



Appeal Decision

Hearing held on 28 November 2012

Site visit made on 28 November 2012

by Martin Whitehead LLB BSc(Hons) CEng MICE

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

Decision date: 18 December 2012

Appeal Ref: APP/K2420/A/12/2180699

Land to the rear of, and including, 261 Main Street, Stanton under Bardon, Markfield, Leicestershire LE67 9TQ

- 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 Hinckley & Bosworth Borough Council.
 - The application Ref 11/00582/FUL, dated 22 July 2011, was refused by notice dated 29 June 2012.
 - The development proposed is the erection of 28 dwellings and garaging, including demolition of 261 Main Street.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of 28 dwellings and garaging, including demolition of 261 Main Street on land to the rear of, and including, 261 Main Street, Stanton under Bardon, Markfield, Leicestershire LE67 9TQ in accordance with the terms of the application, Ref 11/00582/FUL, dated 22 July 2011, subject to the conditions in the attached Schedule A.

Main Issue

2. The main issue is the effect of the proposal on the provision of housing within Stanton under Bardon, with particular regard to its effect on the Hinckley & Bosworth Borough Council Local Development Framework (LDF) Core Strategy Spatial Vision.

Reasons

Background

3. The appeal site includes a 2 storey detached house fronting Main Street, stables and a grassed paddock. A landscape buffer separates the site from an area of public open space to the north and the site is bounded by woodland to the east and dwellings to the south and west. The curtilage of the house is within the settlement boundary of Stanton under Bardon and the grassed paddock is outside this boundary that is defined in the Hinckley and Bosworth Local Plan 2001.
4. The proposal would include the demolition of the existing house and the construction of 28 new dwellings, including 8 affordable units, in a mix of detached, semi-detached and terraced houses. The Council's Planning Committee determined this planning application in June 2012, together with an

outline planning application for a proposed development of 38 dwellings on land at the rear of 169 Main Street that is adjacent to, but outside the defined settlement boundary of Stanton under Bardon. The Officer Report to the Committee offered 4 alternative options for consideration and suggested that there is only capacity for one of the proposed residential developments within the village, but either of them would be acceptable. The Committee resolved to grant outline planning permission for the development at the rear of 169 Main Street and refuse planning permission for this appeal development on the grounds that it would result in a significant over provision of housing within Stanton under Bardon and be detrimental to the Spatial Vision of the Council's Core Strategy.

5. The Spatial Vision given in paragraphs 3.32 to 3.37 of the Core Strategy includes the provision of sufficient housing to meet increases in population and changing needs to ensure that everyone has the opportunity to live in a decent home which they can afford in a community where they want to live. The majority of this housing is to be provided in and around Hinckley sub regional centre, with more limited development in the rural areas, focused on the Key Rural Centres (KRCs), to support sustainable rural communities and provide local choice. Core Strategy Policy 12 is regarding Rural Villages, which paragraphs 4.43 and 4.44 indicate are those with more limited services than KRCs. Stanton under Bardon is one of these Rural Villages in which the Policy seeks, amongst other things, to allocate land for the development of a minimum of 30 new homes.
6. The Committee Report states that the Council is unable to secure a five year housing land supply of deliverable and developable sites. This was based on October 2011 figures. Since this date, the Council has identified a 5.02 year housing supply based on April 2012 figures. The appellant has contested the Council's housing supply figures and method of calculation. Paragraph 49 of the National Planning Policy Framework (Framework) states that relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a five year supply of deliverable housing sites.

