



Appeal Decision

Hearing held on 9 July 2024

Site visit made on 9 July 2024

by Mr JP Sargent BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 September 2024

Appeal Ref: APP/P1045/W/23/3335780

Land to the South of Main Road, Brailsford DE6 3GT

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) (the Act) against a refusal to grant outline planning permission.
 - The appeal is made by Mr Tom Goodall against the decision of Derbyshire Dales District Council.
 - The application Ref is 23/00616/OUT.
 - The proposal is a mixed-use development of up to 75 dwellinghouses and a commercial development (Use Class E).
-

Decision

1. The appeal is allowed and outline planning permission is granted for a mixed-use development of up to 75 dwellinghouses and a commercial development (Use Class E) at land to the South of Main Road, Brailsford DE6 3GT in accordance with the terms of the application, Ref 23/00616/OUT, subject to the conditions in the Conditions Schedule below.

Preliminary Matters

2. This is an outline application with all matters other than access reserved for later consideration. Moreover, the only element of access being considered is the site's entry/exit point to the existing road network. As a result, I am treating all details on the various submissions relating to matters other than the point of access as being illustrative but nonetheless informative, indicating one possible way the scheme could be implemented.

Main Issues

3. The main issues in this case are
 - a) the principle of the scheme in the light of the Council's spatial strategy;
 - b) whether the significance of designated heritage assets would be harmed by the development's effects on their respective settings;
 - c) the effect on the character and appearance of the area;
 - d) the impact on highway safety;
 - e) the effect on best and most versatile land and
 - f) if harm would be caused by any of the above whether that would be outweighed by public benefits, or a decision contrary to the development plan would be justified by other material considerations.

Reasons

Principle of development

4. Policy S1 in the *Derbyshire Dales District Council Local Plan 2013-2033* (adopted in 2017)(the Local Plan) promotes schemes that make a positive contribution towards the achievement of sustainable development. To assist in this, Local Plan Policy S2 seeks to direct development towards the most sustainable locations in accordance with a settlement hierarchy, in which Brailsford, with its limited facilities, is identified as one of a group of Third Tier villages. Only Matlock, Ashbourne, Wirksworth and Darley Dale are in the First and Second Tiers above and so seen as locations in the district that were deemed more sustainable. The policy states that new development should be focussed or concentrated within settlement boundaries. It adds that the Third Tier villages will provide for reduced levels of development in comparison to higher order settlements, so as to safeguard and, where possible, improve their role.
5. Local Plan Policy S4 specifically concerns development in the countryside, placing emphasis on the need for it to protect and where possible enhance the landscape's intrinsic character. It then gives a list of instances in criterion (i) where residential development will be granted planning permission in such locations. One of these is where there is no 5-year supply of deliverable housing land (such as accepted by the Council at the moment and discussed further below), development is acceptable on non-allocated sites on the edge of development boundaries around First, Second and Third Tier settlements, subject to consideration against other local and national policy.
6. In the *Brailsford Neighbourhood Plan* (adopted in 2021) (the Neighbourhood Plan), Policy H1 states that small-scale infill housing developments will be supported where they are within the settlement boundary, but makes no comment about housing outside of the settlement. Indeed my attention was drawn to no specific policy in the Neighbourhood Plan that related to housing outside of the settlement boundary or responded to the exception found in Local Plan Policy S4(i) when the required supply no longer exists.
7. The site is unallocated for development, lying in the countryside outside of the settlement boundary around Brailsford. It can be reasonably described as '*on the edge*' of the village as the settlement boundary runs along the opposite side of Main Road in the site's north-eastern corner. The Council did not challenge the contention that the housing element represented a '*reduced level of development*' and, mindful of its housing position, it accepted this element of the scheme, in principle, does not conflict with Local Plan Policies S1, S2 or S4.
8. Local residents said that, when considered cumulatively, there had been an appreciable amount of new housing in and around Brailsford in recent years. However, there is no definition offered as to what constitutes a '*reduced level of development*' or the period over which it should be measured. Given this, I have no reason to find the cumulative effect of developments in the village would mean this scheme conflicted with the policy basis.
9. It was also said by residents that the services in the village could not cope with the additional demands of further housing, thereby necessitating reliance on the private car and so challenging the sustainability of the location. What Brailsford can offer in this regard is to a degree limited, and trips would be

required further afield for aspects of health care, shopping, education and employment. However, it does have some facilities, and, as the *National Planning Policy Framework* (the Framework) states, opportunities to maximise sustainable transport solutions will vary between urban and rural areas. I am aware too that Brailsford is not a village that is deemed to be an unsustainable location in the development plan, as is shown by it being identified for some development and just 4 settlements in the district being seen as more sustainable and in the First and Second Tiers. Finally, with the introduction of dropped crossings, improvements to bus stops and contributions to education, the scheme will be taking some steps to enhancing sustainability. Weighing these factors together, I find that any failings the housing element of the proposal may have in relation to the sustainability of the location do not offer a reason to resist the scheme.

