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## Appeal Decision

Inquiry Held on 29 September - 2 October 2020

Site visit made on 5 October 2020

**by Claire Searson MSc PGDip BSc (Hons) MRTPI IHBC**

an Inspector appointed by the Secretary of State

**Decision date: 19<sup>th</sup> October 2020**

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**Appeal Ref: APP/R1038/W/20/3251224**

**Land South East of Williamthorpe Road and West of Tibshelf Road,  
Holmewood, Derbyshire**

- 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 Mr Cliff Richards against the decision of North East Derbyshire Council.
  - The application Ref 18/01170/OL, dated 13 November 2018, was refused by notice dated 8 November 2019.
  - The development is an outline application for the erection of up to 250 dwellings.
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### Decision

1. The appeal is allowed and planning permission is granted for an outline application for the erection of up to 250 dwellings at Land East of Williamthorpe Road and South of Tibshelf Road, Holmewood, Derbyshire in accordance with the terms of the application, 18/01170/OL, dated 13 November 2018, subject to the attached schedule of conditions in annex C.

### Procedural Matters

2. The original application was made for up to 300 dwellings, which was subsequently revised to up to 250 dwellings. I have dealt with the appeal on that basis, using the revised description of the development from the Appeal Form. The parties had also agreed to amend the description of the site address to more accurately reflect its geographic location and I have adopted this revision in my decision.
3. A revised red line boundary plan as been submitted as part of the appeal.<sup>1</sup> This amends small areas of the site boundary which were included in error with an overall minor reduction in size of the site. I am satisfied that the change is minor and that no party would be prejudiced by this.
4. The application is in outline with all matters reserved. As such, the final layout and other matters of detail are not fixed as part of the determination of this appeal. An illustrative parameters plan was submitted which shows access, layout and landscaping. I have had regard to this in my determination.
5. A planning obligation was submitted in draft form, discussed at the Inquiry and subsequently finalised. I have had regard to it.

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<sup>1</sup> CR-1379-01-PL-001 rev P1.

## **Main Issue**

6. The main issue is the effect of the proposed development upon the landscape character and appearance of the area.

## **Reasons**

### *Site and area description*

7. The appeal site comprises 3 fields of around 11 hectares, currently laid to pasture. It is located on the western settlement edge of Holmewood and to the south of ribbon development along Williamthorpe Road, which is within North Wingfield. To the south, south-west, west and partly to the east the site is bounded by open, arable countryside. An extensive public right of way (PROW) network is also in place, including footpaths running through and adjacent to the site.
8. Holmewood is currently being expanded, including to the north of the appeal site and Williamthorpe Road whereby approval has been granted for 515 dwellings.<sup>2</sup>

### *Proposal*

9. The proposed residential development of up to 250 dwellings, 20% of which would be affordable housing. The illustrative parameters plan<sup>3</sup> indicate that the site access would be taken from Tibshelf Road (necessitating the demolition of Windy Ridge and Lynbrae). The site would also contain formal and informal open space and landscaping as indicated on the illustrative landscape masterplan.<sup>4</sup>

### *Planning policy context*

10. The site is located outside, but adjacent to the settlement boundaries for both Holmewood and North Wingfield, as identified in the North East Derbyshire Local Plan 2001-2011 (LP) and as a result, is in the countryside in policy terms.
11. The Council's reason for refusal cites a single policy with which the development is said to conflict. Saved policy NE1 relates to landscape character, seeking to conserve and enhance the varied and distinctive landscape character of the district and restricting development which would result in a loss of distinctive features that contribute towards and add value to the landscape character of an area.
12. Saved policies GS1, GS6 and H3 seek to preclude general residential development in the countryside. It is accepted by the appellant that the proposal would conflict with these policies.
13. Due to their restrictive nature, and lack of conformity with the National Planning Policy Framework (the Framework), it was agreed by parties that GS1, GS6 and H3 are out of date. There was disagreement between parties relating to whether NE1 is up-to-date. There was also a debate around which policies are the most important for determining the appeal proposals. I return to these matters later.

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<sup>2</sup> 17/00269/FL – Land west of Chesterfield Road

<sup>3</sup> Drawing Ref: P19-2935\_08/Rev: D

<sup>4</sup> Figure 8 of the Landscape and Visual Impact Assessment

14. The appeal site was promoted and assessed as part of the plan-making process for the emerging North East Derbyshire Local Plan 2014-2034 (ELP) but is not a proposed allocation within this document. Policy SS1 (Sustainable Development), SS2 (Spatial Strategy and Distribution of Development) and SS9 (Development in the Countryside) set out the spatial strategy and the site also lies outside of the settlement limits as identified by the ELP, and continues to be in the countryside in policy terms. Policy SDC3 (landscape character) seeks to ensure that development would not cause significant landscape harm. The abovementioned ELP policies would, when adopted, replace the LP Policies referenced above.
15. The examination of the ELP took place in November and December 2018, and March 2019. This process was then paused following the local elections in May 2019 with the Council then indicating they wanted to recommence in February 2020. Subsequent progress has been delayed by Covid-19 and it is my understanding that the remaining steps in the Examination process relate to main modifications consultation, as well as consultation on an update to housing land supply on 31 March 2020 and a report published by ICENI in July 2020 on Objectively Assessed Housing Need. It was confirmed at the Inquiry that the dates for the re-consultation on these matters has yet to be set.
16. While the ELP is at a relatively advanced stage and the Council consider that moderate weight can be attached to it, I consider that there is considerable uncertainty around this. I am aware that there are outstanding objections (including from the appellant) to the ELP and while it is not for me to pre-judge a local plan examination in the context of a section 78 appeal, matters of housing land supply which remain the subject of further consultation in addition to any main modifications, does give rise to uncertainty around this process. At this stage, I have limited information on the implications of this or any further changes that might need to be made following the forthcoming consultation. Thus, I consider that only limited weight can be attached to the ELP.
17. In any case, I note that the Council did not seek to rely on the emerging policies in their defence of the appeal, considering that the sites failure to comply with LP Policy NE1 is determinative.

