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## Appeal Decision

Inquiry Held on 1-3 August 2017

Site visit made on 3 August 2017

**by David Nicholson RIBA IHBC**

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

**Decision date: 14 May 2018**

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### **Appeal Ref: APP/Y2430/W/17/3167407**

### **Land at Hoby Road, Asfordby LE14 3SL**

- 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 Jelson Ltd. against the decision of Melton Borough Council.
  - The application Ref. 16/00570/OUT, dated 15 August 2016, was refused by notice dated 5 December 2016.
  - The development proposed is: Outline application for residential development (up to 70 dwellings) and associated infrastructure (all matters except access reserved for subsequent approval).
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### **Decision**

1. The appeal is allowed and outline planning permission is granted for residential development (up to 70 dwellings) and associated infrastructure (all matters except access reserved for subsequent approval) at Land at Hoby Road, Asfordby in accordance with the terms of the application, Ref. 16/00570/OUT, dated 15 August 2016, subject to the attached Schedule of conditions.

### **Preliminary matters**

2. A Deed of Agreement between the Appellant, the Council and Leicestershire County Council (LCC) was submitted under section 106 of the T&CPA (s106)<sup>1</sup>. I deal with its contents below.
3. The Inquiry sat for 3 days. I held an accompanied site visit on the last day and carried out an unaccompanied visit before the Inquiry opened.
4. On 12 July 2107 the Appellant consulted with neighbours and other interested parties with regard to an extension to the red line boundary to the eastern side of the site to allow for the possibility of a vehicular link with the adjoining site with permission for development via an access off Station Road<sup>2</sup>. At the Inquiry, the Council confirmed that it had no objection to this amendment and I have reached my Decision based on the revised site boundary<sup>3</sup>. The Appellant also submitted a drawing showing an indicative alternative footpath parallel to an existing right of way but within the site boundary<sup>4</sup>.

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<sup>1</sup> Inquiry Document (ID) 18, dated 31 July 2107

<sup>2</sup> ID9: consultation documents

<sup>3</sup> Shown on drawing number FPCR 7177-01 rev E dated 12 July 2017 - see Condition 15

<sup>4</sup> Drawing number 7177-08 dated 3 August 2017 - see Condition 6 below

5. Following acceptance of the revised drawing, and confirmation that the correct consultation had taken place, the Council confirmed that it was not maintaining its objection with regard to connectivity<sup>5</sup>. It also confirmed that its archaeological concerns had been resolved and that it no longer pursued its second reason for refusal with regard to insufficient information<sup>6</sup>.

#### *Post Inquiry*

6. After the Inquiry closed, the government issued new Planning Practice Guidance (PPG) on various matters including Neighbourhood Planning<sup>7</sup>. I gave the parties the opportunity to comment and have taken their representations into account in reaching my Decision<sup>8</sup>.
7. The Referendum on the Asfordby Neighbourhood Plan (NP) was held on 28 September 2017. The result was overwhelming in favour of the NP<sup>9</sup>. The Secretary of State (SoS) then recovered the appeal for his own Decision<sup>10</sup>. The letter advises that: *The reason for this direction is that the appeal involves proposals which raise important or novel issues of development control, and/or legal difficulties.*
8. The NP was quashed by Consent Order in the High Court on 5 February 2018<sup>11</sup>. The Statement of Reasons included that the submission of the report for fact checking was unlawfully used as an opportunity to re-open key issues without allowing further representations<sup>12</sup>.
9. On 14 March 2018 the appeal was de-recovered and transferred back to me for my Decision<sup>13</sup>. A further opportunity was given to the parties to update their comments on the NP and on housing land supply (HLS)<sup>14</sup>. On 3 April 2018, an email advised that: *The LPA can confirm that significant progress has been made at the site to the immediate east of the appeal site. Roads and sewers are now in and groundworks are well advanced.*
10. At the time of the Inquiry, the emerging Local Plan (eLP) had reached the Pre-Submission draft consultation stage. It has since progressed such that in February 2018 Hearing sessions for the Examination in Public (EiP) were heard and further comments sought on HLS<sup>15</sup>. The LPA's response included updated documents which formed part of the eLP evidence base. These include HLS figures and calculations used by the Council to claim that it has a 6.8 year supply<sup>16</sup>. Much of the HLS would be loaded towards the end of the plan period. The Council's representations did not demur from the position that it does not have an up-to-date LP. The Appellant advised that, at the recent eLP Hearing sessions and in following representations, it and others had objected the LPA's supply assumptions, calculations and any attempt to accept a stepped housing requirement<sup>17</sup>.

