



NORTH WEST LEICESTERSHIRE EXAMINATION IN PUBLIC
REPRESENTOR: WILLIAM DAVID LTD
MATTER: 8 (COUNTRYSIDE AND OPEN SPACE)

LAND OFF STEPHENSON WAY, COALVILLE
9TH DECEMBER 2016

1. Introduction

1.1. This paper forms written evidence as a Position Statement in response to matter 8, and is set out in order of the four key questions raised by the Inspector, as follows:

- a. Is Policy En5 consistent with national policy in designating ‘Areas of Separation’? [BP/12]
- b. Does Policy En5 make appropriate provision for Areas of Separation between Coalville and Whitwick? [BP/12]
- c. Should the Plan formally designate Local Green Spaces (LGS)?
- d. Should any LGS designations be delegated to Neighbourhood Plans?

2. Matter 8 a. Is Policy En5 consistent with national policy in designating ‘Areas of Separation’?

2.1. The NPPF does not have a specific policy referring to Local Landscape designations, such as Areas of Separation. The proposal to designate an Area of Separation in this location will create a long-term land use constraint for the area, and is without detailed reasoned justification of its purpose or extent.

2.2. The NPPF clearly establishes the need to “boost significantly” the supply of housing¹, and case law (hereafter referred to as the Richborough case) has clearly established

¹ NPPF para 47

that policies such as an Area of Separation² (in that case a Green Gap) is a policy relevant to the supply of housing. Recent appeal decisions made by the Secretary of State have confirmed this interpretation³.

- 2.3. A very different interpretation of a housing related policy was made at the Stephenson Green Appeal in 2011 and subsequent High Court judgement in 2012, and it is clear that the interpretation made in these historic cases are not consistent with the prevailing interpretation. The Richborough case directly refers to this point at paragraph 41, as follows:

We ought to say, however, that those cases in which the court has rejected the “wider” interpretation of the policy have not in our view been correctly decided on that particular point. Of the cases cited to us (see paragraph 20), this may be said of the decision in William Davis, where the judge concluded that a policy restricting development in a “Green Wedge” (policy E20 of the North-West Leicestershire Local Plan, adopted in 2002) was not a relevant policy for the supply of housing within paragraph 49, despite the fact that it prevented housing development on the appeal site (see paragraph 47 of the judgment). We should add, however, that the judge did not have the benefit of all the submissions we have heard on this point, or of the later decisions in which it has been considered

- 2.4. Extreme caution therefore must be applied to any reliance by the Council of the site’s planning history affecting current plan making, as referred to at section 7 of Background Paper 12.
- 2.5. The NPPF does clearly set out protection for valued landscapes⁴ and appeal decisions and high court judgments made since the Stephenson’s Green Appeal have confirmed that to become a valued landscape requires “*demonstrable physical attribute rather than popularity*”⁵. The NPPF attaches great weight to protecting ‘higher status’ landscapes, such as National Parks and Area of Outstanding Natural

² Richborough Estates LLP vs Cheshire East and Secretary of State [2016] EWCA Civ 168

³ SoS decision dated 30 November 2016 Land North West of Boorley Green APP/W1715/W/15/3130073

⁴ NPPF paragraph 109

⁵ Stroud DC vs SoS and Gladman Developments Ltd 6 Feb 2015 [2015] EWHC488(Admin)

Beauty⁶. It also requires local planning authorities to set criteria based policies to allow the judgement of harm of development on landscape areas, and in doing so to distinguish between international, national and locally designated sites⁷.

- 2.6. In this context, the NPPF does not directly support local landscape designations, and requires landscapes to have demonstrable physical attributes to become valued. Furthermore, it focuses on the protection of landscapes with a 'higher status' (which a local Area of Separation designation does not have) and, in any event, requires criteria based policies to allow the measurement of harm, with the level of protection being commensurate with their status.
- 2.7. As such, the proposed policy EN5, is not supported by the NPPF. It does not promote a criteria based policy, which sets out a clear mechanism for considering effects of non-compliance with the policy. Policy EN5 is essentially a settlement identity protection policy, and physically defines an exclusion zone within which proposed change cannot adversely effect or diminish the open and undeveloped character of the area. This 'open / character' test does not relate to the policy objective (settlement identity), and simply avoids setting out a criteria test that relates to the policy objective.
- 2.8. This policy is therefore not consistent with National Policy, and it is not justified insofar that it relies on an appeal decision and court judgment that is now inconsistent with interpretation of National Planning Policy.
- 2.9. Moreover, the extent of the Area of Separation required to protect settlement identity has simply not been investigated, with reliance placed on an appeal decision that has been considered by the Courts to be in error. As a result, policy EN5 is considered to be unsound.

⁶ NPPF paragraph 115.

