



Appeal Decision

Inquiry opened on 24 May 2011

Site visit made on 27 May 2011

by M T O'Rourke BA (Hons) DipTP MRTPI

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

Decision date: 24 August 2011

Appeal Ref: APP/A2470/A/10/2143475

Land west of Uppingham Road, Oakham LE15 6JD

- 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 outline planning permission.
 - The appeal is made by Jeakins Weir Ltd against Rutland Council.
 - The application Ref OUT/2010/0954, is dated 25 August 2010.
 - The development is proposed housing development and associated works including provision of access onto Uppingham Road, Oakham.
 - The inquiry sat for 5 days, on 24 to 27 May and on 11 July.
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Decision

1. The appeal is allowed and planning permission is granted for proposed housing development and associated works including provision of access onto Uppingham Road, Oakham at land west of Uppingham Road, Oakham LE15 6JD in accordance with the terms of the application, Ref OUT/2010/0954, dated 25 August 2010, subject to the conditions set out in the schedule at Annex B.

Procedural Matters

2. The application is in outline with all matters other than access reserved for future consideration. Originally the scheme was described as being for 112 houses but this was subsequently reduced to 96 units at 30 dwellings per hectare and proposed as a mix of 2 to 5 bed houses.
3. The examination hearings into the Rutland Core Strategy were held between 21 and 25 March 2011. On opening the inquiry, the Council asked that it be kept open to allow consideration of the Development Plan Inspector's report. This was not resisted by the applicant or by those acting for the Oakham Action Group (OAG). Having completed all the evidence, the inquiry was adjourned on 27 May. The Planning Inspectorate, the applicant and OAG were informed by email on 8 June that the Core Strategy Inspector's Report dated 26 May 2011 was available to view on the Council's website. Closing submissions were heard and the inquiry formally closed on 11 July.
4. Prior to the close of the inquiry a legal agreement under Section 106 (S106) of the 1990 Act, as amended, was completed covering the provision of 33.5% affordable housing and on site open space area(s) and their maintenance and contributions towards off site open space, health care facilities, policing, the fire service, civic amenity facilities, library and museum facilities, children's and young people's service primary and secondary provision, bus stop and layby

improvements, and a cycleway. I have had regard to the Agreement in my determination of the appeal.

5. The consultation draft of the National Planning Policy Framework (NPPF) was published on 25 July 2011 and the main parties were contacted by The Planning Inspectorate for their views on whether it had any bearing on this appeal. I have had regard to the responses received in my conclusions.

Main Issue

6. This is a failure to determine case. The Council would have refused the development and 8 putative reasons were originally agreed by the committee. Subsequently following the receipt of further advice, the Council resolved to withdraw its objection on landscape grounds, although this objection was still maintained at the inquiry by OAG.
7. The Council's remaining objections relate to the site's location in the countryside, beyond the planned limits to development for Oakham identified in the Rutland Local Plan 2001, outside areas allocated for development, and in a defined Area of Particularly Attractive Countryside (APAC). Further its release for housing would lead to an excess of housing land being available, undermining the spatial vision and strategic objectives of the emerging Core Strategy, and was unnecessary as a 5 year housing land supply could be demonstrated. In addition there were reasons relating to the lack of developers' contributions towards necessary infrastructure and the need for pre-determination archaeology investigations. However it was established at the inquiry that the latter matters were capable of resolution by the completion of a Section 106 Agreement and the imposition of appropriate conditions.
8. The main issue in this case is therefore whether the appeal scheme would constitute acceptable development in the countryside and if not whether there are any material considerations that would outweigh any harm that would arise as a result of the development.

Reasons

Adopted and emerging policy

9. The development plan comprises the East Midlands Regional Plan (EMRP) (2009) and the Rutland Local Plan 1991 to 2006, adopted in July 2001 (LP). Local Plan policies relevant to the consideration of this appeal have been saved by direction of the Secretary of State and Section 38(6) applies until they are replaced by the adoption of the Development Plan Documents (DPDs) in the Rutland Local Development Framework. At the time of the inquiry the Rutland Core Strategy Submission DPD (CS) was at an advanced stage in the process towards adoption, with the Inspector finding the submitted CS to be sound, subject to recommended changes. In its response on the consultation draft NPPF, the Council confirmed that the CS was adopted on 11 July 2011 and its policies carry the full force of Section 38(6) of the Act.
10. The LP made provision for housing in accord with the then Leicestershire Replacement Structure Plan 1994 for the period 1991 to 2006. Through policies SE1 and HO3 it identified the market towns of Oakham, along with Uppingham, as areas for future growth. In accord with long standing national policy, now set out in Planning Policy Statement 7 on Sustainable Development in Rural Areas (PPS7), it also strictly controls new house building in the

countryside, away from established settlements or from areas allocated for housing. The site of some 6 ha (gross) of agricultural land lies on the western side of Uppingham Road on the south side of Oakham and around 800m from the town centre. It is outside the planned limits of development of Oakham, as defined in policy EN1 and on the LP Proposals Map, and therefore is in the countryside where LP policy EN26 indicates permission will only be granted for particular types of development, none of which apply here, and provided that 10 listed criteria A to J relating to impact are met.