#### *Landscape character and appearance*

18. A Landscape and Visual Assessment was submitted as part of the original application and a further Landscape and Visual Impact Assessment was submitted as part of the appeal. There was some debate at the inquiry regarding the methodological approach used, and around viewpoints, which I will come to later. However, and for the avoidance of doubt, from what I have read, heard and seen from my visit, I am satisfied that I am able to reach a view on this matter and the submitted information largely follows the guidelines contained within GLIVIA.<sup>5</sup>
19. There were 4 main areas of disagreement between parties on this topic which relate to both the baseline and the effects, which I now turn to below.

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<sup>5</sup> Guidelines for Landscape and Visual Impact Assessment (Third Edition) 2013

*Landscape and visual baseline*

Whether the appeal site and its surroundings have any unique or distinctive landscape features

20. In general, the northern and eastern boundaries of the site border residential development and the rear gardens and rear access tracks serving the ribbon of development along Williamthorpe Road and Meadow View. These properties have garden fences and some hedgerows. The remainder of the site boundaries are formed by hedgerows.
21. As stated above, the site comprises 3 field enclosures. For ease of reference, field 1 covers the largest area, is broadly rectangular and forms the northernmost area of the site, adjacent to the residential developments identified above. Field 2 lies to the south of field 1 and is separated by a hedgerow with 3 mature trees. With the exception of a plant nursery to the eastern side, this field is surrounded by open countryside. Field 3 lies to the west of field 1 and is the smallest in area. It is separated by a hedgerow from field 1. It borders the rear gardens of Williamthorpe Road to the north, and open countryside.
22. The site slopes gently downwards to the south-west from the urban edge. Field 3 has the steepest topography. The 19<sup>th</sup> century ribbon development of North Wingfield, along Williamthorpe Road, is along a ridgeline. Holmewood is also on the ridge, although development also starts to creep down the valley side as part of the 20<sup>th</sup> century expansion of the settlement.
23. Public footpaths cross the site; FP13 in a roughly north-south direction and FP14 in a roughly east-west direction. The Five Pits Trail (5PT) is a public bridleway which incorporates National Cycle Network Route 67 and is a promoted trail. This runs adjacent to the western boundaries of the site and broadly follows the historic route of an old mineral railway line. The site itself used to form, in part, a former colliery, although no trace of this remains today, other than its relationship with the old mineral railway line and the ribbon development which is related to the former presence of the mine. The historic field pattern at the site is intact, based on historic maps.
24. The wider landscape of which the site forms part, is undulating arable agricultural land, with field enclosures are formed by hedgerows and hedgerow trees. There are also areas of woodland and watercourses associated with the Locko Brook Valley. There is evidence of strip fields, to the south west, below the main built up area of North Wingfield. Agricultural buildings and electricity pylons are also visible. The network of footpaths also dissects the wider landscape, including the routes referenced above.
25. The site is located in the 'Nottinghamshire, Derbyshire and Yorkshire Coalfield' National Character Area, the 'Settled Coalfield Farmlands' landscape character type (LCT) at regional level<sup>6</sup> and 'Coalfield Village Farmlands' LCT at county level.<sup>7</sup>
26. The site exhibits many of the features of the Coalfield Village Farmlands LCT and, in broader terms, the features of the regional and national designations. The site thus contributes to the countryside's fundamental beauty. However,

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<sup>6</sup> From the East Midlands Regional Landscape Character Assessment (April 2010)

<sup>7</sup> From the Landscape Character of Derbyshire, Fourth Edition (March 2014)

the site is heavily influenced by the urban fringe and the landscape features are not scarce in the surrounding area. Road noise from Williamthorpe Road is audible, and urban development perceptible when using the local footpath network and the 5PT, and thus I do not consider that the site or its surroundings is especially tranquil. Nonetheless, there is a sense of relief when accessing the site and the countryside from the urban area.

27. Accordingly, the site and the local context feature a number of representative landscape components which give a sense of place in the locality and contributes to the fundamental character of the countryside. However it does not constitute a landscape that is particularly remarkable or distinctive.
28. In terms of visibility, due to the position of the site on the south facing slope of the Locko Brook Valley, and the gently undulating topography, the site is visible from several locations to the west, south and east. The most elevated portion of the site to the north and eastern corner is the most visible in the longer distance views, however this is viewed in the context of the surrounding built development which forms a severe and distinct edge between urban and rural.
29. The site is also visible from the 5PT, although the established hedgerows along this length provide screening to different degrees at various points along its length adjacent and in proximity to the site. Field 3 is particularly visible from the 5PT due to the more limited hedgerow vegetation running alongside it. Longer distance views from the 5PT are also gauged from the south. From Holmewood, glimpsed views are taken from Williamthorpe Road, through the gaps between the dwellings, and from along the access tracks leading to the rear of these.

The value, susceptibility and sensitivity of the local landscape

30. The landscape values, susceptibility and sensitivity were debated by parties at the Inquiry and the appellant's landscape witness had sought to define this in the LVIA on both a wider LCT basis and in terms of local level and immediate site context. The Council preferred more of a holistic approach with a focus at the local level. Concern was also raised in terms of the definitions of low/medium/high as part of the appellant's assessments as the Council considered that the definitions within the LVIA were setting the bar too high.
31. Similarly, the appellant was critical of the Council's landscape witness' approach in failing to define these in landscape terms, preferring instead to utilise the ordinary meaning of low/medium/high in the English language.
32. That said, and based upon Table 2 in INQ9, the differences between the parties in the assessment of these elements was not too dissimilar. It should also be noted that there was broad agreement in terms of the visual sensitivity of the viewpoints between parties as 'high' – a view with which I concur as part of establishing the baseline.
33. Based upon my observations, the intrinsic value of the site arises from its intact, undeveloped and open fields, bounded by hedgerows, with its sloping topography, down towards the Locko Brook valley. The settlements of Holmewood and the ribbon development at North Wingfield are visible in the skylines. The accessibility of the site, via the extensive network of paths and the 5PT also add to this.

