



Appeal Decision

Inquiry held on 18 and 19 March 2008

Site visit made on 19 March 2008

by **John L Gray** DipArch MSc Registered
Architect

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

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Decision date:
25 April 2008

Appeal Ref. APP/Y2430/A/07/2057130

Land off Loughborough Road, Asfordby, Leicestershire

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Jelson Limited against the decision of Melton Borough Council.
- The application, ref. 07/00745/FUL, dated 26 June 2007, was refused by the Council following a resolution made on 25 September 2007.
- The development proposed is the erection of 66 dwellings with associated highway infrastructure, landscaping and open space.

Clarification

1. The number of dwellings was reduced by one, to 65, by the amended layout shown on drawing no. 71446/03/K, dated 19 February 2008. It is agreed in the Statement of Common Ground that this is the layout on which the appeal decision should be based. It facilitates the protection of trees, subject also to conditions, should the appeal be allowed. The Council had also agreed, before the start of the inquiry, that the reasons for refusal relating to archaeology and drainage infrastructure had been overcome or could be resolved by way of planning conditions. At the inquiry itself, the Council said that it would be content with the proposed proportion of 35% affordable housing (23 units).
2. An executed section 106 obligation was submitted at the inquiry. Amongst other things, it secures contributions towards the costs of implementing an extension of the 30mph speed limit on Loughborough Road, introducing parking restrictions on that road and improving existing bus stops in the vicinity of the appeal site.

Decision

3. I allow the appeal and grant planning permission for the erection of 65 dwellings with associated highway infrastructure, landscaping and open space on land off Loughborough Road, Asfordby, Leicestershire, in accordance with the terms of the application, ref. 07/00745/FUL, dated 26 June 2007, and drawings nos. 71446.03.K, 04, 05.A, 10-13, 14.C, 15-17, 18.A and 20-23 submitted with it and thereafter, subject to the conditions set out in Annex A to this decision.

Main issue

4. The main issue revolves around housing provision in the Borough – the rate of recent housing provision, whether there exists a 5-year supply of deliverable sites for housing, whether the appeal site is a suitable one for housing in terms of sustainability and impact on its surroundings, and whether the proposal is a satisfactory one in terms of paragraph 69 of PPS3 and other relevant policies.

Reasons

Policy background

5. Extant and emerging policy enable differing quantitative assessments of whether recent housing provision has been adequate and whether there is sufficient housing land available for the future.
6. The most up-to-date adopted housing requirement figures come from RSS8, which seeks 3,150 dwellings annually in Leicestershire, Leicester and Rutland in the period 2001-2021. No distribution within Leicestershire is given in RSS8. For that, one can only go to the Structure Plan, adopted only a few weeks earlier but covering the period 1996-2016. The overall requirement, however, is exactly the same; in Melton, the 4,200 requirement over the plan period equates to 210 annually.
7. The emerging RSS moves Melton into the Leicester & Leicestershire Housing Market Area (HMA) and seeks the provision of 160 dwellings annually in the period to 2026. Whether that remains the figure when Proposed Changes are published, or when the RSS is adopted, may be considered open to question. The Panel Report identifies two particular areas which could increase the figure – amendment to take account of the 2004 household projections and a shortfall arising from the erroneous inclusion in the overall total of an element for growth in Northamptonshire which should have been kept separate. The Report does not suggest amended figures; it recommends that the local planning authorities in each HMA should agree the distribution of housing with the Assembly. Also, one may assume that, within the Leicester & Leicestershire HMA, development will still be focussed on Leicester itself, thus probably accounting for the bulk of whatever increase might emerge. All of that said, I consider that the annual requirement of 160 for Melton is very likely to increase, even if it might not be by very much.

Recent housing provision

8. Housing completions over the first 6 years of the RSS period, to 31 March 2007, are 926. That is much less than sought by the adopted Development Plan but almost exactly what would be necessary if the figure of 160 were to emerge unscathed from draft RSS8's progress to adoption. A further 101 dwellings were completed in the 8 months to 1 December 2007, which suggests a continuation of the same rate. It being April 2008 as I write this, the information helps me to speculate that completions to 31 March 2008 are very likely to have amounted to around 1,080.
9. If one works to the emerging RSS, then completions over the first 6 years have been only 34 short of the requirement (say about 40 short at 31 March 2008). The number needed over the next 5 years, however it were calculated, would be little more than the plan requirement of 800 (160 x 5).
10. If one works to the adopted Development Plan, then completions should have amounted to 1,260 (210 x 6) instead of 926. That gives a shortfall of 334, which will have increased to around 390 at 31 March 2008. At this relatively early stage in the plan period, the most obvious way to seek to recoup that is evenly over the remaining years. The total requirement is 3,120 (4,200 original requirement – 1,080 completions = 3,120), giving an annual requirement of 240 (3,120 ÷ 13 remaining years) and a 5-year requirement, for the purposes of assessing the availability of sites, of 1,200.

