



Appeal Decision

Inquiry opened on 12 October 2011

by Mary Travers BA (Hons) Dip TP MRTPI

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

Decision date: 22 November 2011

Appeal Ref: APP/X2410/A/11/2156267

8 Loughborough Road, Quorn, Leicestershire LE12 8DX

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Moore, Herbert and Moore against Charnwood Borough Council.
 - The application ref P/10/2834/2 was dated 21 December 2010.
 - The proposed development is the demolition of No 10 Loughborough Road and the construction of an access road to serve 13 No dwellings.
 - The inquiry sat on 12, 13 and 14 October and a site visit was carried out on 14 October.
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Decision

1. The appeal is dismissed.

Main Issues

2. There are two main issues in this case. The first is whether the proposal would entail the loss of an open space or recreational facility for which there is a need and if so whether there are any other factors including the increase in the supply of dwellings entailed by the proposal that would outweigh the loss of the open space/recreational facility. The second issue is whether properly justified contributions would be secured towards the provision of infrastructure required by the development.

Reasons

Background

3. The appeal site is close to the centre of Quorn, to the rear of dwellings fronting Loughborough Road and to the north-west of dwellings on Sanders Road. Demolition of No 10 Loughborough Road would provide for vehicular and pedestrian access to the site which is currently accessible from a private footpath from Loughborough Road adjoining the bowls club. The site and adjoining land, mostly in the Appellant's control, is generally overgrown and includes 20 plots in various ownerships. Five half plots are currently being cultivated, one is used partly for storage and the remainder appear to be disused.
4. The undeveloped south-western boundary abuts Poultney Brook; beyond this are wet meadows known as Tom Long's Meadow and Tom Long's Meadow Extension which are designated as a Local Wildlife Site. Further to the south are playing fields, a residential area and school, and a public footpath winds through this area, providing a link between Meeting Street to the east and

- Woodhouse Road to the west. Badgers are active on the site and surroundings and a number of setts have been identified on the appeal site.
5. Ecological and flood risk considerations have influenced the extent of the proposed development area. As a result, only part of the controlled land would be occupied by residential curtilages, with the remainder given over to a foraging area for badgers and open land (forming part of a flood zone) along the brook. Two half plots are outside the Appellant's control and are excluded from the proposal; these lie to the north-west of the development area and access to them would be provided through the housing site.
 6. There is an extensive planning history on the site going back more than 10 years. It includes seven applications for residential development, none of which were successful.
 7. The Council resolved in August 2011 that had it determined the application it would have been refused for two reasons, the first concerned with the loss of allotment land and the second with the absence of a mechanism to secure appropriate contributions to infrastructure provision.
 8. Two executed planning obligations were placed before the inquiry, one of which is a unilateral undertaking that merits comment at this point. It offers a replacement allotment site at One Ash, to the north of Woodhouse Road, in the event that a need for a replacement facility is identified through this appeal. The enforceability of the undertaking is a matter of dispute between the Appellant and the Council and this is returned to below.

Development Plan and Other Policy Context

9. For the purposes of this appeal the most relevant parts of the development plan are Policy 13a of the East Midlands Regional Plan 2009 (the Regional Strategy (RS)) and Policy H/16 of the Borough of Charnwood Local Plan 2004 (LP). In accordance with the RS, annual provision for 790 dwellings should be made in Charnwood, split between the area within or adjoining the Leicester Principal Urban Area (PUA) (330 dwellings per year) and the rest of the Borough (460 dwellings per year). The most relevant sub-sections of LP Policy H/16 require that residential development schemes would not result in loss of land of high amenity value (sub-section v) or involve the loss of recreational facilities for which there is a need in the area (sub-section xi).
10. The site was formerly protected as allotments by Policy RT/15 of the LP when first adopted, but the Secretary of State considered it unnecessary to save this policy, given the protection afforded by Planning Policy Guidance note 17: *Planning for Open Space, Sport and Recreation* (PPG17). As the latter makes clear, existing recreational land should not be built on unless an assessment has been undertaken which has clearly shown that the land is surplus to requirements. It also states that recreational facilities that are of high quality or particular value to a local community should be recognised and given particular protection, and that existing and potential (my underlining) value for recreation should be properly assessed before development is considered.
11. Planning Policy Statement 3: *Housing* (PPS3) is also particularly relevant in this case, and Planning Policy Statement 1: *Delivering Sustainable Development* (PPS1) and the government's planning objectives as set out in the Minister of State for Decentralisation's statement on *Planning for Growth* (March 2011),

and the draft *National Planning Policy Framework* (NPPF) are also material considerations.