34. However, based on my conclusions above, this is tempered by the distinct urban edge, a lack of distinctive features and limited tranquillity. I thus consider the landscape has medium value.
35. Susceptibility is the ability of landscape to accommodate development without undue consequences for the maintenance of the baseline situation. Again, there was marginal difference between parties, with the appellant citing low/medium susceptibility, and the Council medium/high. In broad terms, based on factors including the scale of the site, the level of development proposed, urban influences, the presence of footpaths (including through the site) and the values, I consider that the susceptibility is medium in landscape terms. It therefore follows, that sensitivity, as derived from the value and susceptibility, is medium.

*Landscape and visual effects*

36. Turning now to my assessment of the effects, it was common ground between parties that the appeal scheme would cause landscape and visual harm, although the extent of those harms was in dispute.
37. A representative list of viewpoints was agreed by parties for my site visit. A focussed list of viewpoints was presented by the Council<sup>8</sup> including panoramic and single framed shorts. In addition to the panoramic viewpoints contained within the LVIA, further verified viewpoints were produced by the appellant<sup>9</sup> which included panoramas, wireline and proposed views at years 1, 7 and 15. I have taken these into account as well as basing my reasoning on my own observations from my visit to the site and the wider area.

The extent of harm to local landscape character and PROW network

38. The appeal proposals would clearly result in development where there is currently none. Such changes would permanently affect the character of the landscape in this location, as part of the Coalfield Village Farmlands LCT and would be visible from certain vantage points in the wider landscape.
39. However, there are a number of factors which would serve to limit that change. Firstly, the appeal site forms a small part of the wider landscape which would retain its general framework. The development would also be well related to Holmewood and would not appear out of place given the existing influence of urban development. It would largely be concentrated to the existing ridgeline with some extension down the Locko Brook Valley, but no more than is experienced elsewhere within the LCT and as such would not be out of character.
40. While landscape and layout are reserved for future consideration, there would be the potential to create a softer landscape edge, which would also reduce the landscape and visual effects. The illustrative parameters plan indicates that a considerable amount of public open space could be accommodated, including leaving field 3 undeveloped for housing and locating development away from the western boundary of field 1 where it adjoins the 5PT, and the western and southern boundary of field 2. The vegetated boundaries between these fields internally within the site could also be retained.

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<sup>8</sup> Viewpoints A-L in Mr Jeffcock's Proof of Evidence,

<sup>9</sup> Viewpoints 3 (G), 6 (A), 10 (D) and 14 (K) contained within Appendix 3 of Mr Peachy's POE – brackets denote corresponding VP reference of Mr Jeffcock.

41. The open spaces which could be created within the site would not retain the current landscape character. Instead they would incorporate balancing ponds, required as part of sustainable urban drainage, as well as play equipment and more formal and managed open spaces, as indicated on the illustrative landscape masterplan. Nonetheless, they would soften the visual and landscape effects of the development and would provide for a transitional area between urban and rural. The density of the development of the residential units would also be consistent with that found elsewhere in Holmewood.
42. In terms of the PROW network, this is clearly an important asset to the local community. At the Inquiry elected Members and local residents were passionate about this, and explained how its importance had increased during the lockdown as a result of Covid-19 as part of health and wellbeing, particularly with its ready accessibility from Holmewood and North Wingfield.
43. FP14 where it runs through the site would have the greatest change as, even with landscaping, it would be transformed from an open rural footpath into an urban thoroughfare. However, it is a relatively short section of footpath and it is already influenced by the residential development which it is parallel to, which limits the sense of relief that is experienced. Users would soon be able to exit into the open countryside along the rest of its length as it leads to North Wingfield. FP13 would have development along one side and again the experience would change, but landscaping would have a screening effect here and the open space to field 3 would also ensure that it is not fully urbanised.
44. In terms of the 5PT, this is a long-distance multi-use trail of around 5.5 miles in length and at my visit I witnessed that it was well used by cyclists, walkers and horse riders. I walked along a significant part of the trail, including north to Grassmoor and around the eastern Holmewood loop. The trail is largely rural along its length, but it does pass through urban areas at various points, including next to a new residential development at Grassmoor and past an industrial estate at Holmewood. It also has vegetation bounding it, which screens adjacent developments as well as the wider countryside in the parts where it is most dense.
45. The experience by users of section of the 5PT which runs adjacent to the site would change, but that would not be incompatible with the overall character of the trail along its length. The new development located off Birkin Lane at Grassmoor demonstrates that such developments can be successfully developed in proximity without causing harm to the 5PT. Landscaping would also help to ameliorate such effects. I do not also consider that there would be any cumulative effects in combination with the consented Chesterfield Road scheme which abuts the Holmewood loop of the 5PT.
46. The development would be visible in the landscape, including from the wider PROW network to the south. But again, this would be read as a small extension of the urban fringe, given the juxtaposition with the Meadow view development. The visual impact here would be limited, particularly as landscaping matured.

Whether there would be increased physical connection between Holmewood and North Wingfield & the extent to which there would be merging of settlements.

