

Appeal Decisions

Inquiry held on 6-8 December 2016

Site visit made on 8 December 2016

by John Woolcock BNatRes(Hons) MURP DipLaw MRTPI

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

Decision date: 16 January 2017

Appeal A - Ref: APP/X2410/W/15/3028159

Land south of Nanpantan Road, Loughborough, Leicestershire

- 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 Harrow Estates Plc and The Helen Jean Cope Charity against the decision of Charnwood Borough Council (CBC).
 - The application No:P/14/1754/2, dated 5 September 2014, was refused by notice dated 6 March 2015.
 - The development proposed is "The erection of 74 dwellings served via formation of a new pedestrian and vehicular access from Nanpantan Road, landscaping, car parking and all other ancillary and enabling works".
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Appeal B - Ref: APP/X2410/W/15/3028161

Land south of Nanpantan Road, Loughborough, Leicestershire

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Harrow Estates Plc and The Helen Jean Cope Charity against Charnwood Borough Council (CBC).
 - The application No:P/14/1755/2, is dated 5 September 2014.
 - The development proposed is "Change of use of land from agricultural to public open space; engineering works to facilitate construction of surface water drainage".
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Decisions

Appeal A - Ref: APP/X2410/W/15/3028159

1. The appeal is dismissed.

Appeal B - Ref: APP/X2410/W/15/3028161

2. The appeal is dismissed, and the grant of planning permission refused for change of use of land from agricultural to public open space; engineering works to facilitate construction of surface water drainage.

Preliminary matters

3. CBC considered an amended scheme from that submitted with the applications. These were minor revisions and the drawings before CBC when it determined the application in Appeal A, and for the scheme in Appeal B, are listed in the Schedule of Plans attached to this decision.
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4. CBC failed to make a decision on the planning application in Appeal B in the required amount of time. However, had it been able to do so, CBC resolved on 27 November 2015 that the application would have been approved, and so does not seek to resist this non-determination appeal, subject to the completion of a section 106 agreement linking the open space application to the residential application.¹ CBC's evidence to the Inquiry dealt only with matters relating to Appeal A. The schemes are related and I have dealt with the appeals together.² The parties agreed at the Inquiry, in the event that Appeal B succeeded, that it would be necessary to impose a planning condition precluding implementation of the development other than in association with the residential development that is the subject of Appeal A.³ However, in the event that Appeal A was dismissed, it would not be reasonable to impose such a condition, as this would negate the planning permission. Notwithstanding CBC's closing submission that the open space appeal be allowed, it seems to me that the potential outcome to the appeals should be either that both be allowed, or that both be refused.
5. Leicestershire Police originally sought Rule 6(6) status but did not pursue this. CBC subsequently submitted emails indicating that the Police no longer intended to appear at the Inquiry, and revising the matters about which the Police were seeking contributions.⁴
6. A unilateral planning obligation, dated 14 December 2016, provides for open space and 30% affordable housing, along with financial contributions to education, health, libraries and travel, subject to compliance with relevant statutory and policy requirements.⁵

Main issues

7. The main issues in these appeals are the effects of the proposed development on:
 - (a) The character and appearance of the area, having particular regard to local and national policy for development in the countryside and for housing.
 - (b) The use of agricultural land.

There is also a dispute about whether CBC can demonstrate a five-year supply of deliverable housing sites.

Planning policy

8. The development plan for the area includes saved policies of the Borough of Charnwood Local Plan, which was adopted in 2004 (LP), where these have not been superseded by the Charnwood Local Plan 2011 to 2018 Core Strategy, which was adopted in November 2015 (CS). The appeal sites lie outside the designated Limits to Development, and in an area defined as countryside, where LP Policy CT/1 provides for strict control of development, and that it should be small-scale and could not reasonably be located within or adjacent to an existing settlement. LP Policy CT/2 provides that in the countryside

¹ Statement of Common Ground (SoCG) dated November 2016 paragraph 1.20.

² The scheme was submitted as two separate applications to overcome the need for a sequential test (SoCG paragraph 1.10).

³ Suggested Condition 12 for Appeal B at ID10.

⁴ Emails dated 5 and 7 December 2016 at ID7.

⁵ ID1.

development acceptable in principle would be permitted where it would not harm the character and appearance of the countryside. Policy ST/2 confines built development to allocated sites and other land within the Limits to Development, subject to certain exceptions, which do not apply here. CBC and the appellants disagree about the weight to be given to saved policies, and I deal with this dispute in the policy and planning balance section of this decision.

9. Policy CS1 provides for at least 5,000 new homes in Loughborough and Shepshed between 2011 and 2028 by planning positively for, amongst other things, sustainable development which contributes towards meeting development needs, supports the strategic vision, makes effective use of land and is in accordance with the policies in the CS. Policy CS2 concerns high quality design. Policy CS11 provides protection for the character of landscape and countryside by, amongst other things, reinforcing sense of place and local distinctiveness by taking account of relevant local landscape character assessments. Policy CS12 states that CBC will work with partners to define, protect and enhance the Charnwood Forest Regional Park. Policy CS16 supports new development that protects environmental resources, including the most versatile agricultural land.
10. Paragraph 49 of the *National Planning Policy Framework* (hereinafter the *Framework*) provides that housing applications should be considered in the context of the presumption in favour of sustainable development, and that relevant policies for the supply of housing should not be considered to be up-to-date if the local planning authority cannot demonstrate a five-year supply of deliverable housing sites. Paragraph 215 states that due weight should be given to relevant policies in existing plans according to their degree of consistency with the *Framework* (the closer the policies in the plan to the policies in the *Framework*, the greater the weight that may be given). I have also had regard to the *Planning Practice Guidance* (hereinafter the *Guidance*).

