



## Appeal Decision

Hearing held on 15 November 2022

Site visit made on 15 November 2022

**by Graham Wraight BA(Hons) MSc MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 17 February 2023**

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**Appeal Ref: APP/K2420/W/22/3300552**

**Land North East Of Ashby Road, Markfield Easting: 448791, Northing: 310724**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
  - The appeal is made by Penland Estates Limited, RV Millington Limited, Sarah Higgins and Gavin Higgins against the decision of Hinckley and Bosworth Borough Council.
  - The application Ref 21/00787/OUT, dated 24 May 2021, was refused by notice dated 16 February 2022.
  - The development proposed is an outline planning application for residential development of up to 93 dwellings, public open space, landscaping and SuDS. All matters reserved except for access.
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### Decision

1. The appeal is allowed and planning permission is granted for the residential development of up to 93 dwellings, public open space, landscaping and SuDS at Land North East Of Ashby Road, Markfield, in accordance with the terms of the application, Ref 21/00787/OUT, dated 24 May 2021, subject to the conditions set out in the schedule at the end of this decision.

### Applications for costs

2. An application for costs was made by Penland Estates Limited, RV Millington Limited, Sarah Higgins and Gavin Higgins against Hinckley and Bosworth Borough Council (HBBC). This application is the subject of a separate Decision.

### Procedural Matters, Background and Main Issue

3. The planning application site straddles the boundary between the administrative areas of HBBC and Charnwood Borough Council (CBC), with a land split of approximately 7% and 93% respectively. On the indicative plans submitted all of the proposed housing is located within the CBC area, with the HBBC land being a narrow strip alongside the road containing the proposed main access and a tree belt. HBBC does not, in the circumstances that prevail in this case, have any jurisdiction to grant or refuse planning permission on land within the CBC area. Nor do I in my determination of a planning appeal made solely against the decision of HBBC.
4. The Planning Practice Guidance<sup>1</sup> states that *where a site which is the subject of a planning application straddles one or more local planning authority boundaries, the applicant must submit identical applications to each local*

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<sup>1</sup> Paragraph: 011 Reference ID: 14-011-20140306

*planning authority*. Accordingly, the appellant has submitted applications to both CBC and to HBBC. CBC has resolved to grant planning permission in respect of the planning application that was submitted to it, subject to the completion of a planning obligation. The PPG does not provide guidance on what should happen if the two Councils reach different conclusions.

5. In determining its application, CBC considered both the impact on their own administrative area and upon the HBBC administrative area. This is evident in the CBC Committee Report which includes consideration of the impact upon the settlement of Markfield in general terms and more specifically with regard to the impact upon the Markfield Conservation Area and other heritage interests. In a late item update to the Planning Committee, matters including the adopted Markfield Neighbourhood Plan 2021 (NP) were addressed. It would appear that HBBC did not raise an objection to the CBC planning application. Having obtained legal advice on how CBC approached the determination of its planning application, the HBBC Planning Committee Report Supplementary Agenda advised that all the correct material considerations were considered when reading the CBC Committee Report and extras report together.
6. The main parties disagree as to whether the determination of the HBBC planning application, and therefore this appeal, should encompass consideration of the development on the 7% land area in HBBC only or the entire development site including the 93% in CBC. There is no available caselaw on a scenario like this and legal opinions provided by both sides support their opposing views. There was however common ground reached between the main parties at the hearing that the appeal proposal is one which includes housing. The implications of this with respect to paragraphs 11 and 14 of the National Planning Policy Framework (the Framework) will be considered later in this decision letter.
7. The application is submitted in outline form with approval being sought in relation to the matter of access. The matters of layout, scale, appearance and landscaping are reserved for later consideration. Therefore, I have assessed the appeal based upon the plans that have been submitted, where they refer to those matters for which approval was sought.
8. There is one main issue arising from the reason for refusal. This is the effect of the proposed development on the character and appearance of the area.

## **Reasons**

### *Character and appearance*

9. The appeal site is situated on the edge of the settlement of Markfield, on the opposite side of Ashby Road to existing dwellings which currently form a visual settlement edge in this locality. Its sloping topography allows extensive views across the valley, and its undeveloped nature and low stone wall along its frontage set it aside visually from the more urban form of the settlement. Its rural tranquillity is however somewhat undermined by the presence of the A50 adjacent to the northern site boundary.
10. The basis of the indicative scheme put forward is that all housing would be located in the CBC area. There is a compelling likelihood that this would be the case, due to constraints relating to the size of the HBBC land area, the presence of protected trees and with respect to visual impact considerations.