47. North Wingfield and Holmewood are connected by the ribbon development along Williamthorpe Road, which adjoins the Meadow View estate to the south side. The groups of properties along this stretch are predominantly terraced or semi-detached properties. They also typically have small front garden areas and the gaps between the groups of dwellings offer little visual relief and only limited views into the landscape beyond. The overall impression when travelling in either direction along this road, is one of a continuous built-up area. In my view there is already a fair degree of merging between the settlements.
48. It was also difficult to appreciate a change in identity between the settlements in this location. North Wingfield is an older settlement with a historic central core and Holmewood appears to date back to largely the 19<sup>th</sup> Century in association with the mining works. Development along Williamthorpe Road is also 19<sup>th</sup> century and is likely to be linked with the former colliery at the appeal site, as well as providing housing for other associated industries. This was, however, a stand-alone area of development and it was only through the 20<sup>th</sup> century expansion of both settlements that they became connected. The individual identities of the settlements are thus already somewhat diminished by the growth that has taken place over the last 70 years.
49. As a c.11ha area of in-depth development behind the properties to the south side of Williamthorpe Road, there can be no doubt that the proposals would further compound the merger of the two settlements. However, the illustrative parameters plan should show how the site could be developed without extending behind all of the ribbon development and the open space at field 3 would also help to preserve this characteristic. Moreover, the site would be accessed from Tibshelf Road, which would assist in the separation of the site from North Wingfield, in terms of vehicular access.
50. Views of the development would be gauged intermittently from Williamthorpe Road, but these would be glimpsed through the breaks between the terraces and would not represent a marked change. From the south, as stated above landscaping would also help to assimilate the development and views of the ridgeline would be largely preserved. In terms of the PROW network, the North Wingfield Walk, along FP14 would for the most part remain intact with the walk remaining across a number of open fields, beyond the development site boundary, leading to the east of North Wingfield (and vice versa).
51. The consented development at Chesterfield Road will infill an area of open land to the north of Williamthorpe Road. I note that will incorporate an area of open space along Williamthorpe Road in order to help preserve a gap between the settlements, which will comprise playing fields/playing area. Cumulatively, both this scheme and the appeal scheme would mean that Holmewood is growing to the west. The mitigation for the Chesterfield Road site is not dissimilar to the landscape mitigation which could be undertaken at the appeal site – including leaving field 3 undeveloped. I also consider that the south side of Williamthorpe Road is less sensitive due to the existing connectivity along this stretch of road. Thus, I also do not consider there would be any cumulative harm in this regard.

52. Taking the above together, while there would be some further merging, I do not consider this to be significant nor would it lead to a loss of identity.

*Conclusions on landscape character and appearance*

53. To sum up, the development of the site would result in a permeant and obvious loss of an undeveloped part of the countryside. However, due to the topography and landscape character, and when considering the scope for mitigation with any future open space, landscaping and layout, the landscape and visual harm in terms of the PROW network and the merging of Holmewood and North Wingfield, be low to moderate, with moderate effects experienced until the landscape planting matured.
54. Consequently, the proposal would have a moderately adverse effect upon the landscape character and appearance of the area. While the development would involve no loss of distinctive features, there would be conflict with the broad thrust of the LP Policy NE1 which seeks to conserve and enhance landscape character.
55. In addition to the proposal being in conflict with locational policies of the LP, as set out earlier, GS1 and GS6 also set criteria in order to protect the countryside. Specifically, GS1 requires the protection and conservation of the quality of areas natural and cultural assets and GS6 states that new development in the countryside is permissible where it is keeping with the character of the countryside and it does not represent a prominent intrusion into the countryside. The development would conflict with these policies in this regard.
56. There would be conflict with the draft policies in the ELP. This includes in terms of the spatial strategy in SS2, as well as in terms of respecting the character of the landscape as set out in SS1, SS9 and SDC3.
57. Lastly, there would be conflict with the Framework which recognises the intrinsic character and beauty of the countryside and seeks to ensure that decisions contribute to and enhance the natural environment (paragraph 170).

**Other Matters**

*Highway safety*

58. There was local concern that the appeal proposal would be harmful to highway safety. Derbyshire County Council has a statutory responsibility to ensure the safety of the local highway network. It has not raised objections to the scheme on these grounds and this is a matter of considerable importance.
59. The appellant also provided an updated Transport Assessment dated January 2020 in light of the local level of concern and a Highways witness also provided a proof of evidence and attended the Inquiry to answer questions from the local residents and myself.
60. I have reviewed the evidence before me and I also visited the site during the PM peak period in order to witness the conditions for myself.
61. I am satisfied that based upon the speed data and the safety records, there is no evidence that the local highway network would have insufficient capacity to accommodate the additional vehicles from the development safely. For this

reason crossing points on Tibshelf Road and Williamthorpe Road, as requested by local residents, would not be justified.

62. Increases to the use of roundabout at Chesterfield Road, Williamthorpe Road and Tibshelf Road would be around 5% and while my own observations accord with those in the evidence in respect of queuing of traffic, I note that off-site mitigation works to be proposed to increase lane width and flare length. This can be secured by condition.
63. Cumulative effects of the appeal development along with the approved developments at Chesterfield Road have been adequately assessed as part of the evidence base presented to me. I have no evidence to suggest that there would be any harm arising from the combined increases from such schemes.
64. In addition, while there may be some traffic disruption arising from the construction period of the site, this would be time limited. Measures can be secured by condition, in terms of the management of construction traffic.
65. I note that local residents are also concerned by the in-combination effects of future works at J29 of the M1 relating to HS2, which is around 3km away from the appeal site. Based upon INQ6, I am satisfied that there is likely to be very little conflict between construction traffic for the appeal site and the HS2 infrastructure works. In any case, that would not be a reason to restrict development at this location and would be best tackled by HS2, in collaboration with the County Council at the appropriate time.

#### *Flood risk*

66. The site is located within Flood Zone 1 and is thus at a low risk of flooding. Concerns were raised regarding surface water run-off but I have had no technical evidence to support this. I note that the statutory consultees including the Lead Flood Authority, Yorkshire Water and Severn Trent Water raise no objections, subject to conditions. I am therefore satisfied there would be no harm in respect of this matter.

