient evidence before me to robustly quantify that similar constraints exist at the Highgate surgery. Accordingly, I cannot be certain that the demands arising from the appeal proposal could not be satisfactorily accommodated chiefly in the Highgate surgery. Accordingly, I am not persuaded that the financial contribution is necessary to make the development acceptable in planning terms. As such I have not taken it into account.
81. Similar concerns apply in relation to the obligation for a financial contribution to the police. I accept that the contribution would be proportionate to the scale of development and relate to capital expenditure. Nonetheless there is scant evidence before me that the contribution would be other than generally consumed within the overall delivery of the County Constabulary service. In this regard I cannot be certain that there have not been five or more similar contributions in Charnwood since 6 April 2010.
82. The LPA submit that they could perform the role of adjudicating whether the police contribution was lawful or not in this regard. As the decision-maker in this instance it is incumbent that I make a judgment on whether or not the lawful tests have been met, I cannot default this responsibility. Accordingly, my concerns regarding pooling mean I have not taken the police contribution into account.
83. A modest contribution is sought for monitoring the County Council obligations. I find there is sufficient complexity to justify what would appear to be a fair and reasonably related financial contribution for this purpose.
84. I therefore conclude that the effects of the proposal on the provision of affordable housing, open space, household waste site, libraries and sustainable travel would be acceptable by virtue of the provisions within the submitted planning obligations.

### **Planning Balance and Conclusion**

85. Section 38(6) of the Planning and Compulsory Purchase Act 2004 states that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. This is reaffirmed at paragraph 12 of the NPPF which states that development proposals which conflict with an up-to-date Local Plan should be refused unless other material considerations indicate otherwise.
86. There is a five year supply of deliverable housing land in Charnwood against a recently adopted Core Strategy which accords with paragraph 47 of the NPPF and a full OAN. The fresh and untested HEDNA OAN, despite its significance for plan-making, does not automatically displace such an up-to-date Core Strategy housing requirement. Accordingly, relevant development plan policies for the

supply of housing are to be considered up-to-date. Accordingly, the second bullet point of paragraph 14 of the NPPF is not engaged and the development plan prevails.

87. This includes Core Strategy Policy CS1 and saved Local Plan Policies ST/2, CT/1 and CT/2. The appeal proposal conflicts with all these policies. Policy CS1 by virtue of being NPPF compliant carries full and substantial weight. For the reasons set out in this decision the saved Local Plan policies carry only moderate weight. The conflict with Policy CS1, in particular, is fundamental. As the development strategy it is a central plank to realizing the over-arching spatial vision which the plan as a whole is seeking to deliver. Compliance with other policies in the plan does not outweigh this crucial conflict. The appeal proposal as a departure from the development plan would represent substantial harm in itself.
88. I therefore turn to consider whether other material considerations indicate otherwise that permission should be granted. I have considered that the appeal proposal would be acceptable in highway safety terms and would make necessary provisions to mitigate its impact on local infrastructure. The proposed development would also result in a general absence of site specific harm, being only limited to a minimal landscape and visual impact which on its own would not amount to a reason to withhold planning permission. However, I am not persuaded that positive weight should be attributed to what are prerequisite factors of any development proposal. As such these are neutral in my considerations.
89. I attach appreciable weight to the fact that the appeal site would be sustainably located and I also give limited weight to the opportunity the appeal proposal presents to enhance biodiversity at this location. The appeal proposal would also offer benefits in terms of boosting the supply of housing and providing affordable housing. There is however a five year supply of housing and that will also yield affordable housing such that I attach only moderate weight to this. Additionally I only give little weight to the economic benefits of ephemeral construction jobs and the additional patronage of village services.
90. There are clearly a number of factors weighing in favour of the appeal proposal but I am not persuaded that they cumulatively outweigh the substantial conflict with the development plan and its up-to-date strategy for sustainable growth to meet housing needs. It is a core planning principle of the NPPF that decision-making should be underpinned by a plan-led system. For the reasons given in this decision, the enhanced presumption in favour of sustainable development at paragraph 14 of the NPPF is not engaged. Therefore, I conclude, having regard to having regard to all other matters that the appeal should not succeed.

*David Spencer*

Inspector.

