



Appeal Decisions

Inquiry held on 26-28 June 2012

Accompanied site visit made on 29 June 2012

by I Jenkins BSc CEng MICE MCIWEM

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

Decision date: 1 October 2012

Appeal A Ref: APP/T2405/A/12/2170192

Land east of Springwell Lane, Whetstone, Leicestershire, LE8 6LT

- 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 East Midlands against the decision of Blaby District Council.
 - The application Ref 10/0856/1/PX, dated 28 October 2010, was refused by notice dated 6 February 2012.
 - The development proposed is residential development of 70 houses with associated access, landscaping and infrastructure (phase1).
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Appeal B Ref: APP/T2405/A/12/2170201

Land east of Springwell Lane, Whetstone, Leicestershire, LE8 6LT

- 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 David Wilson Homes East Midlands against the decision of Blaby District Council.
 - The application Ref 10/0857/1/OX, dated 28 October 2010, was refused by notice dated 6 February 2012.
 - The development proposed is residential development for up to 108 houses with associated access, landscaping and infrastructure (outline)(phase 2).
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Appeal C Ref: APP/T2405/A/12/2170207

Land off Countesthorpe Road and Springwell Lane, Whetstone, Leicestershire

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by David Wilson Homes East Midlands against the decision of Blaby District Council.
 - The application Ref 11/0523/1/PY, dated 20 July 2011, was refused by notice dated 6 February 2012.
 - The development proposed is the formation of access for use by construction traffic in conjunction with proposed residential development.
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Decision

1. The appeals are dismissed.

Procedural matters

2. The appellant has confirmed that revised descriptions of development for schemes A and B were agreed with the Council while the applications were with

it for consideration. I have reflected the revised descriptions in the summary information above.

3. For both scheme A and B the appellant has provided a formally completed agreement under section 106 of the *Town and Country Planning Act 1990*, which details contributions to be made towards: off-site highway works; an off-site cycleway; bus passes and travel packs; as well as civic amenity, library, healthcare and Police facilities. I have taken them into account in my consideration of appeals A and B.
4. In support of the planning applications the subject of schemes A and B, the appellant provided an Ecological Appraisal by FPCR, dated October 2010. Subsequently a number of revisions to the schemes were made while the applications were with the Council for consideration and an additional planning application the subject of appeal C was made. In his consultation response to the planning application the subject of appeal C, dated 2 August 2011, the County Council's Ecologist (CCE) recommended that the section of ditch affected by the works be surveyed for signs of Water Vole activity prior to the determination of the application. This was not done. During the Inquiry the appellant sought the views of FPCR concerning the revised proposals, including the proposed construction access road, and the consultation response of the CCE. FPCR indicated that provided there had been no new Water Vole colonisation in the area the works would be unlikely to be constrained. However, it recommended a full re-survey of the watercourses and ditches within the sites due to the age of the survey information.
5. At the Inquiry, I confirmed notwithstanding that the effect of the schemes on Water Voles has not been identified as a reason for refusal of planning permission by the Council, once I have considered the evidence, I may take the view that the effect of the scheme(s) on this protected species would justify withholding planning permission(s). Whilst acknowledging this, the appellant confirmed that it did not wish to seek an adjournment of the Inquiry to undertake the identified re-survey work.

Main Issues

6. The Addendum Statement of Common Ground¹ confirms, amongst other things, the Council's withdrawal of all but its first reason for refusal. Nevertheless, the three withdrawn reasons continue to be supported by a number of other parties. I consider that the main issues in these cases are whether, having regard to local and national policy, the proposal would amount to a sustainable form of development, with particular reference to: the character and appearance of the landscape; housing land supply and the Council's ability to manage it; protected species; and, provisions made by planning obligations.

Reasons

Character and appearance

7. Schemes A and B would be sited on an area of arable farm land (site A/B), which is located on the southern edge of Whetstone. Whilst it is positioned within the countryside, as defined by the Blaby Local Plan, site A/B adjoins residential development along the majority of its northern boundary. To the

¹ Addendum Statement of Common Ground, dated 29 May 2012 by the Council.