#### *Subsidence*

67. I have previously noted that the site encompasses a former coal mine. However, a risk assessment report was submitted during the application period which recommends site investigation works. These could be adequately conditioned and would feed into the design and layout of any reserved matters scheme. However, based on the information before me, I am satisfied that the site could reasonably accommodate 250 dwellings without risk of subsidence.

#### *Living conditions of local residents*

68. A number of concerns were raised in respect of privacy, noise and disturbance, air quality and crime. However, there is no evidence that there would be an adverse effect on air quality from the proposed development. Other issues listed above relate to layout and design and thus would be considered as part of any reserved matters application.

#### *Agricultural land and ecology*

69. The site is not identified as containing a particularly high standard of agricultural land such that that matter should restrict its development. Similarly, the site is not designated and there are no records of protected

species at the site. Moreover, no ecological concerns were raised by the Derbyshire Wildlife Trust, and indeed it is recognised that biodiversity can be maximised as part of landscaping proposals, in accordance with the submitted ecological appraisal.

*Cumulative impact*

70. I have dealt with topic specific matters related to cumulative effects throughout my decision. While I note that Holmewood is set to expand significantly, to the tune of around 800 consented dwellings, there is no justification to withhold consent based upon my findings in respect of landscape and highways on this specific point.
71. Both Holmewood and North Wingfield are well-served by local services and facilities which are accessible to local residents, and would be to future residents at the appeal site. In terms of specific concerns relating to health provision, a s106 agreement is in place to deal with this and is in accordance with the requirements of the Health Authority. It is appreciated that existing residents often have to wait a considerable time to get a doctor's appointment. Inevitably new residents will need medical care from time to time. However, there have been no representations from the local NHS Foundation Trust or local doctors objecting to the scheme or indicating an issue with capacity.

*Whether the tilted balanced is engaged*

72. While there was no dispute between parties that the Council can demonstrate a 5 year supply of housing, the appellants considered that the tilted balance as per paragraph 11 of the Framework is engaged due to the most important policies being out of date.
73. The Council consider that only LP Policy NE1 should be included in the 'basket' of most important policies and that this is not out of date, as also recently confirmed by an Inspector at the Little Morton Road site in 2019.<sup>10</sup> The appellants consider that the 'basket' should also include LP Policies GS1, GS6 and H3 and that NE1 is also out of date.
74. Firstly, and in accordance with the 3-step process set down in the Wavendon judgement<sup>11</sup> I need to identify the most important policies of the development plan. I note that the Council consider that GS1, GS6 and H3 have ceased to have any material importance in the decision-making process, but this is largely based upon previous findings by Inspectors that the policies are out-of-date. The Council state that they do not understand how it can be said that a policy to which little weight should be attached can nonetheless be considered as a most important policy. However, that clearly goes against the process within the Wavendon judgement and seeks to instead consider each policy individually as to whether or not they are out of date as a first step, and then using that to influence the identification of which policies are most important. This approach is fundamentally incorrect.
75. The harm identified and the issue which goes to the heart of the appeal is a landscape one. Policy NE1 deals with this exclusively, and is clearly important, but the site is also in the countryside in policy terms, which is covered by GS1, GS6 and H3. H3 simply deals with housing and exceptions and as such I do

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<sup>10</sup> APP/R1038/W/18/3216245

<sup>11</sup> Wavendon Properties Limited v SSHCLG & Milton Keynes Council [2019] EWHC 1524 (Admin)

not consider this to be most important in this appeal. However, GS1 and GS6 are housing policies which also include criteria relating to landscape matters. This includes the protection and conservation of the quality of areas' natural and cultural assets in GS1(d) and GS6 states that new development in the countryside is permissible where it is in keeping with the character of the countryside (b) and it does not represent a prominent intrusion into the countryside (f). I therefore find these to be wholly relevant.

76. Given the limited weight I have attached to the ELP, I do not consider that these should be included in the 'basket' for my determination. In any case, while the Council considered that moderate weight should be given to the ELP, it is noted that they did not argue that the policies within this should form part of the 'basket' of most important policies.
77. Based on the above, I thus consider that NE1, GS1 and GS6 form the most important policies in this case.
78. Secondly, in terms of whether the policies are out of date, it was common ground that GS1 and GS6 are out of date. I agree. GS1 lacks conformity with the Framework as a number of its criteria, including exceptional circumstances for development outside a settlement boundary and requires development of brownfield land before greenfield. Similarly, the circumstances set out in GS6 whereby development might be permissible is not reflective of those in the Framework.
79. In terms of Policy NE1, while I recognise there is no specific balance applied to within the policy, the overall thrust of the plan is consistent with the requirements of the Framework in ensuring that decisions contribute to, and enhance, the natural and local environment by, amongst other things, recognising the intrinsic character and beauty of the countryside. I do not consider that individual saved policies need to provide such a balancing mechanism in order to be consistent with the Framework. In any case, this is already enshrined in law whereby provided by which require that applications for planning permission be determined in accordance with the development plan, *unless material considerations indicate otherwise* [my emphasis].<sup>12</sup>
80. The third step is to assess the basket of 'most important' policies in the round to reach a conclusion as to whether, taken overall, they could be concluded to be out-of-date or not for the purposes of the decision. Taking the above together, of the policies I have identified as most important, NE1 is consistent with the Framework, whereas GS1 and GS6 are not. Policy NE1 is dedicated to landscape matters, which is the main issue in contention this case. GS1 and GS6 are more rounded in that they are housing policies but, by virtue of the settlement boundaries, identify the site as being in the countryside in policy terms, while also dealing with landscape matters. It is on this basis of this countryside location that NE1 is relevant and for this reason, when taken as a whole, it is my judgement that the most important policies are out of date.
81. I note that this is different to the conclusions made by the Inspector in the Little Morton Road decision, however that decision also recognised Policy NE7 as being most important, which was also found to be up-to-date. Thus it is not directly comparable to this case.