## **APPEARANCES**

### FOR THE LOCAL PLANNING AUTHORITY:

Ashley Bowes, Of Counsel

Instructed by Rebecca Sells, Solicitor,  
Charnwood Borough Council

He Called

Liz Hopwell  
MTCP (Hons) MSc MRTPI

Principal Planning Officer  
Charnwood Borough Council

Georgina Doyle  
BSc MSc MRTPI

Principal Planning Officer  
Charnwood Borough Council

### FOR THE APPELLANT:

Andrew Williamson,

Instructed by Robert Moore of  
Walker-Morris LLP

He Called

David Cheetham  
BA (Hons) MSc MCIHT FCILT

Regional Director  
Waterman Infrastructure & Environment

James Atkin  
BSc (Hons) DipLM CMLI

Director  
Pegasus Group

Tony Bateman  
BA (Hons) MRICS MRTPI MCMi  
MIoD FRSA

Managing Director  
Pegasus Group

### FOR THE RULE 6 PARTY:

Andrew Tyrer  
BA(Hons) MRTPI

Development Contributions Officer  
Leicestershire County Council

### INTERESTED PARTIES

Emma Compson  
Avril Hardwick  
Joan Dolley  
Richard Burton  
Richard Shepherd  
Paul Murphy  
James Smith  
Rt. Hon. Nicky Morgan MP

Parish Councillor, Sileby Parish Council  
Local Resident  
Local Resident  
Local Resident  
Borough & County Councillor  
Borough & Parish Councillor  
Local Resident  
Member of Parliament for Loughborough

### **Documents submitted at the Inquiry event**

- 1 Draft Section 106 Agreement & summary
- 2 Planning Obligations Compliance Sheet – Charnwood Borough Council
- 3 Update from Leicestershire County Council on Civic Amenity Site contribution
- 4 Mr Cheetham’s Transport & Highways Proof of Evidence Errata Sheet and updated collision data 2011-2016
- 5 Letter dated 19 December 2014 from Minister of State for Housing and Planning to Planning Inspectorate on Strategic Housing Market Assessments
- 6 Seagrave Appeal Decision 3 February 2017 (APP/X2410/W/16/3156475)
- 7 Opening Statement for the Appellants
- 8 Opening Statement for Charnwood Borough Council
- 9 Statement from Parish Councillor Emma Compson
- 10 Charnwood Local Plan Local Development Scheme April 2016
- 11 HEDNA Frequently Asked Questions
- 12 Muckle Gate Lane, Seagrave Appeal Decisions 29 June 2016 (APP/X2410/W/15/3049408 & APP/X2410/W/15/3133041)
- 13 Town and Country Planning (Local Planning) (England) Regulations 2012 – Regulation 8 – Form and Content of Local Plans & SPDs – General.
- 14 DCLG White Paper – Fixing our broken Housing Market February 2017
- 15 Surface Water Run-off and Storage Calculations from Mr Smith
- 16 Closing Submissions on behalf of the Local Planning Authority
- 17 COA Judgment of Q.(oao. Of Cherkley Campaign Ltd v. Mole Valley District Council & anr.) [2014] EWCA Civ 567
- 18 HC Judgment Dartford Borough Council v. SSCLG & Fairview Homes Ltd [2016] EWHC 649 (Admin)
- 19 COA Judgment City & District Council of St. Albans v. Q. (oao) Hunston Properties Ltd & SSCLG [2013] EWCA Civ 1610
- 20 HC Judgment West Berkshire District Council v. SSCLG & HDD Burghfield Common Ltd [2016] EWHC 267 (Admin)
- 21 Closing Submissions on behalf of the Appellant
- 22 SC Judgment Tesco Stores Ltd v. Dundee City Council [2012] UKSC 13
- 23 HC Judgment Trustees of the Barker Mills Estates v. Test Valley Borough Council & SSCLG. [2016] EWHC 3028 (Admin).
- 24 HC Judgment East Staffordshire Borough Council v. SSCLG & Barwell Strategic Land II LLP [2016] EWHC 2973 (Admin)

### **Documents submitted after the Inquiry event**

- 25 Signed and Executed Section 106 Agreement dated 9 February 2017