Housing land availability

11. The Council assess availability (at 1 December 2007) at 8.5 years based on the emerging RSS, 6.5 years based on the extant Development Plan. The appellant disputes both, saying that one must base the calculation on extant Development Plan requirements and that a number of the sites identified by the Council are not, in fact, available.
12. The Council estimates the 5-year supply at 1,342, comprising 20 from one remaining allocated sites, 611 from large sites (10+ dwellings), 351 from small sites and 375 from specific unallocated brownfield sites. The appellant disputes the allocation, broadly agrees the figure for large sites (coming to a total of 616 at 1 February 2008), disputes that the allowance for small sites should be so large and disagrees on all but one of the nine identified brownfield sites.
13. The sole allocated site is subject to a potential access ransom strip – but it is owned by the appellant and is presumably open to negotiation. PPS3 says that land must be available ‘now’ (para. 54), which, strictly speaking, this site is not. Even so, given that the only impediment is in the hands of the appellant, I take the view that it would be unreasonable to exclude the site from a 5-year land supply calculation.
14. Planning permissions had already been granted by 1 December 2007 which would give a total of 351 dwellings from small sites. If implementation of those permissions were spread over 5 years, the annual average of 70 dwellings would be very little more than the corresponding average number of completions, 64, over the last 10 years. The appellant says that permissions granted on small sites stood at 264 on 31 March 2007 and suggests that a 10% discount, to 238, would be an appropriately robust estimate for the number of deliverable sites over 5 years, given the unpredictability and unreliability of implementation. The advice in PPS3 suggests to me that it is nowadays inappropriate simply to rely on past trends in estimating provision from this source over the next 5 years. I consider that the suggested 10% discount is reasonable but that it could be applied to the more up-to-date figure for permissions granted, giving a total of 316.
15. Advice on the inclusion in the 5-year land supply of specific but unallocated brownfield sites is that they should meet the tests of deliverability in PPS3 (para. 54) – they should not only have been identified by the local planning authority but should have made ‘sufficient progress through the planning process’ at the time of assessment to be considered deliverable. The War Memorial Hospital site qualifies. In my opinion, the Asfordby Storage and Haulage site qualifies, save for one thing. It is the only significant existing employment site in Asfordby and was assessed as of average quality in the Employment Land Study carried out for the Council, which also recommended that the then extant policy of safeguarding existing employment land should be carried into the LDF. Thus, to suggest that it is a deliverable site for housing may be thought to go against the thrust of the Council’s employment policy and the guidance available to it on that subject. On the evidence, the other identified sites have not made sufficient progress. Applications may be expected – but that is not to say that they will materialise, or do so in an acceptable form. I am therefore disinclined to allow more than the 108 from the War Memorial Hospital site from this source.

16. Accordingly, I estimate that the 5-year land supply cannot amount to more than 1,055 dwellings – 20 from the one allocated site, 611 from permissions granted on large sites, 316 from small sites and 108 from unallocated brownfield sites. That represents about a 6.6-year supply on the basis of the draft RSS. If, however, its annual figure of 160 were to rise to, say, 180, then the supply would reduce to less than 5.9 years. And, crucially in my view, 1,055 represents only a 4.4 year supply in terms of the extant Development Plan, having adjusted the figures to recoup the shortfall in provision to date.
17. Very simply, therefore, I conclude that there is not a 5-year supply of deliverable housing land in terms of the extant Development Plan. There is more than a 5-year supply on the basis of the emerging RSS, before any Proposed Changes to it have been published. However, I consider that that is vulnerable to changes that may be expected to raise the annual requirement, even if there cannot be any certainty as to what any increase might be.