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<sup>5</sup> ID13: Council's Opening

<sup>6</sup> ID1: Statement of Common Ground (SoCG) between the Council and the appellant – see §1.6

<sup>7</sup> PPG Reference ID: 41-083-20170810 in particular

<sup>8</sup> See ID26 – response from the appellant dated 24 August, Asfordby Parish Council of 26 August

<sup>9</sup> See LPA comments ID29

<sup>10</sup> On 11 September 2017 - ID28

<sup>11</sup> ID38

<sup>12</sup> Ibid §4

<sup>13</sup> ID35

<sup>14</sup> ID37: 28 March 2018

<sup>15</sup> Ibid Appellant §3.5

<sup>16</sup> Ibid LPA §3.1

<sup>17</sup> Ibid Appellant §3.7

11. On 17 April 2018 the eLP Inspector published a Schedule of Main Modifications. The parties reported this and submitted further comments<sup>18</sup>. These Modifications now propose to include the appeal site as a housing allocation<sup>19</sup>. Public consultation on the proposed Main Modifications to the eLP will run for 6 weeks from 10 May 2018<sup>20</sup>.

### **Main Issues**

12. From the evidence before me, the written representations, and my inspections of the appeal site and its surroundings, I consider that the main issues are:
- a) the effect of the proposals on the character and appearance of the countryside and the setting of the village of Asfordby;
  - b) whether the localised sustainability and connectivity of the proposals would be adequate and comply with the design policies of the National Planning Policy Framework (NPPF);
  - c) whether or not the Council can demonstrate a 5 Year HLS; and
  - d) the overall planning balance.

### **Reasons**

#### *Policy background*

13. The development plan for Melton Borough consists of only the saved elements of the Melton Local Plan (LP), adopted in June 1999, and which was intended to cover the period 1991-2006. The LP provides for housing needs to 2006. It was common ground<sup>21</sup> that:
- *The Melton Local Plan 1999 is out of date and in accordance with paragraph 215 of the NPPF its policies can be afforded limited weight;*
  - *The application must be considered under the 'presumption in favour of sustainable development' as set out in paragraph 14 of the [NPPF];*
  - *The development proposals comply with policies H7, H10, H11 and BE1 of the Local Plan.*
- It was acknowledged<sup>22</sup> the only conflict with the LP was with Policy OS2.
14. The LP Proposals Map shows that the site is outside the defined village envelope for Asfordby where the corresponding policy (OS2) states that planning permission will not be granted except in certain circumstances which do not apply here. As above, the proposals would comply with the other relevant saved policies including: H7 (affordable housing), H10 (amenity space), H11 (playing space), BE1 (amenities) and BE11 (archaeology). While the reasons for refusal contained no references to any LP policy, the Council maintained that the scheme would be contrary to both the emerging Melton LP (eLP) and the Asfordby Neighbourhood Plan (NP).
15. At the time of the Inquiry it was agreed that limited weight should be attached to the eLP. Its Policy SS2 sets out the spatial strategy and identifies Asfordby as a Service Centre. Policy C1(A) allocates housing sites, including some for Asfordby; at that time the appeal site was not one of them.

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<sup>18</sup> ID42: 26 April and 3 May 2018. The Schedule is attached to the LPA email

<sup>19</sup> Ibid reference ASF3 (see pp8-14)

<sup>20</sup> Ibid: LPA and Parish Council emails

<sup>21</sup> ID1 §6.1d) - f) and committee report p11

<sup>22</sup> Boland in XX

16. Following evidence to the EiP, the LPA now considers that there is a robust case for a 5 year HLS and that this should carry considerable weight. The Appellant confirmed that there were still substantial objections, not least to the loading of the supply towards the end of the period.
17. Asfordby Parish Council (APC) began exploring a NP in 2012 and the plan area was formally designated in 2013. It was a front-runner in the process. A draft NP was submitted in October 2016, with consultation to 7 December 2016, and subsequently sent for independent examination. The Examiner's report was received for fact checking on 28 February 2107; it recommended that the NP should not proceed to referendum<sup>23</sup>. Following correspondence<sup>24</sup>, and modifications accepted by the Parish Council<sup>25</sup>, the Examiner recommended that the NP did meet the basic conditions and the Council formally decided<sup>26</sup> that it should proceed to referendum<sup>27</sup>. As above, this was challenged and the NP has been quashed. While it may be likely that it will be resubmitted in some form, this will be after the necessary consultation and the opportunity for further representations.
18. In a further letter<sup>28</sup> the Council confirmed that the purported process under Regulation 16 would be cancelled. This effectively means that there is no valid NP document and any NP considerations should therefore be afforded the most limited weight, if any.

