

## Matters Statement

**Our ref** 22987/03/MHE/JN  
**Date** 11 September 2017

**Subject** Hartlepool Borough Council Local Plan Examination Matter 7 -  
Housing Supply

**1.0 Issue 1 – How does the Plan meet the full OAN for market and affordable housing in the housing market area, including identifying a supply of specific, deliverable sites sufficient to provide 5 years’ worth of housing and a supply of specific, developable sites for housing for years 6-10 and where possible years 11-15 ? (NPPF, paragraph 47)**

**Q1 What is the up to date situation regarding completions to date in the plan period and what is the residual amount of housing that needs to be delivered?**

1.1 It is considered that this is a matter for the Council to address.

**Q2 Does the Plan, as submitted, set out a realistic range of land allocations for housing that would provide for:**

**(a) A supply of specific deliverable sites to meet the housing requirement for the five years from point of plan adoption?**

1.2 No. As set out in our Statement to Matter 3 we consider that the housing requirement should be 449 dwellings per annum. Paragraph 10.6 of the Submission Draft Plan (HLP01-7) states that the Council has persistently under delivered against its housing requirement over the past ten years and therefore a 20% buffer is applicable. This is the correct approach. Paragraph 3.6 of the Council’s Five Year Supply of Deliverable Housing Sites (1 April 2017 to 31 March 2022) document (HLP EX/HBC/57) states that there has been an under delivery of 248 dwellings in 2016/17 and explains that this should be added to the five year housing land supply requirement – the ‘Sedgefield’ method. We agree that this is appropriate.

1.3 This means that the 5 year requirement from “point of plan adoption” is 2,992, calculated as shown in table 1. The Council’s requirement of 409 is shown for presentation purposes.

Table 1 Five Year Housing Requirement

		Lichfields	Council
a	Annual Base Requirement	449	409
b	Base Requirement over 5 years (a*5)	2,245	2,045
c	Under supply	248	248

d	Total 5 year base requirement and undersupply (b+c)	2,493	2,293
e	20% buffer (d*0.2)	499	459
f	Total 5 year requirement (d+e)	2,992	2,752

1.4 Table 7 of the Submission Draft Local Plan sets out that there is a projected supply of 2,703 units for the five year period 2017/18 to 2021/22. The Summary table at page 16 of the 5 Year Supply of Deliverable Housing Sites document updates the position and sets out that there is a **supply of 2,686 units** over the same period.

1.5 Therefore, on the basis that the plan is adopted in 2017/18, there is a shortfall of 306 units in the first five years (2,992 minus 2,686) meaning that the Plan, as drafted, is not sound. Even against the Council's requirement there is a shortfall of 66 units (2,752 minus 2,686). Additional sites should be allocated for residential development to rectify this issue and help ensure that the Plan is sound and meets Hartlepool's development needs. As set out in our statement to Matter 8, we consider our Client's site at Tunstall Farm should be allocated for up to 400 dwellings.

**(b) A supply of specific, developable sites or broad locations for years 6-10 from the point of plan adoption?**

1.6 Over years 6-10 of the Plan, the base requirement is 2,245 (449 x 5 years). Table 7 of the Submission Draft Local Plan set out a projected supply of 1,920 units in 2022/23 -2026/27 (years 6-10 of the Plan period, assuming adoption in 2017/18). This represents a shortfall of 325 units. This is the Council's "best case" scenario as the calculation does not account for any shortfall in years 1-5 nor a 5% or 20% buffer, subject to delivery in years 1 to 5. As detailed above, the Plan as currently drafted is therefore not sound, however the allocation of additional land for residential development will address this.

1.7 Furthermore, as shown on Graph 1 of the Plan, the trajectory of housing sites is not sufficient to meet the identified requirement in years 2025-2030. This is not a sound approach. Additional sites must be allocated to rectify this. Our client's site at Tunstall Farm (phase 2) would help to rectify this. Tunstall farm phase 1 is currently on site and delivering well. If allocated and planning permission granted, it is anticipated that phase 2 would start delivering in 2023/24 at a rate of 30 dwellings per year. This would help rectify the Council's identify shortfall of housing delivery in years 2025 onwards.

**(c) For (a) and (b) what are the sources of supply and what assumptions have informed the scale and timing of supply and rates of delivery from these sources? [Are they realistic and supported by the evidence?]**

1.8 We consider that this is a matter for the Council to respond to and evidence.

**Q3 What is the estimated total supply in the plan period from:**

- (i) existing planning permissions**
- (ii) other commitments e.g. sites subject to S106**
- (iii) allocated sites**
- (iv) any other sites specifically identified**
- (v) windfalls**

1.9 We consider that this is a matter for the Council to respond to and evidence.

**Q4 What are the assumptions about the scale and timing of supply and rates of delivery from these various sources? Are these realistic? (Does the SHLAA establish realistic assumptions about the availability, suitability and deliverability and likely economic viability of housing sites? (NPPF paragraph 159)).**

1.10 We consider that this is a matter for the Council and respective developers/land promoters to confirm and evidence on individual sites.

**Q5 What are the potential sources of windfalls? Is there compelling evidence to justify the approach to making an allowance for future windfall sites? (NPPF paragraph 48)**

1.11 Table 1 of the 5 Year Supply of Deliverable Housing Sites document references 65 dwellings per year as replacement demolitions (50% on site windfall replacement). However paragraph 3.37 of the 2015 SHLAA (HLP06/4) states that *“in view of the number and scale of potential housing sites the steering group agreed that there was no need to include a windfall assessment in the SHLAA.”*

1.12 NPPF paragraph 48 is clear that LPAs: *“may make an allowance for windfall sites in the five-year supply if they have **compelling evidence** that such sites have **consistently become available** in the local area and **will continue to provide a reliable source of supply.**”* (Lichfields emphasis).

1.13 It is therefore correct that an allowance for windfall sites should not be include in the supply of housing, given that there is no compelling evidence that windfall sites will provide a reliable source of supply and that the working group agreed that there was no need to include a windfall assessment in the SHLAA.

**Q6 Does the Council’s five year supply of specific deliverable housing sites incorporate a suitable buffer, in accordance with the NPPF and PPG?**

1.14 No. There is currently a shortfall of over 300 units and therefore no buffer. It is imperative that a buffer is included to ensure that the Plan is flexible enough to adapt to change, particularly if some sites don’t deliver as anticipated.

**Q7 Has there been a persistent under delivery of housing? In terms of a buffer for a five year supply, should this be 5% or 20% in relation to paragraph 47 of the NPPF?**

- 1.15 Yes. The Council acknowledge that there has been a persistent under delivery of housing at paragraph 10.6 of the Submission Draft Plan and that a 20% buffer is required in relation to NPPF paragraph 47. This is consistent with national policy and we support this approach.

**Q8 Should an allowance be made for non-implementation of permissions and if so, what is the evidence? Should any additional allowance be made for uncertainty over the supply from allocations and windfall?**

- 1.16 In the absence of robust evidence relating to the non-implementation of permissions the industry standard for non-implementation of 10% should be included.
- 1.17 This was evidenced in a planning appeal at Land Between Station Road and Dudley Road, Worcestershire (Appendix 1) where the Inspector states:
- “In terms of housing supply calculations and the need to identify a supply of specific and developable sites, I am aware that the Appellant’s approach was not to argue for exclusion of any site. The Appellant simply referred to the circumstances of each and concluded that a 10% reduction was justified overall and reasonable having regard to lapses, delays and reduced delivery. The comparison of the 2006 AMR forecasts with actual deliveries showed this was justified and conservative. Moreover, this approach is supported by “Housing Land Availability” DOE, Planning and Research Programme Paper, Roger Tym and Partners 1995 and it was accepted in planning appeal decisions at Moreton in Marsh and Marston Green. I recognise from the table included in the Appendix to APP16 that delivery is often less than expected. Overall I consider it is reasonable to allow for a 10% discount on sites with planning permission.” (Paragraph 39)*
- 1.18 The Inspector into the appeal at Pulley Lane, Newland Road and Primsland Way, Droitwich Spa (appendix 2) also commented that a 10% overall discount was appropriate. The Inspector stated at paragraph 8.55 that:
- “Plainly, a 10% lapse rate should be applied to the Council’s supply. This approach is supported by the ‘Housing Land Availability’ paper by Roger Tym and Partners. The approach was accepted by the Inspectors at Moreton in Marsh, Marston Green, Honeybourne and Tetbury. A 10% lapse rate was affirmed in the High Court decision at Tetbury. Given the previous shortfalls of delivery within this LPA, a 10% lapse rate is entirely reasonable and should be applied here in order to ensure a robust 5-year supply figure.”*
- 1.19 Additional site allocations for residential development will help to ensure there is a sufficient buffer to ensure that the housing requirement is fully delivered.

**Q9 Is the Plan sufficiently clear on the basis on which the 5 year supply calculation should be made, including the ‘Sedgefield’ or ‘Liverpool’ approach?**

- 1.20 Planning Practice Guidance is clear that LPAs “should aim to deal with any undersupply within the first 5 years of the plan period where possible [Sedgefield]. Where this cannot be met in the first 5 years, local planning authorities will need to work with neighbouring authorities under the duty to cooperate.” (PPG Paragraph 035 Ref ID 3-035-20140306)

- 1.21 PPG is clear that Sedgefield is the preferred method to deal with past under supply. Whilst that does not preclude the Liverpool method being adopted, in this instance, there is no compelling evidence that the Liverpool approach would be preferable and we concur with the Council that the Sedgefield method is more appropriate.

**Q10 Should the annual housing requirement figure be staggered to reflect the focus on large strategic sites? (i.e. a lower figures in the early years of the plan period, increasing later?) Are the lead-in times and delivery rates for High Tunstall and Wynyard realistic?**

- 1.22 No. There is no evidence to support a staggered housing requirement figure. The Council's evidence (Table 7) clarifies that the Council anticipate higher delivery rates earlier in the plan period. This does not support a staggered requirement and doing so would go against the NPPF requirement to boost significantly the supply of housing.

**Q11 Should the Plan contain an appropriate Policy mechanism and indicators that would trigger plan-led corrective measures to ensure a deliverable supply of housing land should monitoring indicate there is an insufficient level of supply?**

- 1.23 It is imperative that the Plan contains an appropriate Policy mechanism to ensure a deliverable supply of housing land, if there is an insufficient level of supply. This would ensure that the Plan aligns with the NPPF requirement at paragraph 21 which is that *"Policies should be flexible enough to accommodate needs not anticipated in the plan and to allow a rapid response to changes in economic circumstances."*
- 1.24 If sites have not been delivered and supply is falling short of the requirement, it is not clear what the Council intend to do with developers and landowners to identify new sites or bring forward suitable sites faster. Additional sites should be allocated to ensure that the Plan seeks to meet its identified housing need in the first instance, as currently drafted it does not do this. Further, to address any shortcomings, an early review mechanism should be included in the Plan. Reserve sites should also be identified as a mechanism to ensure that housing needs are met, should identified sites not come forward as envisaged.

**Q12 In terms of monitoring Plan performance should the housing requirement to 2032 be presented in a table within the Plan in three five year phases (2016-21; 2021-26; 2026-31), with a clear numerical total of what is anticipated to be delivered in each of those phases and the annual average for each phase?**

- 1.25 Local Planning Authorities need to demonstrate a five year housing land supply at any point in time. As the five year period is therefore "rolling" plan performance should be monitored annually. Presenting three, five year phases would not be beneficial therefore we do not consider that this is required.

**Q13 Should the Plan include an additional buffer for supply? Is this justified in light of the requirement exceeding the full OAN? Based on past-delivery rates would it be delivered?**

- 1.26 Yes. National Planning Policy is clear that a buffer for supply is required to provide flexibility and choice in the market. Without this, the Plan is not positively prepared as it should seek to meet the identified housing requirement in full, regardless of whether it exceeds the assessment of OAN.
- 1.27 It is not appropriate to limit future housing delivery based on past delivery rates as ultimately, this would be planning to continue to deliver a quantum of housing that falls short of the requirement. Again this would mean that the Plan is unsound as it would not be positively prepared. It would be planning to fail to meet development needs.

**2.0 Inspector's Supplementary Questions**

**SQ2: Is the Council's five year supply assessment in EX/HBC/57 robust and in accordance with the national policy and guidance?**

- 2.1 This Statement does not comment on site specifics. However in terms of methodology to ensure that the document is fully robust the following changes should be made:
- 2.2 The base requirement should be 449 dwellings per annum (as per Matter Statement 3).
- 2.3 The 20% buffer should be added to the base requirement and the backlog, not just the base requirement. This is supported by the SoS in a recent decision in Redcar and Cleveland (Appendix 3, paragraph 20, IR paragraph 249) and the Inspector's decision for another inquiry in Redcar and Cleveland ( Appendix 4, paragraph 40).
- 2.4 This approach has previously been supported by the Secretary of State who agrees with the Inspector's reasoning in a case<sup>1</sup> that:
- "The five year housing requirement comprises about 24,440 dwellings which includes the under supply since April 2012 [IR184] made up in this period and the application of a 5% **buffer to both the base requirement and the under supply**. (Paragraph 189, Lichfields' )*
- 2.5 In the SoS case of Land at Gibraltar Farm, Kent<sup>2</sup> the Inspector states:
- "In terms of need, the appellants are content to accept the Moor Street Inspector's conclusion that the total requirement (**recovering a backlog of 2215 units within the next 5 years and adding a 20% buffer**) is 10344, or 2068 dpa." (Paragraph 76, Lichfields' emphasis)*
- 2.6 In the case of Express Estate, Lichfield<sup>3</sup> the SoS states:

<sup>1</sup> PINS ref: APP/N4720/A/13/2200640. (10 March 2015) (Appendix 5)

<sup>2</sup> PINS ref: APP/A2280/W/16/3143600 (6 March 2017) (Appendix 6)

<sup>3</sup> PINS ref: APP/K3415/W/15/3024063 (13 February 2017) (Appendix 7)

*“Paragraph 47 of the Framework requires that an additional buffer of 5% be added to this figure (moved forward from later in the plan period) to ensure choice and competition in the market for land. Where there has been a record of persistent under delivery, it states the buffer should be increased to 20% for the same reason, and to provide a realistic prospect of achieving the planned supply. Having carefully considered the evidence and the parties’ submissions on the issue, the **Secretary of State agrees with the Inspector’s analysis** for the reasons given (IR 125-129) that a 20% buffer is appropriate in this case, given the historic under delivery of housing in the District and **that the 20% buffer should also be added to the shortfall.**” (Paragraph 20, Lichfields’ emphasis)*

2.7 The Inspector states in the case at Leeds Road, Leeds<sup>4</sup> that:

*“**Any shortfall, and a buffer, needs to be added to the requirement.**” (Paragraph 8.2.3, Lichfields’ emphasis)*

2.8 The SoS agreed stating:

*“Having carefully considered the Inspector’s arguments at IR8.2.1-8.2.10, the Secretary of State agrees with him...” (Paragraph 15)*

**SQ3: Is the proposed front-loading of the housing requirement (492dpa 2017-2021) deliverable? (given past market performance). What evidence gives the Council confidence that this rate of delivery is realistic?**

2.9 See Q 13.

**SQ4: Does the Plan need to be modified to ensure that the five year housing requirement (updated) is clearly expressed for future decision making purposes?**

2.10 Yes. The Plan needs to be modified to confirm the methodology for calculating five year housing land supply and ensuring there is an appropriate mechanism to deal with any under delivery. Importantly, to ensure that the Plan is sound, additional sites must be allocated for residential development to ensure the full housing needs of Hartlepool are met.

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<sup>4</sup> PINS ref: APP/N4720/W/14/3001559 (22 December 2016) (**Appendix 8**)

## **Appendix 1: Land Between Station Road and Dudley Road, Worcestershire Appeal Decision**



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# Appeal Decision

Inquiry held on 24-26 July 2012

Site visit made on 26 July 2012

**by Harold Stephens BA MPhil DipTP MRTPI FRSA**

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

**Decision date: 24 August 2012**

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**Appeal Ref: APP/H1840/A/12/2171339**

**Land between Station Road and Dudley Road, Honeybourne,  
Worcestershire**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
  - The appeal is made by Lioncourt Homes (Honeybourne) LLP; and E, J, M and H Westoby against the decision of Wychavon District Council.
  - The application Ref W/11/02531/OU, dated 11 November 2011, was refused by notice dated 7 February 2012.
  - The development proposed is an outline planning application for mixed residential and business development, public open space, landscaping with detailed access arrangements.
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## Decision

1. The appeal is allowed and planning permission is granted for an outline planning application for mixed residential and business development, public open space, landscaping with detailed access arrangements on land between Station Road and Dudley Road, Honeybourne, Worcestershire in accordance with the terms of the application, Ref W/11/02531/OU, dated 11 November 2011, and the plans submitted with it, subject to the conditions listed at Annex A.

## Application for costs

2. At the Inquiry an application for costs was made by Lioncourt Homes (Honeybourne) LLP; and E, J, M and H Westoby against Wychavon District Council. This application is the subject of a separate Decision.

## Preliminary matters

3. The appeal site comprises some 4.6 hectares which is currently undeveloped and unused agricultural land. On its northern boundary the site adjoins the mainline railway linking Evesham and other settlements to the west, to London. Station Road runs along the western boundary of the site, with an existing field gate access positioned towards the north-west corner. A mature hedgerow runs along most of the western boundary of the site. Honeybourne Railway Station and a housing development surrounding the Station lie on the opposite side of Station Road.
4. To the south, the site adjoins residential properties facing onto Station Road, Dudley Road and Harvard Avenue. An existing access drive leading from Dudley Road and serving a garage parking area leads to the southern

boundary of the site and the northern end of Harvard Avenue also adjoins the southern boundary. Open fields lie to the east. A high pressure gas pipeline runs across the site in a north east to south west direction.

5. The proposal is for outline planning permission with all matters reserved for later consideration, except for detailed access arrangements. Both parties agreed that the plans on which the proposal should be determined are as follows: Location Plan: 11-030/01; Proposed Site Access Drawings: 0349-011, 12 and 13 and Development Framework Plan: 11/030/DF01 Rev A.
6. In addition to the above plans, Drawing 11-030 MP06 was submitted as an illustrative Layout Plan to demonstrate one way in which the site might be developed for 67 dwellings. An additional illustrative Layout Plan 11/030/MP06 Rev A was submitted which superseded the originally submitted illustrative layout and it shows how a development of up to 70 dwellings could be accommodated on the site. Another illustrative plan, Drawing MID3157/003 Rev A was submitted by the Appellant at the Inquiry. This drawing shows Noise Mitigation Stand-Off Distances. I have had regard to all of these illustrative plans in coming to my decision in this case.
7. The proposal is therefore for a residential development of up to 70 dwellings. The illustrative layout plan<sup>1</sup> shows the majority of these units being positioned in the northern half of the site. However, 5 of these units would be located off a new access from Dudley Road, using the existing drive accessing the garage parking area, and a single dwelling towards the southern boundary with access directly off Station Road. The development would include 34.2% of the proposed dwellings as affordable housing i.e. some 24 affordable dwellings.
8. The proposed business development would comprise of up to 2,000 sq metres of B1 (a) (offices) or B1 (b) use (research and development) positioned towards the southern boundary of the site although to the north of the proposed residential development off Dudley Road. The provision of an open space area measuring some 2.5 hectares is shown on the illustrative layout plan<sup>2</sup> as lying within the central part of the site. The plan shows community woodland and surface water balancing ponds within the proposed open space area.
9. A new vehicular access is proposed off Station Road leading to the majority of the proposed development. Also the proposal includes a new vehicular access off Dudley Road (to serve 5 of the proposed dwellings), a vehicular drive off Station Road to serve a single dwelling and a new pedestrian access off the site onto Station Road with pedestrian crossing, close to the access drive to the railway station.
10. The application was supported by various reports including a Design and Access Statement (DAS), a Desk Based Assessment of Land Next to Station Road, an Ecological Assessment, a Transport Assessment, a Framework Business Travel Plan, a Residential Travel Plan, an Archaeological Evaluation, a Landscape Assessment, a Planning Statement, a Noise Assessment, a Hedgerow Report, a Flood Risk Assessment and a Water Management

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<sup>1</sup> Layout Plan 11/030/MP06 Rev A

<sup>2</sup> Op. cit.

Statement. A Statement of Common Ground (SCG) was agreed between the Appellant and the Council.<sup>3</sup>

11. I note that Reason for Refusal 2 (RFR2) relating to the business element of the scheme was withdrawn prior to the Inquiry and was not defended by the Council. Furthermore, I am aware that on 20 July 2012 the Council accepted that the issue of noise (RFR5) was capable of being addressed by an appropriate planning condition.<sup>4</sup>
12. The Appellant and the Council have completed a S106 Agreement<sup>5</sup> to take effect should planning permission be granted for the appeal. Amongst other matters this Agreement provides arrangements for: some 34% of the proposed dwellings on the site to be delivered as affordable units; the enhancement/provision of off site measures to encourage travel to and from the site by means other than the private car including improvements to the local cycle network and improvements to local bus shelters; the enhancement/provision of education facilities; and the maintenance and/or improvement of recycling facilities and/or services.
13. The S106 Agreement also provides for a contribution towards off site public open space including provision and/or enhancement and/or maintenance of a sports ground/sports club for use by the occupants of Honeybourne as well as a financial contribution towards the provision and/or enhancement and/or maintenance of recreational facilities in the Parish of Honeybourne. It includes a public art and community culture contribution to help fund a project aimed at integrating the new community into local village life and public art. I have had regard to the provisions of the S106 Agreement in the consideration of the appeal. I return to the Agreement later in the decision.

## **Main Issues**

14. I consider the main issues in this appeal are:
  - (i) Whether in the light of the development plan, national guidance and other material considerations, including the housing land supply position, the appeal proposal would be a sustainable form of development;
  - (ii) Whether the nature and design of the proposed development would adversely affect the character and appearance of the village;
  - (iii) Whether the proposed development would unacceptably harm the historic, visual and ecological value of the hedgerow fronting Station Road;
  - (iv) The effect of the proposed development on the significance of any designated heritage assets and/or their setting;
  - (v) Whether the occupiers of the proposed dwellings on the site would suffer from excessive noise and disturbance; and

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<sup>3</sup> INQ3

<sup>4</sup> Mr Cahill's Opening Statement paragraph 6

<sup>5</sup> APP7

- (vi) Whether the proposal makes adequate provision for mitigating any adverse impact it would have upon local services and infrastructure.

## **Reasons**

### ***Planning history***

15. I am aware of the planning history of the site and other relevant planning applications. The SCG<sup>6</sup> provides brief details of the only other planning application submitted and relating to the site.<sup>7</sup> The SCG also mentions the planning application and appeal relating to the land on the opposite side of the road. The Applicant (Sharba Homes) has appealed against the Council's decisions to refuse planning permission for this application and a planning appeal Inquiry commenced on 18 July 2012.<sup>8</sup>
16. I am also aware of two other applications which have been submitted. Firstly, I note that the Appellant has submitted a revised planning application relating to the appeal site. Details of this are set out in Mr Edwards' proof.<sup>9</sup> The new application relates to residential development of up to 60 units and a redesigned/re-located vehicular access of Station Road. Secondly, I note there is a planning application submitted by Taylor Wimpey West Midlands which relates to a site of some 4.16 hectares on Grange Farm, High Street, Honeybourne. This application seeks permission for the erection of up to 75 dwellings. Details are included within Mr Edwards' proof.<sup>10</sup> The Council resolved to approve this application subject to various matters including a S106 Agreement on 19 July 2012.<sup>11</sup>

### ***Planning policy background***

17. The development plan for the area includes the Regional Spatial Strategy for the West Midlands (WMRSS) (2008), The Worcestershire County Structure Plan (WCSP) (2001) and the Wychavon District Local Plan (WDLP) (2006).
18. The WMRSS remains part of the development plan, although the SoS is committed to abolishing it. The revocation of Regional Strategies has come a step closer following the enactment of the Localism Act on 15 November 2011. However, until such time as the WMRSS is formally revoked by Order, I have attributed limited weight to the proposed revocation in determining this appeal. There is broad agreement between the parties with regard to the WMRSS policies that are relevant in this case. These are set out in the SCG<sup>12</sup> and there is no need for me to repeat them here.
19. I am aware that the housing figures in the WMRSS are only on a county wide basis and are extremely old, being based on household projections from the 1990s. In respect of paragraphs 214 and 215 of the National Planning Framework (NPPF) full weight cannot be given to the saved policies of this plan and any weight that is given will depend on the degree of consistency with the NPPF. Given the policies relating to housing land requirements are out of date and based on old information then little weight can be accorded

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<sup>6</sup> INQ3

<sup>7</sup> SCG Section 3

<sup>8</sup> APP/H1840/A/12/2172588

<sup>9</sup> Mr Edwards' proof paragraph 8

<sup>10</sup> Mr Edwards' proof paragraph 9

<sup>11</sup> APP2 and LPA2

<sup>12</sup> SCG Section 4

to the policies. They should not be used for future requirements. I note that no WMRSS policy is referred to in the Council's reasons for refusal.

20. The Phase 2 Revision Draft of the WMRSS is not an approved document and therefore it does not form part of the development plan. It is though a document which is a material consideration in this appeal and given the stage reached (Panel Report) would normally be of substantial weight. In a number of appeals the emerging RSS has been given substantial weight, particularly because it has undergone an EIP and the housing figures are more up to date and have been properly examined.<sup>13</sup> The Phase 2 Revision Draft as amended by the Panel seeks the provision of an annual average of 475 dwellings per annum (dpa) in Wychavon in the period 2006 to 2026 (total 9,500 dwellings). The figures contained within the Panel Report remain the most recent objectively assessed figures available, although there have been more recent household and population projections since these were published. The figures in this plan are therefore of weight and are a starting point in the consideration of housing supply.
21. The WCSP was adopted in 2001 and covers the period to 2011. Many of its policies were saved by a SoS Direction under paragraph 1(3) of Schedule 8 of the Planning Compulsory Purchase Act 2004. There is broad agreement between the parties with regard to the WCSP policies that are relevant in this case. These are set out in the SCG<sup>14</sup> and there is no need for me to repeat them here. WCSP Policies SD2, SD4, SD8, CTC5, CTC17, CTC 19, D10 and D26 were referred to in the Council's reasons for refusal. However, the WCSP policies cited in RFR2 are no longer relevant, as RFR2 has been withdrawn.
22. The WCSP does contain housing figures relating to Wychavon. In respect of paragraphs 214 and 215 of the NPPF full weight cannot be given to the saved policies of this plan and any weight that is given will depend on the degree of consistency with the NPPF. Given the policies relating to housing land requirements are out of date and based on old information then little weight can be accorded to the policies. The policies relating to the provision of housing were not saved. There is therefore no figure relating to housing provision within this plan.
23. The WDLP was adopted in 2006 and covers the period 1996 to 2011. Many of its policies were saved under a Secretary of State Direction in May 2009. A number of policies within the plan were not saved. There is broad agreement between the parties with regard to the WDLP policies that are relevant in this case. These are set out in the SCG<sup>15</sup> and there is no need for me to repeat them here. WDLP Policies GD1, GD2, GD3, SR5, ENV1, ENV7, ENV8, ENV10, COM2, COM12 and ECON6 were referred to in the Council's reasons for refusal. In respect of paragraphs 214 and 215 of the NPPF full weight cannot be given to the saved policies of this plan because the plan was not adopted in accordance with the Planning and Compulsory Purchase Act 2004 and any weight that is given will depend on the degree of consistency with the NPPF.

<sup>13</sup> Mr Bateman's proof and appendices

<sup>14</sup> SCG Section 4

<sup>15</sup> SCG Section 4

24. I note that the policies relating to housing provision are time expired and are out of date so limited weight can be given to these policies. Any interpretation of policies within the WDLP which sought to restrict a ready supply of housing and therefore adversely impact on the NPPF requirement to "boost significantly the supply of housing"<sup>16</sup> would clearly conflict with the NPPF. In respect of housing supply, Policy SR1 sought to provide 7,450 dwellings in the District between April 1996 and March 2011 (497 dpa). The plan is therefore time expired in respect of housing provision policies.
25. Emerging Local Planning Policy is contained in the South Worcestershire Development Plan (SWDP). This is being produced jointly by Wychavon District Council, Malvern Hills District Council and Worcester City Council to guide development in the South Worcestershire area. The Preferred Options version of this document was the subject of a public consultation exercise that ended in November 2011. The most recent timetable for the SWDP outlines that the Council aims to consult on the pre-submission draft in November 2012, with the document being submitted to the Secretary of State in March 2013. The independent Examination would be likely to take place in July 2013 with adoption in December 2013. In respect of housing in Wychavon the document suggests that 7,803 dwellings will be provided in the period 2006 and 2030. There have been a number of objections to this figure and inevitably it will be discussed in detail at the independent Examination. The Council has recently resolved<sup>17</sup> to increase the dwelling requirement figure in the SWDP to a total of 23,200 dwellings with the Wychavon figure (excluding WWA) being 8,900 dwellings. Given the stage reached the SWDP can be given little weight.
26. With regard to other documents, I am aware of the Worcestershire Strategic Housing Market Assessment (2012) (WSHMA). This document considers a great deal of background information relating to housing and population within the area, including projections for households. There are a number of detailed concerns with this document in respect of the work that has been undertaken in respect of household projections, not least because of its significant divergence with the demographic projections used by ONS. The document has not been subject to any public consultation and I consider it can be given little weight at this appeal.
27. The following Supplementary Planning Guidance and Documents are relevant in the assessment of this appeal: Developer Contributions Towards Service Infrastructure SPG; Developer Contributions for Education Facilities SPD; Affordable Housing SPG; Water Management SPD; Planning and Wildlife SPD Development Guide - Developer Contributions to Public Open Space; and the Residential Design Guide SPD. I also have taken into account the Written Ministerial Statement Planning for Growth<sup>18</sup> and Laying the Foundations,<sup>19</sup> which emphasises the Government's approach to house building and the need to provide action to build more houses and to boost economic growth.
28. The NPPF was published in March 2012. The NPPF largely carries forward existing planning policies and protections in a significantly more streamlined and accessible form. It also introduces the presumption in favour of

<sup>16</sup> Paragraph 47

<sup>17</sup> APP13

<sup>18</sup> March 2011

<sup>19</sup> November 2011

sustainable development<sup>20</sup> and makes adjustments to some specific policies. Paragraph 7 of the NPPF explains the three dimensions to sustainable development – an economic role, a social role and an environmental role. Paragraph 17 sets out 12 principles that planning should achieve. Paragraph 47 indicates that the Government's ambition is to boost significantly the supply of housing. Moreover, paragraph 49 indicates that relevant policies for the supply of housing should not be considered up to date if the Local Planning Authority cannot demonstrate a five-year supply of deliverable housing sites. The NPPF also sets out how decision-takers should proceed taking account of the date of adoption of the relevant policy and the consistency of the policy with the NPPF. I have taken the NPPF into account as a material consideration in this case.

### **Issue 1 – Housing Land Supply and Sustainability**

29. From the evidence that is before me there are a number of shortcomings in the Council's approach in this case particularly in relation to the wider development plan context. Firstly, the Saving Letters<sup>21</sup> made clear that the Council should adopt a 2004 Act<sup>22</sup> compliant development plan "promptly". That request was made in May 2009 and there is still no such development plan nor will there be until the end of 2013. This failure is compounded by the fact that the time period which the WDLP was intended to cover expired on 31 March 2011. Secondly, the Council supported the Option Figure of 9,100 for WDC for the period 2006 to 2026 which was presented for Examination by the Panel.<sup>23</sup> That Preferred Option was submitted in draft in December 2007 and committed the Council to providing 9,100 over the 20 year period, i.e. 455 dpa starting from 2006.
30. Thirdly, it is clear that the Council has not achieved this total in any one year since 2006. Instead it has relied upon the saved policies to refuse planning applications such as this. Overall this approach is in direct conflict with the advice in the former PPS3 (2006) to bring about a "step change" in housing land supply. It also ignores the Planning for Growth's injunction to issue planning permissions where possible which was issued in March 2011 and most recently it denies that the failure to make 5 year provision engages paragraph 14 of the NPPF by reason of paragraph 49.
31. It seems to me that the "Saving Letters"<sup>24</sup> make clear the contingent basis upon which the policies were saved, namely the requirement in the decision making process to have regard to up-to-date policies, such as the former PPS3, which required a 5 year land supply. These "material considerations", now include the NPPF, which means that it is simply not good enough to regard saved policies as an opportunity to refuse rather than grant planning permission. The Council's approach is at odds with the requirement in the Saving Letters. Relevant policies in the WCSP and the WDLP must be viewed in the context of paragraph 215 of the NPPF. Importantly, there is an obligation to consider the development plan in the light of any absence of a 5 year supply which predated the NPPF and can be traced back to 2006.

<sup>20</sup> Paragraph 14

<sup>21</sup> Mr Bateman's Appendices 9 and 10

<sup>22</sup> Planning and Compulsory Purchase Act 2004

<sup>23</sup> Mr Bateman's Appendix 7 page 105

<sup>24</sup> Mr Bateman's Appendices 9 and 10

32. It is common ground in this case that the Council is unable to demonstrate a 5 year housing land supply. It follows that paragraph 49 of the NPPF is engaged. The Council does not accept that land supply polices which are not "up-to-date" (paragraph 49) must therefore be considered "out of date". I disagree with the Council's interpretation. The Council also argues that the extent of the housing supply deficit is relevant when ascertaining the weight to be attributed to this fact in the overall assessment of the proposal. However, I cannot find evidence to support this view. The Council's delivery record is very poor (234 dpa<sup>25</sup>) when compared to the targets it set for itself in 2007 (455 dpa) and 2012 (371 dpa).
33. In my view the target should be guided by the WMRSS Panel Report which indicates a figure of 9,500 additional dwellings i.e. 475 dpa.<sup>26</sup> This remains a reliable evidence base, consistent with the NPPF.<sup>27</sup> More up to date information is available in the CLG 2008 Household Projections and the 2010 population figures adjusted by using the Chelmer Model are now available and relevant.<sup>28</sup> The result of using these three information sources is that it is obvious that the Council has a 5 year supply of below 3 years when the correct approach is adopted.<sup>29</sup>
34. The Council argues that it has responded proactively to the recognised shortfall by granting planning permissions beyond the WDLP development boundaries. In addition, it states that the lack of completions is, in very large part, due to the on-going economic recession, especially the dearth of finance, which is beyond the control of the Council rather than a lack of extant planning permissions. Whilst this may be so I note that the Council prefers to rely on the housing provision figures in the emerging SWDP. In my view there are fundamental problems with this. Firstly, it is not yet "objectively tested" in the context of the NPPF.<sup>30</sup> Secondly, it relies upon WSHMA figures to which unjustified adjustments have been made.<sup>31</sup> Thirdly, the SoS places importance upon tested figures. This was confirmed in a recent decision in Salford.<sup>32</sup>
35. Fourthly, the Council was unable to point to one recent decision where an Inspector or the SoS had relied upon figures in an emerging plan. Neither could Mr. Bateman. Fifthly, reliance upon the emerging SWDP conflicts with The Planning System: General Principles paragraph 18 as the plan is not likely to be submitted for independent Examination until March 2013. Nor can it be afforded weight under paragraph 216 of the NPPF for reasons already set out above. Finally, the Bishops Cleeve decisions make clear that little weight can be attached to a Preferred Options document which is yet to be consulted upon.<sup>33</sup> The most recent overall timetable for the SWDP also refers to a Preferred Options Consultation document which is indicative of its present status.<sup>34</sup> For all the above reasons I consider that the full, objectively assessed housing needs target cannot be the SWDP figure.

<sup>25</sup> Mr Bateman's proof paragraph 7.5

<sup>26</sup> Mr Bateman's Appendix 7 page 126

<sup>27</sup> NPPF paragraph 218

<sup>28</sup> NPPF paragraph 159

<sup>29</sup> Mr Bateman's proof and APP12 Tables 4-6

<sup>30</sup> NPPF paragraph 47

<sup>31</sup> Mr Bateman's evidence at page 37 onwards

<sup>32</sup> APP10 paragraph 15

<sup>33</sup> APP9 paragraph 19

<sup>34</sup> APP13 paragraph 14

36. The Council considers that the residual method for assessing housing needs should be preferred over that of the Sedgefield approach. It is common ground that the NPPF is silent on the matter. However, the Council was unaware of any post NPPF decision which followed the residual approach. Recent pre-NPPF decisions by the SoS expressly approve the Sedgefield approach at Andover and Moreton in Marsh.<sup>35</sup> In my view, it is inconsistent with Planning for Growth and the NPPF paragraph 47 to meet any housing shortfall by spreading it over the whole plan period. Clearly it is better to meet the shortfall sooner rather than later. Moreover, if the buffers are brought forward into the first 5 years as in the NPPF,<sup>36</sup> so also should the shortfall. I cannot agree with the Council's use of the residual method. In my view the Sedgefield approach should be used for the reasons outlined.
37. There was debate at the Inquiry as whether the Council was a 5% authority or 20% authority in relation to buffers. The test is to be found within NPPF paragraph 47 which refers to "persistent record of under-delivery." When using the SWDP figures (371 dpa) measured from 2006, the agreed table attached to APP16 shows the Council's delivery rates compared to the required rate. It is clear from this evidence that in every one of the last 6 years delivery is below the SWDP requirement of 371 dpa.
38. In my view that failure to deliver amounts to a "persistent" record of under-delivery. Indeed the overall deficit is 823 dwellings which equates to over 2 years. Clearly if the figures in the Phase 2 Revision Draft of the WMRSS were used the deficit would be considerably more. The evidence of the deficit figures left the Council with no option other than to accept that this is a 20% authority. Moreover, it cannot be right to blame the slump in the property industry for under performance so long as there is not a 5 year supply of sites available now as required by paragraph 47 of the NPPF.
39. In terms of housing supply calculations and the need to identify a supply of specific and developable sites, I am aware that the Appellant's approach was not to argue for exclusion of any site. The Appellant simply referred to the circumstances of each and concluded that a 10% reduction was justified overall and reasonable having regard to lapses, delays and reduced delivery. The comparison of the 2006 AMR forecasts with actual deliveries showed this was justified and conservative.<sup>37</sup> Moreover, this approach is supported by "*Housing Land Availability*" DOE, Planning and Research Programme Paper, Roger Tym and Partners 1995 and it was accepted in planning appeal decisions at Moreton in Marsh<sup>38</sup> and Marston Green.<sup>39</sup> I recognise from the table included in the Appendix to APP16 that delivery is often less than expected. Overall I consider it is reasonable to allow for a 10% discount on sites with planning permission.
40. I also accept the Appellant's approach in excluding large windfalls from future delivery. To include them there must be "compelling evidence" according to paragraph 48 of the NPPF. Even in the past there were no large windfalls in 2006/7 and 2008/9.<sup>40</sup> So far as the future is concerned I

<sup>35</sup> Mr Bateman's Appendices 3 and 15

<sup>36</sup> NPPF paragraph 47

<sup>37</sup> See figures in APP16 Appendix

<sup>38</sup> Mr Bateman's Appendix 15 paragraph 178

<sup>39</sup> Mr Bateman's Appendix 13 paragraph 8

<sup>40</sup> Mr Davies' Appendix D Table 4

consider these sites would either be allocated – in which case to include them would be double counting – or will be granted on appeal – in which case there would not be any "compelling evidence" of future delivery, merely the chance thereof. In my view large windfalls should be excluded from the calculation.

41. The Council indicates that there have been 485 small windfalls developed over 6 years which equates to approximately 80 dpa.<sup>41</sup> The previous percentage of garden land planning permissions of all windfalls was 28%<sup>42</sup> and therefore the appropriate figure using the Council's evidence is 72% of 80 which equals 58 dpa. This compares with the Appellant's estimate of 55 dpa. The Council's 5 year figure of 490 for windfalls is not reliable or based on "compelling evidence": quite the opposite, it is contradicted by the evidence. The appropriate figure should be  $58 \times 5 = 290$  or  $55 \times 5 = 275$ .
42. Taking into account all of the above information it is clear to me that the Council does not have a 5 year housing land supply available. The Appellant's evidence indicates a number of ways of calculating housing supply based on housing requirement figures using policy advice and based on the most up to date information. In respect of the Appellant's supply figure, which I prefer, there is between 1.9 to 2.76 years supply. Taking account of the 20% buffer required by NPPF, this amounts to a shortfall of between 3,129 and 1,705 dwellings. Using the Council's supply figures the years supply situation improves to between 2.56 and 3.71 years supply. Taking account of the 20% buffer required by NPPF there is a shortfall of between 2,627 and 1,203 dwellings.<sup>43</sup> In all cases there is always less than a 5 year supply available. In my view, the Council has serious housing land supply problems. It is imperative that restorative action should be taken.
43. It is common ground that the appeal is in conflict with Policy GD1 of the WDLP. The Council argues that due weight, not full weight, should be applied to the conflict in the light of the current housing supply deficit. I accept that the proposed development lies beyond the defined settlement boundary of Honeybourne and I attach some weight to that conflict. However, I am aware that the Council has granted planning permissions for other schemes beyond the settlement boundaries such as at Copcut Lane, Droitwich Spa. I also note the advice in paragraph 47 of the NPPF to boost significantly the supply of housing and paragraph 49 of the same document which indicates that relevant policies for the supply of housing should not be considered up to date if the Local Planning Authority cannot demonstrate a five-year supply of deliverable housing sites. It is agreed that in this context paragraph 14 of the NPPF comes into play and also that no "relevant policies"<sup>44</sup> affect the appeal site. The test therefore is whether the advantages are "significantly and demonstrably" outweighed by the benefits. This can be tested by reference to the 3 dimensions to sustainable development.<sup>45</sup>

<sup>41</sup> Mr Davies' Appendix D Table 4

<sup>42</sup> Mr Davies' Appendix D Table 4

<sup>43</sup> APP12 Tables 4-6

<sup>44</sup> NPPF paragraph 14 footnote 9

<sup>45</sup> NPPF paragraph 7

44. In terms of an economic role I consider the housing construction would bring direct and indirect employment according to "Laying the Foundations".<sup>46</sup> The location is adjacent to a Category 1 village with good services and transport links including a nearby railway station. The employment element of the scheme would provide the opportunity for local employment.<sup>47</sup> The open space on site would be new village "infrastructure". In terms of a social role, I consider that open market housing is needed as evidenced by the deficit in the 5 year housing land supply. There is also a significant under provision of affordable housing against the established need figure and an urgent need to provide affordable housing in Wychavon. The local services are accessible. The new development would serve to "knit in" the Stephenson Green development as part of the village.
45. In terms of an environmental role, I consider that any necessary development brings about change and this one is no exception. I am aware that in a recent SoS decision for a residential development at Burgess Farm Worsley, the SoS acknowledged that development of the site *"would result in the permanent loss of an area of open countryside enjoyed by local people; encroachment into the wildlife corridor; a significant intrusion into the setting of Walkden; and that it would seriously degrade the character and appearance of the area and the amenities of neighbouring residents (IR206)."*<sup>48</sup> Nevertheless, the SoS decided that the proposal would have an environmental role. *"... by providing open areas and nature parks. He accepts that there are substantial environment disbenefits to the development of this site including the loss of countryside that is valued by residents and the impact on the rural setting of Walkden."*<sup>49</sup>
46. It follows that even a site which has the effect of seriously degrading the character of an area can still have an environmental role. In this case the development (i) would lead to the loss of 23m of hedgerow but would provide planting on the northern boundary of the site with a new one; (ii) would lose some ridge and furrow but makes publicly available for close enjoyment by future generations the best of what would remain. This represents a net benefit in its own right according to the evidence of the Appellant's expert, and (iii) would provide a large open space with woodland, grass management and three SUDS areas all of which would increase biodiversity.
47. Overall I conclude on the first issue whilst there would be conflict with aforementioned development plan policies, other material considerations including the housing need position far outweigh such conflict. This is genuinely a sustainable form of development as envisaged in the NPPF.

## **Issue 2 – Effect on the character and appearance of the village**

48. The Council refers to particular paragraphs in the NPPF as providing evidence as to why the appeal proposal should be rejected. Paragraphs 17 and 56 to 64 in relation to design are highlighted. It is common ground between the parties that the yardstick to which the appeal proposal should be judged is whether it can be characterised as high quality design. Paragraph 64 states

<sup>46</sup> Mr Bateman's Appendix 5 page 57 paragraph 11

<sup>47</sup> Report by Halls (Worcester) LLP November 2011

<sup>48</sup> APP10 paragraph 21

<sup>49</sup> APP10 paragraph 28

that permissions should be refused for development of poor design that fails to take opportunities available for improving the character and quality of an area and the way it functions. The Council submits that by siting the vast majority of the houses (64 of the 70 units) in the north-west corner of the site most of the development would be poorly related to, and visibly divorced from, the remainder of the village. The Council also argues that the scheme runs contrary to Policy GD2 of the WDLP and the provisions of the Council's Residential Design Guide SPD, notably paragraphs 4.3 and 4.7. It is claimed that the proposed development would be seen as detached and not well connected to Honeybourne.

49. From the evidence that is before me and from my site visit, it seems to me that Honeybourne, has grown in a rather haphazard and fragmented way over the last 100 years and, should the proposed development be implemented, it would not be uncharacteristic of the way in which Honeybourne has evolved. Whilst layout is a reserved matter, I consider that the appeal proposals would conform to the Council's SPD. The scheme has taken appropriate care to reflect the surrounding scale and appearance of the existing settlement in the design of all the built environment; and its design ensures that it would fit into the surrounding built environment and landscape. Moreover, the proposed layout provides a clear contrast between the public and private realm and it includes home zones which establish pedestrian priority. In addition, the proposals are of a higher design quality than the Stephenson Way development, which was granted consent by the Council in 2001.
50. In my view, the scheme is designed in such a way as to maximise the public benefit of the scheme to the local community, including dedicated public open space, community woodland (2.16 hectares) and it would make a positive contribution in terms of local employment and community facilities. It could hardly be described as exclusive or indeed 'non inclusive'. The layout of the housing is outward-looking offering plenty of natural surveillance both to the open space and Station Road. Furthermore, the layout completes and creates a more robust boundary to the settlement than the weak and poorly defined edge created by the 1970's housing to the south.
51. Having regard to the advice in the NPPF, I consider that the development constraints attributed to the location of the gas main do not provide sufficient negatives to warrant dismissing this appeal. Given that the consent of the development would be representative of Honeybourne's organic evolution, and the scheme conforms to the principles of high quality inclusive design, from a design perspective there is no reason why the appeal scheme should not be granted planning permission. On the second issue I conclude that nature and design of the proposed development would not adversely affect the character and appearance of the village.

### ***Issue 3 - Effect on the hedgerow fronting Station Road***

52. The Council points out that hedgerows are a characteristic feature of the Worcestershire countryside and that the value to be attached to the hedgerow is high as it is a recurring and oft-repeated theme of the "Village

Claylands" LCT.<sup>50</sup> The single key primary characteristic of this landscape type is "hedgerow boundaries to fields". The LCT information sheet states that these are landscapes where the conservation of the hedgerow network is of prime importance and the landscape guidelines indicate that the pattern of hedgerow boundaries should be conserved. It is agreed that by applying the criteria under the Hedgerow Regulations 1997, the hedgerow is 'important' but it is in no way exceptional compared to other hedgerows of similar age in Worcestershire. It is also agreed that the proposed development would only result in a relatively small loss of hedgerow amounting to 23m in length with the remaining hedgerows on Station Road totalling 269m being retained in the development. In the Appellant's view the hedgerow is unkempt and suffers from extensive elm death from disease, albeit it currently remains dense, stock proof and an effective visual screen.<sup>51</sup> It is also common ground that the Station Road hedgerow is the principal habitat on the appeal site but it is not unusually valuable in terms of biodiversity compared with others in the county.

53. The Appellant's survey of the Station Road hedge indicates that the portion of hedge in Highway Authority ownership on the road embankment has limited species diversity with hawthorn dominant. There is then a break in the hedge which serves as the current field access. Immediately south of this break in the hedge the hedge vegetation is dominated by elm which is suffering from Dutch Elm disease leading to extensive dieback of the hedge. Progressing south the quality and species composition of the hedge improves but at chainage 220-254m is not of high quality because this is where the high pressure gas main was laid which involved the removal of a 35m length of hedge to provide a working corridor for construction works. This gap has subsequently been replanted with a single species of hawthorn. The lengths of hedge between chainages 172-220m and 268-310m are typically more species diverse.<sup>52</sup>
54. The Council argues that the proximity of a number of the dwellings in the proposed development as well as the direct loss of hedgerow as a consequence of the proposed new accesses from Station Road would devalue its importance and threaten its wellbeing contrary to WDLP and WCSP policies and national guidance. I disagree. Whilst the relatively small loss of part of this hedgerow is regrettable from both a visual, historical and ecological viewpoint, the impact has to be assessed against the backdrop of the mitigation and landscape strategy proposed for the site. This includes the improved management of the retained hedgerow which would increase species diversity and wildlife population density, as well as increasing visual and amenity value. The retention of most of the hedgerow, its long term protection and management as part of the wider public open space would be a positive benefit which significantly outweighs the minimal and minor loss of hedgerow to gain access to the site. I consider that the Council's concern about a maintenance strip to the side of the hedge of a sufficient width so as to act as a buffer to protect the ecological value of the hedge is a detailed layout matter which could be resolved at the reserved matters stage.

<sup>50</sup> LPA3 - Village Claylands Landscape Character Type Information Sheet

<sup>51</sup> Mr Dobson-Smyth's proof, paragraph 6.3.5

<sup>52</sup> Mr Dobson-Smyth's Hedgerow Survey Plan Drg No. 902B-01

55. In my view the loss of hedgerow would be compensated for by the provision of new hedgerow, SUDS areas, open space and extensive new tree planting in the proposed community woodland. The loss of hedgerow would be more than compensated for in the ecological sense by the positive wider impact set out above. Whilst the hedgerow has historic value the extent of the loss is limited compared to the loss of 123m at the Taylor Wimpey site.<sup>53</sup> The Council's witness agreed that the hedge fronting the Taylor Wimpey site was similar to the one at Station Road albeit the former has a lower ecological value since it has fewer species and contained a higher proportion of dead/dying elm. I consider the visual impact of the loss at the appeal site would be minor compared to the major removal at the Taylor Wimpey site. The absence of a 5 year housing land supply also adds considerable weight in favour of allowing the development. I consider that there would be no material harm to the WDLP and WCSP policies as overall the proposal would conserve and enhance biodiversity through mitigation and compensatory measures. Similarly there would be no conflict with national advice including that contained in the NPPF paragraph 118. On the second issue I conclude that the proposal would not unacceptably harm the historic, visual and ecological value of the hedgerow fronting Station Road.

#### ***Issue 4 - Effect on the significance of heritage assets and/or their setting***

56. Both parties acknowledge there are ridge and furrow earthworks on the site that are undesignated heritage assets. The LCT for the area records the notable representation of ridge and furrow. The ridge and furrow earthworks are agreed to be locally significant in view of their survival and, to a lesser extent, their condition. The remains are in poor condition but do survive to a height of about 400mm and are readily visible. They are a visual expression of medieval arable activity. There is variation in condition over the appeal site. From the Appellant's evidence ridge and furrow is not rare within Honeybourne. However, they are vulnerable to rapid reduction by ploughing of land which may mean that they become rarer.<sup>54</sup> The earthworks within the site contain two areas of ridge and furrow on different alignments, but no other features of note.
57. The proposed development would retain about 50% of the earthworks but as the preservation is better to the east the proportion increases to about 80% of the better preserved earthworks. The development proposals would also greatly increase the potential for appreciation. The earthworks are readily visible and they would fall within the open space provision. Although there may in principle be some minor loss of a non-designated heritage asset of local significance, the significant retention of much of the best and most well preserved areas of ridge and furrow and its long-term protection means that there are more benefits to the proposals here in terms of heritage assets, which substantially outweigh the minor adverse impact. I consider there would be no material conflict with WCSP Policy CTC17, WDLP Policy ENV10 or the advice in the NPPF. I conclude that the development would not have an adverse effect on the significance of undesignated assets or their setting.

<sup>53</sup> APP1

<sup>54</sup> Mr Woodiwiss' proof page 9

### ***Issue 5 - Effect of noise and disturbance on future occupiers***

58. The Council's RFR5 indicates that the appeal site lies adjacent to Station Road and a mainline railway. It refers to the submitted Noise Assessment and records that parts of the site suffer from noise levels that require either a stand-off between the proposed dwellings and the road/railway or design measures incorporated in the proposed development such as the positioning of gardens and habitable rooms away from the sources of noise. It is argued that the submitted layout plan does not reflect the recommendations set out in the Noise Assessment and therefore the proposal would conflict with Policy GD2 of the WDLP and the provisions of the former PPG24.
59. The Appellant has confirmed that there are two remedies for addressing the ambient sound levels which represented a constraint of less than 1dB(A) in magnitude. Mitigation can be achieved either through the introduction of stand-off distances between the noise source and the proposed dwellings or by incorporating noise reduction features into the design of each dwelling. All that needs to be done in relation to the proposed dwellings within noise band NECB shown on Drawing MID3157/003 Rev A could be as simple as double/triple glazing detail with acoustic grade trickle vents, acoustically attenuated wall construction and other building elements, given that the noise levels to be achieved are only a reduction of less than 1 dB(A) from ambient noise levels. At the outset of the Inquiry both parties agreed that issue could be dealt with by means of a planning condition.
60. I am aware that in relation to the proposed development at Copcut Lane Salwarpe, the level of noise that has to be addressed is 6.8 dBA above the acceptable (former PPG24) levels because 2,400 vehicles pass on the A38 each hour as opposed to 420 each hour on Station Road. I note that the Council was content to use planning conditions to deal with the noise issue at Copcut Lane<sup>55</sup> where the Council wished to grant planning permission but not at the appeal site where the acoustic problems were lesser and could have been addressed either by siting or by construction detail. I consider that the proposal would not be in conflict with Policy GD2 or national guidance on noise. I conclude on this issue that the occupiers of the proposed dwellings on the site would not suffer from excessive noise and disturbance.

### ***Issue 6 - Effect on local services and infrastructure***

61. Both parties agree that RFR7, RFR8, RFR9, RFR10 and RFR11 could be addressed through the completion of an appropriately worded S106 Planning Obligation.<sup>56</sup> A S106 obligation<sup>57</sup> was submitted at the Inquiry and is agreed by the main parties. It was discussed in detail at the Inquiry. Regulation 122 of the Community Infrastructure Levy Regulations 2010 (CIL) indicates that any planning obligation entered into must meet the following tests: (a) necessary to make the development acceptable in planning terms; (b) directly related to the development and (c) fairly and reasonably related in scale and kind to the development. I was also provided with an agreed

<sup>55</sup> Mr Tait's Appendix 13 conditions 12, 13

<sup>56</sup> SCG Section 6

<sup>57</sup> APP7

statement of compliance with the CIL Regulations 2010.<sup>58</sup> From all the evidence that is before me I consider that the provisions of the S106 Agreement complies with paragraph 204 of the NPPF and meets the 3 tests of Regulation 122 of the CIL Regulations 2010. I accord the S106 Agreement significant weight and I have had regard to it as a material consideration in my conclusions. I conclude that the Appellant has made adequate provision for mitigating any adverse impact that the proposed development would have upon local services and infrastructure.

## Other matters

62. I have taken into account all other matters raised including the business units proposed, the evidence on site access, sustainable travel, flood risk and drainage. The Council and interested persons raise concerns about the cumulative impact of this proposal and the advice in NPPF paragraph 17 that planning should be genuinely plan-led, empowering local people to shape their surroundings. Reference was made to the fact that there are currently 3 proposals for significant residential development at this village, one of which has now been allowed. It is common ground that some 189 dwellings could be built in the village over the next 5 years which constitutes a 28% increase in the number of dwellings. Concern was expressed about the effect on local services, the effect on the character of the village and on the spatial strategy of the district (SWDP) which anticipates only 75 dwellings in Honeybourne up to 2030. I am aware that there was local preference and Parish Council support for the Taylor Wimpey site.
63. Whilst I understand these concerns I also note that in this case the Council did not include any RFR alleging over-development of Honeybourne nor could there be as the Council has decided to grant planning permission for the Taylor Wimpey site without knowing the result of either of the two current appeals. Certainly it was an option for the Council to await the decisions on these two appeal decisions to determine the "proper level" of development at Honeybourne. The Council has been minded to put other applications in abeyance such as the proposal at Crown Lane, Wychbold.<sup>59</sup> In any event the concept of a "satisfactory" amount of development for Honeybourne comes only from the emerging SWDP to which little weight can be attached for reasons set out above. In my view prematurity should not be given any decisive weight in respect of the appeal proposals.
64. I have also considered the point made by the Council that there may be an alternative proposal which omits the employment land, provides a lower number of dwellings and is likely to cause less material harm to the hedgerow.<sup>60</sup> However, no alternative scheme was submitted to the Inquiry. No alternative is before me and it would not be right for me to comment on such a scheme as it could prejudice the Council's consideration of the matter. In any event I found that overall the appeal proposal would conserve and enhance biodiversity.

<sup>58</sup> APP15

<sup>59</sup> APP14

<sup>60</sup> See paragraph 16 above

## Conclusions

65. Although the proposal would conflict with some development plan policies including Policy GD1 of the WDLP, I conclude that it represents a sustainable form of development in line with the NPPF and there are material considerations which clearly outweigh this conflict. There are a considerable number of positive benefits in this case such as housing provision, business units, heritage and ecology. In line with paragraph 14 of the NPPF there are no adverse impacts which would significantly and demonstrably outweigh the considerable number of benefits and therefore the appeal should be allowed.

## Conditions

66. Both parties prepared a schedule of suggested conditions which were discussed at the Inquiry.<sup>61</sup> I have considered these conditions in the light of the advice in Circular 11/95. Condition 1 is necessary because the application was made for outline permission. Condition 2 refers to time limits for the submission of reserved matters which I consider is reasonable and necessary. I can see no justification for the shorter time limit proposed in the alternative condition 2 requested by the Council. Condition 3 relating to surface water and foul drainage is necessary to ensure that the site can be properly drained without flooding. Condition 4 is necessary to ensure a satisfactory development. Conditions 5-12 are necessary in the interests of highway safety and to establish measures to encourage more sustainable non-car modes of transport. Condition 13 is necessary in the interests of protecting nature conservation issues. Condition 14 is necessary to protect ridge and furrow earthworks on the site. Condition 15 is necessary to encourage an energy efficient development. Conditions 16-19 are necessary to ensure a satisfactory development of the site. Condition 20 is necessary to ensure that the detailed site investigation and remediation strategy will not cause pollution of ground and surface waters. Condition 21 is necessary to ensure a satisfactory development in the interests of visual amenity. Condition 22 is necessary in the interests of protecting residential amenity. Condition 23 is necessary to ensure that inappropriate uses do not occur.

*Harold Stephens*

INSPECTOR

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<sup>61</sup> APP8

## **APPEARANCES**

### **FOR THE LOCAL PLANNING AUTHORITY:**

Mr Jack Smyth of Counsel	Instructed by the Solicitor to Wychavon District Council
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He called:

Mrs Susanne Hiscock Dipl. Ing. (FH) CLMI	Landscape and Natural Heritage Officer
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Mr Jonathan Edwards BSc (Hons) Dip TP MRTPI CLMS	Development Manager (Planning)
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Mr Fred Davies MTP MRTPI	Policy Manager
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### **FOR THE APPELLANT:**

Mr Jeremy Cahill QC	Instructed by Mr Tait, Planning Prospects Ltd
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He called:

Mr Anthony Bateman BA (Hons) TP MRICS MRTPI MCMi MIOd	Managing Director, Pegasus Planning Group
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Mr Ian Turvey BSc MSc CMILT MIEnv Sc	Director, JMP Consultants Ltd
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Mr Simon Woodiwiss BA (Hons) Prehistory Archaeology MIFA	Archaeological Services Manager, Worcestershire County Council
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Mr Martin Sullivan MA BSc (Hons) Dip UD MRTPI FRSA	Managing Director, The Urbanists
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Mr Nigel Dobson-Smyth BA DipLA Dip UD CMLI	Chartered Landscape Architect and Urban Designer, Arthur Amos Associates
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Mr Jason Tait BA (Hons) Dip TP MRTPI	Director, Planning Prospects Ltd
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### **INTERESTED PERSON:**

Councillor Alastair Adams	Local Councillor
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**INQUIRY DOCUMENTS**

INQ1	Notification of Public Inquiry and list of persons notified, submitted by the Council
INQ2	Letters received in response to the Notification of the Public Inquiry
INQ3	Statement of Common Ground

**DOCUMENTS SUBMITTED DURING THE INQUIRY****Appellant's List of Additional Inquiry Documents**

Reference	Document
APP1	Taylor Wimpey Committee Report
APP2	Update to Taylor Wimpey Committee Report
APP3	Sapcote Road Appeal Decision
APP4	Noise Correspondence
APP5	Taylor Wimpey Layout
APP6	Taylor Wimpey Access Drawing
APP7	Section 106 Agreement
APP8	List of Proposed Conditions
APP9	Bishops Cleeve Appeal Decision
APP10	Salford, Manchester Appeal Decision
APP11	Torquay Appeal Decision
APP12	Updated Housing Land Supply Tables produced by Anthony Bateman
APP13	WDC July Report to Special Council – SWDP Update
APP14	WDC Letter re Crown Lane, Wychbold – 6 <sup>th</sup> July 2012
APP15	CIL Compliance Statement
APP16	Closing submissions including Appendix on Five Year Supply Update

**Council's List of additional Inquiry Documents**

LPA1	South Worcestershire Development Plan, Policy SWDP23
LPA2	Resolution on Taylor Wimpey planning application, Ref. No. W/12/01020
LPA3	Landscapes of Worcestershire, Landscape Type Information Sheet – Village Claylands
LPA4	The Hedgerow Regulations – Your Questions Answered
LPA5	Comments from the Council's Planning Policy Officer regarding Public Open Space Requirements
LPA6	Extract of Minutes of Meeting of the Council's Planning Committee for 1 <sup>st</sup> March 2012 referring to Minute No. 190 including resolution of the Committee relating to planning application Ref. No. W.11.02055, Land off Crown Lane, Wychbold
LPA7	Closing Submissions
LPA8	Response to application for costs

**Interested Persons Documents List**

IP1	Statement of Councillor Alastair Adams
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## **ANNEX A**

### **CONDITIONS**

- 1) 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.
- 2) Application for approval of reserved matters relating to the appearance, landscaping, layout and scale of the development must be made not later than the expiration of 3 years beginning with the date of this permission and the development must be begun not later than whichever is the latter of the following dates:
  - the expiration of 5 years from the date of this permission; or
  - the expiration of 2 years from final approval of the reserved matters, or in the case of approval of different dates, the final approval of the last such matter to be approved.
- 3) The development shall not commence until drainage plans and information for the disposal of surface water and foul sewage have been submitted to and approved in writing by the Local Planning Authority. The scheme shall be implemented in accordance with the approved details before the development is first brought into use.
- 4) The Reserved Matters details required under condition 1 shall include the following;
  - a. a plan showing how the proposed development relates to the high pressure gas pipeline that runs across the site as well as any Consultation/Exclusion zones as defined by the Health and Safety Executive
  - b. details of the floor levels of the proposed buildings
- 5) Before any dwelling hereby approved is first occupied visibility splays shall be provided from a point 0.6m above ground level at the centre of the access to the application site and 2.4 metres back from the nearside edge of the adjoining carriageway, (measured perpendicularly), for a distance of 120 metres in each direction along the nearside edge of the adjoining carriageway, Station Road. Nothing shall be planted, erected and/or allowed to grow on the triangular area of land so formed which would obstruct the visibility described above and these areas shall thereafter be retained and kept available for visibility purposes at all times.
- 6) The development shall not be occupied until the approved access arrangements as shown on Proposed Site Access Drawings 0349-011, 12 and 13 have been completed.
- 7) The development shall not be occupied until the road works to the individual units from the adopted highway, their respective individual vehicular accesses and entrance, turning areas and parking facilities have been properly consolidated, surfaced, drained and otherwise constructed in accordance with details to be submitted to and approved in writing by the

Local Planning Authority and these areas shall thereafter be retained and kept available for those uses at all times.

- 8) The development shall not commence until a temporary means of vehicular access for construction traffic between the nearside edge of the adjoining carriageway and the highway boundary and any set back entrance is agreed in writing with the Local Planning Authority in consultation with the Highway Authority and shall be carried out in accordance with a specification to be submitted to and approved in writing by the Local Planning Authority, at a gradient not steeper than 1 in 20.
- 9) The development shall not be occupied until the temporary vehicular access for construction is permanently closed in accordance with details to be submitted to and approved in writing by the Local Planning Authority.
- 10) The development shall not be occupied until the existing field gated access entrance onto Station Road shall be permanently closed to vehicular traffic in accordance with details which shall be submitted to and approved in writing by the Local Planning Authority.
- 11) The development shall not be occupied until secure parking for cycles for the respective dwelling or business unit to comply with the Council's standards is provided in accordance with details to be submitted to and approved in writing by the Local Planning Authority and thereafter be retained for the parking of cycles only.
- 12) The development shall be not be occupied other than in accordance with the provisions of the submitted Framework Business Travel Plan November 2011 and Residential Travel Plan November 2011.
- 13) No development shall commence until a habitat creation/enhancement and management plan and programme has been submitted to and approved in writing by the Local Planning Authority in consultation with specialist advisors. The plan shall include (but not be limited to) further details of measures for: the maintenance and enhancement of retained hedgerows, proposed replacement hedge planting and ecological enhancement and habitat creation proposals within the proposed open space and site drainage ponds. The approved habitat creation/enhancement and management plan shall be implemented in full in accordance with the approved programme.
- 14) No development shall commence until measures to protect ridge and furrow earthworks on the site both during and after construction have been submitted to and approved in writing by the Local Planning Authority. The measures shall be implemented as approved.
- 15) No development shall commence until details of the following have been submitted to and approved in writing by the Local Planning Authority:
  - how renewable energy measures are to be incorporated into the proposed development;
  - measures to conserve and recycle water to be incorporated into the proposed development;

- energy efficiency measures to be incorporated into the proposed development; and
- construction materials to be used in the proposed development with the aim of minimising the use of primary non-sustainable materials
- an implementation timetable

The approved details shall be implemented and incorporated into the approved development in line with the approved implementation timetable.

- 16) No development shall commence 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 parking of vehicles of site operatives and visitors
  - (ii) loading and unloading of plant and materials
  - (iii) storage of plant and materials used in constructing the development
  - (iv) the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate
  - (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 construction works.
- 17) Applications for the approval of reserved matters shall be in accordance with the principles and parameters broadly described and illustratively indicated in the submitted "Design & Access Statement" (as clarified in Planning Prospects letter dated 9<sup>th</sup> December 2011) including with regard to the general areas of development, floor areas and storey heights. Any reserved matter application shall include a statement providing an explanation as to how the design of the development responds to the Design and Access Statement.
- 18) The development shall not commence until details of the facilities for the storage of refuse for the proposed buildings within the development has been submitted to and approved in writing by the Local Planning Authority. The development shall not be occupied until the approved refuse storage facilities to serve the respective dwelling or business unit have been provided in accordance with approved details.
- 19) The development shall not commence until details of a phasing plan for the development have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved phasing plan.
- 20) The development shall not commence until the site has been subject to a detailed scheme for investigation and recording of contamination of the land and risks to the development, its future uses and surrounding environment. A detailed written report on the findings including proposals and a programme for the remediation of any contaminated areas and protective measures to be incorporated into the buildings shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall include proposals for the disposal of surface water during remediation. The

remediation works shall be carried out and a validation report shall be submitted to and approved in writing by the Local Planning Authority in accordance with the approved proposals and programme. If during the course of the development further evidence of any type relating to other contamination is revealed, work at the location will cease until such contamination is investigated and remediation measures, approved in writing by the Local Planning Authority have been implemented.

- 21) A landscape management plan, including long term design objectives, management responsibilities and maintenance schedules for all landscape areas including the proposed open space and the frontage hedge to Station Road (which shall not be demised to individual dwellings) but other than small, privately owned, domestic gardens, shall be submitted to and approved in writing 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.
- 22) No development shall commence until a noise mitigation scheme designed to minimise the impact from road and railway traffic such that the noise levels within the dwellings do not exceed the recommendations set out in BS8223:1999 Sound Insulation and Noise Reduction for Buildings shall be submitted to and approved in writing by the Local Planning Authority. The development shall be implemented in accordance with the approved details.
- 23) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking, re-enacting or modifying that Order), the approved business units shall only be used for B1a and B1b purposes as defined by the Town and Country Planning (Use Classes) Order 1987 (or any order revoking, re-enacting or modifying that Order).

## **Appendix 2: Pulley Lane, Newland Road and Primsland Way, Droitwich Spa Appeal Decision**



Department for  
Communities and  
Local Government

Harris Lamb Limited  
75-76 Francis Road  
Edgbaston  
Birmingham  
B16 8SP

Our Ref: APP/H1840/A/13/2199085  
Your Ref: P484

Mr Chris May  
Pegasus Group  
5 The Priory  
Old London Road  
Canwell  
Sutton Coldfield  
West Midlands  
B75 5SH

Our Ref: APP/H1840/A/13/2199426  
Your ref: Bir.3689

02 July 2014

Dear Sirs,

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78**  
**APPEAL BY BARBERRY DROITWICH LIMITED**  
**SITE AT LAND AT PULLEY LANE, NEWLAND ROAD AND PRIMSLAND WAY,**  
**DROITWICH SPA, (WYCHAVON DC)**  
**APPLICATION REF: W/11/01073/OU;**  
**and**  
**APPEAL BY PERSIMMON HOMES LIMITED AND PROWTING PROJECTS LIMITED**  
**SITE AT LAND NORTH OF PULLEY LANE AND NEWLAND LANE, NEWLAND,**  
**DROITWICH SPA, (WYCHAVON DC)**  
**APPLICATION REF: W/12/02336/OU**

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Inspector, Harold Stephens BA MPhil DipTP MRTPI FRSA, who held a public local inquiry between 28 January and 14 February 2014 into your respective clients' appeals against decisions by Wychavon District Council ("the Council"):

**Appeal A:** to refuse outline planning permission for the development of land for up to 500 dwellings (Class C3); up to 200 unit care facility (Class C2); provision of mixed use local centre to include shop (Class A1); financial & professional services (Class A2); restaurants & café (Class A3); drinking establishment (Class A4); hot food takeaway (Class A5); offices (Class B1a) and police post; indoor bowls facility; means of access and estate roads; public open space; landscaping and infrastructure at Pulley Lane, Newland Road and Primsland Way, in accordance with application Ref: W/11/01073/OU; and

Jean Nowak, Decision Officer  
Planning Casework Division  
Department for Communities and Local Government  
1/H1, Eland House  
Bressenden Place  
London, SW1E 5DU

Tel 0303 444 1626  
Email [pcc@communities.gsi.gov.uk](mailto:pcc@communities.gsi.gov.uk)

**Appeal B:** to refuse outline planning permission for the construction of a maximum of 265 dwellings with associated car parking, access, infrastructure provision and open space at land north of Pulley Lane and Newland Lane, Newland, in accordance with application Ref: W/12/02336/OU.

2. On 26 June 2013, both appeals were recovered for the Secretary of State's determination, in pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act 1990, because they involve proposals over 150 units on sites of more than 5 ha which would significantly impact on the Government's objective to secure a better balance between housing demand and supply and create high quality, sustainable mixed and inclusive communities.

### **Inspector's recommendation and summary of the decisions**

3. The Inspector recommended that both appeals be allowed and outline planning permission granted. For the reasons given below, the Secretary of State agrees with the Inspector's conclusions and recommendations. A copy of the Inspector's report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

### **Procedural matters**

4. In respect of Appeal B, the applications for costs by Barberry Droitwich Ltd and by Persimmon Homes & Prowting Projects Ltd are the subjects of decision letters being issued separately by the Secretary of State.
5. The Secretary of State notes (IR1.21) that, although the development did not require an Environmental Impact Assessment, an Environmental Statement was prepared to support the outline planning applications.
6. The Planning Inspectorate wrote to interested parties on 11 March 2014, following the publication of new planning guidance on 6 March, inviting representations on any implications for these cases. The representations received were forwarded to the Inspector who has taken them into account in writing his report.

### **Policy considerations**

7. In deciding these appeals, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise. In this case, the development plan consists of the saved policies of the Wychavon District Local Plan 2006 (WDLP) as well as the Worcestershire Waste Core Strategy (November 2012).
8. Other material considerations which the Secretary of State has taken into account include the *National Planning Policy Framework* (The Framework); the planning guidance referred to in paragraph 6 above; and the *Community Infrastructure Levy (CIL) Regulations 2010* as amended.
9. The Council is also working jointly with Malvern Hills DC and Worcester City Council to prepare a South Worcestershire Development Plan (SWDP) (IR1.26-1.29). However, as work is still proceeding on that emerging plan and there are a number of

uncertainties outstanding (see paragraph 13 below), the Secretary of State gives it very little weight.

## **Main issues**

10. The Secretary of State agrees with the Inspector that the main issues in these appeals are those set out at IR1.4.

## **APPEAL A**

### Consistency with development plan and sustainability of development

11. The Secretary of State notes (IR8.10) that the reasons for refusal did not allege breach of WDLP policies and both main parties accept that bringing forward housing development in the context of the district's housing needs inescapably creates tension in particular with WDLP policies SR1 and GD1. He also agrees with the Inspector at IR8.14 that, for the reasons at IR8.12-8.14, policies GD1 and SR1 are out of date and paragraph 14 of the Framework applies, triggering the presumption in favour of sustainable development. Furthermore, for the reasons given at IR8.15-8.18, the Secretary of State agrees with the Inspector that only limited weight can be given to policy ENV1 (IR8.15) He also agrees that the appeal scheme would not conflict with ENV8 (IR8.18).
12. Turning to the question as to whether the development is sustainable,, the Secretary of State notes the arguments set out at IR8.19-8.20 in relation to the interpretation and application of the presumption under paragraph 14 of the Framework in the case of *William Davis*. The Secretary of State also notes the recent decision in *Dartford Borough Council v. Secretary of State for Communities and Local Government and Landhold Capital Limited* where Mrs Justice Patterson rejected elevating *William Davis* to a formulaic sequential approach to paragraph 14 of the Framework. Like the Inspector, the Secretary of State finds the relevant policies for the supply of housing are out of date (IR8.24) and therefore the presumption applies and that the evidence before them both (IR8.21-8.23 )demonstrates that the Appeal A scheme is sustainable in terms of economic, environmental and social benefits..

### Prematurity

13. Having regard to the arguments set out at IR8.25-8.30, the Secretary of State agrees with the Inspector that, for the reasons given at IR8.30-8.36, granting permission for these appeal schemes cannot be seen as being likely to prejudice a local plan and so cannot be regarded as premature. In particular, the Secretary of State has taken account of the fact that the Council are proposing at least an extra 3,000 homes and have not yet decided where these should be located (IR8.30); that there are unresolved objections to the SWDP which dramatically reduce the weight that can be given to it (IR8.31); and that the appeal site has previously been under active consideration as a location for development (IR8.34).

### Whether the appeal proposal is necessary to meet housing needs

14. For the reasons given at IR8.38-8.55, the Secretary of State agrees with the Inspector's conclusions at IR8.56-8.58 that the Council cannot demonstrate a 5-year housing land supply, so that the test in paragraph 14 of the Framework applies.

### Character and appearance of the area

15. For the reasons given at IR8.59-8.72, the Secretary of State agrees with the Inspector that the proposed development would not significantly harm the character and appearance of the area and that the countervailing environmental benefits more than outweigh the limited harm caused by the loss of green field land. He therefore also agrees that the proposal would comply with the environmental policies of the WDLP and the emerging SWDP and with the relevant provisions of the Framework.

### Effect on local highway infrastructure

16. Having carefully considered the Inspector's arguments at IR8.74-8.80, the Secretary of State agrees with him that the location of the appeal site, with good access to the centre by cycle and foot, would minimise the highways impact which any substantial development inevitably brings (IR8.81); so that it would not give rise to highway safety or the free-flow of traffic in accordance with the relevant development plan policy . (IR8.82).

### Brine Run

17. For the reasons given at IR8.83, the Secretary of State agrees with the Inspector that there is no sound and robust evidence to suggest that the Brine Run could have any adverse implications for the appeal scheme so long as appropriate engineering measures to mitigate the risk of damage were agreed via the Council's Building Control Department in advance of any development.

### Conditions

18. The Secretary of State has considered the proposed conditions and the Inspector's reasoning and conclusions thereon in respect of Appeal A (IR8.84-8.87), and he is satisfied that the conditions as proposed by the Inspector and set out at Annex A to this letter are reasonable, necessary and would meet the tests of paragraph 206 of the Framework and the planning guidance. However, he also agrees with the Inspector (IR8.87) that it would not be appropriate to attach a planning condition regarding a Brine Run Monitoring Report (IR8.87) since this is a matter covered through the Building Control regime.

### Section 106 obligation

19. The Secretary of State has also considered the S106 Planning Agreement in respect of Appeal A submitted by the main parties at the inquiry (IR8.88) and, like the Inspector, he is satisfied that the provisions can be considered to be compliant with CIL Regulation 122 and paragraph 204 of the Framework and that full weight in support of the appeal proposal can therefore be given to the obligations.

### Conclusion

20. For the reasons given at IR8.89, the Secretary of State agrees with the Inspector that, although the proposal would not be consistent with a strict interpretation of Policy GD1 of the WDLP, little weight can be afforded to that or to the other development plan

policies relied on by the Council because they are clearly out of date and significantly outweighed by the inability of the Council to demonstrate a 5-year housing land supply. Similarly, the Secretary of State agrees with the Inspector at IR8.90 that the proposed development would not significantly harm the character and appearance of the area, with the countervailing environmental benefits more than outweighing the limited landscape harm caused by the loss of green field land. Overall, therefore, the Secretary of State agrees with the Inspector that the benefits of the Appeal A scheme are not significantly and demonstrably outweighed by the alleged disadvantages.

## **APPEAL B**

### Consistency with development plan and sustainability of development

21. For the reasons given at IR8.91-8.96, the Secretary of State agrees with the Inspector at IR8.96 that WDLP Policy GD1 is no longer fit for purpose and would not help the Council to meet its housing requirements in 2014 because land beyond the settlement boundary needs to be released for development in a manner which reflects the housing needs of the area and the terms of the Framework. The Secretary of State also agrees with the Inspector (IR8.97) that, as WDLP policy SR1 is out of date, paragraph 14 of the Framework applies, thereby triggering the presumption in favour of sustainable development. He further agrees with the Inspector (IR9.98) that the application of a Special Landscape Area (SLA) designation to the appeal site (IR8.98) has been superseded. Overall, the Secretary of State agrees with the Inspector (IR8.99-8.100) that the situation represented by the out-dated WDLP has dramatically changed and can no longer be a sound basis against which to decide this proposal, therefore by default the appeal scheme needs to be considered against the provisions of the Framework.

### Prematurity

22. Having regard to the arguments set out at IR8.101-8.110, the Secretary of State agrees with the Inspector's conclusion at IR8.111 that the Council's reliance upon prematurity as a reason for refusal cannot stand as it is contrary to the weight of guidance, policy and judicial decisions and with no relevant precedent.

### Whether the appeal proposal is necessary to meet housing needs

23. For the reasons given at IR8.112-8.126, the Secretary of State agrees with the Inspector's conclusion at IR8.127 that the Council does not have a 5-year supply of housing land and the appeal scheme is necessary to meet the housing needs of the district, including the need for affordable housing.

### Character and appearance of the area

24. Having carefully considered the Inspector's arguments as set out at IR8.128-8.137, the Secretary of State agrees with his conclusions at IR8.138 including his summary that these conclusions demonstrate that there is no logical basis to refuse the Appeal B scheme on the basis of landscape impact. The Secretary of State also agrees with the Inspector at IR8.139 that, if both schemes were to be approved, the additional impact of the Appeal B scheme in landscape terms would be *de minimis*; and that the substantial provision of green infrastructure in connection with both schemes would

mean that the overall result of the proposals would bring benefits to clearly off-set the initial impact of the development. He also agrees with the Inspector's conclusion at IR8.140 that, although there would be changes to the visual effect of the development, there would be no significant harm to the character and appearance of the area and the scheme would comply with the pertinent WDLP and emerging SWDP policies.

#### Effect on local highway infrastructure

25. For the reasons given at IR8.141-8.143, the Secretary of State agrees with the Inspector that the proposed development would not give rise to harm to highway safety or to the free flow of traffic, and that relevant WDLP policies would not be offended in this respect.

#### Conditions

26. The Secretary of State has considered the proposed conditions and the Inspector's reasoning and conclusions thereon in respect of Appeal B (IR8.144-8.147); and he is satisfied that the conditions as proposed by the Inspector and set out at Annex B to this letter are reasonable, necessary and would meet the tests of paragraph 206 of the Framework and the planning guidance.

#### Section 106 obligation

27. The Secretary of State has also considered the S106 Planning Agreement submitted by the main parties at the inquiry in respect of Appeal B and the Inspector's comments on it (IR8.148-8.153). Like the Inspector, he is satisfied that the provisions can be considered to be compliant with CIL Regulation 122 and paragraph 204 of the Framework and that full weight in support of the appeal proposal can therefore be given to the obligations in the Agreement.

#### Planning balance and conclusion

28. For the reasons given at IR8.154-8.158, the Secretary of State agrees with the Inspector's conclusions (IR8.159-8.161) that there is a need for the Appeal B site, which is suitable for the proposed development and which would bring about substantial and tangible benefits. The Secretary of State also agrees that there is no overall conflict with the development plan or the emerging SWDP or with the Framework. Instead, there is a strong positive case for the development of the Appeal B site to provide not only market housing but also much needed affordable housing.

#### **Overall Conclusions**

29. Overall, the Secretary of State is satisfied that the adverse impacts of granting planning permission for both the Appeal A scheme and the Appeal B scheme would not significantly and demonstrably outweigh the benefits when assessed against the Framework taken as a whole, and he does not consider that there are any material considerations of sufficient weight to justify refusing planning permission for either scheme.

## **Formal Decision**

30. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendations he hereby allows your respective clients' appeals and grants outline planning permission for:

**Appeal A:** the development of land for up to 500 dwellings (Class C3); up to 200 unit care facility (Class C2); provision of mixed use local centre to include shop (Class A1); financial & professional services (Class A2); restaurants & café (Class A3); drinking establishment (Class A4); hot food takeaway (Class A5); offices (Class B1a) and police post; indoor bowls facility; means of access and estate roads; public open space; landscaping and infrastructure, subject to the conditions set out at Annex A to this letter, at Pulley Lane, Newland Road and Primsland Way, in accordance with application Ref: W/11/01073/OU; and

**Appeal B:** the construction of a maximum of 265 dwellings with associated car parking, access, infrastructure provision and open space, subject to the conditions set out at Annex A to this letter, at land north of Pulley Lane and Newland Lane, Newland, in accordance with application Ref: W/12/02336/OU.

31. An applicant for any consent, agreement or approval required by a condition of this permission for agreement of reserved matters has a statutory right of appeal to the Secretary of State if consent, agreement or approval is refused or granted conditionally or if the Local Planning Authority fail to give notice of their decision within the prescribed period.
32. This letter does not convey any approval or consent which may be required under any enactment, bye-law, order or regulation other than section 57 of the Town and Country Planning Act 1990.

## **Right to challenge the decision**

33. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged by making an application to the High Court within six weeks from the date of this letter.
34. A copy of this letter has been sent to the Council. A notification e-mail / letter has been sent to all other parties who asked to be informed of the decision.

Yours faithfully

**JEAN NOWAK**

Authorised by Secretary of State to sign in that behalf

**CONDITIONS****APPEAL A - Appeal Ref: APP/H1840/A/13/2199085****Commencement and Phasing of Development**

- 1) Application for approval of reserved matters for phase 1 (which will include a minimum of 200 dwellings) shall be made to the Local Planning Authority before the expiration of 12 months from the date of this outline permission. The development hereby permitted shall be begun before the expiration of 12 months from the date of approval of the first reserved matters application.
- 2) No development shall take place within any phase of the development without the prior approval of the details of the siting, design and external appearance of the building(s), the means of access thereto (save for the details of vehicular access into the site from Primsland Way and Pulley Lane) and the landscaping, including the provision of the on-site recreation/open play space, of the site (hereinafter called "the reserved matters") which shall be obtained from the Local Planning Authority in writing before any development is commenced.
- 3) No development shall take place until a Phasing Plan for the development hereby permitted has been submitted to and approved in writing by the Local Planning Authority. The Phasing Plan shall include details of:
  - i) the timing of the provision of infrastructure to serve the proposed development (including road improvements and drainage facilities) in relation to the provision of any new residential units;
  - ii) the timing of biodiversity, SUDS and strategic landscaping features;
  - iii) the timing of the provision of on-site recreation/open play space in relation to the provision of any new residential units; and
  - iv) the timing of the provision of the local centre, bowls and sports facilities and the care home.

The development shall be carried out in accordance with the approved Phasing Plan.

**Drawings and Plans**

- 4) The development hereby permitted shall be carried out in accordance with the following approved plans and associated documents:
  - 9004 Rev C - Red line site location plan, reference no. (June 2012)
  - 9308 Rev H - Concept Masterplan, reference (June 2012)
  - 10154-63 – Proposed Improvements at Martin Hussingtree
  - 10154-64 – Newlands Road / Primsland Way Access
  - 10154-68 – A38 / Pulley Lane Improvement
  - 10154-69 – Pulley Lane Road Improvements Section 2
  - 10154-70 – Pulley Lane Road Improvements Section 3
  - 10154-71 – Pulley Lane Road Improvements Section 4
  - 10154-72 – Pulley Lane Road Improvements Section 5

- 10154-73 – Pulley Lane Road Improvements Section 6
- 10154-74 – Pulley Lane Road Improvements Section 6
- 5090327/HWY/001 Rev C – Newland Road Bus Link Preliminary Design
- P0371-DR5-0-010 Rev C – Illustrative Landscape Masterplan
- P0152-DR5-010-012 Rev A – Newland Road Trees / Embankment Appraisal
- P0152-DR-5-020-023 Rev A – Newland Road Cross sections
- P0371-5-01-05 – Newland Road cross sections
- Design and Access Statement (May 2011)
- Design and Access Statement and Addendum (July 2012)
- Supporting Planning Statement and Addendum (July 2012)
- Drainage Strategy (May 2011)
- Water Management Strategy (May 2011)
- Environmental Statement and Non-Technical Summary (May 2011)
- Flood Risk Assessment (May 2011)
- Sustainability Appraisal (May 2011)
- Transportation Assessment (May 2011) and Addendum (July 2012)
- Technical note on water treatment matters by Atkins (July 2012)

5) All future applications for the approval of reserved matters shall be broadly in accordance with:

- i) the principles and parameters described and illustrated in the Design & Access Statement dated May 2011 and July 2012 addendum with regard to the general areas of development and approximate floor areas;
- ii) amended Parameter Plan 3: Building Heights - Revision E dated December 2013; and
- iii) the Landscape Design Strategy – Revision B dated July 2012 and drawing no. P0152 attached therein.

All reserved matters applications shall include a statement providing an explanation as to how the design of the development responds to the details submitted as part of the outline application.

### **Roads, Parking and Travel**

6) No development, other than the proposed highway works listed below, shall take place until details of:

- i) the improvements, including the widening to 5.5m, to Pulley Lane (as indicated on DTA Drawings 10154-69/70/71/72 and 73) have been submitted to and approved in writing by the Local Planning Authority, and fully implemented in accordance with those approved details;
- ii) the improvements to the Pulley Lane/A38 junction (as indicated on DTA Drawing 10154-68) have been submitted to and approved in writing by the Local Planning Authority, and fully implemented in accordance with those approved details prior to the occupation of the 1<sup>st</sup> dwelling;
- iii) the bus, walk and cycle link to Primsland Way together with junction improvements on Primsland Way (as indicated on DTA Drawing 10154-64) have been submitted to and approved in writing by the Local

- Planning Authority, and fully implemented prior to the occupation of the 100<sup>th</sup> dwelling in accordance with those approved details; and
- iv) the improvements to the A38/A4538 junction at Martin Hussingtree (as indicated on DTA Drawing 10154-63) have been submitted to and approved in writing by the Local Planning Authority, and fully implemented prior to the occupation of the 100<sup>th</sup> dwelling in accordance with those approved details.
- 7) No development shall take place within each reserved matter until the engineering details and specification of the proposed residential roads, cycle ways, footways, footpaths and highway drains have been submitted to and approved in writing by the Local Planning Authority. The dwellings shall not be occupied until the road works necessary to provide access from the publicly maintained highway to those dwellings have been completed in accordance with the approved details.
- 8) No development shall take place until a revised travel plan, including targets for modal shift, has been submitted to and approved in writing by the Local Planning Authority. The revised travel plan should contain targets for mode share shifts in order to reduce car travel and increase travel by more sustainable transport modes. Such target must be achieved within 5 years of the first occupation of any property hereby approved. In the event of failing to meet these targets at the end of the 5 year period, a revised residential travel plan shall be submitted to and approved in writing by the Local Planning Authority to address any shortfalls, and where necessary make provision for and promote improved sustainable forms of access to the site. The residential travel plan thereafter shall be implemented and updated in agreement with the Local Planning Authority.
- 9) The development hereby permitted shall not be occupied until the individual vehicular accesses, entrance, turning areas and driveways/parking spaces have been constructed in accordance with details to be submitted to and approved in writing by the Local Planning Authority and these areas shall thereafter be retained and kept available for those uses at all times.
- 10) No development shall take place within any phase until a scheme for the provision of secure cycle parking for the apartments, commercial premises, leisure and care facility hereby approved has been submitted to and approved in writing by the Local Planning Authority and thereafter shall be fully implemented in accordance with those approved details prior to the first occupation of those uses and maintained thereafter in perpetuity.

## **Noise and Construction Management**

- 11) No development shall take place until a noise mitigation scheme designed to minimise the impact from road traffic such that the noise levels within the gardens of the proposed dwellings do not exceed the recommendations set out in BS8223:1999 Sound Insulation and Noise Reduction for Buildings has been submitted to and approved in writing by the Local Planning Authority. Thereafter the development shall be carried out in accordance with the approved details.

- 12) No development shall take place within the phase of the development which contains the proposed local centre until a scheme for sound attenuation has been submitted to and approved in writing by the Local Planning Authority. The approved sound attenuation scheme shall be fully implemented in accordance with those approved details prior to the first occupation of any of the commercial uses contained within the local centre.
- 13) No development, including demolition or construction activities, shall take place until a Construction Management Plan has been submitted to and approved in writing by the Local Planning Authority. The plan should include the following:
- i) details of how to minimise the impact of noise, vibration and dust etc. from construction and demolition activities and the traffic associated with this development, including a scheme for wheel cleaning;
  - ii) details of how to restrict the means of vehicular access for site operatives and construction traffic to the development from A38 and Pulley Lane only;
  - iii) details in relation to the prevention of pollution of waterways;
  - iv) the provision of temporary drainage measures;
  - v) details of all temporary contractors buildings, plant, storage of materials and parking for site operatives;
  - vi) delivery times; and
  - vii) restrictions on burning.

The development hereby permitted shall be carried out in accordance with the approved measures.

### **Contaminated Land**

- 14) No development shall take place on any phase of the development until that phase has been subject to a detailed scheme for investigation and recording of contamination of the land and risks to the development, its future uses and surrounding environment. A detailed written report on the findings including proposals and a programme for the remediation of any contaminated areas and protective measures to be incorporated into the buildings shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall include proposals for the disposal of surface water during remediation. The remediation works shall be carried out and a validation report shall be submitted to and approved in writing by the Local Planning Authority in accordance with the approved proposals and programme. If during the course of the development further evidence of any type relating to other contamination is revealed, work at the location will cease until such contamination is investigated and remediation measures, approved in writing by the Local Planning Authority have been implemented.
- 15) No development shall take place until full details of any soil or soil forming materials brought on to the site for use in garden areas, soft landscaping, filling and level raising have been submitted to and approved in writing by the Local Planning Authority. Where the donor site is unknown or is brownfield the material must be tested for contamination and suitability for use on site. Full donor site details, proposals for contamination testing including testing

schedules, sampling frequencies and allowable contaminant concentrations (as determined by appropriate risk assessment) must be submitted to and approved in writing by the Local Planning Authority prior to import on to the site. The approved testing must then be carried out and validatory evidence (such as laboratory certificates) submitted to and approved in writing by the Local Planning Authority prior to any soil or soil forming materials being brought on to site.

## **Archaeology**

- 16) No development shall take place until the applicant has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation which has been submitted to and approved in writing by the Local Planning Authority.

## **Landscaping, Trees and Nature Conservation**

- 17) Each application for reserved matters shall include:

a) An Arboricultural Impact Assessment in accordance with BS5837 and an Arboricultural Method Statement for the protection of trees and hedges during construction; and

b) A landscape scheme which shall include:

- i) a plan(s) showing the planting layout of proposed tree, hedge, shrub and grass areas;
- ii) a schedule of proposed planting - indicating species, size at time of planting and numbers/densities of plants;
- iii) a written specification for root barriers and other measures to be used to ensure planting as outlined in the landscape strategy is achievable in relation to proposed built form;
- iv) a written specification outlining cultivation and others operations associated with plant and grass establishment. This shall include details of soil crates for the planting of semi-mature street trees, or any tree planted in a location where its root run will be restricted;
- v) proposed finished levels or contours;
- vi) means of enclosure and boundary treatments; and
- vii) a schedule of maintenance, including watering and the control of competitive weed growth, for a minimum period of five years from first planting.

- 18) No development shall take place until full details of an Ecological Mitigation and Enhancement Strategy based on up-to-date survey information is submitted to and approved in writing by the Local Planning Authority. The details shall include:

- i) updated ecological surveys including a dedicated bat survey;
- ii) a review of the site's ecological constraints and potential;
- iii) a description of target habitats and range of species appropriate for the site;

- iv) extent and location of proposed works;
- v) details of precautionary and protection measures to ensure protected species and retained habitats are not harmed during and after construction;
- vi) appropriate strategies for creating/restoring target habitats or introducing target species;
- vii) method statement for site preparation and establishment of target features;
- viii) sources of habitat materials (e.g. plant stock); and
- ix) timing of the works.

The Ecological Mitigation and Enhancement Strategy shall be implemented in accordance with the Nature Conservation Management Plan.

- 19) No development shall take place until a Nature Conservation Management Plan has been submitted to and approved in writing by the Local Planning Authority. The Plan shall include:

- i) description and evaluation of features to be managed;
- ii) ecological trends and constraints on site that may influence management;
- iii) aims and objectives of management;
- iv) appropriate management options for achieving aims and objectives;
- v) prescriptions of management actions;
- vi) preparation of work schedule, including a 5 yearly project register, an annual work plan and the means by which the plan will be rolled forward over a 25 year period;
- vii) personnel responsible for implementation of the plan; and
- viii) monitoring and remedial/contingency measures triggered by monitoring.

The plan shall be carried out fully in accordance with the approved details.

- 20) No development shall take place until a Construction Environmental Management Plan has been submitted to and approved in writing by the Local Planning Authority. The plan shall include:

- i) an appropriate scale plan showing 'ecological protection zones' where construction activities are restricted and where protective measures will be installed or implemented;
- ii) details of protective measures (both physical measures and sensitive working practices) to avoid impacts during construction;
- iii) a Methodology Statement to demonstrate construction activities will be undertaken so as to avoid impact on those parts of the site subject to periods of the year when activities could be harmful, such as the bird nesting and other wildlife breeding or hibernation seasons in accordance with the Nature Conservation Management Plan; and
- iv) persons/contractors responsible for:
  - (a) compliance with legal consents relating to nature conservation;
  - (b) compliance with planning conditions relating to nature conservation;
  - (c) installation of physical protection measures during construction;

- (d) implementation of sensitive working practices during construction;
- (e) regular inspection and maintenance of physical protection measures and monitoring of working practices during construction;
- (f) provision of training and information about the importance of 'Ecological Protection Zones' to all construction personnel on site.

The Construction Environmental Management Plan shall be carried out fully in accordance with the approved details.

## **Renewable Energy**

- 21) Notwithstanding the information submitted with the application, no development shall take place until the following details have been submitted to and approved in writing by the Local Planning Authority:
- i) details on how renewable energy measures are to be incorporated into the proposed development;
  - ii) details of measures to conserve and recycle water to be incorporated into the proposed development;
  - iii) details of energy efficiency measures to be incorporated into the proposed development; and
  - iv) details of construction materials to be used in the proposed development with the aim of minimising the use of primary non-sustainable materials.

The approved measures shall be implemented and incorporated into the approved development in line with an implementation timetable to be submitted and approved in writing by the Local Planning Authority prior to the commencement of development.

## **Lighting**

- 22) No development shall take place until details of a lighting scheme to serve the proposed development have been submitted to and approved by the Local Planning Authority. The lighting scheme shall be designed to reduce effects upon sensitive habitats to be retained/created on the site. The details shall include an implementation timetable and the approved lighting scheme shall be provided in accordance with the approved details in perpetuity and agreed implementation timetable.

## **Floor Space**

- 23) The total retail uses (A1, A2, A3, A4, A5) and B1 (a) office floor space shall not exceed 2,500 sq. metres.

## **Drainage and Flood Risk**

- 24) No development shall take place until a phased drainage scheme incorporating sustainable drainage principles and an assessment of the hydrological and hydro geological context of the development in relation to the disposal of surface water and foul sewage has been submitted to and approved in writing by the Local Planning Authority. The scheme shall be implemented in

accordance with the approved details before development is first brought into use.

- 25) Each application for reserved matters shall include for the approval by the Local Planning Authority details of proposed surfacing materials and surface water drainage including:
- i) a plan showing proposed layout and types of surfacing, including permeable paving in appropriate locations as an integrated part of an overall Sustainable Urban Drainage System (SUDS) for the development. The surfacing materials selected shall be of a design and quality appropriate to the location;
  - ii) a written specification of proposed surfacing materials and operations;
  - iii) the range of SUDS components to be used at source, site and regional control levels. These should be used comprehensively and appropriately in accordance with best practice as laid out in the CIRIA Guidance manuals, with consideration given in the first instance to utilising water management through soft features and at ground level;
  - iv) mechanisms to integrate the SUDS scheme with the Green Infrastructure proposals to maximise the potential for improved biodiversity, visual amenity and water quality; and
  - v) methods for the protection of SUDS and Green Infrastructure during each phase of construction to ensure that 'soft SUDS' are adequately established prior to bringing into beneficial use.
- 26) There must be no new buildings, structures (including gates, walls and fences) or raised ground levels within 8 metres of the top of any bank of watercourse and/or of any side of an existing culverted watercourse either inside or along the boundary of the site.

## **CONDITIONS**

### **APPEAL B - Appeal Ref: APP/H1840/A/13/2199426**

#### **Commencement and Phasing of Development**

- 1) Application for approval of reserved matters for phase 1 (which will include a minimum of 150 dwellings) shall be made to the Local Planning Authority before the expiration of 12 months from the date of this outline permission. The development hereby permitted shall be begun before the expiration of 12 months from the date of approval of the first reserved matters application.
- 2) No development shall take place within any phase of the development without prior approval of the details of the siting, design and external appearance of the building(s), the means of access thereto (save for the details of vehicular access into the site from Newland Lane) and the landscaping, including the provision of the on-site recreation/open play space, of the site (hereinafter called "the reserved matters") which shall be obtained from the Local Planning Authority in writing before any development is commenced.
- 3) No development shall take place until a Phasing Plan including details of phasing for the approved development has been submitted to and approved in writing by the Local Planning Authority. The Phasing Plan shall include details of:
  - i) the timing of the provision of infrastructure to serve the proposed development (including road improvements and drainage facilities) in relation to the provision of any new residential units;
  - ii) the timing of biodiversity, SUDS and strategic landscaping features; and
  - iii) the timing of the provision of on-site recreation/open play space in relation to the provision of any new residential units.

The development shall be carried out in accordance with the approved Phasing Plan.

#### **Drawings and Plans**

- 4) The development hereby permitted shall be carried out in accordance with the following approved plans and associated documents:
  - Drawing no. P.0742\_08 - Site Location Plan
  - Drawing no. P.0742\_01D - Illustrative Sketch Masterplan
  - Planning Statement prepared by Pegasus Group (October 2012)
  - Design and Access Statement prepared by Pegasus Group (October 2012)
  - Landscape and Visual Appraisal prepared by Pegasus Group (October 2012)
  - Energy Statement/Carbon Analysis Report prepared by FES (October 2012)
  - Ecological Report prepared by Betts Ecology (November 2011)
  - Arboricultural Survey prepared by Betts Ecology (November 2011)
  - Heritage Assessment prepared by Cotswold Archaeology (December 2011)
  - Ground Conditions Report prepared by GRM (December 2011)
  - Noise Report prepared by Hoare Lea (October 2012)
  - Transport Assessment prepared by Travis Baker (November 2012)
  - Travel Plan prepared by Travis Baker (November 2012)
  - Flood Risk Assessment, including Drainage Strategy prepared by Travis Baker (November 2012)

- 5) All future applications for the approval of reserved matters shall be broadly in accordance with the principles and parameters described and illustrated in the Design & Access Statement dated October 2012 with regard to:

- i) the general areas of development as outlined in the Indicative Masterplan;
- ii) the Buildings Heights Plan; and
- iii) the Landscape and Green Infrastructure Strategy Plan.

All reserved matters applications shall include a statement providing an explanation as to how the design of the development responds to the details submitted as part of the outline application.

### **Roads, Parking and Travel**

- 6) No more than 200 of the dwellings hereby approved shall be occupied until details of means to form a secondary emergency vehicular access to the development have been submitted to and approved in writing by the Local Planning Authority, and the scheme has been constructed in accordance with the approved details.
- 7) No development, other than the proposed highway works listed below, shall take place until details of:
- i) the improvements, including the widening to 5.5m, to Pulley Lane have been submitted to and approved in writing by the Local Planning Authority, and fully implemented in accordance with those approved details;
  - ii) the improvements to the Pulley Lane/A38 junction have been submitted to and approved in writing by the Local Planning Authority, and fully implemented in accordance with those approved details prior to the occupation of the 1st dwelling; and
  - iii) the improvements to provide pedestrian links between the eastern boundary of the development site through Nightingale Close and Jackdaw Lane to Tagwell Road have been submitted to and approved in writing by the Local Planning Authority, and fully implemented prior to the occupation of the 75<sup>th</sup> dwelling in accordance with those approved details.
- 8) No development shall take place until the engineering details and specification of the proposed residential roads, cycle ways, footways, footpaths and highway drains have been submitted to and approved in writing by the Local Planning Authority. The dwellings shall not be occupied until the road works necessary to provide access from the publicly maintained highway to those dwellings have been completed in accordance with the details submitted to and approved in writing by the Local Planning Authority.
- 9) The Residential Travel Plan (RTP) hereby approved, dated November 2012 and produced by Travis Baker, shall be implemented and monitored in accordance with the regime contained within the RTP. The targets for mode share shifts set out in the RTP, in order to reduce car travel and increase travel by more sustainable transport modes, must be achieved within 5 years of the first occupation of any property hereby approved. In the event of failing to meet these targets at the end of the 5 year period, a revised RTP shall be submitted to and be approved in writing by the Local Planning Authority to address any shortfalls, and where necessary make provision for and promote improved sustainable forms of access to the site. The RTP thereafter shall be implemented and updated in agreement with the Local Planning Authority.

- 10) The development hereby permitted shall not be occupied until the individual vehicular accesses, entrance, turning areas and driveways/parking spaces have been constructed in accordance with details to be submitted to and approved in writing by the Local Planning Authority and these areas shall thereafter be retained and kept available for those uses at all times.

### **Noise and Construction Management Plan**

- 11) No development shall take place until a noise mitigation scheme designed to minimise the impact from road traffic such that the noise levels within the gardens of the dwellings do not exceed the recommendations set out in *BS8223:1999 Sound Insulation and Noise Reduction for Buildings* has been submitted to and approved in writing by the Local Planning Authority. Thereafter the development shall be carried out in accordance with the approved details.
- 12) No development, including demolition or construction activities, shall take place until a Construction Management Plan has been submitted to and approved in writing by the Local Planning Authority. The plan should include the following:
- i) details of how to minimise the impact of noise, vibration and dust etc. from construction and demolition activities and the traffic associated with this development, including a scheme for wheel cleaning;
  - ii) details of how to restrict the means of vehicular access for site operatives and construction traffic to the development from A38 and Pulley Lane only;
  - iii) details in relation to the prevention of pollution of waterways;
  - iv) the provision of temporary drainage measures;
  - v) details of all temporary contractors buildings, plant, storage of materials and parking for site operatives;
  - vi) delivery times; and
  - vii) restrictions on burning.

The development hereby permitted shall be carried out in accordance with the approved measures.

### **Contaminated Land**

- 13) No development shall take place on any phase of the development until that phase has been subject to a detailed scheme for investigation and recording of contamination of the land and risks to the development, its future uses and surrounding environment. A detailed written report on the findings including proposals and a programme for the remediation of any contaminated areas and protective measures to be incorporated into the buildings shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall include proposals for the disposal of surface water during remediation. The remediation works shall be carried out and a validation report shall be submitted to and approved in writing by the Local Planning Authority in accordance with the approved proposals and programme. If during the course of the development further evidence of any type relating to other contamination is revealed, work at the location will cease until such contamination is investigated and remediation measures, approved in writing by the Local Planning Authority have been implemented.
- 14) No development shall take place until full details of any soil or soil forming materials brought on to the site for use in garden areas, soft landscaping, filling and level raising have been submitted to and approved in writing by the Local Planning Authority. Where the donor site is unknown or is brownfield the material must be tested for contamination and suitability for use on site. Full donor site details, proposals for contamination testing

including testing schedules, sampling frequencies and allowable contaminant concentrations (as determined by appropriate risk assessment) must be submitted to and approved in writing by the Local Planning Authority prior to import on to the site. The approved testing must then be carried out and validatory evidence (such as laboratory certificates) submitted to and approved in writing by the Local Planning Authority prior to any soil or soil forming materials being brought on to site.

## **Archaeology**

- 15) No development shall take place until the applicant has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation which has been submitted to and approved in writing by the Local Planning Authority.

## **Landscaping, Trees and Nature Conservation**

- 16) Each application for reserved matters shall include:

- a) An Arboricultural Impact Assessment in accordance with BS5837 and an Arboricultural Method Statement for the protection of trees and hedges during construction; and
- b) A landscape scheme which shall include:
  - i) a plan(s) showing the planting layout of proposed tree, hedge, shrub and grass areas;
  - ii) a schedule of proposed planting - indicating species, size at time of planting and numbers/densities of plants;
  - iii) a written specification for root barriers and other measures to be used to ensure planting as outlined in the landscape strategy is achievable in relation to proposed built form;
  - iv) a written specification outlining cultivation and others operations associated with plant and grass establishment. This shall include details of soil crates for the planting of semi-mature street trees, or any tree planted in a location where its root run will be restricted;
  - v) proposed finished levels or contours;
  - vi) means of enclosure and boundary treatments; and
  - vii) a schedule of maintenance, including watering and the control of competitive weed growth, for a minimum period of five years from first planting.

- 17) No development shall take place until full details of an Ecological Mitigation and Enhancement Strategy based on up-to-date survey information is submitted to and approved in writing by the Local Planning Authority. The details shall include:

- i) updated ecological surveys including a dedicated bat survey;
- ii) a review of the site's ecological constraints and potential;
- iii) a description of target habitats and range of species appropriate for the site;
- iv) extent and location of proposed works;
- v) details of precautionary and protection measures to ensure protected species and retained habitats are not harmed during and after construction;
- vi) appropriate strategies for creating/restoring target habitats or introducing target species;
- vii) method statement for site preparation and establishment of target features;
- viii) sources of habitat materials (e.g. plant stock); and
- ix) timing of the works.

The Ecological Mitigation and Enhancement Strategy shall be implemented in accordance with the Nature Conservation Management Plan.

- 18) No development shall take place until a Nature Conservation Management Plan shall be submitted to and approved in writing by the Local Planning Authority. The Plan shall include:
- i) description and evaluation of features to be managed;
  - ii) ecological trends and constraints on site that may influence management;
  - iii) aims and objectives of management;
  - iv) appropriate management options for achieving aims and objectives;
  - v) prescriptions of management actions;
  - vi) preparation of work schedule, including a 5 yearly project register, an annual work plan and the means by which the plan will be rolled forward over a 25 year period;
  - vii) personnel responsible for implementation of the plan; and
  - viii) monitoring and remedial/contingency measures triggered by monitoring.

The plan shall be carried out fully in accordance with the approved details.

- 19) No development shall take place until a Construction Environmental Management Plan has been submitted to and approved in writing by the Local Planning Authority. The plan shall include:
- i) an appropriate scale plan showing 'ecological protection zones' where construction activities are restricted and where protective measures will be installed or implemented;
  - ii) details of protective measures (both physical measures and sensitive working practices) to avoid impacts during construction;
  - iii) a Methodology Statement to demonstrate construction activities will be undertaken so as to avoid impact on those parts of the site subject to periods of the year when activities could be harmful, such as the bird nesting and other wildlife breeding or hibernation seasons in accordance with the Nature Conservation Management Plan; and
  - iv) persons/contractors responsible for:
    - (a) compliance with legal consents relating to nature conservation;
    - (b) compliance with planning conditions relating to nature conservation;
    - (c) installation of physical protection measures during construction;
    - (d) implementation of sensitive working practices during construction;
    - (e) regular inspection and maintenance of physical protection measures and monitoring of working practices during construction;
    - (f) provision of training and information about the importance of 'Ecological Protection Zones' to all construction personnel on site.

The Construction Environmental Management Plan shall be carried out fully in accordance with the approved details.

## **Renewable Energy**

- 20) Notwithstanding the information submitted with the application, no development shall take place until the following details have been submitted to and approved in writing by the Local Planning Authority:

- i) details on how renewable energy measures are to be incorporated into the proposed development;
- ii) details of measures to conserve and recycle water to be incorporated into the proposed development;
- iii) details of energy efficiency measures to be incorporated into the proposed development; and
- iv) details of construction materials to be used in the proposed development with the aim of minimising the use of primary non-sustainable materials.

The approved measures shall be implemented and incorporated into the approved development in line with an implementation timetable to be submitted and approved in writing by the Local Planning Authority prior to the commencement of development.

### **External Lighting**

- 21) No development shall take place until details of a lighting scheme to serve the proposed development have been submitted to and approved in writing by the Local Planning Authority. The lighting scheme shall be designed to reduce effects upon sensitive habitats to be retained/created on the site. The details shall include an implementation timetable and the approved lighting scheme shall be provided in accordance with the approved details in perpetuity and implementation timetable.

### **Drainage and Flood Risk**

- 22) No development shall take place until a drainage scheme incorporating sustainable drainage principles and an assessment of the hydrological and hydro geological context of the development in relation to the disposal of surface water and foul sewage has been submitted to and approved in writing by the Local Planning Authority. The scheme shall be implemented in accordance with the approved details before development is first brought into use.
- 23) Each application for reserved matters shall include for the approval by the Local Planning Authority details of proposed surfacing materials and surface water drainage including:
  - i) a plan showing proposed layout and types of surfacing, including permeable paving in appropriate locations as an integrated part of an overall Sustainable Urban Drainage System (SUDS) for the development. The surfacing materials selected shall be of a design and quality appropriate to the location;
  - ii) a written specification of proposed surfacing materials and operations;
  - iii) the range of SUDS components to be used at source, site and regional control levels. These should be used comprehensively and appropriately in accordance with best practice as laid out in the CIRIA Guidance manuals, with consideration given in the first instance to utilising water management through soft features and at ground level;
  - iv) mechanisms to integrate the SUDS scheme with the Green Infrastructure proposals to maximise the potential for improved biodiversity, visual amenity and water quality; and
  - v) methods for the protection of SUDS and Green Infrastructure during each phase of construction to ensure that 'soft SUDS' are adequately established prior to bringing into beneficial use.
- 24) There must be no new buildings, structures (including gates, walls and fences) or raised ground levels within 8 metres of the top of any bank of watercourse and/or of any side of an existing culverted watercourse either inside or along the boundary of the site.

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# **Report to the Secretary of State for Communities and Local Government**

**by Harold Stephens BA MPhil Dip TP MRTPI FRSA**

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

**Date: 6 June 2014**

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## **Town and Country Planning Act 1990**

### **Appeal by Barberry Droitwich Ltd (Appeal A)**

### **Appeal by Persimmon Homes Limited & Prowting Projects Ltd (Appeal B)**

## **Wychavon District Council**

Inquiry held on 28-31 January, 4-7 and 13-14 February 2014  
Land at Pulley Lane, Newland Road and Primsland Way, Droitwich Spa (Appeal A)  
Land north of Pulley Lane and Newland Lane, Newland, Droitwich Spa (Appeal B)

File Refs: APP/H1840/A/13/2199085 & APP/H1840/A/13/2199426

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## Inspector's Report

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**File Ref: APP/H1840/A/13/2199085 (APPEAL A)**

**Land at Pulley Lane, Newland Road and Primsland Way, Droitwich Spa**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
- The appeal is made by Barberry Droitwich Limited against the decision of Wychavon District Council.
- The application Ref W/11/01073/OU, dated 14 August 2012, was refused by notice dated 30 May 2013
- The development proposed is an outline planning application for the development of land for up to 500 dwellings (Class C3); up to 200 unit care facility (Class C2); provision of mixed use local centre to include shop (Class A1); financial & professional services (Class A2); restaurants & café (Class A3); drinking establishment (Class A4); hot food takeaway (Class A5); offices (Class B1a) and police post; indoor bowls facility; means of access and estate roads; public open space; landscaping and infrastructure at Pulley Lane, Newland Road and Primsland Way.

**Summary of Recommendation: That the appeal be allowed and planning permission be granted subject to conditions**

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**File Ref: APP/H1840/A/13/2199426 (APPEAL B)**

**Land north of Pulley Lane and Newland Lane, Newland, Droitwich Spa**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
- The appeal is made by Persimmon Homes Limited and Prowting Projects Limited against the decision of Wychavon District Council.
- The application Ref W/12/02336/OU is dated 19 October 2012.
- The development proposed is an outline application for the construction of a maximum of 265 dwellings with associated car parking, access, infrastructure provision and open space.

**Summary of Recommendation: That the appeal be allowed and planning permission be granted subject to conditions.**

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**BACKGROUND AND PROCEDURAL MATTERS**

- 1.1 At the Inquiry an application for costs was made by Barberry Droitwich Ltd and by Persimmon Homes and Prowting Projects Ltd against the Wychavon District Council. These applications are the subject of separate Reports.
- 1.2 The Inquiry was held at the Chateau Impney Hotel, Droitwich Spa into these two appeals on 28-31 January, 4-7 and 13-14 February 2014. I made accompanied site visits on 12 and 25 February 2014 to the appeal sites and other sites. I also visited other sites on an unaccompanied basis. I held a Pre Inquiry Meeting in connection with this Inquiry to discuss procedural and administrative arrangements. The Pre Inquiry Meeting was held at the Chateau Impney Hotel, Droitwich Spa on 6 November 2013.
- 1.3 The appeals were recovered by the Secretary of State (SoS) by a direction, made under section 79 and paragraph 3 of Schedule 6 of the Town and Country Planning Act 1990, on 26 June 2013. The reason for this direction is that the appeals involve proposals for residential development of over 150 units or on sites over 5 hectares, which would significantly impact on the Government's objective to secure a better balance between housing demand and supply and create high quality, sustainable, mixed and inclusive communities.

- 1.4 On the information available at the time of making the direction, the statements of case and the evidence submitted to the Inquiry, the following are the matters on which the SoS needs to be informed for the purpose of his consideration of these appeals:
- (i) *The extent to which the proposed development is consistent with the development plan for the area and would deliver a sustainable form of development;*
  - (ii) *Whether the proposed development is premature in the light of the emerging SWDP and national guidance;*
  - (iii) *Whether the proposed development is necessary to meet the housing needs of the district bearing in mind the housing land supply position;*
  - (iv) *The effect of the proposed development on the character and appearance of the area;*
  - (v) *The effect of the proposals on local highway infrastructure;*
  - (vi) *Whether any permission should be subject to any conditions and, if so, the form these should take; and*
  - (vii) *Whether any planning permission granted should be accompanied by any planning obligations under section 106 of the 1990 Act and, if so, whether the proposed terms of such obligations are acceptable.*
- 1.5 There are two Statements of Common Ground (SoCG); one of these records the agreed position between Barberry Droitwich Ltd, Persimmon Homes and Prowting Projects and Wychavon District Council (WDC) on general planning matters<sup>1</sup> and the other sets out the agreed position between Worcestershire County Council (WCC) and the Appellants on highway and transport matters.<sup>2</sup> There are two Section 106 Planning Obligation Agreements,<sup>3</sup> and a List of Suggested Conditions for each appeal.<sup>4</sup> The Appellants, the Council and other parties have also provided a separate list of documents which each submitted to the Inquiry. Copies of all the proofs of evidence, appendices and summaries have been supplied to the SoS. The document lists are at the end of this Report.
- 1.6 On 6 March 2014 DCLG's new Planning Practice Guidance (PPG) was issued. This guidance supersedes the 'beta mode' emerging guidance published for consultation on 28 August 2013. The guidance was launched via a Written Ministerial Statement on local planning by Nick Boles.<sup>5</sup> Also on 6 March 2014 DCLG cancelled the previous planning guidance documents that are replaced by the new guidance. The parties were invited to make comments in respect of the implications of the PPG on these appeals. I received responses from WDC, Harris Lamb and Pegasus Group. These are grouped together under the reference INQ4. I have taken into account the PPG as a material consideration

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<sup>1</sup> INQ3

<sup>2</sup> BDL10

<sup>3</sup> BDL5 and C3

<sup>4</sup> C7 and C8

<sup>5</sup> Parliamentary Under Secretary of State for Planning

in these appeals together with the additional comments submitted by the parties in INQ4.

## **The Sites and Surroundings**

- 1.7 The appeal sites are located to the south of Droitwich Spa, the largest town in Wychavon District by population, in an area known locally as Yew Tree Hill. A plan (drawing ref: P.0742.09) showing the relationship of the appeal sites to one another and their location in the context of the built up edge of Droitwich Spa can be found in Core Document E3.

*The main points for each site are:*

- 1.8 **Appeal Site A** is outside, but adjacent to, the development boundary of Droitwich Spa. The site abuts residential development on its eastern, northern and western boundaries. There is also some sporadic development to the south of the site along Newland Lane. The southern boundary adjoins Pulley Lane and Appeal Site B. The red line plan submitted with the application shows the extent of the site boundary and this can be found at Core Document L20.
- 1.9 The appeal site consists of 34.63 hectares of greenfield land which is predominantly in agricultural and equine use. The site is divided up into a number of parcels of land which are dissected by hedgerows, private tracks and public rights of way. Newland Road dissects the site on a north south axis. It was previously opened to two way traffic and provided a link to Droitwich Spa town centre. It is now untrafficked (by way of a Traffic Regulation Order which came into force in 1993) between the property known as Casa Colina and the junction with Primsland Way but it is open for pedestrians and cyclists.
- 1.10 The topography of the site is undulating. The existing residential development to the north of the site is significantly lower than the appeal site but is separated by open space. The existing residential development to the east of the site is up to 76m AOD. The eastern parcel of Appeal Site A has ground levels that generally fall in a southerly direction towards the existing ditch and hedgeline which forms the common boundary with the Persimmon Homes site (Appeal Site B). Newland Road in places is set in a cutting due to the higher levels of the adjoining residential gardens, fields and land form. The highest part of the overall site is the land adjacent to the water tower. The parcel of land to the west of Newland Road is undulating with ground levels falling away to the north, west and south.
- 1.11 Land to the south of Newland Lane and Pulley Lane, excluding the carriageways, is located in the Green Belt. The proposal includes works to sections of carriageway which involves land in the Green Belt. These works are relatively minor and can be undertaken on land within the Appellant's control. They would not have any adverse impact on the openness of the Green Belt. No other development is proposed in the Green Belt. The appeal site is not constrained by any other nationally recognised designations such as Schedule Ancient Monuments, Conservation Area, Registered Parks and Gardens, Sites of Special Scientific Interest or Area of Outstanding Natural Beauty. The nearest listed building is a Grade II cottage in Hadzor which is about 480m to the east of the appeal site and along the eastern side of the M5. There is a

collection of listed buildings approximately 640m from the northern most part of the appeal site. The listed buildings would not be affected by the proposal.

- 1.12 **Appeal Site B** lies outside the development boundary of Droitwich Spa. A site location plan is included at Core Document M15. The site abuts existing residential development on its eastern boundary, separated here by a narrow belt of public open space. Planning permission was recently granted by WDC for 39 dwellings on an adjoining site within the development boundary known as Newland Hurst (to the south-east of the site) which brings residential properties to the south eastern boundary of the appeal site. Newland Hurst is currently under construction. There is sporadic development to the south of the site along Newland Lane. A short section of the western boundary is defined by Newland Road. The northern boundary is well defined by a hedgerow and ditch, and the remaining boundaries are defined by hedges to the large gardens of adjoining properties.
- 1.13 The appeal site consists of 12.3ha of greenfield land which is currently in agricultural and equestrian use. The site is divided up into two parcels of land which are bisected by a hedgerow. Newland Road runs to the west of the site and Newland Lane bounds the southern tip of the site. The site falls from the southeast to the northwest corner of the site, thus making the site entrance from Newland Lane the highest point of the site.
- 1.14 The appeal site is not constrained by any nationally recognised designations such as Scheduled Ancient Monuments, Conservation Area, Registered Parks and Gardens, Site of Special Scientific Interest, Green Belt or Area of Outstanding Natural Beauty. The nearest listed building is a Grade II cottage in Hadzor which is about 480m to the east of the appeal site and on the eastern side of the M5.

## The Proposals

- 1.15 With regard to **Appeal A** the planning application was submitted in outline form with all matters reserved except for access. A schedule of the application documents and plans on which the SoS is requested to determine the proposal is at BDL 13. The reader should note that the most helpful plan in this schedule is the Indicative Masterplan. The proposed development is described as including the following components:
- Up to 500 dwellings of which 40% (200 dwellings) will be affordable
  - A care facility (Class C2) comprising 200 units
  - A local centre comprising of a potential mix of uses including a shop (Class A1), financial and professional services (Class A2), restaurant and café (Class A3), drinking establishment (Class A4), hot food takeaway (Class A5) and offices (Class B1 (a))
  - A police post
  - An indoor bowls facility
  - Public open space including sports pitches and equipped children's play areas; and
  - Associated infrastructure

- 1.16 The proposed access arrangements include the following:

- A new priority junction providing primary access into the site from Pulley Lane
  - Widening of the north south section of Newland Road to create a improved pedestrian and cycle route with a new bus and emergency vehicle access
  - New signalised junction on Newland Road/Primsland Way including pedestrian crossing with cycle priority
  - New signalised junction on Pulley Lane/A38 by the Copcut Elm Public House including pedestrian crossing with cycle priority; and
  - Works to Pulley Lane comprising road widening and realigned in parts
- 1.17 It is envisaged that all off-site works would be carried out under a Section 278 Agreement in consultation and agreement with the Highways Authority. The proposal includes the principles of a landscape framework and landscape design strategy.
- 1.18 With regard to **Appeal B** the planning application was submitted in outline form with all matters reserved except for access. A schedule of the application documents and plans on which the SoS is requested to determine the proposal is at P1. The reader should note that the most helpful plan in this schedule is the Indicative Masterplan. The development comprises the erection of a maximum of 265 dwellings of which 40% (106 dwellings) will be affordable, public open space and equipped children's play together with associated infrastructure.
- 1.19 The proposed accessing arrangements include the following:
- A new junction providing primary access into the site from Newland Lane;
  - Provision of a secondary emergency access off Newland Road; and,
  - New signalised crossing on Pulley Lane/A38 by the Copcut Elm public house including pedestrian crossing with cycle priority.
- 1.20 All off site works would be carried out under a Section 278 Agreement in consultation and agreement with the Highways Authority. An illustrative Landscape Masterplan is also proposed for the development.

### **Environmental Impact Assessment (EIA)**

- 1.21 The overall development falls within the description at paragraph 10(b) of Schedule 2 of the 2011 Regulations,<sup>6</sup> being an urban development project on a site exceeding 0.5ha. A Screening Opinion was issued by the LPA to the effect the development would be unlikely to have significant impacts on the environment and therefore did not require an EIA. The SoS considered the matter and having taken into account the criteria in Schedule 3 to the above Regulations came to the same view that the proposed development would not be likely to have a significant effect on the environment by virtue of factors such as its nature, size or location. I agree that the proposed development is not EIA development and therefore it does not require the submission of an Environmental Statement. Notwithstanding this decision, an Environmental

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<sup>6</sup> The Town and Country Planning (Environmental Impact Assessment) Regulations 2011

Statement was prepared for the development in order to support the outline planning applications and to help inform the environmental design and mitigation for the development.

## Planning Policy

1.22 The parties refer to national legislation and to a number of national planning policy documents which are listed at paragraph 4.2 of the SoCG.<sup>7</sup> Of particular note is the **National Planning Policy Framework (NPPF) (2012)**. This has the presumption in favour of sustainable development at its heart and this has three dimensions: economic, social and environmental. It is confirmed that applications should be determined in accordance with the development plan unless material considerations indicate otherwise. The NPPF is one such material consideration. Paragraph 215 makes it quite clear that the NPPF can override development plan policy that is not consistent with its provisions. Paragraph 49 of the NPPF indicates that relevant policies for the supply of housing will not be considered up-to-date if the Council is unable to demonstrate a five-year supply of deliverable housing sites. Paragraph 14 of the NPPF indicates that where the development plan is absent, silent or relevant policies are out-of-date, planning permission should be granted unless any adverse effects of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies of the NPPF as a whole or unless specific NPPF policies indicate development should be restricted.

1.23 The development plan for the area includes the saved policies of the **Wychavon District Local Plan (WDLP)** (June 2006). The following saved policies are considered relevant to these appeals:

- GD1 – Location Strategy for New Development
- GD2 – General Development Control
- GD3 – Planning Obligations
- SR5 – Minimising Car Dependency
- SR7 – Green Belts
- ENV1 – Landscape Character
- ENV4 – Sites of Special Scientific Interest
- ENV5 – Sites of Regional or Local Wildlife Importance
- ENV6 – Protected Species
- ENV7 – Protection of Wider Biodiversity
- ENV8 – Protection of Hedgerows, Trees and Woodland
- ENV18 – Development of Low to Medium Flood Risk
- ENV19 – Surface Water Run Off
- COM1 – Mix of Dwellings
- COM2 – Affordable Housing
- COM10 – Provision of Rural Community Facilities
- COM12 – Provision of Public Open Space
- SUR1 – Design
- SUR2 – Landscape Design
- SUR3 – Parking Provision

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<sup>7</sup> INQ3

- 1.24 Copies of all of these policies are set out in Core Document A6 and there is no need for me to repeat them here.
- 1.25 The **Regional Spatial Strategy for the West Midlands** (WMRSS) (January 2008) formed part of the development plan at the time of the determination of both planning applications. It was, however, revoked on 20 May 2013. Whilst the RSSWM no longer forms part of the development plan, the policies in the RSS Phase 2 Revision Draft Preferred Options document, and the accompanying Panel Report and its evidence base are material considerations in the determination of planning applications and appeals.
- 1.26 Wychavon District Council is currently participating in the preparation of the **South Worcestershire Development Plan** (SWDP). The SWDP is being prepared by WDC, Malvern Hills District and Worcester City to form a joint Local Plan for the area. The SWDP has been submitted to the SoS for examination. The SWDP Inspector has decided to examine the SWDP in two stages. The stage one hearing sessions, where matters in relation to the proposed level of employment, housing and retail provision set out in the SWDP, were considered in October 2013.
- 1.27 The SWDP Proposed Submission Document January 2013<sup>8</sup> seeks to allocate most new development in locations where there is good access to local services and where transport choice is maximised. The spatial strategy for residential development in the SWDP is outlined in Policy SWDP2 which identifies Droitwich Spa as a main town providing a comprehensive range of local services and employment opportunities and will consequently continue to be the focus of balanced growth.
- 1.28 For residential development, the SWDP proposes 6 allocations within the existing Droitwich town boundary indicatively totalling 226 dwellings (Policy SWDP48. Policy SWDP49/1 seeks to allocate land at Copcut Lane for approximately 740 dwellings, 3.5ha of employment uses and a local neighbourhood centre incorporating a range of facilities. This site was granted outline planning permission in January 2013. Neither of the appeal sites is allocated for development in the latest iteration of the SWDP. Other policies in the SWDP include Policy SWDP5: Green Infrastructure; Policy SWDP25: Landscape Character and Policy SWDP29: Sustainable Drainage Systems.
- 1.29 The Inspector has now published his Interim Conclusions on Stage 1. Whilst the Inspector has advised that the SHMA's underlying methodology is essentially sound the three authorities have been advised that the housing target in the SWDP is subject to 'three fundamental shortcomings'<sup>9</sup> and is likely to be 'substantially' higher than the 23,200 dwelling figures proposed by the Submission SWDP.<sup>10</sup> The Inspector sets out his view as to the method for deriving an objective assessment of housing needs in South Worcestershire and each of the three authorities therein.<sup>11</sup> The Councils have commissioned

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<sup>8</sup> A9

<sup>9</sup> CD A10 paragraph 15

<sup>10</sup> CD A10 paragraph 40

<sup>11</sup> CD A10 paragraphs 44-48

further work to establish a revised housing requirement to inform the SWDP. The draft SWDP and its evidence based documents, including the Inspector's initial findings, are material considerations in the determination of the appeals.

### **Supplementary Planning Documents**

- 1.30 The Council has issued a number of Supplementary Planning Documents (SPD) that are of relevance. These include: the Wychavon District Council Affordable Housing SPG (2002); the Wychavon District Council Developer Contributions towards Service Infrastructure SPG (2003); the Wychavon District Council Developer Contributions for Education Facilities SPG (2007); the Wychavon District Council Planning and Wildlife SPD (2008); the Wychavon District Council Water Management SPD (2009); the Wychavon District Council Water Recycling Strategy SPD (2010); the Wychavon District Council Residential Design Guide SPD (2010); and the Wychavon District Council Landscape Proposals – A guide for Developers 2005.

## **2. THE CASE FOR WYCHAVON DISTRICT COUNCIL (WDC) (Both Appeals)**

- 2.1 In May 2013, the Planning Committee of WDC refused planning applications by Barberry Droitwich Limited and Persimmon Homes Limited and Prowting Projects Limited on land north of Pulley Lane and Newland Lane, Droitwich Spa. A Special Meeting of the Planning Committee was arranged specifically to consider the two applications. This meeting, on the 16<sup>th</sup> May 2013, commenced at 1400 hours and finished at 1735 hours.
- 2.2 Each application was refused by the Planning Committee with the voting being 12 votes for refusal, 0 against and 1 abstention. In refusing the applications, Members of the Planning Committee exercised their own judgement on the merits of each individual case. A healthy and proper public debate was had for both applications. At the heart of the Committee's consideration was the advice and guidance contained in the NPPF together with other material factors and considerations which were presented before them. The Council's ability to demonstrate a robust supply of housing land for five years in accordance with the NPPF, together with the appropriate buffer (20%) was a significant and materially determining factor. The Planning Committee felt that the Council had the ability to demonstrate such a robust supply.
- 2.3 The development plan currently comprises only the saved policies of the WDLP, the details of which are set out in the SoCG.<sup>12</sup> On the Proposals Map, both of the Appeal Sites lie outside the defined boundary of Droitwich Spa and therefore policies for the open countryside apply. The strategy of the WDLP is to concentrate most development on existing settlements in the District to further sustainability objectives, to reduce the need to travel and to safeguard the countryside for its own sake. Policy GD1 is not out of date. Policy SR1 of the WDLP sets a target for housing provision up to March 2011 and allocates sites for that purpose. Four of the allocated sites which remain undeveloped are being carried forward in the emerging SWDP. In this respect it is still

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<sup>12</sup> INQ3

therefore a relevant policy. Policy ENV1 and ENV8 of the WDLP relate to protection and enhancement of the landscape and are also relevant. None of these policies are out of date. They are consistent with the NPPF.

- 2.4 The NPPF identifies three dimensions to sustainable development – economic, social and environmental. Appeal A contains very little by way of employment creating land uses. Appeal B does not provide any employment creating land uses. There is an economic dimension, albeit not as much as might be generated by a truly mixed use development. There is a social dimension by the provision of jobs, the provision of housing, particularly affordable housing and by the provision of care facilities. As far as the environmental dimension is concerned, there would be some enhancement in terms of bio-diversity but on balance the impact upon the landscape overall is negative. It is clear that in 2012, the Council was unable to demonstrate a 5-year supply of housing land. In those circumstances some WDLP policies were considered to be out of date and considerable weight was given to the benefits arising from development. The position has changed significantly in the last 18 months.
- 2.5 The NPPF identifies 12 core planning principles of the planning system which should underpin both plan making and decision making. The appeal proposals are not in accord with the development plan nor the emerging SWDP and therefore both appeals are in conflict with the first bullet point which requires that planning should be genuinely plan led. The impact on the landscape is such that the proposed development would not enhance the place in which people currently live. The proposals would deliver homes. However, they would not deliver sufficient business and industrial opportunities such as to proactively drive and support sustainable economic development. Appeal A would not promote truly mixed use development and Appeal B contains no uses other than residential.
- 2.6 Neither of the Appeal Sites is well located in respect of walking or public transport and for that reason the location is not sustainable. An attempt has been made with Appeal A to make it more sustainable by introducing a bus route and an indication of bus services but it would not be viable in the long term. Appeal A also includes a proposal for a local centre to provide a focus and to improve sustainability but it fails to achieve that objective. Both appeals conflict with many of the core planning principles set out in the NPPF.
- 2.7 The SWDP has been submitted to the SoS and the Examination in Public has commenced and is therefore at an advanced stage. The Local Plan Inspector published some initial findings in which he has sought additional information from the LPAs and indicated that the housing land requirement may need to be increased substantially. The LPAs have indicated that they will respond to the Local Plan Inspector and it will then be for the Inspector to assess whether the modified proposals satisfy his concerns and to fix the housing land requirement. The Council's intention to maintain the current spatial strategy would not necessarily require a significant increase in the level of housing in Droitwich Spa. Granting planning permission for either or both of these Appeals would defeat the plan led system. To allow either of the Appeals would pre-judge the outcome of the Examination in Public, particularly with regard to scale location and phasing of development.

- 2.8 In light of this, the good progress of the emerging SWDP, the substantial scale of the proposed development and the sensitivity of the local landscape to such significant change, the Planning Committee felt justified in refusing the applications. Influencing this judgement was the fact that the Council had worked, and continues to work, tirelessly towards approving suitable and sustainable forms of housing development where such sites would not prejudice the strategy of the SWDP. Since the Lioncourt Homes (Honeybourne) decision APP/H1840/A/12/2171339 was published in August 2012, the Council has listened to and acted upon the advice of the Inspector. Numerous housing proposals beyond the WDLP development boundaries have been approved. Details of these are contained within Mr Brown's evidence.
- 2.9 Evidence has been submitted about the status and journey of the emerging development plan which will replace the WDLP and provide a plan led approach to the south Worcestershire authorities of Malvern Hills, Worcester City and Wychavon. It is unusual for an emerging development plan to have a completely smooth and seamless journey through its various stages of preparation to adoption, particularly where it is a joint plan. The SWDP is no different in that regard. The Inspector has not found the plan unsound. He has merely requested additional information which the South Worcestershire Councils have duly provided. The Examination in Public reconvened on 13 March 2014. The housing requirement for the district is as yet undetermined and the precise outcome cannot be predicted – these are matters for the local plan process. The Council draws attention to the recent appeal decision at Kentford, Newmarket (November 2013) where the Inspector concluded that the proposal would be premature. That appeal was for a much smaller scale of development than Appeal Site B, the site was in a sustainable location and there was only 3.15 years supply of housing land.
- 2.10 It is agreed amongst all parties that it is not a matter for these Section 78 appeals to determine what the appropriate housing target is for the SWDP. The Council's position is set out in a statement <sup>13</sup> submitted to this Inquiry. During the course of this Inquiry the Council has cooperated with both Appellants in an effort to agree various positions of common ground, including housing land supply, which it is believed will assist the Inspector in formulating his recommendations to the SoS.
- 2.11 It is a matter of fact that the Council has demonstrated that with permissions, commitments and the inclusion of emerging sites, which are coming forward now so cannot be entirely discounted as suggested by the Appellants, it can demonstrate a 5-year supply of housing land with the relevant buffer. The evidence is set out in Mr Brown's supplementary proof and Appendix A. In the light of the Court of Appeal's recent decision in the Hunston Properties case, the Council accepts that reliance on the WMRSS Phase 2 Panel figures in relation to the objective assessment of need is no longer appropriate, even though they remain the last publicly tested figures.
- 2.12 The housing figure relied on for the purposes of these appeals, is derived from the 2008 household projections, as in the Council's view these represent the

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<sup>13</sup> C11

most robust credible figures. Tested against these figures, the Council can demonstrate a 5-year supply of housing land recognising that there is a lapse rate built into the supply calculations. Against a total requirement of 10,133 dwellings, equivalent to 422 dwellings per annum, the Council can demonstrate 6.76 years' housing supply as set out at Appendix A of Mr Brown's Supplementary Proof of Evidence. This includes a 2.6% vacancy rate and a 0.8% allowance for second homes. Previously against an annual requirement of 475 dwellings, set out in the WMRSS Panel Report, 5.65 years' housing supply could be demonstrated. The Council has provided clear evidence to demonstrate that each of the components is 'deliverable' within the context of footnote 11 of paragraph 47 of the NPPF. It also supports the decision of Lang J in *William Davis and others v Secretary of State for Communities and Local Government and others* and her interpretation of paragraph 14 of the NPPF.

- 2.13 The PPG at paragraph: 031Reference ID: 3-031-20140306 provides advice on what constitutes a 'deliverable site' in the context of housing policy. This advice is clear in that planning permission or allocation in a development plan is not a prerequisite for a site being deliverable in terms of the 5-year supply. If there are no significant constraints to overcome (for example infrastructure) sites not allocated within a development plan or without planning permission can be considered capable of being delivered within a five year time frame. The Council also relies on the results of a deliverability questionnaire sent out to all the promoters of the SWDP sites the response to which was positive.<sup>14</sup>
- 2.14 As is now commonplace with housing appeals, the Appellants have attempted to discount various sites and label them as undeliverable for a variety of reasons. However, none of the Appellants' evidence demonstrates significant constraints to development on identified housing sites. Indeed the Council has omitted from its evidence sites where significant constraints exist. None of the sites presented to the Inspector in support of 5-year land supply have significant infrastructure or other constraints.
- 2.15 Both appeal sites lie in open countryside, outside the defined settlement boundary, as set out in the Development Plan and are contrary to the development strategy of the WDLP Policy GD1. The impact of Appeal Site A is particularly significant in terms of harm to character and appearance of the area but also in visual terms. The existing openness would be eroded and the development, on elevated land, straddling the land to the east and west of Newland Road, would significantly encroach into the open countryside, which currently provides an attractive contrast to the urban built form of Droitwich Spa, lying to the north and east. The proposed development on Appeal Site A would be visually intrusive and have major/moderate adverse impacts on landscape character and in terms of visual impact, on a permanent basis, despite the mitigation proposed.
- 2.16 The proposals for Newland Road would be particularly damaging and would turn a rural lane into an engineered, urbanised bus route, detracting significantly from the existing character and causing significant adverse visual

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<sup>14</sup> See MDB17 and MDB18

impact to those living nearby and those using the lane. The proposed open space areas within the scheme (Appeal A) needs to be considered in the context of a significant scale of housing development, arranged in blocks around the site, including development on the higher parts of it. The mitigation planting, whilst seeking to ameliorate the impact of the development, would not in the Council's view, alter the fact that a very substantial development is being placed on the site, with the effect that Droitwich Spa would extend southwards, and one of the last remaining sections of this character type in this location (settled farmlands) would disappear. The adverse impacts on public rights of way would also be very significant indeed.

- 2.17 Taken in isolation, the scheme for Appeal Site B, would have less impact than Appeal Site A, but it is still considered to be harmful, lying as it does close to the interface between two Landscape Character Areas (as set out in Ms Illman's evidence), and clearly impacting on both. It would also give rise to significant adverse visual impacts (including the public rights of way), which are assessed as major/moderate adverse in the long term. The cumulative effect of both schemes in landscape character and visual terms would be manifestly significant and harmful.
- 2.18 The Council acknowledges the Leasowes Road and Laurels Road, Offenham appeal decision - APP/H1840/A/13/2203924 - which was published during this Inquiry. Whilst that decision concludes that Wychavon does not have a sufficiently robust 5 year housing land supply, it also, typically, does not give any indication as to what level of supply the Council does have. The appeal decision does not set out what target the Council should be working to. It is important to note that it does not conclude that there is a chronic shortage of housing in the district, as is often read in appeal decisions across the country. The decision does recognise at paragraph 33 the fact that there has been an upturn in completions since 2009/10.
- 2.19 It is a fact that the Offenham decision is a material consideration in the determination of this appeal. However, it is also a fact that this Inspector has heard different submissions from different witnesses on a matter which seemingly changes on a weekly basis. It is therefore apparent that the Inspector is entitled to make an independent judgement on these appeals based on the evidence he has heard and he is not bound by the decision at Offenham.
- 2.20 The Council also referred to the recent decision by the SoS at Forest Road, Branston, Burton-on-Trent. It highlighted a number of points which distinguished the case from the appeals before this Inquiry. These included: (i) the appeal involved a different context in a different area; (ii) it involved 300 dwellings; (iii) work on the new East Staffordshire Local Plan had just commenced whereas the SWDP had progressed further (iv) the absence of a five-year housing land supply was common ground (v) landscape and visual harm formed the core of the Council's case and the SoS agreed that any major adverse effects of the appeal proposal would be confined to the short term, in the long term, it would not have significant adverse effects on landscape character or visual amenity. The situation at Yew Tree Hill was very different. Overall the Council argued that very little weight should be given to this East Staffordshire decision.

- 2.21 Turning to the planning balance, it is submitted that should the Inspector find that the Council has a robust supply of housing land sufficient for 5 years, with the additional buffer, then the paragraph 14 presumption in the NPPF does not apply. Consequently, the weight attributed to the saved policies of the WDLP would be significant and these appeals, being contrary to those saved policies and recognised as causing significant and demonstrable harm to the local landscape character, should be dismissed.
- 2.22 The Council invites the Inspector to come to this conclusion and recommend to the SoS that both appeals be dismissed.

### **3. THE CASE FOR BARBERRY DROITWICH LTD (APPEAL A)**

- 3.1 These submissions are structured around the main matters set out by the Inspector at the Pre-Inquiry Meeting on 6 November 2013. Before addressing each in turn, it is important to set out the context for these appeals.

#### *(i) The Honeybourne Appeal*

- 3.2 On 24 August 2012 the Planning Inspectorate issued an appeal decision on land between Station Road and Dudley Road, Honeybourne.<sup>15</sup> That decision involved this same LPA. It was made after the publication of the NPPF. The following key conclusions need to be taken from it: (a) the Sedgefield approach should be used in relation to this LPA; (b) this LPA is a 20% authority in relation to buffers; (c) a 10% lapse rate was appropriate; (d) the windfalls figure presented by the Council was not based on 'compelling evidence' the appropriate figure should be between 55 and 58 dwellings pa; (e) the Council did not have a 5-year supply. They could demonstrate between 1.9 and 2.76 years supply and 'the Council has serious housing land supply problems'; (f) full weight could not be given to the saved policies of the Local Plan, any weight given would be dependent on their consistency with the NPPF, in accordance with paragraphs 214 and 215 NPPF; and (g) the policies relating to housing provision were time expired and out of date so limited weight could be given to them.<sup>16</sup>
- 3.3 Quite properly, the decision in Honeybourne affected the officer's advice in his report to Committee. He stated:

*'...members will be aware of recent appeal decisions in Honeybourne such as APP/H1840/A/12/2171339 in which the Inspector concluded that in respect of paragraphs 214 and 215 of the Framework full weight cannot be given to the saved policies of the Local Plan because the plan was not adopted in accordance with the Planning and Compulsory Purchase Act 2004 and any weight that is given will depend on the degree of consistency with the framework. The Inspector further concluded that the housing provision policies outlined in the Local Plan were out of date so limited weight could be given to them.'*<sup>17</sup>

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<sup>15</sup> Land between Station Road and Dudley Road, Honeybourne, APP/H1840/A/12/2172588, CD D12.

<sup>16</sup> *Ibid.* paragraphs 19, 24, 36, 37, 41, 42

<sup>17</sup> Officer's Report to Committee, CD H1, under heading 'Wychavon District Local Plan' (WDLP).

- 3.4 BDL invites the Inspector to give significant weight to the findings of the Inspector in the Honeybourne appeal decision which remains relevant to this Inquiry and especially in relation to main matter (iii).

*(ii) The recommendation and reasons for refusal (RFR)*

- 3.5 The planning officer for WDC recommended approval of both schemes which have been considered at this Inquiry.<sup>18</sup> Importantly, in relation to the Barberry scheme he reached the following conclusions:

*'it is advised that for the purposes of directing the location of new housing, saved Policy GD1 is out of date and should therefore be given limited weight in the decision making process.'*

*'However, it remains so that the Council cannot currently demonstrate a 5 year supply of housing land with the 20% buffer imposed by the Inspectorate and taking into account the need to meet the historical undersupply within the first 5 years (the Sedgefield Approach) against the WMRSS Panel Report or the Council's Strategic Housing Market Assessment.'*

With regard to the 25 April 2012 Report on Wychavon's Housing Land Supply it stated: *'The report shows a shortfall of approximately 1.66 years against the WMRSS figure and 0.07 years against the SHMA figure.'*

*Consequently, significant weight must be given to paragraph 49 of the Framework and the Council's lack of 5 year supply and the need to promote sustainable development in accordance with paragraph 14 and 7 of the Framework.'*

*'...in this instance the grant of planning permission would clearly impact on decisions to be made about the scale and location of development in and around Droitwich, but it does not have wider ramifications for the overall Development Plan process. On this basis it would be difficult for the Council to "demonstrate clearly how the grant of permission for the development concerned would prejudice the outcome of the DPD process"'*

*'It should be borne in mind that in the planning balance and having regard to the principle of the development in planning policy terms, the harm to the landscape – bearing in mind the lack of any national designation or emerging local designation – is outweighed by the wider benefits of increased housing in the district and the contribution this proposal would make towards meeting the housing land supply requirement imposed by the Framework.'*

- 3.6 The officer's report concluded:

*'Overall, the proposed development is considered to achieve an economic, social and environmental role and therefore the proposal can be considered sustainable in line with paragraph 14.'*

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<sup>18</sup> CD H1

*All other material planning considerations relevant to the proposed development have been carefully judged with the overall conclusion that on balance there would be no significant and demonstrable adverse harm to landscape, heritage assets, highway safety, residential amenity, nature conservation, flooding and drainage. Any harm acknowledged in this report would be outweighed by the benefits of the scheme in assisting to meet identified housing need.*<sup>19</sup>

- 3.7 Despite the officer's advice, the Committee refused planning permission for BDL's scheme and gave four reasons for so doing. First, on the basis of prematurity. The second contended that Wychavon could not support the Sedgfield method of calculation and without it the LPA could demonstrate a 5-year supply. The third was an amalgamation of landscape impacts, prematurity and housing need. The final reason was given on the basis of the lack of a s106 Agreement.
- 3.8 Under Article 31(1)(b) of the Town and Country Planning (Development Management Procedure) (England) Order 2010 when refusing planning permission the Local Authority must ensure that the Decision Notice states '*clearly and precisely their full reasons for the refusal, specifying all policies and proposals in the development plan which are relevant to the decision.*' It is noted that the Council has not included any Local Plan policies in any of its non-section 106 related RFR. As such, it can be concluded that in so far as the Council has relied at this Inquiry on the alleged contravention of certain local plan policies by the proposal, this is an *ex post facto* exercise which did not form the basis for the original refusal.
- 3.9 Indeed, the refusal reasons should be afforded even less weight following the insight which Cllr Jennings gave as to why these reasons were chosen. He stated that the reasons were drafted in outline prior to the Planning Committee meeting 'in case they were needed'<sup>20</sup> Under cross-examination it became clear that the Council had chosen the reasons on the basis that 'they could be defended at appeal.'<sup>21</sup> It seems that the reasons do not reflect what appeared to be the genuine concerns of the Council as stated by Cllr Morris: the capacity of a local sewage plant, health infrastructure, access, drainage and adequate education facilities. None of these issues have been raised by the Council at this Inquiry.

*(ii) The Local Plan Context*

- 3.10 Under s38(6) of the Planning and Compulsory Purchase Act 2004 this decision must be taken in accordance with the development plan unless material considerations indicate otherwise. The NPPF reinforces this approach and highlights that the planning system is 'plan-led'.<sup>22</sup> The starting point therefore, is the Council's development plan. The policies should be individually scrutinised in order to assess what weight can be afforded to each in

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<sup>19</sup> *Ibid*, section 7

<sup>20</sup> Cllr Jennings cross-examination, 6 February 2013

<sup>21</sup> *Ibid*

<sup>22</sup> NPPF paragraph 196.

accordance with whether they are 'out-of-date' and/or consistent or inconsistent with the NPPF.<sup>23</sup>

- 3.11 It is material that the WDLP was only intended to run up until 2011. Further, the Saving Letter (written on 29 May 2009) made it clear that policies were being saved in the expectation that they would be replaced 'promptly'.<sup>24</sup> It also stated:

*'Following 23 June 2009 the saved policies should be read in context. Where policies were originally adopted some time ago, it is likely that material considerations, in particular the emergence of new national and regional policy and also new evidence will be afforded considerable weight in decisions. In particular, we would draw your attention to the importance of reflecting policy in Planning Policy Statement 3 Housing and Strategic Housing Land Availability Assessments in relevant decisions.'*<sup>25</sup>

- 3.12 Moreover, weight can only be given to each of the policies depending upon their consistency with the NPPF'.<sup>26</sup> The Inspector in the Honeybourne appeal decision recognised this on 24 August 2012 stating:

*'the policies relating to housing provision are time expired and are out of date so limited weight can be given to these policies. Any interpretation of policies within the WDLP which sought to restrict a ready supply of housing and therefore adversely impact on the NPPF requirement to "boost significantly the supply of housing" would clearly conflict with the NPPF.'*<sup>27</sup>

- 3.13 During this Inquiry the Council has admitted that Policy SR1 is out of date.<sup>28</sup> The Council also admitted that this, along with a lack of a 5-year supply, gives rise to the application of paragraph 14 NPPF.<sup>29</sup> It is submitted that Policy GD1 is also out of date. As stated by Chris May<sup>30</sup> in evidence two factors lead to this conclusion: the strategic context for this policy has disappeared and the policy clearly contains a date within it: it seeks to direct development only up to 2011. It is therefore 'out of date' on its own terms.
- 3.14 The prematurity reason for refusal relies upon the Council's emerging plan, the SWDP formed jointly with Malvern Hills and Worcester City. This plan is in a state of disarray. The Interim Conclusions of Inspector Clews have often been referred to during this Inquiry. They state:

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<sup>23</sup> NPPF paragraphs 14, 49 and 215

<sup>24</sup> 'Saving Letter', 29 May 2009, CD A16

<sup>25</sup> *Ibid*

<sup>26</sup> NPPF paragraph 215 and *Anita Coleman v Secretary of State for Communities and Local Government and North Devon District Council and other* [2013] EWHC 1138 (Admin) CD C4

<sup>27</sup> Land between Station Road and Dudley Road, Honeybourne APP/H1840/A/12/2171339

<sup>28</sup> Malcolm Brown Cross-examination 28 January 2014

<sup>29</sup> *Ibid*

<sup>30</sup> Examination-in-Chief, 6 February 2014

*'the analysis in the February 2012 SHMA does not provide a reliable basis for identifying the level of housing need in South Worcestershire over the Plan period.'*<sup>31</sup>

They concluded:

*'...it appears from the evidence before me so far that the objectively assessed housing need figure for the Plan period is likely to be substantially higher than the 23,200.'*<sup>32</sup>

- 3.15 During this Inquiry, the Council has submitted another figure to the Examination Inspector (between 26,700 and 27,343 dwellings for the SWDP area.<sup>33</sup> Anthony Bateman has provided a note to this Inquiry which highlights that the Council has not done what the EiP Inspector asked them to<sup>34</sup> and raises concerns namely: that the Council has declined to use the previously produced SHMA which the Inspector considered had a sound methodology, the employment forecasts are not based on the 2011 household projections as required by the Inspector and the 2006 starting figure is not robust.
- 3.16 The re-submitted figures will now have to be examined by the Inspector. This, together with the rest of the Local Plan process will involve:
- (a) Assessment of the approach and new figures offered to the Inspector by the Council together with the consideration of objectors' comments therein and alternative approaches;
  - (b) The confirmation of an adequate housing figure;
  - (c) A political 'sign-off' process by the SWDP Local Authorities whereby each agrees to accept additional amounts of development;
  - (d) A future site search process to find where to place the additional housing;
  - (e) Public consultation on those sites;
  - (f) Strategic and Environmental Impact assessments of the sites;
  - (g) An examination of the new sites by the Inspector;
  - (h) If these are found to be sound, implementation of the plan.<sup>35</sup>

It is inevitable that this plan will take a lot longer to come to fruition than is currently projected. Mr Brown accepts that the SWDP will not be adopted until 2015: it may be longer than that. Clearly, the SWDP can be given very little weight in this s78 appeal.

- 3.17 Finally, in relation to the plan which has been submitted, the Inspector is also asked to note the following:
- (a) The SWDP allocates sites outside of settlement boundaries – offending Policy GD1;

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<sup>31</sup> Malcolm Brown Proof of Evidence, Appendix 5, paragraph 41

<sup>32</sup> *Ibid* paragraph 49

<sup>33</sup> Amion Consulting, January 2014, CD C6 page 25

<sup>34</sup> Note by A C Bateman 4 February 2014, BDL 19

<sup>35</sup> Chris May, Examination in Chief, 6 February 2014.

- (b) Worcester City and Malvern Hills (with whom this Council is entering into a joint plan) are both severely constrained in terms of where they can accept development. It is BDL's case that 'Wychavon will end up having to take the lion's share of the additional housing'<sup>36</sup>
- (c) Current and proposed policy in Wychavon steers housing direction to Droitwich, Evesham and Pershore. There is no longer any priority afforded to Evesham over Droitwich;
- (d) By reason of (a)-(c) above Droitwich is a prime candidate for future selection and the appeal site is one of the few unrestricted areas available.

***Main matter (i): The extent to which the proposed development is consistent with the development plan for the area and would deliver a sustainable form of development;***

*A. Consistency with the development plan*

3.18 As noted above, the reasons for refusal did not allege the breach of any local plan policies as a result of this proposal. During this Inquiry, in an *ex post facto* effort, the Council has relied upon Policies SR1, GD1, ENV1 and ENV8. Each policy is addressed below. It is acknowledged that bringing forward housing required by the 5 year supply obligation inescapably creates tension with Policy SR1 and Policy GD1. However, these policies ought to be considered out-of-date and afforded limited weight in this decision in accordance with the terms of the Saving Letter.

3.19 This development falls to be considered under paragraph 14 of the NPPF by virtue of two reasons. First, it is BDL's case that the Council cannot demonstrate a 5-year supply (this is dealt with under Main Matter 3). Accordingly, paragraph 49 of the NPPF applies. It states:

*'Housing applications should be considered in the context of the presumption in favour of sustainable development. Relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a five-year supply of deliverable housing sites.'*

As such, the Council's policies which are relevant for the supply of housing should not be considered up-to-date. It is contended that these must include Policy SR1, Policy GD1 and Policy ENV1 as will be considered further below.