10. The element within Class E of the *Town and Country Planning (Use Classes) Order 1987* (as amended) would not exceed 500sqm and could permit a range of commercial, business and service uses. This includes retail activity, which the main parties agreed could be restricted to a maximum floor space of 150sqm. It would therefore be a relatively small element of the scheme, having a floor area that would be less than reasonably expected with 6, 3-bedroomed 2-storey houses.
11. In support of his position, the appellant drew my attention to how Local Plan Policy S4 accepts rural based enterprises (criterion b) and rural employment development (criterion c) can be undertaken in the countryside. Although no definitions of these terms were brought to my attention, it is reasonable to assume that to fall under either of them here a proposal has to be more than just a commercial enterprise in the countryside, otherwise the word 'rural' is unnecessary. Rather, given the thrust of the policy I consider such uses should be ones that are focussed more strongly on rural activities or where a rural location would be expected. As I do not know the nature this commercial element will take, I cannot be confident it could be defined as falling under the development supported by Local Plan Policy S4.
12. Local Plan Policy S1 encourages economic and mixed use development for sustainability reasons. However, I can give little weight to any benefits the commercial aspect of the scheme may have to enhancing the services and opportunities available in Brailsford or supporting the rural economy as, again, it is not known what form the Class E development would take, or when, if at all, it would be forthcoming.
13. Finally, whilst the policy context favours previously developed land, it does not preclude development on greenfield sites such as this.
14. Accordingly, given the housing land supply shortfall I conclude that, in principle, housing here is not in conflict with Local Plan Policies S1, S2 and S4, or Neighbourhood Plan Policy H1. However, I conclude that the principle of locating an unspecified commercial element on the site is not in accordance with the drive for sustainable development found in Local Plan Policies S1, S2 and S4.

Heritage

Conservation area

15. Policy H1 in the Neighbourhood Plan says schemes should demonstrate an understanding of the village environment, rural location and history, and should take account of the transition between the built area and the open landscape. In the Local Plan Policies S1 and PD2 seek to protect heritage assets, expressing a need for it to be shown that their significance has been taken into account. This appears to be broadly consistent with the Framework.
16. The appeal site forms part of a very large field (the large field) that lies outside of the Brailsford Conservation Area, and runs from the conservation area's western boundary, westwards down the hill towards All Saints Church.
17. Insofar as this appeal is concerned, the significance of the conservation area arises from the way its buildings, roads and intervening spaces reflect the evolution of this small rural village over the centuries. This is particularly so along The Green and Church Lane where the nature of the carriageway, the planting, and the buildings very much illustrate the agricultural origins of Brailsford.
18. There was nothing to show that the large field in general, and the appeal site in particular, had any specific historic link to the village, although it would be reasonable to assume they had both been farmed in one way or another by its residents in years gone by. The submitted aerial photograph offered no indication of features or information below ground. Reference was made to the large field being in some way part of medieval or early post-medieval toft and croft farming practices associated with properties on The Green. No specific evidence was submitted to support this though, and I am aware that the buildings now present post-date when such practices were common. In any event, the report that accompanied the designation of the conservation area said that '*within*' the proposed area was a '*possible*' presence of these practices. It is therefore fair to assume that, at least when that report was published, any land that might have been associated with toft and croft farming was thought to be taken into account when the conservation area boundaries were defined, especially as the western boundary at this point is some distance behind the houses on The Green.
19. However, the fields beyond the conservation area's boundaries contribute to how it is experienced, as they provide an agricultural context for Brailsford that is a reminder of the village's origins. In the case of the large field this is further aided by a public footpath (the footpath) that allows clear views of the conservation area's western boundary when walking towards the village from the church. I do not know how long the footpath has followed this route, but I understand it was on maps from 200 years ago and I have no reason to assume it was not present before then. As such, the effect of the large field on the setting of the conservation area contributes to its significance as a historic village and designated heritage asset, and has done so for many years.
20. The nature of the conservation area was difficult to discern with ease from the large field when I visited due to the substantial planting along the boundary between the two. I accept though that in winter months this visual link may be stronger with fewer leaves on the trees and hedges.