#### *Existing character*

14. The village of Asfordby lies in the Wreake valley approximately 3 miles west of Melton Mowbray on the A6006. It is the third largest settlement in the Borough. It has an extensive range of services and facilities and is well served by public transport. Hoby Road runs out of the village alongside a cemetery, allotments, an area known as the "Wildflower Meadow", Red Lodge Farm, the buildings associated with the Asfordby Carp Pools, and the clubhouse and grounds of Asfordby Football Club beyond which a development of holiday lodges has been permitted at Frisby Lakes.
15. The appeal site lies outside of the defined settlement boundary of Asfordby. It comprises 3.16 hectares (ha) of open arable land towards the south western edge of the village. It is bounded to the north by the Wildflower Meadow, to the west by the grounds of the football club, and is across the road from Red Lodge Farm. The River Wreake runs to the south of the site with open fields beyond. To the east lies further arable farmland which is only separated from the appeal site by overhead power lines. This land, referred to as the Station Lane development, has reserved matters planning consent for 100 dwellings<sup>29</sup> beyond which is existing housing and to the north of which is a playground. The developer is the same as the Appellant. On my initial site visit at the time of the Inquiry, I saw that a start had been made on the access to the Station Lane development. As above, following de-recovery I was advised that

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<sup>23</sup> ID16a

<sup>24</sup> ID16b – between the Examiner and the Council from 20 March to 15 May 2017

<sup>25</sup> ID17 - June 2017 version of Asfordby NP: §1.20

<sup>26</sup> On 12 July 2017 – ID14

<sup>27</sup> Under the NP (Referendums) Regulations this must be held on or before 56 working days of 15 July 2017 (the date that the Council's decision was published).

<sup>28</sup> ID41

<sup>29</sup> See officer report at ID2, ref. 16/00373/REM

significant progress had been made with development at the site<sup>30</sup> and this reinforces the claim that the appeal proposals could proceed without delay.

16. The appeal site slopes gently down from the north-east to the south-west and is partly bounded by trees and other vegetation. It was common ground that the site is not subject of any local or national landscape, cultural or heritage designation and is not a 'valued landscape' under NPPF§109.1.
17. There is an existing agricultural access to the appeal site from Hoby Road. The site contains an informal footpath running from the corner by the playground in a south-westerly direction. A Public Right of Way (PRoW) (H36) runs parallel to, but just outside, the northern boundary of the site alongside the Wildflower Meadow and the playground. A Public Bridleway (H37) runs next to, but beyond, the western boundary between the site and Sports Ground. The latter PRoW extends to the south west to the village of Frisby on the Wreake.

### *Proposals*

18. As well as housing, the scheme would provide 0.8 hectares (ha) of public open space. Excluding these, the net developable area would extend to approximately 2.37ha so that the development density would be around 30 dwellings per ha of which, under the s106 Agreement, 40% would be affordable housing. The intention would be to build out the site directly following that at Station Lane at a rate of 40 dwellings per annum (dpa). As well as according with all but one of the relevant LP policies, given the proposed proportion and mix of affordable housing, the scheme would comply with NPPF§50 with regard to delivering a wide choice of homes.
19. Subject to conditions, the majority of existing vegetation would be retained and there would be new landscaping, to provide a soft edge, and sustainable drainage features. There would be a new junction onto Hoby Road which, with visibility splays, would be rather wider than the existing access, and an extension to the existing footway to link the site to the adjacent PRoWs and provide a safe route to the football club. There would be a dedicated pedestrian and cycle link to the village centre via the adjacent permitted site and Station Lane.

### *Character and appearance*

20. The proposals would change the appearance of the appeal site itself from being a large part of an open field in agricultural use to residential development. Insofar as it currently provides an area of countryside at this end of the village, the scheme would alter its rural appearance. In other respects, the loss of an unexceptional field would cause limited harm. From my site visit I saw that new housing would affect, and alter, a number of views around the site including those from the adjacent footpath H36 alongside the Wilderness Meadow, the playing fields, from some points across the river, and from walking into the village looking across the flood plain from bridleway H37<sup>31</sup>.
21. On the other hand, the site is adjacent to a playground to the north-east, and there is other built development both across from the site access and further down the road. In many views the houses would be seen in the context of the existing village and, shortly, as a continuation of the permitted scheme to the

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<sup>30</sup> ID37. Confirmed in the Council's comments

<sup>31</sup> As detailed in Boland §3.22

- east. From the football ground, the context is again one of man-made development including the clubhouse building itself. Views here would also be filtered and tempered by the existing hedge which, while currently gappy and only 4m high with some taller trees, could be readily enhanced by further landscaping within the appeal site. This would compare favourably with the proposed buffer to the permitted Station Road scheme, due to be planted alongside the power lines, which would have to start from scratch, and so take many years to reach maturity.
22. In views from across the river, and coming back into the village, the change in appearance would be tempered by existing trees, which would be enhanced by further buffer planting, and by the sense of continuity. As the appeal site is on ground rising slowly from the river it would appear as a logical continuation of existing built development abutting the natural boundary of the flood plain.
23. For these reasons, I find that the scheme would harm the character and appearance of the countryside and the setting of Asfordby when viewed from certain angles but also that the weight to that harm should be no more than moderate. Other than against Policy OS2, the Council accepted that there would be no conflict with relevant saved adopted LP policies but argued that the loss of open fields would be contrary to NPPF§17.5 which expects that planning decisions should recognise the intrinsic character and beauty of the countryside.
24. On this issue, I conclude that there would be conflict with Policy OS2, but that, as agreed (above) this policy should be given limited weight. Conversely, some weight should be given to the proposed allocation in the eLP. The loss of countryside should be also recognised with regard to the NPPF balance, albeit that the site has little intrinsic merit other than being undeveloped.

