
Appeal Decision

Inquiry held on 17 & 18 December 2013

Site visit made on 18 December 2013

by Simon Hand MA

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

Decision date: 3 January 2014

Appeal Ref: APP/K2420/A/13/2202261

Land East of Wolvey Road, Three Pots, Burbage, Leicestershire, LE10 2JJ

- 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 David Wilson Homes and Andrew Grainger and Company against the decision of Hinckley & Bosworth Borough Council.
 - The application Ref 13/00094/FUL, dated 31 January 2013, was refused by notice dated 14 February 2013.
 - The development proposed is the erection of 34 dwellings and associated infrastructure.
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Costs application

1. An application for costs was made by the appellants and this is the subject of a separate decision.

Decision

2. The appeal is allowed and planning permission is granted for the erection of 34 dwellings and associated infrastructure at Land East of Wolvey Road, Three Pots, Burbage, Leicestershire, LE10 2JJ in accordance with the terms of the application, Ref 13/00094/FUL, dated 31 January 2013, and the plans submitted with it, subject to the conditions in annex A.

Main Issues

3. Whether the Council have a 5 year supply of housing land; whether policy 4 of the Core Strategy and policies RES5 and NE5 saved from the local plan are housing policies; and, whether the development harms the landscape or the countryside setting of Burbage.

Reasons

4. The Council and appellants provided a Statement of Common Ground, but during the course of the Inquiry the Council's case developed to include some of those matters which they no longer agreed with. It is important to note, however, they did not resile from agreement that the site was sustainably located, close to Burbage and Hinckley centres, to bus routes, and offered a genuine transport modal choice, although their arguments on landscape because of the way the Framework defines sustainability, inevitably led to a final conclusion that in landscape terms only, the site was unsustainable.

5 Year Housing Land Supply

5. The Council has a Core Strategy, adopted in 2009, before the publication of the Framework. There is no dispute that the housing demand figures from the Core Strategy should be used, and that 9000 dwellings are required between 2006 and 2026, which is a rate of 450 a year. As at 31 March 2013 there had been 2490 completions. This is at a rate of less than 450 a year, and results in a backlog of 660 houses.
6. The background as to how these figures should be handled is found in the Core Strategy Inspector's report and three recent appeal decisions in the Borough. The Core Strategy Inspector recognised that completion rates would be lower in the early years of the plan, but this would be made up for by several Strategic Urban Extensions coming on stream later in the period. In a decision issued on 18 December 2012¹, at Stanton under Bardon (SuB) however, an Inspector found there was a persistent under delivery of housing and so a 20% buffer should be applied to the housing figures. He also preferred the Sedgefield to the Liverpool methods for dealing with the backlog. The result of this was that he found the Council did not have a 5 year supply of housing land. A second decision at Groby² was issued on 22 January 2013 but the Inquiry was held before the SuB decision was issued. Here the Inspector preferred the Liverpool method, and, although it is not explicit, also did not find the Council to be guilty of persistent under delivery. On that basis the Council did have a 5 year supply of housing land.
7. The Inspector in the third decision at Shilton Road³ had the benefit of both the previous appeal decisions. His hearing was held in April 2013 and the decision issued in May 2013. He disagreed with the Inspector in the SuB appeal and preferred the Liverpool approach, in particular he felt the effects of the recession should be taken into account and that front loading the housing target by using the Sedgefield approach would not lead to a realistic housing delivery programme; the more cautious Liverpool approach was therefore reasonable in this case. He also found the Council had not been "obstinate" when allocating sites and was not guilty of persistent under delivery. On the contrary it had been a victim of the recession. A 20% buffer would not lead to any more housing being built as such a larger target was unrealistic in the current economic climate. As a consequence of these conclusions the Council did have a 5 year supply of housing land.
8. The appellant pointed out that both the Groby and Shilton Rd decisions have been challenged and judgement on one case is due soon. The Council argued that the SuB appeal was only a hearing, and these matters were properly thrashed out at the Groby inquiry. But I note that Shilton Rd was also only a hearing, and at that time the Council argued it should be postponed so that the issues could be properly explored by cross-examination at an inquiry. In my view, therefore, as the SuB decision was not before the Groby Inspector, the current appeal is the first time the two conflicting approaches have been tested at an inquiry.