Reasons

Character and appearance

11. The site lies within National Character Area 73 Charnwood (NCA73), which is said to have a unique landscape, marked out by its geology and upland qualities, which contrast with the surrounding gentle lowlands.⁶ It retains a rural character.⁷ The western part of NCA73 is within The National Forest, but the appeal site lies outside its defined boundary. It also lies to the north of Charnwood Forest Regional Park, as shown on the Key Diagram of the adopted Core Strategy.⁸
12. In the more fine-grained analysis of the *Charnwood Forest Landscape and Settlement Character Assessment* 2008 the site falls within the Bradgate and Beacon LCA, which borders the Loughborough Fringe.⁹ The Bradgate and Beacon LCA follows a linear ridge of high ground through the central part of Charnwood Forest, with dramatic and wide ranging influence due to its elevated position. Its key characteristics include large tracts of informal open space with distinctive rolling hills. The increased prominence of development

⁶ CD9.2.

⁷ Similar points are made in the 2001 *Leicester Leicestershire and Rutland Landscape and Woodland Strategy* and in the 2009 *East Midlands Regional Landscape Character Assessment*.

⁸ Mrs Jarvis' Appendix 8 and Appendix 12.

⁹ CD9.6.

- particularly along urban fringes is identified as an on-going pressure likely to effect change.
13. The study focussed on the quality of the urban fringes where changes were considered to have the greatest potential to impact on the Charnwood Forest landscape, particularly the south and south-western fringes of Loughborough. It states that Nanpantan Road is an important route leading into Charnwood Forest from the urban area of Loughborough, and includes a photograph of the view from Nanpantan Road over the appeal site, which is annotated "Views of hills and large areas of woodland on the horizon". It is described as a typical view from Nanpantan Road. The text has a section entitled "Key Views" which refers to wooded ridges forming the background of views south that are most prominent from the south-eastern fringes of Nanpantan, where the land rises steeply towards the visually prominent Outwoods. It adds that this large area of woodland rises up the slope to the horizon and creates enclosure close to the urban fringe. The recommendations for the Loughborough Fringe include that, where urban expansion is proposed, sites should be considered where visual containment can be best achieved without impacting on the wider landscape.
 14. The site lies within Zone 3 of the second part of the 2012 *Borough of Charnwood Landscape Character Assessment*, which deals with landscape sensitivity and capacity.¹⁰ Zone 3 is given Medium Low capacity to accommodate development close to the existing urban edge, but the *Assessment* explains that proposals would need to be considered on merit.
 15. The appeal site has a long frontage to Nanpantan Road. This boundary is marked by an agricultural hedge, but the treatment of the roadside, with a footway, street trees, planted beds and grass verge, has a 'municipal' feel. However, the depth of the site, along with its gentle slope down to Wood Brook beyond the open field, means that the trees and vegetation along the brook appear to be located within the countryside, rather than defining its edge. The appeal site relates more to the open countryside to its south than it does to the built development to its east, north and west. Beyond the brook, open farm land rises up, at first gently, then more steeply, to a wooded hill containing Outwoods, that is a feature on the skyline. The byway along Watermead Lane, which marks the eastern boundary of the site, provides a footpath route up the rising land to link into a network of permissive paths in Outwoods.
 16. The proposed development would substantially change the landscape character of the area from rural to urban. With medium sensitivity of the receptor landscape and medium magnitude of landscape effect, I find that the proposed urban development would have an adverse effect on the landscape resource of major/moderate significance.
 17. Turning to visual effects, the view from Nanpantan Road and Watermead Lane would be transformed, with built form in near and middle distance views replacing middle and longer distance views over open countryside towards Outwoods. This is particularly apparent from viewpoints VP3, VP6 and VP8. Mitigation by additional planting would not diminish the likely adverse visual impact from these vantage points. The scheme would alter views from nearby residential properties, and so adversely affect the visual amenity of the area, but would not be so dominant or overbearing that it would impair the living conditions of existing occupiers by reason of its impact on outlook. Nevertheless, with high sensitivity receptors and medium/high magnitude of

¹⁰ CD9.5.

- visual effect, I find that the scheme would have an adverse impact on visual amenity of major/moderate to major significance, both on completion and beyond 15 years post-construction.
18. The *Framework* does not define what is a 'valued landscape' for the purposes of applying paragraph 109. The range of factors set out in Box 5.1 of GLVIA3 are generally agreed to influence value, and may be a useful aid in determining whether a landscape is a valued landscape, but the concepts are not synonymous.¹¹ However, GLVIA3 does assist in defining what 'landscape' is.
 19. This is an important first step here, as the landscape experts who appeared at the Inquiry took different approaches in assessing landscape. The appellants focussed on whether key characteristics of Landscape Character Areas were present on the site, whereas CBC considered the appeal site and the wider area against the factors in Box 5.1. Landscape is defined in GLVIA3 as an area, as perceived by people, whose character is the result of the action and interaction of natural and/or human factors. It is about the relationship between people and place, and perceptions turn land into the concept of landscape. I consider that CBC's analysis is more helpful, as people perceive the appeal site in its wider context. The question then becomes whether the site is part of a valued landscape, and this involves assessing both the site itself, and its role or value within the wider area.
 20. The site itself is an open agricultural field sloping gently down to a wooded brook, with a well-used byway along its side boundary, set within open countryside that provides the setting for Charnwood National Forest and Regional Park. This combination of demonstrable physical attributes takes the landscape 'out of the ordinary'.¹² How these attributes interrelate is relevant in coming to a judgement about whether this is a valued landscape.
 21. The byway and footpath network is a popular route for access to and from Outwoods. Recreational users leaving the urban area enjoy views over the appeal site towards their destination, which adds to their outdoor experience. I acknowledge that in views from the edge of Outwoods and nearby footpaths, such as from VP13, VP14 and VP15, the proposed development would be seen at some distance and in the context of urban development to the rear of the site. However, views from Nanpantan Road, for example from VP5 and VP6, across the appeal site towards the wooded hills, are the first that those travelling west out of Loughborough see of Charnwood Forest.
 22. The importance of the Forest to how the area is appreciated is acknowledged in published landscape character assessments. The appeal site is valued locally because it is part of the open countryside that provides a rural context for the urban area, which here forms an important part of Charnwood Forest's setting. It is the combination of the physical attributes of the area with how it is perceived that makes this a valued landscape. Notwithstanding that CBC did not include in its reasons for refusal of the application in Appeal A any reference to paragraph 109, I find that the appeal site is part of a valued landscape for the purposes of applying this paragraph of the *Framework*.
 23. The proposed development would obscure views towards the hills, and towards Outwoods and Jubilee Woods from Nanpantan Road and from the northern part of Watermead Lane, except possibly for some glimpses between or over the proposed buildings, and along an open corridor between the proposed houses