#### *Sustainability and connectivity/design*

25. The original scheme proposed a single vehicular access from Hoby Road. While pedestrian and cycle links were envisaged, for vehicular access this would have meant a large housing development isolated from all other residential developments. Apart from the lack of a physical barrier, this previous scheme would have been tantamount to a gated community without adequate vehicular connections and with limited integration. Subject to reserved matters, the revised proposals would provide a secondary link through to the permitted scheme with access from Station Road. Taken with suggestions for pedestrian and cycle links, which could also be required through conditions at this and/or the reserved matters stage, the Council accepted that this design flaw would be overcome.
26. APC retained its objection with regard to the distance from most services and facilities. The Highway Authority<sup>32</sup> found that the residual cumulative impacts of development could be mitigated, and were not *severe* under NPPF§32.3, but viewed the proposals as an extension to the Station Lane scheme and anticipated that the future layout would maximise opportunities to link these sites. In its final response<sup>33</sup> it highlighted requirements for this link as part of the internal layout details at the reserved matters stage.

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<sup>32</sup> In its response dated 25 November 2016

<sup>33</sup> Dated 26 July 2017

27. Improved connectivity would not alter the fact that the appeal site lies on the edge of the village at some distance from the centre. On the other hand, the proposed links would provide easy access and walking distances would be only a little greater than for some of the houses about to be built on the adjoining development. It would also have the advantage of being close to the football ground, to which there would be improved and safer access, to the playground, and to other developments along Hoby Road. On balance, I find that the scheme would not lack connectivity.
28. I fully accept that the NPPF§61 requirement to address *the connections between people and places and the integration of new development into the natural, built and historic environment* should be applied to outline proposals. For the above reasons, I find that the link to the permitted scheme off Station Road, together with the other pedestrian and cycle links, would comply with NPPF§61 with regard to connections and integration. Subject to reserved matters, the illustrative drawings suggest that the scheme would echo the adjoining permitted scheme, provide open space, and include appropriate landscaping. On these points it would comply with NPPF§58.
29. For all these reasons it could satisfy the general requirements in NPPF§56 and NPPF§64. It would accord with LP Policy BE1, which requires development to harmonise with its surroundings, not adversely affect occupiers of neighbouring properties, and provide adequate open space, vehicular access and parking.

#### *5 Year Housing Land Supply (5YHLS)*

30. It was common ground that the LP is out of date, that its policies should be afforded limited weight, and that the presumption in favour of sustainable development (or 'tilted' balance<sup>34</sup>) in NPPF§14.4 applies. Nevertheless, the parties submitted conflicting evidence with regard to 5YHLS, both at the Inquiry and recently, and on the likely delivery of the suggested supply of housing<sup>35</sup>. Given that HLS must be assessed at the time of any Decision, there would be no benefit to later decision-takers in me making a very detailed assessment and so it is not necessary for me to do more than set out my broad conclusions.
31. There was agreement on the annual housing requirement and the number of completions between 2011 and March 2017. The Council argued that the shortfall arising from this should be made up over the full plan period to 2036. While there may be circumstances where this is appropriate, as it was not suggested that the Council would need to work with neighbouring authorities to meet the undersupply under the duty to cooperate, this would not accord with the PPG<sup>36</sup> and, on the evidence before me, I find that the shortfall should be dealt with in the first 5 years. I have noted that the Council has never delivered at the rate that this would require, but to approach shortfall in this way would be to admit defeat before even starting and run counter to the imperative in NPPF§47 to boost significantly the supply of housing.

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<sup>34</sup> ID1, §6.1d) and e). The 'tilted' balance is as referred to by the Supreme Court in *Suffolk Coastal DC v Hopkins Homes Ltd and SSCLG; Richborough Estates Partnership LLP and SSCLG v Cheshire East BC [2017] UKSC 37* (§12) and applies to the section of policy which states: For decision-taking this means: · where the development plan is absent, silent or relevant policies are out-of-date, granting permission unless: - any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole;