¹ K2420/A/12/2180699, Stanton under Bardon

² K2420/A/12/2181080, Ratby Rd, Groby

³ K2420/A/12/2188915, Shilton Rd, Barwell

9. I need to take into account a number of issues that were raised before me and that do not seem to have been before the previous Inspectors. The Core Strategy Inspector's view that housing supply figures weighted towards the end of the plan period was reasonable was made some years before the publication of the Framework and on the understanding that the Council's *Site Allocations and Development Management Policies DPD(SADMP)* was due for publication in the following year. The Beta guidance issued in August of this year to help explain the Government's planning policy, states that past under supply of housing should be dealt with within the first 5 years of the plan period "where possible"; and the recently issued guidance from the Planning Advisory service to help Councils to prepare robust housing supply figures advised that the Sedgefield approach is more closely aligned to the requirements of the Framework and that Inspectors' appeal decisions have confirmed their preference for this approach.
10. Neither of these latter two pieces of guidance are binding, one being in draft and one being the views of an advisory body, but they are both indicative of a direction of travel and this direction is explicit in the Framework. Paragraph 47 begins with the phrase "To boost significantly the supply of housing, local planning authorities should:", then in 5 bullet points it explains how to do this with the emphasis on meeting their full objectively assessed needs, updating their strategy annually and only considering deliverable sites. The 20% buffer where there has been a record of persistent under delivery is introduced here too.
11. I agree with the appellant that this marks a significant change in the approach to housing delivery, with a much greater emphasis on providing sites that are genuinely deliverable within 5 years, while the 20% buffer is an example of the urgency the Government attaches to dealing with any housing backlog. This urgency has also been made clear by the Secretary of State in numerous appeal decisions over the last few years. The advice in the Beta guidance and the PAS document is entirely consistent with the emphasis on delivering housing now and not at some more vague time in the future. To this end I consider the Inspector in the Shilton Road appeal misinterpreted the rationale behind the 20% buffer. It is not a punishment for Councils that drag their feet over housing delivery, and there is no suggestion that Hinckley and Bosworth are such a Council, indeed quite the opposite. What it is, is a recognition that if, for whatever reason, less houses have been built than planned for, that backlog should be made up as a matter of urgency by moving forward, from later in the plan, sites for development.
12. The same approach governs the adoption of the Sedgefield approach rather than Liverpool. After all, in the case of this authority, the backlog of houses includes those that should have been built up to seven years ago. To spread that backlog out over the next 13 years is to build in even more delays and to sanction consistent under-provision. That is why the Sedgefield approach has been generally considered by Inspectors to be the correct approach, as any accumulated backlog would be dealt with in the next 5 years.
13. In my view therefore the Sedgefield approach is the most appropriate and if the figures show there has been persistent under-delivery, regardless of economic factors or the willingness of the Council to grant planning permissions for housing, then a 20% buffer should be applied. The figures show that in the

seven years since 2006/07, the 450 target has been met only once, and the annual average rate is 356 houses. The Council argue that one should look back over a full economic cycle. They say that over the last 12 years they have met the target 4 times out of 8. They exclude the 4 recession years. So even by the most favourable calculations possible the Council has failed to meet the target 50% of the time. This seems quite persistent to me. However, for the reasons given above I consider this to be a mathematic rather than a moral judgement, and so the 12 year figures are 8 failures out of 12. However the figures are calculated there does seem to be persistent under delivery.