- west of Springwell Lane, which adjoins the western boundary of site A/B, there is also housing development. A tree lined section of Whetstone Brook runs along the eastern side of the site and there are fields to the south. The western section of site A/B would contain the scheme B residential development. Scheme A residential development would be positioned in the western section of the remainder of the site. It would be separated from Whetstone Brook by a proposed area of public open space.
8. Scheme C involves the provision of a temporary construction access road which would run across agricultural land from the southern end of Springwell Lane northwards to the southern boundary of the scheme B site. The Design and Access Statement confirms that it would be used by construction traffic travelling to and from site A/B. The reason for this is to ensure that construction traffic does not cause disturbance and inconvenience to residents living in the surrounding area. I agree that it is necessary for this purpose.
 9. LP² Policy C2 indicates that in the countryside planning permission will not be granted for built development, or other development which would have a significantly adverse effect on the appearance or character of the landscape. Proposals A and B would conflict with this Policy, as they would include relatively large scale residential built development in the countryside. However, it remains necessary to determine the likely effect of those schemes on the character and appearance of the landscape.
 10. The appellant has suggested that while scheme B could not operate without scheme A, as the principal access route for many of its future residents would be along a scheme A access road, planning permission for scheme A could stand alone. Against this background I will consider the likely impact of the two schemes together and then scheme A on its own.
 11. Site A/B lies within the *Blaby, Countesthorpe and Whetstone Fringe Landscape Character Area (FLCA)* as defined by the *Blaby District Landscape and Settlement Character Assessment (BDLCA)*. The BDLCA indicates that this character area surrounds the settlements of Blaby, Countesthorpe, Whetstone, Cosby and the southern edge of Littlethorpe. These settlements are located in relatively close proximity to one another and areas between them are designated either as a Green Wedge or as an Area of Separation in recognition of their importance as a landscape buffer. These include areas to the north, west and east of Whetstone. The land to the south of Whetstone, which includes site A/B, is not similarly constrained by a neighbouring settlement and does not perform the same function. It is neither part of a Green Wedge nor an Area of Separation³. Nonetheless, it is designated as countryside and the BDLCA indicates that the character of open and undeveloped land within the FLCA should be protected.
 12. The BDLCA confirms that the urban edges of the FLCA tend to be a mix of strongly defined urban edges which are prominent in the landscape and others which are more heavily wooded decreasing their influence. The southern edge of Whetstone is relatively urban and more specifically, in the vicinity of the appeals site, it is characterised by a relatively jagged pattern of residential development abutting agricultural land. In this context, additional residential development, as proposed, would not be alien to the landscape. Furthermore,

² The Blaby District Local Plan, 1999.

³ The subject of LP Policy C4.

in this location it would be well related to, and tend to round off, the existing pattern of built development. However, it would take up productive agricultural land, with an open, undeveloped appearance, which contributes positively to the character of the countryside around Whetstone.

13. When viewed from public vantage points to the south, such as Countesthorpe Road, planting within the proposed public open space would reduce the visual impact of the adjacent existing housing to a degree. At the Inquiry the Council acknowledged that this planting would be unlikely to be delivered without development to prompt it. However, the visual impact of this existing development when viewed from southern public vantage points is already limited by the distances involved and the hedgerow along the northern side of the site. Furthermore, any benefit in this respect would be far outweighed by the visual impact of the scheme A built development. Due to the limited space between these proposed new houses and the southern boundary of the site, there is unlikely to be scope to provide woodland planting sufficient to screen the edge of development as advocated by the BDLCA. Whilst the proposed planting there may soften the visual impact of the development, it would not fully mitigate the harm resulting from the foreshortening of views across open countryside towards the urban area from public vantage points to the south. As Scheme B is in outline, it would be possible to ensure that its southern site boundary would be 'heavily wooded'. However, benefits in this respect would be limited, as this southern boundary is much shorter than that of scheme A.
14. The visual impact of schemes A and B from the nearby A426 to the east would be limited. Views would be heavily filtered by existing intervening tree belts, including that alongside Whetstone Brook and the additional planting proposed within the public open space. Furthermore, in the event of the implementation of the recently granted planning permission for a small residential development alongside Dog and Gun Lane, some of those existing views would be interrupted by housing. However, these features together with planting within the site would be less likely to reduce the visual impact of schemes A and B when viewed from higher vantage points to the south east, such as along Cosby Road, not least as the ground level rises from east to west across the site. From the southeast, the appeals housing development would be more prominent and it would have the appearance of a sizeable extension to the existing urban area and an encroachment on the countryside.
15. Schemes A and B would be a prominent addition to the street scene along Springwell Lane and particularly the section of lane adjacent to site A/B. The scheme B application plans indicate that the dwellings fronting onto Springwell Lane would be set back from the highway beyond a narrow landscaped strip, which would include the existing hedgerow, and an access road. The landscaped strip would provide only a limited opportunity to soften the appearance of the development with planting and the housing would dominate the eastern side of the lane. However, the application the subject of appeal B is in outline and it would be possible to lay out that development in a manner which would increase the opportunities for landscaping, reduce the dominance of the built development and thereby give the impression of a more gradual transition along Springwell Lane between the urban area and the countryside. Whilst the proposals would tend to curtail southerly views from public vantage points within the residential area to the north of site A/B, they are of limited value, being already dominated by the existing residential development.