Furthermore, the appellant has suggested a condition which would ensure that no housing would be located within the HBBC area. Aside from addressing the technicality that housing could come forward within the HBBC area at reserved matters stage, there would be sound planning reasons for imposing such a condition, because it would not be visually desirable to lose or jeopardise the trees or to site development directly on the road frontage.

11. Therefore, the extent of development within HBBC would be confined to the access point, a part of the access road, a pedestrian access and the retained tree belt. These works would have some visual impact, but this would be limited in the context of the small scale of what would take place and because it would adjoin to the existing hard-surfaced Ashby Road. It would not cause any notable harm to the character and appearance of the area, but nonetheless there would be a failure to accord with Policy DM4 of the Site Allocations and Development Management Development Plan Policies 2016 (SADMDP) and Policy M1 of the NP which do not permit development of this kind in a countryside location and outside of a defined settlement boundary.

*The alternative HBBC position*

12. The position advanced by HBBC is that the entire development including that within CBC should be taken into account when considering its impact on the character and appearance of HBBC's land, primarily from views taken on and along Ashby Road. In those views, the proposed housing would introduce a built urban form which would be in contrast to the distinctly rural form that presently exists.
13. However, HBBC is not able to refuse planning permission on land within the CBC area. On that basis, the dismissal of the appeal because of the impact of the proposed housing development that is located on CBC land would be both outside of my powers and would have no effect on that land. There would remain a resolution from CBC to grant planning permission and it would remain for CBC to determine if and how development of land within their area should take place.
14. HBBC assert that it is not clear from the documents available as to whether CBC considered the impact of the development on the basis of the 100% land area, or the 93% in their area. But notwithstanding this, the legal advice obtained by HBBC during the course of the planning application raises no issue with how CBC approached the determination of their application. Furthermore, for the same reasons as set out above I am not persuaded that CBC did indeed need to consider the 7% of the development upon which it could not make a legally binding grant or refusal of planning permission. That determination instead fell to HBBC.
15. Therefore, whilst the impact of the proposed development that would take place on the 93% of the site is a material planning consideration, it is so against the background that CBC has resolved to grant planning permission and that they are the only authority who can decide whether or not development is acceptable on that land. The fact that CBC has resolved to grant planning permission is a consideration of significant weight.
16. Accordingly, I do not find the alternative HBBC position of assessing the full impact of the development including that in CBC to be a sound approach to determining the appeal that is before me.

## **Other considerations**

17. The main parties agree that the 'tilted balance' set out by paragraph 11d) of the Framework is triggered in this instance, as HBBC cannot demonstrate a five-year housing land supply and because a number of relevant development plan policies are out of date. Paragraph 11dii) states that planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
18. Allowing the appeal would mean that all of the benefits associated with the housing development could be achieved. These include the delivery of the housing itself, the provision of affordable housing and associated economic, social and environmental benefits. Collectively, this consideration carries significant weight in favour of the proposal. The adverse impacts of granting planning permission for the proposed development on the HBBC land would relate to the visual impacts and for the reasons set out these would be limited in their effect. They do not therefore significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
19. Paragraph 14 of the Framework states that for applications involving the provision of housing, the adverse impact of allowing development that conflicts with the neighbourhood plan is likely to significantly and demonstrably outweigh the benefits for the purpose of paragraph 11 of the Framework. The conflict with the NP arises directly from the fact that the proposal would not accord with Policy DM4 of the SADMDP. This in turn means there is a conflict with Policy M1 of the NP.
20. The conflict is because there would be development outside of a settlement boundary, although as has been established this would not actually extend to including the built form of the proposed dwellings. Given the minor impact of the development that would take place in HBBC, this is not a case where the adverse impact arising from the conflict with a neighbourhood plan would demonstrably outweigh the benefits. The provisions of paragraph 14 do not therefore tip the tilted balance against the appeal development, and the presumption in favour of sustainable development applies.

## **Other matters**

21. The appeal site is located close to the edge of the Markfield Conservation Area and there are several non-designated heritage assets in the vicinity within the HBBC area, including on the opposite side of Ashby Road. The nearest listed buildings within HBBC are however located closer to the centre of the settlement and buffered by its extensive built form. Having considered the consultation response of HBBC's Conservation Officer and based on my own observations during my site visit, I conclude that there would not be harm to any designated or non-designated heritage assets.
22. Representations from interested parties have raised concern with respect to a number of matters, including with regard to ecological impacts, loss of green space and that previously developed land should be used instead. However, these are matters which are addressed in the CBC consideration of their planning application. There is no evidence to suggest that there would be harm to ecological considerations with respect to the HBBC area.