14. All of this also leads me to the view that the Core Strategy Inspector's views on timing are also now out of date. In the light of the Framework such an approach does seem rather relaxed although it is always possible there are compelling reasons to adopt a 'build later' strategy. In this case the SADMP is still delayed. It is now due to be published for consultation in early 2014. Given the controversy that housing land always seems to generate, the Council's target of seeking the approval of the Secretary of State in August 2014 seems overly optimistic. Secondly the two SUEs are still to come forward. I was informed that planning permission has been granted for Barwell SUE, subject to a s106 agreement, and the Council have included 420 dwellings from Barwell in their projections for the next 5 years (ie up to 2018). The Earl Shilton SuE is still at discussion stage with community engagement being undertaken. No houses from this proposal are included in the 2013-2018 figures. The SC Inspector took the view that these two major developments would come "on stream fully" in the post 2017/18 years to make good the early year shortfalls. While this might be true of Barwell, it would seem Earl Shilton still has a long way to go and it is possible it will contribute little before the years at the very end of the plan period. Given the existing backlog of 660 houses and the uncertainty over Earl Shilton there do not seem to be any compelling reasons to continue with the more relaxed approach from 2009.
15. Taking all this together I consider the Core Strategy Inspector's delivery assumptions are now out of date. There is a backlog of 660 houses and the Sedgefield approach should be adopted to deal with this. In addition there has been persistent under delivery of housing and a 20% buffer should be applied. The Council helpfully worked out the various permutations and this worse-case scenario from their point of view leads to a figure of 4.2 years of housing land supply. The appellant has also queried a number of the Council's assumptions concerning sites in the pipeline that go to make up the 4.2 years, but given there is a significant shortfall I do not need to consider those in detail. Many of the arguments focus on deliverability. I do not consider that a site with an expired planning permission is inherently undeliverable and I do not think this is what footnote 11 of paragraph 47 says. It is silent on how to treat sites with expired planning permissions. In my view those sites should be treated on their merits in accordance with the first sentence of the footnote. Consequently I do not attach great weight to the appellants' arguments on a site by site basis. Nevertheless there is a material shortfall in housing land supply so the council's housing policies should be considered out of date, in accordance with paragraph 49 of the Framework.

Housing supply policies

16. It was agreed there are three policies relevant to the appeal. Policy 4 from the Core Strategy deals with development in Burbage. There is no dispute that, following from my above conclusion, the housing elements of this policy should be discounted and these include the need to allocate land for 295 houses. Policy RES5 deals with housing on unallocated sites and so is also clearly out of date.
17. Policy NE5 deals with development in the Countryside. It seeks to protect the countryside "for its own sake" and sets criteria that any development in the countryside must meet to be acceptable. The Council argue this is not a housing supply policy, but a countryside policy and so is not affected by paragraph 49 of the Framework. I was referred to two high court decisions and an appeal decision. In the Cotswold⁴ court case policy 19 of their Local Plan was at issue. The policy sought to restrict development outside of development boundaries and was essentially a rural protection policy. The court held that policy 19 was a housing land supply policy as it "restricts development, including housing development" (paragraph 72). This is a short but unequivocal statement. In Davis and Jelson⁵ the policy was E20 which was a green wedge policy designed to restrict development within a defined area between two settlements in a manner reminiscent of Green Belt policy. The Court held at paragraph 47 that although this clearly had the effect of restricting housing development it was not a policy concerned with the *supply* of housing itself. The judge underlined the word "supply" whenever she used it. As far as I am aware neither case referred to the other.
18. In the Alsager appeal⁶ the Inspector adopted an approach similar to Davis & Jelson although again it does not appear he had seen either court case. He found policy PS4 which dealt with settlement zone lines was also not a housing land supply policy. Although it defined lines around settlements outside of which it is presumed development would be restricted, it did not allocate housing land. Although it took account of housing land allocations when being drawn up its primary purpose was the delineation of town and countryside.
19. It is perhaps not surprising that three very recent decisions have reached different conclusions as the effect of paragraph 49 is still being worked through. In this case NE5 is a general policy that seeks to control development in the countryside. One affect of it is that it limits housing development to that which meets the relevant criteria, tests that in effect very little housing would pass. On a strict reading of Cotswold it is therefore a housing policy. However, E20 in Davis & Jelson also had the effect of restricting housing and was not considered a 'supply' policy. The wording of paragraph 49 is that "relevant policies for the supply of housing should not be considered up to date...". We are told that each word of the Framework was carefully considered and I can only assume therefore that this deliberately restricts itself to "policies for the supply of housing". It does not mention general policies that have as a side-effect a limitation on housing. The primary purpose of NE5 is the protection of the countryside not housing land supply. The Council can at any time allocate sites for housing in the countryside for example as part of the

⁴ Cotswold District Council v SSCLG and others [2013] EWHC 3719 (Admin)

⁵ Davis and Jelson v SSCLG & North West Leicestershire District Council [2013] EWHC 3058 (Admin)

⁶ R0660/A/13/2195201, Sandbach Rd North, Alsager

SADMP and such allocations would override this policy. It does not seem to me therefore to be a policy that concerns itself with housing land supply except indirectly. As such it is not affected by paragraph 49.