3.20 Secondly, paragraph 14 applies because 'relevant policies are out-of-date.' The most important out-of-date policies would be those relating to housing provisions: there are none for the period post 2011. As paragraph 14 states:

*'At the heart of the National Planning Policy Framework is a **presumption in favour of sustainable development**, which should be seen as a golden thread running through both plan-making and decision taking.*

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<sup>36</sup> Put to Malcolm Brown in Cross Examination, 28 January 2014

*For decision-taking this means:*

- *approving development proposals that accord with the development plan without delay; and*
- *where the development plan is absent, silent or relevant policies are out-of-date, granting permission unless:*
  - *any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole; or*
  - *specific policies in this Framework indicate development should be restricted.*

*Policies SR1 and GD1*

- 3.21 The LPA has admitted that Policy SR1 is out-of-date.<sup>37</sup> BDL's case is that Policy GD1 is also out of date. The LPA has misunderstood the concept of a policy being out-of-date and so rely upon the fact that Inspector Stephens afforded some (if limited) weight to that policy at Honeybourne.<sup>38</sup> This argument is based on a false reading of paragraph 14 of the NPPF. The statutory requirement in s38(6) PCPA 2004 obliges the decision maker to address the development plan. This requirement is found in various places in the NPPF. The task for the decision maker is to assess each policy, determine the extent to which it is out-of-date and then weigh it accordingly. As such, the Planning Committee report, and the decisions in Honeybourne and Offenham are completely reconcilable.
- 3.22 In order to assess the extent to which the relevant policies are out-of-date one has to understand the following:
- (a) The basis upon which these policies were saved;
  - (b) The extent to which the planning context has changed since they were adopted/saved;
  - (c) Whether they are time-expired on their face; and
  - (d) How far they are consistent with NPPF policies.
- 3.23 First, it has been highlighted above that the relevant Local Plan policies were only saved on the basis that they would be replaced 'promptly'<sup>39</sup>. Further, the Local Plan was adopted pursuant to PPG3, following which PPS3 represented a step-change towards the delivery of housing. This change is continued in the relevant provisions of the NPPF. Clearly, the LPA's reliance on Policy GD1 which seeks to constrain development within 2005 boundaries is not listening to what the Saving Letter has said. That letter also stated that the LPA should have regard to more up to date advice. This is consistent with the NPPF's paragraph 215 requirement that Local Plan policies should be weighed in accordance with their consistency with that document. As the Inspector said at Honeybourne 'it

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<sup>37</sup> Malcolm Brown Cross Examination, 28 January 2014

<sup>38</sup> Land between Station Road and Dudley Road, Honeybourne, APP/H1840/A/12/2172588, CD D12.

<sup>39</sup> 'Saving Letter', 29 May 2009, CD A16

*is simply not good enough to regard saved policies as an opportunity to refuse rather than grant planning permission.<sup>40</sup>*

#### *Policy ENV1*

- 3.24 In order to understand whether policies are consistent with the NPPF, one has to understand the purpose/purposes of the policies. Indeed, some Local Plan policies have more than one purpose. In so far as it seeks to protect the countryside, Policy ENV1 can be said to be consistent with the NPPF. However, in so far as it seeks to halt necessary development, it cannot be said to be consistent. This much is clear from the case of *Anita Colman v Secretary of State for Communities and Local Government and others*.<sup>41</sup> In that case the court considered restrictive landscape policies similar to Policy ENV1. The judge concluded:

*'These policies are, in my view, on their own express terms very far removed from the "cost/benefit" approach of the NPPF. The policies as such do not permit any countervailing economic or similar benefit to be weighed in the scales. A submission that such benefits may be implicitly taken into account would be immediately rejected as running directly contrary to both the language and rationale of the relevant policies.'<sup>42</sup>*

- 3.25 The cost/benefit approach of the NPPF is evident from the three-strand nature of sustainable development: economic, social and environmental.<sup>43</sup> As paragraph 8 of the NPPF makes clear:

*'[T]hese roles should not be undertaken in isolation, because they are mutually dependent...Therefore, to achieve sustainable development, economic, social and environmental gains should be sought jointly and simultaneously through the planning system. The planning system should play an active role in guiding development to sustainable solutions.'<sup>44</sup>*

- 3.26 As in the *Anita Colman* case, where Policy ENV1 is used to restrict housing, it cannot be seen to be consistent with the cost/benefit approach of the NPPF. As such it must be afforded limited or no weight in this decision-making process.

#### *Policy ENV8*

- 3.27 Policy ENV8, however, is more flexible and can be considered as consistent with the cost/benefit approach in the NPPF. It states:

*'Development proposals requiring planning permission will not be permitted where they would have an adverse impact on hedgerows, trees or woodland, their setting or their wider habitat, where such features are considered to be important for their visual, historic or ecological value of the area.'*

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<sup>40</sup> Honeybourne CD D12 paragraph.31

<sup>41</sup> [2013] EWHC 1138 (Admin), CD C4

<sup>42</sup> [2013] EWHC 1138 (Admin) *per* Parker J at paragraph.22, CD C4

<sup>43</sup> NPPF, paragraph 7

<sup>44</sup> NPPF, paragraph 8

*Removal of hedgerows, trees or woodland will only be permitted where it can be demonstrated that the proposal will benefit the visual, historic or ecological value of the area. All proposals affecting trees, hedgerows or woodland will need to be accompanied by an assessment that justifies the approach taken.'*

- 3.28 It is BDL's contention that this proposal does not conflict with Policy ENV8. The proposal brings a net positive gain of 1,385 metres of hedgerow.<sup>45</sup> There would be a net positive gain of 2 hectares of scrub and woodland mosaic<sup>46</sup> and 0.9 hectare of orchards.<sup>47</sup>

*B. Is the Development Sustainable?*

- 3.29 This development falls to be considered under paragraph 14 of the NPPF. The Inquiry has heard argument from the Council that a strained interpretation of the paragraph 14 presumption should be applied. The Council has stated that it will rely upon the judgement of Mrs Justice Lang in *William Davis and others v Secretary of State for Communities and Local Government and others*<sup>48</sup> where the judge added an extra 'gloss' on paragraph 14 NPPF. At paragraph 37 of that judgement she ruled that a development must be found to be sustainable before the presumption applies. It states:

*'In my judgement, the Inspector and the Secretary of State directed themselves correctly by asking the question whether the proposed development was "sustainable development". At the Inquiry, the Claimants did not dissent from the Inspector's analysis that the fourth main issue was "whether the appeal scheme represents sustainable development, to which the Framework's "presumption in favour" should apply" (paragraph 317)...I accept Mr Maurici's submission that paragraph 14 NPPF only applies to a scheme which has been found to be sustainable development. It would be contrary to the fundamental principles of NPPF if the presumption in favour of development in paragraph 14 applied equally to sustainable and non-sustainable development.'*

- 3.30 It is submitted that this is an incorrect interpretation of that paragraph. First, the wording of paragraph 14 itself does not support this view. The paragraph states:

*'where the development plan is absent, silent or relevant policies are out-of-date, granting permission unless;*

- any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole; or*
- specific policies in this Framework indicate development should be restricted.'*

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<sup>45</sup> Patrick Downes, Proof of Evidence, Appendix 6

<sup>46</sup> *Ibid*

<sup>47</sup> *Ibid*

<sup>48</sup> [2013] EWHC 3058 (Admin), CD C6

The paragraph clearly relates to all 'development proposals' it does not qualify this with an extra test of sustainability. It is therefore wrong to read such a test into the paragraph. The test also ignores the balancing exercise in paragraph 14. It is that exercise which determines whether or not development is sustainable. In the 'Lang' interpretation there is no identified means by which sustainability can be assessed.

- 3.31 Secondly, the weight of High Court authority runs contrary to Lang J's view. Three judgements from Mr Justice Hickinbottom at Stratford<sup>49</sup>, Mr Justice Males at Tewkesbury<sup>50</sup> and Mr Justice Parker in North Devon<sup>51</sup> demonstrate the correct reading of paragraph 14. In the Stratford case Mr Justice Hickinbottom stated at paragraph 12:

*'If the authority cannot demonstrate a five-year plus buffer supply of housing land at the time of a planning application for housing development, then that weighs in favour of a grant of permission. In particular, in those circumstances, (i) relevant housing policies are to be regarded as out-of-date, and hence of potentially restricted weight; and (ii) there is a presumption of granting permission unless the adverse impacts of granting permission significantly and demonstrably outweigh the benefits, or other NPPF policies indicate that development should be restricted in any event.'*

- 3.32 In the Tewkesbury case Mr Justice Males agreed, stating at paragraph 20:

*'Accordingly both before and after the issue of the NPPF, the need to ensure a five year supply of housing land was of significant importance. Before the NPPF the absence of such a supply would result in favourable consideration of planning applications, albeit taking account also of other matters such as the spatial vision for the area concerned. After the NPPF, if such a supply could not be demonstrated, relevant policies would be regarded as out of date, and therefore of little weight, and there would be a rebuttable presumption in favour of the grant of planning permission. All of this would have been well understood by local planning authorities. An authority which was not in a position to demonstrate a five year supply of housing land, would have recognised, or ought to have recognised, that on any appeal to the Secretary of State from a refusal of permission there would be at least a real risk that an appeal would succeed and permission would be granted.'*

Further, at paragraph 49:

*'...(2) the need for a five year housing supply was a material (and in fact the most important material) consideration; (3) Tewkesbury was unable to demonstrate such a supply in this case; (4) accordingly a presumption in favour of granting permission applied...'*

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<sup>49</sup> *Stratford on Avon District Council v Secretary of State for Communities and Local Government* [2013] EWHC 2074 (Admin) CD C2 at paragraph 12

<sup>50</sup> *Tewkesbury Borough Council v Secretary of State for Communities and Local Government and others* [2013] EWHC 286 (Admin) **CD C3** at paragraphs 20 and 49

<sup>51</sup> *Anita Colman v Secretary of State for Communities and Local Government and others* [2013] EWHC 1138 (Admin) CD C4

- 3.33 In North Devon (the case of Anita Colman) Mr Justice Parker also agreed, at paragraph 5:

*'Paragraph 14 of the NPPF refers to a presumption in favour of "sustainable development" as a central feature of the NPPF in relation to both plan-making and decision-taking. In the context of decision-taking, the presumption in favour of sustainable development is given expression in two ways. The first is by approving development proposals that accord with the development plan. The second is to grant permission where the development plan is absent, silent or where relevant policies are "out-of-date" unless any adverse impacts of granting permission for the proposed development "would significantly and demonstrably outweigh the benefits, when assessed against policies in the [NPPF] taken as a whole".'*

- 3.34 Thus, three High Court judges have disagreed with Lang J. Given this, together with the clear wording of paragraph 14, it is submitted that this Inspector should prefer the view that there is no extra test of sustainability included in paragraph 14, not least because the other three judges' interpretation enables sustainable development to be measured within the balance of paragraph 14.

- 3.35 In any event, even if one followed Lang J's interpretation of the paragraph 14 test, it is submitted that this scheme is indeed sustainable. Mr Downes' proof of evidence and also his Appendix 6 demonstrates this. In summary:

- (a) The scheme offers a number of economic benefits foremost among these is the amount of jobs the scheme would create. In terms of house building the evidence states that for every new home built two new jobs would be provided for a year.<sup>52</sup> It is expected that there would be 190 construction personnel on site at any one time.<sup>53</sup> The Care Facility would also provide jobs, not only in construction but also in order to run the centre. Patrick Downes estimates this to be between 105 and 125 jobs.<sup>54</sup> Finally, it is expected that the local centre would provide 40 jobs.<sup>55</sup>
- (b) The scheme also offers a number of environmental benefits. The development has been landscape-led and affects no international or national designations. There would be a net positive gain in terms of hedgerows, field margins, ponds, broadleaf woodland, scrub, orchards and wetland.<sup>56</sup> These habitats would lead to a net positive gain in invertebrates, amphibians, reptiles, farmland birds and bats.<sup>57</sup> The only species resulting in a neutral/minor negative effect is the badger. However, mitigation measures can be provided to create replacement setts in order to minimise the potential impact.<sup>58</sup>

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<sup>52</sup> 'Laying the Foundations: A Housing Strategy for England', November 2011, Executive Summary paragraph.11, CD A3

<sup>53</sup> Economic Statement, paragraph 5.7.5, CD L17

<sup>54</sup> Patrick Downes, Proof of Evidence, para.7.93

<sup>55</sup> Economic Statement paragraph 5.7.5, CD L17

<sup>56</sup> Patrick Downes, Proof of Evidence, Appendix 6

<sup>57</sup> *Ibid*

<sup>58</sup> *Ibid*

- (c) The proposal offers a number of social benefits. These include: the provision of the local centre and the bowls facility which has been requested by the Council. The provision of the care facility would also meet an existing need in the district. The Worcestershire Extra Care Housing Strategy details that there is a need for 2,600 units.<sup>59</sup> Finally, the contribution of this scheme to meet some of the affordable housing deficit in the area cannot be underestimated. The importance of this will be dealt with in detail under Main matter 3.
- (d) In conclusion on main matter (i), it is significant that no development plan policy was referred to in the reasons for refusal as such the Council did not at the time of the refusal take the view that this scheme offended any Local Plan policies. Secondly, the policies as they relate to the supply of housing land are out of date, both because Wychavon cannot demonstrate a 5-year supply and because the policies are time limited to 2011 and are being applied in a manner inconsistent with the NPPF. As such the paragraph 14 presumption applies to this scheme. The scheme is indeed sustainable as all of the aforementioned factors demonstrate.

***Main matter (ii): Whether the proposed development is premature in the light of the emerging SWDP and national guidance;***

3.36 The starting point in approaching a prematurity argument is the guidance contained in 'The Planning System: General Principles'.<sup>60</sup> The relevant parts state:

*'In some circumstances, it may be justifiable to refuse planning permission on grounds of prematurity where a DPD is being prepared or is under review, but it has not yet been adopted. This may be appropriate where a proposed development is so substantial, or where the cumulative effect would be so significant, that granting permission could prejudice the DPD by predetermining decisions about the scale, location or phasing of new development which are being addressed in the policy in the DPD. A proposal for development which has an impact on only a small area would rarely come into this category. Where there is a phasing policy, it may be necessary to refuse planning permission on grounds of prematurity if the policy is to have effect.'*<sup>61</sup>

*'Otherwise, refusal of planning permission on grounds of prematurity will not usually be justified. Planning applications should continue to be considered in the light of current policies. However, account can also be taken of policies in emerging DPDs. The weight to be attached to such policies depends upon the stage of preparation or review, increasing as successive stages are reached. For example:*

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<sup>59</sup> EiP Inspector Interim Conclusions, Malcolm Brown Proof of Evidence, Appendix 5, paragraph 73

<sup>60</sup> Office of the Deputy Prime Minister, 'The Planning System: General Principles', paragraphs 17-19

<sup>61</sup> *Ibid.* Paragraph 17

- *Where a DPD is at the consultation stage, with no early prospect of submission for examination, then refusal on prematurity grounds would seldom be justified because of the delay which this would impose in determining the future use of the land in question.*
- *Where a DPD has been submitted for examination but no representations have been made in respect of relevant policies, then considerable weight may be attached to those policies because of the strong possibility that they will be adopted. The converse may apply if there have been representations which oppose the policy. However, much will depend on the nature of those representations and whether there are representations in support of particular policies.*<sup>62</sup>

3.37 Finally, it states:

*'Where planning permission is refused on grounds of prematurity, the planning authority will need to demonstrate clearly how the grant of permission for the development concerned would prejudice the outcome of the DPD process.'*<sup>63</sup>

3.38 The NPPF confirms the 'General Principles'. Paragraph 216 states:

*'From the day of publication, decision-takers may also give weight to relevant policies in emerging plans according to:*

- *□ the stage of preparation of the emerging plan (the more advanced the preparation, the greater the weight that may be given);*
- *□ the extent to which there are unresolved objections to relevant policies (the less significant the unresolved objections, the greater the weight that may be given); and*
- *□ the degree of consistency of the relevant policies in the emerging plan to the policies in this Framework (the closer the policies in the emerging plan to the policies in the Framework, the greater the weight that may be given).'*

3.39 The Beta Guidance takes a very similar stance. It states:

*'While emerging plans may acquire weight during the plan-making process, in the context of the National Planning Policy Framework – and in particular the presumption in favour of sustainable development – arguments that an application is premature are unlikely to justify a refusal of planning permission other than in exceptional circumstances (where it is clear that the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, taking the policies in the Framework and any other material considerations into account). Such circumstances are likely to be limited to situations where both:*

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<sup>62</sup> *Ibid.* Paragraph 18

<sup>63</sup> *Ibid* paragraph 19

(a) *the development proposed is so substantial, or its cumulative effect would be so significant, that to grant permission would undermine the plan-making process by predetermining decisions about the scale, location or phasing of new development that are central to an emerging Local Plan or neighbourhood plan; and*

(b) *the emerging plan is at an advanced stage but has not yet been adopted.*<sup>64</sup>

3.40 Two High Court decisions last year have also provided guidance as to how a prematurity reason is to be approached. The cases demonstrate that very substantial development can be permitted within the exercise of planning judgement without falling foul of the prematurity principle. In *Tewkesbury Borough Council v Secretary of State for Communities and Local Government and others*<sup>65</sup> the judge considered two developments amounting to one thousand homes in total. In that decision Males J decided that the SoS's conclusion that developments were not premature was correct and gave the following guidance on prematurity arguments. At paragraph 64 he concluded that the Framework does not:

*'cast any doubt on the fact that, pending the adoption of local development plans, individual planning applications will continue to be dealt with, where appropriate by the Secretary of State, applying existing principles.'*

3.41 At paragraph 69 he confirmed that the Localism Act has done nothing to change the long-recognised principles of prematurity. He stated:

*'But quite apart from the fact that no such conclusion can be drawn from the generalised policy statements on which he relies, such a case would amount, apparently for the first time in English planning law, to laying down as a rule of law a requirement as to the weight to be given to the views of the local authority rather than leaving such matters to the planning judgement of the Secretary of State or his inspector. This would contradict what Lord Hoffmann described as a fundamental principle of planning law (see [50] above). The Localism Act contains nothing which could be regarded as enacting such a radical change and in my judgment it is inconceivable that any such change was intended to be brought about by the policy statements which accompanied the Act.'*

3.42 The case of *Bloor Homes v Secretary of State for the Communities and Local Government and Stratford District Council*<sup>66</sup> is also instructive. Mr Justice Hickinbottom considered the SoS's decision in respect of a development of up to 800 dwellings at Shotton. He rejected the prematurity argument raised by those seeking to challenge the decision and in doing so stated:

*'The mere fact that a change is proposed to the development plan of course does not mean that all applications for development have to be put on hold. Given the propensity for change in policy and plans, that would bring the*

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<sup>64</sup> National Planning Practice Guidance (Beta format), 'Determining a planning application' as at 9 February 2014

<sup>65</sup> [2013] EWHC 286 (Admin), CD C3

<sup>66</sup> [2013] EWHC 2074 (Admin), CD C5

*entire planning system to an effective halt. As the Inspector put it (in paragraph 505 of his report), whilst acknowledging the consultation obligations in European law, "...it is important to avoid unreasonable holding up proposals on the basis of conflict with another process which has an uncertain outcome". A planning decision is therefore still required; but that has to be put into the balance with all other material considerations. That balancing exercise, so well-known in European law, is how the planning regime deals with the tension which I have described.*<sup>67</sup>

He went on to state, at paragraph 64 that paragraphs 17-19 of the 'Planning System General Principles' set out the correct approach to approaching a prematurity argument.

3.43 It is now necessary to apply the above guidance, policy and judicial decisions to the facts of this case. The Inspector is asked to note the following factors:

- (a) When the Planning Committee refused the application in question they did so on the basis that they wrongly believed they had a 5-year supply. This erroneous belief was arrived at principally through ignoring the officer's advice as to the Sedgefield approach and rejecting what Inspector Stephens had said about it in relation to Wychavon in 2012.<sup>68</sup>
- (b) Reliance upon prematurity as a reason for refusal is completely untenable in a situation where the Examination Inspector's Interim Conclusions have said that the figure of 22,300 dwellings is not enough and that substantially more will be required.<sup>69</sup> The Council is now proposing at least an extra three thousand homes.<sup>70</sup> The Council has no idea where these are going to be located. Therefore allowing permission for this scheme cannot prejudice a Local Plan in relation to which there is not even a preferred option identified where the additional development might go.
- (c) On top of the concession that an extra three thousand houses are required, there are unresolved objections to the Emerging Plan. Paragraph 216 of the NPPF dictates that 'unresolved objections' should result in less weight being given to the Emerging Plan. This much was admitted by Mr Brown in cross examination.<sup>71</sup> As such, the objections dramatically reduce the weight which can be given to the assertion that the development will prejudice the Emerging Plan.
- (d) The Council must 'clearly demonstrate' the harm which this development would cause to the emerging development plan. The Council has neither asserted nor demonstrated any harm during this Inquiry. Instead, it has merely prayed in aid two cases whose facts

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<sup>67</sup> *Ibid.* paragraph .63

<sup>68</sup> Land between Station Road and Dudley Road, Honeybourne, APP/H1840/A/12/2172588, paragraph 36

<sup>69</sup> Malcolm Brown, Proof of Evidence, Appendix 5, paragraph 49

<sup>70</sup> Report by Amion Consulting, January 2014, C6 ES11

<sup>71</sup> Malcolm Brown, Cross-examination, 28 January 2014

are completely at odds with the development before this Inquiry. The decision in Moreton-in-Marsh<sup>72</sup> concerned one of nine major settlements in the Cotswold District where Cirencester was the main town and principal target for growth (accepting 63% of development<sup>73</sup>). That left 37% to be located at the other nine principal settlements.<sup>74</sup> If the proposal in question had been approved, Moreton-in-Marsh would have been accepting a quarter of this.<sup>75</sup> In these circumstances a conclusion that the Emerging Plan would be prejudiced was not unreasonable. Further, the Inspector is asked to note that this decision was made pre-Framework and also prior to the decisions in *Shotton* and *Tewkesbury*. It cannot be guaranteed that the same conclusion would be reached on the same facts today.

- (e) Similarly, the decision relating to Kentford in Newmarket involved development at a primary village.<sup>76</sup> It had a very poor range of services.<sup>77</sup> Those decisions are incomparable to the situation here. As addressed above, Droitwich is one of the three main towns in Wychavon. It is specified as a suitable location for development both in the Local Plan and in the emerging SWDP.
- (f) Indeed, it is impossible for the Council to demonstrate harm. Even on its own account there are over three thousand additional homes to be found. The EiP Inspector has found that Worcester City and Malvern Hills are constrained.<sup>78</sup> This means that Wychavon is a prime candidate for locating the extra development. Within Wychavon, Droitwich along with Evesham is the obvious place for the development to go. Evesham has already accepted a disproportionate amount of development and therefore it is time for Droitwich to play its part in contributing to the district's housing supply.<sup>79</sup> Further, the evidence base for the Emerging Plan has shown that the appeal site has been under active consideration as a location for development. Most significantly in 2005 when it was only left out of the plan in favour of Copcut Lane. Now that Copcut Lane has been allocated and granted permission Yew Tree Hill is an obvious next choice for necessary housing development.<sup>80</sup>
- (g) The Council has erroneously advanced its prematurity reason for refusal on the apparent premise that it is necessary for BDL to show that the Council in its Emerging Plan would inevitably choose the appeal site. No such test exists. Paragraph 14 of the NPPF requires a

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<sup>72</sup> Todenham Road, Moreton in Marsh, Gloucestershire, APP/F1610/A/10/2130320, CD D7

<sup>73</sup> *Ibid.* paragraph 202

<sup>74</sup> *Ibid.*

<sup>75</sup> *Ibid* and paragraph 17

<sup>76</sup> Malcolm Brown, Proof of Evidence, Appendix 8, Extract from decision in Land at Bury Road, Kentford, Newmarket, APP/H3510/A/13/2197077, para.37.

<sup>77</sup> *Ibid.* para.38

<sup>78</sup> Malcolm Brown, Proof of Evidence, Appendix 5, paras 82 and 84.

<sup>79</sup> Malcolm Brown, Cross Examination, 28 January 2013 and Patrick Downes, Proof of Evidence, p.58, table 7.1.

<sup>80</sup> Extract from the Inspector's Report in respect of Yew Tree Hill, October 2005 CD A7

planning balance to be performed. The development plan pedigree of the site alongside the evidence that the Inspector has heard here demonstrates that this site is a good choice for development.

- (h) Finally, this application has been considered at a 10 day inquiry. The Council's case and that of objectors in relation to this site has been given a full airing. Clearly, this long process is far longer than would be afforded to this site during the Examination process. There can be no complaint that this site has not properly been scrutinised and the public afforded a full opportunity to express its views about the development of the appeal site.
- (i) Clearly, for all of the reasons outlined above, the Council's reliance upon prematurity as a reason for refusal cannot stand. It is contrary to the weight of guidance, policy and judicial decisions and no relevant precedent has been provided for it. It is noteworthy that Cllrs Jennings and Pearce did not obtain any legal advice to see whether the decision to reject the officer's advice on prematurity was justified or even defensible. Had they done so they would have been told the officer's advice was sound. The failure to revisit the reliance upon prematurity after the rejection of the housing figures at the EiP is completely indefensible and unreasonable.

***Main matter (iii): Whether proposed development is necessary to meet the housing needs of the district bearing in mind the housing land supply position (Note to reader: the submissions on Main matter 3 are joint submissions made by BDL and Persimmon and Prowting Projects Limited).***

3.44 As a preliminary matter, the Inspector is requested to note the very recent decision of Inspector Fox in a planning appeal at Offenham.<sup>81</sup> In relation to Wychavon's five-year supply, the Inspector concluded the following:

- (a) 'It was therefore clear from the detailed discussion and questioning of evidence during the Inquiry that several of the sites without planning permission which were advanced by the Council to be available and deliverable within five years were not supported by robust evidence to that effect.'<sup>82</sup>
- (b) 'the Council's track record shows that it has failed consistently to meet the RS required average requirement of 475dpa, despite an upturn in completions since 2009/10. This is compounded by the relatively low percentages of affordable housing provision during this period...'<sup>83</sup>
- (c) 'the appellant's evidence shows conclusively that the recent significant increase in Wychavon's average house prices and relatively small

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<sup>81</sup> Land between Leasowes Road and Laurels Road, Offenham, Worcestershire, APP/H1840/A/13/2203924 C13

<sup>82</sup> *Ibid.* para.31

<sup>83</sup> *Ibid.* para.33

proportion of rented properties and low delivery of affordable housing have resulted in an increasingly unaffordable local housing market.<sup>84</sup>

- (d) 'Taking into account all the above considerations, it is my view that the Council's case, that it has just over 5 years' housing land, is unconvincing in the light of: (i) the revocation of the RS as a basis for assessing housing need; (ii) the likelihood of an increased housing requirement for Wychavon to emerge during the SWDP Examination; (iii) the over optimism of some of the Council's assumptions of deliverable housing supply over the next 5 years; (iv) the Council's ambitious housing targets in relation to its track record; and (v) the evidence of current market signals in relation to housing under provision and inaffordability.'<sup>85</sup>
- (e) 'I therefore conclude, in relation to the first main issue, that although the proposal is contrary to *Local Plan* Policy GD1, this has little weight for the reasons stated and it is significantly outweighed by the inability of the Council to robustly demonstrate a 5 years' housing land supply for Wychavon.'<sup>86</sup>

3.45 The rejection of the Council's case on the existence of a 5-year land supply on the bases of: insufficient target, unrealistic delivery assumptions and its poor past track record could not be clearer. The Council, through its Deputy Leader Cllr Pearce, was invited to revise its reason for refusal based on an alleged 5-year supply.<sup>87</sup> Cllr Pearce refused to do so. This serves to demonstrate the Council's continuing stubborn unreasonable refusal to face the facts in relation to its 5-year supply position. It is further irrefutable evidence of an inability to accept the independent adjudication of the Planning Inspectorate.

3.46 Turning now to the evidence which has been heard by this Inquiry in relation to these schemes, these submissions are divided into two parts. First, the correct target figure for Wychavon and, secondly, the supply figure.

#### *Requirement*

3.47 Under paragraph 47 of the NPPF, in order to boost significantly the supply of housing LPAs should 'use their evidence base to ensure that their Local Plan meets the full, objectively assessed needs for market and affordable housing in the housing market area.' Wychavon's Local Plan does not contain any figure within it.

3.48 Paragraph 159 of the NPPF requires LPAs to:

*'have a clear understanding of housing needs in their area. They should:*

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<sup>84</sup> *Ibid.* para.34

<sup>85</sup> *Ibid.* para.36

<sup>86</sup> *Ibid.* para.37

<sup>87</sup> Cllr Pearce, Cross-examination, 13 February 2014.

- *prepare a Strategic Housing Market Assessment to assess their full housing needs...The Strategic Housing Market Assessment should identify the scale and mix of housing and the range of tenures that the local population is likely to need over the plan period which:*
  - *meets household and population projections, taking account of migration and demographic change;*
  - *addresses the need for all types of housing...*
  - *caters for housing demand and the scale of housing supply necessary to meet this demand;*
- *prepare a Strategic Housing Land Availability Assessment to establish realistic assumptions about the availability, suitability and the likely economic viability of land to meet the identified need for housing over the plan period.'*<sup>88</sup>

3.49 Paragraph 218 of the NPPF demonstrates that the RSS phase II review figure is an appropriate starting point for assessing the housing needs of an area but that this should be 'supplemented as needed by an up-to-date, robust local evidence.'<sup>88</sup>

3.50 The most recent objectively assessed evidence is that contained within the recent 2011 Interim Sub National Household Projections (SNHP).<sup>89</sup> These state that they should be used for a 10-year period, but beyond that there is a need to determine whether household formation trends are likely to continue.<sup>90</sup> After the ten year period, following the advice of the EiP Inspector, and reflecting the need to revise household representations rates (HRR) due to an improving economy, the more optimistic 2008 SNHP HRRs should be used.<sup>91</sup> This approach accords with the Holman Paper, the conclusions of the Inspector in relation to the Lichfield Core Strategy<sup>92</sup> and also current planning policy which aims to 'plan for growth'.<sup>93</sup> This is the approach Mr Bateman has followed.

3.51 However, the Council seeks to use and defend the 2008 figures for the entire plan period. These are out-of-date. This is made clear in the last sentence of the 2011 projections which state that they replace the 2008 projections from November 2010.<sup>94</sup> Given the chronology of the production of the figures this is hardly surprising. Indeed, this is echoed by the EiP Inspector who has asked the LPA to calculate the supply figure using the latest population projections combined with Nathaniel Lichfield and Partners' approach.<sup>95</sup>

3.52 When calculating the appropriate target figure it is also crucial to start with the correct base date population figure. The Council has used the figure of 49,000

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<sup>88</sup> NPPF, paragraph.218

<sup>89</sup> Anthony Bateman, Proof of Evidence para.6.12

<sup>90</sup> *Ibid* page 19

<sup>91</sup> Malcolm Brown, Proof of Evidence, Appendix 5.

<sup>92</sup> CD I2, Local Plan Inspector's Report, Lichfield District Council Local Plan Examination

<sup>93</sup> The Plan for Growth, 2011, CD A11

<sup>94</sup> Anthony Bateman, Proof of Evidence, Appendix 1

<sup>95</sup> Malcolm Brown, Proof of Evidence, Appendix 5, paragraph 44

for 2006.<sup>96</sup> The SHMA demonstrates that this is incorrect. At page 135 it demonstrates that the correct figure is 47,322<sup>97</sup> as argued for by Mr Bateman.

- 3.53 The *Hunston*<sup>98</sup> judgement is concerned with the proper understanding of how to determine full objectively assessed need in circumstances where, as here, there is a policy vacuum. It requires the identification of a “policy off” figure. Policy is the “varnish” which the Court of Appeal refers to: the application of “varnish” is what happens in the forward planning process but is an exercise which cannot be assessed in the context of a s78 appeal. The Council’s contention that “unvarnished” means arriving at a figure which doesn’t take into account migration or economic considerations is neither consistent with the judgment, nor is it consistent with planning practice for deriving a figure for objectively assessed need to which constraint policies are then applied.<sup>99</sup> Their approach is clearly wrong. The only mention of the word ‘unvarnished’ in the Court of Appeal’s judgement is in paragraph 29 of that judgement, it states:

*‘But there may be other factors as well. One of those is the planning context in which that shortfall is to be seen. The context may be that the district in question is subject on a considerable scale to policies protecting much or most of the undeveloped land from development in exceptional or very special circumstances, whether because such land is in an Area of Outstanding Natural Beauty, National Park or Green Belt. If that is the case, then it may be wholly unsurprising that there is not a five year supply of housing land when measured against the unvarnished figures of household projections. A decision-maker would then be entitled to conclude, if such were the planning judgement that some degree of shortfall in housing land supply, as measured simply by household formation rates, was inevitable.’<sup>100</sup>*

- 3.54 Clearly, where the judgement refers to ‘unvarnished’ figures it means environmental or other policy constraints. There is nothing in this judgement which suggests that it is not perfectly proper to take into account migration, economic considerations, second homes and vacancies. Indeed, this is what the EiP Inspector has asked for.<sup>101</sup>
- 3.55 It is also clear that the 20% buffer should be applied to the entire five-year requirement (including the historic shortfall). Mr Brown, could not point to any provision in policy or previous decisions which supports his contention that the 20% should not apply to the historic shortfall.<sup>102</sup> It is instructive to note that the Council itself has been calculating its five-year supply by adding the 20% to the whole figure. This is clear from the Council’s report to Committee dated 10 October 2013 included in Mr Brown’s own evidence.<sup>103</sup>

<sup>96</sup> Malcolm Brown, Proof of Evidence, paragraph 2.1

<sup>97</sup> SHMA, CD B10, page 135.

<sup>98</sup> *Hunston Properties Ltd v Secretary of State for Communities and Local Government and St Albans City and District Council* [2013] EWHC 2678 (Admin) CD C1

<sup>99</sup> Malcolm Brown, Cross Examination, 29 January 2014

<sup>100</sup> *Hunston Properties*, CD C1, paragraph 29

<sup>101</sup> Malcolm Brown, Proof of Evidence, Appendix 5, paragraphs 45-46

<sup>102</sup> Malcolm Brown, Cross Examination, 29 January 2014

<sup>103</sup> Malcolm Brown, Proof of Evidence, Appendix 9

- 3.56 The Inspector is asked to take particular note of the affordable housing need which exists in Wychavon. Under cross examination Mr Brown admitted that substantial weight should be given by the Inspector to the affordable housing to be provided by this proposal.<sup>104</sup> The weight of the issue in Wychavon is severe. Some 1,153 households are currently on the waiting list for an affordable home in Wychavon.<sup>105</sup> Further, Droitwich is the most unaffordable place for housing in Wychavon.<sup>106</sup> The LPA is drastically underperforming in terms of supplying affordable housing. The 2009 Annual Monitoring Report demonstrates that from 2005-07 only 182 affordable units were produced and only 47 from 2008 to 2009.<sup>107</sup> The LPA provided no affordable units in 2009-10 and only 57 in 2010-11.<sup>108</sup> Indeed, under cross-examination Mr Brown admitted that the LPA had failed to deliver even ¼ of the 268 affordable dwellings per annum that is required of it during the last 8 years.<sup>109</sup>
- 3.57 For all of the aforementioned reasons the LPA has not undertaken a robust calculation in order to arrive at its housing requirement for this Inquiry. This is in stark contrast to the methodology used by Mr Bateman which is robust and well justified. As such, Mr Bateman's figure for a requirement of 14,263 dwellings between 2006 and 2030 should be preferred.<sup>110</sup>
- 3.58 Before moving on to supply, the Inspector is asked to note that in its recent submission to the EiP, the Council has neglected to do what was asked of it by the Inspector. Even on the method the Council has chosen to use the Council accepts a need for an extra 3-4,000 houses which will be required during the plan period.<sup>111</sup> As will be demonstrated at the EiP, the Council's approach is flawed because:
- (a) it has not used the 2011 projections;
  - (b) it has not based its calculations on the correct starting point; and
  - (c) questions remain as to the economic activity rates used.<sup>112</sup>

As such, the figure as submitted does not appear to be robust and very little weight can be given to it in these appeals. In a choice between the Council's figure and Mr Bateman's of about 14,000, it is clear for reasons set out above that it has been demonstrated that Mr Bateman's figure is to be preferred.

### *Supply*

- 3.59 As for the supply figure it is necessary to address here a number of points of principle.

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<sup>104</sup> Malcolm Brown, Cross Examination, 28 January 2014

<sup>105</sup> Worcestershire Strategic Housing Market Assessment, 2012, CD B10 paragraph 5.74

<sup>106</sup> CD B10 figure 5.31, page 123

<sup>107</sup> Wychavon DC Annual Monitoring Report 2009, CD B20 page 19

<sup>108</sup> CD B20 page 79 paragraph 7.55

<sup>109</sup> Malcolm Brown, Cross Examination 29 January 2014

<sup>110</sup> Anthony Bateman, Proof of Evidence, paragraph 7.71

<sup>111</sup> Report by AMION Consulting dated January 2014, C6

<sup>112</sup> Note by A C Bateman 4/2/14, BDL 19

- 3.60 The LPA includes within its supply a number of sites which have permission but are very unlikely to come forward within five years. For example, Land off Banks Lane, Badsey. BDL's evidence shows that this site is not in the hands of a developer and that there is no evidence of viability.<sup>113</sup> The Inspector is invited to note other examples included in the 'Housing Land Supply Position Statement – Difference between Wychavon District Council and the Appellants'. It is not intended to address them all here. However, the Inspector's observations in the Offenham appeal are relevant to these considerations.
- 3.61 The LPA relies upon a Certificate of Lawful Use for the use of land as a touring caravan and camping site. Under cross-examination it became clear that the LPA were not clear of the basis for planning permission. As the Inspector pointed out these are likely to have a 'seasonal occupancy condition'<sup>114</sup> and therefore cannot be considered as dwellings to count towards the LPA's five year supply. The Council has produced no additional material to clarify this position.
- 3.62 The LPA seeks to include all of its SWDP allocated sites. The only safe conclusion using the authority of *Wainhomes*<sup>115</sup> is that not all of them will be deliverable. Each case must be assessed on a fact sensitive basis. Objections to each site must be taken into account as must the fact that most are outside existing development boundaries – one of the reasons the Council has rejected the development of these sites according to its evidence to the Inquiry. In the context of paragraph 216 of the NPPF only limited weight can be given to sites in respect of which there are unresolved objections. It is also relevant that the SWDP is now in a state of disarray. As already highlighted, it will be a long time before the non-strategic sites will actually be allocated at Stage two of the Examination process if and when the SWDP is eventually brought into force. Clearly their inclusion in a Local Plan in disarray cannot lead to a robust conclusion that they are deliverable.
- 3.63 In order for the LPA to include windfalls in its supply there has to be compelling evidence that such sites have consistently become available.<sup>116</sup> This evidence has not been made available to the Inquiry. Indeed, most recently, the EiP Inspector concluded that the large level of windfalls currently proposed should not be accepted and that there is a need for further information.<sup>117</sup> The Inspector is invited to accept Mr Bateman's evidence on this matter and conclude that his figure of 43 dwellings based on completions of 82 per annum, and allowing for windfalls which already have permission, is robust.<sup>118</sup>
- 3.64 The LPA also seeks to rely on C2 care units as adding to the 5-year supply. These cannot be included in the supply. These units have a range of communal indoor facilities, including communal dining. The institutional form and also the

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<sup>113</sup> Housing Land Supply Position Statement, Table 1

<sup>114</sup> Malcolm Brown, Cross Examination, 29 January 2014

<sup>115</sup> *Wain Homes (South West) Holdings Limited v Secretary of State for Communities and local Government and Wiltshire Council and other* [2013] EWHC 597 (Admin) CD C7

<sup>116</sup> NPPF, paragraph 48

<sup>117</sup> Anthony Bateman, Proof of Evidence, paragraph 8.29

<sup>118</sup> Anthony Bateman, Proof of Evidence, paragraph 8.36

occupational age limit renders them unsuitable for being included as 'dwellings' in the housing land supply. Indeed, it is telling that developers are not asked to make an affordable housing contribution on these units (as can be seen from BDL's application). As such, it is clear that Council policy is not to treat them as 'dwellings'.

- 3.65 A 10% lapse rate should be applied to the Council's supply. This approach is supported by the '*Housing Land Availability*' paper by Roger Tym and Partners.<sup>119</sup> The approach was accepted by the Inspectors at Moreton in Marsh,<sup>120</sup> Moat House Farm,<sup>121</sup> Honeybourne<sup>122</sup> and Tetbury.<sup>123</sup> A 10% lapse rate was affirmed in the High Court decision at Tetbury.<sup>124</sup> Given the previous shortfalls of delivery in this Local Authority, a 10% lapse rate is entirely reasonable and should be applied here in order to ensure a robust 5-year supply figure.
- 3.66 Taking all of the above points of principle into account, it is clear that based upon the expert evidence of Mr Bateman and Mr Downes, WDC cannot demonstrate a 5 year supply. If the Appellants' case is accepted on both requirement (i.e. Chelmer with employment') and supply the figure will only 1.83 year's supply.<sup>125</sup> This can be seen from Mr Bateman's table below.<sup>126</sup> Even if the Council's supply figures are used the supply is between 2.83 and 3.76 years (with or without the SWDP sites).

<b>Wychavon Housing Requirement 1<sup>st</sup> April 2013</b>	<b>District</b>			
	<b>1. 2011 SNHP</b>	<b>2. Chelmer with employment</b>	<b>3. SWDP</b>	<b>4. RS Panel Report</b>
Annual requirement (from Table 4)	<b>744</b>	<b>1,083</b>	<b>516</b>	<b>779</b>
5year requirement (annual x 5)	3,720	5,415	2,580	3,897
20% NPPF Buffer	4,464	6,498	3,096	4,676
Annual requirement	<b>893</b>	<b>1,300</b>	<b>619</b>	<b>935</b>

<sup>119</sup> Roger Tym and Partners, *Housing Land Availability* DOE, Planning and Research Program Paper, 1995 cited in Anthony Bateman Proof of Evidence at paragraph 8.13

<sup>120</sup> CD D7, paragraph 178

<sup>121</sup> CD D35, paragraph 8

<sup>122</sup> CD D13, paragraph 49

<sup>123</sup> CD D36

<sup>124</sup> CD C5

<sup>125</sup> Anthony Bateman Proof of Evidence paragraph 11.14

<sup>126</sup> Anthony Bateman, Proof of Evidence, table 6

<b>Appellant Supply</b>	2,374		2,374		2,374		2,374	
Years Supply	<b>3.19</b>		<b>2.19</b>		<b>4.60</b>		<b>3.04</b>	
Shortfall	1,346		3,041		206		1,523	
Shortfall (5 years + 20%)	2,090		4,124		722		2,302	
Years Supply 5yr + 20%	<b>2.66</b>		<b>1.83</b>		<b>3.83</b>		<b>2.54</b>	
<b>LA Supply</b>	+SWDP	-SWDP	+SWDP	-SWDP	+SWDP	-SWDP	+SWDP	-SWDP
	4,886	3,682	4,886	3,682	4,886	3,682	4,886	3,682
Years Supply	<b>6.56</b>	<b>4.95</b>	<b>4.51</b>	<b>3.4</b>	<b>9.47</b>	<b>7.13</b>	<b>6.27</b>	<b>4.73</b>
Shortfall	-	38	529	1,733	-	-	-	215
Shortfall (5 years + 20%)	-	782	1,612	2,816	-	-	-	994
Years Supply 5yr + 20%	<b>5.47</b>	<b>4.12</b>	<b>3.76</b>	<b>2.83</b>	<b>7.89</b>	<b>5.95</b>	<b>5.23</b>	<b>3.94</b>

### *The Consequence of No 5-Year Supply*

- 3.67 In conclusion, it is crystal clear that the LPA does not have a 5-year supply. This Inquiry has demonstrated this to be the case and the recent Offenham decision serves as a useful consideration of this deficit.
- 3.68 If there is no 5-year supply then Policy GD1 and Policy SR1 must be considered to be out of date as they are policies relevant to the supply of housing.<sup>127</sup> This means that the paragraph 14 NPPF test must be applied to these applications. The contention that the absence of a 5-year supply renders settlement boundary policies out of date is further reinforced by the very recent decision of the SoS at Forest Road, Burton on Trent.
- 3.69 However, in the unlikely event that this Inspector concludes that Wychavon can demonstrate a 5-year supply, the paragraph 14 test still applies. This is because relevant policies are out-of-date. As explained above the housing supply policies are time-limited, were saved on a basis that was subject to the caveats in the Saving Letter. The old Local Plan was drawn up against the background of an entirely different national policy context. All extant policies should therefore be afforded little weight in these appeals and the paragraph 14 presumption should be applied.

<sup>127</sup> See Lewis J in *Cotswold District Council v Secretary of State for Communities and Local Government and others* [2013] EWHC 3719 (Admin) at paragraph 72 CD C5

- 3.70 It may be contended on the basis of the case of William Davis v SoS [2013] EWHC 3058 (Admin) that Policy GD1 is not a housing policy and that therefore it is not out of date by virtue of paragraph 49 of the NPPF. There is now, of course, conflicting authority to this decision in the form of the judgment of Lewis J in Cotswold DC v SoS [2013] EWHC 3719. The issue arises as to which interpretation of the NPPF is to be preferred. The Appellant contends that it is beyond a peradventure that the interpretation of Lewis J is correct. Quite apart from the fact that it is consistent with the approach of many Inspectors' decisions the interpretation accords with a common sense, purposive application of the policy for the following reasons.
- 3.71 If the only policies which were out of date, triggering the application of the presumption in favour of sustainable development, were those containing a housing requirement, and the settlement boundary or other constraint policies were of continuing validity how would the mischief to be addressed by the provisions of paragraph 49 of the NPPF, namely insufficient housing, be cured? The answer is that it would not and therefore the interpretation is absurd. The correct interpretation is that in the absence of a 5-year supply of housing the policies (other than those contained in Footnote 9) which are constraining the supply of housing like settlement boundaries and SLA's are out of date and in order to deal with the shortfall of housing land the planning balance needs to be shifted firmly in favour of the grant of consent in accordance with provisions of paragraph 14 of the NPPF.
- 3.72 In this case the evidence on this issue is clear. The Council does not have, and has not had, a 5-year supply for a very substantial period of time. No amount of conjuring with the figures or resolute denial in the teeth of the overwhelming factual material can gainsay this. It has to face both a planning balance which clearly favours the grant of consent in this appeal alongside an undisputable need for further provision for housing to be made.

***Main matter (iv): The effect of the proposed development on the character and appearance of the area***

- 3.73 This scheme has been 'landscape-led' from its inception. The site has been thoroughly investigated over four years.<sup>128</sup> This process has included detailed meetings with people at all levels at the Council.<sup>129</sup> The meetings also included a site visit with Planning Officer Eileen Marshall on 21 June 2010.<sup>130</sup>
- 3.74 Indeed, the Council was fully supportive of the scheme and its officers had no issue with it and stated:

*'...there would be no significant and demonstrable adverse harm to the landscape, heritage assets, highway safety, residential amenity, nature conservation, flooding and drainage.'*<sup>131</sup>

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<sup>128</sup> Alison Potterton, Proof of Evidence, paragraph 9.2.1

<sup>129</sup> Appendix 3, Alison Potterton, Proof of Evidence

<sup>130</sup> Appendix 3, Alison Potterton, Proof of Evidence

<sup>131</sup> Planning Committee Report, Chapter 7 CD H1

3.75 They concluded:

- *'the indicative layout shown on the proposed masterplan would represent an acceptable form of development*
- *the proposed development would not have an adverse impact on the amenities of other residences to justify refusal*
- *subject to implementation of a suitable landscaping scheme the development can enhance the bio-diversity value of the site*
- *the proposed development will include satisfactory drainage facilities to deal with surface water run-off and will not therefore exacerbate flood risk*
- *the proposed development will not cause demonstrable harm to the character/appearance of the landscape.*<sup>132</sup>

3.76 It is therefore somewhat surprising that this Inquiry has had to consider a landscape reason for refusal. However, the minutes of the Committee Meeting of 16 May 2013 and the evidence in chief of Cllr Jennings give some insight into why this reason was given.<sup>133</sup> The meeting minutes do not refer to any discussion on landscape. They state that discussion centred upon the expectation that that development at Droitwich would be either at Copcut Lane or at Yew Tree Hill. As Copcut Lane has now been permitted it seemed, in Cllr Jennings' view, justifiable to refuse this application. Indeed, Cllr Jennings who had made that argument before the Committee stated in cross examination that he had the reasons for refusal drafted prior to the Committee meeting.<sup>134</sup> The reasons were drafted on the basis that they could be defended at appeal.<sup>135</sup> Indeed, that there was no discussion of landscape matters at the Committee, and no landscape policies were cited in the reasons for refusal, this reason appears to be a 'straw-clutching attempt' to ensure no more development at Droitwich. It will also be noted that reason for refusal three has three parts of which landscape is only one third and as has been demonstrated above, the other two are unjustified.

3.77 The Council has sought to defend the landscape reason for refusal through the evidence of Sue Illman. Ms Illman's evidence is somewhat tainted by events which took place in 2012. As Ms Potterton explains in her proof of evidence,<sup>136</sup> Ms Illman's first assessment of the LVIA was based upon incomplete information. She was missing the table which assessed in detail the landscape and visual effects of the scheme.<sup>137</sup> Indeed, the damning nature of her opinion drew some surprise from the Council's Landscape Officer.<sup>138</sup> Once provided with the full information, Ms Illman failed to correct a number of the errors in her report. Indeed, it is submitted that those errors and assumptions have bled into her evidence before this Inquiry.

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<sup>132</sup> Planning Committee Report, Conclusion CD H1

<sup>133</sup> Minutes of Planning Committee Meeting, 16 May 2013, CD H4

<sup>134</sup> Cllr Jennings, Cross-Examination, 6 February 2014

<sup>135</sup> *Ibid*

<sup>136</sup> Alison Potterton, Proof of Evidence, paragraphs 7.3.1 - 7.3.14

<sup>137</sup> Alison Potterton, Evidence in Chief, 31 January 2014

<sup>138</sup> Email from Eileen Marshall to Neil Pierce, 17 October 2012, Alison Potterton, Proof of Evidence, Appendix 5

- 3.78 The Inspector is asked to note that despite the damning initial view of Sue Illman, which was based upon incomplete evidence, she nevertheless wrote to Planning Officers Neil Pearce and Eileen Marshall stating:

*'If the scheme went to appeal, then I think I would spend a lot of time discussing semantics over the lack of a good LVIA, but then conceding that the scheme was actually ok in the main.'*<sup>139</sup>

Ms Illman's evidence has indeed been 'semantic' as promised and the Inspector is invited to agree with her initial impression that the 'scheme is actually ok in the main'.

- 3.79 Ms Illman's evidence has relied very strongly upon her use of the Landscape Character Area (LCA) flowchart. This approach is clearly nonsense for the following reasons. First, the Council itself has not followed that approach. The LPA has allocated and given consent to the development at Copcut Lane which lies in the same LCA as Yew Tree Hill. If the LCA was the litmus test which Ms Illman suggests it is, then permission would not have been granted.

- 3.80 Clearly, the Council is not purporting to use the flowchart in the way that Ms Illman states it should be used. Under cross-examination Ms Illman attempted to explain this and claimed that the chart is used in a different way when you are looking at allocations rather than applications.<sup>140</sup> Ms Illman effectively suggested that a review of all potential sites should be done before developing in this LCA.<sup>141</sup> However, it is noted that she could not point to any requirement in the NPPF for undertaking this process. Indeed this requirement does not exist in either legislation or policy and should be regarded as nonsense.

- 3.81 Secondly, the document itself does not purport to use the landscape character flowchart as an absolute bar to development. It states:

*'The emphasis on the appropriateness of a development in a landscape, and the landscape's resilience to change (or ability to accept that development without undue harm) can only be partially assessed through the LCA. Site visits and the need for detailed visual assessments are also a vital part of both strategic land use planning and development control.'*<sup>142</sup>

Indeed, this was admitted by Ms Illman in cross examination.<sup>143</sup>

- 3.82 As stated above, the assessment of the appropriateness of development at Yew Tree Hill has been assisted by detailed visual assessments and site visits. Further, the scheme itself has been designed so as to enhance consistency with the Landscape Character Parcel. This can be seen through the use of linear woodland, the bolstering of hedgerows and the provision of orchards.<sup>144</sup>

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<sup>139</sup> Alison Potterton, Proof of Evidence, Appendix 5

<sup>140</sup> Sue Illman Cross-Examination, 29 January 2014

<sup>141</sup> *Ibid*

<sup>142</sup> Landscape Character Assessment Supplementary Guidance, paragraph 5.3.12 CD J2

<sup>143</sup> Sue Illman Cross Examination 30 January 2014

<sup>144</sup> Alison Potterton Examination in Chief 31 January 2014

- 3.83 Ms Illman has also made much of her use of Zones of Theoretical Visibility (ZTV). However, in response to the Inspector's question as to whether when Ms Illman stated that the developments would be visible, whether she meant 'partially' or 'entirely', she responded '*[W]e can't be that sophisticated, you would see some of it.*'<sup>145</sup> Ms Illman also admitted that landscaping proposals had not been taken into account as part of her assessment.<sup>146</sup> Any landscape appraisal which fails to take account of mitigation planting is clearly deficient. Any suggestion that the ZTVs are somehow superior to Ms Potterton's LVIA must be rejected. Even if they were superior, they are only aids to understanding which are subservient to what the Inspector will have seen for himself on the site visits.
- 3.84 The differences between Ms Illman and Ms Potterton in terms of the LVIA are essentially matters of judgement. It is the case that only Ms Potterton has provided a full LVIA, Ms Illman's evidence is but an assessment of Ms Potterton's work. The Inspector is asked to note that the test of acceptability cannot be either: (i) the visibility of the development or (ii) its effect on openness. As this Inquiry has heard, it is inevitable that any substantial new development at Droitwich would have to be on the periphery. It is therefore inevitable that it would be visible, because any new development would be visible. Further, it is also inevitable that any new development would be on greenfield land. The Emerging Plan makes it clear that the area has exhausted its supply of previously developed land.<sup>147</sup> This development cannot therefore be criticised on that basis.
- 3.85 The Inspector is also asked to take particular note of the development constraints which exist at Droitwich. Yew Tree Hill is one of the few locations where the development required to meet housing and affordable housing need is capable of being accommodated. Further, although Yew Tree Hill was subject to a Special Landscape Area (SLA) designation, it is not proposed to continue this designation forward into the Emerging SWDP and it can be afforded little weight.<sup>148</sup>
- 3.86 The Inspector is also invited to note the substantial environmental advantages that this development offers. These are set out clearly in Appendix 6 to Patrick Downes' proof of evidence. They include: a net positive gain of 1,385m of hedgerows, a net positive gain of 1,598m<sup>2</sup> of field margins, 2 hectares of scrub/woodland, 0.9 hectare of orchards and new park/open space areas. All of these would serve as suitable habitats for wildlife.
- 3.87 Even if the Inspector's conclusion is that this development would give rise to a significant adverse effect, he is asked to note the SoS's decision in Burgess Farm, Worsley<sup>149</sup> which demonstrates that even clearly harmful development can represent sustainable development when it is weighed against a substantial shortfall of housing land.<sup>150</sup>

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<sup>145</sup> Sue Illman, Examination in Chief, 29 January 2014

<sup>146</sup> *Ibid*

<sup>147</sup> South Worcestershire Development Plan Submission Document, May 2013, CD A9a, paragraph 30

<sup>148</sup> *Ibid*

<sup>149</sup> Land at Burgess Farm, Hilton Lane, Worsley, Manchester, APP/U4230/A/11/2157433, CD D2

<sup>150</sup> *Ibid* paragraph 21

- 3.88 Finally, the Inspector will note the complete failure of Ms Illman's evidence to acknowledge that the environmental role is but one of three roles. She steadfastly and erroneously failed to acknowledge that her conclusions which argued for dismissal on the grounds of adverse environmental impact alone is completely at odds with the requirement in paragraph 8 of the NPPF to consider all three strands together. She simply could not understand that absent consideration of the economic and social roles she could not recommend refusal of planning permission.

***Main matter (v): The effect of the proposals on local highway infrastructure***

- 3.89 The effect of the proposals on local highway infrastructure does not represent a reason to recommend the refusal of this planning appeal. For a refusal to be justified on this basis, any problems associated with the development must be 'severe'.<sup>151</sup> Further, it is common sense that the traffic proposals should be safe. Having identified the correct tests this Inquiry should be clear that the tests are not, amongst others: changes in terms of traffic patterns or an increase in traffic along a particular road.
- 3.90 Road safety is primarily the responsibility of the Highway Authority. It has carefully considered these proposals over a long period of time<sup>152</sup> and has no objection to them. The proposals cannot be regarded as potentially having an adverse impact on the trunk road/motorway network as the HA's formal position is one of non-objection. As planning authority, Wychavon has a responsibility to ask itself whether the development is safe and has concluded that it is. Highways and transport did not form the basis/part of any reason for refusal.
- 3.91 It is against the aforementioned background that the objections raised by SOGOS have to be considered. It also worth bearing in mind that Mr Pettitt has not considered himself constrained by paragraph 187 of the NPPF: the duty to look for solutions and not problems. The approach of SOGOS has been entirely the opposite. The late delivery of the expert evidence from Messrs Pettitt and Stoney was clearly unprofessional and apparently deliberately delayed to inconvenience the Appellant.
- 3.92 As for forward visibility and side roads, the critical issue between the Appellant and SOGOS is whether Manual for Streets (MfS) or Design Manual for Roads and Bridges (DMRB) should be used. Mr Pettitt argues for DMRB for entirely self-serving reasons which are not supported by MfS. It is correct that at one location the major road distance is 59m.<sup>153</sup> The evidence of Simon Tucker and Philip Jones explains why this is sufficient.<sup>154</sup> Their views are consistent with table 7.1 of MfS1, one can even go below that figure if one uses MfS2. Indeed it is true that the risk of accidents is not necessarily heightened by a shortened visibility distance.<sup>155</sup> It is clear that there no unacceptable risk associated with either junctions or forward visibility. It is worth noting that when this scheme

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<sup>151</sup> NPPF paragraph 32

<sup>152</sup> Transportation Statement of Common Ground, BDL 10 paragraph 1.1

<sup>153</sup> Simon Tucker, Examination in Chief, 4 February 2014

<sup>154</sup> Simon Tucker, Examination in Chief, 4 February 2014, Phil Jones, Examination in Chief, 6 February 2014

<sup>155</sup> Manual for Streets 2 (2010) CD B4, page 77

gets to the detailed design stage design features would be used to reduced speed such as signage/gateway features.

- 3.93 This scheme would bring benefits to the Pulley Lane/A38 junction. The junction would become a two lane signalled junction. This measure needs to be set against the additional traffic which would be generated by the development. In any event, some queuing at traffic lights is part of everyday suburban life and this cannot be considered a 'severe' problem in the context of paragraph 32 of the NPPF.
- 3.94 As for Newland Road, up until 1993 it was a two-way road with houses on either side. Any objection based on disruption to this road has to be considered with the road's history in mind. The route has been carefully considered by the Appellant's highway engineers.<sup>156</sup> Clearly, there is no need for a gabion wall which would encroach on third party land. Mr Tucker has demonstrated that it would be possible to use sheet piling without the risk of trespass. Once engineered, the route would become a very attractive walk and cycle route for most of the day with the occasional bus. Indeed, the bus element would be of benefit to both new and existing residents not well served by existing services.
- 3.95 SOGOS' complaints regarding fire engines and buses on Primslan Way is pure mischief making. Neither of these vehicles would need to turn left or right. The fire engines would be going straight ahead as indeed would the buses. If, on the off chance, an emergency vehicle did need to turn, then it could cut over the white lines with its sirens blazing.
- 3.96 Inevitably, any substantial development would bring about highway impacts. The location of this site with good access to the centre by cycle and foot would minimise its adverse effects. None of the highway effects of this development can be said to be 'severe' in terms of paragraph 32 NPPF.

***Main matters (vi) and (vii) – Conditions and S106:***

- 3.97 Appropriate conditions and s106 contributions were dealt with on day nine of the Inquiry (13 February 2014). BDL confirms that it is happy with the conditions as agreed with the Council. It also takes no issue with the s106 obligations and accepts the Council's CIL Compliance Statement.

***Other – Brine Run***

- 3.98 The Appellant relies upon the notes provided to the Inquiry, the evidence of Mr Williams and the fact that WDC does not object to the proposal on this basis. WDC has a long history of familiarity with dealing with problems created by Brine Runs and there is no reason to believe that this development would not be similarly controlled. All the statutory consultees support the development.  
<sup>157</sup> There is no sound and robust evidence to the contrary. Experience suggests

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<sup>156</sup> Atkins drawings, Alison Potterton Proof of Evidence Appendix 1

<sup>157</sup> See CD F1-F14

that similar development to that proposed in this appeal has taken place by experienced developers within Zone A in the past.

## **Conclusion**

3.99 This proposal cannot be tested against an up-to-date Local Plan. The development plan system in Wychavon has failed to make adequate housing provision despite the warning of the Saving Letter some 5 years ago. The Emerging Plan has far to go before its adoption after making an uncertain start.

3.100 It is clear, even to the LPA, that thousands more homes than are catered for in the SWDP – as presently cast – are required. This should have led the LPA to accept that its objection to this site on grounds of 5-year supply and prematurity are completely indefensible.

3.101 The presumption in favour of a grant of planning permission applies in this case for a variety of reasons:

- (a) the inadequacy of the 5-year supply;
- (b) 'absent' provision in saved Local Plan policies for provision of housing post-2011; and
- (c) out-of-date policies.

Only one door needs to open into paragraph 14 for the presumption in favour of development to apply.

3.102 Once the inappropriate reasons for refusal relating to prematurity and 5-year supply are put to one side only the Council's case on landscape effect stands between the Appellant and a grant of planning permission. Issues raised by SOGOS have all been properly addressed by statutory consultees whose conclusions have not been demonstrated to be wrong at this Inquiry. Indeed the evidence has demonstrated the opportunistic nature of the objections. Any residual matters of detail would be adequately controlled by the imposition of conditions and/or the reserved matters application process.

3.103 The exercise of the paragraph 14 balance demonstrates that the benefits of the scheme are not 'significantly and demonstrably' outweighed by the alleged disadvantages not least because, stripped of the untenable prematurity and 5-year supply arguments, there is only landscape impact on the debit side of the equation. Any fair-minded person can see that this balance can only have one result.

3.104 We invite the Inspector to recommend the grant of planning permission to the SoS. The LPA must be told again that it has no 5-year supply and that even if it did the presumption in favour of granting planning permission will continue to apply until such time as it adopts its new SWDP.

3.105 One final word of thanks to the residents who oppose this scheme: they have listened patiently and politely to all the evidence for and against the scheme. The Appellants are grateful to them for this.

#### **4. THE CASE FOR PERSIMMON HOMES LTD (APPEAL B)**

- 4.1 This Inquiry has provided a forum in which the objectors to these proposals have been able to fully ventilate their concerns in relation to the development proposals. That process has done nothing more than expose those concerns as being utterly without substance. The Inquiry has also afforded the opportunity for the validity of the objections to be tested. Upon testing, they have been established to be illusory, assertive, inchoate and unsupported by evidence. The longer the Inquiry went on, the clearer that that picture has become.
- 4.2 The evidence which is before the Inquiry shows that the old guidance represented by the 2006 Local Plan which expired in 2011 can no longer hold. The emerging SWDP requirements are very substantial and reveal how redundant the old 2006 Local Plan has become.
- 4.3 The RFR stated that the Council could demonstrate a 5 year supply of housing land. However, it has become painfully apparent in this Inquiry that the Council is unable to provide a robust evidential basis for this assertion. The Council has not progressed matters since Inspector Clews' Interim Conclusions on the emerging SWDP.<sup>158</sup> The latest work which has recently been published is taking the Plan preparation process backwards rather than forwards as the material does not properly engage with the task that the Inspector set.<sup>159</sup> We are no wiser than we were in October 2013 when he concluded that the requirement is likely to be substantially greater than the Council's estimate of 23,000 as the SHMA had fundamental shortcomings.<sup>160</sup> Those shortcomings have not been remedied and the Council cannot enjoy a 5 year land supply.<sup>161</sup>
- 4.4 The housing land supply position in Wychavon is critically short, and the NPPF requires the identification of deliverable sites. The Council's delivery record is "very poor"<sup>162</sup> and there is no sensible justification for such failure. The Framework requires that objectively assessed needs are met as one of the facets of sustainable development, and the fact that it may be challenging is not identified as an excuse. The failure to release suitable and deliverable sites in these circumstances cannot therefore be justified.
- 4.5 It has become obvious that the Council was well-advised by its Officers that it would be difficult to sustain plausible reasons for refusing permission, and that the benefits which it would bring in terms of employment opportunities, improved accessibility, landscape enhancement, whilst releasing a site to meet an urgent and significant shortfall in market and affordable housing, are not significantly or demonstrably outweighed by any harm caused by the proposal.
- 4.6 The approach to applications under section 38(6) in the context of the NPPF was set out by the High Court in the case of *R(oao Hampton Bishop Parish*

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<sup>158</sup> CD A9

<sup>159</sup> Mr May, Examination in Chief; and Supplementary Note from Mr Bateman

<sup>160</sup> CD A9, paragraph 49

<sup>161</sup> CD C13, Inspector's Decision: Land between Leasowes Road and Laurels Road, Offenham, Worcestershire, 7 February 2014, paragraphs 31, 36, 37 and 58

<sup>162</sup> CD D13, Inspector's Decision: Land between Station Road and Dudley Road, Honeybourne, Worcestershire, 24 August 2012, paragraph 32

*Council) v Herefordshire Council*<sup>163</sup>: development plan policies are not to be read in isolation, but rather through the prism of the NPPF which is a sophisticated exercise.

- 4.7 Against that background the main issues which were raised at the Pre-Inquiry meeting will be canvassed, and then against that analysis, examine how the planning balance should be struck in this case.

***Main matter (i): The extent to which the proposed development is consistent with the development plan for the area and would deliver a sustainable form of development***

- 4.8 In addressing this issue, namely the question of compliance with the development plan, it is important to focus upon those policies which it is claimed that the development may be contrary to. The development plan consists solely of the WDLP, adopted in 2006 and in place until 2011. In substance, only four policies are relied upon by the Council and the objectors within the development plan as giving rise to issues of consistency. These are Policies GD1, SR1, ENV1 and ENV8.
- 4.9 Policy GD1 expressly and unconditionally applies to “*new development to 2011*”<sup>164</sup>. It was plainly not designed to meet housing needs in 2014 and is redundant in today’s changed policy, economic and legal context. Despite the unequivocal wording in Policy GD1, the Council has persisted in arguing that significant weight should be afforded to it. Closer examination illustrates why that is absurd.
- 4.10 Reference to the “*sequential approach... to the re-use of previously developed land and buildings*”<sup>165</sup> implements a previous sequential policy from the RSS and the old PPG/PPS3; it is not replicated in the NPPF or the emerging SWDP in connection with sustainable development.<sup>166</sup> Further, the prioritizing of Evesham in the wording of Policy GD1 does not survive the SWDP.<sup>167</sup> These changes reflect a deliberate shift in policy to loosen restrictions on urban extensions and greenfield land.
- 4.11 The Saving Letter<sup>168</sup> made clear that the preservation of the policies was intended to be temporary, that there was a clear requirement to press on with the preparation of the replacement plan and that in the meantime the old policies should be approached bearing in mind new policy material in national Government advice. There has been a great deal of water under the bridge since then. An instructive lesson on the impact of the policies of the NPPF is to be obtained from the Honeybourne decision, in which the Inspector noted that using the old WDLP policies was not good enough and that the housing provision policies were out of date.<sup>169</sup> But perhaps most tellingly, when

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<sup>163</sup> CD P4, *R(oao Hampton Bishop Parish Council) v Herefordshire Council* [2013] EWHC 3947 (Admin)

<sup>164</sup> CD A6, Wychavon District Local Plan, wording used in Policy GD1, page 9

<sup>165</sup> Ibid, 2<sup>nd</sup> paragraph

<sup>166</sup> CD A9, Track Changed Version of the Proposed Submission Document, South Worcestershire Development Plan, SWDP1, page 32

<sup>167</sup> Ibid, SWDP2, page 35

<sup>168</sup> CD A16, WDLP 2006- “Saving” letter, 29<sup>th</sup> May 2013

<sup>169</sup> CD D13, paragraphs 31, 24

examined in August 2012, the policies were found to be *"time expired and out of date so limited weight can be given..."*

- 4.12 In paragraph 31, the Inspector wrote: *"It seems to me that the "Saving Letters" make clear the contingent basis upon which the policies were saved, namely the requirement in the decision making process to have regard to up-to-date policies, such as the former PPS3, which required 5 year land supply. These "material considerations" now include the NPPF, which means that it is simply not good enough to regard saved policies as an opportunity to refuse rather than grant planning permission. The Council's approach is at odds with the requirement in the Saving Letters. Relevant policies in the WCSP and the WDLP must be viewed in the context of paragraph 215 of the NPPF."*<sup>170</sup> A similar approach can be found in the Bishops Cleeve decision in which the SoS further reinforced that Localism required local communities and Councils to face up to the hard choices in relation to the provision of development and if they did not and they failed to make provision for necessary development then decisions would inevitably need to be taken to provide it on appeal.<sup>171</sup>
- 4.13 Policy GD1 is no longer fit for purpose. It was formulated in a world and in a context very different to one we find ourselves in today. It is not based on the full objectively assessed needs in 2014.<sup>172</sup> Applying the restraints in Policy GD1 will not help the Council meet its housing requirements because land beyond the settlement boundary needs to be released for development: a sequential approach will not deliver the urgently needed housing in Wychavon and it is not consistent with the NPPF. This was further identified in the Inspector's decision at Humberstone, endorsed by the SoS.<sup>173</sup>
- 4.14 Mr Brown's refusal, against this evidence, to accept that Policy GD1 is out of date is simply untenable. The Council's argument collapses further in light of the contradiction at the heart of their case: that Policy SR1 was out of date, but Policy GD1 was not. Mr Brown's acceptance that the two policies should be read together on the one hand, but that one is out of date and the other not, indicates the convoluted nature of the Council's inconsistent and indefensible position.<sup>174</sup>
- 4.15 Whatever view one takes of the policies, as it is accepted that Policy SR1 is out of date, paragraph 14 of the NPPF applies thereby triggering the presumption in favour of sustainable development.
- 4.16 The other policy is ENV1, which applies a Special Landscape Area (SLA) designation to the site. The Inspector in the Tenbury appeal concluded that Policy ENV1 was also a housing supply policy which should be set aside absent a 5 year supply.<sup>175</sup> This again triggers the paragraph 14 presumption.

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<sup>170</sup> Ibid, paragraph 31

<sup>171</sup> CD D3, Ministerial Appeal Decision: Land at Bishops Cleeve, Gloucestershire, 16 July 2012

<sup>172</sup> CD D41, Inspector's Decision: Cheltenham Road, Evesham, Worcestershire, 24 July 2013, paragraph 8

<sup>173</sup> CD D 37, Ministerial Decision: Land South of Humberston Avenue, NE Lincolnshire, 28 November 2013; and Inspector's Report, 4 November 2013

<sup>174</sup> Mr Brown, XX

<sup>175</sup> CD D41, Inspector's Decision: Land of Cheltenham Road, Evesham, 24 July 2013, paragraph 11

- 4.17 The wording of Policy ENV1<sup>176</sup> demonstrates that the SLA designations are not determinative and that the policy must be read in the context of other policy documents. These include the 2011 Landscape Character Assessment (LCA) (as anticipated in the reasoned justification of Policy ENV1), which becomes a new yardstick by which to measure landscape impact. The policy is therefore no more than a general policy in relation to protection of the landscape, and the SLA designation has, in accordance with the provisions of the Plan, been superseded by the publication of the 2011 LCA (if not by earlier such documents).
- 4.18 Other relevant policy includes "A New Look at Landscape of Worcestershire" in 2004 and "Planning for Landscape in Worcestershire, 2008".<sup>177</sup> But it is agreed that the 2011 LCA prevails over the SLA designations, the origin of and justification for which is now lost in the mists of time.
- 4.19 On any reading, the Council relies on an out of date plan, evidenced primarily by the express wording of the old policies, previous Inspector's findings, and underlying it all, the fact that the evidence and policy context for the old WDLP has dramatically changed and can no longer be a sound basis for any meaningful application to this proposal. By way of default the NPPF applies.
- 4.20 It follows from this that whilst as a bald fact the proposals are contrary to Policy GD1, once the exercise required by the High Court decision in *Hampton Bishop* is undertaken and the policy is viewed through the prism of up to date consideration and in particular the NPPF little weight indeed can be attached to that fact. For the reasons set out below the proposals comply with Policy ENV1 and the other policies relating to landscape resources. Given its antiquity the development plan in reality has little to say which will be determinative of this appeal.

***Main matter (ii): Whether the proposed development is premature in the light of the emerging SWDP and national guidance***

- 4.21 The relevant policy framework to determining this issue is set out in *The Planning System: General Principles*, 2005 and relates to the scale of proposals, where we are in the plan-making process and the significance of alternative options.
- 4.22 It should also be noted that in two High Court decisions, prematurity arguments identical to the ones in this appeal failed.<sup>178</sup> Those judgments made clear that there was nothing in the Localism Agenda which required the plan making process to be completed before decisions could be made.
- 4.23 On the first point of where we are in the plan-making process, it is clear that the SWDP process has been stalled: the methodology for the housing calculation has been found in no uncertain terms to be "*unreliable*" not providing a sound basis for the planning of housing provision in the area, with

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<sup>176</sup> CD A6, Wychavon District Local Plan, page 38, paragraph 4.2.3

<sup>177</sup> Mr Peachey's Proof of Evidence, paragraph 5.7; and CD J2

<sup>178</sup> CD C2, *Stratford on Avon DC v SOSCLG* ("Shottery Expansion") [2013] EWHC 2074 (Admin); CD C3 *Tewkesbury BC v SOSCLG* ("Bishops Cleeve") [2013] EWHC 286 (Admin);

*"three fundamental shortcomings",*<sup>179</sup> resulting in an order that further analysis be undertaken to derive an objective assessment of housing need.<sup>180</sup>

- 4.24 Mr May correctly maintained that the SWDP was in a "parlous state"<sup>181</sup> in light of the extensive work still required. There will be a need for further assessment of future allocations and subsequent consultation (to be supported by a SEA). This needs to be settled by 3 authorities at a time when there is clearly no political appetite for further housing provision anywhere.<sup>182</sup> Consequently, there is little hope that the process will be completed before 2015.<sup>183</sup>
- 4.25 Despite the Council's submission of additional information on housing at this Inquiry, there is still no new housing requirement figure. Indeed, the SWDP appears to be going backwards rather than forwards. We are not at an advanced stage of the plan. We are in fact at a state where further land is likely to be required. There are correctly doubts in the Council's mind as to the integrity of the plan making process at present in the light of the fact that the Inspector in March 2014 will not have any proposed modifications containing an alternative figure before him. How therefore the future progress of the plan is to be handled even procedurally is a mystery at present.
- 4.26 Mr Brown argued prematurity in terms of location and phasing but not in terms of scale.<sup>184</sup> This is misconceived because the three elements cannot be disaggregated, especially in light of the status in the extant and emerging plan that Droitwich Spa enjoys as one of the higher tier settlements.<sup>185</sup> The fact is that the scale of both proposals is not such as to prejudice decisions about distribution of development: as the Report to Committee pointed out, taken together, the proposals represent a mere 16.9% increase in households in the parish of Droitwich Spa over the plan period.<sup>186</sup>
- 4.27 The Council further relies on the appeal at Kentford.<sup>187</sup> But in that case Kentford's Village status was a primary village with a poor range of services - completely different to Droitwich Spa, which has a full range of facilities and sufficient infrastructure for further development.
- 4.28 The Council's stance on prematurity is even more difficult to understand in light of its decision to grant permission for 740 dwellings at Copcut Lane. Yet again, another contradiction which fatally undermines the Council's argument.
- 4.29 The weakness in the Council's position on RFR 1 and prematurity is patently clear on any analysis. It should never have been put forward as a RFR and does not withstand scrutiny. The Council's own officer observed that it would

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<sup>179</sup> CD A10, Inspector's Interim Conclusions, 28<sup>th</sup> October 2013, paragraph 15

<sup>180</sup> Ibid, paragraph 44

<sup>181</sup> Mr May, in XiC

<sup>182</sup> Cllr Jennings, XX

<sup>183</sup> Mr May, XiC, XX and Re-X

<sup>184</sup> Mr Brown's Proof of Evidence, paragraph 6.12

<sup>185</sup> Mr May, XiC, XX

<sup>186</sup> CD H2, Planning Officer's Report to Planning Committee, 8 May 2013, Section 7

<sup>187</sup> Mr Brown's Proof of Evidence, tab 8, page 8, paragraph 37

be “difficult for the council to demonstrate clearly how the grant of planning permission would prejudice the outcome of the DPD process.”<sup>188</sup>

- 4.30 Once the status of Droitwich Spa in the hierarchy is acknowledged the simple fact is that in Droitwich Spa there are few if any alternative options which have not already been deployed in the SWDP.<sup>189</sup> The reality is that Yew Tree Farm was only rejected because the Committee preferred Copcut Lane. That option no longer exists. Droitwich Spa is a sustainable settlement and at the top of the settlement hierarchy in SWDP48.<sup>190</sup> Within Droitwich Spa, being constrained by the greenbelt, floodplain and historic environment, Yew Tree Farm is the only option left without imperiling those critical environmental constraints. There is no evidence, let alone any appetite, which would justify the contention that development needs should be met in that way.

***Main matter (iii): Whether the proposed development is necessary to meet the housing needs of the district bearing in mind the housing land supply position***

- 4.31 The short answer to this question is yes. The Council officers are agreed that the Council does not enjoy a 5 year land supply and therefore cannot satisfy the requirement of paragraph 47 of the NPPF. In accordance with an approach previously outlined to the Inquiry detailed joint submissions in respect of this issue will be made in the closing submissions on behalf of Appeal A. (See paragraphs 3.44 – 3.72 above). What follows are points of further context.
- 4.32 The first point to observe is that part and parcel of the 5 year land supply calculation is that the Council has failed for a considerable period of time to deliver their housing requirement. That leads to their acceptance that in this case a 20% buffer is appropriate in relation to the housing land supply assessment.<sup>191</sup> The evidence therefore demonstrates that there is a long-standing chronic problem with housing delivery in South Worcestershire and Wychavon. The same was noted in the Interim Conclusions.<sup>192</sup>
- 4.33 The position is far worse than the Council’s assessment thus far has suggested. The SWDP Inspector made no bones about the “*three fundamental shortcomings*” in the SHMA used by the Council to calculate housing need. These were: firstly, the failure to use household representative rates (HRR) drawn from the 2008-based DCLG projections or any other official population or household statistics;<sup>193</sup> secondly, the Council’s use of the unreliable Cambridge Economics as a basis for predicting job growth and resultant household growth<sup>194</sup>; and thirdly, the lack of evidence to support the assumed increased in older peoples’ economic activity, based on unclear assumptions.<sup>195</sup>

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<sup>188</sup> CD H2, Report to Planning Committee, Persimmon, 8 May 2013, Section 7 “Officer Appraisal”

<sup>189</sup> Mr May’s Proof of Evidence, Appendix 5

<sup>190</sup> CD A9, page 181

<sup>191</sup> CD H2, Report to Committee, 8 May 2013 Section 7

<sup>192</sup> CD A10

<sup>193</sup> Ibid, paragraphs 16, 17

<sup>194</sup> Ibid, paragraph 19

<sup>195</sup> Ibid, paragraph 21

- 4.34 The Inspector therefore concluded that the objectively assessed housing need figure for the plan period *"is likely to be substantially higher than the 23,200 figure identified in the submitted plan"* and that further work was required to rectify this calculation.<sup>196</sup>
- 4.35 He advised that this further work should be combined with the NLP "index" approach and should be carried out using the latest official population projections to translate those projections into future household numbers.<sup>197</sup>
- 4.36 One is able to take an educated guess as to the region of how much higher the additional housing need is likely to be. The range canvassed by the Inspector included the following: 34,000 (Barton Wilmore, not supported by the Inspector);<sup>198</sup> 32,000 (by NLP, assessed as methodically sound, albeit caveated);<sup>199</sup> 26,800 (PSL, considered to be "illuminating", but the adjustments were insufficiently reliable);<sup>200</sup> and between 23,700-27,000, with a mid-point of 25,850 (by Pegasus, the mid-point found to be insufficient because it did not include the employment adjustments).<sup>201</sup>
- 4.37 Thus a housing requirement of substantially more than 23,200, and most probably in the region of 34,000 seems likely. This is, in the main, because unless the new figure is in this region, there are unlikely to be unresolved objections, a key factor affecting the weight to be attached to the emerging plan, as paragraph 216 of the NPPF makes clear. This represents an additional need for a minimum of 8,800 dwellings.
- 4.38 The question which then arises is as to the likely location of the additional housing. 8,800 homes, as a joint figure for the 3 authorities to meet, must be distributed. The evidence overwhelmingly proves that Wychavon is the least constrained authority: Worcester City's built-up area is tightly contained inside its boundaries and there is insufficient space in the City's administrative area to meet all its needs for development, especially housing;<sup>202</sup> Malvern Hills has limited ability to accept new development due to its natural and environmental constraints.<sup>203</sup> This leaves Wychavon, with fewer constraints than Worcester City or Malvern Hills, as the natural destination for the lion's share of the additional 8,800 homes bearing in mind in particular the duty to co-operate. Mr Brown sought to dispute this on the basis that constraints are not fixed but it is difficult to see how the AONB in Malvern Hills might change in the future, for example.<sup>204</sup>
- 4.39 Zooming in further to identify the best location within Wychavon, one cannot ignore that Droitwich Spa is the prime candidate town, when compared against Evesham or Pershore. Growth in Droitwich Spa, between 2006 and 2013, was the smallest of all 3 towns, with a population increase of only 5.6% in this

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<sup>196</sup> Ibid, paragraphs 44, 49

<sup>197</sup> Ibid, paragraph 44

<sup>198</sup> Ibid, paragraph 36

<sup>199</sup> Ibid, paragraph 33

<sup>200</sup> Ibid, paragraph 39

<sup>201</sup> Ibid, paragraph 37

<sup>202</sup> Ibid, paragraph 82

<sup>203</sup> Ibid, paragraph 84

<sup>204</sup> Mr Brown, XX

period.<sup>205</sup> Some 750 homes would represent an increase from 5.6 to 8.9%. With Copcut Lane, that increases to 12%, still less than the % increases seen in Pershore or Evesham.<sup>206</sup>

- 4.40 The Council's approach of directing development outside the conurbation boundaries no longer passes muster in the changed policy context of the NPPF and the presumption in favour of sustainable development. The sea-change brought about by the NPPF recognises that development outside conurbations is appropriate in today's climate of an under-supplied housing market.
- 4.41 The simple fact is that there is a serious need for additional homes. Within Droitwich Spa, Copcut Lane is insufficient on its own to meet those needs and Yew Tree Hill is the logical next step.
- 4.42 If the position in relation to the overall supply of housing demonstrated a general district-wide requirement for further housing, that requirement becomes critical and the need overriding in relation to the provision of affordable housing. The most recent analysis in the SHMA (found to be a sound assessment of affordable housing needs<sup>207</sup>) demonstrates a desperate picture bearing hallmarks of overcrowding, barriers to getting onto the housing ladder and families in crisis. There are nearly 5,000 households on the waiting list,<sup>208</sup> 35% of whom are families with children. Over a fifth of those have a local connection and are in priority need.<sup>209</sup> The SHMA indisputably records that affordability is at crisis point.<sup>210</sup> Without adequate provision of affordable housing, these acute housing needs will be incapable of being met. In terms of the NPPF's requirement to create inclusive and mixed communities in paragraph 50, this is a disaster of catastrophic proportions. Needless to say these socially disadvantaged people are unrepresented at the Inquiry, and require the objectivity of the planning appeal to acquire a voice and for that to be heard. Addressing the needs of the homeless and over-crowded families and children in the District is surely an imperative of any civilized planning system.
- 4.43 These bleak and desperate conclusions are thrown into even sharper focus by an examination of the current circumstances in Wychavon itself. Over the whole of the District's area there is presently a need for 268 homes pa.<sup>211</sup> These are real people in real need now.
- 4.44 Worryingly, there is no early prospect of any resolution to this problem. Firstly, the 2009 AMR recognizes that between 2005 and 2009, a woeful 229 affordable homes were delivered, an average of 55 pa.<sup>212</sup> Over the following 8 year period, between 2009 and 2013, some 501 were delivered, or an average

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<sup>205</sup> Mr Downes' Proof of Evidence, Table 7,1, page 58

<sup>206</sup> Accepted by Mr Brown, XX

<sup>207</sup> CD A10, paragraph 50

<sup>208</sup> CD B10, Worcestershire SHMA (2012), page 41, paragraph 3.32; and pp 109-110

<sup>209</sup> Ibid, page 112

<sup>210</sup> Ibid, page 244, paragraphs 9.32 and 9.33; and page 123

<sup>211</sup> Ibid, page 183, paragraph 7.30

<sup>212</sup> CD B20, Wychavon DC Annual Monitoring Report 2009, page 19

of 62 p.a. over a whole economic cycle.<sup>213</sup> One would be forgiven for characterizing the Council's approach to this key issue as complacent.

- 4.45 Secondly, although SWDP15 (and supporting text)<sup>214</sup> notes that 657 dwellings are needed over the next 5 years, a solution still remains a relatively distant prospect given the state that the forward-planning process finds itself in at present.<sup>215</sup>
- 4.46 The information shows that the delivery of affordable housing in Wychavon has been pitiful.<sup>216</sup> There are no allocations for housing purposes which would begin to address the significant housing crisis in Wychavon. Furthermore, none of the permissions identified are capable of addressing the need. There is thus no solution identified by the Council to even begin to address the crisis in housing provision for the substantial number of households living with housing need which the Council can identify. And as the map made clear, those living in Droitwich Spa are amongst the unluckiest as it is one of the most unaffordable places for housing.<sup>217</sup>
- 4.47 Mr Brown has almost totally ignored the affordable housing need in his evidence. He also overlooked the paltry delivery record by the Council. His planning balance is struck without any apparent consideration being given to one of the most important reasons why housing in Droitwich Spa is needed. This is inexcusable. This Inquiry has brought the facts to light and they must attract very significant weight in any proper exercise of the planning balance.

***Main matter (iv): The effect of the proposed development on the character and appearance of the area***

- 4.48 It is important to recall the benefits of the landscape-led approach to the masterplan. It proposes several benefits and was endorsed by the Council officers. The strategy retains the elevated southern part of the site as open space and development is proposed to be restricted to at or below the 73.5m contour generally with planting proposed to the elevated southern part of the site to provide a vegetated backdrop to the development when viewed from the north. Proposed development is concentrated on the central and northern part of the site where there is a greater degree of visual containment but set back from the public footpath to the north to create a green corridor which also incorporates provision for SUDS.<sup>218</sup>
- 4.49 Perimeter hedgerows/trees and the existing hedgerow that subdivides the site are to be retained and new hedgerows introduced to create a series of development "cells". This network of hedgerows is intended to reflect the local landscape character and provide elements of visual containment.<sup>219</sup>

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<sup>213</sup> CD B21, WDC AMR 2010, page 79; CD B22, SW Housing Lane Monitor, April 2011; Mr Bateman's Proof of Evidence, page 63

<sup>214</sup> CD A9, page 91, paragraph 3

<sup>215</sup> CD B10, SHMA, p112, paragraphs 5.72, 5.69, 5.74, 5.23

<sup>216</sup> Mr Bateman's Proof of Evidence, page 63

<sup>217</sup> CD B10, SHMA, figure 5.31, page 123

<sup>218</sup> Mr Peachey's Proof of Evidence, Appendices 2 and 3; CD H2, Planning Officer's Report to Planning Committee, 8<sup>th</sup> May 2013

<sup>219</sup> CD P2, Green Infrastructure Analysis, Persimmon

- 4.50 There are two aspects to the Council's case in relation to landscape effects and the impact on the visual amenity of the area. The first is the question of policy context and the second concerns the assessments.
- 4.51 The historical context of the SLA needs to be borne in mind when assessing the weight to be given to it. The 1993 Local Plan Inspector concluded that this parcel of land should be excluded from the Green Belt and that the shallow valley of the appeal site should be examined as a plausible candidate for future development. This was reiterated in the 1995 PTP Report with the note that Pulley Lane and Newland Lane should form the boundary of the Green Belt and provide a firm boundary in the long term for the settlement.<sup>220</sup> By delineating a boundary in this way, allowance was being made for future development needs. Even in 1993 and 1995, this site was identified as a potential area for development.
- 4.52 As housing needs increased, one can catalogue the evolution of development in the area.<sup>221</sup> Although Ms Illman asserted that nothing has changed since the 1995 Report<sup>222</sup> the facts indicate that significant elements of development have occurred around the site: additional housing to the east and the Bellway Homes site have clearly changed the immediate context of the site. Furthermore, nothing has been done to advance any proposal for a country park, which was in reality a pipe-dream.<sup>223</sup>
- 4.53 This is the context from which the SLA designation emerged and thus its application must be caveated: the conclusions would only hold until 2011 or else no option for Droitwich to expand would be available;<sup>224</sup> and the SLA was to be integrated into the LCA as set out above.<sup>225</sup>
- 4.54 The Purple Book<sup>226</sup> further indicates that special landscape designations are to carry less weight in the context of LCAs. As such the LCA prevails over the SLA and is incorporated into the plan.
- 4.55 However, it is not good enough to assume that the LCA is determinative. Further assessment must be carried out to properly determine the landscape impact of the scheme on the site. It is a starting point, as set out in the Purple Book, which seeks to move away from the mechanical approach or applying perfunctory assessments. Similarly, the flowchart relied on by Ms Illman has no support in the Purple Book as the assessment method of landscape impact. Rather, it is a tool that provides some perspective.<sup>227</sup> The document itself observes that having considered the flow-chart one should then undertake the necessary site work required to formulate a proper assessment of the detailed character of the landscape of a site and the effects upon it.

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<sup>220</sup> CD B32, page 52, 53, paragraph 6.3.1

<sup>221</sup> Mr Peachey's Proof of Evidence, Figure 4

<sup>222</sup> Ms Illman's Proof of Evidence, page 17, paragraph 2.8.2

<sup>223</sup> Ibid, page 18, paragraph 2.8.4

<sup>224</sup> CD A7, Inspector's Local Plan Report, pp 18-19, paragraphs 38.14.23

<sup>225</sup> CD A6, Local Plan explanatory text, page 38, paragraph 4.2.3

<sup>226</sup> CD B7, Guidelines for Landscape and Visual Impact Assessment, 3<sup>rd</sup> Edition, 2013

<sup>227</sup> Ibid, page 83, paragraph 5.27; and Ms Illman's Proof of Evidence, page 15, paragraph 2.7.3; and page 16

- 4.56 That approach is reflected in the fact that notwithstanding the Settled Farmlands with Pastoral Use description, the Bellway Homes and Copcut Lane developments are both within this designation.<sup>228</sup> Had the approach that Ms Illman advocates been applied to those proposals, they would have probably been refused.
- 4.57 Reading the LCA as a whole, one observes that landscape is only one aspect of decision-making;<sup>229</sup> and that meeting the need for sustainable development on the edge of sustainable settlements is also an important factor. All this is important context which is unfortunately absent from Ms Illman's proof.
- 4.58 Droitwich Spa has at its edge either Settled Farmlands with Pastoral Use or Principal Timbered Farmlands,<sup>230</sup> the latter being less suitable for development than the former in terms of resilience to development, and the lower lying land contained therein.<sup>231</sup> Therefore, the Landscape Character Area in which the site is located is the best option for Droitwich Spa in landscape character terms measured against the LCA.
- 4.59 Turning to the quality of the assessment carried out it is apparent from Ms Illman's initial Illman Young Report<sup>232</sup> that she was not instructed to provide any assessment of the site of Appeal B. Why that is has not been explained.<sup>233</sup> What is clear is that the assessment of the Council's own landscape expert was supportive of the scheme which had been designed and did not conclude that the landscape impacts were unacceptable.<sup>234</sup>
- 4.60 That lack of thoroughness is exemplified further in the absence in her evidence of any explanation of the methodology carried out to reach her conclusions. Nowhere does she set out any calibration, any analysis or any rationale for her judgments. Contrasted with Mr Peachey, whose evidence follows a logical flow and describes in detail how and why he reached his conclusions on the landscape impact, the difference is stark.<sup>235</sup> The same can be said about Ms Illman's assessment of the visual effects of the scheme. Her starting point has been to obtain a ZTV but this approach was exposed as painting a misleading picture of the visibility of the site.<sup>236</sup> Ms Illman's Table C<sup>237</sup> fails to make the connection between her observations and her conclusions: nowhere is there a description or definition of the significance of change and the magnitude of impact; nowhere is there any description of the individual effects, leaving this Inquiry in the dark as to her understanding of terms such as "large" and "major" when describing the impact.

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<sup>228</sup> Mr Peachey's Proof of Evidence, Appendix 2, Figure 4

<sup>229</sup> CD J2, Worcestershire Landscape Character Assessment (LCA, November 2011), page 29

<sup>230</sup> Ibid, Fig 11, map; and page 42, Figure 9; CD P3

<sup>231</sup> Ibid, page 24, paragraph 4.3.2; and page 29

<sup>232</sup> CD J5

<sup>233</sup> Ms Illman, XX

<sup>234</sup> Mr Peachey's Proof of Evidence, Appendix 3

<sup>235</sup> Mr Peachey's Proof of Evidence, page 32 onwards

<sup>236</sup> Mr Peachey, XX; for example, Ms Illman's Figure 7, Target 3, SE quadrant Appeal B suggests areas of visibility with obstructions but Figure 8C Target 3 Appeal A & B show that the site is less visible

<sup>237</sup> Ms Illman's Proof of Evidence, page 41

- 4.61 The conclusions to be reached in relation to this issue on the evidence are as follows. Given the scale of the overall Landscape Character Area of this type the effect of the proposals are not significant. When one examines the more local Landscape Description Unit (LDU) it is clear that the character of the landscape has had its rurality eroded by the recent development in the vicinity. As a result the impact on the LDU landscape character will also be acceptable. Turning to the issue of visual effects there are very limited views of the site from the wider landscape.<sup>238</sup> Whilst there will be some change to very local views firstly, these are views in which the urban form of Droitwich Spa is already evident and, secondly, as a result of the careful siting of the development on the lower lying land the extent of visual effect is minimised. In summary, there is no sensible basis to refuse the proposals on the basis of landscape impact.
- 4.62 It is necessary to consider the potential impacts in the event that both schemes were to be approved. In reality the additional impact of Appeal B in landscape terms if Appeal A is approved is de minimis. Mr Peachey and the other landscape witnesses have approached this issue on the basis of considering the effect of both sites together as a single entity. Again, as the rigorous and transparent evidence of Mr Peachey demonstrates whilst the impact on landscape character and visual effect would be greater, again it would not amount to a basis for refusing the schemes. The proposals sit within the same LCA and LDU, and the assessment of the LDU shows that it is relatively resilient to change. Coupled with the substantial provision of green infrastructure the overall result of the proposals would bring benefits to clearly off-set the initial impact of the development.
- 4.63 There would be changes to the visual effect of the development but still no impact upon the wider landscape. More development would be seen from the closer views but again the magnitude of change, given the existence of views of development already in these views moderates the possible extent of the impact and demonstrates that the development, akin to the other recent developments around the sites, can be properly assimilated into views back towards Droitwich Spa from the wider countryside.

***Main matter (v): The effect of the proposals on local highway infrastructure***

- 4.64 The proposal before the Inquiry, as explained by Mr Jones,<sup>239</sup> includes provisions for public transport and road widening which would enhance the accessibility of the site both by slow modes and by public transport. These provisions have been accepted not only by WCC but have passed an independent safety audit providing the necessary assurance that the site would be safe and accessible.<sup>240</sup> Whilst points have been made in relation to the present position of the site in terms of the impact on traffic flows, those fall away in light of the fact that the flows used have been derived from an independent model and Pulley Lane has an adequate design and capacity to

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<sup>238</sup> Mr Peachey's Proof of Evidence, Appendix 2, Figure 8 site sections

<sup>239</sup> Mr May's Proof of Evidence, Appendix 8 (Statement from Mr Jones); and CD P7, Additional Calculations from Mr Jones

<sup>240</sup> Travis Baker Transport Assessment,

cope with the additional flows.<sup>241</sup> The use of percentages is obviously misleading when the existing flows on this link are so low. The forecast flows are well within the design capacity of the road and pose no difficulty in engineering terms.

- 4.65 With regard to the site access works, Mr Jones explained in his calculations that the point about the visibility splay is based on using a standard of deceleration from trunk roads and motorways to a road which would be residential in character.<sup>242</sup> Using realistic speeds and deceleration rates the visibility splay would be acceptable, a point endorsed by WCC and the safety audit. Using Manual for Streets and after speeds have been managed as a result of the Section 278 works, the visibility splay would function. There is no accident history of safety problems on this highway network.<sup>243</sup>
- 4.66 The extent of the public transport contribution would secure a long term future for the bus service. It is to be noted that Messrs Tucker and Jones and WCC have designed the bus service to pick up a number of residential areas in addition to serving the site so as to provide ridership and support for the revenue stream generated by the service. The bus service would necessarily improve the current service and provide a strong linkage both to the town centre and appeal site, providing therefore an appropriate and sustainable alternative to the use of the private car. These proposals would therefore bring about a wider public benefit to the existing community in the form of enhanced public transport.<sup>244</sup>
- 4.67 It is further important to reinforce that the junction arrangements at Pulley Lane/A38 which are proposed would not only assist in resolving existing highway safety issues but also in terms of providing an acceptable design solution.

***Main matter (vi): Whether any permission should be subject to any conditions and, if so, the form these should take***

- 4.68 Appropriate conditions have been agreed after discussion between the parties. SOGOS' enthusiasm for the Brine Run does not extend to Appeal Site B. There is no basis on which to restrict development on Appeal Site B. Even development on Zone A is a matter which is principally to do with foundations and therefore a matter for Building Regulations not planning.

***Main matter (vii): Whether any planning permission granted should be accompanied by any planning obligations under section 106 of the 1990 Act and, if so, whether the proposed terms of such obligations are acceptable***

- 4.69 The Appellant and the Council have entered into a s106 Agreement by virtue of which £207,529.45 is payable as the "Worcester Transport Strategy Contribution."<sup>245</sup>

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<sup>241</sup> Mr Jones, XiC and XX

<sup>242</sup> CD P7

<sup>243</sup> Mr Jones, XiC and XX

<sup>244</sup> Mr Tucker, XiC and XX

<sup>245</sup> Planning Obligation Deed, 11<sup>th</sup> February 2014, Schedule 4

- 4.70 Pursuant to clause 5.3 of the Deed, the obligation *"shall not apply and shall not be enforceable by the Council and the County Council if the person appointed to determine the Appeal states clearly in the decision letter granting Planning Permission that such obligations, or any of them, are unnecessary or otherwise fail to meet the statutory tests set out in Regulation 122 of the Community Infrastructure Levy Regulations 2010 PROVIDED THAT if any obligations are determined by the decision maker to be unnecessary or otherwise fail to meet the statutory tests it shall not affect the lawfulness of the balance of covenants and obligations in this Deed which continue to be enforceable."* It is submitted that Schedule 4 is not compliant with the legal tests in light of the clear conclusions in the Appeal Decision at Ronkswood Hospital<sup>246</sup> and that, pursuant to clause 5.3, Schedule 4 is unenforceable.
- 4.71 In that appeal, where the main issue was the compliance of the s106 Transport contribution with the Regulation, the Inspector scrutinised the Worcester Transport Strategy (WTS) as the policy basis for the contribution.<sup>247</sup>
- 4.72 In order to be "CIL-compliant", Regulation 122 requires that an obligation be necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind to the development.
- 4.73 The Inspector concluded that the WTS, which consists of a package of infrastructure and service schemes, was too general and there had been no evidence to demonstrate how any of those schemes directly related to the development.<sup>248</sup> In those circumstances, and unsupported by any development plan policy, the contribution calculated by reference to the WTS was not CIL-compliant.
- 4.74 The same applies in this appeal. Firstly, the WTS still includes a very general list of schemes with no direct relation to this proposal. Secondly, the contribution has been calculated using the WTS Technical Note, which gives a total WTS cost of £145.5million and equates to £689.7 per additional SWDP trip (using the SWDP household figures). This is then multiplied by the TRICS figure for the number of daily trips per residential unit, and the resulting figure has been negotiated down as a result of the reduced travel demand due to the Travel Plan.<sup>249</sup> However, as was the case in Ronkswood, this Technical Note has not been subjected to public consultation and the SWDP figures are subject to almost certain change through the Examination process. On that basis therefore, little weight can be afforded to them and the contribution sought through the obligation cannot be fairly and reasonably related in scale and kind to the development.
- 4.75 The contribution in this instance has been calculated on exactly the same basis as in Ronkswood and there has since been no change in policy or data to remedy the failings identified by the Inspector.

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<sup>246</sup> CD D42, Inspector's Decision: Former Ronkswood Hospital, Newtown Road, Worcester, 10 January 2014

<sup>247</sup> Ibid, paragraphs 20-26

<sup>248</sup> Ibid, paragraphs 24-26

<sup>249</sup> Planning Obligation Compliance Statement "Folder", Appendix 7, "Yew Tree Village WTS Briefing Note", 21<sup>st</sup> January 2014

## PLANNING BALANCE

- 4.76 In the light of the conclusions reached earlier it is necessary to draw the factors together and feed them into the equation provided by paragraph 14 of the NPPF in circumstances where the principal policies are out of date. The effect of applying the presumption is that the fulcrum of the planning balance shifts in favour of the grant of consent. Only if the Council is able to demonstrate harm which “significantly and demonstrably” outweighs the benefits of the development should consent be refused. Thus harm simpliciter will not do; harm must be of sufficient gravity to significantly and demonstrably outweigh the benefits. The reason for that significant shift in the fulcrum of the planning balance is that it is a key policy objective of the NPPF under paragraph 47 to ensure that a 5 year supply of housing land is in place and that old plans with outdated constraints are not deployed to frustrate development.
- 4.77 That exercise requires one to start with a careful examination of the benefits of the proposal. Unfortunately there is little, if any, evidence in the proof of Mr Brown, and none in that submitted by third parties, to indicate an understanding of the significant benefits which this scheme would deliver.
- 4.78 Obviously, firstly there is the 5 year housing land supply requirement which needs to be met. The requirement figure is not set but we know that it is greater than 23,200 and is likely to be an additional 8,800. It is the position of both Appellants that the Council cannot demonstrate a deliverable 5 years supply.
- 4.79 Jobs would be created by the development. Government Guidance in Laying the Foundations<sup>250</sup> and the Honeybourne decision<sup>251</sup> both acknowledge the direct and indirect employment flowing from housing construction. Not only would approximately 190 personnel be employed in construction on site<sup>252</sup> but that figure would increase to 120-205 general personnel.<sup>253</sup> Both appeals together would provide 40 jobs at the retail centre and between 105-205 jobs at the extra care facility.<sup>254</sup> Mr Brown struggled to dispute these numbers to any significant degree.<sup>255</sup> His quibble in respect of the rates of development depended on the GL Hearn Report which itself shows that higher rates of development (up to 170 per annum) are capable of sustaining in Droitwich Spa more than one outlet, at the Copcut Lane site as well as outlets at the appeal sites. He was unable to explain GL Hearn’s conclusion in the light of their own empirical evidence.<sup>256</sup>
- 4.80 The development would make a positive contribution to the social dimension of sustainable development, particularly through the provision of new homes to address the significant affordable housing needs. Droitwich Spa is a very

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<sup>250</sup> CD A3, Laying the Foundations, Executive Summary, paragraphs 2, 11

<sup>251</sup> CD D13, paragraph 44

<sup>252</sup> Appeal B, Transport Assessment, L12, Page 31, para 5.7.5,

<sup>253</sup> Ibid, page 50, paragraph 6.2.23

<sup>254</sup> Mr Downes’ Proof of Evidence, paragraph 7.9.3; and page 69

<sup>255</sup> Mr Brown, XX

<sup>256</sup> Mr Brown, XX

sustainable settlement and a good location for new development with a full range of facilities, services and public transport connections. The site location is sustainable with the ability for high quality footpath and cycleway connections to be made to adjoining residential areas and to bus services there and to the adjoining Appeal Site A.

- 4.81 The proposals would involve change in relation to the loss of fields in agricultural and equestrian use and the development of areas of land currently undeveloped. Off-setting environmental benefits in the form of accessible open space, landscaping and habitat creation would mitigate this change and the proposal has been carefully considered to minimize the impact on the landscape. The area of open space on the eastern boundary of the proposal would connect well to the adjoining, existing informal open space and provide connections for existing residential communities to Newland Lane and Newland Road and wider footpath and cycleway networks.
- 4.82 To the extent that harm has been identified, it is limited. It is focused on landscape issues in circumstances where the sites are essentially the only candidates for expansion in Droitwich Spa and the detailed evidence demonstrates that landscape and visual effects are in substance limited to the sites themselves and their immediate surroundings. It raises allegations of prematurity when the SWDP is going backwards rather than forwards, its housing requirement is going up rather than down, and there is an acceptance that further sustainable sites would be required. Any harm is certainly not of a degree of significance so as to outweigh the clear benefits in relation to sustainable development the proposals would provide either substantially or demonstrably or at all.

## **CONCLUSION**

- 4.83 Having examined the evidence before the Inquiry it is clear that the Council's officers were absolutely correct in recommending to members on 8 May 2013 that planning permission should be granted for the appeal proposals. The officers' independent endorsement of the need for this site and its suitability as set out above carries significant weight in the consideration of this appeal.
- 4.84 Measured against the fact that the proposal would bring about substantial and tangible benefits, the Council's case is incoherent and has been motivated by the objections of local residents to a large extent. The lack of substantive evidence put forward by SOGOS or the third parties only highlights that fact. The democratic process is not just about popularity. The rule of law applies in planning cases to ensure that they are determined properly and independently. Overall, the Council's case lacks any reasoning.
- 4.85 There is on analysis no substance in the reasons for refusal which the members imposed. Instead there is a strong positive case for development of the appeal site and one which would bring about significant benefits in terms of addressing housing requirements for all people in South Worcestershire and Wychavon. That is not simply in relation to the need for market housing but the development also addresses the needs of those who are unable through their own socio-economic circumstances to meet their housing requirements and are currently forced to live in unsuitable and unsatisfactory homes. The

proposals would assist in providing jobs. In the light of the material before the Inquiry, there is no sensible basis to do other than recommend to the SoS that planning permission should be granted.

## **5. THE CASE FOR SAVE OUR GREEN OPEN SPACES (SOGOS)**

### **Introduction**

- 5.1 It is necessary to explain the presence of SOGOS at this Inquiry. SOGOS is giving evidence at this Inquiry as its objections to these appeals are only partially mirrored in the Council's case. It should be pointed out that SOGOS fully supports the Council's case on the unacceptable adverse landscape and visual effects of the proposed developments and agrees with the Council that the cumulative scale of the proposed appeals would prejudice the emerging SWDP. However, the concerns about the unacceptable transport impact, the uncertainty as to the surface drainage of the sites, and the simple fact that the Appellants' own consultants have labelled a large portion of one of the sites as "undevelopable" compelled SOGOS and its representatives to attend in order to seek answers to these points which go to the very heart of the principle of developing these sites.
- 5.2 It cannot be ignored that the local highways authority, WCC, does not object to the appeals. However, the information on which WCC based its decision has been demonstrated by SOGOS to have dramatically underestimated the actual transport impacts of the developments. In addition, elements of the proposals relied on by the Appellants have been demonstrated to be wrong through the very simple exercise of looking at a map showing property boundaries. The fact that neither WCC nor the Appellants had picked this very basic fact up is highly indicative of the lack of care applied to these proposed developments.
- 5.3 It is also clear from the decision in Waddington Road, Clitheroe (SOGOS/3) that highways authorities can get it very badly wrong, and that when this occurs - even in the context of a highly sustainable site, no landscape concerns, no 5 year housing land supply and no objections by the Council - an Inspector is free to depart from the statutory consultee's opinion when transport concerns have not been adequately dealt with. It should be noted that this approach was later fully endorsed by the SoS in his decision. It was not the lack of a Road Safety Audit which led to the Inspector's recommendation: it is clear from paragraph 247 that his decision was based on the (as stated in paragraph 244) "hideous geometry" of the junction alone, which the Inspector judged for himself led to a severe transport risk when considered with the proposed development. The Inspector is invited to compare the junction shown in SOGOS/4 with the blind bend along Pulley Lane: it is pointed out that the only mitigation proposed for this equally "hideous" stretch of road is signage.
- 5.4 The evidence from SOGOS is structured as follows. Firstly, the general planning principles which are applicable in these cases are examined. Secondly, the evidence submitted by both Appellants in support of their contention that the appeals satisfy these principles will be examined. Finally, the evidence supporting these principles will be examined to demonstrate that

the Appellants are unable to establish that their proposals meet these requirements on any basis.

### **General Planning Principles**

5.5 Paragraph 17 of the NPPF brings localism to the forefront of the planning process: the planning system should facilitate local people's ability to shape their surroundings. This includes input into the decision-making process, for the very sensible reason that they know the circumstances and the land about which the decision will be made far better than anyone else. Planning decisions should also improve and enhance peoples' lives: rather than merely coping with immediate problems it should seek creative, long-term and holistic solutions with future generations in mind.

5.6 How decision-makers are to put the above principles into practice is succinctly phrased in paragraph 9:

"9. Pursuing sustainable development involves seeking positive improvements in the quality of the built, natural and historic environment, as well as in people's quality of life, including (but not limited to):

...

- improving the conditions in which people live, work, travel and take leisure"

### **Transport Impacts Must Not Be Severe**

5.7 Paragraph 10 of the NPPF says that decision-makers need to take local circumstances into account. This is reflected in paragraph 32, which places an obligation on decision-makers to consider the impacts of the proposed development on the local transport network:

"...decisions should take account of whether:

- the opportunities for sustainable transport modes have been taken up depending on the nature and location of the site, to reduce the need for major transport infrastructure;
- safe and suitable access to the site can be achieved for all people; and
- improvements can be undertaken within the transport network that cost effectively limit the significant impacts of the development. Development should only be prevented or refused on transport grounds where the residual cumulative impacts of development are severe."

### **Developments Must Be Deliverable: Certainty as to Surface Drainage**

5.8 This is important not only as a point of general principle – that permission should only be granted for developments that are deliverable, a point which Mr Downes agreed with in cross-examination – but also because the unique nature of these sites means that particular care must be applied to considering their development.

- 5.9 It cannot be denied that the sites are elevated – the very name of the combined sites, Yew Tree Hill, belies any arguments to the contrary, as does any glance at a topographic map. This is a concern in terms of landscape impact, which was covered by Ms Illman for the Council. It is also a concern in terms of drainage as the steep slopes mean the site is not conducive to on-site storage during extreme weather events. The situation is compounded due to the impermeable nature of the sites – the latter being agreed by the Appellants' consultant, Mr Engledow. This means that on-site storage in the form of ditches, swales, and underground attenuation systems on their own is simply impossible. Yet this is precisely what is still being proposed for the requisite on-site storage and the only answer provided was that a solution would be "engineered".
- 5.10 This is simply not good enough in this context. The evidence from Mr Brass' video of the flooding on Isaacs Way and his photographs of his son kayaking along the lane show precisely what can happen if drainage is not comprehensively thought through prior to allowing development to take place. This serial deferral of considered solutions – a theme in both appeals – incorporates inherent risks into the proposed development and cumulatively these risks have the potential to pose much greater problems in time.

### **Developments Must Be Deliverable: Ground Conditions & Subsidence**

- 5.11 A further unique feature of the area is its geology in respect of the local brine runs, where there is geotechnical evidence in Persimmon's own documents based on research conducted by the recognised experts on this issue which states that based on current evidence a large proportion of Appeal Site A cannot be developed.
- 5.12 Zone A is the area at the highest risk of significant subsidence, which all parties agree runs roughly through the centre of the combined development site, as set out in the brine map (CD/B29) and the GRM Phase 1 Appraisal (CD/M10). The evidence set out in Appendix H to CD/M10, the Johnson Poole and Bloomer report, demonstrates that this area has regularised its rate of subsidence following cessation of brine pumping to a rate of 1 metre subsidence over 60 years and a 1:57 maximum tilt over the same time period (CD/M10, Appendix H, paragraph 5.6).
- 5.13 Of further concern is the fact that at the margins of Zone A there is the greatest risk of significant subsidence (CD/M10, Appendix H, paragraph 4.4.4). As Zone B is at a much lower risk of subsidence (CD/M10, Appendix H, paragraph 4.4.5) the resultant differential subsidence rates carries the risk that infrastructure spanning both zones is, over time, at risk of rupture.
- 5.14 The Appellants have put forward three arguments in response to these concerns: first, that the risk can be adequately dealt with through construction techniques; secondly, that this is a building control matter and thirdly, they rely on the fact that the Council has already permitted development in Zone A.
- 5.15 The first point relied on by the Appellants is shortly answered. No pipe can withstand a short-distance 1:57 tilt, or a 1 metre drop, which is the predicted effect of the subsidence over 60 years by the acknowledged experts in this

field. The only answers provided to the Inspector were that this would be studied and, yet again, a solution would be “engineered”.

- 5.16 In response to the second point, this is of course true. But we are concerned here today with the principle of developing these sites and whether or not they can be constructed at all is obviously relevant to the Inspector’s recommendation. The experts are very clear on this point: they themselves use the phrase “undevelopable” (CD/M10, page 9). If the site is not deliverable, it should not be sterilised in perpetuity through a useless planning permission. Permission should not be granted until it is certain that the proposed residential use can even take place on Appeal Site A.
- 5.17 Finally, in response to the third point, this is obviously a great concern that thankfully does not trouble us much today, though it may be very troubling to members of the public who live in this area. The Appellants did not put forward any evidence that demonstrated that the Council had arguments based on the underlying brine run and risk of subsidence before them when they granted permission for development elsewhere in Zone A other than referring to Johnson Poole and Bloomer’s annual reporting to the Council on the status of the brine run. What is clear and what is before the present Inquiry, however, is the fact that the relevant studies (commissioned in 2009 and 2011) which considered Zone A for development had the fact that earlier development had proceeded in Zone A fully in mind yet went on to state that, nonetheless, Zone A was undevelopable. What is also clear is that the subsidence timeframe is long-term – the rate was characterised as “slow” and “consistent”, at a rate of mere millimetres per year. The development in Zone A has only been there since the late 1990’s. It is too early and we simply do not know enough to draw any conclusions at all from the existing development in Zone A.

### **The Impact on Transport & Highways Must Not Be Severe**

- 5.18 It is evident that there are serious issues with the mitigation measures proposed by the Appellants, as demonstrated by the evidence of Mr Richard Pettitt. Mr Pettitt identified a number of crucial deficiencies in the Appellants’ cases both in the Transport Assessment dated May 2011 (CD/L17), the Addendum dated July 2012 (CD/L22) and Appeal B’s Transport Assessment and Travel Plan dated November 2012 (CD/M12).
- 5.19 In contrast to the Appellants’ evidence, Mr Pettitt – using the Appellant’s own data – demonstrated that traffic rates would increase 873% along this narrow country road. Notably Mr Tucker did not put forward any explanation for the figures used in his Transport Assessment and instead pointed to a third study, that which Halcrow prepared for WCC (CD/L17, Appendix L). However, this document is of extremely limited use as it itself recognises it can only be used for indicative purposes (paragraph 2.7), that further detailed analysis was necessary (paragraph 5.18), and failed to reach a conclusion of the actual impact on the most critical junction it purportedly studied, that of the A38 and Pulley Lane (Table 4). We must turn to the Halcrow models found at CD/L17, Appendix M, scenarios 3 and 4 to learn that this junction would become oversaturated under certain conditions. Therefore it is clear is that there is no margin of error and calculations have to be precise, accurate, and prudent.

- 5.20 The same is true of Pulley Lane, presently a narrow country road. Yet the only mitigation proposed is regularisation to its current maximum width of 5.5 m and widening some visibility splays. As demonstrated by Mr Pettitt, these proposals are not in accordance with applicable design standards and lead to significant safety concerns, particularly at the bend.
- 5.21 Mr Jones for Appellant B acknowledged that the design manual which was used, MfS2 (CD/B4) is designed for urban areas. SOGOS submits that this is wholly inappropriate when considering that these are rural country roads to start with. It cannot be right that highways can be designed backwards, based on what would be developed. One must take the roads as one finds them, and design mitigation measures accordingly. This means the DMRB ought to have been used to ensure the proposed mitigation measures are safe and appropriate for these roads. It is clear that they are not.
- 5.22 The most concerning consequence of using the wrong guidance is the access proposed to both sites, but particularly to Appeal B's site. Evidence was given by both transport witnesses that reduced visibility splays actually increase driver safety as justification for not meeting the design standards (in the case of Appeal A, for failing to meet even the minimum applicable (the erroneous drawing 10154-74)). It is only the heightened awareness of risk that makes this true. Drivers coming down a crested hill are not going to expect that the only access point to a major development lies at the foot of the hill. Simply put, the access proposed for Appeal B is not safe. In these appeals issues regarding access are not reserved matters and thus cannot be engineered away down the line.
- 5.23 Further, the Appellants' over-optimistic figures also give rise to serious concern that the already congested roads would become unusable, leading to significant rat running along wholly inappropriate rural country lanes, one of which includes a narrow humpbacked canal bridge which leads down straight into a 90 degree blind turn.
- 5.24 In addition to having misjudged the boundary lines along Newland Road, Appellant A has assumed that when open to traffic in the past this road carried similar levels of traffic to Pulley Lane (see Simon Tucker's proof of evidence, paragraph 5.3). It is clear from the evidence of Mr Bowler that this was never the case as is clear from his proof of evidence, paragraph 1.3.1.
- 5.25 In any event, the steep slopes along Newland Road would require some form of retaining wall. The most visually, acoustically and environmentally favourable option, gabion walls, would significantly intrude into private gardens. Nor – even if this widening was possible using sheet piling – would bus or emergency vehicles be able to safely access the road from any direction other than straight across the junction with Primsland Way due to the narrowness of the turning radius.
- 5.26 The sustainability proposals put forward by the Appellants are wholly without merit. The re-routing proposal for cyclists has them negotiating a five-armed roundabout. The main pedestrian re-routing proposal is along an isolated, fenced in, and unwelcoming stretch of woods which users simply would not use in the dark or when they are alone. The alternative is through a modern

residential estate or the overcrowded and dangerous Pulley Lane. Neither of these proposals can be considered a genuine benefit in terms of the amenity of the user nor the sustainability credential of the sites.

## **Planning Balance**

- 5.27 Allowing these appeals would have significant effects on the local economy. That is beyond dispute. However, SOGOS disputes the extent to which these effects can be categorised as positive. Appended to the proof of evidence of Mr Stephen Stoney was a letter from E.S. Hill & Sons, an important local employer who has been farming over 242 hectares of the area for three generations. Their landholdings are bisected by the A38 and they rely on Pulley Lane to access the site adjacent to the recently approved Copcut development. It is clear on any view that an increase in traffic of 873% is incompatible with the farm traffic which currently uses this road.
- 5.28 Further, there are two equestrian facilities which currently use these quiet country lanes for horse riding: this activity would be rendered incompatible with the vast increase in traffic as well.
- 5.29 The proposed developments would impede the ability to carry on his business to such a severe degree that Mr Hill states that he is concerned for his farm's economic future. It is clear that being unable to safely ride out beyond the stables themselves would considerably reduce the attractiveness of these facilities and thus have an adverse economic impact.
- 5.30 In contrast, the only benefits to the local economy which the Appellants put forward are the jobs provided through construction, the care facility and the employment facilities. Firstly, there is no doubt that this quantum of housing would have to be provided within South Worcestershire over the plan period in any event. Therefore, refusal of these appeals would only mean that construction jobs are relocated. They would not be lost. Secondly, again, there is no doubt that further care facilities are needed. There is doubt that they need to be located on greenfield land with a subsidising development of 500 homes. Moreover, refusal of Appeal A only means the facility would be located to a more appropriate location. Finally, no evidence has been offered to the Inquiry which demonstrates that a facility located 1.2 to 1.5 miles distant from the town centre would be economically viable.
- 5.31 It follows that only very limited weight ought to be given to the Appellants' arguments that the developments represent sustainable economic development.
- 5.32 Having regard to environmental sustainability, the letters appended to Mr Stoney's proof of evidence and the evidence provided by third parties demonstrates the importance of the greenfield use of the sites for the amenity of existing residents, the protection of which is a core planning principle in paragraph 17 of the NPPF. In this case the amenity of local residents does not limit itself only to the existing use and appearance of the land itself: the rural nature of the area and the agricultural use of the sites contribute to peaceful enjoyment of the local road network for pedestrians, cyclists and horse riders. These uses would be severely hindered if not rendered impossible if these sites

were to be developed. It is not merely that a pleasant walk and lovely views would be destroyed: local residents simply would not be able to live their daily lives in the manner which they have enjoyed to date if these developments proceed. Therefore, in addition to the landscape impacts identified by Ms Illman, the significant impacts to residential amenity mean great weight should be afforded to arguments that the developments are not environmentally or socially sustainable.

- 5.33 Further, and overlapping with environmental considerations, the sites are clearly not sustainable in transport terms. This decreases the accessibility of local services and does not support the health, social and cultural well-being of the community. The sites are between 1.2 and 1.5 miles distant from the town centre, with an incline on any return journey. It is clear that for the sites to be sustainable public transport must be provided. Yet the sites are not well integrated into the public transport network and each site would only be served by a single bus route. The proposed benefit in terms of the enhancement of public transport options put forward by the Appellants is not sufficient to make either development truly sustainable, and thus the developments are not sustainable in transport terms. This reduces any weight to be given to the socially sustainable element of these appeals.

## **Opposition to the Developments**

- 5.34 The strength of local opposition to these proposals is demonstrated in a number of ways. There is the evidence of the vote of the Planning Committee itself: it is significant that, despite the officer's report recommending approval of the applications, every single member of the Committee who voted, voted against the proposals. Then there is the petition signed by over 3,470 local residents who oppose the development of these sites (SOGOS/1). The criteria for signing this petition were rigorous and signatures were carefully monitored for duplication. There can be no doubt that 3,470 is an accurate figure. Therefore, at all stages where a democratic process prevailed the response was unanimously against both proposals.
- 5.35 Though the concept of the common good is ever-narrowing, people's ability to shape their surroundings remains an unshakable core principle within the democratic process. This is recognised by the NPPF, though so too is the need to find a solution to the nation's housing problems. Decision-making in a democracy is messy and goals cannot be achieved with laser-like precision. We do not live in a dictatorship. There can be no doubt that if these appeals are allowed this is because they have been imposed on the residents of Droitwich Spa in the face of an astonishing level of local opposition. Even if the significant issues with the appeal sites are disregarded, it is simply unacceptable that the need for new housing can outweigh this level of local opposition.

## **Conclusion**

- 5.36 SOGOS was not formed merely to turn up to planning inquiries to voice objections to all development in Droitwich Spa. SOGOS fully supports development, provided it is sustainable. In order to demonstrate that both Appeal A and Appeal B are not sustainable, SOGOS has raised funds for two

consultants who have demonstrated that SOGOS' concerns are fully warranted.

- 5.37 There remains unacceptable uncertainty as to drainage and subsidence issues, and the local road network is not capable of absorbing this cumulative quantum of development. There are serious safety and congestion issues in relation to both sites, and SOGOS has provided cogent evidence that the proposed mitigation measures would not alleviate these concerns. Plainly, from the site visit, this is a special area of land significantly elevated above the rest of the developed area which is well-used and much loved by local residents. Local knowledge is an essential supplement to the evidence of expert consultants when making planning decisions if they are to be made properly and this local knowledge demonstrates without doubt that these sites are simply not appropriate locations for such a scale of residential development.
- 5.38 It is not the role of this Inquiry to investigate whether other sites are better suited to meet the identified housing need of the Council: it is clear the Council is addressing this through the progression of the joint development plan. The role of this Inquiry is to interrogate the suitability of these sites for these developments. It is clear from carrying out a thorough planning balance that the developments do not represent sustainable development and that the adverse impacts of granting permission significantly and demonstrably outweigh the benefits. This is enough to warrant dismissal of the appeals in its own right, but there is much more which must be considered as, even if permission is granted, there is no certainty that the developments are deliverable as both sites must await the final results of the brine run surveys. Appeal B has commenced this work (P8), but the final results for the full site are not due for another 18 months. Appeal A has yet to even commence this work and as it stands, a large proportion of this site is in Zone A. There is no information other than normal development in Zone A is prohibited for all but specialist buildings (CD/M10, Appendix H, paragraph 5.7).
- 5.39 Further, even if the Inspector was not minded to recommend that the significant and demonstrable harm outweighs the benefits of allowing the appeals, and even if the Inspector determined that SOGOS' arguments on the certainty of the deliverability of these developments does not demonstrate that these concerns ought not to be left to the reserved matters stage, there is clear and cogent evidence that the appeals are independently unacceptable in planning terms due to the severity of their impact on the transport network.

## **6. INTERESTED PERSONS WHO APPEARED AT THE INQUIRY**

- 6.1 **Mr Richard Giugno**, a local resident, made a number of points in relation to housing demand in Wychavon. These are briefly summarised below but the reader should also refer to his statement at IP1. The ONS sub national population projections 2011 (published April 2013) show a material dependency on Net International Migration for Wychavon over the next 10 years of 300 p.a. The mid-2012 population data published in August 2013 shows a net 191 international migrants into Wychavon for 2012. Previous DCLG housing forecasts have been shown to be too optimistic with current household forecasts now downgraded by 10% to 384 units p.a.

- 6.2 The latest updated objective assessment report submitted to the Inspector reviewing the SWDP indicates an average annual housing need of 416 for 2012-2030 which includes a catch-up from 2006 spread over the next 18 years. Some 66% of the assumed growth is not local to the district. Almost all the growth (97%) is non local for Wychavon with almost half from international migration. Previous year projections of 2011 households for Wychavon have been slightly over optimistic. The international migration projection is a net 300 p.a. Household forecasts are expected to be lower. Wychavon's forecast housing needs are projected down 10.5% with run rates forecasted at 384 p.a.
- 6.3 **Mr Mike Bowler**, a local resident, has lived at 49 Yew Tree Hill, Droitwich since May 1989. Mr Bowler explained the history of the development of his property and how it was built sideways on to Newland Road where Yew Tree Hill itself bends towards the lane. He submitted evidence and provided various plans to explain the history and evolution of development at Newland Road from 1947-2014. He provided comments on the statements made by the developers in their proofs of evidence suggesting that the daily use of Newland Road when it was open to traffic was about 12-15 vehicles per day.
- 6.4 He referred to bus usage pointing out that WCC are currently in the process of consulting the population of the County with a view to cutting bus services, including the 19A/19C routes, and the S1/S2 routes to the Blessed Edward School which run along Primsland Way. He argued that the proposed road width where Newland Road meets Primsland Way is only some 4.50 m wide with limited visibility. As buses could easily be meeting head on when crossing Primsland Way, he suggested that this was too narrow and far too dangerous to mix buses with cyclists and pedestrians.
- 6.5 He referred to DTA's Transport Assessment Addendum, diagram TP2, which shows a green line indicating a proposed East-West cycle route. He said that Pulley Lane itself is barely wide enough today to allow a car to pass a cycle so two-way traffic would not be able to flow along this lane if cyclists use it as they do today. He highlighted that as well as cyclists, there have been several accidents on the Copcut Roundabout which would suggest that this five arm roundabout is dangerous without the possibility of adding a cumulative more 3,000 cars from the Copcut Lane and Yew Tree developments. He disagreed with Mr Tucker's evidence when he said that Pulley Lane would not be used for much in the way of HGV traffic. He considered the proposed development would be detrimental to residential amenity as buses running alongside the back gardens would be an intrusion of privacy.<sup>257</sup>
- 6.6 **Mr Tony Miller** is a District Councillor and County Councillor.<sup>258</sup> He has resided in the area from a schoolboy to living in his present location for 34 years. He is opposed to the development for several reasons. He said that the Council started looking at the suggested development sites 5 years ago. Yew Tree Hill was one site and Copcut Lane was the other site in this location. It was obvious that the infrastructure could not support both locations. The Yew Tree site has very poor access and Pulley Lane is not wide enough to support

<sup>257</sup> IP2

<sup>258</sup> IP3

the amount of vehicle movements and neither can it support a footpath. This is without looking at all the known problems in this location with movement in the land due to the brine run.

- 6.7 The land required for the alterations to Pulley Lane is not in the ownership of the developers and the owner Mr Price has informed him that he is not going to give this land away. The Copcut Lane site was severely limited with Copcut Lane being too narrow even though it has a footpath. It was decided that the only way this site could be served was to have the main entrance off the A38. The Council was aware of the impact this development would have on peak hour traffic flows. Around 700 houses could mean 1,400 cars coming from Yew Tree village.
- 6.8 He said that there were foul water sewage problems at the Ladywood STW because it could not cope with the present capacity. When there is excessive rainfall, Severn Trent is allowed to discharge partially untreated sewage into the River Salwarpe which enters the River Severn. In times of flood this foul sewage water flows into the residential properties alongside the River Severn. Furthermore, he argued that the impact on the health system of 1,500 houses from these two locations would be daunting. There would be implications on the local hospitals where problems already exist coping with the amount of people using the facilities e. g. there are not enough midwives. The WCC is cutting bus subsidies, so he wanted to know how many years the developers would maintain the bus route. Finally, he wanted to know where the children would be going to go to school.
- 6.9 **Mr Ken Jennings** is a Town Councillor for Droitwich Tagwell Ward in which ward the majority of appeal sites is located.<sup>259</sup> He is leader of the majority group on Droitwich Spa Town Council. He is also a District Councillor and he represents Droitwich South East on WDC. This is the ward in which both of the appeal sites are located. He is Vice-Chairman of the District Council's Planning Committee. In addition to speaking on his own behalf as a Town and District Councillor, he was appointed to represent and speak on behalf of the Droitwich Spa Town Council. He registered both his own and the Town Council's objections to these planning applications and he requested that both of the appeals be dismissed.
- 6.10 He said that the draft SWDP, produced in partnership between WDC, Worcester City Council and Malvern Hills District Council has now been submitted to the SoS and is undergoing public examination. It is the hope of everyone that the plan will be approved by the Inspector, Roger Clews, and that WDC will be in a position to adopt it early in 2015. Once that plan is in place there would be no need for debate on speculative planning applications such as these. He said that the planning process in this country is plan led.
- 6.11 Until such time as the SWDP is formally adopted, he considered that paragraph 17 of The Planning System General Principles applies in determining these applications. This has been supported by a statement made by Planning Minister, Nick Boles, in the House of Commons on 8th January 2013.

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<sup>259</sup> IP4

- 6.12 When the SWDP was first being drafted, it was accepted, albeit reluctantly by the people of Droitwich, that to meet the town's anticipated local growth needs in the period to 2030, an urban extension would be required. There were two candidates for the siting of such an extension, Copcut Lane and Yew Tree Hill. Whilst not happy about either choice, the people of Droitwich agreed with the selection of the Copcut Lane option as being the least worst alternative. Outline planning permission has already been granted on this site for 750 houses and 14,000 sq ms of industrial space. He said the town's planned urban extension needs for the next 17 years have already been met.
- 6.13 The people of Droitwich were promised categorically that only one site would be required to meet all the needs of the town. It was an 'either or' situation. Clearly, however, this has not stopped those behind the Yew Tree Hill proposal submitting these speculative planning applications. These have nothing to do with the future needs of Droitwich, or Wychavon, or the SWDP. Rather predictably it comes down to money. One projection he has heard is that the joint developed value of these two sites is somewhere north of £300 million. Clearly, the Yew Tree Hill proposers were not going to take their rejection lightly. These applications are not in accordance with the draft SWDP. These are not preferred development sites. These applications are clearly premature and are so substantial as to prejudice the SWDP and paragraph 17 clearly applies in this case.
- 6.14 The Town Council has heard many times that the District Council must approve planning applications as it needs to demonstrate the provision of a 5 year housing land supply due the requirements of the NPPF. In calculating our 5 year land supply position when the planning applications were considered and refused by the Wychavon Planning Committee, Councillor Jennings took the view that the West Midlands RSS Panel Report was given too much weight in decision making. He explained to the Committee that the RSS had been revoked and that the data behind the plan was becoming increasingly out of date. He considered the data to be unreliable. His preference was for reliance on the locally assessed figures set out in the Council's own draft SWDP – a figure which was based from data in the up-to-date SHMA.
- 6.15 However, he appreciated that since the decision to refuse these planning applications, the world has moved on and an initial assessment of the SWDP housing figure has been made by the Examination Inspector, Mr Clews. He has asked for further information. In addition there has been an important Court of Appeal decision (St Albans v Hunston Properties Ltd) which goes to the heart of the issue as to what evidence should be used to assess a Council's 5 year land supply position. Further to this, the Council has made significant improvements in its land supply position. As set out in the evidence submitted by the Council, the Court of Appeal has made it clear that it would not be appropriate to use the RSS figures – given that the plan has been revoked and that the policies within these plans do not necessarily represent 'an objective assessment of housing need'. The Council has set out in its statement that the decision from the Court of Appeal means that it would be wrong for a planning appeal Inspector "to use a housing requirement figure derived from a revoked plan (such as the WMRSS) even as a proxy for what the local plan process may produce eventually".

- 6.16 He said that on this basis the Council has set out a position which confirms that for the purposes of calculating the Council's 5 year land supply the most appropriate figure to use would be from the DCLG's 2008-based SNHPs (2010). He understood that this equates to a figure of 10,133 dwellings in Wychavon or 422 dwellings p.a. Against this target the Council can demonstrate 6.76 years' housing supply. In fact, if the out of date RSS figures were used, he understood that with an annual requirement of 475 dwellings, the Council would still have 5.65 years' housing land supply. This shows that the Council has taken difficult decisions to grant planning permissions for new housing development where the benefits of the scheme outweigh the harm. Whilst the Council may wish to continue to improve this position and ensure robustness, it is in a position to consider this balance very carefully and does not have to approve all housing developments which come before it. He said WDC had fully discharged its duty to provide a 5 year housing land supply.
- 6.17 He also said that the Town Council has no doubts about the weight that can be given to an emerging development plan such as the SWDP, when planning applications are to be determined. Given that the new SWDP is already under inspection, the WDC, as the decision makers in this case, must surely give it substantial weight in its decision making. WDC, Worcester City Council and Malvern Hills District Council have spent a lot of time, effort and Council Taxpayers' money in producing a plan that would guide the development of all three Districts for the better part of the next 20 years. The draft SWDP therefore must undoubtedly carry great weight in decision making.
- 6.18 He pointed out that the NPPF makes great play on the need for sustainability and therefore serious consideration needs to be given to the sustainability of the proposed developments. Paragraph 7 of the NPPF advises that there are three dimensions to sustainability - economic, social and environmental. He argued that the proposals were isolated developments on the edge of town which were not environmentally sustainable. Much of the appeal sites were in an area prone to major settlement. Moreover, siting so many houses off what is basically a cul de sac and the small rural farm track that is Pulley Lane, should surely have raised some concerns among highways officers. He also referred to the Clitheroe case where the SoS agreed with the Inspector and dismissed the appeal on highway grounds.
- 6.19 **Mr Richard Morris** is a Droitwich South East Ward Member along with Cllr Jennings. He made the following points in relation to both appeals. Cllr Morris was unable to attend in person, but his statement to the Inquiry was read out by Cllr Jennings.<sup>260</sup> He urged careful assessment of the arguments. He said both appeals should be seen as essentially one proposal as the same arguments exist for both. He said that SOGOS had been formed to "Save Yew Tree Hill" and has operated terrifically over time. SOGOS has completed two petitions with over 2,500 signatures on each and petitions have also been handed over to the Council from Droitwich Spa High School youngsters and High Street traders. The view that this is not the right site for development comes from right across Droitwich. Droitwich does not want this site to be developed.

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<sup>260</sup> IP5

6.20 In the SWDP the Yew Tree Hill site was rejected as less sustainable with more landscape and other issues than the development at Copcut Lane nearby which has been approved. If the SoS now approved the Yew Tree proposals, which combined is such a large site outside the SWDP, it would upset the balance of what the policies in the SWDP are trying to achieve and in effect would make a mockery of our local plan and decision making.

6.21 In Nick Boles' letter to the Droitwich Planning Chairman, Cllr Roy Murphy (22.4.13) he said:

"The Government has always been clear that proper consideration should be given in the planning process to emerging local plans....it is for the decision-taker to decide how much weight to give to an emerging plan."

6.22 Surely it is clear from this that the SWDP should be the main source to determine our local requirement especially when Nick Boles MP also says:

"I am pleased to report that the Government has taken the decision to revoke the Regional Strategy for West Midlands and we will lay an order to this effect in Parliament shortly after the Easter recess".

6.23 This means that the top down figures have now effectively gone as Nick Boles says:

"This Government does not set top-down Whitehall housing targets".

6.24 Mr Boles also said that we must ensure "sustainable development" and that we can refuse on the grounds of cumulative development and the lack of sustainability.

"The Framework is also clear that the cumulative impact of development, alongside the need for infrastructure to support development, can be material considerations in deciding whether development is appropriate."

6.25 With a development of 720 houses already approved at Copcut Lane and also in the south of Droitwich and both Yew Tree applications contributing a further 965 (including a 200 bed care facility), this would have a massive impact on local infrastructure. With other developments already underway there is over a 12% increase in the town's population which amounts to a massive effect on local services such as doctors, dentists, schools and police. The SWDP has a sustainable plan so why do we need these two developments outside of the plan?

6.26 There is potential for cumulative impact with the Copcut Lane development on roads and the transport network. Cllr Morris questioned whether the transport study was carried out during peak hours. He said it is during peak hours that the Copcut roundabout had endless queues and the aggregate impact, with the 720 house Copcut development, would cause gridlock.

6.27 He also referred to the issue of Pulley Lane access. He said that any development would necessitate Pulley Lane being widened and straightened. It would therefore no longer appear as a country lane. He

said the highways report seems to lack depth in considering some of the key issues around this area. Brine runs, and potential subsidence are other issues with these sites. We already have a retainer wall at Rebekah Gardens which had to belatedly be included in the last development to protect housing. The report says that some of the land is affected by brine runs. Local experience says that much of the planned area is affected by brine runs and who knows the level of vulnerability of this land running over fluid brine runs.

- 6.28 Cllr Morris quoted from a British Geological Survey paper from 2001 which urged caution with the ending of most near surface mining and brine extraction in the area as the hydrological system has or is in the process of rebalancing itself and subsidence problems may occur.
- 6.29 He considered that these developments would create a detached satellite village at the far south of the town cut off from the Droitwich centre. They would not help the economy of Droitwich town centre. Traders have said the developments would be in the wrong place. The report says the plan would support the wider economy but certainly not the town economy as the land is over 1.5 miles from the Droitwich centre. The Worcester suburb of Warndon and Worcester City Centre would prove better propositions. He said that development nearer Droitwich town centre was needed.
- 6.30 He said that the Yew Tree development would not be sustainable. The size of these developments would be devastating for Droitwich. The Regional Spatial Strategy (RSS) is top down whilst the SWDP is local and sustainable. He preferred the proposals in the emerging SWDP. He noted that the Coalition Government espouses Localism but is forcing LPAs to plan for national figures. He said that the proposals would destroy Droitwich on the basis of the NPPF which could be so different tomorrow. He said we cannot tear concrete up and recreate natural habitats and green fields. He urged the SoS to refuse these appeals which were from opportunist developers. The proposals would do nothing for Droitwich
- 6.31 **Barbara Meddings** is chairman of the Hindlip, Martin Hussingtree & Salwarpe Parish Council.<sup>261</sup> The Parish Council (PC) represents the residents in the rural community of Salwarpe Parish. She said the proposals in these appeals do not recognise or consider the role of Salwarpe Rural Parish; its local character and history that reflect the identity of the local community. The fundamental issues are as follows: (i) the developments on both sites would extend beyond the Droitwich Town development boundary. It is perceived as unacceptable that the proposals are not able to be accommodated within the defined development boundary and would require expansion into the open countryside.
- 6.32 She said that the Parish of Salwarpe already has to accommodate the permitted urban extension at Copcut Lane less than 1 km to the west after extensive public consultation. These appeals set out to establish a second urban extension duplicating many facilities with the main access points outside

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<sup>261</sup> IP6

the town boundary. The character and integrity of the network of rural lanes and their settings within the landscape are considered of value to local people.

- 6.33 Beyond the urbanisation of Droitwich, the rural character of the parish community with patterns of dispersed settlements has evolved through gradual change. Pulley Lane is the main connecting route for the rural community to access the village of Salwarpe. Within the southern approaches of the parish, there is a distinct clear transition from town to countryside and a robust physical limit to the spread of Droitwich Town.
- 6.34 She said that Pulley Lane has changed little since the earliest Ordnance Survey map of 1883; and its existence under the original name of 'Pullheye' can be traced back to 1274. The road boundary hedges and hedgerow trees remain intact. Pulley Lane and its southern boundaries define both the parish and Green Belt boundaries. To provide vehicular routes for both appeal sites would require the removal of sections of historic, ancient hedgerow on the southern side of Pulley Lane and Newland Road.
- 6.35 She stated that of greatest significance is the immediate setting of the entrance to Appeal Site A and the creation of a new junction. This would result in the removal of hedgerows and re-alignments of the lane thus diverting Pulley Lane into the site, effectively cutting off the historic local route. The widening of the lane and re-aligning of the bends would severely compromise Pulley Lane. The entrance into Appeal Site A due to the natural topography would be a major visible feature in the landscape. This would be particularly noticeable during winter months. The entrance to Appeal Site A would impact on the visual features of the historic Oakley Woods. Egress from Appeal Site B would create a permanent opening onto Newland Lane to access the surrounding rural lane network. There would be potential dangers from the increase in traffic for the wide range of people who enjoy rural pursuits, as well as those living and working in the vicinity of both appeals sites.
- 6.36 With regard to safeguarding the historic character of the area she said that the parish of Salwarpe consists of dispersed settlements and clusters of housing with working farms and equine establishments. These are surrounded by agricultural and pastoral fields whose primary characteristics are strong hedgerow patterns. The Hedgerow Regulations 1997 protects ancient and important hedgerows and are designed to reduce direct damage. The important features of the Pulley Lane hedgerows in relation to these Regulations are: (i) they mark the boundary of a parish; (ii) they form an integral part of the Green Belt boundary; (iii) they run alongside a road used as a public path; (iv) they have banks supporting the hedgerow; (v) they visibly relate to features such as the historic Oakley Woods and the SSSI site of Oakley Pool; (vi) they have a number of connections with other hedgerows, woodlands or ponds and (vii) they run alongside a footpath or bridleway.
- 6.37 Concerns were also expressed about surface water drainage from Appeal Site A, to be piped under Pulley Lane and directed onto the SSI site of Oakley Pool, potentially overwhelming the natural balance of the pool.
- 6.38 In conclusion it is argued that proposals for Appeal Sites A and B must: (i) safeguard the natural character of the rural lane; (ii) relate to the sensitivity of

the surrounding open countryside in a wider context; (iii) recognise that removal of the hedgerows would destroy their visual historic and ecological value; (iv) recognise that the cumulative effects of the changes to the rural lane along with access proposals of both Appeal Sites A and B should not overwhelm and destroy the distinct inherent character of the rural Parish of Salwarpe; (v) be aware that the process that should be adhered to in respect of changes in the parish boundary have not been adhered to by the developers or its agents in respect of diversion of Pulley Lane into Appeal Site A and in respect of alterations to the boundary along sections of Pulley Lane.

- 6.39 **Mrs Judy Pearce** is Deputy Leader of WDC and Executive Board Member for Housing, Planning and Infrastructure. The Ward she represents is Wychbold and she is well aware of the sites which are subject to these planning appeals. A full site visit of both the appeal sites was carried out by the Committee.
- 6.40 She said that one of the Council's long-standing mottos is 'Team Wychavon' whereby members and officers working closely together. The Planning Committee works closely with officers to improve the 5 year land supply in Wychavon. Against considerable opposition from local residents and parish councils numerous applications have been approved and followed officer recommendations in all but a handful of cases. As a result, even if other parties try to argue we don't have a 5 year land supply, we would maintain that we do. Nevertheless, because it is such a difficult figure to nail down with any certainty, we have followed officer advice and continue to grant permission to any applications before us where we can see no demonstrable harm greater than the benefit of granting permission. She said that officer advice is honest, measured and cautious and the reason that sites are approved is to improve the robustness of the figures.
- 6.41 She said that national appeal decisions are followed closely by officers and the implications of significant decisions are explained by officers without delay. The Committee has a half hour training session before regular planning meeting which permits a regular 'slot' for any such updates. When it comes to the calculation of the 5 year land supply, we receive regular updates at intervals of no more than three months. These are published as public reports in the Planning Committee agenda papers. Starts and completions on major sites are monitored closely. WDC officers are in regular contact with developers to ascertain progress and the ability to satisfy delivery within 5 years. Building start and completion numbers in the last 12 months are as high as they have been for many years. More affordable housing is being delivered through market sites than all the other districts in Worcestershire put together. From the information submitted to the Government in respect of New Homes Bonus a total of 221 affordable homes are recorded in the year up to October 2013. Tight time implementation conditions are imposed on the full and outline planning applications which are granted to encourage developers to get on site. In short, everything possible is done to boost significantly the supply of housing. WDC can approve applications as fast as possible, but it cannot physically build houses for the developers.
- 6.42 Cllr Pearce referred to her notes of the Planning Committee meeting of the 16 May 2013. The meeting commenced at 1400 hours and concluded at 1735 hours as recorded in the minutes. Only the two planning applications subject

to these appeals were considered at this meeting. An extensive officer report was published prior to the meeting and a further written update was made available in advance of the meeting. The officers presented the two planning applications as separate items. The Committee received two officer presentations, two separate public speaking sections and had two separate discussions on the merits of the individual items. The first application for Barberry did take longer than the second to consider but that is not surprising given that some things were common to both sites and fully debated on the first application. Representatives from both developers were there and raised no objections or queries about the way the decisions were taken following the meeting. Both planning applications were given extensive consideration by the Planning Committee. Both applications were refused; voting was 12 votes for refusal, 0 against and 1 abstention. The conditions imposed were similar, but not identical, to reflect the different identities of the two sites.

- 6.43 Regarding the prematurity refusal reason, the Planning Committee felt that two approvals for such a vast site alongside the Copcut site, which was proposed to be allocated in the SWDP and where outline planning permission for 740 dwellings, local facilities and an employment land allocation had been granted on 8 January 3103, would have been detrimental to the strategic thrust of the SWDP. One of the prime aims of this is to strengthen Worcester's position as a vibrant centre, so it can compete with other large towns in the area, hence the need to allocate a good deal of housing in the City and its immediate environs. After that development is to be directed to the main towns, then the more sustainable villages. The SWDP was about to be submitted to the Inspectorate after considerable public consultation and engagement on the location of development. The Committee felt that the size of these proposals would prejudice the SWDP by predetermining the scale and location of development. At the time of the determination of the applications, the proposed allocations within the SWDP were sufficient to meet what was considered then to be our housing needs. These sites were not needed.
- 6.44 The Planning Committee, however, continues to give approvals on sites which only a few years ago would not have been considered small even if they have not been allocated in the SWDP, so long as they are satisfied that they could be successfully integrated socially, economically and environmentally into the surrounding neighbourhoods. Some villages have already seen numerous applications which will increase their size by over 20% or more in the next 5 years or so – Badsey, Wychbold and Honeybourne for instance. The Planning Committee felt that one huge monolithic site at Droitwich, especially with another very large site so near with outline planning permission was unacceptable and contrary to the SWDP. It was on this basis that the prematurity reason for refusal was included in relation to these two applications. The Council considers that a wide variety of smaller sites across the whole district would not prejudice the overall SWDP strategy.
- 6.45 In relation to the 5 year land supply, the Council is not in the position of Tewkesbury Borough at Bishops Cleeve or Stratford District at Shotton. At the time of the determination of the planning applications and in fact up until (1) receiving the Examination in Public Inspector's report following the first part of Stage 1 and then (2) an understanding of the implications of the Court of Appeal judgement in relation to Hunston, the Council has been using both

the West Midlands RSS report as well as the housing level set out in the pre-submission SWDP as a target to measure our 5 year land supply. The Committee felt that progress was being made against these targets and that it was reasonable to give this progress weight. Cllr Pearce shared the view of the Committee that the Sedgefield approach does not necessarily mean that such a level of housing can physically be delivered, but she accepted that the need to adopt a Sedgefield approach has been repeatedly endorsed by the Inspectorate in order to boost significantly the supply of housing and that officers have been using the Sedgefield approach in their calculations.

- 6.46 Cllr Pearce fully supported the landscape reason for refusal. She recognised that the Copcut and Yew Tree Hill sites have the same technical land character designation. But it is also obvious that the topographical differences of the two sites cannot be ignored. One, Copcut, is fairly gently undulating, whilst Yew Tree Hill, as its name implies, is just that, and presents significant challenges by way of changes in elevation. This is obvious, for instance, from the proposed 'potential attenuation area' on the Pulley Lane side of Appeal Site B, where the gradient is so steep that it is suitable only for cheese rolling or grass skiing and consequently has never been designated as POS. She considered that the landscape impact of the development would be so detrimental as to significantly outweigh any benefits of the development.
- 6.47 Since the determination of the planning applications Cllr Pearce's initial concerns about the development expressed within the reasons for refusal have grown. She has spent a number of hours listening to the points made at the Inquiry and she echoed some of those matters. Her main concerns are based on highways, the visual impact of the proposed solution for the sides of the northern end of Newland Road serving the bus access and finally about the delivery of the sites and their contribution towards the 5 year land supply.
- 6.48 The Committee had significant concerns about the highway accesses to the site, but reluctantly followed the officer advice that without an objection from the Highways Authority, it would be difficult to sustain a highways refusal reason at appeal. Cllr Pearce's personal concerns on highways remain, and she was most grateful that the Inspector has chosen to make highways one of his 7 areas of investigation at this Inquiry. At the Committee site visit there was considerable difficulty negotiating Pulley Lane in the small coach because of oncoming traffic. She realised that it has not yet been improved to 5.5m in width along its whole length, but there are obviously challenges which go beyond width improvements. There are two almost right angle bends, where the proposals show that visibility would not be anything like up to full standard. Cllr Pearce listened to the evidence presented on highways matters and kept thinking that there must be a limit to where a 5.5m wide road with no pavements or cycle lanes and a 40 mph speed limit, can try to slow traffic down to make things safer, and where pure danger and volume of traffic kick in to make the situation downright perilous rather than safe.
- 6.49 She referred to an email<sup>262</sup> which she had recently received in response to an enquiry about an application in Evesham which was appearing on the next

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<sup>262</sup> See IP7 Appendix 1

Planning Committee agenda of 30 January 2014, in which it is stated that a width of 5.5m is only suitable to serve up to 300 houses. At Committee she questioned the WCC highways officer, who confirmed that this advice was taken from the County Council's recommendations in its own design manual. She questioned whether it could really be sensible, satisfactory or sustainable for a road to be at more than double its recommended capacity at the outset, before even considering the present traffic flows along it.

- 6.50 The proposed entrances to both sites are counter-intuitive, being on the southern side of Appeal Site A and the eastern side of Appeal Site B, both make getting to the centre of Droitwich Spa for shopping, the station, the health centres and other facilities more long winded and less sustainable. The proposed bus service may or may not help, but for the weekly supermarket shop and getting to the doctors if you are ill, it won't. As yet it is unclear which first school children might attend, but the bus service would not help at all, whichever present one might be designated, whether St Peter's or Chawson. Parking is already a problem at both. Widening and improving Pulley Lane would entail encroachment into the Green Belt. The Council was advised by an independent consultant's study of Green Belt of the South Worcestershire Districts for the SWDP that no boundary changes were necessary and paragraph 7 of the NPPF specifically mentions safeguarding it.
- 6.51 Because of these capacity issues, and the almost grid lock conditions along the A38 at peak times, especially regularly on the A38 south of the site towards Martin Hunningtree, many residents could be tempted to take the route through Tibberton to reach Worcester and Junction 6 of the M5. The built up area of Tibberton, with cars parked along the road and a very narrow hump backed canal bridge on a right angle bend make this rural route unsuitable for any more rat running. The Inspector should examine the proposal and the capacity of Pulley Lane very carefully during his site visit, and respectfully suggest travelling the route through Tibberton may be instructive, as would trying to get to M5 Junction 6 via the A38 and Pershore Lane at peak times. The Highways Agency has placed a further holding direction on the present two live re-applications for both appeal sites on traffic density grounds. This has prevented any further consideration of the applications.
- 6.52 There has been considerable discussion about the challenges presented by the proposed bus and emergency access through Newland Road at the north of the site. It seems to have been agreed that profiled piling along the bank sides is the only way of dealing with this to achieve the required width without third party land. Cllr Pearce questioned whether this was the right solution in an edge of town suburban situation. She suggested it would be more suitable for an inner city canal embankment or motorway cutting. Aesthetically it would be a terrible solution for this rural location and would have a drastically harmful effect on the immediate environment by totally destroying all biodiversity in its path and preventing any reforming.
- 6.53 It would considerably reduce the amenity of nearby houses by providing hard surfaces which would magnify rather than absorb any noise as the earth banks do now. The pile driving would shake nearby houses to their very foundations. In short it would be a sinister, unsustainable intrusion. Development of this kind on Yew Tree Hill would change the face of Droitwich irreparably and for

ever. Any development having to resort to such solutions cannot be considered sustainable. Many parts of the combined sites would also be visually intrusive from distant views. Since social and economic factors in the way expressed in the NPPF are almost givens, the environmental factor must be the one which plays the deciding role most prominently in most cases, and definitely in this one, but social harm to amenity as outlined must also be given significant weight in this instance.

- 6.54 In the officer's report to the Planning Committee, the Appellants stated delivery rates were considered 'optimistic'. There are two issues here of concern. First, housing on the appeal sites would be likely to be competing with the already approved urban extension at Copcut Lane. It is known that any housing market area can only sell so many houses a year, and she has seen on other large sites in the District that developers are still only building when a purchaser has been signed up. Very little speculative building is taking place, except on small windfall sites. By approving these applications permission would be given for a far greater number of houses than would ever be built out in 5 years.
- 6.55 When the inevitable delay that monitoring the brine runs would entail is factored in, Cllr Pearce started wondering how giving permission for two such large sites would actually boost **significantly** the delivery of housing at all in the district in the first 5 years, or even boost the 5 year land supply. For the first 3 years it may well be that nothing would be delivered. She had experience of brine runs in Wychbold. Seventeen houses on part of the Bloor Estate at Junction 5 were held up for nearly 10 years, primarily for the monitoring of brine run A. The Wychbold Hall Site has also suffered delays of about 3 years. This site is over both A and B brine runs.
- 6.56 In conclusion Cllr Pearce said that it was not often that the Committee disagrees with the officers' recommendations. The Committee knows that in doing so, reasonable grounds for taking the decisions need to be set out and those grounds must be defensible. Whilst there was considerable opposition from local residents, she believed that the Committee made the decision based on the facts presented by these planning applications. The cases raised specific issues of concern and the Committee felt that the size of the schemes would be prejudicial to the SWDP. It is reasonable to recognise the improvements in the 5 year land supply. Members were well aware that a scheme needs to be 'sustainable' and that a planning balance needs to be made by weighing up the harm and benefits. The Committee were well aware that the absence of a 5 year land supply and a development's contribution to reducing it is a very weighty benefit. The Committee was fully aware too that in refusing the application, the 'harm' was capable respectably of significantly and demonstrably outweighing the benefits of a scheme. These are articulated in the reasons for refusal. Cllr Pearce's view is that these areas of harm are sufficient to justify the Committee's concerns and their decisions.
- 6.57 **Mr John Brass** said that he and his family live at 16 Isaacs Way, Droitwich. He has lived at this address for more than 12 years. As a local resident who would be directly affected by the proposals to build a foul water sewer less than 1m from his lounge, he was deeply worried by these plans. His knowledge as a chartered engineer serves to strengthen his worries. In his

view the proposals for a new sewer adjacent to his house would neither be safe nor sustainable.