11. The site is also in a locally defined APAC where LP policy EN28 resists development unless it complies with policy EN26 and '*does not adversely affect the special character and appearance of the landscape*'. That designation derives from the then Structure Plan, based on a survey undertaken in 1990 and covering much of the southern and central parts of the County. The applicant was critical of this local landscape designation as incompatible with the advice in PPS7. However policy EN28 is not replaced by the CS and the APAC designation is intended to be reviewed as part of the later work on the Site Allocations and Development Control Policies DPD. That DPD is not expected to be adopted until late 2013 at the earliest, and until then saved policy EN28 remains part of the development plan. Thus the appeal proposal does not comply with the saved policies of the extant LP.
12. Nor is there any support in the now adopted CS for the release of this site for substantial housing development even though Oakham, along with Uppingham, are identified as continuing to be the main centres for housing. Oakham is within the Peterborough Housing Market Area of the EMRP where reference is made to consolidating its role and having an important part to play in meeting the area's housing needs. The CS identifies Oakham as a key focus for new development and the most sustainable location for substantial housing growth, to provide for a significant portion of the EMRP housing requirement to 2026. Policy CS8 provides for 70% of new housing (about 1,350 new dwellings to be located in Oakham and Uppingham of which 80% will be in Oakham (about 1,100 dwellings or 69 per annum).
13. The strategic site search process which underpinned the CS was informed by a Landscape Sensitivity and Capacity Study and a Directions of Growth appraisal that assessed various potential directions for growth around the town. The latter appraisal rejected a number of potential candidates for allocation as strategic housing sites including an area of about 10ha to the south east of the town of which the appeal site forms part. The north west of Oakham was identified as the most sustainable direction for future growth and policy CS5 provides for a sustainable mixed use urban extension of about 1000 new homes to be developed to the NW of the town. Paragraph 2.27 provides for the remaining development (of about 100 dwellings) on other sites within the town to be identified through the Site Allocations and Development Control Policies DPD which will also consider any boundary modifications.
14. The appeal site remains beyond the development limits of the town and the CS continues to impose strict control over greenfield development in the countryside. It was accepted by the applicant that on the face of it the appeal proposal conflicts with boundary specific policies in the extant LP and in the now adopted CS policy for the town.
15. However it was argued that this technical breach of policy had to be seen, and assessed, in the context of a lack of a 5 year housing land supply. In such

circumstances paragraph 71 of PPS3 on Housing advises that planning applications for housing should be considered favourably, having regard to the policies in the PPS including the considerations in paragraph 69. This approach is consistent with the recent Ministerial statement on Planning for Growth which expects local planning authorities to facilitate housing and *'take into account the need to maintain a flexible and responsive supply of land'*.

The 5 year housing land supply

16. Considerable time was spent at the inquiry in examining the components of land supply and the potential for various sites to come forward within the next 5 years. The housing requirement is set by the EMRP and CS policy CS9 provides for 3,000 new dwellings in Rutland over the period 2006/2026 (150 dwellings per annum). Completions for the period 2006/2010 are set out in the Annual Monitoring Report 2009/10 and reasonable reliance can be placed on the Council's figure for completions in 2010/2011, taken from NHBC and Building Control records. There is a 133 dwellings shortfall on completions 2006/2011 making a residual requirement for 2,383 additional new dwellings in Rutland in the period to 2026.
17. The shortfall accounts for nearly a year's supply and there were differing views on how soon it should be made up; whether in the next 5 years (described as the Sedgefield approach) or spread over the remaining plan period (the residual approach). Both are mentioned in good practice examples in the DCLG May 2009 document Land Supply Assessment Checks and past appeal decisions do not indicate that Inspectors have particularly favoured one approach over the other. The method and parameters chosen have to respond to the needs and requirements of the area and it was agreed at the inquiry that there was no one right answer.
18. The CS has been through its examination, the spatial strategy for the county found to be sound and it has been adopted. Whilst there has been some slippage, the Council is progressing work on its Site Allocations and Development Control Policies DPD which will include a comparative analysis of sites to contribute towards the 30% of new housing that policy CS9 intends to be located outside Oakham and Uppingham. The 2010 Strategic Housing Land Availability Assessment (SHLAA) identified a number of potential housing sites within Rutland for an estimated 4,929 dwellings, considerably in excess of the CS requirement. There is nothing to indicate that the shortfall could not be made up over the plan period. There is reasonable justification for the Council's adoption of the residual approach in this case which results in a requirement for 795 new dwellings (159 X 5) for the 5 year period 2011/2016.
19. To contribute towards the 5 year housing land supply, PPS3 requires sites to be deliverable, which means available now, suitable now and with a reasonable prospect that housing will be delivered within 5 years. During the inquiry agreement was reached between the main parties on the deliverability and likely contribution from all but two of the sites identified as either commitments, allocations without permission or SHLAA sites.
20. The Ashwell depot has an outstanding 2006 Council resolution to grant permission for 47 dwellings. The Council as landowner is now proposing to retain part of the depot and promote a reduced scheme of 35 units. There is Housing Association interest which is subject to a funding bid and if unsuccessful the evidence was that the Council would seek to market the site

on the open market. Although it has now been established that the site is in Langham and not Ashwell parish, it remains the case that it is in the countryside outside of any village where the CS continues the LP policy of restraint. However in determining any new application, the planning history of the site will be a relevant material consideration including the reasons given for the Secretary of State's decision at that time not to call in the application. I find that, in PPS3 terms, the depot site is likely to come forward for housing development in the short term and can be considered to be suitable, available and achievable such as to contribute to the 5 year housing land supply.

21. There were major differences at the inquiry between the parties on the number of units anticipated to be delivered at NW Oakham with the applicant forecasting a slow start with only 125 units completed by 2016. The Council, however, relied upon December 2010 information from Hawksmead, the developer, which indicated submission of the first reserved matters application once outline permission was granted with a view to delivery of the first 25 dwellings by Autumn 2012, followed by 75 dwellings per annum thereafter.
22. During the recess a further letter from Hawksmead confirmed that the S106 agreement was in an engrossed form and that the issue of the outline planning permission would follow shortly. There are a significant number of direct or indirect pre-commencement conditions that will need to be discharged, however the developer expressed confidence in the early submission and timely progress of the first reserved matters application to achieve a January 2012 start on site. The updated delivery programme indicates a slow build up but with 125 dwellings anticipated to be built in the year 2015/2016 with the delivery of 377 units by March 2016. The Council's letter on the consultation draft NPPF confirmed that the outline permission had been granted and the reserved matters application for Phase One was expected shortly.
23. Evidence from the applicant was that no other site in Rutland has achieved similar rates of delivery to those now proposed by Hawksmead. However by reason of the size of the site, the substantial investment already in the overall site infrastructure, and the likelihood of there being one or more development partners, it is reasonable to assume that delivery rates on NW Oakham will be significantly greater than those achieved historically in Rutland. The CS Inspector concluded that there was a realistic prospect of the site delivering some 75 dwellings per year. In terms of the 5 year supply NW Oakham will be a major contributor and unlike the applicant's pessimistic view which suggests that it would only deliver 50 dwellings per annum in the last two years 2014/2016, the Council's forecast of 250 units from the site by 2016 seems to me to strike a reasonable balance whilst being realistic that there could be some slippage in the development programme and a later start on site.
24. OAG's calculations, provided on the last day of the inquiry and using Hawksmead's higher estimate of yield from NW Oakham, showed a very small shortfall of 5 units on the 5 year housing land supply. However, on the evidence before me, I have doubts as to whether such a high yield is realistic and likely to be delivered in the early years. On the applicant's figures there is only a 3.3 years supply. In the report on the CS, the Inspector concluded that given a reasonable prospect of NW Oakham delivering housing at the rate then anticipated, the plan made provision for 5 years supply of deliverable housing land. However on the basis of the detailed evidence presented two months