21. The appeal site itself does not abut the conservation area. Rather, next to Main Road it is separated by a neighbouring property called Field Head House, and to the rear of that house a significant portion of the large field, which would still be for agricultural use, would remain between the site and the conservation area boundary. Furthermore, the illustrative plans show the southern part of the appeal site, next to the footpath and the section of the large field that would be to the south, being maintained as open land, with the proposed buildings being generally tucked up behind a tree belt (the tree belt) that runs southwards from Main Road down the site's western side.
22. On the footpath when approaching from the church, initially the topography and landscaping would do much to conceal both the development and the conservation area. As a result, from there what is proposed would not impinge on any appreciation or understanding of the conservation area beyond.
23. When on the footpath nearer to the conservation area by the south-west corner of the site, the development to the north of Main Road recently built by Avant Homes (the Avant scheme) can be seen now, but it is some distance away and partly concealed by the hedging along the roadside. Consequently, although appreciated, its effect is not dominant. At this point the development would be more pronounced than the Avant scheme when looking to the north while the conservation area would be to the east. Despite the intervening agricultural land that would remain, in these views there would be a diminishing of the rural context of the conservation area to some extent. In my opinion though this would only be slight, as the new buildings would be separate and to one side, while the conservation area would be seen in the context of the remaining relatively large block of arable land and the scheme's open space.
24. By the south-east corner of the site, the development would be behind anyone walking to the village along the footpath, while the trees and hedges marking the boundary of the conservation area would be strongly apparent. I accept that any walker may still be mindful of the scheme at this point, but there is already an awareness of the village now when there, and so that would not be adverse. From this point onwards I therefore consider there would be no harm to the significance of the conservation area.
25. Walking westwards on the footpath the scheme would only become readily apparent when leaving the conservation area, while the remainder of the large field would maintain the village's agricultural context. As a result, it would not diminish the appreciation of that designated heritage asset that would, by then, be behind.
26. In reaching this view I am aware the appellant contended that replacing the monoculture of the large field with naturalistic open space would be more in keeping with the rural past of the locality. However, I consider that even with a single crop the large field reflects the conservation area's agricultural context, and so any benefit resulting from introducing the open space would not offset the harm caused in this regard by the new buildings. As such, this is a contention to which I afford little weight.
27. Accordingly I conclude the proposal's limited effect on the setting of the conservation area would cause less than substantial harm to its significance as a designated heritage asset.

Listed buildings & other assets

28. Roughly 800m-1000m to the west of Brailsford is the Grade I listed All Saints Church. This is the Parish church, and dates back to the 12th Century, although it might well have been a place of worship for some time before then. Although it contains much of architectural and artistic interest, insofar as this appeal is concerned, it is its historic significance that is of most importance. This is because it has been the spiritual focus for the village for many hundreds of years, and over that time has comprised a notable and little-changing landmark in a rural landscape.
29. If inter-visibility is possible between the church environs and the scheme before me as it is shown on the illustrative plans, it would be limited. Given the separation involved and the effects of topography and trees, this development would not harm the context in which the church was appreciated.
30. It was said that by diminishing the rural nature of the walk along the footpath from the village, the scheme would affect how people experienced the church. To my mind though, the possibility of intervening open space between the new built form and the footpath means the scheme's impact in this regard would be mitigated to some extent. Moreover, once past the south-west corner of the site one moves through the 'pinch point' in the large field between the belt of trees on one side and hedging on the other. From here the development would be behind, the wider landscape opens up in front, and the cluster of trees containing the church becomes a clear but still distant focus. This more expansive landscape, together with the length of the walk down to the church that remains necessary along the footpath, allow a full awareness of the church's setting so its significance can be appreciated on approach and eventual arrival. As a result, its role as a historic landmark in a rural landscape would be unchanged. I therefore find that the proposal would not affect the setting of the Grade I listed church and so would not cause harm to its significance as a designated heritage asset.
31. Within the churchyard I was also referred to a Grade II listed cross from the 10th Century or earlier. The historic significance of this lies very much in it being an ancient symbol of Christian worship. Its setting comprises the churchyard around, and mindful of the reasoning above, I consider its significance would not be harmed by this housing so far distant.
32. Between The Green and the eastern boundary of the large field are 3 Grade II listed buildings. At the northern end, closest to the junction with Main Road, is Green Farm, an early 18th Century house with various wings and outbuildings. Its significance lies partly in its historic origins as a house associated with farming, and partly in its architectural detailing.
33. Next to this are what are identified as Barns South of Green Farm. These are from the mid-19th Century and now appear to be converted to residential use. However, with their detailing, including the segmental archway, their significance lies in the way they maintain their historic appearance as buildings of some status to serve agricultural purposes.
34. Beyond the barns is Old Hall Farmhouse, which dates back possibly to the late 17th Century, and is a large sandstone and brick property, again with wings and outbuildings to the rear. The significance of this building too is partly found in

its historic origins as a house connected with farming, and partly in its architectural detailing.