16. Nevertheless, I conclude on balance that, together, schemes A and B, which would conflict with LP Policy C2, would be likely to have a significant detrimental impact on the character and appearance of the landscape.
17. On its own, scheme A, rather than rounding off the pattern of development hereabouts, would leave an awkward shaped area of agricultural land between it and Springwell Lane. With agricultural land to the west and public open space to the east, the scheme A housing would have the appearance of an isolated and awkward projection into the countryside. The issues I have identified with respect to views from the south and southeast would also largely remain. Furthermore, without landscaping the western site boundary would present an irregular, hard edge to Springwell Lane. It is unlikely that adequate landscaping could be accommodated within the site, as the boundary is tightly drawn to the proposed dwellings, gardens and access roads. It may be possible to secure some landscaping provision on part of the agricultural land between scheme A and Springwell Lane through the imposition of a condition. However, in the absence of any details, I consider it is unlikely that a scheme could be provided which would satisfactorily deal with the irregular western boundary in a manner which would be in keeping with the character and appearance of the locality and which would not compromise the design in any other respects.
18. I conclude that, considered in isolation, scheme A, which would conflict with LP Policy C2, would be likely to have a significant detrimental impact on the character and appearance of the landscape.
19. The entrance to the scheme C construction access road would be formed by removing a section of hedgerow on the eastern side of Springwell Lane, at its southern end. The proposed roadway would be over 7 metres wide and, after an initial section surfaced in either concrete or tarmacadam, it would be constructed from compacted hardcore. It would be routed along the inside of the western boundary of fields that adjoin the eastern side of Springwell Lane. The scheme C works together with the traffic passing along it would have an alien appearance in the context of otherwise open agricultural fields. However, the visual impact would be limited by the position of the roadway adjacent to the western boundary of the fields, which are enclosed by hedgerows, for the most part, and as it would be removed following the completion of the housing schemes.
20. I conclude that the harm caused by scheme C to the character and appearance of the landscape would be limited, such that it would not conflict with LP Policy C2.

Housing supply and the Council's ability to manage it

21. The Framework indicates that local planning authorities should identify a supply of specific deliverable sites sufficient to provide more than five years worth of housing against their housing requirements. In keeping with the aims of the EMRP⁴, the emerging Core Strategy⁵ (CSe) seeks to focus the majority of new development within or adjacent to the Principal Urban Area of Leicester (PUA), whilst also encouraging some development within those non-PUA settlements

⁴ East Midlands Regional Plan, 2009. Whilst the Secretary of State has announced the Government's intention to abolish the EMRP, at this stage I continue to give its provisions weight.

⁵ Blaby District Local Development Framework Core Strategy Development Plan Document, Submission version January 2012.

- that have the characteristics necessary to sustain growing communities, such as Whetstone. Whilst I understand that a housing land supply of equivalent to more than 5 years is available in the non-PUA area, I consider that the District wide position should be the starting point, as this is the measure promoted by the Framework. The Council has a record of persistent under delivery of housing relative to the overall needs of the District and it is unable to demonstrate a 5 year District wide supply of deliverable sites.
22. The CSe indicates that detailed locations for proposed developments will be determined through the *Local Development Framework Allocations, Designations and Development Management Development Plan Document*. However, it is at an early stage towards adoption, which is not expected until 2014. Given the need to address the shortfall in the provision of a 5 year District wide supply, there is a need to release housing land in advance of this.
23. Whilst the planned Sustainable Urban Extension (SUE) within the PUA is expected to make a significant contribution towards housing supply (4,250 dwellings), at the Inquiry the Council confirmed that the associated planning application has not yet been determined. I have no reason to depart from the view recently expressed by my colleague⁶ that the shortfall in the District-wide supply of housing land is unlikely to be addressed in the short term at least by the delivery of the SUE.
24. The CSe indicates that Whetstone is one of the larger and best served villages outside of the City of Leicester and Blaby. It has a range of services and facilities that would help to sustain growing communities, these include a wide range of employment facilities in Whetstone itself as well as nearby in Blaby. Against this background the principle of further growth in Whetstone is broadly consistent with the distribution of development supported by the EMRP. CSe Policy 5 makes provision for about 350 dwellings in Whetstone in the period 2006-2029. However, given the stage reached by the CSe towards adoption and that representations have been made to the effect that the CSe Policy 5 targets should be viewed as minima, the housing target for Whetstone may increase.
25. At the Inquiry it was confirmed that since 2006 the number of dwellings built or with planning permission in Whetstone totalled 103. In May 2012 the Council resolved to grant planning permission for residential development at two more sites, WHE011 and WHE012⁷, for up to a total of 220 units. If these schemes were all to come forward together with the appeal proposals, for 178 units, the total would be 501 dwellings.
26. However, given the outline nature of the planning applications associated with WHE011 and WHE012 as well as the site constraints, which include some land within the flood plain and other areas adjacent to industrial development, there is a considerable degree of uncertainty associated with the suggested capacity of the two sites. Under these circumstances, I give greater weight to the more conservative estimates of the capacity of those sites set out in the SHLAA⁸ of 126 units in total. This would reduce the identified capacity from 501 units to 407. I give little weight to the WPC's⁹ reservations regarding the reliability of SHLAAs, which are supported by the *National Planning Policy Framework* (the