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<sup>12</sup> Section 38(6) of the Planning and Compulsory Purchase Act 2004 and section 70(2) of the Town and Country Planning Act 1990

82. As a consequence, I find the policies which are most important for determining the application are out-of-date and, therefore, the 'tilted balance' set out in paragraph 11(d) of the Framework is engaged.

*Other appeal decisions*

83. My attention was drawn to a number of appeal decisions in the vicinity of the site and in the wider District. I have made specific comments on the conclusions where necessary but as a general point, each decision turned on their own evidence, as has my decision.

**Planning Benefits**

84. For the avoidance of doubt, in ascribing weight to the benefits I have used the following scale: limited, moderate, significant and substantial.

*Economic benefits*

Housing delivery

85. The delivery of housing is a significant benefit of the development. This would usually attract substantial weight, although this is tempered by the fact that the Council can demonstrate around an 8-year supply of housing, and Holmewood has a significant level of planned growth. Nonetheless, it attracts greater than the very limited weight the Council sought to argue in light of the Government's objective to significant boost the supply of housing.

Affordable housing

86. The development of up to 50 affordable homes for local people in need is proposed. This would be in accordance with the Council's requirements for 20% provision. The requirement is 172 affordable units per annum and the delivery between 2014-2019 has fallen short of this need.

87. While I note that the district is a low value area with relatively high building costs and that affordable housing is able to be delivered by other means, in light of the shortfall, there can be no doubt that this is a matter to which I must attach substantial weight.

Employment and revenue

88. There would be employment benefits in terms of the provision of jobs during the construction phase. In the longer term there would also be further spending within local shops and facilities by the new population.

89. There was a debate at the Inquiry in terms of the New Homes Bonus (1.7million) and Council tax revenue (£0.5million) generated by the development whereby the Council argued that they would simply 'fall into the maw of the Council's coffers.' Nonetheless, while it could not be guaranteed that these would be a direct benefit to Holmewood and North Wingfield, they are certainly a district wide benefit which cannot be discounted.

90. The employment and revenue benefits are matters to which I give significant weight.

### *Social benefits*

91. A Neighbourhood Equipped Area of Play (NEAP) and a separate Local Equipped Area of Play (LEAP) would be incorporated into the informal open space at the site.
92. In terms of the open space, this would mitigate the effects of the development, as per my assessment of landscape matters and would be neutral in the overall balance.
93. The LEAP and NEAP provision would provide benefits to the new residents and would be used by existing local residents from nearby estates and due to its accessibility from the PROW network. However, at outline stage, such benefits are difficult to quantify as the precise details of such provision is unknown. This would therefore represent a moderate benefit.

### *Environmental benefits*

94. As set out within the Ecological Appraisal (2019), there would be proposed enhancements to biodiversity including introducing species rich grassland, scope for a wild-flower meadow, new hedgerows and trees, and water bodies associated with the Sustainable Drainage System (SuDS). Bird and bat boxes would also be provided. While such matters would represent benefits the scope and scale of such enhancements are, as yet, undeterminable as part of the outline scheme. Such benefit thus would attract limited weight at this stage.

### **Planning Obligation**

95. A signed and completed S106 planning obligation has been submitted along with a detailed Compliance Statement which demonstrates how the obligations meet the relevant tests in the Framework and Regulation 122 of the Community Infrastructure Levy Regulations 2010.
96. The obligation would secure the financial contributions towards the provision of 20% affordable housing in accordance with an approved affordable housing scheme which would set details of the tenure mix, quantum discount, marketing and ownership. This is a necessary requirement that meets the specified provision, as referenced above, and as such is justified.
97. Education contributions are also included for primary, secondary and post-16 provision. Finally, the Obligation also includes health contributions. The development would result in an enlargement of the local population with consequent impacts on local schools and healthcare services.
98. For all these reasons I am satisfied that all of the obligations are necessary, directly related to the development and fairly related in scale and kind. They comply with Regulation 122 of the CIL Regulations and paragraph 56 of the Framework. They can be taken into account in any grant of planning permission.

### **Conditions**

99. A list of planning conditions was drawn up by the main parties and discussed at the Inquiry. My consideration has taken account of paragraph 55 of the Framework and advice in the Planning Practice Guidance. In particular, I have had regard to the Government's intention that planning conditions should be

- kept to a minimum. I have changed the suggested wording in some cases to ensure that the conditions are precise, focused, comprehensible and enforceable.
100. I have attached conditions limiting the life of the planning permission and setting out the requirements for the reserved matters, in accordance with the requirements of the Act. I have also required development to be in accordance with the site plan, and I have added in a condition for the number of units to be developed at the site, for clarity.
101. At the Inquiry it was put forward that the illustrative parameters plan could be conditioned in order to ensure the areas of open space to field 3 and to the east and south sides of fields 1&2 were brought forward as envisaged. An alternative condition restricting the development of houses on field 3 was also tabled. The Council have, however, expressed their concern about whether development in accordance with that plan would be able to be achieved given that the site historically was used as a coal mine.
102. I have no doubt that the site can accommodate 250 units, and thus it is appropriate that the principle of the development with this as a ceiling can be established here. Much store has been set by the parameters plan and it is expected that it will be used to influence the future layout at the site, but given the inherent flexibility of the outline application process, the reality is that whatever could come forward as part of any future reserved matters application could be changed, for example, should this be submitted by a different owner or developer of the site or multiple developers if the site is split.
103. In this case, there are question marks as to whether the development could proceed as anticipated in this plan in light of the site's former use. I have no doubt that there would be scope to make amendments should this prove necessary, while maintaining broad landscape principles and minimising harm, but in light of the relative detail contained within the illustrative parameters plan, I am concerned a condition would be overly restrictive for an outline scheme.
104. Moreover, the Council would be able to control the design, landscaping and layout as part of any reserved matters application that came forward and there is control over these elements whereby they could refuse consent if they did not consider it to be appropriate. Accordingly, I consider that the suggested conditions would be overly restrictive and unnecessary, and could, subject to further site investigation works, be unenforceable.
105. Conditions relating to land contamination and stability are necessary due to the sites aforementioned use as a coal mine. A phasing strategy is also necessary in light of the scale of the site. Although landscaping is a reserved matter, it is appropriate at this stage to ensure that protective measures for retained trees and hedgerows are provided during construction in order to protect wildlife and visual amenity. A condition for a biodiversity enhancement strategy is necessary in order to protect ecological interests and improve biodiversity.
106. The construction period would inevitably cause some disturbance and inconvenience to those living and working in the area as well as to road users. A Demolition and Construction Management Plan is therefore required to help