- 6.58 Within the planning application documents for Appeal Site A, there is a document entitled "Drainage Strategy". On page 14 in section 5.1.2 there is a proposal for a foul sewer connection in Isaacs Way designed to pass between numbers 14 and 16 on the south side of Isaacs Way "along an existing footpath with agreement of the landowner". On the Severn Trent Water website there is an advice document titled "The Consequences of a Water or Sewerage Undertaker's Assets Passing Through Land". According to this document they require a minimum 5.0m "Protected Width Strip" for access and maintenance to buried sewers. In fact, an easement of this width was completed on the directly opposite (north) side of Isaacs Way when the houses were originally built.
- 6.59 Mr Brass has taken his own measurements of the width available at the footpath between numbers 14 and 16 Isaacs Way and they are as follows: (a) building to building about 4.17m; (b) boundary to boundary about 1.30m. It is therefore apparent that there is insufficient width between numbers 14 and 16 Isaacs Way for this sewer proposal; firstly to allow working space to construct a sewer without encroaching on private land; and secondly to provide sufficient easement for Severn Trent to maintain the sewer without encroaching on private land. No approach has been made to him by the developers for permission to encroach on his land.
- 6.60 In document BDL3, three possible alternatives to a foul water outfall into Isaacs Way are offered, and two of them involve a pumping station. Without prejudice to the outcome of this Inquiry, he wondered if a condition could be applied such that there are sufficient measures at the pumping station to prevent overflow during a period of breakdown until repairs were completed. He said that if foul water overflow does occur at this north-west corner of the proposed development, then the foul water may drain away by gravity towards Isaacs Way along the footpath between numbers 14 and 16 in the same way that surface water currently does. Without prejudice to the outcome of this Inquiry, he wondered if a condition could also be applied to mitigate the noise from the pumping station, especially during night-time pumping.
- 6.61 Within the planning application documents for Appeal Site B, there is a document entitled "Phase 1 Appraisal". On page 106 of the PDF file there is a drawing derived from the British Geological Survey with the title "Ground Dissolution Soluble Rocks Map (BGS)". This map shows that the house at 16 Isaacs Way and the proposed foul sewer route adjacent to it are in an area of brine run risk where "construction work may cause subsidence". Document BDL2, on page two, claims that this phrase is misleading. The phrase is taken directly from the map on PDF page 106 of the "Phase 1 Appraisal" report which forms part of the Persimmon planning application.
- 6.62 Within the conveyance documents for his house Mr Brass has a letter from Johnson Poole and Bloomer dated Oct 2000 which confirms that 16 Isaacs Way is within Zone B of the brine run risk area.

- 6.63 On page 119 of the PDF file, the "Phase 1 Appraisal" document there is a report from Johnson Poole and Bloomer which in section 5.8 discusses foundation design for Zone B. Section 5.8 c) recommends "reinforced semi-raft or ring beam type foundations" with a minimum span of 3m.
- 6.64 Mr Brass said that the existing foundations at 16 Isaacs Way were not designed or built with this future sewer in mind, and that the construction of the proposed sewer between 0.9m and 1.3m from the foundations of his house would damage those foundations. His foundations were specially designed for Zone B, and not for a future drainage trench parallel to a main structural wall and within such close proximity. He also submitted that such a sewer, buried into the unstable ground of Zone B, would be at a higher risk of fracture and create a potential maintenance, leakage, and public health problem for the neighbourhood. BDL2 points out that measured Zone B ground movements are "only minor", but he questioned why Zone B is defined at all unless there is a higher risk than in non-zoned areas.
- 6.65 Given these facts Mr Brass submitted that a new foul water sewer (or a surface water drain) in this location between numbers 14 and 16 Isaacs Way would not be safe or sustainable, and that its construction should not even be attempted. Mr Brass also referred in his statement to the site visit locations and what was seen at these locations.
- 6.66 **Mr Patrick Davies** presented a statement on behalf of Droitwich Spa Civic Society.<sup>263</sup> He said the Society is committed to the improvement of the town, including the protection and preservation of its historic core. The Society is not anti-development as this facilitates economic growth and can create new jobs and homes. The Society strongly believes that these proposals would not meet the Society's aspirations for the town. The objections are as follows: (i) The proposals are considered premature, since the need for housing in this location has not been established. The site was ruled out as an allocation in the SWDP and nothing has changed since that decision. (ii) The shape of the Green Belt around Droitwich influences its pattern of growth in a southerly direction and does not create sustainable communities. The development proposals are some 2.6 miles from the town centre and would not underpin the town's economy. Residents of any new homes would be drawn to Warndon and Worcester with its higher order shopping facilities. The proposals therefore fail the tests of sustainability. (iii) The proposals would exacerbate major infrastructure problems particularly in the south going to Worcester and the motorway network. There would be significantly increased traffic through the village of Tibberton and on the narrow country lane leading to the motorway through Newland Common, Smite and Offerton. (iv) The site currently offers a highly valued recreational asset to the town providing a range of habitat for wildlife as well as spectacular views of the surrounding Worcestershire countryside providing intrinsic beauty and character. The proposed development would destroy this.
- 6.67 **Mr Robert Brewer** is a student at Droitwich Spa High School's Sixth Form Centre and a resident of Droitwich. He is the Wychavon member on

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<sup>263</sup> IP9

Worcestershire's Youth Cabinet. In this elected role it is his responsibility to represent the views of local young people on a wide range of issues that affect them, specifically to decision makers. He values the green open space provided by the Yew Tree Villages site. He said that the south of Droitwich has already seen much development and consists of 3 major housing developments – The Ridings, The Primsland Estate and Tagwell Heights. There is no need for further housing at the expense of Yew Tree Hill green space.

- 6.68 He said there would be problems with accessibility and transport which makes Yew Tree Hill unsuitable for development, particularly when considering the needs of young people most of whom are unable to drive. It would be difficult to walk to the services in the town centre including shops, health centre and library therefore any trade brought in by the development would be lost to out of town centres. He highlighted that the town has only one high school and two middle schools in its three tiered education system. The closest of these, Witton Middle School is around a 30 minute walk from the edge of the development site. The high school is about an hours walk away from the edge of the site, a journey of some 2.7 miles. This would mean reliance on cars and public transport which is unsustainable. The development could generate some 850 extra cars on the roads in the vicinity of the site. The Council has already approved one large scale development at Copcut Lane and that is a better option than the appeal sites. There are also many brownfield sites available closer to the town centre. The Yew Tree Hill development is largely unnecessary and unsuitable as a site. It should be adopted as a country park.
- 6.69 **Mr Neil Franks** is a local resident and a sustainability consultant in the construction industry. He is opposed to the development and he highlighted his concerns in his statement.<sup>264</sup> He referred to the poor quality Sustainability Appraisal and the fact that there was no commitment to a sustainability certification standard. He was critical of the ES in terms of biodiversity and ecology, sustainable drainage, secure and accessible cycle storage, secure design and affordable housing. He raised numerous dwelling specific issues, for example in relation to day lighting, sound insulation and disability access. He was also critical of the Carbon Analysis Report which gives details on how energy and carbon efficient the proposed dwellings would be. In his view the development would not be sustainable.
- 6.70 **Mr Christopher Hartwright** is chairman of Tibberton Parish Council. He said that Tibberton was situated about 4 miles south of Droitwich but only about 3 miles from the proposed development at Yew Tree Hill. His concern related to the likely traffic increase using Tibberton as a "rat run" to Worcester, Worcester Royal Hospital, Junction 6 of the M5, Pershore and Evesham. He stated that the approach to Tibberton from Droitwich was by no more than a country lane and negotiation of a difficult canal bridge, which despite having weight restrictions placed upon it to protect the Listed Building status, regularly suffers damage from vehicles.
- 6.71 He said that the road through the village has experienced increases in traffic most noticeably in recent years by the expansion of housing developments

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<sup>264</sup> IP11

locally and by the increase in motorway use. In 2008 a survey was taken which showed an increase of up to 2,000 vehicles per day. It is feared that the proposed development at Droitwich would create an unacceptable increase in vehicle movements in the village because the access onto the A38 would be unable to cope with commuter traffic at peak times causing the obvious alternative route through Tibberton to be used. The development of the Worcester Technology Park in Tibberton Parish would also encourage Droitwich residents to use this route to go to work.

6.72 He said that the road through Tibberton is the only way to reach the very well supported First School, with many pupils sourced from Droitwich and Warndon all brought by car. The proposed increase in traffic would therefore present added danger to schoolchildren. The well used village shop is also on this busy road and the danger to customers, particularly the elderly having to cross the road from retirement bungalows on Hawthorn Rise, is evident.

6.73 **Mr Philip Powell** is a local resident. He was concerned about the proposed traffic increase on Pulley Lane and Newland Lane. He said that there used to be a footpath on Newland Lane and he would like to see footpaths on both of these roads so that local people could enjoy the beautiful scenery. Without footpaths it would be dangerous for children to walk to schools. It would also be dangerous for horse riding. He said that Pulley Lane and Newland Lane would not be wide enough to cater for the development.

## WRITTEN REPRESENTATIONS

7.1 There were objections by local residents at both the application and appeal stages.<sup>265</sup> Generally the same points have been made to those that have been recorded above and these will not be repeated. Additional points include:

- A lack of infrastructure including doctors, dentists, schools and hospitals to support further housing.
- Disruption from construction activity.
- The area is used by local residents as a recreational area and provides homes for many species of wildlife.
- Effect on the living conditions of nearby residents including loss of privacy and noise from additional traffic.
- The loss of a greenfield site when there are other brownfield sites that could be built upon. A very large number of premises on the Berry Hill Industrial Estate are vacant. Some of this land could be developed for housing.
- Noise and light pollution are areas of concern.
- Concern about tanker lorries parking on Pulley Lane to make deliveries.
- Residents would need to travel a considerable distance to do a 'main shop' either to Blackpole or Warndon in Worcester or to Droitwich Spa.
- Walkers, joggers, cyclists and horse riders regularly use Newland Lane and Pulley Lane.
- Change in semi-rural character of Droitwich - an important feature of its history and tradition.

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<sup>265</sup> See CDH1, CDH2 and INQ2

## 8. CONCLUSIONS

*[In this section the numbers in superscript refer to the earlier paragraph numbers of relevance to my conclusions.]*

- 8.1 Main matters (i) to (v) set out at paragraph 1.4 above relate to issues about which the SoS needs to be informed and cover the main considerations of prime significance in these appeals. The conclusions that follow are structured to address each of the main matters (i) to (v) in turn. I then proceed to examine conditions in main matter (vi) that might be imposed should the SoS determine that planning permission should be granted and then the issue of planning obligations under s106 of the 1990 Act in main matter (vii) before giving my overall conclusions and recommendations. <sup>[1.4]</sup>

### Introduction

- 8.2 **Appeal Site A** relates to land to the south of Droitwich Spa - the largest town in Wychavon by population – and is locally known as Yew Tree Hill. The site lies outside the development boundary of the town as defined in the adopted local plan but is contiguous with it. Consequently, the site abuts residential development on the eastern, northern and western boundaries. There is also a ribbon of development to the south of the site along Newland Lane. The southern boundary adjoins Pulley Lane and Appeal Site B. <sup>[1.8]</sup>
- 8.3 The site consists of 34.63 hectares of greenfield land which is predominantly in agricultural and equine use. The site is divided up into a number of parcels of land which are dissected by hedgerows, private tracks and public rights of way. Newland Road dissects the site on a north south axis. It was previously opened to two way traffic and provided a link to Droitwich Spa town centre. It is now untrafficked (by way of a Traffic Regulation Order which came into force in 1993) between the property known as Casa Colina and the junction with Primsland Way but it is open for pedestrians and cyclists. <sup>[1.9]</sup>
- 8.4 The topography of the site is undulating. The existing residential development to the north of the site is significantly lower than the appeal site but is separated by open space. The existing residential development to the east of the site is up to 76m AOD. The eastern parcel of Appeal Site A has ground levels that generally fall in a southerly direction towards the existing ditch and hedgeline which forms the common boundary with the Persimmon Homes site (Appeal Site B). The highest part of the overall site is the land adjacent to the water tower. The parcel of land to the west of Newland Road is undulating with ground levels falling away to the north, west and south. <sup>[1.10]</sup>
- 8.5 The planning application was submitted in outline form with all matters reserved except for access. The Indicative Masterplan shows that the proposed development would comprise the following components: up to 500 dwellings of which 40% (200 dwellings) would be affordable; a care facility (Class C2) comprising 200 units; a local centre comprising of a potential mix of uses including a shop (Class A1), financial and professional services (Class A2), restaurant and café (Class A3), drinking establishment (Class A4), hot food takeaway (Class A5) and offices (Class B1 (a)); a police post; an indoor bowls facility; public open space including sports pitches and equipped children's play areas; and associated infrastructure. The development involves a list of

proposed highway works including the widening of Pulley Lane to 5.5m and improvements to the Pulley Lane/A38 junction.<sup>[1.15-1.16]</sup>

- 8.6 **Appeal Site B** also lies outside the development boundary of Droitwich Spa. The site abuts existing residential development on its eastern boundary, separated here by a narrow belt of public open space. Planning permission was recently granted by WDC for 39 dwellings on an adjoining site within the development boundary known as Newland Hurst (to the south-east of the site) which brings residential properties to the south eastern boundary of the appeal site. Newland Hurst is currently under construction. There is sporadic development to the south of the site along Newland Lane. A short section of the western boundary is defined by Newland Road. The northern boundary is well defined by a hedgerow and ditch, and the remaining boundaries are defined by hedges to the large gardens of adjoining properties.<sup>[1.12]</sup>
- 8.7 The appeal site consists of 12.3 hectares of greenfield land which is currently in agricultural and equestrian use. The site is divided up into two parcels of land which are bisected by a hedgerow. Newland Road runs to the west of the site and Newland Lane bounds the southern tip of the site. The site falls from the southeast to the northwest corner of the site, thus making the site entrance from Newland Lane the highest point of the site.<sup>[1.13]</sup>
- 8.8 The planning application was submitted in outline form with all matters reserved except for access. The Indicative Masterplan shows that the proposed development would comprise the following components: the erection of a maximum of 265 dwellings of which 40% (106 dwellings) would be affordable, public open space and equipped children's play together with associated infrastructure. The development involves a list of proposed highway works including a new junction providing primary access from Newland Lane and secondary emergency access off Newland Road.<sup>[1.18,1.19]</sup>
- 8.9. Both appeals have to be considered independently. However, as Appeal A has a common boundary with Appeal Site B particular regard must be given to the need to achieve a holistic approach to the development. Where issues are common to both appeals, such as housing land supply, I deal with those matters jointly. I also deal with the cumulative impact of the development on various receptors, for example landscape, highways and drainage and the way in which each proposal interacts with each other. I start with Appeal A and then later I deal with Appeal B.

### **Appeal A - Land at Pulley Lane, Newland Road and Primslan Way, Droitwich Spa**

***Main matter (i) The extent to which the proposed development is consistent with the development plan for the area and would deliver a sustainable form of development;***

- 8.10 The development plan for the area includes the saved Policies of the Wychavon District Local Plan (WDLP) (June 2006). The Council relies upon Policies SR1, GD1, ENV1 and ENV8 of the WDLP. However, it is noteworthy that the reasons for refusal did not allege breach of any of these WDLP policies as a result of this proposal. Both main parties accepted that bringing forward housing

development in the context of the district's housing needs inescapably creates tension in particular with Policy SR1 and Policy GD1 of the WDLP.<sup>[1.23, 2.3, 3.18]</sup>

- 8.11 Policy GD1 of the WDLP defines development boundaries for settlements within the district. Whilst the appeal site lies outside the defined development boundary of the town it lies contiguous with it. Policy GD1 sets out the location strategy for new development to 2011 within the district and states that most new development will be accommodated within the main built up areas. The policy focuses development on the three main towns in the district and sets out a sequential preference first, to the re-use of brownfield sites, second to urban greenfield land (with no significant recreational/amenity use) and third to land, but only at Evesham, adjacent to the development plan boundary. Policy SR1 sets out housing land supply provision within the district in the period April 1996 and March 2011. The Council argues that the proposal is contrary to the development strategy of the WDLP Policy GD1 as it lies outside the defined settlement boundary.<sup>[2.3, 2.15]</sup>
- 8.12 Whilst I accept that the appeal site is beyond the settlement boundary it is clear to me that Policy GD1 applies to new development to 2011. Plainly it was not designed to meet housing needs in 2014. It is out of date on its own terms and in the context of today's changed policy, economic and legal context. It is not based on the full objectively assessed needs in 2014. It cannot therefore be afforded weight in the context of this case because it is no longer fit for purpose. In my view it should be given very little weight.<sup>[3.23]</sup>
- 8.13 The Council accepted that Policy SR1 was time expired and out-of-date but argued that limited weight could be afforded to Policy GD1 based on the Honeybourne decision. The Council's acceptance that the two policies should be read together on the one hand, but that one was out of date and the other not, indicates an inconsistent and untenable position. It seems to me that paragraph 14 of the NPPF applies here because relevant policies (Policy GD1 and Policy SR1) are out-of-date. Plainly, the most important policies are those relating to housing supply but there are none for the period post 2011.<sup>[2.3, 3.21]</sup>
- 8.14 The SoS should be aware of the context here. First, it is clear that the relevant WDLP policies were only saved on the basis that they would be replaced 'promptly'. Secondly, the WDLP was adopted pursuant to PPG3, following which PPS3 represented a step-change towards the delivery of housing. Thirdly, the Council's reliance on Policy GD1 which seeks to constrain development within 2005 boundaries is not listening to what the Saving Letter has said. That letter also stated that the Council should have regard to more up-to-date advice. This is consistent with the NPPF's paragraph 215 requirement that Local Plan policies should be weighed in accordance with their consistency with that document. As was made clear in the Honeybourne case it is simply not good enough to regard saved policies as an opportunity to refuse rather than grant planning permission. Policy GD1 and Policy SR1 are out of date and paragraph 14 of the NPPF applies triggering the presumption in favour of sustainable development.<sup>[3.23]</sup>
- 8.15 In terms of Policy ENV1, in so far as it seeks to protect the countryside, this policy can be said to be consistent with the NPPF. However, in so far as it seeks to halt necessary development, it cannot be said to be consistent. This is

clear from the case of *Anita Colman v Secretary of State for Communities and Local Government and others*. In that case the Court considered restrictive landscape policies similar to Policy ENV1. The judge concluded that these policies were very far removed from the “cost/benefit” approach of the NPPF. They do not permit any countervailing economic or similar benefit to be weighed in the scales. The cost/benefit approach of the NPPF is evident from the three-strand nature of sustainable development: economic, social and environmental. In my view, where Policy ENV1 is used to restrict housing, it cannot be seen to be consistent with the cost/benefit approach of the NPPF. Therefore only limited weight can be given to Policy ENV1 in this case.<sup>[3.24-3.26]</sup>

- 8.16 Policy ENV1 applies a Special Landscape Area (SLA) designation to the site. The Inspector in the Tenbury appeal concluded that Policy ENV1 was a housing supply policy which could be set aside absent a 5 year supply. Policy ENV1 indicates that proposals for development must demonstrate that they are informed by and sympathetic to landscape character. The policy also confirms that development proposals that would adversely affect the landscape character of an area will not normally be allowed. The policy is a general policy in relation to protection of the landscape, and the SLA designation has, in accordance with the provisions of the Plan, been superseded by the publication of the 2011 Landscape Character Assessment (LCA). I assess the impact of the development on the landscape under main matter (iv) below.<sup>[1.23, 2.3, 2.15]</sup>

- 8.17 Policy ENV8 is more flexible and can be considered as consistent with the cost/benefit approach in the NPPF. It states:

*'Development proposals requiring planning permission will not be permitted where they would have an adverse impact on hedgerows, trees or woodland, their setting or their wider habitat, where such features are considered to be important for their visual, historic or ecological value of the area.*

*Removal of hedgerows, trees or woodland will only be permitted where it can be demonstrated that the proposal will benefit the visual, historic or ecological value of the area. All proposals affecting trees, hedgerows or woodland will need to be accompanied by an assessment that justifies the approach taken.'*  
<sup>[2.3, 3.27]</sup>

- 8.18 I consider this proposal does not conflict with Policy ENV8. It would bring a net positive gain of 1,385 m of hedgerow. There would be a net positive gain of 2 ha of scrub and woodland mosaic and 0.9 hectare of orchards.<sup>[3.28]</sup>

- 8.19 Turning to the question as to whether the development is sustainable, given that Policies SR1 and GD1 are out of date and time expired I consider this development falls to be considered under paragraph 14 of the NPPF. The Inquiry heard argument from the Council that a strained interpretation of the paragraph 14 presumption should be applied. The Council stated that it relied upon the judgement of Mrs Justice Lang in *William Davis and others v Secretary of State for Communities and Local Government and others* where the judge added an extra ‘gloss’ on paragraph 14 NPPF. At paragraph 37 of that judgement she ruled that a development must be found to be sustainable before the presumption applies.<sup>[2.3, 2.12, 3.29]</sup>

- 8.20 In my view this is an incorrect interpretation of that paragraph. First, the wording of paragraph 14 does not support this view. The paragraph clearly relates to all 'development proposals' it does not qualify this with an extra test of sustainability. It is therefore wrong to read such a test into the paragraph. The test also ignores the balancing exercise in paragraph 14. It is that exercise which determines whether or not development is sustainable. In the 'Lang' interpretation there is no identified means by which sustainability can be assessed. Secondly, the weight of High Court authority runs contrary to Lang J's view. The judgements at Stratford, Tewkesbury and North Devon demonstrate the correct reading of paragraph 14. Three High Court judges have disagreed with Lang J. Given this and the clear wording of paragraph 14, I consider that there is no extra test of sustainability included in paragraph 14, not least because the other three judges' interpretation enables sustainable development to be measured within the balance of paragraph 14.<sup>[3.30-3.34]</sup>
- 8.21 The Council, SOGOS and others consider that the proposed development would not be sustainable and that the benefits claimed would not outweigh the adverse impacts associated with proposals that are not plan-led. However, from the evidence that is before me this scheme is indeed sustainable. Plainly, the scheme would offer a number of *economic benefits* foremost among these is the amount of jobs the scheme would create. In terms of house building the evidence states that for every new home built two new jobs would be provided for a year. It is expected that there would be 190 construction personnel on site at any one time. The Care Facility would also provide jobs, not only in construction but also in order to run the centre. Mr Downes estimates this to be between 105 and 125 jobs. Finally, it is expected that the local centre would provide 40 jobs.<sup>[1.22, 2.4-2.6, 3.35, 5.27-5.35, 6.18, 6.20, 6.69]</sup>
- 8.22 The scheme would also offer a number of *environmental* benefits. The development has been landscape-led and would affect no international or national designations. There would be a net positive gain in terms of hedgerows, field margins, ponds, broadleaf woodland, scrub, orchards and wetland. These habitats would lead to a net positive gain in invertebrates, amphibians, reptiles, farmland birds and bats. The only species resulting in a neutral/minor negative effect is the badger. However, mitigation measures could be provided to create replacement setts in order to minimise the potential impact.<sup>[1.22, 2.4, 3.35, 5.32, 6.20]</sup>
- 8.23 The proposal would offer a number of *social* benefits. These include: the provision of the local centre and the bowls facility which has been requested by the Council. The provision of the Care Facility would also meet an existing need in the district. The Worcestershire Extra Care Housing Strategy details that there is a need for 2,600 units. Finally, the contribution of this scheme to meet some of the affordable housing deficit in the area cannot be underestimated. I deal with this under Main matter (iii).<sup>[1.22, 2.4, 3.35, 5.30, 6.18]</sup>
- 8.24 In relation to main matter (i), I conclude that no development plan policy is referred to in the reasons for refusal and as such the Council did not at the time of the refusal take the view that this scheme offended any Local Plan policies. Secondly, the policies as they relate to the supply of housing land are out of date, both because the policies are time limited to 2011 and are being applied in a manner inconsistent with the NPPF. As such the paragraph 14

presumption applies to this scheme. The scheme is indeed sustainable as all of the aforementioned factors demonstrate. I have to consider the proposal in the context of the other main matters which have been identified before coming to an overall conclusion in relation to the development plan. [2.4-2.6, 3.35, 5.27-5.33, 6.18]

***Main matter (ii) Whether the proposed development is premature in the light of the emerging SWDP and national guidance;***

8.25 The Council argued that granting permission for this proposal now would significantly prejudice the strategy of the SWDP. Councillors Jennings and Pearce together with Patrick Davies supported that view claiming that two approvals of such a vast site alongside the Copcut Lane site would be detrimental to the strategic thrust of the SWDP. It was argued that the size of these proposals would prejudice the SWDP by predetermining the scale and location of development and that these sites were not needed. Several written representations endorsed this view. The Appellant submitted evidence in relation to prematurity in the guidance contained in 'The Planning System: General Principles' and the Beta Guidance. However, that guidance has been cancelled by the PPG issued on 6 March 2014. The Appellant also referred to recent case law where prematurity was at issue. [2.7-2.9, 6.17, 6.43, 6.66]

8.26 Paragraph 216 of the NPPF states:

*'From the day of publication, decision-takers may also give weight to relevant policies in emerging plans according to:*

- *□ the stage of preparation of the emerging plan (the more advanced the preparation, the greater the weight that may be given);*
- *□ the extent to which there are unresolved objections to relevant policies (the less significant the unresolved objections, the greater the weight that may be given); and*
- *□ the degree of consistency of the relevant policies in the emerging plan to the policies in this Framework (the closer the policies in the emerging plan to the policies in the Framework, the greater the weight that may be given).'* [1.22]

8.27 Paragraph 14 of the PPG takes a very similar stance to the NPPF. It states:

*"Annex 1 of the National Planning Policy Framework explains how weight may be given to policies in emerging plans. However, in the context of the Framework and in particular the presumption in favour of sustainable development – arguments that an application is premature are unlikely to justify a refusal of planning permission other than where it is clear that the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, taking the policies in the Framework and any other material considerations into account. Such circumstances are likely, but not exclusively, to be limited to situations where both:*

*a) the development proposed is so substantial, or its cumulative effect would be so significant, that to grant permission would undermine the plan-making process by predetermining decisions about the scale, location or phasing of new development that are central to an emerging Local Plan or Neighbourhood Planning; and*

*b) the emerging plan is at an advanced stage but is not yet formally part of the development plan for the area.*

*Refusal of planning permission on grounds of prematurity will seldom be justified where a draft Local Plan has yet to be submitted for examination, or in the case of a Neighbourhood Plan, before the end of the local planning authority publicity period. Where planning permission is refused on grounds of prematurity, the local planning authority will need to indicate clearly how the grant of permission for the development would prejudice the outcome of the plan-making process” [1.6]*

8.28 It is noteworthy that two High Court decisions last year have also provided guidance as to how a prematurity reason is to be approached. The cases demonstrate that very substantial development can be permitted within the exercise of planning judgement without falling foul of the prematurity principle. In *Tewkesbury Borough Council v Secretary of State for Communities and Local Government and others* the judge considered two developments amounting to one thousand homes in total. In that decision Males J decided that the SoS’s conclusion that developments were not premature was correct. At paragraph 64 of the judgment he concluded that the NPPF does not cast any doubt on the fact that, pending the adoption of local development plans, individual planning applications will continue to be dealt with, where appropriate by the SoS applying existing principles. At paragraph 69 he also confirmed that the Localism Act has done nothing to change the long-recognised principles of prematurity. [2.7-2.9, 3.40-3.41]

8.29 Furthermore, the case of *Bloor Homes v Secretary of State for the Communities and Local Government and Stratford District Council* is also instructive. Mr Justice Hickinbottom considered the SoS’s decision in respect of a development of up to 800 dwellings at Shottery. He rejected the prematurity argument raised by those seeking to challenge the decision. He indicated that the mere fact that a change is proposed to the development plan does not mean that all applications for development have to be put on hold. Given the propensity for change in policy and plans, he argued that approach would bring the entire planning system to an effective halt. [2.7-2.9, 3.42]

8.30 Bearing in mind the above guidance, policy and judicial decisions it is plain to me that when the Planning Committee refused the application in question they did so on the basis that they wrongly believed they had a 5-year supply. This erroneous belief was arrived at principally through ignoring the officer’s advice as to the Sedgefield approach and rejecting what had been said in the Honeybourne decision in relation to Wychavon in 2012. Reliance upon prematurity as a reason for refusal is completely untenable in a situation where the Examination Inspector’s Interim Conclusions have said that the figure of 22,300 dwellings is not enough and that substantially more will be required. At the Inquiry the Council’s position is to propose at least an extra

3,000 homes. The Council has no idea where these are going to be located. Therefore allowing permission for this scheme cannot prejudice a Local Plan in relation to which there is not even a preferred option identified where the additional development might go.<sup>[2.7-2.9, 3.43]</sup>

- 8.31 Moreover, on top of the concession that an extra 3,000 homes are required, there are unresolved objections to the emerging SWDP. Paragraph 216 of the NPPF dictates that 'unresolved objections' should result in less weight being given to the emerging SWDP. This much was agreed by the Council. As such, the objections dramatically reduce the weight which can be given to the assertion that the development would prejudice the emerging SWDP.<sup>[2.7-2.9, 3.43]</sup>
- 8.32 The Council must 'clearly demonstrate' the harm which this development would cause to the emerging development plan. The Council has neither asserted nor demonstrated any harm during this Inquiry. Instead, it cited support from two cases whose facts are completely at odds with the development before this Inquiry. The decision in Moreton-in-Marsh concerned one of nine major settlements in the Cotswold District where Cirencester was the main town and principal target for growth (accepting 63% of development). That left 37% to be located at the other nine principal settlements. If the proposal in question had been approved, Moreton-in-Marsh would have been accepting a quarter of this. In these circumstances a conclusion that the emerging plan would be prejudiced was not unreasonable. The SoS should note that this decision was made pre-NPPF and also prior to the decisions in *Shottery* and *Tewkesbury*. It cannot be guaranteed that the same conclusion would be reached on the same facts today.<sup>[2.7-2.9, 3.43]</sup>
- 8.33 Similarly, the decision relating to Kentford in Newmarket involved development at a primary village. It had a very poor range of services. Those decisions are incomparable to the situation here. As addressed above, Droitwich is one of the three main towns in Wychavon. It is specified as a suitable location for development both in the Local Plan and in the emerging SWDP.<sup>[2.9-2.10, 3.43]</sup>
- 8.34 Indeed, it is impossible for the Council to demonstrate harm. Even on its own account there are over 3,000 additional homes to be found. The SWDP Examination Inspector has found that Worcester City and Malvern Hills are constrained. This means that Wychavon is a prime candidate for locating the extra development. Within Wychavon, Droitwich along with Evesham is the obvious place for the development to go. Evesham has already accepted a disproportionate amount of development and therefore it is time for Droitwich to play its part in contributing to the district's housing supply. Further, the evidence base for the emerging SWDP has shown that the appeal site has been under active consideration as a location for development. Most significantly in 2005 when it was only left out of the plan in favour of Copcut Lane. Now that Copcut Lane has been allocated and granted permission Yew Tree Hill is an obvious next choice for necessary housing development.<sup>[2.7-2.9, 3.43]</sup>
- 8.35 The Council has erroneously advanced its prematurity reason for refusal on the apparent premise that it is necessary for the Appellant to show that the Council in the emerging SWDP would inevitably choose the appeal site. No such test exists. Paragraph 14 of the NPPF requires a planning balance to be performed. The development plan pedigree of the site alongside the evidence

submitted to the Inquiry demonstrates that this site is a good choice for development.<sup>[2.7-2.9, 3.43]</sup>

- 8.36 Finally, the proposed development has been considered at a 10 day Inquiry. The Council's case and that of objectors in relation to this site has been given a full airing. Clearly, this long process is far longer than would be afforded to this site during the Examination process. There can be no complaint that this site has not properly been scrutinised and the public afforded a full opportunity to express its views about the development of the appeal site.<sup>[3.43]</sup>
- 8.37 On main matter (ii) I conclude that, for all of the reasons outlined above, the Council's reliance upon prematurity as a reason for refusal cannot stand. It is contrary to the weight of guidance, policy and judicial decisions and no relevant precedent has been provided for it.

***Main matter (iii) Whether the proposed development is necessary to meet the housing needs of the district bearing in mind the housing land supply position;***

- 8.38 At the outset on this matter the SoS should be aware of the recent planning appeal decision at Offenham (dated 7 February 2014) as it relates to Wychavon's 5-year housing land supply. The SoS should note that the Inspector concluded:

(a) "It was clear therefore from the detailed discussion and questioning of evidence during the Inquiry that several of the sites without planning permission which were advanced by the Council to be available and deliverable within five years were not supported by robust evidence to that effect."

(b) "... the Council's track record shows that it has failed consistently to meet the RS required average requirement of 475dpa, despite an upturn in completions since 2009/10. This is compounded by the relatively low percentages of affordable housing provision during this period."

(c) "the Appellant's evidence shows conclusively that the recent significant increase in Wychavon's average house prices and relatively small proportion of rented properties and low delivery of affordable housing have resulted in an increasingly unaffordable local housing market."

(d) "taking into account all the above considerations, it is my view that the Council's case, that it has just over 5 years' housing land, is unconvincing in the light of: (i) the revocation of the RS as a basis for assessing housing need; (ii) the likelihood of an increased housing requirement for Wychavon to emerge during the SWDP Examination; (iii) the over optimism of some of the Council's assumptions of deliverable housing supply over the next 5 years; (iv) the Council's ambitious housing targets in relation to its track record; and (v) the evidence of current market signals in relation to housing under provision and inaffordability."

(e) "I therefore conclude, in relation to the first main issue, that although the proposal is contrary to *Local Plan* Policy GD1, this has little weight for the

reasons stated and it is significantly outweighed by the inability of the Council to robustly demonstrate a 5 years' housing land supply for Wychavon."

As a preliminary matter therefore it is very clear to me that as recently as February 2014 the Council's case on the existence of a 5-year land supply was firmly rejected by an Inspector on the bases of: insufficient target, unrealistic delivery assumptions and its poor past track record.<sup>[3.44]</sup>

- 8.39 I turn first to the question of the housing requirement. Paragraph 47 of the NPPF states that in order to boost significantly the supply of housing LPAs should 'use their evidence base to ensure that their Local Plan meets the full, objectively assessed needs for market and affordable housing in the housing market area.' The WDLP does not contain any figure within it.<sup>[3.47]</sup>
- 8.40 Paragraph 159 of the NPPF requires LPAs to have a clear understanding of housing needs in their area. They should prepare a Strategic Housing Market Assessment (SHMA) to assess their full housing needs. The SHMA should identify the scale and mix of housing and the range of tenures that the local population is likely to need over the plan period which meets household and population projections, taking account of migration and demographic change; addresses the need for all types of housing; and caters for housing demand and the scale of housing supply necessary to meet this demand. They should also prepare a Strategic Housing Land Availability Assessment (SHLAA) to establish realistic assumptions about the availability, suitability and the likely economic viability of land to meet the identified need for housing over the plan period.<sup>[3.48]</sup>
- 8.41 Paragraph 218 of the NPPF states that LPAs can continue to draw on evidence that informed the preparation of the RS as a starting point for assessing the housing needs of an area but that this should be supplemented as needed by an up-to-date, robust local evidence.<sup>[3.49]</sup>
- 8.42 As I perceive it the most recent objectively assessed evidence is that contained within the recent 2011 Interim Sub National Household Projections (SNHP). These state that they should be used for a 10-year period, but beyond that there is a need to determine whether household formation trends are likely to continue. After the 10-year period, following the advice of the SWDP Examination Inspector, and reflecting the need to revise Household Representations Rates (HRR) due to an improving economy, the more optimistic 2008 SNHP HRRs should be used. This approach accords with the Holman Paper, the conclusions of the Inspector in relation to the Lichfield Core Strategy and also current planning policy which aims to 'plan for growth'. I note that this is the approach Mr Bateman has followed.<sup>[3.50, 6.1-6.2]</sup>
- 8.43 However, the Council and others, seek to use and defend the 2008 figures for the entire plan period. In my view these are out-of-date. This is made clear in the last sentence of the 2011 projections which state that they replace the 2008 projections from November 2010. Given the chronology of the production of the figures this is hardly surprising. Indeed, this is echoed by the SWDP Examination Inspector who has asked the LPA to calculate the supply figure using the latest population projections combined with Nathaniel Lichfield and Partners' approach.<sup>[2.12, 3.51, 6.16, 6.45]</sup>

- 8.44 When calculating the appropriate target figure it is also crucial to start with the correct base date population figure. The Council has used the figure of 49,000 for 2006. The SHMA demonstrates that this is incorrect. At page 135 it demonstrates that the correct figure is 47,322.<sup>[3.52]</sup>
- 8.45 At the Inquiry there was some debate about the *Hunston* judgement. In my view it is concerned with a proper understanding of how to determine full objectively assessed need in circumstances where, as here, there is a policy vacuum. It requires the identification of a "policy off" figure. Policy is the "varnish" which the Court of Appeal refers to: the application of "varnish" is what happens in the forward planning process but is an exercise which cannot be assessed in the context of a s78 appeal. The Council's case that "unvarnished" means arriving at a figure which doesn't take into account migration or economic considerations is neither consistent with the judgment, nor is it consistent with planning practice for deriving a figure for objectively assessed need to which constraint policies are then applied. Plainly the Council's approach is incorrect. Clearly, where the judgement refers to 'unvarnished' figures (paragraph 29) it means environmental or other policy constraints. There is nothing in the judgement which suggests that it is not perfectly proper to take into account migration, economic considerations, second homes and vacancies.<sup>[2.11, 3.53]</sup>
- 8.46 It is also clear that the 20% buffer should be applied to the entire 5-year requirement (including the historic shortfall). The Council could not point to any provision in policy or previous decisions which supports the contention that the 20% should not apply to the historic shortfall. It is instructive to note that the Council itself has been calculating its 5-year supply by adding the 20% to the whole figure. This is clear from the Council's report to Committee dated 10 October 2013 included in Mr Brown's evidence.<sup>[2.11, 2.21, 3.55]</sup>
- 8.47 From the evidence that was submitted to the Inquiry the SoS should take particular note of the affordable housing need which exists in Wychavon. The Council accepted that substantial weight should be given to the affordable housing to be provided by this proposal. The weight of the issue in Wychavon is severe. Some 1,153 households are currently on the waiting list for an affordable home in Wychavon. Furthermore, Droitwich is the most unaffordable place for housing in Wychavon. The Council is seriously underperforming in terms of supplying affordable housing. The 2009 Annual Monitoring Report demonstrates that from 2005-07 only 182 affordable units were produced and only 47 from 2008 to 2009. The Council provided no affordable units in 2009-10 and only 57 in 2010-11. Indeed, Mr Brown admitted that the Council had failed to deliver even ¼ of the 268 affordable dwellings per annum that is required of it during the last 8 years.<sup>[2.4, 3.56]</sup>
- 8.48 For all of the aforementioned reasons it is clear to me that the Council has not undertaken a robust calculation in order to arrive at its housing requirement for this Inquiry. The only robust evidence that is before me is the methodology used by Mr Bateman. This is clear, well reasoned and well justified. As such, Mr Bateman's figure for a requirement of about 14,263 dwellings between 2006 and 2030 should be preferred.<sup>[2.12, 3.57]</sup>

- 8.49 In its recent submission to the SWDP Examination, the Council accepts the need for an extra 3-4,000 houses would be required during the plan period. However, I note that the Council has not used the 2011 projections; it has not based its calculations on the correct starting point; and questions remain as to the economic activity rates used. As such, the figure as submitted does not appear to be robust and very little weight can be given to it in these appeals. In a choice between the Council's figure and Mr Bateman's of about 14,000, it is clear for reasons set out above that it has been demonstrated that Mr Bateman's figure is to be preferred.<sup>[2.12, 3.58]</sup>
- 8.50 Before considering the mathematical calculation relating to supply, it is noteworthy that the Government is particularly concerned to ensure that there is a real supply of housing to meet local needs, both in terms of general housing and also in terms of affordable housing. The absence of a continuing supply of housing land has significant consequences in relation to people finding homes and is in direct opposition to the thrust of the NPPF, which is that everyone should have the opportunity of a wider choice of housing. Housing land supply is not just related to a mathematical equation, it is about ensuring that land comes forward early enough to meet real needs.<sup>[1.22]</sup>
- 8.51 The Council includes within its supply a number of sites which have permission but are very unlikely to come forward within 5 years. For example, Land off Banks Lane, Badsey. The Appellant's evidence shows that this site is not in the hands of a developer and that there is no evidence of viability. Other examples included are included in Document C10. The Leedons Residential Park, Broadway is included among the large site commitments. Here the Council relies upon a Certificate of Lawful Use for the use of land as a touring caravan and camping site. At the Inquiry the Council was not clear about the basis of this planning permission. It is likely that a seasonal occupancy condition applies. It follows that the number of dwellings suggested by the Council cannot be considered as dwellings to count towards the 5-year supply. The Council has produced no robust evidence to clarify the position.<sup>[2.12-2.13, 3.60]</sup>
- 8.52 The Council seeks to include all of its SWDP allocated sites. The only safe conclusion using the authority of *Wainhomes* is that not all of these will be deliverable. Each case must be assessed on a fact sensitive basis. Objections to each site must be taken into account as must the fact that most are outside existing development boundaries – one of the reasons the Council has rejected the development of the appeal sites according to its evidence to the Inquiry. In the context of paragraph 216 of the NPPF only limited weight can be given to sites in respect of which there are unresolved objections. It is also relevant to note that it will be a long time before the non-strategic sites will actually be allocated at Stage Two of the Examination process if and when the SWDP is eventually brought into force. Clearly their inclusion in the SWDP cannot lead to a robust conclusion that they are deliverable. In coming to this view I have considered the results of the deliverability questionnaire sent out by the Council to all the promoters of the SWDP sites.<sup>[2.12-2.13, 3.62]</sup>
- 8.53 The NPPF allows the use of windfall sites in a 5-year calculation if there is compelling evidence that such sites have consistently become available and will continue to provide a reliable source of supply. This evidence has not been made available to the Inquiry. Indeed, most recently, the SWDP Inspector

concluded that the large level of windfalls currently proposed should not be accepted and that there is a need for further information. The Council's figures for windfalls are not robust and involve double counting with permissions on small sites. The Appellant's evidence on this matter is compelling and the figure of 43 dwellings based on completions of 82 per annum, and allowing for windfalls which already have permission, is robust.<sup>[2.12, 3.63]</sup>

- 8.54 The Council also seeks to rely on C2 care units as adding to the 5 year supply. These cannot be included in the supply. These units have a range of communal indoor facilities, including communal dining. The institutional form and also the occupational age limit render them unsuitable for being included as 'dwellings' in the housing land supply. Indeed, it is telling that developers are not asked to make an affordable housing contribution on these units. As such, it is clear to me that Council policy is not to treat them as 'dwellings'.<sup>[2.12, 3.64]</sup>
- 8.55 Plainly, a 10% lapse rate should be applied to the Council's supply. This approach is supported by the '*Housing Land Availability*' paper by Roger Tym and Partners. The approach was accepted by the Inspectors at Moreton in Marsh, Marston Green, Honeybourne and Tetbury. A 10% lapse rate was affirmed in the High Court decision at Tetbury. Given the previous shortfalls of delivery within this LPA, a 10% lapse rate is entirely reasonable and should be applied here in order to ensure a robust 5-year supply figure.<sup>[2.12, 3.65]</sup>
- 8.56 Overall it is very clear to me that that the Council cannot demonstrate a 5-year supply. If the Appellant's case is accepted on both requirement (Chelmer with employment) and supply the figure would only be 1.83 year's supply. Even if the Council's supply figures are used the supply would be between 2.83 and 3.76 years, with or without the SWDP sites.<sup>[2.12, 3.66]</sup>
- 8.57 I conclude on main matter (iii) that the Council does not have a 5-year supply. This Inquiry has demonstrated this to be the case and the recent Offenham decision serves as a useful consideration of this deficit. If there is no 5-year supply then Policy GD1 and Policy SR1 must be considered out of date as they are policies relevant to the supply of housing. This means that the paragraph 14 NPPF test must be applied to these appeals. The contention that the absence of a 5-year supply renders settlement boundary policies out of date is reinforced by the SoS's decision at Forest Road, Burton on Trent.<sup>[2.3, 3.67-3.68]</sup>
- 8.58 However, if the SoS concludes that Wychavon can demonstrate a 5-year supply, then the paragraph 14 NPPF test still applies. This is because relevant policies are out-of-date. As explained above the housing supply policies are time-limited, were saved on a basis that was subject to the caveats in the Saving Letter. The WDLP was drawn up against the background of an entirely different national policy context. All extant policies should therefore be afforded little weight in this appeal and the paragraph 14 presumption should be applied. The Council contended on the basis of the case of William Davies v SoS [2013] EWHC 3058 (Admin) that Policy GD1 is not a housing policy and that therefore it is not out of date by virtue of paragraph 49 of the NPPF. However, there is now conflicting authority to this decision in the form of the judgment of Lewis J in Cotswold DC v SoS [2013] EWHC 3719. The issue arises as to which interpretation of the NPPF is to be preferred. For the reasons given above I consider that the interpretation of Lewis J is correct.<sup>[2.12, 3.70]</sup>

***Main matter (iv) The effect of the proposed development on the character and appearance of the area;***

- 8.59 At the outset on this matter the SoS should be aware that land to the south of Newland Lane and Pulley Lane, excluding the carriageways, lies within the Green Belt. Given that two areas of highway improvement involve the acquisition of land to the south of the existing carriageway, technically a small part of the operational development falls within the Green Belt as shown on BDL14. Paragraph 90 of the NPPF confirms that engineering operations are not inappropriate development in the Green Belt provided they preserve the openness of the Green Belt. The proposed realignment of the Pulley Lane carriageway is not considered to be an engineering operation that would lead to loss of openness. The new roadside hedge planting would also assist in preserving the visual amenity of the Green Belt.<sup>[1.11]</sup>
- 8.60 The proposed development did not require an EIA. A Landscape and Visual Impact Assessment (LVIA) was required and this formed a chapter of the EIA volunteered by the Appellant. A second LVIA was prepared using the Landscape Institute 3<sup>rd</sup> edition guidelines. This included an assessment of both the landscape and visual effects of the scheme. In my view the site has been carefully and thoroughly assessed over a four year period. Comprehensive consultation was held throughout the development of the LVIA and development of the scheme. It is clear to me that the scheme has been 'landscape-led' from its inception.<sup>[1.21, 3.73]</sup>
- 8.61 Policy ENV1 confirms that development proposals that would adversely affect the landscape character of an area will not normally be allowed. The site does not fall within a nationally recognised landscape area. However, it is covered by a local designation known as the Droitwich Special Landscape Area (SLA) and is identified as such on the WDLP Proposals Map. The site is elevated from the adjoining landform and is therefore relatively prominent in the local landscape. The water tower, which stands at 33.5m tall, is sited at the highest point on Yew Tree Hill and is therefore visible from long distances. The Council and others consider that the landscape impact would significantly and demonstrably outweigh the benefits creating an unsustainable development contrary to paragraphs 7 and 14 of the NPPF.<sup>[1.10-1.11, 2.15, 2.1, 6.31-6.38, 6.46, 6.66, 7.1]</sup>
- 8.62 I note that the NPPF does not expressly recognise local landscape designations but instead provides advice at paragraph 109. It says that the planning system should contribute to and enhance the natural and local environment by protecting and enhancing valued landscapes, geological conservation interests and soils. Paragraph 113 of the NPPF indicates that LPAs should set criteria based policies against which proposals for any development on or affecting protected wildlife or geodiversity sites or landscapes areas will be judged. Paragraph 170 of the NPPF advises that where appropriate, landscape character assessments should also be prepared, integrated with assessment of historic landscape character, and for areas where there are major expansion options assessments of landscape sensitivity.<sup>[1.22]</sup>
- 8.63 Nationally, the site lies within the Severn and Avon Vales Character Area. Locally the landscape character of the site and its context fall into the Landscape Character Type of 'Settled Farmlands with Pastoral Land Use'.

These are small-scale rolling lowland, settled agricultural landscapes with a dominant pastoral land use, defined by their hedged fields. These landscape types are further broke down into Landscape Description Units (LDUs) and Land Cover Parcels (LCPs). It is important for the SoS to note that although Yew Tree Hill is covered by a SLA designation, it is not proposed to continue this designation forward into the emerging SWDP and therefore it can be afforded little weight in this case.<sup>[2.16, 6.36]</sup>

- 8.64 It is also noteworthy that the Council's officers had no issue with the scheme. In the Planning Committee Report it is clear to me that they came to the overall conclusion that on balance there would be no significant and demonstrable adverse harm to the landscape, heritage assets, highway safety, residential amenity, nature conservation, flooding and drainage. Moreover, there was no discussion of landscape matters at the Planning Committee meeting and no landscape policies were cited in the reasons for refusal.<sup>[3.74]</sup>
- 8.65 The Council sought to defend the landscape reason for refusal through the evidence of Ms Illman. However, this evidence was somewhat affected by events which took place in 2012. Ms Illman's first assessment of the LVIA was based upon incomplete information. She was missing the table which assessed in detail the landscape and visual effects of the scheme. Once provided with the full information, she did not correct a number of the errors in her report. Indeed, those errors and assumptions appear to have influenced her evidence to the Inquiry.<sup>[3.77]</sup>
- 8.66 The Council's evidence relied heavily upon the use of the LCA flowchart. In my view there are problems with this approach for the following reasons. First, the Council itself has not followed that approach. The LPA has allocated and given consent for the development at Copcut Lane which lies within in the same Landscape Character Area as Yew Tree Hill. If the LCA was the litmus test which Ms Illman suggests it is, then permission would not have been granted for the Copcut Lane development.<sup>[3.79]</sup>
- 8.67 Clearly, the Council is not purporting to use the flowchart in the way that Ms Illman states it should be used. At the Inquiry the Council attempted to explain this and claimed that the chart is used in a different way when you are looking at allocations rather than applications. The Council effectively suggested that a review of all potential sites should be done before development is contemplated in this Landscape Character Area. However, there is no requirement in the NPPF for undertaking this process. This requirement does not exist in either legislation or policy guidance.<sup>[3.80]</sup>
- 8.68 Secondly, the document itself does not purport to use the LCA flowchart as an absolute bar to development. It says that the emphasis on the appropriateness of a development in a landscape, and the landscape's resilience to change (or ability to accept that development without undue harm) can only be partially assessed through the LCA. Site visits and the need for detailed visual assessments are also a vital part of both strategic land use planning and development control. The Council agreed with this at the Inquiry.<sup>[3.81]</sup>
- 8.69 I am aware that the assessment of the appropriateness of development at Yew Tree Hill has been assisted by detailed visual assessments and site visits.

Furthermore, the scheme has been designed using an iterative process to enhance consistency with the LCP. This is evidenced through the use of linear woodland, the bolstering of hedgerows and the provision of orchards. <sup>[3.82]</sup>

- 8.70 The Council also referred to the use of ZTVs. However, these are not critical in my view to the assessment of landscape impact because they are not sophisticated enough to answer the question whether the development would be visible, either partially or entirely. Ms Illman accepted that landscaping proposals had not been taken into account as part of her assessment. Any landscape appraisal which fails to take account of mitigation planting is clearly deficient. In my view ZTVs are only an aid to understanding whereas the Appellant's LVIA approach is comprehensive and to be preferred. This, together with the evidence which I saw on my site visits, enables a well-considered and detailed assessment. <sup>[3.83]</sup>
- 8.71 The differences between the two landscape witnesses in terms of the LVIA are essentially matters of judgement. It is the case that only the Appellant has provided a full LVIA, and the Council's evidence is but an assessment of the Appellant's work. In my view, the test of acceptability cannot be either: (i) the visibility of the development or (ii) its effect on openness. It is inevitable that any substantial new development at Droitwich would have to be on the periphery. It is therefore inevitable that it would be visible, because any new development would be visible. Furthermore, it is also inevitable that any new development would be on greenfield land. The emerging SWDP makes it clear that the area has exhausted its supply of previously developed land. This appeal proposal cannot therefore be criticised on that basis. <sup>[3.84]</sup>
- 8.72 The Appellant highlighted the development constraints which exist at Droitwich. From the evidence that is before me it is clear that Yew Tree Hill is one of the few locations where the development required to meet housing and affordable housing need is capable of being accommodated. Moreover, I am aware that this development offers substantial environmental advantages. These are set out clearly in Appendix 6 to Patrick Downes' proof of evidence. They include: a net positive gain of 1,385m of hedgerows, a net positive gain of 1,598m<sup>2</sup> of field margins, 2 hectares of scrub/woodland, 0.9 hectare of orchards and new park/open space areas. All of these would serve as suitable habitats for wildlife. <sup>[3.85-3.86]</sup>
- 8.73 For all above reasons on main matter (iv) I conclude that the proposed development would not significantly harm the character and appearance of the area. The countervailing environmental benefits more than outweigh the limited landscape harm caused by the loss of green field land. The proposal would comply with aforementioned development plan and emerging plan policies including in particular Policy ENV1 and Policy ENV8 of the WDLP. It would also comply with the relevant provisions of the NPPF. If the SoS disagrees he is asked to note the decision in Burgess Farm, Worsley which demonstrates that even clearly harmful development can represent sustainable development when it is weighed against a substantial shortfall of housing land. It is important to note that there are three dimensions to sustainable development - economic, social and environmental. As paragraph 8 of the NPPF makes clear these roles should not be undertaken in isolation because they are mutually dependent.

***Main matter (v): The effect of the proposals on local highway infrastructure***

- 8.74 Paragraph 32 of the NPPF requires all developments which generate significant amounts of movement to be supported by a Transport Assessment (TA). The appeal proposal is supported by both a TA and a Residential Travel Plan. Read together these demonstrate that the proposed development would take up the opportunities for sustainable transport modes, safe and suitable access to the site could be achieved and improvements are capable of being undertaken which would limit the significant impacts of the proposed development.<sup>[1.5]</sup>
- 8.75 It is important for the SoS to note that the effect of the proposals on local highway infrastructure was not a reason for refusal of this planning appeal. Paragraph 32 of the NPPF also makes clear that development should only be refused on transport grounds where the residual cumulative impacts of development are 'severe'. Furthermore, it is common sense that the traffic proposals should be safe. Having identified the correct tests, it is clear to me that the tests are not amongst others: changes in terms of traffic patterns or an increase in traffic along a particular road.<sup>[3.89, 5.2, 5.7]</sup>
- 8.76 Road safety is primarily the responsibility of the Highway Authority. The Highway Authority has scrutinised the submitted evidence. They have carefully considered these proposals over a long period of time and have no objection to them. The proposals cannot be regarded as potentially having an adverse impact on the trunk road/motorway network as the Highway Agency's formal position is one of non-objection. As LPA, WDC has a responsibility to ask itself whether the development is safe and it has concluded that it is. Highways and transport did not form the basis or indeed part of any reason for refusal. It is against the aforementioned background that the objections raised by SOGOS have to be considered. It also worth bearing in mind that paragraph 187 of the NPPF encourages LPAs to look for solutions and not problems and decision-takers at every level should seek to approve applications for sustainable development where possible.<sup>[3.90-3.91, 5.3]</sup>
- 8.77 As I perceive it, the critical issue between the Appellant and SOGOS relates to forward visibility and side roads, and whether Manual for Streets (MfS) or Design Manual for Roads and Bridges (DMRB) should be used. Mr Pettitt argues for DMRB which are not supported by MfS. It is correct that at one location the major road distance is 59m. The evidence of Simon Tucker and Philip Jones explains why this is sufficient. Their views are consistent with table 7.1 of MfS1. I am aware that forward visibility can even go below that figure if one uses MfS2. Indeed, from the evidence submitted, it is true that the risk of accidents is not necessarily heightened by a shortened visibility distance. It is clear to me that there no unacceptable risk associated with either junctions or forward visibility. It is worth noting that when this scheme gets to the detailed design stage design features would be used to reduced speed such as signage/gateway features.<sup>[3.92, 5.18- 5.26 6.5, 6.7, 6.18, 6.26-6.27, 6.48-6.51, 6.66, 6.70, 6.73]</sup>
- 8.78 SOGOS and others argue that Pulley Lane is presently a narrow country lane and the proposals would lead to significant safety concerns particularly at the bend. However, the regularisation to its current width of 5.5m and the widening of some visibility splays would be beneficial. Furthermore, the

scheme would bring benefits to the Pulley Lane/A38 junction. The junction would become a two lane signalled junction. This measure needs to be set against the additional traffic which would be generated by the development. In any event, some queuing at traffic lights is part of everyday suburban life and this cannot be considered a 'severe' problem in the context of paragraph 32 of the NPPF. [3.93, 5.18-5.26 6.5, 6.7, 6.18, 6.26-6.27, 6.48-6.51, 6.66-6.70, 6.73]

- 8.79 As for Newland Road, up until 1993 it was a two-way road with houses on either side. Any objection based on disruption to this road has to be considered with the road's history in mind. The route has been carefully considered by the Appellant's highway engineers. Clearly, there is no need for a gabion wall which would encroach on third party land. Mr Tucker has demonstrated that it would be possible to use sheet piling without the risk of trespass. Once engineered, the route would become a very attractive walk and cycle route for most of the day with the occasional bus. Indeed, the bus element would be of benefit to both new and existing residents not well served by existing services. [2.16, 3.94, 5.18-5.26, 6.3-6.5, 6.7, 6.18, 6.26-6.27, 6.48-6.51, 6.66-6.70, 6.73]
- 8.80 SOGOS' complaints regarding fire engines and buses on Primslan Way were not substantiated. Neither of these vehicles would need to turn left or right. The fire engines would be going straight ahead as indeed would the buses. If, on the off chance, an emergency vehicle did need to turn, then it could cut over the white lines with its sirens blazing. [3.95, 5.18-5.26]
- 8.81 Inevitably, any substantial development would bring about highway impacts. The location of this site with good access to the centre by cycle and foot minimises its adverse effects. None of the highway effects of this development can be said to be 'severe' in terms of paragraph 32 NPPF. [3.97, 5.18-5.26]
- 8.82 I conclude on main matter (v) that the proposed development would not give rise to harm to highway safety or the free flow of traffic and that relevant development plan policy in the WDLP would not be offended in this respect.

### ***Other Matters – Brine Run***

- 8.83 Evidence was provided to the Inquiry by the Appellant on the Brine Run and its implications on the proposed development. It is the case that there is a considerable body of knowledge about the implications of the Brine Run on development as a result of the Johnson Poole and Bloomer work commissioned by the Council and the situation is summarised in the officer's report to the Planning Committee. Suffice it to say that the presence of the Brine Run has not prevented development of housing areas to the north east and west of the site during the 1990s or within other areas of the town. Engineering measures to mitigate the risk of damage caused by ongoing ground movements would be agreed via the Council's Building Control Department in advance of any development. The Council does not object to the proposal on this basis. The Council has a long history of familiarity with dealing with problems created by Brine Runs and there is no reason to believe that this development would not be similarly controlled. All the statutory consultees support the development. There is no sound and robust evidence to the contrary. Experience suggests that similar development to that proposed in this appeal has taken place by experienced developers within Zone A in the past. [3.98, 5.8-5.17, 5.36-5.39, 6.55, 6.57-6.65]

***Main matter (vi) Conditions:***

- 8.84 There is an agreed list of conditions which were discussed in detail at the Inquiry (Document C7). The conditions have been considered having regard to this discussion, advice in the Appendix A (model conditions) to Circular 11/95 and also the advice in the PPG. The comments in this section and the condition numbers referred to below support and reflect the list produced in the Annex of this Report.<sup>[3.97]</sup>
- 8.85 The scheme is being put forward on the basis that it would make a useful contribution to short term housing needs. It is therefore reasonable to shorten the time period for approval of reserved matters for phase 1. Conditions 1 and 2 otherwise broadly reflect the wording in Appendix A of the Circular. Condition 3 is necessary to ensure the proposed development is constructed in such a way that any new units provided are adequately served by infrastructure and recreation facilities and to promote biodiversity on the site. Conditions 4 and 5 are necessary for the avoidance of doubt and to ensure the proposed development is carried out in accordance with the approved plans, principles and parameters contained within the submitted documents. Conditions 6-10 relate to roads, parking and travel. They are required in the interests of highway safety and sustainable travel. I have deleted the suggested alternative wording to Condition 6 ii) so that the improvements to Pulley Lane/A38 junction are approved and implemented prior to the occupation of the 1<sup>st</sup> dwelling (and not prior to the occupation of the 100<sup>th</sup> or 50<sup>th</sup> dwelling) to ensure the safe and free flow of traffic on the highway.<sup>[3.97]</sup>
- 8.86 Conditions 11-13 relate to noise and construction management and are required to protect the amenities of existing and future occupiers of adjoining properties. Conditions 14 and 15 relate to contaminated land and are necessary to ensure that risks from land contamination to the future users of the land and neighbouring land, controlled waters, property and ecological systems are minimised. Condition 16 is necessary to ensure the proposed development does not cause avoidable harm to any features of archaeological interest. Conditions 17-20 relate to landscaping, trees and nature conservation. They are required to preserve and enhance the visual amenities of the area and to conserve and enhance the natural environment. Condition 21 relates to renewable energy and is required to ensure the prudent use of natural resources. Condition 22 relates to lighting and is necessary to ensure the development does not cause unacceptable levels of light pollution. Condition 23 relates to limits on floorspace and is necessary to safeguard the vitality and viability of Droitwich Spa town centre. Conditions 24-26 relate to drainage and flood risk. They are necessary to reduce the risk of flooding and pollution, to ensure the provision of an adequate and sustainable drainage system and to maintain access to existing watercourses.<sup>[3.97]</sup>
- 8.87 Condition 27 relates to the submission and approval of a Brine Run Monitoring Report. However, the PPG makes it clear that conditions requiring compliance with other regulatory regimes will not meet the tests of necessity and may not be relevant to planning. In the context of this guidance it would not be appropriate to attach a planning condition regarding the Brine Run since this is a matter covered through Building Control regime. I have deleted this condition.<sup>[3.97]</sup>

***Main matter (vii) Planning Obligation:***

- 8.88 A S106 obligation (BDL5) was submitted at the Inquiry and is agreed by the main parties. It was discussed in detail at the Inquiry. Regulation 122 of the Community Infrastructure Levy Regulations 2010 (CIL) indicates that any planning obligation entered into must meet the following tests: (a) necessary to make the development acceptable in planning terms; (b) directly related to the development and (c) fairly and reasonably related in scale and kind to the development. I was also provided with an agreed statement of compliance with the CIL Regulations 2010 (C2). From all the evidence that is before me I consider that the provisions of the S106 Agreement complies with paragraph 204 of the NPPF and meets the 3 tests of Regulation 122 of the CIL Regulations 2010. I accord the S106 Agreement significant weight and I have had regard to it as a material consideration in my conclusions. I conclude that the Appellant has made adequate provision for mitigating any adverse impact that the proposal would have upon local services and infrastructure. <sup>[3.97]</sup>

**CONCLUSION**

- 8.89 Having examined all the evidence before the Inquiry I consider that the proposal would not be consistent with a strict interpretation of Policy GD1 of the WDLP but little weight can be afforded to this because the policy is clearly out of date. Other housing supply policies such as Policy SR1 and ENV1 are similarly out of date and can be given little weight. I consider there is no overall conflict with the development plan. Any development plan conflict is significantly outweighed by the inability of the Council to robustly demonstrate a 5 year housing land supply. The Council has failed to make adequate housing provision despite the warning of the Saving Letter some 5 years ago. The emerging SWDP has far to go before its adoption after making an uncertain start and clearly many thousands more homes than are catered for in the draft SWDP will be required. The presumption in favour of a grant of planning permission applies in this case for a variety of reasons: (a) the inadequacy of the 5-year supply; (b) 'absent' provision in saved Local Plan policies for provision of housing post-2011; and (c) out-of-date policies.
- 8.90 With regard to landscape impact I found that the proposed development would not significantly harm the character and appearance of the area. The countervailing environmental benefits more than outweigh the limited landscape harm caused by the loss of green field land. Issues raised by SOGOS and others in relation to local highway infrastructure have all been properly addressed by statutory consultees whose conclusions have not been demonstrated to be wrong at this Inquiry. Any residual matters of detail would be adequately controlled by the imposition of conditions and/or the reserved matters application process. The exercise of the paragraph 14 balance demonstrates that the benefits of the scheme are not 'significantly and demonstrably' outweighed by the alleged disadvantages. Overall I recommend the SoS to grant planning permission for the proposed development of Appeal A subject to the imposition of conditions.

## **Appeal B – Land north of Pulley Lane and Newland Lane, Droitwich Spa**

### ***Main matter (i) The extent to which the proposed development is consistent with the development plan for the area and would deliver a sustainable form of development***

- 8.91 The Council argues that Appeal Site B lies outside the defined boundary of Droitwich Spa and that policies for the open countryside apply. It is claimed that Policy GD1 is not out of date and that the strategy of the WDLP to concentrate most development on existing settlements is still relevant. Other policies including Policy SR1, Policy ENV1 and Policy ENV 8 of the WDLP are also claimed to be still relevant and consistent with the NPPF. The Council says the proposal is contrary to the development strategy of the WDLP. It accepts that the development plan consists solely of the WDLP which was adopted in 2006 and in place until 2011. In substance, only 4 policies within the WDLP are relied upon by the Council and the objectors as giving rise to inconsistency. These are Policy GD1, Policy SR1, ENV1 and Policy ENV8. <sup>[2.3, 2.15, 4.8]</sup>
- 8.92 It is noteworthy that Policy GD1 expressly and unconditionally applies to ‘new development to 2011’. It was plainly not designed to meet housing needs in 2014 and is redundant in today’s changed policy, economic and legal context. Despite the unequivocal wording in Policy GD1, the Council maintained that significant weight should be afforded to it. Closer examination illustrates why that is ill advised. <sup>[2.3, 2.15, 4.9]</sup>
- 8.93 The second paragraph of Policy GD1 includes a reference to the ‘sequential preference will be given first, to the re-use of previously developed land and buildings’. This implements a previous sequential policy from the RSS and the old PPG/PPS3; it is not replicated in the NPPF or in the emerging SWDP in connection with sustainable development. Further, the prioritizing of Evesham in the wording of Policy GD1 does not survive the emerging SWDP. These changes reflect a deliberate shift in policy to loosen restrictions on urban extensions and greenfield land. <sup>[2.3, 2.15, 4.10]</sup>
- 8.94 The SoS will be aware that the Saving Letter made clear that the preservation of the policies was intended to be temporary, that there was a clear requirement to press on with the preparation of the replacement plan and that in the meantime the old policies should be approached bearing in mind new policy material in Government advice. Furthermore, it was noted in the Honeybourne decision, that using the old WDLP policies was not good enough and that the housing provision policies were out of date. When examined in August 2012, the policies were found to be time expired and out of date so limited weight could be given to them. <sup>[2.3, 4.11]</sup>
- 8.95 A similar approach can be found in the Bishops Cleeve decision in which the SoS further reinforced that Localism required local communities and Councils to face up to the hard choices in relation to the provision of development and if they did not and they failed to make provision for necessary development then decisions would inevitably need to be taken to provide it on appeal. <sup>[2.3, 4.12]</sup>
- 8.96 Plainly Policy GD1 is no longer fit for purpose. It was formulated in a world and in a context very different to one we find ourselves in today. It is not based on the full objectively assessed needs, referred to in paragraph 47 of the NPPF.

Applying the restraints outlined in Policy GD1 would not help the Council meet its housing requirements in 2014 because land beyond the settlement boundary needs to be released for development: a sequential approach would not deliver the urgently needed housing in Wychavon and it is not consistent with the NPPF. This was further identified in the Inspector's decision at Humberstone, endorsed by the SoS in November 2013.<sup>[2.3, 2.15, 4.13]</sup>

- 8.97 The Council did not accept that Policy GD1 is out of date but it ultimately accepted that Policy SR1 was out of date. The Council argued that the two policies should be read together but that one is out of date and the other is not. In my view that is an inconsistent and indefensible position. Notwithstanding this and in so far as the Council readily accepted that Policy SR1 is out of date, paragraph 14 of the NPPF applies thereby triggering the presumption in favour of sustainable development.<sup>[2.3, 2.15, 4.14-4.15]</sup>
- 8.98 Policy ENV1 applies a Special Landscape Area (SLA) designation to the site. However, I note that the Inspector in the Tenbury appeal concluded that Policy ENV1 was also a housing supply policy which should be set aside absent a 5 year supply. It is the evidence of the Appellant that the wording of Policy ENV1 demonstrates that the SLA designations are not determinative and that the policy must be read in the context of other policy documents. Logically these include the 2011 Landscape Character Assessment (LCA) which becomes a new yardstick by which to measure landscape impact. I recognize that Policy ENV1 is a general policy in relation to protection of the landscape and the SLA designation has, in accordance with the provisions of the WDLP, been superseded by the publication of the 2011 LCA. Other relevant policy includes "A New Look at Landscape of Worcestershire" in 2004 and "Planning for Landscape in Worcestershire, 2008". The Council accepted that the 2011 LCA prevails over the SLA designations.<sup>[2.21, 4.16-4.18]</sup>
- 8.99 Drawing the above points together, the evidence demonstrates that the Council relies on an out of date plan, primarily through the express wording of the old policies, previous Inspector's findings, and underlying it all, the fact that the evidence and policy context for the old WDLP has dramatically changed and can no longer be a sound basis for any meaningful application to this proposal. By way of default the NPPF applies.<sup>[2.3, 4.19]</sup>
- 8.100 Following on from that whilst as a bald fact the proposals are contrary to Policy GD1, once the exercise required by the High Court decision in *Hampton Bishop* is undertaken and the policy is viewed through the prism of up to date consideration and in particular the NPPF, little weight indeed can be attached to that fact. I have to consider the proposal in the context of the other main matters which have been identified before coming to an overall conclusion in relation to the development plan.<sup>[4.6]</sup>

***Main matter (ii) Whether the proposed development is premature in the light of the emerging SWDP and national guidance***

- 8.101 In the context of prematurity, the Council contends that given the good progress on the emerging SWDP, the substantial scale of the proposed development and the sensitivity of the local landscape to such significant change warrants refusal of the proposed development. It is argued that the proposal is counter to the strategy of the emerging SWDP. The position of the

Council at the close of the Inquiry was that the emerging SWDP may not yet be adopted but it has advanced to Examination stage and therefore carries greater weight than a pre-submission plan. Furthermore, it is pointed out that there is no suggestion that the underlying strategy of directing development to existing settlements is unsound. The Council, supported by local Councillors and other local objectors claimed that the proposal would significantly prejudice the strategy of the emerging SWDP and undermine the pattern of growth set out therein, by allowing large scale development, which would cause significant harm to the character of the area.<sup>[2.7-2.9, 6.17, 6.20, 6.43, 6.66]</sup>

- 8.102 The Appellant submitted evidence in relation to prematurity in the guidance contained in 'The Planning System: General Principles'. However, that guidance has been cancelled by the PPG issued on 6 March 2014. I have already set out relevant guidance from the NPPF (paragraph 216) and the PPG (paragraph 14) at paragraphs 8.26 and 8.27 of this Report so there is no need to repeat it here.<sup>[4.21]</sup>
- 8.103 The SoS should also be aware that in two High Court decisions, prematurity arguments identical to the ones in this appeal failed. Those judgments made clear that there was nothing in the Localism Agenda which required the plan making process to be completed before decisions could be made.<sup>[2.7-2.9, 4.22]</sup>
- 8.104 With regard to the plan-making process, it is clear to me that the SWDP process has been significantly delayed: the methodology for the housing calculation has been found in no uncertain terms to be "*unreliable*" not providing a sound basis for the planning of housing provision in the area, with "*three fundamental shortcomings*", resulting in an order that further analysis be undertaken to derive an objective assessment of housing need.<sup>[2.7-2.9, 4.23]</sup>
- 8.105 The position of the Appellant is that the emerging SWDP is in a "parlous state" in light of the extensive work that was still required. I accept that there will be a need for further assessment of future allocations and subsequent consultation (to be supported by a SEA). This needs to be settled by all 3 authorities at a time when there is clearly no political appetite for further housing provision anywhere. Consequently, there is little hope that the process would be completed before 2015.<sup>[2.7-2.9, 4.24]</sup>
- 8.106 Despite the Council's submission of additional information on housing at the Inquiry, at the close of this Inquiry there is still no new housing requirement figure. Whilst the SWDP may have been submitted for Examination, I consider this is not an advanced stage of the Plan. We are in fact at a state where further land is likely to be required. There are correctly doubts in the Council's mind as to the integrity of the plan making process at present in the light of the fact that the Inspector in March 2014 will not have any proposed modifications containing an alternative figure before him. How therefore the future progress of the Plan is to be handled procedurally has yet to be decided.<sup>[2.7-2.9, 4.25]</sup>
- 8.107 The Council argued prematurity in terms of location and phasing but not in terms of scale as the proposal for up to 265 dwellings was less than Appeal Site A. This is misconceived because the three elements cannot be disaggregated, especially in light of the status in the extant and emerging plan that Droitwich Spa enjoys as one of the higher tier settlements. The fact is that

the scale of both proposals is not such as to prejudice decisions about distribution of development: as the Report to Committee pointed out, taken together, the proposals represent a mere 16.9% increase in households in the parish of Droitwich Spa over the plan period.<sup>[2.7-2.9, 4.26]</sup>

8.108 The Council further relies on the appeal at Kentford. However, it is clear in that case Kentford's Village status was a primary village with a poor range of services - completely different to Droitwich Spa, which has a full range of facilities and sufficient infrastructure for further development.<sup>[2.9, 4.27]</sup>

8.109 The Council's stance on prematurity is even more difficult to understand in light of its decision to grant permission for 740 dwellings at Copcut Lane. I consider this inconsistency undermines the Council's argument. The weakness in the Council's position on RFR1 and prematurity is patently clear on any analysis. In my view this was an unreasonable RFR and does not withstand scrutiny. The Council's own officer observed that it would be difficult for the Council to demonstrate clearly how the grant of planning permission would prejudice the outcome of the DPD process.<sup>[2.7-2.9, 4.28-4.29]</sup>

8.110 In my view once the status of Droitwich Spa in the hierarchy is acknowledged the simple fact is that in Droitwich Spa there are few if any alternative options which have not already been deployed in the SWDP. The reality is that Yew Tree Hill was only rejected because the Committee preferred Copcut Lane. That option no longer exists. Droitwich Spa is a sustainable settlement and at the top of the settlement hierarchy in SWDP48. Within Droitwich Spa, being constrained by the greenbelt, floodplain and historic environment, Yew Tree Hill is the only option left without imperiling those critical environmental constraints. There is no evidence, let alone any appetite, which would justify the contention that development needs should be met in that way.<sup>[4.30]</sup>

8.111 On main matter (ii) I conclude that, for all of the reasons outlined above, the Council's reliance upon prematurity as a reason for refusal cannot stand. It is contrary to the weight of guidance, policy and judicial decisions and no relevant precedent has been provided for it.

***Main matter (iii): Whether the proposed development is necessary to meet the housing needs of the district bearing in mind the housing land supply position***

8.112 The Council's evidence is that it can demonstrate a 5-year supply of housing land. It maintains that since the Honeybourne decision (August 2012) it has granted permission for a significant number of additional homes on several sites, where such development is regarded as sustainable and meets the other objectives of the NPPF. The Council's position is that against a total requirement of 10,133 dwellings, equivalent to 422 dwellings per annum, it can demonstrate 6.76 years housing supply. This includes a 2.6% vacancy rate and a 0.8% allowance for second homes. The Council maintains that it has provided clear evidence to demonstrate that the sites in question are "deliverable" in the context of Footnote 11 of the NPPF and the advice contained in the PPG.<sup>[2.8-2.14]</sup>

8.113 Furthermore, the Council argues that at the present time the precise outcome in respect of housing figures cannot be predicted albeit the SWDP Inspector

has indicated in his Interim Conclusions that it may be significantly higher than the current figure. In the Council's view the decision as to the quantum and spatial distribution of any additional housing requirement can only be made through the local plan process, where the constraints can and will be considered. However, the question of a 5-year housing land supply is disputed by the Appellant.<sup>[2.9]</sup>

- 8.114 As a preliminary matter the SoS should note that the Council officers are agreed that the Council does not enjoy a 5-year land supply and therefore cannot satisfy the requirement of paragraph 47 of the NPPF. In addition, the reader's attention is drawn to paragraphs 8.40-8.60 of my Report above and in particular to paragraphs 8.58 and 8.59 where I have concluded in relation to Appeal A that the Council does not have a 5-year supply. There is no need to repeat the detail of the various components of housing needs and supply within Wychavon in relation to Appeal B as they have already been set out in my Report for Appeal A. However, there are several additional points which were raised in evidence and which need to be highlighted.<sup>[4.31]</sup>
- 8.115 The first point to note is that part and parcel of the 5-year land supply calculation is that the Council has failed for a considerable period of time to deliver its housing requirement. That leads to the acceptance that in this case a 20% buffer is appropriate in relation to the housing land supply assessment. The evidence therefore demonstrates that there is a long-standing chronic problem with housing delivery in South Worcestershire and Wychavon. The same was noted in the Inspector Clews' Interim Conclusions.<sup>[2.8-2.14, 4.32]</sup>
- 8.116 In this case the position is far worse than the Council's assessment thus far has suggested. The SWDP Inspector has made clear that there were "*three fundamental shortcomings*" in the SHMA used by the Council to calculate housing need. These were: firstly, the failure to use household representative rates (HRR) drawn from the 2008-based DCLG projections or any other official population or household statistics; secondly, the Council's use of the unreliable Cambridge Economics as a basis for predicting job growth and resultant household growth; and thirdly, the lack of evidence to support the assumed increased in older peoples' economic activity, based on unclear assumptions.<sup>[4.33]</sup>
- 8.117 The Inspector therefore concluded that the objectively assessed housing need figure for the plan period "is likely to be substantially higher than the 23,200 figure identified in the submitted plan" and that further work was required to rectify this calculation. He advised that this further work should be combined with the NLP "index" approach and should be carried out using the latest official population projections to translate those projections into future household numbers. The range of the additional housing need canvassed by the Inspector included the following: 34,000 (Barton Wilmore, not supported by the Inspector); 32,000 (by NLP, assessed as methodically sound, albeit caveated); 26,800 (PSL, considered to be "illuminating", but the adjustments were insufficiently unreliable); and between 23,700-27,000, with a mid-point of 25,850 (by Pegasus, the mid-point found to be insufficient because it did not include the employment adjustments).<sup>[4.34- 4.36]</sup>
- 8.118 Therefore at the close of the Inquiry a housing requirement of substantially more than 23,200 and possibly up to 34,000 seems likely. This is, in the main,

because unless the new figure is in this region, there are unlikely to be unresolved objections, a key factor affecting the weight to be attached to the emerging SWDP, as paragraph 216 of the NPPF makes clear. The Appellant estimates that there is an additional need for a minimum of 8,800 dwellings. All parties are agreed that it is not for me to determine what the precise figure should be. That is beyond the remit of these appeals and is a matter for the local planning process. Suffice it to say that significant number of additional dwellings will have to be provided for over and above the figure indicated in the submitted version of the SWDP.<sup>[2.8-2.14, 4.37]</sup>

- 8.119 The question which then arises is as to the likely location of the additional housing. The evidence overwhelmingly proves that Wychavon is the least constrained authority: Worcester City's built-up area is tightly contained inside its boundaries and there is insufficient space in the City's administrative area to meet all its needs for development, especially housing; Malvern Hills has limited ability to accept new development due to its natural and environmental constraints. This leaves Wychavon, with fewer constraints than Worcester City or Malvern Hills, as the natural destination for the lion's share of the additional housing requirement bearing in mind in particular the duty to co-operate. Mr Brown sought to dispute this on the basis that constraints are not fixed but it is difficult to see how the AONB in Malvern Hills might change in the future, for example.<sup>[2.8-2.14, 4.38]</sup>
- 8.120 From the evidence that is before me the best location within Wychavon is clearly Droitwich Spa when compared against Evesham or Pershore. Growth in Droitwich Spa, between 2006 and 2013, was the smallest of all 3 towns, with a population increase of only 5.6% in this period. Some 750 homes would represent an increase from 5.6 to 8.9%. With Copcut Lane, that increases to 12%, still less than the % increases seen in Pershore or Evesham.<sup>[2.8-2.14, 4.39]</sup>
- 8.121 In my view, the Council's approach of directing development outside the conurbation boundaries is no longer tenable in the changed policy context of the NPPF and the presumption in favour of sustainable development. The sea-change brought about by the NPPF recognises that development outside conurbations is appropriate in today's climate of an under-supplied housing market. The simple fact is that there is a serious need for additional homes. Within Droitwich Spa, Copcut Lane is insufficient on its own to meet those needs and Yew Tree Hill is the logical next step.<sup>[2.8-2.14, 4.40]</sup>
- 8.122 The SoS should be aware that a major plank of the Appellant's evidence is the significant under provision of affordable housing set against the established need figure and the urgent need to provide affordable housing in Wychavon. If the position in relation to the overall supply of housing demonstrated a general district-wide requirement for further housing, that requirement becomes critical and the need overriding in relation to the provision of affordable housing. The most recent analysis in the SHMA (found to be a sound assessment of affordable housing needs) demonstrates a desperate picture bearing hallmarks of overcrowding, barriers to getting onto the housing ladder and families in crisis.<sup>[4.42]</sup>
- 8.123 There are nearly 5,000 households on the waiting list, 35% of whom are families with children. Over a fifth of those have a local connection and are in priority need. The SHMA indisputably records that affordability is at crisis

point. Without adequate provision of affordable housing, these acute housing needs will be incapable of being met. In terms of the NPPF's requirement to create inclusive and mixed communities in paragraph 50, this is a very serious matter. Needless to say these socially disadvantaged people were unrepresented at the Inquiry.<sup>[4.42]</sup>

8.124 These bleak and desperate conclusions are thrown into even sharper focus by an examination of the current circumstances in Wychavon itself. Over the whole of the District's area there is presently a need for 268 homes per annum. These are real people in real need now. Unfortunately, there appears to be no early prospect of any resolution to this problem. Firstly, the 2009 AMR recognizes that between 2005 and 2009, only 229 affordable homes were delivered, an average of some 55 per annum. Over the following 8 year period, between 2009 and 2013, some 501 were delivered, or an average of 62 per annum over a whole economic cycle. Given the continuing shortfall in affordable housing within the District, I consider the provision of affordable housing as part of the proposed development is a clear material consideration of significant weight that mitigates in favour of the site being granted planning permission.<sup>[4.43- 4.44]</sup>

8.125 Secondly, although SWDP15 (and supporting text) notes that 657 dwellings are needed over the next 5 years, a solution still remains a relatively distant prospect given the state that the forward-planning process finds itself in at present. The information shows that the delivery of affordable housing in Wychavon has been very poor. There are no allocations for housing purposes which would begin to address the significant housing crisis in Wychavon. Furthermore, none of the permissions identified are capable of addressing the need. There is thus no solution identified by the Council to begin to address the crisis in housing provision for the substantial number of households living with housing need which the Council can identify. And as the map made clear, those living in Droitwich Spa are amongst the unluckiest as it is one of the most unaffordable places for housing.<sup>[4.46]</sup>

8.126 It seems to me that the Council has largely ignored the affordable housing need in its evidence. The poor delivery record of the Council has also been largely overlooked. The Council's planning balance is struck without any apparent consideration being given to one of the most important reasons why housing in Droitwich Spa is needed. From all evidence that is before me the provision of affordable housing must attract very significant weight in any proper exercise of the planning balance.<sup>[4.47]</sup>

8.127 On main matter (iii) I conclude that the Council does not have a 5-year supply and the proposed development is necessary to meet the housing needs of the district.

***Main matter (iv): The effect of the proposed development on the character and appearance of the area***

8.128 The Council, supported by local objectors, maintains that the proposed development would give rise to demonstrable adverse impacts to the overall landscape, including character and in terms of visual effects, thereby failing to achieve the environmental objectives of sustainable development. In the overall balancing exercise it is claimed, that the adverse impacts would be

significant enough to outweigh the benefits of the scheme and permission should therefore be refused. The Council accepts that taken in isolation Appeal B would have less impact than Appeal A but it is still considered harmful lying as it does close to the interface between two Landscape Character Areas and clearly impacting on both. It is argued that Appeal B gives rise to significant visual impacts, including public rights of way, which are assessed as major/moderate adverse in the long term.<sup>[2.15-2.17, 6.18, 6.30, 6.31-6.38, 6.46, 6.66, 7.1]</sup>

- 8.129 However, it is important for the SoS to note the benefits of the landscape-led approach to the masterplan. It proposes several benefits and was endorsed by the Council officers. The strategy retains the elevated southern part of the site as open space and development is proposed to be restricted to at or below the 73.5m contour generally with planting proposed to the elevated southern part of the site to provide a vegetated backdrop to the development when viewed from the north. Plainly the proposed development would be concentrated on the central and northern part of the site where there is a greater degree of visual containment but set back from the public footpath to the north to create a green corridor which also incorporates provision for SUDS.<sup>[2.15-2.17, 4.48]</sup>
- 8.130 Furthermore, perimeter hedgerows/trees and the existing hedgerow that subdivides the site are to be retained and new hedgerows introduced to create a series of development "cells". This network of hedgerows is intended to reflect the local landscape character and provide elements of visual containment.<sup>[2.15-2.17, 4.49]</sup>
- 8.131 The position of the Appellant is that there are two aspects to the Council's case in relation to landscape effects and the impact on the visual amenity of the area. The first is the question of policy context and the second concerns the assessments. I agree that the historical context of the SLA needs to be borne in mind when assessing the weight to be given to it. The 1993 Local Plan Inspector concluded that this parcel of land should be excluded from the Green Belt and that the shallow valley of the appeal site should be examined as a plausible candidate for future development. I am aware that this was reiterated in the 1995 PTP Report with the note that Pulley Lane and Newland Lane should form the boundary of the Green Belt and provide a firm boundary in the long term for the settlement. By delineating a boundary in this way, allowance was being made for future development needs. It is clear to me that even in 1993 and 1995 this site was identified as a potential area for development.<sup>[4.50-4.51]</sup>
- 8.132 As housing needs increased, development in the area has evolved. Although the Council asserted that nothing has changed since the 1995 Report the facts indicate that significant elements of development have occurred around the site: additional housing to the east and the Bellway Homes site have clearly changed the immediate context of the site. Furthermore, nothing has been done to advance any proposal for a country park. This is the context from which the SLA designation emerged and thus its application must be caveated: the conclusions would only hold until 2011 or else no option for Droitwich to expand would be available; and the SLA was to be integrated into the Landscape Character Assessment as set out at paragraph 8.98 above.<sup>[4.52-4.53]</sup>

- 8.133 The Guidelines for Landscape and Visual Impact Assessment 3<sup>rd</sup> Edition (Purple Book) further indicates that special landscape designations are to carry less weight in the context of Landscape Character Assessments. As such the LCA prevails over the SLA and is incorporated into the plan. However, it is clear to me that it is not good enough to assume that the LCA is determinative. Further assessment must be carried out to properly determine the landscape impact of the scheme on the site. It is a starting point, as set out in the Purple Book, which seeks to move away from the mechanical approach or applying perfunctory assessments. Similarly, the flowchart relied on by the Council has no support in the Purple Book as the assessment method of landscape impact. Rather, it is a tool that provides some perspective. The document itself observes that having considered the flow-chart one should then undertake the necessary site work required to formulate a proper assessment of the detailed character of the landscape of a site and the effects upon it. [2.15-2.17, 4.54-4.56]
- 8.134 That approach is reflected in the fact that notwithstanding the Settled Farmlands with Pastoral Use description, the Bellway Homes and Copcut Lane developments are both within this designation. Had the approach that Ms Illman advocates been applied to those proposals, they would have probably been refused. To my mind these decisions comprise a very clear inconsistency in the Council's case. [2.15-2.17, 4.56]
- 8.135 As I perceive it reading the LCA as a whole, it is clear that landscape is only one aspect of decision-making; and that meeting the need for sustainable development on the edge of sustainable settlements is also an important factor. This is an important context which is missing from the evidence provided by the Council. Droitwich Spa has at its edge either Settled Farmlands with Pastoral Use or Principal Timbered Farmlands, the latter being less suitable for development than the former in terms of resilience to development, and the lower lying land contained therein. Therefore, the Landscape Character Area in which the site is located is the best option for Droitwich Spa in landscape character terms measured against the LCA. [2.15-2.17, 4.57-4.58]
- 8.136 Turning to the quality of the assessment carried out it is apparent from the initial Illman Young Report that there was no instruction to provide any assessment of Appeal Site B. Why that is has not been explained. What is clear is that the assessment of the Council's own landscape expert was supportive of the scheme which had been designed and did not conclude that the landscape impacts were unacceptable. [2.15-2.17, 4.59]
- 8.137 The Council considers the impact of the proposed development on the landscape resource and visually would be sufficiently adverse to warrant dismissal of this appeal. I disagree for several reasons. First, there is an absence in the evidence of any explanation of the methodology carried out to reach those conclusions. Nowhere does the Council set out any calibration, any analysis or any rationale for those judgments. Secondly, by way of contrast, the Appellant's evidence follows a logical flow and describes in detail how and why the conclusions on landscape impact are reached. Thirdly, the same can be said about the Council's assessment of the visual effects of the scheme. Reliance is placed on obtaining a ZTV but this approach was exposed as painting a misleading picture of the visibility of the site. Table C in the Council's evidence fails to make the connection between observations and

conclusions: nowhere is there a description or definition of the significance of change and the magnitude of impact; nowhere is there any description of the individual effects, leaving the Inquiry in the dark as to what is meant by terms such as "large" and "major" when describing the impact.<sup>[2.21, 4.60]</sup>

8.138 Drawing together the above points it seems clear to me from the evidence submitted that the conclusions to be reached in relation to this issue are as follows. Given the scale of the overall Landscape Character Area of this type the effect of the proposals are not significant. When the more local LDU is examined it is clear that the character of the landscape has had its rurality eroded by the recent development in the vicinity. As a result the impact on the LDU landscape character would also be acceptable. Turning to the issue of visual effects there are very limited views of the site from the wider landscape. Whilst there would be some change to very local views firstly, these are views in which the urban form of Droitwich Spa is already evident and, secondly, as a result of the careful siting of the development on the lower lying land the extent of visual effect would be minimised. My site visits confirmed these conclusions. In summary, there is no logical basis to refuse the proposals on the basis of landscape impact.<sup>[2.21, 4.61]</sup>

8.139 It is necessary to consider the potential impacts in the event that both schemes were to be approved. In reality the additional impact of Appeal B in landscape terms if Appeal A is approved is de minimis. The Appellant has approached this issue on the basis of considering the effect of both sites together as a single entity and this demonstrates whilst the impact on landscape character and visual effect would be greater, again it would not amount to a basis for refusing the schemes. The proposals sit within the same Landscape Character Area and LDU, and the assessment of the LDU shows that it is relatively resilient to change. Coupled with the substantial provision of green infrastructure the overall result of the proposals would bring benefits to clearly off-set the initial impact of the development.<sup>[4.62]</sup>

8.140 There would be changes to the visual effect of the development but still no impact upon the wider landscape. More development would be seen from the closer views but again the magnitude of change, given the existence of views of development already in these views moderates the possible extent of the impact and demonstrates that the development, akin to the other recent developments around the sites, can be properly assimilated into views back towards Droitwich Spa from the wider countryside. For all above reasons on main matter (iv) I conclude that the proposed development would not significantly harm the character and appearance of the area and the scheme would comply with pertinent development and emerging plan policies including in particular Policy ENV1 and Policy ENV8 of the WDLP and the relevant provisions of the NPPF.<sup>[4.63]</sup>

***Main matter (v): The effect of the proposals on local highway infrastructure***

8.141 On this issue I have already set out the relevant NPPF advice above at paragraph 8.75 and 8.76. The SoS should also be aware that there was no RFR on highway or transport grounds. The proposal before the Inquiry includes provisions for public transport and road widening which would enhance the

accessibility of the site both by slow modes and by public transport. These provisions have been accepted not only by WCC but have passed an independent safety audit providing the necessary assurance that the site would be safe and accessible. SOGOS and other local objectors have made points in relation to the present position of the site in terms of the impact on traffic flows. However, those fall away in light of the fact that the flows used have been derived from an independent model and Pulley Lane has an adequate design and capacity to cope with the additional flows. SOGOS also refers to significant increases in traffic flows on Pulley Lane but the use of percentages is obviously misleading when the existing flows on this link are so low. The forecast flows are well within the design capacity of the road and in my view would pose no difficulty in engineering terms. [4.64, 5.2-5.3, 5.7, 5.18, -5.26, 6.5, 6.7, 6.186.27, 6.35, 6.48-52, 6.70-6.72]

8.142 With regard to the site access concerns, the Appellant explained in evidence that the point about the visibility splay is based on using a standard of deceleration from trunk roads and motorways to a road which would be residential in character. Using realistic speeds and deceleration rates the visibility splay would be acceptable, a point endorsed by WCC and the safety audit. Using Manual for Streets and after speeds have been managed as a result of the Section 278 works the visibility splay functions. There is no accident history of safety problems on this highway network. [4.65]

8.143 It is noteworthy that the extent of the public transport contribution would secure a long term future for the bus service. Messrs Tucker, Jones and WCC have designed the bus service to pick up a number of residential areas in addition to serving the site so as to provide ridership and support for the revenue stream generated by the service. The bus service would necessarily improve the current service and provide a strong linkage both to the town centre and the appeal site, providing therefore an appropriate and sustainable alternative to the use of the private car. These proposals therefore would bring about a wider public benefit to the existing community in the form of enhanced public transport. It is further important to reinforce that the junction arrangements at Pulley Lane/A38 which are proposed would not only assist in resolving existing highway safety issues but also in terms of providing an acceptable design solution. I conclude on main matter (v) that the proposed development would not give rise to harm to highway safety or to the free flow of traffic and that relevant development plan policies in the WDLP would not be offended in this respect.

***Main matter (vi): Whether any permission should be subject to any conditions and, if so, the form these should take***

8.144 There is an agreed list of conditions which were discussed in detail at the Inquiry (Document C8). The conditions have been considered having regard to this discussion, advice in the Appendix A (model conditions) to Circular 11/95 and also the advice in the PPG. The comments in this section and the condition numbers referred to below support and reflect the list produced in the Annex of this Report. [4.68]

8.145 The scheme is being put forward on the basis that it would make a useful contribution to short term housing needs. It is therefore reasonable to shorten the time period for approval of reserved matters for phase 1. Conditions 1 and

2 otherwise broadly reflect the wording in Appendix A of the Circular. Condition 3 is necessary to ensure the proposed development is constructed in such a way that any new units provided are adequately served by infrastructure and recreation facilities and to promote biodiversity on the site. Conditions 4 and 5 are necessary for the avoidance of doubt and to ensure the proposed development is carried out in accordance with the approved plans, principles and parameters contained within the submitted documents.<sup>[4.68]</sup>

8.146 Conditions 6-10 relate to roads, parking and travel. They are required in the interests of highway safety and sustainable travel. I have deleted the suggested alternative wording to Condition 7 ii) so that the improvements to Pulley Lane/A38 junction are approved and implemented prior to the occupation of the 1<sup>st</sup> dwelling (and not prior to the occupation of the 100<sup>th</sup> or 50<sup>th</sup> dwelling) to ensure the safe and free flow of traffic on the highway. Conditions 11 and 12 relate to noise and construction management and are required to protect the amenities of existing and future occupiers of adjoining properties.<sup>[4.68]</sup>

8.147 Conditions 13 and 14 relate to contaminated land and are necessary to ensure that risks from land contamination to the future users of the land and neighbouring land, controlled waters, property and ecological systems are minimised. Condition 15 is necessary to ensure the proposed development does not cause avoidable harm to any features of archaeological interest. Conditions 16-19 relate to landscaping, trees and nature conservation. They are required to preserve and enhance the visual amenities of the area and to conserve and enhance the natural environment. Condition 20 relates to renewable energy and is required to ensure the prudent use of natural resources. Condition 21 relates to lighting and is necessary to ensure the proposed development does not cause unacceptable levels of light pollution. Conditions 22-24 relate to drainage and flood risk. They are necessary to reduce the risk of flooding and pollution, to ensure the provision of an adequate and sustainable drainage system and to maintain access to existing watercourses. There is no need to attach a planning condition regarding the Brine Run since it does not extend to Appeal Site B. It is principally to do with foundations and is therefore a matter for Building Regulations and not planning.<sup>[4.68]</sup>

***Main matter (vii): Whether any planning permission granted should be accompanied by any planning obligations under section 106 of the 1990 Act and, if so, whether the proposed terms of such obligations are acceptable***

8.148 Document C3 is a signed and completed s106 Planning Obligation Agreement, dated 11 February 2014 between the Appellant, the LPA and WCC. The Appellant and the Council have entered into a s106 Agreement by virtue of which £207,529.45 is payable as the "Worcester Transport Strategy Contribution." Document C3 also contains a statement which provides a summary of the obligations contained in the Agreement and how each complies with the legal tests of Regulation 122 of the CIL Regulations 2010.<sup>[4.69]</sup>

8.149 The Appellant maintains that Schedule 4 of the s106 Agreement is not compliant with the legal tests in light of the conclusions in the Appeal Decision

at Ronkswood Hospital and that, pursuant to clause 5.3, Schedule 4 is unenforceable. In that appeal, where the main issue was the compliance of the s106 Transport contribution with the Regulation, the Inspector scrutinised the Worcester Transport Strategy (WTS) as the policy basis for the contribution. The Inspector concluded that the WTS, which consists of a package of infrastructure and service schemes, was too general and there had been no evidence to demonstrate how any of those schemes directly related to the development. He concluded that the contribution calculated by reference to the WTS was not CIL-compliant.<sup>[4.70-4.75]</sup>

- 8.150 In order to be "CIL-compliant", Regulation 122 requires that an obligation be necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind to the development. The Worcester transport network is congested and subject to poor performance. Development projected in the emerging SWDP will create additional traffic, cumulatively causing severe network performance deterioration as shown by the Worcester Transport Model (WTM). The WTS will support the emerging SWDP by improving network performance. As 14.2% development traffic will route to congested sections of the Worcester network (allowing for travel measures), the impact of development traffic forms part of the cumulative impacts shown by the WTM, so mitigation secured by the s106 Planning Obligation is required to make the development acceptable. This is consistent with the approach used for the Copcut Lane development.
- 8.151 The WTS will mitigate the cumulative impacts, of which this development's traffic forms a part, and the specific locations the contribution is to be dedicated to is that most used by development traffic routing to Worcester, so the Planning Obligation is directly linked to the development. The SoS should be aware that it is acceptable to the Council to dedicate the WTS contribution to improvements to the A38, Hurst Lane and Cotswold Way corridors as the element of the network most affected by the development traffic.
- 8.152 The WTS contribution is proportionately calculated according to the amount of development traffic routing to the Worcester network so is reasonably related in scale. An original calculation was made, but following revision of this to cater for the 14.2% traffic routing to the WTS area the contribution was reduced to £207,529.45. The emerging SWDP Policies SWDP04 and 07 provide for development to contribute to infrastructure requirements. In my view that is consistent with the NPPF and should carry weight. The proposed contribution is therefore in conformity with the emerging policy. The contribution is also in conformity with the Local Transport Plan (LTP3) policies providing for development to contribute to infrastructure requirements and this is a material consideration of some weight in this case. I consider that there are material differences with the Ronkswood case and the WTS contribution sought in this appeal is more robustly and precisely justified. The WTS contribution complies with the requirements of Regulation 122 of CIL Regulations 2010.
- 8.153 Overall I consider that the s106 Agreement meets the 3 tests of Regulation 122 of the CIL Regulations 2010 and the criteria in paragraph 204 of the NPPF. I accord the s106 Agreement significant weight and I have had regard to it as a material consideration in my conclusions.

## PLANNING BALANCE

- 8.154 In the light of my conclusions on the main matters it is necessary to draw the factors together and feed them into the equation provided by paragraph 14 of the NPPF in circumstances where the main policies are out of date. The effect of applying the presumption is that the planning balance shifts in favour of the grant of consent. Only if the Council is able to demonstrate harm which "significantly and demonstrably" outweighs the benefits of the development should consent be refused. The harm must be of sufficient gravity to significantly and demonstrably outweigh the benefits. The reason for that significant shift in the planning balance is that it is a key policy objective of the NPPF under paragraph 47 to ensure that a 5 year supply of housing land is in place and that old plans with outdated constraints are not deployed to frustrate development.<sup>[4.76]</sup>
- 8.155 That exercise requires one to start with a careful examination of the benefits of the proposal. There is little, if any, evidence in the Council's evidence, and none in that submitted by interested persons, to indicate any acknowledgement of the significant benefits which this scheme would deliver. First, there is the 5 year housing land supply requirement which needs to be met. The requirement figure is not set but it is recognized by all parties that it is greater than 23,200 and it could be an additional 8,800. It is the position of both Appellants that the Council cannot demonstrate a deliverable 5 year supply.<sup>[4.77-4.78]</sup>
- 8.156 Secondly, jobs would be created by the proposed development. Government Guidance in Laying the Foundations and the Honeybourne decision both acknowledge the direct and indirect employment flowing from housing construction. Not only would about 190 personnel be employed in construction on site but that figure would increase to 120-205 general personnel. Both appeals together would provide some 40 jobs at the retail centre and between 105-205 jobs at the extra care facility. The Council could not dispute these numbers to any significant degree at the Inquiry. The Council's concern in respect of the rates of development depended on the GL Hearn Report which itself shows that higher rates of development (up to 170 per annum) are capable of sustaining in Droitwich Spa more than one outlet, at the Copcut Lane site as well as outlets at the appeal sites. The Council was unable to explain GL Hearn's conclusion in the light of the empirical evidence.<sup>[4.79]</sup>
- 8.157 Thirdly, the development would make a positive contribution to the social dimension of sustainable development, particularly through the provision of new homes to address the significant affordable housing needs. Droitwich Spa is a very sustainable settlement and a good location for new development with a full range of facilities, services and public transport connections. The site location is sustainable with the ability for high quality footpath and cycleway connections to be made to adjoining residential areas and to bus services there and to the adjoining Appeal Site A.<sup>[4.80]</sup>
- 8.158 Fourthly, the proposals would involve change in relation to the loss of fields in agricultural and equestrian use and the development of areas of land currently undeveloped. Off-setting environmental benefits in the form of accessible open space, landscaping and habitat creation would mitigate this change and the

proposal has been carefully considered to minimize the impact on the landscape. The area of open space on the eastern boundary of the proposal would connect well to the adjoining, existing informal open space and provide connections for existing residential communities to Newland Lane and Newland Road and wider footpath and cycleway networks.<sup>[4.81]</sup>

8.159 To the extent that harm has been identified by the Council and by many local residents, it would be limited. It is focused on landscape issues in circumstances where the sites are essentially the only candidates for expansion in Droitwich Spa and the detailed evidence demonstrates that landscape and visual effects would, in substance, be limited to the sites themselves and their immediate surroundings. The proposed development may not be consistent with a strict interpretation of Policy GD1. However, due to its accordance with all other policies, I conclude there is no overall conflict with the development plan or the emerging SWDP or with relevant provisions of the NPPF. The proposal raises allegations of prematurity but the emerging SWDP is in a state of disarray at the close of this Inquiry, its housing requirement is going up rather than down, and there is an acceptance that further sustainable sites will be required. Any harm is certainly not of a degree of significance so as to outweigh the clear benefits in relation to sustainable development, which the proposals would provide, either substantially or demonstrably or at all.<sup>[4.82]</sup>

## **CONCLUSION**

8.160 Having examined the evidence before the Inquiry it is my view that planning permission should be granted for the appeal proposal. The evidence before me shows the need for this site and its suitability. Measured against the fact that the proposal would bring about substantial and tangible benefits, the Council's case is not well made and it has been bolstered by the objections of local residents to a large extent. The lack of substantive evidence put forward by SOGOS or by other local objectors only highlights that fact.

8.161 The evidence put forward by the Council was substantive but not persuasive. In my view upon analysis the Council's evidence did not support the RFR which the members imposed. Instead there is a strong positive case for development of the appeal site and one which would bring about significant benefits in terms of addressing housing requirements for all people in South Worcestershire and Wychavon. That is not simply in relation to the need for market housing but the development also addresses the needs of those who are unable through their own socio-economic circumstances to meet their housing requirements and are currently forced to live in unsuitable and unsatisfactory homes. The proposals would assist in providing jobs. Overall in the light of the evidence before the Inquiry, I recommend the SoS to grant planning permission for Appeal Site B subject to the imposition of conditions.

## **RECOMMENDATIONS**

- 9.1 I recommend that Appeal A be allowed and planning permission be granted subject to conditions.
- 9.2 I recommend that Appeal B be allowed and planning permission be granted subject to conditions.

## **APPEARANCES**

### **FOR THE LOCAL PLANNING AUTHORITY:**

Miss Nadia Sharif of Counsel	Instructed and assisted by Ian Marshall Solicitor to Wychavon District Council
She called	Malcolm Brown FRICS MRTPI Sue Illman BA DipLA Grad Dip (Cons) AA and PLI HonFSE Heather Peachey – Projects & Development Officer WDC Pritpal Singh-Swarn - Solicitor - Wright Hassall Karen Hanchett - Worcestershire County Council

### **FOR APPELLANT A:**

Mr Jeremy Cahill QC Assisted by Victoria Hutton	Instructed by Patrick Downes, Harris Lamb
He called	Anthony Bateman BA (Hons) TP MRICS MRTPI MCMI MIOD FRSA Alison Potterton BA DipLA CMLI Simon Tucker BSc (Hons) MCIHT Patrick Downes BSc (Hons) MRICS Richard Engledow I Eng ACIWEM Mark Williams BSc (Hons) CEng MIMMM

### **FOR APPELLANT B:**

Mr Ian Dove QC Assisted by Suella Fernandes	Instructed by Chris May, Pegasus Group
He called	Jeremy Peachey BSc (Hons) M.LD CMLI Philip Jones BSc (Hons) CEng MICE MCHIT MITE FIHE Chris May BA (Hons) MRTPI

### **FOR SAVE OUR GREEN OPEN SPACES (SOGOS)**

Miss Nina Pindham of Counsel	Instructed by SOGOS
She called	Richard Pettitt BSc CEng CWEM FICE FCIHT MCIWEM Stephen Stoney BA (Hons) MRTPI

## **INTERESTED PERSONS:**

Mr Richard Giugno	Local Resident
Mr Mike Bowler	Local Resident
Mr Tony Miller	District Councillor and Ward Member
Mr Ken Jennings	District Councillor and Ward Member
Mr Richard Morris	District Councillor <sup>266</sup>
Barbara Meddings	Salwarpe Parish Council
Mrs Judy Pearce	District Councillor and Deputy Leader of WDC
Mr John Brass	Local Resident
Mr Patrick Davies	Droitwich Spa Civic Society
Mr Robert Brewer	Worcestershire's Youth Cabinet
Mr Neil Franks	Local Resident
Mr Christopher Hartwright	Tibberton Parish Council
Mr Philip Powell	Local Resident

## **INQUIRY DOCUMENTS**

INQ1	Notification Letter
INQ2	Written representations submitted following the issue of the SoS's Direction to recover the applications
INQ3	Statement of Common Ground on General Planning Matters
INQ4	Additional comments received from WDC, Harris Lamb and Pegasus Group following the issue of DCLG's new Planning Practice Guidance on 6 March 2014

## **ADDITIONAL DOCUMENTS SUBMITTED ON BEHALF OF WYCHAVON DISTRICT COUNCIL**

C1	Opening Statement
C2	CIL Compliance Statement (Appeal A)
C3	CIL Compliance Statement (Appeal B) including s106 Agreement final signed version dated 11 February 2014
C4	Site visit route plans
C4a	Site visit itinerary
C5	Letter to Inspector Clews dated 31 January 2014 (SWDP additional information)
C6	Report by AMION Consulting dated January 2014 (SWDP additional information)
C7	Suggested Conditions (Appeal A)
C8	Suggested Conditions (Appeal B)
C9	South Worcestershire Development Plan – Droitwich Spa Proposals Map January 2013
C10	Housing Land Supply Position Statement between Wychavon District Council, Barberry (Appellant A) and Persimmon Homes (Appellant B)
C11	SWDP Position Statement
C12	Costs Rebuttal
C13	Leasowes Road and Laurels Road, Offenham Appeal Decision (Ref: 2203924) dated 7 February 2014

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<sup>266</sup> Councillor Morris was unable to attend the Inquiry so his statement was read out by Councillor Jennings

- C14 List of attendees at site visit (Part 1) on 12 February 2014
- C15 Closing Submissions

## **ADDITIONAL DOCUMENTS SUBMITTED ON BEHALF OF THE APPELLANTS**

### Appeal A – Barberry Droitwich Ltd

- BDL1 Ecological update by Countryside Consultants Limited
- BDL2 Brine Run letter by Atkins dated 27 January 2014
- BDL3 Foul Water letter from Adkins dated 24 January 2014
- BDL4 Archaeology letter from Adkins dated 27 January 2014
- BDL5 Section 106 final signed version dated 14 February 2014
- BDL6 Schedule of Application Documents and Plans
- BDL7 Addendum Proof of Evidence from Simon Tucker
- BDL8 Opening Statement
- BDL9 Letter to PINS dated 28 May 2013 regarding the SWDP EiP submission
- BDL10 Transportation Statement of Common Ground
- BDL11 Extract from Worcestershire County Council Landscape Character Assessment – Primsland Settled Farmlands with Pastoral Land Use
- BDL12 Droitwich Spa Walking and Cycling Map
- BDL13 Schedule of Plans submitted with the application
- BDL14 Green Belt Plan in relation to the appeal site
- BDL15 Hybrid Masterplan (for use during site visit)
- BDL16 Note from Mr Bateman in response to Mr Giugno's evidence on population statistics/projections
- BDL17 Distribution of development proposed by the SWDP
- BDL18 List of allocations in the SWDP – relationship to Local Plan settlement boundary
- BDL19 Note from Mr Bateman responding to Interested Person's comments on housing demand and Wychavon District Council's C5 and C6 documents
- BDL20 Costs Application
- BDL21 Closing Submissions
- BDL22 Atkins witness details

### Appeal B - Persimmon Homes Ltd

- P1 List of plans and documents submitted with the planning application
- P1a List of plans and documents submitted after the planning application
- P2 Green Infrastructure analysis
- P3 Landscape character areas document
- P4 Hampton Bishop Parish Council High Court decision
- P5 Opening Submissions
- P6 Section 106 final version dated 11 February 2014
- P7 Calculations in respect of safe stopping distances
- P8 Letter dated 30 January from GRM Development Solutions regarding Brine Runs
- P9 Appeal decision and cost decision from East Staffordshire Borough Council (ref: 2193657) dated 12 February 2014
- P10 Costs Application
- P11 Closing Submissions
- P12 Joint Closing Submissions on Main Matter 3

## **ADDITIONAL DOCUMENTS SUBMITTED BY SOGOS**

SOGOS1	Petition with 3,470 signatures
SOGOS2	Opening Submissions
SOGOS3	Clitheroe Appeal Decision dated 23 January 2014
SOGOS4	Photographs and map of highway junction in relation to the Clitheroe Appeal Decision
SOGOS5	Calculation of major road stopping sight distances inc. plan
SOGOS6	Letter of instruction for Stephen Stoney
SOGOS7	Letter from PINS confirming agreed deadline for submission of statements
SOGOS8	Letter of instruction for Richard Pettitt
SOGOS9	Table of housing permissions since appeal proposed submitted
SOGOS10	Closing Submissions

## **INTERESTED PERSONS' DOCUMENTS**

IP1	Statement/presentation by Mr Giugno
IP2	Statement by Mr Bowler
IP3	Statement by Councillor Miller
IP4	Statement by Councillor Jennings
IP5	Statement by Councillor Morris (read by Councillor Jennings at the Inquiry)
IP6	Statement by Barbara Meddings, Salwarpe Parish Council
IP7	Statement by Councillor Mrs Pearce
IP8	Statement by Mr Brass
IP9	Statement by Mr Davies, Droitwich Spa Civic Society
IP10	Statement by Mr Brewer
IP11	Statement by Mr Franks
IP12	Statement by Mr Hartwright, Tibberton Parish Council

## **ANNEX - RECOMMENDED CONDITIONS**

### **APPEAL A - Appeal Ref: APP/H1840/A/13/2199085**

#### **Commencement and Phasing of Development**

- 1) Application for approval of reserved matters for phase 1 (which will include a minimum of 200 dwellings) shall be made to the Local Planning Authority before the expiration of 12 months from the date of this outline permission. The development hereby permitted shall be begun before the expiration of 12 months from the date of approval of the first reserved matters application.
- 2) No development shall take place within any phase of the development without the prior approval of the details of the siting, design and external appearance of the building(s), the means of access thereto (save for the details of vehicular access into the site from Primsland Way and Pulley Lane) and the landscaping, including the provision of the on-site recreation/open play space, of the site (hereinafter called "the reserved matters") which shall be obtained from the Local Planning Authority in writing before any development is commenced.
- 3) No development shall take place until a Phasing Plan for the development hereby permitted has been submitted to and approved in writing by the Local Planning Authority. The Phasing Plan shall include details of:
  - i) the timing of the provision of infrastructure to serve the proposed development (including road improvements and drainage facilities) in relation to the provision of any new residential units;
  - ii) the timing of biodiversity, SUDS and strategic landscaping features;
  - iii) the timing of the provision of on-site recreation/open play space in relation to the provision of any new residential units; and
  - iv) the timing of the provision of the local centre, bowls and sports facilities and the care home.

The development shall be carried out in accordance with the approved Phasing Plan.

#### **Drawings and Plans**

- 4) The development hereby permitted shall be carried out in accordance with the following approved plans and associated documents:
  - 9004 Rev C - Red line site location plan, reference no. (June 2012)
  - 9308 Rev H - Concept Masterplan, reference (June 2012)
  - 10154-63 – Proposed Improvements at Martin Hussingtree
  - 10154-64 – Newlands Road / Primsland Way Access
  - 10154-68 – A38 / Pulley Lane Improvement
  - 10154-69 – Pulley Lane Road Improvements Section 2
  - 10154-70 – Pulley Lane Road Improvements Section 3
  - 10154-71 – Pulley Lane Road Improvements Section 4
  - 10154-72 – Pulley Lane Road Improvements Section 5
  - 10154-73 – Pulley Lane Road Improvements Section 6

- 10154-74 – Pulley Lane Road Improvements Section 6
- 5090327/HWY/001 Rev C – Newland Road Bus Link Preliminary Design
- P0371-DR5-0-010 Rev C – Illustrative Landscape Masterplan
- P0152-DR5-010-012 Rev A – Newland Road Trees / Embankment Appraisal
- P0152-DR-5-020-023 Rev A – Newland Road Cross sections
- P0371-5-01-05 – Newland Road cross sections
- Design and Access Statement (May 2011)
- Design and Access Statement and Addendum (July 2012)
- Supporting Planning Statement and Addendum (July 2012)
- Drainage Strategy (May 2011)
- Water Management Strategy (May 2011)
- Environmental Statement and Non-Technical Summary (May 2011)
- Flood Risk Assessment (May 2011)
- Sustainability Appraisal (May 2011)
- Transportation Assessment (May 2011) and Addendum (July 2012)
- Technical note on water treatment matters by Atkins (July 2012)

5) All future applications for the approval of reserved matters shall be broadly in accordance with:

- i) the principles and parameters described and illustrated in the Design & Access Statement dated May 2011 and July 2012 addendum with regard to the general areas of development and approximate floor areas;
- ii) amended Parameter Plan 3: Building Heights - Revision E dated December 2013; and
- iii) the Landscape Design Strategy – Revision B dated July 2012 and drawing no. P0152 attached therein.

All reserved matters applications shall include a statement providing an explanation as to how the design of the development responds to the details submitted as part of the outline application.

### **Roads, Parking and Travel**

6) No development, other than the proposed highway works listed below, shall take place until details of:

- i) the improvements, including the widening to 5.5m, to Pulley Lane (as indicated on DTA Drawings 10154-69/70/71/72 and 73) have been submitted to and approved in writing by the Local Planning Authority, and fully implemented in accordance with those approved details;
- ii) the improvements to the Pulley Lane/A38 junction (as indicated on DTA Drawing 10154-68) have been submitted to and approved in writing by the Local Planning Authority, and fully implemented in accordance with those approved details prior to the occupation of the 1<sup>st</sup> dwelling;
- iii) the bus, walk and cycle link to Primslan Way together with junction improvements on Primslan Way (as indicated on DTA Drawing 10154-64) have been submitted to and approved in writing by the Local Planning Authority, and fully implemented prior to the occupation of the 100<sup>th</sup> dwelling in accordance with those approved details; and

- iv) the improvements to the A38/A4538 junction at Martin Hussingtree (as indicated on DTA Drawing 10154-63) have been submitted to and approved in writing by the Local Planning Authority, and fully implemented prior to the occupation of the 100<sup>th</sup> dwelling in accordance with those approved details.
- 7) No development shall take place within each reserved matter until the engineering details and specification of the proposed residential roads, cycle ways, footways, footpaths and highway drains have been submitted to and approved in writing by the Local Planning Authority. The dwellings shall not be occupied until the road works necessary to provide access from the publicly maintained highway to those dwellings have been completed in accordance with the approved details.
- 8) No development shall take place until a revised travel plan, including targets for modal shift, has been submitted to and approved in writing by the Local Planning Authority. The revised travel plan should contain targets for mode share shifts in order to reduce car travel and increase travel by more sustainable transport modes. Such target must be achieved within 5 years of the first occupation of any property hereby approved. In the event of failing to meet these targets at the end of the 5 year period, a revised residential travel plan shall be submitted to and approved in writing by the Local Planning Authority to address any shortfalls, and where necessary make provision for and promote improved sustainable forms of access to the site. The residential travel plan thereafter shall be implemented and updated in agreement with the Local Planning Authority.
- 9) The development hereby permitted shall not be occupied until the individual vehicular accesses, entrance, turning areas and driveways/parking spaces have been constructed in accordance with details to be submitted to and approved in writing by the Local Planning Authority and these areas shall thereafter be retained and kept available for those uses at all times.
- 10) No development shall take place within any phase until a scheme for the provision of secure cycle parking for the apartments, commercial premises, leisure and care facility hereby approved has been submitted to and approved in writing by the Local Planning Authority and thereafter shall be fully implemented in accordance with those approved details prior to the first occupation of those uses and maintained thereafter in perpetuity.

### **Noise and Construction Management**

- 11) No development shall take place until a noise mitigation scheme designed to minimise the impact from road traffic such that the noise levels within the gardens of the proposed dwellings do not exceed the recommendations set out in BS8223:1999 Sound Insulation and Noise Reduction for Buildings has been submitted to and approved in writing by the Local Planning Authority. Thereafter the development shall be carried out in accordance with the approved details.
- 12) No development shall take place within the phase of the development which contains the proposed local centre until a scheme for sound attenuation has

been submitted to and approved in writing by the Local Planning Authority. The approved sound attenuation scheme shall be fully implemented in accordance with those approved details prior to the first occupation of any of the commercial uses contained within the local centre.

- 13) No development, including demolition or construction activities, shall take place until a Construction Management Plan has been submitted to and approved in writing by the Local Planning Authority. The plan should include the following:
- i) details of how to minimise the impact of noise, vibration and dust etc. from construction and demolition activities and the traffic associated with this development, including a scheme for wheel cleaning;
  - ii) details of how to restrict the means of vehicular access for site operatives and construction traffic to the development from A38 and Pulley Lane only;
  - iii) details in relation to the prevention of pollution of waterways;
  - iv) the provision of temporary drainage measures;
  - v) details of all temporary contractors buildings, plant, storage of materials and parking for site operatives;
  - vi) delivery times; and
  - vii) restrictions on burning.

The development hereby permitted shall be carried out in accordance with the approved measures.

### **Contaminated Land**

- 14) No development shall take place on any phase of the development until that phase has been subject to a detailed scheme for investigation and recording of contamination of the land and risks to the development, its future uses and surrounding environment. A detailed written report on the findings including proposals and a programme for the remediation of any contaminated areas and protective measures to be incorporated into the buildings shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall include proposals for the disposal of surface water during remediation. The remediation works shall be carried out and a validation report shall be submitted to and approved in writing by the Local Planning Authority in accordance with the approved proposals and programme. If during the course of the development further evidence of any type relating to other contamination is revealed, work at the location will cease until such contamination is investigated and remediation measures, approved in writing by the Local Planning Authority have been implemented.
- 15) No development shall take place until full details of any soil or soil forming materials brought on to the site for use in garden areas, soft landscaping, filling and level raising have been submitted to and approved in writing by the Local Planning Authority. Where the donor site is unknown or is brownfield the material must be tested for contamination and suitability for use on site. Full donor site details, proposals for contamination testing including testing schedules, sampling frequencies and allowable contaminant concentrations (as determined by appropriate risk assessment) must be submitted to and

approved in writing by the Local Planning Authority prior to import on to the site. The approved testing must then be carried out and validatory evidence (such as laboratory certificates) submitted to and approved in writing by the Local Planning Authority prior to any soil or soil forming materials being brought on to site.

### **Archaeology**

- 16) No development shall take place until the applicant has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation which has been submitted to and approved in writing by the Local Planning Authority.

### **Landscaping, Trees and Nature Conservation**

- 17) Each application for reserved matters shall include:
- a) An Arboricultural Impact Assessment in accordance with BS5837 and an Arboricultural Method Statement for the protection of trees and hedges during construction; and
  - b) A landscape scheme which shall include:
    - i) a plan(s) showing the planting layout of proposed tree, hedge, shrub and grass areas;
    - ii) a schedule of proposed planting - indicating species, size at time of planting and numbers/densities of plants;
    - iii) a written specification for root barriers and other measures to be used to ensure planting as outlined in the landscape strategy is achievable in relation to proposed built form;
    - iv) a written specification outlining cultivation and others operations associated with plant and grass establishment. This shall include details of soil crates for the planting of semi-mature street trees, or any tree planted in a location where its root run will be restricted;
    - v) proposed finished levels or contours;
    - vi) means of enclosure and boundary treatments; and
    - vii) a schedule of maintenance, including watering and the control of competitive weed growth, for a minimum period of five years from first planting.
- 18) No development shall take place until full details of an Ecological Mitigation and Enhancement Strategy based on up-to-date survey information is submitted to and approved in writing by the Local Planning Authority. The details shall include:
- i) updated ecological surveys including a dedicated bat survey;
  - ii) a review of the site's ecological constraints and potential;
  - iii) a description of target habitats and range of species appropriate for the site;
  - iv) extent and location of proposed works;

- v) details of precautionary and protection measures to ensure protected species and retained habitats are not harmed during and after construction;
- vi) appropriate strategies for creating/restoring target habitats or introducing target species;
- vii) method statement for site preparation and establishment of target features;
- viii) sources of habitat materials (e.g. plant stock); and
- ix) timing of the works.

The Ecological Mitigation and Enhancement Strategy shall be implemented in accordance with the Nature Conservation Management Plan.

- 19) No development shall take place until a Nature Conservation Management Plan has been submitted to and approved in writing by the Local Planning Authority. The Plan shall include:

- i) description and evaluation of features to be managed;
- ii) ecological trends and constraints on site that may influence management;
- iii) aims and objectives of management;
- iv) appropriate management options for achieving aims and objectives;
- v) prescriptions of management actions;
- vi) preparation of work schedule, including a 5 yearly project register, an annual work plan and the means by which the plan will be rolled forward over a 25 year period;
- vii) personnel responsible for implementation of the plan; and
- viii) monitoring and remedial/contingency measures triggered by monitoring.

The plan shall be carried out fully in accordance with the approved details.

- 20) No development shall take place until a Construction Environmental Management Plan has been submitted to and approved in writing by the Local Planning Authority. The plan shall include:

- i) an appropriate scale plan showing 'ecological protection zones' where construction activities are restricted and where protective measures will be installed or implemented;
- ii) details of protective measures (both physical measures and sensitive working practices) to avoid impacts during construction;
- iii) a Methodology Statement to demonstrate construction activities will be undertaken so as to avoid impact on those parts of the site subject to periods of the year when activities could be harmful, such as the bird nesting and other wildlife breeding or hibernation seasons in accordance with the Nature Conservation Management Plan; and
- iv) persons/contractors responsible for:
  - (a) compliance with legal consents relating to nature conservation;
  - (b) compliance with planning conditions relating to nature conservation;
  - (c) installation of physical protection measures during construction;

- (d) implementation of sensitive working practices during construction;
- (e) regular inspection and maintenance of physical protection measures and monitoring of working practices during construction;
- (f) provision of training and information about the importance of 'Ecological Protection Zones' to all construction personnel on site.

The Construction Environmental Management Plan shall be carried out fully in accordance with the approved details.

### **Renewable Energy**

- 21) Notwithstanding the information submitted with the application, no development shall take place until the following details have been submitted to and approved in writing by the Local Planning Authority:
- i) details on how renewable energy measures are to be incorporated into the proposed development;
  - ii) details of measures to conserve and recycle water to be incorporated into the proposed development;
  - iii) details of energy efficiency measures to be incorporated into the proposed development; and
  - iv) details of construction materials to be used in the proposed development with the aim of minimising the use of primary non-sustainable materials.

The approved measures shall be implemented and incorporated into the approved development in line with an implementation timetable to be submitted and approved in writing by the Local Planning Authority prior to the commencement of development.

### **Lighting**

- 22) No development shall take place until details of a lighting scheme to serve the proposed development have been submitted to and approved by the Local Planning Authority. The lighting scheme shall be designed to reduce effects upon sensitive habitats to be retained/created on the site. The details shall include an implementation timetable and the approved lighting scheme shall be provided in accordance with the approved details in perpetuity and agreed implementation timetable.

### **Floor Space**

- 23) The total retail uses (A1, A2, A3, A4, A5) and B1 (a) office floor space shall not exceed 2,500 sq. metres.

### **Drainage and Flood Risk**

- 24) No development shall take place until a phased drainage scheme incorporating sustainable drainage principles and an assessment of the hydrological and hydro geological context of the development in relation to the disposal of

surface water and foul sewage has been submitted to and approved in writing by the Local Planning Authority. The scheme shall be implemented in accordance with the approved details before development is first brought into use.

- 25) Each application for reserved matters shall include for the approval by the Local Planning Authority details of proposed surfacing materials and surface water drainage including:
- i) a plan showing proposed layout and types of surfacing, including permeable paving in appropriate locations as an integrated part of an overall Sustainable Urban Drainage System (SUDS) for the development. The surfacing materials selected shall be of a design and quality appropriate to the location;
  - ii) a written specification of proposed surfacing materials and operations;
  - iii) the range of SUDS components to be used at source, site and regional control levels. These should be used comprehensively and appropriately in accordance with best practice as laid out in the CIRIA Guidance manuals, with consideration given in the first instance to utilising water management through soft features and at ground level;
  - iv) mechanisms to integrate the SUDS scheme with the Green Infrastructure proposals to maximise the potential for improved biodiversity, visual amenity and water quality; and
  - v) methods for the protection of SUDS and Green Infrastructure during each phase of construction to ensure that 'soft SUDS' are adequately established prior to bringing into beneficial use.
- 26) There must be no new buildings, structures (including gates, walls and fences) or raised ground levels within 8 metres of the top of any bank of watercourse and/or of any side of an existing culverted watercourse either inside or along the boundary of the site.

## **RECOMMENDED CONDITIONS**

### **APPEAL B - Appeal Ref: APP/H1840/A/13/2199426**

#### **Commencement and Phasing of Development**

- 1) Application for approval of reserved matters for phase 1 (which will include a minimum of 150 dwellings) shall be made to the Local Planning Authority before the expiration of 12 months from the date of this outline permission. The development hereby permitted shall be begun before the expiration of 12 months from the date of approval of the first reserved matters application.
- 2) No development shall take place within any phase of the development without prior approval of the details of the siting, design and external appearance of the building(s), the means of access thereto (save for the details of vehicular access into the site from Newland Lane) and the landscaping, including the provision of the on-site recreation/open play space, of the site (hereinafter called "the reserved matters") which shall be obtained from the Local Planning Authority in writing before any development is commenced.
- 3) No development shall take place until a Phasing Plan including details of phasing for the approved development has been submitted to and approved in writing by the Local Planning Authority. The Phasing Plan shall include details of:
  - i) the timing of the provision of infrastructure to serve the proposed development (including road improvements and drainage facilities) in relation to the provision of any new residential units;
  - ii) the timing of biodiversity, SUDS and strategic landscaping features; and
  - iii) the timing of the provision of on-site recreation/open play space in relation to the provision of any new residential units.

The development shall be carried out in accordance with the approved Phasing Plan.

#### **Drawings and Plans**

- 4) The development hereby permitted shall be carried out in accordance with the following approved plans and associated documents:
  - Drawing no. P.0742\_08 - Site Location Plan
  - Drawing no. P.0742\_01D - Illustrative Sketch Masterplan
  - Planning Statement prepared by Pegasus Group (October 2012)
  - Design and Access Statement prepared by Pegasus Group (October 2012)
  - Landscape and Visual Appraisal prepared by Pegasus Group (October 2012)
  - Energy Statement/Carbon Analysis Report prepared by FES (October 2012)
  - Ecological Report prepared by Betts Ecology (November 2011)
  - Arboricultural Survey prepared by Betts Ecology (November 2011)
  - Heritage Assessment prepared by Cotswold Archaeology (December 2011)
  - Ground Conditions Report prepared by GRM (December 2011)
  - Noise Report prepared by Hoare Lea (October 2012)
  - Transport Assessment prepared by Travis Baker (November 2012)

- Travel Plan prepared by Travis Baker (November 2012)
- Flood Risk Assessment, including Drainage Strategy prepared by Travis Baker (November 2012)

5) All future applications for the approval of reserved matters shall be broadly in accordance with the principles and parameters described and illustrated in the Design & Access Statement dated October 2012 with regard to:

- i) the general areas of development as outlined in the Indicative Masterplan;
- ii) the Buildings Heights Plan; and
- iii) the Landscape and Green Infrastructure Strategy Plan.

All reserved matters applications shall include a statement providing an explanation as to how the design of the development responds to the details submitted as part of the outline application.

### **Roads, Parking and Travel**

6) No more than 200 of the dwellings hereby approved shall be occupied until details of means to form a secondary emergency vehicular access to the development have been submitted to and approved in writing by the Local Planning Authority, and the scheme has been constructed in accordance with the approved details.

7) No development, other than the proposed highway works listed below, shall take place until details of:

- i) the improvements, including the widening to 5.5m, to Pulley Lane have been submitted to and approved in writing by the Local Planning Authority, and fully implemented in accordance with those approved details;
- ii) the improvements to the Pulley Lane/A38 junction have been submitted to and approved in writing by the Local Planning Authority, and fully implemented in accordance with those approved details prior to the occupation of the 1st dwelling; and
- iii) the improvements to provide pedestrian links between the eastern boundary of the development site through Nightingale Close and Jackdaw Lane to Tagwell Road have been submitted to and approved in writing by the Local Planning Authority, and fully implemented prior to the occupation of the 75<sup>th</sup> dwelling in accordance with those approved details.

8) No development shall take place until the engineering details and specification of the proposed residential roads, cycle ways, footways, footpaths and highway drains have been submitted to and approved in writing by the Local Planning Authority. The dwellings shall not be occupied until the road works necessary to provide access from the publicly maintained highway to those dwellings have been completed in accordance with the details submitted to and approved in writing by the Local Planning Authority.

- 9) The Residential Travel Plan (RTP) hereby approved, dated November 2012 and produced by Travis Baker, shall be implemented and monitored in accordance with the regime contained within the RTP. The targets for mode share shifts set out in the RTP, in order to reduce car travel and increase travel by more sustainable transport modes, must be achieved within 5 years of the first occupation of any property hereby approved. In the event of failing to meet these targets at the end of the 5 year period, a revised RTP shall be submitted to and be approved in writing by the Local Planning Authority to address any shortfalls, and where necessary make provision for and promote improved sustainable forms of access to the site. The RTP thereafter shall be implemented and updated in agreement with the Local Planning Authority.
- 10) The development hereby permitted shall not be occupied until the individual vehicular accesses, entrance, turning areas and driveways/parking spaces have been constructed in accordance with details to be submitted to and approved in writing by the Local Planning Authority and these areas shall thereafter be retained and kept available for those uses at all times.

### **Noise and Construction Management Plan**

- 11) No development shall take place until a noise mitigation scheme designed to minimise the impact from road traffic such that the noise levels within the gardens of the dwellings do not exceed the recommendations set out in *BS8223:1999 Sound Insulation and Noise Reduction for Buildings* has been submitted to and approved in writing by the Local Planning Authority. Thereafter the development shall be carried out in accordance with the approved details.
- 12) No development, including demolition or construction activities, shall take place until a Construction Management Plan has been submitted to and approved in writing by the Local Planning Authority. The plan should include the following:
  - i) details of how to minimise the impact of noise, vibration and dust etc. from construction and demolition activities and the traffic associated with this development, including a scheme for wheel cleaning;
  - ii) details of how to restrict the means of vehicular access for site operatives and construction traffic to the development from A38 and Pulley Lane only;
  - iii) details in relation to the prevention of pollution of waterways;
  - iv) the provision of temporary drainage measures;
  - v) details of all temporary contractors buildings, plant, storage of materials and parking for site operatives;
  - vi) delivery times; and
  - vii) restrictions on burning.

The development hereby permitted shall be carried out in accordance with the approved measures.

## **Contaminated Land**

- 13) No development shall take place on any phase of the development until that phase has been subject to a detailed scheme for investigation and recording of contamination of the land and risks to the development, its future uses and surrounding environment. A detailed written report on the findings including proposals and a programme for the remediation of any contaminated areas and protective measures to be incorporated into the buildings shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall include proposals for the disposal of surface water during remediation. The remediation works shall be carried out and a validation report shall be submitted to and approved in writing by the Local Planning Authority in accordance with the approved proposals and programme. If during the course of the development further evidence of any type relating to other contamination is revealed, work at the location will cease until such contamination is investigated and remediation measures, approved in writing by the Local Planning Authority have been implemented.
- 14) No development shall take place until full details of any soil or soil forming materials brought on to the site for use in garden areas, soft landscaping, filling and level raising have been submitted to and approved in writing by the Local Planning Authority. Where the donor site is unknown or is brownfield the material must be tested for contamination and suitability for use on site. Full donor site details, proposals for contamination testing including testing schedules, sampling frequencies and allowable contaminant concentrations (as determined by appropriate risk assessment) must be submitted to and approved in writing by the Local Planning Authority prior to import on to the site. The approved testing must then be carried out and validatory evidence (such as laboratory certificates) submitted to and approved in writing by the Local Planning Authority prior to any soil or soil forming materials being brought on to site.

## **Archaeology**

- 15) No development shall take place until the applicant has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation which has been submitted to and approved in writing by the Local Planning Authority.

## **Landscaping, Trees and Nature Conservation**

- 16) Each application for reserved matters shall include:
- a) An Arboricultural Impact Assessment in accordance with BS5837 and an Arboricultural Method Statement for the protection of trees and hedges during construction; and
  - b) A landscape scheme which shall include:
    - i) a plan(s) showing the planting layout of proposed tree, hedge, shrub and grass areas;

- ii) a schedule of proposed planting - indicating species, size at time of planting and numbers/densities of plants;
- iii) a written specification for root barriers and other measures to be used to ensure planting as outlined in the landscape strategy is achievable in relation to proposed built form;
- iv) a written specification outlining cultivation and others operations associated with plant and grass establishment. This shall include details of soil crates for the planting of semi-mature street trees, or any tree planted in a location where its root run will be restricted;
- v) proposed finished levels or contours;
- vi) means of enclosure and boundary treatments; and
- vii) a schedule of maintenance, including watering and the control of competitive weed growth, for a minimum period of five years from first planting.

17) No development shall take place until full details of an Ecological Mitigation and Enhancement Strategy based on up-to-date survey information is submitted to and approved in writing by the Local Planning Authority. The details shall include:

- i) updated ecological surveys including a dedicated bat survey;
- ii) a review of the site's ecological constraints and potential;
- iii) a description of target habitats and range of species appropriate for the site;
- iv) extent and location of proposed works;
- v) details of precautionary and protection measures to ensure protected species and retained habitats are not harmed during and after construction;
- vi) appropriate strategies for creating/restoring target habitats or introducing target species;
- vii) method statement for site preparation and establishment of target features;
- viii) sources of habitat materials (e.g. plant stock); and
- ix) timing of the works.

The Ecological Mitigation and Enhancement Strategy shall be implemented in accordance with the Nature Conservation Management Plan.

18) No development shall take place until a Nature Conservation Management Plan shall be submitted to and approved in writing by the Local Planning Authority. The Plan shall include:

- i) description and evaluation of features to be managed;
- ii) ecological trends and constraints on site that may influence management;
- iii) aims and objectives of management;
- iv) appropriate management options for achieving aims and objectives;
- v) prescriptions of management actions;
- vi) preparation of work schedule, including a 5 yearly project register, an annual work plan and the means by which the plan will be rolled forward over a 25 year period;

- vii) personnel responsible for implementation of the plan; and
- viii) monitoring and remedial/contingency measures triggered by monitoring.

The plan shall be carried out fully in accordance with the approved details.

- 19) No development shall take place until a Construction Environmental Management Plan has been submitted to and approved in writing by the Local Planning Authority. The plan shall include:
- i) an appropriate scale plan showing 'ecological protection zones' where construction activities are restricted and where protective measures will be installed or implemented;
  - ii) details of protective measures (both physical measures and sensitive working practices) to avoid impacts during construction;
  - iii) a Methodology Statement to demonstrate construction activities will be undertaken so as to avoid impact on those parts of the site subject to periods of the year when activities could be harmful, such as the bird nesting and other wildlife breeding or hibernation seasons in accordance with the Nature Conservation Management Plan; and
  - iv) persons/contractors responsible for:
    - (a) compliance with legal consents relating to nature conservation;
    - (b) compliance with planning conditions relating to nature conservation;
    - (c) installation of physical protection measures during construction;
    - (d) implementation of sensitive working practices during construction;
    - (e) regular inspection and maintenance of physical protection measures and monitoring of working practices during construction;
    - (f) provision of training and information about the importance of 'Ecological Protection Zones' to all construction personnel on site.

The Construction Environmental Management Plan shall be carried out fully in accordance with the approved details.

## **Renewable Energy**

- 20) Notwithstanding the information submitted with the application, no development shall take place until the following details have been submitted to and approved in writing by the Local Planning Authority:
- i) details on how renewable energy measures are to be incorporated into the proposed development;
  - ii) details of measures to conserve and recycle water to be incorporated into the proposed development;
  - iii) details of energy efficiency measures to be incorporated into the proposed development; and
  - iv) details of construction materials to be used in the proposed development with the aim of minimising the use of primary non-sustainable materials.

The approved measures shall be implemented and incorporated into the approved development in line with an implementation timetable to be submitted and approved in writing by the Local Planning Authority prior to the commencement of development.

### **External Lighting**

- 21) No development shall take place until details of a lighting scheme to serve the proposed development have been submitted to and approved in writing by the Local Planning Authority. The lighting scheme shall be designed to reduce effects upon sensitive habitats to be retained/created on the site. The details shall include an implementation timetable and the approved lighting scheme shall be provided in accordance with the approved details in perpetuity and implementation timetable.

### **Drainage and Flood Risk**

- 22) No development shall take place until a drainage scheme incorporating sustainable drainage principles and an assessment of the hydrological and hydro geological context of the development in relation to the disposal of surface water and foul sewage has been submitted to and approved in writing by the Local Planning Authority. The scheme shall be implemented in accordance with the approved details before development is first brought into use.
- 23) Each application for reserved matters shall include for the approval by the Local Planning Authority details of proposed surfacing materials and surface water drainage including:
- i) a plan showing proposed layout and types of surfacing, including permeable paving in appropriate locations as an integrated part of an overall Sustainable Urban Drainage System (SUDS) for the development. The surfacing materials selected shall be of a design and quality appropriate to the location;
  - ii) a written specification of proposed surfacing materials and operations;
  - iii) the range of SUDS components to be used at source, site and regional control levels. These should be used comprehensively and appropriately in accordance with best practice as laid out in the CIRIA Guidance manuals, with consideration given in the first instance to utilising water management through soft features and at ground level;
  - iv) mechanisms to integrate the SUDS scheme with the Green Infrastructure proposals to maximise the potential for improved biodiversity, visual amenity and water quality; and
  - v) methods for the protection of SUDS and Green Infrastructure during each phase of construction to ensure that 'soft SUDS' are adequately established prior to bringing into beneficial use.
- 24) There must be no new buildings, structures (including gates, walls and fences) or raised ground levels within 8 metres of the top of any bank of watercourse and/or of any side of an existing culverted watercourse either inside or along the boundary of the site.



## Department for Communities and Local Government

### **RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT**

**These notes are provided for guidance only and apply only to challenges under the legislation specified. If you require further advice on making any High Court challenge, or making an application for Judicial review, you should consult a solicitor or other advisor or contact the Crown Office at the Royal Courts of Justice, Queens Bench Division, Strand, London, WC2 2LL (0207 947 6000).**

The attached decision is final unless it is successfully challenged in the Courts. The Secretary of State cannot amend or interpret the decision. It may be redetermined by the Secretary of State only if the decision is quashed by the Courts. However, if it is redetermined, it does not necessarily follow that the original decision will be reversed.

#### **SECTION 1: PLANNING APPEALS AND CALLED-IN PLANNING APPLICATIONS;**

The decision may be challenged by making an application to the High Court under Section 288 of the Town and Country Planning Act 1990 (the TCP Act).

##### **Challenges under Section 288 of the TCP Act**

Decisions on called-in applications under section 77 of the TCP Act (planning), appeals under section 78 (planning) may be challenged under this section. Any person aggrieved by the decision may question the validity of the decision on the grounds that it is not within the powers of the Act or that any of the relevant requirements have not been complied with in relation to the decision. An application under this section must be made within six weeks from the date of the decision.

#### **SECTION 2: AWARDS OF COSTS**

There is no statutory provision for challenging the decision on an application for an award of costs. The procedure is to make an application for Judicial Review.

#### **SECTION 3: INSPECTION OF DOCUMENTS**

Where an inquiry or hearing has been held any person who is entitled to be notified of the decision has a statutory right to view the documents, photographs and plans listed in the appendix to the report of the Inspector's report of the inquiry or hearing within 6 weeks of the date of the decision. If you are such a person and you wish to view the documents you should get in touch with the office at the address from which the decision was issued, as shown on the letterhead on the decision letter, quoting the reference number and stating the day and time you wish to visit. At least 3 days notice should be given, if possible.

## **Appendix 3: Land to the south of Marske by the Sea Appeal Decision**



Department for  
Communities and  
Local Government

Our Ref: APP/V0728/W/15/3134502

Mr David Staniland  
Knight Frank  
No.1 Marsden Street  
Manchester  
M2 1HW

20 July 2017

Dear Sir

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78  
APPEAL MADE BY WEST MIDLANDS METROPOLITAN PENSION FUND  
LAND TO THE SOUTH OF MARSKE-BY-THE-SEA, BOUNDED BY LONGBECK ROAD,  
A1085 AND A174, REDCAR, CLEVELAND, TS11 6EZ  
APPLICATION REF: R/2013/0669/OOM**

1. I am directed by the Secretary of State to say that consideration has been given to the report of John Braithwaite BSc(Arch) BArch(Hons) RIBA MRTPI, who held a public local inquiry between 11-14, 18-21 and 25 October 2016 into your client's appeal against the decision of Redcar and Cleveland Borough Council to refuse planning permission for the development of the site to provide up to 1000 no. residential dwellings, together with ancillary uses and a neighbourhood centre, a park-and-ride car park, a petrol filling station, a drive-thru, a pub/restaurant and a 60 bed hotel, with details of access, in accordance with application ref: R/2013/0669/OOM, dated 27 September 2013.
2. On 16 October 2015, this appeal was recovered for the Secretary of State's determination, in pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act 1990, because it involves a proposal for residential development of over 150 units or on sites of over five hectares, which would significantly impact on the Government's objective to secure a better balance between housing demand and supply and create high quality, sustainable, mixed and inclusive communities.

**Inspector's recommendation and summary of the decision**

3. The Inspector recommended that the appeal be allowed and planning permission granted, subject to conditions.
4. For the reasons given below, the Secretary of State agrees with the Inspector's recommendation. He has decided to allow the appeal and grant planning permission. A

Department for Communities and Local Government  
Maria Stasiak, Decision Officer  
Planning Casework Unit  
3rd Floor Fry Building  
2 Marsham Street  
London SW1P 4DF

Tel: 0303 44 41624  
Email: [PCC@communities.gsi.gov.uk](mailto:PCC@communities.gsi.gov.uk)

copy of the Inspector's report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

### **Environmental Statement**

5. In reaching this position, the Secretary of State has taken into account the Environmental Statement which was submitted under the Town and Country Planning (Environmental Impact Assessment) Regulations 2011 and the environmental information submitted before the inquiry opened. Having taken account of the Inspector's comments at IR4, the Secretary of State is satisfied that the amended Environmental Statement complies with the above Regulations and that sufficient information has been provided for him to assess the environmental impact of the proposal.

### **Procedural matters**

6. The proposed development was amended after the application was determined by the Council. The amendments were agreed by the main parties and the Inspector was satisfied that no other party's interests were jeopardised by consideration of the amended scheme at the planning inquiry (IR2). The amended scheme is described in the Statement of Common Ground as 'a 821 dwelling scheme with ancillary uses, neighbourhood centre, petrol filling station, drive-thru restaurant, pub/restaurant, 60 bed hotel and car parking, with details of access'. The amended scheme and an amended parameters plan were considered at the Inquiry. The Secretary of State is satisfied that no one has been unfairly disadvantaged by the amendment.

### **Matters arising since the close of the inquiry**

7. The Secretary of State referred back to parties on 18 May 2017 to seek their views on the implications for this appeal, if any, of the Supreme Court judgment on the cases of *Cheshire East BC v SSCLG* and *Suffolk Coastal DC v SSCLG*, which was handed down on Wednesday 10 May 2017. A response was received from Knight Frank on 10 July 2017. A copy may be obtained on written request to the address at the foot of the first page of this letter.

### **Policy and statutory considerations**

8. In reaching his decision, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise. In this case the development plan consists of the saved policies of the Redcar and Cleveland Local Plan (LP) 1999, and the Core Strategy Development Plan Document (CS) 2007 and Development Policies Development Plan Document (DP) 2007 of the Redcar and Cleveland Local Development Plan Framework.
9. In accordance with section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the LBCA Act), the Secretary of State has paid special regard to the desirability of preserving those listed buildings potentially affected by the proposals, or their settings or any features of special architectural or historic interest which they may possess.
10. Other material considerations which the Secretary of State has taken into account include the National Planning Policy Framework ('the Framework') and associated planning guidance ('the Guidance').

### *Emerging plan*

11. The Secretary of State notes that the emerging Redcar and Cleveland Local Plan was submitted to the Secretary of State for Examination on 19 April 2017. Examination hearings are expected to begin in September 2017. The Secretary of State considers that the most relevant policies include SD2 (Locational policy) and N2 (Green infrastructure). He has taken into account that the emerging plan is at an early stage, that local consultation on the emerging plan indicates an unresolved objection to Policy N2 by the appellant, and that the emerging policies are largely in accordance with the Framework. Overall he considers that these emerging policies carry little weight.

### **Main issues**

12. The Secretary of State agrees with the Inspector that the main issues in this case are the effect of the proposed development on the character and appearance of the area; the effect of the proposed development on the significance of heritage assets; and whether the Council can demonstrate a 5-year supply of land for housing.

#### *The effect of the proposed development on the character and appearance of the area*

13. The Secretary of State has carefully considered the Inspector's analysis of the impact on the character and appearance of the area. For the reasons given in IR230-236, he agrees with the Inspector at IR233 that the proposed development would not adversely affect the character of the remainder of area R2, and would not harm the character of area E7. He further agrees at IR236 that the proposed development would not have a significant adverse effect on the appearance of the area, and considers that any adverse effects carry little weight against the proposal.
14. For the reasons given in IR237-240 the Secretary of State agrees that the strategic gap between Marske and New Marske would remain, and the quality, value, multi-functionality and accessibility of the part of the gap that would be developed would be enhanced. He therefore agrees with the Inspector at that the proposed development does not, in this regard, conflict with CS policy CS23. He further agrees that the proposed development would not result in any significant harm to the character and appearance of the area and does not therefore conflict with CS policy CS22 (IR240).

#### *The effect of the proposed development on the significance of heritage assets*

15. The Secretary of State has carefully considered the Inspector's assessment of the effect of the proposed development on the significance of the Scheduled Ancient Monument (SAM), and has taken into account its historic, economic and visual linkages to the village of Marske (IR241-243). He has also taken into account the view of English Heritage<sup>1</sup> that 'less than substantial harm' would be caused to the significance of the SAM (IR245). He agrees that the SAM is a heritage asset of the highest significance, and that the proposed development would not have any direct effect on that significance (IR241).
16. The Secretary of State has taken into account that a 150m buffer zone would be provided within which there would be no built development (IR243). For the reasons given in IR244, he agrees with the Inspector that the SAM would be experienced from an undeveloped area, that the proposed built development would be significantly further from the SAM than existing built development, and that the proposed development would not affect the experience of the SAM from the railway footbridge or from the Black Path for walkers approaching from the west. Overall he agrees with the Inspector that the

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<sup>1</sup> Now Historic England.

development would not intrude into the setting of the SAM and there would be no adverse effect on the significance of the heritage asset.

17. The Secretary of State has taken into account that a Conservation Management Plan (CMP) would be put in place which could provide for access to the SAM and for the display of on-site information about its history and significance. The SAM would thus become an educational resource for the whole community. The Secretary of State agrees with the Inspector at IR245 that this would be a direct and beneficial consequence of the grant of planning permission, and considers that these benefits carry moderate weight in favour of the proposal.
18. The Secretary of State has also carefully considered the impact on the significance of St Marks Church. For the reasons given in IR246-7, he agrees with the Inspector at IR248 that no harm would be caused to the significance of St Marks Church.
19. Overall the Secretary of State agrees with the Inspector's conclusion at IR248 that the proposed development does not conflict with CS policy CS25 or DP policy DP11. In reaching this conclusion he has taken account of his duty under s.66 of the LBCA Act.

#### *Five year housing land supply*

20. The Secretary of State notes the main parties' agreement that there are 1839 housing units under construction or with planning permission, that the Council has a record of persistent under-delivery and that a buffer of 20% should be applied (IR249). He agrees with this assessment, and also with the Inspector's assessment at IR262 that the backlog is 707 houses, and that it should be dealt with within the first five years of the plan period (which equates to 141dpa). He further agrees, for the reasons set out at IR250, that the CS housing requirement (270dpa) should be set aside in favour of an Objectively Assessed Need (OAN) figure for the Borough.
21. The Secretary of State has considered carefully the arguments put forward by the main parties in respect of the OAN figure, and the Inspector's assessment of these arguments (IR251-264). He considers that the figure of 132dpa, as set out in the conclusion on the Strategic Housing Market Assessment, published in February 2016 (IR256), is the appropriate starting point for considering OAN.
22. He accepts the Appellant's arguments at IR260 that models such as that put forward by Experian cannot be relied upon in circumstances such as the 'one-off shock' associated with the closure of the steelworks, and agrees that considerable efforts will be made '...to replace those lost jobs, not to mention regenerate the steelworks site'. He also accepts that past trends and/or economic forecasts are a valid part of an assessment of employment trends (IR253), and considers them to be relevant in the circumstances of this case. Overall he therefore considers that the appropriate job growth prediction will be nearer to the Appellant's figure of 2,200 than to the Council's figure of 500. He agrees with the Inspector at IR261 that it is not possible in this context to reach a firm conclusion on the OAN for the HMA. The Secretary of State considers that the OAN in this case lies in the range 240-285, and that the 5-year housing land supply is therefore in the range 3.6-4 years.
23. The Secretary of State considers that the appeal proposal is in conflict with Policy DP1, which defines the type of development which is acceptable in principle outside development limits. The Secretary of State has considered whether Policy DP1 is out of date. He considers that it has some limited consistency with the core principles of the Framework (for example as set out in the 5<sup>th</sup> bullet point of paragraph 17). However, he

has concluded above that the Council has not identified a 5-year housing land supply as required by paragraph 47 of the Framework. Overall he considers that Policy DP1 is out of date by virtue of inconsistency with the Framework, and taking into account his conclusion that the housing land supply is in the range of 3.6-4 years, he considers that it carries only limited weight.

#### *Other matters*

24. For the reasons given in IR266-270, the Secretary of State considers that matters relating to flooding, drainage, economic competition, highways, traffic and parking do not weigh against the proposal.

#### **Planning conditions**

25. The Secretary of State has given consideration to the Inspector's analysis at IR226 and IR275, the recommended conditions set out at the end of the IR and the reasons for them, and to national policy in paragraph 206 of the Framework and the relevant Guidance. He is satisfied that the conditions recommended by the Inspector comply with the policy tests set out at paragraph 206 of the Framework and that the conditions set out at Annex A should form part of his decision.

#### **Planning obligations**

26. Having had regard to the Inspector's analysis at IR227-229, the planning obligation dated 14 November 2016, paragraphs 203-205 of the Framework, the Guidance and the Community Infrastructure Levy Regulations 2010, as amended, the Secretary of State agrees with the Inspector's conclusions, for the reasons given in IR227-229, that the various Schedules of the Agreement comply with Regulation 122 of the CIL Regulations. He considers that the provisions of the Agreement meet the tests at paragraph 204 of the Framework, are necessary to make the development acceptable in planning terms, are directly related to the development, and are fairly and reasonably related in scale and kind to the development.
27. The Secretary of State has taken into account the number of planning obligations which have been entered into on or after 6 April 2010 which provide for the funding or provision of a project or type of infrastructure for which an obligation has been proposed in relation to the appeal. For the reasons given at IR229, the Secretary of State concludes that the obligations are compliant with Regulations 123(3), as amended.

#### **Planning balance and overall conclusion**

28. For the reasons given above, the Secretary of State considers that the proposed development would conflict with DP policy DP1 (Development outside development limits). However, he considers that this policy carries limited weight, and that the proposed development is in accordance with the development plan as a whole. He has gone on to consider whether there are material considerations which indicate that the proposal should be determined other than in accordance with the development plan.
29. In the absence of a 5-year supply of housing land, paragraph 14 of the Framework states that planning permission should be granted unless (a) any adverse impacts of doing so significantly and demonstrably outweigh the benefits, when assessed against policies in the Framework as a whole or (b) specific policies in the Framework indicate development should be restricted.

30. The Secretary of State considers that the contribution to meeting housing needs carries significant weight in favour of the development, the economic benefits carry moderate weight, and the heritage benefits carry moderate weight.
31. He considers that the conflict with policy DP1 carries limited weight against the proposal. He further considers that there would not be a significant adverse impact on the character and appearance of the area, and that this carries little weight against the proposal. For the reasons given above, he considers that the strategic gap would be maintained and that no harm would be caused to the significance of the heritage assets.
32. In the light of his conclusions on the heritage assets and the strategic gap, the Secretary of State considers that there are no specific policies in the Framework which indicate that this development should be restricted. He further considers that the adverse impacts of granting permission do not significantly and demonstrably outweigh the benefits. He concludes that there are no material considerations to indicate that the proposal should be determined other than in accordance with the development plan.

### **Formal decision**

33. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. He hereby allows your client's appeal and grants planning permission for the development of the site to provide a 821 dwelling scheme with ancillary uses, neighbourhood centre, petrol filling station, drive-thru restaurant, pub/restaurant, 60 bed hotel and car parking, with details of access, in accordance with application ref: R/2013/0669/OOM, dated 27 September 2013, amended as described in paragraph 6 above.
34. This letter does not convey any approval or consent which may be required under any enactment, bye-law, order or regulation other than section 57 of the Town and Country Planning Act 1990.

### **Right to challenge the decision**

35. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged. This must be done by making an application to the High Court within 6 weeks from the day after the date of this letter for leave to bring a statutory review under section 288 of the Town and Country Planning Act 1990.
36. An applicant for any consent, agreement or approval required by a condition of this permission for agreement of reserved matters has a statutory right of appeal to the Secretary of State if consent, agreement or approval is refused or granted conditionally or if the Local Planning Authority fail to give notice of their decision within the prescribed period.
37. A copy of this letter has been sent to Redcar and Cleveland Borough Council, and notification has been sent to others who asked to be informed of the decision.