20. I am supported in this conclusion by the appellants own argument that if NE5 was considered a housing land supply policy so could any other policy that sought to control the use of land for purposes other than housing, including safeguarding land for commercial or industrial use, which would as a by-product prevent housing development on that land. In my view a Council's Green Belt policies would also have to be considered out of date as these severely restrict housing development. I do not think this was the intention of the Framework, hence the careful wording of paragraph 49.
21. Consequently, while the Council's housing supply policies are out of date by virtue of paragraph 49, policy NE5 is not. However, it does seek to protect the countryside for its own sake, a phrase not found in the Framework. Paragraph 115 gives great weight to protecting land subject to a national designation such as a National Park and paragraph 109 seeks to protect and enhance valued landscapes; whilst recognising the "intrinsic character and beauty of the countryside" is one of the core planning principles in paragraph 17. But none of these refer to a blanket protection of the countryside regardless of its landscape merits. In that sense the policy is not in conformity with the Framework and the weight ascribed to it is accordingly reduced.

Landscape

22. In the SoCG both sides agreed the development accorded with Policy 4 and was environmentally sustainable as defined in the framework. This can only be taken to mean the Council did not have a landscape objection. Consequently, no landscape impact assessment was made and none was put to the Inquiry. However, the Council did argue that the site provided a gateway to Burbage. There was a clean break between development and countryside on the approach to the site and to extend beyond the development limits as proposed would erode the sense of place created by this demarcation and harm the open countryside. At the same time the landscape protection elements of policy 4 would also be breached, as these seek to prevent development in the general area of the site as this will erode the corridor between the village and the M69 which Policy 4 seeks to preserve.
23. Following my logic when considering NE5 I agree that the non-housing specific elements of policy 4 are not out of date and so still relevant to this appeal, and I shall deal with those first. The key bulletpoint from policy 4 is "*protect and preserve the open landscape to the east which provides an important setting for the village and seek to enhance the landscape structure which separates the village from the M69 corridor as supported by the Hinckley and Bosworth Landscape Character Assessment*". At 2 previous appeals⁷ the Inspectors found a site at Britannia Road to be to the south of Burbage. Britannia Road lies to the east of the appeal site and so the latter is clearly not in the "east" as referred to by policy 4, but in the south.
24. The site lies in Fringe Character Area F of the Landscape Character Assessment, and it was agreed at the Inquiry that none of the "key

⁷ K2420/A/10/2127585 (issued July 2011) & K2420/A/13/2197652 & 2197648 (issued October 2013)

characteristics” defined in Area F applied to the site. Equally I do not consider that the phrase “Other areas are important due to their openness and consequent role in preventing urban coalescence⁸” refers to the site as it is not open. The most striking feature of the site is that it is surrounded by a thick belt of trees. At this time of year, with no leaf cover, traffic on the roads is visible through the trees from close quarters but from a distance the site appears quite separate and distinct from the more open fields to the south. Something that is even more apparent in longer distance views from the vicinity of the M69 and Canberra Way. The site is close to the M69 and will extend development towards the motorway junction, but that development will be well screened by trees and will not appear as intrusive. There will still be a clear break of open fields between Burbage and the M69.

25. The Inspector in the first Britannia Road appeal took it as read that building houses on a field would not “enhance the landscape structure” as required by policy 4. I am not so certain that I understand what this phrase means. The appellant argued the structure of the landscape, ie the hedgerows, trees and sub-divisions would be enhanced by extra planting and by the improvement of the wetland feature within the site. I think there is some merit to this argument. In addition the site is not part of the open landscape as Britannia Road was. I also note there is a Local Landscape Improvement Area marked on the Core Strategy proposals map that fills the land between the site and the M69, but only touches the southern-most edge of the site itself. There will thus be no conflict with this designation.
26. I am also not persuaded that Burbage exhibits a strong sense of place or a clear demarcation of development at the boundary of the site. The B4109 meets the urban edge at a roundabout and while there is a clear line of houses to the east, fronting onto open countryside, to the west development meanders round the corner and back down towards the A5. The thickly wooded site lies in the angle of these roads and, as it would be heavily screened, would provide a gentle introduction to the village and would not detract from any perceived clear demarcation which, in any case, lies mainly to the east. Although the site slopes upwards towards Burbage, the slope is gentle and would have little effect on the visibility of the houses.
27. Taking this all together I do not think there would be any conflict with policy 4. NE5 is stricter as it requires the countryside to be protected for its own sake, but this element of the policy is not in accord with the Framework. Inserting houses into the site would obviously detract in some way from the character of the site itself, but for the reasons given above I do not consider it would harm the wider landscape, and so the proposal would be in general conformity with NE5.