Existing Use of the Site and Policy Implications

12. It is not disputed that the application site is part of an area that is and has been privately owned for many decades by a number of individual plot holders. Evidence from 1919 indicates that the plots were sold as long, narrow strips of land and that the erection of dwellings upon them was not prohibited after the expiry of six months from the end of the Great War. Until the expiry of that period they were to be cultivated as garden ground. Whether or not they were purchased for building purposes, there is no indication that any dwellings were built upon them.
13. There are a number of legal opinions on the status of these plots and they indicate opposing views. While the evidence is limited, there is no real dispute that the plots have been used to a greater or lesser extent for allotment-type cultivation for many years, either by their owners or others, none of whom live on the plots. There are some indications that there was a greater level of use up to about 10 years ago, around the time that residential development was first proposed on the site, although a couple of plots are said to have been disused for 20-40 years.
14. Eighteen of the plot holders have signed statutory declarations to the effect that they will not permit their land to be used as allotments in the future. However, ownerships and intentions can change. In any event it would not be justified on the basis of the statutory declarations alone to conclude that this is not an allotment site. It appears that the Council was not in doubt that it was an allotment site when Policy RT/15 was included in the LP. Also, the adopted Quorn Village Design Statement refers to the land as allotments, albeit this is a non-statutory document.
15. Taking all of the evidence into account, even though the plots remain in private ownership and are not currently designated as allotments or open space in the LP, there can be little doubt that they are or were allotments. As referred to above, five half plots are currently under cultivation. The plots as a whole are best described in my view as partially disused allotments. And therefore the potential conflict of the proposal with Policy H/16 v and xi and with national planning policy in PPG17 is at issue. The supporting text to Policy H/16 that refers to backland development on underused allotments in some instances should not be taken to mean that under-use in itself would remove the policy conflict. Such an interpretation would not necessarily be consistent with criterion xi of Policy H/16 or with PPG17 and fails to take into account the wider issue about the public value of open space.

Need for Allotment Facilities

16. The Open Space and Recreation Study of the borough, commissioned by the Council in April 2009 and published in 2010, examined allotment provision and future needs. The appeal site was included in the assessment. The report sets a quantitative standard derived from the local needs consultation and the audit of provision; the standard (0.33ha per 1,000 population) represents an increase on the existing borough-wide provision, taking account of existing waiting lists and expressed demand from local residents. On this basis there is no quantitative need for additional allotments in Quorn; even if those on the

proposed development area were lost, a surplus of about 0.75ha over and above the quantitative standard would remain.

17. The study also defines qualitative and accessibility standards for allotments. In these terms both the appeal site and the other allotment site in Quorn at Flesh Hovel Lane are rated as poor quality, with the key areas for improvement being the entrance, roads and paths, security and parking. Taking account of both sites, provision in the settlement meets the accessibility standard, since the majority of residents are within a 15-minute walk of one or other site.
18. However as the report states, the application of the quantity, quality and accessibility standards provides an understanding of the existing distribution of allotments, but in the light of the demand-led nature of allotments, this should be treated as an indication only. It notes that potential redevelopment of the appeal site may significantly affect access to and quantitative provision in Quorn. Generally, it is clear that provision falls below the minimum standard in the majority of settlements in the borough. The report recommends that all sites should be protected from development and that losses should only be permitted where it can be proven that the site is surplus to requirements and is unlikely to be required in future years.
19. Notwithstanding the report's conclusion in regard to quantitative provision in Quorn, the Parish Council has 70 persons on its waiting list for allotments. Waiting list data is only available since January 2009. Given that it shows peaks in applications rather than a relatively even spread of demand, and that no one joined the waiting list in 2010, it has been suggested that the waiting list represents a response (opposition) to the proposed housing development of the appeal site, rather than a true indication of need for allotments. There may be some truth in this but it is difficult to dismiss the waiting list entirely, given the general finding of under-provision in the borough and the concerns raised in the large volume of representations about the loss of the allotment potential of the appeal site.
20. There is little to suggest that the plots at Flesh Hovel Lane are under-utilised to any significant extent. Some may be lying fallow but this is not unusual to allow a period for soil recovery. It seems there is generally a waiting list for plots but at the time of the inquiry one was available. Overall, Flesh Hovel Lane appears to be a vibrant, well-used facility that offers little or no spare capacity to accommodate the demand indicated by the Parish Council's list. To the extent that there are quality issues that should be resolved here, they are not of the same order as those on the appeal site. But given its location on the eastern periphery of the settlement, it does not offer a good standard of accessibility for all residents including those in the more westerly parts of Quorn.
21. All of these considerations have been taken into account, including the accessibility standard that should be applied and the caveats in the open space study about the weight to be attached to the quantitative standard. It is concluded on balance that without the potential offered by the appeal site or a replacement for it, the Flesh Hovel Lane site alone would not provide adequately for existing and future needs for allotments in Quorn.
22. As referred to above, the quality and public value of the recreational facility that would be lost is also relevant. There is no doubt that the appeal site generally provides a low quality facility, with poor access, many heavily overgrown plots and other deficiencies. But in principle these could be