35. The agricultural roots of each of these properties means their significance benefits from a relatively open, rural setting. However, they are all set away from the boundary of the large field, and so are further still from the built development now proposed. I therefore consider that the scheme before me would be sufficiently distant, with adequate open rural land remaining in between, to mean how these 3 assets were experienced would not be affected. I was also not informed of any link between these properties and the site, again apart from the presumed general point that the land could have been farmed by their occupants. As a result, the proposal would not cause harm to the significance of these properties by reason of its effect on their various settings.
36. To the south of Church Lane is The Old Rectory. This is a Grade II listed building that dates from the 16th Century or earlier. It has a historic significance arising from its age and its apparent role in the village. It also has an architectural significance due to its varied materials and the manner in which it displays construction techniques over the years. To the north I consider its setting is strongly defined by its substantial boundary wall and by Church Lane. The appeal site is well beyond this, across the intervening paddocks and the portion of the large field that would remain, and substantial hedging lies in between. Consequently, the proposal's effect on the setting of this property would not harm its significance.
37. I am aware of no non-designated heritage assets that would have their settings adversely affected by the scheme.
38. Similarly, whilst there may be some archaeological evidence under the site, I have no reason to find that it would prevent the scheme from proceeding. Consequently, that could be explored through a pre-commencement condition. Furthermore, the large field seems denuded of any historic field boundaries. Although some hedging does remain parallel to Main Road, the age of that or its value in identifying any field arrangements that might have historically existed have not been explained.

Conclusions on this issue

39. Accordingly, I conclude the scheme would not cause harm to the significance of the various listed buildings brought to my attention, and so in relation to these it would not conflict with Local Plan Policies S1 and PD2, Neighbourhood Plan Policy H1, or the Framework.
40. However, I also conclude that the limited effect on the setting of the conservation area means there is less than substantial harm to the significance of that designated heritage asset.

Character and appearance

41. Supporting the concern about the village environment and its rural location in Neighbourhood Plan Policy H1, Local Plan Policies S1 and S4 seek to protect and, where possible, enhance the landscape's intrinsic character and distinctiveness. Local Plan Policy PD1 aims for development that responds positively to the environment while Local Plan Policy PD5 and Neighbourhood

- Plan Policy LW1 broadly seek to protect, enhance and restore the landscape character of the area, having regard to landscape sensitivities.
42. The landscape around Brailsford is not a valued one under the terms of the Framework. It is nonetheless no doubt much appreciated and enjoyed by local residents and visitors alike, as it comprises a pleasing and attractive patchwork of fields with strong established hedges, interspersed with woodlands, settlements and farmsteads in a rolling, undulating topography. Even though the large field is expansive and contains few features of interest, its use, its irregular form and its isolated trees means that it contributes positively to the rural landscape in which the village sits.
 43. Because of the landscaping, the topography and the effect of the village itself, any impact the scheme may have on the character and appearance of the area would be localised rather than affecting longer-distanced views.
 44. The proposal would be apparent when passing in either direction along Main Road immediately to the north of the site. While the intention is to retain much of the existing hedging on that boundary, the new housing and commercial development would be visible above, especially in the winter months when leaves are less. It would also be apparent through the new access, which would be a formalised highway feature in what is now a grass verge and would necessitate a loss of some of the roadside hedging. In this regard it would therefore detract from the rural character of this side of the road.
 45. However, coming along Main Road from the west, one is travelling up a hill with significant tree planting on the southern side. As a result, the development would only be apparent more or less as one drew level with it, and then it would be balanced by the Avant scheme opposite. Approaching on this road from the east, similarly there would be the housing on the north side and Field Head House adjacent. Moreover, the scheme's focus on Main Road would reflect the historic linear arrangement of Brailsford. As a result, whilst some harm would be caused by it resulting in a loss of the rural landscape there now, from the road it would not be an isolated or discordant development that was unrelated to the village.
 46. Approaching the site along the footpath from the church, the development would be substantially concealed for much of the way by the topography and by the trees immediately to its west. As one moved closer, and also from the other footpath that crosses the large field running from Church Lane northwards, the development would become increasingly apparent, diminishing slightly the quality of the rural landscape. Looking from the footpath as it passes directly along the south side of the site, although the Avant scheme can be seen from here what is before me now would be closer and, inevitably, more dominant. As a result, from the footpath this relatively large scheme would lead to harm as the built-up area of the village expanded at the expense of the rural landscape.
 47. Accordingly, by extending the built-up area of Brailsford onto a field that currently makes a positive contribution to the rural nature of the surroundings, I conclude that the development would detract from the intrinsic character and beauty of the countryside. It would therefore conflict with Local Plan Policies S1, S4, PD1 and PD5, Neighbourhood Plan Policies H1 and LW1 and the Framework.