Five Year Housing Supply

7. The Council's housing supply target set in its Core Strategy, 2009, is 9000 homes over the period of 2006 to 2026, which equates to 450 dwellings per annum (dpa). It has changed its method of addressing its previous shortfall in providing the number of houses per year required to meet this target from spreading it over the current five year period, which is known as the Sedgefield approach, to spreading it over the residual period.
8. The Council has justified its change in approach by suggesting that the shortfall would be made good later on in the plan period, in accordance with the Inspector's report on the Core Strategy. However, the circumstances have significantly changed since that report, particularly with regard to the date for the Area Action Plan, on which the Council has suggested that the pre-submission draft is due in May/June 2013. As such, the housing trajectories envisaged in the report have been significantly affected.
9. I have taken account of the arguments and evidence presented, including those given in a recent appeal decision Ref APP/H1840/A/12/2171339 in Wychavon District. Based on this evidence, I find compelling reasons why the Sedgefield

approach should be used. Such an approach would attempt to meet the shortfall earlier in the plan period, which would be consistent with the advice given in the Framework in providing a realistic prospect of achieving the planned supply.

10. The Council has included a 5% buffer in its calculations, in accordance with paragraph 47 of the Framework. However, that paragraph also indicates that a 20% buffer should be applied where there has been a record of persistent under delivery. The Council has not contested the appellant's figures that show that over the 6 years from 2006 to 2012 only one of those years (2008/9) has delivered the required 450 dpa. Although the Council has shown that it has delivered well above its required level from 2001 to 2006, this is outside the plan period. Also, the Council has suggested that the under delivery is not due to the lack of planning permissions but is due to the lack of implementation of these permissions. However, the Framework does not give this as a justification for persistent under delivery. Therefore, based on the evidence provided for the previous 6 years, I conclude that a persistent under delivery of housing has been demonstrated and a 20% buffer should be applied.
11. With regard to housing supply, the appellant has suggested that some of the large site commitments identified by the Council are not deliverable. Of these, the development of 10 dwellings at Westfield Nurseries was started, but no dwellings have been completed and the appellant has indicated that the land is for sale to interested parties. The appellant has indicated that the site for 10 dwellings at 59 High Street, Barwell was offered to it for the permitted development but was considered to be unable to achieve the value for the scheme. The permitted development for 20 dwellings at Markfield Road, Groby, for which the planning permission reference number is 2006, has been materially started, but has not been continued. Although the Council suggested that the buildings on the Trinity Vicarage Road site have been demolished, it has not received any recent feedback from a developer regarding the permission for the construction of 13 dwellings on the site.
12. The Council has allowed for 375 dwellings in the five year period on the Sketchley Brook Site, on which it has suggested that the Reserved Matters were resolved to be granted on 15 November 2012. However, a Section 106 Agreement has to be entered into and ground works are required. This could result in about an 18 month delay before the start of construction of the dwellings. The appellant has indicated that a more realistic figure than that allowed for by the Council would be for 30 dwellings in 2013/14 and 60 in the following years, based on there being two developers. Even using the Council's latest figures provided at the hearing, 60 dwellings would be completed in 2013/14 and 90 in each of the following years, up to a total of 345 dwellings. This would result in 45 fewer dwellings than allowed for in the five year housing supply.
13. The Council has allowed for 425 dwellings from the Barwell Sustainable Urban Extension scheme in its five year housing supply figures. Planning permission has not yet been granted for the Scheme, but the Council indicated at the hearing that the application would be determined in March 2013, with a likely grant of permission, given the level of negotiations that have taken place. The appellant has referred to footnote 11 to paragraph 47 of the Framework to support its argument that the scheme should not be considered to be available and deliverable as it has not been granted planning permission. Whilst the

current absence of planning permission gives a degree of uncertainty about the timescale and level of housing delivery on the site, I do not accept that this means that development would not be deliverable, given the level of commitment shown by the Council to development on the site.

14. The appellant has found that by using the Sedgefield approach, a 20% buffer and reducing the delivery from some of the sites, with no dwellings from the Barwell Sustainable Urban Extension, only a 2.8 year housing supply has been demonstrated. I have accepted the appellant's arguments with regard to the approach to addressing the shortfall and the level of the buffer that should be applied. I also find that, based on the evidence provided at the hearing, the Council has been optimistic with regard to the delivery of housing on some of its larger sites, even though I am satisfied that the Barwell Sustainable Urban Extension should be able to deliver some housing within the five year period. Therefore, I find that the housing land supply falls significantly short of what under the Framework is required in the five year period.