Yours sincerely

*Maria Stasiak*

Authorised by the Secretary of State to sign in that behalf

## **ANNEX A – CONDITIONS**

1. Application for approval of reserved matters shall be made to the Local Planning Authority not later than three years from the date of this permission.
2. For each phase or sub phase of the development, 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 development is commenced and the development shall be carried out as approved. The details shall accord with the following plans: The details submitted shall be in accordance with the following plans:
  - Fixed Parameter Plan ((SK) 104 Rev D0)
  - Indicative Masterplan ((SK) 103 Rev D0)
  - Indicative Phasing Diagram ((SK) 059 PL1)
  - Indicative Landuse Parameter Plan ((SK) 056 PL5)
  - Indicative Access Parameter Plan ((SK) 058 PL1)
  - Indicative Landscape Plan ((SK) 057 PL1)
3. Each phase or sub phase of the development shall begin not later than two years from the date of approval of the last of the reserved matters to be approved.
4. The development hereby permitted shall not be implemented until a Phasing Plan for the timing and delivery of the development, or parts of it, in terms of the relationship between the phases or sub-phases of development and the proposed infrastructure, has been submitted to and approved in writing by the Local Planning Authority. Development shall be undertaken in accordance with the approved Phasing Plan.
5. For each phase or sub-phase of the development, details submitted in accordance with Condition 2 shall include existing and proposed ground levels together with finished floor levels for the development. The levels shall be shown by sections through the site and the development shall be carried out as approved.
6. An art feature or features shall be incorporated into the development in accordance with a scheme that has first been submitted to and approved in writing by the Local Planning Authority. The approved details shall be implemented in their entirety in accordance with the Phasing Plan required by condition 4 above.
7. Prior to the commencement of the relevant phase or sub-phase of the development, a Construction Traffic Management Plan (CTMP) shall be submitted to and agreed in writing with the Local Planning Authority. Development or each phase or sub-phase shall be undertaken in accordance with the approved CTMP.
8. For each phase or sub-phase of the development, development shall not take place until details have been submitted to and approved in writing by the Local Planning Authority of proposals to provide contractors car parking and material storage within the site. The details shall include a timetable for their provision linked to the Phasing Plan referred to in condition 4 above. The details approved shall be implemented and retained for the duration of the construction of each relevant phase or sub-phase until its completion in accordance with the approved timetable.

9. Prior to the occupation of any phase or sub-phase of the development hereby approved, a detailed Travel Plan shall be submitted to and approved in writing by the Local Planning Authority. The approved Travel Plan shall be implemented for five years after final occupation of that phase or sub-phase.
10. For each phase or sub-phase of the development, development shall not take place until a scheme of ecological mitigation and enhancement, including a timetable for scheme implementation, to accord with the details set out in the Environmental Statement and Phase I Habitat Survey, has been submitted to and approved in writing by the Local Planning Authority. The approved scheme shall provide for the protection of the most important protected habitat and wildlife species on the site identified in the ES. The development shall be implemented in accordance with the approved scheme and timetable.
11. For each phase or sub-phase of the development no part of the development shall be occupied until a scheme of lighting for the site has been submitted to and approved in writing by the Local Planning Authority. The approved scheme of lighting shall be implemented in accordance with the timetable set out in the approved Phasing Plan required by condition 4 above.
12. For each phase or sub-phase of the development a minimum of 10% of the site's energy requirements shall be provided by embedded renewable energy, in accordance with a scheme that has first been submitted to and agreed in writing by the Local Planning Authority. The approved scheme shall be implemented in its entirety, for that particular phase or sub-phase, in accordance with the Phasing Plan required by condition 4 above prior to the occupation of the development.
13. For each phase or sub-phase of the development the working hours for all construction activities on the site shall be limited to between 0800 and 1800 hours on Mondays to Fridays and 0800 to 1300 hours on Saturdays and not at all on Sundays or Public Holidays.
14. For each phase or sub-phase of the development no development shall take place until a scheme for the suppression of dust at the construction site has been submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be implemented prior to the commencement of development and shall be adhered to for the duration of the construction period.
15. For each phase or sub-phase of the development, development other than that required to be carried out as part of an approved scheme of remediation must not commence until parts (a) to (c) below have been complied with. If unexpected contamination is found after development has begun, development must be halted on that part of the site affected by the unexpected contamination to the extent specified by the Local Planning Authority in writing until part (e) has been complied with in relation to that contamination.

(a) Site Characterisation

An investigation and risk assessment, in addition to any assessment provided with the planning application, must be completed in accordance with a scheme to assess the nature and extent of any contamination on the site, whether or not it originates on the site. The contents of the scheme are subject to the approval in writing of the Local Planning Authority. The investigation and risk assessment must be undertaken by

competent persons and a written report of the findings must be produced. The written report is subject to approval in writing of the Local Planning Authority. The report of the findings must include:

- (i) a survey of the extent, scale and nature of contamination;
- (ii) an assessment of the potential risks to human health, property (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes, adjoining land, ground and surface waters, ecological systems, and archaeological sites and ancient monuments;
- (iii) an appraisal of remedial options, and proposal of the preferred option(s).

This must be conducted in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11'.

(b) Submission of Remediation Scheme

A detailed remediation scheme to bring the site to a condition suitable for the intended use by removing unacceptable risks to human health, buildings and other property and the natural and historical environment must be prepared, and is subject to the approval in writing of the Local Planning Authority. The scheme must include all works to be undertaken, proposed remediation objectives and remediation criteria, timetable of works and site management procedures. The scheme must ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation.

(c) Implementation of Approved Remediation Scheme

The approved remediation scheme must be carried out in accordance with its terms prior to the commencement of development other than that required to carry out remediation. The Local Planning Authority must be given two weeks written notification of commencement of the remediation scheme works.

Following completion of measures identified in the approved remediation scheme, a verification report that demonstrates the effectiveness of the remediation carried out must be produced, and is subject to approval in writing of the Local Planning Authority.

(d) Reporting of Unexpected Contamination

In the event that contamination is found at any time when carrying out the approved development that was not previously identified it must be reported in writing immediately to the Local Planning Authority. An investigation and risk assessment must be undertaken in accordance with the requirements of part (a) and where remediation is necessary a remediation scheme must be prepared in accordance with the requirements of part (b), which is subject to the approval in writing of the Local Planning Authority. Following completion of measures identified in the approved remediation scheme a verification report must be prepared, which is subject to the approval in writing of the Local Planning Authority.

(e) Long Term Monitoring and Maintenance

A monitoring and maintenance scheme to include monitoring of the long-term effectiveness of the remediation over a period of 10 years, and the provision of reports on the same must be prepared, both of which are subject to the approval in writing of the Local Planning Authority. Following completion of the measures identified in that scheme and when the remediation objectives have been achieved, reports that demonstrate the effectiveness of the monitoring and maintenance carried out must be produced, and submitted to the Local Planning Authority. This must be

conducted in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11'.

16. For each phase or sub-phase of the development and prior to the commencement of development, details of the surface water drainage scheme shall be submitted and approved by the Local Planning Authority (in consultation with the Lead Local Flooding Authority and Northumbrian Water) and the development shall be completed in accordance with the approved scheme. The design of the drainage scheme shall include;
- (i) Restriction of surface water run-off rates (QBAR value) with sufficient storage within the system to accommodate a 1 in 30 year storm;
  - (ii) Measures to mitigate known surface water issues on the northwest corner of the site in order to mitigate the risk of increased flooding in this area;
  - (iii) The method used for calculation of the existing greenfield run-off rate shall be the ICP SUDS method. The design shall also ensure that storm water resulting from a 1 in 100 year event, plus 30% climate change surcharging the system, can be stored on site with minimal risk to persons or property and without overflowing into drains, local highways or watercourses;
  - (iv) Full Micro Drainage design files (mdx files) including a catchment plan;
  - (v) The flow path of flood waters for the site as a result on a 1 in 100 year event plus 30%.
17. For each phase or sub-phase of the development and prior to the commencement of the development, details of a Surface Water Drainage Management Plan shall be submitted and approved by the Local Planning Authority. The development shall be completed in accordance with the Management Plan. The Management Plan shall include;
- (i) The timetable and phasing for construction of the drainage system;
  - (ii) Details of any control structure(s);
  - (iii) Details of surface water storage structures;
  - (iv) Measures to control silt levels entering the system and out falling into any watercourse during the construction process;
  - (v) Details of any structures or features that will be privately owned and maintained, but which make a contribution to the flood or coastal erosion risk management of people and property.
- The development shall be carried out in accordance with the approved Management Plan.
18. For each phase or sub-phase of the development no dwelling or other building shall be occupied until a Management & Maintenance Plan for the surface water drainage scheme has been submitted to and approved in writing by the Local Planning Authority. The development shall be completed in accordance with the Management & Maintenance Plan. The plan shall include details of the following;
- (i) A plan clearly identifying the sections of surface water system that are to be adopted;
  - (ii) Arrangements for the short and long term maintenance of the SuDS elements of the surface water system.
19. For each phase or sub-phase of the development no part of the development shall be brought into use until the parking and servicing provision associated with it are available for use.

20. The details submitted pursuant to condition 2 above shall ensure that private drives should be a minimum of 3.7m wide for their entire length and should serve no more than 5 properties.
21. Access to the site from the existing highway shall incorporate a visibility splay of 2.4m x 43m on Longbeck Road and 2.4m x 43m on the A1085. There shall be no obstructions greater than 600mm in height within these splays and any vegetation shall be maintained at this height.
22. The details pursuant to condition 2 above shall include full highway construction and layout details in accordance with Redcar and Cleveland Design Guide and Specification and shall highways shall be designed and implemented to adoptable standards.
23. Prior to the commencement of development (unless stated otherwise below), or in accordance with a phasing scheme to be agreed in writing with the Local Planning Authority, the following highways improvements that are set out in the Transport Assessment (Report Reference 1270/3/E, August 2016) shall be submitted to and approved in writing by the Local Planning Authority:
- Change Bus stop locations on Longbeck Road (identified on drawing no. 1270/06/D) and on A1085 (identified on drawing no. 1270/37/D);
  - Pedestrian access on A1085 into Marske, by way of a footway under the A1085 railway bridge, prior to first occupation of the development;
  - A174/A1042 Kirkleatham Lane (SJ18, drawing no. 1270/40), prior to first occupation of the development;
  - A174/ Fishponds Road (SJ19, drawing no. 1270/34/A), prior to occupation of Phase 2 (the 275th dwelling);
  - A174/Redcar Lane (SJ20, drawing no. 1270/35), prior to occupation of Phase 3 (the 633rd dwelling).
24. For each phase or sub-phase of the development, prior to the first occupation of any dwelling, boundary walls and fences shall be erected in accordance with a scheme that has first been approved in writing by the Local Planning Authority and shall thereafter be maintained.
25. For each phase or sub-phase of the development, development shall not be occupied until a scheme for the enclosure of any noise emitting plant and machinery with sound-proofing material, including details of any sound-insulating enclosure, mounting to reduce vibration and transmission of structural borne sound and ventilation or extract system, has been submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be completed prior to the first occupation of the building and shall thereafter be retained.
26. No development shall take place until a scheme for protecting the occupants of the proposed residential development from noise from the adjacent road network and from the railway has been submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be completed prior to the first occupation of the development and shall thereafter be retained.

27. For each phase or sub-phase of the development the landscaping details submitted pursuant to condition 2 above shall make provision for the protection and enhancement of the proposed route of the Public Right of Way (within the site) together with opportunities for ecological enhancement /biodiversity.
28. For each phase or sub-phase of the development, a full planting plan including details of species and mix, together with a landscape management plan covering a period of at least 10 years together with any proposals for advance structure planting shall be submitted to and approved by the Local Planning Authority. All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding season following the occupation of the buildings or the completion of the development, whichever is sooner, and any trees or plants which within a period of ten years from the completion of the development die, are removed, or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.
29. For each phase or sub-phase which adjoins the scheduled ancient monument boundary and prior to the commencement of the development in that location, a written scheme of investigation (WSI) for a programme of archaeological evaluation work shall be submitted to and agreed with the Local Planning Authority. The WSI shall as a minimum provide for the following:
- (i) a magnetometer survey of all of the land constituting the areas intended to be set out as landscaping/playing fields lying between the boundary of the scheduled monument at Hall Close and the zones of built development to the south and west, indicated on Fixed Parameter Plan, reference 11-043(SK)104DO;
  - (ii) a resistivity survey of that part of the land subject to magnetometer survey which lies within 50 metres of the boundary of the scheduled monument;
  - (iii) trial trenching of all anomalies of archaeological potential revealed by the magnetometer/resistivity surveys that may be affected by ground works required for the development (including works carried out by statutory undertakers or their agents or sub-contractors) at or below a depth of 300mm;
  - (iv) methodologies, recording, assessment, reporting, and archiving in accordance with professional practice and CiFA standards and guidance.

The requirements of the WSI shall be carried out and the full reports for the surveys and trial trenching shall be made available to the local planning authority before the commencement of development of the phase or sub-phase which adjoins the scheduled ancient monument boundary and in sufficient time to allow agreement of a programme of archaeological investigation (if any) required by this condition.

Prior to the commencement of development of the phase or sub-phase which adjoins the scheduled monument boundary, the developer shall agree with the local planning authority whether the results of the surveys and trial trenching suggest that further archaeological investigation of any structures, remains or deposits is required. If archaeological investigation is required a further WSI for a programme of archaeological work shall be agreed with the local planning authority before the commencement of development. The WSI shall provide for an appropriate agreed programme of work, which may include full excavation of features, strip/map/sample/record, or watching brief, or any combination of those intensities of work, in accordance with then current professional methodologies, practices, recording, reporting, assessment and archiving, and CiFA standards and guidance.

The requirements of any further WSI shall be carried out and the report or reports of work shall be made available by the developer to the local planning authority no later

than when the development of the phase or sub-phase which adjoins the scheduled monument boundary is first brought into use.

30. Prior to the commencement of the development hereby permitted a Conservation Management Plan (CMP) shall be submitted to and approved in writing by the Local Planning Authority, in consultation with Historic England, for the management of the scheduled area of Hall Close (SAM 32746; NHL 1018948) and land within its vicinity to the south and west. The CMP shall provide for maintenance, public access, interpretation (including the results of any archaeological work on adjacent areas carried out by the developer), restriction of access, and prohibitions, or any similar thing or matter in relation to the nature and proximity of the development as well as a timetable to carry out such works. The CMP shall be implemented in accordance with the approved timetable.
31. In accordance with the CMP, the Scheduled Ancient Monument shall be re-assessed to establish whether or not it remains on the Historic England List of Scheduled Ancient Monuments at Risk. If any residual works are required by Historic England they shall be carried out and certified by Historic England.
32. The extent and detailed layout (including gradients, surfaces, planting, any built structures and scheduled monument boundary) in those areas west and south of the scheduled monument at Hall Close, indicated on Fixed Parameter Plan, reference 11-043(SK)104DO to be school playing fields, linear park, open grass and shrubs, shall be approved in writing with by the Local Planning Authority prior to the commencement of the phase or sub-phase which adjoins the scheduled monument boundary. The phase or sub-phase which adjoins the scheduled monument boundary shall not thereafter be brought into use or occupied other than in accordance with that approved detailed layout.
33. Prior to the commencement of the 200<sup>th</sup> dwelling on the development site, a Reserved Matters (or Detailed Planning) Application for the development of the Neighbourhood Centre shall be submitted to and approved in writing by the Local Planning Authority.
34. Prior to the occupation of the 600<sup>th</sup> dwelling on the development site, the Neighbourhood Centre approved pursuant to condition 33 shall be constructed and made available for occupation.

# **Report to the Secretary of State for Communities and Local Government**

**by John Braithwaite BSc(Arch) BArch(Hons) RIBA MRTPI**

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

**Date: 22 February 2017**

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**TOWN AND COUNTRY PLANNING ACT 1990**

**REDCAR AND CLEVELAND BOROUGH COUNCIL**

**APPEAL**

**by**

**WEST MIDLANDS METROPOLITAN PENSION FUND**

Inquiry held on 11-14, 18-21 and 25 October 2016

Land to the south of Marske-by-the-Sea, Bounded by Longbeck Road, A1085 and A174, Redcar,  
Cleveland TS11 6EZ

File Ref: APP/V0728/W/15/3134502

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**File Ref: APP/V0728/W/15/3134502**

**Land to the south of Marske-by-the-Sea, Bounded by Longbeck Road, A1085 and A174, Redcar, Cleveland TS11 6EZ**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
- The appeal is made by West Midlands Metropolitan Pension Fund against the decision of Redcar & Cleveland Borough Council.
- The appeal was recovered for decision by the Secretary of State, by a direction made under section 79 of the Town and Country Planning Act 1990, on 16 October 2015.
- The application Ref R/2013/0669/OOM, dated 27 September 2013, was refused by notice dated 11 March 2015.
- The development proposed is up to 1000 no. residential dwellings, together with ancillary uses and a neighbourhood centre, a park-and-ride car park, a petrol filling station, a drive-thru, a pub/restaurant and a 60 bed hotel, with details of access.

**Summary of Recommendation: The appeal be allowed and planning permission be granted, subject to conditions set out in a schedule attached to this report.**

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## **Procedural Matters**

The planning application

1. The application was submitted in outline form with all matters except for access reserved for future consideration.

The proposed development

2. The proposed development was amended after the application was determined by the Council. The amendments have been agreed by the main parties and no other party's interests are jeopardised by consideration of the amended scheme. The amended scheme is described in the Statement of Common Ground as 'a 821 dwelling scheme with ancillary uses, neighbourhood centre, petrol filling station, drive-thru restaurant, pub/restaurant, 60 bed hotel and car parking, with details of access'. The amended scheme and an amended parameters plan were considered at the Inquiry and have been in this Report.

Inquiry and Core Documents

3. Documents submitted at the Inquiry (ID) are listed in an appendix to this Report. The amended Fixed Parameters Plan is ID6. Core documents (CD) are also listed in appendix to this Report.

Environmental Statement

4. The proposed development is EIA development for the purposes of the Town and Country Planning (Environmental Impact Assessment) Regulations 2011. An Environmental Statement (ES) was submitted to The Planning Inspectorate (PINS). The ES was found not to meet the requirements of the EIA Regulations. An amended ES was submitted to PINS, and copied to the Council, on 5 September 2016 and was advertised in a local newspaper. The amended ES was found to meet the requirements of the EIA Regulations.

Statements of Common Ground

5. The main parties have agreed a Statement of Common Ground (ID5) and a Highways and Transport Statement of Common Ground (ID4).

## The Council's Refusal Notice

6. The Council's Refusal Notice cited two reasons for refusal of the outline planning application. These are as follows:

*The application site is located outside of the development limits and within a Strategic Gap and it is considered that in the light of available information no exceptional circumstances have been demonstrated to justify the grant of planning permission. The proposed development would result in a substantial built intrusion into an extensive area of countryside beyond the currently approved development limits of Marske that would be detrimental to the character and appearance of this part of the local countryside and would notably reduce the broad Strategic Gap between Marske and New Marske. The Local Planning Authority has considered information set out in the application to justify a departure from policy but considers those grounds do not justify a policy departure at this time. The proposal therefore fails to accord with Policies CS23 (Green Infrastructure) and DP1 of the Local Development Framework (Core Strategy and Development Policies DPDs, July 2007).*

*The proposed development, taking into account the information submitted to support the application, the location of the Scheduled Ancient Monument (SAM) and the advice received from English Heritage, will have a less than substantial harm upon the SAM but, in the opinion of the Local Planning Authority, the public benefits arising from the proposed development do not outweigh the less than substantial harm identified. The development, therefore, fails the relevant test set out at Paragraph 134 of the National Planning Policy Framework, policy CS25 (Built and Historic Environment) and policy DP11 (Archaeological Sites and Monuments) of the Redcar and Cleveland Local Development Framework (Core Strategy and Development Policies DPDs, July 2007).*

## The Site and Surroundings

7. The site is about 50 hectares of agricultural land. To the north of the site is a railway line that marks the south boundary of the village of Marske-by-the-Sea (hereafter referred to as Marske). To the east of the site is the A1085 which extends out from the village towards a roundabout junction with the A174, which extends along the south boundary of the site in a wide cutting. To the west of the site is Longbeck Road which extends out from the village also to a roundabout junction with the A174. A triangular area of the area between the three roads and the railway line, to the east of the roundabout junction of Longbeck Road and the A174, is agricultural land not within the site. Also not within but surrounded by the site is Marske Inn Farm, a site mainly in use for vehicle repair and maintenance purposes.

8. The site slopes gently up from north to south and is mainly arable land though a roughly square area at its north-east corner is a Scheduled Ancient Monument (SAM), described by Historic England as 'Manorial Settlement, dovecote and fragment of field system'. Between the SAM and the railway line is Marske Station and a coal depot. The A1085 passes under the railway line and becomes High Street. Where the road passes under the bridge it has no footpath. The village has a district centre based on the High Street with a variety of shops, licenced premises, public services and facilities, and primary and secondary schools. A neighbourhood shopping parade is situated on Hummershill Lane to the east of the High Street.

9. Between the A1085 and Longbeck Road, alongside the railway line, is a public footpath, the Black Path. To the north of Marske is the coastline of the North Sea.

The village is surrounded by countryside though the settlements of Redcar, New Marske and Saltburn are nearby to the west, south-west and east respectively.

## **Planning Policy**

### **Local planning policy**

10. The Development Plan includes saved policies of the Redcar and Cleveland Local Plan 1999 (LP), adopted on 1 June 1999, and the Core Strategy Development Plan Document (CS) and the Development Policies Development Plan Document (DP) of the Redcar and Cleveland Local Development Framework (LDF), both of which were adopted before publication of the National Planning Policy Framework (NPPF).

11. CS policy CS23 'Green Infrastructure' states that strategic gaps between Marske and New Marske and between Marske and Saltburn, amongst other areas, will be protected and, where appropriate, enhanced to improve their quality, value, multi-functionality and accessibility. The strategic gap designation is not identified on the adopted LP Proposals Map and there are no clearly defined boundaries of the strategic gaps. CS policy CS22 seeks to protect and enhance the Borough's landscape and CS policy CS25 'Built and Historic Environment' states that the character of the built and historic environment will be at least protected.

12. DP policy DP1 defines the types of development that will be acceptable in principle outside development limits, though these limits are not defined in the LDF. The main parties agree that the proposed development does not fall within any of the acceptable types of development and that the policy is a policy for the supply of housing. DP policy DP11 states that development that would adversely affect important archaeological sites or monuments will not be approved.

13. CS policy CS13 states that the LDF will provide for net additions to the dwelling stock of the Borough of 300 dwellings per annum in 2004-2011 and 270 dwellings per annum in 2011-2021. These housing requirements are based on the provisions of the now withdrawn Regional Spatial Strategy for the North-East (RSS).

14. A Redcar and Cleveland Local Plan, to replace the LDF, is in preparation. The Council consulted on the Local Plan Scoping Report in July 2015 and on a Draft Local Plan in May 2016. A publication version of the Local Plan has been the subject of consultation but has not been the subject of independent examination. The main parties agree therefore that no weight can be attached to the emerging Local Plan.

### **National planning policy**

15. Paragraph 215 of the NPPF states that due weight should be given to relevant policies in existing plans according to their degree of consistency with the framework. Paragraph 47 of the NPPF requires local planning authorities to identify and update annually a supply of specific deliverable sites to provide five years' worth of housing against their housing requirements. Paragraph 49 states that relevant policies for the supply of housing should not be considered up to date if the local planning authority cannot demonstrate a five-year supply of deliverable housing sites.

## **The Proposals**

16. The proposed development is as described in paragraph 2 and as shown on the amended Fixed Parameters Plan. The non-housing elements of the development would be in the south-east corner of the site with a single access off the A1085. There would be a wide undeveloped buffer to the west of the SAM and to the south of New Marske Farm, and a landscape buffer along the boundary to the A174 and to the

boundary to the triangle of agricultural land to the south-west of the site. The remainder of the site would be developed for housing with a spine road between accesses off Longbeck Road and the A1085.

### **Main Issues**

17. The main issues were set out at the Inquiry as being:
1. The effect of the proposed development on the character and appearance of the area;
  2. The effect of the proposed development on the significance of heritage assets;
  3. Whether the Council can demonstrate a five year supply of land for housing.

### **The Case for West Midlands Metropolitan Pension Fund**

The material points of the case made by West Midlands Metropolitan Pension Fund are:

#### *Character and appearance of the area*

##### Strategic Gap

18. The Council has sought to make much of alleged differences between the Appellant's interpretation of CS policy CS23 and that of the Inspector in the Saltburn appeal. It is therefore useful to remember exactly what the Inspector said "I consider it to be both a spatial policy and, by implication, a landscape policy, in so far as it seeks to protect a landscape which forms part of a strategic gap".

19. It is clear that the Inspector saw policy CS23 as primarily a spatial policy. While he recognised that it has a landscape function, his view was that this function was a natural and logical consequence of the spatial function. That the Inspector was able to conclude on compliance with policy CS23 before going on to assess landscape impacts later in his decision shows that his focus was on spatial matters. This is a correct interpretation of policy CS23 for two reasons:

20. Firstly, the wording of the policy itself does not refer to landscape quality or protection, requiring only the development should protect or enhance, "quality, value, multi-functionality and accessibility". Secondly, the purpose of the gap is to prevent the coalescence of the settlements of Marske and New Marske. This interpretation is entirely consistent with the approach adopted by the Council in all circumstances other than in relation to this appeal.

21. As a matter of fact, the development would not result in coalescence, there still being a gap between the A174 to the south of the appeal site and the northern edge of New Marske. Furthermore, development would not result in the two settlements appearing to coalesce from any viewpoint. It is therefore beyond argument that the purpose of the gap is not compromised by the proposed development.

22. The Appellant's approach to the purpose of policy CS23 sits comfortably with the Council's long held views outside of this appeal. In 2013 the Council assessed the site as being, "the most suitable and logical greenfield growth location in the conurbation due to the...(fact that)...it is less constrained by environmental factors...

and policy considerations". The logic of the Council's approach is that nothing would ever get built in the strategic gaps. This would spell the end for the growth of Marske, the village being surrounded by sea to the north, strategic gaps to the east and south and green wedge to the west. It would also be inconsistent with the Inspector's approach to the Saltburn strategic gap. This is not a conclusion that finds any support in either CS policy CS23 or national policy.

23. The CS Key Diagram is the closest thing we have to a proposals map, the Council having not found time to adopt one in the decade since the adoption of the CS. That diagram clearly and deliberately identifies the boundary of the conurbation as being the A174. This is further evidence that it was never intended for strategic gaps to be sacrosanct, otherwise the boundary of the conurbation could just as easily have followed the railway line and the existing settlement edge.

24. In landscape terms the appeal site can be developed without harming the strategic gap and would, in fact, enhance the gap by reducing the visibility of the boundary of Marske from New Marske and vice versa.

#### Character

25. The 2006 Landscape Character Assessment (LCA) identifies a series of positive and negative elements within the landscape. Positive elements identified in the assessment include variety of landform, accessibility by pedestrians, extensive views, standing or running water, hedgerows and woodlands, wildlife habitats, and archaeological and historical features, and, at the coast, beach and cliffs. Negative elements include intrusive urban elements, (such as power lines and towers), urban edges, sparsity (or evidence of loss of) hedgerow or tree cover, limited public access and caravan sites.

26. This analysis leads to a conclusion as to whether the landscape of each unit has a character which should be retained and where change would be damaging (as a Sensitive Landscape), or whether the landscape may be improved (as a Restoration Landscape). Within the Redcar Flats landscape character area the landscapes to the east and west of Marske (R6 and R7) are identified as Sensitive Landscapes (in part because of their naturally open character caused by their coastal location), as are the woodland areas to the west of Saltburn (R8) and at Kirkleatham (R3). The appeal site falls within R2, which is designated as a Restoration Landscape.

27. While Mr Barker, for the Council, maintained throughout the appeal that openness was an important characteristic of the site, this is impossible to reconcile with everything else that the Council has ever published on the topic. In fact, it is diametrically opposed to the views of the Council before (and in the case of the emerging plan during but outside of the scope of) this appeal. In contrast, the Appellant's argument that the landscape character of the site would be enhanced by the proposed landscaping sits comfortably with the Council's position.

28. Mr Barker supplemented his argument by arguing that the designation of the appeal site as a strategic gap gave it a value that differentiated it from the rest of R2 and means that the Restoration Landscape designation is not appropriate. The strategic gap designation dates back to at least 2004, when it was identified in the Tees Valley Structure Plan. This was a full two years before the LCA, which did not refer to strategic gaps at all and, in any event, distinguished between the quality of the land to the south of Marske to that to the east and west (strategic gap and green wedge respectively). Nor did the SPD choose to reference strategic gaps in 2010, despite their having been reconfirmed again in the Core Strategy.

29. The landscaping proposed would enhance the landscape character of the site, softening the current hard edge of Marske and restoring landscape structure, the absence of which is the primary reason for the Council identifying it as a Restoration Landscape. The Appellant rejects the suggestion that deep boundary planting is intended to hide the development or that it creates an automatic expectation of built form behind. The proposed landscaping (which Mr Barker accepted will substantially screen the built form) is in keeping with the character of the high quality landscapes in the area and would contribute towards the restoration of the landscape character locally so as to be a clear benefit of the proposals.

#### Appearance

30. Once again Mr Barker was forced to overstate his case in order to try to reach the threshold for harm; this time classifying all receptors as highly sensitive and giving anything that is currently visible from any view a degree of landscape value that might be justified when it comes to views of the coast. This is understandable given that all of the viewpoints that he identified are highly localised and most of them are only available to vehicular and rail traffic, not pedestrians. Even where the views are available to pedestrians, the sensitivity of the pedestrian is reduced because the views coincide with crossings over busy roads.

31. Mr Barker also accepted that, in the main, the view after planting has established would be of the landscaping rather than of built development. This again brings him back to having to argue that trees and hedgerows are harmful visual intrusions. On a number of occasions, Mr Barker was also forced to disregard the fact that the site lies on the edge of Marske. His chosen photographs from the Black Path do not address the fact that users are following the existing settlement edge alongside a railway line.

#### Valued landscape

32. In response to a question from the Inspector, Mr Barker agreed that there was a difference between a valued landscape for the purposes of the NPPF and a landscape of value. Furthermore, he indicated that the appeal site is a landscape of value. The site is not a valued landscape in NPPF terms and paragraph 109 of the NPPF is not engaged.

#### Conclusion on character and appearance matters

33. The appeal proposals would not compromise or undermine the strategic gap. Whilst there would be a change to landscape character and that within the site the impact would be significant, this highly localised change (which can be applied to all development on greenfield sites) must be weighed against the positive impact that the proposals would have on wider landscape character, contributing towards the objectives set for this Restoration Landscape.

34. In visual terms, the topography of the wider area means that the extensive views identified as a positive feature of the area by the LCA are largely retained. Only relatively few views would be impacted by the proposals and these are both highly localised and largely not affecting highly sensitive receptors. When considered in the context of existing built form and of the existing lack of visibility into the site from the surrounding areas, the impacts do not justify a refusal of the appeal.

## *Heritage assets*

### Policy context

35. The NPPF is clear on how potential impacts on heritage assets should be assessed and taken into account in the context of development proposals. The starting point is to assess the significance of the potentially affected asset, and then to assess the impact that the development proposal would have on that significance.

36. Heritage significance can be derived from any or all of the following: archaeological interest, architectural interest, artistic interest, and/or historic interest. The setting of a heritage asset is not a heritage asset in its own right, but it can make a contribution to the significance of the relevant heritage asset.

37. Whether and to what extent a particular asset's setting contributes to its significance is a matter of fact and degree; setting does not automatically contribute to an asset's significance as is made clear by the NPPF's definition of setting: "The surroundings in which a heritage asset is experienced. Its extent is not fixed and may change as the asset and its surroundings evolve. Elements of a setting may make a positive or negative contribution to the significance of an asset, may affect the ability to appreciate that significance or may be neutral". What constitutes setting is also a matter of assessment; the setting being the surroundings in which the asset can be experienced.

38. While there are several advice and guidance notes that can be of assistance in carrying out this assessment, these documents do not supplant or replace the NPPF and the clear approach that it requires. It is common ground that the appeal proposals do not directly impact on, or harm, the significance of any heritage assets.

### Scheduled Ancient Monument (SAM)

39. It takes nothing away from the heritage significance of the SAM to accept that its appearance is relatively modest to the untrained eye. In reality, it is a collection of mounds in a field that is currently in use for grazing (albeit very important mounds, the archaeological significance of which is recognised in the Schedule entry). Nonetheless the main parties agree that the SAM has the very highest level of significance.

40. Where the main party's views diverge is in defining the extent of the SAM's setting and the contribution that setting makes to that significance. This is important because, in the absence of direct harm to the SAM, it is only by harming the contribution that its setting makes to its significance that the appeal proposals can have any adverse impact on the SAM.

41. At this point it is important to pause and be clear exactly what must be proven before any harm to the SAM can be established:

- the setting of the SAM must be defined;
- the contribution that that setting makes to the significance of the SAM must be assessed;
- the change that will occur within the setting must be identified; and
- the extent to which such change harms the contribution that setting makes to the SAM must be assessed.

42. One of the most serious weaknesses in the Council's case on heritage is that they have singularly failed to undertake this four-stage assessment.

### Setting of the SAM

43. Mr Ives' has carried out a detailed analysis of the surrounding in which the SAM is experienced, taking into account both the locations from which the SAM can be experienced and the locations that can be experienced from the SAM. During the course of the Inquiry the Council sought to make much of the allegation that Mr Ives had wrongly confined his assessment of setting to the locations that can be seen from the SAM and from where the SAM can be seen. It is clear from Mr Ives' evidence that he did not exclude non-visual methods of experiencing the SAM, but that his conclusion was that the SAM, by its very nature, can only be experienced visually.

44. It is submitted that Mr Ives' forensic analysis of the setting is to be preferred to the somewhat arbitrary conclusion that the whole of the appeal site is within the setting of the SAM. Indeed, Mr Burton-Pye was forced to concede during the Inquiry that not all of the appeal site was within the SAM's setting. He accepted that once the SAM is no longer visible from the Black Path (heading east), the SAM is no longer experienced. He makes a similar concession in relation to the part of the appeal site to the south of Marske Inn Farm.

45. Support for Mr Ives' conclusion can also be found in the views of Historic England. While their first letter made clear that they considered that development could take place on some parts of the appeal site their last letter expressed their view that the proposals would still cause a degree of harm. The only way that these two statements can be reconciled is if Historic England considers that not all of the appeal site lies within the SAM's setting.

### Contribution of Setting to Significance

46. The parties agree that the SAM has no architectural or artistic interest and that the primary source of significance is the SAM's archaeological interest. The primacy of the archaeological interest is clear from the SAM's schedule entry, although it is perhaps a given that an archaeological site must derive its significance principally from its archaeological interest in any event.

47. The parties agree that some significance can be derived from the SAM's historic interest, although Mr Ives argues that the historic interest is derived from the SAM's relationship with the High Street, the conservation area and the listed buildings at the heart of the village. In this, he draws support from the Council's conservation area appraisal and the schedule entry. While he acknowledges that some historic interest can be derived from the SAM's relationship with its agricultural surroundings, his assessment is that this interest is derived from the evidence of historic ridge and furrow farming practices visible within the SAM and in the field to the east rather than from a modern, intensively farmed field whose historic features were destroyed in the latter half of the 20th century. Mr Ives also argues that the railway line and modern expansion of Marske, as well as the distant views to industrial Teesside, influence the way that the site is experienced.

48. In contrast, Mr Burton-Pye plays down the interest derived from the SAM's relationship with the historic development of Marske and does not even acknowledge the value of the clear evidence of a historic ridge and furrow farming system on the field to the east of the SAM. For him, it is all about the agricultural use of the appeal site. The Appellant submits that Mr Burton-Pye is plainly wrong and that Mr Ives' assessment is to be preferred.

49. In addition, Mr Burton-Pye falls into the trap of ignoring the pattern of urban change in Marske since the mid-1880s, which has changed the SAM's setting and the way that it is experienced. The southward expansion of Marske, the arrival of the railway line and the construction of the A174 bypass have all reduced the contribution that setting makes to the significance of the SAM. In essence, he has made the same mistake that Mr Ives argues was made by Historic England, whose assessment stops in the mid-18th century.

50. The Appellant submits that Mr Ives' conclusion that setting makes only a low contribution to the SAM's significance is the only conclusion before this Inquiry that is based on a proper and robust assessment and should be preferred.

#### Change within Setting

51. The amendments made to the masterplan during the course of the application mean that the change within the SAM's setting would be modest, largely consisting of the introduction of landscape planting and the change of use of the immediately surrounding land to open space and, possibly, school playing field.

#### Extent to which Change to Setting Harms Significance

52. Mr Burton-Pye often talked about harm to setting as if it were the end of the matter. In this he revealed the fundamental flaw in the Council's heritage case. Throughout the Council's evidence they have failed to undertake the assessment set out above. Most significantly, they fail to consider the extent to which the changes that would occur within the SAM's setting would harm the significance of the SAM.

53. The Appellant accepts that there would be change within the SAM's setting. What is not accepted, however, is that any of the changes would cause harm to the significance of the SAM. It is common ground that the changes would not cause any harm to the primary archaeological interest of the SAM and so the key question is whether any harm is caused to the historic interest of the SAM by virtue of the changes within its setting. It is submitted that the Council has failed to articulate any such harm and that Mr Ives is correct to conclude that the changes to the SAM's setting would have a neutral impact on its significance.

#### St Mark's Church, Marske

54. The Church is a Grade II listed building. The main parties agree that it is less important than the SAM but is still a designated asset of significance. The parties agree that this significance is derived from its architectural, artistic and historic interest. It is also agreed that the artistic interest is best appreciated within the building itself and so is unaffected by the appeal proposals.

55. Mr Ives has explained very clearly and cogently why the architectural and historic interest of the Church is best appreciated up close, alongside the other listed buildings around it and within the historic context of the conservation area. Nonetheless, the tower of the Church is visible from many locations outside of the village and the Appellant accepts that the appeal site is within the setting of the Church and makes a moderate contribution to the Church's significance.

56. In views from the north of Marske the Church is less prominent as it is viewed against the backdrop of Errington Woods on higher ground to the south. In any event, the contribution that these views make to its significance is severely reduced by the effect of the new academy buildings that clearly dominate these views when on site, even if conveniently cropped out of Mr Burton-Pye's photographs. Mr Ives also pointed to the greater prominence of the listed Cliff House

in these views, which further reduces the prominence of the Church and the contribution that these views make to its significance. In any event, the change to these views that would result from the appeal proposals is negligible, amounting to nothing more than the addition of a small amount of built form at the back of the village. The appeal proposals would not interfere with views of the church and would not change the skyline.

57. The Council has identified just two views from the south from which existing glimpses of the Church would be lost as a result of the appeal proposals and a further two where the view would be altered by the development. The Appellant does not dispute the Council's evidence in this regard and has accepted from the outset that the appeal proposals would result in some change to these views, but Mr Ives was clear that these minor changes, in the context of the number and quality of views in which the church is prominent and the moderate contribution that setting in this location makes to the Church's significance, do not result in harm to the significance of the Church.

#### Heritage Benefits

58. The SAM is currently on Historic England's 'At Risk' Register. Unless steps are taken to restore it, its long-time survival is therefore in doubt. At the same time, the SAM's very nature, combined with its location, limit the opportunities for people to understand and appreciate its significance. The Council is wrong to argue that a Conservation Management Plan (CMP) was not proposed before the Appellant referred to it in proofs of evidence. Historic England raised the prospect of a CMP in their consultation responses on the application.

59. A suitable CMP can be secured by condition. While the decision as to whether or not to remove the SAM from the 'at risk' register is one for Historic England and so cannot be guaranteed through a condition, no reasons were put before the Inquiry to indicate why a CMP could not deliver significant improvements in the condition of the SAM and provide opportunities for greater public access to and/or understanding of the SAM's significance. By virtue of the statutory regime, any CMP would also require a Scheduled Ancient Monument Consent application, further reinforcing the protections afforded to the SAM and to ensuring its preservation in the longer-term.

60. The Council has provided no evidence to suggest that a CMP would not be forthcoming in the absence of the development and so this is a very substantial benefit in heritage terms. A benefit of such significance is more than enough to outweigh the harm alleged by the Council.

#### Conclusion on Heritage Matters

61. The Council has sought to overplay the harm that the appeal proposals would cause to the significance of heritage assets. In order to do so they overstate the extent of the SAM's setting and simply equate change within setting to harm. The extent of the Council's mistake is clear from Mr Burton-Pye's proof of evidence, which makes no reference to the NPPF and its concepts of significance.

62. When properly assessed, it is clear that the appeal proposals would cause no harm to the significance of the SAM but would offer the opportunity to secure it for the future and increase awareness of its significance. This is a clear heritage gain and an enhancement of the SAM's significance. There would be no harm to the significance of the Church, whose significance would therefore be preserved.

63. It therefore follows that the appeal proposals both preserve (in the case of the Church) and enhance (in the case of the SAM) and so there is no heritage case

for the Appellant to answer. Furthermore, even if the Council is correct in its assessment of harm, the benefits to the SAM comfortably outweigh that harm so that, either way, paragraph 134 of the NPPF is not engaged.

*Five year housing land supply*

Subnational Population Projections (SNPP)

64. The National Planning Practice Guidance (NPPG) makes clear that the starting point for establishing OAN is the latest SNPP projections. The NPPG makes a number of important points:

- The projections are trend based, i.e. they provide the household levels and structures that would result if assumptions based on previous demographic trends in the population and rates of household formation were to be realised in practice;
- The projections should be adjusted to reflect factors that have affected local demography and household formation rates, including any history of undersupply that might have constrained household formation rates;
- Wherever possible, assessments should be based on the most recently published data.

65. The Council has added a somewhat arbitrary 10% (12 dwellings per annum) to take account of historic undersupply. This is insufficient to reflect the impact of the scale of undersupply on the SNPP figures.

66. There can be no doubt that there has been a significant undersupply throughout the current plan period from 2004. The shortfall is calculated to be 1,034 against the CS requirement and shows that the Council has failed to achieve its target in all but four years of the 12-year plan period. Furthermore, between the adoption and revocation of the RSS the Council monitored its performance against the higher RSS numbers, making the underperformance even worse than it currently looks. The Council's own 2014/15 - 2018/19 Five Year Land Supply Assessment concluded that there has been an undersupply of, on average, 160 dwellings per annum for the plan period to the date of assessment.

67. The impact of this underperformance is clear from the Council's own analysis, which concludes that approximately 170 households per annum have left the Borough during the same period that they identify an undersupply of 160 dwellings per annum. While the Council sought to argue that the report was of little weight because there are later reports for more recent years, that does not in any way call into question the calculations behind these figures. This is not the sort of information that will change with time.

68. The numbers are too similar to be discounted and there is a remarkable similarity between the scale of undersupply and the numbers of households moving away from the Borough. Unless and until the Council is delivering against its own targets, it does not have the right to blame the market and demand factors. The market has not had an opportunity to work due to the lack of supply.

69. The Council accepts that the 12 dwellings per annum (dpa) figure is largely plucked out of the air, in effect being based on a direct extrapolation from two other appeal decisions in completely different parts of the country and without any real analysis of whether the problems were the same type or scale.

70. In view of the arbitrary nature of the adjustment and the clear evidence of undersupply and of the resultant impact on household formation rates, it is clear that

it is right to argue that a 12 dpa increase in housing numbers is not adequate. It is woefully inadequate and understates the scale of the Council's under delivery.

#### Employment Trends

71. The TNPPG requires those undertaking an assessment of OAN to take account of the likely change in job numbers. It is clear that this should be done by looking at, "past trends and/or economic forecasts as appropriate...".

72. There are three different jobs growth figures before the Inquiry. Oxford Economics (OE) predicts a loss of 1,100 jobs between 2015 and 2032, Experian (on which the Council relies) predicts a growth of 500 jobs in the same period and Dr Gomez for the Appellant predicts jobs growth of 2,200. Ms Howick, for the Council, sees OE and Experian as being broadly similar and "within the margin of error". She has accepted that Dr Gomez's forecast was within the same "margin of error" but considered it unreliable because she did not understand how Dr Gomez had calculated it. Dr Gomez's figures are simply a forward projection based on the latest Census and Labour Force Survey data.

73. In contrast, there are a number of aspects of the Experian model relied on by the Council that Ms Howick could not explain. The Appellant's key criticisms of the Experian model are that it is dependent on the assumption that the Borough's economic activity rate for the 16-64 age group will increase by approximately 5% at a time when Experian is only forecasting a 2.5% increase in economic activity rates nationally. This is a very bullish assumption, especially as it would require the Borough to move from below the national average to above it. Effectively, this requires the Secretary of State to accept that the core working age population will decline by some 8,500 people while at the same time 2,500 or more of that same group will become economically active. Without any explanation of why this might be so, it would be irresponsible in the extreme to use this assumption to limit housing numbers and to be the basis of a statutory development plan that will continue through to 2032.

74. While Dr Gomez's figure takes account of self-employment, Ms Howick could not say whether and, if so, how self-employment is factored into Experian's jobs growth figure. Self-employment is an increasing part of economic activity and until a local plan inspector can be satisfied that it is properly accounted for by Experian, it would be extremely risky to plan on the basis of Experian's less positive projections.

75. As well as using a wildly optimistic assumption about increased economic activity rates in the 16-64 age group to fill the hole in its model, Experian also uses ambitious assumptions about the rate of increase in economic activity in the 65+ population. It does this by assuming an increase in economic activity rates for this age group within the Borough that is significantly above the increases projected nationally by the Office of Budget Responsibility (OBS). Furthermore, given that the Council accepts that activity rates will be much less in the 70+ population because of declining ill health and the availability of the state pension, they could not provide any details as to the local activity rates being assumed in this age group by Experian.

76. Experian relies on assumed commuting rates as a 'balancing factor'. Not only is this contrary to the NPPG but it is also concerning that a figure that can vary so much year-to-year because of the unreliability of how the data is collected is seemingly used to balance the model and make sure that the two sides of the equation balance. The mere fact that the model assumes that jobs demand and job numbers always perfectly balance is itself a warning that the model does not reflect

reality and suggests that commuting and other 'balancing factors' are based more on needing to create a balanced equation than on reflecting what is actually happening.

77. Finally, Dr Gomez was clear that he considers modelling to be unreliable over such a long period of time. He explained how the model is very susceptible to immediate shocks but cannot take account of longer-term responses to them. This is made clear by Ms Howick's indication that the next set of data from the Experian model will show some 1,700 job losses in the period from 2015 to 2032 because of the closure of the SSI steelworks. A one-off shock sends the model significantly negative and in doing so takes no account of the fact that over the next few years there will no doubt be considerable efforts to replace those lost jobs, not to mention regenerate the steelworks site. This susceptibility to immediate negative changes is hardly the positive planning that the NPPF requires.

78. Dr Gomez's approach has the advantage of being understandable and robust when compared with a model whose key assumptions are unknown and which cannot therefore be properly tested in the context of this appeal. Ms Howick's dismissal of the use of past trends is not only contrary to the approach advocated in the NPPG (which not only recognises that past trends are appropriate in the context of jobs growth but also uses similar past trends data (SNPP) to set the starting point housing figure) but is also of limited value when she was unable to give any more detail as to how the Experian model works.

79. Dr Gomez's approach has the advantage of being more positive, in line with the NPPF's promotion of positive planning and specifically of the requirement that local plans should plan for economic growth. Until such time as a local plan Inspector is able properly to assess the robustness of the Experian model, the Appellant submits that the only sensible thing to do in the context of the Framework is to "lean to the generous side".

80. It is perhaps appropriate here to deal with Ms Howick's so called 'logic trap'. In short this is her argument that Dr Gomez's assessment of jobs growth will lead to an unacceptable level of migration if it were applied across the country. In making this argument Ms Howick is assuming that all OAN assessments across England are required to add up to a national whole. This is clearly not the case when the NPPG does not require a particular model to be applied or that all OAN are carried out at the same time.

#### Affordable Housing Need

81. Dr Gomez has clearly explained how Ms Howick's analysis fails properly to take account of affordable housing need. His evidence on this point was not challenged by the Council. Instead, Ms Howick described this as a policy-on factor that she does not think has any place in the assessment of OAN. In this she is simply wrong.

82. To support her argument, Ms Howick points to the *Hunston* case, which distinguishes between policy-off and policy-on factors. In so doing, she is misunderstanding the meaning of the judgement. At paragraph 26 of his judgement Sir David Keene accepted that, "it is not for an inspector on a Section 78 appeal to carry out some sort of local plan process as part of determining the appeal, so as to arrive at a constrained housing requirement figure". The judgement is only relevant to OAN in the context of an appeal in so far as it is making clear that LPAs cannot seek to impose constraints on OAN figures in advance of those constraints being properly tested through examination.

83. None of the factors discussed above are constraints, they are simply part of the evidence that must be taken into account to be able to carry out a comprehensive and robust objective assessment of need. The Council has failed to apply this approach to an assessment of OAN.

#### OAN Conclusion

84. Dr Gomez's approach is both reliable and in line with the requirement for positive planning required by the NPPF both in terms of housing and economic growth. Ms Howick's approach is untested and based on a model whose inner workings are unclear. Furthermore, to the extent that there is any doubt about which approach is to be preferred, the Appellant submits that the only option open to the Secretary of State in the context of the NPPF's requirement that we boost significantly the supply of housing, is to err on the side of caution and place greater weight on the higher OAN unless and until the lower figure is found to be sound, following the proper and effective scrutiny that can only be achieved through a local plan examination. For both of these reasons, the Appellant therefore submits that the OAN that should be adopted for the purposes of this appeal is at least 349 dpa.

#### Five-Year Land Supply

85. Whether the five-year land supply should be based on the adopted CS requirement or OAN depends on whether there is evidence that the adopted requirement is not meeting OAN. The NPPF is not a neutral document. At its very core is a clearly articulated ambition on the part of the Government to see a significant boost to housing delivery in England. This is clear from the very first line of the housing section, which sets out a number of steps that LPAs are required to take in order to boost significantly the supply of housing. The first of these steps is to ensure that local plans meet an area's full OAN for housing. It is therefore self-evident that the whole purpose of OAN is to contribute towards the significant boost to the supply of housing that the Government is seeking.

86. The starting point for the assessment of five-year housing land supply must be the adopted development plan. To do otherwise would be contrary to Section 38(6) itself. In fact, the NPPG makes it clear that adopted plans are the starting point, "...Housing requirement figures in up-to-date adopted Local Plans should be used as the starting point for calculating the five year supply. Considerable weight should be given to the housing requirement figures in adopted Local Plans, which have successfully passed through the examination process, unless significant new evidence comes to light...".

87. During discussion of these issues at the Inquiry, the Council regularly made reference to the "previous plan period" when describing the adopted development plan. In so doing, it was misrepresenting the position. There is a development plan, the CS having been adopted in 2007 and covering the period from 2004 to 2021. In itself, there is nothing out-of-date about it.

88. The emerging plan is at an early stage and the parties agree that no weight can be attached to it, so the emerging plan is not able to detract from the weight to be attached to the CS. Likewise, the Council considers that the whole of the plan, in so far as it relates to this appeal, accords with the NPPF and so is not out-of-date by virtue of paragraph 215. Whilst the Appellant disagrees to a limited extent, they agree that the plan is broadly compatible with the NPPF. Being a post-2004 plan, it has also been through the examination process as required by the NPPG.

89. In order to argue for anything less than considerable weight to be attached to it, the Council therefore needs to show that there is significant new evidence. In this context it is important to recognise that there is no direct link between OAN and five-year land supply. OAN is the first step required by paragraph 47 of the NPPF. Five-year land supply is the second step and makes no reference to OAN.

90. The Council argues that the OAN and the data that underpins it (i.e. the 2011 Census and the 2012 SNPP) constitute significant new evidence that renders the CS housing requirement out-of-date. The flaw in this argument is that the OAN the Council invites the Secretary of State to use is considerably lower than the CS housing requirement. The Council's OAN figure is therefore evidence of nothing more than that the adopted housing requirement continues to meet local housing need and, if it is ever actually delivered, will support the primary objective of boosting significantly the supply of housing.

91. The Council is unable to point to a single appeal decision or court case in which an LPA has been able to get away with not delivering the development plan's housing requirement because of a new OAN assessment that points to lower housing need. The absence of authority is not surprising as this would run entirely contrary to the fundamental purpose of boosting the supply of housing.

92. If an LPA believes that it is justified in planning for lower housing delivery than its adopted plan requires then it must be required to prove the soundness of such a step. To do otherwise would be about as far removed from positive planning and from the statutory presumption in favour of the development plan set out in Section 38(6) as it is possible to imagine. This is particularly important when, as here, an LPA has a poor record on getting plans in place. The Council never got around to adopting any allocations under the 2007 CS. Having decided to instead bring forward a new local plan, it then decided to abandon it when the going got tough a few years later. Now it is starting again with another new plan. Unless and until the Council is able to secure the adoption of a new plan it must be held to its current one rather than risk even less certainty and delivery by creating a hiatus.

93. Reliance on the Council's OAN figure would be contrary to Section 38(6), the NPPF and the NPPG, and it would be fundamentally wrong to calculate five-year land supply by reference to it rather than the adopted CS requirement. If the Secretary of State prefers the Appellant's OAN figure, then consideration must be given to whether the higher figure constitutes significant new evidence that renders the CS requirement out-of-date. This depends on whether the current backlog is to be included. If not, then even the Appellant's OAN produces a lower figure than the CS requirement and so the submissions above must apply equally to it.

94. However, the Appellant submits that the backlog cannot be excluded in advance of the local plan examination. To do so would effectively allow the Council to write-off its undersupply against the adopted housing requirement in advance of proving the soundness of its new approach. Again, this would be contrary to the very clear requirements of the NPPF and the NPPG.

95. The Council claims that there are numerous authorities that support their case, but they can only point to one, the Zurich case, but this is of no relevance to the present appeal and Mr McMullan is right to include the backlog in his calculations at this stage. In doing so, he is entirely consistent with the approach taken in the Saltburn appeal. The Inspector asked Mr McMullan whether the inclusion of the backlog and the addition of a 20% buffer was double-counting. Mr McMullan accepted that it was but this double counting is right and proper because the five-

year land supply calculation against the CS requirement includes the backlog and the buffer and is not challenged by the Council.

96. This approach must be correct and is no different to every five-year land supply calculation. It is generally accepted that any undersupply in past years should be made up in future years, the only area of discussion being whether the undersupply should be made up in the next five years (the Sedgfield method) or the remaining years of the plan (the Liverpool method). Likewise, the NPPF requires a buffer to be imposed in every case, the only issue being whether it is 5% or 20% depending on whether there is a record of persistent under delivery.

97. The NPPF therefore requires double counting of the sort Mr McMullan has undertaken. The only question for the Secretary of State is whether the situation should be different when dealing with OAN rather than adopted housing requirements. In the Appellant's submission, until a new housing requirement is adopted, there is no justification for a different approach.

98. With the backlog included, the Appellant's OAN produces a housing supply of 2.75 years whereas against the CS requirement the supply is 3.21 years. This is a difference of approximately half a year and amounts to significant new evidence that could justify placing less weight on the CS requirement in view of the requirement of the NPPF to significantly boost the supply of housing by ensuring plans meet OAN.

99. If the backlog is excluded then the calculation produces a more favourable position for the Council (by hiding the actual underperformance) than a five-year land supply calculated against the CS requirement and so, for all of the reasons above, the CS figure should continue to be preferred.

100. Unless the Secretary of State adopts the Council's OAN, the Council cannot demonstrate a five years housing land supply. This is not in dispute. The worst case is a 2.75 year supply. The CS requirement is little better, producing a 3.21 year supply. The Appellant's OAN without backlog enables the Council to get to 4.4 years supply. In any of these situations there is a significant undersupply and paragraph 49 of the NPPF (and through it paragraph 14) is triggered.

Effect of a lack of five-year land supply

101. Following the Court of Appeal's decision in the Suffolk Coastal case, what constitutes a "relevant policy for the supply of housing" for the purposes of paragraph 49 is clear. As Lindblom LJ explained "The contentious words are "[relevant] policies for the supply of housing". In our view the meaning of those words, construed in their proper context, is "relevant policies affecting the supply of housing". A "relevant" policy here is simply a policy relevant to the application for planning permission before the decision-maker - relevant either because it is a policy relating specifically to the provision of new housing in the local planning authority's areas or because it bears upon the principle of the site in question being developed for housing. The meaning of the phrase "for the supply" is also, we think, quite clear. The word "for" is one of the most versatile prepositions in the English language. It has a large number of common meanings. These include, according to the Oxford Dictionary of English 2nd edition (revised), "affecting, with regard to, or in respect of". A "supply" is simply a "stock or amount of something supplied or available for use" - again, the relevant definition in the Oxford Dictionary of English. The "supply" with which the policy concerned, as the policy in paragraph 49 says, is a demonstrable "five-year supply of deliverable housing sites". Interpreting the policy in this way does not strain the natural and ordinary meaning of the words its draftsman has used...".

102. Even if DP policy DP1 is not out-of-date on its own terms, it is self-evident that it is a relevant policy for the supply of housing applying this test. Indeed, it is an almost identical policy to one of those considered in the Suffolk Coastal case. It is equally clear that CS policy CS23 is also a relevant policy for the supply of housing. Applying the different components of Lindblom LJ's test the policy is clearly relevant to the determination of this appeal, in so far as it bears upon the principle of the acceptability of the appeal site being used for housing, and, accordingly, it clearly affects the supply of housing. With the benefit of Lindblom LJ's explanation, it is therefore beyond doubt that CS policy CS23 is also rendered out-of-date by paragraph 49 in the absence of a five-year land supply.

103. The Council points to the Inspector's decision in Saltburn in support of its contention that CS policy CS23 is not a relevant policy for the supply of housing. In the Appellant's submission this is completely misguided in view of the decision in Suffolk Coastal. The Inspector reached his decision in 2015, before the Court of Appeal gave its judgement in Suffolk Coastal and at a time when Lang J's decision in William Davis was good law. The Court of Appeal expressly overruled William Davis in Suffolk Coastal, Lindblom LJ saying "...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...this may be said of the decision in William Davis, where the judge concluded that a policy restricting development in a "Green Wedge"...was not a relevant policy for the supply of housing within paragraph 49, despite the fact that it prevented housing development...".

104. It is legally dubious in the extreme for the Council to seek to rely on the conclusions of an Inspector that were based on what we now know to be bad law. The Inspector did not have the benefit of the Court of Appeal's judgement and so his conclusions are irrelevant. The Secretary of State, whose arguments the Court accepted, must now make up his own mind about the point and in doing so, he must apply the Court's judgement and not the prior findings of an Inspector.

Weight to be attached to out-of-date Policies

105. Suffolk Coastal is clear that the effect of paragraph 49 is not to exclude out-of-date policies from consideration; instead, consideration must be given to the weight to be attached to them. The Council has not demonstrated any abnormal circumstances that would justify not reducing the weight of either DP policy DP1 or CS policy CS23 and the reduction in weight should be substantial. Very limited weight can therefore be placed on any conflict with CS policy CS23 and no weight can be attached to DP policy DP1.

Contribution to five-year land supply

106. The development would contribute some 50 dwellings per year to the five-year land supply, with the remainder coming forward in later years, if only one developer is on site. But, on a site of this size, it is likely that two or three house builders would be on site at the same time. If that is the case, then an even larger contribution to five-year land supply would be made. Even 50 dwellings is a meaningful contribution to five year land supply and the remainder of the site will address the lack of a 6-10 and 11-15 year supply that is also required by paragraph 47 of the NPPF. Given that the Council has failed to allocate land for the current CS, despite it being adopted over a decade ago, and has already had one abortive attempt at putting a new local plan in place, it would be foolhardy to trust that they will deliver this time around.

### *Drainage and Flooding*

107. Despite the Council's best attempts to argue the contrary, it is clear from the original ES that it was never intended that there would be no outfall from the site. It is impossible for infiltration-only solutions on anything other than fragmented chalk geology and certainly not on non-porous clay as on the appeal site. Mr Fraser could not assist the Inquiry with any knowledge of the sewer requisition process but Mr Travis has considerable experience that he was able to share. From that experience it is clear that there is a statutory right for a sewer to be requisitioned once planning permission is granted but that the type of sewer (existing capacity upgrade, new sewer, etc.) and the route of any new sewer are entirely matters for the statutory undertaker outside of the planning process.

108. While the Council sought to cast doubt on the ES because of its failure to assess either the route or the effect of the sea outfall, neither criticism can be maintained. In light of the inability for the Appellant to control the route of the sewer, it is simply impossible for any likely significant environmental impacts to be assessed now. A finding that the route of any new sewer be included within the ES would have the effect of preventing the appeal from being determined and interfere with the separate statutory regime for requisitioning new sewers. The point about the failure to assess the likely significant impacts of surface water being discharged to the sea is plainly wrong. As Mr Travis explained, the sea is not a sensitive receptor that will be affected in any way by the release of surface water into it. It is therefore impossible for any outfall to have any environmental effect on the sea, let alone be likely to have a significant one.

109. The Appellant, the Council and third parties all agree that there is a serious issue with flooding within Marske and that this is in part caused by surface water coming from the appeal site. The Appellant has demonstrated that the appeal proposals would not only avoid exacerbating the current problem, but would actually improve the situation by controlling run-off from the appeal site. If a new sewer is provided by NWL via the requisition process, as seems likely, this would also create additional capacity that could be used to alleviate other sources of flooding in the area. This is a very considerable benefit of the appeal proposals.

110. Significantly, Mr Fraser accepted in response to a question from the Inspector that all of his concerns were now addressed by the agreed conditions. Mr Fraser also accepted that the benefits were significant. It is therefore clear that the Council has no case on drainage and flooding and that the residents' concerns will be addressed by the proposals, making this a very considerable benefit of the development.

### *Other Matters*

111. After flooding the major concern for local residents is traffic impacts, and in this regard Mr Jackson answered all questions from the third parties openly and honestly; explaining the limited impacts that the appeal proposal would have on local traffic flows and the measures that are proposed to address the minor issues that will arise. Mr Jackson also explained how the proposals would resolve the existing problem of a lack of a pedestrian footpath under the railway bridge on the A1085 and how cycle parking facilities at Longbeck railway station will be improved by the relevant planning obligation. These are clear benefits of the scheme.

112. Some concerns were raised about GP surgery capacity, but Mr McMullan confirmed that no objections to the proposal were received from local doctors' surgeries or other parts of the NHS. Additionally, Mr McMullan confirmed that the

proposals include a new GP surgery, pharmacy and dental surgery in any event. Whether these come forward will be determined by demand.

113. Mr McMullan also confirmed that a contribution would be made to ensure that the additional capacity that is needed within local schools is delivered. In addition, land is also being made available to the Council to build a new primary school should it wish. While the ultimate decision is for the Council, the land has been made available at their request and so there is clearly a desire to see a new primary school provided. If, as is likely, the school comes forward, this will provide additional capacity over and above the requirements of the development, representing a further benefit of the scheme.

#### *Compliance with the Development Plan*

114. The Appellant accepts that the appeal proposals conflict with DP policy DP1. However, the Appellant submits that in the absence of adopted development boundaries, the policy is out-of-date on its own terms. While the Council argues that the 1999 local plan boundaries are applicable, this position cannot be reconciled with the supporting text to policy DP1, which makes no reference to those boundaries and recognises that boundaries will need to be brought forward at a later date. Even if the Council's argument had weight, it would not change the fact that policy DP1 would remain out-of-date. Mr McMullan was clear in his oral evidence that the current boundaries cannot accommodate either the CS housing requirement or even the Council's OAN figure. Even if there is a boundary, it cannot be up-to-date if it cannot accommodate the planned growth. This is entirely consistent with all previous appeal decisions.

115. If the Secretary of State accepts the Appellant's case that the appeal proposals would not harm the character and appearance of the site then CS policy CS22 is not breached. Even if the Council is correct to identify harm then policy CS22 is not automatically breached. Rather, the harm needs to be weighed against the need for the scheme. This is an exercise that is undertaken in the context of paragraph 14 of the NPPF and it is clear that any landscape and visual harm is more than outweighed by the substantial benefits of the scheme. The appeal proposals would actually result in a landscape benefit, contributing to the restoration of a degraded landscape in accordance with the LCA, thus going beyond compliance with CD policy CS22.

116. In any event, the weight to be attached to policy CS22 is reduced by virtue of paragraph 215 of the NPPF. Paragraph 113 requires local plans to include criteria based policies against which landscape impacts can be judged, and also requires the hierarchy of designations to be recognised and treated appropriately. But policy CS22 does not even distinguish between the approach to be taken in Sensitive and Restoration Landscapes identified in the LCA. If there is any conflict between the appeal proposals and CS policy CS22, such conflict should be given little weight in view of the significant differences between it and the NPPF.

117. The Appellant's case on CS policy CS23 is clearly set out above; there is no conflict between the appeal proposals and this policy. In fact, the landscaping buffer proposed to the south of the appeal site offers the opportunity to reinforce and enhance the gap. The value of the strategic gap would be enhanced through this reinforcement, as would its quality. Value and quality would also be enhanced through improved biodiversity and public access as well as the introduction of a variety of uses including recreation. This would also satisfy the multi-functionality and accessibility requirements of the policy.

118. Furthermore, the policy can find no support anywhere in the NPPF and conflicts with paragraph 113 for the reasons set out above. While the Council originally sought to argue that it finds support in paragraph 109, Mr Barker's acceptance that it is not a valued landscape renders this point irrelevant. Even if there was a conflict, the lack of conformity with the approach in the NPPF would therefore mean that little weight should be placed on such conflict by virtue of paragraph 215 in any event.

119. The lack of any harm to the significance of the Church by virtue of change within its setting means that DP policy DP10 is complied with. Likewise, the lack of any harm to the archaeological significance of the SAM or to its wider significance resulting from change within its setting means that DP policy DP11 is complied with. In fact, the overall enhancement to the SAM's significance goes beyond mere compliance and into the realms of benefit. It therefore follows that there is no conflict with these policies or with CS policy CS25.

120. The appeal proposals accord with the development plan and should be approved unless material considerations indicate otherwise.

### *Planning Balance*

121. There are no specific policies of the NPPF that indicate that the development should be prevented and so it follows that the presumption in favour of sustainable development applies to the appeal proposals unless any harm significantly and demonstrably outweighs the benefits of the proposal "when assessed against the policies of the Framework as a whole".

122. The benefits of the appeal proposal are many and substantial and include:

- Substantial enhancement to the significance of the SAM, through the agreement of a CMP;
- Reinforcing the strategic gap and restoring the site's degraded landscape;
- Increasing public access to the site and securing significant new recreation space to the benefit of the wider area;
- Securing a net-gain in biodiversity;
- Reducing flooding within Marske and providing increased sewer capacity to the settlement;
- Improving pedestrian safety by providing a footpath under the railway bridge over the A1085;
- Providing opportunities for the provision of a new school, GP surgery, pharmacy and dental surgery;
- Contributing towards addressing the shortfall in 5YLS and providing a significant amount of new affordable housing;
- Creating new jobs in construction and within the development and boosting economic growth.

123. Paragraph 6 of the NPPF is clear that sustainability is determined by applying paragraphs 18 to 219. That is the exercise that has been carried out above. It is therefore clear that the proposal represents sustainable development.

124. However, for completeness, the Appellant has considered each of the three limbs of sustainability below:

- **Economic:** It is clear that the proposals would create new jobs during both the construction and occupation phases. It is also clear that the presence of new residents in Marske would provide a new source of potential customers for existing businesses, further boosting the local economy.
- **Social:** The delivery of housing and affordable housing would be a clear social benefit in its own right. Likewise, the provision of a new school and other facilities outlined above also offers social benefits.
- **Environmental:** The substantial benefit to the SAM, addressing existing flooding issues, improving pedestrian safety, delivering net-gains for biodiversity and improving a degraded landscape all represent environmental benefits that contribute to sustainability. The site's location in relation to public transport links also further contributes to this aim.

125. The Appellant therefore submits that the proposals offer net-gains in all three areas of sustainability and so represents a sustainable form of development.

### *Conclusion*

126. For all of the above reasons, the appeal should be allowed.

## **The Case for Redcar and Cleveland Borough Council**

The material points of the case made by Redcar and Cleveland Borough Council are:

127. This case must be considered with specific reference to Section 38(6) of the Planning and Compulsory Purchase Act 2004 (the Act). The first issue to be determined therefore, having regard to the test in 38(6) of the Act, is whether the proposals are 'in accordance' with the development plan.

128. The appeal site is a large, unallocated, greenfield site. There can be no doubt that it currently forms part of the countryside. The development of the site for residential and mixed commercial retail uses is not supported, directly or indirectly, by the adopted development plan. On the contrary the appeal scheme conflicts directly with several policies of the development plan. These proposals cannot therefore be 'in accordance' with the development plan.

129. The statutory presumption in favour of the development plan weighs heavily against the grant of the appeal scheme. This is the correct legal starting position for the decision maker's deliberations. The question then becomes whether there are any material considerations in this case which outweigh the statutory presumption in favour of the development plan.

### *Character and appearance of the countryside*

130. Mr Barker's evidence for the Council on landscape matters was both comprehensive and cogent; his assessment remained robust and credible in the face of cross examination. In contrast, the evidence of Mr Laws was at times incomprehensible and confused under cross examination. Critically, Mr Laws conceded that the appeal scheme would result in harm to the landscape unless his 'woodland planting' alongside the A174 was successful in creating an impermeable visual barrier, effectively hiding the development from view.

131. This concession from Mr Laws reinforces the evidence of Mr Barker that the appeal scheme is simply inappropriate for its landscape context. The 'landscaping scheme', which the Appellant claims is a 'benefit', is nothing of the sort. It is a desperate attempt to hide built development which would cause a significant level of harm to the surrounding landscape character that it sits within.

132. The terms of CS policy CS22 makes clear that the question is whether development would "...lead to the loss of features important to the character of the landscape". If such harm would occur, the development will not be allowed unless, "the need for the development outweighs the landscape considerations".

133. The Landscape Character Assessment 2006 (LCA) identifies the appeal site as falling within the 'Redcar Flats' character area. Within this general character area, the appeal site falls within the Landscape Unit 'R2 Lowland Farmland (South of Redcar and Marske)'. The LCA identifies positive landscape features as including: i) extensive views, some of which include the coast, and ii) physical separation between urban areas. These are quite evidently features of the landscape which the LCA considers to be important to its character.

134. Mr Barker's evidence demonstrates that both of these positive landscape features will be adversely affected by the development of the appeal site. Considering the landscape impacts of the appeal scheme, on this crude analysis alone, demonstrates a clear conflict with CS policy CS22. Furthermore, the appeal site plays a crucial role in providing an attractive rural setting to the settlement of Marske. It provides, for example, the users of the Black Path with an uninterrupted view across the wider countryside up to the key feature of Errington Woods, and a sense of being separate from the edge of Marske (given the clear demarcation between 'urban' and 'rural' which is provided by the railway line). The impact of the development on this valuable recreational resource is indisputable. It will sever the connection between the users of the footpath and the wider countryside.

135. The appeal scheme would appear as a salient protrusion into the existing open countryside, breaching the defensible barrier of the railway line, and removing a critical part of the existing rural gateway into Marske. The adverse impacts of the appeal scheme are not reduced merely because the viewpoints which would be affected by the development are relatively limited in number.

136. The careful assessment of Mr Barker regarding the high quality and extensive views which would be adversely affected by the appeal proposals cannot be properly replicated here. As Mr Barker identifies, the appeal site is instrumental in preserving long distance views of well-established and unique local landmarks. Its contribution to preserving the identity of Marske should not be under-estimated. It is not simply the 'openness' of the site which results in it being valuable; it is the combination of its openness and its particular location. Any greenfield site may be comparatively 'open'; however, not all of them will perform an important role in preserving key distinctive and expansive views, which are important for the character of the wider landscape, or in providing an attractive setting to a particular settlement along key approaches, Longbeck Road and the A1085.

137. This is to say nothing of the important role the appeal site plays as part of the wider landscape which forms the 'strategic gap' between Marske and New Marske. The combination of these factors sets the appeal site apart from the countryside in general, and imparts its value to the local landscape. These demonstrable physical attributes set the appeal site apart and are more than capable of qualifying for protection under paragraph 109 of the NPPF.

138. It is evident, however, that the Council's case on landscape harm and the harm to the character and appearance of the countryside does not rest on the paragraph 109 'point'. The substance of the arguments made by Mr Barker hold good irrespective of whether the appeal site is considered to be a 'valued landscape'.

### *Heritage Impacts*

#### The Scheduled Ancient Monument

139. With respect to the SAM, Mr Ives's approach rests upon his assessment that the wider appeal site does not form part of the 'setting' to the SAM. In taking this approach he departs in his assessment methodology from both KM Heritage and CGMS, not to mention Heritage England and Mr Burton-Pye. Mr Ives agreed that his conclusion as to the relevance of the appeal site as part of the SAM's setting in turn rests upon his focus upon 'views' into the SAM from different parts of the appeal site.

140. This focus on views to determine the 'setting' for the SAM exposes the weakness in Mr Ives's approach. His narrow assessment of the extent of the setting of the SAM compromises his evidence that there would be no harm to the SAM. If the extent of the SAM's setting is unduly restricted, changes to the setting that adversely affect the significance of the SAM will be missed.

141. Mr Burton-Pye adopts a more comprehensive and 'rounded' approach to the issue of setting for the SAM. He has explained how the existing land use of the appeal site for agricultural purposes helps to inform the significance of the SAM by way of the continued connection to a rural setting and land use. There can be no real doubt that the development of the appeal site for urban housing and commercial development would impact adversely on the existing setting of the SAM, and in turn would diminish the ability to experience the significance of the SAM as an isolated and rural heritage feature.

142. Mr Burton-Pye accepts that the existing setting of the SAM carries within it negative features which already harm its significance (the 'urban elements' such as the coal yard, the existing settlement edge of Marske, the railway line etc.). However, this does not justify in any way further harm being caused. The appeal scheme would result in a magnitude of harm over and above that to which the SAM is already exposed.

143. It is difficult to conclude that major development of the scale proposed by the appeal scheme, would not cause additional and significant harm to the setting and significance of the SAM. Mr Burton-Pye's assessment on this issue is supported in this respect by the views of Heritage England. The final consultation response from Heritage England is absolutely clear: notwithstanding the efforts of the Appellant to 'pull back' built form from the immediate vicinity of the SAM, the appeal scheme would cause harm to the SAM. This harm would be 'less than substantial' in NPPF terms, but this does not negate its importance.

#### St Mark's Church

144. The Appellant suggests that there will be no adverse impact on the significance of St Mark's Church as a result of the appeal scheme. However, Mr Ives accepted that the significance of St Mark's Church, in both historical and architectural terms, stemmed (at least in part) from the prominence of its tower. Mr Ives also accepted that the 'prominence' of the church tower was best appreciated from viewpoints which were further away from the church itself. The importance of the appeal site in facilitating views that capture the prominence of the church tower is clear.

145. The appeal proposals would adversely impact upon the prominence of the church tower, not least from the well-used footpath of Quarry Lane. In light of this, it is difficult to understand how the Appellant can robustly maintain that the ability to understand its historic and architectural significance would not be adversely affected in any way by the appeal scheme. The Council robustly maintains its position that harm would be caused to the significance of St Mark's Church. The harm would be 'less than substantial' in NPPF terms, but the guidance and legislative framework is clear that any harm is a weighty consideration in the overall planning balance.

*Five year housing land supply*

146. The relevance of OAN stems from i) central Government's abolition of 'top down' regional housing targets, and ii) the policy guidance contained within the NPPF as to how LPA's should address the provision of housing following their revocation.

147. Paragraph 47 of the NPPF makes clear that, "To boost significantly the supply of housing" LPA's should, *"use their evidence base to ensure that their Local Plan meets the full, objectively assessed needs for market and affordable housing in the housing market area..."*. As the Court recognised in the Solihull MBC case, *"The NPPF indeed effected a radical change...It means that housing need is clearly and cleanly ascertained. And as the judge said at paragraph 94, "here, numbers matter; because the larger the need, the more pressure will or might be applied to [impinge] on other inconsistent policies"*.

148. In the Hunston case the Court rejected the proposition that a "housing requirement figure *derived* from a revoked plan" could lawfully be used as a "proxy" for OAN, specifically citing the Government's express move away from the 'top down' approach which was inherent within regionally imposed 'housing targets'. Furthermore, as the Court made clear in this case "The needs assessment, objectively arrived at, is not affected in advance of the production of the Local Plan, which will then set the requirement figure". It is, therefore, an entirely separate exercise from setting a 'requirement' as part of a Local Plan process.

149. The decision maker in this case must therefore ascertain the OAN based on the information available to him; to do otherwise would be to fall into an error of law. In the absence of such an assessment it will not be possible to properly assess whether the LPA will be able to supply enough housing to meet its OAN. If it is able to do so the aim of paragraph 47 of the NPPF will be fulfilled; if it is not, an LPA will be unable to demonstrate that it is 'boosting the supply of housing' as per the NPPF objective.

150. In making such an assessment, the decision maker has before him the evidence of Ms Howick for the Council and that of Dr Gomez for the Appellant. They differ significantly in their overall conclusion as to what the OAN is. Ms Howick's assessment concludes that the OAN is 132 dwellings per annum. In contrast, Dr Gomez proposes an OAN of 349 dwellings per annum.

*Labour market alignment*

151. It is agreed between the parties that the difference in the calculations relates to the disputed issue of future jobs growth. Dr Gomez refers to this as the 'economic growth adjustment'; Ms Howick refers to it as the issue of 'labour market alignment'. Notwithstanding the terminology used, the essence of the question is: 'will there be enough people in the future to meet the demand for workers in the future'.

152. Ms Howick's assessment concludes that there is no need to make an upwards adjustment to the demographic projections. Dr Gomez concludes the opposite - his

case on OAN rests upon his argument that there is a need to make a significant uplift to the demographic projections to ensure the demand for jobs can be fulfilled by the population. This has the effect of more than doubling the amount of homes the Council has to provide in order to meet what Dr Gomez asserts is its OAN.

153. It is imperative therefore that an assessment is made as to what the likely level of jobs growth will be in the future. This is reflected in the NPPG which states that, "Plan makers should make an assessment of the likely change in job numbers based on past trends and/or economic forecasts...". Without this, it is impossible to understand whether there will be enough people in the future to meet any 'jobs growth' which is likely to occur in the future. Once the likely level of jobs growth is assessed, it is necessary to consider whether there will be sufficient people available to meet the jobs.

154. Therefore, there are two sides to the equation: what will the 'demand' for jobs in the future be, and what will the 'supply' of people be in the future to meet the demand? If either side of the equation is incorrectly calculated, it will affect the overall outcome.

155. Dr Gomez contends that jobs growth will increase in the future by 132 jobs per annum. The only evidence he presents for this assertion is a calculation which he says is based on a 'past trend' in jobs growth from 2000 to 2014. Neither the Council nor the decision maker in this case is able to interrogate and/or understand the mathematics behind Dr Gomez's calculation. Dr Gomez made a vain attempt to address this criticism at the Inquiry but he conceded that the 'additional' information provided did not plug the gaps identified by Ms Howick.

156. Both of the data sets from which Dr Gomez's 'past trends' figure is derived are based on surveys. It is impossible to understand the level of accuracy that the data carries with it. Dr Gomez does not provide any information as to the 'margin of error' which might be inherent within the data. In the absence of providing the underlying data, and showing his mathematical calculations, Ms Howick made clear that she could not assess whether the 132 jobs per annum figure was in fact an accurate reflection of 'past trends'. Neither can the decision maker in this case.

157. There can be no confidence as to how Dr Gomez has reached his 'past trends' figure. If he has made an error in his calculation of the past trend, this will undoubtedly infect his calculation going forward. Unfortunately, it is simply not possible to know whether the calculation is accurate or not. The importance of this issue for Dr Gomez's case is amplified because it is the only data on which he relies.

158. More importantly, however, is the fact that Dr Gomez has merely 'rolled forward' a past trend into the future. He has done this without any analysis as to whether the past trend is likely to continue. It is a logical non-sequitur that the future will necessarily follow the past. This cannot be assumed. The likelihood of this eventuality must be properly assessed taking into account relevant factors which i) will affect the future, and ii) may not have been the same as the past. In the absence of this assessment, merely rolling forward a past trend is meaningless and is not based upon any robust evidence.

159. Dr Gomez accepted that his past trend figure would have within it factors including i) overall population level, ii) the size of the working age population, and iii) activity rates. He accepted that all these factors affected the level of job growth. He likewise accepted that he had not provided any of this information to the Inquiry. His approach of rolling forward a past trend is therefore entirely 'blind' as to the factors which may have been affecting job growth for the relevant period.

160. It is simply impossible, therefore, for Dr Gomez's approach to be based on any robust understanding of why jobs growth was what it was 'in the past'. Without this information it is simply unacceptable to 'roll' the trend forward. There is no confidence that what happened in the past is likely to happen in the future.

161. Even more damaging, however, is that the evidence provided by Ms Howick demonstrates quite clearly that the future will be different from the past. In this regard Dr Gomez agreed that there will be a rapidly ageing population in the UK from 2014 onwards. He attempted to suggest that some of this would have been captured during the time period which his past trend was derived from. However, there is simply no evidence for his assertion. When pressed, Dr Gomez rightly conceded that this change from 2014 onwards cannot possibly be taken account of in his 'past trend' figure. This fundamentally undermines the approach taken by Dr Gomez of 'rolling forward' a past trend as a 'proxy' for future jobs growth.

162. Furthermore, it is now absolutely clear that the jobs number in itself makes a difference to the outcome. Dr Gomez accepted that the jobs growth figure was important and that it does make a difference to the overall calculation as to whether 'demand' and 'supply' are in balance or not. Dr Gomez sought to rescue his case by suggesting that there was little difference between the future jobs growth calculated by Ms Howick (30 per annum) and the future jobs growth of 132 per annum. He asserted that the main difference between his assessment and that of Ms Howick was the use of activity rates on the 'supply' side of the equation for older age groups i.e. how many older people will remain active in the workforce.

163. This assertion lacks any credibility in light of the 'alternative scenario' carried out by Ms Howick. She has demonstrated that the outcome of her assessment does not alter if lower activity rates are assumed, as opposed to the higher activity rates (predicted by Experian). Dr Gomez clearly accepts that Ms Howick has demonstrated that the use of OBR or Experian activity rates for older age groups in the future did not alter her assessment. This can, therefore, no longer provide an explanation for the difference between Dr Gomez and Ms Howick's assessment.

164. Finally, on this issue, the evidence of Dr Gomez as to what the likely job growth will be in the future is entirely out of step with the future job growth forecast by both Experian and Oxford Economics (OE). The latter forecast predicts job losses over the plan period in the order of 1110. Dr Gomez predicts jobs growth over the same period of 2244. A difference of 3354 jobs is clearly a significant difference.

165. It should be noted that in his main proof of evidence, Dr Gomez did not seek to criticise the job growth forecast by OE. Indeed, he specifically references the OE forecast in his POE, but makes no complaint as to its methodology or overall conclusions. On the contrary Dr Gomez acknowledges that it is the only forecast presently available which assesses the impact of the closure of the SSI Steelworks on job growth in Redcar and Cleveland.

166. Dr Gomez accepted that his jobs growth figure, based on a past trend, could not possibly take into account the impact of the closure of the SSI Steelworks. His paragraphs 5.33 to 5.37 appear to provide reasons why he does not think the impact will be as severe as the impacts predicted by OE. This is however nothing more than conjecture and opinion. Dr Gomez seems to suggest in his proof that the SSI closure only resulted in the loss of 1000 jobs, or 2% of the resident workforce. Such a simple analysis fails entirely to understand the wider ramifications of those job losses for the local economy. The only up to date analysis of the likely impact of the job losses are found in the OE forecast.

167. The logic trap is another way of demonstrating that Dr Gomez's assessment of future jobs growth is fundamentally flawed. As already referred to above, Ms Howick has provided evidence that there will be a rapidly ageing population at the UK level from 2014 onwards. This slows the future growth of employment at the national level from 2014 onwards, compared with the past. This is demonstrated by a figure presented by Ms Howick in her rebuttal proof of evidence, which is a replicated figure from the OBR Fiscal Sustainability Report (FSR).

168. Dr Gomez accepted that if the OBR are correct about activity rates for older people in the future (as opposed to Experian's higher economic activity rates) the size of the national economy will shrink. Dr Gomez also accepted that the growth of the national economy will be a factor which affects growth at the local level i.e. within Redcar & Cleveland; he conceded that he would expect local growth to follow the national trend/pattern.

169. The difficulty for Dr Gomez is that Experian, whilst using significantly higher activity rates in the future for older people compared to the OBR, predict lower jobs growth than Dr Gomez. If Experian are wrong about future activity rates, the national economy will grow slower than Experian predict.

170. The consequence is that if Dr Gomez is correct about future activity rates being lower than those predicted by Experian, his assumption about job growth at the local level (i.e. in Redcar and Cleveland) pays no regard to the slowing of the national economy which the OBR predicts. In order to be logically consistent, Dr Gomez's jobs growth number would have to be lower than that predicted by Experian; it clearly is not. Dr Gomez accepted that he had looked at jobs growth at the local level 'in isolation' from the national economy. This is a fundamentally flawed approach - it ignores one of the major drivers of future jobs growth anywhere in the country: the national economy.

171. The Appellant has failed to mount any credible challenge to the evidence of Ms Howick on the issue of labour market alignment. The criticisms raised by Dr Gomez in his proof of evidence were two-fold: i) that the SHMA used only one economic forecast, and ii) that Ms Howick relied on unused activity rates for the 'supply' side of the labour market 'equation'. Both have been rebutted.

172. The production of the SHMA Update and Ms Howick's rebuttal proof of evidence explain that additional forecasts have been taken into account by Ms Howick. Indeed, Dr Gomez accepted that the criticism he raised in his proof of evidence now apply with more force to his own work - he is reliant on only one source of data for his predicted future jobs growth (and it is a source which is evidently out of step with more up to date economic forecasts).

173. Not only has Ms Howick had regard to the OE forecast, it is consistent with her overall conclusion that no uplift to the OAN is needed as a result of likely future jobs growth. Indeed, by resting her final conclusion on the Experian forecast (which predicts a slightly less pessimistic picture for jobs growth in the Borough than OE) she has not adopted the 'worst case' scenario for future jobs growth.

174. The 'Alternative' Experian scenario demonstrates that there is no change to Ms Howick's case even if she adopts the lower OBR activity rates for older people in the future. Dr Gomez made no criticism of the 'Alternative' Experian scenario. As noted above he fully accepted that this work effectively removes any doubt that her position was contingent on the higher Experian activity rates being correct (i.e. the concern raised by the Longbank Farm Inspector).

175. There was some exploration of the 'commuting balance' change when comparing the Experian 'baseline' with the Experian 'sensitivity' forecast. However, this went nowhere. As Ms Howick explains in the SHMA Update one of the main effects of reduced activity rates in the future (for older people) is that jobs demand is reduced (by 1500 by the end of the plan period). This is because (as is explained at paragraph 3.22 of the SHMA Update) if the OBR are correct about lower activity rates, the economy will grow more slowly and therefore there will be less jobs overall. In other words, 'demand' reduces as well as 'supply'.

176. Further, Ms Howick's table (provided to the Inquiry immediately prior to her evidence in chief) setting out commuting ratios also makes clear that the assumption made by Experian in the 'sensitivity test' is entirely consistent with the 'business as usual' scenario for commuting flows. The available data indicates that between 2011 and 2014, the commuting flows in the borough were likely to have varied between a ratio of 1.2 to 1.3. This is summarised in Ms Howick's rebuttal proof of evidence which notes that, "Commuting changes of this order are common". The Appellant has adduced no evidence to the contrary.

#### Summary on OAN

177. Ms Howick's evidence presents a credible and thorough assessment of the OAN for the borough. The SNPP 2012 population projections are, in this case, the appropriate measure of OAN. By contrast the OAN which Dr Gomez argues for is underpinned by an unreasonable uplift for 'economic factors'. The fracture between Dr Gomez's assessment and reality 'on the ground' is well understood by those living within the Borough today. Younger people leave the borough, not because there is a problem with housing supply, but because there are no higher education or employment opportunities to retain them.

178. Artificially inflating the OAN will not address this issue; it requires a policy intervention. As such, it is plainly a matter for the emerging local plan to address and is wholly irrelevant to the issue of OAN.

179. Dr Gomez's case fails entirely to reflect the reality of the likely future jobs picture in the Borough; unfortunately, on the best available evidence, there will be no material jobs growth in the Borough over the plan period. Importing additional population into the borough (over those projected by SNPP) to compete for jobs which do not exist will only cause harm. This ultimately exposes the overall approach of Dr Gomez as an erroneous one. His evidence starts out on the wrong foot, seeking to address the OAN, "...and the proposed housing requirement for the borough". The issue of the proposed housing requirement for the borough is entirely irrelevant to the question of OAN. His continual references to the potential housing requirement figures in the emerging local plan demonstrate this point.

180. Despite Dr Gomez's best endeavours they take the Appellant nowhere on its case regarding OAN. Dr Gomez's reliance on the Strategic Economic Plan (SEP) likewise is entirely mis-placed; the SEP does not provide any assessment of how jobs growth in the borough is likely to change in the future - it is an aspirational policy document which looks at how many jobs would be needed to increase employment in the existing population. It does not suggest, in any way, that such a level of jobs growth is likely given the prevailing economic climate for the borough.

181. As Ms Howick explains clearly in her evidence, there is nothing inherently wrong with a projected falling population in 'working age' people as predicted by the SNPP. The question is whether that falling population will be able to provide enough workers in the future (supply) to meet the likely growth for jobs in the future

(demand). The answer is clearly yes. In that scenario, there is no justification for an uplift to the OAN for 'economic factors'.

#### Five Year Supply of Housing Land

182. The parties agree that the Council is able to demonstrate a deliverable supply of 1839 houses within the relevant five year period. The difference in position stems not from the amount of deliverable supply of land within the relevant five year period, but the numerical 'target' which the deliverable supply has to satisfy.

183. Mr Cansfield deals with this issue for the Council, making reference to the approach taken in the Council's Five Year Housing Land Supply Assessment. The Council's approach is as follows:

- The calculation starts with the OAN for the relevant five year period: 1030 (206 per annum x 5);
- A backlog of 20 is added to the 1030 (this reflects a small 'shortfall' of delivery against 'target' in the first year);
- A 20% buffer for persistent under delivery (measured against past 'housing requirement') is applied;
- This provides a total 'target' of 1259 houses over the five year period;
- It should be noted that this differs from the 123 dpa for the OAN over the emerging plan period, which is an 'averaged' figure;
- Taking into account the deliverable supply, the Council is therefore able to demonstrate a 7.3 supply of housing land.

184. Mr McMullan presents the Appellant's evidence on the five year supply issue, which is set out in his 'Supplementary' note to his main proof of evidence. The key differences are:

- Mr McMullan suggests that the housing requirement figures from the Core Strategy should be used to calculate the 'target', rather than the 'OAN';
- In so far as OAN is relevant to the calculation of five year supply, the OAN is 349 dpa;
- In either scenario, the 'target' should be added to by '1034' in order to require the Council to 'make up' a 'backlog' of delivery;
- A 20% buffer should then be applied for persistent under delivery against the Core Strategy housing requirement figure.

185. In summary therefore, the Appellant i) starts from a 'higher' numerical target (either 270 or 349) and ii) applies a 'backlog' for what is contended to be an under supply against the Core Strategy target. However, as was made absolutely clear in Mr McMullan's evidence in chief, the Appellant pins its colours to the 'Core Strategy' mast (270 dpa), rather than Dr Gomez's OAN (349 dpa).

186. In order for its case to succeed on five years supply, it must therefore demonstrate that it is correct to add to the 'target' a 'backlog' for under supply since 2004. If it fails in this part of its argument, the Council will be able to demonstrate a five year supply of housing even assuming a starting point of 270 houses per annum. Indeed, Mr McMullan accepted that in the absence of his 'Core Strategy Backlog', the Council would be able to demonstrate a five year supply of housing measure against the 270 dpa 'target'.

#### OAN or Core Strategy target

187. The Council remains firmly of the view that its OAN for the relevant five year period should be the starting point for the five year supply calculation. Both parties

place weight on the guidance in the NPPG which states that "Housing requirement figures in up to date adopted Local Plans should be used as the starting point for calculating the five year supply. Considerable weight should be given to the housing requirement figures in adopted Local Plans, which have successfully passed through the examination process, unless significant new evidence comes to light".

188. Mr McMullan accepted that the SNPP is the sort of 'significant new evidence' which the NPPG is referring to. There can be no doubt that this has come to light since the housing requirement targets in the Core Strategy were adopted. Mr McMullan likewise agreed that the SNPP supersedes entirely the evidence base which was used for the Core Strategy (which goes back to the early 2000's). This is a critical concession. It renders the Appellant's case on this issue wholly unsustainable. The SNPP cannot and should not be ignored.

189. Apart from the above, there are very good reasons indeed why the Core Strategy requirement should not be used to calculate the five year housing land position. To do so would fly in the face of the Government's clear objective of moving away from top down targets, which were imposed by the regional strategies.

190. The Core Strategy Requirement is derived entirely from the emerging RSS for the North East at the time of its adoption. The Appellant accepts this point. The housing requirement figures within the CS are therefore rendered effectively obsolete by the revocation of the RSS. There is clearly a policy vacuum regarding the housing delivery target. Using a CS requirement which is derived from a revoked RSS would render the entire concept of OAN irrelevant to the issue of five year supply. A housing requirement derived from RSS cannot be used as a 'proxy' for OAN.

191. The Council must meet its OAN to give effect to paragraph 47 of the NPPF; it does not need more. The question of whether or not it should look to do more is a question for the emerging plan process. Any additional housing requirement will have to balance the competing demands of the Borough in accordance with the other policies in the NPPF, including those which seek, for example, to recognise the intrinsic value and beauty of the countryside. Using the CS requirement to calculate the land supply would effectively neuter the fundamental changes to assessing housing need which are within the NPPF.

192. The only reason why the Appellant argues for such an approach is because, in this case, the assessment of OAN does not assist them. If they were able to demonstrate on any convincing basis an OAN higher than the CS requirement, they would no doubt be arguing that the Council could not, as a matter of law (applying *Hunston*), insist on using the lower CS figure for its five year supply calculation. The correct interpretation of the housing supply policies within the NPPF cannot, as a matter of law, alter on a case by case basis. The Appellant's approach to this issue is fundamentally flawed.

The backlog dispute

193. The NPPG deals expressly with the question of 'how LPA's should deal with past under-supply'. Mr McMullan agreed that its terms were clear: past under-supply is to be dealt with by assessing whether a particular LPA has a record of persistent under delivery. The approach to be taken if persistent under delivery is demonstrated could not be made clearer by the NPPF: a 20% buffer is to be applied to the starting point 'target' for the relevant five year period. The NPPF makes equally clear that this 20% buffer is not an overall increase on the 'target' for the plan period - it is simply moving it forward from later in the plan period.

194. The assessment of OAN in itself takes into account issues of past under supply of housing. This has been done robustly by Ms Howick. If past under supply needed to be 'made up' this would be clearly evident from the housing market signals within the borough, such as affordability and overcrowding, which have been assessed as part of the SHMA and SHMA Update. Notwithstanding that market signals overwhelmingly indicate there is no issue with under-supply in the Borough, Ms Howick has erred on the side of caution and applied a 10% uplift to the OAN.

195. The Appellant's approach of imposing a 'backlog' on top of i) the 10% uplift to the OAN for 'market signals' and ii) a 20% buffer to the 5 year supply 'target' is an egregious example of double counting. It should be noted that although Dr Gomez is critical of the 10% uplift for market signals, he does not provide any alternative in his evidence; his case on OAN rests entirely on his unfounded economic 'uplift'.

196. The Appellant's approach to dealing with the backlog in the five year supply assessment is not supported by the NPPG or the NPPF. It is nothing more than an attempt to artificially inflate the OAN, which is unsupported by the up to date evidence base that informs the SHMA and the SHMA Update.

Summary of the five year supply calculation

197. The Council robustly maintains its position that it is able to demonstrate a five year supply of housing land. The consequence, of course, is that any policies of the Development Plan that are considered to be 'relevant' to the supply of housing, are not rendered out of date pursuant to paragraph 49 of the NPPF.

#### *Flooding and Drainage*

198. On a sensible reading of the original ES and the ES updates (either September or October 2016) it is difficult to see how the Appellant can maintain its position that a sea outfall was 'always' part of its drainage scheme. A sea outfall is simply not mentioned anywhere in the original ES.

199. Mr Travis accepted that the environmental impacts of constructing a new sewer to service the appeal scheme have not been assessed. He suggested that this was not possible, as the Appellant has no control over the final route of the new requisitioned sewer. However, as Mr Travis made clear, the options for the new sewer appear to be reasonably well established. The mere fact that some of those options will not be taken forward does not preclude them from being properly assessed as part of the ES process. The construction and operation of a new sewer has the clear potential to result in environmental impacts. It is development which is related to and an integral part of the appeal scheme. The proper approach is to ensure that those impacts are, in so far as they can be, assessed before outline planning permission is granted for the appeal scheme. If this assessment is not made prior to the grant of outline permission, the potential environmental impacts of the new sewer will avoid scrutiny altogether.

200. In short, the Appellant's drainage proposals have altered materially from the 'solution' which was proposed to the Environmental Agency (EA). It is simply untenable that the 'additional information' was the proposal of a condition; a condition of the same nature and type was always proposed in the original ES. The 'additional information' was the proposed drainage scheme shown on the plan attached to Enzygo's letter. The EA made clear that their objection was withdrawn subject to the 'information' in question forming part of the application; that information can only be the scheme which was proposed. Not only did the proposed

drainage solution never make its way into the application proposals, but the options now being set out by the Appellant differ fundamentally from that provided to the EA.

201. It is fair to say that it is not always necessary to require an advanced level of information at the outline stage regarding the availability and adequacy of drainage solutions. However, this site suffers from and causes significant flooding elsewhere in the locality. This increases the importance of being able to assess the adequacy of any drainage solution proposed at the outline stage. It is simply irrelevant that NWL do not object to the Appellant's proposals to requisition a sewer. The statutory consultee with responsibility for this issue is now the LLFA. Mr Fraser's evidence is clear that as things stand, the information provided by the Appellant does not allow an appropriate level of assessment to be carried out. The absence of information is the basis for the Council's objection in this case.

### *The Planning Balance*

202. The Council maintains its position that the appeal scheme is contrary to the Development Plan, read as a whole, and it considers there are no material considerations which outweigh this policy conflict.

#### *The Development Plan*

203. Mr McMullan seeks to argue that the appeal scheme is in 'overall compliance' with the Core Strategy. A key part of his case on this issue rests on his interpretation of CS policy CS2 and the 'key diagram' in the Core Strategy. On a fair reading of Mr McMullan's evidence, it is clear that he contends that a key diagram can be interpreted as a 'settlement limit'. He suggests that as the appeal site falls within the purple shading on the key diagram which denotes the 'conurbation', that the appeal scheme is expressly supported by policy CS2.

204. It is right that Marske is recognised as one of the settlements which is said to fall within the 'Conurbation'; as a matter of common sense this alone cannot lend any weight to the appeal scheme. The appeal site is outside the settlement of Marske as it stands today. The key diagram cannot properly be read as providing any indication that the CS envisaged development of the appeal site. Mr Cansfield has explained the purpose and role of key diagrams at the time the CS was adopted. It cannot sensibly be interpreted as providing any indication as to what the future settlement limit of Marske was likely to be.

205. The Council maintains its position that the appeal scheme conflicts with DP policy DP1. Mr McMullan conceded that policy DP1 seeks to protect the countryside from development. Whether policy DP1 is out of date in any way, whether by way of the five year land supply, or due to the absence of a review of settlement limits, the Council considers that it can legitimately be given weight by the decision maker. DP policy DP1 reflects the policy objective of bullet point 5 of paragraph 17 and is therefore consistent with the NPPF's objective to recognise the intrinsic beauty and character of the countryside.

206. The Court made clear in *Suffolk Coastal* that the NPPF does not prescribe any particular level of weight that a decision maker must afford to a policy which is 'out of date'. Should the decision maker consider it appropriate, full weight can be afforded to DP policy DP1. Given the extent to which this appeal proposal conflicts with its countryside protection objective, the Council considers that significant weight should be afforded to policy DP1.

207. The Council rejects any suggestion that DP policy DP1's relevance and/or its application depends upon the existence of a 'new' proposals map. The wording of

the policy makes no reference to the need for development limits to be identified in order to ensure its operation. If the operation of DP policy DP1 was dependent on a new proposals map coming forward, it should not have been found sound. It could not be clearer that the appeal site lies outside of the existing development limits of Marske and falls within the 'countryside' as a matter of policy. DP policy DP1 therefore applies and the scheme conflicts with it significantly.

208. The Appellant accepts that CS policy CS22 is fully up to date with the NPPF and that it is not a policy which is 'relevant' to the supply of housing. CS policy CS22 should therefore be afforded full weight in the determination process if the appeal scheme conflicts with it. The Council concludes that there is conflict with CS policy CS22 and weight should be given to this conflict in the determination process.

209. DP policies DP10 and DP11 differ slightly in that the Appellant and the Council take a different view as to whether or not they are 'up to date' in NPPF terms. However, the question of conflict essentially turns on whether the heritage evidence of the Council is accepted in substance. If so, then there will inevitably be conflict with DP policies DP10 and DP11. In some respects the policies add little in substance to the assessment which must be carried out under paragraphs 132 and 134 of the NPPF in any event. Save of course for the fact that conflict with DP the policies must be given an appropriate level of weight, over and above that afforded to the NPPF, to reflect the statutory presumption in favour of the Development Plan.

210. On a correct interpretation of CS policy CS23 the Council considers that the appeal proposals plainly conflict with it. As Mr McMullan accepted the appeal site falls within the Strategic Gap. The land within the Strategic Gap is to be 'protected'. It cannot be 'protected' by being built on.

211. To this extent, arguments as to whether the policy is predominantly a 'landscape' policy or a 'spatial' policy are rendered somewhat irrelevant. The Appellant accepts that at least part of the purpose of CS policy CS23 is to protect the landscape which falls within the Strategic Gap but contends that the policy is 'relevant' for the supply of housing. However, this does not assist the Appellant in light of the fact that the Council can demonstrate a five year supply of deliverable housing. The Council resists any suggestion that the judgment in Suffolk Coastal means that the decision maker is required to find that CS policy CS23 is a policy which is 'relevant to the supply of housing'.

212. As with DP policy DP1, even if CS policy CS23 is considered to be 'out of date' by way of the application of paragraph 49 of the NPPF or for any other reason, this does not automatically render it obsolete. The Council contends that CS policy CS23 can still be afforded significant weight in accordance with the NPPF's directive to protect and enhance the landscape and to recognise the intrinsic value of the countryside. The appeal site forms an essential part of the Strategic Gap which CS policy CS23 seeks to protect.

### *The benefits and harms of the appeal scheme*

213. The Council has given careful consideration to the Appellant's case on 'benefits'. The Council does not accept that the items referred to by the Appellant can be properly assessed as 'benefits' of the appeal scheme. In the main, as Mr Cansfield explained in oral evidence, the purported benefits are largely mitigation.

214. The main benefit of the scheme would be the provision of market and affordable housing within the next five years. However, the weight which can be attached to this benefit as a material consideration is substantially reduced in this case because the Council can demonstrate a five year supply of housing land, the appeal scheme would only contribute a minimal supply of housing within the five years, and, if the Council is found to not have a five year supply of housing land, then the harm which the appeal scheme would cause is not outweighed by the benefit of providing a contribution to the five year supply of housing.

215. Taken as a whole, the Council does not accept that the appeal scheme represents sustainable development. The finite and irreplaceable loss of the countryside which the appeal scheme would result in is by itself a clear environmental harm. In addition, the appeal proposal would result in significant harm to the character and appearance of the countryside, and would cause significant harm to the key elements of the wider landscape character within which the site sits. The identity of Marske would be fundamentally compromised, as its rural setting on the southern approaches would be lost and key views which inform its identity (by reference to local landmarks) would also be lost. The integrity of a key part of the Strategic Gap would be significantly compromised. Harm to heritage assets would be caused, which are not 'clearly or convincingly' justified.

216. In essence, the Council contends that the environmental harm which would arise as a result of the appeal scheme renders the proposals unsustainable. The extent and severity of the harm is such that it significantly outweighs the benefits of the appeal scheme in respect of the provision of housing and any economic benefits arising from job creation and investment. Even considered in isolation from any conflict with Development Plan policies, the Council considers that this harm is sufficient for the planning balance to fall heavily on the side of refusal.

217. There are no material considerations which are sufficient to outweigh the conflict with the Development Plan.

### **Third Party Verbal and Written Representations**

The material points of the cases made by third parties in writing and at the Inquiry are:

218. The proposed development would be outside the development limits of Marske and would constitute a significant intrusion into the countryside. The village is already overdeveloped for its core facilities and further development, including a drive-thru restaurant, a hotel and a petrol filling station, would be out of keeping with the traditional character of Marske. The housing proposed is not required to meet local housing needs and is not included in the emerging Local Plan to meet housing needs for the next five years. There is no social benefit in providing housing that is not needed. It is disingenuous for the Appellant to claim that affordable housing would be a benefit when only 15% of the houses would be affordable. The village has expanded in recent years with the construction of about 400 dwellings

and the construction of more than double this number on one site on the edge of the village would have a significant effect on its character.

219. The development would result in loss of agricultural land, research indicates that the UK will face a significant shortage of farmland by 2030, and would have a significant adverse effect on the character of the countryside and on the character of Marske. The development would be a dense suburban expansion of the village and would intrude into the strategic gap between Marske, New Marske and Saltburn. It would be a blight on the fragile landscape beauty that exists in the area. Views northwards over the town towards the sea would be interrupted as would views southwards towards Errington Woods

220. Harm would be caused to the significance of the SAM by the construction of the development within its setting. Whatever the scale of the harm considerable weight must be attached to it in the planning balance. The tower of St Marks Church at the heart of the village would be obscured in views from the A174 and from footpaths on higher ground to the south of the site.

221. Housing development on the scale proposed would increase pressure on already stretched local infrastructure and services; local residents already experience long waiting times for medical services. The Appellant has not assessed the pressure that this proposed development would have on public services in Cleveland and has not offered a contribution to the cost of community infrastructure. It is disputed that the proposed community hall would be a social benefit because there is already a community hall in the village. The provision of a fast food restaurant is a social dis-benefit as it would contribute to obesity and diabetes.

222. The proposed development would increase traffic on roads around and in Marske, which would exacerbate current traffic queues at peak times. The proposal to reduce the width of the road under the railway bridge to single track on the entry to the village, and the introduction of traffic lights, would also contribute to further traffic problems. There is no guarantee that bus services would be provided for the intended residents and existing residents of the village already face problems with fewer public transport services. Car ownership would be essential for residents of the development. Parking is already at a premium in the village and the development would only result in serious parking congestion.

223. Flooding is a serious issue and has affected the village on several occasions in recent years. Many people have had their homes flooded and have suffered the loss of personal items. The proposed development would add to flooding concerns and insufficient information has been provided by the Appellant to indicate that the problem would be resolved if planning permission is granted. In particular rainwater runs off the site and causes flooding on and around the railway crossing on Longbeck Road. The development of the site would only serve to make this flooding worse. The proposal to pump rainwater off the site through a pipe to a sea outfall has been put forward late in the day and there are no guarantees that this will be a realistic solution to the flooding problems.

224. The public house and restaurant proposed for the site would have a destabilising effect on the public houses in the village and would threaten these family run businesses. The proposed petrol filling station would have a similar effect on existing similar businesses in the area. The recent closure of the Redcar Steelworks has resulted in the direct and indirect loss of 1000's of jobs and has had a devastating effect on the local economy. Many people have been forced to move away from the area in search of jobs and in such an economic climate it is unnecessary to build over 800 houses in an area where there are no jobs.

225. The proposed development is contrary to CS and DP policies, there is no demonstrable need for the housing proposed and the other non-residential uses proposed would threaten the economy of the area. The site is not a sustainable location for the proposed development. The strength of local opposition to the proposal should be given significant weight in the decision making process.

### **Conditions and Section 106 Obligation**

226. Recommended conditions are included in a Schedule attached to this report. The reason for each condition appears after the condition. They are, apart from one which is considered in the conclusions in this report, in line with conditions agreed by the Council and the Appellant (ID25). The agreed conditions have been amended, where necessary, to meet the tests set out in the National Planning Practice Guidance (NNPPG) and in the interests of clarity and precision. Phrases such as 'unless otherwise agreed in writing by the Local Planning Authority' have been deleted. Phrases such as 'unless otherwise agreed in writing by the Local Planning Authority' have been deleted.

227. The Appellant has entered into a Planning Obligation with the Council, made under Section 106 of the Town and Country Planning Act (ID27). Schedule 2 of the Obligation requires the Appellant to submit an Affordable Housing Scheme for approval by the Council which will set out the quantum of affordable dwellings, the affordable housing mix, the types and sizes of affordable dwellings, the timing of delivery of the dwellings and their locations. Affordable Dwellings is defined in the Obligation to be 15% of the total number of dwellings in the development.

228. Schedule 3 of the Obligation requires the transfer of land to the Council for the construction of a primary school or the payment in prescribed stages of a Primary School Contribution, which is £2,642 per dwelling. If the land is not transferred within 10 years then the Owner may make a planning application for an alternative use of the land. Schedule 4 of the Obligation requires the payment, before development commences, of a £12,000 PROW Contribution, a £2,000 Cycle Parking Contribution, a £3,000 Traffic Regulation Order Contribution, and a £2,000 Railway level Crossing Contribution. Schedule 4 also requires the payment, before occupation of any dwelling, of a £111.73 per dwelling Community Facilities Contribution, and the payment, before occupation of the 400<sup>th</sup> dwelling, of a £25,000 Marske Leisure Centre Contribution. Schedule 5 of the Obligation requires the Council to use or repay, under specified circumstances, the financial contributions.

229. The provisions of the Obligation are all related to requirements of development plan policies and are all necessary to make the development acceptable in planning terms. They are all, furthermore, directly related to the development, are fairly and reasonably related in scale and kind to the development, and are in place to mitigate the effects of the development. The Legal Agreement therefore complies with the tests set out in the Planning Practice Guidance and with Regulation 122 of the CIL Regulations 2010 and, with regard to clause 4 of the Undertaking, is required if planning permission is granted for the development. The Council has confirmed that there is no conflict with Regulation 123(3) (ID26).

## Conclusions

*Numbers in square brackets at the end of each paragraph refer to earlier paragraphs in this Report.*

The first issue – the character and appearance of the area

230. The former hedgerow subdivisions of the appeal site have been removed and it is, apart from the fenced SAM, now simply a very large area of arable farmland. It is devoid of any features of interest, other than the SAM, and there is no public access across the site. These characteristics of the site are mentioned in the negative elements of landscape set out in the LCA and have led to the site's inclusion within area R2 'Lowland Farmland' (South of Redcar and Marske) within the Redcar Flats Landscape Tract, which is designated as a Restoration Landscape, rather than within an area designated as a Sensitive Landscape. [25, 133]

231. The LCA refers to existing features in the denuded Restoration Landscape which are "...relatively sparse, due to hedgerow decline and loss, and their retention is important to 'place' new development, to act as the basis for additional planting, or for the creation of 'new landscape'. Additional planting may comprise...a hedgerow to continue the line of an existing one, or, in preference, form a hedgerow pattern or network and combine with tree planting to create an enhanced landscape structure".

232. The site, in itself, has little character though such character that it does have would be fundamentally altered by the proposed development. Rather than open farmland the site would be almost wholly developed for housing and other uses. Furthermore, whilst there are no hedgerows to be retained on site, the proposed development would provide the opportunity to reintroduce a hedgerow pattern, to sub-divide phases of the housing development in particular, and to introduce tree planting within the site and, as proposed, in a landscape buffer alongside the A174. The development has the potential to create an enhanced landscape structure for the site in accordance with the LCA aspirations for Restoration Landscapes. [26, 134]

233. The landscape character of the site would not be 'improved' by the development but it is reasonable to conclude that the development would have an overall positive effect on the character of the site. The proposed development would not adversely affect the character of the remainder of area R2, which is an extensive open farmed area that extends from the outskirts of Redcar to the west up to the outskirts of Saltburn to the east and from Marske up to New Marske and Errington Woods to the south, and would not harm the character of Area E7 'Upland' (Upleatham) which includes Errington Woods. [29, 135]

234. The site can be, and is by residents of the area, valued for its openness but it falls well short of being a 'valued landscape' for the purposes of paragraph 109 of the NPPF. There are views across the site from the Black Path towards Errington Woods on high ground to the south and these would be largely lost if the development was to be permitted and ultimately implemented. But the Black Path is not, on evidence gained at site visits both during and after the Inquiry, a well-used footpath and the loss of these views is not regarded to be significant. [32, 138]

235. Glimpsed views towards the sea across the site from the A174 would be lost but these are from fast moving vehicles and there are similar views from other sections of this trunk road to the west and east of the site. These partial seascape views are a feature of travelling along the A174 and the loss of views from a short section of the road is not regarded to be significant. There are seascape views from footpaths to the south of the site, particularly from Quarry Lane, and from a

footbridge that crosses the A174 close to Longbeck Road, but these views would remain over the rooftops of the buildings on the site. The proposed development would not intrude in glimpsed views of distant features of the area such as the disused steelworks in Redcar. [30, 135]

236. The proposed development would have a short built frontage to Longbeck Road but this would be opposite development on the west side of the road. The development would be screened by structural landscaping in the buffer strip alongside the A174, similar to that which screens development on the south side of Redcar which extends up to this road, and an existing hedgerow to the A1085 leading from the A174 into Marske would be retained. Despite the railway line that defines the existing south boundary of Marske, the proposed development would be, in many respects, a natural extension of the village. The site is well defined and bounded on all four sides by existing roads and the railway line, and for this and other aforementioned reasons the proposed development would not have a significant adverse effect on the appearance of the area. [31, 136]

237. With regard to the Strategic Gap between Marske and New Marske that is a subject of CS policy CS23, the supporting text to the policy states that the gap will be protected to ensure that settlements do not coalesce with surrounding settlements to help maintain their identity. The proposed development would not, as a matter of fact and in plan terms, result in Marske coalescing with New Marske; the south-west corner of the appeal site is about 0.5 kms from the north-east corner of New Marske. There would not, furthermore and given in particular the lack of any significant landscape features in the gap that would remain, be any visual coalescing of the two settlements from any vantage points and, in particular, from the A174. A clear and visible separation of the two settlements would be maintained. [21, 137]

238. Planning permission was granted on appeal in December 2015 (CD30) for 'the erection of up to 130 dwellings, landscaping, and ancillary works' on land south of Marske Road, Saltburn, following an Inquiry held in October 2015. The 5.83 hectare site is on the south side of the A174 and abuts the western edge of Saltburn. The permitted scheme, if implemented, will result in the strategic gap between Marske and Saltburn being reduced to about 0.5 kms: the same as the gap that there would be between Marske and New Marske as a result of the appeal development. It is worth noting that the Inspector in the Saltburn appeal reached similar conclusions on the strategic gap as are reached in this report. [22]

239. The proposed housing development would have a spine road running through it from the A1085 to Longbeck Road and it is intended that there would be a footpath link to the Black Path for access to the station and to the village. Whereas there is currently no access to the site, particularly to the SAM, there would be throughout the proposed development. The proposed development would be inherently multifunctional and, given the current denuded character of the site, there is good reason to suppose that the quality and value of the site would be enhanced. [33]

240. The strategic gap between Marske and New Marske would remain and would thus be protected, and the quality, value, multi-functionality and accessibility of the part of the gap that would be developed would be enhanced. The proposed development does not, in this regard, conflict with CS policy CS23. The proposed development would not result in any significant harm to the character and appearance of the area and does not therefore conflict with CS policy CS22. [34, 218]

## The second issue – the significance of heritage assets

241. The SAM is a heritage asset of the highest significance but the proposed development would not have any direct effect on that significance. The only possible heritage harm that might be caused would be as a result of development within the setting of the SAM. The setting of the SAM, the surroundings in which the heritage asset is experienced, extends out from the monument and includes the railway line, coal yard and village to the north, the appeal site to the west, Marske Inn Farm to the south, and the A1085 and farmland to the east. In general visual terms the SAM can be experienced, from public vantage points, from the Black Path and from a footbridge that provides access to the westbound station platform, and through a boundary hedgerow alongside the A1085. [43-45, 139]

242. There is good reason to agree with Mr Burton-Pye for the Council who has stated that “The SAM and the manor house that it represents once formed a key element of the village of Marske”. The A1085 was almost certainly, when the manorial settlement was established, a track that led past the settlement to the village and the coast from the south. The track is now a substantial metalled highway and, furthermore, the SAM’s direct relationship to the village has been severed by the railway line and the introduction of the station and coal yard. The manorial settlement is likely, given that part of a field system is part of the heritage asset, to have been established just outside the village so that it was also directly related to the land that was farmed to provide produce for its residents. [47, 140]

243. Evidence indicates that the field system extended into the field to the east, beyond the track that is now the A1085, and it is quite possible that the field system that supported the manorial settlement extended into the appeal site. The settlement clearly has a direct and important relationship to the farmland that surrounds it, and this includes the major part of the appeal site that would be developed. Though the SAM cannot be experienced from the appeal site at present it would be if the site was to be developed. This factor has been addressed however by incorporating a 150 metre wide buffer zone within which there would be no built development. If the prospect of developing a primary school on the site was to be taken up by the Council the buffer zone would be playing fields and if this does not come to fruition the buffer zone would be a public access amenity area. [49, 141]

244. In either event the SAM would be experienced from an undeveloped area and proposed built development to the west and south would be significantly further away from the SAM than existing built development in the village, at the railway station, and at Marske Inn Farm. Further built development would not intrude into the setting of the SAM. The proposed development would not affect experience of the SAM from the railway footbridge or, given that the SAM is undulations in a field and that boundary treatment and landscaping would be matters for careful consideration at reserved matters stage, from the Black Path for walkers approaching from the west. The development would not intrude into the setting of the SAM and there would be no adverse effect on the significance of the heritage asset. [52-3]

245. The Appellant has proposed that the SAM, if planning permission is granted, is the subject of a Conservation Management Plan (CMP). At present the SAM is inaccessible and is on Historic England’s List of Scheduled Ancient Monuments at Risk. The CMP may or may not result in removal of the SAM from the list but this is more likely to occur with a CMP in place; a condition agreed between the parties would require the approval and implementation of a CMP. The CMP could provide, at least, for access to the SAM and for the display of on-site information about its history and significance. The SAM would thus become an educational resource for

the whole community. This would be a direct and beneficial consequence of the grant of planning permission and would outweigh Heritage England's view, if that view is to be preferred, that less than substantial harm would be caused to the significance of the heritage asset. [58-60, 142]

246. St Marks Church, a Grade II listed building, is at the centre of Marske. The church tower, which is a prominent feature of the area around Marske, contributes to the architectural and historic interest of the listed building. In this regard, the area around Marske may be regarded to be part of the setting of the heritage asset. The built elements of the proposed development would be visible in views of the church, particularly from Quarry Lane, from the footbridge over the A174, and on the approach to the village along the A1085. In views from Quarry Lane and the footbridge built elements of the proposed development would be in the foreground but it is unlikely that they would obscure the church tower or even detract from the experience of the tower in the landscape. [54-55, 143]

247. Even if the development did obscure the tower from some public vantage points it is a feature of the area that the church tower is not a constant feature, such as it might be in a featureless and flat landscape, but is glimpsed between landscape and topographical features. In this regard many glimpses of the church tower would remain. The view of the church tower along the A1085 was particularly referred to at the Inquiry but before Marske Inn Farm it is hedgerows on both sides of the road and road signs that are the most prominent landscape features, and built elements of the proposed development to the west of the road would not obscure or detract from the experience of the church tower from the road. From no other direction would the proposed development reduce the prominence of the tower in the landscape. [56-57]

248. A CMP and its implementation, which would be required by an agreed condition, would ensure that no harm would be caused by the proposed development to the significance of the SAM and no harm would be caused to the significance of St Marks Church. The proposed development does not therefore conflict with CS policy CS25 or with DP policy DP11. [61-63, 220]

The third issue – five year housing land supply

249. Paragraph 47 of the NPPF requires local planning authorities to identify and update annually a supply of specific deliverable sites sufficient to provide five years' worth of housing against their housing requirements with an additional buffer of 5%, or 20% if there has been a record of persistent under delivery. The main parties agree, for the purposes of assessing housing land supply, that there are 1839 housing units under construction or with planning permission, that the Council has a record of persistent under delivery of housing, and that a buffer of 20% should be applied. Consideration must also be given as to whether any backlog should be made up, either in the first five years of the remaining plan period, the Sedgefield approach, or over the whole of the remaining plan period, the Liverpool approach.

250. The NPPG states that housing requirement figures in up-to-date adopted Local Plans should be used as a starting point for calculating five years supply and that considerable weight should be given to these figures unless significant new evidence comes to light. The NPPG also mentions that it should be borne in mind that evidence which dates back several years, such as that drawn from revoked regional strategies, may not reflect current housing needs. The CS housing requirements for the Borough are indeed based on a revoked RSS and the Appellant has accepted that the Sub-National Population Projections for England (SNPP) published by the Office for National Statistics (ONS) in 2012, and which therefore postdates the adoption of the CS, is significant new evidence. There is good reason

therefore to set the CS housing requirements aside in favour of an OAN for the Borough. [64, 187-192]

251. The main parties agree that the Housing Market Area (HMA) is the Borough Council area. The NPPG is clear that the starting point for assessing the OAN for the HMA is Household Projections for England (HP) published by the Department for Communities and Local Government (DCLG). These projections are produced by applying projected household representative rates to the SNPP population projections. The NPPG indicates that the household projection-based estimate of housing need may require adjustment to reflect factors affecting local demography and household formation rates which have not been captured in past trends. [65-67]

252. The SNPP predicts that the population of the Borough will not increase from 135,000 up to mid-2022 and the HP therefore predicts that household growth, presumably as a consequence of the reduction in household size, will increase by only 2,000 up to 2024. Thereafter the main parties agree that an adjustment needs to be made for 'economic growth adjustment' or 'labour market alignment', depending on terminology. It is the issue of jobs growth that is critical. [71, 151]

253. The NPPG states that employment trends should be based on an assessment of the likely change in job numbers based on past trends and/or economic forecasts as appropriate, whilst also having regard to the growth in the working age population in the HMA. In accordance with this guidance the Appellant has based their assessment of jobs growth on past trends and has assessed it to be an increase of 2,200 jobs over the plan period of 2015-32. The Council relies on the economic forecast of Experian who predict a growth of 500 jobs over the same period. [72,

254. OAN has been debated at two relatively recent Inquiries into proposed housing schemes in the Borough. The Inspector in the Saltburn Inquiry, mentioned in paragraph 240, commented that "As affirmed by the Court of Appeal in *Hunston v Secretary of State for Communities and Local Government* [2013] EWCA Civ 1610 (*Hunston*), it is not the purpose of a Section 78 appeal to formally determine an authority's OAN, its housing requirement, or its available five-year housing land supply. That exercise is a legitimate part of a wider and more elaborate development plan process". An assessment of OAN for the purposes of this report, given that it is being undertaken in consideration of a Section 78 appeal, must take an appropriate 'broad brush' approach to the evidence put forward by both parties, as did the Inspector in the Saltburn Inquiry. That Inspector did not reach a conclusion on OAN but did "...find no justification for the Council to confine its assessment of housing need in the way it has" and favoured "...a more comprehensive assessment of requirement at 395 dwellings per annum". [103, 148]

255. The other relatively recent Inquiry was held in early 2016 and related to a proposed housing scheme for up to 320 dwellings on a site in Ormesby (CD32). At the Inquiry the Council was represented by the same Counsel, Ms Ogle, and by the same housing consultant, Ms Howick, as appeared at the Inquiry that was held into the appeal that is the subject of this report. The case presented by the Council at that Inquiry, and the documentary evidence submitted, is likely to have been similar to that presented and submitted in this case. The Inspector concluded: "...the Appellant's view on activity rates to be more realistic. Accordingly, I am persuaded...that the OAN figure of 355 dpa is the more robust figure".

256. Two volumes of a Strategic Housing Market Assessment (SHMA) have been published, in February 2016, since the Ormesby Inquiry. Volume 2 of the SHMA, 'Objectively Assessed Housing Need', was prepared by Peter Brett Associates. Ms Howick works for Peter Brett Associates and is likely to have been the author of, or at

least contributed to, Volume 2, and it is not surprising that the conclusions reached in that document are virtually the same as those put forward by Ms Howick at the Inquiry. The conclusion of Volume 2 is that "...there is no justification for a 'future jobs' uplift to the housing need figure of 132 dpa from 2015 to 2032. This conclusion is based on a 'business as usual' economic scenario. It also assumes that economic activity rates for the older age groups increase in future, in line with Experian's view...". [77-80, 161-163]

257. Both main parties have addressed the issue of undersupply in previous years. The Council maintains that this is taken up in the assessed OAN, and should not be added to it, whereas the Appellant maintains that it should be added to the OAN before the 20% buffer is added. The Planning Advisory Service (PAS) has indicated that a "...SHMA should properly take account of backlog as part of the calculation of OAN...". The recent SHMA does not mention undersupply specifically but does include a section on 'Past Delivery and Market Signals'. A table in this section sets out housing completions against targets and shows, over the ten year period 2004-14, that 2,203 houses were completed. The Local Plan housing target in the first seven years was 300 dpa and in the last three years was 270 dpa; a total of 2,910 houses. The shortfall for the ten year period was 707 houses. [94-99, 193-196]

258. The SHMA makes the observation that 72% of house completions in the period 2004-2010 were on windfall sites because "...most of the housing land allocations in the 1999 Local Plan had been built out". The SHMA goes on to state that "Recognising the threat to its five-year land supply position, the Council from 2011 onwards has been granting windfall permissions on sites outside development limits, which they did not do previously. This evidence suggests that in recent years planned land supply may have constrained housing development...". This indicates that the Council is in a precarious position with regard to housing land supply, particularly as they did not adopt any housing land allocations to support achieving the 2007 CS housing targets, abandoned the first draft Local Plan a few years later, and have yet to reach a point where the emerging Local Plan can be given any weight. The SHMA does not clearly indicate that the shortfall in the ten years up to 2014-15 has been accounted for in the stated base OAN of 120 dpa, to which has been added a 'market signals uplift' of 10%, 12 dpa, to reach an OAN of 132 dpa.

259. With regard to an economic growth adjustment the Council favours the job growth prediction of Experian, that job numbers in the Borough will increase by only 500 up to 2032, and the prediction by that organisation that the rate of increase in economic activity rates in the 65+ population of the Borough will be significantly above the national increase for this age group that is predicted by the Office for Budget Responsibility (OBR). Taking into account the prediction, by OBR and other forecasters, that economic activity rates will increase in the 16-64 age group as a result of the aging population, the recent closure of the SSI Steelworks in Redcar that resulted in the direct and indirect loss of many more than 1,000 jobs, and other factors, the Council makes no economic growth adjustment to their assessed OAN of 132 dpa. [72, 165]

260. The Appellant predicts that job numbers in the Borough, on the basis of past trends, will increase by 2,200 up to 2032, though it is not clear how this figure is calculated. They also predict that self-employment will continue to increase and that, with regard to the closure of the steelworks, considerable efforts will be made "...to replace those lost jobs, not to mention regenerate the steelworks site". They have pointed to the 'one-off shock' of the closure of the steelworks as a reason why models such as that put forward by Experian cannot be relied on. However, it is unclear what the Appellant regards the base OAN to be from an assessment of the

HP figures published by DCLG and what economic growth adjustment can be applied to that base OAN. It is entirely unclear how the Appellant has arrived at an overall OAN of 349 dpa. [77, 170]

261. Taking into account the affirmation in *Hunston* it is not possible in this report to reach a firm conclusion on the OAN for the HMA. But there is clearly a significant difference between the conclusions of the main parties on this matter. If the Council's OAN of 132 dpa is accepted then they would be able, irrespective of other considerations such as application of a backlog before applying a 20% buffer, to demonstrate a five year housing land supply, and if the Appellant's OAN of 349 dpa is accepted then the opposite would be the case. [82, 183-184]

262. Taking into account the statement in the SHMA "...that in recent years planned land supply may have constrained housing development..." and other factors, particularly the Council's reliance on windfalls and the Government's commitment in the NPPF to boost the supply of housing, it is appropriate to take account of the housing supply backlog in an assessment of five year housing land supply. This backlog is taken to be 707 houses, as set out in the SHMA, rather than 1034 houses as claimed by the Appellant. There is no reason to depart from guidance in the NPPG that 'local planning authorities should aim to deal with any undersupply within the first five years of the plan period' and an assessment of supply will be carried out on this basis. A backlog of 707 houses therefore equates, for the purposes of assessing the five year housing land position, to 141 dpa. [84, 194]

263. Taking into account the agreed current supply of 1839 houses and the need to account for the backlog, the OAN, once an agreed buffer of 20% is also applied, needs to be 166 dpa or less to result in there being five years of housing land supply (1839 divided by  $((166 + 141) \times 1.2)$  equals 5). Taking all other matters into account, including commuting rates, affordable housing need and the 'logic trap' referred to by the Council, it is reasonable to conclude that the OAN for the HMA, whilst it is probably not as high as 349 dpa as claimed by the Appellant, is significantly higher than 166 dpa. [98-99, 167, 175]

264. The Appellant has remarked that the Council's OAN is lower, significantly in fact, than the CS requirement of 270 dpa. It would be remarkable if, in the light of the Government's requirement to boost the supply of housing, an OAN that is lower than an adopted and current CS requirement was to be accepted. Taking account of the backlog and a 20% buffer the CS housing requirement of 270 dpa results in there being only 4.2 years of housing land supply. [100, 197]

265. The Council cannot demonstrate a five year supply of housing land and paragraph 49 of the NPPF is therefore engaged.

#### Other matters

266. Parts of Marske have been flooded in recent years and residents have suffered damage to their homes and the loss of personal possessions. There is also evidence, given the non-porous clay soil that underlies the site and ground levels, that rainwater runs off the site at its north-west corner and contributes to flooding around the railway crossing of Longbeck Road and of nearby properties. The development of the site, which would require the introduction of a comprehensive sustainable drainage scheme (SuDS), would result in rainwater no longer running off the land. This may not alleviate flooding around the railway crossing but it is entirely safe to conclude that the proposed development would not exacerbate flooding in Marske. [107, 199]

267. There is nothing in evidence, either in the ES or elsewhere, to indicate that there was ever the intention that rainwater falling on the site would not be carried away from the site through an underground sewer. The outflow would be controlled by the introduction of attenuation ponds on the site, as part of the SuDS, and would be the subject of a sewer requisition to NWL that would be the subject of the statutory regime for such requisition. There is nothing to indicate that NWL would not ultimately provide the necessary sewer, that agreement with EA for the drainage scheme would not be forthcoming, or that an outfall to the sea, as would appear to be the logical solution, would cause any environmental concerns. Mr Fraser, for the Council, accepted at the Inquiry that agreed conditions overcame concerns and these have been included in the schedule of conditions attached to this report. Furthermore, nothing can occur on the site until reserved matters applications have been submitted to and approved in writing by the local planning authority. Drainage of the site and full details of all SuDS and outfall drainage matters can be fully considered at that stage before development commences. [108, 200, 223]

268. Local residents have commented that local businesses, particularly shops and public houses in the village, are suffering during the current depressed economic climate and that the proposed development, particularly the proposed public house and drive-thru restaurant, would destabilise these businesses. It is not a purpose of the planning system to prevent competition between similar commercial uses and it is likely that existing businesses in the village would benefit from residents of the proposed development becoming customers. In this regard the site is within easy walking distance of the town and would be served by an upgraded Black Path and by a footpath that would be introduced, where there is none at present, where the A1085 passes under the railway line. [112, 221, 224]

269. The introduction of the footpath under the railway line would require reducing the width of the roadway to a single lane and the introduction of traffic lights to control the two way flow of traffic. The Highway Authority has agreed this and other highway alterations and there is nothing in evidence to indicate that the proposed development would result in any adverse consequences for highway safety, would result in traffic congestion in the village, or would result in unacceptable pressure on public parking in the village centre. In this regard it is worth reiterating that residents of the proposed development would have easy walking and cycling access to all of the existing services and facilities in the village and would have almost direct access to the A174 for driving access to Redcar and further afield. [113, 222]

270. All other matters raised by local residents have been considered but none are of sufficient weight to influence the planning judgement that must be made.

#### Overall conclusions

271. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise.

272. With regard to paragraphs 47 and 49 of the NPPF, DP policy DP1, given that the Council cannot demonstrate a five year supply of housing land, is out of date.

273. The proposed development, with regard to its effect on the character and appearance of the area, does not conflict with CS policies CS22 and CS23, and, with regard to its effect on the significance of heritage assets, does not conflict with CS policy CS25 and DP policy DP11. The proposed development is in accord with the Development Plan as a whole and there are no material considerations to indicate

that the proposed development should be determined other than in accordance with the Development Plan [114-119, 120-217, 203-212]

274. Paragraph 14 of the NPPF states that there is a presumption in favour of sustainable development and that, for decision taking, this means, approving development proposals that accord with the development plan without delay. The proposed development, for this reason and given that it satisfies the three dimensions to sustainable development set out in paragraph 7 of the NPPF, is sustainable development. The development would contribute, if implemented, to meeting the housing needs of the Borough within the next five years and, in accordance with paragraph 47 of the NPPF, would contribute to meeting housing supply beyond that period. [106]

275. The first of twelve core planning principles set out in paragraph 17 of the NPPF states that planning should "...be genuinely plan led...with succinct local and neighbourhood plans setting out a positive vision for the future...Plans should be kept up to date...They should provide a practical framework within which decisions on planning applications can be made with a high degree of predictability and efficiency". The Council has not allocated land for housing since 1999 and has relied in recent years, to a significant degree, on windfalls to meet their housing requirements. Windfalls within built up areas are a finite resource and it is worth noting that the Council has been permitting housing developments on windfall sites that are outside development limits. This is an ad hoc approach to planning and is not the genuine plan led approach required by the NPPF.

276. Condition one in an agreed conditions schedule (ID25) requires that an application for approval of reserved matters shall be submitted for approval by the local planning authority within fifteen years of the date of the permission. This time period exceeds the normal time period of three years. No explanation of why such an extended period is appropriate, or why this is a change from the previously agreed condition in a draft conditions schedule (ID24), has been given by either main party. Land with planning permission for housing is required now to meet the housing requirements of the Borough and there is no justification for a reserved matters application to be submitted beyond the standard time period.

#### Recommendation

277. It is recommended that the appeal be allowed and that planning permission be granted, subject to conditions set out in the attached schedule.

*John Braithwaite*

Inspector

## **APPEARANCES**

### **FOR THE LOCAL PLANNING AUTHORITY:**

Ms A Ogley	Of Counsel
She called	
Mr D Burton-Pye MBE DipTP MRTPI IHBC	Historic Environment Consultant
Mr P Barker MPhil CMLI	Director of Glen Kemp (Newcastle) Ltd
Ms C Howick MA MSc	Partner at Peter Brett Associates LLP
Mr Cansfield BA(Hons) MTP MRTPI	Planning Consultant at Cundall Johnston and Partners LLP

### **FOR THE APPELLANT:**

Mr T Ivory	Of Counsel
He called	
Mr G Ives MRTPI	Associate Director of Turley Planning Consultants
Mr S Laws BA(Hons) DipLA CMLI	Landscape Architect at One Associates
Dr R Gomez BA MA PhD	Director of Regeneris Consulting
Mr A McMullen MRTPI	Partner at Knight Frank
Mr B Jackson BEng(Hons) MSc MCIHT	Director of Ashley Helme Associates Ltd
Mr M Travis BSc(Hons) MSc CWEM MCIWEM CSci CEnv	Consultant at Enzygo

### **INTERESTED PERSONS:**

Mrs A Turley	Member of Parliament for Redcar
Mr H Bowman	Local resident
Mrs M Marshall	Local resident
Mr A Fox	Local resident
Mrs Findley	Local resident

Mr P Wensley	Local resident
Mr P Finlinson	Local resident
Mrs S Sandiford	Local resident
Mr Lockey	Local resident
Mr M Douglas	Local resident
Mrs A Sidgwick	Local resident
Mr Lombard	Local resident
Mr A Barker	Local resident
Mr J Wilkinson	Local resident
Councillor S Turner	Ward Councillor for Longbeck
Councillor K King	Ward Councillor for St Germain's
Ms J Holland	Local resident
Mrs Birtill	Local resident
Councillor N Cooney	Ward Councillor for Longbeck
Mrs M Mabbs	Local resident
Councillor M Findley	Ward Councillor for Longbeck
Councillor M Dick	Ward Councillor for Brotton
Councillor P Thomson	Ward Councillor for Saltburn
Rev Lambert	Local resident
Mr Fraser	Local resident
Mr J Lambert	Chairman of Saltburn, Marske and New Marske Parish Council

## **INQUIRY DOCUMENTS**

- 1 Council's letter of notification of the Inquiry and lists of those notified.
- 2 Opening statement on behalf of Redcar and Cleveland Borough Council.
- 3 Opening submissions on behalf of the Appellant.
- 4 Highway Statement of Common Ground.
- 5 Statement of Common Ground.
- 6 Parameters Plan – Drwg. No. (SK)104 Rev. D0.
- 7 Housing Delivery Plan.
- 8 Housing Delivery Table.
- 9 Appellant's Supplementary Housing Calculations.
- 10 Emails regarding site drainage.
- 11 Emails regarding site drainage.
- 12 Sewer Requisition Application Guidance Notes.
- 13 National and DEFRA Guidance on drainage issues.
- 14 Tees Valley Hotel Futures Summary Report.
- 15 OAN and Housing Targets Technical Advice Note.
- 16 Strategic Housing Market Assessment – Volume Two.
- 17 OBS Fiscal Sustainability Report June 2015.
- 18 Appeal Decision APP/W1525/W/15/3121603.
- 19 Letter to PINS dated 7 October 2016 from Mr McMullen of Knight Frank.
- 20 Extract from NPPG – Housing and Economic Land Availability Assessment.
- 21 Commuting Data – Redcar and Cleveland 2011-15.
- 22 Highways Plans.
- 23 Coverdale v Charlton Dec 2 1878.
- 24 Draft Conditions Schedule.
- 25 Agreed Conditions Schedule.
- 26 CIL Compliance Statement.
- 27 Signed and Dated Section 106 Planning Obligation.
- 28 Representation by Anna Turley MP.
- 29 Representation by Mr Andrew.
- 30 Representation by Ms Archer.
- 31 Representation by Mr Wilkinson.
- 32 Representation by Mr Lambert.
- 33 Representation by Mr Barker.
- 34 Representation by Mrs Daniel.

- 35 Representation by Mrs Lilley.
- 36 Representation by Rev Lambert.
- 37 Representation by Councillor Thomson.
- 38 Representation by Ms Mabbs.
- 39 Representation by Mr Wensley.
- 40 Representation by Councillor Dick.
- 41 Representation by Councillor Findley.
- 42 Representation by Ms Sidgwick.
- 43 Representation by Mr Barker.
- 44 Representation by Mr Wensley.
- 45 Representation by Mr Lombard.
- 46 Representation by Mr Lockey.
- 47 Representation by Mr Finlinson.
- 48 Representation by Ms Findley.
- 49 Representation by resident of Sherwood Drive, Marske.
- 50 Representation by Mr Sanderson.
- 51 Representation.
- 52 Representation by Mr Bowman.
- 53 Representation by Mr Wensley.
- 54 Representation by Mrs Waters.
- 55 Representation by Councillor Cooney.
- 56 Representation by Ms Birtill.
- 57 Representation by Ms Holland.
- 58 Representation by Councillor King.
- 59 Representation by Councillor Turner.
- 60 Representation by Mr Wilkinson.
- 61 Representation by Mr Douglas.
- 62 Closing Statement on behalf of Redcar and Cleveland Borough Council.
- 63 Closing Submissions on behalf of the Appellant.

## **CORE DOCUMENTS**

- 1 Redcar and Cleveland Local Development Framework – Core Strategy DPD (July 2007)
- 2 Redcar and Cleveland Local Development Framework – Development Policies DPD (July 2007)
- 3 Redcar and Cleveland Local Plan Publication Version (July 2014) (abandoned)
- 4 Redcar and Cleveland Draft Local Plan (May 2016)
- 5 Redcar and Cleveland Draft Local Plan – Background Evidence Paper : Housing Supply Requirements and Site Allocations (September 2013)
- 6 Redcar and Cleveland Draft Local Plan – Housing Land Supply and Allocations Background Evidence Paper (June 2016)
- 7 Redcar and Cleveland Developer Contributions SPD (December 2014)
- 8 Redcar and Cleveland Regeneration Masterplan – Redcar Area Spatial Framework (April 2010)
- 9 Regeneration Master – Delivery Plan (2012-17)
- 10 Our Plan (also identified as the Corporate Plan) (2015-17)
- 11 Strategic Housing Land Availability Assessment (SHLAA) Update (August 2014)
- 12 Strategic Housing Land Availability Assessment (SHLAA) Consultation Draft (June 2016)
- 13 5 Year Housing Land Supply Assessment (June 2014)
- 14 5 Year Housing Land Supply Assessment (September 2014)
- 15 5 Year Housing Land Supply Assessment (December 2015)
- 16 Redcar and Cleveland Strategic Housing Market Assessment (SHMA) 2016 – Volume 1 : Household Survey and Affordable Housing (February 2016)
- 17 Redcar and Cleveland Strategic Housing Market Assessment (SHMA) 2016 – Volume 2 : Objectively Assessed Housing Need (February 2016)
- 18 Redcar and Cleveland Borough Council Employment Land Review Update (July 2016)
- 19 Historic England : Historic Environment Good Practice Advice in Planning Note 2 : Managing Significance in Decision-Taking in the Historic Environment 2015
- 20 Historic England : Historic Environment Good Practice Advice in Planning Note 3 : The Setting of Heritage Assets 2015
- 21 Marske Conservation Area Appraisal 2011
- 22 Redcar and Cleveland Landscape Character Assessment (April 2006)
- 23 Redcar and Cleveland Landscape Character SPD (March 2010)
- 24 Redcar and Cleveland's Green Space Strategy

- 25 Redcar and Cleveland Green Wedge and Strategic Gap Review (May 2016)
- 26 Review of Development Limits Background Evidence Report (May 2016)
- 27 An Approach to Landscape Character Assessment : Natural England (October 2014)
- 28 National Character Area Profile : 23 Tees Lowlands (Natural England)
- 29 National Character Area Profile : 25 North York Moors and Cleveland Hills (Natural England)
- 30 Appeal Decision APP/V0728/W/15/3006780 - Land South of Marske Road, Saltburn
- 31 Appeal Decision APP/V0728/W/15/3063757 – Spencerbeck Farm, Normanby Road, Middlesborough
- 32 Appeal Decision APP/V0728/W/15/3018546 – Longbank Farm, Ormesby, Middlesborough
- 33 Jones v Mordue EWCA Civ 1243
- 34 Appeal Decision APP/T3725/A/14/2216200 – Land south of Mallory Road, Bishop’s Tachbrook, Warwickshire
- 35 Appeal Decision APP/W1850/W/15/3002571 – Land west of Upper Court Road, Bosbury, Herefordshire
- 36 Appeal Decision APP/J0405/A/14/2219574 – Land east of A413 Buckingham Road and Watermead, Aylesbury
- 37 Appeal Decision APP/C1570/A/14/2213025 – Land west of Great Dunmow, Essex
- 38 Appeal Decision APP/C1570/A/14/2219018 – Land north-east of Elsenham, Essex
- 39 Five Year Housing Land Supply Assessment 2016/17 – 2020/21 (September 2016)
- 40 Scheduled Monuments and Nationally Important but Non-scheduled Monuments (October 2013)
- 41 Objectively Assessed Need and Housing Targets Technical Advice Note (July 2015)
- 42 Strategic Housing Market Assessment (SHMA) Volume 2 : Objectively Assessed Housing Need (September 2016 Update)

## **RECOMMENDED CONDITIONS**

1. Application for approval of reserved matters shall be made to the Local Planning Authority not later than three years from the date of this permission.

Reason - to accord with the provisions of Section 92 of the Town and Country Planning Act (as amended)

2. For each phase or sub phase of the development, 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 development is commenced and the development shall be carried out as approved. The details shall accord with the following plans: The details submitted shall be in accordance with the following plans:

- Fixed Parameter Plan ((SK) 104 Rev D0)
- Indicative Masterplan ((SK) 103 Rev D0)
- Indicative Phasing Diagram ((SK) 059 PL1)
- Indicative Landuse Parameter Plan ((SK) 056 PL5)
- Indicative Access Parameter Plan ((SK) 058 PL1)
- Indicative Landscape Plan ((SK) 057 PL1)

Reason - to accord with the provisions of Section 92 of the Town and Country Planning Act (as amended)

3. Each phase or sub phase of the development shall begin not later than two years from the date of approval of the last of the reserved matters to be approved.

Reason - to accord with the provisions of Section 92 of the Town and Country Planning Act (as amended)

4. The development hereby permitted shall not be implemented until a Phasing Plan for the timing and delivery of the development, or parts of it, in terms of the relationship between the phases or sub-phases of development and the proposed infrastructure, has been submitted to and approved in writing by the Local Planning Authority. Development shall be undertaken in accordance with the approved Phasing Plan

Reason - to ensure that the development is completed in accordance with an agreed phasing plan which reconciles the requirement for infrastructure provision on the site for each phase of the development

5. For each phase or sub-phase of the development, details submitted in accordance with Condition 2 shall include existing and proposed ground levels together with finished floor levels for the development. The levels shall be shown by sections through the site and the development shall be carried out as approved.

Reason - in order that the Local Planning Authority is properly able to consider the impact of the development on the local landscape in respect of the height and massing of the development in the interests of local visual amenity

6. An art feature or features shall be incorporated into the development in accordance with a scheme that has first been submitted to and approved in writing by the Local Planning Authority. The approved details shall be implemented in their entirety in accordance with the Phasing Plan required by condition 4 above.

Reason - to secure the provision of an artistic element in accordance with policy DP15 (Art and Development) of the Redcar and Cleveland Local Development Framework (Development Policies DPD) 2007

7. Prior to the commencement of the relevant phase or sub-phase of the development, a Construction Traffic Management Plan (CTMP) shall be submitted to and agreed in writing with the Local Planning Authority. Development or each phase or sub-phase shall be undertaken in accordance with the approved CTMP.

Reason - in order to minimise the impact of the construction process on the amenity of the locality and in the interests of local highway safety

8. For each phase or sub-phase of the development, development shall not take place until details have been submitted to and approved in writing by the Local Planning Authority of proposals to provide contractors car parking and material storage within the site. The details shall include a timetable for their provision linked to the Phasing Plan referred to in condition 4 above. The details approved shall be implemented and retained for the duration of the construction of each relevant phase or sub-phase until its completion in accordance with the approved timetable.

Reason - in order to minimise the impact of the construction process on the amenity of the locality and in the interests of local highway safety

9. Prior to the occupation of any phase or sub-phase of the development hereby approved, a detailed Travel Plan shall be submitted to and approved in writing by the Local Planning Authority. The approved Travel Plan shall be implemented for five years after final occupation of that phase or sub-phase.

Reason - to encourage access to and from the site but sustainable transport choices in the interest of promoting the delivery of a sustainable development

10. For each phase or sub-phase of the development, development shall not take place until a scheme of ecological mitigation and enhancement, including a timetable for scheme implementation, to accord with the details set out in the Environmental Statement and Phase I Habitat Survey, has been submitted to and approved in writing by the Local Planning Authority. The approved scheme shall provide for the protection of the most important protected habitat and wildlife species on the site identified in the ES. The development shall be implemented in accordance with the approved scheme and timetable.

Reason - to improve the biodiversity interest of the site in accordance with policy set out at paragraph 109 of the National Planning Policy Framework

11. For each phase or sub-phase of the development no part of the development shall be occupied until a scheme of lighting for the site has been submitted to and approved in writing by the Local Planning Authority. The approved scheme of lighting shall be implemented in accordance with the timetable set out in the approved Phasing Plan required by condition 4 above.

Reason - to minimise the impact from on-site lighting in the interests of the visual amenity of the area

12. For each phase or sub-phase of the development a minimum of 10% of the site's energy requirements shall be provided by embedded renewable energy, in accordance with a scheme that has first been submitted to and agreed in writing by the Local Planning Authority. The approved scheme shall be implemented in its entirety, for that particular phase or sub-phase, in accordance with the Phasing Plan required by condition 4 above prior to the occupation of the development.

Reason - to accord with policy DP3(e) (Sustainable Design) of the Redcar and Cleveland Local Development Framework (Development Policies DPD)

13. For each phase or sub-phase of the development the working hours for all construction activities on the site shall be limited to between 0800 and 1800 hours on Mondays to Fridays and 0800 to 1300 hours on Saturdays and not at all on Sundays or Public Holidays.

Reason - to minimise the impact of construction operations and the amenity of existing and potential residential occupiers

14. For each phase or sub-phase of the development no development shall take place until a scheme for the suppression of dust at the construction site has been submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be implemented prior to the commencement of development and shall be adhered to for the duration of the construction period.

Reason - to minimise the impact of construction operations in terms of the possible generation of dust nuisance in the interests of protecting the amenity of existing and potential residential occupiers

15. For each phase or sub-phase of the development, development other than that required to be carried out as part of an approved scheme of remediation must not commence until parts (a) to (c) below have been complied with. If unexpected contamination is found after development has begun, development must be halted on that part of the site affected by the unexpected contamination to the extent specified by the Local Planning Authority in writing until part (e) has been complied with in relation to that contamination.

(a) Site Characterisation

An investigation and risk assessment, in addition to any assessment provided with the planning application, must be completed in accordance with a scheme to assess the nature and extent of any contamination on the site, whether or not it originates on the site. The contents of the scheme are subject to the approval in writing of the Local Planning Authority. The investigation and risk assessment must be undertaken by competent persons and a written report of the findings must be produced. The written report is subject to approval in writing of the Local Planning Authority. The report of the findings must include:

- (i) a survey of the extent, scale and nature of contamination;
- (ii) an assessment of the potential risks to human health, property (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes, adjoining land, ground and surface waters, ecological systems, and archaeological sites and ancient monuments;
- (iii) an appraisal of remedial options, and proposal of the preferred option(s).

This must be conducted in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11'.

(b) Submission of Remediation Scheme

A detailed remediation scheme to bring the site to a condition suitable for the intended use by removing unacceptable risks to human health, buildings and other property and the natural and historical environment must be prepared, and is subject to the approval in writing of the Local Planning Authority. The scheme must include all works to be undertaken, proposed remediation objectives and remediation criteria, timetable of works and site management procedures. The scheme must

ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation.

(c) Implementation of Approved Remediation Scheme

The approved remediation scheme must be carried out in accordance with its terms prior to the commencement of development other than that required to carry out remediation. The Local Planning Authority must be given two weeks written notification of commencement of the remediation scheme works.

Following completion of measures identified in the approved remediation scheme, a verification report that demonstrates the effectiveness of the remediation carried out must be produced, and is subject to approval in writing of the Local Planning Authority.

(d) Reporting of Unexpected Contamination

In the event that contamination is found at any time when carrying out the approved development that was not previously identified it must be reported in writing immediately to the Local Planning Authority. An investigation and risk assessment must be undertaken in accordance with the requirements of part (a) and where remediation is necessary a remediation scheme must be prepared in accordance with the requirements of part (b), which is subject to the approval in writing of the Local Planning Authority. Following completion of measures identified in the approved remediation scheme a verification report must be prepared, which is subject to the approval in writing of the Local Planning Authority.

(e) Long Term Monitoring and Maintenance

A monitoring and maintenance scheme to include monitoring of the long-term effectiveness of the remediation over a period of 10 years, and the provision of reports on the same must be prepared, both of which are subject to the approval in writing of the Local Planning Authority. Following completion of the measures identified in that scheme and when the remediation objectives have been achieved, reports that demonstrate the effectiveness of the monitoring and maintenance carried out must be produced, and submitted to the Local Planning Authority. This must be conducted in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11'.

Reason - in order that the Local planning Authority is properly able to assess, monitor and manage the risk associated with any contamination found on the site

16. For each phase or sub-phase of the development and prior to the commencement of development, details of the surface water drainage scheme shall be submitted and approved by the Local Planning Authority (in consultation with the Lead Local Flooding Authority and Northumbrian Water) and the development shall be completed in accordance with the approved scheme. The design of the drainage scheme shall include;

(i) Restriction of surface water run-off rates (QBAR value) with sufficient storage within the system to accommodate a 1 in 30 year storm;

(ii) Measures to mitigate known surface water issues on the northwest corner of the site in order to mitigate the risk of increased flooding in this area;

(iii) The method used for calculation of the existing greenfield run-off rate shall be the ICP SUDS method. The design shall also ensure that storm water resulting from a 1 in 100 year event, plus 30% climate change surcharging the system, can be stored

on site with minimal risk to persons or property and without overflowing into drains, local highways or watercourses;

(iv) Full Micro Drainage design files (mdx files) including a catchment plan;

(v) The flow path of flood waters for the site as a result on a 1 in 100 year event plus 30%.

Reason - in order that the development, or each phase of it, is provided with the necessary surface water drainage infrastructure to deal with surface water run-off from the site and to minimise the risk of additional surface water flooding in the locality

17. For each phase or sub-phase of the development and prior to the commencement of the development, details of a Surface Water Drainage Management Plan shall be submitted and approved by the Local Planning Authority. The development shall be completed in accordance with the Management Plan. The Management Plan shall include;

(i) The timetable and phasing for construction of the drainage system;

(ii) Details of any control structure(s);

(iii) Details of surface water storage structures;

(iv) Measures to control silt levels entering the system and out falling into any watercourse during the construction process;

(v) Details of any structures or features that will be privately owned and maintained, but which make a contribution to the flood or coastal erosion risk management of people and property.

The development shall be carried out in accordance with the approved Management Plan.

Reason - in order that the development, or each phase of it, is provided with the necessary surface water drainage infrastructure to deal with surface water run-off from the site and to minimise the risk of additional surface water flooding in the locality and ensure that these structures and features can be protected after the completion of the development

18. For each phase or sub-phase of the development no dwelling or other building shall be occupied until a Management & Maintenance Plan for the surface water drainage scheme has been submitted to and approved in writing by the Local Planning Authority. The development shall be completed in accordance with the Management & Maintenance Plan. The plan shall include details of the following;

(i) A plan clearly identifying the sections of surface water system that are to be adopted;

(ii) Arrangements for the short and long term maintenance of the SuDS elements of the surface water system.

Reason - in order that the development, or each phase of it, is provided with the necessary surface water drainage infrastructure to deal with surface water run-off from the site in order to minimise the risk of additional surface water flooding in the locality and to ensure that the drainage infrastructure is maintained in accordance with an approved management regime

19. For each phase or sub-phase of the development no part of the development shall be brought into use until the parking and servicing provision associated with it are available for use.

Reason - to ensure that each phase of the development is supported by parking and servicing arrangements in accordance with the Council's adopted standards

20. The details submitted pursuant to condition 2 above shall ensure that private drives should be a minimum of 3.7m wide for their entire length and should serve no more than 5 properties.

Reason - to accord with the Council's adopted standards in the interest of highway safety

21. Access to the site from the existing highway shall incorporate a visibility splay of 2.4m x 43m on Longbeck Road and 2.4m x 43m on the A1085. There shall be no obstructions greater than 600mm in height within these splays and any vegetation shall be maintained at this height.

Reason - to accord with the Council's adopted standards in the interest of highway safety

22. The details pursuant to condition 2 above shall include full highway construction and layout details in accordance with Redcar and Cleveland Design Guide and Specification and shall highways shall be designed and implemented to adoptable standards.

Reason - to accord with the Council's adopted standards in the interest of highway safety

23. Prior to the commencement of development (unless stated otherwise below), or in accordance with a phasing scheme to be agreed in writing with the Local Planning Authority, the following highways improvements that are set out in the Transport Assessment (Report Reference 1270/3/E, August 2016) shall be submitted to and approved in writing by the Local Planning Authority:

- Change Bus stop locations on Longbeck Road (identified on drawing no. 1270/06/D) and on A1085 (identified on drawing no. 1270/37/D);
- Pedestrian access on A1085 into Marske, by way of a footway under the A1085 railway bridge, prior to first occupation of the development;
- A174/A1042 Kirkleatham Lane (SJ18, drawing no. 1270/40), prior to first occupation of the development;
- A174/ Fishponds Road (SJ19, drawing no. 1270/34/A), prior to occupation of Phase 2 (the 275th dwelling);
- A174/Redcar Lane (SJ20, drawing no. 1270/35), prior to occupation of Phase 3 (the 633rd dwelling).

Reason - to ensure that the offsite highways works identified in Transport Assessment are implemented in the interests of highway safety

24. For each phase or sub-phase of the development, prior to the first occupation of any dwelling, boundary walls and fences shall be erected in accordance with a scheme that has first been approved in writing by the Local Planning Authority and shall thereafter be maintained.