Highway safety

48. I have no technical evidence to show that the operation of the proposed site access with Main Road would compromise highway safety, or that the residual cumulative effect of the scheme's traffic on the road network would be severe. In these regards I therefore find the development to be acceptable.
49. There would be pedestrian movements from the site to the services in the rest of the village. Moreover, people could also walk from elsewhere in Brailsford to the site, and the scale of this flow would be affected by if and how the commercial element was developed. There is no pavement though along the southern side of the road at this point. While the footpath may be used by some on occasion, its unsurfaced and unlit nature, its narrowness and its stiles all mean its use would not be attractive to those with mobility challenges, or during the hours of darkness or in inclement weather. As such, it would be necessary for anyone walking to or from the site to cross over Main Road.
50. Main Road is busy, carrying an appreciable flow throughout the day. Furthermore, although the site entrance would be just within the 30mph speed limit for Brailsford I accept that cars may well be travelling faster at this point. As a result, a controlled crossing and the narrowing of the carriageway is necessary to allow all pedestrians to cross the road safely. This could be secured by a condition requiring their details to be agreed and them to be in place before occupation.
51. Having crossed the road, the school could be accessed on the pavements and footpaths running through and beyond the Avant scheme. In terms of accessing the rest of the village, the pavement between the site and the junction with Luke Lane is, in places, narrow. However, narrow pavements are not uncommon in older settlements. Moreover, this narrowness is, to a degree, because the pavement has been overgrown by the adjacent hedging. I recognise that the busyness of the road and the width of the carriageway may mean cutting the hedging back has safety implications. However, given it is a maintenance issue concerning part of the adopted highway network, this of itself does not offer a reason to resist the development. Moreover, I understand that a portion of this pavement is to be widened under the permission associated with the Avant scheme, when no doubt the overgrown hedging would be tackled to some extent.
52. The Parish Council also raised concerns about the uncontrolled pedestrian crossing that was to be formed over Main Road between its junctions with Luke Lane on the north, and The Green to the south. This would allow access to the medical centre, and also the shop. There is already a partial crossing here though, with a dropped kerb on the south side next to the bus stop. As a result, it would not be a new feature but rather would be making an existing one more useable. Consequently, the benefits this would bring to the existing population would outweigh any increase in hazard that may result from the additional use arising from the scheme. Indeed, even if the existing crossing was not there, I would expect it would be a popular crossing point now and so it would bring wider benefits to the village's current residents.
53. Accordingly I conclude that the proposal would not compromise highway safety, and so would not conflict with Local Plan Policy HC20 concerning the management of residual car demand, Neighbourhood Plan Policy TMA1 concerning the expectation for safe access, or the Framework.

Best and most versatile land

54. The Framework states that decision-makers should recognise the wider benefits from natural capital, including the economic and other benefits of the best and most versatile agricultural land. It defines this as land falling in Agricultural Land Classifications 1, 2 or 3a. The appeal site is Grade 2 land, and would be taken out of agricultural production by the development. As such in this regard the scheme would conflict with the Framework.

Other matters

Flooding

55. It was said that the drains in the village could not cope with the additional demand, especially after heavy rains. I had little evidence to support this, though I did have the benefit of seeing the after-effects of an exceptionally heavy downpour that occurred just before I started my site visit, which I am aware came after a relatively wet period.
56. Foul and surface water drainage schemes could be secured under a condition, and in the absence of any technical basis to indicate otherwise I consider this would allow this concern to be addressed satisfactorily.

Housing mix

57. Neighbourhood Plan Policy H1 highlights the need for smaller homes, affordable homes and bungalows. The Parish Council expressed concern about the potential mix of the scheme, saying smaller dwellings were needed in the village rather than executive housing. I note though that up to 30% of properties are to be affordable, and the precise sizes and mix of units will be resolved at Reserved Matters stage within the context of Council policy. Accordingly, this is not a basis to resist this proposal.

Wildlife

58. As the site is on the edge of the countryside, it is to be expected that wildlife might use it for foraging or even as habitat. However, noting the submitted surveys, mindful of the nature of its arable activity now, and taking into account the potential for landscaping works and enhancements, I have nothing to show that the scheme would cause unacceptable ecological harm in these regards.

Wellbeing

59. Walking along the footpath can enhance the well-being of the users. However, the development will be set some distance back from that path and would be adjacent to it for only a relatively short section, from where the Avant scheme can already be seen. Furthermore, extensive rolling countryside is found around the village. While the scheme may have some effect on the well-being of those enjoying the countryside, that concern could be raised about any development near to where people undertake recreation. Mindful of this, I therefore find this is not a basis to resist the scheme.

Infrastructure

60. Concern was raised that the village's primary school was already over-subscribed, and the Education Authority has said there would be a need to

mitigate the impact of the proposed development on school places in order to make the development acceptable in planning terms. The necessary financial contributions are secured through an Agreement under section 106 of the Act (a s106 Agreement) that I consider accords with Regulation 122 in the *Community Infrastructure Levy Regulations 2010* (the Regulations). Mindful of this, I consider its effect on the village primary school is not a reason to dismiss the scheme.