<sup>35</sup> See ID7 and ID37

<sup>36</sup> Reference ID: 3-035-20140306

32. There was agreement that a 20% buffer should be applied. The remaining difference was over the extent of supply. Until shortly before the Inquiry, the Council was reporting a 5YHLS of between 1.9 and 2.5 years (depending on the approach to the shortfall). However, in November 2106 and more recently, the Council published a substantially increased supply position based on a very large number of draft allocations from the eLP<sup>37</sup>. The guidance in NPPF footnote 11 is generally to count those sites with planning permission (and I accept that this could include a Council's resolution to grant permission). While the Appellant has disputed a number of these, without looking in detail I consider that in principle they should be included. However, this would only increase the supply slightly above that prior to November 2106.
33. Otherwise, sites should be available, suitable and deliverable with the onus on the Council to produce evidence. To my mind, this generally implies discounting those with no more than a draft allocation, in an emerging LP which is at an early stage, many of which are likely to have constraints and objections. Most of the sites which make up the difference between the parties' positions are also greenfield and outside current settlement boundaries. To this extent, many of these are similar to the appeal site and so likely to face opposition and delays. Some have more than one owner and may not be readily available. The PPG does allow for such sites to be included where there is sufficient evidence. However, at the time of the Inquiry and of de-recovery, I find it unlikely that the majority of these will come forward quickly enough to bridge the extent of the gap and so provide the Council with a 5YHLS.
34. Since the Inquiry, the latest figures seek to back load delivery towards the end of the plan period. Consequently, it would only require a modest slip in progress for delivery of some of these houses to fall outside the 5 years and some of these may not yet be available to a house builder. For the purposes of this appeal, I find that the Council cannot demonstrate a 5YHLS. However, were the Main Modifications to be accepted, this would improve the situation significantly and by the time that the eLP is adopted, the local housing market may well have adjusted to the uplift of housing delivery.
35. By contrast, the Appellant intends to deliver at a reasonable rate of 40 dpa following directly on from the adjacent scheme. This is persuasive evidence that the proposed houses would be delivered well within 5 years. Moreover, I have found that the proposals would accord with the development plan as a whole (see below) and so, whatever the extent of HLS, my Decision would be the same.
36. Turning to the implications of this conclusion, I have considered the proposals against the 3 dimensions to sustainability in NPPF§7. Additional housing would bring expenditure during construction and by future residents and so would have economic benefits. There would be social advantages from new housing and affordable housing in particular. New public open space would bring environmental benefits and more than offset any ecological harm. Set against this would be the loss of part of an open field, to which NPPF§17.5 is relevant, and some harm to the appearance of the area from beyond the site. On balance, I find that the benefits would clearly outweigh the harm and that the

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<sup>37</sup> See Thorley appendix 9, p32: MBC 5YHLS Trajectory Position, 2 November 2016, appendix B.

scheme would amount to sustainable development as defined in NPPF§§18-219 as a whole. I give this conclusion considerable weight.

### *Conditions*

37. As well as the standard conditions for commencement and reserved matters, for clarity I have added a condition to those suggested specifying the relevant application drawings as listed in the SoCG. I have made adjustments for precision. As boundary treatment is not necessarily covered by landscaping reserved matters, this needs to be controlled to protect the character and appearance of the area. In the interests of amenity and highway safety, construction traffic management and vehicular access need control. Pedestrian and cycle links are needed to provide the connectivity referred to in my reasoning. However, the condition suggested for the link road would duplicate requirements for reserved matters for both this and the Station Road development and so would be unnecessary.
38. Conditions are needed over areas of vegetation, buffer strips, an updated protected species survey and the implementation of ecological recommendations in the interests of biodiversity. To protect possible remains of human activity, and to comply with Policy BE11 on archaeology, a programme of investigation and subsequent recording are needed. To prevent flooding, surface water and drainage should be controlled.
39. The proposed Main Modifications include suggested Policy ASF3 with detailed criteria for the appeal site. These were not discussed at the Inquiry or subsequently and the policy is still at the consultation stage. However, I note that in general the provisos are already covered by conditions, either specifically or as part of the details to be submitted as reserved matters. Indeed, many of the criteria are those matters which would transform an otherwise apparently remote location into one which would be well connected and able to provide sustainable development.

### *Agreement under s106*

40. I have assessed the s106 Agreement in the light of the CIL Regulations which set 3 tests<sup>38</sup> for such obligations which are reflected in NPPF§§203-204. From April 2015, CIL Regulation 123(3) also restricts the use of pooled contributions that may be funded via a s106 obligation if five or more obligations for that project or type of infrastructure have already been entered into since April 2010 which could have been funded by the levy. Justifications for the provisions were provided by the Council and by LCC<sup>39</sup>. Clause 2.9 of the s106 Agreement specifically allows that if I expressly state that any obligation, or part, would be incompatible with the tests it shall cease to have effect.
41. The s106 Agreement would oblige the Appellant to make provision for 40% of the new dwellings to be affordable as defined in the Annex 2 to the NPPF. It would require details for the offer of transfer of the proposed public open space to the Council, or a management company, together with provisions for its ongoing maintenance. These provisions would be specific to this site, accord with Policy H7 for affordable housing, exceed the requirements of Policies H10 and H11 for public amenity space, and meet the relevant CIL and NPPF tests.