The Provision of Housing

15. Having found that there is not an identified supply of deliverable sites sufficient to provide five years worth of housing, the relevant policies are not to be considered up-to-date in accordance with paragraph 49 of the Framework. As such, the proposal should be considered in the context of the presumption in favour of sustainable development given in paragraph 14 of the Framework. In this respect, the Council has indicated in its Committee Report that the proposal would represent sustainable development. I agree that the proposal would be consistent with the economic, social and environmental criteria given in the Framework for sustainable development. The appellant has demonstrated that it, when combined with the other permitted development within Stanton under Bardon, would support the local primary school without taking up all its available places and the Council has not contested these findings.
16. In addition to the above, the proposal would provide 8 affordable housing units. The report to the Council's Planning Committee entitled 'Affordable Housing' identifies a substantial need for affordable housing in Stanton under Bardon. Core Strategy Policy 15 requires at least 480 affordable dwellings in rural areas in order to contribute to its target of 2090 affordable homes in the Borough from 2006 to 2026. The Council has not provided any substantive evidence to show that there is not a substantial need for affordable housing in the Village. As such, the contribution that the proposal would make towards addressing this need carries significant weight.
17. At the hearing the Council indicated that its main concern about the harm that the proposal would cause to its Core Strategy Spatial Vision would be that, by permitting the development, it would set a precedent for other similar development in Rural Villages, which would undermine the Spatial Vision. However, the Council has not provided any information regarding other similar sites that might come forward for planning permission in Rural Villages should planning permission be granted for the appeal proposal. Given the reasons behind the 30 minimum limit for new housing in Stanton under Bardon, which is already exceeded by the previously permitted development, and the above mentioned aims of the Core Strategy Spatial Vision, I cannot see any significant harm that the proposal would cause to the Spatial Vision.

Furthermore, each case should be dealt with on its own individual planning merits in the light of prevailing policies and guidance.

18. The Council has referred to a previous Appeal Decision reference APP/K2420/A/10/2138596 in support of its decision. However, based on the information provided, that appeal involved significantly different circumstances from the current appeal, and in particular it was determined before the introduction of the most recent government policies given in the Framework, which place a greater weight on the provision of sustainable development. Whilst I have noted the points made, no direct comparisons can be made with the current appeal, which I have determined in the light of the policies in the Framework.

Section 106 Agreement

19. At the hearing, the appellant submitted an engrossed Section 106 Agreement to secure the provision of 8 affordable housing units, and contributions towards bus passes, bus stops, civic amenities, libraries, the National Forest, open space, and travel packs. The findings of the Viability Appraisal by DBK, dated July 2011, that was submitted in support of the application demonstrate that the scheme would not be sustainable or viable with a contribution of 40% affordable housing, which is the target set in Core Strategy Policy 15 for new housing in rural areas. On this basis, the Council has accepted a 30% affordable housing provision, which the Appraisal has indicated would ensure that the scheme would be viable.
20. With regard to bus and travel facilities, I have been provided with limited information to support the need for the contributions towards bus passes, bus stops and travel packs. As such, I am not satisfied that the obligations to secure these contributions would meet the tests in Community Infrastructure Levy Regulation (CIL) 122 and paragraph 204 of the Framework, particularly in terms of being necessary to make the development acceptable in planning terms or being directly related to it. I am therefore unable to take these obligations into account in determining this appeal.
21. In relation to the contribution towards civic amenities, Leicestershire County Council has indicated that it would go towards the provision of services at the Coalville Civic Amenity Site, which is the nearest and most convenient civic amenity site to the proposed development. The evidence provided has supported the need for these additional services and the level of the contribution towards them in order to provide the additional capacity that would be required due to the proposed development.
22. In terms of the contribution towards libraries, Leicestershire County Council has suggested that it would go towards the provision of stock at Markfield Library, which is the nearest local library service to the appeal site. I am satisfied that the evidence provided demonstrates the need for the additional resources due to the proposed development, as the stock is below the guidelines advised by the Department of Culture, Media and Sport.
23. The Council has indicated that the open space contribution would go towards the provision of additional play equipment and the resurfacing of swings at the Stanton under Bardon Primary School Recreational Facility, which is near to the appeal site. The Green Space Strategy 2005-2010 has found that the Village has a deficiency of equipped play space for its population when compared with