61. The NHS Derby and Derbyshire Integrated Care Board (the ICB) sought a contribution of just over £67,000 to provide any additional capacity necessary at GP Practices in the area. This is included in the s106 Agreement. However, based on 2 judgements submitted at the Hearing (Documents APP3 and APP4 below) the appellant nonetheless contended this contribution was not justified, as on-going payment for the care of the residents at the site would be secured through the normal funding process.
62. The ICB contended that those judgements concerned money sought to fund primary care. In this instance though the requested money was not to pay for such services, as it accepted that was achieved through contract payments. Rather, it was to deliver capital funding for infrastructure and, in particular, premises developments, as it said that could only be achieved through contributions such as this. This is reflected in the nature of the consultation response, which focussed on increasing the capacity of local GP practices.
63. In the judgement in Document APP3, it says in paragraph 11 that

'the Trust's concern relates solely to the first financial year (or more precisely that part of the financial year) in which a "new resident" begins to occupy the dwelling and is treated by the Trust. It says any treatment it provides for such residents is not accounted for in the funding agreed under the block contract for that year'

To my mind it is therefore clear that the issue at the heart of that judgement was the funding of services rather than capital, and this similarly seems to be the basis of the second judgement in Document APP4. I see nothing in the consultation response in connection with the proposal before me to lead me to the view that the money would fund services. Indeed in the s106 Agreement enlarging specified practices is identified as the express purpose for the money. As such, I share the ICB's opinion that those judgements do not stand in the way of the contributions it is seeking.

64. To my mind residents can properly expect to have access to a nearby doctor. Where their premises are deficient contributions to extend those can be fairly sought from a development, and is compatible with the tests in the Regulations. As such, and noting the calculations in the consultation response, I consider it is a reasonable requirement.

Other commitments in the s106 Agreement

65. As well as securing contributions to education and the delivery of capacity in local medical practices, the s106 Agreement delivers suitable affordable housing contributions and monies for a Travel Plan bond amongst other things. Having regard to the policy basis, I consider these are also compatible with the tests in the Regulations.

Other considerations and the relevant balances

66. I have therefore found less than substantial harm to the significance of the conservation area. Furthermore, I have found harm to the character and appearance of the area and from the loss of best and most versatile agricultural land, while I have considered the commercial element is, in principle, not supported in the development plan.
67. The Framework states that great weight should be given to the conservation of a designated heritage asset, with any harm to its significance, including from development within its setting, requiring clear and convincing justification. It adds that if less than substantial harm is caused to the significance of any asset, in this case the conservation area, that harm should be weighed against the public benefits in what I shall call the heritage balance.
68. A second balance (the planning balance) is found in section 38(6) of the *Planning and Compulsory Purchase Act 2004*, which says development should be in accordance with the development plan unless material considerations indicate otherwise.
69. The appellant offered a number of benefits and other considerations to be weighed in these balances. First and foremost was the delivery of up to 75 dwellings where, the parties agreed, the Council could only demonstrate a deliverable housing land supply of 3.49 years. To my mind this is an appreciable shortfall and the additional houses would make a notable contribution to addressing it. I therefore afford this benefit significant weight. Similarly, I also attach significant weight to the delivery of affordable housing, despite the fact that it is policy-compliant. It was said the scheme would provide homes for first time buyers, families and the elderly, but as stated the mix is not now before me.
70. Other benefits include the crossing points on Main Road, the delivery of open space, positive landscape management, environmental enhancement through bio-diversity net gain and improvements to the footpath. I accept that some of these are primarily to the benefit of the scheme's residents, but they could be appreciated and used by other villagers, and so I afford them moderate weight.
71. There would also be economic benefits from the construction of the housing and from its subsequent occupants, to which I afford moderate weight. With specific reference to the commercial element, this would be an employment opportunity in the village. There is no requirement though for that aspect of the development to be built and, even if constructed, there is nothing to show what opportunities it would bring. Therefore, the weight it can be afforded is limited at best.
72. With the heritage balance, I consider the delivery of up to 75 dwellings in an area where there is an appreciable shortfall of housing is a public benefit that would, by itself, outweigh the great weight I attach to the less than substantial harm to the significance of the conservation area that arises from the scheme's limited effect on the setting of that designated heritage asset. As such, the proposal would not conflict with the Framework in this regard, and if there remains any conflict with Local Plan Policy PD2 or Neighbourhood Plan Policy H1, the accordance with the Framework is a material consideration that means such conflict would not be a basis to resist the scheme.