The appeal site

18. The site is at the very western edge of Asfordby, outside the existing village envelope. However, it has development on its east and south-east sides, and part of its south-west side, the northern boundary would continue roughly the line established by the school and existing housing to the east and the configuration of roads to the north and west would mean no precedent could be set for further expansion in these directions.
19. The defined settlement boundary has been influenced primarily by housing need in the last two Local Plans. Visual impact was a consequent consideration in the first of those and was not raised at all by the Inspector for the second. It is true that development of the site would represent an extension of the built-up area into what is presently countryside but I consider that the resultant village edge would be defensible and, once established, would appear logical. Change itself is not necessarily harmful.
20. Other factors weigh on the same side of the balance. The suggestion that the development would not be integrated with the existing settlement is one that could be raised against any new development not taking access through existing housing. It cannot carry any great weight. Nor can the suggestion that proximity to the bypass would encourage residents not to pass through the village or use its facilities. The former might be considered an advantage (because additional traffic might stay out of the village) while, on the latter, I cannot imagine that residents on this site would be any more likely than others to forego what is on offer in the village in favour of alternatives further afield. Also, if that criticism did apply to this proposal, then it must almost equally have applied to the housing recently built at the east end of the village.
21. There are reasonable bus services to and from Melton Mowbray and Leicester, the nearest focuses for development, as well as other towns. Asfordby Business Park is at least as accessible from Asfordby as from many parts of Melton Mowbray. The school would not be put under pressure by the amount of housing proposed. Indeed, it might be argued that the additional population could help to maintain the existing services and facilities in the village. All told, while Asfordby must, in principle, be a less sustainable location than Melton Mowbray (which, likewise, must be less a sustainable location than Leicester), what the village offers means that it cannot be considered unsustainable.

22. In short, I consider that the site is an acceptably sustainable location for housing and that appropriate development on it would be acceptable rounding off at this end of the village.

The appeal scheme

23. The Council has no objections to the details of the layout and design that cannot be controlled by way of conditions attached to planning permission. It originally sought a higher proportion of affordable housing than the 35% it expressed itself content with at the inquiry. The evidence on the matter is mixed. District-wide analysis suggests that the need in and around Asfordby is higher than in any part of the District except Melton Mowbray itself. On the other hand, the Housing Needs Survey for the village itself concluded that there was a need for just 14 affordable dwellings, only about 22% of the 65 dwellings proposed here. While there appears to be a significant District-wide need for affordable housing, the proportion in adopted policy is 35% and there is no progress on any replacement policy that could justify a higher amount.
24. The Parish Council raised a number of concerns. I have dealt above with those relating to the village envelope and visual intrusion. The inclusion of two three-storey buildings cannot be objectionable purely because there are no others in the village; I find both to be appropriate in the context of the development itself and in terms of the approach to the village. Nor do I consider the prospect of overlooking the school grounds from the three-storey building unacceptable in principle; it does not seem to me that the objection was based on any cogent need for privacy or security. The highway authority raises no traffic objection and the section 106 obligation secures contributions towards relocating the 30mph limit and introducing parking restrictions. I understand why the Parish Council might be concerned about maintaining the play facilities at Glendon Close but I imagine that funding for its responsibilities would increase with an increase in the total number of dwellings.
25. It was clear at my site inspection following the inquiry that the existing boundary hedge on Loughborough Road would seriously impede visibility to the south-east from the proposed access junction. In terms of the existing rural approach to the village, the removal of a substantial length of the hedge would be a significant visual loss. I do not consider this a serious objection, however; the entrance to the village would simply be at a point nearer to the A6006 and views of the development itself would not be at all unacceptable.

Conditions

26. A schedule of conditions agreed by the Council and the appellant was submitted to the inquiry. I consider the suggestions to be reasonable and necessary, with three exceptions – there is no evidence to support a requirement for an ecological survey or a watching brief for protected species and I shall identify the drawing numbers in the terms of the permission itself. I have, however, modified or amalgamated some suggestions in the interests of clarity or precision or in line with the advice in Circular 11/95.

Conclusion

27. The sole remaining reason for refusal cites Structure Plan Strategic Policy 8, which has not been saved, and Local Plan Policies OS2 and C8, of which only the former, dealing with development in the countryside, has been saved. The proposal runs contrary to Policy OS2 in that the site is beyond Asfordby's

defined village envelope. In practice, I consider that the more recent and more up-to-date RSS8 and PPS3 are the policy documents to which most weight should be given in determining this appeal. In that context, there does not exist a 5-year supply of available housing land in Melton Borough and, as a result, the appeal scheme, which I conclude to be in an acceptably sustainable location and of an appropriate design, may be permitted.