Reason - so that the Local Planning Authority is able to confirm the means of enclosure to be developed on each phase do the development in the interests of promoting good design visual amenity of the development

25. For each phase or sub-phase of the development, development shall not be occupied until a scheme for the enclosure of any noise emitting plant and machinery with sound-proofing material, including details of any sound-insulating enclosure, mounting to reduce vibration and transmission of structural borne sound and ventilation or extract system, has been submitted to and approved in writing by the

Local Planning Authority. The approved scheme shall be completed prior to the first occupation of the building and shall thereafter be retained.

Reason - to protect the amenity of existing and future residential occupiers from the impacts of noise associated with the development of plant and machinery

26. No development shall take place until a scheme for protecting the occupants of the proposed residential development from noise from the adjacent road network and from the railway has been submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be completed prior to the first occupation of the development and shall thereafter be retained.

Reason - in the interests of protecting the amenity of the prospective occupiers from the impact of rail and road noise

27. For each phase or sub-phase of the development the landscaping details submitted pursuant to condition 2 above shall make provision for the protection and enhancement of the proposed route of the Public Right of Way (within the site) together with opportunities for ecological enhancement /biodiversity.

Reason - to ensure that the development makes appropriate provision for footpaths within the site and the secure associated ecological enhancement of the site in accordance with paragraph 109 of the National Planning Policy Framework

28. For each phase or sub-phase of the development, a full planting plan including details of species and mix, together with a landscape management plan covering a period of at least 10 years together with any proposals for advance structure planting shall be submitted to and approved by the Local Planning Authority. All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding season following the occupation of the buildings or the completion of the development, whichever is sooner, and any trees or plants which within a period of ten years from the completion of the development die, are removed, or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.

Reason - to ensure that details of landscaping are in accordance with Policy DP3 of the Council's Development Policies DPD

29. For each phase or sub-phase which adjoins the scheduled ancient monument boundary and prior to the commencement of the development in that location, a written scheme of investigation (WSI) for a programme of archaeological evaluation work shall be submitted to and agreed with the Local Planning Authority. The WSI shall as a minimum provide for the following:

- (i) a magnetometer survey of all of the land constituting the areas intended to be set out as landscaping/playing fields lying between the boundary of the scheduled monument at Hall Close and the zones of built development to the south and west, indicated on Fixed Parameter Plan, reference 11-043(SK)104DO;
- (ii) a resistivity survey of that part of the land subject to magnetometer survey which lies within 50 metres of the boundary of the scheduled monument;
- (iii) trial trenching of all anomalies of archaeological potential revealed by the magnetometer/resistivity surveys that may be affected by ground works required for the development (including works carried out by statutory undertakers or their agents or sub-contractors) at or below a depth of 300mm;
- (iv) methodologies, recording, assessment, reporting, and archiving in accordance with professional practice and CiFA standards and guidance.

The requirements of the WSI shall be carried out and the full reports for the surveys and trial trenching shall be made available to the local planning authority before the commencement of development of the phase or sub-phase which adjoins the scheduled ancient monument boundary and in sufficient time to allow agreement of a programme of archaeological investigation (if any) required by this condition.

Prior to the commencement of development of the phase or sub-phase which adjoins the scheduled monument boundary, the developer shall agree with the local planning authority whether the results of the surveys and trial trenching suggest that further archaeological investigation of any structures, remains or deposits is required. If archaeological investigation is required a further WSI for a programme of archaeological work shall be agreed with the local planning authority before the commencement of development. The WSI shall provide for an appropriate agreed programme of work, which may include full excavation of features, strip/map/sample/record, or watching brief, or any combination of those intensities of work, in accordance with then current professional methodologies, practices, recording, reporting, assessment and archiving, and CiFA standards and guidance.

The requirements of any further WSI shall be carried out and the report or reports of work shall be made available by the developer to the local planning authority no later than when the development of the phase or sub-phase which adjoins the scheduled monument boundary is first brought into use.

Reason - to ensure that each phase of the development is the subject of an investigation in order that the archaeological interests of the site is properly assessed and recorded in accordance with policy set out at paragraph 141 of the National Planning Policy Framework

30. Prior to the commencement of the development hereby permitted a Conservation Management Plan (CMP) shall be submitted to and approved in writing by the Local Planning Authority, in consultation with Historic England, for the management of the scheduled area of Hall Close (SAM 32746; NHL 1018948) and land within its vicinity to the south and west. The CMP shall provide for maintenance, public access, interpretation (including the results of any archaeological work on adjacent areas carried out by the developer), restriction of access, and prohibitions, or any similar thing or matter in relation to the nature and proximity of the development as well as a timetable to carry out such works. The CMP shall be implemented in accordance with the approved timetable.

Reason - in order that the impact of the development on the Scheduled Ancient Monument can be fully assessed and that the appropriate level of mitigation as to any impact on the site is implemented

31. In accordance with the CMP, the Scheduled Ancient Monument shall be re-assessed to establish whether or not it remains on the Historic England List of Scheduled Ancient Monuments at Risk. If any residual works are required by Historic England they shall be carried out and certified by Historic England.

Reason - given that the development relies upon the removal of the Scheduled Ancient Monument from the Historic England At-Risk Register of Scheduled Ancient Monuments to mitigate the impacts of the development then the removal of the site from that list occurs prior to the commencement of the development

32. The extent and detailed layout (including gradients, surfaces, planting, any built structures and scheduled monument boundary) in those areas west and south of the scheduled monument at Hall Close, indicated on Fixed Parameter Plan, reference 11-043(SK)104DO to be school playing fields, linear park, open grass and shrubs, shall be approved in writing with by the Local Planning Authority prior to the commencement of the phase or sub-phase which adjoins the scheduled monument

boundary. The phase or sub-phase which adjoins the scheduled monument boundary shall not thereafter be brought into use or occupied other than in accordance with that approved detailed layout.

Reason - in order that the impact of the development on the Scheduled Ancient Monument can be fully assessed and that the appropriate level of mitigation as to any impact on the site is implemented

33. Prior to the commencement of the 200<sup>th</sup> dwelling on the development site, a Reserved Matters (or Detailed Planning) Application for the development of the Neighbourhood Centre shall be submitted to and approved in writing by the Local Planning Authority.

Reason - in order to ensure the delivery of the Neighbourhood Centre within a reasonable timescale

34. Prior to the occupation of the 600<sup>th</sup> dwelling on the development site, the Neighbourhood Centre approved pursuant to condition 33 shall be constructed and made available for occupation.

Reason - in order to ensure the delivery of the Neighbourhood Centre within a reasonable timescale



## **RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT**

These notes are provided for guidance only and apply only to challenges under the legislation specified. If you require further advice on making any High Court challenge, or making an application for Judicial Review, you should consult a solicitor or other advisor or contact the Crown Office at the Royal Courts of Justice, Queens Bench Division, Strand, London, WC2 2LL (0207 947 6000).

The attached decision is final unless it is successfully challenged in the Courts. The Secretary of State cannot amend or interpret the decision. It may be redetermined by the Secretary of State only if the decision is quashed by the Courts. However, if it is redetermined, it does not necessarily follow that the original decision will be reversed.

### **SECTION 1: PLANNING APPEALS AND CALLED-IN PLANNING APPLICATIONS**

The decision may be challenged by making an application for permission to the High Court under section 288 of the Town and Country Planning Act 1990 (the TCP Act).

#### **Challenges under Section 288 of the TCP Act**

With the permission of the High Court under section 288 of the TCP Act, decisions on called-in applications under section 77 of the TCP Act (planning), appeals under section 78 (planning) may be challenged. Any person aggrieved by the decision may question the validity of the decision on the grounds that it is not within the powers of the Act or that any of the relevant requirements have not been complied with in relation to the decision. An application for leave under this section must be made within six weeks from the day after the date of the decision.

### **SECTION 2: ENFORCEMENT APPEALS**

#### **Challenges under Section 289 of the TCP Act**

Decisions on recovered enforcement appeals under all grounds can be challenged under section 289 of the TCP Act. To challenge the enforcement decision, permission must first be obtained from the Court. If the Court does not consider that there is an arguable case, it may refuse permission. Application for leave to make a challenge must be received by the Administrative Court within 28 days of the decision, unless the Court extends this period.

### **SECTION 3: AWARDS OF COSTS**

A challenge to the decision on an application for an award of costs which is connected with a decision under section 77 or 78 of the TCP Act can be made under section 288 of the TCP Act if permission of the High Court is granted.

### **SECTION 4: INSPECTION OF DOCUMENTS**

Where an inquiry or hearing has been held any person who is entitled to be notified of the decision has a statutory right to view the documents, photographs and plans listed in the appendix to the Inspector's report of the inquiry or hearing within 6 weeks of the day after the date of the decision. If you are such a person and you wish to view the documents you should get in touch with the office at the address from which the decision was issued, as shown on the letterhead on the decision letter, quoting the reference number and stating the day and time you wish to visit. At least 3 days notice should be given, if possible.

## **Appendix 4: Land to the west of Flatts Lane Appeal Decision**

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## Appeal Decision

Inquiry opened 25 April 2017

Site visit made on 5 May 2017

**by Philip Lewis BA (Hons) MA MRTPI**

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

**Decision date: 13 June 2017**

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**Appeal Ref: APP/V0728/W/16/3158336**

**Land west of Flatts Lane, Normanby, Middlesbrough TS6 0SR.**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
  - The appeal is made by Mr Harrison, Theakston Estates (Investments) Limited against the decision of Redcar & Cleveland Borough Council.
  - The application Ref R/2016/0326/OOM, dated 16 May 2016, was refused by notice dated 1 September 2016.
  - The development proposed is residential development (Use Class C3) together with access, infrastructure, open space and landscaping with all matters reserved except for access.
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### Decision

1. The appeal is allowed and planning permission is granted for residential development (Use Class C3) together with access, infrastructure, open space and landscaping with all matters reserved except for access at land west of Flatts Lane, Normanby, Middlesbrough TS6 0SR in accordance with the terms of the application, Ref R/2016/0326/OOM, dated 16 May 2016, subject to the attached schedule of conditions.

### Procedural matters

2. The inquiry sat for 5 days from 25 to 28 April and on 5 May 2017. The application is in outline, with all matters reserved for future consideration except for access. The submitted plans are as set out in the agreed Planning Statement of Common Ground (PSCG) and I have had regard to these in determining the appeal.
3. During the appeal, the appellant submitted revised plans to exclude a Council owned footpath which had previously been shown to be in their ownership. I am satisfied that no interests would be prejudiced by this minor amendment and I have taken the revised plans into account in making my decision.
4. A completed Planning Obligation under Section 106 of the Town and Country Planning Act 1990 (S106) was submitted at the Inquiry<sup>1</sup>. The S106 includes obligations relating to affordable housing, education contributions, pedestrian and cycleway improvement works, bus services and towards management and maintenance at the Flatts Lane Woodland Country Park. At my request, the

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<sup>1</sup> Document 11

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Council provided a Community Infrastructure Levy Regulations 2010 Compliance Statement<sup>2</sup>.

5. The Council and appellant provided proofs of evidence for ecology witnesses<sup>3</sup> prior to the Inquiry, but subsequently agreed not to call these witnesses. I have dealt with this evidence therefore as written submissions.
6. Prior to closing the Inquiry, it was agreed that the appellant and Council would, if they considered it necessary, make submissions regarding the anticipated Supreme Court judgement concerning the Suffolk Coastal DC v Hopkins Homes and Richborough Estates v Cheshire East BC cases<sup>4</sup>. The judgement was issued on 10 May 2017 and I have had regard to submissions received from the appellant and the Council in determining the appeal.
7. Before the Inquiry opened, the Council wrote to request that the Inquiry should be postponed or kept open to await the decision of the Secretary of State in respect of an appeal relating to land south of Marske<sup>5</sup>. The decision of this appeal should not however wait for the outcome of the Marske appeal and in any event, I have made my decision on the evidence before me.

### **Main Issues**

8. Having had regard to the above procedural matters and in light of all that I have read, heard and seen, I consider the main issues in the appeal are:
  - Whether the Council is able to demonstrate a five year supply of deliverable housing sites sufficient to meet the full objectively assessed need for housing;
  - Whether the appeal site is an appropriate location for housing development having regard to whether the future occupants of the proposed development would have acceptable access to shops, community facilities and services; and
  - Whether the material considerations identified are sufficient to outweigh any conflict with the Development Plan.

### **Reasons**

#### ***Five year supply of deliverable housing sites***

9. The Framework, in paragraph 47 sets out what local planning authorities should do to significantly boost the supply of housing. This includes that they identify a supply of specific deliverable sites sufficient to provide five years' worth of housing against their housing requirements. The Council and appellant have agreed as set out in the Housing Statement of Common Ground (HSCG) that there is not an up to date housing requirement for the area set out in the development plan and it is necessary to therefore consider the objectively assessed need for housing.

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<sup>2</sup> Document 18

<sup>3</sup> Mr Kevin Honour for the Council and Dr Antony Martin for the appellant

<sup>4</sup> [2017] UKSC 37

<sup>5</sup> APP/V0728/W/15/3134502

*Objectively Assessed Need (OAN)*

10. The Planning Practice Guidance (PPG) states that needs should be assessed in relation to the relevant functional area. For the purposes of this appeal, the parties consider this to be the Redcar and Cleveland administrative boundary. No reason is before me to dispute this.
11. The PPG sets out that establishing the future needs for housing is not an exact science and that no single approach will provide a definitive answer<sup>6</sup>. It also states that there is no one methodological approach or use of a particular dataset(s) that will provide a definitive assessment of development but strongly recommends the standard methodology set out in the PPG.
12. Whilst I have had regard to the appeal decisions relating to land south of Marske Road, Saltburn<sup>7</sup> and Longbank Farm, Ormesby<sup>8</sup>, I have formed my own view regarding the availability of a five year supply of housing on the basis of the evidence before me.
13. The Council has calculated the OAN at 206 dpa for the 5 year period starting on 1 April 2016. The appellant has calculated the OAN to be at least 358 dpa. The parties agree that the OAN is the key factor in determining whether the Council can demonstrate a 5 year supply of deliverable housing sites and that the key issue in determining the OAN concerns any adjustment to be made regarding the likely change in job numbers and economic activity rates (EARs). I agree.
14. The position of the Council in regards to OAN is similar to that it expressed in the Longbank Farm appeal, based upon the Strategic Housing Market Assessment (SHMA) February 2016 and the SHMA update dated September 2016<sup>9</sup>. The Inspector in the Longbank Farm appeal found the appellant's figure of 355 dwellings per annum (dpa) to be more robust. The Council use forecasts by Experian and Oxford Economics to test whether a future jobs uplift is required. The appellant has put forward a case which includes both a forecast and trends based approach.
15. The Council submit that the number of workplace jobs in Redcar and Cleveland and population will remain virtually unchanged between 2015 and 2032 and that economic activity rates will increase with no constraint being caused by a lack of labour. The SHMA update includes forecasts which predict falls in the age 16-64 labour force and increases in the 65+ age group labour force, with Experian predicting an increase in jobs per annum (jpa) of 30, whilst Oxford Economics predict minus 62 jpa. Consequently, the Council makes no uplift in the OAN for any employment led needs.
16. The appellant on the other hand puts forward a number of job led scenarios ranging from 89 to 210 additional jpa, resulting in an OAN in the range 335-462 dpa. The 89 jpa is based upon past job trends between 2000 and 2015, whilst 109 jpa reflects the past trends argued at the Longbank Farm appeal. Alternative scenarios are provided based upon Cambridge Econometrics (CE) forecasts, of 152 jpa and 210 jpa. The appellant contends that the future

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<sup>6</sup> 014 Reference ID: 2a-014-20140306

<sup>7</sup> APP/V0728/W/15/3006780 dated 16 December 2015

<sup>8</sup> APP/V0728/W/15/3018546 dated 9 March 2016

<sup>9</sup> CD 5.12 and CD 5.13

Economic Activity Rates (EARs) used by Experian are unrealistically high and instead adopts those of the Office for Budgetary Responsibility (OBR).

17. I have before me therefore two contrasting views of the future to inform my judgement regarding the OAN. One, where the balance between jobs and labour supply will be met and the other, requiring further housing if in-commuting into Redcar and Cleveland were not to increase.

*Economic Activity Rates and jobs*

18. The appellant contends that the OBR national EAR rates are more realistic since Redcar and Cleveland has lower economic activity rates than the national average and argues that the 2017 OBR rates provide more optimistic forecasts of older age economic activity, closer to those of Experian than the OBR 2015 rates.
19. I take the point that there is an inconsistency in the appellant's assumptions in terms of jobs growth forecasts and local labour force supply. The Council's alternative scenario using the OBR data results in a smaller resident workforce and fewer jobs, with the workplace jobs equal to job demand, as per the Experian baseline scenario. This demonstrates the logical inconsistency point through the Experian model, evidence which I understand was not before the Longbank Farm Inspector. I note however that the logical consistency exercise has not been repeated with the OBR 2017 data and that the OBR 2017 data has not been critiqued by Experian.
20. In terms of historic jobs growth data for 2000 to 2015, the ONS data indicates an equivalent of 86 jpa, Oxford Economics 94 jpa and CE, 240. For this period Experian indicate a reduction of minus 40 jpa. For the more recent 2011 to 2015 period, I note that Experian indicates an appreciably lower rate of job growth than the other forecasters cited. In this context, the Experian forecast of jobs growth appears appreciably lower than the longer term trend and significantly lower than the more recent shorter term performance in Redcar and Cleveland.
21. Bearing in mind that establishing the future need for housing is not an exact science, I have not been persuaded that the logical inconsistency argument should hold sway given the particular circumstances in Redcar and Cleveland. In my view, EARs are unlikely to increase at a sufficiently rapid rate so as to meet future jobs growth. Consequently, it is reasonable to establish the OAN through a combination of trend based job growth and the EARs from the OBR 2017.
22. Although I note that there are examples<sup>10</sup> where Inspectors have accepted the logical inconsistency point, each appeal must be determined on its own merits. On the evidence before me, I consider that, despite the inconsistency in the appellants approach, I consider that it provides a more realistic assessment than the Experian forecasts, given the relatively low starting point in Redcar and Cleveland in terms of EARs and the degree of rapid increase suggested for them.
23. It may well be that Redcar and Cleveland's problem is with creating jobs but the appellants minimum OAN is based upon past trends and produces a higher

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<sup>10</sup> APP/W1525/W/15/3129306 and APP/W1525/W/15/3121603

annual jobs growth figure. Applying the logical inconsistency argument, this would not necessarily result in an increase in jobs, but I am not convinced that the rapid increase in EARs forecast by Experian would be achieved.

24. Mr Spry explained in re-examination that if the logical inconsistency point was considered correct then he would rely upon the CE forecast, which is not based upon any assumption regarding EARs, as confirmed in the Cambridge Econometrics Employment Projections note submitted to the inquiry<sup>11</sup>. Whilst it is contended by the Council that these forecasts must assume some national assumptions in terms of activity, this has not been demonstrated. The CE projections are for 152 jpa and give rise to a higher OAN than the minimum stated by Mr Spry and lend some support to the contention for a higher OAN than that of the Council.
25. As for the scenario regarding York Potash, I am not convinced that it is realistic since some account will already be taken of it in the baseline. Nor is there any technical evidence to demonstrate whether the SSI closure has had a specific effect on OAN.
26. Whilst the logical inconsistency argument casts some doubt over the appellant's methodology, the Council's assumed rapid increases in EARs lack sufficient justification due to the absence of a critique of the 2017 OBR data. In any event, the CE forecast is not so affected given that it is concerned with past trends in various industrial sectors, and adds some weight to the OAN arguments of the appellant.

#### *Population projections and uplifts*

27. I note that the difference between the 2012 and 2014 population projections as used by the parties is minor, and in the context of the PPG does not represent a meaningful change in the projections. In respect of the headship rate uplift put forward by the appellant, I remain unconvinced that this is necessary and in any event, does not lead to a figure, significantly out of step with the demographic starting point of the Council.
28. The PPG<sup>12</sup> sets out guidance regarding how market signals should be taken into account in assessing housing need. It has not been demonstrated that Redcar and Cleveland is experiencing adverse issues in respect of land or house prices, rents, overcrowding or affordability.
29. The PPG also includes that if the historic rate of development shows that actual supply falls below planned supply, future supply should be increased to reflect the likelihood of under-delivery of a plan. I have had regard to the submissions from the Council that this guidance, taken with that set out in paragraph 47 of the Framework regarding the 20% buffer, could give rise to double counting of any under supply in assessing the 5 year supply of deliverable housing sites. I have some sympathy with this view and am not convinced of the necessity to apply such an uplift in calculating the OAN, if the 20% buffer were also to be applied. In any event however, in this case I have no reason to disagree with the parties that this point is somewhat peripheral overall, though the factors above would overall have a small downwards effect if applied to appellant's OAN calculation.

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<sup>11</sup> Document 14

<sup>12</sup> Reference ID: 2a-019-20140306

*OAN conclusion*

30. I consider therefore that the appellant's case in the round is preferable to that of the Council. Having had regard to adjustments and uplifts, an OAN at the lower end of the appellants range at 335 dpa is the more robust figure. This would be broadly in line with the conclusions in respect of Longbank Farm.

*The supply of deliverable housing sites*

31. The Council contend that there is a supply of 1839 dwellings that are deliverable over the five year period. The appellant disputes the deliverability of two of the sites (Spencerbeck Farm and The Dunes) and the assumptions made regarding the trend based allowance for small sites.
32. Firstly, with regards to Spencerbeck Farm, I note the scheme has outline planning permission. There is no clear evidence before me that the scheme will not be implemented within 5 years and having had regard to evidence of Mr Cansfield obtained from the agent for the site regarding its likely implementation and to footnote 11 to the Framework, I consider the site as being deliverable.
33. The Dunes, is for accommodation falling within Use Class C2 Residential Institutions. The PPG<sup>13</sup> advises such accommodation should count against the housing requirement. It seems that the Dunes would provide self-contained living units for future occupiers capable of being occupied independently. Whilst this type of accommodation is excluded from the Government's household projections, I nevertheless find that given the particular characteristics of the Dunes scheme and the guidance in the PPG, the scheme should count against the housing requirement.
34. The appellant contends that the allowance for small sites should be 148 dwellings rather than that the 235 set out by the Council. Given however that the base date for the 5 year period is 1 April 2016 and that there are already 164 such units with planning permission, I do consider that the Council's assumed figure is reasonable for the 5 year period as a whole and that its approach is realistic in the context of paragraph 48 of the Framework.
35. On the basis of the evidence before me, I concur with the Council that there is a supply of 1839 dwellings that are deliverable over the five year period.

*5% or 20% buffer*

36. The Council has previously accepted that a 20% buffer should be applied but considers that the 2016-2017 housing completions data means that the 20% buffer should no longer be applied.
37. The Framework in paragraph 47 is clear that the five year supply should be measured against the housing requirement. This was agreed by Ms Howick in oral evidence. In this case, the relevant requirement is set out by Policy CS13 of the Redcar and Cleveland Local Development Framework Core Strategy (Core Strategy) even though the Core Strategy housing requirement is not up to date, it would not be appropriate to use instead the emerging Local Plan target for this assessment, given the early stage in its examination and that it is liable to change. Furthermore, I am unconvinced as to the logic of applying

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<sup>13</sup> Reference ID: 3-037-20150320

the OAN of either party to this purpose, given that they have been assessed for a period starting on 1 April 2016.

38. When measured against the Core Strategy requirement there has been undersupply in the provision of housing in 3 out of the past 5 years and marginally overall in numeric terms over 5 years. Having regard to the Cotswold judgement<sup>14</sup>, I have also considered the delivery of housing over a range of time periods. In the longer term, there has been under supply in 3 out of 10 years and 4 out of 14, with a significant undersupply as a whole since 2004/5. On this basis, I do not consider that the addition of the 2016/17 figures has significantly changed the position as to the persistent under delivery of housing. A 20% buffer should be applied.
39. Whilst residents have drawn my attention to factors such as the need for housing and affordability, the level of housing for sale in the area and the availability of brownfield land, these factors do not alter my conclusion regarding housing supply.
40. The Council cannot demonstrate a 5 year supply of deliverable housing sites. Based upon an OAN of 335, taking into account the shortfall in supply from 2015, the application of a 20% buffer and a supply of 1839 dwellings, the supply is about 4.27 years<sup>15</sup>.

### ***Accessibility to shops and community facilities and services***

41. The appeal site is situated to the south of Normanby, separated from the existing built up area by the A174 dual carriageway. A bridleway passes through the site from Flatts Lane to the Woodland Country Park and there are informal paths to the west of the site leading to a pedestrian underpass beneath the A174, which connects with informal paths to the north.

### ***Walking***

42. The appeal site has limited pedestrian and cycle connectivity to the urban area via Flatts Lane and there is no disagreement that the underpass beneath the A174 is unattractive. The proposal makes provision for various improvements to the west side of Flatts Lane, the bridleway and the underpass to provide pedestrian links from the appeal site to Ormesby. A footway/cycleway would be provided from the underpass along the western edge of the appeal site to the country park. A footpath link is also proposed to the Longbank Farm development to the west.
43. The parties agree that with the implementation of the proposed transport and travel planning measures, the target mode share as set out in the TA<sup>16</sup> would be met. However, the Council contend that the appeal site would not have reasonable, acceptable or easy pedestrian access to shops, services and jobs, with its concerns relating to the walking distances required and the effect of gradients and topography.
44. The IHT Guidelines provide desirable, acceptable and preferred maximum distances. For town centres these range between 200 to 800 metres, for commuting/school 500 to 2000 metres and elsewhere 400 to 1200 metres.

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<sup>14</sup> [2013] EWHC 3719 (Admin)

<sup>15</sup> As set out in Inquiry document 22

<sup>16</sup> CD 1.37 Table 7 page 34

Although of some vintage, they were prepared by the relevant professional body and are used widely, I nevertheless consider them relevant and afford them some weight.

45. Whilst no primary school is situated within 1000 metres, the appeal site falls within the preferred maximum figure of 2000 metres as set out in the IHT guidelines for all identified primary schools and within the statutory walking distances. With regard to retail facilities, the identified shops are situated between about 1200 and 1700 metres from the appeal site, with health facilities in Normanby between 1900 and 2000 metres away. In terms of recreational facilities, the Woodland Country Park is situated about 800 metres from the site, with the other facilities identified between 800 and 2100 metres. The urban centres at Normanby, Ormesby and Eston Square are 1900, 2200 and 2400 metres away respectively.
46. I observed during my site visit that the proposed walking routes would not be affected by significant gradients. With the proposed improvements to surfacing and lighting and connectivity with the existing network, they would not present any significant deterrent to walking. Due to some of the journey distances involved however and given the location of the site at the edge of the urban area, the resulting target mode share for walking is not high, but I understand the target figure would nevertheless reflect that of the existing urban area to the north.
47. The appellant also proposes a link to the west towards Ormesby via the Longbank Farm development site. I have had regard to the correspondence between the appellant and the developer at Longbank Farm and whilst there is clearly a prospect of the route coming forward, there is nevertheless uncertainty, particularly regarding the details, timing and delivery of such a route. Consequently, I afford it less weight than the proposed routes via Flatts Lane and the underpass.
48. To conclude, whilst the appeal site cannot be said to be close to services, shops and facilities for journeys on foot, many services and facilities and employment locations are within the suggested maximum acceptable walking distances. The proposed routes would provide opportunities for walking and cycling and would be reasonable and acceptable for such use. Although the target mode share for walking at 8.1% is relatively modest, it is reflective of the existing urban area to the north. In that context, I do not find the proposal to be unacceptable in this regard.

#### *Bus services*

49. The appeal site is not presently served by direct public transport and the appellant is proposing via a S106 agreement, a new bus service between the appeal site and Middlesbrough via Normanby. The proposed bus service would operate on an hourly frequency Mondays to Saturdays and would be guaranteed for a period from the occupation of the first dwelling until 2 years after the completion of the development. Without the proposed bus service, the proposed development would not otherwise be served by public transport. The existing bus services are not conveniently related to the appeal site in terms of distance, with the nearest service, offering a very limited service. The parties agree that the distance to the nearest railway station is such that rail travel would not be a significant mode of public transport, as reflected in the target mode share.

50. I note that the bus services previously operated by Leven Valley Coaches were withdrawn due to the company ceasing to trade, rather than a lack of viability on any particular route. I also note that the former 271 and X71 services, which took a similar route in part to that proposed by the appellant, became uneconomic once concessionary fares were withdrawn. Consequently, the Council's concern regarding the certainties of the viability of the proposed service and that once the proposed bus service is no longer supported, it could be unviable and be withdrawn, potentially leaving the proposed development with no direct public transport service, have some validity.
51. Whilst the proposed bus service might not be of a 'high frequency', the public reaction to the withdrawal of the hourly No 492 service indicates that the proposed bus service is likely to be attractive to new and existing residents. Given the proposed route and destination of Middlesbrough, the service would provide access to a range of employment locations.
52. In respect of long term viability, the support for the proposed bus service would continue for a number of years, with the capital cost of providing a new bus being met up front. I am given to understand that the service would require a daily revenue of £320 to be viable. Given the population within a five minute walk of a bus stop being about 18,000 and the target mode share for bus being 7.8%, there appears to be a realistic prospect that the required income would be met from a share of the existing bus demand on the route. On the balance of evidence before me therefore, I consider that there is a reasonable prospect that the proposed bus service would be viable in the long term.

#### *Accessibility conclusions*

53. The proposed bus service would provide a realistic public transport choice for residents wishing to travel to Normanby and Middlesbrough and would be viable in the longer term. The appeal scheme would also provide connections for walking and cycling networks in the wider area. Whilst the distances involved are generally at the upper end or beyond the maximum acceptable walking distances set out in the IHT guidelines, I am satisfied that the proposed development should achieve the target mode share. Consequently, I find that access to shops and community facilities and services by means other than the private car to be acceptable in this case.
54. The proposal does not conflict with Core Strategy Policy CS1 which is concerned with the principle of sustainable development and sets criteria against which the contribution of development proposals will be assessed. These include easy access to jobs, shops and transport services by all sections of the community. It also accords with Core Strategy Policy CS19 which is concerned with delivering inclusive communities and includes amongst other things that all proposal will be assessed in terms of their contribution to providing access to core facilities which are listed as local shops for day to day needs, education, basic health and care facilities, sport facilities, children's play areas and safe open space.
55. Whilst not included within the reason for refusal, Core Strategy Policy CS26 was considered in evidence and discussed at the Inquiry. I find that the appeal scheme does not conflict with Policy CS26 which is concerned with managing travel demand and includes amongst other things, that proposals will be supported that improve transport choice and encourage travel to work and

school by public transport, cycling and walking and minimise the distance people need to travel.

56. I also find that the appeal proposal does not conflict with the Redcar and Cleveland Local Development Framework Development Policies DPD July 2007 (DPD) Policies DP2 and DP3, which are concerned with the location of development and sustainable design respectively.

**Whether the material considerations identified are sufficient to outweigh any conflict with the Development Plan**

57. DPD Policy DP1 is concerned with development limits and sets out that development beyond development limits will be restricted to specified circumstances. The purpose of the development limits is to contain future development and to make a clear distinction between the urban area and the countryside. The appeal proposal conflicts with DPD Policy DP1 through the extension of the urban area beyond the defined limits, with the appeal scheme not meeting one of the exceptions as set out in the policy. Given that DPD Policy DP1 is a key policy in the plan concerning the location of development, I consider that the appeal proposal does not accord with the development plan as a whole.
58. A number of comments have been made that the proposed development would breach a 'barrier' set by the A174 road. During my site visit I observed that the road provides a clear separation between the urban area of Normanby and the appeal site and country park beyond. If I were to allow the appeal the character of the appeal site would change, and bring housing development closer to the Eston Hills. However, I have had regard to the development either side of the A174 to the west, which would be further extended by the Longbank Farm development. The appeal scheme would nevertheless give rise to some harm through development encroaching into agricultural land.
59. The appeal site falls within the Eston Hills Landscape Tract as identified in the Redcar and Cleveland Landscape Character Assessment (CD 5.24), falling within the defined 'Escarpment' landscape unit. I consider that given the identified character of the area, its elevation and its contrast to the adjacent 'Upland' landscape unit, in terms of character, the appeal scheme would not give rise to unacceptable effects upon the Eston Hills. In regards to outlook from the Eston Hills, the appeal scheme would bring the urban area closer, but I do not consider that such change would be unacceptable. It has not been demonstrated that the appeal scheme would give rise to additional unacceptable pressure upon the Eston Hills, nor have any adverse effect on the setting of the North York Moors National Park. It has been stated by some interested persons that the appeal site is within a Green Belt, however, whilst it is outside of the development limits for Normanby, this is not the case.
60. The appeal scheme would affect the bridleway which passes through the site with the illustrative layout indicating a road crossing it. Whilst the setting of the bridleway and experience of users would change, it would be retained in the site layout, with improvements being made in respect of pedestrian and cycling accessibility. I do not find the proposed changes unacceptable, but the change in character of the bridleway does weigh against the scheme.

### *Other matters*

61. I have considered carefully all other matters raised, both in written evidence and at the inquiry and have had regard to the high level of local interest in the proposal, as expressed in the written comments and petitions. I consider these matters below.

### *Precedent*

62. Concern has been expressed by residents concerning the appeal scheme setting a precedent for further development south of the A174. However, any such proposals would have to be considered within the constraints posed by topography, the infrastructure including the Ethelyne pipeline and power lines and access. In any event, any such scheme would be the subject of a planning application to be considered on its merits.

### *Flatts Lane Woodland Country Park*

63. The proposed development is sited to the north of the Country Park, which is clearly a well-used and valued community resource, as was seen during the site visit. Whilst there may be some additional recreational pressures arising from the proposed housing, I am satisfied that the associated improvements to walking/cycling routes and management and maintenance measures would be sufficient to mitigate against any such effects and so I do not consider that the appeal scheme would be unacceptable in this regard.

### *Ecology*

64. I have had regard to the concerns of interested persons about the effects of the proposal on ecology. Firstly I have noted the evidence regarding the works which were undertaken to the appeal site to bring it into agricultural use, including statements that a pond was filled. However, those works have already taken place and nor is that scheme before me.
65. In view of the specialist evidence of the appellant and the Council, I am satisfied that the surveys undertaken for protected species are up to date and adequate. The surveys undertaken of the ponds within 500 metres of the appeal site recorded a single great crested newt, which it is stated reflects the low scattered population within the area. I consider that likely effects of the proposed development on great crested newts would not be harmful if the proposed mitigation is undertaken. Such mitigation could be secured by way of planning conditions were I minded to allow the appeal. The proposed development has the potential to harm to a European Protected Species, the great crested newt, and I have had regard to the Habitats Directive in reaching my decision. In respect of other species, I am satisfied that the appeal scheme would not give rise to unacceptable adverse effects.

### *Capacity of local services*

66. Concern has been expressed that the additional 400 dwellings would place unacceptable burdens on local services, such as school places, doctors and dentists. I am satisfied from the evidence before me that doctors and dentist practices are taking on new patients in the area. In regards to education, the proposed development via a S106 Planning Agreement, would provide for education contributions which would meet any requirement for school places arising from the development.

### *Highway safety*

67. I have had regard to the concerns expressed by many interested persons concerning the potential effects of the appeal scheme in terms of traffic congestion and highway safety. After having regard to the appellant's transport assessment (TA) including the proposed full junction refurbishment at the B1380/Normanby Road / Cleveland Street junction to be implemented under section 278 of the Highways Act and the comments of the Highway Authority, I do not however find the proposal unacceptable in this regard.

### *Infrastructure*

68. I have considered the comments in respect of electricity transmission lines and Ethelne pipeline and historic mine workings. Having had regard to the consultation responses from the responsible bodies, I do not consider that these matters weigh against the appeal scheme.

### *Landscaping*

69. I have had regard to the concerns of interested persons regarding trees and landscaping and note that the appeal site was the subject of a temporary Tree Preservation Order. However, landscaping would be a reserved matter should I be minded to allow the appeal.

### *Drainage*

70. I heard at the Inquiry from a number of interested persons regarding recent flooding events in the area. I have had regard to the concerns expressed that the appeal scheme would give rise to an increased risk of flooding due to an increase in the run off of surface water, though there is no technical evidence before me in support of this proposition. I note that the Lead Local Flood Authority has no objection to the appeal scheme subject to certain planning conditions regarding surface water. The appellant has through the Flood Risk Assessment and Drainage Strategy, set out measures to control surface water run off including sustainable urban drainage measures which would restrict flows during storm events. Subject to appropriate planning conditions, consider the appeal scheme acceptable in this regard.

### ***Planning balance***

71. The proposal would be contrary to DPD Policy DP1 and the development plan as a whole. Nevertheless, because of the housing land supply position, paragraph 14 of the Framework is invoked. I find that the development limits relating to DPD Policy DP1 were not reviewed for the DPD and are not serving to provide a 5 year supply of deliverable housing sites. The strict application of this policy would prevent improvements to the shortfall in the supply of housing. The development limits do however continue to mark the edge of the urban area and the countryside and accordingly I afford them limited weight.
72. Paragraph 14 of the Framework indicates that where relevant policies are out of date permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole.
73. The appeal scheme would give rise to some limited harm through development encroaching into agricultural land and I also give some limited weight to the

harm which would arise to the change in character of the bridleway. In respect of accessibility of the appeal site to shops, services and facilities, although the proposed walking distances are towards or beyond the upper limits of the IHT guidelines, given the target mode share which is based on that in the area and the improved opportunities proposed for walking and bus travel, I do not find the scheme to be harmful in this regard.

74. Set against this harm are the social and economic benefits of addressing the undersupply of housing in the area. In the context of the shortfall in the supply of housing land, I attach significant weight to the provision of up to 400 units, 15% of which would be affordable. In accordance with Section 70(2)(b) of the Town and Country Planning Act 1990, I take into account the local finance considerations in respect of the New Homes Bonus and Council Tax payments, which although would arise from any housing development, are nevertheless benefits to the scheme.
75. The proposed education contribution would provide for a half form entry at a school, providing additional places over that resulting from the development. This is a benefit to the wider community. The proposed bus service and upgraded walking and cycle routes, off-site highways improvements and works to the Woodland Country Park and contributions towards ongoing management and maintenance and ecological mitigation, whilst being intended to serve the development would also have wider benefits to the community to which I attach modest weight.
76. Overall the adverse impacts identified above do not significantly and demonstrably outweigh the social, economic and environmental benefits of the appeal scheme. Consequently the proposal would represent sustainable development as defined in the Framework, and, material considerations indicate that planning permission should be granted for development that is not in accordance with the development plan.

### **Planning obligations**

77. The S106 agreement contains obligations in respect of the provision of 15% affordable housing; a financial contribution to expand the capacity of primary schools within the catchment of the appeal site to be determined through a feasibility study; financial contributions towards pedestrian and cycleway improvement works; provision of a bus service between the site and Middlesbrough Bus Station from the occupation of the first dwelling until at least two years after the completion of the 400<sup>th</sup> dwelling and annual contributions towards the management and maintenance of Flatts Lane Woodland Country Park.
78. Having had regard to the evidence before me including the Council's Community Infrastructure Levy Regulations 2010 (CIL Regulations) Compliance Statement<sup>17</sup> I am satisfied that the tests set out in paragraph 204 of the Framework and Regulation 122 of the CIL Regulations are met in that the obligations are necessary to make the development acceptable in planning terms, directly related to the development and fairly and reasonably related in scale and kind to the development. The Council confirmed during the discussion regarding planning obligations that there was no reason under Regulation 123 regarding the pooling of contributions, why I could not take the

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<sup>17</sup> Inquiry document 18

obligations into account, and having had regard to the provisions of the S106 agreement in terms of projects and the evidence before me, I do not disagree.

79. I am satisfied with the form and drafting of the Section 106 agreement and I therefore take the obligations into account as material planning considerations.

### **Planning conditions**

80. A draft list of agreed conditions was provided before the Inquiry and was revised following discussion at the Inquiry. I have made some minor changes to these having regard to the tests set out in the Framework and the guidance contained in the PPG, reordered to group some related conditions together and omitted conditions proposed regarding landscaping, external building materials and refuse storage as these would be covered by reserved matters.
81. I have imposed conditions in respect of timescale and specifying the approved plans, to specify that the development shall consist of no more than 400 dwellings, regarding finished floor levels and in respect of phasing of development, as this provides certainty. In the interests of highway safety, I have attached conditions regarding the design and implementation of the vehicular access to the site, to secure a Travel Plan and regarding improvements to the B1380 / Normanby Road / Cleveland Street junction. A condition is also attached to secure the implementation of the new or improved paths and the future maintenance of the A174 underpass in the interests of accessibility and safeguarding the environment.
82. Conditions are attached concerning a Construction Environmental Management Plan to ensure that development is undertaken in a satisfactory way and construction hours are restricted to safeguard the living conditions of residents. Conditions are also attached concerning contamination in the interests of preventing pollution. In addition, conditions are attached regarding the maintenance and management of green infrastructure, including measures to conserve great crested newts, in respect of trees and hedgerows and regarding vegetation clearance in order to protect the environment and breeding birds and in the interests of the character and appearance of the area. A lighting scheme, provision of bird nesting boxes, method statements in respect of minimising harm to protected species and landscape enhancements are specified in the interests of wildlife.
83. I have specified a condition requiring a written scheme of investigation in the interests of the archaeology of the area. Conditions are specified regarding foul and surface water drainage in the interest of flood prevention and preventing pollution. A condition is attached requiring a noise mitigation strategy in respect of the A174 road in order to provide acceptable living conditions for future residents. Having had regard to DPD Policy DP5, a condition is also applied regarding the provision of an art feature in the interests of the character and appearance of the area.

### **Conclusion**

84. For the above reasons, the appeal is allowed.

*Philip Lewis*

INSPECTOR

### Schedule of conditions

- 1) 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 takes place 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) The development hereby permitted shall be carried out in accordance with the following approved plans: Red Line Boundary Plan N81-2451 dated 24 March 2017; Land Use Parameter Plan N81-2451 PL02 Rev C dated 28 March 2017; Character Area Parameter Plan N81-2451 PL05 Rev C dated 28 March 2017; Site Access Arrangements Plan 2057/SK001/006 and Proposed Landscape Enhancements NT13039/100 March 2017.
- 5) No more than 400 dwellings (Use Class C3) are hereby permitted within the application site.
- 6) No development (except for site preparation works and the formation of a site compound) shall take place until a scheme of phasing for the dwellings, highways, and drainage infrastructure and associated open space/green infrastructure has been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 7) No development (except for site preparation works and the formation of a site compound) shall take place until full engineering details for site access as shown on plan reference 2057/SK001/006 have been submitted to and approved in writing by the local planning authority. The approved access must be completed prior to the first occupation of any dwelling on site.
- 8) Prior to the occupation of the 100th dwelling, details in general accordance with the improvement works to the junction of B1380 / Normanby Road / Cleveland Street, proposed within section 8.4.3 of the Transport Assessment (Fore Consulting, July 2016), shall be submitted to and approved in writing by the local planning authority. The approved scheme shall be fully operational before the occupation of the 200th unit and be maintained thereafter.
- 9) No development (except for site preparation works and the formation of a site compound) shall take place before a Travel Plan has been submitted to and approved by the local planning authority. The approved Travel Plan shall be implemented upon commencement of the development and thereafter maintained
- 10) No development, shall take place until a Construction Environmental Management Plan (CEMP) for the phase(s) has been submitted to and approved in writing by the local planning authority. The approved CEMP

shall be adhered to throughout the construction period and shall include details of:

- i. the methods to be used to control the emission of dust, noise and vibration from construction works, including details of any mitigation measures required;
  - ii. measures to control the deposit of mud and similar debris on adjoining public highways;
  - iii. site fencing and security;
  - iv. temporary contractor's buildings, plant, storage of materials, lighting and parking for site operatives;
  - v. the use of generators;
  - vi. the routing of all HGV movements associated with the construction phases;
  - vii. arrangements for the turning of vehicles within the site so that they may enter and leave the site in a forward gear;
  - viii. restrictions on burning;
  - ix. pedestrian and cyclist protection throughout construction including the use of the Flatts Lane Bridleway (no. 102/14/1);
  - x. a risk assessment of construction activities with a potentially damaging effect on ecological receptors, existing trees and hedges including measures to identify and protect any such receptors during construction;
  - xi. the location and timing of sensitive work to avoid harm to biodiversity features;
  - xii. roles and responsibilities for the implementation of CEMP requirements and measures.
- 11) Construction work shall only take place between the hours of 08:00 and 18:00 Monday to Friday and 08:00 to 13:00 Saturday and not at all on Sundays or Bank Holiday.
- 12) Development shall not begin until a scheme to deal with any contamination of the site has been submitted to and approved in writing by the local planning authority. The approved scheme shall include an investigation and assessment to identify the extent of contamination and the measures to be taken to avoid risk to the public when the site is developed. Development shall not commence until the measures approved in the scheme have been implemented.
- 13) If during the course of development any contamination not previously considered is identified, additional measures for the remediation of this source of contamination shall be submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.
- 14) Prior to the commencement of the first dwelling within each phase, a scheme for the provision, maintenance and management of areas of green infrastructure/open space and play space (excluding private gardens) for each phase shall be submitted to and approved in writing by the local planning authority. Details to be submitted shall include:

- i. Measures to conserve great crested newts including any trapping out under licence;
- ii. Details of planting, grass cutting, weeding and pruning;
- iii. Inspection, repair and maintenance of all hard landscaping and structures;
- iv. Management, monitoring and operational restrictions;
- v. Maintenance and planting replacement programme for the establishment period of landscaping together with future management and maintenance; and
- vi. Trees, hedges and shrubs planted in accordance with the scheme shall not be removed within five years. Any planting which dies, fails to flourish or is removed within a period of 5 years from the substantial completion of the development shall be replaced in the next planting season with others of similar size and species.

The development of each phase shall thereafter be carried out, maintained and managed in accordance with the approved details.

- 15) No trees or hedgerows shall be removed from that phase of the site until the reserved matters for landscaping, has been approved in writing by the local planning authority. For the avoidance of doubt, the trees and hedgerows on the southern and western perimeter boundary of the application site, and the hedgerows along the Flatts Lane Bridleway (no102/14/1) within the application site, shall be retained, except for where the internal road network crosses the Flatts Lane Bridleway in accordance with the reserved matters approval.
- 16) All hedgerows and trees that are to be retained shall be protected from root compaction during the course of the development works in accordance with the guidance set out in BS5837:2012 Trees in Relation to Design, Demolition and Construction: Recommendations' British Standards Institution, 2012.
- 17) There shall be no site vegetation clearance between 1 March to the 31 August unless an ecologist, whose professional details and qualifications have first been submitted to and approved by the local planning authority, has first undertaken a checking survey immediately prior to the clearance and confirms in writing to the local planning authority that no active nests are present. The development shall be implemented in accordance with the Method Statements for the protection of wildlife during construction works at Flatts Lane, by E3 Ecology Ltd dated March 2017.
- 18) Prior to the occupation of the first dwelling in any phase, a lighting scheme for that phase, shall be submitted to and be approved in writing by the local planning authority. The scheme shall specify the lighting to external public areas, including means to minimise light spill and to ensure the illumination within areas of green infrastructure of importance for wildlife does not exceed 2 lux and shall include a timetable for its implementation together with the management regime. The development shall thereafter be undertaken in accordance with the approved details.
- 19) No development (except for site preparation works and the formation of a site compound) shall take place until a scheme for the incorporation of 35

(open fronted and hole) nesting boxes within areas of retained woodland, 40 nesting boxes suitable to house sparrow and starling incorporated into garages and two owl boxes to be installed on retained trees is submitted to and approved in writing by the local planning authority. The development shall thereafter be undertaken in accordance with the approved details.

- 20) No development (except for site preparation works and the formation of a site compound) shall take place until details of the proposed works for the protection and enhancement of the woodland as identified by point 6 (woodland management) as shown on the Proposed Landscape Enhancement Plan NT13039/100 (March 2017), including a timetable for implementation have been submitted to and approved in writing by the local planning authority. The development or phase thereof shall be carried out in accordance with the approved details.
- 21) No development shall take place until a programme of archaeological work including a Written Scheme of Investigation (WSI) has been submitted to and approved by the local planning authority in writing. The scheme shall include an assessment of significance and research questions, and:
- i. The programme and methodology of site investigation and recording
  - ii. The programme for post investigation assessment
  - iii. Details of the provision to be made for analysis of the site investigation and recording
  - iv. Details of the provision to be made for publication and dissemination of the analysis and records of the site investigation
  - v. Details of provision to be made for archive deposition of the analysis and records of site investigation
  - vi. The name and qualifications of the personnel proposed to undertake the archaeological work.

The development shall be implemented in accordance with the approved details.

- 22) The development shall be implemented in line with the drainage scheme contained within the submitted document entitled "Drainage Statement" (prepared by Queensberry Design Limited, February 2017). The drainage scheme shall ensure that foul flows discharge to manhole 4105.
- 23) No development (except for site preparation works and the formation of a site compound) within any phase of the development shall take place until a scheme to dispose of, maintain and manage surface water from each phase has been submitted to, and approved in writing by the local planning authority. The development of each phase shall be implemented and thereafter managed and maintained in accordance with the approved details. The scheme shall include but not be restricted to providing the following details;
- i. Detailed design of the surface water management system

- a) Restriction of surface water greenfield run-off rates (QBAR value) with sufficient storage within the system to accommodate a 1 in 30 year storm
  - b) The method used for calculation of the existing greenfield run-off rate shall be the ICP SUDS method. The design shall also ensure that storm water resulting from a 1 in 100 year event, plus climate change surcharging the system, can be stored on site with minimal risk to persons or property without overflowing into drains, local highways or watercourses
  - c) Full Micro Drainage design files (mdx files) including a catchment plan
  - d) The flow path of flood waters for the site as a result of a 1 in 100 year event plus climate change.
  - ii. A build program and timetable for the provision of the critical surface water drainage infrastructure
  - iii. A management plan detailing how surface water runoff from the site will be managed during construction phase
  - iv. Details of adoption responsibilities and management plan for the surface water drainage scheme and any maintenance and funding arrangement.
- 24) Prior to the commencement of the construction of the first dwelling, a detailed noise mitigation strategy in relation to residential amenity from the A174 shall be submitted to and approved in writing by the local planning authority for the development. The development shall be implemented in accordance with the approved mitigation strategy and the mitigation measures shall be retained throughout the lifetime of the development.
- 25) Prior to the commencement of the first dwelling within each phase, details of the finished floor levels shall be submitted to and approved in writing by the local planning authority for each phase. The development shall be carried out in accordance with the approved details.
- 26) Prior to the occupation of the 200th unit, a scheme for an artwork feature(s) shall submitted to and approved in writing by the local planning authority. The art feature(s) shall be installed on site in accordance with the approved scheme prior to the occupation of the 350th unit and be maintained throughout the lifetime of the development.
- 27) No development shall take place until a scheme for the management and maintenance of the underpass, as shown on the Proposed Landscape Enhancement Plan NT13039/100 (March 2017) has been submitted to and approved by the local planning authority. Thereafter the scheme shall be implemented in accordance with the approved details.

## APPEARANCES

### FOR THE LOCAL PLANNING AUTHORITY:

John Hunter	Of Counsel instructed by the Assistant Head of Governance of Redcar and Cleveland Borough
He called	
Neil McAlpine BA (Hons), MSc, MCIHT	Director of Transportation, Cundall Johnston and Partners LLP
Ian Cansfield BA (Hons) MA MRTPI	Cundall Johnston and Partners LLP
Cristina Howick	Partner of Peter Brett Associates LLP

### FOR THE APPELLANT:

Mr Christopher Katkowski	of Queen's Counsel, instructed by Lichfields
He called	
Paul Irwin BSc (Hons), MSc, MCIHT	Director, Fore Consulting Ltd
Matthew Spry BSc (Hons), Dip TP (Dist) MRTPI MIED FRSA	Senior Director, Lichfields
Christopher Harrison BA (Hons), DIPTP, MRTPI	Managing Director, Theakston Land

### INTERESTED PERSONS:

Mr Andrew Fenwick	Local resident
Mr Brian Dennis	Local resident
Linda McGloin	Read statement on behalf of Mrs Coulson
Mr Craig Hornby	Conservationist/historian
Jayne Moffat	Local resident
Mr Ian Tyzack	Speaking on behalf of Liz Bone
Katie Atkinson	KVA Planning Consultancy on behalf of CRPE North Yorkshire
Mr Marek Olszowski	Local resident
Mr David Cammish	Local resident
Mr Kester Marsh	Local resident
Anna Turley MP	Member of Parliament for Redcar
Janet Coulson	Local resident

DOCUMENTS (Received during the Inquiry)

- 1 Opening Statement for the Appellant
- 2 Opening Statement for the Council
- 3 Mr Brian Dennis statement
- 4 Linda McGloin statement
- 5 Mrs Janet Coulson statement
- 6 Jayne Moffat statement
- 7 Tyzack/Bone statement regarding flooding at Cricket Lane/Ormesby Road, Normanby
- 8 KVA Planning Consultancy statement for CPRE North Yorkshire
- 9 Lichfields plan of withdrawn and proposed bus routes GIS/NE/22607/012-31
- 10 Redcar and Cleveland Borough Council housing completions data 01/04/2016 to 31/03/2017
- 11 Copy of completed Section 106 agreement
- 12 Mr Marek Olszowski statement
- 13 Mr Kester Marsh statement
- 14 Cambridge Econometric Employment Projections methodology
- 15 Suggested planning condition by Appellant regarding underpass maintenance and management
- 16 Anna Turley MP statement
- 17 Cuttings Teeside Gazette regarding flooding
- 18 Redcar and Cleveland Council Community Infrastructure Regulations 2010 Compliance Statement
- 19 Planning decision notice R/2014/0304/OOM Longbank Farm, Longbank, Ormesby
- 20 Redcar and Cleveland Council Planning Officers report regarding R/2014/0304/OOM Longbank Farm, Longbank, Ormesby
- 21 Plan showing super output area boundary Redcar and Cleveland 015D submitted by appellant
- 22 Appellants tables - OAN implications with 5% and 20% buffers
- 23 Second floor floorplan Wheatacres Extracare 14.013/112D submitted by the Council
- 24 Housing commitments by parish data submitted by the Council
- 25 Mr Craig Hornby statement and DVD 'A Century in Stone - The Eston and California Story'
- 26 Further statement by Jayne Moffat
- 27 Aerial photograph submitted by Mr Marsh
- 28 Closing statement for the Council; appeal decision APP/B3410/W/16/3142808 and East Staffordshire BC v SSCLG and Barwood Strategic Land [2016] EWHC 2973 (Admin)
- 29 Appellants closing submissions and transcript of evidence in chief of Mr Spry.

Documents received after the Inquiry closed

- A Appellants Supplementary Submissions regarding the Supreme Court Judgement Suffolk Coastal DC v Hopkins Homes / Richborough Estates v Cheshire East BC cases [2017] UKSC 37
- B Councils Submissions on Supreme Court Judgement Suffolk Coastal DC v Hopkins Homes / Richborough Estates v Cheshire East BC cases [2017] UKSC 37

## **Appendix 5: Bagley Lane/Calverley Lane, Farsley Appeal Decision**



Department for  
Communities and  
Local Government

Mr Jonathan Dunbavin  
ID Planning Limited  
Atlas House  
31 King Street  
Leeds  
LS1 2HL

Our Ref: APP/N4720/A/13/2200640

10 March 2015

Dear Sir,

**TOWN AND COUNTRY PLANNING ACT 1990 (SECTION 78)  
APPEAL BY THORNHILL ESTATES:  
BAGLEY LANE/CALVERLEY LANE, FARSLEY, LEEDS, WEST YORKSHIRE  
APPLICATION REF: 12/04046/OT**

1. I am directed by the Secretary of State to say that consideration has been given to the reports of the Inspector, Mark Dakeyne BA (Hons) MRTPI, who held a public local inquiry on 19 and 22 November and 28-29 November 2013 into your client's appeal against the failure of Leeds City Council (the Council) to give notice within the prescribed period of a decision on an application for outline permission for a residential development (about 400 dwellings and associated works) at Bagley Lane/Calverley Lane, Farsley, Leeds, in accordance with planning application ref: 12/04046/OT, dated 21 September 2012. This inquiry was then reopened on 11 November 2014 for four consecutive days.
2. The appeal was recovered for the Secretary of State's determination on 4 July 2013 in pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act 1990, because the appeal involves proposals for residential development over 150 units or on sites of over 5 ha, which would significantly impact on the Government's objective to secure a better balance between housing demand and supply and create high quality, sustainable, mixed and inclusive communities.

**Inspector's recommendation and summary of the decision**

3. The Inspector, whose reports are enclosed with this letter, initially recommended that the appeal be allowed and outline permission granted but, in the light of his findings at the reopened inquiry, he subsequently recommended that it be dismissed and outline permission refused. For the reasons given below, the Secretary of State agrees with the Inspector's final recommendation, dismisses the appeal and refuses planning permission. All paragraph numbers, unless

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otherwise stated, refer to the Inspector's reports (IR(i) for the earlier report and IR(ii) for the more recent report).

### **Procedural matters**

4. The Secretary of State notes (IR(i)11-12) that an Environmental Statement was submitted voluntarily by the appellants and that the Inspector was satisfied at the time that it met the requirements of the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999. The Secretary of State has also taken account of the update on environmental information referred to at IR(ii)7-9. Overall, the Secretary of State considers that sufficient information has been provided for him to assess the environmental impact of this appeal.
5. Following the initial close of the inquiry on 29 November 2013, the Secretary of State wrote to the parties on 14 March 2014 seeking comments on the publication of the Planning Practice Guidance and again on 14 April 2014 affording an opportunity to comment on habitats issues which had been brought to his attention after the inquiry had closed. In the light of these comments, the Secretary of State then decided that the most appropriate way forward would be to reopen the inquiry, as described at IR(ii)2-6. A list of the representations received is set out in an Annex to this letter, and copies can be made available on written request to the address at the foot of the first page of this letter.

### **Policy Considerations**

6. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise. At the time when the inquiry first opened, the development plan for Leeds comprised the Leeds Unitary Development Plan Review 2006 (LUDPR) and the Secretary of State agrees with the Inspector that the development plan policies relevant to the appeal were those identified at IR(i)17-18. Since then, Leeds have adopted their Core Strategy (CS) on 12 November 2014 (IR(ii)10). However, the Inspector points out (IR(ii)215) that the proposal remains contrary to LUDPR Policy 34 as that remains a saved policy following the adoption of the CS. Although the Council have subsequently resolved to withdraw this policy (as indicated in their letter of 11 February 2015 listed in the Annex to this letter), and the appellants have suggested in their letter of 5 February 2015 that that is an important material consideration in this case, the Secretary of State gives it little weight at this early stage in the Council's work towards preparing their Site Allocations Plan (SAP).
7. Other material considerations that the Secretary of State has taken into account include: *the National Planning Policy Framework* (the Framework) (March 2012) and the associated Guidance (March 2014); and the *Community Infrastructure Levy (CIL) Regulations 2010* as amended.
8. The Secretary of State has also paid special attention to the desirability of preserving or enhancing the character or appearance conservation areas, as required by section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990.

## **Main Issues**

9. Having regard to the issues identified by the Inspector at IR(i)132 and IR(ii)182, the Secretary of State considers that the main considerations in this case are:
- a. whether there is a five year supply of housing land;
  - b. the release of the appeal site in the context of the spatial strategy for Leeds;
  - c. whether the development would be likely to result in harm to bats as a protected species; and
  - d. the sustainability of the appeal scheme and its impact on local character and identity.

### **Whether there is now a five year supply of housing land**

10. As the appeal Inspector confirms (IR(ii)183), the CS has now been found to be sound, with a base requirement for the period from 1 April 2014 to 31 March 2019 of 20,380 dwellings – lower than his assessment at the time of the original session of the inquiry. However, as it forms the basis for an up-to-date development plan, the Secretary of State accepts it as an indisputable basis for the determination of appeals.
11. Like the Inspector, the Secretary of State has then gone on to consider the implications of the shortfall in provision against the base requirement. He agrees with the Inspector's reasoning at IR(ii)184-188, and with his conclusion at IR(ii)189, that the five year housing requirement comprises about 24,440 dwellings including the undersupply since April 2012 to be made up in this period and the application of a 5% buffer.
12. The Secretary of State has also carefully considered the Inspector's discussion on "Supply" at IR(ii)190-201 and agrees with his conclusion at IR(ii)202 that an overall supply figure of about 26,500 homes would be reasonable. The Secretary of State therefore also agrees with the Inspector's conclusion at IR(ii)203 that a supply of some 26,500 homes exceeds the requirement by just over 2,000 units, thereby indicating that a five year housing land supply can be demonstrated with scope for some flexibility. He also agrees (IR(ii)204) that the difference from the appeal Inspector's original conclusion is accounted for by the different approach accepted in the adopted CS along with evidence on completions, city centre/inner area viability, regeneration, empties and other sources of supply.

### **The release of the appeal site in the context of the spatial strategy for Leeds**

13. The Secretary of State agrees with the Inspector with regard to the Council's spatial strategy at the time when the inquiry first opened in November 2013 (IR(i)133-135) and, like the Inspector (IR(ii)216), he recognises that the fact that a five year supply of housing has now been established in an up-to-date development plan represent a significant change in circumstances. He agrees with the Inspector that this means that paragraph 49 of the Framework does not take effect, and also agrees (IR(ii)219) that the test within paragraph 14 of the Framework does not come into play.

14. As indicated in paragraph 6 above, the Secretary of State gives little weight to the fact that the Council have indicated that they now intend to withdraw LUDPR Policy 34. The Secretary of State takes the view that, although that protects land not envisaged to be needed for development during the period covered by the housing policies of the LUDPR (IR(i)133), an intention to withdraw it does not necessarily imply that all such sites should be released immediately as there will be a number of other factors to be taken into account by the Council in preparing their SAP.

### **Whether the development would be likely to result in harm to bats**

15. The representations received following the original close of the inquiry (as referred to at paragraph 5 above) included material from the Farsley Residents Action Group (FRAG) indicating that bats were potentially more prevalent on the appeal site than first thought, and including evidence that the site is used for roosting and by some rarer bat species (IR(ii)205). The Secretary of State therefore asked the Inspector to consider this matter as part of the reopened inquiry and, having carefully considered the Inspector's findings on this matter (IR(ii)206-208), he agrees with his conclusion at IR(ii)209 that, subject to the imposition of suitable conditions, the proposed development would be unlikely to result in harm to bats as a protected species.

### **Sustainability, local character and identity**

16. Having carefully considered the Inspector's arguments at IR(i)144-149, the Secretary of State agrees with his conclusion at IR(i)150 that, despite some deficiencies in public transport provision and walking distances to services, the proposal would constitute a sustainable development. He also agrees that neither concerns raised relating to educational provision (IR(i)151) nor those relating to lack of health care provision (IR(i)152) would provide reasons to resist the development. Furthermore, for the reasons given at IR(i)153-160, the Secretary of State also agrees with the Inspector's conclusion at IR(i)161 that highways and drainage infrastructure would be acceptable subject to the measures proposed as part of the development.
17. However, taking account of the Inspector's comments at IR(i)163-166, the Secretary of State agrees with his conclusion at IR(i)167 that the proposal would result in an adverse impact on local character and identity and the loss of a site of intrinsic value. In coming to this conclusion, the Secretary of State has had particular regard to the desirability of preserving or enhancing the character or appearance of the Farsley Conservation Area, and gives appropriate weight to the significant change in character which the Inspector identifies.

### **Conditions and obligations**

18. The Secretary of State has considered the Inspector's reasoning and conclusions on the proposed planning conditions at IR(i)194-197 and IR(ii)214. The Secretary of State is satisfied that the proposed conditions are reasonable and necessary and would meet the tests of paragraph 206 of the Framework. However, the Secretary of State does not consider that the conditions would overcome his reasons for dismissing the appeal.

19. The Secretary of State has also considered the Inspector's comments at IR(i)187-192 and IR(ii)212-213 on the proposed Obligations and is satisfied that these would meet the tests in CIL regulation 122. However, the Secretary of State does not consider that the terms of the Undertaking would overcome his reasons for dismissing the appeal. He also agrees with the Inspector at IR(i)193 that the suggestion that there should be a commitment to build the dwellings within the current five year supply period would be overly prescriptive and unreasonable.

### **Overall Conclusions**

20. The Secretary of State is satisfied that the Council have now identified a five year supply of housing land in an up-to-date CS without the appeal site, so that the presumption in the Framework in favour of sustainable development does not apply. Furthermore, he considers that the adverse impacts on local character and identity count against the proposed scheme and considers it appropriate for the Council to proceed to identify the most sustainable sites through the preparation and adoption of their SAP.

### **Formal Decision**

21. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's later recommendation at IR(ii)221. He hereby dismisses your client's appeal and refuses planning permission for the erection of 400 dwellings and associated works at Bagley Lane/Calverley Lane, Farsley, Leeds, in accordance with planning application ref: 12/04046/OT, dated 21 September 2012.

### **Right to Challenge the Decision**

22. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged by making an application to the High Court within six weeks from the date of this letter.

23. A copy of this letter has been sent to Leeds City Council. A notification letter/email has been sent to all other parties who asked to be informed of the decision.

Yours faithfully

*Jean Nowak*

**Jean Nowak**  
**Authorised by the Secretary of State to sign in that behalf**

**Representations received by Secretary of State**

<b>Correspondent</b>	<b>Date</b>
Cllr Andrew Carter	11/2/14; 14/3/14; 31/3/14; 9/4/14; 28/4/14
Stuart Andrew MP	14/2/14; 2/4/14; 23/6/14
ID Planning (appellants' agent)	14/2/14; 26/3/14; 7/4/14; 23/5/14; 2/6/14; 3/6/14; 13/6/14; 4/2/15; 5/2/15; 3/3/15
FRAG	31/3/14; 10/4/14; 14/5/14; 27/5/14
Leeds City Council	31/3/14; 28/4/14; 23/5/14; 30/5/14; 20/6/14; 11/2/15



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# Report to the Secretary of State for Communities and Local Government

by Mark Dakeyne BA (Hons) MRTPI

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

Date: 27 January 2014

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Town and Country Planning Act 1990

Leeds City Council

Appeal by

Thornhill Estates

Land at Bagley Lane/Calverley Lane, Farsley, Leeds, West Yorkshire

Inquiry opened on 19 November 2013

Land at Bagley Lane/Calverley Lane, Farsley, Leeds, West Yorkshire

File Ref: APP/N4720/A/13/2200640

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**File Ref: APP/N4720/A/13/2200640**

**Land at Bagley Lane/Calverley Lane, Farsley, Leeds, West Yorkshire**

- 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 Thornhill Estates against Leeds City Council.
- The application Ref 12/04046/OT is dated 21 September 2012.
- The development is proposed residential development.

**Summary of Recommendation: That the appeal is allowed and outline planning permission be granted.**

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**Procedural Matters**

1. The inquiry sat for six days: 19-22 November 2013 and 28-29 November 2013 and was closed on 29 November 2013. I made an accompanied visit to the site and the surrounding area on the morning of 29 November 2013.
2. The application was submitted in outline form with all matters of detail reserved for subsequent approval apart from the means of access from Calverley Lane.
3. The appeal was recovered for a decision by the Secretary of State for Communities and Local Government by letter dated 4 July 2013, as it involves a proposal for residential development of over 150 units or on a site of over 5ha, which would significantly impact on the Government's objective to secure a better balance between housing demand and supply and create high quality, sustainable, mixed and inclusive communities.
4. The appeal is against the non-determination of the application by Leeds City Council (the Council) within the statutory period. The Council subsequently resolved that, had it been in a position to refuse the application, it would have done so for the following reasons:
  1. *The Local Planning Authority considers that the release of the Kirklees Knowl PAS site for housing development would be premature being contrary to Policy N34 of the adopted Leeds Unitary Development Plan Review (2006) and contrary to Paragraph 85 bullet point 4 of the National Planning Policy Framework because its suitability needs to be comprehensively reviewed as part of the preparation of the Site Allocations Plan. The size of the site, the possible need for a school and the availability of other housing development opportunities in the locality means that the site does not fulfil the exceptional criteria set out in the interim housing delivery policy approved by Leeds City Council's Executive Board 13/3/13 to justify early release ahead of the comprehensive assessment of safeguarded land being undertaken in the Site Allocations Plan.*
  2. *There are outstanding highway objections in relation to the lack of a direct safe pedestrian and cycle route along the Ring Road to access schools and New Pudsey Train Station. As such the development is detrimental to highway safety which is contrary to policies N12, T1, T2, T7 and GP5 of the adopted Leeds Unitary Development Plan Review (2006) and the guidance contained within the adopted Street Design Guide SPD.*
  3. *The development would require a signed Section 106 agreement to cover affordable housing, education, greenspace, public transport, travel planning*

*and off site highway works. The Council anticipates that a Section 106 agreement covering these matter should be provided prior to the Inquiry however, it reserves the right to contest these matters at the appeal should the Section 106 Agreement not be completed or cover all the requirements.*

5. Statements of Common Ground have been agreed between the appellants and the Council.<sup>1</sup> These record that the part of the first reason for refusal that relates to the need for some of the site for a school, the second reason for refusal dealing with outstanding highway objections, and the third reason requiring obligations to be in place have been addressed, so far as the Council are concerned, subject to the wording of the obligations being agreed.
6. Planning obligations in the form of an agreement between the appellants and the Council and a unilateral undertaking made by the appellants, both under S106, were submitted at the inquiry<sup>2</sup>. The former makes provision for affordable housing, education and public transport contributions, greenspace and off-site highway works. The latter relates to the reservation of land for a primary school within the appeal site.
7. This report contains a description of the site and surroundings, reference to environmental information, an explanation of the proposal, identification of the relevant planning policies, the cases of the parties and my conclusions and recommendation. Lists of appearances, inquiry documents, abbreviations and recommended conditions are appended.

## **The Site and Surroundings**

8. The appeal site is located approximately 8.5km to the north-west of Leeds City Centre. The site comprises 17.8ha of mainly improved grassland used for grazing, on a north-east facing slope of the Aire Valley. It is crossed by hedged field boundaries and interspersed with mature trees. A line of high-voltage electricity pylons bisect the site on a south-west to north-east axis.
9. The site is within the Leeds Outer Ring Road (A6120), which lies to the north-west, and abuts the northern extent of the built up area of Farsley. The village of Rodley lies adjacent to the north and north-east boundaries of the site. The small linear settlement of Bagley runs along the eastern boundary, connecting Farsley with Rodley.
10. The site fronts onto Calverley Lane to the south-west, which connects Farsley with the ring road. The rear boundaries of properties forming part of a 1970s housing development, known as the Kirklees Estate, abut the southern boundary, separated by a narrow fenced public right of way (Public Footpath No 18 Pudsey). A recently completed housing development, Poplar Farm, is adjacent to the south-east corner of the site. To the east is a gravel track which leads onto Oaklands Road, with commercial buildings and housing beyond. To the northern and north-eastern boundaries is a mix of residential development along Towler Drive and Petrie Street/Crescent, Rodley. Between the north-west boundary of the site and the ring road is an area of predominantly open low-lying land containing a small number of buildings used

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<sup>1</sup> Documents SOCG1 and SOCG2

<sup>2</sup> Documents TE11 and TE12

by landscape contractors. The western extremity of the appeal site is adjacent to the ring road, close to its junction with Calverley Lane.

## **Environmental Information**

11. The proposed development falls under Schedule 2(10) of the Town and Country Planning (Environmental Impact Assessment) Regulations 2011 as an urban development project exceeding 0.5ha. The site exceeds the thresholds and criteria in Schedule 2 of the Regulations. An Environmental Statement<sup>3</sup> was submitted voluntarily by the appellants following the obtaining of a scoping opinion from the Council.
12. The Environmental Statement complies with the above Regulations. The information provided is sufficient to enable the environmental impact of the proposed development to be assessed. The contents of the statement, comments received on it and all other environmental information submitted in connection with the appeal, including that given orally at the inquiry, have been taken into account in arriving at the recommendation.

## **The Proposal**

13. The outline application for residential development indicates that around 400 dwellings would be built on the site. The details of the access from Calverley Lane<sup>4</sup> show a roundabout offset from the existing line of the highway and a new footway along the eastern side of road, linking with existing pavements on Calverley Lane to the north-west and south-east. It is indicated that the speed limit along Calverley Lane would be reduced to 30mph to correspond with the limit as it leaves the built-up area of Farsley.
14. The Masterplan Layout<sup>5</sup> shows a second vehicular access to the site via the Poplar Farm development. Non-vehicular links to Petrie Street, Oaklands Road, Poplar Farm, Kirklees Close and Calverley Lane are also indicated. The layout shows roads and areas of open space, incorporating existing landscaping features and footway links, separating clusters of housing. The pylons would cross a central tract of open space.
15. The proposals incorporate off-site highway works comprising a new footway/cycleway along the ring road from the site access to the footbridge near Priesthorpe School, a length of some 1.5km; improvements to the roundabout at the junction of the ring road with Rodley Lane; some modifications to the T-junction of Calverley Lane with the ring road; and the installation of a traffic calming measure on Badley Lane. These works would be secured either by conditions or through the S106 agreement.

## **Planning Policies and Guidance**

16. The RSS was partially revoked on 22 February 2013. Although some policies in the RSS which relate to the Green Belt around York were retained, these do not affect Leeds and the appeal site where no policies remain in force. The

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<sup>3</sup> DOC1, DOC2 and DOC3

<sup>4</sup> Plan2

<sup>5</sup> Plan3

development plan relevant to the appeal, therefore, comprises the LUDPR<sup>6</sup>. The policies of the LUDPR relevant to this appeal were saved by directions of the SoS in 2007 and 2009.

17. The LUDPR shows the appeal site as lying adjacent to the MUA which incorporates the built up areas of Farsley, Rodley and Bagley<sup>7</sup>. The site is identified as PAS land under Policy N34 of the LUDPR<sup>8</sup>. In the explanation to the policy the site is referred to as Kirklees Knowl, Farsley (N34-26). Policy N34 was intended to ensure the endurance of Green Belt boundaries by designating land for longer-term development needs. The suitability of PAS land for development would be reviewed as part of the preparation of the LDF. In the meantime the policy allows only development that is necessary for the operation of existing uses or alternatively temporary uses which would not prejudice long-term development. To the west of the site on the opposite side of Calverley Lane is a smaller area of land which is also a PAS site.
18. The LUDPR also contains housing supply policies, including Policy H1, which indicates that provision will be made for the annual average requirement identified in the RSS. Policy H3 deals with the delivery of housing land in phases and is accompanied by allocations relating to those phases. Policy H4 deals with non-allocated sites. Other relevant LUDPR policies relate to affordable housing (Policies H11-H13), green space (Policies N2 and N4), planning considerations (Policy GP5), urban design (Policy N12) and transport and highway matters (Policies T2, T5 and T7). The LUDPR plan period is 1998 to 2016.
19. The LUDPR is to be replaced by the emerging Leeds LDF. The Publication Draft of the Leeds CS<sup>9</sup> is at examination stage. Hearings took place in October 2013. The Inspector has written to the Council requesting further work on the assessment of gypsies and travellers needs and on the policy approach to affordable housing. These matters are likely to delay the adoption of the CS beyond the mid-2014 date anticipated in SOCG1.
20. The Council has also published a SAP Issues and Options DPD<sup>10</sup> which was subject to consultation in the summer of 2013. The Council is currently considering several thousand representations. The timetable for a Publication Draft is dependent on the adoption of the CS but is estimated to be towards the end of 2014 at the earliest<sup>11</sup>.
21. Draft Policy SP6 of the CS indicates that 70000 (nett) new dwellings will be accommodated between 2012 and 2028. The policy also contains a "step-up" whereby 3660 dwellings per annum would be accommodated between 2012/13 and 2016/17 with 4700 dwellings per annum between 2017/18 to the end of the plan period. 500 dwellings per annum are anticipated from windfalls, leaving 62000 (nett) dwellings to be identified. The Issues and Options SAP indicates

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<sup>6</sup> There is also adopted DPD on Natural Resources and Waste which has not been cited as relevant

<sup>7</sup> LCC4

<sup>8</sup> CD4

<sup>9</sup> CD3

<sup>10</sup> CD7

<sup>11</sup> LPA3

that there is an existing supply of some 32000 dwellings so that sites for around 34000 units need to be found. The same document assesses sites for potential allocation categorising them as Green, Amber or Red<sup>12</sup>. The appeal site is coded Amber.

22. In order to stimulate the housing market and increase the supply of housing land, the Council's Executive Board introduced an interim policy in March 2013<sup>13</sup> for PAS land. The policy incorporates criteria against which the release of PAS sites for housing would be considered. The criteria in summary cover (i) relationship to the MUA or Major Settlements as defined by the Draft CS; (ii) a size threshold of 10ha; and (iii) the need for the land for alternative uses. If the size threshold is not met but the other two criteria are satisfied, then development of a larger site for housing may be supported if (iv) there is a lack of housing development opportunities in the area and (v) the proposal includes or facilitates significant planning benefits.
23. There are also other local policy documents of relevance to the appeal, namely SPG3 – Affordable Housing; SPG4 – Greenspace Relating to New Housing Development; SPG11 – Section 106 Contributions for School Provision; Public Transport Improvements and Developer Contributions SPD; Leeds Street Design Guide SPD; and the Travel Plans SPD<sup>14</sup>.
24. The National Planning Policy Framework (the Framework) was published in March 2012 and sets out the Government's policies to achieve sustainable development. Other national documents of relevance are The Planning System: General Principles (General Principles)<sup>15</sup>, MfS<sup>16</sup> and the DMRB<sup>17</sup>. Reference will also be made to the NPPG<sup>18</sup>, which at the time of the inquiry was still in draft form.

## **The Case for Thornhill Estates**

*The material points are<sup>19</sup>:*

### **Prematurity**

#### *General Principles*

25. General Principles sets out national guidance on the topic of prematurity but was not mentioned in the Council's evidence. Although the prematurity case is relative to the production of the SAP, that document is at a very early stage of preparation with no consultation on a fixed set of allocations. Adoption is not likely to be until early 2016 at the soonest given the need to tie in with the

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<sup>12</sup> *Green* – sites which have the greatest potential for housing; *Amber* – sites which have potential but there may be issues which need to be resolved, or the site may not be in such a favoured location as those highlighted in green; *Red* – sites which are not considered suitable for allocation for housing.

<sup>13</sup> CD18

<sup>14</sup> CD35, CD33, CD38, CD26, CD29 and CD37 respectively

<sup>15</sup> CD3

<sup>16</sup> CD25

<sup>17</sup> FRAG4

<sup>18</sup> CD17

<sup>19</sup> Summarised from the appellant's closing submissions TE13

outcome of the CS examination. It is not a document that weight can be attached to pursuant to Paragraph 216 of the Framework. Similarly in relation to Paragraph 18 of General Principles, the SAP is not yet at a stage where refusal on prematurity grounds would be justified. Moreover, in addition to the timing of Plan, the development must be so substantial as to have the effects described in Paragraph 17. The Council has not proved its case on either timing or scale and indeed appeared to be unaware of these key tests.

26. In terms of scale, 400 units is less than 0.6% of the CS requirement and just over 1% of the total of new allocations that need to be identified. For the Outer West Area, the appeal site is around 15% of the new allocations required. This is in the context of the site being adjacent to the MUA, no identification of strategic sites in the CS and the interim policy on PAS sites accepting sites of upto 10ha or 225 dwellings. Indeed a number of PAS sites under 10ha could come forward in the same area or sites in excess of 10ha can be considered as acceptable under the interim policy. In these respects the site could not be beyond the threshold of "so substantial".
27. No part of the Council's case on prematurity relates to the cumulative effect of granting planning permissions. The totality of PAS sites amounts to only 25% of the new allocations required according to the CS. The criteria within the interim policy for the release of PAS sites do not include reference to cumulative impacts and no evidence of harm from cumulative effects has been put forward by the Council.

#### *LUDPR Policy N34*

28. The purpose of Policy N34 of the LUDPR was to protect land to allow it to be developed in the future, not because it was unsuitable for development. The land was identified 12 years ago. Although there is reference in the supporting text that sites would be reviewed in the LDF, the policy itself does not say that. Indeed the Council has taken into account current circumstances in agreeing to release PAS sites in advance of the review and regardless of the five year housing land supply position. This is an acceptance that Policy N34 is out of date. This is logical as the SAP will not be in place for two years and there will be a need to maintain a rolling five year housing land supply.
29. Whilst Paragraph 85 of the Framework is referred to in the first reason for refusal, it is not otherwise advanced as part of the Council's case. It is a policy dealing with the protection of the Green Belt through the preparation of plans and defining of boundaries and how safeguarded land policies should be framed at their inception. It is entirely different to the applicability of a policy that is 12 years old. No case has been made on national policy grounds to refuse planning permission for reasons of prematurity.

#### *Executive Board Report*

30. In terms of the Executive Board Report, it is not a policy of any sort, interim or otherwise. It was not consulted upon, is subject to a legal challenge and is not intended to go into a plan or SPD. The furthest that the Council goes is that it will have regard to the criteria within the policy. In any event it should be applied flexibly.

31. In applying the criteria, the site is adjacent to a MUA and the issue of the alternative use of part of the site as a school has been resolved. The 10ha threshold does not draw upon any other guidance. Moreover, the figure is not an absolute. In terms of the further criteria, the application of development opportunities in the area being demonstrably lacking is incapable of proper application, has not been proven by the Council and is of no weight. It is not defined in the Executive Board Report. There is no support in national policy for such an approach. The Council has not followed the HMCA of the CS. Most sites identified by the Council fall into a different HMCA. The assessment of housing requirements has to be on a LPA wide basis.
32. The criterion relating to significant benefits and the examples given must be CIL compliant. There are several benefits to be taken into account in the planning balance. There are choices for the Council in provision of affordable housing, including commuted sums to be spent off-site where significant additional benefits can be achieved. This approach is endorsed by the Council<sup>20</sup> and is being pursued elsewhere<sup>21</sup>. There is the offer to reserve 2ha of land within the site for a primary school. No other site is available. There are a series of highway improvements within the locality of the site acknowledged to be significant infrastructure enhancements<sup>22</sup>.

#### *UDP Inspector Reports*

33. The Council quotes the UDP Inspector reports but they are not relied upon to frame any specific opposition to the appeal. In any event there are two material points. Firstly the 2006 comments were made in the context of national policy at that time and the sequential approach to the development of housing land. At the time the Inspector concluded that there was housing land to meet needs without significant areas of greenfield land being utilised. Secondly, the Council has not resisted the proposal for reasons relating to openness, character or separation of settlements.

#### *Plan Led System*

34. Finally on the topic of prematurity, the Council's reference to Paragraph 17 of the Framework and the plan led system has to be considered in the context of national policy as a whole. There is also an obligation to keep plans up-to-date and to deliver, amongst other things, housing. The Tewkesbury High Court<sup>23</sup> and Harlow appeal<sup>24</sup> decisions confirm the approach. In addition the point about the need for up-to-date plans and the weight that can be given to emerging plans has been confirmed by the Planning Minister<sup>25</sup>.
35. On the grounds of prematurity alone the Council is unable to prove its case.

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<sup>20</sup> CD19

<sup>21</sup> CD22

<sup>22</sup> SOCG2

<sup>23</sup> ID12

<sup>24</sup> ID40

<sup>25</sup> CD14, TE5 and FRAG3

### ***Five Year Housing Land Supply***

36. The appeal cannot be refused simply because there is a five year housing land supply. Policy N34 is out of date regardless of the land supply issue as demonstrated by the Council's approach to the release of PAS land in advance of the SAP. Nevertheless the absence of a five year supply adds further weight to the case as N34 is a policy relevant to the supply of housing and would be out-of-date in accord with Paragraph 49 of the Framework. Paragraph 14 of the Framework requires the grant of planning permission in such circumstances, unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework as a whole or specific policies in the Framework indicate that development should be restricted. The latter does not apply.

### ***Requirement***

37. Policy H1 of the LUDPR refers to the requirement figure in the RSS which is 4300 dwellings per annum (21500 units for five years). This reference does not rely upon the RSS being part of the development plan as explained in the Horsforth appeal decision<sup>26</sup>. That appeal differs from the Hunston case<sup>27</sup> where the relevant Regional Strategy figure did not reflect the objectively assessed need for housing. Although the RSS has been revoked, the SEA and Post Adoption Statement<sup>28</sup> for the revocation point out that the partial review of the RSS identified higher rates to boost the supply of housing. Revocation should not be an opportunity to avoid boosting housing supply.

38. The Council's approach is to rely on the emerging CS which shows a five year requirement of 20307 units. However, the housing figures and the "step up" approach in the CS were subject to objections and the CS is yet to be found sound. In any event in the year 2012/13 provision was some 2000 units below the target. In addition, whilst the Council takes the view that undersupply prior to the 2011 census should be discounted due to the lower population numbers and household formation rates than predicted, it is necessary to look at the position in 2011/12 before the start date of the CS. Then the provision was some 1900 units which represented an under-delivery of between about 1300 and 2700 units depending on the basis of the requirement. Taken together the 2011/12 and 2012/13 undersupply would have been above 3300 dwellings against the lowest requirement. Furthermore, in the current year (2013/14) delivery is below that anticipated by the CS. Overall undersupply by April 2014 will be some 4500 units. Then the "step up" will kick in which will lead to a five year requirement of some 25800 dwellings.

39. The Council seeks to avoid this requirement by applying the Liverpool approach to dealing with the backlog rather than the Sedgfield approach<sup>29</sup>. To do so would be at odds with the Framework's requirement to significantly boost supply. It would also be contrary to the advice within the draft NPPG<sup>30</sup> and various

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<sup>26</sup> APP5 paragraph 55

<sup>27</sup> Hunston Properties Ltd v SoS for DCLG and St Albans City DC

<sup>28</sup> TE4

<sup>29</sup> Liverpool spreads any backlog over the whole plan period, Sedgfield over the next 5 years

<sup>30</sup> CD17

appeal decisions<sup>31</sup>. The fact that Leeds is a Regional City does not make it a special case. Indeed the CS claims to be an engine for growth and a means of fulfilling the aspirations set out in the Vision for Leeds and its Growth Strategy. In addition moving the five year supply on by a year to April 2014 will not be sufficient to address the undersupply. Even applying the Liverpool approach to the backlog there would be a need to add around 1400 units to the five year requirement.

40. The requirement position is materially worse if the strength of the “step up” provision within the CS is analysed. The Inspector in the Horsforth appeal decision disagreed with the Council’s approach on the basis of similar evidence to that before the current inquiry. The SHMA<sup>32</sup> sets out the “step up” approach. The employment led scenario is subject to a sensitivity test based on the assumption that headship rates would remain constant for the period 2010 to 2015. However, that period is coming to an end. Moreover, the fixed headship rate is based on recessionary considerations, including constraints on supply. Furthermore, the ONS 2011 Household projections indicate a figure of over 4000 per annum which is above the figure for the early years of the CS. Since the Horsforth appeal, Edge Analytics have updated the demographic evidence<sup>33</sup>. The REM figures suggest housing requirements above the early years CS figures, more in line with the CS average of 4375 units per annum.
41. In that there has already been an undersupply in 2011 and 2012 and will be in 2013, the addition of a 5% or 20% buffer as required by Paragraph 47 of the Framework does not alter the position on the lack of a five year supply. Based on the number of years (since 2008) and the quantum of undersupply, the case can be made for persistent undersupply such that a 20% buffer would be appropriate. The Council’s plea that, even if more permissions are granted, the requirement would not be met, is not accepted. There has been a steady decline in the number of permissions granted since 2009/10. Experience indicates that sites that go to appeal tend to be developed.
42. In conclusion, on the requirement side, the Council is unable to demonstrate a figure below its claimed supply on any basis.

### *Supply*

43. The Council’s position is that it has a five year supply of 21407 units which is some 1100 above its claimed requirement. However, the 2011-12 AMR<sup>34</sup> shows an “uncharacteristically high” supply figure for 2016/17 and suggests a figure which would be 1000 or so units less. It is also considered that some 1000 fewer units came forward from windfalls in the last two years than anticipated by the CS. Demolitions have also been running at lower levels than anticipated due to sites not coming forward, particularly in the inner urban area. This equates to a further reduction in supply of some 500 dwellings. Analysis of sites included within the five year supply undertaken at the inquiry indicates that a further 2175 dwellings will not come forward.

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<sup>31</sup> ID15, ID16, ID17, ID18, ID19, Appendix A of R6.3 and APP6

<sup>32</sup> CD8

<sup>33</sup> CD11

<sup>34</sup> CD12

44. Of those SHLAA sites without planning permission, the application of the Red and Amber traffic light system used in the Issues and Options SAP shows that some 2300 dwellings fall within these categories. On that basis it is a very strong indication that they cannot be said to be available, suitable, achievable and viable in the terms set out within Footnote 11 of Paragraph 47 of the Framework. That said some sites identified as Green in the SAP and which are not currently within the five year supply could come forward but these only total some 850 units.
45. The Council's five year supply has a base date of September 2012. However, regard must be had to the current position. No other sites have been suggested that might fall within the supply. There have been a reducing number of permissions and completions since September 2012. There is no evidence to show a larger supply just around the corner. The supply of some 1700 units from PAS sites has not been clearly identified. Even taking into account those sites shown in the first table in LCC1, there are over 600 units not accounted for. There is a contradiction in the Council's case if it relies on sites which are no different to the appeal site. Sites have to be identified so that they can be tested against Footnote 11.
46. Reliance on the SHLAA is also undermined by the review of sites undertaken by house builders<sup>35</sup>. Although house builders are represented on the SHLAA Partnership, there is little difference between the stance of the representatives and that of the Consortium in terms of housing numbers<sup>36</sup>. The house builders on the Partnership were not asked to review the majority of sites included within the SHLAA.
47. Even assuming in favour of the Council in relation to windfalls, demolitions, PAS sites and the 850 units from Green sites, there would still only be a supply of some 16200 units.

### *Conclusions on Housing Land Supply*

48. When requirement and supply are considered together it is beyond question that the Council is unable to demonstrate a five year housing land supply. The gap between the two is "at least 10000 units." Therefore, the Council's approach to granting planning permission on PAS sites in principle must be extended to the appeal site when the Council points to no impediments or harm caused by its development now.

### ***Highways and Sustainability***

49. SOCG2 confirms with the Highway Authority that there is no basis for refusal on highways grounds. However, FRAG and local residents are concerned nonetheless. The appellants' evidence follows tried and tested approaches to modelling the effects on traffic routes and junctions. The use of photographs by FRAG and others does not invalidate the appellants' evidence. The starting point is set out in Paragraph 32 of the Framework. The impacts have to be seen in the context of the MUA location which is always going to be busy.
50. The approach to trip generation, using a survey of an adjacent housing area, is in line with Government advice. This has been sensitivity tested by taking an 85<sup>th</sup>

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<sup>35</sup> CD13

<sup>36</sup> ID28

percentile of the TRICS database. Traffic surveys have been taken of the surrounding area. The effects of the development on particular junctions have been analysed. The surveys and analysis have been agreed with the Highway Authority.

51. Dawson's Corner Roundabout is busy but the effects of the development are modest. The assessment has taken into account the improvements to New Pudsey Station. The impact on the roundabout would not be severe. The analysis indicates that it is unlikely that people will cut through Farsley to avoid the roundabout. Vehicle and pedestrian movements arising from the development would not justify improvements to the Old Road/Bradford Road junction or the nearby zebra crossing and these have not been asked for by LCC.
52. The analysis of Rodley Roundabout requires modelling of the interaction of flows. The improvements will facilitate traffic movements through it. In particular the formalising of two lanes on the Rodley Lane North and Rodley Lane South approaches will provide benefits over the existing situation. There will also be a knock-on benefit for Bagley Lane and Canal Road. There will be no blocking of the exit from the roundabout or capacity issues on the single carriageway towards Horsforth. There will be some pedestrian safety improvements and no net detriment to pedestrians and cyclists. Full account has been taken of changes in traffic flows.
53. The Council's objective of introducing traffic signals at the Rodley Roundabout would not be affected by the appellants' proposed improvements to the junction. The option remains to commute the costs of the improvements as a contribution to the wider signalisation scheme. It is notable that the Council has specifically identified the appeal scheme in its funding bid<sup>37</sup>.
54. Calverley Lane is lightly trafficked now and will remain well within capacity with the development. Pedestrian improvements will be to the benefit of all. Although the narrowest part of the lane will be reduced to about 5.9m in width<sup>38</sup> this will follow the Highway Authority's approach to speed reduction. Parking can remain in the narrowed section and elsewhere with the necessary forward visibility. MfS indicates that roads of between 5.5m and 6m are expected to accommodate parking.
55. Farsley Town Street is an active and well-used street. Its width is between about 7.3 and 7.6m which allows parking and the retention of available carriageway of some 5.5 to 5.7m. It operates satisfactorily now and it would continue to do so if the appeal is allowed.
56. The appellants' approach to traffic distribution is not undermined by the limited questionnaire of the Poplar Farm development undertaken by FRAG. The two sites are not comparable because the appeal site has almost direct access to the ring road. The results of the questionnaire must be in doubt because it indicates a traffic generation dramatically beyond any figures that could be justified by a TRICS analysis. Its results are at odds with the far more extensive Census information.

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<sup>37</sup> FRAG2

<sup>38</sup> Appendix F to APP4

57. SOCG2 confirms that the site is sufficiently sustainable. The facts about the location of bus stops and the railway station, the nature of public transport services and the site's position in relation to jobs, shops and facilities are agreed. Sustainability is a matter of judgement. However, the public transport which is capable of being utilised is, in comparison to most sites, significant. Moreover, sustainability cannot be a basis for refusing development of a site on the edge of the MUA which has been identified for longer-term development since 2001 and where permission has been granted on appeal for an adjacent site with agreement that it was a sustainable location<sup>39</sup>.

### ***Drainage, Soils and Agriculture***

58. In expressing concerns about infiltration FRAG misunderstood what SUDS is about. In this respect the infiltration capacity of the soils on the site are not relevant. The proposals are to attenuate surface water so that it would be released at a greenfield run-off rate. Storage would be designed to deal with a 1:100 year storm event plus climate change. This has been agreed with the Environment Agency, Yorkshire Water and LCC. As a result the development would not add to surface water flows and indeed would reduce them during large storms. Details of drainage would be agreed at a later stage. Yorkshire Water has confirmed that the existing combined sewer and sewage treatment works have the capacity to accommodate the foul drainage from the development.
59. A modest amount of the site is Grade 3a agricultural land and is isolated from other 3a land by roads, boundaries and 3b land. The farmer who uses the land for grazing has no objection to the loss of land to his business.

### ***History, Coalescence and Character***

60. SOCG1 indicates that the Council takes no issue on landscape and visual impact. It is clear that the formerly separate settlements of Farsley, Rodley and Bagley are now subsumed into the MUA of Leeds and physically connected by existing development. The view down Farsley Town Street towards the northern valley side of the Aire is over the top of the houses on the Kirklees Estate towards the A65 and not of the appeal site. This is the only view in the direction of the appeal site identified in the Conservation Area Appraisal and Management Plan<sup>40</sup> (CA appraisal). Indeed there are no views of the appeal site from within the Farsley Conservation Area other than from the recreation ground and its vicinity. From the recreation ground the site is set down and behind trees which would be reinforced by planting as part of the proposals. These views are not identified in the CA appraisal as important. FRAG appears to be implying that no development or change in land should take place beyond the CA boundaries. This is not the correct approach as development is often accommodated near conservation areas and within them. In the appellants' considered judgement there is no harm.
61. The appeals referred to by FRAG<sup>41</sup> are distinguishable from the current case for a number of reasons. Yate dealt with a proposal to add 210 dwellings to a settlement of 100 houses of rural character. It was not a PAS site. Yate was an

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<sup>39</sup> CD30

<sup>40</sup> Document contained within R6.2

<sup>41</sup> R6.3 appendices A to D

entirely separate town so the impacts of coalescence were different. Barwell and Groby both involved land designated as green wedge where there were five year supplies. In Armthorpe the CS had just been adopted, the proposal ran contrary to scale and phasing requirements for the settlement, it was not PAS land and there was a five year supply.

### ***Overall Conclusions***

62. Development of the site is not premature when viewed in the context of the General Principles document and the Council's approach to releasing PAS land. Policy N34 is out of date. The Council does not have a five year land supply. No harm has been identified from the development of this sustainable site. The Inspector is asked to recommend to the SoS that planning permission is granted.

### **The Case for the Council**

*The material points are<sup>42</sup>:*

#### ***The development plan***

63. The starting point under s38(6) of the Town and Country Planning Act 1990 is the development plan. The development plan in Leeds now consists only of the LUDPR. There are two policies at issue, N34 and H1. The proposed development is not in accordance with N34. That policy protects PAS land from development until a comprehensive review has been carried out through the LDF process which has not yet happened. The argument that, because the Council has accepted that some PAS land should be released before a review, in order to meet the need to provide more housing land, N34 was out of date and no weight should be put on it, is unsustainable.
64. Firstly, policies do not become out of date because there are reasons to depart from them. The need for housing land, as acknowledged by the Council in the interim policy, may be a material consideration to depart from the policy. Secondly, the analysis ignores the planning considerations which are not of interest to the appellants, i.e. anything other than the need to provide more housing land. Thirdly, N34 is entirely in step with Paragraph 85 of the Framework which provides policy support for the same approach in new policies. To accord with Paragraph 85 it is appropriate to release safeguarded land through a plan led process, although there may be circumstances to balance against that, as is the case with the interim policy. But Paragraph 85 supports the Council's approach of ensuring that the larger PAS sites come through the Site Allocations DPD process.
65. The Framework does not place housing delivery above all other considerations in the planning system. Indeed the "golden thread" of the Framework is sustainability, so it would be strange if the benefits of more housing automatically outweighed the need to ensure that the most sustainable sites are chosen for housing development.

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<sup>42</sup> Summarised from the Council's closing submissions LCC9

## ***Five Year Housing Land Supply***

### *Requirement*

66. H1 is the policy which set the housing target in the LUDPR. H1 refers to the RSS. There is no longer any RSS because it has been revoked. Therefore, there is no housing target in H1. There is a valid question over whether weight should be put on the RSS figure because of its evidence base. It is in the circumstances where the RSS evidence base has been the most up-to-date that appeal decisions have used RSS figures. That is not the case now in Leeds, because there is a more up to date evidence base in the SHMA and the Edge Analytics reports. The SEA on the revocation does not suggest that housing targets will necessarily rise. In any event, the SEA was written before the census established that the RSS forecasts were exaggerated. The appropriateness of relying on the draft CS figures, rather than the RSS figures, was entirely supported by the Horsforth appeal decision.
67. In these circumstances the appropriate housing targets are those set out in the draft CS. Although it has not been adopted, it is well advanced. There are objections, but they are in both directions. Assumptions cannot be made that the targets will move upwards, given the Edge Analytics report showing the need to recalibrate Leeds population base and that the 70000 is at the upper end of the range of forecasts of housing need<sup>43</sup>. Indeed the appellants are not challenging the 70000 target. The issues between the Council and the appellants are the backlog, the “step up” and whether the buffer should be 5% or 20%.
68. The “step up” is based on the most up-to-date evidence on household formation and need. The argument that Leeds should be providing as much housing as possible needs to be in the context of other planning considerations, including the plan led system and meeting objectively assessed needs. In any period the rate of household formation (headship rate) and therefore the housing land requirement will depend partly on economic conditions. That will be just as true of the 2008 headship rates as the 2011 ones. The difference is that the 2011 headship rates are the most up to date evidence, whereas the 2008 ones are not. The 2011 headship rate covers a period both of recession and boom. There is nothing in national guidance which suggests that the LPA should ignore the most up to date evidence, including recessionary factors. Indeed relying on the 2011 household projections follows the NPPG. The pre-census projections were unreliable, showing household projections that were significantly too high, probably because levels of international migration predicted for Leeds did not happen.
69. Reliance on the Horsforth decision in respect of the “step up” needs to be seen in the context that the Inspector said that it should be tested through the development plan process in the first instance and can carry little weight at this stage. However, that analysis cannot be correct in the current situation as the draft CS is based on the most up to date evidence, including the step up.

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<sup>43</sup> CD9

70. In terms of the REM there are two points. Firstly, the REM is a forecast and is not based on current empirical evidence. Secondly, the REM is a very optimistic forecast. It assumes an average employment growth that would be equivalent to the highest level of job growth during the boom. The Experian (REM) growth of 2.1% is at the top end of national economic forecasts. It takes no account of the fact that 21000 jobs were lost in 2009. The CS housing figures are based on an employment led model. If there is a great deal of slack in the employment market, then that will inevitably affect the need for housing. The NPPG advises that where forecasts show volatility then it is appropriate to consider averaging. The REM model has swung from predicted job growth of 45000 to 65000. Therefore the step up is entirely justified on up to date evidence and should be taken as the target figure.
71. On the backlog, the SHMA is clear that pre-CS there was none. Suppressed demand is taken into account in the assessment of future need in the SHMA<sup>44</sup>. In respect of the period since the CS targets became relevant, any backlog which may have accumulated will be accounted for in the next five year land supply analysis which will take place with the benefit of a revised SHLAA and a more advanced site allocations process. The Council can then do what the Framework asks of it and remedy an identified backlog by moving deliverable land from later years into the next five year period. It is not possible for Leeds to be undertaking a running analysis of provision and supply through the year.
72. In terms of the buffer, Leeds was exceeding its housing land supply targets up to 2008/9. Then the RSS target stepped up, based on a seriously flawed prediction of population growth, and the recession took hold. The recession is highly relevant in judging "persistence". The failure to reach the target post 2008/9 in Leeds is the result of the recession and not of any historic recalcitrance. It is also relevant that for Leeds, as a large metropolitan authority with a great deal of brownfield land, the impact of the recession on the housing land supply was particularly severe. In accordance with national policy, Leeds prioritised regeneration and the use of brownfield land to provide housing, and that market for such housing collapsed in a very short period. It is only now that there are signs of city centre sites becoming viable again. None of the other decision letters relied upon by the appellants relate to local planning authorities which are in anyway comparable with Leeds, either in terms of the nature of the housing land available, the scale of the authority or the regeneration issues. To that degree Leeds is genuinely different, because it faces different challenges. It is also clear that Inspectors have been careful to look at individual circumstances in judging their approach to housing land supply<sup>45</sup>.
73. The Council responded to the line of appeals that culminated in the Grimes Dyke decision<sup>46</sup> by releasing Phase 2 and 3 allocation sites, all of which were greenfield, and took a number of other proactive steps to increase the housing land supply. The Council has brought forward housing within its own control, putting £45m of Council capital into building new homes and a further programme for refurbishment of properties, many of which are currently empty,

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<sup>44</sup> CD8

<sup>45</sup> Appendix B of R6.2 and Outgang Lane, Pickering

<sup>46</sup> ID7

as well as an active brownfield land strategy. Therefore, Leeds is not a recalcitrant authority

74. Imposing a 20% buffer would not have a material impact on housing delivery. The buffer is not intended to be a punishment, and to impose it in Leeds will simply lead to a disproportionate number of greenfield sites being released outside the plan led system. The evidence in Leeds strongly suggests that there is little or no correlation between the number of planning permissions, including those on green field sites, and the number of houses being developed. Completions in Leeds fell with the recession, and the large gap between permissions and completions had no impact on the level of completions<sup>47</sup>. The suggestion that this was because the permissions were brownfield and in the urban area is shown to be incorrect<sup>48</sup>. The large number of greenfield permissions after the Grimes Dyke appeal had little or no impact on completions. This is not just a timing issue, because it is still the case that sites which have been released are not coming forward. In reality house builders are picking and choosing the sites they wish to develop. That is entirely their prerogative as private sector developers, but it does show that at least in Leeds there is little direct relationship between the release of greenfield sites and an increase in housing delivery.
75. If permission is granted on more greenfield sites some extra housing may come forward, but this has to be balanced against the harm from a non-plan led approach and potentially inappropriate release of sites. However, Leeds is already in the position where a large number of greenfield sites have become potentially appropriate on the back of the interim policy on PAS sites. The policy was only agreed in March 2013 so it is unsurprising that its effect in terms of completions cannot yet be gauged in detail. The policy did not exist when the SHLAA partnership was assessing the sites. However, what it has done is provide a range of sites across the Leeds area as a choice for house builders and planning permissions have already been granted on the basis of the application of the policy.
76. It seems inconceivable that the house builders will in practice be able or prepared to build the number of houses in the next 2-3 years which would be required to meet the appellants' figures. This would involve stepping up from around 2000 this year, to around 6000 in the following years. This simply will not happen. Therefore the consequence of the appellants' arguments is that Leeds will not be able to deliver the five year supply, and it will continually be open to developers to pick off the sites in appeals. Such a consequence is entirely contrary to the Framework.
77. If Leeds has to provide for the extra 20% then there will be little choice for the Council but to consider releasing all the PAS sites in advance of the SAP process. This would be contrary to the development plan and to the principles of both sustainability and the plan led system. Retaining the local community's belief in, and engagement with the planning system, is very important. A release of this site at this stage would undermine the plan led system and encourage the development of relatively less sustainable greenfield land.

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<sup>47</sup> See Figure 4 of LPA2

<sup>48</sup> See Figure 3 of LPA2

Although the appeal is about one site, house builders apply precedent to each successful appeal. This can be seen in the reliance placed by the appellants on the Grimes Dyke, Wetherby<sup>49</sup> and Horsforth appeals. House builders are acting in concert, and have created a housing consortium in Leeds. They are undoubtedly very quick to rely on each other's decision. If they try to put weight on the decision at Wetherby which concerned 4 houses and housing land supply was not even in evidence, then there can be no doubt whatsoever that the present appeal decision will be used as a major precedent.

### *Supply*

78. For an authority as large and complex as Leeds, with a very large number of sites, it is simply inconceivable that the five year land supply can be calculated for each appeal. It is entirely appropriate that Leeds should rely on the annual calculation which follows the AMR and the annual SHLAA review. It is inevitable that the position will have changed since the last review in 2012. It is important to have clearly in mind that those changes will be both up and down. Much of Leeds' supply is on brownfield land in the city centre and urban area where viability fell away during the recession but where there are signs of the market starting to rise again. Viability has to be assessed in a systematic way through the SHLAA, and is also something which can change rapidly, particularly as market confidence rises. An example of a factor which may cause increased supply, which has not been assessed at all by the SHLAA, because it post-dated the last review and was not foreseen, were the changes to permitted development allowing of offices to move to housing. The Framework expressly promotes assessing housing land supply through a SHLAA process.
79. It is reasonable for Leeds to rely on the SHLAA Partnership to raise concerns about whether sites within the SHLAA and the five year period are appropriate. That is the function of the SHLAA membership. It may well be that there is some historic suspicion between different members of the Partnership, but if the house builder representatives thought that there were sites within the five year supply that should not have been there, then they should have said so clearly in writing. If they did not say so, then it is hardly open to them now to complain. The evidence produced by the appellants was one email from the two members of the SHLAA raising a specific concern, which as far as the Council was concerned, was then dealt with. It was only about one week before the Horsforth appeal proofs were due, that the house builders produced a detailed attack on the SHLAA five year supply. This is hardly the way a partnership is supposed to work, but also puts the Council in an impossible position. It is now advancing a new SHLAA and cannot undertake a new five year supply and AMR without this annual update process.
80. The Council does not dispute the figures in the appellants' evidence insofar as many of these sites are now unlikely to deliver as previously assessed through the SHLAA partnership, although at the time it was appropriate to include them in the five year supply. The Council in its AMR also points to a substantial level of supply that sits just outside of the current five year supply, but that with an improving market (particularly in the city centre/main urban area) will be

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<sup>49</sup> ID11

deliverable now. These sites will be discussed with the SHLAA partnership over the coming weeks. They, along with further greenfield sites and releases, will help form the significant supply of land that the appellants say Leeds needs.

81. However, the appellants have wholly discounted the PAS sites and the sites coming through the SAP on the grounds that they do not fall within the Framework Footnote 11. In the context of an authority such as Leeds it is necessary to read Footnote 11 with realism and not as a statute. It is clear that Footnote 11 does not require that every site has to either have planning permission or be allocated. The NPPG makes this clear. It cannot be the case that every site has to be deliverable at the moment of the calculation, or it would be a one year land supply. The Council can point to the relevant sites, and say that of those sites sufficient will come forward in the five years as to meet the five year land supply. It may be that Leeds is relatively unusual. It is a very large metropolitan authority, but it is also in the process of undertaking its SAP. It is through this process that sites both for the entire CS period, but also for the next five years will come forward. There is no doubt that through that process Leeds will have to allocate enough sites to meet the CS requirements, and that this will necessarily require sites that fall within the Green and Amber ratings in the Issues and Options SAP. A proportion of these sites will plainly be capable of delivering housing within the next five years.
82. The appellants place great weight on the stage that the SAP has reached and the fact that it probably will not be adopted until 2016. However, the publication draft will set out those sites that the Council believes should be allocated, and that will be a Plan which the Council considers sound. Therefore considerably more weight can be placed on the SAP at that stage.
83. It is unreasonable not to count the PAS sites which the Council considers falls within the interim policy. These are greenfield sites which the house builders say they want to build upon, and which accord with the Council's view on sites which are suitable to be released now. There is no reason not to count them in the five year land supply. Similarly a proportion of the sites identified in the SAP will come forward in the next five years.
84. Doing the exercise as the appellants suggest it should be done, the following figures emerge. The Council say that the housing land supply is 21407 dwellings. Of these 689 units would be deducted as red sites in the SAP and 2188 units removed as identified by the appellants<sup>50</sup>. Some 900 units would be added as green sites in the SAP and a further 330 units included as part of the ongoing SHLAA exercise. This leaves a total of some 19760 dwellings which is not far below the five year land supply requirement. However, it is not appropriate to do this exercise at this stage in the SHLAA process.

### ***Prematurity***

85. The appellants place weight on the General Principles document and the scope of prematurity. However, the Council did not refer to this document in their putative reason for refusal but to the specific policy in relation to safeguarded land, Policy N34. This is a different situation from the general policy on prematurity. This land was only placed in N34 on the basis that its suitability

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<sup>50</sup> Page 47 of APP2 and ID24

for development would be considered through a development plan process. It is therefore this policy which lies at the heart of the Council's reasoning, not the General Principles document.

### *Interim Policy*

86. The interim policy has two points of relevance in this appeal. Firstly, its role in bring forward PAS sites before the DPD; and secondly, whether the site should have been granted planning permission in the light of the policy in any event.
87. The interim policy has to be seen for what it is, i.e. not an adopted policy, but a series of publicly stated criteria or considerations. Like any policy it must be applied sensibly on each specific application and there may be grounds to depart from the policy. The appellants accepted that it is a good thing that these considerations are publicly stated in that it helps both transparency and consistency. The key question then is whether those are material planning considerations which it is appropriate to have in mind when making the relevant determination.
88. There are two underlying purposes behind the interim policy, to allow the most obviously sustainable sites to come forward before the Site Selection process, and to do the minimum harm to the Plan led system. Both these purposes are entirely in accord with the planning principles set out in the Framework. Despite the appellants' criticism, the interim policy is working to bring forward PAS sites to help meet the five year land supply with permissions already granted and more applications in the pipeline.
89. Criterion (i) is clearly based on finding what are likely to be the most sustainable sites. In relation to the 10ha criterion, (ii), it is obvious that it is the largest sites where it is most important that they come through the Plan led system i.e. SAP. Those are the ones which will have the greatest impact on sustainability, because they will generate the largest number of trips and take the most greenfield land. Any specific figure will be a "bright line" with cases falling on either side. It is inconsistent that the "area" test in criterion (iv) is criticised because it is not defined but the 10ha is attacked because it is too rigid. It makes sense to have a definition of a large site, i.e. over 10ha, but that does not stop the Council considering the position if two or three 9ha sites come forward at the same time and saying that, in practice, it triggers the concerns in the interim policy and having regard to cumulative impact. The appellants' reliance on the 9ha sites merely shows the benefits of waiting for the SAP, and carrying out a systematic consideration of all sites being proposed. Criterion (iii), that the land is not needed for alternative uses, is clearly reasonable and would have to be a material consideration in any event.
90. Criterion (iv) involves an exercise of planning judgement as to what is the appropriate area. That is not a fixed distance, because the aim is to consider whether there is a choice of sites with an area that relates to where people would choose to live, i.e. related to communities such as Farsley and Rodley. It is difficult to see what is objectionable about leaving such a judgement to Planning Officers in the light of the characteristics of the particular area. The extent of the area will inevitably vary across the city.
91. Criterion (v) involves another set of judgements that can only be carried out on a site specific basis. The facts here show that what the appellants are offering

is merely what would be required of them in any event, and they are not addressing any wider infrastructure need.

92. In respect of the land for the school, two points are important. Firstly, the school land would be required under Policy N34 in any event. The Council is clear that there is a need for a new primary school in this area, and the site's own education need means that a school would need to be provided. Therefore, there is no additional benefit in reserving the land. Secondly, the S106 only requires the owner to sell the land to the Council at compulsory purchase compensation value. This means in practice open market value ignoring the scheme. The owner will undoubtedly argue that the open market value is residential land value, because this is PAS land, and they have an expectation of getting residential planning permission. If that is the case the appellants are giving no benefit to the Council, as they will get the full residential value of the land in any event. The Council is likely to argue that the land value is educational value, because the land must be reserved for a school under N34 and the evidence of school need. It is not possible to be definitive at this stage on what the precise value will be. But the critical point is that, whatever the ultimate value is, the Council is getting no benefit out of this transfer because it is paying the open market value of the site, however that is calculated.
93. On affordable housing, again the appellants are merely meeting the terms of the interim affordable housing policy. There is no linkage to a brownfield site, and no ground to take the view that criterion (v) is met. The appellants' reliance on the Spofforth Hill, Wetherby application<sup>51</sup> is misconceived. No decision has been made on that site, and there is a debate going on in the Council as to how to deal with the proposal.

### **Conclusion**

94. For all these reasons the appeal should be refused.

### **The Case for Farsley Residents Action Group (FRAG)**

*The material points are<sup>52</sup>:*

#### **Highways**

95. FRAG has endeavoured to provide the "local knowledge" required to build an understanding of the issues associated with the road network. The appellants have not sought to adopt the guidance contained within the Street Design Guide SPD but instead have relied upon MfS.
96. The appellants have attempted to undermine the photographic evidence put forward by FRAG. FRAG's evidence has captured the considerable queue lengths at two approaches to the Rodley Roundabout and suggests that the impact of the development would be severe. Moreover, it should be noted that FRAG's concerns about Rodley Roundabout are borne out by the points raised by the manager of the Pinch Point bid<sup>53</sup>. Although the appellants suggest that the

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<sup>51</sup> CD22

<sup>52</sup> Summarised from FRAG's closing submissions FRAG7

<sup>53</sup> In response to the Government's Local Pinch Point Fund to remove bottlenecks on the local highway network which are impeding growth

improvements would reduce traffic queues, the Pinch Point application indicates that the works would merely mitigate the impact of traffic from the development. There is no guarantee that the Pinch Point application will be successful, as it is the last of the funding tranches and it already failed in its Tranche 2 bid.

97. The Pinch Point bid was submitted prior to the release of higher 2013 traffic counts which showed a 21% growth in traffic within the peak hour along the A6120 South between 2011 and 2013. On this basis it is questionable as to whether the signalisation of the roundabout is suitable. In addition the SAP has the potential to identify a number of key employment sites within the area with the nearby Leeds Bradford Airport acting as a key driver. This does not appear to have been considered by the appellants.
98. The two lane improvement on the Horsforth exit would narrow to one lane in order to cross the bridges over the canal, River Aire and railway. No thought has been given to the significant funding issues that would need to be addressed should the road need to be widened over the bridges. The 2019 design scenario already indicates that the bridge crossing points will be close to capacity. The expectations for growth of the airport will fill the remaining capacity. When this saturation point is reached tailbacks will occur at the roundabout, whether it is signalised or not, with severe congestion at one of the main arterial junctions on the highway network.
99. The evidence of FRAG indicates that the development would have a severe and adverse effect on Rodley Roundabout creating highway problems that would be contrary to Paragraph 32 of the Framework. The worsening situation will create dangers and delays, impeding emergency vehicles and public transport.
100. Although not dealt with in FRAG's closing submissions, their evidence also covered the following highway concerns, some of which have been also raised by local residents:
  - Capacity issues at the Dawson's Corner, exacerbated by car park improvements to New Pudsey Station and the new traffic signals on Bradford Road;
  - Increases in use of the Old Road/Bradford Road, Farsley junction but no improvements proposed, either at the junction or zebra crossing;
  - Issues of rat-running along Canal Road and Bridge Road, Rodley;
  - Backing up along Bagley Lane, Rodley;
  - Concerns about the suitability of changes to Calverley Lane, including the narrowing outside the recreation ground and its impact on on-street parking and safety;
  - The safety of the Calverley Lane/Ring Road crossing point, if traffic speeds and flows increase due to changes at the Rodley Roundabout. The improvements proposed to the crossing are minimal;
  - Pedestrian and cyclist safety concerns arising from the proximity of the proposed footway/cycleway alongside the ring road;

- Increased vehicular use of Town Street Farsley which has only one pelican crossing point; narrow footways; and a carriageway width reduced by parked cars;
- The suitability of the Poplar Farm estate as a vehicular access to the development, given the width and residential characteristics of the approach and taking into account the Street Design Guide SPD.

### ***Sustainability***

101. The site is at the boundary of what constitutes a demonstrably sustainable location being 10 minutes walk to the northern edge of Farsley Centre with facilities such as the post office, supermarket and pharmacy further away. The Local GP indicates that the practice could not accommodate any more patients.
102. The site fails to meet the criteria in relation to accessibility to public transport as set out in the relevant SPD<sup>54</sup> in that it is not within 400m of a bus stop with a high frequency bus service to a major transport interchange. The only high frequency bus service to Leeds City Centre takes a very circuitous route with an average journey time of at least 50 minutes. The site is not within 800m of New Pudsey Railway Station, the journey taking at least 30 minutes.
103. FRAG considers that the development would be heavily car dependent, contrary to the principles of sustainability set out in the Framework.

### ***Drainage***

104. The appellants' modelling of site drainage does not take into account the unusual properties of the soils on Kirklees Knoll. The subsoil is extremely impermeable and will shed a high percentage of rainfall. There is also some uncertainty as to the appropriate rainfall values that have been used in the run-off model. Permeability and rainfall are the only variables input into the model. If these values are inaccurately defined the establishment of viable SUDS is questionable. Moreover, soil compaction during the construction phase has not been taken into account. This factor would increase run-off and the risk of excessive surface water discharge. The local combined sewer system does not have the capacity to accept any surface water.
105. The existing public sewerage system does not function effectively. Whenever there is excessive surface water in the area raw sewage is released, polluting local watercourses.
106. The appellants gave assurances at the inquiry into the Poplar Farm development that flood risk would be low. However, photographs and local residents' statements indicate that flooding has occurred despite a drainage condition being imposed. As similar values and modelling took place with the appeal site, extreme doubt should be placed on its veracity.

### ***Conservation, Landscape and Coalescence***

107. The villages of Farsley and Rodley have developed very differently so that there are two disparate and independent villages. The appeal site provides a very clear

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<sup>54</sup> CD26

separation between the villages. This was recognised by the LUDPR Inspector in 2006 who saw the site as having important Green Belt attributes.

108. FRAG has shown that the view across Kirklees Knowl from Calverley Lane is a very open one and is highly valued by the local community. The appellants' visual assessment fails to fully appreciate the impact the development would have from Calverley Lane, the recreation ground, Public Footpath No 18 and St Margaret's Church, Horsforth on landscape and views. The Framework emphasises that the planning system should protect and enhance valued landscapes.
109. The site adjoins Farsley Conservation Area and contributes to the character and setting of the recreation ground which is within the conservation area. It is also a key constituent of one of the main gateways into the conservation area. The CA Appraisal recognises that development around the conservation area should not spoil its setting.

### ***Prematurity***

110. The Issues and Options SAP received some 5000 to 6000 responses to the public consultation process. The appellants' development would represent 66% of the 594 additional homes for the Farsley area which are being consulted upon. It would also be the largest site in the Outer West HMCA. Granting planning permission now would render the public consultation process worthless and would undermine public confidence in the planning system, contrary to the principles of the Framework.
111. FRAG does not feel that the impact would only be on a small area. On the one hand the appellants state that the release of the site is crucial because of the significant positive impact but on the other hand argues that the impact would be sufficiently minimal so as not to be refused on grounds of prematurity. The two arguments are not compatible.
112. The Issues and Options SAP states that the site should be considered alongside two other PAS sites nearby and refers to the LUDPR Inspector's comments on the contribution that the site could make to Green Belt purposes. Paragraph 85 of the Framework reiterates the Inspector's stance that the site should be considered following a local plan review.
113. The application is wholly cynical and opportunistic and makes a mockery of public consultation and the plan led process.

## **The Case for Interested Parties**

### **i) Local Residents**

114. Thirty four local residents spoke against the proposal at the inquiry. The material points made were:
- *Sustainability* – The development is not good sustainable development as demonstrated by the detailed impacts.
  - *Prematurity* – The allocations plan is not finished. The site is protected under the current development plan. The roundabout will also allow development to the west of Calverley Lane.

- *Social Cohesion* – There is pride in the local village communities. The development would threaten this cohesion. Crime and disorder could occur, particularly on narrow pathways created by the development which would also provide escape routes for criminals. There will be limited opportunity for affordable homes for local people.
- *Education, Health and the Police* – The three schools are over-subscribed. Extensions to the schools will not meet the need. With more houses, there is less chance of locals getting their children into nearby schools. The pupil appeal process is stressful. Childminders are also bursting at the seams. The one GP surgery has a waiting list and no room for any more patients. Appointments are often not available for some time. It is often necessary to go to A & E. Dentists would also be affected. The police are also stretched.
- *Highways* – The Bradford and Leeds conurbation has had the greatest growth in congestion in the country. There is congestion and grid lock at Rodley Roundabout, Dawson's Corner and on the ring road generally. This has a number of effects. There is backing up down Bagley Lane, often for upto 1km. A bus was witnessed taking 18 minutes to travel 450m towards Rodley Roundabout. People use rat runs through Farsley and along Canal Road and Bridge Road in Rodley. This has an impact on pedestrians and cyclists, particularly those wishing to access the safe route along the canal or cross the main routes. Frustration occurs which can lead to unsafe manoeuvres, accidents and impacts on commuting, with drivers taking circuitous routes. The Clariant Works development has not helped. The development would make matters worse. The works to Rodley Roundabout, including the provision of two lanes, would not make a difference.

Calverley Lane would be more dangerous, particularly on the brow of the hill near the recreation ground. Children would be especially at risk. In Farsley Town Street vehicles already park on both sides. The pavements are narrow. You often need to step onto the road, particularly when pushing a pram. It is difficult to cross Town Street and more development will make it worse. The elderly will be discouraged from going out. Buses have difficulty travelling through the village. On-street parking has occurred at recent developments such as that in Coal Hill Lane. The same would occur within the proposed estate. Access for refuse and emergency vehicles would be difficult. The cycle path along the ring road would not be attractive or safe for cyclists or pedestrians.

- *Drainage* – A new culvert, as part of a flood alleviation scheme, was constructed nearby but flooding still occurred in the area in 2002 and 2007. Surface water flooding has occurred from the Poplar Farm development. This has led to ponding in Bagley Lane and insurance being cancelled due to floodplain issues. The combined sewers are unable to cope with storm conditions. It is a Victorian brick-built system with narrower pipes at the junctions. Sewage overspill tanks built in recent times reach capacity and sewage backs up and has been seen in Bagley Beck and the River Aire. The development would drain towards Rodley and Bagley where these problems have occurred. A small housing development was refused a few years ago on drainage grounds.

- *Character and Appearance* – The Green Belt between Bradford and Leeds is of limited width and the proposal will impact upon it. The development would ruin the local environment, leading to coalescence between Farsley and Rodley and urban sprawl. The balance in the Aire Valley between development and greenspace with separate settlements would be affected. The site allows lovely views from Calverley Lane, the recreation ground and elsewhere over the Aire Valley. The site also offers a free natural resource for residents, particularly children, who need to be able to experience wildlife and farm animals close at hand. Brownfield land should be built on as a priority.
- *Environmental Issues* – The development will increase noise from traffic for local people. Lighting will affect residents. Dust, noise, general disturbance and odours would all occur during construction.
- *Agriculture* – The land is an opportunity to provide British produce locally. The viability of the farm will be affected.
- *Recreation Ground* – The ground provides an opportunity for gentle exercise, including for those with mobility problems. The narrowing of the road and potential loss of parking will make level access to the recreation ground difficult.

## **ii) Stuart Andrew MP**

115. Mr Andrew spoke against the proposal making the following material points:

- *Plan led system* – Planning is a significant issue in the area and evokes strong feelings. The community has been proactive in engaging in the local plan process. A number of sites have been proposed in the Farsley, Rodley and Horsforth area to meet future needs. There is a need to look at this site and the others in a sustainable way as part of the local plan process. The Local Plan has been put in draft form to the SoS. The Planning Minister has said that such a plan should carry weight in decisions<sup>55</sup>. The process is put at risk by an opportunistic application which would not achieve sustainable development and has bypassed the LPA.
- *Five Year Housing Supply* – Housing supply is being addressed by the Council.
- *Specific Impacts* – The communities, although part of Leeds, are distinctive towns and villages. They should not be subsumed into the suburbs by urban sprawl. The congestion and safety issues on local highways would be exacerbated by the development at Clariant Works and on the appeal site. There are capacity issues with local schools.

## **iii) Councillor Joseph Marjoram**

116. Councillor Marjoram is a Ward Councillor for Calverley and Farsley who is not opposed to the principle of releasing PAS land and developing the site but is concerned about the scale and made the following other material points:

- *Five Year Housing Supply* – It is clear that LCC do not have a five year supply of housing and in this respect the Council has not had an appeal decision in its favour. Unimplemented planning permissions do not necessarily constitute an

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<sup>55</sup> FRAG3

achievable land supply as many will never be built. The PAS sites need to be part of that supply and some should be released based on a sequential approach which puts sites in the following order – brownfield, regeneration, PAS and Green Belt. Land banking is a rational response to the lack of supply.

- *Status of the site* – It is not credible to say that Kirklees Knowl is the same as Green Belt. It does not compare with the Leeds/Bradford Gap or the Aire Valley. The site is part of the urban area within the ring road.
- *Interim PAS Site Policy* – There is no logic to a 10ha threshold. Why not 9 or 11ha? The scale of ownership is unrelated to sites coming forward. There are 8000 people in Farsley. The development could accommodate existing residents, others with local connections and those interested in the area, including the economically active.
- *Specific Impacts* – Adequate education provision depends on a new school rather than extending existing facilities but the delivery of the new school ultimately is down to the Council. Rodley Roundabout needs a signalised scheme which would address pedestrian safety. There will be an impact on Bagley Lane and Rodley Road. Better connectivity at the Calverley Lane/ring road junction would be achieved by a footbridge.

#### iv) Sandgate Residents Action Group

117. Mrs Payne spoke on behalf of the above group which was formed in response to a planning application by Persimmon Homes on a 10ha PAS site in East Leeds. She made the following material points:

- *Interim PAS Site Policy* – The interim policy is supported. Its content is reasonable and it will prevent the release of such sites prematurely.
- *Plan led system* – Residents groups want to actively engage in the local and neighbourhood plan processes. The outcome of the CS is still unknown, including the housing figures which many people feel are too high. Consultation on the SAP will allow consideration to be given to the most appropriate and sustainable form of development to meet the housing figures. Otherwise there is a bizarre race with developers trying to get past the winning post and circumvent the plan led process before it is completed.
- *Impacts* – The residents' groups share the same concerns about sustainability, school and health provision, transport, access, green space and the character of the areas.

#### Written Representations

118. Written representations were made by **local residents** at both application and appeal stages<sup>56</sup>. The vast majority raised objections to the proposal. Many of the points have been covered in the cases of FRAG and local residents set out above. The following additional material points were also raised:

- *Principle of development* – Land between Leeds and Bradford should be considered comprehensively as part of the respective development plans. Developing the site would set a precedent for land within the ring road. The

<sup>56</sup> 388 responses at application stage, 263 at appeal stage

site should be returned to Green Belt. The development would lead to the affected villages losing their identity

- *Housing Need* – Farsley has already made its contribution to housing targets in Leeds. The vast majority of homes will not be affordable for local people. There is no need for more houses given the number of empty properties and homes for sale.
- *Sustainability* – There is a lack of local jobs so residents would need to travel elsewhere with limited benefit for local businesses. Access to public transport services would be poor. There are few remaining facilities in Rodley.
- *Highways* – The use of Poplar Farm Estate as an access fails to have regard to the inadequate estate roads with 5.5m carriageway widths. The estate would be used as a cut-through to the ring road. This would affect the safety of children walking to school. Construction traffic would also access the ring road via Rodley and other routes, causing dangers. Access by other routes than Calverley Lane is likely due to the inability to turn right at the junction with the ring road. Drivers would also seek to avoid existing and proposed traffic calming. Access difficulties also arise during the winter in bad weather. Priesthorpe Road would also be used as a cut-through to the ring road but is narrowed by parked cars which make it dangerous for all users.
- *Environmental Issues* – The site is used by deer, foxes, bats and a range of birds and other wildlife all of which would be affected by the development. Trees and hedgerows would be lost. The loss of the site would have an adverse affect on local residents' well-being. Public open space under the high voltage electricity lines would be unsuitable.
- *Water Supply* – The development would have an impact on water supply pressures which are already unpredictable.

119. In terms of support, the material points were that there is a need for houses and the development would benefit local businesses.

120. Written representations were also made by **Stuart Andrew MP**, the **Ward Councillors** and separately **Councillor Joseph Marjoram**. The comments of the Ward Councillors and Councillor Marjoram are covered in the cases set out above. The additional points made in writing by Mr Andrew were:

- The site should be returned to the Green Belt. It is farmed land, forms part of important public views and has historical significance by providing separation between communities. The development would impact on trees and wildlife.
- There is more than a five year supply of housing in this particular area of Leeds. Brownfield sites should be the priority.
- Traffic calming in the vicinity of the site would be impractical and counter-productive.

121. Written representations were made on behalf of the owners of land on the opposite site of Calverley Lane, **Gaunts Limited** and **Ian Driver (GID)**. The material points made were:

- PAS land opposite is to be subject to an outline application for around 70 homes<sup>57</sup>. The view is that the proposal is fully compliant with the interim policy on the release of PAS sites. The site is in separate ownership from the appeal site, is severed by Calverley Lane and would be a development of much smaller scale, with different access requirements and with no relationship with the built-up area of Rodley.
- There was an implication that the roundabout to the appeal site could also be used as an access to the GID land. This is not the case as there is an easement around the electricity pylon on the GID land. A separate access from Calverley Lane is proposed which is subject to an in-principle agreement by LCC<sup>58</sup>. It is considered that both sites can be satisfactorily accessed independently. However, there are concerns if any proposed access solution for the appeal scheme would prejudice access to the GID land.
- There is agreement that there is a need for additional housing within Farsley. However, as the site is in excess of 10ha it would not meet Criterion (ii) of the interim policy and there is no evidence that criteria (iv) and (v) are met. The proposal would amalgamate the separate settlements of Rodley and Farsley with their strong community identities. The appeal site should be considered through the Local Plan process. The proposal is premature.

## Obligations

122. The planning obligations referred to in paragraph 6 of this report have been supported by statements by the Council and appellants<sup>59</sup>. In terms of the S106 agreement the Council makes the following material points in relation to Section 122 of the CIL Regulations:

- *Affordable Housing* – The need for affordable housing is set out in the LUPDR and SPG3. The SPG forms the basis for the Council's approach to affordable housing. However, an interim housing policy was approved by the Executive Board in May 2011. This interim policy was introduced to help boost house building and proposed a significant reduction in the percentage of affordable homes required as part of a development. The S106 agreement will deliver 15% of the total number as affordable dwellings, either through being built on site or as an equivalent contribution off-site, in accordance with the interim policy.
- *Education Provision* – SPG11 sets out the Council's approach to securing contributions to the improvement and maintenance of schools. The SPG sets a development threshold of 50 dwellings. The development generates requirements for both primary and secondary school contributions based on a formula and taking into account capacity issues in local schools. The primary school element would be used either to expand existing schools or as a contribution to the delivery of a new primary school. The secondary school element would help to maintain and improve existing schools. The contributions would be phased to accord with delivery of housing numbers.

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<sup>57</sup> An application for 70 dwellings has now been submitted to the Council

<sup>58</sup> Shown as a T-junction to the south of the proposed roundabout

<sup>59</sup> LCC8 and TE8

- *Greenspace contributions* – SPG4 deals with the delivery of on-site greenspace and, where necessary, securing contributions to off-site open space in the form of neighbourhood and major city parks. The appeal proposal will provide areas of greenspace which will need to be maintained and generates a requirement for off-site contributions. The agreement follows the formula in the SPG and outlines reasonable timescales for delivery of on-site open space and contributions to off-site parks.
- *Public Transport Contributions* – There are three elements to this. The payment of a contribution to improve bus stops near the site; the payment of a public transport improvement contribution; and implementation of the Travel Plan<sup>60</sup> recommendations, including provision of Metrocards. The bus stops to be improved are well related to the site. The works would help promote public transport as a travel option. The public transport contributions are supported by the relevant SPD and will help to deliver improvements which will reduce the need to travel by private car. The Travel Plan will also help in shifting people from private cars to other means of travel. The contribution for Metrocards has been based on 75% take up which reflects citywide figures. The Travel Plan fee would help the Travel Wise Team monitor the implementation of the Travel Plan.
- *Off-Site Highway Works* – The improvements to the Rodley Roundabout are necessary to make the development acceptable in road safety terms. However, the Council's signalisation scheme, for which funding is currently being sought, would make the appellants' proposals for the roundabout non-implementable. The provision of a contribution towards the signalisation scheme is reasonable and would be comparable with the necessary works.

123. The appellants support the UU by reference to the following material points in relation to Section 122 of the CIL Regulations:

- *Mechanism* – The UU reserves part of the site from development whilst the Council decides whether or not some 2ha is required for the provision of a two-form entry primary school. The land will be reserved for seven years from the grant of outline planning permission or four years from the final reserved matters approval. It would be a serviced plot. The land will be offered as if it were being compulsorily acquired which would be no different to the Council using such powers under the Education Acts. In this respect allocation of part of the appeal site for a school would not make a difference to the value.
- *Need for School* – The Council's putative reason for refusal 1 on prematurity referred to the need for a school. The obligation is a means of addressing that issue. The CIL tests are satisfied by this reference to the Council's position rather than from the need for the school arising solely from the development.

124. The Council accepts that the UU resolves that part of the putative reason for refusal relating to the school but does not accept that the land would necessarily attract residential value. However, that is a matter for another day.

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<sup>60</sup> DOC8

125. The Council also considers that the appellants should commit to building a reasonable number of dwellings within the current five year supply period, if release of the site is justified to meet the land supply position. Building 50 dwellings per year following the discharge of conditions would be fairly and reasonably related to the implementation of the development. The recommendation to the SoS could be that permission is not granted without such an agreement or undertaking.
126. The appellants understood from discussions that the obligation was to build homes within five years, not as it is put now, tied to the discharge of conditions. However, the appellants are landowners, not house builders and would have to go to the market. By comparison the Poplar Farm development received outline planning permission in 2010, was put straight to the market, reserved matters approval was obtained and it was built out by 2013. Whilst not closing the door to the idea, 50 dwellings would be the top end of what could be delivered and it is a somewhat unusual request.
127. FRAG point out that the number of bus stops to be improved is less than that requested in the original consultation response from Metro. The public transport contribution is less than that required by the SPD. Metro Cards should be provided at 1 per household and to cover both bus and rail. Consideration should be given to the provision of a pedestrian crossing in Town Street, Farsley and measures to curtail rat-running on Canal and Bridge Roads.

## Conditions

128. The Council submitted a list of conditions<sup>61</sup> which had been largely agreed by the appellants and were discussed at the inquiry, in the event that the appeal is allowed. The conditions deal with the need to submit reserved matters and commence the housing development within the relevant timeframes. A separate condition specifies the timeframe for the submission of reserved matters for the primary school linked to the period of seven years in the UU. The appellants consider that this period should be extended to ten years as the primary school might be linked to a later phase of the development whereas the Council suggest that eight years would be a reasonable compromise. A condition requiring phasing would allow the development to progress in appropriate stages.
129. A construction management plan condition is suggested to safeguard highway safety, living conditions and prevent pollution of watercourses. Conditions are proposed requiring further details and timing of highway works in Calverley Lane and elsewhere. The highway works in Calverley Lane would also need trees and hedges to be suitably protected. A condition is required to ensure the submission of a drainage scheme, including SUDS, and its phasing taking into account the two catchments. Flood risk alleviation measures are also necessary in accordance with the recommendations of the Flood Risk Assessment<sup>62</sup>. Further intrusive investigations for contamination and coal workings are

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<sup>61</sup> LCC7

<sup>62</sup> Contained within Appendix 13.1 of the Environmental Statement – DOC2

required on the site, following the Phase 1 Desk Study<sup>63</sup> and recommendations contained within the Environmental Statement<sup>64</sup>.

130. The appellants, whilst accepting that sustainability measures should be incorporated within the development, consider that these should not be as prescriptive as framed in the proposed condition. The relevant SPD is discretionary, not mandatory. The Council consider that the adopted SPD requirements are sufficiently precise and are in the context of Policy GP5 of the LUDPR and policies of the emerging CS. Conditions requiring bat mitigation measures, biodiversity protection and enhancement and safeguarding of birds are proposed. There is Japanese Knotweed and Himalayan Balsam on the site which need to be eradicated.
131. Discussion took place about the possibility of improving Public Footpath No 18 and the pedestrian link to Kirklees Estate. The appellants pointed out that they are outside their control. The Council has powers under the Highways Act to facilitate improvements to footpaths. The ownership and status of the Kirklees Estate link was unclear.

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<sup>63</sup> Contained within Appendix 12 of the Environmental Statement

<sup>64</sup> Chapter 12, paragraph 102

## Conclusions

*The numbers in square brackets [ ] refer back to earlier paragraphs which are relevant to my conclusions.*

### **Main Considerations**

132. I have identified the main consideration in this case to be:

Whether planning permission should be granted, taking into account local and national planning policies on the delivery of housing, including:

- (a) the release of sites in the context of the spatial strategy for Leeds; and,
- (b) the need for a five year supply of deliverable housing sites.

### **Spatial Strategy**

#### *The existing development plan*

133. The LUDPR is the development plan for Leeds but was adopted in 2006. Its strategy, including that brownfield land should be developed in preference to greenfield sites, was based on national policy at the time<sup>65</sup> and an RSS housing requirement of an average of 1930 dwellings per year. The housing requirement increased with the review of the RSS in 2008 so that it stood at 4300 dwellings per year. Since then the need to release allocated greenfield housing sites was recognised in a string of appeal decisions followed by the Council's release of further Phase 1 and Phase 2 sites allocated by Policy H3 of the LUDPR [IR73].

134. Policy N34 protected land not envisaged to be needed for development in the period covered by the housing policies of the LUDPR (2003-2016) but with the intention that such land would be available for longer-term development needs [IR17]. Given the objectives of the policy and the number of sites subject to PAS, it was appropriate that the reasoned explanation indicated that the suitability of protected sites for development would be comprehensively reviewed as part of the preparation of the LDF.

135. Paragraph 85 of the Framework, although related to the definition of Green Belt boundaries through Local Plans, proposes a similar approach for "safeguarded land" between the urban area and Green Belt. The appeal site is still protected by development plan Policy N34 and the appeal proposal is contrary to the provisions of the policy [IR17]. I will deal with the extent that the policy can be considered up-to-date when I come onto my overall conclusions.

#### *The emerging development plan*

136. The emerging CS is based on the policies and overall vision of the now revoked RSS. In addition it is intended to support and facilitate the Leeds Growth Strategy. This Growth Strategy is consistent with one of the core planning principles of the Framework, proactively driving and supporting sustainable economic development, and the objective of boosting significantly the supply of housing.

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<sup>65</sup> Planning Policy Guidance 3: Housing

137. The Council has undertaken an assessment of need using a SHMA and related reports [IR66]. This evidence base is more up-to-date than that which underpinned the RSS. The CS includes a requirement to provide 70000 (net) new dwellings between 2012 and 2028. Although not markedly different to RSS requirements which flowed from Policy H1 of the LUDPR, a "saved" development plan policy, I consider that it is appropriate to use the CS total housing requirement in that it reflects both objectively assessed need and current national and local housing growth strategies. The appellants accept that around 70000 dwellings is a reasonable requirement for the CS plan period [IR67].
138. The Council needs to find sites for around 34000 dwellings [IR21]. The Council proposes that the considerations within Policies SP1 and SP6 will be used to achieve the distribution of housing set out in Policy SP7. The Council accepts that housing development will need to take place on urban extensions on greenfield land adjacent to the MUA and major settlements as well as infill. The proposal constitutes an urban extension on greenfield land adjacent to the MUA.
139. The approach to the location of housing development is reflected in the Issues and Options SAP which considers PAS land and the need for a selective review of Green Belt sites under Policy SP10 of the CS. Moreover, the Council has been prepared to release some PAS sites in advance of the publication of a Draft SAP to boost housing supply [IR22]. In terms of the Outer West HMCA, the emerging strategy indicates that sites for some 2660 dwellings will need to be allocated. The Issues and Options SAP shows Green and Amber sites in the same area with a capacity of 3515 dwellings.
140. The considerations set out within Policies SP1 and SP6 cover the main impacts of the development raised at the inquiry. I attach some weight to these policies as they have reached examination stage and they are reasonably consistent with the core planning principles of the Framework. I will deal with the relevant impacts referred to within Policies SP1 and SP6 in turn in considering whether the site should be released in the context of the emerging spatial strategy for Leeds.

#### *PAS Interim Policy*

141. Although not a development plan policy and something to which I can attach limited weight to, I have also taken the PAS Interim Policy into account on the basis that it represents a pragmatic approach by the Council to ensuring an ongoing supply of housing land pending the publication of the SAP.
142. The proposal would meet Criteria i) and iii) of the PAS Interim Policy now that land has been safeguarded for a primary school. The site exceeds 10ha so Criterion ii) would not be met and, as a result, consideration need to be given to Criteria iv) and v). In terms of iv), "area" is not defined but there are some significant developments in the vicinity of the appeal site such as Clariant Works to the north which lies within the North Leeds HMCA but there appear to be more limited opportunities within the Outer West HMCA. The evidence about whether housing land is demonstrably lacking is inconclusive, particularly as criterion iv) lacks clarity.
143. There are some benefits arising from the development. Those relating to highways infrastructure are necessary for the development to go ahead, although the footway/cycleway along the ring road, in particular, would be of

wider benefit. The affordable housing provision is of benefit but is not directly tied to the redevelopment of a brownfield site and does not exceed the current 15% target. The provision of a primary school would address an infrastructure deficit. However, overall, although CIL compliant, the planning benefits are not, in my view, significant (Criteria v)).

### *Sustainability*

144. Although Policy SP1 indicates that priority will be given to previously-developed land and infill sites in identifying land for development, greenfield land comprising sustainable extensions to settlements is also recognised as being suitable. The appeal site is adjacent to settlements within the MUA [IR17].
145. There are a number of bus services within walking distance of the site providing links to Leeds and Bradford as well as other more local destinations. However, most are further than 400m away, some of these services are infrequent and the nearest route to Leeds is circuitous. The railway station at New Pudsey is 30 minutes walking distance or more from the site such that it is unlikely that many residents of the site would access it by foot [IR102]. Access by cycle or bus would be possible but most residents of the site would be likely to reach the station by private car.
146. The northern end of Farsley town centre is some 10 minutes walk from the site. There are some local employment sites nearby. However, the convenience store, post office, doctor's surgery, dentist, schools and larger employers are further away. Rodley and Bagley have limited facilities. Larger shops such as those at the Owlcoates Centre are beyond the railway station.
147. The proposals to improve local bus stops, provide Metro Cards and pay a public transport contribution [IR122] are measures which would have the potential to encourage use of public transport. The latter is based a modal split applied to the formula within the relevant SPD<sup>66</sup>. The provision of footways and cycleways within and beyond the development would enable access to local services other than by private car [IR14 and 15].
148. The site is not within an area at risk from flooding. The scheme would incorporate a sustainable drainage system [IR58]. Other sustainability measures could be included within the development.
149. The off-site improvements and measures within the development would have some, albeit limited, effect on residents' propensity to use transport modes other than the private car, given the site's relationship to public transport and local services. I note the position in SOCG2 as to the sustainability of the location and the agreed position in relation to the Poplar Farm site [IR57].
150. I conclude that, despite some of the deficiencies in public transport provision and the walking distances to services, the proposal would constitute a sustainable development and would comply with Policies N12, T2, T5 and T2D of the LUDPR in this regard. In arriving at this conclusion I have had regard to the accessibility criteria within the relevant SPD [IR102] and emerging CS Policy T2 but also to the site's proximity to the MUA, existing development and the settlements of Farsley, Rodley and Bagley.

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<sup>66</sup> Mr Owen's evidence in response to Inspector question

### *Educational and Health Infrastructure*

151. Local schools appear to be close to capacity and there was evidence given at the inquiry about difficulties of getting places [IR114]. LCC has identified the need for at least a 1 Form Entry Primary School in the area<sup>67</sup> based on existing and proposed demands, including the appeal site. The Council has not identified a site. The appellant has responded to this need by safeguarding 2ha of the appeal site for a school [IR32 and 123]. In addition a financial contribution would also be made [IR122]. On the basis that the Council is satisfied that this mechanism overcomes its concerns about education provision, the proposal is acceptable in this regard. The issue of the value of the site and how this would affect the school being brought forward is not a matter for this appeal, suffice to say that the UU includes valuation mechanisms.
152. Although concerns have been raised about the ability of the local doctor's and dentist's surgeries to cope with additional patients [IR114], neither LCC nor the health authorities have raised this as an issue. On this basis, lack of health care provision would not be a reason to resist the development.

### *Highways and Drainage Infrastructure*

153. The ring road and its major junctions at Rodley Roundabout and Dawson's Corner are busy, particularly during morning and evening peaks. I experienced this during unaccompanied site visits. It is understandable that FRAG and local residents have raised concerns about the capacity of the highway network to accommodate further development of the scale proposed.
154. I am satisfied that the increased use of Rodley Roundabout would be offset by the improvements either as proposed by the appellants (with or without the Clariant Works development) or as part of the signalisation scheme such that queuing and safety associated with the roundabout and its approaches would not worsen [IR52 and 53]. As a consequence there would be no increase in the use of Canal and Bridge Roads as rat-runs or exacerbation of backing-up on Bagley Lane.
155. Impacts on Dawson's Corner, Old Road/Bradford Road and other junctions would be modest and the residual cumulative impacts would not be severe, the test required by Paragraph 32 of the Framework. Pedestrian flows arising from the appeal site would not justify improvements to the zebra crossing near the Old Road/Bradford Road junction [IR51].
156. The narrowing of Calverley Lane near the recreation ground would still allow vehicles to park on street within a carriageway width not below that recommended by MfS [IR54]. The extension of the 30mph speed limit and footway improvements would ensure that Calverley Lane operated safely with the development. The railings where the footpath link from the Kirklees Estate meets the road would be replaced on the new kerb-line. The improvements to the junction of Calverley Lane with the ring road would improve its function and safety. Crossing the ring road towards Calverley would remain difficult for pedestrians but would not be a reason to resist the development. Provision of a footbridge has not been justified. The cycleway-footway on the ring road

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<sup>67</sup> TE1

highway verge could incorporate safety measures and would be a commonplace type of scheme.

157. The additional traffic using Town Street would not be significant enough to impact on its function as a local centre, including its safe use by pedestrians. There is insufficient justification for the developer to provide an additional pedestrian crossing.
158. Poplar Farm, as an access, would provide carriageway widths of 5.5m which meet MfS guidelines and advice within the Street Design Guide SPD for Type 1 Connector Streets serving up to 300 dwellings. Parked cars within the estate would assist in reducing traffic speeds so that pedestrian safety would be maintained. Given the access from Calverley Lane to the southbound carriageway of the ring road in the direction of Pudsey, Leeds and Bradford, Poplar Farm would operate as the secondary access, as intended, so would, in practice, serve fewer than 300 dwellings.
159. Providing proposed traffic calming meets agreed standards it would benefit highway safety.
160. The proposal to provide SUDS so that run-off would be at greenfield rates provides sufficient comfort such that localised flooding that has occurred would not be exacerbated by the development. The detailed design of the drainage system, which could be conditioned, would take into account the infiltration capacity of the soils, rainfall levels and climate change. Whilst noting the local concerns about the capacity of off-site sewers, there is no evidence before me that they would be unable to take foul water flows from the development [IR58].
161. In conclusion, the impact on highways and drainage infrastructure would be acceptable, subject to the measures proposed as part of the development, and there would be compliance with Policies GP5 and T2 of the LUDPR in these respects. In arriving at this conclusion, I note that the Highways Authority and Statutory Drainage Consultees have not objected subject to the aforementioned measures being incorporated.

#### *Green Belt Purposes, Local Character and Identity*

162. The Inspector who considered the original LUDP pointed to some local characteristics of the site but concluded that it should be excluded from the Green Belt. The Inspector into the LUDPR pointed to the Green Belt attributes of the site of checking sprawl, preventing coalescence and safeguarding the countryside from encroachment [IR107] but recommended that it be retained as PAS land until such time as a comprehensive review of all PAS sites was undertaken.
163. Green Belt boundaries will be reviewed as part of the SAP. The open nature of the appeal site has a visual connection with the Green Belt land to the west of the by-pass when seen in longer views from the northern slopes of the Aire Valley. However, even from this direction and certainly from closer up, the ring road provides a clear physical boundary. In the context of the Green Belt as a whole, the Leeds/Bradford gap and development needs for the city, it would seem unlikely that the site would be restored to the Green Belt as part of the SAP review.

164. That said the local characteristics of the site are of merit. The site maintains a physical separation between the distinct communities of Farsley and Rodley [IR107 and 114]. Although development along Bagley Lane has led to the conjoining of the built-up area to the east, the overall perception is still of two separate settlements. The Masterplan shows a central tract of open space following the line of the pylons [IR14], but this would not be perceived in near or distance views as separating the settlements.
165. The appellants' underplay the contribution that the green and open characteristics of the site make to public views from Calverley Lane, the recreation ground, Public Footpath No 18 and other surrounding public land. These are locally important, particularly as they are on Farsley residents' doorstep, the site appearing to be unique in that respect [IR108].
166. The recreation ground is at the northern extremity of the Farsley Conservation Area and the views across open fields and the Aire Valley provide a contrast to the linear urban heart of the settlement. The development of the fields would adversely affect the setting of the Conservation Area. The existing trees, proposed new planting and relative levels [IR60] would not mitigate the significant change in character that would occur, the greenery merely providing a foreground to urban development. In longer distance views from the cemetery and St Margaret's Church in Horsforth, the site's contribution to the balance in the Aire Valley between development and greenspace would be lost.
167. I conclude that the proposal would result in an adverse impact on local character and identity and the loss of a site of intrinsic value.

#### *Conclusions on Spatial Strategy*

168. I have considered the conflict with Policy N34 of the LUDPR, the only development plan policy that applies specifically to the site, against the need, recognised in the emerging CS and SAP and reinforced by the interim policy, that greenfield sites, including PAS land, will need to be brought forward for housing development. The site lies adjacent to the MUA. The proposal is acceptable in terms of education and health provision and highway, and drainage infrastructure. The development would be relatively sustainable.
169. However, I find adverse impacts of the development on local character and identity of the area and concerns as to whether the distinctiveness of the affected neighbourhoods would be reinforced or enhanced as required by emerging CS Policies SP1 and SP6. The development is not fully compliant with the PAS Interim Policy. That said in other respects the development would fit with the spatial strategy for Leeds. The specific harm that I have found in relation to one of the criteria that will guide the location of development in the context of the Spatial Strategy for Leeds needs to be balanced against other considerations which I will come onto in my overall conclusions.

## ***Five Year Housing Land Supply***

### *Requirement*

170. As indicated above [IR137], the emerging CS housing requirement is the most appropriate to be used in the period up to 2028. However, there are three main areas at issue between the appellants and the Council in calculating the five year housing supply requirement – the “step-up”, the backlog and whether the buffer should be 5% or 20% [IR67]. I will deal with these in turn.

#### *(i) Step-Up*

171. The “step-up” approach within the CS indicates that a smaller number of dwellings per annum need to be provided up to 2016/17 [IR21] based on household formation and need evidence [IR68]. This approach has been subject to objections during the CS examination. In considering the evidence before the inquiry, I accept that some account should be taken of recessionary factors. The Council has undertaken a thorough analysis of the different scenarios. However, the Council’s approach needs to be balanced against the requirement within the Framework to boost significantly the supply of housing and in the context of the Leeds Growth Strategy [IR39]. Moreover, the ONS 2011 Household Projections and the REM figures suggest a requirement above the CS early years 3660 dwellings per annum [IR40].

172. I have had regard to the range of scenarios debated at both the examination into the CS and this appeal inquiry and indeed considered by the Edge Analytics Reports. In the current circumstances and pending the receipt of the Inspector’s report into the CS examination, applying the CS average requirement of 4375 units per annum rather than the “step-up” is the approach that should be followed. This is consistent with the approach taken by the Inspector in the recent Horsforth appeal. It also reflects the fact that the period when headship rates would remain constant is coming to an end [IR40]. This leads to a five year requirement of 21875 dwellings. This would be marginally above the requirement based on the revoked RSS figures [IR37].

#### *(ii) Back Log*

173. The SHMA indicates that pre-CS there was no backlog as the suppressed demand was taken into account in the assessment of future need [IR71]. However, the evidence at the inquiry, that since the start of the CS period, there has been a shortfall in provision against the requirement, was not disputed. For example in 2012/13 there was a shortfall in provision of some 2000 units. Indications are that in 2013/14 there will be further undersupply of about 1200 units [IR38]. Whilst I accept that it is reasonable for the Council to undertake a full review of the five year requirement position as part of its new SHLAA, I need to consider the evidence before me at this inquiry in terms of the five year position.

174. On the basis of the Framework’s requirements, including the application of the buffer, and the emerging national guidance in the NPPG, the under-supply should normally be dealt with in the next five years rather than over the whole plan period. The Sedgefield approach rather than the Liverpool approach is adopted in most of the appeal decisions put before me on the subject [IR39]. I see no convincing case for the backlog of over 3000 units being spread over

the whole plan period and to do so would mean that some of the current need would not be met until towards the end of the Plan period (2028).

*(iii) Buffer*

175. Until 2008/09 Leeds was exceeding its housing land supply targets [IR72]. The recession then took hold which had a particularly severe effect on supply in Leeds, where much of the land was brownfield and on city centre sites, including flat developments. At the same time RSS targets stepped-up but based on unrealistic population forecasts. As a result Leeds has not met its housing targets in the intervening period. In response LCC has released allocated greenfield sites and undertaken other interventions to maintain the stock of permissions but completions have not increased [IR73 and 74]. Most recently it has introduced the interim policy for PAS sites but its effect has not been seen as yet [IR75].
176. On the basis that recessionary factors have largely been outside the control of the Council and steps have been taken, a record of persistent under delivery of housing has not been proven, so a buffer of 5%, not 20%, should be added to the five year requirement.

*Conclusions on requirement*

177. Adding the 3000 backlog and the 5% buffer to the CS average requirement leads to a five year requirement of just under 26000 dwellings. Even if the Liverpool approach to dealing with the backlog was applied there would still a five year requirement of some 24000 dwellings.

*Supply*

178. There are a number of factors set out by the appellant which have an effect on the actual five housing supply in place at the time of the inquiry [IR43 and 44]. Of these the most significant, in terms of housing numbers, and the least contentious are those sites that are not likely to come forward which are shown in the five year supply [IR80] and the sites that are shown as Red or Amber within the SAP so could not be said to be available, suitable, achievable or viable. However, in the interests of balance, there are some Green SAP sites which could be added to the five year supply.
179. In addition there is the high supply figure for 2016/17 within the AMR. Information on the suggested smaller contribution from windfalls and lower demolitions is more uncertain. However, even without the adjustments for the 2016/17 figure and the less than predicted contributions from windfalls and demolitions, the Council itself calculates that the current five year supply would be some 19760 dwellings [IR84]. This would be below the Council's stated requirement of 20307 homes based on the "step-up" approach and less than a four year supply set against my conclusions on the requirement [IR177].