73. Moving on to the planning balance, paragraph 11d) of the Framework states that where the policies which are most important for determining the proposal are out-of-date (including situations where the Local Planning Authority cannot demonstrate a necessary housing land supply) permission should be granted unless (a) the application of policies in the Framework provide a clear reason for refusing the development proposed or (b) the adverse impacts of doing so would significantly and demonstrably outweigh the benefits.
74. Mindful of my comments above, I consider neither the effect on heritage assets, nor indeed any other matters, mean the application of policies in the Framework provide a clear reason for refusing the development proposed. Consequently, in the light of the shortfall in housing land supply I therefore turn to establish whether the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits.
75. With regard to the other adverse impacts, I recognise the importance the Government places on the country producing enough food for its own needs, as this not only ensures food security but also gives rise to sustainability benefits. However, the Government also seeks to boost the delivery of housing, and the Framework says that the use of land for food production should be taken alongside other policies in the Framework when considering the most appropriate sites for development.
76. Whilst the loss of agricultural land could be reduced by reliance on land that has been previously developed, I have nothing to show such land is readily available in this district or that, even if it is, the district's housing needs will not also be reliant, to a degree, on greenfield sites. In my view the proposal would not take a significant area of land out of production, while it is located next to a Third Tier village. Therefore, on balance I consider the delivery of housing in this instance outweighs the harm resulting from the loss of best and most versatile agricultural land.
77. In relation to the effect on character and appearance, as stated the proposed housing would be tucked away to a certain extent, and would be seen, to some degree, in the context of the Avant scheme to the north. I recognise too that the Local Plan accepts housing in the countryside if there is a shortfall, and whilst regard has to be given to its visual impacts, such development will often be on open rural land. As a result, the limited nature of this harm means this adverse effect would not significantly and demonstrably outweigh the benefits I have identified.
78. Finally, as stated the commercial element is small relative to the development as a whole before me and so would not, of itself, be a striking additional component in the landscape. If built I accept that some economic benefits would flow, though the precise nature of these would depend on what materialised. Overall, on balance any harm caused by this aspect of the scheme would not outweigh the benefits of the remainder.
79. Indeed, even if the harms I have identified were taken together, they would not significantly and demonstrably outweigh the identified benefits.
80. I therefore conclude that the public benefits outweigh the less than substantial harm to the conservation area, while the scheme's adverse effects do not significantly and demonstrably outweigh its benefits, thereby justifying a decision otherwise than in accordance with the development plan.

Conditions

81. Conditions concerning the commencement of development, the timescale for the submission of Reserved Matters, and the approved plans need to be imposed for the avoidance of doubt.
82. I have given above the reasons for agreeing details of the works to the carriageway and its infrastructure, and as they are intended to serve and safeguard the residents these should be provided before first occupation. To protect highway safety the access should be operative before the development is first occupied, and a construction management plan should be agreed to establish how traffic will be managed during the construction phase.
83. In the interests of ensuring adequate drainage, a drainage scheme should be agreed, with confirmation that it has been implemented prior to occupation. For the same reason drainage details during the construction phase should also be agreed.
84. To ensure regard is given to any archaeological deposits there may be on the site a written scheme of Investigation should be approved, and a Travel Plan and details to address climate change should be agreed in the interests of sustainability. The hours of construction should also be controlled to protect the living conditions of neighbours.
85. Finally, to control the extent of any commercial element and ensure it remains proportionate, the floor space of this should be restricted.
86. Conditions were also suggested relating to the agreement of materials, finished floor levels, meter boxes and matters associated with landscaping and ecology. Whilst controls over these may well be justified, they are matters more appropriately addressed under a Reserved Matters submission. A further condition was also suggested concerning Great Crested Newts, but mindful of the powers of other legislation, and noting the evidence before me, such a condition is not justified.

Conclusions

87. Accordingly, I conclude that the appeal should be allowed.

JP Sargent

INSPECTOR

CONDITIONS SCHEDULE

1. Before any development takes place details of the appearance, landscaping, layout, and scale (the reserved matters) shall be submitted to and approved in writing by the Local Planning Authority and the development shall be carried out as approved.
2. Application for approval of the reserved matters shall be made to the Local Planning Authority not later than 3 years from the date of this permission.
3. The development hereby permitted shall take place not later than 2 years from the date of approval of the last of the reserved matters to be approved.
4. Unless otherwise modified under the conditions below, the development hereby permitted shall be carried out in accordance with Drawing ADC1294-DR-002 RevP4, as amended by the presence of Proposed Controlled Pedestrian Crossing Points as indicated on the modified drawing 18/694/9128A by James Eaton Design Ltd dated April 2018 and appended to the signed Statement of Common Ground and referred to as Appendix A.
5. No development shall take place until drawings and details have been submitted to and approved in writing by the Local Planning Authority of the highway improvement works comprising:
 - a) carriageway narrowing;
 - b) bus stop improvements to the 2 nearest existing bus stops to the site, to include bus shelters and real time passenger information;
 - c) an uncontrolled pedestrian crossing over Main Road between its junction with The Green and its junction with Luke Lane;
 - d) a controlled pedestrian crossing point between the pavement around the site access and the pavement on the north side of Main Roadand the development hereby approved shall not be occupied until those works have been constructed/installed in accordance with the approved details.
6. No development shall take place until details have been submitted to and approved in writing by the Local Planning Authority of a construction management plan comprising
 - a) parking of vehicles for site operatives and visitors;
 - b) any temporary access to the site;
 - c) locations for loading/unloading and storage of plant, waste and construction materials;
 - d) methods of preventing mud and dust being carried onto the highway
 - e) arrangements for turning vehicles;
 - f) arrangements to receive all types of construction traffic required by the works;
 - g) a Joint Highway Condition survey;
 - h) methods of communicating the construction management plan to staff, visitors, neighbouring residents and neighbouring businesses;
 - i) details of how additional surface water run-off from the site will be avoided and managed during the construction period.The approved plan shall be adhered to throughout the construction period.