⁶ Appeal Ref. APP/T2405/A/11/2164413.

⁷ WHE011-land at Cambridge Road/Warwick Road & WHE012-land east of Cambridge Road.

⁸ Blaby District Council Strategic Housing Land Availability Assessment (SHLAA), March 2011.

⁹ Whetstone Parish Council.

Framework) as a means of establishing realistic assumptions about the availability, suitability and likely economic viability of land to meet identified needs for housing. I am also conscious that the appellant has issued pre-action protocol letters in preparation for applications for Judicial Reviews in relation to the Council's resolutions to grant planning permission for the WHE011 and WHE012 schemes, which casts doubt over whether they are deliverable.

27. My attention has been drawn to a number of previously developed sites within Whetstone and I am conscious of the encouragement given by the Framework to the reuse of such land. At the Inquiry WPC confirmed that it had been approached by the asset manager of an area of the Whittle Industrial Estate within Whetstone, who has expressed an interest in promoting that land for residential development. However, in the absence of any formal assessment which shows residential development of this land to be suitable and achievable, I give little weight to the possibility that it may contribute to housing land supply in the District. Furthermore, the other sites, such as the 'Electroform' site, are small and would be unlikely to make a significant contribution towards meeting the District-wide housing land supply shortfall.
28. I consider overall that appeal schemes A and B may lead to the emerging housing targets for Whetstone and the non-PUA being exceeded. Nonetheless, it is unlikely that this would give rise to an increase on a scale which would seriously compromise either the existing or emerging housing land supply strategy.
29. The CSe identifies, with reference to 2 studies¹⁰, that there is a significant shortfall in supply relative to the need for Affordable Housing in the District. Whilst WPC asserts that there is an excess of Affordable Housing in Whetstone, I have not been provided with any compelling evidence in support of that view. 25% of the dwellings included in schemes A and B would comprise Affordable Housing.
30. I conclude that appeal schemes A and B, which would reduce the shortfalls in both housing land supply and Affordable Housing in the District, would not conflict to any significant degree with the Council's housing supply strategy or materially harm its ability to manage housing supply.

Protected species

31. Water Voles are a protected species under the terms of the *Wildlife and Countryside Act 1981* (as amended). The FPCR Ecological Appraisal (EA) took into account the results of Water Vole surveys undertaken along Whetstone Brook in 2000 and 2002. In addition, ditches and other features within the locality suitable for Water Voles, including sections of Whetstone Brook, were re-surveyed in 2010 and some evidence was found of Water Vole activity.
32. However, with the exception of a section of ditch which was re-surveyed on the 25 April 2010, the remainder of the 2010 survey work was undertaken on the 8 March. Natural England's *Standing Advice Species Sheet: Water Voles* indicates that surveys are best carried out in the period April to October, as Water Voles are less active above ground during the winter. Furthermore, whilst in the years since the EA was undertaken Water Voles may have moved

¹⁰ The Leicester and Leicestershire Housing Market Assessment (2008) and the Leicester and Leicestershire Housing Market Area Managing and updating of data project (2010).