⁷ NPPF paragraph 113

3. Matter 8 b. Does Policy EN5 make appropriate provision for Areas of Separation between Coalville and Whitwick?

3.1. Policy EN5 is not considered to make appropriate provision for Areas of Separation between Coalville and Whitwick. There is no evidence base or robust justification to support the claimed distinction between Coalville and Whitwick. Indeed, this site was the location for a proposed sustainable urban extension supported by NWLDC, as set out at 6.14 of Background Paper 12, and are both part of the designated urban area of Coalville in planning policy terms. The site was also promoted by the Princes Foundation in a study commissioned by NWLDC in 2010 (titled “*Regeneration Strategy, Coalville, Leicestershire*”) as an appropriate location for development, with the majority of the site identified in this study as relating to Coalville, with the western / north western section relating to Whitwick (see extract at page 4).

3.2. The change of position to promote this land for an Area of Separation appears to be a reaction to the Stephenson's Green appeal, which is recognised as being a flawed decision. It is not based on the objective analysis of settlement identity, simply that a 2nd Sustainable Urban Extension was not required by the (at that time) reduced housing requirement. The 2010 Princes Foundation Study did consider where an appropriate form of separation could take place (which is reflected by the current masterplan), and it occupied only a modest part of what is now promoted as an Area of Separation in the submitted Local Plan.

Princes Foundation “*Regeneration Strategy, Coalville Leicestershire*” Extract – with NE5 added for reference.

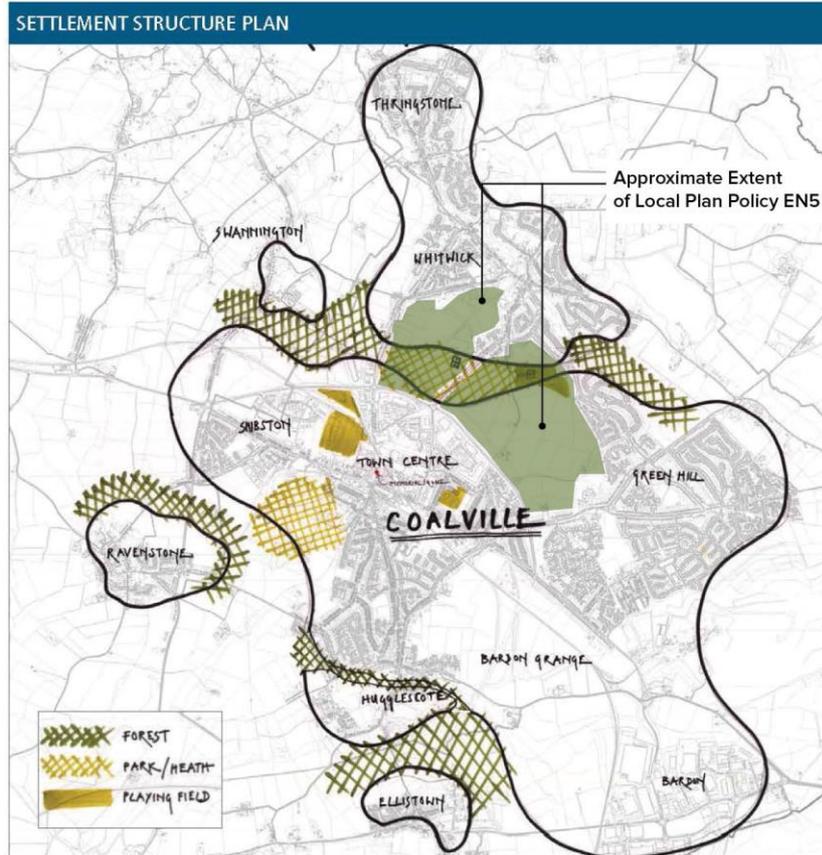
A Settlement Structure Plan was therefore drawn during the workshop to reinforce the centres of Thringstone, Whitwick, Swannington, Ravenstone, and Ellistown with new centres also proposed based on an existing and proposed network of streets. A growth boundary around Coalville and each of these villages was then drawn with a greenways network woven throughout, connecting places to each other and the countryside beyond.

In some instances, where greater distinction is desirable, greenways can be designed as separators (such as new woodlands) and in other instances where adjacent communities can benefit from a shared heritage, greenways can be designed as integrators (such as parks, allotments and playing fields).

PFBE recommends that when considering Coalville's development as part of the revised Core Strategy, NWLOC;

- ♦ identifies clear neighbourhood structures for existing and proposed neighbourhoods
- ♦ plans for a greenway network
- ♦ considers the physical distance between people's homes, village centres and Coalville town centre
- ♦ plans for a series of 'integrators' and 'separators', such as:
 - New woodlands
 - Parks
 - Playing fields
 - Allotments
 - Nature reserves
 - Heathland

Whilst PFBE is not currently commissioned to advise on such issues, the team undertook an initial assessment of how existing settlements might be developed and where new settlements may be located and formed in order to maximise efficiency of movement and walkability. A clear understanding of the opportunities and possible form of growth is essential in understanding the importance of links in and out of the town centre.