¹¹ *Guidelines for Landscape and Visual Impact Assessment* 3rd Edition at CD9.1.

¹² *Stroud DC v SSCLG* [2015] EWHC 488 (Admin).

that would extend from the corner of the road and the lane. This vista is depicted in a verified view photomontage.¹³ It is evident from this vantage point that the top of the hill and part of Outwoods would be seen between the houses. But the wooded flanking slopes of the hill would be obscured by buildings, giving the outlook to the wooded hillside a 'cropped' appearance in this view. Furthermore, even this restricted view would only be available for viewers aligned directly along the open corridor. The built form of the proposed scheme would diminish the significance of what is an important skyline feature. The proposed 'vista corridor' would appear as a contrived design feature in this context, at odds with the aims of Policy CS2. I do not consider that the proposal would preserve or enhance a valued landscape. It would not protect landscape character or reinforce a sense of place and local distinctiveness, and so would conflict with Policy CS11.

24. On the first issue, I find that the proposed development would harm the character and appearance of the area, and would conflict with relevant development plan policies. This harm and policy conflict weighs heavily against the proposal.

Agricultural land

25. The appeal sites together comprise 0.6 ha (13%) of grade 2 agricultural land, 2.7 ha (56%) of grade 3a land, and 1.5 ha (31%) of grade 3b land. The proposal would not protect the most versatile agricultural land, and so would not be new development that would be supported by Policy CS16. The supporting text to this policy states that CBC contains areas of high quality agricultural land which is vital for supporting wildlife and for producing food.
26. The *Framework* provides that the planning system should contribute to and enhance the natural and local environment by, amongst other things, protecting and enhancing soils. Paragraph 112 adds that account should be given to the economic and other benefits of the best and most versatile (BMV) agricultural land, defined as grades 1, 2 and 3a land, and where significant development of agricultural land is necessary areas of poorer quality land should be preferred to that of a higher quality.
27. There is a dispute about whether the loss of 3.3 ha of BMV here would be significant for the purposes of applying national policy. What is 'significant development of agricultural land' is not defined. I do not consider that the loss, in perpetuity, of 3.3 ha of BMV land in this location should be considered *de minimis* or so minor that it should be disregarded. This field has in the past been in productive use for arable farming. It adjoins other farmland from which there is access for farm vehicles. There is no evidence to indicate that it would not be likely to return to arable use in the event that the appeals were dismissed. Furthermore, paragraph 112 is in section 11 of the *Framework*, concerning conserving and enhancing the natural environment, which is one of the core land-use planning principles that should underpin decision-taking.
28. I find that the use of 3.3 ha of BMV agricultural land for the proposed development would not accord with the provisions of the *Framework* for planning to contribute to conserving and enhancing the natural environment. I note that Policy CS16 does not prohibit development of BMV agricultural land, but neither does it include the qualification 'significant development of agricultural land'. I have also taken into account that there are extensive areas

¹³ Mrs Jarvis' Appendix 3.

of quality agricultural land around Loughborough, and that CBC has granted planning permission for other areas of BMV agricultural land to achieve the benefits of additional housing.¹⁴ Nevertheless, I find that the loss of BMV agricultural land here is a consideration that would be at odds with the aims of relevant national and local policy, and falls on the negative side of the planning balance.

Housing Land Supply

29. The parties are agreed about a housing requirement of 820 dwellings per annum, a shortfall for the period from 2011-2016 of 744 dwellings, the use of the Sedgefield method to deal with the shortfall, and the application of a 20% buffer to include the shortfall. I have no reason to disagree with any of this common ground. The supply for the five year period from 2016-2021 is also agreed, except for the likely delivery from three strategic sites; North-east of Leicester Sustainable Urban Extension (SUE), West of Loughborough SUE, and North of Birstall Direction of Growth. The different projections for these strategic sites by the appellants and CBC, along with the trajectory that was before the Core Strategy Inspector, are set out in Table 1 of Annex A to this decision. The difference between the parties in terms of how these trajectories affect the five-year housing land supply are set out in Table 2 of Annex A; with CBC finding a 5.26 years supply and the appellants a 4.51 years supply.
30. The assessment of housing land supply does not require certainty that the housing sites will actually be developed within the five year period, as the planning process cannot deal in such uncertainties, and the problem of uncertainty is managed by assessing 'deliverability' over a five year period.¹⁵ Nevertheless, the *Guidance* notes that the size of sites will be an important factor in identifying whether a housing site is deliverable within the first five years, and that plan makers would need to consider the time it would take to commence development and build out rates to ensure a robust five-year housing supply. It seems to me that this guidance could also reasonably apply in determining appeals, but that the evidence should be proportionate and that projections for the future will often rely upon assumptions, as full details about legal agreements between owners/developers may not be available.
31. I share the appellants' reservations about the developer's estimate of 60 units at the West of Loughborough SUE delivered in March 2018 if site preparation commenced in January 2018. However, some slippage here need not significantly alter the five year supply. There is nothing that would rule out three sales outlets for the large sites at West of Loughborough and North of Birstall, and I am satisfied that this would be a reasonable assumption at this stage. There is agreement here about a likely average of 40 sales per outlet per annum. I note that CBC's current estimate for build-out in 2019/20 and 2020/21 at North of Birstall is the same as that which was presented to the Core Strategy Inspector.
32. For the North-east of Leicester SUE CBC assumed a higher rate of 50 sales per outlet per annum. This does not seem to me to be unrealistic given that it is acknowledged that this is a high value area, which is in demand. CBC's assumptions about a start on Phase II, providing for a total of six outlets, delivering housing in 2019/20 are more speculative. Nevertheless, sales would be likely to be required to fund a new access road for Phase II, and