Other Matters

28. Councillors Moore and Ingram gave evidence as well as Mr Whitby on behalf of the local residents in Burbage. A lot of their points have been dealt with above. There seemed to be some confusion as to the housing land supply calculation which should be made on a District wide basis and not just for Burbage alone. Councillor Ingram also relied heavily on the assumption that the SADMP would allocate sufficient land to deal with Burbage’s requirements,

⁸ Taken from box labelled “Capacity and Sensitivity” p49 of the Character Assessment

but, given the delays to the SADMP, I can give that assumption very little weight. Mr Whitby was particularly concerned about traffic generation, especially in the face of cumulative impacts from a number of major developments in the area. While I have some sympathy with his arguments, neither the Council nor the County Council as highway authority raised any traffic or highway issues and no independent evidence was provided to support Mr Whitby's views. Consequently I can give them little weight.

29. I have also considered the letter from David Tredinnick MP which was read out at the Inquiry. Again, the arguments are dealt with in my reasoning above, but above all I do not consider the site to be unsustainable, and neither did the Council.
30. The development also provides a number of positive benefits. Seven affordable homes will be provided in accordance with the Council's requirements and an area of marsh will be improved so that its biodiversity potential is enhanced and managed for the future. Both of these are important considerations to which I give some weight.

Conclusions

31. The Council does not have a 5 year housing land supply, so its housing supply policies are out of date. This triggers the second bulletpoint of paragraph 14 of the Framework under "Decision Taking", so that permission should be granted unless "any adverse impacts of doing so would significantly and demonstrably outweigh the benefits...". Policy NE5 of the local plan and the non-housing elements of Policy 4 of the Core Strategy are relevant, but the proposal does not offend either of these policies in any significant way. Consequently, planning permission should be granted.
32. I am aware that the two planning permissions at Groby and Shilton Road are subject to a high court challenge. Should the court support the approach taken by the Inspectors in those decisions, it could be that my conclusion on housing land supply would be undermined. If the Council does have a 5 year supply of housing the main effect would be to bring all of policy 4 back into play. This requires the Council to allocate land for 295 houses. Although there is some disagreement about housing numbers it is clear there are at least another 123 houses and possibly as many as 172. The Council accept there is not enough brownfield land to accommodate all these houses within the village. Although policy 4 directs development primarily to the north of the village there seems to be insufficient land there so some greenfield sites would need to be identified elsewhere. I agree with Mr Whitby there is not necessarily a pressing need to build all these houses now, but nor is there any policy requirement not to build them now. The site would have to be measured against the development plan and the presumption in favour of sustainable development. As I do not find any material harm to policy 4 or NE5 this only leaves RES5. The proposal is clearly contrary to this policy as it seeks to restrict housing solely to within development boundaries. However, such blanket policies are no longer in conformity with the framework, which has a presumption in favour of sustainable development as a golden thread running through it. The weight to be accorded to RES5 is thus reduced, and as I consider the site is sustainable as defined by the Framework, any harm to policy would be outweighed by the presumption and by the positive aspect of the proposal and planning permission should still be granted.

Conditions and S106 Agreement

33. A signed s106 agreement between the appellant, the Borough and County Council was provided which detailed payments or other arrangements to secure open space, children's play space, affordable housing, an education contribution and money for library, civic amenity, bus passes and travel packs. All of these relate to the development and there was no dispute they passed the CIL tests.
34. Conditions were agreed between the parties to provide for a footway on part of the edge of the site, car parking and garaging arrangements, deposition of materials by builders traffic, drainage, flood risk, the code for sustainable development and an archaeological scheme. A landscaping condition was also agreed. All of these conditions are relevant and necessary.