minimise adverse impacts. Separate conditions have been suggested for demolition and construction but this is unnecessary as both of these matters would be adequately covered by the provisions of a single, combined plan.

107. While the site has a low flood risk, conditions are necessary for foul and surface water drainage. As a cited benefit, it is necessary to condition a scheme for training and employment to ensure that opportunities for locals are maximised.
108. A Travel Plan was submitted at application stage which contains a number of targets and objectives for sustainable travel, a Travel Plan Framework and final Travel Plan will be required to be submitted to supplement this before the site is first occupied.
109. A condition in respect of roundabout improvement works is also necessary for highway capacity and safety, in accordance with the details contained within the Transport Assessment.
110. Finally, conditions relating to levels, areas of play, public art, and matters of design including internal access roads, boundary treatments, cycle and refuse storage and external lighting are unnecessary as these will be considered at reserved matters stage.

### **Planning Balance**

111. Planning law requires that applications for planning permission must be determined in accordance with the development plan unless material considerations determine otherwise. The Framework makes clear that the planning system should be genuinely plan-led.
112. However, I have found that the tilted balance as set out in paragraph 11 of the Framework is engaged as the policies which are most important for determining the application are out of date.
113. The site is also outside of the defined settlement boundary and in the countryside in policy terms. There would be harm to the landscape character and appearance of the area by the transformation of open, agricultural land, into a developed site. However, this would be tempered by the scope of the site to support large areas of proposed landscaping and public open space, such that the overall harm would be of moderate weight. Accordingly, there is conflict with Policies NE1, GS1, GS6 and H3 of the LP.
114. In addition, while of limited weight, there would also be conflict with SS1, SS2, SS9 and SDC3 of the ELP. These, plus LP Policy H3 are all excluded from the basket of 'most-important' policies.
115. I have examined the benefits and have explained why I consider them relevant and the reason for the varying degree of weight that I have attributed to them. Overall, I consider that the package of benefits delivered by this appeal development is a matter of significant weight in the planning balance.
116. Drawing the above together, the policy conflict and the adverse effects to landscape character and appearance would not significantly and demonstrably outweigh the benefits of these proposals.
117. Even if I were to conclude that the 'tilted balance' was not engaged in this case, applying the 'flat balance' under section 38(6), I find that the significant

benefits of the proposal would outweigh the harm due its effects on the landscape and the conflict with policy. As such the material considerations would still warrant a decision other than in accordance with the development plan.

118. For the reasons given above, and having regard to all matters raised, I conclude that the appeal should be allowed.

*C Searson*

INSPECTOR

## **ANNEX A: APPEARANCES**

### FOR THE LOCAL PLANNING AUTHORITY:

Jonathan Mitchell of counsel	instructed by North East Derbyshire District Council
He called	
Mr John Jeffcock CMLI, NZILA (Registered) MLA, BA	Michelle Bolger Expert Landscape Consultancy
Susan Wraith Dip URP MRTPI	4 Planning Deliver Limited

### FOR THE APPELLANT:

Peter Goatley QC	Lead Counsel, instructed by DLA Piper UK LLP
He called:	
Jeremy Peachey	Executive Director, Pegasus Group
Roland Bolton MRTPI	Senior Director, DLP Consultants
Anna Meer CMILT	Associate Director, DLP Consultants

### INTERESTED PERSONS:

Martyn Slack	Local Resident
Cllr Nigel Barker	District Counsellor and Chair North Wingfield Parish Council
Cllr Suzy Cornwall	District Counsellor and Vice Chair Health and Holmewood Parish Council

## **ANNEX B: INQUIRY DOCUMENTS\***

INQ1 – Opening Statement on behalf of the Appellant  
INQ2 – Opening Statement on behalf of the Council  
INQ3 – Improving access to greenspace, a new review for 2020 (Public Health England)  
INQ4 – Excel Spreadsheet – EB-HOU6b-Housing sites appendix C.  
INQ5 – Mr J Peachy Proof of Evidence para 3.35 correction  
INQ6 - HS2 briefing note and map  
INQ7 – Council’s closing statement  
INQ8 – Appellant’s closing statement  
INQ9 – Summary compare/contrast tables on landscape and visual assessments  
INQ10 – Agreed site visit itinerary  
INQ11 – Email dated 5/10/20 containing 2 suggested additional conditions  
INQ12 – S106 agreement

\*Including documents and correspondence submitted after the inquiry closed.