*Conclusions on housing land supply*

180. As acknowledged above in relation to the requirement, it is not practical for the Council to undertake a comprehensive review of the housing land supply position for every appeal involving housing development. Nonetheless, appellants are entitled to undertake an analysis to support their own proposals, particularly as the base date for evidence from which the five year supply was

derived was September 2012 [IR45]. In this case the evidence indicates that a five year housing supply cannot be demonstrated.

### ***Other Considerations***

181. The development would lead to the loss of some small parcels of Grade 3a agricultural land and a larger area of Grade 3b agricultural land. There is no objection to the proposal from the farmer who leases the land for grazing [IR59]. There would no significant loss of the best and most versatile agricultural land.
182. There is no evidence that the development would lead to increased crime and disorder or put additional burdens on the police. The detailed layout could be carefully planned to avoid areas lacking natural surveillance.
183. There would inevitably be disruption to local residents during the construction phases of a development of this nature but the use of a method statement would reduce the temporary impacts. The detailed layout and lighting scheme could be designed such that the living conditions of neighbouring residents would not be unacceptably affected, albeit that the urbanising of the site would change their outlook.
184. The site is used by some wildlife which is appreciated by locals [IR118] but there is no evidence that it contains particularly sensitive habitats or protected species. The information before me indicates that most trees and hedges would be retained [IR14]. Conditions could be imposed to ensure that the site is developed carefully and that biodiversity features are incorporated.
185. No objections have been raised by Yorkshire Water in relation to water supply.
186. In relation to the representations made by the owners of the land on the opposite side of Calverley Lane [IR121], it would appear that both sites could be accessed independently without prejudicing the development of the other.

### ***Obligations***

187. The affordable housing obligations respond to identified needs and are supported by existing and emerging development plan policies and SPG, modified to take into account recent market conditions [IR122].
188. The education contributions are also supported by SPG. Given the capacity issues with local schools the contributions are justified. I am satisfied that it is necessary to secure maintenance of on-site open space and provide contributions to off-site parks also in accordance with approved SPG. Contributions to public transport infrastructure and ensuring the implementation of the travel plan measures are also required to encourage for use of modes other than the private car [IR122] and would meet the guidance within the relevant SPD. I am satisfied that the level of public transport contribution is what could reasonably be required for the development.
189. The appellants have put forward improvements to Rodley Roundabout and its approaches to mitigate the impact of the development on this junction. The appellants' scheme would not be necessary should the more comprehensive signalisation scheme go ahead. However, a contribution to the signalisation

scheme would be reasonable as an alternative which is allowed for by the agreement [IR122].

190. The obligations within the S106 agreement are necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind to the development. Therefore, they meet the tests within CIL Regulation 122 and should be taken into account in the decision. I consider that the conditions set out in Paragraph 3.2.2 of the agreement are satisfied and that the obligations should become effective, in the event that planning permission is granted.
191. The proposal, as submitted to the Council, did not include a primary school. The UU makes provision for a school site. I am satisfied that there is a need for a primary school in the area, taking into account existing capacity issues and the proposed development of the appeal site and other sites. This is the only site which has been put forward. Without school provision the proposal would have been unacceptable on the grounds of failure to make appropriate provision for education infrastructure in the area [IR123].
192. The obligation is necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind to the development. It meets the tests within CIL Regulation 122 and should be taken into account in the decision. I consider that the conditions set out in Paragraph 3.2. of the undertaking are satisfied and that the obligation should become effective, in the event that planning permission is granted.
193. I do not regard the Council's suggestion that there should be a commitment to building dwellings within the current five year supply period [IR125] as necessary to make the development acceptable in planning terms, notwithstanding the appellants case that the site is needed to meet land supply requirements. The site would be attractive to a developer. I see no reason why it would not be brought forward in a reasonable timescale. However, detailed approvals would need to be sought, there would be on-site and off-site infrastructure requirements and market conditions can change significantly over time. These factors make such a requirement overly prescriptive and unreasonable. There is no need for such an agreement or undertaking.

### **Conditions**

194. IR128-131 deal with the conditions put forward and discussed at the inquiry. I consider that the conditions dealing with reserved matters; phasing; highway works; a construction method statement; drainage and flood risk; contamination and ground conditions; and biodiversity are necessary for the reasons given in the above paragraphs and elsewhere in the report [IR160, 161, 183 and 184], should planning permission be granted.
195. With regard to the terms of conditions where there was an element of disagreement between the main parties, I consider that a requirement that reserved matters for the school be submitted within eight years is reasonable having regard to the terms of the UU [IR123].
196. I have framed the condition relating to sustainability measures so it is less prescriptive than that suggested by the Council, given the discretionary

guidance within the relevant SPD. I note that emerging policies of the CS such as EN2 have a clear target related to the Code for Sustainable Homes. However, I have not been made aware of whether there are objections to these policies so there is uncertainty as to their final form.

197. There would be ample scope within the development to provide an attractive footpath link as an alternative to the narrow Public Footpath No 18 and such provision should be covered by a condition. There is some uncertainty over the Kirklees Estate link, but there would be a reasonable prospect of it being improved through agreement between the developer and other parties, including LCC. A condition to require improvements would be necessary to enhance the link referred to in the Master Plan and encourage access to Farsley Centre on foot. These conditions would meet the tests in Circular 11/95.

### **Overall Conclusions**

198. The proposal is contrary to the provisions of the development plan Policy N34 which is the starting point. There are adverse impacts on local character and identity. The development is not fully compliant with the PAS Interim Policy.
199. Balanced against these impacts, there are other material considerations. There is not a five year supply of housing land. The site would make a significant contribution to housing provision in Leeds and the area, including affordable homes. Education provision has now been catered for on the site. There are no technical constraints to development of the site subject to the improvements to highways infrastructure and the drainage works that would accompany the development. There are no other overriding objections to the development. Other than the impact on the character of the area, the proposal would perform the economic, social and environmental roles of sustainable development promoted by the Framework.
200. As a five year supply of deliverable housing sites has not been demonstrated relevant policies for the supply of housing should not be considered up-to-date. Policy N34 relates to areas of land safeguarded for long-term development, including housing and Policy H3 deals with the delivery of housing. Both should be considered as policies relevant to the supply of housing and are, therefore, out of date. Paragraph 14 of the Framework indicates that where relevant development plan policies are out-of-date planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies of the Framework as a whole. There are no specific policies in the Framework that indicate that development should be restricted<sup>68</sup>.
201. The conflict with Policy N34, taking into account its out-of-date status, and the adverse impacts on local character and identity do not, in themselves, significantly and demonstrably outweigh the benefits. In this regard I have considered the harm to the setting of the designated heritage asset, Farsley Conservation Area. However, the harm would be less than substantial. The PAS Interim Policy has been subject to legal challenge [1R30] and is of limited weight. The inconclusive position of housing land development opportunities needs to be seen in the context of the lack of a five year supply in the Council

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<sup>68</sup> Footnote 9 of the Framework

area as a whole, the national policy test. The requirement for significant planning benefits goes beyond Framework advice of making otherwise unacceptable development, acceptable.

202. In terms of prematurity, there is a reasonable fit with the emerging spatial strategy for Leeds in the CS in that the site is adjacent to the MUA. The SAP is not at a stage where much weight can be attached to it as an emerging DPD under the terms of Paragraph 216 of the Framework, in that no draft has been published containing firm proposals. Nevertheless, the Issues and Options SAP, in coding the site as Amber, indicated that the site has potential for development. Indeed evidence would suggest that a significant proportion of PAS sites will be needed to meet the housing needs identified in the CS [1R27]. Moreover the interim policy is an acknowledgement by the Council that PAS land needs to be released in advance of the SAP. Although a large development, it would not be at odds with emerging CS strategy and would not be so substantial or have a cumulative effect such that it would prejudice the SAP. It has not been demonstrated that the grant of planning permission would prejudice the outcome of the DPD process as required by The Planning System: General Principles.
203. Given the size of the site, its suitability is being considered as part of the emerging development plan, as intended by Policy N34 and Paragraph 85 of the Framework. Granting planning permission for a sizeable development would be perceived by many as undermining the genuinely plan-led system promoted by the Framework. In this respect the emerging CS and SAP has already empowered local people to become involved. Consideration of the site as part of the SAP process would allow the relative merits of this and other sites (the Green and Amber sites) to be considered in providing development opportunities to meet the needs of Leeds and the particular communities in this part of the city.
204. However, the plan-led system has to be considered in the context of national policy as a whole, including the obligation to keep plans up-to-date. Moreover, the site has been safeguarded for many years to meet long-term development needs, fits reasonably well with the Spatial Strategy and has no technical constraints to development. Development of the site would boost the supply of housing. Permission in this case would not set an undesirable precedent as other greenfield sites can continue to be assessed on their merits having regard to their status, the particular impacts of the proposed development and the other considerations, such as land supply, applicable at that time. I conclude that the adverse impacts would not significantly and demonstrably outweigh the benefits of the development.

### **Recommendation**

205. I recommend that the appeal be allowed and planning permission be granted subject to the conditions set out in Appendix D.

*Mark Dakeyne*

INSPECTOR

## APPENDIX A: APPEARANCES

### FOR THE LOCAL PLANNING AUTHORITY:

Nathalie Lieven	Of Queens Counsel, instructed by the Council's Solicitor
She called	
Martin Elliot MA (Hons) MA MRTPI	Team Leader
Janet Howrie BA (Hons) MTP MRTPI	Principal Planner
Mathias Franklin MPLAN	Principal Planner

### FOR THE APPELLANTS:

Richard Sagar	Solicitor, instructed by ID Planning Limited
He called	
Jonathan Dunbavin BSc MCD MRTPI	Director, ID Planning Limited
Philip Owen BEng (Hons) CEng MICE MIHT	Director, Optima Highways and Transportation
Dick Longdin BSc (Hons) MA FLI	Partner, Randall Thorp LLP
Tim Morley BEng (Hons) CEng MICE	Director Egorum

### FOR THE RULE 6 PARTY, FARSLEY RESIDENTS ACTION GROUP (FRAG):

Martin Joslin	
Phillipa Simpson BSc (Hons) Dip TRP MRTPI (rtd)	
David Cotton BA PHD	
Caroline Gibson	
Andrew Carter	Ward Councillor, Calverley and Farsley Ward

### INTERESTED PERSONS:

Mrs Payne	Sandgate Residents Action Group
Chris Levi	Local Resident
Malcolm Levi	Local Resident
Susan Pickles	Local Resident
Ian Bentley	Local Resident
Don Harris	Local Resident
David Badger	Local Resident
Damien Persich	Local Resident
Sophie Lemm	Local Resident
David Williams	Local Resident
Paul Hogarth	Local Resident
John Threlfall	Local Resident

Keith Parish	Local Resident
Patricia Jackson	Local Resident
Louise Daddy	Local Resident
Teresa Cotton	Local Resident
Keith Lambert	Local Resident
Christine Agar	Local Resident
Nancy Wilson	Local Resident
Philip Kellett	Local Resident
Ian Rhodes	Local Resident
Gareth Sheperd	Local Resident
Jennifer Allum	Local Resident
Richard Jordan	Local Resident
David Holmes	Local Resident
Christine Beckwith	Local Resident
David Cotton	Local Resident
Jean Stevenson	Local Resident
Jane Hickson	Local Resident
Emma Wallis	Local Resident
Catherine Parker	Local Resident
Susan Lacey	Local Resident
Mr Garrett	Local Resident
Joseph Marjoram	Ward Councillor, Calverley and Farsley Ward
Stuart Andrew	Local MP
Neal Stead	Local Resident
Christine Glover	Local Resident
Kevin Tanner	Local Resident
Lisa Banton	Local Resident

## **APPENDIX B: PLANS AND DOCUMENTS**

### **APPLICATION PLANS AND DOCUMENTS**

Plan1 Red Line Boundary Drawing Number 454A.28A  
Plan2 Calverley Lane Proposed Site Access Arrangements Drawing No 11040-GA-03  
Plan3 Masterplan Layout Drawing No 454A.22B  
DOC1 Environmental Statement Volume 1 – Main Text and Figures  
DOC2 Environmental Statement Volume 2 – Technical Appendices  
DOC3 Environmental Statement Non Technical Summary  
DOC4 Planning Analysis Statement  
DOC5 Masterplan, Design and Access Statement  
DOC6 Utilities Study  
DOC7 Statement of Community Consultation  
DOC8 Travel Plan  
For Transport Assessment refer to CD23 and CD24

### **CORE DOCUMENTS**

CD1 DCLG – National Planning Policy Framework (March 2012)  
CD2 HM Government – Laying the Foundations: A Housing Strategy for England (November 2011)  
CD3 ODPM – The Planning System: General Principles (January 2005)  
CD4 LUDPR - Relevant Saved Policies and Proposals Maps Extracts (2006)  
CD5 LCC – Local Development Framework Core Strategy Submission Draft (April 2013)  
CD6 LCC CS Housing Background Paper (April 2013)  
CD7 LCC – SAP - Issues and Options for the Plan Document Extracts (June 2013)  
CD8 LCC SHMA Update (May 2011)  
CD9 LCC Demographic Evidence Update (September 2013) – Edge Analytics  
CD10 NLP – Leeds Local Plan Assessment of Housing Requirement to Inform Examination (September 2013)  
CD11 LCC – Leeds Local Plan Summarising Demographic Evidence – issued at the 9 October 2013 CS Housing Hearing  
CD12 LDF AMR 2011-12 (March 2013)  
CD13 An Assessment of the Leeds District 5 Year Housing Land Supply 2013-2018 by the Leeds Planning Consultant and House Builder Consortium – Final Report 9 September 2013  
CD14 Nick Boles Planning Minister – Speech: Housing the Next Generation (10 January 2013)  
CD15 NLP – Handle with care: The new 2011-based Interim Household Projections (10 April 2013)  
CD16 LGA/Planning Advisory Service – Ten Key Principles for Owning Your Housing Numbers – Finding your Objectively Assessed Need (April 2013)  
CD17 Draft National Planning Practice Guidance – Assessment of Housing and Economic Development Needs and Assessment of Land Availability (2013)  
CD18 LCC Executive Board Report – Housing Delivery (13 March 2013)

- CD19 LCC Executive Board Report - Housing Investment Land – A Strategic Approach to Delivery (17 July 2013)
- CD20 LCC Report to Scrutiny Board (Housing and Regeneration) - Council Approach in Dealing with Offsite Affordable Housing Contributions (24 September 2013)
- CD21 Martin Elliott LCC Rebuttal Proof to the Land at Outwood Lane, Horsforth Inquiry (see APP4)
- CD22 LCC Report to City Plans Panel – Pre-Application Presentation on Spofforth Hill PAS Site and Associated Minutes (11 April 2013)
- CD23 Optima Transport Assessment for appeal site dated September 2012
- CD24 Optima Transport Assessment Addendum dated April 2013
- CD25 Manual for Streets – DoT (2007)
- CD26 LCC - Public Transport SPD Planning Document (August 2008)
- CD27 Guidelines for Planning for Public Transport in Developments – IHT (March 1999)
- CD28 Guidelines for Providing for Journeys on Foot – IHT (2000)
- CD29 Leeds Street Design Guide SPD (August 2009)
- CD30 Appeal Decision Ref: APP/N4720/A/09/2111698 – Land at Kirklees Knowl, Bagley Lane, Farsley (8 March 2010)
- CD31 Statement of Common Ground relating to CD30 (December 2009)
- CD32 Guidance on Transport Assessment – DoT (March 2007)
- CD33 LCC SPG4 – Greenspace Relating to New Housing Development (July 1998)
- CD34 LCC Neighbourhoods for Living SPG (December 2003)
- CD35 LCC SPG3 – Affordable Housing (February 2003)
- CD36 Farsley Village Design Statement (August 2010)
- CD37 LCC Travel Plans SPD (September 2012)
- CD38 LCC SPG11 – Section 106 Contributions for School Provision (February 2001)
- CD39 LCC Pudsey Local Plan (1995) – Extract from Proposals Plan
- CD40 LUDP – Extract from Inspector's Report (1999)
- CD41 LUDPR – Extract from Inspector's Report (2006)
- CD42 LCC Development Plan Panel Report – SHLAA 2012 Update
- CD43 Letter from Barratt Homes re: SHLAA 2012 Update dated 19 August 2013
- CD44 LCC Response to CD43 dated 12 September 2013
- CD45 LCC Housing Land Monitor 31 March 2013

## **OTHER DOCUMENTS SUBMITTED BEFORE THE INQUIRY**

### **GENERAL DOCUMENTS**

- GEN1 Questionnaire
- GEN2 Notification about receipt of appeal (4 July 2013)
- GEN3 Letters of representation in response to appeal notification
- GEN4 Notification of inquiry arrangements (11 November 2013)

### **STATEMENTS OF COMMON GROUND**

- SOCG1 – Statement of Common Ground agreed by appellants and LCC relating to non-highway/transport matters

SOCG2 – Statement of Common Ground agreed by appellants and LCC relating to highway/transport matters including Appendices A to T

### **LPA DOCUMENTS**

- LPA1 Statement of Case
- LPA2 Proof of Evidence of Martin Elliot
- LPA3 Proof of Evidence of Janet Howrie
- LPA4 Proof of Evidence of Mathias Franklin and Appendix
- LPA5 Rebuttal Proof of Evidence of Martin Elliot and Appendices 1 to 7
- LPA6 Rebuttal Proof of Evidence of Janet Howrie

### **APPELLANTS' DOCUMENTS**

- APP1 Statement of Case
- APP2 Proof of Evidence of Jonathan Dunbavin and Appendices ID1 to ID41
- APP3 Proof of Evidence of Philip Owen and Appendices A to Z
- APP4 Rebuttal Proof of Evidence of Philip Owen
- APP5 Appeal Decision Ref: APP/N4720/A/13/2192208 – Land at Outwood Lane, Horsforth, Leeds (13 November 2013)
- APP6 SoS Appeal Decision Ref: APP/B3410/A/13/2197299 – Land at Red House Farm, Lower Outwoods Road, Burton-upon-Trent (12 November 2013)
- APP7 Statement on Drainage Strategy and SUDS by Tim Morley (11 November 2013)

### **FRAG DOCUMENTS**

- R6.1 Statement of Case
- R6.2 Bundle of Proofs and Supporting Evidence
- R6.3 Rebuttal Proofs including Appendices A to D
- R6.4 Comments on Optima letter to LCC dated 17 October 2013
- R6.5 Statement on Travel Plan

### **DOCUMENTS SUBMITTED AT THE INQUIRY**

#### **GENERAL DOCUMENT**

- ATT1 Attendance Lists for Days 1 to 6

### **LPA DOCUMENTS**

- LCC1 Current status of PAS sites (4 tables)
- LCC2 List of sites sieved out of 5 year supply but Green in Site Allocations DPD
- LCC3 Residential Eye – UK Residential Forecasts November 2013 – Helping Hands – Jones Lang LaSalle
- LCC4 LUDPR 2006 – Proposals Map and Inset Maps
- LCC5 LUDPR – Inspector's Report – Chapter 5 – pages 8-28
- LCC6 LCC CS Settlement Hierarchy Map 3
- LCC7 Draft Conditions
- LCC8 Statement on CIL Regulation 122 compliance

## LCC9 Closing submissions

### **APPELLANTS' DOCUMENTS**

- TE1 Letter from LCC re primary school provision (12 September 2013)
- TE2 Report to LCC Joint Plans Panel - CS Examination Update (14 November 2013)
- TE3 Parking Surveys on Calverley Lane outside recreation ground (9/10 November and 16/17 November 2013)
- TE4 Strategic Environmental Assessment of the Revocation of the RS (January 2013)
- TE5 Extract from Hansard (24 October 2013)
- TE6 E-mail from Yorkshire Water relating to foul drainage (21 November 2013)
- TE7 Summary of S106 agreement between appellants and LCC
- TE8 Statement on CIL Regulation 122 compliance on UU
- TE9 Appearances List
- TE10 Opening Submissions
- TE11 S106 agreement between LCC and the appellants (27 November 2013)
- TE12 Unilateral Undertaking under S106 given by the appellants (27 November 2013)
- TE13 Closing Submissions
- TE14 Notes on the procedures contained in Parts II and III of the Land Compensation Act 1961

### **FRAG DOCUMENTS**

- FRAG1 Report to LCC Scrutiny Board re SHLAA 2012 (30 October 2013)
- FRAG2 Local Pinch Point Fund Application Rodley Roundabout Signalisation
- FRAG3 Extract from Hansard (25 November 2013)
- FRAG4 Extract from DMRB
- FRAG5 Rebuttal on walking times contained in Philip Owen's Rebuttal
- FRAG6 Opening Statement with addendum
- FRAG7 Closing submissions

### **LOCAL RESIDENTS' DOCUMENTS**

- LR1 Tom Tom European Congestion Index (David Cotton)
- LR2 Statement from Mrs Payne, Sandgate Residents Action Group
- LR3 Photograph of parking outside recreation ground (Chris Levi)
- LR4 Photographs of development on Coal Hill Lane, Farsley and vacant land in Stanningley (Catherine Parker)

## **APPENDIX C: Abbreviations**

AMR	Leeds Local Development Framework Annual Monitoring Report
CIL	Community Infrastructure Levy
CS	Core Strategy
DCLG	Department of Communities and Local Government
DMRB	Design Manual for Roads and Bridges February 1999
DoT	Department of Transport
DPD	Development Plan Document
HMCA	Housing Market Characteristic Area
IHT	Institution of Highways and Transportation
LGA	Local Government Association
LCC	Leeds City Council
LDF	Local Development Framework
LPA	Local Planning Authority
LUDP	Leeds Unitary Development Plan 2001
LUDPR	Leeds Unitary Development Plan Review 2006
MfS	Manual for Streets
MUA	Main Urban Area
NLP	Nathaniel Lichfield and Partners
NPPG	National Planning Practice Guidance
ODPM	Office of the Deputy Prime Minister
ONS	Office of National Statistics
PAS	Protected Areas of Search
REM	Regional Economic Model
RSS	The Yorkshire and Humber Plan - Regional Spatial Strategy to 2026

SAP	Site Allocations Plan
SEA	Strategic Environmental Assessment
SHLAA	Strategic Housing Land Availability Assessment
SHMA	Strategic Housing Market Assessment
SoS	Secretary of State
SOCG	Statement of Common Ground
SPD	Supplementary Planning Document
SPG	Supplementary Planning Guidance
SUDS	Sustainable Urban Drainage System
S106	Section 106 of the Town and Country Planning Act 1990
TRICS	Trip Rate Information Computer System
UU	Unilateral undertaking under S106

## **APPENDIX D: Recommended Conditions**

### *Reserved Matters*

- 1) Details of the access, 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.
- 2) Application for approval of the reserved matters for the site or any phase (excluding the land to be reserved for the two form entry primary school) 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) Application for the approval of reserved matters for the land reserved for the two form entry primary school shall be made to the local planning authority before the expiration of eight years from the date of this permission.

### *Phasing*

- 5) No development shall take place until details of any phasing of the development hereby permitted have been submitted to, and approved in writing by, the local planning authority. The development shall be carried out in accordance with the approved details.

### *Highways*

- 6) Notwithstanding the submitted plans, further details of the following and a timetable of implementation of the highway works shall be submitted to, and approved in writing by, the local planning authority prior to commencement of development:
  - (i) Proposed Calverley Lane site access arrangements and footway link towards Farsley (Drawing No: 11040-GA-03/Rev B)
  - (ii) Proposed Calverley Lane/Ring Road Improvement Scheme (Drawing No: 11040-GA-05/Rev B)
  - (iii) Proposed Ring Road A6120 Footway/Cycleway Improvement Scheme (Drawing No: 11040/SK/04/Rev A)
  - (iv) Proposed Bagley Lane Traffic Calming Improvement Scheme (Drawing No: 11040/SK/05/Rev A)
  - (v) A cycleway link through the appeal site
  - (vi) A footway through the landscaped area towards the southern boundary of the site linking Calverley Lane with the Poplar Farm Estate
  - (vii) Improvements to the footpath link onto Kirklees CloseThe works shall then be implemented in accordance with the approved details and timetable.

### *Construction*

- 7) No development shall take place 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) details of access, including routing of construction traffic
- ii) hours of construction and construction deliveries
- iii) the parking of vehicles of site operatives and visitors
- iv) loading and unloading of plant and materials
- v) storage of plant and materials used in constructing the development
- vi) the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate
- vii) wheel washing facilities
- viii) measures to control the emission of dust and dirt during construction
- ix) a detailed method statement for the protection of all watercourses on or adjacent to the site from any physical or chemical disturbance or pollution during all site operations
- x) a scheme for recycling/disposing of waste resulting from construction works.

#### *Protection of Vegetation*

- 8) No works, including ground preparation, shall commence on the site until all existing trees, hedges, bushes shown to be retained on Drawing No: 11040-GA-03/Rev B are fully safeguarded by protective fencing and ground protection in accordance with the specifications and the provisions of "British Standard 5837: 2012 Trees in relation to design, demolition and construction". Such measures shall be retained for the duration of the construction works.

#### *Drainage and Flood Risk*

- 9) No development shall take place until a scheme for the disposal of surface water and foul drainage has been submitted to, and approved in writing by, the local planning authority. The details shall incorporate the following:
  - (i) the use of a Sustainable Urban Drainage System for the surface water as set out in the Drainage Strategy Report dated February 2012;
  - (ii) a programme for the implementation of the works relative to the water catchments and the phasing of the development;
  - (ii) information about the design storm period and intensity, the method employed to delay and control the surface water discharged from the site to the equivalent of greenfield run-off and the measures taken to prevent pollution of the receiving groundwater and/or surface waters;
  - (iii) a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public authority or statutory undertaker and any other arrangements to secure the operation of the scheme throughout its lifetime.The scheme shall be carried out in accordance with the approved details and programme.
- 10) The development hereby permitted shall be carried out in accordance with the Flood Risk Assessment (FRA) dated February 2012 and the following mitigation measures detailed within the FRA:
  - i) There shall be no built development in the area identified as at risk of flooding in the 1 in 1000 year flood event on Red Beck (Figure 3 of the Hydraulic Modelling Technical Note dated 19 January 2012);

- ii) There shall be no built development within 8 metres of Red Beck;
- iii) The alignment and condition of the ordinary watercourse referred to in paragraph 2.4.2 of the FRA shall be fully investigated and the easement requirement submitted to, and approved in writing by, the local planning authority prior to commencement of development on site;
- iv) Finished floor levels of the proposed dwellings shall be set no lower than 300mm above the surrounding ground levels.

#### *Contamination and Ground Conditions*

- 11) Development shall not commence until intrusive ground investigations have been carried out and a report of the investigations has been submitted to, and approved in writing by, the local planning authority. Where remediation measures are shown to be necessary in the report and/or where soil or soil forming material is being imported to site, development shall not commence until a Remediation Statement demonstrating how the site will be made suitable for the intended use has been submitted to, and approved in writing by, the local planning authority. The Remediation Statement shall include a programme for all works and for the provision of Verification Reports.
- 11) If remediation is unable to proceed in accordance with the approved Remediation Statement, or where significant unexpected contamination is encountered, the local planning authority shall be notified in writing immediately and operations on the affected part of the site shall cease. An amended or new Remediation Statement shall be submitted to, and approved in writing by, the local planning authority prior to any further remediation works which shall thereafter be carried out in accordance with the revised approved Statement.
- 12) Remediation works shall be carried out in accordance with the approved Remediation Statement. On completion of those works, the Verification Report(s) shall be submitted to the local planning authority in accordance with the approved programme. The site or phase of a site shall not be brought into use until such time as all verification information has been approved in writing by the local planning authority.
- 13) Prior to the commencement of development, intrusive site investigations, in accordance with the recommendations within Paragraph 102 of Chapter 12 of the Environmental Statement, shall be undertaken and written details of the investigations submitted for the written approval of the local planning authority. In the event that the site investigations confirm the need for remedial works to treat any areas of shallow mine workings to ensure the safety and stability of the proposed development, these works shall be undertaken prior to commencement of development.

#### *Sustainability*

- 14) Prior to commencement of development, a Sustainability Statement shall be submitted to, and approved in writing by the local planning authority, including measures to be incorporated into the development reflecting the guidance within the Council's "Building for Tomorrow Today Sustainable Design and Construction SPD". The measures shall be carried out as approved.

### *Biodiversity*

- 15) Prior to the commencement of development a Bat Mitigation Plan, including a timetable for carrying out the plan, shall be submitted to, and approved in writing by, the local planning authority to implement the recommendations of the "Tree inspection and bat activity survey" report dated October 2011. The plan shall be implemented in accordance with the approved details and timetable.
- 16) Prior to the commencement of development a Biodiversity Protection and Enhancement Plan, including a timetable for carrying out the plan, shall be submitted to, and approved in writing by, the local planning authority. The Plan shall include details of the protection of tree and hedgerow habitats together with any wildflower seeding of proposed SUDS areas, enhancements along the beck, and planting across the site to benefit wildlife. The Plan shall include objectives to benefit biodiversity and a maintenance schedule of how the features will be managed on an annual basis, together with details of who shall carry out the maintenance. The Plan shall thereafter be implemented in accordance with the approved details and timetable.
- 17) Prior to the commencement of development, details of bat roosting and bird nesting opportunities (for species such as house sparrow, starling, swift, swallow and house martin) to be provided within buildings and elsewhere on-site shall be submitted to, and approved in writing by the local planning authority. The details shall show the number and specification of the bird nesting and bat roosting features and where they shall be located and a timetable for implementation. The details shall be carried out in accordance with the approved details and timetable.
- 18) No site clearance or removal of any trees, shrubs or other vegetation shall be carried out during the period 1 March to 31 August in any year.
- 19) Prior to the commencement of development a Method Statement for the control and eradication of Japanese Knotweed and Himalayan Balsam shall be submitted to, and approved in writing by, the local planning authority. The Method Statement shall thereafter be implemented as approved.

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# Supplementary Report to the Secretary of State for Communities and Local Government

by Mark Dakeyne BA (Hons) MRTPI

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

Date: 27 January 2015

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Town and Country Planning Act 1990

Leeds City Council

Appeal by

Thornhill Estates

Land at Bagley Lane/Calverley Lane, Farsley, Leeds, West Yorkshire

Reopened inquiry held on 11, 12, 13 and 14 November 2014

Land at Bagley Lane/Calverley Lane, Farsley, Leeds, West Yorkshire

File Ref: APP/N4720/A/13/2200640

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**File Ref: APP/N4720/A/13/2200640**

**Land at Bagley Lane/Calverley Lane, Farsley, Leeds, West Yorkshire**

- 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 Thornhill Estates against Leeds City Council.
- The application Ref 12/04046/OT is dated 21 September 2012.
- The development is proposed residential development.

**Summary of Recommendation: That the appeal is dismissed and outline planning permission is refused.**

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**Procedural Matters**

1. The original inquiry into this appeal opened on 19 November 2013 and closed on 29 November 2013. Following the inquiry my report and recommendation on the appeal were submitted to the SoS.
2. By letter dated 3 July 2014 the SoS decided to reopen the inquiry as he considered that there remained two issues upon which he was not sufficiently informed to be in a position to determine the appeal. These issues relate to (1) the five year supply of housing; and (2) the impact of the development on bats. The letter stated that the reopened inquiry should not consider other issues.
3. The inquiry reopened on 11 November 2014 and closed on 14 November 2014, sitting for an additional four days. Closing statements from LCC and the appellants were submitted in writing a few days after the close of the inquiry as substantial evidence was heard about the five year supply of housing on the final day of the inquiry. This supplementary report deals solely with the matters raised in relation to the reopened inquiry and should be read alongside my original report<sup>1</sup>.
4. A SOCG<sup>2</sup> dated 14 October 2014 was agreed between LCC and the appellant on ecology. The SOCG concludes that the bat surveys undertaken are sufficient for planning permission to be granted for the proposal and there are no ecological grounds to warrant a refusal of planning permission.
5. A variation<sup>3</sup> to the S106 agreement put forward at the original inquiry [OR6, 122, & 187-190] has been submitted so as to make provision for CIL in the event that a CIL charging schedule is adopted and is in force when development commences.
6. This supplementary report provides updates on the environmental information submitted and relevant planning policies and sets out the cases of the parties and my conclusions and recommendations. Lists of appearances, inquiry documents, abbreviations and recommended conditions for the reopened inquiry are appended.

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<sup>1</sup> Paragraphs in the original report referred to in this supplementary report will be prefixed by OR followed by the original paragraph number e.g. [OR96]

<sup>2</sup> Document SOCG3

<sup>3</sup> Document TE21

## Update on Environmental Information

7. The bat surveys conducted between May and October 2012 and subject to a survey report in March 2013 were not put before the original inquiry, although referenced in the Environmental Statement as having been ongoing in September 2012<sup>4</sup>. Following on from the decision to reopen the inquiry the Council re-advertised the application as a whole by notice dated 31 July 2014 as, amongst other things, an application accompanied by an environmental statement.
8. In considering the Environmental Information I have had regard to the Extended Phase 1 Habitat Survey February 2012 and the Tree Inspection and Bat Activity Survey October 2011 included within the original Environmental Statement [OR11-12]. In addition the further surveys of 2012, the bat survey report 2013 and the bat impact assessment report 2014<sup>5</sup> were considered at the reopened inquiry and now comprise part of the Environmental Information.
9. It has also come to light that the trees on the appeal site are subject to an area Tree Preservation Order made in 2011<sup>6</sup>. Consent was granted to remove an oak tree (T12) on the eastern boundary of the site in February 2012<sup>7</sup>. Two trees (T36 and 37) in the south-east corner of the site were removed by Bellway Homes, the developer of the adjacent Poplar Farm estate, in March 2014. It would appear that these trees were shown to be removed on the reserved matters approval for that development<sup>8</sup>.

## Update on Planning Policies and Guidance

10. The Council approved the CS for adoption on 12 November 2014. This followed its examination in 2013/14 and the publication of the CSIR on 5 September 2014<sup>9</sup>. The Inspector agreed to the 'step up' contained within Spatial Policy 6 [OR21] on the basis that this would allow housing growth to be delivered with, as far as possible, the provision of infrastructure necessary to support it.
11. The Council has been considering the representations to the SAP Issues and Options DPD [OR20]. Now that the housing requirement and distribution has been set by the CS it was intended to report to the Development Plans Panel of the Council in mid-January 2015 with a list of sites to be included in the Publication Draft version of the SAP to be issued later in 2015. It is anticipated that adoption of the SAP would not be until 2017.
12. The legal challenge to the lawfulness of the interim policy for PAS land [OR22, 30 & 201] was not upheld<sup>10</sup>. The judge found that the policy was a lawful 'residual' DPD.
13. The PPG was published in March 2014, after the close of the original inquiry. The PPG replaced a plethora of Circulars and guidance documents, including The

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<sup>4</sup> DOC1 Chapter 8 paragraphs 91 and 92

<sup>5</sup> Document TE15

<sup>6</sup> Document LCC18

<sup>7</sup> Document TE17

<sup>8</sup> Document APP11

<sup>9</sup> See ID2 to APP8

<sup>10</sup> R (on the application of Miller Homes) v Leeds City Council [2014] EWHC 82 (Admin)

Planning System: General Principles [OR24-25, OR85, OR202]. Advice on refusing planning permission on the grounds of prematurity has thus been updated and will be referred to later in this report.

## **The Case for Thornhill Estates**

*The material points are<sup>11</sup>:*

### *General*

14. The appellant relies on the previous closing submissions to the extent that they are not covered or updated by these submissions.

### **Prematurity**

15. The issue of prematurity was covered in detail at the original inquiry. By way of update, the PPG restates the prematurity policy tests and confirms that:

- Prematurity arguments are unlikely to justify refusal other than where it is clear that the adverse impacts would significantly and demonstrably outweigh the benefits;
- Prematurity is likely to be limited to cases where (i) the proposal is so substantial or its effects so significant that to grant permission would undermine plan making on central issues in the emerging Plan and (ii) the Plan is at an advanced stage;
- Prematurity will seldom be justified where a plan has yet to be submitted for examination;
- The burden of proof is on the LPA to demonstrate prejudice to the plan.

16. The SAP is not yet at the first draft stage in terms of defining allocations. The Council's best estimate is that a publication draft will be available in June 2015 with adoption some two years later. The SAP is not at an advanced stage and certainly has not been submitted for examination. The proposals do not have a substantial effect on, or undermine the task of, identifying 70,000 houses through the plan period.

17. Policy N34 of the UDP is no proper basis for refusal as that policy is out of date regardless of the 5 year land supply position. This is evidenced by the Council's own decision to allow development of PAS, provided the terms of 'Interim Policy' are met. PAS were always identified as suitable for development, the only question being when such sites should be developed.

18. The content of the draft SAP will have no material bearing on the position of supply and delivery of houses for several reasons:

- Historically the Council has resisted the development of allocated sites in the UDP on phasing grounds;
- The Council's current attitude towards greenfield development that is neither allocated in the UDP nor in line with its PAS release resolution is negative, as has been well documented throughout the inquiry;

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<sup>11</sup> Summarised from the appellants' closing submissions TE22

- The draft SAP will not be published until June 2015 and at that point its status will still mean that limited weight could be attached to it;
  - The issue of prematurity is a continuum and whilst it does not arise now, as the Plan moves towards submission the issue becomes more, not less of a basis for refusal;
  - Lead in times for development from the point of the adoption of the plan can legitimately carry material weight and have to be considered in the context of the five year period. It will be too late to make a difference.
19. There is no emerging Neighbourhood Plan, at any stage of preparation that the prematurity issue could arise in relation to.
20. The 'interim policy' carries no more weight as a result of the High Court decision [IR12]. The Judge found that the Interim Policy did not allocate sites; was not a Development Management Policy; and consequently, it was neither a DPD nor an SPD. He found that it was a residual LDD. The Council's case was that this finding would not stop any applicant arguing a case based on the individual merits of an application and the weight to be given to the 'interim policy'.

### ***The Housing Requirement***

21. It is common ground that the base requirement for the five year period is 20,380 (3 x 3,660 and 2 x 4,700). It is also clear that this base requirement will automatically increase by the difference between 4,700 and 3,660 (1,040) in April 2015 and each year until April 2017, when the base will be 5 x 4,700 or 23,500.
22. The terms of the CSIR are important to read because it says:
- The base requirement should not be higher than 3,660 for the period to 2017 due to the sustainable growth, environment and infrastructure delivery issues. The CS Inspector did not engage with the issues of undersupply (other than pre 2011) or the appropriate buffer, and did not need to. The five year requirement is greater than the base to reflect these issues. There can be no valid suggestion that this base precludes the proper analysis of these topics in a 5 year land supply assessment, which is quite different from the exercise of setting the base requirement in a plan;
  - The issue of undersupply relative to the evidence base date and the census (both of 2011) is dealt with at paragraphs 16 and 17 of the CSIR and it is clear that the base did not include undersupply prior to these dates, but the Inspector was silent on the year 2011 – 2012. Nevertheless, at paragraph 17, is a clear finding that not all housing need pre-2011 had been met;
  - The Inspector concluded that there was an immediate need for housing and the 3,660 pa figure up to 2017 should not be used to prevent delivery of more housing if it can be satisfactorily accommodated;
  - The Inspector was aware of undersupply against the CS base requirement and encouraged positive steps to be taken to address shortfalls by bringing sites forward and considering alternative strategies to prevent constraining development.

23. Whilst the Council takes a general prematurity point, no site specific point on environment, sustainability or infrastructure relative to this development is taken. The 3,660 figure should not be used to prevent development.

*The Buffer*

24. There was undersupply against the CS base requirement in 2012/2013 and 2013/2014. There is also undersupply in the first half of 2014/2015 and there will be by the end of the year. Completions in the current year are very low, starts are very low, and the single quarter of higher starts in Q4 of 2013/2014 shows a one-off 'spike'. The current year position of completions in Leeds is heading downwards compared to previous years, and in the opposite direction to the general improvement in the national picture.
25. There must have been a requirement to be met in 2011/2012 and it was accepted by the Council that this was not met by some margin. The supply was 1,931, well down on the Core Strategy 3,660. As noted above it was accepted by the CS Inspector and is also common ground that not all the pre-2011 need was met prior to that date as well.
26. On this basis there has been persistent undersupply of at least four years against a newly set base requirement in the CS, as well as acceptance that pre 2011 needs were not all met. This is persistent under supply against the Council's recently approved CS base requirement.
27. Time periods considered in several recent appeals (4, 5 and 6 years) includes recession but also a period of recovery. The appellants submit that a 20% buffer should be applied. In this case there is a recent Council derived requirement figure against which the judgement is made, and in addition we are now further into economic recovery than the date of those appeals.
28. The Council's reply is essentially a plea not to apply 20% rather than an argument as to why the test of persistency has not been met in that green belt land will have to be released now to meet the buffer. However, the Council already has a reservoir of non green belt land which can be released in the form of PAS which was found suitable for development almost 15 years ago. The appeal site is not only PAS but on the edge of the MUA of Leeds as defined in the CS, and is not part of an outlying settlement (such as Wetherby), and as such has sustainability credentials. The suggestion that even if land is released, builders will not build is clearly wrong. Bellway built out next to the appeal site in double-quick time in the heart of the recession. As explained, greenfield sites that developers have been able to get on and start (notwithstanding delays in getting reserved matters approval) are building and selling quickly. Many of these are the sites won on appeal which were allocated in the UDP but held back by the Council on phasing grounds, when exactly the same arguments were run and rejected about the builders not building.
29. The buffer should be added to the base requirement and undersupply, according to the SoS in the Galley Hill<sup>12</sup> and Droitwich Spa<sup>13</sup> appeals. The undersupply is

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<sup>12</sup> Appeal decision ref: APP/V0728/A/13/2190009 dated 26 September 2013 (See ID3 of APP8)

what should have been provided according to the CS. A buffer (whether 5% or 20%) is always to be applied to the base figure from the start of the new plan, so it follows that by not delivering the base requirement figure, the LPA can not be allowed to wipe out the buffer as well - thereby reducing the requirement it would otherwise have had to meet in the 5 year period - simply because it failed to meet the base annual requirement. This would have the effect of rewarding a failure to deliver with a lower requirement that would have otherwise been expected.

#### *Past Undersupply*

30. The minimum past undersupply in this case is 2,342 – for the two full years of the CS period. There was also undersupply in the year 2011 – 2012. The figure measured against 3,660 (the CS base requirement for the first 5 years) is 1,729. This makes the minimum undersupply 4,071. When added to the 20,380, with a 20% buffer this equates to 29,341 as the five year requirement.
31. However, the minimum undersupply contains completions from the re-occupation of long term empty properties and older people's accommodation. In these two years the quantum of 1,184 is in dispute due to the extent of evidence. The evidence needs to be robust and compelling in the case of empties (as they are windfall) and in the case of older people measured against the Council's own criteria of being akin to C3 as self-contained units or freeing up housing stock. The evidence presented to the inquiry meets none of the relevant tests. The requirement increases according to the amount of delivery felt to have been robustly evidenced from these two sources.

#### *Period of Catch Up for Undersupply*

32. Several statements of policy and guidance now make this matter clear, in addition to a range of appeal decisions:
- The PPG makes it clear that LPAs are to aim to catch up undersupply in five years where possible. No case is advanced that this would not be possible in Leeds. The PPG goes on to say that where this cannot be done, working with neighbouring authorities should be pursued. Leeds is not attempting to do this;
  - The Planning Advisory Service confirms the use of the Sedgefield approach to catching up under delivery in the first five years;
  - Several appeals also confirm the same, the conclusions of which are all the more telling in this case because we are dealing with undersupply against the Council's own and recently set requirement figure in a rising market for housing (at least on sites that are deliverable).
33. The Council's argument for a ten year period is similar to not applying the buffer to the undersupply. It has the effect of reducing the requirement below the base figure defined in the CS, as though the prize for under performance is to be let off meeting the CS defined figure for the first five years. This would be the direct opposite to the Framework duty to boost significantly the supply of housing.

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<sup>13</sup> Appeal decision ref: APP/H1840/A/13/2199426 dated 2 July 2014 (See Appendix 2 to APP12)

## *Requirement Summary*

34. The base five year requirement of 20,380 should have added to it the first five years' undersupply and then a 20% buffer. Without taking any adjustment for empties and older person's accommodation in completions, this equates to 29,341. There is no cogent basis for excluding under supply in 2011/12. By way of comparison, if adjustment is made to exclude completions from empties and older peoples housing on the same approach, the 29,341 becomes 30,685.
35. The urgency of taking steps to address this position, given the failing upturn in delivery in Leeds is amply illustrated by information on completions. Based on a requirement of 3,660 per annum there is a quarterly requirement of 915 units. Completions have only twice (out of 10) exceeded 600, let alone 915 and the current quarter year position is well under 500. Starts have only 3 times (out of 10), exceeded 600 units. Of those three occasions only once was 700 units exceeded in what was a one off quarter that just met (and did not exceed) the required 915 units per quarter required by the new CS.

## ***Housing Supply***

36. It is common ground that the burden of proof falls on the Council to demonstrate that there is a 5 year supply. Sites have to be available now, be suitable now and achievable with a realistic prospect of delivery and in particular be viable. Viability is not the only aspect of achievability.
37. The test is one of realism. Build out rates have to be realistic too. It is for LPAs to provide robust up to date evidence of deliverability and show that judgements are clear and transparent.
38. The Council's supply assessment is described as 'optimistic' in relation to sites without permission, the reuse of brownfield land and build out rates. This approach is inconsistent with policy and pervades the Council's entire analysis of supply. It is submitted that this optimism is aligned to an assertion that the Council's CS requirement is also optimistic. In fact, the opposite is true - the Council's requirement is deliberately stepped back below the level of need.
39. A specific example of this optimism is provided by looking at 'red' and 'amber' sites in the Council's 5 year supply. Red sites are those identified in the Allocations Issues and Options paper as not considered suitable for allocation. Amber sites are considered to be sites with 'potential' but with 'issues' to resolve and not in a favoured location [OR21].
40. There is no evidence before the inquiry that the Amber 'issues' have been resolved, merely the general suggestion that the Council has looked further at these sites since they were judged Amber. No detail at all is provided. Of those sites on the list most are Amber, but some are Red. They total 1,558 units. The comments show issues of a significant technical nature, not just of a policy nature. None of these sites can be judged suitable now and cannot be included in the five year supply on that basis alone.
41. The Council seeks to portray the position of house builders as binary. They will not build in the city centre and inner areas but will build elsewhere. To understand this properly one has to look at the HBF position which is a matter of correct and realistic balance. The HBF identify a deliverable supply for these areas of over 3,000 units in the next 5 years, in contrast to the optimistic almost

10,000 identified by the Council. In terms of delivery of smaller properties, there is no evidence to suggest the terms of the CS Policy H1 are unlikely to be met as a result of a finding that the Council does not have a 5 year supply. The Council's evidence to this inquiry on matters of regeneration is clear. There is no case to stop greenfield development in order to encourage regeneration. But the approach is symptomatic of the Councils persistent resistance to development, a position that may appear to have been moderated since it lost 11 appeals in a row on land supply issues up to 2011, but which remains as the constant underlying theme.

42. Of the sites in the SHLAA, less than half have planning permission. Those sites make up about a third of the total supply claimed by the Council. The SHLAA numbers have also increased since approved by the Council by some 1,800 units. Even at the time of approval, Members of the relevant Panel had concerns regarding realism. The supply starting point only 3 years ago was a finding that the supply was between 9,000 and 11,000 units at the Grimes Dyke appeal.
43. Policy in relation to SHLAA production is clear. Developers, landowners and agents are to play a significant role to make sure the document is robust as set out in the PPG, PAS guidance and the appeal at Elworth Farm<sup>14</sup>.
44. The process has involved the relevant parties but the outcome has taken no material account of their comments. After the end of engagement on the SHLAA with builders and landowners, the Council has attempted to backfill the evidential void with reports from the DVS in late May 2014 and October 2014, having recognised the need to attempt to support the position already reached.
45. The position of the HBF is very clearly one of disagreement with the Council over more than half of the claimed SHLAA sites output. This is supported by detailed analysis through the HBF detailed site by site report<sup>15</sup>. This sets out comments on all sites and reasons for conclusions. There has been no response to it from the Council and no attack of it in cross examination. The further analysis of sites over 50 units by Mr Roebuck has not been responded to either. That it takes a more optimistic view of some sites than the HBF, in particular in the city centre, is a robust and healthy check on the HBF position. What this still shows is a massive difference in realistic delivery from that of the Council.
46. Whilst the DVS reports attempt to grapple with viability on a best case approach of minimum profit and minimum land price, there is no cogent evidence before the inquiry on:
  - The realism of enough developers in the market place with enough capacity and aptitude for the specialist nature of city centre development, which is a very different proposition to that which existed pre-recession. This is a significant point given that the Council estimate 3,959 units being delivered from the city centre in the next five years. As emerged at the inquiry, the Council's case relies on the fortunes of a new model; the PRS institutional investor which has no track record in Leeds;

<sup>14</sup> Appeal decision ref: APP/R0660/A/13/2196044 dated 11 April 2014 (See ID12 of APP8)

<sup>15</sup> See APP9

- The realism of investment and bank funding, its terms, restrictions and availability, on which no evidence was given by the Council at all;
  - The realism of enough developers in the market place with enough capacity for inner area development which is acknowledged to be 'challenging' and is the domain of a handful of low cost developers such as Gleeson and Keepmoat with insufficient output potentially even on a regional basis to deliver the Council's 5 year figure from the inner area of 5,816 units.
47. There is also confirmation from the DVS that, in the main, volume builders are reluctant for commercial reasons to be involved with delivery in the inner area and that their business models and view of viability generally preclude development in these low market areas.
48. The Council's case against the HBF position on the SHLAA is on build out rates and viability. The build rate point is however hollow for several reasons:
- The HBF did not apply 20 to 30 units per annum as suggested but 35 to 40;
  - Of the sites where build out rates made a difference, there are only 6 and the specific circumstances and basis of judgements are explained on all of these;
  - The Council identifies sites in generally strong market areas where supply is short<sup>16</sup>. There were actually few sites granted permission, outside the city centre area, with more than 50 units. The build rates on these suburban sites in areas of low supply are expectedly high. It shows the demand for sites of that nature and the relative lack of supply. However, to apply these build rates to all sites regardless of their market area or circumstances is false. In addition, normal market economics will cause build rates per site to fall if supply in attractive locations is available, even though overall output would increase with more of such sites available. At Kirkstall Forge the Council's committee report agrees with the appellant's position on build rates and at Spofforth Hill evidence comes direct from the builder involved. Realism of analysis depends upon following this information, not rejecting it;
  - Build rates are not materially different in Mr Roebuck's analysis of his 84 sites.
49. Consequently, build rates are not a principal reason for the difference between the parties. It is the reality of market delivery of sites in challenging areas with no realistic means of attracting anything like sufficient interest to achieve delivery of, in the case of the city and inner area in particular, 9,775 units (41% of all Council-claimed SHLAA supply).
50. The evidence of delivery in the city centre and inner area presented to the inquiry amounts to this:
- That city centre delivery depends primarily upon PRS schemes;
  - That city centre viability depends upon 2 to 3 sites predicting a theoretical viability of delivery of almost 4,000 units based upon minimum profit, minimum land prices, and an educated guess on abnormal costs and developable areas;

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<sup>16</sup> See Figure 13 of LPA7

- That inner area delivery depends upon volume builders taking on sites that it is acknowledged are unlikely to meet their views on viability or their business model and a handful of low cost builders increasing their regional output by an unrealistic degree so as to achieve some 5,816 units;
- That inner area viability depends upon, for the 60% or so of the sites analysed by the DVS as viable, developers taking minimum profit, landowners taking minimum value, and the similar educated guesses on abnormal costs and developable areas as with city centre developments (bearing in mind that viable on this basis is in many cases only just short of a negative return). For the 40% or so judged by the DVS not able to produce a positive return, viability depends upon an assumption that, with enough pressure, developers would take less than minimum profit and/or landowners less than minimum land value.

51. On any level these propositions are weak for over 40% of the SHLAA based supply. In more detail the appellant's response to these points is:

- PRS – Nothing has been built or is being built and no investors are identified. The capacity or appetite of this new idea is unknown and untested. Strong demand from occupiers does not equate to strong demand from institutional investors or evidence on landowners' returns. The appellants are aware of discussions on two sites - Globe Road and the former Yorkshire Post site at Wellington Street. Globe Road is being sold by Wimpey City who cannot make it work as a volume house builder formerly involved in city centre development. Mr Roebuck has optimistically ascribed 150 units delivery from this site (130 less than the Council) but this is a position reached on the basis that an institutional investor could be tempted to proceed and views it as a sound proposal. On Wellington Street there is no difference in numbers between the parties but on the same conditionality. The only other site where there are discussions is Ingram Row (Dandara) but the background to this site is important. Dandara have not made the site work for years, need a permission to replace the previous expired one and PRS is being explored. There may be plenty of valid business reasons for having a new permission and considering a different angle of delivery. For this untried and untested approach to development, the evidence can be summed up as falling short. The Council suggests that there are, outside the topic of PRS, traditional developer-led schemes in the city centre. Mr Roebuck gave evidence on this. He explained that this could happen as part of mixed use schemes once the commercial element was pre-let, but there is no indication that it is happening now at any material level.
- City Viability – the Council approach is to look at a small sample of sites on a site-specific basis and claim this presents a picture of theoretical viability across the whole city centre. The assumptions as to viability are questionable. The approach is akin to a stressed situation with the developer and landowner already committed to the development. It does not reflect the realism of choices and assumes those parties will have to live with minimum profit and land values. The appellant's evidence is that a market-facing view of profit and land would be higher outside such a stressed situation, when choices are available with other sites elsewhere (indeed in other districts that are already

proving more attractive to volume house builders)<sup>17</sup> and better opportunities of return. Abnormal costs will always be site-specific and there is not the luxury of having the information. Whilst abnormalities could be more or even less, this itself brings into question this whole exercise which involves 2 or 3 partially complete specific site assessments claiming to reflect a wider picture of the viability of almost 4,000 units. Exactly the same can be said of net to gross areas. There are other significant areas of dispute on the assumptions.

- The EVS update was the only document on detailed viability put to the CIL and CS Inspector. The DVS report was not presented. The EVS update's entire premise is to define, at various levels of selling prices for apartments in the city centre, the price that could be afforded to be paid for land. It is at odds with the DVS first report because:
  - a. The sales prices per square foot of the DVS report indicate figures similar to the claimed 'mid point' indicating an amount that could afford to be paid for land according to the EVS, lower than the DVS minimum.
  - b. Properly converted to £/sq ft, taking averages and avoiding using only the expensive riverside apartments with small sizes that skew the figures, the current sales prices are below the mid point.
  - c. On this basis the EVS update 'current asking prices' are wrong, unreliable and unsupportable.
  - d. For the same reason, according to the EVS update, the price that could be offered to be paid for land in the City is well below even the Globe Road (strictly inner area and not city centre) figure used by the DVS which was described by the Council as a 'fair land value' for an average site.
  - e. The outcome of this is that the CIL Inspector made a finding on unreliable evidence, inconsistent with the Council's current case and there is a real risk, based upon the difference between the EVS update and the DVS work, that minimum land prices will not be capable of being afforded, leaving land incapable of being brought to market and development unable to proceed.
- Inner Area Delivery – There is no suggestion from the Council that the delivery capacity of the low cost builders is anything other than as presented by the appellants. Additionally there is acceptance (save as set out below) that volume builders find delivery in this area does not fit with their business models, is unattractive and, by their approach, unviable. The only references to the contrary from the Council are to one site at Wortley that is not in the inner area, and 2 or 3 sites in the EASEL area that Bellway are looking at (and who are the Council's partner in the EASEL project). This handful of examples demonstrates little in the context of the Council's expected delivery of 5,816 units. Wortley is a secondary site and is modest in scale. Bellway have various historic commitments to EASEL. The suggestion that, if greenfield sites are not made available, inner area sites will be delivered is no part of the Council's regeneration case. It is also inconsistent with Policy H1 of the CS. The allegation that builders are driven by their profit margins is of course true. They are businesses seeking to make money. That fact has to be taken into

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<sup>17</sup> Wakefield was given as an example

account in assessing the realism of delivery, not discounted based on a sequential test style argument, long since absent from national and local policy.

- Inner Area Viability – The general points regarding city centre viability, abnormal cost and assumptions apply. The difference here is that the sample of specific sites tested is larger at 22. The apparent suggestion from the Council's exercise is that this sample reflects the wider theoretical viability of the inner area. For this reason it does not matter that a couple of sites found non-viable in the first DVS report are no longer in the supply. If the Council's point is that all in the current supply are viable it should have tested them all. If the point is the sample sets the tone of the wider viability of that area it has to live with the outcome that 2 of the original 5 and 7 of the additional 17 produce a negative return, even with minimum profit and minimum land price and all the other contested assumptions. This is 9 out of 22, or 40%. Applied to the inner area total this is 2,326 units that would be producing a negative return, with many of these producing a surplus so small as to be highly susceptible to minor changes in assumptions. Even the DVS report concedes that the approach taken to viability is no guarantee all developers will adopt the same approach.

#### *Other SHLAA Issues*

52. The Council optimistically includes 84 sites with expired permission having a combined supply of 1,193 units. The evidence is that only 4 sites have come back for renewals. Whilst it is understood that these 4 sites are examples, the optimism that all these expired permissions will be renewed and proceed to deliver does not meet the policy test of realism.
53. It is also clear that one area of dispute with the HBF was sites currently occupied by other uses. This again highlights not only optimism, but a failure to show that such sites are available now as required by the Framework.
54. The response to the appellant's sense check<sup>18</sup> is also unconvincing, particularly as several of these sites were conceded at the original inquiry. Of the 33 sites (Council claimed five year delivery of 4,253 units) the DVS is relied upon for only 4 and offers no further comment on 14 (42%). Where comments are offered, Mr Dunbavin explained with evidence his position, but the Council rely on assumptions such as that the market view of an area might change if a PRS scheme delivers near it, or in one case, that the Council has asked a developer if residential can be included in a retail scheme and hopes they will.

#### *HILS and other initiatives*

55. The regeneration evidence is now clear but adds little to the Council's case
  - It is not suggested that greenfield land should be held back to assist delivery of brownfield/regeneration and there is agreement with the SoS findings at the Grimes Dyke appeal that there is no case for doing this;
  - There is a need for housing growth generally;

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<sup>18</sup> ID14 of APP8

- None of the sites/initiatives referred to increase the supply figure relied upon by the Council;
- It is agreed that 40% of the supply referred to is not on the market in any formal sense, which must question its availability even if someone could theoretically buy it 'off market';
- Of the 2,700 units claimed to be deliverable from all sources discussed, this is as a result of actions that it is hoped will cause delivery rather than (save the modest item of new Council housing) actual planned delivery. It is at best a very modest response to the delivery concerns over almost half of the 23,450 SHLAA units.

### *Older People and Students*

56. The problem with relying on completions from older people is one of monitoring and clarity of data. The Council's Monitoring Report requires either that they free up housing or are akin to C3 as self contained units.<sup>19</sup> No information is available on either point. In addition whilst older people's accommodation is in the supply, it has not been separately identified. The difficulties of this are made clear in the Elworth Farm appeal decision<sup>20</sup>.
57. Finally, for student accommodation of some 895 units there is no supply identified. There is no challenge by the Council to the Student Growth Papers<sup>21</sup> or its conclusions that the rate of student growth in the next five years will massively outstrip supply from these 895 units. This growth in student numbers will not only exceed the 895 unit student supply, but occupy other housing needed for general requirements. The effect will be a net reduction in supply. There is no evidence that a specific level of student growth was a component in the SHMA or CS. In addition there is a specific net reduction in supply through the demolition of one of the University's main halls of residence at Boddington Hall. Both the PPG<sup>22</sup> and the Council's monitoring policy in the CS<sup>23</sup> say that students only count if they 'free up' existing stock. The evidence here is that the 895 units will not only fail to free up existing stock but will also be far too little to accommodate student growth.

### *Other Supply – Windfall*

58. Almost 6,000 units (5,913) or 20% of all supply is windfall, for which the Council needs to demonstrate compelling evidence<sup>24</sup> and in the case of empties 'robust evidence'.<sup>25</sup>
59. In the case of empty properties there are two conflicting figures for completions in two years and a single figure for an average over a four year period. The evidence simply cannot be interrogated for veracity. There is no information at all of the number falling vacant by year; the number being occupied by year; the

<sup>19</sup> Pages 36 and 37 of CSIR

<sup>20</sup> See Footnote 14

<sup>21</sup> ID17 of APP8

<sup>22</sup> 3-038

<sup>23</sup> Page 37 of CSIR

<sup>24</sup> Framework paragraph 48

<sup>25</sup> PPG 3-039

types of properties; the approximate location of properties; and no return data of any sort has been supplied.

60. Indeed there is virtually nothing that can be analysed, despite the Council's own proposed monitoring for the CS requiring it.<sup>26</sup> The dearth of information of past achievements is then used to project future delivery. The Council's position has changed from 300 per annum (March 2014) to 400 per annum (May 2014). It is also clear that the re-occupation of empties is a finite resource of supply and there is an apparent maximum of 2,000 units achievable all of which is claimed in the five year period.
61. The initiatives identified to deliver future re-occupation appear to show much lower delivery. Funding is available for some 140 units over 3 years, following the achievement of some 70 – 80 over the last two years from similar sources<sup>27</sup>.
62. Prior approvals from office to residential use amount to 632 in the Council's supply. No more than 5 units have been created from this source in the last 18 months and the compelling evidence to rely on this source is simply absent. There may be many reasons why such an approval would be obtained and not carried out, such as bank valuation exercises.
63. A further 600 is claimed from larger windfalls (on top of 2,500 from windfalls already allowed for), the sole evidence for this is 2 years permissions on sites that are not in the SHLAA. These are permissions (not starts or completions) and are insufficient to show trends or compelling evidence.
64. Altogether there are now 4 different types of windfalls claimed - small, large, empties and pre-determinations - each stretching further the bounds of compelling evidence to try to show greater supply.

#### *Conclusions on Five Year Housing Land Supply*

65. The appellant's summation of all of these points is that the 5 year supply is 16,873 units. This includes a total of 3,619 windfalls, 1,000 of which are from empties. Against the Council's view of requirement, adjusted to make good undersupply in 5 years and using a disputed 5% buffer (23,858<sup>28</sup>) this amounts to 3.5 years supply. Against the appellant's requirement this is 2.7 years supply.
66. The appellant's conclusion that there is no 5 year supply by some 6,985 units even against LCC16 is not altered by accepting the Council's position on empties (a difference of 1,000 units between the parties). Indeed if one was to accept the Council's position on all windfall this would still leave the need to disagree with the appellant's analysis on more than 4,691 units in the SHLAA to conclude that a 5 year supply exists against the 5 year catch up requirement figure in LCC16.
67. On any sensible basis the Council cannot demonstrate a 5 year supply, but even if it could, there is nothing in the CS or national policy that allows refusal because there is a 5 year supply unless harm can be demonstrated. In this case there would be none.

<sup>26</sup> Page 38 CSIR

<sup>27</sup> ID19 of APP8

<sup>28</sup> LCC16

## **Ecology**

68. The appeal is in respect of an outline application, with only the means of access into the site (and not internal vehicular layout) to be determined at this stage. FRAG's evidence to the reopened inquiry related solely to the potential impact of the development upon bat species, being species of community interest for the purposes of Council Directive 92/43/EEC 1992.
69. The material before the reopened inquiry to assess the potential impact of the development upon bats is greater than at the original inquiry. No alternative evidence relating to potential impacts on bats has been presented and no greater or different effects have been identified. The appellant and the Council are agreed in their assessment as set out in the SOCG [1R4]. FRAG offered no comments on the appellant's bat report 2014 following its formal advertisement in July 2014.
70. Should the SoS be minded to grant outline planning permission for the proposal, the appellant, the Council and FRAG have each reviewed and agreed draft conditions, which include pre-commencement conditions relating to the approval of a construction environmental management plan, a bat mitigation plan, a biodiversity enhancement and management plan and a lighting design strategy for bats. As the application is in outline, at this stage no trees or other features of potential value to bats have been identified as being necessary for removal in order to facilitate the development.
71. Dr Webb provided a clear and convincing rebuttal of FRAG's evidence. It is submitted that the survey and impact assessment work undertaken on behalf of the appellant contains sufficient information of an appropriate expert standard for the SoS to assess the appeal site's use by bats and the likely level of any impacts upon bat species. Dr Webb confirmed that in his view it is very unlikely that a Natural England mitigation licence would be required as a result of the proposed development.
72. The crux of FRAG's case before this inquiry centred on a misinterpretation of the role and relevance of guidelines published by the BCT in 2007 and 2012, as a means of challenging the robustness of the appellant's bat survey work.
73. A responsible practicing ecologist will refer to and follow the BCT guidelines where appropriate, but will do so in conjunction with other relevant guidance including that of CIEEM who emphasise the role of professional judgment in devising and undertaking ecological work. It is for the ecologist to apply professional judgment to the case in question, and to determine an appropriate level of survey work accordingly.
74. FRAG's evidence seeks to apply an inappropriate degree of stringency to the BCT guidelines but also to superimpose value judgments different to those made by the expert ecologists. For example it was argued that WSP's expert assessment of the application site's value to bats is incorrect and instead when applying the indicators of site value set out at Tables 3.1/4.2 of the 2007/2012 editions the site ought to have been assessed as having a 'medium to high' value, rather than the 'low to moderate' value ascribed by WSP following the 2012 survey work. In evidence in chief, Dr Webb emphasised the overlapping nature of the continuum of indicators, and described how he considered indicators (7) and (12) to be

inappropriate in this case, and that an assessment of 'low to medium' was a fair appraisal. He drew attention to the accompanying text to Tables 3.1/4.2, which expressly reference the role of expert judgment in assessing a site's value to bats.

75. Much of FRAG's misplaced criticisms of the WSP activity survey efforts flow from this ill-informed assessment of the site's habitat quality/value (as against the suggested indicators in the BCT guidelines). Dr Webb explained how the level and nature of the guideline survey effort varies depending upon the site's value assessment. In this case, both the type and quantity of survey work was commensurate with a large site of low to medium habitat value to bats (as described by the 2012 guidelines), and assessed as being correct by Dr Webb. The site was surveyed throughout all surveying months from August 2011 to July 2012 (with the exception of April 2012). The survey data is more than sufficient for a large site of low value, and only fractionally below that suggested for a large site of medium value. The appeal site is only just above the suggested threshold to constitute a large site and the proposed development is very different in its character and likely impact to the type of major or nationally significant infrastructure project to which the recommended survey frequency for large sites is directed.
76. Dr Webb plainly explained how the level, amount and type of survey work undertaken by WSP in both 2011 and 2012 was appropriate and consistent with the practice guidance contained within the relevant BCT guidelines (and others), and concluded that the findings of the WSP surveys were robust in both assessing the likely level of impacts upon bats and in recommending mitigation where required.

### **The Case for the Council**

*The material points are*<sup>29</sup>

77. These submissions only deal with matters that have changed since the original inquiry in November 2013. They do not seek to repeat the matters set out in the closing submissions then. Therefore, they need to be read together with those earlier submissions.
78. The relevant material changes of circumstance since November 2013 are the adoption of the CS; the proximity to the publication of the Council's report on the SAP DPD; the production of the SHLAA 2014; the upholding of the Interim Policy by the High Court; and further ecological information on bats on the site.
79. The Council's reason for refusal was that it was premature to grant planning permission for housing on this site in advance of the production of the SAP DPD, given that the site is a PAS site in the UDP, and the UDP is entirely clear that such sites should not be released for housing until there has been a comprehensive review of sites.
80. The appellants argue that the Council does not have a 5 year housing land supply and therefore, by reason of paragraph 49 of the Framework, planning permission should be granted.

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<sup>29</sup> Summarised from the Council's closing submissions LCC19

81. In November 2013 the SAP had only reached Issues and Options stage, and there was a long list of sites which were to be further considered, many of which were amber and would have to be allocated. We are now at the position by which in January 2015 the Council will produce a report to the relevant committee which will set out those sites that the Council intends to put into the publication draft of the SAP. This report will therefore put into the public domain the Council's choices about which of the amber sites it thinks should be taken forward to allocation. So it is virtually certain that by the time of the SoS's decision the Council's position on site allocations will be known. This is not the end of the process, but it is a vitally important stage within it.
82. In deciding the phasing of the release of sites the Council will have to comply with Policy H1 of the CS, i.e. that there should be a distribution of sites between greenfield and brownfield.
83. In those circumstances it would undermine the plan led system for the SoS to grant planning permission on a large safeguarded site just at the moment that the next stage of the DPD process is published. The Issues and Options paper produced a massive public response, and there has been a very high level of public engagement. As has been clear through this inquiry this site is extremely important to the residents of Farsley and there has been a very large amount of opposition to the application. Local residents have been closely involved in the SAP process. If the SoS grants planning permission almost immediately after the Council's decision on the public consultation process becomes known it will inevitably destroy public confidence in the planning system in this area. What was the point of local residents engaging in the SAP process if it is simply ignored on a planning appeal?
84. Such an outcome also means that there is no opportunity for sites which are allocated to come forward, in accordance with the CS and SA DPD, as should be the case in a plan led system, but instead there is planning decision making by appeal. There the localism agenda, by which local people are involved in the choice of sites, becomes otiose.

### *The Core Strategy*

85. There are a number of policies in the CS which are central to this inquiry. It has a housing target for the plan period of 70,000 dwellings. This must be one of the highest requirement figures in the country. The step-up, which was fiercely opposed by the house builders generally and the appellant at the original inquiry in 2013, was accepted by the CS Inspector and is now in Spatial Policy 6. The spatial distribution is set out in Policy Spatial Policy 7. The greenfield/brownfield split is in Policy H1.
86. The way that these policies are to be met in practice is left to the SAP which will allocate sites. Therefore again the plan led system would be undermined by the grant of planning permission because a decision would be made outside the SAP process.

## ***The five year land supply***

### *Requirement*

87. The starting point on the requirement is the 3,660 in the CS and the Inspector's reasons for accepting the Council's case on the step up. The Inspector accepted that to impose a requirement higher than that would have serious impacts on Council's ability to achieve the plan policies, and to meet the objective of sustainable development.
88. The first issue is whether a buffer of 5 or 20% should be applied. In terms of persistent under delivery there is no rule as to the period to be looked at. In Leeds's case there was no under delivery until a combination of the recession and the RSS stepped up requirement both hit in 2007/8. Any analysis of under-delivery since then is subject to the problem that the requirement in the RSS was accepted by the CS Inspector to be based on a flawed evidence base.
89. There has been under-delivery since the CS base date, but that in itself does not amount to persistent under-delivery. The second issue is whether it is appropriate in Leeds in any event to apply a 20% buffer, and what that would achieve. The purpose of the buffer must be to improve delivery – it is not a punishment. It is very clear that if a 20% buffer is applied then on the appellant's case LCC has no realistic prospect of delivering a 5 year land supply save with a massive greenfield release, the majority of which is likely to be currently designated as green belt. This would then lead to the problems that the CS Inspector had in mind. It would also completely undermine the SAP process and the choices to be made therein.
90. Further there is the issue of the purpose of imposing a 20% buffer on Leeds. On the appellants' case the only way that Leeds can meet its 5 year land supply is by a massive release of greenfield sites in advance of the SAP. This may lead to some more houses coming forward, but on the evidence at this inquiry not very many and not for a number of years. But that is at the cost of undermining the plan led system and public confidence therein, and effectively accepting the house builders case that they will not develop outside prosperous suburbs and the countryside.
91. The appellant places great weight on the fact that this site is agreed in principle to be sustainable. But that does not mean that in terms of other sites within the HMCA it is a preferable site in sustainability terms. It is simply impossible, before the SAP is produced, to know how this site sits in a comparative sustainability analysis. So releasing this site now may well be a very negative decision in terms of sustainability. This will be one of the largest sites in this HMCA. That is why the larger sites are excluded from the Interim PAS policy, given their greatest impact on sustainability and therefore the greatest need to consider them through the SAP.
92. Even if more greenfield sites are released this would result in very little, if any, increase in supply. Since 2011 LCC has released a large number of greenfield sites, through the UDP Stage 2 and 3 sites, and the Interim PAS policy sites. However, there is no evidence of this feeding through into an increase in completions. Indeed completions from volume house builders have actually fallen this year despite the much increased number of greenfield permissions

since 2011. The appellant says that is just because of the time lag, but that does not seem to make much sense given the actual fall in numbers. It seems much more likely that the house builders do not wish to build out quickly, in order to maintain profit levels. Obviously if more greenfield sites in desirable locations are released there will be some increase in delivery, but it does not seem likely to be a high number in the light of the existing evidence. The appellant wishes to bring this site forward for sale quickly, but the evidence is replete with examples of developers being very bullish about delivery speed at the point of getting planning permission, but the reality being somewhat different.

93. Finally Leeds is 'different'. There are particular characteristics that make the problems of imposing too high a requirement a particular issue in Leeds. Firstly, it is a very large authority so the absolute numbers are very high – possibly the highest in the country. Secondly, its CS requirement has been set on a high growth basis, and if the appellant is to be believed that is not being reflected in the housing market. Thirdly, it has a large urban area with a huge stock of brownfield land in need of regeneration, but surrounded by countryside. This means (a) the need for regeneration including housing led, is manifest; and (b) the Framework causes a particular problem because there are potentially large numbers of greenfield sites. Contrast metropolitan authorities where there are much tighter boundaries and therefore there can be no argument about housing land supply being met on greenfield sites. Fourthly, Leeds has a very attractive city centre which (like Manchester) saw major residential development in the boom much to the benefit of the City. There is no reason that this cannot be achieved again in accord with the CS policies, so long as the Framework is not used by the volume house builders to undermine the plan led approach.
94. These arguments apply equally to dealing with the backlog which should be spread over 10 years. It is necessary to consider what are the purposes sought, the consequences of increasing the requirement and the reasons why the target has not been met since the CS base date. So in the Council's view the requirement is 22,570.

### *Supply*

95. This case raises some really critical issues about how 5 year land supply is approached in an authority like Leeds with a stark mix of areas and therefore housing sites. Again this is situation which makes Leeds unlike many of the authorities where there have been previous Inspectors' decisions. Leeds is not a south/south-eastern authority where the vast majority of sites are greenfield and there may be issues around choice of sites, but not around the more fundamental issue of the nature of the development industry.
96. The appellant's argument at this inquiry has been that the volume house builders are only interested in sites in financially 'robust' areas and not in sites in the city centre or inner area and have very little interest in building flats. Their business model is primarily, if not virtually exclusively, to build two-storey family housing. The argument put by the appellant is that the effect of the Framework is to allow them to reject sites in the city centre or inner area, whether financially viable or not, and then say that there is no 5 year land supply because sites in these areas are not 'deliverable'. The effect of this argument is to allow the volume house builders to demand that further sites be released in their choice of area, many of

which would inevitably have to be greenfield sites. This is a complete subversion of the policies in the CS and indeed the Framework.

97. The policies and approach in the CS inform the approach to the 5 year land supply. The Council was criticised for taking an 'optimistic' approach to 5 year land supply which the appellant will say is not in accord with the Framework or PPG. However, LCC has based its CS target, and therefore requirement for 5 year land supply, on an optimistic economic growth forecast that necessarily underpins the housing growth targets in the CS. If the targets are based on strong growth, but the house builders reject a very large proportion of the anticipated 5 year supply on the grounds of a pessimistic outlook for Leeds growth and a risk averse business model, then it is inevitable that the Council will not be able to prove a 5 year land supply. The house builders approach is one of relying on recessionary levels of housing in the city centre in particular, and saying that they are now very risk averse because of the recession and will not deliver those sites, or those in the inner area where they are not interested.
98. Further, the CS target is based on an objective assessment of need. The CS Inspector was clear and strongly supported by the house builders, that such an assessment could not take into account the ability of those with a housing need to pay for new housing. In other words the 'need' was considered to be different from whether there was actually a demand which could meet the cost of any housing. Critically the need was also assessed as covering all sections of the community. As is clear from the CS<sup>30</sup> a very large proportion of the need is actually from single households and couples without children. The need for family housing is only a relatively small proportion of the total need.
99. However, that stands in striking contrast to the need which the volume house builders say they wish to meet, and which their business model provides for. The sites they are prepared to develop are focused on meeting the family housing market, so house builders look to areas which are attractive to purchasers of private family housing, and the planning permissions they seek are for this form of housing. There is a self-fulfilling prophecy here, because the CS anticipates that the majority of single units will be built in the city centre and inner area but these are the areas that the house builders will not build in. So the planning applications outside these areas may well meet the policy mix on the individual site but it is clear that the largest segment of the overall need is simply not being met.
100. It is important to appreciate that the house builders (and appellants') position is not about viability of city centre and inner area sites, it is about the house builders' decision not to develop in those areas because it does not suit their business model to do so. They do not wish to develop in the city centre because it would involve large upfront capital investment, which they do not wish to make; and they do not wish to develop in the inner area because the returns are insufficiently high for the volume house builders. It was not argued that the inner area was unviable for the 'low cost developers' but that they operated a different business model, presumably including a lower level of required profit.
101. In these circumstances it is hardly surprising that, if the appellants' case is accepted, Leeds is not meeting its 5 year land supply. The requirement is based

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<sup>30</sup> Paragraph 5.2.10

on meeting need across the whole community, and the house builders are only purporting to meet the need of one relatively small part. Releasing more greenfield sites will not address that mismatch.

102. This issue exposes a problem with the Framework which may well be at its most stark in Leeds. Leeds is special because it is a very large urban area with masses of brownfield land in desperate need of regeneration, but surrounded by countryside which the house builders would love to build upon, and where large profits can be made. It is therefore an area where the problems of assessing need without regard to ability to pay, and encouraging brownfield development without a clear brownfield first policy support, comes into very direct conflict. The inevitable consequence of the appellants' arguments are that more and more greenfield land must be released and developed, whilst huge swathes of brownfield land stands derelict.

### *The SHLAA*

103. In assessing its 5 year supply the Council did precisely what the Government advised. It formed a SHLAA Partnership, shared the information and sought views of the house builders and others. Planning Officers considered each site in order to determine suitability and availability, and the DVS was instructed to carry out an assessment of viability.
104. However, the house builders' approach was simply to reject a large part of the assessed supply with either minimal comment 'not viable/not available' or no comment at all. The Council sought independent advice from the DVS on viability, and assessed a cross section of sites in order to inform its analysis. The house builders on the other hand produced no viability assessment and simply asserted that city centre and inner area sites were not viable. Many of the sites rejected out of hand by the house builders are actually now considered likely to come forward. The appellant complained about the Council not having engaged with the house builders and having dismissed their comments out of hand. It is very difficult to see how the Council could engage with 'no comment' and what kind of meaningful dialogue could take place with the phrase 'not viable', particularly when there was no evidential support for the comment. What has now become entirely clear from the evidence is that the truth of the situation is the HBF meant 'not interested' and the result of this was that the HBF had no wish to spend time or money on any further consideration.
105. The Framework sets out three tests - suitability, availability and viability. For the Inspector and SoS purposes on a planning appeal one can only take a broad brush approach, and this must particularly be the case in Leeds with a very large number of sites in the SHLAA and no reliance on specific large urban extensions to form the bulk of the housing land supply.
106. The Council assessed suitability and availability by considering the known planning position and, where views of owners/developers were known, taking those into account. What is very clear is that land supply in Leeds is highly dynamic. Sites which were accepted as not being part of the supply last year are now under active consideration. Sites which were at the back end of the SHLAA now clearly come forward into the 5 year land supply. There will undoubtedly be other sites that with more information will move the other way. The appellants are in the position of reporting private conversations with landowners/developers but there is no ability to confirm, when those conversations suit the case, but

making no reference to sites such as Wortley that go the other way. That is why objective evidence of viability matters is important as it can be tested and is subjected to objective standards. Evidence which relies on 'I have spoken to the developer /owner and he isn't interested', are impossible to test.

107. Viability is one of the three key tests. It is clear from the Framework and the PPG that viability is an objective test i.e. what would a reasonable developer require to develop, and what price would a willing i.e. reasonable landowner, seek. This policy approach would be rendered otiose if it was then open to the house builders to say that, despite the objective position, they simply were not interested. The issue must be whether the Council can show a 5 year supply of sites which a developer seeking a reasonable level of profit would be prepared to develop.
108. The other 'delivery' issue relied upon is to say that for the inner area the volume house builders are not interested because it does not meet their business model, and there are insufficient low cost developers to bring forward the sites. This is the area where the evidence on the action LCC is taking to bring forward brownfield land is important. The Council is very active in this field, and have a large number of initiatives which will bring forward housing development. The HILS is disposing of land on the open market; promoting an affordable homes programme, including Council housing; bringing forward sites in the housing estates of the inner areas through joint ventures with developers; supporting specialist housing such as self-build and older persons housing; and working in partnership with the HCA on some key sites.
109. There are a number of developers who specialise in this field, and there is a very obvious opportunity for them to expand in Leeds, where there are a large number of sites and a high level of demand (as is clear from the CS figures).
110. There is a clear opportunity for new entrants into this market. The appellants' approach to markets is a highly static one. House builders have a model and they will not change it, existing low cost providers in Leeds will not expand very much, and there will be no new entrants in the market.
111. This again raises a fundamental issue with the Framework and 5 year land supply. On the appellants' evidence what exists in Leeds, certainly in the inner area, is a dysfunctional market. There are sites available which are viable and upon which a reasonable profit can be made, but there are not house builders willing to take up that opportunity. It is difficult to see why that failure of the market should lead to the release of more greenfield sites to volume house builders who are only providing for one sector of need in any event.
112. In terms of financial viability the appellant says that the DVS reports do not consider sufficient sites, or a sufficient cross section to be reliable. This is a difficult argument to sustain. The May 2014 report covered a cross section of sites across the Council area. The Council chose sites where there might be viability issues, and it is difficult to see what was wrong with this approach. The DVS report (as well as the EVS update) suggested that the city centre was a viable location, so the October 2014 report focused on the Inner Area. The sample is a total of 32, so obviously there could have been more. But it seems probable that however many sites had been chosen, the appellant would have said they were insufficient and it must be remembered that the Council is operating in a world of limited budgets where it cannot require endless reports.

113. The DVS Reports show that the 3 city centre sites assessed were all viable, by a wide margin. This now seems to be borne out in reality, given that one of those sites was one of the PRS proposals referred to, so there seems to be strong market interest. There are specific factors which will much help viability in the city centre. Many of the key regeneration sites are in Holbeck Urban Village, which will get an enormous boost from the new southern entrance to the railway station helping connectivity both to the station and across the city.
114. There was evidence of discussions with developers on sites such as that at Ingram Row for a very large PRS scheme. This site is not even in the 5 year land supply, and is clear evidence of the growing developer confidence in the city centre. The Ingram Row site is also interesting in terms of the appellant and HBF approach to the SHLAA. This is a site where there is a very strong developer interest. But neither the HBF in the SHLAA process, nor the appellant's evidence, made any mention of it. This and the site at Wortley show the difficulties for the Council in drawing up a SHLAA when the house builders either do not share information, or perhaps do not even know information about city centre sites. The size and diversity of sites in Leeds makes the task of drawing up a robust 5 year land supply assessment enormously difficult notwithstanding the Council's best efforts.
115. There is obviously great interest in the emerging PRS market. It was accepted that private rental demand is strong in Leeds, so it is difficult to see why PRS will not be an important part of the 5 year land supply, particularly given the very high number of units that are involved on individual sites.
116. There are also the more traditional developer led schemes in the city centre which are coming forward. The market is not as buoyant as at its height but developers are looking to start schemes on the upward trajectory of the market, rather than wait for the top of the market and then be building as the economic cycle turns. A brief perusal of the SHLAA schedule shows the number of city centre sites where there are on-going discussions between the Council and developers.
117. There are different issues around inner area viability. Again the DVS report shows viability on a large proportion of sites. The October 2014 report, which was on inner area sites alone, showed that out of 17 only 4 were unviable, 3 of those only by relatively small margins. So on the basic approach of taking a reasonably optimistic view of the economy in Leeds it is not unrealistic to include those 3 in the SHLAA. In terms of demand this is an area where considerable public funding is available to help support schemes and this will lead to a virtuous circle of regeneration. The actions of Bellway at Gipton, a privately funded development albeit within the EASEL area, shows that house builders can be interested in the inner area and the appellants' pessimism may not be well founded.
118. Critically this is the area where the house builders' avowal of lack of interest should not lead to the sites being rejected for the purposes of the 5 year land supply.
119. Finally, in the areas where the house builders are interested there has been a disparity between the build out rates relied upon by the Council, and those of the house builders and the appellant. The Council has analysed build out rates on larger sites completed in the period 2006 to 2014 which show an average rate of

46 dwellings per annum. House builders at LCC Plans Panel Meetings have stated build out rates up to 50 dwellings per annum. But the house builders suggest that a lower rate would be more realistic. Again this comes back to the fundamental issue as to how far the HBF should be allowed to dictate the 5 year land supply, and rely on their own business model to force the release of greenfield sites rather than the Council's housing mix policy (H4) in the CS. The evidence is clear that house builders on high demand sites choose to deliver at a rate at which they can maintain the price and thus their profit levels. It is clear from the DVS evidence that those profit levels are well above what is required for viability.

120. Two examples are (1) Spofforth Hill, Wetherby, a large PAS site in a very high demand area (the Golden Triangle), where the developers are now saying they will only have two outlets and build out 68 units per year. This makes perfectly good commercial sense but inevitably reduces the 5 year land supply. And (2) Kirkstall Forge, a very large site with permission for over 1000 units, of which about 750 are flats. There is no issue about the site being viable, but the HBF/appellants say the houses will be built first, thus again significantly reducing the number of units within the 5 year land supply. Again this may make commercial sense, but from the Council's point of view this is a large site which could make a far greater contribution to the 5 year land supply, if the developers chose to reflect the housing mix set within Policy H4 of the CS.
121. The contribution of older persons housing and student accommodation is taken into account both in assessing completions since the start of the CS period and in contributing to the 5 year supply. Although it is difficult to assess whether such sources free up existing stock and further guidance is expected on this from DCLG, the PPG and CS refer to such sources. The CS Inspector accepted that such accommodation could contribute to the 5 year supply and included it within the monitoring framework.

#### *Other Sources of Supply*

122. In addition to SHLAA sites, there are some other sources of supply that the Council include in its 5 year calculation. A PAS site at Methley for 181 dwellings not included in the SHLAA has been released despite not meeting all the interim policy criteria. Small windfall sites account for 500 dwellings per year as accepted by the CS Inspector. Larger windfall sites have also come forward in the last two years providing about 450 dwellings. Taking into account that sites with planning permission will already be included within the SHLAA, 600 units are predicted from this source.
123. Prior approvals that allow offices to change to residential have produced the potential for 316 dwelling units so far half way through the three year relaxation. An equivalent supply is predicted for the remaining 18 months.
124. The PPG refers to the contributions that empty homes can make towards meeting housing need. The CS Monitoring Framework includes reference to empty homes. There is robust evidence that there have been 800 'completions' in 2 years from empty homes and some 2000 dwellings will come forward from this source as set out by the Council's Private Sector Housing Manager.

## **Ecology**

125. In respect of ecological matters, the Council is content that there is sufficient information upon which a decision can be made.

## **Conclusion**

126. To grant planning on this large greenfield site shortly before the publication of the report on the Council's position on the choice of sites to be put into the SAP would be premature and undermine the plan led system, and public confidence both in the planning process and the reality of the localism agenda.
127. In terms of the 5 year land supply the base requirement is 20,380, the shortfall against the CS is 2,342 which the Council spreads over 10 years making 1,171 relevant to the 5 year land calculation and therefore the total requirement is 22,629. A 5% not 20% buffer should be applied. There is no history of persistent under-delivery, and in any event applying a 20% buffer can only result in the release of unallocated greenfield sites, contrary to the strategy of the so recently adopted CS.
128. The Council's supply figure is 29,504 based on a reasonably optimistic view of Leeds economy over the next 5 years. That is entirely appropriate given that it precisely mirrors the approach to growth in the CS which underpins the requirement figure.
129. The appellants' rejection of the majority of the sites in the SHLAA turns not on their viability, but on the argument that they do not meet the volume house builders business model and there are no other companies willing or able to develop them. This approach should be rejected. If the sites are viable, suitable for the use proposed and available then they are appropriately within the 5 year land supply.
130. In these circumstances the appeal should be rejected.

## **The Case for Farsley Residents Action Group (FRAG)**

*The material points are<sup>31</sup>:*

### *Site Value for Bats*

131. FRAG maintains that both the appellants and the Council have failed to ensure that the current planning application is supported by evidence to allow the potential harm to protected species to be properly assessed.
132. At the original inquiry neither FRAG nor the Inspector was aware of the existence of the 2012 ecology and bat surveys. FRAG wrote to DCLG in April 2014 indicating that the appellant had failed to submit the 2012 surveys.
133. The 2011 surveys indicated that there were no potential bat roosts on the site and that the site was used purely for commuting and foraging purposes by a small number of Common Pipistrelle bats. The 2012 surveys found other bat species using the site and that a number of potential roosts had been found thus indicating that the value of the land to bats was significantly higher than

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<sup>31</sup> Summarised from FRAG's closing submissions FRAG9

originally estimated. FRAG did not comment on the bat impact assessment report 2014 when it was released for consultation as, by that point, the inquiry had been re-opened so the information would be addressed in evidence.

134. In response to the appellants' assertion that the BCT Guidelines should not be applied rigidly and should be considered alongside other advice, the 2011 surveys refer almost exclusively to the BCT 2007 Guidelines<sup>32</sup>. The reason given for undertaking the 2012 surveys and 2014 bat report was the publication of the BCT 2012 Guidelines<sup>33</sup>. The only guidance referred to in the surveys, other than that related to desk top studies and risk assessment, are the BCT Guidelines.
135. The BCT Guidelines refer to minimum recommended levels of surveys and the need to explain any deviation from the minimum. This implies that, whilst judgement can be applied, more surveys would be appropriate rather than less in comparison to the recommended levels. It is considered that the appellants have not adhered to the minimum and have not explained the rationale behind the deviation.
136. Taking into account the guidance, the site should be classified as moderate to high value based on the 2011 surveys and 2007 guidance and comfortably as medium value based on both the 2012 surveys and guidance. The points of relevance, ordered as in Table 4.2 of the Guidelines, are that (5) there are several potential roosts in trees; (6) the habitat could be used for foraging; (7) the site is connected with the wider landscape by linear features that could be used by commuting bats; and (12) bats have been recorded or observed using an area for foraging or commuting close to potential roosts.
137. The appellant agrees that (6) and (7) are relevant but dispute (5) and (12). The survey data in respect of roosts shows two to three Common Pipistrelle were possibly seen emerging from Tree 21 and three of the same species from Tree 36 or 37 suggesting three suspected roosts of small numbers of Common Pipistrelle which might be used as transitional roosts or potentially as hibernacula. The appellants consider that point (2) is applicable – a small number of potential (opportunistic) roost sites (i.e. probably not maternity roosts or hibernacula). FRAG submit that (5) is more relevant as the roosts are potentially hibernacula.
138. In relation to (12) Tree 21 contains a potential roost and is close to both a major commuting route along the western boundary and a second commuting route along the northern side boundary. The appellants' inference that a hibernation roost should contain a large number of bats is not referenced in (12).
139. FRAG maintains that the site characteristics, when considered on the continuum between low and high potential value, reflect a medium value based on the 2012 guidelines. Dr Webb confirmed that, if points (5), (6), (7) and (12) were met, then a medium value would be appropriate.

### *Tree Inspection*

140. The number of categories for assessing the value of trees due to be affected by arboricultural work increased from 4 to 5 with the introduction of the 2012 guidance. Some of the categories are similar but in combining the known and

<sup>32</sup> BCT Bat Surveys Good Practice Guidelines 2007

<sup>33</sup> BCT Bat Surveys Good Practice Guidelines 2<sup>nd</sup> Edition 2012

potential roost categories a level of disparity has been introduced that could seriously undermine the robustness of data. The trees should have been reclassified under the 5 category system and the methodology explained or a new preliminary roost survey undertaken following the 2012 guidelines.

### *Survey Efforts*

141. The 2007 guidelines recommended that 4 surveyors were used on sites of between 5 and 25 ha but only 2 surveyors were used in the 2011 surveys. Moreover, the surveys did not extend over several nights to compensate for the lesser number of surveyors. Based on a site of moderate to high value 2 to 3 activity surveys should have been undertaken between April and September and at least one of these should have been a dusk and dawn or dusk to dawn. Only 2 dusk surveys were undertaken, one at the end of August and a second towards the end of September. These factors mean that the 2011 survey data was not robust.
142. The 2012 surveys did not meet the minimum requirement for a site of over 15 ha of medium value as recommended in the 2012 guidelines. There were surveys in May (dusk), June (dusk) and July (dusk and dawn). Automated surveys were also undertaken over 5 consecutive nights in June and September but during the latter the detector in the south-west corner of the site did not function on 16 September for a period. The guidelines recommend 1 visit per line transect per month April to September/October and at least one of the surveys should be dusk and pre-dawn or dusk to dawn. Automated surveys should comprise 2 locations per transect with data collected on 5 consecutive nights each month. The shortcomings are that no activity surveys have been carried out in April or August and the automated survey undertaken in September was not complete.

### *Presence/Absence Surveys of Trees*

143. Surveys were undertaken for all trees recommended for arboricultural work. The 2012 guidelines recommend that for a tree 2 surveyors may be adequate but it is better to have some surveillance overlap. Tree 21, close to the north-west corner of the site, has several potential roost entry/exit points<sup>34</sup> but FRAG's analysis of the 2012 survey document suggests that only 1 surveyor was used. Given the potential roost and the high number of bat passes in the vicinity of the tree, many more bats may have emerged from the tree than recorded, hence undervaluing the importance of the roost. This affects the factors fed into the assessment of site value.
144. These circumstances have parallels with an appeal in Upton on Severn where the Inspector commented that the use of only 1 surveyor is unlikely to produce reliable results<sup>35</sup>. The species of bats present was different but the points about the practicalities of carrying out a survey are relevant.
145. In considering whether the value of the site has been correctly assessed and the survey effort is appropriate, regard should be had to a recent legal case where Mr Justice Stewart found that the decision maker did not have regard to the requirements of the Habitats Directive in establishing the presence or otherwise

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<sup>34</sup> See Document R6.8

<sup>35</sup> See Document R6.6 - Appeal decision ref: APP/J1860/A/13/2199166 dated 4 March 2014

of protected species and the extent that they may be affected by the development before planning permission was granted<sup>36</sup>.

146. Article 12 of the Habitats Directive prohibits the deliberate disturbance of bats or the deterioration or destruction of their breeding sites or resting places. In certain circumstances a mitigation license can be issued to permit activities which would otherwise be unlawful. But derogation tests have to be met.
147. In this case the arboricultural report recommends category R trees are felled as they have a minimum safe and useful life expectancy but notes that some of the recommendations could not be considered necessary if the site was not developed. Tree 21, as a category R tree and unsafe, needs to be felled if the development goes ahead but otherwise would probably not need to be removed. A mitigation license would be required for its felling because it potentially contains a bat roost. As a result Article 12 is engaged and the derogation tests need to be considered. As pointed out by Judge Waksman<sup>37</sup> if it clear or very likely that the tests cannot be met then planning permission should be refused.
148. In this case there is no imperative reason of overriding public interest and there are satisfactory alternatives both of which will be confirmed with the publication of the draft SAP in 2015. Therefore, the derogation tests are failed.
149. FRAG submits that the appeal should be rejected.

### **The Case for Interested Parties**

#### **Stuart Andrew MP**

150. Mr Andrew said that he was pleased that the inquiry has been reopened and that the appeal is being given the scrutiny that it deserves. The site is important to Farsley and the appeal has galvanised people locally. The infrastructure concerns, about congested roads, pressure on school places and difficulties of accessing local health care, well presented at the original inquiry, remain.
151. In terms of the five year land supply, the CS hearings were focused on housing numbers. Whilst the house builders fought to have a figure of 90,000 homes included as a requirement, local groups sought to explain the impact that such an excess number of houses would have. LCC was exhaustive in defending its requirement of 70,000 homes and the CS Inspector found this number to be sound. It is noteworthy that the house builders did not attend hearing sessions on transport or employment emphasising that they are only interested in housing targets so that they could maximise the number of sites and cherry pick the most profitable sites. This approach would not address the real housing needs of the city.
152. The step up was accepted by the CS Inspector. The Council has provided significant evidence that it has a five year land supply. If the buffer is increased it will have the effect of bringing greenfield sites forward too early. Moreover, the number of houses being delivered is increasing as we come out of recession,

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<sup>36</sup> Bagshaw and Carroll v Wyre Borough Council [2014] EWHC 508 (Admin)

<sup>37</sup> R (on the application of Simon Woolley) v Cheshire East Council [2009] EWHC 1227 (Admin)

helped by schemes assisting first time buyers. So the need to increase the buffer is negated.

153. The Council is very well advanced with its site allocation process, not an easy task for one of the largest cities in the country with specific issues to address. LCC has been working with local councillors to identify sites for the SAP, with particular focus on brownfield sites which may come forward as the economy improves. This reflects the Government's objective of brownfield first which is supported by a £3m fund to get sites moving. At this critical point in the process it is important that we do not give up valuable greenfield sites such as Kirklees Knoll.
154. House builders are casting aside brownfield sites, including city centre locations, saying that they are not viable. But this pessimistic view is put forward so that they can get land such as Kirklees Knoll released. And it is against their business model of wanting to build 4 and 5-bed houses rather than the starter homes and accommodation for older people that would be well suited to brownfield sites, represent a significant part of the actual housing needs of the city and would help to achieve more sustainable development and regeneration.
155. In addition the issue of the five year supply needs to be balanced against the objectives set out in the foreword to the Framework about protecting the natural and historic environment and the achievement of sustainable development through the consideration of the document's policies as a whole. Moreover, development should be plan led, enhance and improve where people live, take account the character of different areas and conserve and enhance the natural environment.
156. In terms of being plan led, more people in Leeds and in the constituency have become engaged in the planning process in recent years as promoted by the Framework. This is reflected in attendance at public meetings, involvement in neighbourhood forums, survey returns and the formation of community groups. But these processes, including the inquiries and hearings, are time consuming, difficult and sometimes daunting. Nonetheless people go out of their way to gather information and evidence to support a plan led approach because they want to be part of it and see sustainable communities.
157. Given that we are seeing greater engagement, the most sustainable sites are being identified, the CS has been found sound, there is a five year supply of housing and LCC is advanced with its plans, it would pre-empt the plan led process to allow this appeal. And it would send out a terrible message to those who have worked hard to engage with the process. It would be back to the old days when planning was something that happens to them.
158. To allow the development would be premature and would harm rather than enhance the community. The application should be refused. The community should be allowed to decide what and where should be developed through a genuine plan led approach.

### **John Bracken**

159. Mr Bracken is a candidate to be a LCC Labour Councillor for the Farsley and Calverley Ward. He has lived in Farsley for two years in which time he has come to know about local issues having spoken to 10,000 local residents.

160. Whilst noting the appellants' case that the build rate should not be a ceiling and a reason to refuse an acceptable scheme, the proposal is not satisfactory due to highway issues, pressure on schools and health care impacts even though the application may satisfy technical requirements.
161. The CS has been signed off as satisfying legal and soundness requirements. It should be the basis for empowering people to shape their own surroundings in accordance with the Framework, PPG and localism. The development would not be sustainable and permission would fly in the face of the Government's mantra.

**Jamie Hanley**

162. Mr Hanley has lived and worked in the area for most of his life. He went to school near to the appeal site. He is standing as the Labour Parliamentary Candidate for the constituency.
163. He has spoken to more than 9,000 residents in the Farsley Ward and over 8,000 residents in the adjacent ward. There is overwhelming opposition to the proposal, including from FRAG, local councillors and the MP. The issues of highways, schools, health care and local public transport provision remain. In addition there will be impact on a bat habitat.
164. There is 6.4 years of housing supply against the approved CS. Some 550 homes have been approved by an Inspector at the Clariant site on the Calverley-Horsforth border which will increase pressures on local infrastructure and services.
165. It would be remarkable if the SoS went against localism.

**Andrew Carter (LCC Ward Councillor)**

166. Since the original inquiry circumstances have changed. The CS is now at the point of adoption with the requirement of 70,000 homes, the step up in delivery, the existence of infrastructure and environmental constraints and a spatial distribution, all endorsed by the CS Inspector.
167. He has experienced the SHLAA partnership in deputising for a member. The Council is encouraged to follow the SHLAA process but it is a depressing affair as 25% of the members work against it. There are delays in the HBF representatives providing information.
168. The SoS and the Planning Minister have recently spoken about the need to avoid urban sprawl. Build rates are improving, including on many brownfield sites. This is demonstrated by the monthly meetings with LCC Planners to consider applications and preliminary enquiries for housing in the Ward which demonstrate sites within the HMCA, including brownfield, are coming forward all the time. For example a proposal for 90 homes has come forward on a site adjacent to Belgrave Works, Town Street, Stanningley.
169. The SAP is being progressed and people are aware of what the basis for site selection will be. Some developers will put up a fight. But it surely cannot be right that a site that represents 10% of the Outer West HMCA should be plucked out of the SAP process as that would drive a coach and horses through the SAP process and localism.

### **Ron Wood (LCC Ward Councillor)**

170. He is concerned about the felling of the two trees in the south-east corner of the site (T36 and 37). Although a conversation took place with the agent for the Thornhill Estates land<sup>38</sup>, it is incorrect to state that the felling was accepted. Contact was made with the tenant farmer because of concerns about livestock. The Project Director for Bellway Homes, when contacted about the work, had no knowledge about it. Mr Wood was not aware of any consent having been obtained from the Council.

### **Chris Levi**

171. The five year supply of housing can include the large number of brownfield sites which are a reflection of the city's industrial heritage. Examples locally include Cherry Trees where there are 24 dwellings, the Old Foundry in Bagley Lane and Sunnybank Mills. The latter scheme reflects good practice in consultation where 16 homes will be integrated into a site with a stream and woodland. In contrast the Kirklees Knoll development will bring no benefits, just negative impacts.

### **Amanda Carter**

172. She chaired the LCC Plans Panel in the past and was involved with the Leeds/Bradford Regeneration Corridor. A number of windfall sites have been coming forward within the corridor, including developments in Pudsey. Kirklees Knoll would be the largest site in the HMCA. There is no need for the site in the context of the Framework and CS.

### **Philippa Simpson**

173. The extensive evidence, including the SHLAA, indicates that there is a five year housing land supply. Her son bought a house recently built by Keepmoat, some 10 minutes walk from Shipley Station. There is a significant stock of brownfield sites which have a regeneration benefit. There is a finite supply of greenfield sites. Brownfield should be the preference.
174. Examples of brownfield sites are land to the north of Morrisons and Elder Road in Swinnow, Kirkstall Forge, Yorkshire Chemicals, Belgrave Works and Clariant Works. Some of these sites are of significant size.
175. The appeal proposal would be premature and should be considered as part of the plan led process within the SAP.

### **Malcolm Levi**

176. As a keen gardener he often sees bats on summer evenings flying to and from Sunnybank Mills. The bats use the gaps between houses on either side of Priesthorpe Road before flying onwards to Kirklees Knoll. The LCC Plans Panel rode roughshod over the requirement to take into account bats when outline planning permission was granted for development on the south-west side of Calverley Lane. It is expected that the SoS will give more consideration to the issue.

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<sup>38</sup> See APP11 appendix 3

## Written Representations

177. Written representations have also been made by four interested persons<sup>39</sup> in response to the notification about the reopened inquiry. The following additional points have been made:

- *Five Year Supply* – It is understood that ONS are shortly issuing updated population projections and estimates for growth are to be revised downwards. If so then the LCC requirement of 70,000 homes by 2028 should also go down.
- *Bats* - Numerous bat activities have been witnessed over the years, including bats hunting over the gardens backing onto the site. FRAG surveys note multiple species. It was wrong not to submit the 2012 surveys prior to the original inquiry. It was also wrong for LCC not to insist on submission of them as it is apparent from e-mail exchanges that LCC was aware of their existence in October 2012. There is no public consultation response from the Council's relevant officer on the public file. Whilst the bat report 2014 recommends further bat surveys at detailed design stage, the appellants should have also submitted up-to-date surveys to ensure a robust assessment given that the last surveys were in 2012.
- *Bus services* – There has been a deterioration in bus services since the original inquiry as the No 86 linking Rodley, Farsley and Pudsey has been withdrawn. This route linked Rodley and Farsley with the Owlcotes Shopping Centre and went close to New Pudsey Railway Station. There is now no daytime weekday service from the nearest bus stops to the appeal site in Bagley Lane. The nearest bus stops to serve the Owlcotes Centre are now at Old Road/Bradford Road. S106 contributions should be directed towards those bus stops that have weekday daytime services. Further services may be withdrawn or reduced in the future making the development even more car dependent.
- *Infrastructure* – The highway network, particularly Calverley Lane, Town Street, the ring road and Bagley Lane, would be severely tested. Measures such as traffic calming would be unworkable. Both local primary schools have had to expand against the wishes of the local community and the school in Calverley is oversubscribed. The developer should make a realistic and substantial financial contribution to the provision of extra school places. There are concerns about the availability of local medical facilities.

## Obligations

178. The appellants and the Council explained that the obligations referred to in the original report [OR122-124,187-193] remain in place. However, the variation to the S106 agreement takes into account the progress that has been made in on the CIL charging scheme. The CIL Charging Schedule was adopted by LCC on 12 November 2014 and it is intended that it will be implemented across Leeds from 6 April 2015. Some of the matters which are covered by the agreement may have been replaced by charges under CIL if permission is granted and by the

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<sup>39</sup> Philippa Simpson, Philip Kellett, John Bracken and Jamie Hanley

time that development proceeds. The deed of variation allows for this eventuality.

179. Reference was also made at the inquiry to progress being made on the improvements to Rodley Roundabout. The signalisation scheme had commenced at the time of the reopened inquiry. The Council has obtained a grant following its pinch point bid [OR53, 122] but advised that it would still require developer contributions to make up the deficit in funding which has currently been bridged by borrowing. The Council requested that it be given an opportunity to respond fully if there is any suggestion that these contributions would no longer meet the CIL Regulation 122 tests.

### **Conditions**

180. The need to update conditions was discussed following the submission of the bat report 2014. The report recommended mitigation relating to lighting during the construction period and when the development is completed; the timing of works to the junction with Calverley Lane; planting, tree and hedgerow retention; provision of bat boxes; and updated surveys for any trees with bat roosts (potential or confirmed).
181. An updated list of conditions<sup>40</sup> was submitted following the close of the inquiry. The recommended conditions relating to bats cover a mitigation plan, roosting opportunities and lighting design.

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<sup>40</sup> Document LCC20

## Conclusions

*The numbers in square brackets [ ] refer back to earlier paragraphs which are relevant to my conclusions.*

### **Main Considerations**

182. The main considerations arising from the reopened inquiry are:

- (1) whether there is now a five year supply of housing land; and,
- (2) whether the development would be likely to result in harm to bats as a protected species.

### **Five Year Housing Land Supply**

#### *Requirement*

183. The CS has now been found to be sound and the plan to be adopted contains the 'step up' [IR10]. There is no dispute that the base requirement for the five year period 1 April 2014 to 31 March 2019 is 20,380 dwellings [IR21 & 127]. This differs from what I considered to be the base requirement at the time of the original inquiry when the CS was still under examination and the 'step up' was subject to objections [OR171-172].
184. There has been a shortfall in provision against the requirement in both of the full years since the base date of the CS. On the Council's figures for 2012/13 the shortfall was some 1,567 dwellings whereas in 2013/14 it was 775 homes resulting in an under-supply in the first two years of 2,342 units [IR30 & 127]. However, these figures include 'completions' from the bringing of empty homes back into use and older persons and student housing. Evidence on completions from these sources was not before me at the original inquiry [OR173]. The figure of about 400 completions per year from empties is based on monthly monitoring so is supported by evidence [IR124]. However, the inclusion of older persons and student housing is less robust as there is no evidence that existing housing stock has been freed up [IR31 & 121]. Whilst some completions should be included from older persons' housing, say about 80 units per year, the evidence is that student accommodation is less likely to have freed up existing housing, given the range of factors set out by the appellants [IR57] which apply to an extent to past delivery as well as future supply. On this basis the under supply for the first two years of the CS has been about 2,900 units.
185. With regard to any undersupply in 2011/12, whilst there was 12 months between the preparation of the evidence base (the SHMA) and the base date of the CS, it would seem to me that my original conclusions on what should count towards the backlog hold true [OR173]. The backlog fed into the objective assessment of need which included demographic factors.
186. The shortfall should be made up in the next five years in accordance with the Sedgfield approach for the reasons set out in OR174. The use of the Sedgfield approach has been reinforced with the publication of the PPG. There is no evidence that LCC has worked with neighbouring authorities [IR32]. To spread the shortfall over the first 10 years of the CS as suggested by the Council [IR94] would mean that it would be less likely that provision would match identified housing needs for the early years of the CS. Applying the Sedgfield approach

would not increase the CS requirement but merely seek to address it within an appropriate timeframe.

187. So far as the buffer required by paragraph 47 of the Framework is concerned I see merit in considering delivery over a relatively long period for Leeds. Such an approach would reflect the guidance in PPG<sup>41</sup> that a local delivery record is likely to be more robust if a longer term view is taken so that peaks and troughs in the market cycle are included. The appellants' suggestion that a period of between 4 and 6 years is appropriate [IR27] would take into account primarily a period of recession and recovery from recession rather than a complete market cycle. As noted in my original report delivery exceeded targets until 2008/09 but then dipped due to recessionary and RSS factors [OR175]. There has been under delivery in the first two years of the CS. The appellants point to completion rates lagging behind the requirement in the last 10 quarters [IR35]. But these factors are a reflection of a period when the country has been emerging from recession. Delivery on city centre, inner area and brownfield sites, which make up a significant proportion of the supply in Leeds, is likely to take longer to respond to encouraging trends in the housing market. However, at the same time permissions on greenfield sites have increased as a proportion of consents [IR92]. PPG notes that the factors behind under delivery may vary from place to place<sup>42</sup>.
188. On the basis that delivery exceeded targets for the first four of the last 10 years, a persistent under delivery of housing has not been proven, a conclusion which is consistent with that which I came to previously [OR176]. This is a judgement based on the particular circumstances in Leeds as put to me at the inquiry. A buffer of 5% should be applied to the five year requirement. The buffer should also be applied to the under supply as to do otherwise would result in some of the CS requirement and the 5% buffer disappearing altogether [IR29]. The application of a 5% buffer would not result in the harm from a higher requirement identified in paragraph 24 of the CSIP [IR87 & 89].
189. The five year housing requirement comprises about 24,440 dwellings which includes the under supply since April 2012 [IR184] made up in this period and the application of a 5% buffer to both the base requirement and the under supply.

### *Supply*

190. The Council's five year figure of 29,504 dwellings [IR128] is calculated using a number of sources of supply, notably SHLAA sites, an additional PAS site, windfalls, returns from long term empty properties and prior approval applications enabling changes of use from offices to residential. There is no dispute about the delivery from small windfall sites comprising 500 units per year.
191. A significant proportion of the SHLAA Sites identified to contribute are in the city centre and inner areas of Leeds [IR49]. There are questions over the viability of many of these sites and whether a competitive return can be achieved and there are the developers available to bring them forward [IR51]. However, to my

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<sup>41</sup> Paragraph 035

<sup>42</sup> Paragraph 036

mind, supply cannot be approached in a policy vacuum. The strategy of the CS is to require a significant proportion of brownfield development<sup>43</sup> (over 50% for the whole of the plan period) and an appropriate mix of dwelling types, including units for smaller households<sup>44</sup>. In terms of housing distribution almost 50% of housing is planned to take place in the City Centre, Inner Area and East Leeds HMCA<sup>45</sup>. Allocations and planning permissions will need to reflect this strategy. As a consequence so will the five year land supply. This is in the context of an optimistic growth strategy [IR97]. Based on the evidence before me the position in Leeds is different to that in other areas such as Wakefield where there a number of main settlements with adopted allocations and less reliance on development within a MUA [IR51 & 102].

192. The volume house builders have rejected a significant proportion of the supply from city centre and inner area sites identified by the Council. In recent years the house builders have not tended to be involved in such sites as they have not fitted their business model [IR108]. However, a number of factors are likely to assist supply in these areas. The Council's interventions will bring forward brownfield land [IR108]. Some developers are involved in regeneration projects and there is evidence of S106 obligations assisting in this respect [IR117]. There are signs that Leeds is going to capitalise on the emerging market for large PRS schemes funded by financial institutions [IR115]. There are low cost builders who are active in Leeds and there is no reason why that should not continue [IR109], whilst recognising that output from these regional operators is unlikely to increase significantly [IR50]. The scheme to open up a south entrance to the railway station will make the Holbeck Urban Village more attractive to developers [IR113]. There is good reason to expect the city centre to capitalise upon its attractiveness as a place to live once again [IR93].
193. The Council has assessed the viability of a selection of sites in the city centre and inner area and the evidence indicates that a significant proportion of such sites are likely to be viable, albeit not achieving the profit margins sought by the volume house builders [IR113 & 117]. The approach taken by the DVS on land values, costs, sale prices and profit has, to my mind, been largely substantiated [IR112 & 113]. For these reasons the house builders' and appellants' view of the contribution from these areas is too pessimistic.
194. I note that less than 50% of SHLAA sites have planning permission [IR42]. Some are Amber sites [IR40]. Others have expired permissions [IR52]. However, I am satisfied that the Council has made a reasonable assessment of the likelihood of them coming forward in the short-term, taking into account their promotion by landowners and the Council's knowledge of sites within its area [IR106]. It is also appropriate for such sites to be considered within the context of the Core Strategy objectives.
195. There is also a difference between the Council and the appellant in relation to predicted build out rates. Even on sites in high demand areas such as the Golden Triangle there are a limited number of outlets and a tendency to concentrate on family houses rather than smaller units [IR120]. For example at Kirkstall Forge

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<sup>43</sup> Policy H1

<sup>44</sup> Policy H4

<sup>45</sup> Spatial Policy 7

family homes are to be built first even though more than 75% of the development is to be flats. Build rates may be limited so that the flow of properties onto the market allows prices and profit levels to be maintained [IR119]. There is also some reflection of their business model in the figures. However, past build out rates and publically stated anticipated rates on some sites indicate a higher output than generally predicted by the house builders [IR119]. For the purpose of this exercise build rates should be based on a more optimistic but still realistic delivery than that put forward by the house builders within the policy framework set by the CS.

196. So far as accommodation for older people and students is concerned both sources are difficult to analyse as the CS Monitoring Indicators (11a and 11b) require that new units free up existing stock [IR56 & 57]. Moreover, in relation to students the evidence indicates that student growth will massively outstrip supply [IR57]. So the SHLAA figures should be adjusted to remove the supply of 895 units for students and an estimated 500 units for older people. With regard to the latter that would still allow some supply from older persons housing of about 400 units.
197. The input of the development industry into the SHLAA process and resultant five year supply is important as recognised by PPG, Planning Advisory Service guidance and the appeal decision in Cheshire East [IR43]. The position of the house builders is clearly set out in the Leeds Developer Consortium Report [IR45]. I acknowledge the work done by the appellants in their further assessment of the larger sites where there is variance between the house builders and the Council [IR45] and the further sense check on some sites [IR54]. Although circumstances have changed on some sites which were conceded as being unlikely to come forward at the original inquiry and at previous appeals, the appellants' overall assessment indicates that SHLAA sites will deliver over 10,000 units less than the 2014 SHLAA figure.
198. The SHLAA process for a city such as Leeds is by necessity a broad brush approach given the large number of sites, many of them relatively small in scale. [IR105]. Some sites will come into the supply and others will fall away [IR106]. The SHLAA is a snapshot in time. There were significant disagreements during the formulation of the 2014 SHLAA which has led to the disparity in the figures put forward by the Council and the appellants. However, it is nigh impossible for an Inspector at appeal to redo the analysis for a city such as Leeds with any accuracy.
199. Therefore, taking into account the policy context and the other factors that I have referred to above, I consider that the published 2014 SHLAA is the best basis for assessing the five year housing supply. In coming to this conclusion I have taken into account the different underlying objectives of the Council and the development industry which underpin their analysis. Given that the CS has only just been adopted and should be given the opportunity to bed down and form the framework for housing supply, the Council's analysis should be preferred. To do otherwise would seriously undermine the chances of the CS being implemented.
200. The additional allowance for the PAS Site not included in the SHLAA appears reasonable as it has obtained planning permission [IR122]. Taking into account the size of Leeds and the diversity of its urban area, an additional allowance from large windfalls, based on an analysis of permissions that have come forward

outside the SHLAA in the last 2 years is reasonable [IR122]. In terms of contribution from prior approvals, although there is a stock of such units, I consider that the Council's estimate of their contribution [IR123] is over-optimistic for the reasons given by the appellant, particularly the likelihood that many such applications are likely to be for valuation purposes [IR60].

201. Turning to empty homes, an allowance can be included for those long term empties likely to return to the housing stock in accordance with Monitoring Indicator 14 of the CS. The figures provided by the Council about completions from this source are not supported by detailed information [IR58] but the Council advised the inquiry that analysis of Council tax records had taken place. I see no reason to dispute that this was the basis for the figures and can understand the sensitivities over this material. That said it is unlikely that all long term empties (2,000) will return to the stock within five years so I consider that the appellants' suggestion that 1,000 units would arise from this source is reasonable [IR65].
202. Therefore, I consider that an overall supply figure of about 26,500 homes would be reasonable taking into account the Council's figure adjusted to remove some empty homes and older persons housing and the totality of the contribution from prior approvals and student housing.

### *Conclusions on housing land supply*

203. The supply of some 26,500 homes exceeds the requirement by just over 2,000 units. Therefore, the evidence indicates that a five year housing supply can be demonstrated. The supply figure also allows flexibility on top of the 5% buffer so some under delivery on city centre and inner area sites and lower build rates on prime sites such as Kirkstall Forge would not necessarily be fatal to the delivery of sufficient new homes.
204. This conclusion differs from that arrived at in the original report [OR180] and that can be explained by the adoption of the CS with its step up; and the presentation of evidence on completions since April 2012, city centre/inner area viability, regeneration, empties and other sources of supply.

### **Ecology**

205. Surveys and assessments provided since the original inquiry indicate that bats are more prevalent on the appeal site than first thought. There is now evidence that the site is used for roosting and by some of the rarer bat species [IR133].
206. The BCT Guidelines need to be applied with expert judgement. But the layperson should be confident that they should generally be followed to ensure that the process is transparent and robust. The information available, particularly that relating to potential hibernacula [IR137] and roosts close to commuting routes [IR138] suggests that the site should be attributed a 'medium value' as indicators (5), (6), (7) and (12) in Table 4.2 of the 2012 guidelines apply [IR139]. The extent of surveys does not follow the recommendations for a medium value site [IR142]. There are also potentially issues with the number of surveyors used for those trees likely to be affected by arboricultural work [IR143]. So as a result the importance of, for example, the roost in Tree 21 may have been undervalued.
207. That said the application is in outline. No trees are shown to be removed as a result of the access works onto Calverley Lane, the only part of the proposal that has been detailed thus far [IR68]. There may be tensions between the

recommendations for arboricultural work and the need to retain trees that have known roosts or the potential for such roosts [IR147]. The detailed layout proposals have the potential to affect existing trees. However, there would be a strong presumption that the detailed scheme and arboricultural works would be drawn up so that protected species would not be affected by the development [IR145]. Conditions can be imposed at this outline stage to ensure that further survey work is undertaken, consistent with a medium value site and bat mitigation is put in place [IR70]. With these safeguards and on the basis of the scheme as it stands the proposals would not cause deliberate disturbance of bats or the destruction or deterioration in their breeding or resting places and therefore a licence would not be required. Therefore, it is not necessary to consider the derogation tests [IR146 & 148].

208. Consent has been given for the removal of the three trees on the appeal site felled since 2011 [IR9]. Therefore, these works are not within the jurisdiction of the SoS.
209. In conclusion the development would be unlikely to result in harm to bats as a protected species subject to the imposition of suitable conditions. This case is different to the Upton on Severn appeal [IR144] where full planning permission was sought and Category 1 veteran trees were in close proximity to the proposed dwellings. In arriving at this conclusion I have had regard to the SOCG on ecology agreed between the Council and appellants [IR4].

### **Other Issues**

210. Reference was made by interested parties to issues such as highway infrastructure, school provision, health services and public transport at the reopened inquiry. However, it is not within my remit to revisit these issues in this supplementary report [IR2]. Moreover, the appellants were not asked to present evidence on these matters and were, therefore, not in a position to counter the information. The original report can be relied upon for these issues as circumstances do not appear to have materially changed save for two matters.
211. In relation to the update on works at Rodley Roundabout this is a matter that is addressed through the obligations [IR179]. So far as the loss of a bus service is concerned [IR177] this does not affect my finding about deficiencies in public transport [OR145].

### **Obligations**

212. I support the reason for the variation in the S106 agreement, based on the emergence of firm proposals for a CIL Charging Schedule, including a timetable for its implementation [IR178]. In all likelihood CIL would be in place should the development proceed and would replace some of the S106 obligations.
213. The development would impact on Rodley Roundabout. The funding package for the signalisation scheme was on the basis that nearby developments, including the appeal scheme, would contribute [OR189]. The fact that the signalisation scheme has now been partially funded by grant and is going ahead does not, in my view, make the developer contribution unnecessary or unrelated to the development. The tests within CIL Regulation 122 are still met and the conditions set out in Paragraph 3.2.2. of the agreement are satisfied. If the SoS

takes a different view he should revert to the parties so that they have further opportunity to comment [IR179].

### **Conditions**

214. I consider that there is a need to update the recommended conditions following the submission of further information on bats. All of the conditions referred to [IR180 & 181] are necessary to safeguard the protected species. Appendix D contains recommended conditions to substitute those contained under the sub-heading *Biodiversity* in Appendix D to the original report. I have amended those submitted by the Council for clarity without changing the substance.

### **Overall Conclusions**

215. The proposal remains contrary to Leeds UDP Policy N34 which is still a 'saved' policy post adoption of the CS. There are adverse impacts on local character and identity, including less than substantial harm to the setting of the Farsley Conservation Area [OR201]. The development is not fully compliant with the PAS Interim Policy [OR198]. Permission would undermine the plan-led system promoted by the Framework [OR203]. The other impacts, including on bats, could be made acceptable by the use of conditions or through mitigation contained within the obligations.
216. I have concluded that there is now a five year supply of housing which is a significant change in circumstances since the original report. As a result paragraph 49 of the Framework does not take effect and relevant policies for the supply of housing can be considered up-to-date. Given that Spatial Policies 6 and 7 and Policies H1 and H4 of the CS have recently been found sound and have only just been adopted it is unsurprising that they should be considered up-to-date.
217. So far as Policy N34 of the UDP is concerned I concluded previously that it was a policy for the supply of housing [OR200]. In the light of the present circumstances it can also be considered up-to-date. In this respect the UDP has a plan period of 1998 to 2016 [OR18] so is not time expired. It is noteworthy that in the explanation to Policy N34, PAS land will be reviewed as part of the preparation of the LDF [OR17]. This is consistent with paragraph 85 of the Framework which states that permission for permanent development of safeguarded land should only be granted following a Local Plan review which proposes the development.
218. The SAP will be published in 2015 and will undertake this review having regard to the CS, including in particular Spatial Policies 6 and 7 and Policies H1 and H4. As part of this review the relative sustainability of potential sites will be assessed [IR23 & 91]. The fact that the Council has applied Policy N34 flexibly through the interim policy so that land has been released in advance of a Local Plan review does not make it out-of-date in the context of paragraphs 14 and 49 of the Framework. More, it reflects a pragmatic approach by LCC.
219. The test within paragraph 14 of the Framework in relation to planning permission being granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits does not now come into play. It is a matter of balancing the harm, conflict with the development plan and adverse impacts on local character and identity, against the benefits, primarily the contribution to

housing provision, including affordable homes [OR199]. As with the original report the prematurity argument in relation to the SAP [OR202] is not a significant factor in the planning balance. The publication of PPG has not materially altered this position [IR15].

220. Development that conflicts with the development plan should be refused unless other material considerations indicate otherwise. I conclude that the conflict with the development plan, the starting point for decision making, and the adverse impacts on local character and identity are sufficient to outweigh the benefits of additional housing, including affordable homes. The presumption in favour of sustainable development does not apply as the proposal does not accord with the development plan.

### **Recommendation**

221. I recommend that the appeal be dismissed and outline planning permission be refused. This recommendation supersedes that contained in my original report [OR205].
222. If the Secretary of State is minded to disagree with the recommendation, Appendix D to the original report lists the conditions that should be attached to any permission granted, other than conditions 15) to 19) which are replaced by conditions 1) to 6) set out in Appendix D of this report.

*Mark Dakeyne*

INSPECTOR

## APPENDIX A - APPEARANCES

### FOR THE LOCAL PLANNING AUTHORITY:

Nathalie Lieven: Of Queens Counsel, instructed by the Council's Solicitor

She called

Martin Elliot MA (Hons) MA MRTPI Team Leader

Adam Brannen BA (Hons) MA Head of Regeneration

David Newham MRICS DVS

### FOR THE APPELLANT:

Richard Sagar Solicitor, instructed by ID Planning Limited

He called

Dr Mark Webb BSc (Hons) PhD CEcol CEnv MCIEEM Technical Director WSP

Philip Roebuck FRICS Director, DTZ

Jonathan Dunbavin BSc MCD MRTPI Director, ID Planning Limited

### FOR THE RULE 6 PARTY, FARSLEY RESIDENTS ACTION GROUP (FRAG):

Mark Joslin  
Caroline Gibson

### INTERESTED PERSONS:

Rodney Cam	Local Resident
Stuart Andrew	Local MP
John Bracken	Prospective Leeds City Councillor
Jamie Hanley	Prospective Local MP
Andrew Carter	Ward Councillor, Calverley and Farsley Ward
Rod Wood	Ward Councillor, Calverley and Farsley Ward
Chris Levi	Local Resident
Amanda Carter	Local Resident
Philippa Simpson BSc (Hons) Dip TRP MRTPI (rtd)	Local Resident
Malcolm Levi	Local Resident

## **APPENDIX B: PLANS AND DOCUMENTS IN CONNECTION WITH THE REOPENED INQUIRY**

### **DOCUMENTS SUBMITTED BEFORE THE INQUIRY**

#### ***CORE DOCUMENTS***

- CD46 Leeds SHLAA Update 2014 – Main Report and Full Report with detailed site schedules
- CD47 Leeds Five Year Supply Schedules
- CD48 Report on the Economic Viability of 17 Residential and Mixed Use Development Sites within the Metropolitan Borough of Leeds – DVS – October 2014

#### ***GENERAL DOCUMENTS***

- GEN5 Notification of inquiry arrangements dated 15 October 2014

#### ***LPA DOCUMENTS***

- LPA7 Proof of Evidence of Martin Elliot and 8 appendices
- LPA8 Proof of Evidence of Adam Brannen and 1 appendix
- LPA9 Rebuttal of aspects of the evidence of Philip Roebuck by Philip Lee and David Newham of the DVS and appendices PRL1 to PRL4
- LPA10 Rebuttal Proof of Evidence of Martin Elliot and 3 appendices

#### ***APPELLANT'S DOCUMENTS***

- APP8 Supplementary Proof of Evidence of Jonathan Dunbavin and appendices ID1 to ID19
- APP9 Revised ID7 – Leeds Developer Consortium Assessment of Leeds City Council identified Five Year Housing Supply Final Report 9 November 2014
- APP10 Proof of Evidence of Philip Roebuck and appendices DTZ1 to DTZ3
- APP11 Proof of Evidence of Dr Mark Webb and appendices 1 to 3
- APP12 Rebuttal Proof of Evidence of Jonathan Dunbavin and appendices 1 and 2
- APP13 Rebuttal Proof of Evidence of Philip Roebuck and appendices DTZ1 to DTZ5

#### ***FRAG DOCUMENTS***

- R6.6 Proof of Evidence and Exhibits 1 to 8 and 10 additional documents
- R6.7 Rebuttal of SOCG on Ecology
- R6.8 Photographs of Trees 12 and 21

### **DOCUMENTS SUBMITTED AT THE INQUIRY**

#### ***GENERAL DOCUMENT***

- ATT2 Attendance Lists for Days 1 to 4

#### ***STATEMENT OF COMMON GROUND***

- SOCG3 Statement of Common Ground agreed by the appellants and LCC relating to ecology

#### ***LPA DOCUMENTS***

- LCC10 Opening Submissions
- LCC11 CIL Examination Hearing Session 3 June 2014 – LCC response to Examiner's Questions
- LCC12 Extract from PPG on Viability
- LCC13 Leeds CS consolidated version November 2014

LCC14 Report on the Economic Viability of 15 Residential and Mixed Use Development Sites within the Metropolitan Borough of Leeds – DVS – May 2014

LCC15 Letter to DCLG from LCC dated 17 March 2014 relating to publication of PPG

LCC16 Additional tables of 5 year supply showing 5% buffer added to shortfall

LCC17 Comparison of GVA EVS Study January 2013 and DVS reports dated May and October 2014

LCC18 Tree Preservation Order dated 10 November 2011 relating to the appeal site

#### ***APPELLANTS' DOCUMENTS***

TE15 Updated Bat Impact Assessment Report 2014 including Bat Activity and Tree Roost Survey Report dated 27 March 2013

TE16 Opening Submissions

TE17 Letter from LCC dated 9 February 2012 relating to Tree 12

TE18 City Centre Values Comparison Summary Table

TE19 Report to LCC Executive Board dated 19 June 2013 relating to Leeds Rail Growth Package and Kirkstall Forge mixed use development

TE20 Letter to DCLG from ID Planning Ltd relating to publication of PPG

TE21 Supplemental Agreement and Deed of Variation dated 13 November 2014 to S106 dated 13 November 2013 (Document TE11)

#### ***FRAG DOCUMENTS***

FRAG8 Opening Submissions

FRAG9 Closing Submissions

#### ***INTERESTED PARTIES DOCUMENTS***

LR5 Statement from Stuart Andrew MP

#### **DOCUMENTS SUBMITTED AFTER THE CLOSE OF THE INQUIRY**

#### ***LPA DOCUMENTS***

LCC19 Closing Submissions

LCC20 Updated List of Draft Conditions

#### ***APPELLANTS' DOCUMENTS***

TE22 Closing Submissions

**APPENDIX C: Abbreviations**

BCT	Bat Conservation Trust
CIL	Community Infrastructure Levy
CIEEM	Chartered Institute of Ecology and Environmental Management
CS	Core Strategy
CSIR	Core Strategy Inspector's Report
DCLG	Department of Communities and Local Government
DPD	Development Plan Document
DVS	District Valuer Services
EASEL	East and South East Leeds
EVS	Economic Viability Study
HBF	Home Builders Federation
HCA	Homes and Community Agency
HILS	Housing Investment Land Strategy
HMCA	Housing Market Characteristic Area
LCC	Leeds City Council
LDD	Local Development Document
LDF	Local Development Framework
LPA	Local Planning Authority
LUDP	Leeds Unitary Development Plan 2001
LUDPR	Leeds Unitary Development Plan Review 2006
MUA	Main Urban Area
ONS	Office of National Statistics
PPG	Planning Practice Guidance
PAS	Protected Areas of Search
PRS	Private Rented Sector

RSS	The Yorkshire and Humber Plan – Regional Spatial Strategy to 2026
SAP	Site Allocations Plan
SEA	Strategic Environmental Assessment
SHLAA	Strategic Housing Land Availability Assessment
SHMA	Strategic Housing Market Assessment
SoS	Secretary of State
SOCG	Statement of Common Ground
SPD	Supplementary Planning Document
SPG	Supplementary Planning Guidance
S106	Section 106 of the Town and Country Planning Act 1990
UDP	Unitary Development Plan
UU	Unilateral undertaking under S106

**APPENDIX D: Recommended Conditions**  
**(to be substituted for condition nos. 15) to 19) in Appendix D to the original report)**

*Biodiversity*

- 1) Prior to the commencement of the development a Construction Environmental Management Plan (CEMP) Biodiversity shall be submitted to, and approved in writing by, the local planning authority. The CEMP shall include the following:
  - i) Risk assessment of potentially damaging construction activities;
  - ii) Identification of 'biodiversity protection zones' to include trees and hedgerows important to bats;
  - iii) Measures to avoid or reduce impacts during construction, including protection of any watercourses on or adjacent to the site from physical disturbance and chemical pollution;
  - iv) Measures to avoid spreading invasive species;
  - v) Location and timings of sensitive works to avoid harm to biodiversity features, including nesting birds and commuting, foraging and roosting bats;
  - vi) The times during construction when ecologists need to be present on site to oversee works;
  - vii) Responsible persons and lines of communication; and,
  - viii) Use of protective fences, exclusion barriers and warning signsThe approved CEMP shall be adhered to and implemented throughout the construction period.
- 2) Prior to the commencement of development a Bat Mitigation Plan, including a timetable for carrying out the plan, shall be submitted to, and approved in writing by, the local planning authority. The Plan shall be informed by further presence/absence surveys of all trees identified as having 'moderate/low or high' bat roost potential in page 1 of the Tree Inspection and Bat Activity Survey Report dated October 2011 (WSP). The further surveys shall be undertaken within one year of the submission of the Bat Mitigation Plan to the local planning authority. The Plan shall be implemented in accordance with the approved details and timetable.
- 3) Prior to the commencement of development a Biodiversity Protection and Enhancement Plan, including a timetable for carrying out the plan, shall be submitted to, and approved in writing by, the local planning authority. The Plan shall include details of the protection of tree and hedgerow habitats together with any wildflower seeding of proposed SUDS areas, enhancements along the beck, and planting across the site to benefit wildlife. The Plan shall include objectives to benefit biodiversity and a maintenance schedule of how the features will be managed on an annual basis, together with details of who shall carry out the maintenance. The Plan shall thereafter be implemented in accordance with the approved details and timetable.
- 4) Prior to the commencement of development, details of bat roosting and bird nesting opportunities (for species such as house sparrow, starling, swift, swallow and house martin) to be provided within buildings and

elsewhere on-site shall be submitted to, and approved in writing by the local planning authority. The details shall show the number and specification of the bird nesting and bat roosting features and where they shall be located and a timetable for implementation. The details shall be carried out in accordance with the approved details and timetable and thereafter retained.

- 5) Prior to the commencement of the development a Lighting Design Strategy for Bats shall be produced by an appropriately qualified ecological consultant and submitted to, and approved in writing by, the local planning authority. The strategy shall include lighting design for both the construction phase and for the completed development and shall:
  - i) identify those areas and features on site using appropriately scaled plans that are sensitive to commuting, foraging and roosting bats;
  - ii) show how and where external lighting will be installed (through the provision of appropriate lighting contour plans and technical specifications) so that it can be clearly demonstrated that areas to be lit will not disturb commuting, foraging and roosting bats;
  - iii) shall take into account the mitigation measures set out in paragraphs 4.2.7 to 4.2.9, 4.2.19 to 4.2.22 and 4.3.5 to 4.3.8 of the Updated Bat Impact Assessment Report 2014 dated 2 June 2014 (WSP).All external lighting shall be installed in accordance with the specifications and locations set out in the Strategy and shall be maintained thereafter in accordance with the Strategy. No other external lighting shall be installed in the areas identified as sensitive to commuting, foraging and roosting bats.
- 6) Prior to the commencement of development a Method Statement for the control and eradication of Japanese Knotweed and Himalayan Balsam shall be submitted to, and approved in writing by, the local planning authority. The Method Statement shall thereafter be implemented as approved.



## Department for Communities and Local Government

### **RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT**

**These notes are provided for guidance only and apply only to challenges under the legislation specified. If you require further advice on making any High Court challenge, or making an application for Judicial review, you should consult a solicitor or other advisor or contact the Crown Office at the Royal Courts of Justice, Queens Bench Division, Strand, London, WC2 2LL (0207 947 6000).**

The attached decision is final unless it is successfully challenged in the Courts. The Secretary of State cannot amend or interpret the decision. It may be redetermined by the Secretary of State only if the decision is quashed by the Courts. However, if it is redetermined, it does not necessarily follow that the original decision will be reversed.

#### **SECTION 1: PLANNING APPEALS AND CALLED-IN PLANNING APPLICATIONS;**

The decision may be challenged by making an application to the High Court under Section 288 of the Town and Country Planning Act 1990 (the TCP Act).

#### **Challenges under Section 288 of the TCP Act**

Decisions on called-in applications under section 77 of the TCP Act (planning), appeals under section 78 (planning) may be challenged under this section. Any person aggrieved by the decision may question the validity of the decision on the grounds that it is not within the powers of the Act or that any of the relevant requirements have not been complied with in relation to the decision. An application under this section must be made within six weeks from the date of the decision.

#### **SECTION 2: AWARDS OF COSTS**

There is no statutory provision for challenging the decision on an application for an award of costs. The procedure is to make an application for Judicial Review.

#### **SECTION 3: INSPECTION OF DOCUMENTS**

Where an inquiry or hearing has been held any person who is entitled to be notified of the decision has a statutory right to view the documents, photographs and plans listed in the appendix to the report of the Inspector's report of the inquiry or hearing within 6 weeks of the date of the decision. If you are such a person and you wish to view the documents you should get in touch with the office at the address from which the decision was issued, as shown on the letterhead on the decision letter, quoting the reference number and stating the day and time you wish to visit. At least 3 days notice should be given, if possible.

## **Appendix 6: Land at Gibraltar Farm, Ham Lane, Hempstead Appeal Decision**



Department for  
Communities and  
Local Government

Our Ref: APP/A2280/W/16/3143600

Mr Alister Hume  
Hume Planning Consultancy Ltd  
Innovation House  
Discovery Park  
Sandwich  
Kent CT13 9ND

6 March 2017

By email: [info@humeplanning.co.uk](mailto:info@humeplanning.co.uk)

Dear Mr Hume

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78  
APPEAL MADE BY MESSRS KD, JC & MC ATTWOOD  
LAND AT GIBRALTAR FARM, HAM LANE, HEMPSTEAD, GILLINGHAM, KENT ME7  
3JJ - APPLICATION REF: MC/14/2395**

1. I am directed by the Secretary of State to say that consideration has been given to the report of Mrs Zoe Hill BA (Hons) Dip Bldg Cons (RICS) MRTPI IHBC, who held a public local inquiry opening on 4 October 2016 into your client's appeal against the decision of the local authority to refuse planning permission for the erection of up to 450 market and affordable dwellings together with provision of access, estate roads and residential open space, in accordance with application ref: MC/14/2395, dated 8 August 2014.
2. On 4 August 2016, this appeal was recovered for the Secretary of State's determination, in pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act 1990, because it involves proposals for residential development of over 150 units or sites of over five hectares which would significantly impact on the Government's objective to secure a better balance between housing demand and supply and create high quality, sustainable, mixed and inclusive communities.

**Inspector's recommendation and summary of the decision**

3. The Inspector recommended that the appeal be allowed on the basis of the revised plans and planning permission be granted subject to conditions set out in Annex A.
4. For the reasons given below, the Secretary of State agrees with the Inspector's conclusions, and agrees with her recommendation. He has decided to allow the appeal.

Department for Communities and Local Government  
Stephen Jewell  
Planning Casework  
3rd Floor Fry Building  
2 Marsham Street  
London SW1P 4DF

Tel: 0303 444 42110  
Email: [PCC@communities.gsi.gov.uk](mailto:PCC@communities.gsi.gov.uk)

A copy of the Inspector's report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

### **Procedural matters**

5. In January 2015 the Secretary of State refused to make a direction under s.98 of the Local Government, Planning and Land Act 1980 which the appellants had sought to secure access using land in the Council's ownership. A revised scheme was submitted with a single primary access point which only involves a modest area of land in the Council's ownership. The provision of an emergency access onto Ham Lane remains the same. The Inspector considered the appeal on the basis of the single primary access proposal (IR3). The Secretary of State notes (IR4-5) that revised plans were submitted and that she, along with the main parties agreed that consideration of the amended plans would not cause any prejudice to any interested party.

### **Policy and statutory considerations**

6. In reaching his decision, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise.
7. In this case the development plan consists of the saved policies of the Medway Local Plan (adopted 2003). The Secretary of State considers that the development plan policies of most relevance to this case are those set out at IR11 (S4, BNE34 and BNE25).
8. Other material considerations which the Secretary of State has taken into account include the National Planning Policy Framework ('the Framework') and associated planning guidance ('the Guidance'), as well as Supplementary Planning Guidance; Medway Council Guide to Developer Contributions (2014) and Medway Landscape Character Assessment 2011 and the North Kent Strategic Housing and Economic Needs Assessment (SHENA) (2015).

### **Main issues**

9. The Secretary of State agrees with the Inspector that the main issues are those set out at IR184.

#### *The Planning Policy position*

10. In the context of the development plan position set out above, three saved local plan policies are cited as being of relevance; these are BNE25, BNE34 and S4.
11. Like the Inspector, the Secretary of State notes that policy BNE25 relates to development in the open countryside and clearly seeks to restrict housing growth. He also agrees with the Inspector, that as it is agreed that the Council does not have a five year land supply, and given the advice in the Framework paragraph 49, policy BNE25 is out of date and should only be afforded limited weight (IR187). Additionally, and like the main parties and the Inspector, the Secretary of State agrees, for the reasons in IR188, that policy BNE34 should also be considered out of date and has similarly afforded the policy limited weight.

12. Policy S4 seeks 'a high quality of built environment' with 'landscape mitigation where appropriate'. The Secretary of State has considered the appeal scheme in the context of the Inspector's view of this policy at IR191. Like the Inspector, he agrees that it is not a policy which seeks to restrict development in this, or any other, location and as such, it is not a policy which is of significance in the determination of this appeal. The Secretary of State agrees and has gone on to consider two of the three policies (BNE25 and BNE34) further under the main related issue below at paragraph 14.

#### *Housing land supply*

13. The Secretary of State has carefully considered the Inspectors analysis and reasoning set out at IR194-200. He notes that the main parties agree that a 5 year housing land supply cannot be demonstrated and the Council acknowledges a supply in the range of 2.21 to 2.79 years. The appellant considers that even that level is optimistic (IR194) and the Inspector considers that the housing land supply is significantly lacking (IR197). Overall the Secretary of State agrees with the Inspector's conclusion at IR200, that the shortfall in five year housing land supply is so great and the pressure on sites is so significant, that it is inevitable that Greenfield land will have to be developed.

#### *Character and Appearance of the Countryside which is also designated as part of the Capstone and Horsted Valleys ALLI*

14. For the reasons set out at IR 201-225 the Secretary of State agrees with the Inspector and considers that the proposed development would harm the character and appearance of the immediate area and, therefore, fail to accord with the provisions of policies BNE25 and BNE34 (IR224). He also agrees that the harm would not represent a critical harm to the function of the Capstone and Horsted Valleys ALLI taken as a whole (IR224). Furthermore, given that policy BNE34 allows for development in an ALLI if the social and economic benefits of the proposal outweigh the local priority to conserve the area's landscape (IR225), the Secretary of State has gone on to consider these benefits for the appeal scheme.

#### *Whether there are other benefits of the scheme*

15. The Secretary of State agrees with the Inspector's consideration of matters other than housing land supply to be added to the planning balance (IR226-231). In this the Inspector attaches significant weight to the provision of (25%) affordable homes (IR226) as she does to the economic benefits (IR227). Furthermore additional weight is afforded by the Inspector to the benefit resulting from the open space, including a children's place (IR228) and modest, biodiversity and access benefit of the scheme (IR229). For the reasons set out in IR230-231, the Secretary of State agrees that the proposed landscaping/planting and New Homes Bonus Payments attract little and no additional weight respectively.

#### *Other matters*

16. For the reasons given at IR232-248 the Secretary of State has considered and agrees with the Inspector's conclusions in considering a range of matters raised by interested parties that do not reflect issues between the main parties.

#### **Planning conditions**

17. The Secretary of State has given consideration to the Inspector's analysis at IR170-172, the recommended conditions set out at the end of the IR and the reasons for them, and

to national policy in paragraph 206 of the Framework and the relevant Guidance. He is satisfied that the conditions recommended by the Inspector comply with the policy test set out at paragraph 206 of the Framework.

### **Planning obligations**

18. Having had regard to the Inspector's analysis at IR173-183, the signed s.106 Unilateral Undertaking, paragraphs 203-205 of the Framework, the Guidance and the Community Infrastructure Levy Regulations 2010, as amended, the Secretary of State agrees with the Inspector's conclusion in IR183 and that, other than in respect of the specific items referred to for the waste and recycling contribution, the obligation complies with Regulation 122 of the CIL Regulations and the tests at paragraph 204 of the Framework as being necessary to make the development acceptable in planning terms, directly related to the development, and are fairly and reasonably related in scale and kind to the development.
19. The Secretary of State has taken into account the number of planning obligations which have been entered into on or after 6 April 2010 which provide for the funding or provision of a project or type of infrastructure for which an obligation has been proposed in relation to the appeal. The s.106 Unilateral Undertaking contributions calculation is as set out at IR7 and accords with the Council's Medway Guide to Developer Contributions (2014) and provides for education, healthcare, open space, public transport, waste and recycling, community facilities, impact on the Medway Estuary Special Protection Area and affordable housing. However, in respect of certain aspects of the waste and recycling contribution, the Inspector does not consider that those aspects of the calculation are CIL compliant and does not take them into account in her appeal recommendation (IR179). Nonetheless, in all other respects, the Secretary of State concludes that the obligations are compliant with Regulations 123(3), as amended.

### **Planning balance and overall conclusion**

20. For the reasons given above, the Secretary of State considers that the appeal scheme is not in accordance with saved policies BNE25 and BNE34 of the development plan, and is not in accordance with the development plan overall. He has gone on to consider whether there are material considerations which indicate that the proposal should be determined other than in accordance with the development plan.
21. Given that policies for the supply of housing are out of date, the Secretary of State considers that paragraph 14 of the Framework is engaged. He has therefore considered whether the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, when assessed against the Framework policies as a whole.
22. In terms of the sustainability, there would be economic gains from housing delivery, including affordable housing, and in the value of construction works and subsequent housing to the local economy. The Inspector also notes that the housing would be accessibly located, in close proximity to recreational facilities and local transport, and concludes this would make economic sense in terms of reducing the need for private car travel. The Secretary of State agrees that these benefits significantly outweigh the dis-benefits, in economic terms, of losing the site from agricultural use.
23. Turning to the social role the proposed dwellings would provide much needed homes, including affordable homes and this would provide for an improvement in peoples' quality of life. This is alongside some benefits for existing residents in terms of play space and

sustainable transport provision. Although there are concerns that existing residents may experience some detrimental impact on their amenity and not feel their views have been listened to. Like the Inspector, the Secretary of State considers, on balance that the social benefits weigh heavily in favour of the proposal.

24. The overall positive balance for the economic and social strands of sustainability from the development contrast with the environmental role where there is clear harm to this area of countryside which is locally designated for protection. However, the development would not lead to coalescence between Lordswood and Hempstead or critical harm to the ALLI's function. The Secretary of State therefore concludes that the sustainability of the appeal scheme along with the fact that the relevant policies for the supply of housing land in Medway are out of date, outweigh the landscape harm and other harm, and that the adverse impacts of the scheme do not significantly and demonstrably outweigh its benefits when assessed against the policies of the Framework taken as a whole.

### **Formal decision**

25. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. He hereby allows your client's appeal and grants planning permission subject to the conditions set out in the annex to this decision letter for the erection of up to 450 market and affordable dwellings together with provision of access, estate roads and residential open space.
26. This letter does not convey any approval or consent which may be required under any enactment, bye-law, order or regulation other than section 57 of the Town and Country Planning Act 1990.

### **Right to challenge the decision**

27. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged. This must be done by making an application to the High Court within 6 weeks from the day after the date of this letter for leave to bring a statutory review under section 288 of the Town and Country Planning Act 1990.
28. An applicant for any consent, agreement or approval required by a condition of this permission for agreement of reserved matters has a statutory right of appeal to the Secretary of State if consent, agreement or approval is refused or granted conditionally or if the Local Planning Authority fail to give notice of their decision within the prescribed period.
29. A copy of this letter has been sent to Medway Council, and notification has been sent to others who asked to be informed of the decision.

Yours sincerely

*S Jewell*

Stephen Jewell  
Authorised by Secretary of State to sign in that behalf

## **Annex A: List of conditions**

- 1) 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 except that authorised by condition 4 below and the development shall be carried out as approved.

*Reason for the condition: As required to be imposed by Section 92 of the Town and Country Planning Act 1990 as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.*

- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than 18 months from the date of this permission. The development hereby permitted shall begin not later than 12 months from the date of approval of the last of the reserved matters to be approved.

*Reason for the condition: For the avoidance of doubt and to ensure the satisfactory and prompt development of the site.*

- 3) No development shall take place until a scheme of phasing for the dwellings and highways and drainage infrastructure and associated open space / green infrastructure has been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved scheme of phasing.

*Reason for the condition: This pre-commencement condition is required to ensure that the key elements of each phase of the development is completed in an order which ensures that infrastructure needs, landscaping/open space and access are in place relevant to each phase before further development is undertaken, in the interests of good planning.*

- 4) The development of Phase One as agreed by condition 3 above shall begin not later than 12 months from the date of the approval of reserved matters applications relating to that phase.

*Reason for the Condition: To ensure a prompt start on site.*

- 5) All reserved matters and details required to be submitted pursuant to condition 1 shall be in accordance with the principles and parameters described and identified in the Illustrative Masterplan (Drawing No. EDP1995/97a received 24/09/2015 and the Design and Access Statement (Revised 12/08 2014). A statement shall be submitted with each reserved matters application, demonstrating how the submitted reserved matters comply with the Design and Access Statement and the indicative Masterplan documents.

*Reason for the condition: For the avoidance of doubt and to ensure the satisfactory development of the site.*

- 6) No dwelling or ancillary building construction shall take place until details 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.

*Reason for the condition: As the scheme is a large new development with limited screening in the initial years this condition is necessary in the interests of visual amenity and to ensure the satisfactory development of the site.*

- 7) No more than 450 dwellings shall be constructed on the site.

*Reason for the condition: For the avoidance of doubt and given all assessments have been on the basis of this figure such that it is necessary to ensure the satisfactory development of the site.*

Trees and Landscaping and Ecology

- 8) The plans and particulars required to be submitted in accordance with the condition 1 shall ensure that no less than 2.96 ha of the site is set aside as woodland, 0.531 ha as open space and play space and where the development abuts the adjoining ancient woodland a clear minimum of 15m landscape buffer area/zone shall be maintained.

*Reason for the condition: To ensure adequate open space for future occupiers of the development and to provide for the interests of the ancient woodland.*

- 9) The development shall not commence until an Arboricultural Method Statement (AMS) and Tree Protection Plan (TPP), which shall include details of all trees to be retained and removed, any facilitation pruning required and the proposed measures of protection, undertaken in accordance with BS 5837 (2012) 'Trees in Relation to Design, Demolition and Construction-Recommendations' has been submitted to and approved in writing by the local planning authority. The AMS shall include full details of areas of hard surfacing within the root protection areas of retained trees which should be of permeable, no-dig construction and full details of foundation design, where the AMS identifies that specialist foundations are required. The approved barriers and/or ground protection measures shall be erected before any equipment, machinery or materials are brought onto the site and shall be maintained until all equipment, machinery and surplus materials have been removed from the site. Nothing shall be stored or placed, nor fires lit, within any of the areas protected in accordance with this condition. The siting of barriers/ground protection shall not be altered, nor ground levels changed, nor excavations made within these areas without the written consent of the local planning authority. The measures set out in the AMS and TPP shall be adhered to in accordance with the approved details.

*Reason for the condition: This condition is required and to be agreed pre-commencement to safeguard the arboricultural interests of the site before works commence that could cause irrevocable harm and to ensure adequate maintenance for the protection of landscape and habitat in the interests of ecological and local amenity.*

- 10) A Landscape and Ecology Management Plan (LEMP), including long term design objectives, management responsibilities and maintenance schedules with timetable(s) for works for all landscape areas, other than domestic gardens, shall be submitted to the local planning authority for approval in writing prior to the occupation of the development. The LEMP shall be carried out as approved in accordance with the approved timetable(s).

*Reason for the condition: To safeguard the landscape and ecological interests of the site and to ensure adequate maintenance for the protection of landscape and habitat in the interests of ecological and local amenity.*

- 11) No dwelling shall be occupied until a Woodland Management Plan (WMP) for the existing and proposed woodland areas has been agreed in writing by the local planning authority. That part of the WMP for Hall Wood Ancient Woodland shall be in accordance with EDP's Heads of Terms for a WMP (EDP report ref: C\_EDP1997\_07).

The WMP shall include the following:

- a) Review of existing constraints and opportunities;
- b) Management objectives and associated practical measures;
- c) Details of initial enhancements and long term maintenance;
- d) Extent and location/area of management works on scaled maps and plans at a scale which shall have first been agreed by the local planning authority in writing;
- e) Timetable for implementation demonstrating that works are aligned with the proposed programme of development;
- f) Details for monitoring and remedial measures; and
- g) Persons responsible for implementing the works.

The measures set out in the WMP shall be implemented in accordance with the approved details and timetable(s).

*Reason for the condition: This condition is required to safeguard the woodland and to ensure adequate management for the protection of landscape and habitat in the interests of ecological and local amenity.*

- 12) The development shall not commence until details of all fencing, walling and other boundary treatments, to include hedgehog holes have been submitted to and approved in writing by the local planning authority. The landscaping areas and buffer zones shall be implemented in full in accordance with the approved details before the first occupation of any of the dwelling as hereby approved, or in accordance with a programme to be agreed in advance in writing by the local planning authority. All boundary treatments and buffer zones to be installed in or adjacent the ancient woodland shall be carried out in accordance with the approved details.

*Reason for the condition: This condition is required and to be agreed pre-commencement to safeguard the ecological interests of the site. The works subsequently required are necessary in the interests of residential and local amenity.*

- 13) All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons for the phase to which it relates following the occupation of the first dwelling on that phase or the completion of that phase of development, whichever is the sooner; and any trees or plants which within a period of 5 years from the completion of that phase of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.

*Reason for the condition: This condition is required to ensure that the landscaping gets properly established which is particularly important to visual amenity given the size and partly open location of the site.*

- 14) No works shall take place (including ground works and vegetation clearance) until an updated species survey has been carried out to inform production of an Ecological Design Strategy (EDS) addressing all species mitigation for all species recorded within the site has been submitted to and approved in writing by the local planning authority.

The EDS shall include the following:

- a) Purpose and conservation objectives for the proposed works;
- b) Review of site potential and constraints;
- c) Detailed method statements to achieve stated objectives for each species;
- d) Extent and location/area of proposed mitigation for all species on appropriate scale maps and plans;
- e) The location of bat and bird boxes and/or bricks and their specifications;
- f) Type and source of materials to be used (including whether or not they are native species and local provenance);
- g) Timetable for implementation demonstrating that works are aligned with the proposed programme of development;
- h) Persons responsible for implementing the works;
- i) Details of initial aftercare and long term maintenance;
- j) Details for monitoring and remedial measures; and,
- k) Details for disposal of any wastes arising from works.

The EDS shall be implemented in accordance with the approved details and retained thereafter.

*Reason for the condition: This condition is required and to be agreed pre-commencement to safeguard the ecological interests of the site before works commence that could cause irrevocable harm and to ensure adequate maintenance for the protection of landscape and habitat in the interests of ecological and local amenity.*

- 15) No part of the development hereby granted (including ground works and vegetation clearance) shall take place until a Construction Environmental Management Plan (CEMP: Biodiversity) has been submitted to and approved in writing by the Local Planning Authority. The CEMP: Biodiversity shall include the following:
- a) Details of the areas where ancient woodland soil and coppiced stools are to be translocated and method statement for translocation;
  - b) Risk assessment of potentially damaging construction activities;
  - c) Identification of biodiversity protection zones;
  - d) Practical measures (both physical measures and sensitive working practices) to avoid or reduce impacts during construction (may be provided as a set of method statements);
  - e) The location and timing of sensitive works to avoid harm to biodiversity features;
  - f) The times during construction when specialist ecologists need to be present on site to oversee works;
  - g) Responsible persons and lines of communication;
  - h) The role and responsibilities on site of an ecological clerk of works (ECoW) or similarly competent person;
  - i) Use of protective fences, exclusion barriers and warning signs; and,

j) Cordwood above 20cm in diameter from the site should be retained and placed within the site in locations and quantities to be agreed with the local planning authority prior to any tree felling take place.