later to this inquiry, and its testing by cross examination, the Council's witness conceded that the supply for the period 2011/2016 would at most be 4.3 years.

25. In conclusion, there is less than a 5 years supply of deliverable sites and in such circumstances, even if the shortfall is argued as being relatively modest, paragraph 71 of PPS3 falls to be applied. Although this is not a situation where the local plan can be said to be absent, silent or indeterminate or where relevant policies are out of date, there is no indication in the consultation draft of the NPPF that the Government has any intention to drop the requirement for local planning authorities to demonstrate a 5 year housing land supply. Indeed it suggests that local planning authorities should identify a further 20% of sites. In that regard the consultation draft NPPF consolidates and adds to existing policy and is a material consideration to which I give some weight in this case. Current policy in PPS3 advises the favourable consideration of applications for housing where there is an absence of a 5 year supply having regard to the requirements of paragraph 69. I now turn to address those matters.

Quality and mix of housing

26. The application is in outline but the information provided indicates that the site could be laid out to achieve a high quality of housing and a good mix of accommodation. The scheme would provide a third of the units as affordable housing, a higher proportion than is proposed at NW Oakham, which would help to meet housing needs in the town and county. The site is 6ha overall and the revised illustrative masterplan indicates a net developable area of 3.2ha with areas of open space around the periphery of the site and replanting of the windmill mound. The number of dwellings was reduced in response to officers' concerns about the proposed design but would still make effective and efficient use of the land, in keeping with the character of the surrounding area. I am satisfied that the scheme would satisfy the objectives of CS policies on housing density and mix (CS10), affordable housing (CS11) and good design (CS19).

Suitability of the site

27. The site is in a sustainable location within walking distance of the town centre and is accessible to buses on Uppingham Road. The site can be serviced and there are no flooding or drainage issues. The Statement of Common Ground confirms that there are no outstanding issues between the main parties that could not be resolved by the imposition of appropriate conditions or legal obligations in respect of residential amenity, archaeology, noise, biodiversity, ecology and traffic and highway safety. As such the scheme would comply with CS policies CS18, CS20, CS21, CS22 and CS23. The S106 Agreement provides for developer contributions towards necessary infrastructure required to serve the development. Specific justification has been provided for each of the contributions sought and I am satisfied that the obligations contained in the Agreement are all necessary to make the development acceptable in planning terms, directly relate to the development and fairly and reasonably relate in scale and kind to the development and meet the requirements of the Community Infrastructure Regulations and the policy tests of Circular 05/2005.

Landscape impact

28. The application is in outline with all matters other than access reserved but with a suite of supporting information including a Landscape and Visual

Appraisal and a Design and Access Statement (DAS) with an Indicative Site Layout Plan and Framework Plan, revised in December 2010 to address issues raised by consultees and the Council.

29. The Council, having sought expert landscape advice from two independent consultants, resolved to make no objection to the proposed development on the grounds of landscape impact. An objection was pursued by OAG with the presentation of expert evidence and many local people wrote and spoke at the inquiry about what they saw as the potential adverse impact of housing here on the character and setting of Oakham. The applicant also presented evidence on landscape impact at the inquiry. I have considered the different views expressed along with my own assessment of the impact of development in coming to a conclusion on the site's suitability for housing.

Background

30. The Council's Countryside Design Guidance identifies the appeal site as being within the Vale of Catmose, described as a *'classic vale landscape of meadows and fields'* with relatively little tree cover and relatively large fields *'bounded by low cut, often gappy, hawthorn hedges'*. The objectives include the need to safeguard the *'setting of Oakham and open vale from conspicuous development and a scatter of buildings'*. The appeal site is bounded to the north by the Upper River Gwash and its steeply incised and densely vegetated valley defines this part of the boundary of the built up area. The site comprises the northern part of a swathe of farmland to the south of Oakham which, along with parkland designated as a Conservation Area to the east of Uppingham Road, has been looked at in the past for its potential for the town's future growth.
31. In her 1999 report, the Local Plan Inspector rejected the idea of development either side of the Uppingham Road, concluding that development of the 5.8ha site to the west (almost identical in size to the appeal site) would be *'very intrusive and visually detrimental to the existing rural character of the area and the setting of and approach to Oakham and to the wider landscape of the Vale of Catmose'*. The LP at paragraph 2.154, in the preamble to policy EN26, addresses itself particularly to this area, noting the *'soft and attractive edge'* to the south and east of Oakham as an example of where land adjacent to a settlement is important to its setting and character.
32. More recently, however, the November 2008 Joint SHLAA, looking at the potential of land around Oakham for housing as part of the evidence base for the emerging LDF, identified the appeal site, described as 5.7ha of land west of Uppingham Road, as available, viable and deliverable with infrastructural capacity, subject to mitigation. The site was again assessed for its suitability for development as part of a larger 9.8ha area of land to the west of Uppingham Road (Site 2D) in David Tyldesley Associates (DTA) Landscape Sensitivity and Capacity Study (May 2010), a strategic exercise intended to help guide the direction of future growth in the CS.
33. The Study confirmed the landscape constraints on development around Oakham with large areas to the west, north and south east of the town having high landscape sensitivity with low landscape capacity. Site 2D was assessed as being of moderate overall landscape sensitivity and medium overall landscape capacity and recommended as a priority site to be considered as a direction for growth, albeit ranked below NW Oakham. Whilst it was acknowledged as being within an APAC, key factors included its *'typical,*

unremarkable landscape character with few, if any, landscape features/elements that could not be replaced'. The Study also concluded that 'some extension southward along Uppingham Road, in the northern half of the site, would be relatively well associated with the town despite lying beyond existing southern limits defined by built development and mature vegetation' and that 'structural mitigation planting separating the northern and southern halves of the site would help to integrate the northern half into its landscape setting on the southern approach to the town'.