- into a location that would be directly affected by aspects of the proposed development, the re-survey works recommended by CCE and FPCR have not yet been undertaken. I consider that, given the timing of the 2010 survey and the period that has since elapsed, whilst it is likely that Water Voles are present, it cannot be concluded with any confidence that they are unlikely to be inhabiting the sections of watercourse and ditches which would be affected by the proposed works.
33. This is unlikely to be an insurmountable issue in relation to the 2 proposed footbridges. Application drawing no. EM-51-04R indicates that there would be one over Whetstone Brook and the other over the wet ditch to the west. There is likely to be significant scope for repositioning those crossings within the site, should it become necessary to avoid an impact on protected species and this could be controlled, as the appellant suggests, by condition.
34. However, the same could not be said in relation to the other ditch crossings proposed. This includes a crossing close to burrow 5¹¹, where the scope for relocation would be limited by the balancing lagoon to the north and the site boundary to the south. A crossing would also be associated with the proposed construction access road. FPCR has suggested that in the event that Water Vole are occupying a section of ditch along the route of this access, this need not be a constraint, provided an agreed good practice method statement is adhered to, which would include the provision of buffer zones. However, the boundary of appeal site C is tightly drawn around the proposed roadway, leaving no scope for movement or the provision of buffer zones within the site. Re-alignment of the proposed roadway along a different route may well involve land outside the control of the appellant and an increase in the prominence of the development, if it needed to be moved away from the planting along the eastern side of Springwell Lane. I consider that interested parties, some of whom have objected to the proposed access, would be likely to want to comment on significant changes of this nature, which therefore, could not reasonably be secured by condition.
35. I have had regard to the view of FPCR that some aspects of the proposed developments would be likely to enhance the ecological value of the land. However, in the absence of a reasonably up to date assessment concerning the likely impact on Water Vole, it cannot be concluded with confidence that the overall impact would not be significantly negative overall.
36. Whilst I do not know the full circumstances of the proposed WHE012 scheme, at Cambridge Road, it includes a road bridge over the brook and is materially different from the schemes before me. Therefore, I give little weight to the approach of the CCE and Natural England to that scheme.
37. Based on the evidence presented, I consider that there is a reasonable likelihood of protected species being present and affected by the appeal developments. Circular 06/2005 indicates that it is essential that the presence or otherwise of protected species, and the extent that they may be affected by the proposed development, is established before planning permission is granted. In my judgement, this has not been done. Under the circumstances, I cannot be confident that Schemes A and C would not cause significant harm to a protected species, which could not be adequately mitigated or

¹¹ Recorded as disused in 2010.

compensated for. In this respect they would conflict with the aims of the Framework.

Planning obligations

38. The section 106 agreements submitted in support of schemes A and B secure the provision of the affordable housing, to which I referred earlier. The agreement relating to scheme A also makes provision for a financial contribution towards the maintenance of the area of public open space that would form part of the scheme. I am satisfied that these obligations would be likely to meet the tests set out in regulation 122 of the *CIL Regulations 2010*¹² (the statutory tests). That is: necessary to make the development acceptable in planning terms; directly related to the development; and, fairly and reasonably related in scale and kind to the development.
39. The traffic analysis indicates that the proposed development would result in a material increase in traffic, and potentially congestion, at the A426 Blaby by-pass/B582 Enderby Road roundabout. The implementation of 'keep clear' road markings on the circulating carriageway would help to ensure the free flow of traffic at this roundabout and reduce the potential for the proposal to result in backing up along the southern approach. The County Council has confirmed that a financial contribution of £1,500 would be required to cover the cost of providing the road markings and this is not disputed. Provision is made for this contribution by both agreements. I consider that in relation to scheme A this obligation meets the statutory tests. However, it would be necessary to construct the scheme A access, thereby triggering the scheme A obligation, in order to bring scheme B into use. Therefore, the same contribution need not be secured by the scheme B section 106 agreement, it is unnecessary and I have not taken it into account.
40. The section 106 agreements include a contribution towards free bus passes¹³ and the provision of travel packs¹⁴ for households, which would provide information concerning local transport infrastructure, such as cycle routes, that provide alternatives to car use. In addition, each agreement includes provision for a contribution¹⁵, calculated by the Highway Authority, towards the provision of an off-site cycle link along Cambridge Road, including a road crossing. This would improve the linkage between site A/B and locations of employment, retail uses, a railway station and the existing cycle path network. I consider that these sums, which are not disputed, are necessary in order to promote sustainable transport modes in keeping with the aims of the Framework and as mitigation, in circumstances in which some key facilities, whilst within cycling distance, are not within reasonable walking distance of site A/B. I consider that these obligations meet the statutory tests.
41. Assessments have been submitted by the County Council which indicate that schemes A and B would place additional demands on the local library and civic amenity site, which could not be met without investment. The required contributions¹⁶ have been calculated in accordance with the principles set out in the County Council's adopted *Statement of Requirements For Developer*

¹² Community Infrastructure Levy Regulations 2010.

¹³ Scheme A-£662.40, scheme B-£662.40.

¹⁴ Scheme A-£3,513, scheme B-£50.18/dwelling.

¹⁵ Scheme A-£50,000, scheme B-£50,000.

¹⁶ Scheme A-library facilities £4,110 and civic amenity facilities £1,968, Scheme B-library facilities £5,870 and civic amenity facilities £3,037.

Contributions in Leicestershire. These contributions are necessary to ensure adequate provision of infrastructure and services for the proposed developments and I consider that they meet the statutory tests.