the National Playing Fields Standard. The proposal would be likely to result in an increase in the number of families in the Village, and it would not include any on-site public open space. Consequently, there would be an increase in the use of the recreational facility. As such, I am satisfied that the contribution would be directly related to the development and would be necessary to mitigate its impact on the existing open space facilities.

24. With respect to the contribution towards the National Forest, the Council has suggested that it would go towards planting and landscaping within the vicinity of the development, which would be within the National Forest boundary. This would ensure that the proposal would comply with Core Strategy Policy 21, which requires commuted sums to normally be paid where planting and landscaping cannot be accommodated on or nearby the development site due to lack of land; and Policy 12, which supports proposals that contribute to the delivery of the National Forest Strategy in Stanton under Bardon. The contribution would be in accordance with the National Forest Guidelines for Developers and Planners.
25. Based on the information given, sufficient evidence has been provided to support contributions towards civic amenities, libraries, open space and the National Forest to show that the obligations to provide these contributions would satisfy the tests in CIL Regulation 122 and paragraph 204 of the Framework. Therefore, in my determination of this appeal I have taken account of these obligations, together with the obligation that would ensure the provision of affordable housing on the site, as, without them, the proposal would have an unacceptable harmful effect on the provision of affordable housing, civic amenity, library and open space facilities and on the National Forest.

Other Matters

26. I have considered the concerns expressed by local residents. Those about the impact on natural habitat and protected species would be addressed by an appropriate planning condition to prevent access to the site by amphibians, including great crested newts, given the conclusions of the appellant's ecological appraisal and supplementary information. With regard to the vehicular access to the site, the proposal would provide 33m by 2.4m visibility splays which, based on the survey of vehicle speeds in the area, would be sufficient to prevent any significant harm to highway safety. The Highway Authority has not objected to the proposal on these grounds. There is insufficient substantive evidence to show that the additional traffic that would be generated by the proposal and the other permitted development would cause any significant harm to the free flow of traffic or parking in the Village.
27. Disputes about the ownership of land on the southern boundary would not adversely affect the proposed development. I am satisfied that the proposed housing would be at an appropriate density and have an appropriate mix of housing types and there would be sufficient existing and proposed planting near to the site boundaries to ensure that it would not harm the character and appearance of the area. The dwellings would be a sufficient distance from other nearby dwellings to ensure that there would be no significant harm to the living conditions of local residents due to loss of privacy, loss of light, noise, disturbance or dust. I have insufficient evidence to show that the proposal would have any significant harmful effect on the nearby quarries. Therefore, I am satisfied that these, and the other concerns expressed, would either be

adequately addressed by planning conditions or not sufficient to justify the refusal of planning permission.

Conclusions

28. For the reasons given above, I find that the proposal would not have an adverse effect on the provision of housing within Stanton under Bardon, and any potential harm that permitting this development would cause to the Hinckley & Bosworth Borough Council LDF Core Strategy Spatial Vision is more than outweighed by the need for the housing, including affordable housing, within the Borough. The Council has not shown that the proposal would have any other significant adverse effects. Contributions to local infrastructure, where they have been shown to be in accordance with the relevant guidance and regulations, would ensure that the proposal would support any infrastructure necessary as a result of the development. As such, the proposal would accord with Policy 12 of the Core Strategy and would represent sustainable development in accordance with the Framework. Therefore, having regard to all matters raised, I conclude that the appeal should succeed.