## **ANNEX C: SCHEDULE OF PLANNING CONDITIONS**

- 1) Details of the access, 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 approval of the reserved matters shall be made to the local planning authority not later than 3 years from the date of this permission.
- 3) The development hereby permitted shall take place not later than 2 years from the date of approval of the last of the reserved matters to be approved.
- 4) The development hereby permitted shall be carried out in accordance with the following approved plans:  
Revised Location Plan – Drawing No. CR-1379-01-PL-001 rev P1.
- 5) No more than 250 dwellings shall be built on the site.
- 6) No development shall commence until an assessment of the risks posed by any contamination, carried out in accordance with British Standard BS 10175: Investigation of potentially contaminated sites - Code of Practice and the Environment Agency's Model Procedures for the Management of Land Contamination (CLR 11) (or equivalent British Standard and Model Procedures if replaced), shall have been submitted to and approved in writing by the local planning authority. If any contamination is found, a report specifying the measures to be taken, including the timescale, to remediate the site to render it suitable for the approved development shall be submitted to and approved in writing by the local planning authority. The site shall be remediated in accordance with the approved measures and timescale and a verification report shall be submitted to and approved in writing by the local planning authority. If, during the course of development, any contamination is found which has not been previously identified, work shall be suspended and additional measures for its remediation shall be submitted to and approved in writing by the local planning authority. The remediation of the site shall incorporate the approved additional measures and a verification report for all the remediation works shall be submitted to and approved in writing by the local planning authority.
- 7) No development shall commence until a site investigation of the nature and extent of any land instability has been carried out in accordance with a methodology which shall first have been submitted to and approved in writing by the local planning authority. The results of the site investigation shall be made available to the local planning authority before any development is begun. If any land instability issues are found during the site investigation, a report specifying the measures to be taken to remediate the site to render it suitable for the development hereby permitted and a timetable for implementation of those measures shall be submitted to the local planning authority for approval. The site shall be remediated in accordance with the measures and timetable as approved. If, during the course of development, any unexpected land instability issues are found which were not identified in the site

investigation, details of additional measures and timescale(s) for their remediation shall be submitted to the local planning authority for approval. The remediation of the site shall incorporate the additional measures and timescale(s) as approved by the local planning authority.

- 8) No later than concurrent with the first reserved matters submission a detailed Phasing Strategy shall have been submitted to the local planning authority for approval. The Phasing Strategy shall include the phasing of the open space and infrastructure including all roads, pedestrian and cycle routes and public art together with the housing phases. The development shall be implemented in accordance with the approved details and timescale(s).
- 9) No site clearance, preparatory work or development shall take place until tree and hedgerow protection measures have been put in place in accordance with details which shall first have been submitted to and approved in writing by the local planning authority. Within the protected areas shown in the approved details there shall be no alteration to ground levels, no compaction of the soil, no stacking or storage of materials and any service trenches shall be dug and back filled by hand. The tree and hedgerow protection measures shall remain in place for the duration of the carrying out of the development.
- 10) No development on any particular phase, other than enabling works, shall commence until a Biodiversity Enhancement Strategy [BES] for that phase, to achieve a net biodiversity gain and to include bird and bat boxes, connectivity for wildlife and ecologically beneficial landscaping, has been submitted to and approved in writing by the local planning authority. The BES for each phase shall include timescales for implementation and details (with timescales) for ongoing management and maintenance of all areas of open space within the development. The BES for each phase shall be implemented in accordance with the approved details and timescales and the ongoing management and maintenance measures, as approved, shall be adhered to for the life of the development.
- 11) No development on any particular phase, other than enabling works, shall commence until a scheme of arrangements for surface water drainage has been submitted to and approved in writing by the local planning authority. The scheme shall include:
  - (i) Details of the design of the scheme which shall be a sustainable drainage scheme unless an assessment of ground conditions has shown that to be impracticable;
  - (ii) Details of the assessment of ground conditions undertaken;
  - (iii) A timetable for implementation; and
  - (iv) A management and maintenance plan which shall include the arrangements for adoption by any public body or statutory undertaker, and/or any other arrangements to secure the effective operation of the drainage scheme throughout the lifetime of the development.

The drainage scheme shall be implemented for each phase and thereafter managed and maintained in accordance with the details and timetable as approved.

- 12) No development on any particular phase, other than enabling works, shall commence until details of measures for the avoidance of surface water run-off from the site during the construction of each phase and a timescale for implementation have been submitted to and approved in writing by the local planning authority. The measures shall be implemented in accordance with the details and timescale as approved and shall remain in place for the duration of each phase of the construction of the development.
- 13) No development on any particular phase shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by the local planning authority. The Statement shall provide for:
- i) the parking of vehicles of site operatives and visitors;
  - ii) loading and unloading of plant and materials;
  - iii) storage of plant and materials used in constructing the development;
  - iv) the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;
  - v) wheel washing facilities;
  - vi) measures to control the emission of dust and dirt during construction;
  - vii) a scheme for recycling/disposing of waste resulting from demolition and construction works;
  - viii) delivery, demolition and construction working hours.
  - ix) timescale(s) for implementation

The approved Construction Method Statement shall be adhered to throughout the construction period for the development.

- 14) No development, other than enabling works, shall commence until a site wide Travel Plan Framework has been submitted to and approved in writing by the local planning authority. The Travel Plan Framework shall include specific proposals for:
- (i) Immediate, continuing and long-term measures to promote and encourage alternatives to single-occupancy car use;
  - (ii) A timetable for implementation;
  - (iii) Travel plan targets; and
  - (iv) Measures for monitoring and review.

Before occupation of any dwelling within any particular phase a detailed travel plan for that phase shall have been submitted to and approved in writing by the local planning authority. The detailed travel plan shall incorporate the principles of the Travel Plan Framework and shall include proposals for how the travel plan will operate within that phase, timescale(s) for implementation, targets and measures for monitoring and review. The Travel Plan Framework and the detailed travel plans for each phase shall be implemented and operated thereafter in accordance with the approved details and timescales(s).

- 15) No development on any particular phase, other than enabling works, shall commence until a scheme for recruitment of employees for the

construction period of the development of that phase has been submitted to and approved in writing by the local planning authority. Thereafter the scheme shall be operated in accordance with the approved details.

- 16) No more than 95% of the dwellings hereby permitted shall be occupied until the roundabout improvement referred to in the Transportation Assessment rev P2 and shown on the plan at its Appendix H have been implemented in accordance with full details which shall first have been submitted to and approved in writing by the local planning authority.

*End of schedule (16 Conditions)*