Simon Hand

Inspector

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Tim Leader of Counsel

He called

Simon Wood

Urban Vision

FOR THE APPELLANT:

Peter Goatley of Counsel

He called

Felicity Jane Gardner

Marrons Planning

INTERESTED PERSONS:

Councillor John Moore

Councillor David Inman

Roger Whitby

Borough Councillor

Borough Councillor

Local Resident

DOCUMENTS

- 1 Letter of notification of the Inquiry
- 2 Local Planning Authority rebuttal proof and appendices
- 3 Further evidence from appellant in response to LPA rebuttal
- 4 Local Planning Authority opening
- 5 Councillor Moore's speaking notes
- 6 Mr Whitby's speaking notes
- 7 Letter from David Tredinnick MP
- 8 Conclusion to Tab 3 of Ms Gardner's appendices
- 9 First schedule of Tab 13 of Ms Gardner's appendices
- 10 Good copy and correct pages of Tab 16 of Ms Gardner's appendices
- 11 National Planning Practice Guidance – extract
- 12 S106 Agreement
- 13 Transcript of Davis & Jelson
- 14 Transcript of North Wiltshire District Council v SSE & Clover
- 15 Appellants' closings
- 16 Appellants' costs submission

Annex A

This is the annex referred to in my decision dated:

by Simon Hand MA

Land East of Wolvey Road, Three Pots, Burbage, Leicestershire, LE10 2JJ

Reference: APP/K2420/A/13/2202261

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the approved plans listed in the plans schedule below.
- 3) Prior to the occupation of the first dwelling within the development hereby permitted, a footway shall be completed from the existing footways located adjacent to northern edge of the site (situated on the corner of Rugby Road/Three Pots Lane) and the north-western edge of the site (situated on the corner of Three Pots Lane) to the point of the new access to the development.
- 4) Before first occupation of any dwelling, car parking shall be provided, hard surfaced and made available for use to serve that dwelling on the basis of 2 spaces for a dwelling with up to three bedrooms and 3 spaces for a dwelling with four or more bedrooms. The parking spaces so provided shall thereafter be retained for that use in perpetuity
- 5) The garages hereby approved shall remain available at all times for the purpose of parking a motor vehicle.
- 6) No development shall take place until details of measures to be taken to prevent the mud from vehicles leaving the site during construction works being deposited on the public highway have been submitted to and approved in writing by the Local Planning Authority. Such measures shall be retained and fully implemented for the duration of the construction period.
- 7) No development shall commence until full drainage details, which shall incorporate sustainable drainage principles and an assessment of the hydrological and hydrogeological context of the development, have been submitted in writing to and approved in writing by the local planning authority. The scheme shall be implemented in accordance with the approved details prior to the occupation of the first dwelling.
- 8) The development permitted by this planning permission shall be carried out in accordance with the approved flood risk assessment (FRA) dated January 2013: Rev 0 compiled by EWE Associates Ltd and the following mitigation methods within the FRA:

- a) a scheme for the provision and implementation of a Sustainable Drainage (SuDs) System with two treatment trains and the utilisation of holding sustainable drainage techniques;
 - b) the limitation of surface water run-off to equivalent greenfield rates;
 - c) the ability to accommodate surface water run-off on site up to the critical 1 in 100 year event plus an appropriate allowance for climate change, based on the submission of drainage calculations;
 - d) finished floor levels within the southern parcel are set no lower than 200mm above the adjacent external ground level. The mitigation measures shall be fully implemented prior to occupation of the dwellings and subsequently in accordance with the timing/phasing arrangements embodied within the scheme, or within any other period as may subsequently be agreed, in writing, by the local planning authority.
- 9) No development shall commence unless and until a Code for Sustainable Homes Design Stage Assessment, carried out by a qualified code assessor, demonstrating that the dwellings hereby approved can be constructed to a minimum of Code Level 4 has been provided to the Local Planning Authority. In addition, within three months of the first occupation of the first dwelling hereby approved, a final certificate demonstrating that the dwellings have been constructed to a minimum of Code Level 4 shall be provided to the Local Planning Authority.
- 10) No development shall take place until there has been submitted to and approved in writing by the local planning authority a scheme of landscaping, which shall include indications of all existing trees and hedgerows on the land, and details of any to be retained, together with measures for their protection in the course of development.
- 11) All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development, whichever is the sooner; and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the local planning authority gives written approval to any variation.
- 12) No development shall commence until a programme of archaeological work including a Written Scheme of Investigation has been submitted in writing to and approved in writing by the Local Planning Authority. The scheme shall include an assessment of significance and:
- a) the programme and methodology of site investigation and recording;
 - b) the programme for post investigation assessment;
 - c) provision to be made for analysis of the site investigation and recording investigation, including a timetable;
 - d) provision to be made for archive deposition of the analysis and records of the site investigation, including a timetable;

e) Nomination of a competent person or persons/organisation to undertake the works set out within the Written Scheme of Investigation.