34. The July 2010 Directions for Growth appraisal rejected growth to the south east of Oakham as a preferred option, finding several key advantages to the land NW of Oakham. However this rejection was on the basis of the larger Site 2D which grouped together with other more prominent sites to the east between the by-pass and the railway, was dismissed as being a '*relatively exposed location with impacts on the attractive woodland setting of the town from the south east*'. References in the reasons for rejection to the impact on Catmose Park and the Oakham Conservation Area and proximity to Rutland Water clearly have more to do with the other sites than to the appeal site and the land west of Uppingham Road.
35. In addition to DTA's strategic landscape assessment which identified some potential for acceptable development on the appeal site, as the northern part of Site 2D, officers in advising members of the Council also sought specific advice on the landscape impact of the appeal scheme initially from DTA and then a second opinion from Robert Doughty Consultancy (RDC). Both concluded that a landscape reason for refusal could not be supported.
36. Whilst commenting that less built development and more open space within the scheme might be more appropriate, DTA concluded that the site had the capacity to accommodate the proposed development without significant adverse visual impact and that the retention of existing vegetation and proposed structural planting would help filter views into the site '*where development would be prominent but not uncharacteristically conspicuous*'. RDC similarly agreed with the applicant's Landscape and Visual Appraisal that a sensitively designed and well laid out development, with appropriate landscape mitigation, would successfully be assimilated into the wider countryside.

Impact of the appeal scheme

37. Viewing opportunities of development on the site are limited. From houses in The Vale and Bowling Green Close, even in the winter months views of the new houses would be filtered by the trees alongside the River Gwash. Planting is proposed behind Catmose Lodge and an acceptable separation distance could be achieved. From the wider surrounding rural landscape views are restricted to Uppingham Road, Brooke Road and public rights of way. Uppingham Road is a main approach into the town. The northern fields rise from the river to a slight brow with the southern field facing towards the open countryside and there has been some recent planting along the southern boundary to reinforce the '*gappy*' hedge. Although the dense river corridor vegetation provides a distinctive break between the town and countryside, there is a scatter of built development on either side of the road south of the river, including Catmose Lodge and the cottages opposite, and when travelling south it is only when beyond these that the landscape starts to open up and only when south of the A6003 bypass that a rural countryside character prevails.

38. The scheme proposes a broad public open space corridor fronting Uppingham Road, maintaining an open green frontage on the approach to town, whilst the weak southern boundary would to be reinforced with structural woodland planting, to reflect the current character of the edge to the built up area. Whilst it is accepted that it would take time for this to become established, the provision of boundary planting to screen views of the development is consistent with saved LP policy EN17 which requires adequate landscaping as an integral part of any layout, particularly where development would abut or be in open countryside, and which I saw has been provided elsewhere in Oakham where new housing has been built or is proposed close to the bypass.
39. Once established, the structural planting along the southern boundary would screen the majority of the new housing in views from the approach along Uppingham Road. The built development would generally sit below the brow of the site and would not extend development any further south along Uppingham Road than currently exists and the existing focal view north towards the spire of All Saints Church would be maintained. From the public right of way crossing the conservation area on the east side of Uppingham Road there are some views across the appeal site. However from what I saw on my visit I do not consider that these long views towards the hills would be materially diminished by the appeal development. The railway runs along the western boundary of the site but given the existing development on Brooke Road to the west, passengers would already be aware that they were approaching the town and further development to their east would have limited impact.
40. There are elevated views of the site from the south west from places along Brooke Road and along the Rutland Round from where, in the early years, the development would appear as a raw and rather isolated outpost of housing, detached from the urban area of Oakham, with development extending beyond the current soft green boundary. However in that regard it would not look dissimilar to the harsh open edge of development around Brooke Road stretching up the hill out of the town. These viewpoints are around a kilometre away from where the site would be seen within the larger scale context of the southern extent of the town and well vegetated backdrop reducing the significance of the impact. With the establishment and maturing of the planting within and around the site, the development's impact over time would further soften and the housing would be assimilated into the townscape.
41. I am mindful of the views of those representing OAG and of local residents who know and love the area. However I do not find that the appeal site when assessed on its own fulfils any strategic role in the wider countryside or in establishing the setting of Oakham. It has a strong relationship with the existing settlement boundary and is influenced by existing development along its northern and eastern boundaries. In concluding on landscape impact, I am of the same view as the applicant's designer and the landscape experts who advised the Council that a sensitively designed and well laid out development, with appropriate landscape mitigation, would be successfully assimilated into the wider countryside and the appeal development would provide an acceptable transition between town and countryside. There is nothing to indicate that the advice of DTA that the highest design principles should be incorporated into the development could not be secured by the imposition of appropriate conditions.
42. Accordingly as I have concluded that the proposal would not adversely affect the special character and appearance of the landscape, it would comply with

saved LP policy EN28 and, in terms of impacts, would not be in conflict with parts D), E), F), H) and J) of LP policy EN26. It would also satisfy the objectives of CS policy CS19 and PPS1 and PPS3 to promote good design and deliver high quality housing in suitable locations.