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<sup>38</sup> These are: *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.*

<sup>39</sup> Tyrer's evidence, with attached documents, and oral evidence

42. The obligations would also provide financial contributions towards: secondary education at John Ferneley College, bus passes and travel packs, civic amenities, library facilities, the NHS medical practice at Melton Mowbray, and monitoring of the Travel Plan and individual contributions.
43. The education contribution would be solely for secondary education and would be used for a classroom modular extension. It would be the 3<sup>rd</sup> such obligation and so be acceptable under the pooled contributions restrictions. The Travel Plan, including bus passes and travel packs, would support the claims for connectivity and access to public transport. With regard to civic amenities, while at one point characterised as for bric-a-brac, it was explained to me how this contribution was required for capital expenditure to drive up levels of recycling for a service which is already at capacity. It would therefore satisfy the tests and should be applied.
44. The library contribution would be for study support materials based on a formula and I was told that this would be to maintain stock levels. While no doubt important, in my assessment, this is a matter for operating budgets rather than capital expenditure and the lack of it would not be something which should prevent the development proceeding.
45. The NHS submitted a funding application seeking a contribution on behalf of Latham House Medical Practice. The Appellant argued<sup>40</sup>, and the Council conceded, that the evidence did not come close to demonstrating CIL compliance and no further evidence was produced. As no representative of the NHS was present at the Inquiry to justify the contribution, I agree.
46. I therefore find that most of the obligations would comply with the relevant tests in the CIL Regulations and NPPF§204. However, the contributions sought for the library and the NHS would not satisfy the tests and so these covenants shall cease to have effect and there shall be no obligation to comply with them.

#### *Overall planning balance*

47. For the reasons set out above, I find that the initial harm from the proposals would be limited to moderate landscape harm to the site itself and to a number of views from nearby public footpaths. Against this, in due course there would be significant mitigation from new public open space and extensive new buffer planting. On the plus side, I give considerable weight to the benefits of new housing and affordable housing such that, on the ordinary balance and even disregarding NPPF§14.4, the benefits would outweigh the harm.
48. The only conflict with the saved adopted LP would be with Policy OS2 and the corresponding Proposals Map for the period to 2006. As above, this should be given limited weight at most. Set against this, the scheme would comply with all other relevant saved policies, including those for affordable housing and amenity space, which should attract substantial weight as benefits. I therefore find that, on balance, the scheme would not conflict, but accord, with the development plan taken as a whole. Regardless of whether or not there is a 5YHLS, my overall conclusions would therefore be the same. Given the

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<sup>40</sup> At Thorley §9.19: *NHS England has requested a contribution of £61,817 towards unspecified improvements to GP facilities. The ... sum is based on ... a standard formula. No evidence is provided in respect of the capacity of existing services or the operational impact of the development. ... there is no evidence ... that a contribution is necessary. There is also no detail provided as to how or even where the contribution would be used to mitigate any impact and so it is not possible to determine whether the contribution is directly related to the proposals or reasonable in scale and kind.*

relatively low level of harm I have found in this case, this is consistent with the Committee Report for Long Clawson<sup>41</sup> where the officer reported that, even though the Council believed that it did then have a 5YHLS, the benefits would still outweigh any harm.

49. Not only is the LP out-of-date but it is likely that the Council lacks a 5YHLS, albeit that in due course the eLP is likely to address this. For both these reasons, the tilted balance should apply. The resulting NPPF§14.4 balance should carry considerable weight as a material consideration. Consequently, even if I had found that conflict with Policy OS2 was enough for the scheme to be contrary to the development plan taken as a whole, which I do not, at the time of the Inquiry the Council could not demonstrate a 5YHLS and so the tilted balance would apply in any event. However, being out of date alone has no bearing on the weight to be given to a policy, with which there would be conflict, when assessing the proposals against s38(6) of the Act as to do so would be to tilt the balance twice.
50. NPPF§216 also allows me to attribute weight to the eLP. While this still has hurdles to pass before adoption, and it was common ground at the Inquiry that limited weight should be attached to its policies, given that it is now much further advanced some weight can be given to the support from Policy ASF3.
51. For the above reasons, conflict with the quashed NP does not significantly reduce the weight I give to the NPPF balance as a material consideration in favour of the scheme whereas emerging policy in the eLP lends further support. I therefore find that, given the advantages of sustainable development as defined in the NPPF, even if conflict with Policy OS2 were decisive with regard to the LP, and amounted to conflict with the development plan as a whole, which I find it is not, this would be outweighed. Consequently, the NPPF balance is a material consideration of sufficient importance that it would outweigh conflict with the development plan in any case and the appeal should succeed.

### *Conclusions*

52. For the reasons given above, and having regard to all other matters raised including highway safety, flooding and prematurity, I conclude that the appeal should be allowed.