The approved CEMP: Biodiversity shall be adhered to and implemented throughout the construction period strictly in accordance with the approved details, unless otherwise agreed in writing by the local planning authority

*Reason for the condition: This condition is required and to be agreed pre-commencement to safeguard the ecological interests of the site before works commence that could cause irrevocable harm and to ensure adequate maintenance for the protection of landscape and habitat in the interests of ecological and local amenity.*

- 16) No external lighting fixtures or fittings shall be attached to any building or structure hereby approved and no free standing lighting equipment shall be erected on the site, other than those shown on the plans approved for condition 17 below or as may be agreed on a temporary basis under condition 15 during the construction period.

*Reason for the condition: This condition is required to safeguard the ecological interests of the site.*

- 17) No dwelling shall be occupied until a Lighting Strategy for Biodiversity, including a timetable for its implementation has been submitted to and approved in writing by the local planning authority. The strategy shall:
- a) identify those areas/features on site that are particularly sensitive for bats, dormice and otters and that are vulnerable to light disturbance in or around their breeding sites and resting places or along important routes used to access key areas of their territory, for example, for foraging; and
  - b) show how and where external lighting will be installed (through the provision of appropriate lighting contour plans and technical specifications) so that it can be clearly demonstrated that areas to be lit will not disturb or prevent the above species using their territory or having access to their breeding sites and resting places.

All external lighting shall be installed in accordance with the specifications and locations set out in the strategy, and these shall be maintained thereafter in accordance with the strategy.

*Reason for the condition: This condition is required to safeguard the ecological interests of the site.*

#### Highways

- 18) The access to the site shall be from North Dane Way Drive as show in drawing 186-SK-006 Rev A and the emergency vehicular access shall be from Ham Lane.

*Reason for the condition: In the interests of highway safety and emergency access, for the avoidance of doubt and to ensure the satisfactory development of the site.*

- 19) Development shall not begin until details of the proposed emergency access have been submitted and approved in writing by the local planning authority. The approved emergency access shall be made available prior to the first occupation of any dwelling and thereafter retained for the purpose intended.

*Reason for the condition: This condition is required in the interests of highway safety and emergency access.*

- 20) No development shall take place until a Construction Method Statement (CMS) has been submitted to and approved in writing by the local planning authority. The approved CMS shall be adhered to throughout the construction period. The CMS shall provide for:
- i) the parking of vehicles of site operatives and visitors;
  - ii) loading and unloading of plant and materials;
  - iii) storage of plant and materials used in constructing the development;
  - iv) wheel washing facilities;
  - v) measures to control the emission of dust and dirt during construction; and,
  - vi) a scheme for recycling/disposing of waste resulting from construction works.

*Reason for the condition: This condition is required to be addressed pre commencement as it relates to activities which would be likely to have an impact immediately upon first works on the site and it relates to the interests of highway safety and the protection of the environment.*

- 21) No development hereby permitted shall commence until such time as the improvement works to the junction of North Dane Way and Albermarle Road and the link access road to the site as shown in the drawing 1661-SK-001 Revised A within appendix H of the Transport Assessment Report have been completed in accordance with details which shall first have been approved by the local planning authority in writing.

*Reason for the condition: This condition is required pre-commencement as it is essential that safe access is provided to the site before activities commence on site in the interests of highway safety and the free flow of traffic.*

- 22) No dwellings on the development shall be occupied until the carriageway(s) (including surface water drainage/disposal, vehicular turning head(s) and street lighting) providing access from the nearest public highway to that dwelling have been completed to at least binder course level and the cycle and footway(s) to surface course level.

*Reason for the condition: This condition is required to ensure pedestrian and cycle and vehicular access is available for each dwelling before it is occupied in the interests of the welfare and safety of the occupiers of the related dwelling.*

- 23) No dwelling shall be occupied until details of the proposed arrangements for future management and maintenance of the proposed streets within the development have been submitted to and approved in writing by the Local Planning Authority. The streets shall thereafter be maintained in accordance with the approved management and maintenance details until such time as either a dedication agreement has been entered into or a private management and maintenance company has been established.

*Reason for the condition: To ensure highways are maintained in a safe condition for the protection of those using them.*

- 24) No dwelling hereby approved shall be occupied until a travel plan based on the Framework Travel Plan has been submitted to and approved in writing by the local planning authority.

*Reason for the condition: To encourage alternative means of transport to that of the private car in the interests of the environment.*

- 25) Details submitted pursuant to condition 1 shall include a shared footway/cycleway on the north side of North Dane Way to link the development site with the Lords Wood Leisure Centre with associated improvements and street lighting.

*Reason for the condition: To encourage alternative means of transport to that of the private car in the interests of the environment.*

#### Archaeology

- 26) No development shall take place within any phase of the development until a programme of archaeological work has been secured and implemented in accordance with a written scheme of investigation for the relevant phase, which shall have first been submitted to and approved in writing by the Local Planning Authority.

*Reason for the Condition: It is necessary for this condition to be a pre-commencement condition so that archaeological assessment can take place before the land is disturbed.*

#### Flood Risk and Drainage

- 27) The first application for the approval of reserved matters on the site shall be accompanied by a sustainable surface drainage strategy for the entire application site. No dwelling hereby permitted shall be occupied until surface water drainage works have been implemented in accordance with details that have been submitted to and approved in writing by the Local Planning Authority as part of the reserved matters applications for the phase within which the dwelling is situated.

Before these details are submitted, an assessment shall be carried out of the potential for disposing of surface water by means of a sustainable drainage system in accordance with the principles set out in DEFRA's non-statutory technical standards for the design, maintenance and operation of sustainable drainage to drain surface water (or any subsequent version), and the results of the assessment provided to the local planning authority. Where a sustainable drainage scheme is to be provided, the submitted details shall:

- i) provide information about the design storm period and intensity, the method employed to delay and control the surface water discharged from the site and the measures taken to prevent pollution of the receiving groundwater and/or surface waters;
- ii) include a timetable for its implementation; and
- iii) provide a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public authority or statutory undertaker and any other arrangements to secure the operation of the scheme throughout its lifetime.

*Reason for the condition: To ensure acceptable drainage of the site so as to minimise flood risk.*

- 28) No dwelling in any phase of development hereby permitted shall be occupied until sewage disposal works for that phase have been implemented in accordance with a scheme which has first been submitted to and approved in writing by the Local Planning Authority.

*Reason for the condition: To ensure acceptable foul drainage of the site.*

Noise

- 29) No dwelling shall be constructed until an acoustic appraisal specifying attenuation measures (where necessary) has been submitted for approval in writing by the local planning authority. No dwelling shall be occupied until the approved attenuation measures have first been installed in accordance with the approved details. The approved attenuation measures shall be maintained and retained thereafter.

*Reason for the condition: To ensure acceptable living conditions for future occupiers of the site.*

Air Quality

- 30) The development shall not be commenced until an Air Quality report has been submitted to the local planning authority for its written approval. The report shall contain and address the following:
- i) An assessment of air quality on the application site and of any scheme necessary for the mitigation of poor air quality affecting the residential amenity of occupiers of this development.
  - ii) An assessment of the effect that the development will have on the air quality of the surrounding area and any scheme necessary for the reduction of emissions giving rise to that poor air quality. The assessment should quantify the measures or offsetting schemes to be included in the development which will reduce the air pollution of the development. Any scheme of mitigation set out in the subsequently approved report shall include a timetable for implementation. The development shall be implemented and managed in accordance with the approved scheme.

*Reason for the condition: This condition is required as a pre-commencement condition as air quality needs to be initially assessed prior to any works of development commencing as they could alter background air quality levels and this condition is required in the interests of the environment and living conditions of future occupiers of the development.*

Contamination

- 31) If during the course of development, contamination is found to be present at the site then no further development (unless otherwise agreed in writing with the local planning authority) shall be carried out until the developer has submitted, and obtained written approval from the local planning authority for a remediation strategy detailing how the contamination shall be dealt with. The remediation strategy shall be implemented as approved, verified and reported to the satisfaction of the local planning authority.

*Reason for the condition: This area is prone to fly-tipping and therefore it is anticipated that as yet unidentified contamination may exist on site. In such circumstances it may be necessary for remedial works to take place in order that the land becomes safe for residential use.*

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# **Report to the Secretary of State for Communities and Local Government**

**by Mrs Zoë Hill BA(Hons) Dip Bldg Cons(RICS) MRTPI IHBC**

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

**Date: 5 December 2016**

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Town and Country Planning Act 1990  
Appeal by Messrs KD, JC & MC Attwood  
Against the decision of  
Medway Council

Inquiry opened on 4 October 2016

Gibraltar Farm, Ham Lane, Hempstead, Gillingham, Kent ME7 3JJ

File Ref: APP/A2280/W/16/3143600

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## Abbreviations

<b>ALLI</b>	Area of Local Landscape Importance
<b>AMR</b>	Annual Monitoring Report
<b>AONB</b>	Areas of outstanding natural Beauty
<b>The Council</b>	Medway Council
<b>CIL</b>	Community Infrastructure Levy Regulations
<b>CPRE</b>	Campaign to Protect Rural England
<b>dpa</b>	dwelling per annum
<b>The Framework<sup>1</sup></b>	National Planning Policy Framework
<b>The Guidance</b>	The National Planning Practice Guidance
<b>ha</b>	hectares
<b>LCA</b>	Landscape Character Assessment
<b>LCT</b>	Landscape Character Type
<b>OAN</b>	Objectively Assessed Need
<b>PRoW</b>	Public Right of Way
<b>SHENA</b>	Strategic Housing and Economic Needs Assessment
<b>SLAA</b>	Strategic Land Availability Assessment
<b>SoS</b>	Secretary of State
<b>SPA</b>	Special Protection Area
<b>ZVI</b>	Zone of Visual Influence

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<sup>1</sup> (also referred to when quoted as NPPF)

**File Ref: APP/A2280/W/16/3143600**

**Gibraltar Farm, Ham Lane, Hempstead, Gillingham, Kent ME7 3JJ**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
- The appeal is made by Messrs KD, JC & MC Attwood against the decision of The Medway Council.
- The application Ref: MC/14/2395, dated 8 August 2014, was refused by notice dated 27 January 2016.
- The development proposed is the erection of up to 450 market and affordable dwellings together with provision of access, estate roads and residential open space.

**Summary of Recommendation: The appeal be allowed, and planning permission granted subject to conditions.**

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**Procedural Matters**

*Determination*

1. The Secretary of State (SoS) has directed that, in exercise of powers under section 79 and paragraph 3 of Schedule 6 of the Town and Country Planning Act 1990, he shall determine the appeal because it involves proposals for residential development of over 150 units or sites of over five hectares which would significantly impact on the Government's objective to secure a better balance between housing demand and supply and create high quality, sustainable, mixed and inclusive communities.

*Inquiry Dates*

2. The Inquiry opened on the 4 October 2016 and sat for three days. The accompanied site visit was conducted on the 6 October 2016.

*Plans and Planning History*

3. In January 2015 the SoS refused to make a direction under s.98 of the Local Government, Planning and Land Act 1980 which the appellants had sought to secure access using land in the Council's ownership. That scheme included two main access points. In light of that refusal to make such a Direction, a revised scheme was submitted with a single primary access point which only involves a modest area of land in the Council's ownership. The provision of an emergency access onto Ham Lane remains the same. I have considered the appeal on the basis of the single primary access proposal.
4. During the appeal process, and prior to the Inquiry, an inaccuracy was found in the 'red line' site boundary. As a consequence revised plans were submitted with the appeal. Those plans show a fractionally smaller site. It makes no material difference to the scheme proposed on the 'masterplan'. The parties agree that consideration of the amended plans would not cause prejudice to any interested party and, from the evidence before me, I agree. The revised plans are: Illustrative Masterplan [Dr No EDP 1995/125] (dated 5 Sept 2016); Site Plan / Application Boundary Plan [Dr No EDP 1995/74d] (dated 5 Sept 2016); and, Informative to Application Boundary Plan [Dr No EDP 1995/124a] (dated 5 Sept 2016).
5. The advance planting plan, road access plan, site section plan and open space breakdown plan, which were submitted as part of the planning application as illustrative plans, also require consideration.

### *Environmental Impact Assessment*

6. The application was screened by the Local Planning Authority which decided on 24 February 2014 that it did not require an Environmental Impact Assessment. I have no reason to disagree.

#### *S.106 Unilateral Undertaking*

7. A draft s.106 Unilateral Undertaking was submitted for consideration with the appeal proposals. A signed s.106, dated 6 October 2016, was submitted at the Inquiry. It varies in detail, but not principle, from the draft and, in broad terms, it provides for:

Education Contribution - £2,226,674

Affordable Housing – 25% to be affordable housing

Healthcare Contribution - £210,577

Open Space Contribution - £290,928

Public Transport Contribution - £201,843

Waste and Recycling Contribution - £69,948

Community Facilities Contribution - £61,519.50

Impact on the Medway Estuary Special Protection Area (SPA) Contribution (tariff)  
- £81,300.

8. Community Infrastructure Levy Regulations (CIL) compliance is dealt with later in this report.

### **The Site and Surroundings**

9. The appeal site is some 23.93 hectares (ha) of mainly open agricultural land. It is bordered by Lordswood to the south-west and Ham Lane to the north. Beyond Ham Lane is the Elm Court Business Park<sup>2</sup>. The western boundary is formed by the farm building complex at Gibraltar Farm and the woodland 'Hook Wood'. The east/south-east boundary is not marked by any specific feature but runs across an open agricultural field. A byway runs north-west to south-east through the appeal site. This would be retained in the proposed scheme.

### **Planning Policy**

10. The Development Plan comprises the saved policies of the Medway Local Plan (May 2003).
11. The main parties agree that the saved policies which are relevant to the appeal are:

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<sup>2</sup> I note that this site was also referred to as Elm Park, Elm Court Business Village, Elm Court Industrial Village and may be referred to by similar titles. For ease of reading I have adopted Elm Court Business Park throughout

Policy S4 - Landscape and Urban Design

Policy BNE34 - Areas of Local Landscape Importance

Policy BNE25 - Development in the Countryside

12. It is agreed between the main parties that little weight should be given to Policy BNE25. The pertinence and weight to be attached to the other policies was a matter of debate.
13. In addition, the following guidance is relevant to the appeal:
  - Supplementary Planning Guidance –
  - Medway Council Guide to Developer Contributions (2014)<sup>3</sup>
  - Medway Landscape Character Assessment 2011(LCA)<sup>4</sup>
14. The National Planning Policy Framework (the Framework) is a relevant material consideration.
15. The Medway Submissions Draft Core Strategy (2006-2028) was withdrawn. The emerging Issues and Options consultation seeks to identify contextual matters for the new Local Plan, rather than setting out detailed policies or site specific matters. It is currently envisaged that a new Local Plan will be submitted in early 2018.
16. The North Kent Strategic Housing and Economic Needs Assessment (SHENA) (2015) underpins the objectively assessed housing need (OAN) of 29,463 dwellings for the plan period (or 1281dpa). The Issues and Options Consultation makes it clear that Medway intends to meet the OAN for its area. The intention is that 25% affordable housing would be sought on sites of 15 or more units.

### **The Appeal Proposals**

17. The application is described as the erection of up to 450 market and affordable dwellings together with provision of access, estate roads and residential open space. The highways access would be a continuation of North Dane Way which is to the north-east of housing in Lordswood<sup>5</sup>. The emergency access would be from Ham Lane at the opposite side of the site.
18. The scheme is in outline with only access for consideration at this stage and all other matters reserved for subsequent consideration. However, the illustrative Masterplan broadly identifies structural landscaping, open/play space, potential open water storage areas, retention of the public byway across the site, and primary and secondary vehicular routes.

### **Other Agreed Facts<sup>6</sup>**

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<sup>3</sup> CD10.6

<sup>4</sup> CD10.5

<sup>5</sup> I note that in some places the address is given as Lords Wood – I have adopted Lordswood throughout this report

<sup>6</sup> Key matters taken from the Statement of Common Ground CD8.1

19. **Housing Matters:** The site is not allocated for any development purpose in the Medway Local Plan and, as the land lies beyond the designated settlement confines, comprises countryside and is designated as an Area of Local Landscape Importance (ALLI).
20. The parties agree that Medway Council does not have a five year housing land supply. They acknowledge that at a recent appeal for land west of Hoo St Werburgh<sup>7</sup> the Inspector concluded at paragraph 75 of his Decision that Medway's five year housing land supply was within a range of 2.21 and 2.79 years.
21. The Council's Annual Monitoring Report (AMR) for 2014-15 sets out that housing completions in the years 2012-2015 respectfully were: 809, 565, 579 and 483 giving a total of 2436 dwellings.
22. It is recognised by both parties that the Framework supports housing and economic growth with a balanced approach applied through the presumption in favour of sustainable development. Paragraph 49 of the Framework states that relevant policies for housing should not be considered up-to-date if the local planning authority cannot demonstrate a five year supply of deliverable housing sites. Medway Council acknowledges in the officer's report that it does not have sufficient sites to meet the 5-year housing land supply. It is agreed that, in line with the Framework, a 20% buffer should be applied given the recent rate of housing completions that are identified in the Annual Monitoring Report (AMR).
23. The parties agree that the Framework sets out a presumption in favour of sustainable development and that, in the context of Medway and the relationship of the site to the surrounding urban area, the site represents a sustainable location in accessibility terms and would contribute to the supply of housing, including market choice and affordable provision, to meet a persistent record of under delivery relative to annualised targets.
24. There is no dispute that the site is readily deliverable and could make a short term contribution to supply and the agreed timing conditions would help to accelerate delivery.
25. **Heritage Matters:** The site contains no designated or non-designated heritage assets. Nor does it form part of or affect the setting of any conservation area or listed building. It is also agreed that an archaeological investigation condition would safeguard any archaeological potential of the site.
26. **Design and Residential Amenity:** The parties agree that the masterplan accompanying this outline scheme, combined with the distance of separation from existing housing and proposed buffer landscaping, would allow the site to be developed for up to 450 dwellings without material harm to the living conditions of existing residential occupiers in terms of overshadowing, overlooking and conventional expectations of distances of separation required for providing adequate outlook from property windows.
27. **Flood/Drainage and Sewage:** There is agreement between the parties that flooding, drainage and sewerage considerations have been properly addressed

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<sup>7</sup> CD10.7 APP/A2280/W/15/3132141 (dated 6 September 2016)

within the outline planning proposal subject to the imposition of appropriate planning conditions.

28. **Air Quality Noise and Contamination:** There is agreement that the impact of the proposed outline development on living conditions in the locality would be acceptable with suitable mitigations that can be secured via appropriate conditions.
29. **Agricultural Land Quality:** It is agreed that the appeal site consists of Grade 3a and 3b agricultural land - classified as good to moderate quality. The proposal therefore meets the requirement of the Framework at paragraph 112, which seeks to protect the best and most versatile agricultural land.
30. **Ancient Woodland:** It is accepted that the small area of woodland that would be required for access contains no significant tree specimens. The proposal includes some 2.96ha of new woodland and additional open space that would be safeguarded by planning conditions. It is accepted by both parties that the loss of Ancient Woodland is minor and offset by mitigation in the form of new woodland and open space, in line with paragraph 118 of the Framework. The parties have agreed planning conditions which seek to ensure that proposed housing would not encroach within a distance of 15 metres from the Ancient Woodland. This is reflected within the illustrative masterplan.
31. **Highways:** The parties agree that there is no highway objection to the appeal scheme.

### **The Case for Messrs KD, JC & MC Attwood (the Appellants)**

#### ***The Appellants' Introduction***

32. The appellants' contend that the key issues are the policy framework and particularly the weight to be attached to the development plan; whether the appeal proposals would cause harm to the ALLI, or to a valued landscape; and if so, the magnitude of that harm; and, whether the harm significantly and demonstrably outweigh the benefits of the scheme.

#### ***Weight to be attached to the Development Plan***

33. It is common ground that s.38(6) of the Planning and Compulsory Purchase Act 2004 (s.38(6)) requires the decision taker to start from the development plan.
34. It is common ground that the appeal proposal conflicts 'in principle' with Policy BNE25 of the Local Plan which resists most development in the countryside, and that, in the absence of any other material considerations, this would indicate that permission should be refused.
35. However, it is also common ground that the Framework is an important material consideration which is capable of justifying a decision other than in accordance with the development plan. In particular, paragraph 49 advises that the relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a five year housing land supply. Where relevant policies are out-of-date, the presumption set out in paragraph 14 is engaged.
36. The appellant's take the view that it is wrong to say that the bar set by s.38(6) is a high one in terms of according with the development plan. S.38(6) doesn't

- include weighting as some other parts of statute do (for example green belt or listed buildings) rather the weighing of other material considerations is one for the decision maker.
37. In this appeal, the key development plan policies relied on (BNE25 and BNE34) are both agreed to be relevant policies for the supply of housing within the meaning of Framework paragraph 49. Since the Council does not have a five year housing land supply, those policies are out-of-date.
38. As the Court of Appeal made clear in *Suffolk Coastal District Council v Hopkins Homes*<sup>8</sup> (Suffolk Coastal), the fact that the policies are out-of-date does not mean that they are necessarily irrelevant, or must be given no weight: rather weight is ultimately a matter for the decision-maker.
39. However, the Framework is clear about the weight to be attached to policies that are out-of-date. In particular, paragraph 14 of the Framework advises that, where relevant policies are out-of-date, permission should be granted unless *"any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole"*.
40. There are two important components in the para 14 formulation. Firstly, what is important is not harm when assessed against the out-of-date development plan policies, but harm when assessed against the Framework as a whole; and secondly, the starting point is that permission should be granted, unless the harm *"significantly and demonstrably outweighs the benefits"*.
41. As the Court of Appeal made clear in *Suffolk Coastal* it is for the decision-maker to decide what weight is to be given to Framework policies, and the weight to be given to policies of the development plan is not dictated by the Framework. In the present case, the decision-maker will be the same SoS who is responsible for the Framework. While the SoS is perfectly entitled to disregard his own policy, he would need good reasons for so doing and would want to be careful about the precedent this might set for others.
42. This is a straightforward case for the application of paragraph 14 of the Framework. The appellants have considered each of the policies referred to in the reasons for refusal in light of this context.
43. **Policy S4** states that: *"A high quality of built environment will be sought from new development, with landscape mitigation where appropriate. Development should respond appropriately to its context, reflecting a distinct character."*
44. It was accepted by the Council that there is no reason why the appeal scheme could not satisfy the first part of the policy: the Council's complaint relates to the second part.
45. In the appellants' submission, when policy S4 is read together with its reasoned justification, it is clear that it is primarily intended to govern issues of detailed design, rather than the location of new development. However, if it provides locational guidance of any relevance to this appeal, it was accepted by the Council that it adds nothing substantive to policies BNE25 and BNE34.

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<sup>8</sup> CD11.2

46. **Policy BNE25** is a typical old style countryside policy, premised on the need to protect the countryside for its own sake. It creates an 'in principle' policy objection to any form of development which does not fall within the categories listed in its sub-paragraphs; this position exists irrespective of the quality or value of the countryside in which that development is proposed and of whether the development would cause harm. In all these respects, it is completely inconsistent with the Framework.
47. Further, in circumstances where the Council does not have a five year housing land supply, the Council accepts that it will not be possible to meet Medway's housing needs without the release of greenfield sites beyond the built up area. It is therefore difficult to see how any weight could rationally be attached to the 'in-principle' conflict with policy BNE25.
48. This leaves the first limb of the policy, which states that development in the countryside will only be permitted if it maintains and wherever possible enhances the character, amenity and functioning of the countryside. For the Council it is argued that this part of the policy is consistent with the Framework, in as much as its paragraphs 17 and 109 both seek to protect the countryside. However, the fact that there is an overlap in the subject matter of policy BNE25 and paragraphs 17 and 109 is not enough to make the development plan policy consistent with the Framework, because of the way in which the Framework tells us how the countryside should be protected.
49. In that regard, paragraph 17 of the Framework speaks only of recognising the intrinsic character and beauty of the countryside, which is some way short of requiring the character, amenity and functioning of the countryside to be maintained and enhanced. Paragraph 109 speaks only of protecting valued landscapes, whereas BNE25 applies to all countryside. Moreover, it is implicit in the policy BNE25 criterion (i) requirement that character, amenity and function are maintained and that the policy requires development to cause no harm. In contrast, where there is a shortfall in the five year housing land supply, but meeting housing need conflicts with paragraphs 17 and 109, paragraph 14 tells us how that balance should be struck, in terms which expressly recognise that this may mean doing harm to the countryside.
50. Once these elements are stripped out of policy BNE25, it is difficult to see what is left. Consequently, if one seeks to protect the countryside in a way which is consistent with the Framework, there is no need to look to policy BNE25 to know how to do it: the answer is in the Framework itself. The Council's planning witness confirmed that he was not seeking to resile from the SoCG, which states that little weight should be attributed to policy BNE25. That was also the view of officers when reporting the Mierscourt application to committee<sup>9</sup>, and of the Inspector dealing with the Station Road appeal<sup>10</sup>. Reference to the Audlem Road decision<sup>11</sup> to seek a contrary view ignores the evidence of the Council's witness and SoCG.
51. **Policy BNE34** is accepted by the Council to be a relevant policy for the supply of housing. Nonetheless, the Council seeks to argue that it should be given

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<sup>9</sup> CD11.7

<sup>10</sup> CD11.3 para 14

<sup>11</sup> CD11.4

considerable weight, on the basis that it is consistent with Framework paragraph 109. The appellants do not share that view.

52. As the 2011 Landscape Character Assessment (LCA) observed<sup>12</sup>, national policy has for some time discouraged the protection of landscape via rigid local landscape designations, and has instead advocated the use of criteria-based policy guidance. Further, as the Gleaming Wood<sup>13</sup> Inspector points out, it should be based on objective landscape character assessment rather than qualitative perception. In contrast, policy BNE34 is clearly based on a rigid designation and, as two Inspectors have now pointed out, there is no evidence that it was ever underpinned by an objective landscape character assessment. In neither respect is it consistent with the Framework.
53. The Framework expects development plan policies to be up-to-date. The ALLI designation dates back to 1992. There is no evidence that the appropriateness of either the designation generally or that the detailed boundaries have ever been reviewed since that time. Further, when the SoS saved the policy in 2007, he did so specifically to give Medway a chance to justify the continued retention of the policy. In the 9 years since that letter, no justification has been forthcoming.
54. Although the 2011 LCA assesses the landscape character of all the ALLIs it makes no recommendations as to the retention of the designation generally or the validity of particular boundaries. That is to be expected given that the LCA's recognition that national policy guidance proposed the replacement of rigid local landscape designations. The LCA was intended to provide the basis for such a replacement policy, not the justification for retaining policy BNE34.
55. The absence of an up-to-date review justification is all the more critical, given the way in which the ALLI designations have been tightly drawn around the main urban areas of Medway. Effectively, policy BNE34 means that any proposal for a sustainable urban extension to meet housing needs will be contrary to policy. However, this conflict is inevitable given that Medway cannot demonstrate a five year housing land supply. In these circumstances, meeting the future housing needs of the district will necessarily involve development within areas designated as ALLIs. Indeed, in resolving to grant permission for the Mierscourt application, the Council has recognised that this is the case. The Station Road appeal decision<sup>14</sup> is to similar effect. Further, as the LCA makes clear, there are significant differences in the quality and importance of the landscape areas within individual ALLIs. This is precisely why the Framework has moved away from the concept of blanket designations and towards a criteria-based approach, informed by objective landscape character assessment.
56. The policy BNE34 approach to balancing harm is markedly different to paragraph 14 of the Framework. Whereas paragraph 14 requires permission to be granted unless the harm significantly and demonstrably outweighs the benefits, in policy BNE34 the presumption is the other way around.
57. Between them, the Council's witnesses accepted that each and every one of these points reduced the weight which should be attached to policy BNE34.

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<sup>12</sup> CD10.5 page 2

<sup>13</sup> CD3.5 Appeal Ref: APP/U2235/W/14/2227572 & 3132364

<sup>14</sup> CD11.3

Thus, the appellants contend it is difficult to see how the policy could have considerable weight. Such an approach stands in stark contrast to the advice given to members when the Mierscourt application was reported to committee with a recommendation for approval. In that case, officers concluded that policy BNE34 should only be given limited weight, notwithstanding the fact that that was a case in which they considered there would be significant harm to the ALLI.

58. Policy BNE34 may be claimed to be about protecting valued landscapes in line with the Framework. However, this overlooks the inconsistency between policy BNE34 and the Framework over the way valued landscapes should be protected, and how any conflicts should be balanced.
59. The Council's planning witness contended that there was no difference between the balancing exercise in policy BNE34 and that in paragraph 14 but he accepted that, when making a decision on the appeal, the approach in paragraph 14 should be applied. If the SoS wishes to act consistently with his own policy this must be done. If one wants to understand how the Framework considers things should be done, there is no need to refer to policy BNE34: all that is needed is Framework paragraph 109, read together with paragraph 14.

***Whether the appeal proposals would cause harm to the ALLI, or to a valued landscape; and if so, the magnitude of that harm***

60. The first question to be considered is whether the appeal site is, or forms part of, a valued landscape. It is common ground that value is not to be equated with popularity, and that what one is looking for is some demonstrable physical attribute which lifts a site out of the ordinary.
61. The appeal site lies within an area which has been designated in a Local Plan as an ALLI which can be taken as evidence that it is valued. However, just as landscapes can be valued even though they are not designated, as the Council's landscape witness agreed, the ALLI designation does not necessarily equate to value. For the reasons set out above, it is necessary to be careful about assuming that the ALLI designation is an assessment of value in the sense referred to in Framework at paragraph 109. Value is not an on or off switch. There is a hierarchy of landscape designations, with higher value placed on national designations such as AONBs. Even within single designations, there will be parts of the landscape that have greater value than others.
62. As their name suggests, ALLIs are a local designation. Consequently, we are not dealing with an AONB, a National Park or even a county-wide designation such as a Special Landscape Area. This does not mean that ALLIs are not valued, but it means that their value is towards the lower end of the spectrum. It is therefore important not to apply the same rigorous standards that would be expected in an AONB.
63. It is necessary to assess whether the landscape in which the appeal site sits has demonstrable physical attributes which raise it above the ordinary. It is common ground between the parties that, when considering whether the appeal site has such attributes, it is helpful to start from the 2011 LCA. As the LCA makes clear<sup>15</sup>, while the ALLI for the Capstone area as a whole has some demonstrable

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<sup>15</sup> CD10.5

- physical attributes which engage paragraph 109 of the Framework, not all parts of the Capstone ALLI are equally valuable. The LCA does not seek to rank the ALLIs but nor does it suggest that they are of equal value; what it does is to provide some information for comparison.
64. The appeal site lies within the 'Elm Court' landscape character type (LCT). In that context, it has value in terms of its spatial and recreational function. However, there is nothing about the fabric of the land which takes Elm Court out of the ordinary. This is borne out by the LCA, which describes Elm Court as being characterised by indistinct field patterns, a lack of containment, the discordant presence of the Elm Court Industrial Estate, monotonous open farmland, and urban fringe activities such as fly tipping.
65. In short, Elm Court is part of a wider valued landscape, but the Elm Court LCT is in poor condition overall, and has significantly less value than the other LCTs which make up the wider Capstone ALLI. Moreover, this specific proposal leaves the roles of the wider ALLI to the north unaffected. Paragraph 109 of the Framework is engaged, but very much at the lower end of the spectrum.
66. It is in this context that the harm which would be caused should be assessed. In this regard, the Council's landscape witness identifies the key attributes of the ALLI as being a green wedge linking urban communities into the wider countryside, preventing coalescence of Lordswood/Princes Park and Hempstead, being a rural landscape in close proximity to the urban area, contributing to the wider landscape setting of Capstone Farm Country Park and, contributing to the setting of the Kent Downs AONB.
67. The Council's landscape witness agreed that the contribution to the setting of the Kent Downs AONB was a secondary issue, and he made no issue in respect of the contribution to the setting of Capstone Farm Country Park.
68. Turning to the matter of the site being part of a green wedge linking urban communities into the wider countryside, it is relevant to consider the size of the ALLI as a green wedge (the Council's viewpoint 1 is, in the appellants' view, a good illustration). The ALLI totals over 575ha, and extends for almost 4km north of the appeal site up to Darland Banks, along two sharply incised valleys. The appeal site is invisible from the urban edges to the north, and for residents along 90% of the ALLI's boundaries there would be no change in their sense of being linked to the countryside.
69. The Council's landscape witness referenced his concerns to what he described as the flow of countryside from north to south. However, the LCA notes that there are few footpaths in the ALLI which run north-south, and none which run the length of the ALLI in that direction. To the extent that the flow can be experienced in a single journey, it is most likely to be in a car or on a bicycle, travelling the length of Shawstead Road/Ham Lane or Capstone Road/Lidsing Road. In the appellant's view the appeal scheme would not materially affect the extent to which that journey is experienced as being a journey through countryside.
70. Turning to the prevention of coalescence between Lordswood/Princes Park and Hempstead, there is no doubt that the appeal proposal would narrow the gap between these settlements in this particular location. However, the effect of this would be localised. In the extensive areas of the ALLI to the north, there would

still be very substantial separation between the urban areas to the east and west, and development on the appeal site would have no effect on this at all. Even within the immediate locality, there would still be a gap of at least 0.5km between the two settlements. Elsewhere within the LCA, the authors of that document recognise that areas of land such as the Horsted Valley still manage to fulfil the function of preventing coalescence, even though they are narrower than would be the case for this location were the scheme developed.

71. It is also important to consider the extent to which the reduction in the gap would be perceived once the proposed mitigation has matured. In this regard, it is worth reflecting on the extent to which the existing urban development on either side of the ALLI is already largely screened by woodland. In time, there is no reason why development on the appeal site should be any different.
72. As to the importance of the site as a rural landscape in close proximity to the urban area, the appeal proposals would inevitably change the character of the existing open field. However, although residents of the nearest parts of Lordswood would have a slightly longer walk to get there, they would still be able to access open countryside via the footpaths through the site. Moreover, the development would provide its own areas of open space for recreation, as well as better managed access to Hall Wood.
73. In considering the Council's criticisms, it is important to recognise the extent to which these impacts are localised. In considering the functions and value of the ALLI as a whole, the appeal scheme would have a negligible effect. Further, a number of the impacts are time limited. In the medium to long term, any visual harm would be substantially mitigated by the landscape proposals and, in particular, the 20m wide block of woodland which is proposed for the southern boundary of the site.

***Whether the harm significantly and demonstrably outweighs the benefits of the scheme***

74. It is common ground that whatever the precise figure, the shortfall against Medway Council's five year housing land supply is significant. In the words of the Moor Street Inspector<sup>16</sup>, the situation is "parlous". Leaving the disagreement over landscape impacts to one side, the appeal proposal site is in a sustainable location. The provision of 450 houses with ready access to jobs, services and public transport would make a valuable and sustainable contribution to Medway's housing needs, and that is a matter to which significant weight should be given.
75. The only area of uncertainty relates to precisely how bad the shortfall in the five year housing land supply is. In this regard, the SoS may take the view that, even on the best estimate, the Council is so far short of its requirement that the exact figure is of limited relevance. However, in Suffolk Coastal, the Court of Appeal indicated that the magnitude of the shortfall will be important in determining the weight to be attached to development which will address that problem.

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<sup>16</sup> CD11.5 Appeal Ref: APP/A2280/W/15/3012034

76. In terms of need, the appellants are content to accept the Moor Street Inspector's conclusion that the total requirement (recovering a backlog of 2215 units within the next 5 years and adding a 20% buffer) is 10344, or 2068 dpa.
77. At the Moor Street appeal, the Council claimed a supply of 5587 units, which equates to a 2.7 year supply. However, in the more recent Hoo St Werburgh appeal<sup>17</sup> the Inspector concluded that the 5 year housing land supply was somewhere between 2.21 and 2.79 years. Precisely how this range was arrived at is not clear from the decision letter but, despite the Council's planning witness referring to 2.7 years, the SoCG records that the Council now considers that the correct figure lies within the range identified at Hoo St Werburgh.
78. As the Hoo St Werburgh decision records, the range of 2.21 to 2.79 years was arrived at without any exploration of the supply side. It is this aspect, or the lack of transparency which surrounds it, which results in concern about the robustness of the 2.21 to 2.79 range. In particular, the appellant has been unable to unearth any document which clearly explains what the Council considers its supply side is, and how that figure has been arrived at.
79. A table from the appendices to the 2015 AMR has been submitted<sup>18</sup> which appears to have been the source of the 5587 figure relied on at Moor Street. That table provides a breakdown between sites with planning permission, allocations, sites from the latest Strategic Land Availability Assessment (SLAA) and windfalls. While that document answers some questions, it raises others.
80. In particular, the Housing Trajectory table<sup>19</sup> shows large sites with planning permission for 3649 units. However, elsewhere the 2015 AMR records that the SLAA has identified 12808 sites of which 11481 do not have planning permission, which suggests that there are only 1327 units with planning permission<sup>20</sup>. That is less than one year's supply. The difference is not explained, nor are we able to interrogate the list of large sites to understand what assumptions have been made with regard to phasing.
81. The overall total includes in the five year housing land supply two allocations from the 2003 Local Plan which begin to deliver a projected 232 dwellings starting mid-way through the five year period. However, it is impossible to tell why, having been allocated for 15 years, it is assumed that they should suddenly come to life now. There is no way of identifying the basis on which it has been concluded that the sites from the SLAA are deliverable.
82. In circumstances where it is not possible to interrogate the Council's figure and so test its reliability, the appellants' planning witness has taken an alternative approach based simply on looking at what the Council has managed to deliver over the last five years. He readily accepts that that is not a conventional approach to deciding what is on the supply side, but the reason why he has done it is because it has not been possible to find (and the Council has not been able to provide) any better information from which to work.

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<sup>17</sup> CD10.7

<sup>18</sup> Inquiry Document 9

<sup>19</sup> Inquiry Document 9 p.112

<sup>20</sup> CD10.3 p.4

83. Working on this basis, for the appellants it is considered that the five year housing land supply could be as low as 1.5 to 1.8 years, depending on whether the backlog is spread over the remaining plan period ('Liverpool' approach) or made up in the next five years ('Sedgefield' approach).
84. In this regard, attention is also drawn to the fact that, when reporting the application for residential development at Mierscourt Road to committee in June this year, the Council's Head of Planning advised members that Medway had "more like a two year supply".
85. In the appellants' submission, it is worrying that the Council appears to have so little idea of what the true position is, and is unable to provide the basic data from which a meaningful figure could be calculated. The appellants are not in a position to fill that gap definitively, but in their submission there is a very real possibility that the true five year housing land supply position is even worse than the Hoo St Werburgh decision suggests.
86. Second, the appeal scheme would deliver 25% affordable housing. The significance of this can be gauged from the Moor Street decision, where the Inspector records that the need is for 713 affordable homes per year over the plan period, but that over the last four years the Council has delivered only 845. In other words, the Council is currently achieving only 30% of the affordable housing required. In those circumstances, the potential for up to 112 units from the appeal scheme is also a matter to which considerable weight should be given.
87. Third, it is common ground that the appeal scheme would bring economic benefits. The government's views on the importance of this are well known. In this case, during the construction period the appeal scheme would provide jobs and training opportunities for local people, as well as spend in the local economy. In the longer term, occupants of the new development would provide additional expenditure to support local services.
88. Fourth, the appeal proposals would bring forward social and environmental benefits in the form of 5.67ha of open space, including a community park and children's play area.
89. Fifth, there would be significant environmental benefits from the woodland management plan for Hall Wood. Hall Wood is currently not well managed and, as a result, suffers damage from unregulated access and fly-tipping. The proposed Woodland Management Plan (WMP) would address these issues, benefitting the ancient woodland itself, and its value for recreation and biodiversity.
90. Sixth, there would be 2.96ha of new woodland planting. This would also improve biodiversity and address the LCA objectives of introducing new planting to provide a strong landscape framework into which future development can be absorbed. It would also strengthen the landscape structure by breaking up the monotony of the open farmland with new woodland planting.
91. The Council's landscape witness accepted the benefits of this new woodland planting for biodiversity, but was critical of its location on the grounds that this was arbitrary, lacked historical justification and, being a straight line, would look out of place. However, in light of the widespread clearance of woodland in the

last half century to create Lordswood, the LCA specifically advocates new planting in the Elm Court LCT.

92. In fact, there has historically been planting along the line of parts of the southern boundary. There is certainly as much justification for planting along this line as there is for anywhere else. In any event, planting does not have to be historically accurate to achieve the LCA objectives of strengthening the landscape structure and breaking up the monotony of the open farmland; nor does it have to be historically accurate to deliver much needed habitat and biodiversity improvements.
93. The southern boundary is not a straight line, nor is there any reason why it should be perceived as such. Moreover, when looking at a layered woodland backdrop, it can be difficult to perceive differences in the depth of field.
94. In the appellants' submission, the new woodland would emulate the wooded character of surrounding settlements, and so be appropriate in context, as well as enhancing the appeal site's denuded ecological interest.
95. Seventh, there would be additional receipts to the Council in the form of New Homes Bonus and a capital receipt in excess of £4m for the small area of land required for access. Despite some initial reluctance to do so, the Council eventually accepted that this latter point was a relevant consideration. It is a benefit which would flow directly from the grant of permission, and so is plainly a matter to which weight should be given.
96. In summary, there would be significant and material benefits under each of the three dimensions of sustainable development.
97. In considering the weight to be attached to them, the appellants draw attention to one final factor which is the prospect that, in the absence of the release of sites such as the appeal site, Medway would not be able to meet its housing needs. On this issue, it is noted that when bringing forward the (now abandoned) 2012 Core Strategy, the Council itself recognised that achieving even 815 dpa would be challenging. Since then little has changed. However, the requirement has gone up by over 60% since that time because of undersupply. The OAN figure spans the period 2012 to 2035. In the first four years of that period the Council has consistently failed to hit the required target to the extent that there is already (as at December 2015) a shortfall of 2215 dwellings. The Council's trajectory for 2017/18, 2018/19 and 2019/2020 requires delivery of 1259, 1239 and 1581 dwellings respectively. This level of delivery has never been achieved at any time in the last 25 years. It is somewhere between 2 and 4 times what has been achieved in the last three years. Without a major injection of new sites, it is simply not credible.
98. There is no realistic prospect of the need being met by the Council through the development plan process at any time in the near future. The 2003 Local Plan is 10 years past its end date. If there are any unused allocations from that plan, the fact that they have not already been taken up must raise a significant question over their deliverability. Medway has twice tried and failed to bring forward a replacement development plan. Its third attempt has only just reached the issues and options stage. Even on the Council's best estimates, it is unlikely to be adopted before the end of 2018/early 2019.

99. There are good grounds for caution in accepting the Council's estimates of its housing land supply. In particular, although Lodge Hill is not relied on as part of the Council's five year housing land supply, it is clear that this site remains a key issue for the Council. It is difficult to see how it can progress the Local Plan much further until the Lodge Hill situation has been resolved.

### ***The Appellants' Conclusion***

100. This case falls squarely within paragraph 14 of the Framework. Permission should be granted unless the harm "significantly and demonstrably outweighs" the benefits, when assessed against the policies in the Framework as a whole.
101. There would be some localised harm to the landscape. However, harm of this sort is going to be inevitable, somewhere within Medway, if the Council is going to meet its housing needs.
102. Against this, both individually and cumulatively, the benefits of the scheme are considerable, and cover all three dimensions of sustainable development. The harm does not "significantly and demonstrably" outweigh those benefits.
103. If, the SoS decides to give policy BNE34 any material weight, the issue of balance would be addressed slightly differently, but the answer would remain the same, that is the economic and social benefits of the appeal scheme are so important that, on the facts of this case, they "outweigh the local priority to conserve the area's landscape".
104. Either way, it is the appellants' view that the overall balance is firmly in favour of the grant of permission.

### **The Case for Medway Council**

#### ***The Council's Introduction***

105. It is common ground that the appeal proposal breaches saved Local Plan policy BNE25, such that under the first limb of s.38(6), the appeal should be dismissed "*unless material considerations indicate otherwise*". The same point also applies if the development breaches policies BNE34 and S4, as the Council maintains.
106. Before jumping to material considerations (primarily that the Council cannot demonstrate a five year housing land supply), it is necessary to consider the nature and extent of the breach of the development plan<sup>21</sup>. Local Plan policy BNE25 is an 'in principle' policy in the sense that it tells the reader that development is not acceptable here. It is not a policy that deals with detail or minutiae, but rather the fundamental question of whether it is acceptable under the Local Plan to build here. Policy BNE34 requires an analysis of the nature of the proposed development in terms of the criteria of the policy. Policy S4 seeks development to respond appropriately to its context, reflecting a distinct local character.

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<sup>21</sup> Tesco Stores Ltd v Dundee City Council [2012] UKSC "Where it is concluded that the proposal is not in accordance with the development plan, it is necessary to understand the nature and extent of the departure from the plan which the grant of consent would involve in order to consider on a proper basis whether such a departure is justified by other material considerations." (Lord Reed [22])

107. The Council considers that the proposed scheme conflicts with these policies. Therefore, given the breach of the countryside (BNE25), the ALLI (BNE34) and landscape and urban design (S4) policies, building up to 450 dwellings here would constitute a significant breach of, and inconsistency with, the Development Plan.
108. Thus, when it comes to the issue of whether material considerations indicate that the appeal should be allowed, rather than dismissed, because of its breach of the development plan, the question to be asked is whether those material considerations are sufficiently weighty to justify sanctioning a significant departure from the development plan.
109. Further, in order to allow the appeal, not only must the material considerations be judged to be as weighty as explained above, they must also be sufficiently weighty to justify not according the development plan "*the priority which the statute has given it*".<sup>22</sup> In other words, the bar is set high.

### ***Housing Land Supply***

110. As made clear in the SoCG, the Council accepts that it cannot demonstrate the requisite five year housing land supply, that the shortfall is substantial and that the housing land supply position is a significant material consideration in the determination of the appeal. Despite the appellants' acceptance of this, some Inquiry time was spent in cross examining the Council's planning witness on housing supply.
111. The SoCG records that the most recent appeal decision<sup>23</sup> concluded that the supply was within a range of 2.21 to 2.79 years. The appellants' planning witness suggested 1.8 years, albeit based on what he accepted was an unusual approach of averaging completions over the last five years and projecting the figure forward over the next five year period. Moreover, this witness stated that if the 'Sedgefield' approach was applied, wherein any backlog is made up over the next five year period, the supply would drop to 1.5 years.
112. Whilst the appellants' figures are not accepted by the Council, given the extent of any difference is readily apparent, and the common ground is that the shortfall is substantial, the Council considers that the Inspector and SoS have sufficient information, when considering the weight to be attributed to policies BNE25 and BNE34 to assess "*the extent to which relevant policies fall short of providing for*" the five year housing land supply, as sought by Suffolk Coastal<sup>24</sup>. In that context, the Council has taken proactive measures of promoting regeneration and is being robust in looking at sites such as Mierscourt Road to address the shortfall prior to the adoption of a new Local Plan.

### ***The weight to be accorded to Local Plan Policies***

113. The material considerations in this appeal spring from the Framework. The presumption in Framework paragraph 14 applies in any one of three circumstances; the first, where the development plan is "*absent*", and second,

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<sup>22</sup> As set out in *Bloor Homes East Midlands v SSCLG & Hinckley & Bosworth BC* [2014] EWHC 754 (Admin)

<sup>23</sup> CD10.7 (Hoo St Werburgh)

<sup>24</sup> CD11.2 paragraph 47

where it is "*silent*", do not arise here; the policies address what will or will not be permitted in the open countryside and the ALLI and thus whether the site is an appropriate location for the proposed development. Policies BNE25 and BNE34 are both saved, extant, policies and neither is temporary in nature. It is therefore only the third circumstance where "*relevant policies are out-of-date*" that is relevant in the present case.

114. It was accepted by the appellants' planning witness that Policies BNE25 and BNE34 are not out-of-date on the basis of inconsistency in principle with the Framework given that paragraph 215 in respect of protecting the countryside from being built upon is consistent with the fifth core planning principle in Framework paragraph 17 of "*recognising the intrinsic character and beauty of the countryside*" and the environmental dimension of sustainability at Framework paragraph 7. The March 2015 Ministerial letter<sup>25</sup> also makes it clear that it is consistent with the Framework to seek to protect the countryside from being built upon.
115. The Framework means to recognise the intrinsic, the inherent and innate, character and beauty of all countryside as countryside. This has nothing to do with special designations for landscape quality. Some parts of the countryside have a stronger or more distinct character and beauty than others, but the Council takes the view that all countryside is regarded by the Framework as intrinsically characterful and beautiful. Having recognised these intrinsic qualities, it would be nonsensical not to protect the countryside from development – there would be little point of recognising the intrinsic character and beauty of the countryside if one then did nothing with that recognition.
116. Therefore, the countryside protection purpose of BNE25 is consistent with the fifth bullet point of Framework paragraph 17. In the recent Audlem Road decision (in relation to a policy with a similar purpose to BNE25), the SoS concluded the policy to be generally consistent with the Framework and to carry "*reduced but still significant weight*" although it is acknowledged that in the present case it has been agreed that only limited weight should be afforded to policy BNE25 .
117. As to BNE34, the ALLI policy is a landscape character protection policy which is also consistent with the Framework. In the Station Road case, the Inspector found that although "*BNE34 does not set a criteria-based approach and the ALLI designations were not based upon a landscape character assessment*" so that the policy did not fully accord with the Framework in those respects, "*the discrepancy related to the nuances of how landscape should be protected through planning policy as opposed to the fundamental principle of whether those landscapes should be protected*". The Inspector then concluded that "*I can find nothing inherently inconsistent with the Framework in seeking to recognise and protect areas of recognised local landscape character. Thus, whilst the weight afforded to policy BNE34 must be reduced to a degree as a result of the inconsistency with paragraph 113 of the Framework, I am satisfied that its aims are broadly consistent with the Framework as a whole and I attach significant weight to the policy*". It is acknowledged by the Council that the Station Road decision predates the Suffolk judgment, and that the Inspector considered (on the basis

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<sup>25</sup> CD11.1 Mr Harouni proof of Evidence Appendix 1

of the authorities as they then stood) that the policy was not a policy for the supply of housing, but he reached a clear conclusion, which remains relevant, that the landscape protection purpose of the policy was consistent with the Framework. Whilst the appellants' landscape witness, endorsed the Station Road Inspector's approach he did not agree that the policy should be accorded significant weight.

118. The Council accepts it cannot demonstrate a five year housing land supply. Thus, by virtue of the Suffolk Coastal case, Framework paragraph 49 applies such that Local Plan policies BNE25 and BNE34 are out-of-date for the purposes of Framework paragraph 49. It is accepted that policy BNE34 is a policy for the supply of housing for the purposes of Framework paragraph 49, such that the weight to be afforded to the policy is reduced. However, the Council's case is that considerable weight should be attached to BNE34 in the present case, because its landscape character protection purpose is consistent with the Framework. This is reinforced as the site falls within part of a valued landscape for the purposes of Framework paragraph 109.
119. The Council acknowledges that the ALLI designations have not been reviewed and that the designations are part of a dated local plan. However, the LCA makes it clear that despite the then (Planning Policy Statement 7: *Sustainable Development in Rural Areas*) national policy approach moving away from local designations, the assessment work within the LCA "*will ensure an appropriate level of protection continues to be provided [for the ALLIs] without a continued need for rigid designation*". It also states it: "*is important that all of these valuable [ALLI] functions continue to be valued and protected, particularly when considering the urban-fringe character areas of Medway*". Thus, the criteria-based LCA 2011 is compliant with the objectives and approach of the Framework in relation to the assessment of effects on the natural environment, and the area assessed within the Capstone and Horsted Valleys LCA includes all of the Capstone, Darland and Elm Court ALLI.
120. The supporting text to policy BNE34<sup>26</sup> makes clear that the ALLIs are areas of landscape that enhance local amenity and environmental quality, providing an attractive setting to the urban area and surrounding villages. The ALLIs are significant not only for their landscape importance but for other specified important functions, including as green lungs or buffers, helping to maintain the individual identity of urban neighbourhoods and rural communities, as green corridors (or links) for the community to reach the wider countryside and as edge or fringe land, needing protection from the pressures of urban sprawl. In this case the function of maintaining biodiversity is not at issue. The landscape character and function of each of the ALLIs is to be protected, with the justification for designating each ALLI set out in order to provide guidance on the landscape features and functions the Council will aim to protect.
121. The Council considers that weight, limited in the case of policy BNE25 and considerable in the case of policy BNE34, should be given to the policies because of the countryside protection purpose, consistent with the approach set out in the Suffolk Coastal case:

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<sup>26</sup> CD10.4

*"46. We must emphasize here that the policies in paragraphs 14 and 49 of the NPPF do not make "out-of-date" policies for the supply of housing irrelevant in the determination of a planning application or appeal. Nor do they prescribe how much weight should be given to such policies in the decision. Weight is, as ever, a matter for the decision-maker (see the speech of Lord Hoffmann in Tesco Stores Ltd. v Secretary of State for the Environment [1995] 1 W.L.R. 759, at p.780F-H). Neither of those paragraphs of the NPPF says that a development plan policy for the supply of housing that is "out-of-date" should be given no weight, or minimal weight, or, indeed, any specific amount of weight. They do not say that such a policy should simply be ignored or disapplied. That idea appears to have found favour in some of the first instance judgments where this question has arisen. It is incorrect.*

*47. One may, of course, infer from paragraph 49 of the NPPF that in the Government's view the weight to be given to out-of-date policies for the supply of housing will normally be less than the weight due to policies that provide fully for the requisite supply. The weight to be given to such policies is not dictated by government policy in the NPPF. Nor is it, nor could it be, fixed by the court. It will vary according to the circumstances, including, for example, the extent to which relevant policies fall short of providing for the five-year supply of housing land, the action being taken by the local planning authority to address it, or the particular purpose of a restrictive policy – such as the protection of a "green wedge" or of a gap between settlements. There will be many cases, no doubt, in which restrictive policies, whether general or specific in nature, are given sufficient weight to justify the refusal of planning permission despite their not being up-to-date under the policy in paragraph 49 in the absence of a five-year supply of housing land. Such an outcome is clearly contemplated by government policy in the NPPF. It will always be for the decision-maker to judge, in the particular circumstances of the case in hand, how much weight should be given to conflict with policies for the supply of housing that are out-of-date. This is not a matter of law; it is a matter of planning judgment (see paragraphs 70 to 75 of Lindblom J.'s judgment in Crane, paragraphs 71 and 74 of Lindblom J.'s judgment in Phides, and paragraphs 87, 105, 108 and 115 of Holgate J.'s judgment in Woodcock Holdings Ltd. v Secretary of State for Communities and Local Government and Mid-Sussex District Council [2015] EWHC 1173 (Admin))."*

122. In this case, the first criterion of policy BNE34 is breached because the proposed development would be an inappropriate form of development in the countryside that would materially harm the landscape character and function of the area. Further, the second criterion is not satisfied, because the economic and social benefits are not so important that they outweigh the local priority to conserve the area's landscape.
123. Although it is acknowledged that the objective of policy S4, that development should respond appropriately to its context, reflecting a distinct local character, adds little to the issues to be determined in relation to policies BNE25 and BNE34. It is the Council's case that there would also be conflict with policy S4 because the development would fail to respond appropriately to its context and fail to reflect the distinct local character of the area.

## ***Sustainability***

124. In light of the recent judgment in the Suffolk Coastal case, whether the development is, or is not, sustainable is to be assessed by the exercise to be undertaken in accordance with Framework paragraph 14, in other words, the proposed development would not be sustainable only if the adverse impacts significantly and demonstrably outweigh the benefits.
125. Therefore, the absence of a five year housing land supply is not an automatic green light to planning permission. The lack of a five year housing land supply does not mean that housing development should be permitted anywhere, but only where it amounts to sustainable development taking account of all relevant considerations.
126. In terms of whether this proposal is sustainable, on the positive side of the weighing scales the Council recognises that building market and affordable homes against the backdrop of a need for both provides important benefits and contributes towards the economic and social dimensions of sustainable development as expounded in paragraph 7 of the Framework. This should be given significant weight. On the negative side of the weighing scales is the loss of greenfield land in the open countryside and an ALLI, by reason of a very significant extension of the urban form of Lordswood in an area of high sensitivity.

## ***Landscape, Rural Character and Appearance***

127. As set out above, the site falls within the Capstone and Horsted Valleys LCA. The principal characteristics of the Capstone Valley are listed in the LCA and include that the area forms a green wedge linking urban communities into the wider countryside and the North Downs, connects into the heart of Medway's urban areas, is a valuable semi-rural open space in close proximity to densely populated urban communities, provides a distinctive edge to urban areas and prevents coalescence of Lordswood and Hempstead, contains blocks of deciduous woodland (predominantly ancient woodland) which are distinct features, particularly on the shallower slopes and plateau landform, contains woodlands providing valuable containment for open arable farmland and retains a distinctly rural character and has a strong sense of overall coherence. Further, the LCA identifies the development pressure that the area is under, and emphasises that both valleys are valuable green wedges linking town with countryside and bringing the distinctive North Downs landscape character into urban areas.
128. The Capstone Character Area is then separated into sub-areas in the LCA. The site falls within the Elm Court sub character area, described as flat or undulating wooded farmland. It is common ground that the site reflects many of the characteristics of the Elm Court sub-area – it is typical of the undulating open farmed arable plateau, with a weak hedgerow pattern.
129. The Council considers that the site has a rural character. Whilst the appellants' landscape witness acknowledged that the site looks rural, he stated that it does not feel rural. The main area of difference on this point is the influence of the identified detractors. The M2 motorway cuts through the landscape approximately 1km to the south of the site, is set in a shallow landscaped cutting, and is largely screened from view. The site is bordered by open countryside to the north, to the west notwithstanding Elm Court Business

Park and to the south. The Council considers that the influence of the motorway, including traffic noise, has been overstated by the appellants and notes that motorways cutting through rural areas are a common feature throughout the country.

130. The appellants consider that road, aircraft noise and services infrastructure serve as constant reminders of proximity of urban area. However, the Council's conclusion is that the noise impacts on the tranquillity of the site are negligible and the electricity pylons are an unremarkable countryside feature. As such, the appeal site and the surrounding area retain a predominantly rural character, characterised by rolling arable farmland, with wooded blocks and a network of narrow country lanes and paths.
131. The Council's landscape witness also considers that the existing residential development at Lordswood can only be glimpsed through breaks in the wooded edge to the settlement. Thus, the influence of the Lordswood development on the character of the appeal site and the Elm Court sub-area is negligible, because it is, in the main, screened in views north and west across the appeal site.
132. It is common ground that the Elm Court Business Park is a detractor, but it is an isolated development and is typical of small industrial or business parks often located in the urban fringe countryside.
133. The LCA assessed the landscape condition of the Elm Court Area as poor, but the landscape sensitivity as high which is consistent with the Kent Landscape Assessment. The high sensitivity assessment is attributable to the perceived development pressure and the visual openness. The appellants' landscape witness agreed on this point but not to the Council's view that high sensitivity is due to the spatial sensitivity of the area. Despite this he accepted that the wider ALLI fulfils such a function, and that this sub-area of course forms part of the ALLI. Although the appellants' disliked the word 'pinch-point', the area is a relatively narrow point of the ALLI and it is, in the Council's view, right to regard the area as spatially sensitive.
134. The appellants draw attention to the low marks attributed to the Elm Court sub character area, compared to the others in the Capstone and Horsted LCA. However, this does not draw attention to the fact that the area is assessed as one of only two sub-areas to have a "*coherent*" pattern of elements and "*high*" visibility. Further, Elm Court is one of four "*high*" sensitivity areas (the other three are moderate). It is also important to note that the LCA does not seek to rank the sub-areas against each other<sup>27</sup> and the recommendation to restore is recognition that the area warrants restoration because of its high sensitivity. The LCA defines sensitivity as a measure of the ability of a landscape to accept change without causing irreparable damage to the essential fabric and distinctiveness of that landscape. The sensitivity categories used were: distinctiveness, continuity, sense of place, landform, tree cover and visibility. As to the appellants' claim that the Elm Court sub-area is the least harmful location for development, it is clear that the LCA makes no such ranking and without a full assessment of the other sub-areas (indeed the other ALLIs), there is no evidence to support the suggestion.

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<sup>27</sup> CD10.5 p122

135. Turning to the function of the ALLI as a green wedge preventing coalescence between Lordswood and Hempstead, the appellants acknowledged that the development would adversely affect the ALLI. The appellants' landscape witness agreed that the proposed development would result in material harm to the spatial function of the ALLI in this part of it and, therefore, that there would be harm to the ALLI overall, albeit that the appellants' planning witness made the assessment that there would be no material harm to the ALLI overall.
136. The Council maintains that the development would lead to coalescence between settlements because of the significant reduction in the open countryside and as it would enclose the southern end of the Capstone Valley. The development would reduce the width of the gap between the eastern edge of Lordswood and the nearest residential areas on the western edge of Hempstead (in the vicinity of Elm Court Business Park) from some 1.4km to 0.7km or approximately 50%, as was accepted by the appellants.
137. The Council considers that the result would be that the continuous flow of countryside through the valleys to the AONB would be adversely affected. Indeed, the connection to the wider valley to the north would be reduced to Ham Lane and Public Rights of Way (PRoW) KH34 and 41, whereas at present, the connection is formed by the open countryside in a green wedge, in an uninterrupted flow (bar Elm Court Business Park), of rural landscape. At present, the appellants' landscape witness accepts that a sense of separation is experienced within the ALLI, adding that the open land remaining post development would "*punch above its weight*", because of the contrast between the wooded edges of the settlements and the open countryside. He described that contrast as "*a powerful delineation of those 2 settlements*", and finally acknowledged that the existence of those features means that the site similarly operates as part of that powerful delineation. The Council considers that narrowing of the separation by 50% would not reinforce that delineation in any positive sense; rather, it would reduce the gap to a material extent and cause adverse harm to the spatial function of the ALLI.
138. Further, the site forms part of a valued landscape for the purposes of Framework paragraph 109. The appellants' landscape witness agreed that the site and its environs are part of a valued landscape. He also accepted that the demonstrable physical attributes of the site and its surroundings, which apply to the whole of the ALLI, are as a green wedge preventing coalescence between Lordswood and Hempstead, as part of the wider setting of the Country Park and AONB, providing a continuous flow of open countryside from the Capstone Valley to the AONB, providing an accessible rural landscape in close proximity to urban areas and, that it meets informal open space needs of communities nearby. Finally, he agreed that identifying demonstrable physical attributes was not just about physical features on a site, but the character, function and role of the landscape.
139. In terms of the effect on landscape character of the Elm Court sub-area, the Landscape and Visual Impact Assessment (LVIA)<sup>28</sup> concludes that the development would result in a major/moderate adverse effect during the short term (years 1-15) which is considered significant. Notably the LVIA defines

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<sup>28</sup> CD1.9

major as “*changes resulting in a fundamental change to the landscape resource or visual amenity*” and moderate as “*a material but non-fundamental change to the landscape resource or visual amenity*”. The table (A3.67) explains that a ranking of moderate or above is judged to be a significant effect. Therefore, it is common ground that the development would have a significant adverse effect on local landscape character in the short term.

140. In the medium term, the LVIA concludes that the development would result in a low overall magnitude of change with a consequent minor to minor/negligible adverse residual effect. That conclusion is largely based on the perceived benefits of the proposed landscape infrastructure mitigation, as it matures. However, the Council notes that that mitigation would come at the cost of the loss of a substantial area of open countryside and spatial harm, in terms of the large reduction in the rural gap/green wedge between Lordswood and Hempstead.
141. Moreover, while the proposed landscape infrastructure on the south eastern boundary shown on the illustrative masterplan and the photomontages<sup>29</sup> would help to mitigate some of the adverse visual effects, it does not follow any existing topographical feature but simply cuts across the field. The proposed boundary is arbitrary. Indeed the LVIA acknowledges that the boundary is arbitrary, because it follows the administrative boundary between Maidstone and Medway and is not representative of any change in landscape character further south. The need to plant a dense tree belt to screen the development is a consequence of the arbitrary or artificial nature of the boundary and it would result in the enclosure of the southern end of the Capstone Valley. Therefore, the Council considers that in the medium term (15yrs +), the overall residual landscape effect would be moderate adverse.
142. In terms of visual effects, the LVIA identifies a significant adverse effect (major or major/moderate adverse) from seven out of 10 of the representative viewpoints in the short term (1-15 years). The Council’s six additional viewpoints reinforce the findings of the LVIA that the development would result in significant adverse visual effects. Indeed, all six would experience major or major/moderate adverse effects in the short term.<sup>30</sup>
143. Although the LVIA and appellants’ landscape witness both describe the significant visual effects as geographically confined, the Zone of Visual Influence (ZVI) is not particularly geographically small, it extends approximately 1km north and south of the site and across the entire width of open countryside between Lordswood and Hempstead. As the viewpoints show, views from within the visual envelope tend to be relatively wide and expansive. It is also relevant to note that several of the viewpoints are from PRoW, where similar views would be experienced over substantial lengths of each route, for example some 400m of footpath RC11 between viewpoints 8 and 16, and similar lengths of footpath RC28/KH34 and byway KH41<sup>31</sup>. Views from these rights of way are highly sensitive to change. Further, the development would be very prominent in the

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<sup>29</sup> CD11.9 (Appendix 10)

<sup>30</sup> CD11.9 (Appendix 7)

<sup>31</sup> See the appellants’ landscape witness’s Plan 2

short to medium term, such that there would be a harmful loss of visual openness and countryside character.

144. As to the medium term (15 years +), the LVIA records that even after the landscape infrastructure has matured there would remain significant adverse effects from seven of the 10 viewpoints. In terms of the Council's additional viewpoints from three of those six there would be significant (major) adverse effects, moderate effects from one viewpoint and minor effects from the other two.
145. The appellants' landscape witness acknowledged that the proposed development would contribute to a permanent erosion of the rural character of the area and the open countryside separating the settlements of Lordswood and Hempstead. He acknowledged that those were material detrimental effects, albeit that the appellants' case is they are outweighed by benefits.
146. Moreover, however well landscaped as a housing estate, the proposed development would utterly transform the site because the open greenfield countryside would be lost, the development would cause a change for the worse to the intrinsic character of the site and the local area as countryside. That change would have a significant and permanent effect on the character of the area. The permanent loss of openness cannot be mitigated. Therefore, building up to 450 dwellings on this land would result in an inappropriate development because of the significant harmful change to the intrinsic character and beauty of the countryside, and the material harm to the landscape character and function of the ALLI, contrary, the Council considers, to policies BNE25, BNE34 and S4 of the Local Plan.
147. The fact that greenfield sites on the edge of settlements are needed to meet the housing requirement in Medway does not mean that the impact on the open countryside and ALLI, as set out in this case, must be acceptable. Each proposed development falls to be determined on its merits and the Council has permitted development of some sites in the open countryside and in ALLIs, where they have been considered to be sustainable. In this case the Council attaches significant weight to the harm to the countryside's intrinsic character and function. This, the Council considers, is not a place where it would be appropriate for such a large scale development to extend the settlement of Lordswood, materially and adversely reducing the important green wedge and leading to coalescence with Hempstead. Greater weight should be given to protection of the countryside in this location.

### **The Council's Conclusion**

148. Much has been made by the appellants of the lack of a five year housing land supply, and it is acknowledged that is an important material consideration in the determination of this appeal. However, the real issue here is whether the acknowledged material harm caused to the landscape and rural character and appearance of the area significantly and demonstrably outweighs the benefits of the proposed development, when assessed against the policies in the Framework taken as a whole.
149. The Council's case is that the negatives weigh very heavily against the proposal in the scales. In the Council's judgment they outweigh the significant weight given to the benefits of providing market and affordable housing such

that, having weighed the competing considerations, the appropriate conclusion to reach is that the appeal scheme is not sustainable development. Material considerations would not indicate otherwise than dismissing the appeal. In these circumstances the appeal should be dismissed because of the significant breaches of the development plan.

### **The Case Advanced by Others Appearing at the Inquiry**

150. **Mrs Vanessa Jones**, who is the chair of Bredhurst Parish Council and Bredhurst Woodland Action Group, explained that this proposal would impact on the Kent Downs AONB. Bredhurst is on the edge of that AONB in, she considers, a beautiful location. The residents of Bredhurst value the arable farmland which forms the appeal site and want it to be kept as rural land. Whilst traffic figures are not questioned, the traffic along the lanes is of concern. In particular she notes that there are no footpaths. The vehicles used by the occupiers of the proposed 450 additional dwellings would have a devastating effect on the existing community and change the rural character of the area.
151. **Mrs Pauline Bowdery** is the Clerk to Boxley Parish Council and spoke on behalf of the Parish Council, reading out a statement<sup>32</sup>. The Parish Council supports Medway Council's decision. In particular, she explains that what is important about the ALLI is the patchwork of different habitats with open flatter land being necessary to enjoy the sweeping views. Moreover, open spaces can be improved with hedges. It is not reasonable to suggest monotonous fields should be improved by developing 450 houses and tree planting. The fact that Elm Court Business Park exists as a detractor does not justify further development. The proposed development would extend urban frontages into the countryside. The proposed tree belt is only proposed as it would be required for mitigation. Further, the screen planting would take a long time to establish, it might not achieve the extent of screening predicted and for half of the year, when trees are not in leaf, the screening effect would be reduced.
152. Lordswood already has a clearly defined boundary. The proposed development would be at a pinch point in the ALLI and would impact upon the whole of the ALLI as 50% of the land at the pinch point would be developed. As a result development here would erode the function of the green wedge in terms of preventing coalescence between Lordswood and Hempstead.
153. The site is rural regardless of how quiet it might be. In this respect it is no different from the North Downs AONB which is rural even though in many parts noise can be heard from motorways or high speed rail and the M20 can be glimpsed.
154. The Parish Council do not understand why there is no case being made on traffic grounds or on the lack of medical facilities. One surgery has closed and another may close altogether as staff retire and money will not solve the problem of retiring doctors. In terms of traffic, people from the development would use private cars as buses use circuitous routes, get stuck in traffic and are costly. People would not walk to Hempstead because it is a 60mph road without footways and is too far, particularly with heavy shopping. Traffic at the beginning/end of school day indicates the difficulty of relying on public transport.

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<sup>32</sup> Inquiry Doc 6

That said, it is acknowledged that there is one good commuter service for the Walderslade area.

155. It is unlikely that future residents of the site would work at Elm Court Business Park because generally it is not a high spec /high tech employment area. As a result, future residents would be likely to commute for work. Thus, there would be much use of the local road network. To get to Maidstone the cross country journey cuts through the ALLI, AONB, and the villages of Boxley and Bredhurst. At Boxley the road reduces to single width. The additional traffic would cause more noise and air pollution particularly where cars stop to allow for passing.
156. The Parish Council offices are located near to the application site and junction 3 of the M2 motorway. As such, it is felt by local residents and the Parish Council that they are much more aware of local traffic issues and impacts than Highways England.
157. There is an asbestos waste transfer site near to the proposed housing and future residents should be made aware of this.
158. A greenfield site would be lost forever if this proposal goes ahead, the green wedge would be reduced, 50% of the greenfield pinch point would be eroded and the proposed development would join up with Elm Court Business Park. This harm is such that Boxley Parish Council requests that the appeal be refused.
159. **Mr N Van der Vliet**, a local resident, explained the importance of this open land, and access across it, as open space for his family and for others. He stressed the importance of the relief this open space brings to the nearby developed areas and its ease of access. He also expressed concern about accessibility of the development to local facilities and services. He noted that people are unlikely to travel the proposed distances on foot or by bicycle when carrying heavy shopping. As such, those in affordable housing who might have lesser access to a private car would find this location difficult. He also had significant doubts about the highway situation. Given the access issues he considers it most unlikely that households would only have one car. Rather, based on the experience of living where he does, it is more likely they would have in excess of two vehicles per household.
160. In terms of other facilities Mr Van der Vliet is concerned that there would not be adequate capacity to serve the needs of future occupiers of the proposed development. For instance there is no space at the local doctors' surgery and the schools are oversubscribed so that those in catchment cannot get places. The contribution to education appears far too small given the very high costs involved. The green wedge is important and loss of it, as well as his concerns for future occupiers, results in his view that the site should not be developed.
161. **Mr Dines**, a local resident, set out his expertise as a highway manager and, thus, his relevant experience in dealing with highway matters. He explained that his main concern relates to the lack of sustainable credentials for this greenfield site. In particular he voiced concerns that the site is difficult to serve by public transport. The walking distance to Clandon Road is some 500m and so beyond the 400m distance which would normally be sought. He considers that the contribution to be made through the s.106 would be inadequate to entice a bus service operator into the culs-de-sac of the site. Moreover, the bus services are not good. He also felt conditions to secure the proposed works at the Gleaming

Wood Road/Lordswood Lane junction would be essential and expressed concern about whether the detail was acceptable in terms of pedestrian and cycle users at this junction. Whilst being close to Hempstead and Elm Valley there are no specific provisions for walking or cycling. Thus, there would be reliance from future occupiers on the private car.

### **Written Representations to the Inquiry**

162. The Local Member of Parliament for this area, Tracey Crouch MP, wrote reiterating her earlier objections made to the Council in respect of the scheme. In particular the MP focusses on the loss of green space which creates a green buffer between distinct residential areas, the precedent it would cause, the impact on local services and on the local road network with particular concern for the motorway junction no.3 of the M2. The previous letters also set out concerns regarding wildlife and proximity to an asbestos waste transfer site.
163. In addition to the MP's letter I received a letter from the Campaign to Protect Rural England (CPRE) who object on a numbers of grounds. They express concern at the impact on local character, noting the siting at a pinch point harms the 'green lung' benefits of the ALLI and the effect on the setting of the Kent Downs AONB. Concern is raised regarding the impact on designated habitats and protected species and the loss of best and most versatile agricultural land. They consider that the environmental harm is such that the proposed development is not sustainable development. They also express concern that the habitat has not been properly assessed and draw attention to the concerns of others regarding traffic.
164. A further 22 letters or e-mails of objection were received. In addition to the points raised by objectors at the Inquiry and by the MP and CPRE these letters expressed the following concerns:
- i) that it would result in pressure on schools, emergency services, roads, water, power, health provision, including dental services, play space provision and air quality (existing services are overstretched in schools and the national health service);
  - ii) the negative impact on house prices and a reduction in the desirability of the Hempstead area;
  - iii) impact on wildlife, including skylarks;
  - iv) it is too close to Capstone Country Park;
  - v) brownfield land should be utilised as once greenfield sites have gone they are lost forever. In particular Chattenden Barracks site could offer comprehensive development on a brownfield site;
  - vi) highways impacts, especially at overstretched junctions and on single carriageway lanes, harm to road safety, concern about learner HGV drivers operating from the Gillingham Business Park. There would also be a further harm to existing poorly surfaced roads;
  - viii) that migration should be controlled to reduce housing need;
  - ix) the recent hawthorn planting would not screen this proposed development;
  - x) this proposal could lead to widespread social unrest and a lack of integration between residents of the proposed development;

- xi) the area is already burdened by traffic to the Channel ports, widening of the M2, threats of an airport and expansion of the Hempstead Valley Shopping Centre. These are not local benefits;
- xii) future residents would add to the existing jobless figures;
- xiii) financial contributions would be insufficient to resolve the pressure on medical services and the Council might not spend the money on this need. One objector records two personal incidents where family members had been left in hospital corridors before being found rooms; one was given life-saving surgery whilst the other died. They are not critical of the medical care but consider adding to the populous in these circumstances would be criminal;
- xiv) the scheme is opportunistic property development,
- xv) this scheme should be considered with the Lodge Hill site,
- xvi) allowing the proposal would be contrary to localism,
- xvii) extensive housing is already being provided for instance at Horsted Park (250-300 dwellings) and on North Dane Way (100 dwellings); and,
- xviii) the site is not sustainable because of the likely number of car movements given the lack of access to schools, doctors, dentists and shops and that there is no public money to support public transport.

165. One further email was received and asked to be considered with the sender's details omitted. It indicates that the sender considers the land to be a Site of Special Scientific Interest and green belt. The writer complains about static caravans on a nearby site (outwith the appeal site) and objects on grounds already covered above.

### **Written Representations at the Application Stage**

166. **Petitions:** The Council received four petitions of objection at the application stage. The committee report advises that the largest of these was signed by 2,730 people objecting to the proposal on the grounds of loss of local beauty spots, loss of farmland and additional strain on local schools and medical services. Three petitions of 169 signatories were received on grounds of additional pollution, impact on the local highway leading to reduced highway safety, impact on the character and appearance of the area and AONB, loss of a green lung providing relief to the adjoining urban areas and preventing coalescence, loss of ancient woodland, loss of habitat reducing flora and fauna, extra demand on education and healthcare, impact on local water supply, asbestos risk from the nearby waste transfer station and no benefits from the scheme for the existing residents.
167. **Letters of objection:** At the application stage the committee report records 295 letters of objection from 285 respondents, with a further 74 letters of objection reiterating objections and adding to them. In addition to the matters raised by the letters above the following objections are made:
- i) the proposed development would not be a natural extension to the urban area which is well contained;
  - ii) the occupiers of Gibraltar Farm and Gibraltar Farm Cottages would be surrounded on three sides by residential development;

- iii) this might be a part of a piecemeal application as the site boundary follows an administrative boundary and a subsequent application might be made for the Maidstone Council's area;
- iv) there is no need to support housing here as the Council supports 5000 houses at Lodge Hill;
- v) harm to a recreational walking route;
- vi) inadequate resources for the Police service and this would add to the burden;
- vii) doubts about the highway modelling;
- viii) doubts about the likelihood of success for the travel plan;
- ix) concern about additional traffic near to the recreational space and Lords Wood Leisure Centre;
- x) North Dane Way to Gleaming Wood Drive should be extended to relieve congestion;
- xi) North Dane Way should not be speed restricted as it is designed as a quick peripheral route;
- xii) the emergency access could be used as a secondary route;
- xiii) construction traffic would cause traffic issues and disturb residents;
- xiv) light pollution;
- xv) loss of privacy;
- xvi) Gibraltar Farm was used as a gun position during WW2 and munitions may remain on site;
- xvii) the provision of affordable housing would result in anti-social behaviour;
- xviii) an EIA should be required;
- xix) flood risk;
- xx) walking routes to bus stops are 500m not 400m as reported by the appellants and bus services and stops in the Transport Assessment are inaccurate;
- xxi) concerns about pedestrian and cyclist safety;
- xxii) two access points are needed, a priority junction at North Dane Way/Albemarle would be less safe than a roundabout; and,
- xxiii) the main access off North Dane Way would create security concerns for existing residents.

168. Bredhurst Parish Council, Boxley Parish Council and Hempstead Residents Association all objected at the application stage on grounds already covered above.

169. **Letters of support and other letters:** There was one letter of support and one neither supporting nor objecting.

### **Conditions and Obligations**

170. **Conditions** were discussed at the Inquiry in the light of the advice in the Guidance which has replaced, in part, Circular 11/95. The conditions have in some cases been amalgamated, as discussed, and amended to provide compliance with the Guidance. Those conditions would be necessary in order to achieve an acceptable development, were the Secretary of State to consider the

principle of the development to be acceptable. Thus, they are set out in the Schedule attached at Annex A. Where necessary, specific conditions have been addressed in the Considerations below. Reasoning for the conditions is otherwise contained within the conditions in the Annex. The conditions set out would be relevant, necessary to make the development acceptable and otherwise comply with the necessary tests.

171. The conditions include a shortened timescale for the submission of reserved matters and commencement given the pressing need for housing. It is for the Council to be prompt in discharging conditions to get progress made on site. The timing and phasing conditions proposed by the parties have been adjusted for clarity and to avoid conflict between conditions. I have omitted the suggested electric car charging point condition as there is no formal policy basis for it nor is it a pre-requisite for making the proposal acceptable in planning terms, although I accept it is a laudable suggestion and the appellants did not object to it.
172. I have reorganised the conditions into clear subject groups and altered pre-commencement style conditions to other trigger points where it is appropriate.
173. **The s.106 Unilateral Undertaking** provides for education, healthcare, open space, public transport, waste and recycling, community facilities and Medway SPA contributions as set out in the details at paragraph 7 above. It also commits to providing 25% affordable housing.
174. I have had regard to this planning obligation in the light of the tests set out in the s.122 of the Community Infrastructure Levy Regulations 2010 and repeated in the Framework at paragraph 204. These state that a planning obligation may only be sought if it is necessary to make the development acceptable in planning terms, is directly related to the development and is fairly and reasonably related in scale and kind to the development. In this regard a CIL compliance checklist has been provided by the Council<sup>33</sup>. The approach to seeking contributions is set out in the Council's Medway Council Guide to Developer Contributions (2014)<sup>34</sup>.
175. In terms of the education contribution it is derived from a formula based on the likely number of children arising from the proposed development. The calculations are based on charging rates per type of pupil. It is calculated that the scheme would result in the need for 44.55 nursery places (£377,396). This would be used at one or more of Swingate Primary, Hempstead infants or new provision. For primary education 109.35 places are sought (£930,010). This would be used at one or more of Lords Wood Primary Academy, St Benedict's RC School or new provision. The secondary provision would require 66.95 places (£919,269). This would be used at Walderslade Girls and Greenacre Boys Schools or a new provision. This results in the total contribution of £2,226,674. The calculations are set out in Inquiry Document 1 and the sums are fairly and reasonably related to the development based on Education Department confirmation that there is inadequate capacity within schools in this area, a calculated pupil product ratio and costs. The schools proposals identified would be necessary to provide capacity through expansion and extension. No issue arises with regard to other projects or pooling of s.106 monies. This contribution accords with the Council's Medway Council Guide to Developer Contributions.

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<sup>33</sup> Inquiry Document 1

<sup>34</sup> CD10.5

176. The National Health Service (NHS) confirms that it has insufficient capacity to accommodate additional demands from the proposed development and I am conscious that this has been mentioned in many of the objections. The contribution is based on a sum arising from the Healthy Urban Development Unit model taking account of demographics, predicted population growth, and NHS costs and floor space requirements. This results in a calculation per dwelling. The monies would be utilised at Lordswood Community Living Centre, Hempstead Medical Centre and Princes Park Medical. Again no pooling issue would arise and the approach and sums follow the Council's Guide to developer contributions.
177. The public open space requirement is also based on a set formula and would provide monies towards sport improvements at Hook Meadow and/or Princes Meadow and /or Kings Frith, allotment improvements at Chapel Lane and/or Hatton Road and, park improvements at Capstone Country Park and/or Wigmore Park. It is not disputed that these facilities do not have sufficient capacity to accommodate additional demand from the proposed development and the proposal is likely to result in demand for such facilities. The contribution is therefore directly related to the development. Again no pooling issue would arise and the sums and approach follow the Council's Guide to developer contributions.
178. The transport contribution relates to improvements in evening services and frequency of the Sunday service and to provide for diversion of the bus service into the site. The sum for diverting into the site is clearly related to the proposed development. It is also reasonable to expect a contribution towards the improvement of existing services into the evening and on Sundays to make the site more sustainable. The Council advises that the sum sought in this regard relates to the anticipated cost of the improvements. While I agree a need is generated by the development, I note it is likely to have ancillary benefits to others on the bus route. Nonetheless, given the contribution is required to facilitate those improvements it is reasonably related to the appeal development.
179. The waste a recycling contribution is costed in detail and is based on a rate per dwelling using 2013 figures. It does not relate to costs involved in collecting and disposing of waste which is met from Council Tax. Whilst bin provision and additional waste site capacity are justified as a result of need generated by the site, I am not satisfied that payments for graffiti removal have been justified as necessary in relation to this development. Nor is there any reason to suspect pest control leaflets would be required for this site. Despite these being matters set out in the Council's Guide to developer contributions, I do not consider that those aspects of the calculation are CIL compliant and so they shall not be taken into account in my recommendation in respect of this appeal.
180. The contribution towards community facilities relates to Lordswood and Hempstead libraries to provide more meeting room and associated facilities which the main parties agree are under pressure. The space provision is based on 31sqm per 1000 population which reflects Medway's provision and on construction costs of £1,800 per square metre. I accept that this appears a fair basis on which to seek a contribution and that it relates to needs likely to be generated by the proposed development. Again no pooling issue would arise and the approach and sums follow the Council's Guide to developer contributions.
181. The SPA contribution is a per dwelling contribution. Over 80.8% of the site is within 6km of the North Kent Marshes SPA/ Ramsar site. This contribution is for

mitigation and designated habitat monitoring, including through management to enhance certain locations to attract visitors so as to avoid disturbance of these sensitive areas for over-wintering birds. The limited details are set out in Inquiry Document 1. Whilst those details are rather limited, on the basis that they do not relate to site infrastructure (which has not been identified) this satisfies the CIL regulations. Natural England advises that the payment avoids the need for Appropriate Assessment under the Habitat Directive. On the basis that the sum relates to management of sites the CIL pooling provisions do not apply to this tariff.

182. The affordable housing requirement would be policy compliant (policy H3) and directly relates to housing need in this Council's area. The s.106 sets out details relating to provision, management and occupation of that housing in line with the Council's Guide to developer contributions (2014).

183. Thus, from the information and evidence provided, other than in respect of the specific items referred to for the waste and recycling contribution, I am satisfied that the obligation tests set out in the Framework would be met for these items. It is therefore appropriate to take the obligation into account in the determination of this scheme save in respect of the matters identified.

### **Inspector's Conclusions**

[References to earlier paragraphs are set out in square brackets]

#### ***The Main Considerations***

184. The main issue in this case is whether or not the proposed development amounts to sustainable development having regard to local and national planning policies for the supply of housing and the countryside. In order to arrive at a recommendation in this regard, the main considerations I have set out before arriving at the planning balance are:-

(a) whether or not the proposal accords with local and national planning policy and the implications of this;

(b) the implications of housing land supply for the proposed development;

(c) the effect of the proposed development on the character and appearance of the area which is within an ALLI; and,

(d) the assessment of other matters, including other benefits and disbenefits.

### **The Planning Policy Position**

185. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that where the development plan contains relevant policies, applications for development should be determined in accordance with the development plan unless material considerations indicate otherwise. [33, 105]

186. In terms of this appeal three saved Local Plan policies are cited as being of relevance; these are BNE25, BNE34 and S4 of the Medway Local Plan which was adopted in 2003. Whilst it is an old plan, a matter to which I shall return, it has status as the development plan.

187. Policy BNE25 relates to development in the countryside, which it seeks to resist except for specific uses or circumstances, none of which apply in this case. As such, the appeal scheme is in clear breach of this development plan policy. However, policy BNE25 clearly seeks to restrict housing growth. It is agreed that the Council does not have a five year housing land supply. Given this, and based on the advice of the Framework at paragraph 49, there is no doubt in my mind that policy BNE25 of the Medway Local Plan, which, incidentally, was only intended to run until 2006, is out-of-date. As such, it should only be afforded limited weight as was originally agreed in the SoCG.
188. Policy BNE34 relates to the ALLI's. It seeks to limit development only permitting it where it would not materially harm the landscape character and function of the area or the economic and social benefits are so important that they outweigh the local priority to conserve the area's landscape. This policy, because of its restrictive approach, is a relevant policy for the supply of housing within the meaning of paragraph 49 of the Framework and thus, given the housing land supply situation, it is to be considered out-of-date, a position with which both main parties agree. [118]
189. Policies BNE25 and BNE34 are also of reduced weight because of their age: their formation dates from a time when national guidance sought to protect the countryside for its own sake. Moreover, in terms of Policy BNE34, local landscape designations were a standard approach when it was drafted, whereas current policy advice seeks to avoid blanket restrictions and takes a more balanced and pragmatic criteria based landscape character approach. In this case the work on the ALLIs dates back to 1992. Since that time there appears to have been no reassessment of the designation boundaries, despite the saving direction indicating that saving would give an opportunity to justify the retention of the policy. That opportunity has not been taken despite the LCA being clear about the change in direction and noting that the LCA itself would be a tool for informing decision making. While this reduces weight to policy BNE34, so that it is limited, that cannot be said of the LCA itself which reflects a criterion based approach. The Council is clearly aware of the pressure on the ALLIs and the need to look at their quality. Indeed, it has supported housing development within them in certain circumstances, for example in the Mierscourt scheme.
190. While the policies BNE25 and BNE34 are out-of-date and old, this does not mean that they are of no weight or that they relate to planning matters of no merit - a principle confirmed by the Suffolk Coastal Court of Appeal Decision. It remains reasonable and legitimate to consider the impacts of development on the character and appearance of the countryside. Indeed, the current Framework identifies, as a core principle, the importance of recognising the intrinsic character and beauty of the countryside albeit this represents a shift in emphasis from former days of protecting the countryside for its own sake. The Framework, at paragraph 14, differentiates between countryside and specific designated countryside assets. The ALLI designation and its level of importance is a matter which will be considered in more detail later in this report. [38-39]
191. Policy S4 is entitled Landscape and Urban Design. It seeks 'a high quality of built environment' with 'landscape mitigation where appropriate'. The Council does not dispute that this could be achieved and does not take issue in terms of the first part of this policy. The policy goes on to explain that 'development should respond appropriately to its context, reflecting a distinct local character'.

While the Council considers the proposal would fail in this regard, because it says the scheme would harm the local character and not fit the site's context, it seems to me that this policy is being misapplied. The policy is one of the strategic policies of the plan. Reading it as a whole, it indicates what will be expected of developers when schemes are submitted. It is not a policy which seeks to restrict development in this, or any other, location. Rather it is a policy to achieve a positive scheme, in design and landscape terms, should development be allowed in any given location. As such, it is not a policy which is of significance in the determination of this appeal and, even if it were considered directly relevant, the character harm set out by the Council would be no different in terms of this policy than for that addressed in the BNE25 and BNE34 policies which I consider are relevant. [43-45, 123]

192. Notwithstanding my view in respect of policy S4, it is important to consider a number of matters in arriving at a conclusion as to whether the development would be sustainable. Moreover, it is possible that, when looking at the wider benefits of the scheme, one might come to the conclusion that the appeal scheme could be compliant with policy BNE34 because it allows for "*development where the economic and social benefits are so important that they outweigh the local priority to conserve the area's landscape*". Aside from this, it is the balance of a number of key matters that results in the recommendation as to whether material considerations justify determining the proposal other than in accordance with the development plan. [122]

193. In this case those key matters for consideration relate to the housing land supply position, the effect of the proposed development on the character of the countryside and the impacts on the Capstone and Horsted Valleys ALLI. There are some further matters raised by interested parties, relating to highways issues, pressures on infrastructure and services, other development sites, localism, proximity to an asbestos waste transfer station, light pollution, flood risk and ecological matters, including impacts upon an area of ancient woodland, which also require consideration.

### **Housing Land Supply**

194. The parties agree that a 5 year housing land supply cannot be demonstrated. Indeed, it is agreed that the supply is significantly lacking. The Council, based on the Inspector's reasoning in Hoo St Werburgh, an appeal relating to an Inquiry held in August 2016, acknowledges a supply in the range of 2.21 to 2.79 years. The appellants consider that even that level is optimistic.

195. The housing supply figures were not the subject of significant interrogation at the Inquiry. This was, in part, because the AMR appendices were supplied late in the event and because neither party sought to waste Inquiry time given the relatively recent Hoo St Werburgh appeal decision and so had broadly agreed to adopt the figures from that decision (as set out in the SoCG). That said, despite the lack of figures to interrogate, I do not endorse the appellants' unorthodox approach of calculating delivery in the last five years as a way of predicting supply. However, I share some of the appellants' scepticism about the Council's supply side figures. In particular, I agree with the appellants that the three allocations brought forward from the 2003 Local Plan (those listed in the AMR as Strood Riverside North Canal Road, Commissioners Road Strood and Gray's Garage Chatham) have been identified for so long, yet not been developed, that

it appears likely that they have significant sticking points. Thus, without clear explanation, it seems unlikely that they would now be imminently deliverable.

196. I also note that the appellants point out that the AMR refers to 90 sites being identified as suitable for housing with an estimated capacity of 12808 units, of which 11481 do not have planning permission. However, this included Lodge Hill which is now discounted. Moreover, these figures appear to reflect the early stages in the call for sites and not the more detailed assessment included elsewhere in the AMR regarding residential land availability of large sites with planning permission which is provided at Table 4 Section 3. I appreciate the robustness of sites within that table was not a matter of discussion. Nevertheless, I do not share the appellants' concerns, as set out above, regarding the level of large sites with planning permission.
197. I acknowledge that the Council appears to be showing some pragmatism for instance in the Mierscourt Road resolution to grant planning permission for 134 dwellings despite it being within an ALLI. That resolution, assuming it results in planning permission, and the appeal decision for Station Road for 90 dwellings would assist in housing supply. However, even on these reasonably large sites, in the context of the shortfall in the range of 2.21 to 2.79 years supply it is evident very much more has to be done. In this respect, to give a more meaningful numerical picture, it is agreed that the housing requirement for 2012-2035 is 1281 dpa, yet the completions in the four years 1 April 2012-31 March 2015 only amount to 2436 dwellings, so at that point there was already a backlog of 2688 dwellings. Interested parties refer to other sites but there is no evidence as to how they would fit into the supply side, if at all. Thus, from the evidence before me I take the view that housing land supply is significantly lacking and constitutes a very serious issue for this Council. [21, 97, 164]
198. Whether or not the Head of Planning Services was lacking caution when/if he advised members that the supply side was more like a two year supply when dealing with the Mierscourt Road application in June 2016 it seems to me that this level of supply may well be the case and it may be even worse still. However, without rigorous testing of the evidence that was simply not available, it is not possible to be definitive. [84]
199. That said, it is acknowledged by the parties that the lack of supply is significant. Having regard to the Suffolk Coastal case, the extent of undersupply in this case is such that housing provision attracts materially greater weight than if the supply was only marginally under the five year housing land supply requirement.
200. Moreover, the shortfall in five year housing land supply is so great and the pressure on sites so significant, that it is agreed to be inevitable that greenfield land will have to be developed. Furthermore, given the extent of the ALLI designations, ALLI designated land will need to be developed unless new development is to be located where it would not be accessible in terms of proximity to existing development with its associated services and facilities. These factors are considerations which also need to be placed in the planning balance.

**Character and Appearance of the Countryside which is also designated as part of the Capstone and Horsted Valleys ALLI**

201. The appeal site is open countryside and situated within the Capstone and Horsted Valleys ALLI. Whilst this is not a national designation, the area is recognised for its local value. The Framework seeks that the planning system contributes to and enhances the natural and local environment by protecting and enhancing valued landscapes. But it is also clear that weight should be apportioned on the importance of the landscape with great weight being given to those areas protected by national designations. The ALLI designation is at the lower end of the landscape designation hierarchy. [65, 138]
202. The principal characteristics of the Capstone Valley part of ALLI are set out in the LCA. The main characteristics which are relevant to the issues in this appeal include the two valleys with a central plateau area, its provision of a setting for the Capstone Farm Country Park, its position as a green wedge linking urban communities into the wider countryside and the North Downs, valuable semi-rural open space in close proximity to densely populated urban communities offering significant health and recreational benefits, a distinct edge to urban areas and prevention of coalescence of Lordswood/Princes Park and Hempstead, remnant chalk grassland on steep slopes leading to smaller fields and then larger arable units to the southern section, blocks of deciduous planting providing containment for arable land and distinct rural character and coherence despite proximity to urban settlements. [66-67, 128, 138]
203. The appeal site is situated within the Elm Court sub-area. This area forms the central plateau with dry valleys to west and east and with the Capstone Country Park to the north. Access to the area is by the country lanes network, with Ham Lane being one of the roads through this sub-area. There are PRoW which give east/west access but there is little north/south access, although there is a footpath across the appeal site in this direction. The characteristics of this sub-area include the gently undulating open farm arable plateau rising towards the North Downs and the indistinct field pattern with a weak hedgerow structure. I saw, as set out in the LCA, that this lack of uniform containment provides a large scale landscape.
204. The Elm Court Business Park, to the east of the appeal site, has a long and tall conifer boundary. That boundary treatment, along with the buildings on the business park, introduces discordant urban elements into the rural scene. The Lordswood Leisure centre and its associated playing fields are situated to the north-west of the appeal site and are within the ALLI. It creates a feature that has a different use to that of agriculture. [63, 127]
205. The appeal site consists mainly of an expansive area of arable agricultural land with wide views over the appeal site and attached agricultural land as well as more distant views. There is also a small area of woodland within the site boundary. The dwellings of Lordswood are well screened from the appeal site by trees for about half of the length of the western boundary and for the remaining part of this boundary there is a good degree of screening which softens the appearance of the dwellings. This can be partly seen in LVIA viewpoints 4 and 7 and the Council's viewpoint 15 and also the appellants' landscape proof of evidence plan 3 *Oblique Ariel Photograph of the Site*. [131]
206. The buildings of Gibraltar Farm and Gibraltar Farm Cottages are rural in character such that the only main detractor which can be seen is the Elm Court Business Park (this can be seen in LVIA viewpoint 6 on Byway RC29 adjacent to

- Hall Wood looking across the site). However, it has a rural industrial appearance and it is partly screened by planting, albeit in addition to the traditional hedgerow there are uncharacteristic conifers.
207. In landscape terms the lack of hedgerow planting detracts from the area, although this provides for open views (as shown in LVIA viewpoint 4 from PRow RC27 on Ham Lane looking across the site). Both landscape witnesses agreed that the site looked rural. [129, 132]
208. I appreciate that on this site there are certain factors which detract from the feeling of being in a rural area, particularly background noise. That said, motorways often cross rural areas yet do not change them from being rural. This is particularly so where the traffic movement is not seen, as is the case here. I also saw high levels of fly-tipping on Ham Lane and littering more generally in the area. Whilst that is a landscape detractor, I do not consider this to be simply an urban phenomenon (albeit it an urban fringe is likely to be under greater pressure because of proximity to the community).
209. Those aspects prevent the appeal site, in its wider context, being entirely attractive or tranquil. However, I concur with the Council that it is in a rural countryside location where the appeal site provides a sense of being away from the urban area. It is this which provides the 'visual relief' that some local residents describe as being important for well-being. [130, 153, 159]
210. In addition to the appearance of the site, the spatial matters which are of importance for the ALLI and appeal site are the distinct rural character despite close proximity to urban areas, the green wedge position which links urban areas to the Downs and the position in relation to preventing the coalescence of Lordswood/Princes Park with Hempstead. [120]
211. In spatial terms, I have no doubt that the ALLI as a whole, the sub-area and the appeal site are of value because of their rural character and appearance in close proximity to the urban area. However, that situation could arise in many circumstances, particularly in this Council's area where so many ALLI designations adjoin the urban area. This matter is therefore of limited weight. [72]
212. The extent of the green wedge formed by the ALLI can be seen in the Council's viewpoint 1 taken from the top of the scarp at Darland Banks and also in the LVIA viewpoint EDP 1 (Kingsway Road). I agree with the appellants that the appeal scheme would cause limited visual intrusion in that expansive view. This, also reflects the LVIA assessment that even in the short term (1-15 years) the magnitude of change seen from this viewpoint would be 'very low' with a minor neutral' significance of change (hereafter in this report the impacts are listed in the same order i.e. magnitude of change followed by significance of change). I also agree that the site seems modest in the context of the size of the ALLI as a green wedge given the ALLI covers some 575ha. However, visual impact is not just about a particular static view or the proportion of an area occupied; rather, it is also requires consideration of movement through the area as well as consideration of other key views. [68]
213. Many of the viewpoints provided are taken close to the site (e.g. LVIA viewpoints EDP 2, 3, 4, 5, 6, 7 are all taken on the site or close to its boundary as are Council viewpoints 4, 6a and 7). As such, considerable change would be

felt here particularly by those people (receptors) walking or riding on PRoW through the appeal site or travelling along Ham Lane. Indeed the LVIA considers the short term impacts to be 'very high' and 'major adverse' or 'moderate adverse' for viewpoints 2, 4, 5, 6 and 7, with a level of 'high' and 'major/moderate adverse' at the least for viewpoints 2, 5 and 6 in the medium term (15 years) and beyond. However, development of any greenfield site would inevitably result in a considerable change when seen from the site itself or any of its unscreened boundaries. [69, 139-140, 142]

214. In other views, such as that from Footpath RC11 (LVIA viewpoint EDP 8, Council viewpoint 8) some distance to the north of the site, the proposed development would be seen in the distance as a detractor to the rural view. The LVIA identifies short term impacts as being 'high' and 'major/moderate adverse' reducing to 'medium' and 'moderate adverse' in the medium term once planting becomes established. Similarly the proposed development would have an urbanising effect, but at closer proximity, when seen from the Council's viewpoint 11 taken on PRoW KG35 near Roots Wood. I consider that view would be more adversely affected than LVIA viewpoint EDP 8 due to proximity. [143]
215. In terms of the distant views from the south, I agree that the proposed tree planting is likely be able to screen much of the site in the long term, though not all light spill. The foreshortening of views such as that from the motorway bridge (LVIA viewpoint EDP 10, Council viewpoint 10) would alter the character of this view even at a distance. However, dense tree cover is a characteristic of the wider area. As such, I consider that the LVIA conclusion of a 'medium' and 'moderate/minor neutral' reducing to 'very low' and 'minor/negligible' in the medium and longer term represents a reasonable assessment of the likely visual impact. This is a relatively sensitive location heading towards the ALLI and the green wedge/corridor it provides. It would result in change because it would appear to partially block this southern end of the ALLI. That said, the blocking would be by trees in the long term and so would not be uncharacteristic for the wider locality. Moreover, the blocking effect would be to block views of trees rather than longer open views. [71, 73, 93, 141]
216. The route leaving the urban area, along Shawstead Road/Ham Lane and heading out towards the Downs, is currently one of a rural character despite the fly-tipping referred to above. The effect of the proposed development on the sequential views along this route would be to create an urbanised section from Gibraltar Farm almost to the junction with the Lidsing Road. Thus, the presence of the appeal development would be prominent and uncharacteristic in views on this route until the planting became established. Even in the long term, with established planting, it is likely that the development's presence would be felt. This is because of likely glimpsed views into the site, for instance along the emergency access route and retained footpaths as well as from associated activity and lighting. Given the site boundary adjoins Ham Lane at a point where the Elm Court Business Park also adjoins the lane it is likely to result in a feeling of consolidated development, exacerbating the impact of that existing, albeit semi-rural, detractor. Even though I accept that landscaping using deep tree belts would not be uncharacteristic in this locality, the current route of Ham Lane as a countryside rural route would feel less rural. Furthermore, such planting would take a considerable time to provide robust screening particularly during winter months. [69, 151, 158]

217. In practical terms those walking across the appeal site would have to simply walk further to access an open countryside view. Once there they would lose visual connection with the rest of the ALLI to the north but there would still be views southwards to the Downs. Nonetheless, there would be some harm to this public recreational route within the ALLI contrary to the assertion made by the appellants. That said, the appeal scheme would offer other recreational opportunities. [72]
218. Turning to the matter of coalescence, the comparison with other smaller ALLIs is not particularly helpful as the issue is site specific and requires assessment of other matters beside distance. Essentially, in terms of this spatial function of the ALLI, the matter is one of whether the erosion of the gap between Lordswood/Princes Park and Hempstead would be so significant that the settlements began to appear or feel like they are merging. The parties agreed that the existing separation distance between Hempstead and Lordswood (Princes Park is further to the north) would be reduced by some 50% to somewhere in the region of 500-700m. In contrast with the existing situation this would represent a pinch-point at the southern end of the ALLI, particularly given the position of the Elm Court Business Park in relation to the appeal site. [70, 158]
219. Viewpoint EDP 4 on Ham Lane is assessed in the LVIA as having a 'very high' and 'major/moderate adverse' short term impact and a medium to longer term impact of 'medium' and 'moderate/minor neutral'. This relies heavily on the landscape planting significantly filtering or screening views of the development behind. However, even with a planted boundary, the existing open rural/agricultural gap seen between the areas of Lordswood and Hempstead from the surrounding road and PRoW network, would be markedly altered. This would particularly be the case for views from Ham Lane, Lidsing Road and Chapel Lane (this can be seen in in LVIA viewpoint EDP 4 and Council viewpoints 4, 15 and 14 respectively). However, that landscape change does not indicate a merging of settlements. The landscaping combined with the traffic flow which would be from the southern side towards Lordswood rather than onto the rural Ham Lane would mean that the neighbouring settlements would not appear to merge.[71, 133, 135-137, 145]
220. The appeal would also see other sizeable new landscaping belts. Whilst a number of these would reinforce existing planting or enhance roadside planting, that across the southern end of the site would be a lengthy boundary traversing an open tract of arable land as set out above. Although tree screening of housing is a characteristic of this area, the position chosen follows the Council's administrative boundary rather than being robustly determined by existing landscape features. That said, the administrative boundary does not follow any current fixed feature and so may well be reflective of historic features such as those dating back to 1860, as shown on the appellants' proof of evidence plan 6 *Landscape Change through the 20<sup>th</sup> Century* such that the planting would reintroduce a historic boundary feature. [141]
221. Aside from the main development area of the appeal site, I appreciate that the small area of woodland within the site boundary would remain largely intact and be proactively managed were the appeal to be successful. The section to be removed would be limited to that essential for the access, and does not contain high importance trees. Thus, in respect of the existing woodland the proposals overall would be able to secure a benefit.

222. The LCA analyses the condition of the area, which it notes is strongly influenced by external factors with urban fringe areas often under pressure, to be poor. It also assesses the sensitivity, described as measure of the ability of a landscape to accept change without causing irreversible damage to the distinctiveness of that landscape, as high. It goes on to seek restoration of the area.
223. In this regard, the poor landscape condition does not render the appeal site of limited landscape value. Rather, I agree that its sensitivity in this part of the ALLI depends on the role it plays as part of the green wedge the ALLI creates, and in preventing coalescence. On these points I do not consider that the site is critical to maintaining separation between the settlements of Lordswoods and Hempstead. Further, when considered in more distant views (rather than those on the site or at its boundaries) does not have a particular prominence or importance in creating the sense of a green wedge.
224. I conclude that the proposed development would harm the character and appearance of the immediate area and, therefore, fail to accord with the provisions of policies BNE25 and BNE34. However, that harm would not represent a critical harm to the function of the Capstone and Horsted Valleys ALLI taken as a whole. [133-134]
225. Policy BNE34 allows for development in an ALLI if the social and economic benefits of the proposal are so important that they outweigh the local priority to conserve the area's landscape. It is therefore necessary to consider whether there are social and economic benefits of the proposal before coming to a final conclusion in respect of policy BNE34 and indeed before making the final planning balance.

### **Whether there are other Benefits of the Scheme**

226. As set out above the housing land supply situation is very significant in this case. However, there are other matters to be added to the planning balance. The first is directly linked to housing supply and relates to affordable housing provision. The scheme would deliver 25% affordable housing. Based on the Moor Street decision the Inspector recorded the need for 713 affordable dwellings to be provided per year, yet only 845 such dwellings have been delivered over the last four years. Given that shortfall I agree with the appellants that significant weight should be attached to the provision of affordable homes. In this regard I also note that there is no evidence to suggest the provision of affordable housing would result in anti-social behaviour.
227. I agree with the appellants that the appeal scheme would bring economic benefits. The government's views on the importance of this are well known. In this case, during the construction period the appeal scheme would provide jobs and training opportunities for local people, as well as spend in the local economy. In the longer term, occupants of the new development would provide additional expenditure to support local services. These factors clearly align with the economic dimension of planning and should be afforded significant weight.
228. Whilst the proposal would bring forward open space, including a community park and children's play space this, to a large extent, is a requirement of the scheme, both to serve the needs of future occupiers and to be able to screen the

proposed development. As such, I consider modest additional weight should be afforded to this benefit.

229. I agree, as set out above that the provision of a Woodland Management Plan for Hall Wood would represent a positive, albeit modest, biodiversity and access benefit of the scheme.

230. The extensive structural landscape planting which is proposed would create a biodiversity benefit. However, although the Elm Court LCT encourages new planting of woodland and hedgerows I am not convinced it envisaged woodland belts of the extent proposed to screen the appeal site. Nor do I agree that the form of planting proposed necessarily improves the landscape character, which at this point is of wider views and larger and more open fields, rather it is more neutral in landscape terms. Thus, and given that planting is largely required to screen the appeal proposal, I attach little additional weight to this matter.

231. New Homes Bonus payments would be significant, but this does not attract weight in the planning balance, as it offers an incentive for Councils to provide much needed housing on appropriate sites. I also note that the Council would be in receipt of a capital sum in excess of £4m as a result of the scheme. This clearly should be a matter of public record and I appreciate this would bolster the Council's resources and so assist the provision of public services. However, it seems to me this should attract no weight as a material consideration because it is unrelated to the planning matters in this case.

### **Other Matters**

232. Interested parties raise a significant number of other matters which do not reflect issues between the parties and it is to these I shall now turn.

233. Many interested parties have raised concerns about access to medical and education services. As part of the appeal process the appellants have signed up to a s.106 Unilateral Undertaking in which they agree to make provision based upon the Council's formulae in respect of need anticipated to be generated from the future occupiers of the appeal site. It is not for the developer to have to make up for existing shortcomings in service provision. There is no evidence before me from any main service provider to indicate that the scheme should be resisted because of likely impact on services. Thus, there is nothing before me to justify withholding permission because of the concerns raised.

234. There are a number of transported related matters raised by interested parties. Many relate to general concerns regarding traffic in the locality. However, it is important to note that all traffic would come through the primary access route on North Dane Way / Albemarle Road before joining the highway network. The traffic modelling has been agreed with the highway authority. It is agreed that existing junctions currently operate within their capacity albeit queuing is experienced in the morning and evening peak periods. It is also agreed that the appeal scheme would not unacceptably impinge on the free flow of traffic in the locality. The access to Ham Lane would be for emergencies only. Mr Dines' concerns regarding the Gleaming Wood Road / Lordswood Lane Junction are understandable given the queue predictions. However, the junction improvement scheme would allow ahead traffic to pass traffic waiting to turn right, reducing queuing. This and pedestrian/cycle links would be dealt with through the imposition of conditions.

235. A circular bus route is a core part of the transport plans and a contribution to this (at the level sought) would be provided through the s.106 undertaking. The internal road layout would be designed to accommodate a bus route and the Council would be able to control this through the reserved matters application process. Details of bus stops close to the site are in Albemarle Road and Clandon Way (CD1.14 Appendix C). The frequency of bus services indicate a reasonable level of service, for instance with the Lordswood/Chatham service having five buses per hour during the day Monday to Saturday and hourly on Sundays (CD1.14 Table 3.19 p.12). It is proposed that evening and Sunday services would be enhanced through the s.106 contribution.
236. Many services would be within easy walking or cycling distances (CD1.14 Appendix C) albeit one would not wish to transport heavy shopping over longer distances. That would be the case in many locations and delivery services are not uncommon.
237. There is no substantiated evidence to support withholding a decision on this appeal to await the outcome of the Lodge Hill proposals.
238. I am satisfied that the site would provide ample opportunity for positioning of dwellings in the detailed scheme so as to prevent adverse impacts in terms of privacy or overshadowing of existing residential properties. It is likely that there would be impacts on outlook but there is no right to a private view.
239. Whilst there is criticism of the scheme for being opportunistic, house-building relies upon business to take development opportunities and risks to develop the housing that is needed for the nation.
240. Fluctuation in property prices as a consequence of development, be it good or bad, is not a matter which the planning system is designed to control.
241. Other infrastructure projects, such as motorway improvements, may be considered by some to result in undesirable change but they reflect community and business needs and are not a reason to withhold planning permission in this case.
242. The substantiated evidence before me indicates that the scheme would not have a harmful impact on ecology, which, in any event, is limited given the arable agricultural management of much of the site. Ecological mitigation proposals, which would be secured by condition were the appeal to be allowed, would make improvements to the surrounding area and so no statutory objections are raised. In terms of the Ancient Woodland conditions would be required to secure a Woodland Management Plan and prevent encroachment within 15 metres of the Ancient Woodland.
243. The site is good classified as grade 3a and 3b agricultural land but is not of the highest quality. In any event, impact upon it must be judged in the context of the dire need for homes.
244. The visual effect on the ALLI set out above would have a modest contextual impact on the Capstone Country Farm Park and the scheme would be likely to increase visitor numbers and thus management needs. S.106 monies have been put forward to assist in recreation requirements arising from the site and are identified for this location. Aside from this, the proximity to this facility would be

a benefit for future occupiers of the site in terms of access to recreational space for health and well-being.

245. Concerns are raised about a waste transfer station near to the site which takes asbestos. That business will be carefully regulated under other legislation and should be managed so that it poses no risk to occupiers of the proposed development.
246. There is no substantiated evidence before me that flood risk/drainage would pose a problem here which could not be dealt with by the conditions proposed.
247. I appreciate that there is substantial local opposition, including as sustained by the Parish Councils and the MP. I am mindful of the Government's localism agenda. However, I have to consider the proposed development having regard to local development plan policies and associated documents, including those relating to local housing need. I also have to report on the development having regard to national planning policies and all other material considerations.
248. It is not unreasonable for people to have homes and I am not satisfied that providing such homes here would lead to social unrest. Nor do I consider that immigration and its potential impact on the requirements of housing need is a matter for consideration in dealing with this housing scheme. Furthermore, there is no substantiated evidence before me that occupiers of the proposed development would materially add to the existing jobless figures for this area.

### **The Planning Balance**

249. The planning balance must be considered in the light of the Framework as a whole. This sets out that there are three dimensions to sustainable development; economic, social and environmental. Gains should be sought jointly and simultaneously for each of those roles. It is inevitable that there will be times when different strands pull in different directions, as is the case here.
250. In terms of economic benefits there would be gains in housing delivery, including affordable housing, and in the value of the construction works and subsequent housing to the local economy. The housing would be accessibly located, in close proximity to recreational facilities, reasonably close to other facilities and to bus service provision, so would make economic sense in terms of reducing the need to travel by private car. I consider those benefits significantly outweigh the disbenefit, in economic terms, of losing the site from agricultural use.
251. In terms of the social role, the proposed dwellings would provide much needed homes, including affordable homes. The social benefits of being able to house people are significant in creating stable communities. I do not share the objection raised that this scheme would result in social unrest; on the contrary it should make life better for many by easing housing pressure. In this case there is no reason to doubt that the homes would create a high quality environment. This would provide for an improvement in people's quality of life, improving the conditions in which they live and take leisure and would widen the choice of quality homes. These are all important objectives of the Framework.
252. There would also be benefits for existing residents as a result of access to the on-site children's play facilities, recreational open space on the site and better woodland management. The bus services would also be improved.

253. Some existing residents that adjoin the site may feel the proposed development would be to the detriment of their living conditions. However, development would be likely to have that impact in many cases and the living conditions of those residents would be considered in the light of normal development management policies at the time of the reserved matters application.
254. I have greater concerns, in terms of social impacts, that local people would feel they have not been listened to, that the Local Plan is being ignored and that localism would not have been taken seriously were the appeal to be allowed. However, the Local Plan is not up-to-date in terms of its policies for the supply of housing and this is a materially important consideration. Despite this, other local assessments providing evidence to support the new local plan, including for housing and affordable housing, have identified local requirements and it is these which need to be considered.
255. Weighing these social dimension matters together, I consider that the balance of social benefits weighs heavily in favour of the proposed development.
256. In terms of the environmental role I find that, despite the landscaping proposals and management plans, the proposed development would cause harm to this area of countryside which is locally designated for protection. Whilst it would begin to close off the southern end of the ALLI and so impinge on the sense of spaciousness, it would not lead to coalescence between Lordswood and Hempstead. It would reduce the sequential countryside views from Ham Lane and the PRoW across the site, but these are limited distances and in terms of Ham Lane, the impact would significantly reduce as planting becomes established.
257. Moreover, acknowledging those harms, even the dated policy BNE34 accepts that economic and social benefits of a scheme might be so important that they outweigh the local priority to conserve the area's landscape. In this case the economic and social benefits are particularly clear and the harms are not critical to the functioning of the ALLI as a whole. Moreover, I am mindful that ALLI designations cover a significant part of undeveloped land in accessible locations in this Council's area, so that it is inevitable that to fulfil housing requirements ALLI land will need to be developed. As such, I consider this is a case where policy BNE34 would be complied with.
258. Turning to the Framework, the balancing exercise is explicit where relevant policies are out-of-date. It sets out the presumption in favour of sustainable development and says that for decision taking planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework as a whole. Those policies make it clear that the locally designated ALLI is at the lower level of priority in terms of weight to its protection and I have already determined that harm to the ALLI as a whole is not so significant that it outweighs the benefits of the appeal scheme, particularly in terms of housing provision.
259. Local planning authorities are advised by the Framework to boost significantly the supply of housing. In this case it is evident that the supply of housing is in a precarious state, at best being in the range 2.79 to 2.21 years. That very substantial policy under-provision has no clear solution in the near future, despite

the Council's more flexible approach to development on ALLI sites. Thus, given the sustainable location in close proximity to Lordswood and its facilities, the harm to the landscape would not significantly and demonstrably outweigh the benefits of the proposed development. Thus, the Framework planning balance lies in favour of the proposal.

260. It is not disputed that there would be conflict with adopted policy BNE25 of the development plan and that policy is afforded limited weight by the parties in the SoCG. As noted above, s.38(6) requires that applications for development should be determined in accordance with the development plan unless material considerations indicate otherwise. In this case, the Framework is a significant material consideration. Because the development plan policies are out-of-date, the Framework test is whether any adverse impacts of approving this development would significantly and demonstrably outweigh the benefits when assessed against the Framework as a whole. It is my view that the appeal should succeed as the harms do not significantly and demonstrably outweigh the benefits of the scheme in the circumstances before me, where housing land supply is so significantly below that required. Accordingly, I find the proposed development to be a sustainable one in the terms of the Framework, that being a material consideration which warrants a decision other than in accordance with the development plan.

### **Recommendation**

261. I recommend that the appeal be allowed on the basis of the revised plans and planning permission be granted subject to conditions set out in Annex A.

*Zoë Hill*

Inspector

## **APPEARANCES**

### **FOR THE LOCAL PLANNING AUTHORITY:**

Paul Brown QC	Instructed by Mrs V. Stoodley
He called	
Mr D McInerney	
Mr G Warren	

### **FOR THE APPELLANT:**

Graeme Keen	Instructed by the Head of Legal Services, Medway Council
He called	
Mr Withycombe	
Mr Harouni	

### **INTERESTED PERSONS:**

Mrs Pauline Bowdery	on behalf of Boxley Parish Council
Mr Van der Vliet	Local resident
Mrs Vanessa Jones	Chair of Bredhurst Parish Council and Bredhurst Woodland Action Group
Mr Dines	Local resident

### **INQUIRY DOCUMENTS:**

- 1 CIL Compliance Checklist
- 2 Opening on behalf of the Appellants
- 3 Opening Statement on behalf of the Council
- 4 Judgement of Mr Justice Ouseley:  
Stroud District Council v SoS Communities and Local Government  
Gladman Developments [2015] EWHC 488 (Admin)
- 5 Bundle of documents submitted by Mrs Bowdery
- 6 Statement on behalf of Boxley Parish Council (made by Mrs  
Bowdery)
- 7 Proposed conditions list with additional sheet
- 8 Email regarding s.106 contributions - G Gould
- 9 Housing Land Availability Tables
- 10 Closing Submissions for the Council
- 11 S.106 Unilateral Undertaking
- 12 Closing Submissions on behalf of the Appellants

### **CORE DOCUMENTS**

- 1.1 Pre-Application Response
- 1.2 Covering Letter
- 1.3 Application Forms
- 1.4 Ownership Certificates
- 1.5 Acknowledgement of Application

- 1.6 Environmental Screening Opinion
- 1.7 Planning Statement
- 1.8 Design and Access Statement (EDP1995\_04a)
- 1.9 Landscape and Visual Impact Assessment (Volume 1 EDP1995\_04a)
- 1.10 Landscape and Visual Impact Assessment Volume 2 L\_EDP1995\_04a
- 1.11 Ecological Appraisal. C\_EDP 1995\_05a.
- 1.12 Archaeological and Heritage Assessment. EDP 1995\_03a
- 1.13 Arboricultural Assessment. T\_EDP 1995\_02a. July 2014
- 1.14 Transport Plan Amended. GC/HB/P14-630/10
- 1.15 Residential Travel Plan. GC/CS/P14-630/02
- 1.16 Flood Risk Assessment. GL/HB/P14-630/03
- 1.17 Utilities Assessment. PL/HB/P14-630/04
- 1.18 Site Ground Investigation. Appendix C to FRA CD DOC GF1.16
- 1.19 Residential Travel Plan Amended. GC/CS/P14-630/11
- 1.20 Furneaux & Co. Agricultural Land Classification (P889)
- 1.21 Ecology Addendum Report. (C\_EDP 1995\_06)
- 1.22 LinSig Output M2 J3 (Scheme Model with Lodge Hill Mitigation Scheme)
  - 1.22.1 LinSig Output M2 J3 (Base Model (Existing Junction) Without Development)
  - 1.22.2 LinSig Output M2 J3 (Base Model (Existing Junction) With Gibraltar Farm + Lodge Hill)
  
- 2.1 Illustrative Masterplan. 1995/77d
- 2.2 Illustrative Masterplan. Amended Version 1 1995/97a
- 2.3 Site Plan EDP 1995/74b
- 2.4 Parameter Plan 5 Advance Planting Amended. edp 1995/99
- 2.5 Parameter Plan 2 Access Plan Amended. 1661-SK-006 Rev A
- 2.6 Site Section Plan EDP/1995/79a
- 2.7 Open Space Breakdown EDP1995/102 dated 03 Dec 2015
- 2.8 Application Boundary Site Plan EDP 1995/74c (Amended August 2016)
  
- 3.1 Covering email updating ecological report
- 3.2 Letter to case officer (G. Gould)
- 3.3 Letter to case officer (G. Gould) with appended letters by BTF Lister
- 3.4 Letter to case officer (G. Gould) clarifying transport + S106 position
- 3.5 Gleaming Wood Drive, Lordswood appeal decision
- 3.6 Email to case officer clarifying points before committee
- 3.7 Email to case officer (G. Gould) with extract from Autumn Statement
- 3.8 Email from Noel Filmers (Medway Council) to Appellant
- 3.9 Email to case officer
- 3.10 Letter from case officer seeking clarification on open space contribution request
- 3.11 EDP email to case officer (G. Gould) clarifying open space
- 3.12 Email from Medway's G. Gould to G. Warren re S106
- 3.13 Email from Medway's G. Gould confirming open space

- 4.1 Planning Committee Report
- 4.2 Planning Committee Supplementary Report
- 4.3 Minutes of the Meeting
- 4.4 Decision
  
- 5.1 Appeal Application Form
- 5.2 Appeal Notification to Ownership
- 5.3 Appeal Covering letter
  
- 6.1 Appellants Statement of Case
- 6.2 LPA Statement of Case
  
- 7.1 LPA Planning Evidence Proof of Evidence – Majid Harouni
- 7.2 LPA Planning Evidence Summary of Proof – Majid Harouni
- 7.3 LPA Landscape Proof of Evidence – David Withycombe
- 7.4 LPA Landscape Summary Proof of Evidence – David Withycombe
- 7.5 Appellant Planning Evidence Proof of Evidence – Graham Warren
- 7.6 Appellant Planning Evidence Summary Proof of Evidence – Graham Warren
- 7.7 Appellant Planning Evidence Proof of Evidence – Duncan McInerney
- 7.8 Appellant Planning Evidence Summary Proof of Evidence – Duncan McInerney
  
- 8.1 Statement of Common Ground September 2016
  
- 9.1 List of Agreed Draft Conditions
- 9.2 Signed but Undated s.106 Unilateral Undertaking
  
- 10.1 Medway Local Plan Update
- 10.2 Medway Council Issues and Options (2012-35)
- 10.3 Medway Council Annual Monitoring Report
- 10.4 Medway Local Plan (saved policies) (S4, BNE25, BNE34)
- 10.5 Medway Landscape Character Assessment Mar11 Main Report
- 10.5.1 Medway Landscape Character Assessment Mar11 Appendices
- 10.5.2 Medway Landscape Character Assessment Mar11 Map
- 10.6 Medway Developers Contribution Guide
- 10.7 Appeal Decision Land West of Hoo St Werburgh
  
- 11.1 LPA Planning Evidence Appendix 1 Minister of State for Housing Letter 27th March 2015
- 11.2 LPA Planning Evidence Appendix 2 Suffolk Coast Hopkins Judgement
- 11.3 LPA Planning Evidence Appendix 3 Appeal Decision Land at Station Road, Rainham
- 11.4 LPA Planning Evidence Appendix 4 Appeal Decision Muller Properties Group
- 11.5 LPA Planning Evidence Appendix 5 Appeal Decision Moor Street, Rainham

- 11.6 LPA Planning Evidence Appendix 6 Appeal Decision Land Off Bath Road, Leonard Stanley
- 11.7 LPA Planning Evidence Appendix 7 Land East of Mierscourt Road, Committee Report 01-06-2016
- 11.8 LPA Planning Evidence Appendix 8 Land North of Peninsula Way, Chattenden, Rochester, MC-15-3104
- 11.9 LPA Planning Evidence Landscape Proof of Evidence Appendices – David Withycombe
- 11.10 Appellant Planning Evidence Proof of Evidence Appendices – Graham Warren
- 11.11 Appellant Planning Evidence Proof of Evidence Appendices Parts 1 - 13 – Duncan McInerney
  
- 12.1 Illustrative Masterplan [EDP 1995/125] (dated 5 Sept 2016)
- 12.2 Site Plan / Application Boundary Plan [EDP 1995/74d] (dated 5 Sept 2016)
- 12.3 Informative to Application Boundary Plan [EDP 1995/124a] (dated 5 Sept 2016)

## Appendix 1 – Conditions

- 1) 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 except that authorised by condition 4 below and the development shall be carried out as approved.

*Reason for the condition: As required to be imposed by Section 92 of the Town and Country Planning Act 1990 as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.*

- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than 18 months from the date of this permission. The development hereby permitted shall begin not later than 12 months from the date of approval of the last of the reserved matters to be approved.

*Reason for the condition: For the avoidance of doubt and to ensure the satisfactory and prompt development of the site.*

- 3) No development shall take place until a scheme of phasing for the dwellings and highways and drainage infrastructure and associated open space / green infrastructure has been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved scheme of phasing.

*Reason for the condition: This pre-commencement condition is required to ensure that the key elements of each phase of the development is completed in an order which ensures that infrastructure needs, landscaping/open space and access are in place relevant to each phase before further development is undertaken, in the interests of good planning.*

- 4) The development of Phase One as agreed by condition 3 above shall begin not later than 12 months from the date of the approval of reserved matters applications relating to that phase.

*Reason for the Condition: To ensure a prompt start on site.*

- 5) All reserved matters and details required to be submitted pursuant to condition 1 shall be in accordance with the principles and parameters described and identified in the Illustrative Masterplan (Drawing No. EDP1995/97a received 24/09/2015 and the Design and Access Statement (Revised 12/08 2014). A statement shall be submitted with each reserved matters application, demonstrating how the submitted reserved matters comply with the Design and Access Statement and the indicative Masterplan documents.

*Reason for the condition: For the avoidance of doubt and to ensure the satisfactory development of the site.*

- 6) No dwelling or ancillary building construction shall take place until details 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.

*Reason for the condition: As the scheme is a large new development with limited screening in the initial years this condition is necessary in the interests of visual amenity and to ensure the satisfactory development of the site.*

- 7) No more than 450 dwellings shall be constructed on the site.

*Reason for the condition: For the avoidance of doubt and given all assessments have been on the basis of this figure such that it is necessary to ensure the satisfactory development of the site.*

Trees and Landscaping and Ecology

- 8) The plans and particulars required to be submitted in accordance with the condition 1 shall ensure that no less than 2.96 ha of the site is set aside as woodland, 0.531 ha as open space and play space and where the development abuts the adjoining ancient woodland a clear minimum of 15m landscape buffer area/zone shall be maintained.

*Reason for the condition: To ensure adequate open space for future occupiers of the development and to provide for the interests of the ancient woodland.*

- 9) The development shall not commence until an Arboricultural Method Statement (AMS) and Tree Protection Plan (TPP), which shall include details of all trees to be retained and removed, any facilitation pruning required and the proposed measures of protection, undertaken in accordance with BS 5837 (2012) 'Trees in Relation to Design, Demolition and Construction-Recommendations' has been submitted to and approved in writing by the local planning authority. The AMS shall include full details of areas of hard surfacing within the root protection areas of retained trees which should be of permeable, no-dig construction and full details of foundation design, where the AMS identifies that specialist foundations are required. The approved barriers and/or ground protection measures shall be erected before any equipment, machinery or materials are brought onto the site and shall be maintained until all equipment, machinery and surplus materials have been removed from the site. Nothing shall be stored or placed, nor fires lit, within any of the areas protected in accordance with this condition. The siting of barriers/ground protection shall not be altered, nor ground levels changed, nor excavations made within these areas without the written consent of the local planning authority. The measures set out in the AMS and TPP shall be adhered to in accordance with the approved details.

*Reason for the condition: This condition is required and to be agreed pre-commencement to safeguard the arboricultural interests of the site before works commence that could cause irrevocable harm and to ensure adequate maintenance for the protection of landscape and habitat in the interests of ecological and local amenity.*

- 10) A Landscape and Ecology Management Plan (LEMP), including long term design objectives, management responsibilities and maintenance schedules with timetable(s) for works for all landscape areas, other than domestic gardens, shall be submitted to the local planning authority for approval in writing prior to the occupation of the development. The LEMP shall be carried out as approved in accordance with the approved timetable(s).

*Reason for the condition: To safeguard the landscape and ecological interests of the site and to ensure adequate maintenance for the protection of landscape and habitat in the interests of ecological and local amenity.*

- 11) No dwelling shall be occupied until a Woodland Management Plan (WMP) for the existing and proposed woodland areas has been agreed in writing by the local planning authority. That part of the WMP for Hall Wood Ancient Woodland shall be in accordance with EDP's Heads of Terms for a WMP (EDP report ref: C\_EDP1997\_07).

The WMP shall include the following:

- a) Review of existing constraints and opportunities;
- b) Management objectives and associated practical measures;
- c) Details of initial enhancements and long term maintenance;
- d) Extent and location/area of management works on scaled maps and plans at a scale which shall have first been agreed by the local planning authority in writing;
- e) Timetable for implementation demonstrating that works are aligned with the proposed programme of development;
- f) Details for monitoring and remedial measures; and
- g) Persons responsible for implementing the works.

The measures set out in the WMP shall be implemented in accordance with the approved details and timetable(s).

*Reason for the condition: This condition is required to safeguard the woodland and to ensure adequate management for the protection of landscape and habitat in the interests of ecological and local amenity.*

- 12) The development shall not commence until details of all fencing, walling and other boundary treatments, to include hedgehog holes have been submitted to and approved in writing by the local planning authority. The landscaping areas and buffer zones shall be implemented in full in accordance with the approved details before the first occupation of any of the dwelling as hereby approved, or in accordance with a programme to be agreed in advance in writing by the local planning authority. All boundary treatments and buffer zones to be installed in or adjacent the ancient woodland shall be carried out in accordance with the approved details.

*Reason for the condition: This condition is required and to be agreed pre-commencement to safeguard the ecological interests of the site. The works subsequently required are necessary in the interests of residential and local amenity.*

- 13) All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons for the phase to which it relates following the occupation of the first dwelling on that phase or the completion of that phase of development, whichever is the sooner; and any trees or plants which within a period of 5 years from the completion of that phase of the development die, are removed or become seriously damaged or diseased

shall be replaced in the next planting season with others of similar size and species.

*Reason for the condition: This condition is required to ensure that the landscaping gets properly established which is particularly important to visual amenity given the size and partly open location of the site.*

- 14) No works shall take place (including ground works and vegetation clearance) until an updated species survey has been carried out to inform production of an Ecological Design Strategy (EDS) addressing all species mitigation for all species recorded within the site has been submitted to and approved in writing by the local planning authority.

The EDS shall include the following:

- a) Purpose and conservation objectives for the proposed works;
- b) Review of site potential and constraints;
- c) Detailed method statements to achieve stated objectives for each species;
- d) Extent and location/area of proposed mitigation for all species on appropriate scale maps and plans;
- e) The location of bat and bird boxes and/or bricks and their specifications;
- f) Type and source of materials to be used (including whether or not they are native species and local provenance);
- g) Timetable for implementation demonstrating that works are aligned with the proposed programme of development;
- h) Persons responsible for implementing the works;
- i) Details of initial aftercare and long term maintenance;
- j) Details for monitoring and remedial measures; and,
- k) Details for disposal of any wastes arising from works.

The EDS shall be implemented in accordance with the approved details and retained thereafter.

*Reason for the condition: This condition is required and to be agreed pre-commencement to safeguard the ecological interests of the site before works commence that could cause irrevocable harm and to ensure adequate maintenance for the protection of landscape and habitat in the interests of ecological and local amenity.*

- 15) No part of the development hereby granted (including ground works and vegetation clearance) shall take place until a Construction Environmental Management Plan (CEMP: Biodiversity) has been submitted to and approved in writing by the Local Planning Authority. The CEMP: Biodiversity shall include the following:

- a) Details of the areas where ancient woodland soil and coppiced stools are to be translocated and method statement for translocation;

- b) Risk assessment of potentially damaging construction activities;
- c) Identification of biodiversity protection zones;
- d) Practical measures (both physical measures and sensitive working practices) to avoid or reduce impacts during construction (may be provided as a set of method statements);
- e) The location and timing of sensitive works to avoid harm to biodiversity features;
- f) The times during construction when specialist ecologists need to be present on site to oversee works;
- g) Responsible persons and lines of communication;
- h) The role and responsibilities on site of an ecological clerk of works (ECoW) or similarly competent person;
- i) Use of protective fences, exclusion barriers and warning signs; and,
- j) Cordwood above 20cm in diameter from the site should be retained and placed within the site in locations and quantities to be agreed with the local planning authority prior to any tree felling take place.

The approved CEMP: Biodiversity shall be adhered to and implemented throughout the construction period strictly in accordance with the approved details, unless otherwise agreed in writing by the local planning authority

*Reason for the condition: This condition is required and to be agreed pre-commencement to safeguard the ecological interests of the site before works commence that could cause irrevocable harm and to ensure adequate maintenance for the protection of landscape and habitat in the interests of ecological and local amenity.*

- 16) No external lighting fixtures or fittings shall be attached to any building or structure hereby approved and no free standing lighting equipment shall be erected on the site, other than those shown on the plans approved for condition 17 below or as may be agreed on a temporary basis under condition 15 during the construction period.

*Reason for the condition: This condition is required to safeguard the ecological interests of the site.*

- 17) No dwelling shall be occupied until a Lighting Strategy for Biodiversity, including a timetable for its implementation has been submitted to and approved in writing by the local planning authority. The strategy shall:
- a) identify those areas/features on site that are particularly sensitive for bats, dormice and otters and that are vulnerable to light disturbance in or around their breeding sites and resting places or along important routes used to access key areas of their territory, for example, for foraging; and
  - b) show how and where external lighting will be installed (through the provision of appropriate lighting contour plans and technical specifications) so that it can be clearly demonstrated that areas to be lit will not disturb or prevent the above

species using their territory or having access to their breeding sites and resting places.

All external lighting shall be installed in accordance with the specifications and locations set out in the strategy, and these shall be maintained thereafter in accordance with the strategy.

*Reason for the condition: This condition is required to safeguard the ecological interests of the site.*

#### Highways

- 18) The access to the site shall be from North Dane Way Drive as show in drawing 186-SK-006 Rev A and the emergency vehicular access shall be from Ham Lane.

*Reason for the condition: In the interests of highway safety and emergency access, for the avoidance of doubt and to ensure the satisfactory development of the site.*

- 19) Development shall not begin until details of the proposed emergency access have been submitted and approved in writing by the local planning authority. The approved emergency access shall be made available prior to the first occupation of any dwelling and thereafter retained for the purpose intended.

*Reason for the condition: This condition is required in the interests of highway safety and emergency access.*

- 20) No development shall take place until a Construction Method Statement (CMS) has been submitted to and approved in writing by the local planning authority. The approved CMS shall be adhered to throughout the construction period. The CMS shall provide for:

- i) the parking of vehicles of site operatives and visitors;
- ii) loading and unloading of plant and materials;
- iii) storage of plant and materials used in constructing the development;
- iv) wheel washing facilities;
- v) measures to control the emission of dust and dirt during construction; and,
- vi) a scheme for recycling/disposing of waste resulting from construction works.

*Reason for the condition: This condition is required to be addressed pre commencement as it relates to activities which would be likely to have an impact immediately upon first works on the site and it relates to the interests of highway safety and the protection of the environment.*

- 21) No development hereby permitted shall commence until such time as the improvement works to the junction of North Dane Way and Albermarle Road and the link access road to the site as shown in the drawing 1661-SK-001 Revised A within appendix H of the Transport Assessment Report have been completed in accordance with details which shall first have been approved by the local planning authority in writing.

*Reason for the condition: This condition is required pre-commencement as it is essential that safe access is provided to the site before activities commence on site in the interests of highway safety and the free flow of traffic.*

- 22) No dwellings on the development shall be occupied until the carriageway(s) (including surface water drainage/disposal, vehicular turning head(s) and street lighting) providing access from the nearest public highway to that dwelling have been completed to at least binder course level and the cycle and footway(s) to surface course level.

*Reason for the condition: This condition is required to ensure pedestrian and cycle and vehicular access is available for each dwelling before it is occupied in the interests of the welfare and safety of the occupiers of the related dwelling.*

- 23) No dwelling shall be occupied until details of the proposed arrangements for future management and maintenance of the proposed streets within the development have been submitted to and approved in writing by the Local Planning Authority. The streets shall thereafter be maintained in accordance with the approved management and maintenance details until such time as either a dedication agreement has been entered into or a private management and maintenance company has been established.

*Reason for the condition: To ensure highways are maintained in a safe condition for the protection of those using them.*

- 24) No dwelling hereby approved shall be occupied until a travel plan based on the Framework Travel Plan has been submitted to and approved in writing by the local planning authority.

*Reason for the condition: To encourage alternative means of transport to that of the private car in the interests of the environment.*

- 25) Details submitted pursuant to condition 1 shall include a shared footway/cycleway on the north side of North Dane Way to link the development site with the Lords Wood Leisure Centre with associated improvements and street lighting.

*Reason for the condition: To encourage alternative means of transport to that of the private car in the interests of the environment.*

#### Archaeology

- 26) No development shall take place within any phase of the development until a programme of archaeological work has been secured and implemented in accordance with a written scheme of investigation for the relevant phase, which shall have first been submitted to and approved in writing by the Local Planning Authority.

*Reason for the Condition: It is necessary for this condition to be a pre-commencement condition so that archaeological assessment can take place before the land is disturbed.*

#### Flood Risk and Drainage

- 27) The first application for the approval of reserved matters on the site shall be accompanied by a sustainable surface drainage strategy for the entire application

site. No dwelling hereby permitted shall be occupied until surface water drainage works have been implemented in accordance with details that have been submitted to and approved in writing by the Local Planning Authority as part of the reserved matters applications for the phase within which the dwelling is situated.

Before these details are submitted, an assessment shall be carried out of the potential for disposing of surface water by means of a sustainable drainage system in accordance with the principles set out in DEFRA's non-statutory technical standards for the design, maintenance and operation of sustainable drainage to drain surface water (or any subsequent version), and the results of the assessment provided to the local planning authority. Where a sustainable drainage scheme is to be provided, the submitted details shall:

- i) provide information about the design storm period and intensity, the method employed to delay and control the surface water discharged from the site and the measures taken to prevent pollution of the receiving groundwater and/or surface waters;
- ii) include a timetable for its implementation; and
- iii) provide a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public authority or statutory undertaker and any other arrangements to secure the operation of the scheme throughout its lifetime.

*Reason for the condition: To ensure acceptable drainage of the site so as to minimise flood risk.*

- 28) No dwelling in any phase of development hereby permitted shall be occupied until sewage disposal works for that phase have been implemented in accordance with a scheme which has first been submitted to and approved in writing by the Local Planning Authority.

*Reason for the condition: To ensure acceptable foul drainage of the site.*

#### Noise

- 29) No dwelling shall be constructed until an acoustic appraisal specifying attenuation measures (where necessary) has been submitted for approval in writing by the local planning authority. No dwelling shall be occupied until the approved attenuation measures have first been installed in accordance with the approved details. The approved attenuation measures shall be maintained and retained thereafter.

*Reason for the condition: To ensure acceptable living conditions for future occupiers of the site.*

#### Air Quality

- 30) The development shall not be commenced until an Air Quality report has been submitted to the local planning authority for its written approval. The report shall contain and address the following:

i) An assessment of air quality on the application site and of any scheme necessary for the mitigation of poor air quality affecting the residential amenity of occupiers of this development.

ii) An assessment of the effect that the development will have on the air quality of the surrounding area and any scheme necessary for the reduction of emissions giving rise to that poor air quality. The assessment should quantify the measures or offsetting schemes to be included in the development which will reduce the air pollution of the development. Any scheme of mitigation set out in the subsequently approved report shall include a timetable for implementation. The development shall be implemented and managed in accordance with the approved scheme.

*Reason for the condition: This condition is required as a pre-commencement condition as air quality needs to be initially assessed prior to any works of development commencing as they could alter background air quality levels and this condition is required in the interests of the environment and living conditions of future occupiers of the development.*

#### Contamination

- 31) If during the course of development, contamination is found to be present at the site then no further development (unless otherwise agreed in writing with the local planning authority) shall be carried out until the developer has submitted, and obtained written approval from the local planning authority for a remediation strategy detailing how the contamination shall be dealt with. The remediation strategy shall be implemented as approved, verified and reported to the satisfaction of the local planning authority.

*Reason for the condition: This area is prone to fly-tipping and therefore it is anticipated that as yet unidentified contamination may exist on site. In such circumstances it may be necessary for remedial works to take place in order that the land becomes safe for residential use.*

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## **RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT**

**These notes are provided for guidance only and apply only to challenges under the legislation specified. If you require further advice on making any High Court challenge, or making an application for Judicial Review, you should consult a solicitor or other advisor or contact the Crown Office at the Royal Courts of Justice, Queens Bench Division, Strand, London, WC2 2LL (0207 947 6000).**

The attached decision is final unless it is successfully challenged in the Courts. The Secretary of State cannot amend or interpret the decision. It may be redetermined by the Secretary of State only if the decision is quashed by the Courts. However, if it is redetermined, it does not necessarily follow that the original decision will be reversed.

### **SECTION 1: PLANNING APPEALS AND CALLED-IN PLANNING APPLICATIONS**

The decision may be challenged by making an application for permission to the High Court under section 288 of the Town and Country Planning Act 1990 (the TCP Act).

#### **Challenges under Section 288 of the TCP Act**

With the permission of the High Court under section 288 of the TCP Act, decisions on called-in applications under section 77 of the TCP Act (planning), appeals under section 78 (planning) may be challenged. Any person aggrieved by the decision may question the validity of the decision on the grounds that it is not within the powers of the Act or that any of the relevant requirements have not been complied with in relation to the decision. An application for leave under this section must be made within six weeks from the day after the date of the decision.

### **SECTION 2: ENFORCEMENT APPEALS**

#### **Challenges under Section 289 of the TCP Act**

Decisions on recovered enforcement appeals under all grounds can be challenged under section 289 of the TCP Act. To challenge the enforcement decision, permission must first be obtained from the Court. If the Court does not consider that there is an arguable case, it may refuse permission. Application for leave to make a challenge must be received by the Administrative Court within 28 days of the decision, unless the Court extends this period.

### **SECTION 3: AWARDS OF COSTS**

A challenge to the decision on an application for an award of costs which is connected with a decision under section 77 or 78 of the TCP Act can be made under section 288 of the TCP Act if permission of the High Court is granted.

### **SECTION 4: INSPECTION OF DOCUMENTS**

Where an inquiry or hearing has been held any person who is entitled to be notified of the decision has a statutory right to view the documents, photographs and plans listed in the appendix to the Inspector's report of the inquiry or hearing within 6 weeks of the day after the date of the decision. If you are such a person and you wish to view the documents you should get in touch with the office at the address from which the decision was issued, as shown on the letterhead on the decision letter, quoting the reference number and stating the day and time you wish to visit. At least 3 days notice should be given, if possible.

## **Appendix 7: Land at Express Estate, Fisherwick Road, Fisherwick Appeal Decision**



Department for  
Communities and  
Local Government

Our Ref: APP/K3415/W/15/3024063

Mr Shaun Taylor  
Satplan Ltd  
Kemp House  
152 City Road  
London EC1V 2NX

13 February 2017

Dear Mr Taylor

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78  
APPEAL MADE BY LYLEVALE PROPERTY LIMITED  
LAND AT EXPRESS ESTATE, FISHERWICK ROAD, FISHERWICK, LICHFIELD,  
STAFFORDSHIRE, WS13 8XA  
APPLICATION REF: 14/00394/OUTM**

1. I am directed by the Secretary of State to say that consideration has been given to the report of Michael Boniface MSc MRTPI who held a public local inquiry on 17-20 November and 9 December 2015 into your client's appeal against the decision of Lichfield District Council ('the Council') to refuse by notice dated 24 February 2015 planning permission for up to 180 dwellings including access in accordance with application ref: 14/00394/OUTM dated 14 March 2014.
2. On 13 January 2016 this appeal was recovered for the Secretary of State's determination, in pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act 1990, because the appeal involves proposals for residential development of over 150 units or a site of over 5 hectares, which would significantly impact on the Government's objective to secure a better balance between housing demand and supply and create high quality, sustainable, mixed and inclusive communities.

**Inspector's recommendation and summary of the decision**

3. The Inspector recommended that the appeal be dismissed.
4. The Secretary of State agrees with the Inspector's conclusions, except where stated, and agrees with his recommendation and has decided to dismiss the appeal and refuse planning permission. A copy of the Inspector's report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

## **Matters arising since the close of the inquiry**

5. On 23 May 2016 the Secretary of State referred back to the parties to invite representations on the implications, if any, of the following matters for the above appeal: the five year land supply position; the Court of Appeal judgment in the cases of *Suffolk District Council v Hopkins Homes Ltd & Secretary of State for Communities and Local Government*; and *Richborough Estates Partnership LLP v Cheshire East Borough Council & Secretary of State for Communities and Local Government* [2016] EWCA Civ 168; the adoption by Lichfield District Council of its Community Infrastructure Levy Charging Schedule on 19 April 2016.
6. The Secretary of State has taken the representations received (listed at Annex A) into account in reaching his decision. As these representations were circulated to the parties the Secretary of State does not find it necessary to reproduce them here. Copies may be obtained on written request to the address at the foot of the first page of this letter.
7. In September 2016 the Council published on its website its Strategic Housing Land Availability Assessment 2016 and Five Year Housing Land Supply Paper 2016.

## **Policy and statutory considerations**

8. In reaching his decision, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise.
9. In this case, the development plan consists of the saved policies of the Lichfield District Local Plan (1998) (LP), and the Lichfield District Local Plan Strategy 2008-2029 (2015) (LPS). The Secretary of State considers that the development plan policies of most relevance to this case are those set out at IR8-12. The Secretary of State has also given consideration to the emerging Whittington and Fisherwick Neighbourhood Plan. Paragraph 216 of the Framework states that decision makers may give weight to relevant policies in emerging plans according to: (1) The stage of preparation of the emerging plan; (2) The extent to which there are unresolved objections to relevant policies in the emerging plan; and (3) The degree of consistency of relevant policies to the policies in the Framework. While he considers that the relevant policies in the draft Neighbourhood Plan are not inconsistent with the objectives of the Framework, the Secretary of State has taken into account that the emerging Neighbourhood Plan is at an early stage of preparation, and has not yet been through Examination and that there are outstanding objections to the Neighbourhood Plan. For these reasons, therefore, the Secretary of State agrees with the Inspector (IR 191) and considers that the emerging Neighbourhood Plan carries very limited weight.
10. Other material considerations which the Secretary of State has taken into account include the National Planning Policy Framework ('the Framework') and associated planning guidance ('the Guidance'), as well as the Community Infrastructure Levy (CIL) Regulations 2010 as amended.

## **Main issues**

11. The Secretary of State agrees with the Inspector that the main issues are those set out at IR112.

### *Housing Land Supply (HLS)*

12. As part of the reference back exercise (referred to at paragraphs 5-7 above), the Secretary of State has taken into account the representations made by all the parties on this issue. He notes too that in September 2016, both the Lichfield District SHLAA 2016 and the Council's Five Year Housing Land Supply Paper 2016 were published by Lichfield District Council on its website. He has taken all the above evidence and the Inspector's analysis into consideration in his assessment of the HLS position.

### **Housing Requirement**

13. The Council has a recently adopted Local Plan, the Lichfield District Local Plan Strategy 2008-2029 (LP) which was adopted on 17 February 2015. The Secretary of State notes (IR114) that it is agreed by the parties that the LP provides a robust housing requirement figure of 10,030 dwellings for the plan period, or 478 dwellings per annum (dpa).

### *Addressing shortfall*

14. Since the beginning of the plan period (2008), the Council has accumulated a shortfall of 1,943 dwellings. This is set out within the Five Year Housing Land Supply Paper 2016. There is a need for this shortfall to be met in addition to the on-going requirement for housing in the area.
15. There are two commonly used methods for addressing an accumulated shortfall. The 'Liverpool approach' apportions the shortfall across the remaining years of the plan period, whilst the 'Sedgefield approach', seeks to make up the shortfall during the next five years. The Secretary of State has had regard to the Guidance which advocates the 'Sedgefield approach' stating that Local Planning Authorities should aim to deal with any undersupply within the first 5 years of the plan period where possible.
16. However, he notes that this was an issue recently considered by the Local Plan Inspector who found, following rigorous examination, that the 'Liverpool approach' was more appropriate in the case of Lichfield notwithstanding the advice in the PPG. The Local Plan Inspector's conclusion was reached having regard to past rates of delivery in the district, including prior to the recession, and the requirement for completions far in excess of the highest levels ever achieved in the district if the 'Sedgefield approach' were adopted. The Local Plan Inspector highlighted that plans are required to be realistic as well as aspirational and that the Local Plan would likely fail if the Sedgefield approach was used.
17. The Secretary of State further notes that the Local Plan Inspector recognised the potentially critical impact of using either the Liverpool or Sedgefield approaches, and the Planning Policy Guidance, before reasoning that the required housing trajectory using Sedgefield was highly likely to prove unrealistic due to the serious doubt about the necessary high rate of delivery over five years would be attainable in market terms.
18. The Secretary of State has carefully considered the appellant's submissions in favour of the 'Sedgefield approach' being adopted summarised at IR 27-30 and analysed by the Inspector at IR 115-124. Having regard to the arguments in favour of the 'Sedgefield approach' being adopted, the Secretary of State considers that these matters do not represent sufficient grounds to not follow the 'Liverpool approach' to addressing shortfall adopted within the LP following rigorous examination and, therefore, agrees with the LP

Inspector and appeal Inspector (IR 124) that the shortfall should be apportioned across the remaining plan period.

19. The Secretary of State thus finds that addressing the shortfall over the remaining plan period would give an annual requirement of 627 dpa, or 3,135 over the 5 year period.

#### *Buffer*

20. Paragraph 47 of the Framework requires that an additional buffer of 5% be added to this figure (moved forward from later in the plan period) to ensure choice and competition in the market for land. Where there has been a record of persistent under delivery, it states the buffer should be increased to 20% for the same reason, and to provide a realistic prospect of achieving the planned supply. Having carefully considered the evidence and the parties' submissions on the issue, the Secretary of State agrees with the Inspector's analysis for the reasons given (IR 125-129) that a 20% buffer is appropriate in this case, given the historic under delivery of housing in the District and that the 20% buffer should also be added to the shortfall. This leads to a 5 year requirement of 3,762 dwellings or 752 dpa.

#### **Supply**

##### *Windfalls*

21. Paragraph 48 of the Framework and paragraph 3-24-2-140306 of the PPG states that LPAs may make an allowance for windfall sites in the 5 year supply if they have compelling evidence that such sites have consistently become available in the local area and will continue to provide a reliable source of supply. It states any allowance should be realistic having regard to the SHLAA, historic windfall delivery rates, and expected future trends. The Secretary of State notes that the parties have agreed that a windfall allowance of 50dpa is reasonable (IR 19). Having had regard to the average historic delivery of windfall permissions in the District, as set out in the SHLAA 2016, the Secretary of State considers that a windfall allowance of 50dpa is reasonable and consistent with paragraph 48 of the Framework.

##### *Lapse rate*

22. The Secretary of State notes that the parties agree that a 5% lapse rate is appropriate (IR19).

##### *Delivery*

23. Having regard to footnote 11 of paragraph 47 of the Framework and the relevant paragraphs of the PPG, the Secretary of State has gone on to consider the deliverability of the disputed sites in this matter.

##### *Walsall Road and Limburg Avenue, Hallam Park*

24. The Secretary of State has had regard to the Five Year Housing Land Supply Paper 2016 and concludes that while the site will not deliver any dwellings in 2016/2017, as planning permission has been granted it is reasonable to conclude that over the 5 year period 157 units will be delivered.

### *East of Lichfield (Streethay) SDA*

25. The Secretary of State has considered the submissions of the parties, and of the Pegasus Group, who act for the developers of the site, and the 5 Year Housing Land Supply Paper 2016, and noting that planning permission is in place, concludes that 40 units can be delivered at this site during the reporting year and 640 over the five year period.

### *South of Lichfield SDA*

26. The Secretary of State has carefully considered representations of the parties and the 5 Year Housing Land Supply Paper 2016, and, given the presence of an outline planning permission subject to a s106 agreement, concludes that 450 homes can be delivered at this site in five years.

### *East of Burntwood Bypass SDA*

27. The Secretary of State has carefully considered the representations of the parties and the Five Year Housing Supply Paper 2016, and noting that the SDA is under construction the Secretary of State concludes that it is reasonable to assume that the position on build out rates and lead in times found sound by the LP examination is robust and that 351 homes will be built at this site by 2019/2020.

### *King Edward School*

28. In regard to King Edward VI School, while the Secretary of State has taken account of the Council's representation of 15 June 2016, which states that pre-application discussions have been held regarding this site and the likelihood that it will come forward within 5 years, the Secretary of State concludes, in agreement with the Inspector (IR 12.67) that there is insufficient evidence to include the site within the Council's housing land supply, and therefore he removes the figure of 32 dwellings from his calculations.

### *Dean Slade Farm*

29. The Secretary of State concludes that while dwellings on sites South of Lichfield (Dean Slade Farm) have been allocated in emerging or made Neighbourhood Plans, in the absence of extant planning permissions it is too early to conclude that 275 dwellings could be delivered over the five year period. He thus excludes them from his Housing Supply calculations.

### *Conclusions on five year HLS*

30. The Secretary of State concludes that an annual target of 478 dpa leads to a 5 year requirement of 2,390 dwellings ( $478 \times 5$ ). Addressing the shortfall of 1,943 dwellings over the remaining plan period ( $1,943 \text{ divided by } 13 = 149$ ) gives an annual requirement of 627 dpa ( $478 + 149$ ), or 3,135 over the 5 year period.

31. To this the Secretary of State has applied a 20% buffer to this figure, including the shortfall, for the reasons set out above, thus finding a total housing requirement of 3,762 over the five year period, or 752 dpa.

32. The Secretary of State notes from the 5 year Housing Land Supply Paper 2016 that the Council states it has 4,149 net deliverable capacity in the 5 year period. For the reasons given above the Secretary of State has deducted 307 units from the net deliverable

capacity for the disputed Dean Slade Farm and King Edwards School sites leaving a total of 3,842 net deliverable capacity.

33. As such, the Secretary of State finds that there is a surplus of 307 dwellings, or a 5.11 year housing land supply.
34. For the reasons set out above the Secretary of State agrees with the Inspector and concludes in his judgement that the local planning authority can demonstrate a 5 year supply of deliverable housing sites. In these circumstances, paragraph 49 of the Framework is not engaged and the Secretary of State concludes that the relevant policies of the development plan are up to date.

#### *Location, accessibility and sustainable travel*

35. For the reasons set out by the Inspector at IR147-176, the Secretary of State agrees that the site is not an appropriate location for residential development given its lack of accessibility. He further agrees that the future residents of the development would become unacceptably reliant on the use of private cars, failing to contribute to objectives within the Framework to promote sustainable patterns of development and means of travel so as to combat climate change, reduce greenhouse gases and achieve sustainable development. He also agrees with the Inspector that the development is not of a scale and nature appropriate to its locality, nor would it reduce the overall need to travel, whilst optimising choice of sustainable modes of travel, particularly walking, cycling and public transport, and would thus conflict with Policies CP5, ST1 and BE1 of the LP (IR 176).