The spatial vision for the area

43. Paragraph 69 of PPS3 requires in determining planning applications that regard is had to ensuring that development is in line with planning for housing objectives, reflecting the need and demand for housing in, and the spatial vision for, the area and does not undermine wider policy objectives.
44. The spatial strategy for Rutland has been very recently adopted. The CS Inspector in finding the strategy sound expressly endorsed the proposed direction of growth to the NW of the town beyond the LP planned limits of development and the continuation of the restrictive approach to housing development in the countryside beyond the settlement boundary. Oakham is identified in policy CS3 as the Main Town and in policy CS4 as the key focus for new development. Whilst that is intended to be mostly on land allocated to the north west of the town, the town is considered to be the most sustainable location to accommodate significant levels of growth and policy CS9 identifies a requirement for at least 1,930 dwellings in the County of which about 1,100 are to be at Oakham.
45. PPS1 confirms the importance of the plan led system; the certainty and predictability that it provides as central to planning; and its key role in integrating sustainable development objectives. It was argued that allowing housing in a location expressly rejected by the Council, local people and CS Inspector would significantly undermine a major element of the strategy, the process which endorsed it and the confidence of local people in it.
46. The Government is committed to the principle of localism. It is also committed to promoting sustainable economic growth and paragraph 11 of the consultation draft NPPF sets out the Government's view that '*there is no necessary contradiction between increased levels of development and protecting and enhancing the environment*'. It remains Government policy that spatial planning should ensure that the necessary land is available at the right time and in the right place to deliver the new housing required (PPS12 paragraph 2.4). Despite the work by the Council in progressing its CS to adoption and the conclusions of the CS Inspector, it had to accept at the inquiry that it did not have a 5 year supply of deliverable housing land.
47. The appeal site is at Oakham, identified as the most sustainable location in the CS. Its development for 96 units would be entirely consistent with the spatial strategy and vision for Rutland and whilst it would be the other side of town to the sustainable urban extension, there is no evidence that it would undermine policy CS5. It is not of a size that would have needed to be considered in the CS as a strategic site. There is nothing to indicate that the strategic allocation at NW Oakham would not go ahead if the appeal proposal were to be allowed or that it would impact on or delay its delivery.
48. The CS at paragraph 2.27 refers to the sustainable urban extension of around 1,000 dwellings but '*with the remaining development (about 100 dwellings) on other sites around the town to be identified through a Site Allocations and Development Control Policies DPD.*' The Hawksmead scheme for 1,096 units at

NW Oakham would take up all of the requirement for Oakham. However the CS Inspector confirmed that the housing figures should be treated as minima and could be exceeded.

49. The Council has already accepted in allocating NW Oakham that a breach of the LP planned limits of development is inevitable if the EMRP housing numbers are to be met. There would be no offence to policy CS9, or to the spatial strategy, if 1,200 and not 1,100 dwellings were to be provided at Oakham where the release of additional land is needed now to address an identified shortfall and ensure a continuous 5 year supply of deliverable sites available for housing. This is even more critical where, contrary to PPS3, the Council has not identified a further supply of specific, developable sites for years 6-10 and the CS Inspector acknowledged it was difficult to carry out any meaningful analysis of housing supply beyond 5 years. It may be, as the Council suggested in its response on the consultation draft of the NPPF, that the 15 year phasing of NW Oakham could be adjusted if delivery against overall expectation were found to be falling behind but that does not address the current shortfall.
50. Work on the identification of other sites, at or outside Oakham, for the Site Allocations and Development Control Policies DPD is only just getting underway with the DPD not expected to be adopted until late 2013. Thus it could be nearly 2 years before there is any meaningful plan-led response to the current housing shortfall. The suggestion that an additional concentration of housing at Oakham as proposed by the appeal scheme would somehow undermine the strategic objectives of the CS to accommodate a small scale level of growth at other settlements, further down the hierarchy, was not supported by any substantive evidence that this might occur or what harm would result.
51. Reflecting the principles of 'Plan, Monitor, Manage', Chapter 6 of the CS on implementation and monitoring considers the response if there is any significant shortfall against the housing trajectory with the Council proposing in those circumstances to bring forward sustainable alternative sites '*via the site specific DPDs and/or the development control process*'. Given the anticipated adoption date of the Site Allocations and Development Control DPD, it follows that the CS envisages that a deficit in the 5 year supply can be addressed through development control decisions on proposals like the one subject to this appeal.
52. The appeal proposal would provide additional high quality housing with a mix of both market and affordable homes, on a suitable site and in a sustainable location, identified in the LP and CS as offering a good range of community facilities and with access to jobs, key services and infrastructure. It would offer an improved choice of new housing and greater flexibility in the local housing market via early delivery and would be in line with the planning for housing policy objectives set out in PPS3 and reflect the need and demand for housing in Rutland in accord with policies CS5 and CS9.
53. I conclude that the proposed development would not conflict with the spatial strategy for Rutland set out in policy CS2, particularly a) to c). It would be consistent with the settlement hierarchy in policy CS3 and the spatial vision in policy CS4 that identifies Oakham as the key focus for new development and which, if there is a need to release further land, should be looked at first as the most sustainable location. As the release of the appeal site outside the LP planned limits of development is to address the identified shortfall in housing delivery, it would comply with LP policy EN26 A).

Overall conclusion

54. There are long standing policy objections to the release of this site outside the planned limits of development for housing. The recently adopted CS strategy also excludes the site from development. However in that the Council has now acknowledged a shortfall in the 5 year housing land supply as a result of poor past performance, the strategy is failing to deliver. In such circumstances it is Government policy that favourable consideration should be given to planning applications for housing, subject to the policies in PPS3 and the considerations in paragraph 69. The appeal scheme would use the land effectively and efficiently, achieving high quality housing and a good mix of market and affordable homes. Whilst it might look rather raw in the early years, the establishment of major structural planting around and within the development would ensure its impact on the landscape would be acceptable.
55. The provision of additional housing on the appeal site would not harm or undermine the spatial vision and strategic objectives of the CS to develop vibrant and prosperous market towns and diverse and thriving villages. To delay addressing the housing shortfall, pending an assessment of future housing sites as part of the Site Allocations and Development Control Policies DPD, would not reflect the principles of 'Plan, Monitor, Manage', risk the shortfall worsening and would not accord with the Government's objective to increase significantly the delivery of new homes. I heard nothing to suggest that the site is not capable of early delivery with the covenant in the S106 Agreement deferring payment of the financial contribution towards primary education provision, an incentive for it to be completed within 5 years. Considering all these factors I find in this case that the balance weighs in favour of the grant of permission.