¹⁴ For example 19.7 ha of BMV agricultural land at North-east of Leicester SUE (Mrs Brightman's evidence).

¹⁵ *St Modwen Developments Ltd and SSCLG and East Riding of Yorkshire C* [2016] EWHC 968 (Admin).

assumptions about different sales outlets meeting different market sectors would not be unrealistic. Again, I note that CBC's current estimates for build-out in 2019/20 and 2020/21 for the North-east of Leicester SUE are about the same as that which were accepted by the Core Strategy Inspector.¹⁶ The evidence before me does not provide a convincing basis for coming to a different finding about likely build-rates in these years.

33. I have taken into account that CBC's estimate of five year supply of deliverable sites has reduced from 6,245 units on 1 April 2015 to the latest estimate of 6,117 units, and that the Core Strategy Inspector considered the trajectory to be optimistic.¹⁷ The appellants' case to the Inquiry was based on considerable insight into how the industry operates, and I note that CBC's estimated supply has declined from 5.93 years in March 2016 to 5.26 years at the end of September 2016. Nevertheless, on the evidence before me, it would appear that CBC can still realistically demonstrate a five-year supply of deliverable housing sites in accordance with paragraph 47 of the *Framework*. If I am wrong about this, the evidence would indicate that any shortfall would be likely to be slight, and CBC has in place a sound strategy to bring forward new housing on a considerable scale.
34. My finding of a five-year housing supply does not detract from the social and economic benefits that would derive from an additional 74 dwellings, including much needed affordable units, particularly where Policy CS1 provides for a minimum number of new homes in Loughborough and Shepshed between 2011 and 2028. The proposal would, therefore, gain support from the provisions in the *Framework* to boost significantly the supply of housing.

Other matters

35. There is local concern about the proposed development adding to flood risk. I saw evidence about high water levels in Wood Brook after intense rainfall, and of surface water ponding on the appeal site. There is particular concern about local drainage, as some of the properties in the vicinity of Ralph Close are affected by a drainage easement. However, I am not convinced that the scheme would exacerbate any existing flooding problem. The development could be designed to ensure that runoff from the site did not exceed that which already occurs. Improved site drainage could also minimise surface water ponding. These are matters that could be addressed by the imposition of appropriate planning conditions.
36. I saw at my site visits some local traffic congestion on Nanpantan Road at peak times, but there is no technical evidence to indicate that the proposed access, or the resultant increase in vehicles on the local network from 74 dwellings, would significantly affect highway safety.
37. There was also adverse comment on the ability of local services and infrastructure to accommodate additional demands from the occupiers of the proposed houses. However, the obligation submitted would provide reasonable contributions in this regard. Furthermore, the scheme would provide additional open space that would be available as a leisure facility for the locality. There are no grounds to reject the proposal because of any unacceptable adverse impact on local services and infrastructure.

¹⁶ Core Strategy Inspector's Report paragraph 76 states "Whilst it remains in my view optimistic, I am satisfied that the revised trajectory takes a realistic view of likely start dates and annual rates of completions from these strategic sites." at CD8.7.

¹⁷ SoCG paragraph 7.4 and Core Strategy Inspector's Report paragraph 84 at CD8.7.

38. I have taken into account all the other matters raised in the evidence, including issues raised about biodiversity. Neither these, nor any of the other matters raised, are sufficient to outweigh my conclusions on the main issues, which have led to my decision on these appeals.

Policy and planning balance

39. Comments in the Sustainability Appraisal and the Core Strategy Inspector's Report do not assist much in determining these appeals, because those assessments concerned a strategic direction of growth, of a very different scale of development to the 74 dwellings now proposed. Furthermore, the appraisal of the site in CBC's SHLAA should not be decisive, as this was a broad-brush exercise, and undertaken without the benefit of the spatial strategy now set out in the Core Strategy.
40. The parties agree that the proposal would conflict with LP Policies ST/2, CT/1 and CT/2. The appellants sought to reduce the weight to be attached to the conflict with relevant policies on the basis that they are not consistent with the *Framework*. CBC considers that reduced weight should not be applied to the settlement boundary because it accords with core principles of the *Framework*; including recognising the intrinsic character and beauty of the countryside, having a clear and predictable plan, making effective use of land and managing patterns of growth.
41. I note that the *Guidance* refers to policies for the conservation and enhancement of the natural environment, including landscape, both in designated landscapes and also the wider countryside. However, the text for LP Policy CT/1 refers to national policy at that time, which emphasised the need to protect the countryside for its own sake. That is a very different basis for the formulation of local policy to that set out in the *Framework*, which refers to the different roles and character of different areas, recognising the intrinsic character and beauty of the countryside. Furthermore, the sustainable development balancing exercise required by the *Framework* does not limit development to small-scale schemes that could not reasonably be located within or adjacent to an existing settlement. I find that LP Policy CT/1 is inconsistent with the *Framework* and can be given little weight. LP Policy CT/1 and LP Policy ST/2 are linked because they both hinge upon the defined Limits to Development.
42. The supporting text to LP Policy ST/2 explains that the Limits to Development allow for any new development to be sensibly related to the existing pattern of settlement to ensure that development needs can be met without unwarranted harm to the countryside and other rural interests. The aims of this policy accord with some of the provisions of the *Framework* concerning the countryside and other rural interests, but an important factor here in defining Limits to Development must be the particular 'development needs' required to be delivered. The development needs at the time the LP was adopted arose from a strategic housing requirement for the period 1991-2006. The current strategy is set out in Policy CS1 for the period from 2011 to 2028, with very different development needs. I consider, in a plan-led system, as advocated by the *Framework*, that little weight can be given in this case to the Limits to Development defined by LP Policy ST/2.
43. LP Policy CT/2 does not accord with the *Framework* because it limits countryside development to that which would be acceptable in principle, and to locations where it would not harm the character and appearance of the