Conditions

29. I have considered the 12 conditions suggested by the Council should the appeal be allowed, including the standard time for commencement of development. A condition to ensure compliance with the plans is necessary for the avoidance of doubt and in the interests of proper planning. Conditions regarding materials, finished levels and landscaping are necessary to protect the character and appearance of the surrounding area. A condition to ensure that amphibian fencing is provided is necessary in the interests of a protected species, given the location of the site near to ponds where great crested newts could be present.
30. A condition regarding drainage, including the provision of sustainable drainage systems, is necessary for sustainability and flooding reasons. Conditions to ensure the provision of visibility splays at the access, car parking and garaging are necessary to protect highway safety. A condition to secure obscure glazing in some of the windows is necessary to protect privacy. I am satisfied that all these conditions are reasonable and necessary. I have combined some of the suggested conditions and worded them to reflect the advice in Circular 11/95: *The Use of Conditions in Planning Permissions*.

M J Whitehead

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Jane Gardner	Marrons Planning
David Cummins	BWB Consulting
Robert Blaney	Appellant Company

FOR THE LOCAL PLANNING AUTHORITY:

Sally Smith	Planning Policy, Hinckley & Bosworth Borough Council
Ebbony Mattley	Planning Officer, Hinckley & Bosworth Borough Council
Paul Grundy	Assistant Planning Officer, Hinckley & Bosworth Borough Council

INTERESTED PERSONS:

John Prendergrast	Principal Solicitor, Leicestershire County Council
Steve Kettle	Library Services, Leicestershire County Council
Andrew Tyrer	General Policy, Development Control, Leicestershire County Council
Paul McMorran	Waste Technician, Leicestershire County Council
J Z Prusinski	Local resident

DOCUMENTS SUBMITTED AT THE HEARING

- 1 Council's letter of notification and list of those notified, submitted by Hinckley & Bosworth Borough Council.
- 2 Hinckley & Bosworth Borough Council Local Development Framework Core Strategy, December 2009, submitted by Hinckley & Bosworth Borough Council.
- 3 Extract from the Consultation Draft Site Allocations and Generic Development Control Policies Development Plan Document Preferred Options Report giving Stanton under Bardon preferred sites, submitted by the appellant.
- 4 Extract from Appeal Decision Ref APP/K2420/A/10/2142660, submitted by the appellant.
- 5 Calculation of Civic Amenity Contribution for Site at 261 Main Street, submitted by Leicestershire County Council.
- 6 Engrossed Section 106 Planning Agreement, submitted by the appellant.
- 7 Copy of an e-mail from George Prusinski, submitted by the appellant.
- 8 National Forest Contribution- response of the local planning authority, submitted by Hinckley & Bosworth Borough Council.

PLANS SUBMITTED AT THE HEARING

- A Copy of Drawing No NTT/665/002 Revision P1: Proposed Access Arrangement, submitted by the appellant.

SCHEDULE A: CONDITIONS

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the approved plans listed in the attached Schedule B.
- 3) No development shall take place until samples of the types and colours of the materials to be used in the construction of the external surfaces of the buildings hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 4) No development shall take place until details of finished ground levels of the site and floor levels have been submitted to and agreed in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 5) Notwithstanding the submitted plans, no development shall take place until full details of hard and soft landscape works have been submitted to and approved by the local planning authority. These details shall include planting plans; written specifications; schedules of plants, noting species, plant sizes and proposed numbers/densities where appropriate; a maintenance schedule; an implementation programme; areas to be grassed; and treatment of hard surfaced areas. The works shall be carried out and maintained in accordance with the approved details and implementation programme. The soft landscaping shall be maintained for a period of five years from the date of planting. During this period, any trees or shrubs which die or are damaged, removed, or are seriously diseased shall be replaced by trees or shrubs of a similar size and species to those originally planted at such a time as shall be specified in writing by the local planning authority.
- 6) No development shall take place until details of the siting, scale and appearance of amphibian fencing have been submitted to and agreed in writing by the local planning authority. The fencing shall be erected in accordance with the approved details prior to the commencement of development and thereafter retained.
- 7) No development shall take place until drainage details and plans for the disposal of surface water and foul sewage, incorporating sustainable drainage principles, have been submitted to and approved in writing by the local planning authority. The drainage shall be implemented in accordance with the approved details prior to the first occupation of any of the dwellings hereby permitted.
- 8) No dwelling hereby permitted shall be occupied until visibility splays of 2.4 metres by 33 metres have been provided at the junction of the access with Main Street. No structure or erection exceeding 0.9 metres in height shall be placed, and nothing shall be allowed to grow above a height of 0.9 metres above ground level, within the visibility splays.
- 9) No dwelling hereby permitted shall be occupied until space has been laid out within the site in accordance with Drawing No S5510/100/01 Revision G for cars to be parked and for vehicles to turn so that they may enter and leave the site in forward gear. This space shall be retained for the parking and turning of vehicles thereafter.