Conditions

56. Draft conditions were prepared by the Council and discussed at the inquiry. I have considered them having regard to the advice in Circular 11/95. In addition to the standard reserved matters conditions, to ensure a satisfactory form of development on the site in broad accord with the revised DAS and Masterplan it is reasonable and necessary to impose conditions to require the submission and approval of a detailed Design Code for the development, for the submission of samples of materials and to require final floor levels to be agreed. The DAS refers to the eco-credentials of the scheme. It was agreed that a condition requiring the achievement of Code for Sustainable Homes 4 would appropriately address the scheme's contribution to mitigating the impact of climate change.
57. Conditions dealing with landscaping, landscape management, materials, tree and hedge retention and protection are reasonable and necessary to ensure the assimilation of the development into the landscape. They adequately cover details of the layout, landscaping and management of the open space, recreational and children's play areas and there is no need for separate conditions dealing with those matters. With the proximity of the railway, noise measures to protect the future occupants should be agreed and implemented. In the interests of highway safety, conditions are also needed to cover the gradient, width and visibility splays of the main estate road and the provision of parking and turning areas.

58. The site is next to the River Gwash and to prevent the increased risk of flooding and to improve and protect water quality, it is necessary, relevant and reasonable to require the prior submission and approval of a surface water drainage scheme for the site. The site also lies in an area of archaeological interest with the likelihood of buried archaeological remains surviving in good condition. There is also interest in the substantial earthwork mound in the centre of the site. Conditions recommended by Leicestershire County Council are necessary to safeguard any important archaeological remains potentially present on the site that would be significantly damaged by the development.
59. The ecological appraisal submitted with the application indicated the presence of badgers in the local area with some evidence of foraging activity on the site and a lower status outlier sett. There is specific protection of badgers under the Protection of Badgers Act 1992 and a licence from Natural England would need to be in place prior to any works on site. Given that control, the onus is on the applicants to ensure that full regard is had to badgers in both the design and implementation of the scheme and there is no need to impose a condition requiring further survey work. Similarly I am not imposing conditions that the Council agreed at the inquiry would be more appropriately imposed on any reserved matters approval. I have amended the wording of some conditions to reflect that of the Model Conditions annexed to Circular 11/95.

Overall conclusion

60. I have taken into account all other matters raised, including the views of local residents and other interested parties, in reaching this decision. However I find none to be of such weight as to override my conclusions, for the reasons given above, that the appeal should be allowed and outline planning permission granted.

Mary O'Rourke

Inspector

Annex A APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Brian Ash QC	Queens Counsel, instructed by Melvyn Blyth, Planning Solicitor to the Economic Growth Team, Legal Services, Town Hall, Peterborough PE1 1HG
He called	
Sharon Baker BA(Hons) MA MRTPI	Senior Planning Officer
Nicholas Hodgett DipTP MRTPI	Principal Planning Officer

FOR THE APPLICANT:

Jeremy Cahill	Queens Counsel, instructed by John Edmonds, Solicitor, Marrons, 1 Meridian South, Meridian Business Park, Leicester LE19 1WY
He called	
Phil Rech BA BPhil LD CMLI	fper Environment and Design Ltd
Richard Dunnett BA(Hons) MRTPI	Marrons
Alasdair Jones BA(Hons) MRTPI	Marrons
Not Called	Waterman Boreham Ltd
Brian Plumb BSc(Hons) CEng MICE MIHT	(his proof was submitted as written evidence)

FOR THE OAKHAM ACTION GROUP:

Satnam Choongh	Of Counsel, instructed by Stuart Andrews, Solicitor, Eversheds LLP 115 Colmore Row, Birmingham B3 3AL
He called	
Guy Longley BSc(Hons) DipTP DipUD MRTPI	Pegasus Planning Group
Clive Self MA DipLA CMLI	Managing Director CSa Environmental Planning

INTERESTED PERSONS:

Michael Lambert MRTPI	Leicestershire Police
Colin McDavid	Resident
Judy Geer	Resident
Cory Cavell-Taylor	Resident
Mark Taylor	Resident
Rob Bowley	Resident and Chair Oakham Allotments Society
Ryan Henry	Resident
Patricia Montgomery	Resident
Martin Brooks	Town councillor and resident

DOCUMENTS HANDED IN AT THE INQUIRY

- 1 Statement of Common Ground signed and dated 24.5.11
- 2 Statement by Michael Lambert representing Leicestershire Police
- 3 Appeal decision APP/T2405/A/10/2131699 submitted by Mr Lambert
- 4 Mr Dunnett's letter of 14.9.10 to the CC setting out draft heads of terms for the S106 agreement
- 5 Letter of objection of 5.5.11 from WYG on behalf of Mr D Gibson submitted by the CC
- 6 Mrs Geer's statement to the inquiry with Inspector's contemporaneous notes of additional points made
- 7 Mr Cavell-Taylor's statement to the inquiry with Inspector's contemporaneous notes of additional points made
- 8 Mr Bowley's statement to the inquiry
- 9 Certified copy of the Section 106 Agreement dated 30 June 2011
- 10 Letter from Hawksmead Ltd dated 8 July 2011 to PINS

COUNCIL DOCUMENTS HANDED IN AT THE INQUIRY

- CC1 Opening statement
- CC2 Supporting letter from Ward Councillors Plews and Munton
- CC3 Draft conditions (dated 26 May)
- CC4 Bundle of documents submitted by Mrs Baker - email from CC Estate Surveyor dated 23.5.11, internal memorandum of 18.5.11 and schedule showing timelines for disposals of Barleythorpe Hall, Ashwell Depot and The Parks site and Tresham site
- CC5 Email of 26.5.11 from CC Head of Asset Management to Mrs Baker updating progress on The Parks redevelopment
- CC6 GO East Midlands' letter of 1.11.2006 about the Ashwell Depot
- CC7 Draft conditions for the Hawksmead site (OUT/2009/1306) (as at 27.5.11) and minutes of Development Control and Licensing Committee 5.4.11 with position update on the Hawksmead site
- CC8 Proposed amendment to the Rutland Local Plan Proposals Map showing proposed extension to the Planned Limits of Development to include the sustainable urban extension (policy CS5)
- CC9 Plan provided at the inquiry to show The Parks site and the residual site B: land north of the Memorial Hospital
- CC10 Internal memo of 25.5.11 from CC Children and Young People's Services providing additional education information
- CC11 The Inspector's Report on the Examination into the Rutland Core Strategy DPD dated 26 May 2011 but sent to the Inspector and the other parties by electronic link in an email from the Council dated 8 June 2011
- CC12 Email exchange between the Council and Marrons in relation to Ashwell depot.
- CC13 Letter from Freeth Cartwright LLP of 8.7.11 confirming completion of the S106 Agreement for the Hawksmead development at NW Oakham