- countryside. Such a policy requirement would not balance harm against any benefits in determining whether a proposal was sustainable development for the purposes of applying the *Framework*. Again, this saved policy can be given little weight here.
44. I have had regard to the judgment in *Gladman Developments Ltd and Daventry DC*, but consider that relevant saved policies in this case have a high degree of inconsistency with current national policy. In accordance with paragraph 215 of the *Framework*, I find that LP Policies CT/1, ST/2 and CT/2 can be given little weight, and are out-of-date. Accordingly, paragraph 14 of the *Framework* is engaged, irrespective of my findings about a deliverable five-year housing supply.
45. The appellants initially argued that paragraph 109 of the *Framework* was not caught by footnote 9.¹⁸ But accepted at the Inquiry that I should proceed on the basis that paragraph 109 is a situation in which the *Framework* indicates that development should be restricted.¹⁹ I was referred in this regard to the Secretary of State's decision in an appeal at *Leckhampton*, and to the High Court's subsequent refusal of permission to apply for judicial review.²⁰ The interpretation of policy is a matter of law, but this looks to me to be the correct approach. The judgment in *Borough of Telford and Wrekin and SSCLG* can be distinguished because it found that paragraph 112, dealing with BMV agricultural land, did not confer any particular level of protection, whereas I consider that paragraph 109 can be read as a restriction on development in principle. I consider that the first bullet point of paragraph 109 of the *Framework* is a specific *Framework* policy that indicates that development should be restricted, and so the presumption in favour of sustainable development does not apply here because I have found that the site is a valued landscape.
46. Therefore, the planning balance that applies in determining these appeals is a straightforward balancing exercise of weighing the benefits of the proposed development against the harm, having regard to the three dimensions to sustainable development, as set out in paragraphs 6-10 of the *Framework*, as it was put at the Inquiry, without applying a 'tilt' in favour of the grant of planning permission.
47. The significant benefits of the additional housing, including affordable units, along with the contribution to the local economy and public open space provision, would far outweigh the loss of 3.3 ha of BMV agricultural land. But in my judgement, I do not consider that these benefits would also be sufficient to outweigh the substantial harm I have identified to the character and appearance of the area. I find that the planning balance here falls against the proposal.
48. The economic, social and environmental roles for the planning system, which derive from the three dimensions to sustainable development in the *Framework*, require in this case that a balancing exercise be performed to weigh the benefits of the scheme against its disadvantages. The economic and social benefits of the additional housing and infrastructure would be significant,

¹⁸ ID2 paragraph 1. 2nd bullet point part (c).

¹⁹ ID11 paragraph 26.

²⁰ APP/B1605/W/14/3001717 at Mrs Brightman's Appendix 6. In considering the Application for permission to apply for Judicial Review Justice Lewis found no arguable error of law in finding that paragraph 109 indicated, amongst other things, that valued landscapes should be protected and enhanced, and that it was a policy within the meaning of paragraph 14 (CO/3029/2016 dated 26 July 2016).

but in my judgement, would be outweighed by the substantial environmental harm from the proposal. I do not consider that the scheme would be sustainable development, or would make effective use of land, and so it would not accord with Policy CS1.

Conclusions

49. I am required to decide these appeals having regard to the development plan, and to make my determination in accordance with it, unless material considerations indicate otherwise. The proposed development would conflict with Policies CS1, CS2 and CS11. Overall, I find that the proposal would conflict with the development plan when taken as a whole. Furthermore, I do not consider, for the reasons set out above, that the proposal would represent sustainable development for the purposes of applying the *Framework*. There are no material considerations in this case which indicate that the appeals should be determined other than in accordance with the development plan. For the reasons given above and having regard to all other matters raised, I conclude that both appeals should be dismissed, and that planning permission should be refused in Appeal B.

John Woolcock
Inspector

ANNEX A

Housing delivery trajectory						
	2016/17	2017/18	2018/19	2019/20	2020/21	Total
North-east of Leicester Sustainable Urban Extension						
CBC	0	0	90	250	300	640
Appellants	0	0	40	80	80	200
Core Strategy	25	175	250	300	300	1050
West of Loughborough Sustainable Urban Extension						
CBC	0	60	120	120	120	420
Appellants	0	0	40	80	80	200
Core Strategy	40	120	120	240	240	760
North of Birstall Direction of Growth						
CBC	0	0	65	120	130	315
Appellants	0	0	0	20	80	100
Core Strategy	0	75	110	120	130	435

Table 1 (figures taken from ID9)

	Estimated contribution to five year supply from 30 September 2016	
Strategic Site	CBC	Appellants
North-east of Leicester	640	200
West of Loughborough	420	200
North of Birstall	315	100
Large sites	4,272	4,272
Small sites	470	470
Total supply	6,117	5,242
Five year calculation	5.26 years	4.51 years

Table 2 (SoCG paragraph 7.4)

SCHEDULE OF PLANS

Appeal A - APP/X2410/W/15/3028159 (LPA REF: P/14/1754/2)