7. No development shall take place until a Written Scheme of Investigation for archaeological work has been submitted to and approved in writing by the Local Planning Authority. The scheme shall include an assessment of significance and research questions and:
- a) a timetable for the site investigation, recording and deposition of the analysis and records of the site investigation;
 - b) the programme and methodology of site investigation and recording;
 - c) the programme for post investigation assessment;
 - d) provision for analysis of the site investigation and recording;
 - e) provision for publication and dissemination of the analysis and records of the site investigation;
 - f) provision for archive deposition of the analysis and records of the site investigation;
 - g) nomination of a competent person or persons/organization to undertake the works set out within the Written Scheme of Investigation.

The Written Scheme of Investigation shall then be undertaken in accordance with the approved timetable, and no development shall take place other than in accordance with the archaeological Written Scheme of Investigation.

8. With or before the submission of Reserved Matters a detailed design of the surface water drainage for the site, together with an associated management and maintenance plan, shall be submitted to the Local Planning Authority. No development shall be undertaken until it has been approved in writing by the Local Planning Authority, and, prior to the first occupation of the development, a verification report carried out by a qualified drainage engineer must be submitted to and approved by the Local Planning Authority. This report must demonstrate that the drainage system has been constructed in accordance with the agreed scheme (or detail any minor variations), provide the details of any management company and state the national grid reference of any key drainage elements.
9. With or before the submission of Reserved Matters, a detailed scheme of measures to mitigate the effects of and adapt to climate change at the site along with a timetable for implementation shall be submitted to the Local Planning Authority. Once approved in writing by the Local Planning Authority, the development shall be carried out in accordance with those approved details and timetable, and the approved measures shall be maintained throughout the lifetime of the development hereby approved.
10. No site machinery or plant shall be operated, no process shall be carried out and no construction related deliveries received or dispatched from the site except between the hours of 0800h – 1800h Monday to Friday, 0800h – 1300h Saturday and at no time on Sundays, Bank or Public Holidays.
11. The development hereby approved shall not be occupied or be brought into use until the site access works shown on drawing ADC1294-DR-002 Rev P4 (or any amendments to that arrangement resulting from compliance with other conditions on this decision), have been constructed and completed.
12. The development hereby approved shall not be occupied until a Travel Plan, together with details of its implementation and monitoring, has been first submitted to and approved in writing by the Local Planning Authority, and

the Travel Plan shall be implemented and monitored thereafter in accordance with its approved details.

13. The floor area of the commercial element hereby approved shall not exceed 500sqm, of which not more than 150sqm shall be retail floorspace.

APPEARANCES

FOR THE APPELLANT:

J Cassie	Highways consultant
T Goodall	Appellant
D Horton	Landscape consultant
J Millhouse	Planning consultant
S Stemp	Counsel instructed by Mr Stock
A Stock	Planning consultant

FOR THE LOCAL PLANNING AUTHORITY:

S Robson	Planning Manager
D Stokoe	Landscape consultant
R Usher	Heritage Officer

INTERESTED PARTIES:

S Cowdrey	Brailsford resident
E Tarling	Brailsford resident
L Thompson	Brailsford Parish Council
S Thompson	Brailsford Parish Council

DOCUMENTS SUBMITTED AT OR AFTER THE HEARING

BY THE APPELLANT:

APP1: Draft Planning Agreement under s106 of the Act
APP2: Drawing no 18/694/9128A entitled S278 Works
APP3: *R (on the application of the University Hospitals of Leicester NHS Trust) v Harborough District Council* [2023] EWHC 263 (Admin)
APP4: *The King (on the application of Worcestershire Acute Hospitals NHS Trust) v Malvern Hills District Council, Wychavon District Council, Worcester City Council and others* [2023] EWHC 1995 (Admin)
APP5: Signed and dated Planning Agreement under s106 of the Act
APP6: Email to the Planning Inspectorate concerning suggested conditions (dated 7 August 2024)
APP7: Email to the Planning Inspectorate in response to the ICB's comments of 14 August (dated 3 September 2024)

BY THE PARISH COUNCIL:

PC1: Letter to Planning Inspectorate (dated 5 July 2024)

BY THE NHS DERBY AND DERBYSHIRE ICB:

ICB1: Email to the Planning Inspectorate in response to the judgements in APP3 and APP4 (dated 14 August 2024)