- CC14 Exchange of correspondence between Marrons and the County Council in respect of the Inspector's report on the Core Strategy and including a letter from Marrons to The Planning Inspectorate of 6.7.11
- CC15 Report of the Strategic Director of Places to the Council on 11.7.11 recommending the adoption of the Rutland Core Strategy
- CC16 Closing submissions on behalf of the County Council (with Inspector's handwritten notes of points made orally)
- CC17 RCC letter dated 9.8.11 on the consultation draft NPPF

APPLICANTS' DOCUMENTS HANDED IN AT THE INQUIRY

- APP1 Opening submissions
- APP2 Extracts from Mr Longley's proof relating to Manor Farm, Bessacarr for Persimmon Homes (South Yorkshire) Ltd
- APP3 Traffic assessment of Cricket Lawns by Brian Plumb 16.5.11
- APP4 Amendments to Mr Jones' proof (pages substituted in proof)
- APP5 Schedule of S106 contributions
- APP6 Land south of Oakham to east and west of Uppingham Road
- APP7 Update to Mr Dunnett's proof and Consent Order relating to applicant's claim for Judicial Review
- APP8 Mr Jones' schedule of housing sites comparing applicant's and CC's assessments of likely delivery numbers and time
- APP9 Fpcr ecological surveys 2011 – results summary May 2011
- APP10 Leicestershire CC's letter of 23.5.11 relating to archaeological considerations
- APP11 Draft S106 agreement
- APP12 Rutland CC Local Development Scheme 2009-2012 Revised June 2009
- APP13 Note prepared by applicant to summarise Mrs Baker's evidence on the component sites of forward housing supply
- APP14 Sites subject to disagreement between the parties
- APP15 Email of 12.5.11 from David Tyldesley Associates
- APP16
 - A. Components of supply 2010-2015 and years' supply by Sedgefield and residual methods
 - B. Components of supply 2011-2016 and years' supply by Sedgefield and residual methods
- APP17 Officers' report to Rutland CC Development Control and Licensing Committee 6.4.11 on outline application by Hawksmead Ltd, Land north of Oakham
- APP18 Letter from Marrons dated 22 June 2011 re the affordable housing provisions in the S106 and enclosing a copy of the draft S106 Agreement
- APP19 Closing submissions on behalf of Jeakins Weir and addendum (with Inspector's handwritten notes of points made orally)
- APP20 Marrons' letter dated 15.8.11 on the consultation draft NPPF

OAKHAM ACTION GROUP DOCUMENTS HANDED IN AT THE INQUIRY

- OAG1 Opening submissions
- OAG2 Oakham Action Constitution

- OAG3 Schedule of components of housing land supply with Inspector's handwritten corrections made by Mr Longley in evidence.
- OAG4 Note on household projections submitted by Mr Longley
- OAG5 Appeal decision APP/Z2830/A/10/2124685 submitted by Mr Longley
- OAG6 Secretary of State's decision letter relating to land at Binhamy Farm, Stratton Road, Bude
- OAG7 Secretary of State's decision letter relating to land east of Marriott Road/Anvil Close/Forge Fields and South of Hind Heath Road, Sandbach, Cheshire and the Inspector's report
- OAG8 Closing submissions on behalf of the Oakham Action Group (with Inspector's handwritten notes of points made orally)

PLANS

- A Application drawings:
 - 4284-SK-02 showing application site edged red
 - 4284-SK-02 Illustrative Masterplan December 2010
 - 4284-L-01 Rev C Framework Plan
 - 210076/05 Rev A Proposed Access Arrangement

Annex B

Schedule of Conditions

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans Nos 4284-SK-02, 4284-L-01 Rev C and 210076/05 Rev A but only in respect of those matters not reserved for later approval.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than three years from the date of this permission.
- 3) The development hereby permitted shall begin not later than two years from the date of approval of the last of the reserved matters to be approved.
- 4) Details of the appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development begins and the development shall be carried out as approved.
- 5) The submission of the reserved matters application(s) shall broadly accord with the details shown in the revised Design and Access Statement December 2010 and the revised Illustrative Masterplan 4284-SK-02 dated December 2010.
- 6) No development shall take place until a Design Code for the site has been submitted to and approved by the local planning authority. It shall substantially accord with the revised Design and Access Statement December 2010. Any amendment shall also be submitted to and approved by the local planning authority. Development shall be carried out in accordance with the Design Code. The Design Code shall address the following issues:
 - Architectural and sustainable construction principles;
 - Character areas;
 - Lifetime homes standards;
 - Street types and street materials;
 - Development block types and principles;
 - Car parking principles;
 - Cycling provision;
 - Pedestrian and cycle links to adjoining land;
 - Public transport routes;
 - Boundary treatments;
 - Buffer strips between the housing, railway, River Gwash and Uppingham Road;
 - Building types;
 - Building heights;
 - Building materials;
 - Sustainable urban drainage systems;
 - Public open spaces;
 - Lighting strategy;
 - Provision for refuse and recycling;
 - Implementation.