Location plan 1651/08/01/030 Rev A dated August 2014
Site Plan 1651/08/02/001 Rev C dated December 2014
Street Scenes 1651/08/02/006 dated August 2014
3D Axonometric 1651/08/02/011 Rev A dated December 2014
Street Sections 1651/08/02/040 dated August 2014
Finished Floor Levels 1651/08/02/041 dated August 2014
Masterplan 1651/08/02/100 Rev A dated June 2014
Enclosures Plan 1651/08/04/010 Rev C dated December 2014
High Street Plan 5338/HS rev A dated December 2014
Indicative Drainage Strategy BMW/2348/001 Rev P2 dated August 2014
Potential Site Access to Nanpantan Road VN30201 -100 Rev D dated May 2014
House types – apartments dated April 2014
Bungalow dated April 2014
The Tweed dated April 2014
The Balmoral dated April 2014
The Cambridge (EF series- render & EF series brick) dated April 2014
The Dart dated April 2014
The Henley dated April 2014
The Marlow dated April 2014
The Oxford (EF series brick & EF series render) dated April 2014
The Shrewsbury (EF series brick & EF series render) dated April 2014
The Sunningdale dated April 2014
The Tavy dated April 2014
The Welwyn (EF series brick & EF series render) dated April 2014
The Windsor (Cnr) (EF series brick & EF series render) dated April 2014
The Windsor (EF series brick & EF series render) dated April 2014
Double garages type 11 and 12 drawing no's GAR11 001 and GAR12 001 dated April 2014
Single garage type 1 drawing no GAR01 001 dated April 2014
Landscape Masterplan 5338/LM.03 Rev B dated December 2014
Planting Plan Overview 5338/PP.04 Rev B dated May 2013
Planting Plan 1 – 9 drawing no's 5338/LM.05 – 09 Rev B dated December 2014
Topographical survey sheets 1 and 2 01010/TOPO August 2014

Appeal B - APP/X2410/W/15/3028161 (LPA REF: P/14/1755/2)

Location Plan 1651/08/01/031 Rev A dated August 2014
Proposed Open Space Plan 1651/08/02/003 rev B dated June 2014
Harrow Estates Landscape Masterplan 5338/LM.03 Rev B dated December 2014
Harrow Estates Public Open Space 5338/PPOS dated August 2014
Indicative Drainage Strategy (Preliminary) BMW/2348/001 Rev P2 dated August 2014

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Ashley Bowes of Counsel	Instructed by Rebecca Sells Solicitor for Charnwood Borough Council
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He called

Richard Brown BA(Hons) DipTP MRTPI	Principal Planning Officer CBC
Iain Reid DipTP MRTPI CMLI	Director Iain Reid Landscape Planning Ltd
Karen Brightman BA(Hons) BPL MRTPI	Planning Officer CBC

FOR THE APPELLANTS:

David Manley QC	Instructed by Kathryn Ventham
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He called

Jane Jarvis BSc(Hons) DipLD MA CMLI	Principal Landscape Architect SLR Consulting Ltd
Kathryn Ventham BSc(Hons) MSc MRTPI	Planning Partner Barton Willmore LLP

FOR RULE 6 PARTY

Andrew Tyrer MRTPI	Development Contributions Officer Leicestershire County Council
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INTERESTED PERSONS:

Steve Cuff	Chairman Nanpantan Residents Group
Raymond Clay	Local resident and chartered civil engineer
Cllr Jonathan Morgan	Ward Councillor
Cllr Margaret Smidowicz	Ward Councillor
Steve Birkett	Local resident
Michael and Glenys Nethercott	Local residents
Rt Hon Nicky Morgan MP	Member of Parliament for Loughborough

DOCUMENTS SUBMITTED AT THE INQUIRY

- Document 1 Planning obligation by way of unilateral undertaking under Section 106 of the 1990 Act dated 14 December 2016
- Document 2 Appellants' opening note
- Document 3 Opening statement on behalf of CBC
- Document 4 Matter 5: Note in respect of delivery of small windfall sites Charnwood Core Strategy Examination [submitted by CBC]
- Document 5 Supplementary Proof of Evidence
Monitoring Cost Contribution
Leicestershire County Council
- Document 6 Statement of CIL compliance by CBC
- Document 7 Emails from Leicestershire Police dated 5 and 7 December 2016
- Document 8 Written Statement from Rt Hon Nicky Morgan MP
- Document 9 Table showing Housing Land Supply Comparison Trajectory [requested by Inspector]
- Document 10 Suggested planning conditions
- Document 11 Outline closing submissions on behalf of CBC
Including Appeal Ref:APP/X1925/V/15/3131943
- Document 12 Appellants' closing note

JUDGMENTS

Trustees of the Barker Mill Estates and Test Valley BC [2016] EWHC 3028 (Admin)

Borough of Telford and Wrekin and SSCLG [2016] EWHC 3073 (Admin)

Gladman Developments Ltd and Daventry DC [2016] EWCA Civ 1146

St Modwen Developments Ltd and SSCLG and East Riding of Yorkshire C [2016] EWHC 968 (Admin)