42. Site A/B falls within the catchment area of Whetstone Badgerbrook Primary School. The demand for primary school places generated by the two schemes would be likely to exceed the number of places available at this school. However, there would be sufficient capacity at schools within a 2 mile radius of the development. Under these circumstances, the County Council has confirmed that it is unable to substantiate a claim for a contribution towards the provision of additional facilities at Whetstone Badgerbrook Primary School. Furthermore, in my judgement it is not self-evident that the capacity of the local primary schools would be exceeded if the numbers likely to be associated with the SHLAA WHE011 and WHE012 sites were also taken into account. Under the circumstances, I consider that the absence of a contribution towards primary school capacity does not weigh against the appeal schemes.
43. Whilst each section 106 agreement includes contributions towards healthcare¹⁷ and policing¹⁸, the appellant maintains that they are not compliant with the statutory tests. I will deal first with healthcare. The consultation response from the local Primary Care Trust¹⁹ (PCT) indicates that the site is within the practice boundaries of two GP practices in Blaby. Hazelmere, which is the closest, does not have any spare capacity, whilst Northfield could accommodate approximately 500 more patients. Schemes A and B would be likely to result in an increase in patient population of around 441. If schemes A and B are viewed in isolation, their patient population could be catered for by Northfield.
44. However, if the developments proposed at SHLAA sites WHE011 and WHE012 come forward, the capacity would be exceeded. Furthermore, even if they did not, the CSe supports an increase in housing over and above that which would be provided by the appeal schemes and I have no reason to believe that it would not be realised. In this context, it is also likely that the existing capacity would be exceeded. This being the case I consider that it would be unreasonable to expect later developers to bear the full cost of the additional capacity and that it would be appropriate to seek a contribution in relation to schemes A and B. The healthcare contributions set out in the section 106 agreements have been calculated by the PCT with the aim of funding additional capacity at Hazelmere to meet a proportion of the needs arising from the appeal schemes, the remaining needs being catered for, without cost, by existing capacity at Northfield. The method of calculation, based on a quantity surveyor's estimate of the cost of the building extension that would be necessary to cater for the additional Hazelmere patients, appears to me to be reasonable. I am content that these contributions would meet the statutory tests.
45. Turning to the policing contributions, new housing development on the scale proposed would increase demands on police services. I understand that the day to day running costs of the Force, that is: the payment and management of staff; the ongoing costs relating to the running and maintaining of buildings and equipment; and, repayment loans used to fund capital projects, is generally funded by Council Tax and grants. Furthermore, I note that where

¹⁷ Scheme A-£14,226.96, scheme B-£21,968.10.

¹⁸ Scheme A-£42,420, scheme B-£65,448.

¹⁹ The Leicester County and Rutland PCT Cluster.

efficiencies are possible, the Leicestershire Constabulary (LC) is reducing its workforce and estate. Nonetheless, in my view, it is reasonable to expect developers to make a contribution towards the costs associated with increases in the capacity of infrastructure made necessary by development.

Furthermore, that those contributions are pooled where the combined impact of a number of developments gives rise to the need for additional infrastructure.

46. The sums included within the section 106 agreements reflect LC's itemised assessment of need in this regard. It would expect to employ around 1.7 staff to deliver policing to a development of the size proposed and has identified initial staff equipment costs. Furthermore, it has identified that planned growth in Blaby, of which the appeal schemes would form part, would result in a requirement for additional airwaves transmitter coverage and the provision of additional local policing hubs. I consider that the elements of the contributions related to these matters meet the statutory tests.
47. However, I have concerns that the other elements of cost may be too high, such that they do not fairly and reasonably relate in scale and kind to the development. In relation to the capacity of the airwaves system, control room equipment and the police national database the contributions appear to be based on a theoretical cost per existing household for the routine replacement of hardware, as opposed to the potentially more marginal incremental cost likely to be associated with any increase in hardware capacity driven by growth. Furthermore, the ANPR, CCTV and local crime initiative costs whilst funded to a large extent by the identified contributions would address a shortfall in the facilities available to the whole community. In relation to vehicles, there is no indication of the capacity of the existing fleet to absorb growth and, if vehicles are required, the cost of routinely replacing them after 3 years would appear to be a day to day running cost. Furthermore, it is not clear from the evidence presented that an increase in property costs on the scale identified would be directly driven by the proposed housing growth. Based on the evidence presented, I consider that these elements of the contributions do not meet the statutory tests and I have not taken them into account.
48. However, I conclude overall that, insofar as planning obligations would be necessary to make the developments acceptable in planning terms, with particular reference to: the safety and convenience of highway users; the promotion of sustainable transport; library, civic amenity and health care facilities; and, policing, adequate provisions are made by the section 106 agreements. In this respect schemes A and B would accord with the aims of LP Policy IM1.