- rectified. The compatibility of more intensive use as allotments with the presence of badgers needs to be considered but subject to adequate foraging space being provided, neither the ecological nor other evidence suggests that there is likely to be a fundamental difficulty in this regard. In principle, the needs of allotment growers and badgers could be accommodated in this area.
23. The Council's and the Quorn Community Gardens Working Group's assessments of the site's public value, based on criteria in PPG17's Companion Guide, conclude that it is of high value. These take account of the potential of the site, and not only its existing condition and owners' intentions. The weight that should be attributed to potential in this case is considered below, but as PPG17 makes clear, potential is a relevant consideration in principle.
24. In the light of all the above, it seems reasonable to place the site in a Low Quality/Medium-High Public Value category. Having regard to the advice in the Companion Guide, albeit it is not specific about gradations of value, this suggests that the site or at least the recreational potential that it offers merits some degree of policy protection so that its value is not permanently lost to the community. In terms of the community's response, the appeal proposal is clearly not supported.
25. The weight that should be given to the recreational potential of the site is subject to dispute, given the statutory declarations by plot owners about their intentions not to cultivate the plots or allow others to do so. Taking account of existing use value and hope value of the land and the terms of the Appellant's option on the site, it has been argued that dismissal of the appeal could not reasonably be expected to lead to resumption of allotment use of the plots that are currently disused. The judgments in *Clyde and Company v Secretary of State for the Environment* [1977] (1 WLR 926) and *Westminster City Council v British Waterways Board* [1985] (1 A.C. 1985-27) were referred to in this regard.
26. However, withdrawal of a site from recreational use as in the current case could be replicated in many other instances. If the reasonable probability test were applied in the way that the Appellant seems to suggest, not only the appeal site but other lands that are needed and valued for recreation could be lost permanently. This would frustrate the implementation of national and local planning policies to ensure adequate provision for recreational facilities.
27. This is not to say that dismissal of the appeal would directly result in any short-term improvement in allotment facilities in Quorn. But over the medium to longer term there is a reasonable probability that it would achieve this desirable result; this would follow from consistent application of national and local planning policies that recreational facilities that are not clearly surplus to requirements should not be lost unless an adequate replacement can be provided. The fact that the Council has no intention of using compulsory purchase powers to acquire the appeal site does not alter this conclusion.
28. As referred to above the Appellant has undertaken to provide a replacement facility at One Ash. In accessibility terms, together with the Flesh Hovel Lane site, it would be reasonably well-placed to serve existing and future residents of Quorn and outlying areas and is within 15 minutes walking distance of the centre of the settlement. On the current evidence of demand, the scale of the proposed replacement provision, which is less than the potential on the appeal site, might not appear sufficient in quantitative terms, but the balance between need and demand would be a matter for the Council in due course. In

principle, the replacement site could provide an opportunity for qualitative improvements in allotment facilities in Quorn, meeting one of the aims of PPG17.

29. I have no doubt that the undertaking has been entered into in good faith by the Appellant but it poses a number of difficulties because it relies on a proposed lease, the terms of which are not agreed by the Council; it offers a relatively short term (about 15 years) with uncertain prospects of renewal, and there is also uncertainty about the detailed suitability of the site, its preparation costs and who would be responsible for them. These and other details may be capable of resolution, but they require negotiation and the Council and/or Quorn Parish Council's agreement to the lease. Taking all of these aspects into account, the undertaking can be afforded very little weight.
30. For the above reasons it is concluded that the appeal proposal would conflict with PPG17 and Policy H/16 xi of the LP by reducing the stock of allotments (albeit largely disused) that are not clearly surplus to requirements, and by failing to secure provision for a suitable replacement facility. So far as emerging national policy is concerned, the current draft NPPF does not indicate any fundamental change in the approach to policy protection for recreational facilities.