23. Leicestershire County Council are the Highway Authority for both HBBC and CBC. They do not raise an objection with respect to the impact on highway safety or the surrounding highway network. Based upon the information that is before me and my own observations, I find no reason to take a different view. The plans submitted show the provision of two crossing points between each side of the proposed access and across Ashby Road, which would be appropriate to provide a facility for residents of the proposed developments and others wishing to access it on foot.
24. There would potentially be some impact from noise during the construction phase, but this could be mitigated by the use of a planning condition. The occupier of the property opposite the proposed entrance has raised concern with regard to the impact of car headlights leaving the site upon their property. In this respect no concern was raised by the Council's Environmental Health department and due to the distance and alignment of the proposed access in relation to the dwellings opposite, I am satisfied that a harmful impact would not arise.
25. It is suggested that there is limited employment in the vicinity so the proposed development would lead to more commuting, but nonetheless its close proximity to Markfield means that the site is well placed to access the services and facilities found there.
26. Representations have been made in relation to the fact that the development would primarily affect Markfield and its residents, yet some benefits such as affordable housing will prevail for CBC residents. Markfield has also, via its NP, set out a large housing site allocation to meet and potentially exceed its housing requirements and it is understood that this is being built out. However, the planning obligations attached to the CBC permission will address matters relating to school provision and healthcare, in line with the identified need set out by respective service providers in their consultation responses and provide an affordable housing benefit, irrespective of from which local authority the future residents derive.

### **Planning Balance**

27. The consideration of this appeal is limited to the impact of the development on the land within the HBBC administrative area. Although it results in a failure to accord with Policy DM4 of the SADMDP and Policy M1 of the NP, there would be no substantial harm caused as a result. The development would not therefore undermine the aims of these policies, both of which seek to protect the intrinsic character and beauty of the countryside. The allowing of the appeal would mean that the benefits associated with the housing resolved to be granted by CBC could be realised and I have found that the presumption in favour of sustainable development set out by the Framework applies. These considerations outweigh the conflict with the development plan and accordingly planning permission should be granted.

### **Conditions**

28. Conditions relating to the submission of the reserved matters of appearance, landscaping, layout, and scale, the relevant time period for submitting this and for carrying out the development, and a condition confirming the approved plans, are necessary to provide certainty. In order to ensure that retained trees are protected and replacement trees are planted in lieu of trees T11 and T12,

conditions are required to secure details of this and their implementation, along with details of existing and proposed ground levels. A construction management plan is necessary in the interests of ensuring that construction does not have an adverse impact on highway safety and upon the living conditions of the occupiers of nearby properties.

29. Conditions relating to the provision of the new access, the provision of visibility splays and the closing of existing access points are required in the interest of ensuring that the scheme is accessed in an acceptable manner. Conditions relating to surface water drainage and its subsequent maintenance shall be imposed to ensure that the site is adequately drained.
30. I shall also impose the condition offered forward by the appellant with respect to the location of the housing and it's siting solely on land within the CBC area. Whilst I note that HBBC objects to the imposition of such a condition, I find that it would serve a sound planning purpose in tying the reserved matters to the parameters plan. It is desirable to do this so that the proposed dwellings are not sited close to protected trees on the site frontage, and because siting development back from the frontage would significantly reduce the visual impact that arises.

### **Conclusion**

31. For the reasons given above, I conclude that the appeal should be allowed.

*Graham Wraight*

INSPECTOR

## **APPEARANCES**

### FOR THE APPELLANT:

Satnam Choongh – Counsel

Andrew Gore – Marrons Planning

Will Gardner - EDP

### FOR THE LOCAL PLANNING AUTHORITY:

Nina Pindham – Counsel

Chris Brown – Hinckley & Bosworth Borough Council

Dr David Hickie – David Hickie Associates

### INTERESTED PARTIES:

Cllr Matthew Lay – Hinkley & Bosworth Borough Council & Markfield Parish Council

Colin Wilkinson – Planit-X, on behalf of Markfield Parish Council

Cllr David Snarrt – Charnwood Borough Council, speaking in a personal capacity

Dr Susan Pritchard – Newtown Linford Parish Council Chair

Spencer Dyer – Local resident

### DOCUMENTS

Letter from Mr and Mrs B A Page, dated 4 November 2022, including photographs

Copy of speaking notes from S Dyer, including photographs

Redacted copy of HBBC legal opinion, dated 22 December 2021

## Conditions

- 1) Details of the appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the Local Planning Authority before any development takes place and the development shall be carried out as approved.
- 2) Application for the approval of reserved matters shall be made within three years from the date of this permission and the development shall be begun not later than two years from the date of approval of the last of the reserved matters to be approved.
- 3) The development hereby permitted shall not be carried out otherwise than in complete accordance with the submitted application details, as follows:

Site Location Plan Drg No: 001 Revision C  
MAC drawing number 454-TA10

- 4) Before any development commences on the site, including site works of any description, a Tree Protection Plan demonstrating trees and hedges to be removed and those to be retained and protected from construction activities, prepared by a suitably qualified arboriculturist, shall be submitted to and approved in writing by the Local Planning Authority. The plan shall include protective barriers to form a secure construction exclusion zone and root protection area in accordance with British Standard 5837:2012 Trees in relation to design, if any trenches for services are required within the fenced-off areas they shall be excavated and back-filled by hand and any tree roots or clumps of roots encountered with a diameter of 25cm or more shall be left un-severed. The development shall be implemented in accordance with the approved Tree Protection Plan. If any of the trees or hedges to be retained are removed, uprooted or destroyed or die, a replacement shall be planted at the same place and that tree or hedge shall be of such size and species, and shall be planted at such time, as maybe specified in writing by the Local Planning Authority.
- 5) Within one month of the removal of trees T11 and T12 shown on the RJ Tree Services Tree Survey & Layout Plan 01 October 2020; details of new trees, including their location within Hinckley and Bosworth Borough Council Administrative Boundary, to replace the removed trees; shall be submitted to and approved in writing by the Local Planning Authority. The replacement trees shall be planted in accordance with the approved details in the next available planting season (October to March).
- 6) No development shall commence on site until such time as the existing and proposed ground levels of the site have been submitted to and agreed in writing by the Local Planning Authority. The development shall then be implemented in accordance with the approved details.
- 7) No development shall commence on the site until such time as a construction traffic management plan, including as a minimum details of the routing of construction traffic, wheel cleansing facilities, vehicle parking facilities, and a timetable for their provision, has been submitted to and approved in writing by the Local Planning Authority. All work on site, including deliveries, shall be between 7:30am and 6pm Monday to Friday and 8am-1pm on Saturdays only. There shall be no work on site or deliveries to site on Sundays or bank or public



holidays. The construction of the development shall thereafter be carried out in accordance with the approved details and timetable.

- 8) No part of the development hereby permitted shall be occupied until such time as the access arrangements shown on MAC drawing number 454-TA10 have been implemented in full.
- 9) No part of the development hereby permitted shall be occupied until such time as vehicular visibility splays of 2.4 metres by 120 metres have been provided at the site access. These shall thereafter be permanently maintained with nothing within those splays higher than 0.6 metres above the level of the adjacent footway/verge/highway.
- 10) The new vehicular access hereby permitted shall not be used for a period of more than one month from being first brought into use unless the existing vehicular accesses on Ashby Road that become redundant as a result of this proposal have been closed permanently and reinstated in accordance with details first submitted to and agreed in writing by the Local Planning Authority.
- 11) No development approved by this planning permission shall take place until such time as a surface water drainage scheme has been submitted to and approved in writing by the Local Planning Authority. No building shall be occupied until surface water drainage works shall have been implemented in accordance with the approved details.
- 12) No development approved by this planning permission shall take place until such time as details in relation to the management of surface water on site during construction of the development has been submitted to and approved in writing by the Local Planning Authority. The drainage system shall be maintained throughout the construction period in accordance with the approved details.
- 13) No occupation of the development approved by this planning permission shall take place until such time as details in relation to the long-term maintenance of the surface water drainage system within the development have been submitted to and approved in writing by the Local Planning Authority. The drainage system shall be maintained thereafter in accordance with the approved details.
- 14) No development approved by this planning permission shall take place until such time as infiltration testing has been carried out (or suitable evidence to preclude testing) to confirm or otherwise, the suitability of the site for the use of infiltration as a drainage element, and the results have been submitted to and approved in writing by the Local Planning Authority.
- 15) The location of all dwellings in the reserved matters submissions shall be outside of the Hinckley and Bosworth Borough Council Administrative Boundary, as shown indicatively on the Parameters Plan drawing no. 004 Rev A.

-----End of Conditions-----