- 7) No development shall take place 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.
- 8) No development, including site works, shall begin until a landscaping scheme, to include those details specified below, has been submitted to and agreed in writing by the local planning authority:
 - a) The treatment proposed for all ground surfaces, including hard areas;
 - b) Full details of tree planting;
 - c) Planting schedules, noting the species, sizes, numbers and densities of plants;
 - d) Finished levels or contours;
 - e) Details of boundary treatments
 - f) Any structures to be erected or constructed;
 - g) Functional services above and below ground; and
 - h) All existing trees, hedges and other landscape features, indicating clearly those to be removed.
- 9) All hard and soft landscape works shall be carried out in accordance with the approved details. The works shall be carried out prior to the occupation of any part of the development or in accordance with the programme agreed with the local planning authority.
- 10) The landscaping scheme shall be fully completed, in accordance with the details agreed under the terms of condition 8) above, in the first planting and seeding seasons following the first occupation of any part of the development or in accordance with a programme previously agreed in writing by the local planning authority. Any trees or plants removed, dying, being severely damaged or becoming seriously diseased, within 5 years of planting shall be replaced in the following planting season by trees or plants of a size and species similar to those originally required to be planted.
- 11) A landscape management plan, including long term design objectives, management responsibilities and maintenance schedules for all landscape areas, other than small, privately owned, domestic gardens, shall be submitted to and approved by the local planning authority prior to the occupation of the development or any phase of the development, whichever is the sooner, for its permitted use. The landscape management plan shall be carried out as approved.
- 12) The hedges located within and on the boundary of the application site, other than those approved to be removed as part of the landscaping scheme to be submitted for approval under condition 8) above, shall be retained and maintained at a height no lower than 1.5 metres. Any part of the hedge removed, dying, being severely damaged or becoming seriously diseased shall be replaced, with hedge plants of such size and species as previously agreed in writing by the local planning authority, within one year of the date of any such loss for a period of 5 years from the date development begins.
- 13) No development, including site works, shall take place until the hedges shown to be retained on the approved landscaping plan have been protected, in a manner previously agreed in writing by the local planning

- authority. The hedge shall be protected in the agreed manner for the duration of building operations on the application site.
- 14) The existing trees on the boundaries of the site and within the site, as indicated on Figure 2 of the Tree Assessment Report Revision A August 2010 submitted with the application, with the exception of Tree T7, shall be retained and shall not be felled, lopped, topped or uprooted without the previous written agreement of the local planning authority, under the terms of the landscaping conditions above or subsequently given in writing by the local planning authority. Any trees removed, dying, being severely damaged or becoming seriously diseased shall be replaced with trees of such size and species as previously agreed in writing by the local planning authority within one year of the date of any such loss, for a period of 5 years from the date development begins.
 - 15) No development, including site works, shall take place until each tree shown to be retained on the approved plan has been protected, in a manner previously agreed in writing by the local planning authority, and in accordance with BS 5837:2005. Each tree shall be protected in the agreed manner for the duration of building operations on the application site. Within the areas agreed to be protected, the existing ground level shall be neither raised nor lowered, and no materials or temporary building or surplus soil of any kind shall be placed or stored thereon. If any trenches for services are required in the protected areas, they shall be excavated and back-filled by hand and any tree roots encountered with a diameter of 5cm or more shall be left unsevered.
 - 16) The reserved matters applications shall include full details of existing and proposed levels, including ground levels, finished floor levels of all buildings and sections across the site, these sections to extend to land and buildings adjoining the application site.
 - 17) Construction work shall not begin until a scheme for protecting the proposed houses from noise from the railway has been submitted and approved in writing by the local planning authority; all works which form part of the scheme shall be completed before the houses are occupied and shall be retained in perpetuity.
 - 18) No development shall take place until a programme of archaeological work including a Written Scheme of Investigation has been submitted to and approved by the local planning authority. The scheme shall include an assessment of significance and research questions; and:
 - The programme and methodology of site investigation and recording
 - The programme for post investigation assessment
 - Provision to be made for analysis of the site investigation and recording
 - Provision to be made for publication and dissemination of the analysis and records of the site investigation
 - Provision to be made for archive deposition of the analysis and records of the site investigation
 - Nomination of a competent person or persons/organisation to undertake the works set out within the Written Scheme of Investigation.
 - 19) No development shall take place other than in accordance with the Written Scheme of Investigation approved under condition 18).
 - 20) The development shall not be occupied until the site investigation and post investigation assessment has been completed in accordance with the

- programme set out in the Written Scheme of Investigation approved under condition 18) and the provision made for analysis, publication and dissemination of results and archive deposition has been secured.
- 21) The dwellings shall achieve Level 4 of the Code for Sustainable Homes. No dwelling shall be occupied until a final Code Certificate has been issued for it certifying that Code Level 4 has been achieved.
 - 22) The gradient of any road or access drive shall not exceed 1 in 20 for the first 5 metres measured into the site from the highway boundary.
 - 23) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995, or any order revoking and re-enacting that Order, with or without modifications, no vehicular access gates shall be erected at any time unless they are set back a minimum distance of 5 metres behind the highway boundary and hung so as to open inwards only.
 - 24) No part of the development hereby permitted shall be occupied or used until visibility splays of 2.4 metres by 120 metres have been provided on the highway boundary on Uppingham Road, on both sides of the access and the areas have been laid out and surfaced in a manner previously agreed in writing by the local planning authority.
 - 25) No dwelling shall be occupied until such time as provision has been made within the development for the turning of delivery/ refuse/ service/ emergency vehicles.
 - 26) No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by, the local planning authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:
 - i) the location and details of the access to be used during the construction period
 - ii) parking of vehicles of site operatives and visitors
 - iii) loading and unloading of plant and materials
 - iv) storage of plant and materials used in constructing the development
 - v) wheel washing facilities
 - vi) measures to control the emission of dust and dirt during construction
 - vii) a scheme for recycling/disposing of waste resulting from demolition and construction works
 - 27) The details of the layout submitted in accord with condition 4) shall provide for a minimum width of 5.5m for the main access road and 4.25m for any private shared drives.
 - 28) Any vehicular access drive shall be surfaced with a hard bound but porous material (not loose aggregate) for a distance of at least 5 metres behind the highway boundary in accordance with details submitted to and approved by the local planning authority.
 - 29) No development shall take place until a surface water drainage scheme for the site, incorporating sustainable drainage principles and an assessment of the hydrological and hydro-geological context of the

development, has been submitted to and approved in writing by the local planning authority. The scheme shall subsequently be implemented in accordance with the approved details before the development is completed.