Site Suitability and Need for Housing

31. It is common ground that the borough has a shortfall against the five year housing land supply requirement. As at 30 September 2011, the supply within the non-PUA area, the PUA area and the borough as a whole was estimated as 4.21 years, 1.08 years and 2.6 years respectively. As PPS3 advises, in such circumstances planning authorities should consider favourably planning applications for housing having regard to the considerations in the PPS.
32. The Council does not dispute that the appeal site is suitable for housing development in principle, given its location in a central position in a sustainable settlement. Also it is not disputed that the site is deliverable, and the Council has no fundamental concerns about the proposed design and layout, access, landscaping, mitigation provisions for badgers and other elements of the scheme. While it was indicated that the proposal is in conflict with Policy H/16 v in relation to the loss of land of high amenity value, it was clear from the inquiry that this concern arises from the loss of the allotments and that no other significant adverse effect would arise in this regard.
33. The Quorn Community Gardens Working Group has developed a proposal to bring forward an enhanced open space and recreational facility, including allotments, on the site, based on its assessment that this is the best potential location in the settlement. The commitment and professionalism of the group's approach is not doubted. However, the evidence does not indicate that the site is unsuitable in principle for residential development.
34. Local residents' concerns about overlooking, loss of privacy and outlook are understood but the design and layout of the scheme, controlled by suitable planning conditions, should ensure that a reasonable level of residential amenity would be protected. The desire to retain the area as a tranquil green space and a haven for wildlife within the core of the village is understandable but not in itself a compelling reason to protect the site from residential development. Traffic generation and all the other concerns raised have been

taken into account, but were it not for the loss of recreational potential that is entailed, the appeal scheme would satisfy the relevant policies of the LP.

Housing/Recreational Facilities Balance

35. Drawing together the above findings, the shortfall in the housing land supply indicates that the appeal should be considered favourably in accordance with the advice in PPS3. Also the government's objectives and intentions as set out in *Planning for Growth* and the draft NPPF are to increase the supply of housing land. But it is also clear from PPS1, PPS3 and these recent indications by government that much-needed development should be sustainable.
36. The appeal scheme would make a very small contribution to the housing land supply with a net gain of 12 dwellings. This is not a case where dismissal of the appeal would seriously limit opportunities to address the supply shortfall. And even though adoption of the borough's core strategy and any site allocations development plan documents are some way off in the future, there is nothing to indicate that the Council will not seek to address the supply shortfall in the interim period; there are indications that it is already doing so in Quorn.
37. On the balance of the evidence, the recreational facility that would be lost is not clearly surplus to requirements. For the reasons set out above this conclusion is drawn even though the facility, for the most part, is not currently in use and is intended to be withheld from recreational use. Without compensatory provision, it is likely that there would be inadequate allotment facilities for the future in Quorn. There is potential to compensate for the loss of the appeal site by a replacement facility elsewhere but the opportunity at One Ash has not been adequately tested or secured. Balancing all of these considerations, the need for and benefits of the development do not outweigh the loss of the recreational facility.
38. In conclusion on the first issue, rejection of the appeal scheme is justified on the basis of its conflict with LP Policy H/16 xi and the overall balance of national planning policies. It is also consistent with the approach advocated in paragraph 2 of *Planning for Growth* and with draft NPPF, although the finally approved framework may change from the draft. The proposal is contrary to the government's aspirations for sustainable development, in particular to create strong, vibrant communities with accessible leisure facilities that would meet the community's needs and support its health and well being.

Contributions for Provision of Required Infrastructure

39. During the course of the appeal an agreement under S106 of the Act has been executed that provides for financial contributions towards the improvement of infrastructure that is required by the proposed development. The agreement provides for contributions for education and library facilities, sustainable transport, health facilities and the costs of managing and monitoring the agreement. The Council's requirements generally derive from LP Policy ST/3, the County Council's adopted supplementary planning guidance: *Statement of Requirements for Developer Contributions in Leicestershire*, the latest review of which took place in December 2007, and the Borough Council's adopted *S106 Development Contributions Supplementary Planning Document (2007)*.
40. Specific details of the basis for contributions and the methodology for calculating the required sums have been provided and the relevance of the

requirement for specific elements in this case has been assessed. On this evidence I am satisfied that the contributions sought for education, library facilities and managing and monitoring meet the statutory tests for obligations.

41. However, there is insufficient justification for the contributions sought for sustainable transport or health facilities in this case. At the inquiry the County Council withdrew its request for a sustainable transport contribution, and the health contribution was not pursued on behalf of the health providers. Therefore, while the executed agreement overcomes the Council's original concerns on this issue and effectively resolves the second of the putative reasons for refusal of the planning application, I give no weight to the elements of the agreement referred to above that are not justified.