CORE DOCUMENTS

CD No.	Planning Application Documents and Plans Residential Application (Ref: P/14/1754/2)	Date
1.1	Covering Letter, prepared by Barton Willmore LLP	September 2014
1.2	Application Forms and Certificate	September 2014
1.3	Arboricultural Method Statement, prepared by First Environment Limited	August 2014
1.4	Archaeological Desk-Based Assessment, prepared by CgMs	August 2014
1.5	Design and Access Statement	August 2014
1.6	Phase 1 Habitat Survey & Protected Species Surveys, prepared by Naturally Wild	August 2013
1.7	Flood Risk Assessment, prepared by BWB Consulting	August 2014
1.8	Planning Statement, prepared by Barton Willmore LLP	September 2014
1.9	Preliminary Risk Assessment, prepared by	August 2014
1.10	Ecological Assessment, prepared by First Environment Limited	August 2014
1.11	Transport Assessment, prepared by Vectos	August 2014
1.12	Landscape and Visual Appraisal, prepared by First Environment Limited	August 2014
	Site Plans	
1.13	Location Plan (Drawing No. 1651/08/01/030 Rev. A)	August 2014
1.14	Residential Site Plan (Drawing No. 1651/08/02/001 Rev. A)	August 2014
1.15	Street Scenes (Drawing No. 1651/08/02/006)	August 2014
1.16	3-D Axonometrics (Drawing No. 1651/08/02/011)	August 2014
1.17	Materials Plan (Drawing No. 1651/08/02/015)	July 2014
1.18	Street Sections (Drawing No. 1651/08/02/040)	August 2014
1.19	Proposed Floor Levels (Drawing No. 1651/08/02/041)	August 2014
1.20	Coloured Master Plan (Drawing No. 1651/08/02/100 Rev. A)	June 2014
1.21	Enclosures Plan (Drawing No. 1651/08/04/010 Rev. A)	June 2014
1.22	Indicative Drainage Strategy (Drawing No. BMW/2348/001 Rev. P2)	August 2014
1.23	Potential Site Access with Nanpantan Road (Drawing No. VN30201-100 Rev. D)	May 2014
	House Type Portfolio	
1.24	Apartments – Floor plan and Elevations	April 2014
1.25	Bungalow – Floor Plan and Elevations	April 2014
1.26	The Tweed – Floor plan and Elevations	April 2014
1.27	The Balmoral – Floor plans	April 2014
1.28	The Balmoral – Elevations	April 2014
1.29	The Cambridge – Floor plan and elevations (EF series – Render)	April 2014
1.30	The Cambridge – Floor plan and elevations (EF series – Brick)	April 2014
1.31	The Dart – Floor plans	April 2014
1.32	The Dart – Elevations	April 2014
1.33	The Henley – Floor plans	April 2014
1.34	The Henley – Elevations	April 2014

1.35	The Marlow – Floor plan and elevations	April 2014
1.36	The Oxford – Floor plan and elevations (EF series – Brick)	April 2014
1.37	The Oxford – Floor plan and elevations(EF series – Render)	April 2014
1.38	The Shrewsbury – Floor plan and elevations (EF series – Brick)	April 2014
1.39	The Shrewsbury – Floor plan and elevations (EF series – Render)	April 2014
1.40	The Sunningdale – Floor plan	April 2014
1.41	The Sunningdale – Elevations	April 2014
1.42	The Tavy – Floor plan	April 2014
1.43	The Tavy – Elevations	April 2014
1.44	The Welwyn – Floor plan	April 2014
1.45	The Welwyn – Elevations (EF series – Brick)	April 2014
1.46	The Welwyn – Elevations (EF series – Render)	April 2014
1.47	The Windsor (Cnr) – Floor plan and elevations (EF series – Brick)	April 2014
1.48	The Windsor (Cnr) – Floor plan and elevations (EF series – Render)	April 2014
1.49	The Windsor – Floor plan and elevations (EF series – Brick)	April 2014
1.50	The Windsor – Floor plan and elevations (EF series – Render)	April 2014
1.51	Double Garage Type 11 Plan, Section & Elevations (Drawing No. GAR11 001)	April 2014
1.52	Double Garage Type 12 Plan, Section & Elevations (Drawing No. GAR12 001)	April 2014
1.53	Single Garage Type 1 Plan, Section & Elevations (Drawing No. GAR01 001)	April 2014
	Landscape Plans	
1.54	Landscape Plan – High Street (Drawing No. 5338/HS)	May 2013
1.55	Planting Plan Overview (Drawing No. 5338/PP.04)	May 2013
	Topographical Survey	
1.56	Sheet 1 (Drawing No. 01010/Topo)	August 2014
1.57	Sheet 2 (Drawing No. 01010/Topo)	August 2014

	Planning Application Documents and Plans Public Open Space Application (Ref: P/14/1755/2)	Date
2.1	Covering Letter, prepared by Barton Willmore LLP	September 2014
2.2	Application Forms and Certificate	September 2014
2.3	General Statement – Change of Use of Land to Public Open Space, prepared by Harrow Estates	August 2014
2.4	Phase 1 Habitat Survey & Protected Species Surveys, prepared by Naturally Wild	August 2013
2.5	Flood Risk Assessment, prepared by BWB Consultancy	August 2014
2.6	Archaeological Desk-Based Assessment, prepared by CgMs	August 2014
2.7	Planning Statement, prepared by Barton Willmore LLP	September 2014
2.8	Ecological Assessment, prepared by First Environment Limited	August 2014

	Site Plans	
2.9	Location Plan (Drawing No. 1651/08/01/031 Rev. A)	August 2014
2.10	Proposed Open Space Plan (Drawing No. 1651/08/02/003 Rev. A)	June 2014
2.11	Public Open Space (Drawing No. 5338/PPOS)	August 2014