28. The emerging RSS suggests that the housing requirement in Melton may be significantly lower than under the extant RSS8. However, while the Panel has reported, Proposed Changes have yet to be published and there is a clear indication that housing figures will rise, even if by how much cannot be known. There exists a more than a 6-year supply of housing land in the context of the emerging RSS but that is potentially vulnerable to an increased requirement and there can be no certainty about what will finally emerge.
29. I therefore allow the appeal subject, broadly, to the conditions suggested by the Council and agreed by the appellant.

John L Gray

Inspector

ANNEX A : SCHEDULE OF CONDITIONS

1. The development hereby permitted shall begin not later than three years from the date of this decision.
2. Development shall not begin until samples 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.
3. Development shall not begin until full details of both hard and soft landscape works have been submitted to and approved in writing by the local planning authority. These details shall include proposed finished levels, means of enclosure, car parking layouts, other vehicle and pedestrian access and circulation areas, hard surfacing materials, street lighting, the identification of trees and hedgerows to be retained, planting plans and schedules of plants, noting species, plant sizes and proposed numbers/densities. All hard and soft landscape works shall be carried out in accordance with the approved details and to a programme first agreed in writing with the local planning authority.
4. The landscaping scheme shall include details of a mechanism to prevent vehicles parking within the landscaped area between plots 25-28 and 31-36.
5. Development shall not begin until all trees and hedgerows to be retained have been securely fenced off in accordance with details first submitted to and approved in writing by the local planning authority. There shall be no alteration to ground levels, no compaction of soil and no storing of materials within those fenced areas. Any service trenches within the fenced areas shall be dug and backfilled by hand and any root with a diameter greater than 50mm shall be left unsevered.
6. Development shall not begin until details of the junction between the proposed access road and Loughborough Road have been submitted to and approved in writing by the local planning authority. These details shall include visibility splays of 4.5m x 90m which shall thereafter be permanently maintained with no planting or other obstruction within them higher than 0.6m. No dwelling shall be occupied until the junction has been constructed in accordance with the approved details.
7. All existing vehicular accesses to the site shall be permanently closed within one month of the new access junction being brought into use. Existing vehicular crossings shall be removed in accordance with details first submitted to and approved in writing by the local planning authority.
8. No dwelling shall be occupied until the car parking provision for it and the access to it have been laid out in accordance with the approved plans. The parking and garaging spaces so provided shall remain permanently available for that purpose.
9. Shared private drives shall be constructed in accordance with details first submitted to and approved in writing by the local planning authority. These details shall include a minimum width of 4.25m for the first 5.0m beyond the highway boundary.
10. Individual vehicular accesses shall be provided with 2.0m x 2.0m visibility splays which shall thereafter be permanently maintained with no planting or other obstruction within them higher than 0.6m.

11. Garage doors shall be set back from the highway boundary a minimum distance of 5.0m for sliding or roller-shutter doors, 5.6m for up-and-over doors and 6.0m for doors opening outwards.
12. Development shall not begin until the applicant, or its agents or successors in title, has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation which has first been submitted to and approved in writing by the local planning authority.
13. Development shall not begin until full details of works for the disposal of foul and surface water drainage have been submitted to and approved in writing by the local planning authority. No dwelling shall be occupied until the works have been completed in accordance with the approved details.
14. Development shall not begin until a scheme for the provision of affordable housing as part of the development has been submitted to and approved in writing by the local planning authority. The scheme shall secure 23 affordable dwellings and shall provide details of their type, their location on the site, the timing of their construction, the arrangements to ensure that they are affordable for both first and subsequent occupiers, the occupancy criteria to be used for determining the identity of occupiers and the means by which such occupancy criteria shall be enforced. The affordable housing shall be provided in accordance with the approved scheme.

ANNEX B : APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY

Trevor Ivory	Solicitor, Eversheds, instructed by the Head of Planning, Melton Borough Council.
He called	
David Pendle BA(Hons) BTP MRTPI	Principal Policy Officer, Melton Borough Council.

FOR THE APPELLANT

Christopher Lockhart-Mummery QC	instructed by GVA Grimley Ltd.
He called	
Robert Thorley BA(Hons) DipTP MRTPI	Principal Planner, GVA Grimley Ltd, Birmingham.