*David Nicholson*

INSPECTOR

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<sup>41</sup> Thorley appendix 10 – 27 April 2017

## APPEARANCES

### FOR THE LOCAL PLANNING AUTHORITY:

Timothy Leader of Counsel	instructed by Sach Khosa, solicitor, Melton Borough Council (MBC)
He called	
Valerie Adams BSc DipTP MRTPI	Local Plans Manager, MBC
Sara Boland CMLI	Director, Influence Environmental Ltd
Patrick Reid BA DipTP MRTPI	Regulatory Services Manager, MBC

### FOR THE APPELLANT:

Christopher Lockhart-Mummery QC	instructed by Robert Thorley, Jelson Limited
He called	
Gary Holliday, BA MPhil CMLI	FPCR Environment and Design Ltd
Robert Thorley BA DipTP MRTPI	Jelson Limited

### FOR LEICESTERSHIRE COUNTY COUNCIL (LCC):

Ruth Lea, solicitor	Leicestershire County Council (LCC)
She called	
Andrew Tyrer BA MRTPI	Contributions officer, LCC
Liz Evans	Library service, LCC
Nadine Lewin	Library service, LCC
Nigel Shilton	Civic amenities, LCC

### INTERESTED PERSONS:

Colin Wilkinson MRTPI	for Asfordby Parish Council
Ronnie de Burle (site visit only)	Chairman Asfordby Parish Council

### INQUIRY DOCUMENTS (ID)

1. Statement of Common Ground
2. Land at Station Lane Asfordby, Officer Report to Committee
3. Land at Regency Road, Asfordby, Officer Report to Committee
4. Recreation Area, Melton Road, Asfordby Hill, Officer Report to Committee
5. CIHT Guidance on Planning for Walking
6. Extracts from CIPFA report on libraries
7. Melton Borough Council 3 part site assessment update of 30 May 2017
8. 5 year housing land supply table
9. Various documents relating to consultation undertaken on revisions to red line planning application boundary including drawing number 7177-01 Rev E
10. GL Hearn report: Towards a Housing Requirement for Melton Borough
11. Station Lane, Asfordby – Design and Access Statement
12. Appellant's opening
13. Council's opening
14. Asfordby Neighbourhood Plan – officers report to Rural Affairs Committee – Agenda item 2, dated 12 July 2107

15. Draft suggested planning conditions
16. (a) Asfordby Neighbourhood Plan fact checking documents  
(b) Neighbourhood Plan documents
17. June 2017 version of Asfordby Neighbourhood Plan
18. Section 106 Agreement – signed and dated 31 July 2017
19. Corrected letter from Andrew Tyrer (dated 14 June 2017)
20. Land at Hall Lane, Whitwick appeal decision
21. WYG Site Access Drawing (A085842-35-18-007 Rev B)
22. Extracts from emerging Melton LP Focussed Changes document: Appendix 1 – Site allocations and policies
23. Council’s closing submissions
24. Agreed list of conditions (including indicative internal footpath/cycle link drawing number 7177-08, dated 3 August 2017)
25. Appellant’s closing submissions
26. Responses following changes to PPG§083

*Post Inquiry documents*

27. Emails dated 24 August, 26 August and 1 September 2107 from the Appellant, the Parish Council and the LPA commenting on the changes to PPG §083
28. Recovery letters dated 11 September 2017
29. Emails from the Appellant and the LPA dated 3 and 9 October 2017
30. Email from PINS dated 10 October requesting comments on two matters
31. Responses dated 10, 19 and 20 October from the Parish Council the Appellant and the LPA (including HLS position on 30 May 2017)
32. Further email from PINS dated 10 October offering final comments
33. Details for re-opening the Inquiry dated 6 December 2017
34. Correspondence from Appellants the Parish Council and the LPA dated 6 March and 14 March 2018 following the quashing of the Neighbourhood Plan
35. De-recovery letter dated 14 March 2018
36. PINS invitation for further comments dated 14 March 2018
37. Further comments from Appellants and the LPA dated 28 March 2018
38. High Court Order by Consent to Claim No: CO/3881/2017 *Jelson and Melton BC and Asfordby Parish Council and SoSCLG* dated 5 February 2018 quashing the Referendum Decision (attached as Appendix 1 to Appellants comments dated 28 March 2018)
39. Final questions from Inspector dated 29 March 2018
40. PINS email dated 9 April 2018 confirming that the Inspector will proceed to a Decision
41. Letter dated 17 April 2018 from MBC regarding Asfordby NP
42. Further comments on behalf of the Appellants, the LPA and the Parish Council, dated 26 April and 3 May 2018, regarding the Schedule of Main Modifications to the emerging Melton Local Plan