	Planning Application Documents submitted after the initial submission	Date
	Amended Plans and Documents, submitted 19 December 2014:	
3.1	Covering Letter, dated 29 December 2014	November 2014
3.2	Agricultural Land Classification and Soil Resources, prepared by Reading Agricultural Consultants Ltd	November 2014
3.3	Letter dated 28 November 2014 from Darren Lovell (for and behalf of Vectos)	November 2014
3.4	Landscape and Visual Assessment, prepared by First Environment Ltd	December 2014
3.5	Landscape Masterplan (Drawing No. 5338/LM.03 Rev. B)	December 2014
3.6	Planting Plan Overview (Drawing No. 5338/PP.04 Rev. B)	December 2014
3.7	Planting Plan 1 of 5 (Drawing No. 5338/PP.05 Rev. B)	December 2014
3.8	Planting Plan 2 of 5 (Drawing No. 5338/PP.06 Rev. B)	December 2014
3.9	Planting Plan 3 of 5 (Drawing No. 5338/PP.07 Rev. B)	December 2014
3.10	Planting Plan 4 of 5 (Drawing No. 5338/PP.08 Rev. B)	December 2014
3.11	Planting Plan 5 of 5 (Drawing No. 5338/PP.09 Rev. B)	December 2014
3.12	High Street Plan (Drawing No. 5338/HS. Rev A)	December 2014
3.13	Public Open Space Plan, prepared by First Environment Ltd (Drawing No. 5338/POS Rev. A)	December 2014
3.14	Arboricultural Method Statement, prepared by First Environment Ltd	December 2014
3.15	Colour Site Plan (Drawing No. 1651/08/02/001 Rev. C)	December 2014
3.16	Site Plan (Drawing No. 1651/08/02/001 Rev. C)	December 2014
3.17	Open Space Site Plan (Drawing No. 1651/08/02/003 Rev. B)	December 2014
3.18	3D Axonometrics (Drawing No. 1651/08/02/011 Rev. A)	December 2014
3.19	Materials Plan (Drawing No. 1651/08/02/015 Rev. B)	December 2014
3.20	Enclosures Plan (Drawing No. 1651/08/04/010 Rev. C)	December 2014
3.21	Design and Access Statement – Residential Full Application	December 2014
3.22	Transport Assessment, prepared by Vectos	December 2014
3.23	Revised Flood Risk Assessment, prepared by BWB Consultancy	December 2014
3.24	Signed Extension of Time Form – Residential Application	December 2014
3.25	Signed Extension of Time Form – Public Open Space Application	December 2014
	Amended Plans and Documents, submitted 29 January 2015:	
3.26	Visually Verified Imagery Methodology, prepared by cg eye	January 2015
3.27	Verified View from junction of Nanpantan Road and Watermead Lane	January 2015

Statutory Consultation Responses – Residential Application	
4.1	Leicestershire Police
4.2	Charnwood Borough Council – Landscape
4.3	Charnwood Borough Council – Infrastructure and Planning
4.4	Campaign for the Protection of Rural England
4.5	Environmental Health - Contamination
4.6	Environmental Health – Noise/Dust
4.7	Affordable Housing
4.8	LCC Contributions - Education
4.9	LCC Contributions – Library
4.10	LCC Contributions – Civic Amenity
4.11	LCC Contributions - Landscape
4.12	Leicestershire County Council - Footpaths
4.13	Leicestershire County Council – Highways
4.14	Leicestershire County Council – Highways (dated 15 October 2014)
4.15	Natural England
4.16	Environment Agency
4.17	Leicestershire County Council – Highways, dated 26 September 2014
4.18	Leicestershire County Council – Highways, dated 9 February 2015
4.19	NHS England
4.20	Severn Trent Water
4.21	Lead Local Flood Authority

Statutory Consultation Responses – Public Open Space Application	
5.1	Charnwood Borough Council – Landscape
5.2	Leicestershire County Council - Footpaths
5.3	Leicestershire County Council - Highways
5.4	Natural England
5.5	Environment Agency
5.6	Lead Local Flood Authority

Third Party Comments	
6.1	Loughborough South West Action Group (LSWAG), dated 3 November 2014 (prepared by DPP Planning)
6.2	Outwoods Management Committee
6.3	Councillor Peter Lewis – County Councillor Loughborough South West
6.4	Councillor Margaret Smidowicz – Nanpantan Ward
6.5	Woodhouse Parish Council

Application Documents	
7.1	Report to Planning Committee, 26 February 2015 – Residential Application + Update Report
7.2	Decision Notice, dated 6 March 2015 – Residential Application
7.3	Delegated Officers Report – Open Space Application

Planning Policy Core Documents	
8.1	The National Planning Policy Framework (March 2012)
8.2	<i>Planning Practice Guidance (March 2014) – Not Submitted alongside Appeal</i>
8.3	Borough of Charnwood Local Plan 1991 – 2006 (adopted January 2004)

8.4	Extract from Local Plan Inset Maps
8.5	Letter Confirming which Policies are Saved
8.6	Charnwood Local Plan 2011 – 2028 Core Strategy (November 2015)
8.7	Charnwood Local Plan 2011 – 2028 Core Strategy Examining Inspectors Report
8.8	Five Year Housing Land Supply Review – October 2015
8.9	List of Saved Policies
8.10	Updated Sustainability Appraisal Report (August 2015)

Landscape Documents	
9.1	Extract from Guidelines for Landscape and Visual Impact Assessment (GLVIA 3)
9.2	Extract from National Character Area (NCA) 73 Charnwood Forest
9.3	Extract from East Midlands Regional Landscape Character Assessment
9.4	Extract from Leicester, Leicestershire and Rutland Landscape and Woodland Strategy
9.5	Extracts from Borough of Charnwood Landscape Character Assessment
9.6	Extracts from Charnwood Forest Landscape Character Assessment (Bradgate and Beacon and Loughborough Fringe)
9.7	Extracts from 6Cs Green Infrastructure Strategy Volume 5 Strategic GI Network for the Leicester Principal Urban Area and Sub-Regional Centres

Correspondence from Local Planning Authority	
10.1	E-mail from Case Officer, dated 9 February 2015 (14:54)
10.2	E-mail from Case Officer, dated 9 February 2015 (21:47)
10.3	E-mail from Case Officer, dated 17 February 2015
10.4	E-mail from Case Officer, dated 18 February 2015
10.5	E-mail from Case Officer, dated 27 February 2015 (11:33)
10.6	E-mail from Case Officer, dated 27 February 2015 (11:45)
10.7	E-mail from Graham Smith (Charnwood Borough Council), dated 26 March 2015