No development shall take place other than in accordance with the Written Scheme of Investigation approved under this condition and the site investigation and post investigation assessment and the provision made for analysis, publication and dissemination of results and archive deposition shall be completed in accordance with the programme set out in the Written Scheme of Investigation approved under this condition.

Plans Schedule

Planning layout - chimney deposition plan drawing no. S0000_100_05 Rev B;

Planning layout - material schedule drawing no. S0000_100_03 Rev B;

Planning layout—boundary treatment plan drawing no. S0000_100_02 Rev B;

Planning layout - surface finishes plan drawing no. S0000_100_04 Rev B;

Garage type drawing no. EO7W;

Planning layout drawing no. S0000_100_01 Rev E;

Location plan drawing no. S0000/100/03;

Arboricultural Survey drawing no. DWH/TPLB/01 Rev A;

House type drawing nos.

H433.04 (OPP); H433.03 (OPP);

H421.01 (AS); H421.02 (AS);

H455.01 (AS); H455.02 (AS);

H597.03 (OPP); H597.04 (OPP);

H421.03 (OPP); H421.04 (OPP);

T307.02 (AS); T307.01 (AS);

T307.04 (OPP); T307.03 (OPP);

P341.03 (OPP); P341.04 (OPP);

P383.02 (AS); P383.01 (AS);

P206.BI.02 (AS); P206.BI.01 (AS);

P206.04 (OPP); P206.03 (OPP);

P383/SH41.02 (AS); P383/SH41.01 (AS);

H404.04 (OPP); H404.03 (OPP);

H455.03 (OPP); H455.04 (OPP);

H469.05 (AS); H469.06 (AS);

H469.08 (OPP); H469.07 (OPP);

H341.10 (AS); H341.09 (AS);

P341.11 (OPP); P341.12 (OPP);

P383.01 (AS); P383.02 (AS);

P383.04 (OPP); P383.03 (OPP);

Garage type drawing nos. G2A; E51W.01; G3C; G2C; G2D; G1B.

Design and Access Statement

Costs Decision

Inquiry held on 17 December 2013

Site visit made on 18 December 2013

by Simon Hand MA

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

Decision date: 3 January 2014

Costs application in relation to Appeal Ref: APP/K2420/A/13/2202261 Land East of Wolvey Road, Three Pots, Burbage, Leicestershire, LE10 2JJ

- The application is made under the Town and Country Planning Act 1990, sections 78, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by David Wilson Homes & Andrew Grainger and Company for a full award of costs against Hinckley & Bosworth Borough Council.
 - The inquiry was in connection with an appeal against the refusal of planning permission for the erection of 34 dwellings and associated infrastructure.
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Decision

1. The application for an award of costs is refused.

The submissions for the appellants

2. The Council failed to provide any evidence to support its case. It failed to recognise the two policies it relied on, RES5 and NE5 were both out of date and not compliant with the Framework. The members refused to take their officers' clear professional advice but then failed to advance any reasons why, especially as the proposal accords with national policy. The refusal is merely a continuation of members continued opposition to housing development in Burbage as a matter of principle.

The response by the Council

3. The officers' recommendation is not binding and a considerable amount of evidence was put forward to support the view that the Council does have a 5 year supply of housing land and so NE5 is attributed full weight. The site is attractive and its development would clearly harm the countryside contrary to NE5.

Reasons

4. Circular 03/2009 advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
5. In my view the 5 year housing land supply issue was far from clear cut, especially because of the two recent decisions supporting the Council. Had the Council been able to persuade me they did have a 5 year supply, it was not unreasonable of them to also hope to persuade me the site was an important

part of the landscape and should be protected as required by NE5. Although these arguments were not clear at the beginning, but appeared to develop as the Inquiry progressed, that is not necessarily a significant problem. On balance I consider the Council did enough to avoid a charge of unreasonable behaviour and I do not consider the appellants were put to unnecessary expense.

Simon Hand

Inspector