- 10) The garages hereby permitted shall be kept available for the parking of motor vehicles at all times.
- 11) Before the first occupation of the dwellings hereby permitted the windows serving rooms labelled En-suite, E.S, WC and/or Bath, as identified on the approved Drawings, shall be fitted with obscured glass and shall be permanently retained in that condition.

SCHEDULE B: PLANS

Location Plan Scale 1:2500 Drawing No. S0000_100_02

Location Plan Scale 1:1250 Drawing No. S0000_100_02

House Type S200 CGS4 (OPP) Drawing Nos S200.03; S200.04

House Type P206 B1-5 (AS) Drawing Nos P206.B1.01; P206.B1.02

House Type P206 B1-5 (OPP) Drawing Nos P206.B1.03; P206.B1.04

House Type P332--L5 (AS) Drawing Nos P332.L.01; P332.L.02

House Type P332--L5 (OPP) Drawing Nos P332.L.03; P332.L.04

House Type P341-WD5 (AS) Drawing Nos P341.09; P341.10

House Type P341-D5 (OPP) Drawing Nos P341.03; P341.04

House Type H406---5 (AS) Drawing Nos H406.01; H406.02

House Type H436---5 (AS) Drawing Nos H436.01; H436.02

House Type H436---5 (OPP) Drawing Nos H436.03; H436.04

House Type H451---5 (AS) Drawing Nos H451.01; H451.02

House Type H451---5 (OPP) Drawing Nos H451.03; H451.04

House Type H452---5 (AS) Drawing Nos H452.01; H452.02

House Type H452---5 (OPP) Drawing Nos H452.03; H452.04

House Type H455---5 (AS) Drawing Nos H455.01; H455.02

House Type H455---5 (OPP) Drawing Nos H455.03; H455.04

House Type H469---5 (AS) Drawing Nos H469.01; H469.02

House Type H469---5 (OPP) Drawing Nos H469.03; H469.04

Single Garage E01 Drawing No E01.01

Single Shared Garage E06 Drawing No E06

Proposed Access Arrangement Drawing No NTT/655/002 Revision P1

Planning Layout Drawing No S5510/100/01 Rev G

House Type P206 BE-5 (AS) Drawing Nos P206.01; P206.02

House Type P206 BE-5 (OPP) Drawing Nos P206.03; P206.04

House Type N300 CGG4 (AS) Drawing Nos N300.01; N300.02

House Type N300 CGG4 (OPP) Drawing Nos N300.03; N300.04

House Type N300 CG14 (AS) Drawing Nos N300.09; N300.10

House Type N300 CG14 (OPP) Drawing Nos N300.11; N300.12

House Type H433---5 (AS) Drawing Nos H433.01; H433.02

House Type H433---5 (OPP) Drawing Nos H433.03; H433.04

House Type P383 BE-5 (AS) Drawing Nos P383.01; P383.02

House Type P383 BE-5 (OPP) Drawing Nos. P383.03; P383.04

Planning Layout – Boundary Treatment Plan Drawing No S5510/500/01 Rev A

Soft Landscape Proposals Drawing No Bir.3845_01

1800mm Close Boarded Fence Details Drawing No SD/600/13

1800mm High Screen Wall Detail Drawing No SD/600/02