Sustainable development

49. The purpose of LP Policy C2 is to control development within areas designated as countryside on the Proposals Map. I consider that it is a Policy of significant importance to the achievement of the aims of the LP, which include protecting the environment, and cannot be regarded as a minor provision of the Development Plan²⁰. Notwithstanding that schemes A and B may not conflict with the other elements of the Plan identified as relevant by the Council and the appellant, they would conflict with LP Policy C2 and, in my judgement, can be regarded as conflicting with the Development Plan. However, the

²⁰ R v Rochdale MBC ex parte Milne.

Framework indicates that relevant policies for the supply of housing land should not be considered up-to-date if the local planning authority cannot demonstrate a five-year supply of deliverable housing sites. Insofar as LP Policy C2 imposes a restraint on housing supply, I consider that it is out-of-date and the identified conflicts with this Policy would not be sufficient on their own to justify withholding planning permission in these cases.

50. The Framework identifies that where the Development Plan is out of date, permission should be granted unless: any adverse effects of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole; or, specific policies in the Framework indicate that development should be restricted. The Framework confirms that there are three dimensions to sustainable development: economic, social and environmental.
51. CSe Policy 18, in common with LP Policy C2, seeks to restrict built development in the countryside. Its objectives also include protecting important areas of the District's landscape and natural environment, including species and habitats. However, CSe Policy 18 recognises that the need retain countryside must be balanced against the need to provide new development, including housing, in the most sustainable locations. In this regard, it more closely reflects the aims of the Framework. Given its stage towards adoption and that it is not the subject of objections, I give it significant weight.
52. Schemes A and B, which relate to land from which jobs, shops and services are reasonably accessible in a safe manner, would provide a mix of high quality housing in a landscaped setting. The proposed area of public open space together with the footbridge across the brook would improve access along the watercourse, in keeping with the aims of the BDLCA and the schemes would not raise any significant flood risk concerns. They would reduce the shortfalls in both housing land supply and Affordable Housing in the District and would not conflict to any significant degree with the Council's housing supply strategy or materially harm its ability to manage housing supply. In addition, those schemes, through the submitted section 106 agreements, would ensure that the needs of future residents as regards local facilities would be met and that the schemes would not adversely affect the safety and convenience of highway users. In these respects the schemes would gain some support from the Framework, which, amongst other things, gives encouragement to a boost in the supply of housing, as well as the Development Plan²¹ and CSe²². Furthermore, as a consequence of the proposed developments the community would qualify for a substantial *New Homes Bonus*.
53. However, schemes A and B, which would involve development in the countryside, would cause significant harm to the character and appearance of the landscape. The Framework indicates that planning should recognise the intrinsic character and beauty of the countryside and add to the overall quality of the area. Furthermore, I cannot be confident that schemes A and C would not cause significant harm to a protected species, which could not be adequately mitigated or compensated for, contrary to the aims of the Framework. Schemes A and B are reliant on scheme C. Without it the only access available for construction traffic would be through a residential area and this would be likely to harm the living conditions of existing residents, contrary

²¹ LP Policies CE25, R4, T4, T6, IM1, R13, R14 and CE21 as well as EMRP Policies 2, 12, 14, SRS 3 and 28.

²² CSe Policies 2, 7, 8, 11, 12, 14, 15, 21 and 22.

to the aim of the Framework to secure a good standard of amenity for existing occupants of land and buildings. If planning permission was not granted for the housing schemes, scheme C, which would harm interests of acknowledged importance, would serve little purpose.

54. I consider that the adverse effects on the environment of granting planning permission in relation to schemes A, B and C, whether considered individually or together would be likely to significantly and demonstrably outweigh the economic, social and environmental benefits. I conclude on balance, having regard to local and national policy, that schemes A, B and C would not amount to sustainable development and they would conflict with the Framework. Schemes A and B would conflict with CSe Policy 18. Furthermore, whilst I have had regard to the conditions suggested by interested parties, in my judgement, it would not be possible to make the proposals acceptable in planning terms through the imposition of reasonable conditions.

Other matters

55. My attention has been drawn to a number of previous appeal decisions related to other sites. However, the circumstances of the cases to which they refer are not directly comparable to those in the cases before me, not least in terms of the combination of: the planning policy context, which now includes the Framework; the location on land designated as countryside; and, the potential impact on protected species. Therefore, I have found them to be of little assistance.
56. The Council's decisions to refuse planning permission in relation to schemes A and B were against the recommendations of its officers. However, this does not alter the planning merits of the schemes upon which my decisions are based. I have also had regard to the views of Parish Councils and other interested parties. Nonetheless, in my judgement, neither these nor any other matters raised are sufficient to outweigh the considerations which have led to my conclusions on the main issues.