INTERESTED PERSONS

Danny Bailey	Asfordby Parish Council, Parish Hall, 24 Main Street, Asfordby, Melton Mowbray, LE14 3SA.
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ANNEX C : DOCUMENTS

Core Documents submitted at the inquiry

- CD1 Regional Spatial Strategy for the East Midlands 2005 (RSS8).
- CD2 Leicestershire, Leicester and Rutland Structure Plan 2005.
- CD3 Melton Local Plan 1991-2006.
- CD4 Structure Plan Saved Policies Direction.
- CD20 Strategic Housing Land Availability Assessments: Practice Guidance.
- CD21 Demonstrating a 5 Year Supply of Deliverable Sites, DCLG.
- CD22 Manual for Streets.
- CD23 Strategic Housing Land Availability Assessment and Development Plan Documentation Preparation, Planning Advisory Service.
- CD30 Melton Annual Monitoring Report 2005.
- CD31 Melton Annual Monitoring Report 2006.
- CD32 Melton Housing Needs Survey 2004.
- CD33 Melton Housing Needs Survey Update 2006.
- CD34 Melton Employment Land Study, 2006.
- CD35 Melton Urban Housing Potential Study, 2003.
- CD36 Extract from 1988 Melton District Local Plan Inspector's Report.
- CD41 Draft East Midlands Regional Plan (draft RSS).
- CD42 East Midlands Regional Plan: Report of the Panel, November 2007.
- CD43 Melton Core Strategy (Preferred Options), January 2008.
- CD44 Melton Affordable Housing SPD: draft consultation, September 2007.
- CD45 Letter dated 8/6/06 from GVA Grimley to Melton BC.
- CD50 Planning application forms, certificates and covering letter.
- CD51 Site Layout, revision K.
- CD52 Other application plans.
- CD53 Planning Statement.
- CD54 Design & Access Statement.
- CD55 Transport Assessment.
- CD56 Flood Risk Assessment.
- CD57 Archaeological and Geophysical Surveys.
- CD58 Arboricultural Survey.

Other Inquiry Documents

- 1 Statement of Common Ground.
- 2 David Pendle's proof of evidence.
- 3 Appendices to David Pendle's proof of evidence:
 - 1. Local Plan Saved Policies;
 - 2. Melton Local Plan extracts;
 - 3. CD11 extract;
 - 4. CD33 extract;
 - 5. Melton Annual Monitoring Report 2007;
 - 6. East Midlands Regional Assembly, extract from Joint Board papers;
 - 7. Email dated 23/1/08 re Saved Structure Plan Policies;
 - 8. CD21 extract;

9. CD23 extract;
 10. Urban Housing Potential Study, Final Report, September 2006;
 11. Housing Audit, CABE, 2007;
 12. Bus timetables;
 13. Tree preservation order;
 14. CD1 extract;
 15. CD2 extract;
 16. CD41 extract;
 17. CD43 extract;
 18. CD36 extract;
 19. Structure Plan Examination in Public extract;
 20. CD42 extract;
 21. Melton Statement of Community Involvement, October 2006;
 22. Housing land availability assessment at 1 December 2007;
 23. Melton Local Development Scheme, First Revision, June 2007;
 24. Committee report on appeal application;
 25. Letter dated 12/2/08 re. archaeology;
 26. CD22 extract;
 27. Suggested conditions (superseded by Document 13).
- 4 David Pendle's notes for the inquiry on specific identified housing sites.
 - 5 Robert Thorley's proof of evidence.
 - 6 Appendices to Robert Thorley's proof of evidence:
 1. Statement by Yvette Cooper, 23/7/07;
 2. Inspector's report on Appeals A/04/1163821 & A/05/1185896;
 3. Secretary of State's decisions on appeals A/04/1170984, A/06/1199382, A/06/1199440 & A/06/1199383.
 4. Brownfield site analysis;
 5. Leicestershire, Leicester & Rutland Residential Land Availability Monitoring Report, year to 31 March 2007;
 6. Photographs of the appeal site;
 7. Secretary of State's decision on appeal A/07/2035178;
 8. Press release from UK Coal re. Asfordby Business Park.
 - 7 Danny Bailey's proof of evidence.
 - 8 Appendices to Danny Bailey's proof of evidence:
 1. The Quality Parish and Town Council Scheme;
 2. Melton Local Plan, extract;
 3. Village envelope consultation responses and recommendations;
 4. Housing Needs Survey Report;
 5. Risk Assessment Report – Glendon Close Play Area.
 - 9 The application plans – drawings nos. 71446/03E (also 03A and 03J, now all superseded by 03K), 04, 05A, 10-13, 14C, 15-17, 18A and 20-23.
 - 10 Letter of notification of inquiry and distribution list, plus single response thereto.
 - 11 Report and Minutes of Council Meeting of 12 December 2007 re. Core Strategy (Preferred Options).
 - 12 Section 106 obligation.
 - 13 Amended list of suggested conditions.