### **Schedule of conditions**

- 1) Application for approval of the reserved matters shall be made to the local planning authority (LPA) not later than three years from the date of this permission and the development hereby permitted shall take place not later than two years from the date of approval of the last of the reserved matters to be approved.
- 2) Details of the appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the LPA before any development takes place and the development shall be carried out as approved.
- 3) No development shall take place unless and until details of the treatment of the site boundaries including fencing and/or soft landscaping, including reinforcement of existing hedgerows where necessary, has been submitted to and approved in writing by the LPA. The development shall thereafter be carried out in accordance with the approved details and timetable.
- 4) No development shall commence on site until such time as a construction traffic/site traffic management plan, including wheel cleansing facilities, vehicle parking facilities and a timetable for their provision, has been submitted to and approved in writing by the LPA. The development shall thereafter be carried out in accordance with the approved details and timetable.
- 5) The proposed vehicular access to the site shall be constructed in general accordance with WYG drawing number A085842-35-18-007 Rev B to the satisfaction of the LPA prior to occupation of the first dwelling.
- 6) No development shall take place until details of a shared pedestrian/cycle way linking points A and B on FPCR plan 7177-08 (dated 3 August 2017), and broadly as shown on that plan, has been submitted to and approved in writing by the LPA. The link shall be constructed and available for use prior to the first occupation of the final dwelling on site and retained thereafter for that purpose.
- 7) Details of the layout of the site submitted pursuant to condition 2 shall include details of a continuous footpath link from footpath H36 which is located to the northwest of the development to bridleway H37 in the southwest corner of the development site. Thereafter the scheme should be constructed in accordance with the approved details and retained thereafter for that purpose.
- 8) No development shall commence on site until such time a biodiversity management plan of the areas of semi-natural vegetation has been submitted to and approved in writing by the LPA. The development shall thereafter be carried out in accordance with the approved plan and its timetable.
- 9) The details submitted pursuant to condition 2 above shall make provision for at least a 20m buffer between the development and the River Wreake and a 5m buffer between the development and existing hedgerows.
- 10) If development has not commenced prior to 1 April 2018 then, prior to development commencing, an updated protected species survey must first be submitted to and approved in writing by the LPA.
- 11) No development shall commence until a programme of archaeological mitigation work (archaeological excavation) has been detailed within a Written

Scheme of Investigation (WSI), submitted to and approved by the LPA in writing. The WSI shall include a statement of significance and research objectives, and:

- a programme and methodology of site investigation and recording, with consideration of appropriate analytical methods to be utilised;
- a detailed environmental sampling strategy, linked to the site research objectives and where appropriate informed by previous work (i.e. any previous archaeological evaluation or investigation of this site or any in the vicinity);
- the programme for public outreach and dissemination;
- the programme for post-investigation assessment and subsequent analysis;
- provision for publication, dissemination and deposition of resulting material in an appropriate archive repository; and
- nomination of competent person(s) or organisation(s) to undertake the agreed work.

For land and/or structures included within the WSI, no demolition, development or related ground disturbance shall take place other than in accordance with the agreed WSI.

- 12) The programme of archaeological site investigation, subsequent analysis, publication, dissemination and deposition of resulting material in an appropriate archive repository shall be completed within 12 months of the start of development works, or in full accordance with the methodology and timetable detailed within the approved WSI.
- 13) No development approved by this planning permission shall take place until such time as a detailed surface water drainage scheme, designed in accordance with the principles laid out within the reserved matters application has been submitted to, and approved in writing by, the LPA.
  - The scheme shall incorporate sustainable drainage techniques including sufficient treatment drains to maintain or improve the existing water quality; the limitation of surface water runoff to equivalent greenfield rates; the ability to accommodate surface water run-off on-site up to the critical 1 in 100 year event plus an appropriate allowance for climate change, based upon the submitted drainage calculations.
  - The scheme shall include details of the long term maintenance of the sustainable surface water drainage system, including routine maintenance, remedial actions, monitoring of the separate elements of the system, and procedures to be implemented in the event of pollution incidents.
  - Full details of the drainage proposals should be supplied, including but not limited to, headwall details, pipe protection details (e.g. trash screens), and long sections. Full model scenarios for the 1 in 1, 1 in 30 and 1 in 100 year + climate change will also need to be provided.
  - The discharge rate for the proposed site should be based on the Qbar calculations contained within the Flood Risk Assessment and ensure that the proposals reduce run-off from the site to greenfield rates and volumes.

The scheme shall be fully implemented in accordance with the timing, phasing and maintenance arrangements embodied within the scheme.

- 14) The development hereby permitted shall be carried out in accordance with the recommendations in section 4 of the Ecological Appraisal (FPCR, October 2016) which includes necessary GCN mitigation for the site.
- 15) The development hereby permitted shall be carried out in accordance with the following approved plans:
  - Location plan: FPCR 7177-01 rev E, dated 12 July 2017;
  - Site access: WYG A085842-35-18-007 rev B, dated 7 March 2106.