THE PRINCE'S FOUNDATION FOR THE BUILT ENVIRONMENT

3.3. If such distinction between Coalville and Whitwick's identity exists (we do not believe it does) the Council have not sought to justify the extent of land required to establish the necessary separation between these settlements. The policy as drafted simply relies on a designated Area of Separation up to the current settlement boundaries of Whitwick and Coalville.

3.4. When you compare this position against the almost continual urban form linking Coalville and Whitwick along Hermitage Road and Hall Lane, it is clear that the provision for the Area of Separation as proposed constrains development without a robust or credible justification for the extent of the proposed designation.

3.5. This approach is consistent with the Appeal Court Decision in regard to ‘the Richborough Case’ in establishing a policy that is relevant for the supply of housing⁸.

3.6. With regard to other elements of NWLDC’s Evidence Base, this further demonstrates the suitability of the site for development, including (my emphasis in bold):

- SHLAA (2016) – the site ref is C19 “*the site is **considered potentially suitable**; the removal of the Green Wedge designation would be required for the site to be considered suitable*”
- Settlement Fringe Assessment (2010), which states for Urban Fringe 3 under scope for mitigation “*This land forms an area of separation between Whitwick and Coalville, however as linear development extends between Whitwick and Coalville along Hermitage Road and Broom Leys Road **there is little perception along roads and gateways into the settlement that there is separation...** Development within this fringe would alter and reduce the separation between settlements, however careful siting and placement of mitigation planting including small scale woodlands and areas of open space **could retain a sense of separation and potentially reduce the prominence of some edges**”.*

3.7. Both the 2016 SHLAA and 2010 Settlement Edge Study highlight that coalescence between Whitwick and Coalville has already occurred and that some development can take place within the site and be successfully mitigated in respect of settlement identity and separation.

3.8. Indeed, the revised masterplan as submitted with the original representations (Figure 1 and Figure 2 – see pages 6 and 7 below) specifically provide the following mitigation to have the effect as described in the evidence base document, including:

- The provision of sports pitches and neighbourhood playing facilities on the northern edge of the housing area.
- Retaining strong green corridors through the site providing direct walking and cycling routes to and from the centre of Coalville which are aligned with key desire lines to existing community facilities.

⁸ Richborough Estates LLP vs Cheshire East and Secretary of State [2016] EWCA Civ 168

- Providing key focal green spaces, eg a central community green to establish a meeting place for residents.
- Creating extensive area of native woodland planting to the north of the development.
- The enhancement of the existing landscape character of the site.
- The provision of more open space and landscaping than considered in the previously dismissed scheme.
- The enhancement of the ecological value of the site through native woodland planting and a proposed wetland.

Figure 1 – Site Masterplan



Figure 2 – Current / Appeal Site Comparison



3.9. The provision for the Area of Separation is therefore not justified and as a result is considered to be unsound.

4. Matter 8 c. Should the Plan formally designate Local Green Spaces (LGS)?

- 4.1. Local Green Spaces are considered in the National Planning Policy Framework at paragraphs 76 to 78, confirming that both local and neighbourhood plans can be used to identify them, a position that is recognised by the NPPG⁹.
- 4.2. The land being proposed as an Area of Separation is substantial in size (at over 112 hectares) and is not considered to be appropriate for a Local Green Space designation - paragraph 77 of the NPPF sets out that this designation is not appropriate for an extensive tract of land.
- 4.3. Furthermore, the NPPG states¹⁰ in response to “How big can a Local Green Space be in the first section of paragraph 015:

“There are no hard and fast rules about how big a Local Green Space can be because places are different and a degree of judgment will inevitably be needed. However, paragraph 77 of the National Planning Policy Framework is clear that Local Green Space designation should only be used where the green area concerned is not an extensive tract of land.

- 4.4. As a result of the scale of the extensive tract of land (over 112 hectares) the proposed Area of Separation is not considered to be suitable for a Local Green Space.

5. Countryside and Open Space Matter 8 d. Should any LGS designations be delegated to Neighbourhood Plans?

- 5.1. The NPPG considers LGS, at the latter half of paragraph 015 states (following on the extract shown at 4.3 above):

“Consequently blanket designation of open countryside adjacent to settlements will not be appropriate. In particular, designation should not be proposed as a ‘back

⁹ NPPG Local Green Space Paragraph: 006 Reference ID: 37-006-20140306

¹⁰ NPPG Local Green Space Paragraph: 015 Reference ID: 37-006-20140306

door' way to try to achieve what would amount to a new area of Green Belt by another name."

- 5.2. It is not considered appropriate for a Local Green Space designation to be assessed for the land currently identified as an Area of Separation as part of a Neighbourhood Plan, as this process is considered to inevitably lead to a proposed LGS that acts as a blanket designation, without rigorous and objective assessment of where settlement identities and the separation between them are required.
- 5.3. In this sense, a Neighbourhood Plan would hold the same flaws in the justification of the designation and its extent.