Conclusions

57. For the reasons given above, I conclude that the appeals A, B and C should be dismissed.

Ian D Jenkins

INSPECTOR

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Mr T Leader of Counsel	Instructed by Mrs J Warner, Legal Services Manager, Blaby District Council.
He called	
Mrs Churchill	Blaby District Council.
BA(Hons) MRTPI	
Mr I Davies	Blaby District Council.

FOR THE APPELLANT:

Mr J Cahill QC	Instructed by Mr G Lees.
He called	
Mr J Peachey	The Pegasus Planning Group.
BSc M.LD CMLI	
Mr G Lees	The Pegasus Planning Group.
BA(Hons) BTP MRTPI	

FOR LEICESTERSHIRE COUNTY COUNCIL:

Mr J Prendergrass Principle Solicitor	Leicestershire County Council.
He called	
Mr Tyrer	Leicestershire County Council.
BA(Hons) MRTPI	
Mr Kassim	Leicestershire County Council.
BSc	

FOR LEICESTERSHIRE CONSTABULARY:

Mr M Lambert Chartered Town Planner	Force Architectural Liaison Officer
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INTERESTED PERSONS:

Mr L Breckon	Whetstone Parish Council.
Mrs A Tyler	Whetstone Parish Council.
Mr M Jackson	Whetstone Parish Council.
Mr L Phillimore	Local resident.
Councillor Tanner	South Whetstone District Councillor.
Councillor T Greenwood	Whetstone Ward Councillor.

DOCUMENTS

- 1 Letters notifying interested persons of the appeal and the Inquiry arrangements.
- 2 Correspondence in response to the notifications.
- 3 Draft agreement pursuant to section 106 of the *Town and Country Planning Act 1990*-related to appeal A.

- 4 Draft agreement pursuant to section 106 of the *Town and Country Planning Act 1990*-related to appeal B.
- 5 Appeal decision ref. APP/T2405/A/09/2118414.
- 6 Planning application site visit notes 11/0523/1/PY.
- 7 Full copy of 10 appeal decisions supporting contributions to Leicestershire Police.
- 8 Leicester & Leicestershire HMA Authorities Growth Infrastructure Assessment.
- 9 Leicestershire County Council-proofs of evidence and appendices.
- 10 Letter from Highcross Strategic Advisers Ltd to Whetstone Parish Council, dated 31 May 2012.
- 11 Leicestershire Police-case summary/rebuttal.
- 12 Emails from the Environment Agency to Blaby District Council, dated 25 August 2011.
- 13 Whetstone Parish Council-proofs of evidence.
- 14 Mr L Phillimore-proof of evidence.
- 15 Suggested conditions.
- 16 Email from Jay Kassim to Kate Fenney, dated 26 June 2012.
- 17 Statement of common ground agreed between the Council and the appellant.
- 18 Extracts from the Blaby District Local Plan, 1999.
- 19 Letter from the Environment Agency to Blaby District Council, dated 10 May 2012 (re. Cambridge Road).
- 20 Email from Leicestershire County Council to Blaby District Council, dated 10 May 2012 (re. Cambridge Road).
- 21 Extracts from the Regional Spatial Strategy.
- 22 Plan showing the location of Alice Gardens, The Dicken and Electroform sites.
- 23 Land off Springwell Lane, Whetstone-Transport Assessment.
- 24 Extracts from the Blaby District Local Plan, 1999.
- 25 Extracts from the emerging Blaby Core Strategy.
- 26 Appeal decision ref. APP/T2405/A/11/2164413.
- 27 Draft agreement pursuant to section 106 of the *Town and Country Planning Act 1990*-related to appeal A.
- 28 Draft agreement pursuant to section 106 of the *Town and Country Planning Act 1990*-related to appeal B.
- 29 Note on Water Voles.
- 30 Suggested conditions.
- 31 Email from Leicestershire Police to Blaby District Council, dated 27 June 2012.
- 32 ODPM Circular 06/2005.
- 33 Letter from Natural England to Blaby District Council, dated 23 April 2012 (re. Cambridge Road).
- 34 Email from FPCR Environment and Design Ltd to Pegasus Planning Group, dated 28 June 2012.
- 35 Plans associated with the draft section 106 agreements.
- 36 Finalised agreement pursuant to section 106 of the *Town and Country Planning Act 1990*-related to appeal A.
- 37 Finalised agreement pursuant to section 106 of the *Town and Country Planning Act 1990*-related to appeal B.