Other Matters and Conclusion

42. All of the other matters raised through evidence and in the representations have been taken into account. However they do not alter the factors leading to the conclusion set out above in respect of the advantages and disadvantages of the proposal. Accordingly, the appeal is dismissed.

Mary Travers

INSPECTOR

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Mr S Gasztowicz, Queen's Council	Instructed by Head of Legal Services, Charnwood Borough Council, Southfields, Loughborough LE11 2TX
He called Mr G Smith DipTP MRTPI	Principal Planning Officer, Charnwood Borough Council

FOR THE APPELLANT:

Mr J Cahill, Queen's Council	Instructed by Mr J Jowitt, PJ Planning, Heath House, 125 Heath Lane, Stourbridge, W Midlands DY8 1BB
He called Mr J Berry BA(Hons), DipLA, AIEMA, CMLI M.Arbor.A	Tyler Grange LLP
Mr J Jowitt BSc(Hons), DipTP MRTPI	PJ Planning

FOR LEICESTERSHIRE COUNTY COUNCIL:

Mr J Prendergast	Leicestershire County Council, County Hall, Glenfield, Leicester, LE3 8TE
He called Mr A Tyrer	Development Contributions Officer

INTERESTED PERSONS:

Councillor J Orr	Quorn Parish Council
Mr P Child	Plot owner on the appeal site and local resident
Mrs E Phillips	Local resident
Mrs F Parker	Local resident
Mrs J Holloway	Local resident
Mr D Cawdell	Local resident

DOCUMENTS

Documents submitted at the Inquiry by the Appellant:

Doc A1: RSPCA wildlife note "Living with Badgers".

Doc A2: Case Law report; Westminster City Council v British Waterways Board 1985.

Doc A3: Case Law report Millgate Development Ltd, R (on the application of) v Wokingham Borough Council.

Doc A4: Tyler Grange report dated 22nd September 2011 entitled 'Review of New Allotment Provision on Vacant Land near One Ash, Quorn.

Doc A5: Application Acknowledgement Letter dated 18th January 2011.

Doc A6: List of Statutory Declarations.

Doc A7: Charnwood Borough Housing Supply Estimate 30th September 2011.

Doc A8: Copy of e-mail correspondence between Bird Wilford and Sale and Quorn Parish Council to 6th March 2008.

Doc A9: Letter from Charnwood Borough Council to Bird Wilford and Sale dated 10th October 2011.

Doc A10: E-mail response from Bird Wilford and Sale to Charnwood Borough Council dated 10th October 2011.

Doc A11: Bundle of documents headed 'Suitability of Allotment Proposal at One Ash'.

Doc A12: E-mail dated 5 October 2011 from Bird Wilford and Sale and Borough Council response letter dated 11 October 2011 re the S106 obligations.

Doc A13: Drawing No 2727-20 Revision B showing the allotment plots at the appeal site.

Doc A14: E-mail dated 13 October 2011 from Bird Wilford and Sale re the chronology of the One Ash offer.

Documents submitted at the Inquiry by Charnwood Borough Council

Doc C1: Memorandum from Colin Bailey, Green Spaces Officer, dated 11 October 2011 in respect of proposed replacement allotment site at One Ash, Quorn.

Doc C2: E-mail correspondence dated 11 October 2011 from third parties sent to the Borough Council regarding flooding issues at One Ash, Quorn.

Doc C3: Extract from the Borough Council's flood map.

Doc C4: Aerial photograph of the appeal site dated 2006.

Doc C5: Extract from Megarry and Wade: *The Law of Real Property*, Sweet and Maxwell Seventh Edition 2008.

Doc C6: Copy of *Jelson Ltd v Derby City Council* [2000] JPL 2003.

Doc C7: Copy of *Courtney & Fairbairn Ltd v Tolaini Bros (Hotels) Ltd* [1975] I.W.L.R. 297.

Doc C8: Aerial photograph showing current and proposed allotment sites in Quorn including the appeal site, Flesh Hovel Lane and One Ash.

Doc C9: Extract from the Borough of Charnwood Local Plan (2004) depicting saved policies EV18: Open Spaces of Special Character and EV22: Sites of Regional, County and District Level Ecological Importance in respect of the appeal site and adjacent land known as Tom Long's Meadow.

Doc C10: Plan showing HLAA sites and flood zones.