#### *Character and appearance*

36. For the reasons set out at IR177-193 the Secretary of State agrees with the Inspector that while the development would initially cause moderate adverse harm to landscape character, subject to an appropriate landscape strategy, these impacts would significantly reduce over time so as to become minor by year 15. He also agrees that the existing site is itself an anomaly in the landscape and the proposed woodland planting offers an opportunity for landscape regeneration in an area noted to be in need of such intervention.
37. The Secretary of State agrees that the landscape impacts must be compared against the existing situation, which is a negative feature on the landscape, as well as being balanced against the proposed landscape regeneration in the form of woodland planting. As such, he agrees with the Inspector that the development would not materially harm the character and appearance of the area. He thus finds no conflict with Policies CP1, CP3, Core Policy 12, Core Policy 14, NR1 or BE1 of the LP.

#### *Other matters*

38. Whatever the current position in relation to the Council's HLS, the Secretary of State agrees that the Council has a significant need for affordable housing that it is failing to meet year on year. He agrees that the proposed development would provide 31% affordable housing, equating to 56 units out of 180. This would be a significant contribution towards meeting the identified, and undisputed, need in the district. He attaches significant weight to this benefit.
39. The Secretary of State has had regard to the other benefits of the proposal, including potential ecological enhancements; use of renewable energy and energy efficiency

technology; economic gains during construction, increased population and local expenditure and payments to the Council through the New Homes Bonus. Agreeing with the Inspector's conclusions at IR195 that even cumulatively these matters do not outweigh the harm identified and the conflict with the development plan, he affords them moderate weight.

### **Planning conditions**

40. The Secretary of State has given consideration to the Inspector's analysis at IR198-209 of the recommended conditions set out at the end of the IR and the reasons for them, and to national policy in paragraph 206 of the Framework and the relevant Guidance. While he is satisfied that the conditions recommended by the Inspector comply with the policy test set out at paragraph 206 of the Framework and the relevant Guidance he does not consider that the imposition of these conditions would overcome his reasons for dismissing this appeal.

### **Planning obligations**

41. The Secretary of State has carefully considered the Inspector's analysis at IR210-214, the planning obligations set out in the Unilateral Undertaking dated 9 December 2015, paragraphs 203-205 of the Framework, the Guidance, and the Community Infrastructure Levy Regulations 2010, as amended. However, as the Council's Community Infrastructure Levy (CIL) charging regime came into force on 13 June 2016, the Secretary of State has gone on to consider whether these still apply. He concludes that the requirement for affordable housing; the provision of open space; the Primary Education Contribution; the Travel Plan measures; and the Traffic Regulation Order would still apply. However, the Leisure contribution has now fallen away as it is now subject to CIL, and no regard has been had to that in reaching his decision.

42. The Secretary of State agrees with the Inspector's conclusion for the reasons given in IR213 that the obligations set out in the Unilateral Undertaking of 9 December 2015 comply with Regulation 122 of the CIL Regulations and the tests at paragraph 204 of the Framework and are necessary to make the development acceptable in planning terms, directly related to the development, and are fairly and reasonably related in scale and kind to the development. However, the Secretary of State does not consider that the obligations overcome his reasons for deciding that the appeal should be dismissed.

### **Planning balance and overall conclusion**

43. In deciding this appeal, the Secretary of State has had regard to Section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise. For the reasons given above, the Secretary of State considers that the appeal scheme is not in accordance with Policies CP5, ST1 and BE1 of the development plan. Therefore, applying the first limb of Section 38(6) of the Planning and Compulsory Purchase Act 2004, the Secretary of State considers that the proposal is not in accordance with the development plan overall. He has gone on to consider, applying the second limb of Section 38(6) of the Planning and Compulsory Purchase Act 2004, whether there are material considerations which indicate that the proposal should be determined other than in accordance with the development plan.

44. For the reasons given, he attaches significant weight to the benefits of the provision of market and affordable housing. In doing so he considers that the appeal proposal

advances the social and economic roles identified in paragraphs 7 and 8 of the Framework which are not diminished owing to the Council now being able to demonstrate a five year supply. For the reasons above, he attaches further moderate weight to the benefits of potential ecological enhancements; use of renewable energy and energy efficiency technology; economic gains during construction, increased population and local expenditure and payments to the Council through the New Homes Bonus.

45. As the development would not materially harm the character and appearance of the area, with no conflict with the relevant policies referred to at paragraph 37 above, the Secretary of State gives no weight to this. However, he attaches significant weight to the lack of accessibility of the site, given that it would not be located appropriately in terms of accessibility to services and facilities. He has had regard to paragraph 34 of the Framework, which seeks to ensure that developments which would generate significant movement are located where the need to travel will be minimised and the use of sustainable transport modes can be maximised. Whilst opportunities for sustainable transport are likely to be less in a rural area such as this one, he agrees with the Inspector that this location is particularly poor and would require future residents to be heavily reliant on private vehicles. The development is not of a scale and nature appropriate to its locality, nor would it reduce the overall need to travel, whilst optimising choice of sustainable modes of travel, particularly walking, cycling and public transport.
46. Having assessed the proposal against the Framework taken as a whole, the Secretary of State agrees with the Inspector at IR216 that the significant environmental harm that would result from the development is such that, notwithstanding the benefits of the proposal, it should not be considered to represent 'sustainable development' for the purposes of the Framework.
47. The Secretary of State concludes that overall the material considerations do not indicate that the proposal should be determined other than in accordance with the development plan. The Secretary of State therefore concludes that your client's appeal should be dismissed.

### **Formal decision**

48. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. He hereby dismisses your client's appeal and refuses planning permission for up to 180 dwellings including access in accordance with application ref: 14/00394/OUTM dated 14 March 2014.

### **Right to challenge the decision**

49. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged. This must be done by making an application to the High Court within 6 weeks from the day after the date of this letter for leave to bring a statutory review under section 288 of the Town and Country Planning Act 1990.
50. A copy of this letter has been sent to Lichfield District Council, and notification has been sent to others who asked to be informed of the decision.

Yours faithfully

*Philip Barber*

Authorised by Secretary of State to sign in that behalf

## **Annex A**

### **Representations received in response to the Secretary of State's letter of 23 May 2016**

<b>Party</b>	<b>Date</b>
Bal Nahal, Solicitor, Lichfield District Council	3 June 2016
Shaun Taylor, Managing Director, Satplan Ltd	7 June 2016
Sophie Sherratt, Staffordshire County Council	7 June 2016
Martyn Bennett, Chairman, Whittington and Fisherwick Parish Council	Dated 9 May 2016 in error

### **Representations received in response to the Secretary of State's letter of 8 June 2016**

<b>Party</b>	<b>Date</b>
Shaun Taylor, Managing Director, Satplan Ltd	15 June 2016
Bal Nahal, Solicitor, Lichfield District Council	15 June 2016

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# **Report to the Secretary of State for Communities and Local Government**

**by Michael Boniface MSc MRTPI**

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

**Date: 15 March 2016**

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**TOWN AND COUNTRY PLANNING ACT 1990**

**LICHFIELD DISTRICT COUNCIL**

**EXPRESS ESTATE, FISHERWICK ROAD, FISHERWICK, LICHFIELD**

**APPEAL BY LYALVALE PROPERTY LTD**

Inquiry held on 17, 18, 19 & 20 November 2015 and 9 December 2015

Express Estate, Fisherwick Road, Fisherwick, Lichfield, Staffordshire, WS13 8XA

File Ref: APP/K3415/W/15/3024063

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**File Ref: APP/K3415/W/15/3024063**

**Express Estate, Fisherwick Road, Fisherwick, Lichfield, Staffordshire, WS13 8XA**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
- The appeal is made by Lyalvale Property Ltd against the decision of Lichfield District Council.
- The application Ref 14/00394/OUTM, dated 14 March 2014, was refused by notice dated 24 February 2015.
- The development proposed is up to 180 dwellings including access.

**Summary of Recommendation: That the appeal be dismissed.**

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**Procedural Matters**

1. After the Inquiry had closed, the appeal was recovered by the Secretary of State for Communities and Local Government for his own determination, in accordance with his powers under section 79 and paragraph 3 of Schedule 6 of the Town and Country planning Act 1990<sup>1</sup>. The reason for the Secretary of State's direction was that the appeal involves proposals for residential development of over 150 units or a site of over 5 hectares, which would significantly impact on the Government's objective to secure a better balance between housing demand and supply and create high quality, sustainable, mixed and inclusive communities.
2. The application is submitted in outline with access to be considered. Matters of appearance, landscaping, layout and scale are reserved for subsequent consideration.
3. During the appeal, the appellant submitted a revised Illustrative Master Plan '015-007-005 Rev A'<sup>2</sup>. This was considered by the Council and discussed during the Inquiry.
4. Prior to the Inquiry, a revised Transport Assessment (October 2015) and Travel Plan (October 2015) were provided by the appellant, which sought to deal with a number of the concerns raised by the Council. Various Rebuttal Statements were also exchanged in relation to highways matters. This led to the parties agreeing traffic generation and distribution figures and an acceptance by the Council that the development would not have a severe impact on the local highway network, subject to mitigation of impacts at two junctions. Following this agreement, the Council did not defend this aspect of refusal reason 2, other than in relation to the necessary junction improvements.

**The Site and Surroundings**

5. The site extends to approximately 9.77 hectares and was formerly used for the storage of explosives used in the quarrying industry. It is currently used for the storage of components used in the manufacture of sporting ammunition. It comprises 13 concrete storage buildings/magazines surrounded by earth bunds of approximately 4m in height. Each magazine is equipped with a lightning rod of approximately 16m in height. A chain link fence surrounds the facility. The site is located in open countryside, around 1.4 miles (2.2km) from the village

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<sup>1</sup> Direction letter dated 13 January 2016

<sup>2</sup> Contained at Appendix SAT3 of Proof of Evidence of Shaun Taylor (October 2015)

centre of Whittington. The Lyalvale Express Ltd building, which continues to manufacture sporting ammunition, is located adjacent to the site.

6. A long private access road serves the site and the adjacent factory premises. Large areas of hard standing also exist within the site, forming an internal road network that provides vehicular access to each of the magazines. It is agreed between the parties that the site is previously developed land<sup>3</sup>.

## **Planning Policy**

7. The development plan comprises the Lichfield District Local Plan Strategy 2008 - 2029 (LP) (adopted 17 February 2015).
8. Core Policy 1 (CP1) of the LP sets out the Spatial Strategy for the district, confirming that a minimum of 10,030 dwellings will be delivered within the most sustainable settlements, making best use of and improving existing infrastructure. Throughout the district, growth is to be located at the most accessible and sustainable locations in accordance with the settlement hierarchy. Proposals will be expected to make efficient use of land and prioritise the use of previously developed land.
9. The settlement hierarchy seeks to direct residential development to the Strategic Centre (Lichfield), Other Large Centre (Burntwood) and Neighbourhood Towns (Rugeley and Tamworth), before Key Rural Settlements (Fradley, Fazeley, Shenstone, Armitage with Handsacre, Whittington and Alrewas) and Other Rural areas. The nearest settlement to the site is Whittington, identified as a Key Rural Settlement within the hierarchy, but the site is some way outside of the village in open countryside.
10. Core Policy 6 (CP6) sets out details as to the level of housing development expected in various locations. In addition to the deliverable and developable sites identified by the Council, 440 dwellings are to be distributed across the Key Rural Settlements. This will be apportioned through the Local Plan Allocations Document or Community Led Plans, both of which are at very early stages of preparation. Housing in the Other Rural areas may be brought forward via a Community Led Plan. This policy recognises that some sites adjacent to existing settlement boundaries will need to be identified to accommodate housing that cannot be built within existing settlements.
11. Policy Whit4 expects a range of between 35 – 110 homes to be built at Whittington.
12. Core Policy 3 (CP3) seeks to deliver sustainable development requiring, amongst other things, that development is of a scale and nature appropriate to its locality; encouraging the re-use of previously developed land in the most sustainable locations; and reducing the overall need to travel, whilst optimising choice of sustainable modes of travel, particularly walking, cycling and public transport. Core Policy 5 (CP5), Policy ST1 and Policy BE1 have similar objectives to promote sustainable travel.

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<sup>3</sup> Paragraph 2.4 of the Planning Statement of Common Ground (November 2015)

## **Planning History**

13. A summary of the site's planning history is contained in the Council's committee report<sup>4</sup> but there is no history which is relevant to the current appeal.

## **The Proposals**

14. The development would involve the construction of up to 180 dwellings with vehicular access provided along the route of the existing private track to Fisherwick Road. All matters, other than access, are reserved for subsequent consideration but it is agreed that the development would involve buildings a maximum of two storeys high, that 2.6ha of open space would be provided on site and that landscape buffers would be provided on the periphery of the site<sup>5</sup>. 25% of the proposed dwellings (45 out of 180 units) would be provided as affordable housing. The indicative drawing provided demonstrates how the proposed scheme might be laid out<sup>6</sup>.

## **Other Agreed Facts**

15. The appeal documents include a Planning Statement of Common Ground (November 2015), an Agreed Statement of Common Ground relating to Landscape Matters (16 November 2015), Statement of Common Ground - Highways and Transportation (October 2015), Housing Land Supply Statement of Common Ground (November 2015) and a Statement of Common Ground Relating to Education Contribution (9 December 2015).
16. The first document agrees the reasons for refusal; a description of the site and surroundings; a description of the proposal and the development parameters; the development plan policies relevant to the proposal, as well as supplementary planning documents and national policy and guidance documents; and that no objections to the planning application had been received from consultees other than Staffordshire County Council.
17. The second includes details of the site location and description, along with applicable policies. The following detailed matters are also agreed:
- The appeal site is located outside the settlement boundary of Whittington;
  - The site is not allocated for any purpose and is located in open countryside;
  - The site is previously development or brownfield land;
  - The site is not subject to any planning designations, including any environmental, historic environment, open space or qualitative landscape designations;
  - The National Planning Policy Framework (the Framework) includes a 'presumption in favour of sustainable development', defines the meaning of sustainable development and highlights that the three roles contributing to sustainable development should not be read in isolation;

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<sup>4</sup> Appendix 2 to Proof of Evidence of Susan Hodgkinson

<sup>5</sup> Paragraph 3.3 of the Planning Statement of Common Ground (November 2015)

<sup>6</sup> Drawing 015-007-005 Rev A - Contained at Appendix SAT3 of Proof of Evidence of Shaun Taylor (October 2015)

- The site is not subject to any national, regional and local landscape designation and will not affect any wider statutorily protected sites or landscape;
- The Landscape and Visual Impact Assessment (February 2014) provides a suitable basis on which to assess the landscape and visual impacts of the proposal. Two additional photo viewpoints are nonetheless provided by the Council;
- The site is not a recognised 'valued landscape' in the terms of paragraph 109 of the Framework and this part of the rural area is not classified as a high quality landscape;
- The site falls within the Central Rivers initiative (Policy EA14);
- There are few landscape features within the site;
- Existing trees and vegetation associated with ditches would be largely retained, with the exception of some clearance of vegetation alongside the existing ditches to facilitate a SuDS drainage scheme.

18. With regards to Highways and Transportation, the following matters are agreed:

- The submitted Personal Injury Collision records, traffic flow and turning count survey data used in the Transport Assessment are appropriate;
- The development would generate 147 total vehicle trips (arrivals and departures) in each peak hour;
- For the traffic impact assessment, the AM peak is 08.00-09.00 and the PM peak is 17.00-18.00;
- Trip distribution data is agreed<sup>7</sup>;
- The traffic impact assessment considers an opening year of 2017 and a future year of 2020;
- The growth factors for the scenario years, determined by TEMPRO (as set out in the revised Transport Assessment) and applied in the traffic impact assessment are realistic;
- The following junctions have been included in the traffic impact assessment: A51/Lichfield Road; Lichfield Road (or Whittington Common Road)/Cappers Lane/Church Street (with Darnford Lane being incorporated with Lichfield Road movements; A51/Common Lane; Main Street/Fisherwick Road/Common Lane/Church Street; Fisherwick Road/Site Access; Fisherwick Road/A513 Tamworth Road;
- The findings of the traffic impact assessment, which was undertaken using PICADY software, demonstrate that none of the junctions currently have or are forecast to have capacity issues during the scenario years tested;
- The site is accessed from Fisherwick Road by an access road that is to be 5.5m wide and have a footway of 2m wide along one side;

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<sup>7</sup> Table 1.1 of the Statement of Common Ground – Highways and Transportation (Oct. 2015)

- The site access has been designed to be suitable for future adoption but no decision has been made as to whether the County Council would adopt;
- The site access road and junction with Fisherwick Road has been demonstrated via swept path analysis as being suitable for refuse and heavy goods vehicles;
- The site access has sufficient visibility splays in both directions;
- A clear 1.2m wide footway would be provided along Fisherwick Road over the West Coast Mainline from the junction with the site access road to the junction with the U3067 to facilitate pedestrian movements;
- The Coventry Canal Towpath is a permissive path as opposed to a public right of way. There is no legal right of access, however public use of the route is permitted by the landowner (The Canal and Rivers Trust). The route can be closed as required;
- Any upgrade to the towpath would be subject to detailed discussions and agreement from the Canal and Rivers Trust;
- There is no capacity concern at the junction of Church Street/Fisherwick Road/Main Street/Common Lane, however, there are existing sub-standard visibility splays. The introduction of a Traffic Regulation Order at this location would improve visibility and prevent obstruction;
- A no stopping order would help to manage movements outside Whittington Primary School and a financial contribution could be secured as a Planning Obligation in this respect.

19. The following matters are agreed in respect to Housing Land Supply:

- The most recent information available relating to the Council's five year housing land supply position is contained in the Council's 2015 Strategic Housing Land Availability Assessment (SHLAA) Update published in October 2015;
- The housing requirement is set within the LP and requires 10,030 dwellings to be provided within the plan period 2008-2029. This equates to 478 dwellings per annum;
- The Examining Inspector for the Local Plan concluded that the Liverpool approach to dealing with a shortfall in housing supply should be used for Lichfield;
- The density assumptions set out in the SHLAA for sites without planning permission are appropriate and reasonable;
- The Council's windfall allowance of 50 dwellings per annum contained within its housing supply figure is considered reasonable;
- The 5% non-implementation rate for lapsed planning permissions is appropriate;
- Housing completions in Lichfield since 2008 have been below the annual requirement of 478 dwellings.

20. The Statement of Common Ground relating to Education Contribution confirms agreement of the following matters:

- A contribution of £765,497 is required to mitigate the impact of the development on primary education facilities;
- The contribution will be used towards additional educational provisions at Whittington Primary School;
- The contribution complies with Regulations 122 and 123 of the Community Infrastructure Levy Regulations 2010;
- Subject to the primary education contribution being secured, there is no objection to the appeal proposal on education grounds.

### **The Case for the Appellant**

21. The proposed development would involve reuse of brownfield land which presently causes detriment to the landscape, which is said to be of very low quality. Strong market evidence exists to show that the site would be deliverable as a beneficial residential development (**Document 5<sup>8</sup>**).
22. The Council has failed to meet its housing target for the past 7 consecutive years and has delivered just 5% of its affordable housing needs since the beginning of the plan period. There is a serious backlog in housing supply which needs to be addressed. The Council's anticipated delivery assumptions are ambitious and unrealistic. The Council cannot demonstrate a deliverable five year housing land supply but even if it were concluded that it could this would be extremely fragile given the reliance on a number of large sites to deliver at pre-recession rates, only achieved in the past on one site in 2008<sup>9</sup>. In any case, sustainable development should be supported even where a 5 year housing land supply exists and this is supported by an increasing body of appeals.
23. Although the site is located some distance from the nearest settlement, this does not make it inherently unsustainable and there are numerous examples of development being allowed under similar circumstances (including at Shipston on Stour<sup>10</sup>, Formby<sup>11</sup> and Whittington Barracks). Inevitably many journeys between the site and Whittington would involve use of a car but these journeys would be very short. Furthermore, there is a real prospect of using other modes of transport. The appellant puts forward an innovative solution to encourage sustainable travel, including the provision of a community mini-bus that would be funded from an annual service charge on individual properties, bridging the gap in public transport.
24. The proposal would make a contribution towards an immediate housing need, including affordable housing. It would utilise previously developed land and provide an alternative to the inevitable release of Green Belt land in the area. The development would have little impact on landscape character subject to the

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<sup>8</sup> Letter of interest from Mulbury dated 20 October 2015

<sup>9</sup> East Rugeley SDA

<sup>10</sup> APP/J3720/A/12/2185727 (Appendix MM4 of Proof of Evidence of Kevin Riley)

<sup>11</sup> Paragraph 2.4.3 of Proof of Evidence of Kevin Riley

proposed mitigation. The proposal would represent sustainable development and would deliver a number of significant benefits.

### ***Housing land supply***

25. Paragraph 47 of the Framework requires that local planning authorities should identify and update annually a supply of specific deliverable sites sufficient to provide five years worth of housing against their housing requirements.
26. Dispute exists between the parties as to whether a deliverable five year housing land supply can be demonstrated and this is reliant on the detailed figures and assumptions leading into the calculation. The appellant's Rebuttal with regards to Housing Land Supply suggests a 4.73 years supply at best, though a range of other scenarios were also submitted which show a significantly worse situation<sup>12</sup>. This figure was also amended during the course of the Inquiry following concessions by the appellant as to the correct supply figure but remained below a five year supply at 4.85 years<sup>13</sup>.

### ***Addressing shortfall***

27. It is agreed by the parties that a shortfall of 1,665 dwellings exists, accumulated since the beginning of the plan period<sup>14</sup>. The appellant suggests that the 'Sedgefield approach' to addressing any shortfall in housing delivery should be applied and this is consistent with advice in Planning Practice Guidance, in order to remedy the shortfall as quickly as possible and meet the Framework's objective to boost significantly the supply of housing<sup>15</sup>.
28. This is a matter considered by the Examining Inspector for the LP, who concluded that the 'Liverpool approach' was appropriate in the case of Lichfield and that application of the Sedgefield approach would result in a requirement that was unrealistic and unachievable. In short, the plan would be likely to fail under these circumstances<sup>16</sup>. Notwithstanding this, the appellant highlights that there has now been another year's under-supply. Furthermore, the latest trajectory published by the Council suggests that housing delivery will be such as to meet the numbers necessary if the Sedgefield approach were to be applied.
29. The Council's latest housing projections<sup>17</sup> anticipate net delivery exceeding 1,000 dpa, peaking at 1,191 in 2018/19. This is dramatically more than anticipated in the trajectory before the Examining Inspector. It was suggested that such a rate of delivery would be similar, and in fact in excess of, the peak Sedgefield figures (approaching 1,000) discounted by the LP Examining Inspector as unrealistic. The implication was made that if such figures could be relied upon, there is no reason not to use the Sedgefield approach in line with PPG.
30. This, the appellant suggests, is a materially different situation to that considered by the Examining Inspector and calls for a re-evaluation of the approach to

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<sup>12</sup> Paragraph 4.2 of Rebuttal with regards to Housing Land Supply

<sup>13</sup> See Note for Inspector Mr Boniface: Updated 5 year supply tales following round table discussion (Updated 20 November 2015)

<sup>14</sup> P.28 of the SHLAA (2015)

<sup>15</sup> Paragraph 035, ID Ref. 3-035-20140306

<sup>16</sup> Paragraph 212 of Report to Lichfield District Council by Robert Yuille (Examining Inspector)

<sup>17</sup> Table 6.4 of the SHLAA (2015)

addressing the shortfall. If the Council's trajectory can be relied upon, there is no good reason not to apply Sedgefield.

### *Buffer*

31. Paragraph 47 of the Framework requires that an additional buffer of 5% be added to the requirement figure (moved forward from later in the plan period) to ensure choice and competition in the market for land. Where there has been a record of persistent under delivery, the buffer should be increased to 20% for the same reason, and to provide a realistic prospect of achieving the planned supply.
32. The appellant seeks a 20% buffer, citing a persistent under delivery of housing against the recognised requirements. The housing requirement has not been met for the last 7 years, the entire plan period so far. Furthermore, the Council's Strategic Housing Land Availability Assessment (SHLAA) 2015 suggests that the requirement will not be met again this year.
33. Although the Examining Inspector for the LP concluded that only a 5% buffer was appropriate at that time, it is suggested that this decision was based on out of date information. His reference to oversupply for 7 out of the last 11 years can only have looked at the period up to 31 March 2012 since the Council has not met its requirement during this plan period since 2008<sup>18</sup>.
34. Since Examination of the LP the SHLAA 2014 Addendum (January 2015)<sup>19</sup> and SHLAA 2015 (October 2015)<sup>20</sup> have been published by the Council. These show a worsened situation and delivery has now fallen significantly short of the requirement for the past 7 years. Furthermore, the Council's own projections suggest that the requirement will not be met by some margin in this reporting year<sup>21</sup>.
35. Although the findings of the LP Inspector attract significant weight, a conclusion must be reached in this case on the basis of the most up to date information and it is suggested that the situation is now materially different. It is clear that there has now been persistent under delivery and that a 20% buffer should be applied.
36. The buffer should also be applied to the shortfall that has accumulated over the plan period (1,665 dwellings) since this remains part of the housing requirement for the area. This approach was endorsed by the Secretary of State in two recent appeal decisions at Wychavon<sup>22</sup> and Nantwich<sup>23</sup> and by Inspectors<sup>24</sup>.

### *Supply*

37. The SHLAA 2015 sets out assumptions applied by the Council in respect of lead-in times and build out rates where no contrary site specific information is

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<sup>18</sup> Paragraph 2.14 of Examining Inspector's Report (Appendix 3 of Proof of Evidence of Melissa Kurihara)

<sup>19</sup> Appendix 1 of Proof of Evidence for Melissa Kurihara

<sup>20</sup> Appendix 2 of Proof of Evidence for Melissa Kurihara

<sup>21</sup> Table 6.4 (P.30) of the SHLAA (October 2015)

<sup>22</sup> Appendix PDT 9 of Proof of Evidence of Peter Taylor: Extracts of Appeal Decisions APP/H1840/A/13/2199085 & APP/H1840/A/13/2199426

<sup>23</sup> (**Document 10**) Appeal decision APP/R0660/A/13/2197532 & APP/R0660/A/13/2197529

<sup>24</sup> Appendices PDT 10 and 11 of Proof of Evidence of Peter Taylor: Extracts of Appeal Decisions APP/R0335/A/14/2219888 & APP/V0510/A/14/2224671

available<sup>25</sup>. The appellant largely accepts these assumptions and questions the apparent lack of application of the generic lead-in times in respect of four major sites, including three Strategic Development Area's (SDA)<sup>26</sup>. It is suggested that the generic lead-in times should be applied to these sites to ensure consistency and accuracy in approach.

38. In these cases, the Council has used site specific information from the LP Examination and through recent discussions with the developer to apply differing lead-in times. It is also noted that no distinction is made between sites with outline planning permission and those with full planning permission.
39. Although the Examining Inspector endorsed the generic build-out rates used by the Council the appellant considers them to be extremely optimistic, noting that only one site in the district has ever come close to the rate of delivery anticipated. This was in the Rugeley Eastern Regeneration Zone, of regional significance. The build-out rates are expressed as maxima and it is clear that this represents the best case scenario. The build out rate assumed by the Council, roughly 50 dwellings per annum per developer, is far in excess of that anticipated in neighbouring authorities including Cannock Chase and East Staffordshire<sup>27</sup>.
40. It is suggested that the build-out rates proposed should be treated with extreme caution and that a sensitivity check should be applied to ensure that a more realistic picture is created. A build out rate of 40 dwellings per annum per developer is suggested.
41. The build out rates outlined by the Council are far in excess of those ever achieved in the district. The delivery rates suggested by the appellant would be 699 dwellings per annum, still in excess of past rates but far more realistic. The Council's delivery trajectory relies on up to 7 sites with 14 developers all delivering at the maximum anticipated rate of 50 dwellings per annum, a position which is unprecedented. The appellant's position is far more realistic, reducing the annual delivery rate by 10 dwellings per annum per developer and applying the Council's own lead in times from the SHLAA across the board.
42. On the basis of the appellant's supply and requirement assumptions there is at best a 3.57 year housing land supply. Under these circumstances, paragraphs 49 and 14 are engaged, relevant policies for the supply of housing are out of date and the presumption in favour of sustainable development applies.

### ***Location, accessibility and sustainable travel***

43. With one exception, there is no dispute between the parties that the site can be safely accessed by vehicular traffic which can be accommodated on the road network without safety or capacity issues in the terms of paragraph 32 of the Framework<sup>28</sup>. The one exception to this is the junction between Fisherwick Road/U3067. If it is determined that a scheme is required to improve visibility then it can be delivered within the public highway and secured by a Grampian

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<sup>25</sup> Paragraphs 4.18 and 4.19 of the SHLAA 2015

<sup>26</sup> Detailed in Table 5.1 of Proof of Evidence of Peter Taylor

<sup>27</sup> Build-out rates compared at paragraph 4.15 of Proof of Evidence of Peter Taylor

<sup>28</sup> Transport Assessment contained in Appendix MM1 to Proof of Evidence of Kevin Riley

style condition. However, the appellant asserts that this is not necessary given the lack of any accident data, the limited number of existing and proposed traffic movements at the junction<sup>29</sup>, the limited potential for conflict given low traffic flows from the east, the reasonable visibility already available and potential for correcting the incorrect road markings at the junction to improve the situation.

44. The real dispute is the site's location and accessibility, in particular, whether measures can be put in place to render the site sufficiently accessible so as to enable it to be viewed as sustainable overall. The appellant suggests that they can for the following reasons:
- The site is a very short car journey to Whittington with a range of services and facilities including opportunities to access public transport;
  - The site is similarly an easy cycle ride to Whittington along lightly trafficked roads already used by cyclists;
  - The site is 1.4 miles from the centre of Whittington (around a 30min walk)<sup>30</sup>. There is a realistic opportunity to walk safely into the village. For the most part on footways, albeit that a section of the route would necessarily be on carriageway or along the canal towpath;
  - A mechanism is proposed to provide for a dedicated minibus facility through a mandatory and ongoing management charge which could be used to promote sustainable travel for future residents. The revenue from the charge could also support other sustainable travel initiatives. This would provide solutions in perpetuity;
  - A Travel Plan is proposed to encourage sustainable travel such as car sharing and would include a range of measures to ensure a choice of travel modes;
  - The site is well located in terms of proximity and access to strategic networks including road and rail for travelling further afield.
45. There are numerous instances where decision makers have concluded that a site which is physically removed from a settlement but proximate nonetheless is sustainable development provided suitable measures are in place to encourage non-car journeys, and mindful that journeys would be short and less environmentally damaging. One example is the Whittington Barracks site which is a similar distance from the village.
46. The distance and route for walking to Whittington will be appropriate for the majority of people, notwithstanding that inclement weather might dissuade some. A segregated route would be provided for the majority of the route into the village, with awareness raising measures such as signage provided along the 380m stretch that would be on carriageway<sup>31</sup>. Alternatively, people may choose to bypass the on carriageway section in favour of the Coventry Canal towpath which would be upgraded. This allows for personal choice and capability.

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<sup>29</sup> See Transport Assessment

<sup>30</sup> Paragraph 3.5.17 of the Transport Assessment (October 2015)

<sup>31</sup> Detail at Sections 2 and 3 of Proof of Evidence of Kevin Riley

47. There is no reason to believe that the canal towpath cannot be suitably surfaced and upgraded notwithstanding that no agreement is currently in place. Discussions with the Canal and River Trust (the Trust), who are responsible for the towpath are ongoing. Correspondence is clear that upgrading can be achieved<sup>32</sup>. The Trust is a public body and must act in the public interest in accordance with the Trust Settlement (**Document 17**). The evidence produced by the Council demonstrated that instances of towpath closure are rare and none have been recorded in the vicinity of the site. There is no reason to believe that the towpath would not remain open and available as a viable route for future residents, notwithstanding its permissive nature.
48. For some, even a short walk may not be desirable or possible but the vast majority of people could and would utilise the route available, in full knowledge of the site's location prior to purchase. The gradient of the access onto the canal towpath could be improved but is unlikely to ever reach DDA compliance standards. Nevertheless, an alternative route is available.
49. It is suggested that the on-carriageway route is perfectly safe and usable with a straight alignment and good inter-visibility between pedestrians and vehicles, with regular locations to step off the carriageway if necessary. The road is currently used by pedestrians and cyclists yet there is no record of accidents on the stretch. Signage and road markings could be introduced to improve the situation further and alert oncoming vehicles. Traffic flows are low, not materially higher than the levels found acceptable in County Council guidance in respect of routes for children to walk to school<sup>33</sup>. The distance involved is short, just 380m on carriageway.
50. Cycling represents an opportunity for sustainable travel and the roads in the vicinity are already used for this purpose. Higher order settlements are within 5km of the site and opportunities exist for a modal shift from car use to cycle to access many services and facilities. Cycle parking facilities are also available within Whittington, including outside the Co-op store.
51. The nearest bus stop is within Whittington and this provides a good level of service by rural standards<sup>34</sup>. Opportunities exist for combined trips when visiting the village, as well as use of the proposed minibus facility so as to pick up public transport in the village. The minibus and other sustainable travel measures will be paid for by the charge on individual properties and it is, therefore, likely that people will wish to make use of the service they are paying for. Measures such as electric car charging points, storage space for bicycles and high speed broadband to increase the potential for home working can all be incorporated into the development to reduce the need to travel and encourage modal shift.

### ***Character and appearance***

52. The site comprises previously developed land adjacent to a large commercial enterprise which is screened by extensive structural planting. The site accommodates a series of incongruous mounds and freestanding buildings with

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<sup>32</sup> Appendix MM5 – Proof of Evidence of Kevin Riley

<sup>33</sup> Staffordshire County Council Walking Route Assessment Criteria (2014)

<sup>34</sup> Paragraph 3.5.2 of Transport Assessment (Appendix MM1 in Proof of Evidence of Kevin Riley)

- hard standing around, lightning rods throughout and a chain link fence surrounds. The site is incongruous and jarring in the landscape and benefits from no structural planting to mitigate its effects.
53. There are very few places where the proposed development would be visible and indeed, where viewpoints show visibility, the existing site and incongruous structures are already apparent.
54. The Council's case with regards to landscape impact has been made on the basis of the indicative master plan originally submitted, with no recognition of the fact that the application is in outline form with matters of landscaping and layout reserved for subsequent consideration. Therefore, there is scope for improvement of the landscaping and a reduction in visual impacts and this was accepted by the Council during the Inquiry having regard to the most recent master plan. The visualisations produced by the Council<sup>35</sup> overstate the impact of the development having been produced in light of the superseded master plan, which is in any case indicative.
55. The appeal site does not lie within any designated landscape, nor does it contain any particular physical features which would warrant it being protected as a 'valued landscape' in the terms of paragraph 109 of the Framework. The site is previously developed land containing incongruous structures in an otherwise rural landscape. It can be described as isolated, incongruous, contains obvious urban features, is an intrusive feature in the rural landscape and is unrelated to the existing settlement pattern. Therefore, it is itself harmful to landscape character. This is the baseline against which the proposed development should be assessed.
56. The site falls within National Character Area 69: Trent Valley Washlands<sup>36</sup>, a narrow, linear and low lying landscape comprising the river flood plain corridors of the middle reaches of the River Trent's catchment. It is accepted by both parties that this is a high level assessment and that local documents are more helpful in assessing landscape impact in this case.
57. 'Planning for Landscape Change'<sup>37</sup> is produced by the County Council as Supplementary Planning Guidance. It identifies the area within which the site is located as the Terrace Alluvial Lowlands Landscape Character Type. This is a small area that the site sits roughly centrally within. It is characterised by small broadleaved woodland; hedged fields and hedgerow trees; waterside tree species along ditches; flat landform; intensive mixed pasture and arable farming; Large fields; lush improved pasture; scattered farmsteads; straight roads and small winding lanes; traditional village character; and canals.
58. It also identifies that the lack of landform results in views through the landscape being controlled by the intactness of the hedgerows and density of the tree cover. In proximity to villages the scale reduces to a landscape of very small, irregularly shaped fields with plentiful hedgerow oaks controlling views to a maximum of one field distance.

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<sup>35</sup> Appendix 1 to Proof of Evidence of Pete Coe

<sup>36</sup> National Character Area Profile, Natural England

<sup>37</sup> Staffordshire County Council, 2000

59. The critical factor which limits landscape quality is identified as the relatively poor representation of characteristic semi-natural vegetation. Other factors which limit quality to a lesser extent are a loss of some characteristic landscape features; a decline in the condition of those features that remain; and an increase in the representation of incongruous features. The document notes that the potential value of new woodland planting would be moderate to very high. The area is a National Forest Preferred Area. Hedgerows, hedgerow trees and small copses, it is said, will contribute to the enclosed small scale and respond to the strong land cover pattern without subverting it.
60. The Central Rivers Initiative<sup>38</sup> refers specifically to opportunities for landscape enhancement at Fisherwick, close to the site. Here, it is noted that the river terrace at Fisherwick has suffered significant loss of characteristic landscape features and patterns, so that restoration is not possible, and replacement landscapes of a new character are now required.
61. The site forms a small part of a large character area and the development would not have a harmful impact on the wider character area if approved. The appeal site presents no characteristics which are identified as key or positive in the landscape area. 'Planning for Landscape Change'<sup>39</sup> identifies that the site falls within a low value landscape area which is not in need of restoration but regeneration.
62. The Council accepted during the Inquiry that the effects of the revised master plan would fall from the Moderate impact initially found to Minor Moderate. This is below the level of significant impacts but is also akin to the level of effect resulting from the existing incongruous site in the landscape. In short, the effect of the proposed development would be no worse than that of the existing site which has no landscape planting mitigation. Therefore, there is no material impact in landscape terms.
63. The closest public views of the site are from 0.5km away and, even at that distance, the site is evidently developed by large engineered structures within a secured compound<sup>40</sup>. The principal visual impact is from the South where there is potential for extensive tree screening to mitigate visual effects. This was accepted by the Council during the Inquiry. Any such tree planting would increase in effect with maturity.
64. From the East, the existing site is clearly visible as an incongruous feature in the landscape. In contrast, the proposed housing would be screened behind extensive tree planting. The Council's position that the change would have a high-moderate adverse effect is, therefore, implausible when the baseline position is taken into account and the potential mitigation considered.
65. If the appeal is not successful, the appellant has sought advice regarding alternative uses<sup>41</sup>. It is likely that use would be made of the existing licence on

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<sup>38</sup> Central Rivers Initiative, Landscape Character and Opportunities for Landscape Enhancement, September 2014

<sup>39</sup> Staffordshire County Council, 2000

<sup>40</sup> Photoviewpoints contained within Volume 2: Appendices, Plans and Photoviewpoints to Proof of Evidence of Jonathan Berry

<sup>41</sup> Letter from CBRE contained at Appendix SAT9 in Proof of Evidence of Shaun Taylor

the site to store explosive material and that the existing buildings and hard surfacing would be extended under permitted development rights to maximise their use<sup>42</sup>. This would result in a significant increase in the size of the buildings, removal of some of the grass bunds surrounding and an extensive increase in hard standing to accommodate heavy goods vehicles. It is also said that the number of heavy goods vehicles attracted to the site would significantly increase. This would result in significant additional visual impact without any opportunity for the Council to secure landscaping or other mitigation. This is said to be the appellant's fallback position which, it is suggested, would be implemented if the appeal fails.

### **The Case for the Council**

66. The Council adopted the LP as recently as February 2015. The development would be in conflict with the LP and there are no material considerations that indicate that a contrary decision should be taken. Policy CP1 is clear that development will be prioritised in the most sustainable settlements. The site falls within the 'other rural area' at the bottom of the hierarchy, the least accessible and sustainable location. The scale of development proposed is out of kilter with this location within the hierarchy. Development should be located within existing built-up areas and not the countryside. This is notwithstanding that the site is previously developed.
67. The Council's approach to calculating housing land supply is fully in accordance with that of the Examining Inspector's in respect to the LP. There is no justification for altering the approach endorsed through the examination process. Although there has been a further year of undersupply since adoption of the LP, this situation is not materially different. The requirement figure is firmly established by the LP and the supply figure has been fully justified and supported by site specific evidence. A five year housing land supply is demonstrated.
68. The location of the site is remote from services and facilities, which would not be easily accessible to all future residents by sustainable means. Insufficient visibility is available at the junction of Fisherwick Road/U3067. There are no facilities proposed within the development and the scope for local employment is limited. Access to the nearest settlement by walking or cycling is extremely poor, even with the suggested improvements. Services and facilities are too far away and there is no viable route for accessing them by sustainable means.
69. The site is isolated in open countryside and the development would not relate well to the nearest settlement in landscape terms. The existing site, although incongruous, has blended into the landscape over a period of time. The proposed development would be harmful in both landscape and visual terms regardless of the proposed mitigation measures, such as tree screening. The fall-back position is unconvincing and unproven.

### ***Housing Land Supply***

70. The Examining Inspector for the LP endorsed the Council's approach to calculating housing land supply. The early years after adoption of an LP are critical and it must be given the opportunity to succeed. Considerable weight

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<sup>42</sup> Schedule 2, Part 7, Class J of the GPDO 2015

should be attached to housing figures that have passed through the examination process and been adopted.

### *Addressing shortfall*

71. Use of the 'Liverpool approach' in addressing the Council's shortfall in housing delivery was expressly considered and endorsed by the Examining Inspector for the LP, notwithstanding advice in the PPG<sup>43</sup>. It was reasoned that the Liverpool approach was more appropriate in the case of Lichfield having regard to past rates of delivery in the district, including prior to the recession, and the requirement for completions far in excess of the highest levels ever achieved in the district if the Sedgefield approach were adopted. It was highlighted that plans are required to be realistic as well as aspirational<sup>44</sup> and that the plan would likely fail if the Sedgefield approach was used.
72. It is suggested that there has been no material change in circumstances since this time to give weight to any alternative approach. The Liverpool approach is particularly appropriate given the reliance of the Council on a large number of large SDA's which take time to deliver. There are a number of large strategic sites in the pipeline that will see a bulge in housing delivery. This does not indicate that Sedgefield should now be applied as delivery will be challenging even with Liverpool figures in place. The Sedgefield approach would result in an unachievable inflated requirement for the first 5 years. The 'Liverpool approach' is an entirely reasonable and sound approach in the circumstances and the PPG provides scope for consideration of individual circumstances.
73. It is noted that one additional year's under supply has now resulted but this does not alter the overall conclusion reached by the Examining Inspector that Sedgefield figures could not be realistically delivered.

### *Buffer*

74. The Council does not consider that an additional year's undersupply (2014/15) since the adoption of the LP leads to persistent under delivery in the terms of the Framework so that a 20% buffer should be applied. There is no defined period over which to assess this matter but the Examining Inspector was clear that there was no persistent under delivery at the time of examining the LP. Furthermore, the PPG advises that the assessment of a local delivery record is likely to be more robust if a longer term view is taken, since this is likely to take account of the peaks and troughs of the housing market cycle<sup>45</sup>. In examining the LP, the Inspector looked back beyond 2008, noting that the Council had achieved its requirement in 7 out of the 11 years<sup>46</sup> considered.
75. The Council explain that prior to 2008 it demonstrated a good record of delivery and that factors such as the recession, constraints on sites in the emerging LP (which is now adopted) and the uncertainty resulting from the plan making process including subsequent challenges have had an adverse effect on delivery. Under these circumstances, it is suggested that a 5% buffer is appropriate.

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<sup>43</sup> Paragraphs 210-213 of Inspector's Report (Appendix 3 of Proof of Evidence of Melissa Kurihara)

<sup>44</sup> Paragraph 154 of the Framework

<sup>45</sup> PPG Reference ID: 3-035-20140306

<sup>46</sup> Paragraph 214 of Report to Lichfield District Council (16 January 2015)

76. Having regard to the Secretary of State's decision in Gresty Lane, Crewe<sup>47</sup> it is clear that the buffer should only apply to the base requirement for housing and not to any past shortfall in provision.

*Supply*

77. The Council relies on the detailed assessment of housing supply contained within the SHLAA and has applied generic build-out rates and lead-in times unless specific evidence is available which allows a more accurate prediction. This is the case in respect of 4 sites disputed by the appellant:

SHLAA Ref. 89 & 90: Walsall Road & Limburg Avenue, Hallam Park

78. Although no planning permission existed on this site when the Inquiry opened, full planning permission has now been granted. As such, there is no reason why the site could not deliver the expected 25 dwellings during 2016/17 and continue in line with the Council's trajectory thereafter<sup>48</sup>, notwithstanding the need to deal with conditions and clear the site. Although there is no written evidence from the developer to support an intention to commence this year, the Council has received verbal indications that this is the case and the grant of planning permission indicates progress.

SHLAA Ref. 125 & 408: East of Lichfield (Streethay) SDA

79. The site has outline planning permission for 750 dwellings, with two reserved matters approvals, one of which provides for 325 dwellings. The appellant notes the outline planning permission was granted in 2014<sup>49</sup> but does not acknowledge the more recent reserved matters approvals. This is evidence that the site is progressing towards delivery. The hearing statement provided by the developer in respect of the LP Examination anticipates completions on site in the first quarter of 2016<sup>50</sup>. This was confirmed more recently in an e-mail to the Council on behalf of the developer dated 3 March 2015<sup>51</sup>. A further e-mail (**Document 19**) sent on behalf of the developer as recently as 11 November 2015 confirms that the anticipated commencement remained unchanged.

80. Although the Council accepts that the delivery of 40 units in this reporting year is optimistic, there is no reason to believe that it cannot be achieved.

SHLAA Ref. 109, 378, 414: South of Lichfield SDA

81. This site has a resolution by the Council to grant outline planning permission subject to a S106. The Council expects this to be completed imminently, at which point outline planning permission can be granted. The hearing statement<sup>52</sup> provided by the developer to the LP Examination suggested an intention to deliver all 450 homes in 5 years, with the first completions expected at the first quarter of 2016. This estimate is amended by an e-mail on behalf of the

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<sup>47</sup> Appeal Ref. APP/R0660/A/13/2209335 (Appendix 8 to Proof of Evidence of Melissa Kurihara)

<sup>48</sup> Appendix C to SHLAA 2015 (P.265)

<sup>49</sup> Table 5.1 - Proof of Evidence of Peter Taylor

<sup>50</sup> Appendix 1 of Council 5 Year Housing Land Supply Rebuttal

<sup>51</sup> Appendix 2 of Council 5 Year Housing Land Supply Rebuttal

<sup>52</sup> Appendix 3 of Council 5 Year Housing Land Supply Rebuttal

developer<sup>53</sup> which suggests that completions are unlikely until 2016/17 and includes the likely rate of completions. These updated completion dates and rates are utilised in the Council's trajectory. Whilst the outline planning permission is not yet in place, this is likely to be imminent. If reserved matters applications follow promptly, there is no reason to believe that the site will not deliver in line with the estimates put forward.

#### SHLAA Ref. 497 & 478: East of Burntwood Bypass SDA

82. Full planning permission has been granted for 375 dwellings and the developer is currently dealing with conditions. Two developers are on site, which is being cleared for development at the current time. There is no reason to doubt the lead-in time adopted by the Council.
83. Generic lead-in times have not been applied to these sites because the Council has used site specific information from the LP Examination and through recent discussions with the developer to apply differing lead-in times. This is an approach supported by PPG, which recognises that the advice of developers and local agents will be important in assessing lead-in times and build-out rates by year<sup>54</sup>. Where such information is available, this is likely to be more reliable than generic figures and is to be favoured.
84. The build-out rates used by the Council are those detailed in the SHLAA 2015<sup>55</sup>. This document, including the generic build-out rates, was verified and endorsed by an industry panel as part of the SHLAA process<sup>56</sup>. Furthermore, they are the same as those endorsed by the Examining Inspector for the LP and are supported by the detailed representations from individual developers<sup>57</sup>. Therefore, the Council maintains a supply of 3,995 dwellings as set out in the SHLAA 2015<sup>58</sup>.
85. The PPG is clear that the examination of Local Plans is intended to ensure that up to date housing requirements and the deliverability of sites to meet a five year supply will have been thoroughly considered and examined prior to adoption in a way that cannot be replicated in the course of determining individual applications and appeals where only the applicant's/appellant's evidence is likely to be presented to contest an authority's position<sup>59</sup>. Significant weight should, therefore, be attached to the housing land supply approach endorsed through this process.
86. On this basis, the Council can demonstrate a 6.43 year housing land supply<sup>60</sup>.

#### ***Location, accessibility and sustainable travel***

87. The development would result in an unacceptable impact on highway safety in the absence of mitigation to deal with substandard visibility at the junction of Fisherwick Road/U3067. There is a clear intensification of use of this junction

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<sup>53</sup> Appendix 2 of Council 5 Year Housing Land Supply Rebuttal

<sup>54</sup> PPG Reference ID: 3-023-20140306

<sup>55</sup> Paragraph 4.19 of the SHLAA 2015

<sup>56</sup> Details at Appendix A of the SHLAA 2015

<sup>57</sup> Appendices to Council 5 Year Housing Land Supply Rebuttal

<sup>58</sup> Table 6.2 of the SHLAA 2015

<sup>59</sup> PPG Reference ID: 3-033-20150327

<sup>60</sup> Paragraph 6.22 and Table 6.3 of SHLAA 2015

- (127% and 83% in the AM and PM peaks) and visibility is substandard by Manual for Streets standards notwithstanding low vehicle speeds.
88. The proposed development would not provide safe and suitable access for all<sup>61</sup>, including disabled people, persons with young children and pushchairs and walkers, other than the more hardy and able. The proposed large scale development would be located in open countryside. There are no amenities within the development and future residents would necessarily rely on the services and facilities provided in Whittington. The scope for local employment is very limited in terms of access by walking and cycling.
89. The distance to amenities in Whittington will inevitably result in a reliance on the private car. The walking distances<sup>62</sup> from the site to a range of amenities within Whittington, including the primary school, pubs, shop, church, village hall and post office are all in excess of the maximum walking distance of 2km recommended in the IHT publication 'Providing for Journeys on Foot' (2000). The nearest bus stop is also in Whittington, also in excess of recommended maximum walking distances.
90. The school, a key facility for future residents is 1.57 miles (2.5km) away, significantly in excess of the recommended maximum. The appellant refers to the Staffordshire County Council Walking Route Assessment Criteria (2014)<sup>63</sup> and suggests that a walking distance of 2 miles is appropriate. However, this document was produced in the County Council's capacity as Local Education Authority and differs from the preferred distance of 600m outlined in the Staffordshire Residential Design Guide (2000). In any case, the proposed walking route does not accord with the wider criteria stipulated by the Walking Route Assessment Criteria, with excessive traffic flows on the route identified by the submitted Transport Assessment (October 2015).
91. The site is too remote from services and facilities to be regarded as having acceptable accessibility for those travelling on foot or by bus and cycling is likely to be a recreational activity in this area rather than being used on a regular basis. The inaccessibility for pedestrians is not simply a matter of distance but of the acceptability of the routes in terms of providing full assured access for all people. The existing route to Whittington is not appropriate for use by up to 180 households and so significant improvements would be necessary.
92. It is not possible to provide a footway along part of the route and this leads to the need for pedestrians to utilise the carriageway. This stretch is characterised by assessed vehicles speeds of 38-42mph<sup>64</sup> and is used by large vehicles including tractors. There are no meaningful step off points from the carriageway that would be suitable for all users, particularly those that do not have an ability to access the towpath. Variable visibility is available and high hedges stand either side of the carriageway. The route might be used by hardy walkers but it is not an appropriate route for most people occupying the development, notwithstanding its rural location.

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<sup>61</sup> As per paragraph 32 of the Framework

<sup>62</sup> Paragraph 6.62 – 6.66 – Proof of Evidence of Geoffrey Evenson

<sup>63</sup> Appendix G of the Transport Assessment

<sup>64</sup> See Transport Assessment (October 2015)

93. The alternative route offered along the towpath is of variable width and quality; it is not intended to be a footpath. It is used as a permissive route only and is not a public right of way; access can be closed at any time and this is demonstrated in closures of other parts of the canal network<sup>65</sup>. The objectives of the Canal and Rivers Trust do not require the towpath be upgraded to the status of a public right of way and the existing access from the public highway is unsuitable in terms of both surfacing and gradient. Furthermore, the e-mail correspondence<sup>66</sup> with the Trust demonstrates reluctance to a suitable all weather surface or lighting. It is also pertinent that the towpath is isolated and lacks natural surveillance. There is no agreement in place and no direct control over the path or any upgrades. The towpath cannot be relied upon as a regular route to the village.
94. The distance involved for cyclists is acceptable to the Council but for the same reasons as above, the route would be unattractive to all but recreational or hardy users.
95. The distance to the nearest bus stop is around 1.4 miles (2.2km), far in excess of the 350m distance sought by the Staffordshire Residential Design Guide. This distance is far too far to encourage modal shift from the private car and there is no dispute that the site cannot itself sustain public transport.
96. The unusual proposals advanced in the submitted Travel Plan are not supported by any identified house builder and there is no indication that any house builder would be willing or able to implement such a plan. No specific targets are contained in the plan to ensure modal shift, nor are there any default measures in the event of the proposed sustainability measures failing. The Travel Plan lacks detail and cannot be relied upon.
97. The levy proposed by the appellant for sustainability measures is no substitute for an appropriately located site. Periodic hire of a minibus and driver is unlikely to meet the day to day needs of individuals within the development. There is no single example of such a scheme ever having been employed elsewhere and there is insufficient information as to how the scheme will be managed and maintained. The appeal lacks evidence that any bus company would be willing to operate the service or that there would be any willingness of future occupants to maintain and utilise the service.
98. The proposed levy is in no way comparable to SuDS maintenance or similar where physical infrastructure is on site from day one. Furthermore, the use of a minibus by an employer where members of staff are starting and finishing on site on a regular pattern is somewhat different to the type of usage now proposed, with residents competing schedules and needs. It is unclear how the proposed measures and levy could be properly secured as part of any planning permission and retained thereafter were it found unnecessary or workable.
99. The proposal will not take place in the most sustainable location in accordance with the LP (Policy CP1); the proposal would promote unsustainable travel behaviour with residents unduly reliant on the private car (Policy CP3) and is not served by an attractive choice of transport modes to provide alternatives (Policy

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<sup>65</sup> Paragraph 6.34 in Proof of Evidence of Geoffrey Evenson

<sup>66</sup> Appendix MM5 – Proof of Evidence of Kevin Riley

CP5); and would be poorly integrated and connected to the closest settlement of Whittington and the services and facilities that it offers (Policy CP10).

### ***Character and appearance***

100. The site lies in open countryside where there is a distinctly rural character. It does not lie within a settlement or adjacent to a settlement. The site is separated from Whittington by agricultural land and is to be regarded as isolated. The site currently has no residential character and relates poorly to the existing settlement pattern in the nearest village. The development would create an isolated housing estate entirely uncharacteristic of the area.
101. Although the existing site with its bunkers and lightning conductors has an effect on landscape character, this has to an extent blended into the landscape owing to the extensive grass bunds surrounding the buildings.
102. The site falls within National Character Area 69: Trent Valley Washlands<sup>67</sup>. The associated Statement of Opportunity suggests that new development will need to be carefully planned and managed to ensure that landscape character and ecosystem services are strengthened.
103. The appellant's evidence underestimates the impacts of the development for the following reasons:
- The site cannot be considered to be on the fringe of Whittington; it is too remote;
  - There are some detracting elements in the existing landscape but these have been overplayed;
  - The scheme fails to reflect the Statement of Opportunity contained in the Council's SPG<sup>68</sup>, which seeks to locate new development within existing settlements;
  - Village expansion is incongruous in the Terrace Alluvial Lowlands character area which tends to comprise nucleated villages. The proposed isolated development would be all the more incongruous;
  - The LVIA<sup>69</sup> does not fully engage with the guidance of GLVIA<sup>70</sup> in terms of the short, medium and long-term effects, concentrating on long term effects;
  - Pre-mitigation impacts are agreed to be moderate adverse and so impacts are greater at the earlier stages of development (construction and completion);
  - Visual effects are greater than anticipated by the appellant;
  - Previous iterations of the master plan would have involved limited reduction of visual effects post-mitigation, though it is accepted that the revised scheme reduces the effect to Minor-Moderate adverse;

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<sup>67</sup> National Character Area Profile, Natural England

<sup>68</sup> 'Planning for Landscape Change', Staffordshire County Council (2000)

<sup>69</sup> Landscape and Visual Impact Assessment (March 2014)

<sup>70</sup> Guidelines for Landscape and Visual Impact Assessment, Third Edition, Landscape Institute and Institute of Environmental Management & Assessment

- Insufficient weight has been given to effects prior to year 15;
- The proposal relies on a substantial screening belt.

104. The proposed fallback position is noted but unconvincing. Much of the proposed fallback would require planning permission (permitted development only allows a small amount of development); the use permitted on the site is restrictive and specialist; and there is no convincing evidence that it is realistic for the site owner to seek to intensify the use of the appeal site. Any fallback position pursued under these circumstances would in any event involve far less development than the appeal proposal. No details of any proposed scheme were provided for comparison, there is no proven need for the envisaged use and its viability is unclear, notwithstanding the appellant's generic evidence<sup>71</sup>. The fallback position should attract limited weight.

### **The Case for Interested Parties**

105. Objections were presented to the Inquiry by Geoffrey Hanson, a local resident. He raised concern regarding the distance from the site to the village of Whittington, including any public transport. It was asserted that people would not walk the distance involved and that approximately 200 car journeys would be generated every day. It was noted that heavy goods vehicles currently use the route to the site and that this causes conflict with cars. There is an existing traffic problem in Whittington, especially near the school. Congestion is a problem on Main Street, near to the village shops. The Canal towpath is in very poor condition and would need significant works.
106. John Cannon of Whittington Parish Council also attended the Inquiry but chose not to speak in favour of submitting a leaflet containing the results of a village survey 'Developers' Day, Your Comments & Feedback' (**Document 7**).

### **Written Representations**

107. A Proof of Evidence was submitted on behalf of Staffordshire County Council in its capacity as Local Education Authority. This set out detailed justification supporting the need for both primary and secondary education contributions to mitigate the effect of the development on local schools and ensure sufficient capacity. However, the evidence was not presented to the Inquiry following agreement between the parties that only the primary education contribution was necessary for increasing capacity at Whittington Primary School. The Council chose not to pursue the secondary education contribution.
108. At the application stage, a range of letters were received from statutory and other consultees, as well as 46 letters of objection from local people raising a range of concerns which are summarised within the committee report<sup>72</sup>. The main concerns include the prevailing policy context, distance of the site from the village in both environmental and social cohesion terms, highway safety and congestion, loss of employment land, lack of capacity within local infrastructure and flooding.

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<sup>71</sup> Letter from CBRE contained at Appendix SAT9 in Proof of Evidence of Shaun Taylor

<sup>72</sup> Report and letters included in appeal questionnaire documentation

## Conditions and Obligations

109. A list of 15 conditions is proposed by the Council in the event that planning permission is granted<sup>73</sup>. These were discussed during the Inquiry and agreed by the appellant subject to the relevant plans being specified in conditions 2 and 9. I shall return to this matter later in the report.
110. A Unilateral Undertaking has been submitted by the appellant to secure the following planning obligations:
- £765,497 'Primary Education Contribution' to facilitate an increase in the number of teaching rooms at Whittington Primary School;
  - £128,744 'Leisure Contribution' towards the redevelopment and extension of Friary Grange Leisure Centre to provide an additional swimming pool and sports hall;
  - Provision of open space within the development on the basis of 1.4ha per predicted 100 population (to be established by the eventual Reserved Matters Approval);
  - Travel Plan measures, including annual performance reports, a community minibus, appointment of a Travel Plan management company, provisions for a service charge to fund sustainable travel measures identified within the Travel Plan and a sum of £6,300 for the monitoring and review of the Travel Plan.
  - 25% affordable housing provision; and
  - £5,000 'Traffic Regulation Order Contribution' to fund the imposition of a TRO to control parking at the junction of Church Street/Fisherwick Road/Main Street/Common Lane and to control parking and stopping outside Whittington Primary School.
111. A Community Infrastructure Levy (CIL) Regulations Compliance Statement is provided<sup>74</sup> which seeks to demonstrate that the obligations accord with the tests set out at Regulation 122 of the CIL Regulations 2010 and paragraph 204 of the Framework. These documents also demonstrate that no more than 5 obligations would be in place to fund any one of the projects identified so as to prevent the obligations being taken into account in accordance with CIL Regulation 123. Detailed evidence provided from various consultees to the planning application seeks to justify the obligations<sup>75</sup>. The submitted obligations are a material consideration which I consider in more detail below.

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<sup>73</sup> Contained in the appeal submissions

<sup>74</sup> Document 24 and Appendix 5 from Proof of Evidence of Susan Hodgkinson

<sup>75</sup> Contained within the appeal questionnaire documentation

## **Inspector's Conclusions**

*[Numbers in square brackets refer to previous paragraphs above]*

112. The main considerations in this case are:

- whether the Council can demonstrate a deliverable five year housing land supply;
- whether the site is appropriately located in terms of sustainable travel objectives, with particular regard to the pedestrian route to Whittington;
- the effect on the character and appearance of the area; and
- if the Council cannot demonstrate a deliverable five year housing land supply, whether any adverse impacts arising from the development would significantly and demonstrably outweigh the benefits.

### ***Housing Land Supply***

113. Paragraph 47 of the Framework requires that local planning authorities should identify and update annually a supply of specific deliverable sites sufficient to provide five years worth of housing against their housing requirements. Whether such a supply exists is a matter of dispute between the parties. The Council suggests that a supply of 6.43 years can be demonstrated [86] and the appellant just 4.73 years at best [26], highlighting that assumptions within the calculations could significantly reduce this figure. The appellant's figure was amended to 4.85 years at best during the Inquiry to reflect a concession in respect of supply [26].

114. The Council has a recently adopted Local Plan, the Lichfield District Local Plan Strategy 2008 - 2029 (LP) (adopted 17 February 2015). It is agreed between the parties that this provides a robust housing requirement figure of 10,030 dwellings for the plan period, equating to 478 dwellings per annum (dpa) [19].

### ***Addressing shortfall***

115. Since the beginning of the plan period (2008), the Council has yet to deliver this annual requirement and has accumulated a shortfall of 1,665 dwellings. This is set out within the Strategic Housing Land Availability Assessment 2015 (SHLAA) (October 2015) and is agreed by the appellant. As such, there is a need for this shortfall to be met in addition to the ongoing requirement for housing in the area.

116. There are two commonly used methods for addressing an accumulated shortfall. The 'Liverpool approach' apportions the shortfall across the remaining years of the plan period, whilst the 'Sedgefield approach' seeks to make up the shortfall during the next five years. The Planning Practice Guidance (PPG) advocates the Sedgefield approach [27] where possible and this is consistent with the objectives of the Framework to boost significantly the supply of housing.

117. However, this was a matter considered by the Inspector examining the LP, who found that the Liverpool approach was more appropriate in the case of Lichfield, notwithstanding advice in the PPG. This conclusion was reached having regard to past rates of delivery in the district, including prior to the recession, and the requirement for completions far in excess of the highest levels ever

achieved in the district if the Sedgefield approach were adopted. It was highlighted that plans are required to be realistic as well as aspirational and that the plan would likely fail if the Sedgefield approach was used [28].

118. If I were to determine that the Sedgefield approach was to be favoured at this stage and the shortfall was apportioned over the current five year period, a requirement of 811 dpa (plus buffer) would need to be achieved consistently for the next 5 years. This would be in excess of the expected requirements considered by the LP Examining Inspector and even further from the maximum delivery rate recorded in the District of 647 dwellings in 2005/6. The Examining Inspector found such figures to be unrealistic and it is clear, therefore, that the requirement arising now would be even less realistic in these terms.
119. I note that the Council's latest housing projections anticipate net delivery exceeding 1,000 dpa, peaking at 1,191 in 2018/19 [29]. It was suggested that such a rate of delivery would be similar, and in fact in excess of, the peak Sedgefield figures (approaching 1,000) discounted by the LP Examining Inspector as unrealistic. The implication was made that if such figures could be relied upon, there is no reason not to use the Sedgefield approach in line with PPG.
120. The Council explained that the peak in expected delivery reflected the certainty provided by adoption of the LP, removing constraints from a number of key sites, namely the Strategic Development Allocations (SDA's). Furthermore, I note that this peak is expected to occur in the later part of the five year period, with much lower delivery expected in the early years. This would allow a lead-in time for large sites to begin to deliver. Given that relatively few sites are expected to deliver in significant numbers in the next two years, an inflated requirement is highly unlikely to be met.
121. The significant increase in delivery expected by the Council during the five year period follows discussions between the Council and various developers and is to be welcomed given the significant shortfall in housing provision since 2008. Imposing an alternative strategy to dealing with the accumulated shortfall, in conflict with the approach taken in the recently adopted LP could be regarded as 'moving the goal posts'. This would undermine the LP position without having given it opportunity to deliver the housing numbers it provides for. Whilst the Council's past projections no doubt accounted for the effect of adopting the LP, this was anticipated to occur in 2014 and the later adoption will have prevented housing deliveries, which have been pushed back in the plan period, and increased the cumulative shortfall.
122. The fact that the Council relies on a number of SDA's which typically take a number of years to come forward and deliver supports the use of the Liverpool approach, which aligns with the strategy to deliver higher numbers over a longer period. I do not consider that an expected short term peak in housing delivery rates should influence the overall strategy for delivery. The actual delivery of housing numbers sufficient to meet year on year requirements is yet to be borne out. The appellant highlighted the past unreliability of the Council's housing projections and this makes it all the more important that the housing requirement is soundly based.
123. The LP Examining Inspector considered a range of housing numbers, including a higher requirement, and was informed by input from a range of industry sources. The PPG advises that the examination of Local Plans is intended to

ensure that up to date housing requirements and the deliverability of sites to meet a five year supply will have been thoroughly considered and examined prior to adoption in a way that cannot be replicated in the course of determining individual applications and appeals where only the applicant's/appellant's evidence is likely to be presented to contest an authority's position [85].

124. I attach considerable weight to the requirement in the LP, particularly the use of the Liverpool approach, for the reasons set out above. Although I have had regard to the new evidence provided in this case, namely the increased housing projections published by the Council, I am not persuaded that this justifies deviating from the approach to addressing shortfall adopted within the LP following rigorous examination. Therefore, the shortfall should be apportioned across the remaining plan period, leading to an annual requirement of 597 dwellings.

#### *Buffer*

125. Paragraph 47 of the Framework requires that an additional buffer of 5% be added to this figure (moved forward from later in the plan period) to ensure choice and competition in the market for land. Where there has been a record of persistent under delivery, the buffer should be increased to 20% for the same reason, and to provide a realistic prospect of achieving the planned supply.
126. As set out above, the Council has failed to deliver against its housing requirement during this plan period from 2008 [19]. PPG advises that the assessment of a local delivery record is likely to be more robust if a longer term view is taken, since this is likely to take account of the peaks and troughs of the housing market cycle [74]. In examining the LP, the Inspector looked back beyond 2008, noting that the Council had achieved its requirement in 7 out of the 11 years considered [33]. It was accepted by the appellant that the Council met its housing requirements for the years preceding 2008.
127. Since this time, the SHLAA 2014 Addendum (January 2015) and SHLAA 2015 (October 2015) have been published by the Council. These show a worsened situation and delivery has now fallen significantly and consistently short of the requirement for the past 7 years. Furthermore, the Council's own projections suggest that the requirement will not be met by some margin in this reporting year [32].
128. The Council explain that prior to 2008 it demonstrated a good record of delivery and that factors such as the recession, constraints on sites in the emerging LP (which is now adopted) and the uncertainty resulting from the plan making process including subsequent challenges have had an adverse effect on delivery. I do not doubt that all of these factors have had an influence but it seems to me that there has now been a prolonged period of shortfall and that this trend is set to continue for at least another year. In my view, this now amounts to persistent under delivery.
129. The Framework seeks to boost significantly the supply of housing and this is not being achieved by the Council's continued failure to meet need. The purpose of the buffer is to ensure choice and competition in the market, and where there has been a persistent under delivery, to provide a realistic prospect of achieving the planned supply. Notwithstanding the factors that might have influenced delivery over the past years, it is clear that additional stimulus is necessary to

ensure an increase in delivery. A 20% buffer is, therefore, appropriate in this case.

130. There is dispute between the parties as to whether the buffer should be applied to the housing requirement before or after the shortfall is added. The Council refers to an appeal in Crewe in which the Secretary of State applied an approach whereby the buffer is not applied to the shortfall, raising concern of double counting if it were done in the alternative [76]. However, the appellant drew my attention to numerous appeal decisions where an alternative view was taken, concluding that the shortfall should be added to the overall requirement prior to the application of the buffer [36]. Notwithstanding that the application of the buffer was not expressly considered by the Secretary of State in the latter decisions, the approach is clear from the Inspector's reports and the calculations involved, which he plainly endorsed.
131. There is no guidance within the Framework or PPG that assists with the expected approach. However, it seems to me that the accumulated shortfall is part of the overall requirement for housing, the need for which remains. Given the purpose of the buffer, set out above, I can see no reason why it should not apply to the housing requirement as a whole or why the shortfall should be discounted from attempts to improve the likelihood of delivery. During the Inquiry, the Council's housing land supply witness noted that the buffer brought forward supply from later in the plan period but was unable to explain how 'double counting' might occur by applying the buffer to the shortfall. Therefore, I favour the appellant's approach and agree that the buffer should apply to the housing requirement, inclusive of the past shortfall. This leads to a five year requirement of 3,580 dwellings, equating to 716 dpa.

### *Supply*

132. The SHLAA 2015 sets out assumptions applied by the Council in respect of lead-in times and build out rates where no contrary site specific information is available [37]. The appellant largely accepts these assumptions and questions the apparent lack of application of the generic lead-in times in respect of four major sites, including three SDA's. In these cases, the Council has used site specific information from the LP Examination and through recent discussions with the developer to apply differing lead-in times [78-82]. This is an approach supported by PPG, which recognises that the advice of developers and local agents will be important in assessing lead-in times and build-out rates by year [83]. Where such information is available, this is likely to be more reliable than generic figures and is to be favoured.

### SHLAA Ref. 89 & 90: Walsall Road & Limburg Avenue, Hallam Park

133. Planning permission is in place and the first 25 dwellings are expected to be delivered during 2016/17. Notwithstanding the need to deal with conditions and clear the site, I see no reason why the site could not deliver within this timescale. Although there is no written evidence from the developer to support an intention to commence this year, the Council refers to verbal indications that this is the case and the grant of planning permission represents significant progress [78]. Whilst there has not been a start on site to date, I have seen no evidence to discount the Council's position in respect of the lead-in time for this site and I therefore accept its position.

SHLAA Ref. 125 & 408: East of Lichfield (Streethay) SDA

134. The site has outline planning permission for 750 dwellings, with two reserved matters approvals, one of which provides for 325 dwellings. The appellant notes the outline planning permission was granted in 2014 but does not acknowledge the more recent reserved matters approvals. This is evidence that the site is progressing towards delivery. The Council refers to the hearing statement provided by the developer in respect of the LP Examination which anticipates completions on site in the first quarter of 2016. This was confirmed more recently in an e-mail to the Council on behalf of the developer dated 3 March 2015. During the Inquiry I was passed a further e-mail sent on behalf of the developer as recently as 11 November 2015 which confirmed that the anticipated commencement remained unchanged [79].
135. This site specific information, informed by the developers own intentions, appears to me to be a robust basis on which to base the lead in time. Although the Council accepted that the delivery of 40 units in this reporting year was optimistic, there is no reason to believe that it cannot be achieved based on the information before me.

SHLAA Ref. 109, 378, 414: South of Lichfield SDA

136. This site has a resolution by the Council to grant outline planning permission subject to a S106. The Council expected this to be completed by the end of 2015, at which point outline planning permission was to be granted. The hearing statement provided by the developer to the LP Examination suggested an intention to deliver all 450 homes in 5 years, with the first completions expected at the first quarter of 2016 [81].
137. This estimate is amended by an e-mail on behalf of the developer which suggests that completions are unlikely until 2016/17 and includes the likely rate of completions [81]. These updated completion dates and rates are utilised in the Council's trajectory. Whilst the outline planning permission is not yet in place, indications are that this is likely to be imminent. If reserved matters applications follow promptly, there is no reason to believe that the site will not deliver in line with the estimates put forward. I note that the developer has pushed back its expected delivery rates, but estimates can only ever be approximate and my considerations must be based on the evidence available.

SHLAA Ref. 497 & 478: East of Burntwood Bypass SDA

138. Full planning permission has been granted for 375 dwellings and the developer is currently dealing with conditions. Two developers are on site, which is being cleared for development at the current time [82]. The appellant accepted this position at the Inquiry and agreed that there was no longer any reason to doubt the lead-in time adopted by the Council.
139. The SHLAA 2015 sets out a range of build out rates that will be applied to various scales of development. The appellant questions the assumed build out rate for major sites which, broadly speaking, involves a rate of 50 dwellings per annum, per developer on site. However, the rates are consistent with the findings of the Inspector examining the LP [84], who noted that this rate was demonstrated at East of Rugeley SDA. Furthermore, other developers confirmed during the Examination that more than one developer would be likely to operate

on the other SDA sites, with the potential to deliver up to 150 dpa on each site. Lichfield was identified as an area of high demand for housing where sites are capable of high rates of delivery.

140. The conclusion reached by the Examining Inspector was based on a range of evidence, including input from developers themselves. As noted above, the LP Examination process is one which cannot be replicated in individual appeals, involving evidence from a wide range of participants. Consequently, I attach substantial weight to the build out rates endorsed through this process.
141. I acknowledge that the East of Rugeley SDA is the only site to have delivered close to the identified rate but this is the only SDA that has come forward ahead of the adoption of the LP. Now that an up to date LP is in place and planning constraints have been removed from other allocations, it can be expected that further sites will progress. There is no reason to doubt, given the past performance at Rugeley, that sites will not achieve similar delivery rates.
142. Although the build out rates expected by the Council are considered to be optimistic by the appellant, I have seen no evidential basis on which to discount the figure. The SHLAA is put before a development industry panel prior to publication in order to test the information and assumptions contained within, including assumed build out rates [84]. The SHLAA 2015 was endorsed by the panel according to the Council and this is not disputed by the appellant. This adds significant weight to the most recent SHLAA.
143. The sensitivity test proposed by the appellant would reduce the build out rate across all major sites to 40 dpa. This figure appears arbitrary, based on the appellant's subjective view, rather than any evidential basis such as build out rates for other sites in the district. As such, I see no reason to impose an alternative build out rate to those found sound during the Examination of the LP and subsequently adopted by the Council in producing its housing trajectory. This is particularly so as the detailed evidence provided by the Council in respect of the disputed major sites continues to support the build out rates anticipated [78-82]. Whilst I note that the Council's trajectory relies upon a number of major developments coming forward simultaneously, it has already been noted that the housing market is strong in the area and I have no reason to doubt that multiple sites could deliver.
144. Having favoured the Council's position in respect of lead-in times and build out rates on the disputed sites, I have no reason to discount the supply figure of 3,995 dwellings offered by the Council [84].

*Five year supply position*

145. Setting this supply against the requirement established above (716 dpa) for the next five years, the Council can currently demonstrate a 5.6 year housing land supply (3,995/716).
146. In these circumstances, paragraphs 49 and 14 of the Framework are not engaged and the relevant policies of the LP can be regarded as up to date.

***Location, accessibility and sustainable travel***

147. The development plan seeks to promote sustainable patterns of development, seeking to direct development to the most accessible and sustainable locations in

the district in accordance with the settlement hierarchy [7-12]. The proposed development would make use of previously developed land in accordance with Policy CP1 of the LP and deliver housing in accordance with its objective. However, the site is not located within an established settlement and is agreed to fall in open countryside. Whittington, a Key Rural Settlement, is the closest village to the site but the site cannot be said to be part of the village given its physical separation. It is clear, therefore, that the site falls at the bottom end of the hierarchy, forming one of the least accessible and sustainable locations in the district.

148. That said, if the development were found to be acceptable in all other respects, it would contribute to the rural housing need of the area and potentially to the nearest settlement of Whittington. Policy Whit4 of the LP expects the village to accommodate between 35-110 homes. In addition, Policy CP6 requires that 440 further dwellings be apportioned across the rural area during the plan period, which may include Whittington. This apportionment is to be determined through the plan making process [10] but that does not alter the fact that the need exists now or the Framework's objective to boost significantly the supply of housing. In terms of accessibility and relative sustainability, the proposal must be considered against the more detailed criteria set out in Policies CP3, CP5, ST1 and BE1 of the LP [12].
149. The site is located around 1.4 miles (2.2km) from the centre of Whittington, which offers a range of services and facilities and an hourly bus service to higher order settlements. The level of services and facilities available in Whittington is reflected in its designation as a Key Rural Settlement and this role is expected to be maintained and enhanced during the plan period. As set out above, significant housing growth is expected within and adjacent to the village. However, the site cannot be said to be adjacent to the village. It is in fact both visually and physically separated with poor transport and pedestrian links at the present time, despite there being a sizeable business adjacent which the site is currently associated with.
150. The appellant identifies that the site is located around 1.4 miles (2.2km) from the services and facilities of Whittington, a walking journey time of around 30 minutes [44]. The Council's highways witness details the walking distances [89] from the site to a range of amenities within Whittington, including the primary school, pubs, shop, church, village hall and post office, all of which exceed the maximum walking distance of 2km recommended in the IHT publication 'Providing for Journeys on Foot' (2000). The nearest bus stop is also in Whittington, again in excess of recommended maximum walking distances.
151. The school, a key facility for future residents is 1.57 miles (2.5km) away, significantly in excess of the recommended maximum. The appellant refers to the Staffordshire County Council Walking Route Assessment Criteria (2014) [90] and suggests that a walking distance of 2 miles is appropriate. However, I was told that this document was produced in the County Council's capacity as Local Education Authority and differs from the preferred distance of 600m outlined in the Staffordshire Residential Design Guide (2000). Whilst it should be expected that County Council documents will be compatible, I find the IHT guidelines a more reliable and commonly used benchmark. In any case, the proposed walking route did not appear to accord with the wider criteria stipulated by the

Walking Route Assessment Criteria, with excessive traffic flows on the route identified by the submitted Transport Assessment (October 2015).

152. The appellant recognises the need to ensure sustainable modes of travel as an important facet of sustainability, suggesting that appropriate means could be employed to minimise the reliance of future residents on the private car. Key to this are proposed improvements to the pedestrian route between the site and the village to ensure safe and suitable access is achieved for all people. Whilst I consider that the distance involved is likely to reduce the likelihood of people walking to local facilities, the quality and availability of the route will also have a significant impact on the likely usage.
153. The parties agree that appropriate improvements could be made along much of the identified route to the village but there is disagreement regarding the reliance on a section of the Coventry Canal towpath or carriageway (with no footpath) along Fisherwick Road. The width and nature of Fisherwick Road, a rural country road with hedgerows close on either side for a 380m stretch, is such that the provision of a footway is impractical. Therefore, it is suggested that access to the canal towpath be provided close to the junction between Fisherwick Road and the U3067.
154. This would require pedestrians to cross Fisherwick Road and negotiate a steep ramp from the carriageway to the level of the towpath at both ends of the route. The appellant suggests that improvements could be made to accessibility but recognised that it was unlikely that a DDA compliant access could be achieved [48], limiting its usability for many people including the disabled or people with young children or prams. The towpath is currently an informal and unmade route close to the edge of the canal. The appellant proposes to upgrade the surface and cited ongoing discussions with the Canal and River Trust (the Trust), who are responsible for the towpath.
155. It is clear that discussions have taken place and that the Trust is open to improvement [47], but the extent of any upgrading has not been agreed and a number of significant questions remain, of particular concern, the permissible surface material and lack of lighting. The towpath is promoted as the main route for most people occupying the site and it must therefore be appropriate for year round use if people are to be encouraged to utilise it on a regular basis. The Trust has expressed a reluctance to allow a bound surface material despite the recognised lack of durability of a crushed stone surface, its preference in this rural area. Furthermore, it is suggested that lighting is unlikely to be appropriate for both character and ecology reasons.
156. Pedestrians and cyclists will need to access the services and facilities offered by Whittington throughout the day and year if sustainable modes of travel are to be attractive. The use of a crushed stone surface is prone to pooling in inclement weather and its lack of durability could lead to it becoming an undesirable option for pedestrians and cyclists. This is particularly likely in the winter months when wet weather is common and daylight hours reduced. The proximity of the path, which would necessarily be very close to the edge of the canal, would also be a hazard to pedestrians if the path were to remain unlit. Whilst the risk may be small, I am mindful that the route is expected to provide access to the local primary school for children and this seems to me to be an undesirable prospect.

157. In addition to these concerns, the route is highly secluded, set behind an established hedgerow for the majority of its length with little or no surveillance from nearby houses, again undesirable for a route expected to serve 180 dwellings with its range of residents, including vulnerable people such as children.
158. It was also highlighted by the Council that the path is a permissive route only with no formal public right of way [93]. Whilst I have had regard to the Trust Settlement (**Document 17**) provided during the Inquiry and the objectives of the Trust to act in the public interest, there remains nothing to prevent closure of the path for legitimate reasons of maintenance or repair for example, particularly pertinent given the surface material favoured by the Trust. Whilst such instances are unlikely to be common, with no record of closures in this area since the Trusts' records began in 2006 [47], there would be no obligation on the Trust to provide an alternative route. Therefore, the opportunities for walking to Whittington could be significantly compromised. For all of these reasons, I am not persuaded that the canal towpath could provide a reliable, safe and convenient pedestrian or cycle route between the site and the village.
159. The only alternative to use of the towpath is to walk on the carriageway along Fisherwick Road for a stretch of around 380m. Whilst inter-visibility between vehicles and pedestrians is good for much of the stretch, the road is not entirely straight and long views are not always possible. The hedgerow is not hard up against the carriageway for the entire length of this stretch of road but I do not consider that the limited opportunities along the route to step off the carriageway would be sufficient to be reliable in the event that pedestrians need refuge from passing traffic. This is notwithstanding that traffic flows are relatively low according to the submitted Transport Assessment.
160. This is not least because the verge is narrow and raised with a hedgerow in close proximity. This would likely make it difficult for most people to easily step out of the way, but I am also mindful that this route is offered as the alternative to the towpath, which I have already established is not suitable for day to day use for many people. Those very people, perhaps with restricted mobility or pushchairs would be those most affected by the restricted step off points from the carriageway.
161. Should two vehicles pass one another, there would be very limited space or opportunity for people to move out of the way, if the opportunity were available at all. The road is rural in nature, with a number of farms nearby and the potential for large vehicles associated with the existing commercial use adjacent the site, and this further heightens my concerns in these respects. I also note that the recorded vehicle speeds were commonly in excess of the 30mph speed limit [92] on the route and I am not convinced that the proposed signing and lining scheme would be effective under the circumstances described.
162. There are a number of off-road public rights of way in the surrounding countryside but these are not realistic options for day to day travel into Whittington given their largely unmade surface and the significantly longer distance of the routes. The appellant suggested that people could take equipment such as torches to improve the ease of their journey but this does not, in my view, offer a reasonable alternative to a safe and usable walking route. The need for such measures is likely to discourage people from walking or

cycling. Whilst the proposed improvements would be likely to improve opportunities for leisure walking and access to the existing business, it would not provide a safe and convenient walking and cycling route to the village for all future residents of the development.

163. The submitted Travel Plan (October 2015) seeks to maximise the opportunity for sustainable travel and reduce reliance on private vehicles. It sets out a range of measures from bicycle storage at individual properties and communal areas, to improvements along the pedestrian/cycle routes. However, having determined that the proposed routes do not provide a viable walking/cycling option for future residents, even with improvement, these measures are not likely to be effective.
164. Other proposed measures include electric car charging points at individual properties, funding of capital costs for a community minibus and that an ongoing revenue stream is secured through an annual charge on individual property owners. A welcome pack would also be used to educate new occupiers of the opportunities for sustainable travel in the area.
165. I was told that the Travel Plan was in draft form and that it would need to be updated and refined once the development had been carried out and occupiers identified. I understand the difficulties in outlining specific measures at this early stage but the document contains no targets or means by which to deal with any underperformance in achieving modal shift. In its current form, I am not persuaded that the document would be reliable and effective, but in any case, it is unlikely that a Travel Plan could ever be truly effective on a site which provides no services and facilities and which is so remote from the nearest settlement.
166. The reality of the site's location is that there are very few realistic sustainable travel options given the inability to access day to day services by walking and cycling. I have had regard to the proposed measures outlined in the Transport Assessment and the Travel Plan but these are not in my view sufficient to overcome the fundamental lack of sustainability arising from the location of the site.
167. The distance from Whittington, which is itself a rural settlement with a level of services and facilities commensurate with its role as a Key Rural Settlement, is likely to dissuade walking and cycling. This is particularly so given the lack of a suitable and safe off road route for all people. Whilst the village is served by an hourly bus service, I consider it unlikely that people will travel to the bus stop only to continue their journey using public transport. It is far more likely that people will simply utilise private vehicles to access the services and facilities of higher order settlements, perhaps making use of the local facilities for top-up shopping from time to time.
168. Many journeys from the site would likely be relatively short [44], to access the school for example, but these journeys would be regular and numerous given the scale of the development. Furthermore, many journeys will be much longer, seeking to access employment and higher order settlements.
169. Even if a community minibus were provided and a charge secured indefinitely against future residents for the purposes of promoting and providing sustainable travel I find it unlikely that residents would utilise an ad-hoc service in preference to the convenience of their own vehicle, notwithstanding that there will be some who choose to do so or have no alternative. Furthermore, the lack of detail

within the submitted Travel Plan calls into question the effectiveness of any mechanism to secure the charge – no amount or defined purpose is contained within the Travel Plan or Unilateral Undertaking. In my view, the site is simply too distant from the range of services and facilities needed to support sustainable patterns of travel.

170. Following discussions between the parties, there is no longer a dispute that vehicular traffic could access the site without safety or capacity issues for the local highway network. This is subject to mitigation measures at two junctions, the only one in dispute being the need for visibility splay improvements at the junction between Fisherwick Road and U3067. Traffic flows using this junction would be low, particularly traffic from the non-through route to the left on approach to the junction from the site [43].
171. Whilst this is so, visibility is significantly impaired at this junction by the fence and planting adjacent. The marked increase in traffic approaching the junction as a result of the development (roughly double according to the TA) [87] would significantly intensify usage and risk, necessitating improvement in my view. However, there is no dispute that a suitable junction improvement could be achieved and I am satisfied that this could be secured by condition if planning permission were to be granted.
172. Paragraph 34 of the Framework seeks to ensure that developments which would generate significant movement are located where the need to travel will be minimised and the use of sustainable transport modes can be maximised. Whilst the nature and location of the site must also be considered, noting that such opportunities are likely to be reduced in rural areas, the appeal site is at odds with this objective even by rural standards.
173. I have had regard to the other sites referenced by the appellant [23] where planning permission has been granted for residential development on brownfield sites some distance from the nearest settlement, including one where the use of a towpath was endorsed. However, all of these sites appear closer to the nearest settlement and/or associated services and facilities. Furthermore, it appears that suitable walking routes were available in these cases. For these reasons, I do not consider them to be comparable.
174. My attention was drawn to the Whittington Barracks site, now the Defence Medical Services Facility, which was noted to be a similar distance away from the centre of the village as the appeal site. The Council highlighted that a footpath was available between the two and that, at least historically, it provided a range of services to its residents within the site. It is also many residents' place of employment, requiring comparatively less travel. The site is also a long standing specialist military asset and I do not consider that it adds weight to the current proposal which must be considered in light of current policy and circumstances.
175. The appellant highlighted that the site has planning permission for a B8 use and that this could be significantly intensified through extensions to the buildings and improvement of the access roads using permitted development rights [65]. This fallback position is noted and I see no reason why it is not a realistic prospect, particularly given the appellants expressed intention to do so. That said, I have not been provided with any detailed information as to the likely increase in traffic that would result, or the type and size of vehicles anticipated. Whilst an increase in large vehicles passing through the village is no doubt

undesirable to local residents, I do not consider that the impacts would be so great, based on the limited information available, as to outweigh the significant harm that I have otherwise identified in respect of this issue.

176. Overall, the site is not an appropriate location for residential development given its lack of sustainability and accessibility in the terms of Policy CP1 of the LP. I note that the rural site allocations outlined by the policy are yet to come forward, but that does not negate the need for site specific consideration of sustainability credentials. In this case, future residents would become unacceptably reliant on the use of private cars, failing to contribute to objectives within the Framework to promote sustainable patterns of development and means of travel so as to combat climate change, reduce green house gases and achieve sustainable development. The development is not of a scale and nature appropriate to its locality, nor would it reduce the overall need to travel, whilst optimising choice of sustainable modes of travel, particularly walking, cycling and public transport. Therefore, it would be in conflict with Policies CP5, ST1 and BE1 of the LP.

### ***Character and appearance***

177. The site was designed for the storage of explosives and continues to be used for the storage of components used in the manufacture of sporting ammunition. The buildings and associated infrastructure are utilitarian in appearance and have clearly been designed with their function in mind [5].
178. The Council accept that the earth bunds, lightning rods and fencing are incongruous within the landscape but suggest that their prominence is reduced given the grassed nature of the bunds, which effectively hide the magazines [101]. While the bunds are, overall, beneficial in their screening effect they are undoubtedly incongruous manmade structures which I found to be highly prominent, along with the other site infrastructure, on views from the railway bridge to the south and from the east in particular. This is the baseline against which potential impacts of the development should be considered.
179. The site has been considered against various national and local landscape character assessments [56-60, 102-103] which provide a broad sense of the general landscape character in the area. However, neither party suggests that the site, in its current form, fits comfortably within this wider scale landscape character. Nor is the site or the immediate area surrounding it said to offer any particular physical features of merit or that could be strongly associated with the wider character areas. This is notwithstanding the parties' agreement that Whittington could be described as a nucleated settlement.
180. In short, the site and surrounding area are not good examples of the positive attributes identified within the wider area and in fact sit firmly within a degraded landscape that is noted to be in need of regeneration. That does not alter the fact the area maintains a rural character with some intrinsic value, but it cannot be said to be anything other than ordinary, noted in the County Council's document 'Planning for Landscape Change' to be of low landscape value [61]. The site does not fall within any national or local landscape designation. Furthermore, it was accepted by the Council that the landscape could not be considered a 'valued landscape' in the terms of paragraph 109 of the Framework [17].

181. The incongruous landscape effect of the existing site and the influence of other urban features, such as the Lyalvale building, the west coast mainline, associated embankments and bridge and the presence of a commercial garage and large solar arrays all detract from the rural character of the countryside and diminish its quality. This increases the capacity for change in the landscape. The Council accepts that this is a landscape that has suffered a loss of identity and a decline in its character which requires regeneration to redefine it and make it more resilient to further change.
182. Using the criteria contained within GLVIA3, it is agreed between the parties that the landscape has a medium sensitivity, indicating that it is of no more than local importance. The landscape contains some characteristic features and possesses intrinsic rural character. However, noting that the site and its immediate surroundings present no particular quality or distinctiveness, and the presence of incongruous features, this seems to me to be an appropriate assessment.
183. The Council go on to consider the magnitude of change to be medium but notes that the visibility of the site is to some extent contained. This view is shared by the appellant who notes a localised magnitude of change. This reflects the relatively short views of the site from the surrounding landscape, many of which are illustrated in the Landscape and Visual Impact Assessment (LVIA) (March 2014) and the subsequent visualisations and photographs contained within the evidence of Mr Berry and Mr Coe. Features such as the raised bridge over the west coast mainline and associated embankments serve to limit views from Whittington and Fisherwick, as do the woodland copses around Lyalvale and along the footpaths to the north. There is, however, no dispute that the introduction of 180 dwellings would change the character of the landscape.
184. The parties take a different view on the significance of the effect. The appellant suggests a Moderate Adverse effect at completion, reducing to Minor Adverse to Neutral after proposed woodland screening has become established. The Council conclude a Moderate Adverse effect on completion that would remain unchanged after 15 years, despite the proposed landscaping according to Mr Coe's evidence. It was, however, recognised that the revised indicative master plan, reducing the amount of development in the south east corner of the site and increasing landscape buffer planting, had improved the likely effectiveness of the proposed mitigation.
185. It was also accepted by Mr Coe during cross examination that a suitable landscape strategy could ensure appropriate screening of the development, so as to reduce its significance of effect to Minor-Moderate adverse [103]. Therefore, it is pertinent that landscaping remains a reserved matter, and that detailed landscaping proposals could be considered at the reserved matters stage. It should also be noted that the existing site is accepted to have an adverse landscape and visual effects.
186. The site is previously developed land and is incongruous within the landscape, detracting from the wider landscape character. Proposals to significantly screen a development or hide it from view are often inappropriate in landscape terms, but in this case, the introduction of woodland blocks are encouraged in the local landscape character assessments [59]. Given that this would contribute to the regeneration of the landscape, reflecting the wider character area objectives,

such an approach can be seen as preferable to the existing situation where the landscaping bunds and other site infrastructure are entirely alien and highly visible in the landscape.

187. Although limited assessment of construction or medium term effects has been presented, it is agreed between the parties that a Moderate Adverse effect would result immediately post completion. Construction effects would be temporary and it seems to me that immediately post completion represents the worst case scenario, when the development would be present but landscaping yet to establish. I have no reason to take a different view that the landscape effects would be Moderate Adverse at this time that would detract from the character of the area.
188. However, there seems to me to be no doubt that the visual impact would reduce over time. Subject to an appropriate landscape strategy, the residual effects would become Minor when the benefits of landscape screening are properly considered. This minor harm to the landscape must be compared against the existing situation, which is also a negative feature. For these reasons, I do not consider that the development would materially harm landscape character when a long-term view is taken.
189. In terms of visual effects, the parties take a different view as to the sensitivity of various receptors, the magnitude of effect and the overall level of effect. The Council suggests that residential occupiers and leisure walkers are likely to be highly sensitive and I agree with this as a general concept. However, the Council appears to base its overall assessment as to the level of effect on the landscaping shown in the indicative master plan. It has been established that there is scope for greatly improving the landscaping strategy and this mitigation would reduce the effects anticipated by the Council. Furthermore, the Council's assessment attributes little weight to the effect of the existing site on individual receptors. Taking these factors into account, I prefer the appellant's assessment, involving generally lower magnitudes of effect and overall levels of effect, leading to a Minor Adverse to Neutral effect once the woodland buffer planting is established.
190. In considering the proposed development, the Council's Conservation Officer raised no objection, noting that the LVIA produced by the appellant was sound. It was stated that residential development would be highly visible in the short term but woodland planting would mitigate its presence in the rural landscape. This is consistent with the appellant's case and my conclusions above. The appellant's approach has not changed from that considered in the LVIA but the scope for mitigation has been agreed to be greater than shown in the indicative master plan.
191. I note the Council's preference for the expansion of existing settlements to accommodate new development, which is supported by the objectives of the National Character Area Profile. I have also had regard to the availability of alternative sites on the edge of Whittington, identified in the SHLAA. However, I must consider the proposal before me. Whilst the SHLAA sites may be allocated for development at some point in the future, both the Allocations Local Plan and the Neighbourhood Plan are at the very early stages, attracting very little weight at the current time. Therefore, I have considered the proposal on its own merits.
192. Although the development would initially be harmful to landscape character, these impacts would significantly reduce over time so as to become minor by

year 15. The existing site is itself an anomaly in the landscape and the proposed woodland planting offers an opportunity for landscape regeneration in an area noted to be in need of such intervention.

193. For all of these reasons, the development would not materially harm the character and appearance of the area. As such, I find no conflict with Policies CP1, CP3, Core Policy 13, Core Policy 14, NR1 or BE1 of the LP, which amongst other things, seek to protect and enhance the character and distinctiveness of the natural environment; protect the countryside, as a valued asset; and secure appropriate hard and soft landscaping to ensure high quality development.

### ***Other Matters***

194. Notwithstanding my findings in relation to the Council's housing land supply position, I note that the Council has a significant need for affordable housing and that it is failing to meet this need year on year. The proposed development would provide 25% affordable housing, equating to 45 units out of 180. This would be a significant contribution towards meeting the identified, and undisputed, need in the district. I attach this benefit significant weight but it is not sufficient to outweigh the harm that I have identified in respect of the second main issue and the inherently unsustainable nature of the proposal.

195. I have had regard to the other benefits outlined by the appellant, including potential ecological enhancements; use of renewable energy and energy efficiency technology; economic gains during construction, increased population and local expenditure and payments to the Council through the New Homes Bonus but, even cumulatively, these matters do not outweigh the harm identified and the conflict with the development plan.

196. During the Inquiry, the appellant drew my attention to a Government consultation (**document 25**) that supports the use of brownfield land and considers the introduction of a presumption in favour of development of previously developed sites. There is no dispute that the efficient use of previously developed land is to be encouraged and this is an objective of Policy CP1 of the LP. However, this does not negate the need for development to meet other planning objectives. Given that the document is a consultation, there is no certainty that its contents will make its way into policy. Therefore, I attach it little weight.

197. The Council recognises that some sites on the edge of villages are likely to be released for development in order to meet housing needs, many of which are located in the Green Belt. If this appeal were allowed, housing could be delivered that might reduce the amount of Green Belt land needed. Land should only be taken out of the Green Belt in exceptional circumstances but this is a matter for the plan making process. Whilst I note the benefit of utilising land outside the established Green Belt, this does not outweigh the harm that would arise in other respects.

### ***Conditions***

198. The list of conditions proposed by the Council was agreed by the appellant during the Inquiry [109]. I agree that these would be necessary in the event that planning permission is granted and that they otherwise accord with the tests

set out in the Framework and PPG<sup>76</sup>, subject to some modification to ensure precision and to include the correct plan references.

199. In the event that the Secretary of State disagrees with my recommendation and intends to grant planning permission, I recommend that the conditions contained in the attached Annex are imposed. It should be noted that the condition numbering differs from that of the Council's proposed list of conditions following amendment.
200. Conditions 1 - 4 are necessary to set out the requirements for the submission of reserved matters, for commencement of development and to clarify the approved plans, noting that some are indicative. These have been re-worded to increase clarity and to incorporate the statutory timescales; no justification has been put forward for alternative timescales. Condition 5 sets out the detailed matters which must be dealt with as part of the reserved matters in order that sufficient information is available to properly assess the proposals.
201. Condition 6 is necessary to protect the living conditions of future occupants' in respect of noise, pertinent given the nature and proximity of the adjacent business.
202. Condition 7 requires full details of the proposed foul and surface water drainage system to ensure appropriate living conditions for future occupants' and to prevent flooding.
203. Condition 8 is necessary to secure the implementation of a programme of archaeological works noting the potential for remains in the vicinity of the site.
204. Conditions 9 and 15 are needed to ensure that ecological interests are protected and enhanced as appropriate, in accordance with the development plan.
205. Condition 10 requires the investigation and remediation of contamination so as to ensure safe living conditions for future occupants' and to prevent contamination of nearby controlled waters.
206. Conditions 11 and 12 are appropriate to secure full details of the proposed vehicular access within the site and the proposed highway works that are necessary outside of the site and to ensure their implementation in the interests of highway safety and to facilitate access to the nearest settlement. Condition 13 is also required in the interests of highway safety, to ensure efficient construction management.
207. Condition 14 is necessary to secure details of the proposed boundary treatments to ensure an appropriate appearance and to protect the living conditions of future occupants'.
208. Conditions 16 and 17 are needed to ensure protection of any trees to be retained within the site during construction and to require replacement of any trees which die or are lost in the first 5 years of the development in the interests of character and appearance, noting the importance of the proposed tree screening.

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<sup>76</sup> Paragraph 206 of the Framework and Reference ID: 21a-003-20140306 of the PPG

209. Although detailed wording has not been proposed by the main parties, a condition is also necessary to ensure visibility improvements at the junction between Fisherwick Road/U3067 [170-171]. This is included as condition 18.

### ***Planning Obligations***

210. Various planning obligations are contained within the submitted Unilateral Undertaking [110].
211. Policy H2 of the LP sets out the requirement for affordable housing in the context of a recognised need in the district. Provision would be made for a minimum of 25% of the proposed dwellings to be affordable housing, comprising a mix of 35% Intermediate Housing Units and 65% Rented Social Housing Units. This level and mix of provision is agreed by the parties and accords with Policy H2. This is a positive benefit that would contribute to the identified need for affordable housing in the area and weighs in favour of the development. Although I attach significant weight to this benefit given the under provision made by the Council to date this does not, even cumulatively with other recognised benefits, outweigh the harm that has been identified.
212. The remaining obligations seek to mitigate the impacts of the development on local infrastructure and Core Policy 4 of the LP sets out the general requirement for new development to do so. The Leisure Contribution is required in connection with Core Policy 11 of the LP; Open space is to be provided in accordance with Policy HSC1 of the LP; the Primary Education Contribution would facilitate the additional teaching space needed to accommodate the development; the Travel Plan sum would ensure monitoring and review of the Travel Plan measures to facilitate sustainable travel in accordance with Policies CP5 and ST1 of the LP, as well as implementation of the sustainable travel measures such as the footway and road improvement proposed within the scheme; and the Traffic Regulation Order contribution would mitigate traffic impacts.
213. Some dispute exists between the parties as to the detailed wording and construction of the deed and the Council set out a range of issues in writing (**Document 23**). These were discussed during the Inquiry and resulted in a number of hand written amendments so increase the acceptability of the Undertaking to the Council. There is no dispute between the parties that the obligations proposed are necessary and I am satisfied that they are appropriate and can be taken into account having regard to CIL Regulations 122 and 123. Furthermore, the submitted Unilateral Undertaking would secure the required obligations if planning permission were to be granted.
214. Therefore, in the event that the Secretary of State disagrees with my recommendation and intends to grant planning permission for the development, I recommend that he has regard to the submitted obligations.

### **Overall Conclusion**

215. Although the development would not harm the character and appearance of the area, it would not be located in an appropriate location in terms of accessibility to services and facilities and would lead to an unsustainable reliance on private cars, a failure to support sustainable means of travel and would not contribute to the need to reduce green house gases and combat climate change. The development is not of a scale and nature appropriate to its locality, nor

would it reduce the overall need to travel, whilst optimising choice of sustainable modes of travel, particularly walking, cycling and public transport. Therefore, it would be in conflict with Policies CP5, ST1 and BE1 of the LP. I have had regard to the potential benefits of the scheme but these are not sufficient to justify a decision other than in accordance with the development plan in this instance.

216. I have concluded that the Council can demonstrate a deliverable five year housing land supply and so the presumption in favour of sustainable development is not engaged in the terms of paragraphs 49 and 14 of the Framework. However, even if the Secretary of State took an alternative view on this matter, the significant environmental harm that would result from the development is such that it should not be considered to represent 'sustainable development' for the purposes of the Framework in any case. Consequently, the presumption in favour would still not apply.

### **Recommendation**

217. I recommend that the appeal be dismissed.

218. In the event that the Secretary of State disagrees with me and allows the appeal, I recommend that the conditions contained in the Annex below be applied.

*Michael Boniface*

INSPECTOR

## **APPEARANCES**

### **FOR THE LOCAL PLANNING AUTHORITY:**

Gary A Grant of Counsel                      Instructed by Bal Nahal, Solicitor to the Council

He called:

Pete Coe BA Dip LA CMLI                      Landscape Architect

Geoffrey Evenson FIHE                      Senior Engineer, Staffordshire County Council

Melissa Kurihara MLPM,  
MRTPI                      Principal Planning Consultant

Andrew Marsden PgDip                      County Commissioner for Access for Learning

Susan Hodgkinson BSc  
(Hons), MA                      Senior Planning Officer

Sophie Sherratt                      Solicitor

### **FOR THE APPELLANT:**

Paul G Tucker QC                      Instructed by Shaun Taylor for the appellant

He called:

Jonathan Berry BA (Hons),  
DipLA, CMLI, AIEMA,  
M.Arbor.A                      Landscape Architect

Kevin Riley BSc (Hons),  
MSc                      Consulting Engineer

Peter Taylor BEng(Hons),  
MSc, MRTPI                      Associate, Town Planner

Oliver Nicholson BA (Hons)                      Strategy Director

Shaun Taylor BA (Hons),  
MCD, MRTPI                      Director, Town Planner

Rebecca Mushing                      Solicitor

Anna Cartilage                      Solicitor

### **INTERESTED PERSONS:**

Geoffrey Hanson                      Local resident

John Cannon                      Whittington Parish Council

## **DOCUMENTS SUBMITTED DURING THE INQUIRY**

Doc 1	Figure 4.3 - Proposed Access Layout (larger version of plan)
Doc 2	Draft Unilateral Undertaking (including education contribution)
Doc 3	Draft Unilateral Undertaking (without education contriution)
Doc 4	Agreed Statement of Common Ground relating to Landscape Matters
Doc 5	Letter from Mulbury to Shaun Taylor dated 20 October 2015
Doc 6	Appendix 1 from Proof of Evidence of Pete Coe (larger version)
Doc 7	Developers' Day, Your Comments & Feedback Leaflet
Doc 8	Opening Submissions on behalf of the Appellant
Doc 9	Opening Remarks on behalf of the LPA
Doc 10	Appeal decisions APP/R0660/A/13/2197532 & 2197529
Doc 11	Appeal decisions APP/W4705/A/11/2161990, 2162739 & 2162736
Doc 12	Questions from EPDS Consultants arising from Staffordshire County Council Rebuttal of education matters
Doc 13	Plan showing extent of adopted highway and visibility splays at junction of U3067 and Fisherwick Road
Doc 14	Appeal decision APP/D3315/A/12/2170249
Doc 15	Chronology of legal challenges to the Local Plan Strategy 2008 – 2029
Doc 16	Appeal decision APP/K3415/A/14/2216143
Doc 17	Trust Settlement between the Secretary of State for Environment, Food and Rural Affairs and Canal & River Trust
Doc 18	Location Plan – Fox's Meadow Residential Development, Nr Wellington
Doc 19	E-mail from Patrick Jervis of Pegasus Group dated 11 November 2015
Doc 20	Extract from General Permitted Development Order, Class J
Doc 21	Extract from Local Development Scheme (February 2015)
Doc 22	Statement of Common Ground Relating to Education Matters
Doc 23	Staffordshire County Council's submissions on outstanding matters in the Section 106 Unilateral Undertaking to be provided by the appellant pursuant to the appeal
Doc 24	CIL Compliance Statement
Doc 25	Extract (Page 11 & 12) of Government consultation 'Supporting new settlements, development on brownfield land sites, and delivery of housing agreed in Local Plans
Doc 26	Draft Unilateral Undertaking
Doc 27	Closing submissions on behalf of the LPA
Doc 28	Closing submissions on behalf of the appellants
Doc 29	Unilateral Undertaking

## **ANNEX – SCHEDULE OF SUGGESTED CONDITIONS**

- 1) 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.
- 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) The development hereby permitted shall be carried out in accordance with the following approved plans: Location Plan '13/022/P01 Rev. B' and 'Figure 4.3: Proposed Access Layout'.
- 5) No development shall be commenced until details of the layout of the site including the disposition of roads and buildings; full road construction details including longitudinal sections; existing and proposed ground levels and finished floor levels; housing mix; the design of all buildings and structures; the external appearance of all buildings and structures including materials to be used on all external surfaces including those to remain in private ownership; the means of pedestrian access and parking layout; and the landscape and planting of the site, which shall include tree planting within the amenity open space and fronting Fisherwick Road, have been submitted to and approved by the Local Planning Authority as part of a Reserved Matters application.
- 6) Before the development hereby approved is commenced, a scheme for protecting the proposed dwellings from noise shall be submitted to and approved in writing by the Local Planning Authority. The approved scheme of noise protection shall thereafter be implemented before the development is first brought into use and shall be the subject of a validation report which shall be submitted to and approved in writing by the Local Planning Authority prior to the dwellings being first occupied. The validation report shall ensure that all noise issues on the site have been adequately addressed prior to the development being first brought into use. The approved measures shall thereafter be maintained for the life of the development.
- 7) Before the development hereby approved is commenced, full details of the proposed surface and foul water drainage system for the development, including details of outfall from those areas to remain in private ownership, for the development shall be submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be undertaken in accordance with the approved details prior to the first occupation of the dwellings hereby approved.
- 8) Before the development hereby approved is commenced, the applicant shall secure the implementation of a programme of archaeological work, including excavation, post-excavation analysis and publication of a report, in accordance with a written scheme of investigation, which shall be submitted to and approved in writing by the Local Planning Authority. The

programme of archaeological work shall thereafter be fully implemented in accordance with the approved scheme of investigation and timescales.

- 9) Before the development hereby approved is commenced, full details of a Habitat Management Plan, including a timetable for implementation, shall be submitted to and approved in writing by the Local Planning Authority. The Habitat Management Plan shall thereafter be fully implemented in accordance with the approved scheme.
- 10) Before the development hereby approved is commenced, a remediation strategy that includes the following components to deal with the risks associated with contamination of the site shall be submitted to and approved, in writing, by the Local Planning Authority:
  - a) A site investigation scheme, based on the Phase I geo-environmental detailed desk top study carried out by Curtins Consulting in August 2013 (report ref. EB1165/KR/3167, revision A, dated 11th February 2014), to provide information for a detailed assessment of the risk to all receptors that may be affected, including those off site.
  - b) The results of the site investigation and the detailed risk assessment referred to in (a) and, based on these, an options appraisal and remediation strategy giving full details of the remediation measures required and how they are to be undertaken.
  - c) A verification plan/report providing details of the data that will be collected in order to demonstrate that the works set out in the remediation strategy in (b) are complete and identifying any requirements for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action.
  - d) The report shall be submitted to and approved in writing by the Local Planning Authority within 1 month of the approved remediation being completed, to ensure that all contaminated land issues on the site have been adequately addressed prior to the first occupation of any part of the development.

The development shall thereafter be implemented in accordance with the approved details.

- 11) Before the development hereby approved is commenced, full details of the site access works as broadly indicated on drawing number 'Figure 4.3: Proposed Access Layout' shall be submitted to and approved in writing by the Local Planning Authority. The highways works shall thereafter be constructed in accordance with the approved details before first occupation of the development.
- 12) No development shall take place until full details of the following off site highway works have been submitted to and approved in writing by the Local Planning Authority: a) Provision of a footway between the site access and the U3067; b) Traffic Management scheme on Fisherwick Road; and c) Canal towpath upgrade. No dwelling shall be occupied until the proposed off-site works have been carried out in full.
- 13) Before the development hereby approved is commenced, a Construction Management Plan/Method Statement shall be submitted to and approved in

writing by the Local Planning Authority. The Construction Management Plan shall include the following:

- a. Provision of parking for parking of vehicles of site operatives and visitors;
- b. Construction traffic access;
- c. Loading and unloading of plant and materials;
- d. Storage of plant and materials;
- e. Hours of operation;
- f. Method of prevention of mud being carried onto the highway;
- g. Pedestrian and cyclist protection;
- h. Proposed temporary traffic restrictions; and
- i. Arrangements for turning vehicles.

The approved Construction Management Plan shall thereafter be implemented prior to any works commencing on the site and shall be adhered to throughout the entire construction period.

- 14) Before any of the dwellings hereby approved are first occupied, details of all proposed boundary treatments shall be submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be undertaken in accordance with the approved details prior to the occupation of the dwellings the respective boundary treatment is to serve.
- 15) The development hereby approved shall be carried out in full accordance with the mitigation and compensation measures outlined within the Ecological Assessment (1783\_R01b\_LW\_RW) and Biodiversity Mitigation Report (1783\_R04a) prepared by Tyler Grange.
- 16) The Reserved Matters to be submitted pursuant to condition 1, shall include details of tree/hedge protection measures in accordance with BS 5837:2012 shall be submitted to and approved in writing by the Local Planning Authority. The agreed tree/hedge protection measures shall be put in place prior to any construction works commencing and be retained for the duration of construction works, including any demolition and/or site clearance works, unless otherwise agreed in writing by the Local Planning Authority. No fires, excavation, change in levels, storage of materials, vehicles or plant, cement or cement mixing, discharge of liquids, site facilities or passage of vehicles, plant or pedestrians, shall occur within the protected areas. The approved scheme shall be kept in place until all parts of the development have been completed, and all equipment; machinery and surplus materials have been removed from the site.
- 17) Any tree, hedge or shrub planted as part of the approved landscape and planting scheme (or replacement tree/hedge) on the site and which dies or is lost through any cause during a period of 5 years from the date of first planting shall be replaced in the next planting season with others of a similar size and species.
- 18) No development shall take place until a scheme of visibility improvements for the junction between Fisherwick Road/U3067 has been submitted to and approved in writing by the Local Planning Authority. The approved works shall be completed prior to first occupation of the development.



## **RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT**

**These notes are provided for guidance only and apply only to challenges under the legislation specified. If you require further advice on making any High Court challenge, or making an application for Judicial Review, you should consult a solicitor or other advisor or contact the Crown Office at the Royal Courts of Justice, Queens Bench Division, Strand, London, WC2 2LL (0207 947 6000).**

The attached decision is final unless it is successfully challenged in the Courts. The Secretary of State cannot amend or interpret the decision. It may be redetermined by the Secretary of State only if the decision is quashed by the Courts. However, if it is redetermined, it does not necessarily follow that the original decision will be reversed.

### **SECTION 1: PLANNING APPEALS AND CALLED-IN PLANNING APPLICATIONS**

The decision may be challenged by making an application for permission to the High Court under section 288 of the Town and Country Planning Act 1990 (the TCP Act).

#### **Challenges under Section 288 of the TCP Act**

With the permission of the High Court under section 288 of the TCP Act, decisions on called-in applications under section 77 of the TCP Act (planning), appeals under section 78 (planning) may be challenged. Any person aggrieved by the decision may question the validity of the decision on the grounds that it is not within the powers of the Act or that any of the relevant requirements have not been complied with in relation to the decision. An application for leave under this section must be made within six weeks from the day after the date of the decision.

### **SECTION 2: ENFORCEMENT APPEALS**

#### **Challenges under Section 289 of the TCP Act**

Decisions on recovered enforcement appeals under all grounds can be challenged under section 289 of the TCP Act. To challenge the enforcement decision, permission must first be obtained from the Court. If the Court does not consider that there is an arguable case, it may refuse permission. Application for leave to make a challenge must be received by the Administrative Court within 28 days of the decision, unless the Court extends this period.

### **SECTION 3: AWARDS OF COSTS**

A challenge to the decision on an application for an award of costs which is connected with a decision under section 77 or 78 of the TCP Act can be made under section 288 of the TCP Act if permission of the High Court is granted.

### **SECTION 4: INSPECTION OF DOCUMENTS**

Where an inquiry or hearing has been held any person who is entitled to be notified of the decision has a statutory right to view the documents, photographs and plans listed in the appendix to the Inspector's report of the inquiry or hearing within 6 weeks of the day after the date of the decision. If you are such a person and you wish to view the documents you should get in touch with the office at the address from which the decision was issued, as shown on the letterhead on the decision letter, quoting the reference number and stating the day and time you wish to visit. At least 3 days notice should be given, if possible.

## **Appendix 8: Leeds Road, Collingham, Leeds Appeal Decision**



Department for  
Communities and  
Local Government

Our Ref: APP/N4720/W/14/3001559

Mr Jonathan Dunbavin  
ID Planning  
Atlas House  
31 King Street  
LEEDS  
LS12HL

22 December 2016

Dear Sir,

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78 APPEAL  
BY MILLER HOMES AND THE HILLS FAMILY,  
LEEDS ROAD, COLLINGHAM, LEEDS  
APPLICATION REF: 14/00315/OT**

1. I am directed by the Secretary of State to say that consideration has been given to the report of K D Barton BA (Hons) DipArch DipArb RIBA FCI Arb, who held a public local inquiry between 12 and 29 April 2016 into your clients' appeal against the decision of Leeds City Council ("the Council") to refuse your clients' application for outline planning permission for the erection of circa 150 dwellings at land at Leeds Road, Collingham, Leeds, in accordance with application ref: 14/00315/OT, dated 17 January 2014. This included consideration of the matter of Housing Land Supply (HLS) in Leeds jointly with two other appeals between 19 and 21 April 2016, with closing submissions on 29 April 2016.
2. On 29 May 2015, this appeal was recovered for the Secretary of State's determination, in pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act 1990, because the proposal was for a residential development of over 150 dwellings, on a site over 5 hectares, which would significantly impact on the Government's objective to secure a better balance between housing demand and supply and create high quality, sustainable, mixed and inclusive communities.

**Inspector's recommendation and summary of the decision**

3. The Inspector recommended that the appeal be allowed and outline planning permission granted, subject to the conditions set out in IR Appendix C, pages 78-82.
4. For the reasons given below, the Secretary of State agrees with the Inspector's conclusions and recommendation. He has decided to allow the appeal and grant outline planning permission. A copy of the Inspector's report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

Department for Communities and Local Government  
Jean Nowak  
Planning Casework  
3rd Floor Fry Building  
2 Marsham Street  
London SW1P 4DF

Tel: 0303 444 1626  
Email: [PCC@communities.gsi.gov.uk](mailto:PCC@communities.gsi.gov.uk)

## **Procedural matters**

5. As described by the Inspector at IR1.1, amendments were made to the application at the inquiry so that it now reads “outline planning permission (all matters reserved except for means of access to, but not within, the site) for the erection of up to 150 dwellings”. The Secretary of State notes that this is the basis on which the evidence has been given, the report has been written and the recommendation has been made. He is therefore satisfied that no interests will be prejudiced by making his decision on that basis.
6. Furthermore, as mentioned in paragraph 1 above, the Secretary of State is satisfied that, in order to avoid repetition and make efficient use of Inquiry time, it was appropriate to hear the matter of HLS in Leeds in conjunction with two other appeals (APP/N4720/W/15/3004034 Bradford Road, East Ardsley and APP/N4720/W/15/3004106 Breary Lane East, Bramhope) on 19 – 21 April 2016.

## **Matters arising following the close of the Inquiry**

7. Following the close of the Inquiry, the Planning Inspectorate received letters from Eversheds LLP dated (i) 16 May 2016 relating to the 5 year HLS supply position and (ii) 5 September 2016 drawing attention to an appeal decision at Kippax; but the Secretary of State is satisfied that these raised no new matters upon which he needed to refer back to parties. The Planning Inspectorate also received an email from Leeds City Council enclosing a letter from the Collingham Residents Action Group relating to flooding risk. However, the Secretary of State is satisfied that the Inspector’s proposed condition covers this matter adequately and that there was no need to seek further views from parties. Copies of all this correspondence may be obtained on written request to the address at the foot of the first page of this letter.

## **Policy considerations**

8. In reaching his decision, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise.
9. In this case the development plan comprises the adopted Leeds Core Strategy (CS), adopted in 12 November 2014; and the saved policies of the Leeds Unitary Development Plan Review (UDPR) adopted in July 2006. The Secretary of State agrees with the Inspector at IR8.3.5 that the most relevant UDPR policy is Policy N34.
10. The Inspector refers at IR4.2 to the emerging Leeds Site Allocations Plan (SAP), but the Secretary of State agrees with the Inspector that, as the SAP is still an early stage, he can give it only limited weight in considering this appeal.
11. The Inspector also refers at IR4.2 and IR8.3.3 to the fact that, at the time the Council reached its decision on this case, an Interim Housing Delivery Policy was in place relating to the potential release of sites allocated as Protected Areas of Search (PAS) in the UDPR (including the appeal site (IR8.1.2)), but that that interim policy was subsequently withdrawn so that such sites were taken back to the Plans Panel for assessment in the light of the current policy context. Like the Inspector (IR8.3.3), the Secretary of State is satisfied that no-one has been disadvantaged by the fact that this rendered it necessary for the Inspector to consider this case in the context of the revised reasons for refusal.

12. The Secretary of State has also taken account of the fact that the final draft of the *Collingham Neighbourhood Plan* was in preparation at the time of the Inquiry (IR8.3.44), and he is aware that the Examiner's Report has now been submitted to the Council. Having regard to paragraph 216 of the Framework and the fact that the Neighbourhood Plan has not yet reached Referendum stage, the Secretary of State gives it limited weight.
13. Other material considerations which the Secretary of State has taken into account include the National Planning Policy Framework ('the Framework') and associated planning Guidance; and the Community Infrastructure Levy (CIL) Regulations 2010 as amended.

### **Main issues**

14. The Secretary of State agrees with the Inspector that the main issues are those referred to at IR8.1.1.

### **Assessment of Housing Land Supply**

15. Having carefully considered the Inspector's arguments at IR8.2.1-8.2.10, the Secretary of State agrees with him at IR8.2.11 that, on past performance, the buffer must be 20% - so that the 5-year HLS requirement across the City would be 31,898, or 6,379 units per annum (IR8.2.12). The Secretary of State notes the Inspector's comparison with recent levels of performance (IR8.2.13) before turning to the supply side as set out by the Inspector at IR8.2.14-8.2.25. He agrees with the Inspector at IR8.2.25 that the position on supply is difficult as the SAP will not be adopted until at least December 2017, but that the available evidence based on the December 2015 draft of the SHLAA indicates that there is a serious shortfall of supply in the next two years, a heavy dependence on sites that do not have planning permission and reliance on sites that are currently in other use.
16. The Secretary of State has given careful consideration to the Inspector's analysis of the uncertainties relating to the potential supply of land at IR8.2.26-8.2.28 and he agrees that there are a number of differences between the parties as to delivery rates and lead-in times (IR8.2.29-8.2.38). Overall, he agrees with the Inspector's conclusion at IR8.2.39 that the failure to produce an adopted SAP until December 2017 means that there is no policy set out to show how delivery of any houses, never mind the magnitude required, will actually take place; that the safety margin of 2,262 dwellings can soon be whittled away when realism is applied and that the Council has failed to demonstrate a robust 5 year HLS. The Secretary of State therefore agrees with the Inspector's conclusion that the solution is to deliver housing now, including much needed affordable housing (IR8.2.40.8.2.41).

### **Development Plan Policy**

17. Having regard to the Development Plan position as set out in paragraphs 9 - 11 above and by the Inspector at IR8.3.1, the Secretary of State agrees with the Inspector at IR8.3.2 that, as there is no 5 year HLS, paragraphs 14 and 49 of the Framework must be applied. Therefore, while he agrees with the Inspector that UDPR policy N34 is a policy for the supply of housing, he also agrees with the Inspector's conclusion at IR8.3.2 that policy N34 cannot be considered up-to-date. He further agrees with the Inspector that, rather than being a restrictive policy, the purpose of Policy N34 was to safeguard land to meet longer term development needs so that, as it envisages development, the appropriate test to apply is whether any adverse impacts of granting

permission would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework as a whole.

18. Having carefully considered the Inspector's arguments at IR8.3.4-8.3.24, the Secretary of State agrees (i) with his conclusions at IR8.3.14 that the use of Policy N34 to prevent development would be contrary to the Framework and that, in the absence of a 5 year HLS the provisions of paragraphs 14 and 49 of the Framework should apply; and (ii) with his conclusions at IR8.3.24 that any adverse impacts due to the development should be balanced against the benefit of granting permission now to see if they significantly and demonstrably outweigh them so as to lead to a presumption in favour of sustainable development.
19. For the reasons given at IR8.3.25-8.3.33, the Secretary of State agrees with the Inspector's conclusion at IR8.3.34 that, overall, the proposal would be generally compliant with the CS and would not undermine its implementation. He therefore agrees with the Inspector's conclusion at IR8.3.35 that, in terms of the development plan, only UDPR Policy N34 would be breached and that this should attract little weight as it is time expired. The Secretary of State therefore also agrees that there needs to be a balancing exercise within the parameter that there is a presumption in favour of granting permission. He further agrees with the Inspector's findings and reasoning at IR8.3.36-8.3.43 concerning the outstanding uncertainties in relation to the timing and content of the emerging SAP; and shares his concerns about the poor rate of delivery in the Outer North East HMCA highlighted at IR8.3.43.

#### Accessibility of proposed site to shops and services

20. Having carefully considered the Inspector's discussion at IR8.4.1-8.4.16, the Secretary of State agrees with his conclusion at IR8.4.17 that, with a modicum of flexibility, the site would satisfy the objectives of the CS Accessibility Standards, so that these would not represent a sufficient reason to justify withholding planning permission.

#### Effect on the Highway Network

21. For the reasons given at IR8.5.1-8.5.3, the Secretary of State agrees with the Inspector that, in the light of the work referred to at IR8.5.2 and 8.5.3, there is now little evidence to justify reaching a different conclusion to that of the highway authority with regard to the capability of the highway network to absorb the additional pressures which the scheme would place on it. He therefore regards this as being neutral in the overall balance.

#### Effect on the character and identity of Collingham

22. For the reasons given at IR8.6.1-8.6.5, the Secretary of State agrees with the Inspector that the provision of a vehicular access to the appeal site would not necessarily harm the appearance of the settlement (IR8.6.3); that its character would not be significantly affected (IR8.6.4); and that there would be no adverse impact on the living conditions of those already living in the vicinity (IR8.6.5). The Secretary of State also notes the Inspector's comments on dwelling size and density at IR8.6.6-8.6.7; and he agrees with the Inspector at IR8.6.6 that there is nothing exceptional in terms of character nor any overriding concern in design terms to justify a lower density than the minimum of 30 dph specified in the CS. The Secretary of State agrees with the Inspector's points at IR8.6.8 and with his overall conclusion at IR8.6.9 that the appeal proposal would preserve the

character and identity of Collingham in accordance with the aims of CS Policies SP1(iii), H3 and H4.

### Other matters

23. The Secretary of State agrees with the Inspector at IR8.7.1 that, in view of the desperate need for affordable housing in Leeds, the provision of affordable housing in accordance with policy requirements is to be welcomed. The Secretary of State also welcomes the improvements to flood defence measures which would be provided both on- and off-site (IR8.7.2) and agrees with the Inspector that these would provide a general benefit to the village. The Secretary of State also agrees with the Inspector's conclusions with regard to the other matters considered at IR8.7.3-8.7.5 that there is little evidence on which to justify refusing planning permission.

### **Conditions**

24. The Secretary of State has considered the suggested conditions set out at Appendix C to the IR and the Inspector's comments on them at IR8.8.7-8.8.11. He agrees with the Inspector that those conditions – which are now set out at Annex A to this letter – are reasonable and necessary and meet the tests of the Framework and guidance. He is satisfied that they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects.

### **Obligations**

25. The Secretary of State notes (IR8.8.1) that a number of facilities are covered by the Leeds CIL Charging Schedule adopted in April 2015. In addition, having regard to the Inspector's analysis at IR8.8.1-8.8.6, paragraphs 203-205 of the Framework, the Guidance and the Community Infrastructure Levy Regulations 2010 as amended, the Secretary of State is satisfied that the signed section 106 Agreement dated 29 April 2016 complies with Regulation 122 of the CIL Regulations. He therefore agrees with the Inspector's conclusion at IR8.8.11 that its terms comply with the tests at paragraph 204 of the Framework, are necessary to make the development acceptable in planning terms, and are fairly and reasonably related in scale and kind to the development.

### **Overall conclusions**

26. The Secretary of State concludes that granting permission for the appeal scheme would be contrary to the development plan as a whole, particularly having regard to the conflict with saved policy N34 of the UDPR. He has therefore gone on to consider whether there are any material considerations that indicate that the proposal should be determined other than in accordance with the development plan.
27. As he has not found evidence of a five year supply of deliverable housing sites across the local authority area, the Secretary of State concludes that the relevant development plan policies for the supply of housing are out-of-date. Therefore, in line with the presumption in favour of sustainable development at paragraphs 14 and 49 of the Framework, he considers that permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies of the Framework taken as a whole, or specific policies in the Framework indicate that development should be restricted.
28. Having carefully assessed the evidence before him, the Secretary of State is satisfied that there are no adverse impacts which, either individually or together, are of sufficient

weight to indicate that the development of the appeal site should be restricted. Overall, therefore, the Secretary of State finds that, when taking the policies of the Development Plan and the Framework as a whole, the adverse impacts of granting consent for the proposed development are limited and that there are no material harms that significantly and demonstrably outweigh the very real benefits of providing new homes to boost the supply of housing as required by the Framework.

### **Formal decision**

29. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. He hereby allows your client's appeal and grants outline planning permission (all matters reserved except for means of access to, but not within, the site) for the erection of up to 150 dwellings at land at Leeds Road, Collingham, Leeds, in accordance with application ref: 14/00315/OT, dated 17 January 2014, subject to the imposition of the conditions set out in Annex A to this letter.
30. An applicant for any consent, agreement or approval required by a condition of this permission for agreement of reserved matters has a statutory right of appeal to the Secretary of State if consent, agreement or approval is refused or granted conditionally or if the local planning authority fail to give notice of their decision within the prescribed period.
31. This letter does not convey any approval or consent which may be required under any enactment, bye-law, order or regulation other than section 57 of the Town and Country Planning Act 1990.

### **Right to challenge the decision**

32. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged. This must be done by making an application to the High Court within 6 weeks from the day after the date of this letter for leave to bring a statutory review under section 288 of the Town and Country Planning Act 1990.
33. A copy of this letter has been sent to Leeds City Council. Notification has also been sent to all other parties who asked to be informed.

Yours faithfully,

*Jean Nowak*

Authorised by Secretary of State to sign in that behalf

## **List of conditions**

### **Approval of details**

- 1) 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.
- 2) The development hereby permitted shall comprise no more than 150 dwellings.
- 3) The development hereby permitted shall be carried out in accordance with the following plans:

Site Location Plan P13 4827 02  
Sections/Cross Sections 35800/001 Rev A  
Block Plan/Layout Plan 35800/002 Rev A  
Sections/Cross Sections 35800/04 Rev A

### **Timing of Implementation**

- 4) Application for approval of all reserved matters shall be made to the local planning authority before the expiration of three years from the date of this permission. The development hereby permitted shall be begun before the expiration of two years from the date of approval of the last of the reserved matters to be agreed.

### **Archaeology**

- 5) No development shall take place until the applicant, or their agents or successors in title, has secured the implementation of a programme of archaeological recording. This recording must be carried out by an appropriately qualified and experienced archaeological consultant or organisation, in accordance with a written scheme of investigation which has been submitted by the applicant to, and approved in writing by, the local planning authority.

### **Flood Risk and Drainage**

- 6) The development hereby permitted shall be carried out in accordance with the approved Flood Risk Assessment (FRA) compiled by Weetwood dated January 2014 v1.2, and the mitigation measures detailed in paragraphs 4.2, 4.3, and 4.4 of the FRA.

The mitigation measures shall be fully implemented prior to occupation and subsequently in accordance with the timing/phasing arrangements embodied within the scheme.

- 7) The site shall be developed with separate systems of drainage for foul and surface water on and off site.
- 8) No piped discharge of surface water from the application site shall take place until works to provide a satisfactory outfall for surface water have been completed in accordance with the FRA prepared by Weetwood dated January 2014 (Reference 2300/FRA\_Final v1.2) with details to be submitted to, and approved in writing by, the local planning authority before development commences.

- 9) Development shall not commence until details of the proposed means of disposal of foul and surface water drainage, including details of any balancing works and off-site works, have been submitted to, and approved in writing by, the local planning authority. The works shall be implemented in accordance with the approved scheme before the development is brought into use, or as set out in the approved phasing details.
- 10) The development shall not be occupied until details of the management and long term maintenance of the Sustainable Urban Drainage System and flood alleviation and mitigation works within the site has been submitted to and approved in writing by the local planning authority. The approved details, including maintenance, shall be implemented before the development is brought into use, or as set out in the approved phasing details

### **Ground Conditions**

- 11) The approved Phase I Desk Study report indicates that a Phase II Site Investigation is necessary, and therefore development shall not commence until a Phase II Site Investigation Report has been submitted to, and approved in writing by, the local planning authority. Where remediation measures are shown to be necessary in the Phase II Report and/or where soil, or soil forming material, is being imported to site, development shall not commence until a Remediation Statement demonstrating how the site will be made suitable for the intended use has been submitted to, and approved in writing by, the local planning authority. The Remediation Statement shall include a programme for all works and for the provision of Verification Reports.
- 12) If Remediation is unable to proceed in accordance with the approved Remediation Statement, or where significant unexpected contamination is encountered, the local planning authority shall be notified in writing immediately and operations on the affected part of the site shall cease. An amended or new Remediation Statement shall be submitted to, and approved in writing by, the local planning authority prior to any further remediation works which shall thereafter be carried out in accordance with the revised Remediation Statements.
- 13) Remediation works shall be carried out in accordance with the approved Remediation Statement. On completion of those works the verification report(s) shall be submitted to the local planning authority in accordance with the approved programme. The site, or phase of a site, shall not be brought into use until such time as all verification information has been approved in writing by the local planning authority.

### **Ecology and Trees**

- 14) Removal of trees T1, T2, and T3 and retention of Trees T4, T5, and T6 as shown in Figure 1 of the Bat Impact Assessment report dated October 2015 by Brooks Ecological ref R-1485-o6 shall be carried out in full accordance with the recommendations of the same report. Written confirmation by an appropriately qualified ecologist will be provided to the local planning authority within 6 weeks of tree removal taking place.
- 15) No development shall take place until the following ecological reports and details, including details for implementation, have been submitted to and approved in writing by, the local planning authority:
  - a) An Ecological Bridge Design Statement (EBDS) that addresses any adverse impacts on bats commuting and foraging below and above the new bridge;

- b) A “Lighting Design Strategy for Bats”;
- c) A Construction Environmental Management Plan (CEMP);
- d) A Biodiversity Enhancement and Management Plan (BEMP);
- e) Details of bat roosting and bird nesting opportunities

The approved plans and reports shall be implemented in accordance with the approved details.

- 16) No site clearance, preparatory work or development shall take place until a scheme has been drawn up that identifies the trees to be retained on the site (the retained trees), the measures to be taken for their protection (the tree protection plan) and the appropriate working methods (the arboricultural method statement) in accordance with BS5837 (2012): *Trees in relation to construction – Recommendations* and submitted to and approved in writing by the local planning authority. The retained trees shall be protected as described and approved. Both the tree protection plan and the arboricultural method statement shall be accompanied by appropriate drawings showing details of changes in level, foundations and paving, boundary treatment, utilities routes and proposed landscaping operations, in so far as they may affect the retained trees. Such measures shall be retained for the duration of any approved works.

## **Public Open Space**

- 17) The development hereby permitted shall not begin until a scheme has been submitted to, and approved in writing by, the local planning authority for the provision of 80m<sup>2</sup> of on-site public open space per dwelling or 1.2 hectares overall based upon a maximum development of 150 dwellings. The scheme shall include details of the siting, layout, landscaping, maintenance, and long term management of the open space. The on-site public open space shall be provided prior to completion of the development in accordance with the approved scheme.
- 18) The development hereby permitted shall not begin until a scheme for the provision of a landscaped buffer zone on the western boundary has been submitted to, and approved in writing by, the local planning authority. The scheme shall include the location, layout, planting plans, schedule of species, timetable for implementation and long term management scheme. The scheme should include for the provision of native tree planting in order to provide a transition from open countryside to development and should provide for the retention and improvement of any public rights of way that falls within it. The buffer zone shall be laid out in accordance with the approved details and maintained as a buffer zone for the lifetime of the development.

## **Highways**

- 19) Prior to the commencement of development, details shall be submitted to, and approved in writing by, the local planning authority of arrangements to secure the following highway improvement works which shall be implemented and completed prior to occupation of the first dwelling:
- a) The site access as shown indicatively on Drawing No 7119-005 rev F, including the provision of street lighting for the area of the proposed 30 mph limit, relocation of speed limit and VAS sign as well as the two new bus stops;

- b) The widening of the footway between the proposed site access and Crabtree Green shown indicatively on Drawing No 7119-015; and
  - c) The works to widen the footway to Leeds Road identified on Drawing No 7119-019 Rev A.
- 20) No development shall take place until details have been submitted to and approved in writing by the local planning authority of arrangements to secure the following highway improvements which shall be implemented and completed prior to occupation of the first dwelling or other approved timetable but not later than occupation of the 50<sup>th</sup> dwelling:
- a) The highway works at the Wattlesyke junction shown indicatively on Drawing No 71119-006 rev D road incorporating MOVA with associated queue detection equipment;
  - b) The highway works at the junction of the A58 Main Street and A659 Harewood Road shown indicatively on Drawing NO 7119-016 Rev B, incorporating MOVA with associated queue detection equipment; and
  - c) The culvert strengthening works at Wattlesyke junction to accommodate the proposed highway works.
- 21) No development shall take place until a scheme for the provision of electric vehicle charging points, to be provided within each garage hereby approved, shall have been submitted to, and approved in writing by, the local planning authority. The approved scheme shall be implemented prior to occupation of the respective dwellings.
- 22) The access hereby approved shall not be brought into use until works have been undertaken to provide the visibility splays shown on approved Drawing No 7119-005 Rev F.
- 23) The development shall not be occupied until details of the proposed pedestrian/cycle link through the site as part of route 66 of the National Cycle Network has been submitted to, and approved in writing by, the local planning authority. The route shall be implemented prior to occupation of any of the houses hereby approved and subsequently maintained and kept unobstructed.
- 24) Cycle storage shall be provided for each dwelling in accordance with details that have been submitted to, and approved in writing by, the local planning authority.
- 25) The development shall not be occupied until all areas shown on the approved plans to be used by vehicles have been fully laid out, surfaced and drained such that surface water does not discharge or transfer onto the highway. These areas shall not be used for any other purpose thereafter.

## **Construction**

- 26) No development shall take place 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:
- a) The parking of site operatives and visitors vehicles within the site;

- b) The loading and unloading of plant and materials within the site;
  - c) The storage of plant and materials within the site;
  - d) The erection and maintenance of security hoarding including decorative displays and facilities for public viewing where appropriate;
  - e) Wheel washing facilities;
  - f) Measures to control the emissions of dust and dirt during construction;
  - g) A scheme for the recycling/disposing of waste resulting from the construction works;  
and,
  - h) Routes of construction traffic.
- 27) Construction works shall not take place outside 0800 hours to 1800 hours Mondays to Fridays and 0830 to 1600 hours on Saturdays; nor at any time on Sundays or Bank Holidays.

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# Report to the Secretary of State for Communities and Local Government

by K D Barton BA(Hons) DipArch DipArb RIBA FCI Arb

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

Date: 20 September 2016

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**TOWN AND COUNTRY PLANNING ACT 1990**

**APPEAL BY MILLER HOMES AND THE HILLS FAMILY**

**AGAINST A DECISION BY**

**LEEDS CITY COUNCIL**

**RELATING TO A SITE AT LEEDS ROAD, COLLINGHAM**

Inquiry opened on 12 April 2016

Land at Leeds Road, Collingham, Leeds

File Ref: APP/N4720/W/14/3001559

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**File Ref: APP/N4720/W/14/3001559**

**Land at Leeds Road, Collingham, Leeds**

- The appeal is made under Section 78 of the *Town and Country Planning Act 1990* against a refusal to grant outline planning permission.
- The appeal is made by Miller Homes and the Hills Family against the decision of Leeds City Council.
- The application Ref 14/00315/OT, dated 17 January 2014, was refused by notice dated 30 October 2014.
- The development proposed is in outline (all matters reserved except for means of access to, but not within, the site) for the erection of circa 150 dwellings.

**Summary of Recommendation: The Appeal be allowed, subject to the conditions set out in Appendix C to this report.**

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**1. Procedural Matters**

- 1.1. At the Inquiry the Inspector proposed, and the parties agreed in the interests of clarity and precision, to amend the application to read: "outline planning permission (all matters reserved except for means of access to, but not within, the site) for the erection of up to 150 dwellings". This is the basis on which the evidence was given, the report has been written, and the recommendation has been made.
- 1.2. The appeal was recovered by the Secretary of State (SoS) by a Direction dated 29 May 2015 (SSD). The reason for the direction is that the appeal involves a proposal for residential development of over 150 units, or a site of over 5 hectares, which would significantly impact on the Government's objective to secure a better balance between housing demand and supply and the creation of high quality, sustainable, mixed and inclusive communities.
- 1.3. A Direction, dated 9 June 2009, extended the saved policies listed within it. The Direction indicates that local planning authorities should "make good progress with local development frameworks" and states that "Policies have been extended in the expectation that they will be replaced promptly". The *National Planning Policy Framework (Framework)* makes clear that "It is highly desirable that local planning authorities should have an up-to-date plan in place" and where development plans are "absent, silent or relevant policies are out-of-date it expects planning permission to be granted unless "adverse impacts significantly and demonstrably outweigh the benefits" or "specific policies" apply.<sup>1</sup>
- 1.4. A Pre-Inquiry Note was issued to set out the administrative arrangements for the Inquiry, which sat for 12 days between 12 and 29 April 2016. Accompanied and unaccompanied visits were made to the site and the surrounding area on 28 April 2016. In addition, to avoid repetition and make efficient use of Inquiry time, the matter of Housing Land Supply (HLS) in Leeds was heard in conjunction with two other appeals, APP/N4720/W/15/3004034 Land off Bradford Road East Ardsley and APP/N4720/W/15/3004106 Land at Breary Lane East, Bramhope, on 19-21

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<sup>1</sup> MHH/3/C APP ID2, MHH/12 Paras 7-8

April 2016. Closing submissions in relation to this appeal, on all matters, including HLS, were made on 29 April 2016<sup>2</sup>.

- 1.5. Subsequent to the close of the Inquiry an appeal decision was issued relating to development at Grove Road, Boston Spa (APP/N4720/A/13/2208551). The parties were given an opportunity to comment on this decision and their comments have been taken into consideration. The Council confirms that it is challenging the Grove Road decision, the conclusions of which it maintains are divergent from those relating to an earlier decision at Bagley Lane, Farsley (APP/N4720/A/13/2208551)<sup>3</sup>. The Council states that its evidence on HLS has changed significantly since it was given at the Grove Road Inquiry in May 2014. It therefore asks that the conclusions on the three appeals mentioned at paragraph 1.4 above should be reached based on the latest evidence from all parties as presented and tested at the Inquiries in April 2016. The general consensus of the Appellants is also that the most up to date evidence given to this Inquiry should be used although response has been made to some of the detailed points raised by the Council.<sup>4</sup>
- 1.6. This report includes a description of the site and its surroundings, a summary of the planning policy background, the gist of the representations made at the Inquiry, and in writing, and my conclusion and recommendation. Lists of appearances and documents, a schedule of conditions should the Secretary of State be minded to allow the appeal, and a glossary of abbreviations, are also attached as appendices.

## **2. The Site and Its Surroundings<sup>5</sup>**

- 2.1. The appeal site has an area of approximately 8.79 hectares, of which 4.43 hectares would be developed as residential. It is currently an open area of Grade 2 and 3 agricultural land on the western side of Collingham bounded on two sides by residential development. The site lies between the Collingham Beck and A58, which run roughly parallel to the south, with residential properties to the north accessed from Harewood Road. To the east is the predominantly 1960s, one and two storey residential, development on Millbeck Green.
- 2.2. The southernmost part of the site is relatively flat but the land rises to the north with houses in South View and Hastings Way being elevated above the site. The land on which the proposed dwellings and associated green space would stand is designated as a Protected Area of Search (PAS), which is land that was removed from the Green Belt for future development needs. Land to the west of the PAS which comprises open space and flood alleviation measures is within the Green Belt, as is the open countryside on the south side of the A58. A number of trees within the site and along the A58 frontage are subject to a Tree Preservation Order (TPO).

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<sup>2</sup> CD/F9, LCC/7, LCC/18 Paras 48-115, BDW/7, BDW/8

<sup>3</sup> Since the Inquiry the Grove Lane decision has been challenged

<sup>4</sup> LCC/10/H Letter incorrectly dated 12 July 2015, BDW/5/C, and MHH/8/D

<sup>5</sup> CD/L4 Section 2

### 3. The Proposal<sup>6</sup>

- 3.1. The application sought outline permission with appearance, landscaping, scale and internal access reserved for future consideration. An indicative Masterplan seeks to demonstrate that, in principle, residential development of no more than 150 homes could be accommodated on the site. It is agreed that detailed layout, massing and townscape can be dealt with at reserved matters stage through the imposition of conditions.
- 3.2. The indicative Masterplan shows a vehicular access from the A58 and the Council does not object to that access in terms of location, capacity, highway safety or effect on trees. The Masterplan also shows areas of open space distributed throughout the site. These areas would be in excess of those required by development plan policies. The proposals would also provide flood risk mitigation for the proposed development and also off-site betterment in terms of reduced flood risk to existing residential properties. Part of these works would be secured through a Section 106 Agreement.

### 4. Planning Policy Context

- 4.1. Section 38(6) of the *Planning and Compulsory Purchase Act 2004* indicates that determinations under the Planning Acts should be made in accordance with the development plan, unless material considerations indicate otherwise. The development plan in this case includes the *Leeds Core Strategy* (CS) adopted in November 2014, and the saved provisions of the Leeds Unitary Development Plan Review (UDPR) 2006.<sup>7</sup>
- 4.2. The Council is progressing a Site Allocations Plan (SAP) but it is agreed that as this is at an early stage only limited weight can be attached to it. At the time the Council reached its decision on this proposal, an Interim Housing Delivery Policy was in place. However, since adoption of the CS, the Interim Policy has been withdrawn and the reasons for refusal have been revised to reflect adopted and emerging policy.<sup>8</sup>

### 5. The Case for Leeds City Council

#### 5.1. Introduction

- 5.1.1 Collingham is a Smaller Settlement within the CS settlement hierarchy, whilst under the UDPR the site was designated as a Protected Area of Search (PAS) site. When the Council reached its decision on the appeal proposal it was against the background of the Interim Housing Policy. However, this was withdrawn in February 2015 in light of the stage reached by the SAP process. The SAP will resolve the Council's view as to which PAS sites should be included on the basis of their planning merits. This accords with CS policies and meeting the Council's housing delivery and locational strategies.<sup>9</sup>

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<sup>6</sup> CD/L/4

<sup>7</sup> CD/L/4 Section 6, CD/A/3, CD/A/5, CD/A/5(A), CD/A/6, CD/A/6(A), CD/A/7, CD/A/7(A), MHH/12 Para7

<sup>8</sup> CD/A/8, CD/A/10

<sup>9</sup> LCC/7 Para 2

- 5.1.2 Consequently, assessment against the Interim Policy is not appropriate and the proposal was taken back to the Plans Panel Committee for assessment in the light of the current policy context. The amended reasons for refusal are the outcome of that assessment and the Council relies on them.<sup>10</sup>

## 5.2 Assessment of Housing Land Supply

- 5.2.1 The housing requirement for the purposes of *Framework* paragraph 47 is largely common ground. The 5 year period is 1 April 2016 to 31 March 2021. The annual requirement derives from CS Policy SP6 which contains a step-up in the requirement with the first five years of the plan being at a lower rate. The consequent annual figures are 1x3,660 + 4x4,700 although the requirement is not a maximum.<sup>11</sup>
- 5.2.2 The CS requirements for the first three years of the plan period have not been met but the completions for the period 2012/13 to 2014/15 are agreed as the table below.<sup>12</sup>

Year	Adopted CS Policy SP6	Contribution from sources to Core Strategy target			Demolitions	Total
		New & converted units	Empty homes	Older persons housing		
2012/13	3,660	1,650	149	29	27	1,801
2013/14	3,660	2,235	880	86	6	3,195
2014/15	3,660	2,076	215	322	97	2,226
Total	10,980	5,961	1,244	147	130	7,222
Backlog 2012 to 2015						

- 5.2.3 There are two issues in dispute between the parties:
- a) The precise level of completions in 2015/16; and
  - b) The appropriate buffer.<sup>13</sup>
- 5.2.4 The precise level of completions in 2015/16 is not an issue of principle but of quantum. The figure submitted by the Council has been compiled in exactly the same way as other years, where the Appellant accepts the figures, and is the figure submitted to Government for the purpose of the New Homes Bonus. The base information comes from individuals' Council

<sup>10</sup> CD/F/5 Para 4.11, LCC/7 Para 2

<sup>11</sup> CD/A/1, CD/A/3, CD/F/6, CD/L/5, LCC/18 Paras 48-50

<sup>12</sup> CD/L/5, LCC/18 Paras 49-50

<sup>13</sup> CD/L/5, LCC/18 Para 50

Tax information and cannot simply be disclosed. However, the figure sits in the range of annual figures accepted for 2012/15.<sup>14</sup>

- 5.2.5 Turning to the matter of the buffer, this is a matter of judgement that the *Guidance* makes clear will vary from place to place. Notwithstanding this the *Guidance* notes that a more robust assessment will be made by considering a longer term view such as a complete housing market cycle. The Appellants' joint 5 years assessment does not do this.<sup>15</sup>
- 5.2.6 The purpose and function of the buffer derives from Framework paragraph 47. The purpose is to ensure choice and competition and, in relation to the 20% buffer, to provide a realistic prospect of the planned supply being achieved. The function is to move sites forward from later in the plan period. This is consistent with the core policy principles and promoting, not undermining, the plan-led system. The objective is not to penalize an authority.<sup>16</sup>
- 5.2.7 In this case, the Appellants seek the release of safeguarded land that would be contrary to the CS and would undermine the emerging SAP. A 20% buffer would have the opposite purpose and function to that set out in *Framework* paragraph 47. There is a large volume of permitted residential development and large areas of the inner area and city centre available for development. The issue is not an absence of competition and supply but that the volume house builders seek to build other than in accordance with the Council's adopted CS.<sup>17</sup>
- 5.2.8 In terms of figures, there is agreement except for Empties in 2015/16 as set out above and they can be considered in three parts.<sup>18</sup>

Plan	Context	Year	Net Completions	Target Min	Target Max	Under delivery Min	Under delivery Max
UDP	Rising	2003/4	2,991	1,930	1,930	1,061	1,061
UDP/RSS	Rising	2004/5	2,633	2,260	2,260	373	373
UDP/RSS	Boom	2005/6	3,436	2,260	2,260	1,176	1,176
UDP/RSS	Boom	2006/7	3,327	2,260	2,260	1,067	1,067
UDP/RSS	Boom	2007/8	3,576	2,260	2,260	1,316	1,316
UDP/RSS	Recession	2008/9	3,828	2,260	4,300	1,568	-472

<sup>14</sup> LCC/18 Para 51

<sup>15</sup> LCC/18 Para 52, CD/A/2 Para 3-035, MHH/3/C APP ID9 Table 2.2

<sup>16</sup> LCC/18 para 53

<sup>17</sup> LCC/18 Paras 53

<sup>18</sup> LCC/18 Para 54, LCC/11//B Table 7

UDP/RSS	Recession	2009/10	2,238	2,260	4,300	-22	-2062
UDP/RSS	Recession	2010/11	1,686	2,260	4,300	-574	-2,614
UDP/RSS	Recovery	2011/12	1,931	2,260	4,300	-329	-2,369
CS	Recovery	2012/13	1,801	3,660	3,360	-1,859	-1,859
CS	Recovery	2013/14	3,195	3,660	3,660	-465	-465
CS	Recovery	2014/15	2,226	3,660	3,660	-1,434	-1,434
CS	Rising	2015/16		3,660	3,660		
						1,878	-6,282

- 5.2.9 Firstly, pre-recession the requirement was 1,930 rising to 2,260 and in these 5 years the requirement was exceeded by around 5,000 homes. During the recession the requirement was debatable. Adopted targets were 2,260 and 4,300. The lower target was exceeded by 643 but against the step up RSS requirement there was an under supply of 7,517. However, it is acknowledged that the RSS requirement was inaccurate. Post-recession the CS requirement for 2013 to 2016 was 3,660 and there has been a cumulative undersupply of 4,122. However, the most recent year is the best since the adoption of the CS delivering 3,296 units.<sup>19</sup>
- 5.2.10 If a cumulative approach is taken to the whole cycle and assessment made against the lower requirement for 2008/12, targets were exceeded by 1,514. The RSS is accepted as being unrealistic and the figure is based on job growth of 24,000 when in practice there was a loss of 8,000 jobs, a swing of over 32,000. An assessment against this is meaningless and the Bagley Lane Inspector concluded it was unrealistic.<sup>20</sup>
- 5.2.11 The CS Inspector also considered the matter. "The Regional Strategy has been revoked and its housing targets were underpinned by assumptions that the 2011 census and later projections have shown to be inaccurate. This significantly reduces the weight to be attributed to under delivery against the Regional Strategy target and the need to address any shortfall against the RS through the CS".<sup>21</sup>
- 5.2.12 No weight should be given to non-compliance with the RSS target. The lower target is more meaningful and against that there is no cumulative shortfall. In any event, the CS requirement was based on demographic projections and encapsulates any shortfall properly found to have occurred therefore counting non-compliance against the higher RSS target would lead to double counting of any actual undersupply. This was recognised by the Bagley Lane Inspector.<sup>22</sup>
- 5.2.13 Secondly, turning to performance against the CS, the requirement has not been met. However, completions are increasing as the market recovers

<sup>19</sup> LCC/18 Para 54<sup>20</sup> LCC/18 Paras 55-58<sup>21</sup> CD/G/4 Para 16, LCC/18 Para 59<sup>22</sup> LCC/18 Para 60, CD/G/17 2<sup>nd</sup> report Para 185

and are just short of the CS requirement. A robust approach over a market cycle, in line with the *Guidance*, has met the cumulative need and is moving into line with the CS requirement. This is similar to the conclusion of the Bagley Lane Inspector. Although time has passed he was informed that the target for 2014/15 would not be met. His conclusions should continue to apply as the practical difference is one additional year in which supply only fell by 364 units.<sup>23</sup>

- 5.2.14 The Appellants' make much of how substantial the CS requirement is but the Council has always acknowledged that and is committed to meeting the target. To add a 20% buffer would be unproductive, contrary to the intentions of the *Framework*, and would undermine the strategy for meeting the target. A 20% buffer would effectively increase the CS target to allow remote greenfield sites to get permission at the expense of urban regeneration. With a 5% buffer the Council maintains that the 5 year housing requirement is 27,911 units.<sup>24</sup>
- 5.2.15 Many of the sources of supply are agreed. Over 5 years these would be; 2500 smaller windfalls, those sites too small to be identified by the SHLAA; 1000 empty homes; and -225 demolitions. In terms of large windfalls the Council includes an average of 167 such units a year whereas large windfalls have actually produced an average of 388 units over the last three years. This allowance was accepted by the Bagley Lane Inspector with only 2 years of evidence and should be allowed in this case.<sup>25</sup>
- 5.2.16 *Framework* paragraph 47 requires five year supply sites to be "deliverable" and sets out advice in Footnote 11. Firstly, "sites with planning permission should be considered deliverable until permission expires unless there is clear evidence that schemes will not be implemented within 5 years". Secondly, "sites should be available now, offer a suitable location for development now, and be achievable with a realistic prospect that housing will be delivered on the site within five years and in particular that development of the site is viable."<sup>26</sup>
- 5.2.17 The Appellants acknowledge and identify 16,571 units in the 5 year supply deriving from the 2015/2020 that have planning permission or are under construction. The equivalent figure for 2016/2021 is 14,770. All these units must count in the absence of clear evidence otherwise. The real challenge is to the achievability although predictions of delivery are inherently uncertain. Consequently the Framework looks only for a realistic prospect of delivery. The *Guidance* addresses the Footnote 11 factors of Availability, Achievability and Deliverability.<sup>27</sup>
- 5.2.18 Reference has also been made to Wain Homes (SW) Holdings Ltd v SSCLG. This agrees that sites should not be 'assumed' to be deliverable. The Council has considered each site against the Footnote 11 tests and the same methodology has been used by the Appellant. Another occupier is

<sup>23</sup> LCC/18 Paras 61-62, CD/G17 2<sup>nd</sup> Report Para 187

<sup>24</sup> CD/A/38A, CD/L/14, LCC/18 Paras 63-64

<sup>25</sup> LCC/18 Paras 65-66, CD/A/1 Para 48, LCC/11/B Para 3.13 & App 2, CD/L/5 Para 3.16, CD/G/17 Para 200, CD/A/3 Paras 4.6.4, 4.6.8 & 4.6.10

<sup>26</sup> LCC/18 Paras 67

<sup>27</sup> LCC/18 Para 68-71

not a bar to inclusion of the site in the five year supply but rather consideration should be given as to whether any problem could be overcome to allow delivery within 5 years. The inclusion of a site in the SHLAA provides a starting point and some evidence a site is deliverable.<sup>28</sup>

5.2.19 The SHLAA takes on board an enormous amount of information and is the result of an iterative process. The 2015 SHLAA, from which the 5 year supply derives, used the same methodology as the 2014 SHLAA which was the subject of extensive consultation with the development industry. It didn't agree with a number of issues which has influenced the approach to consultation. Criticisms in the Appellants' case reflect the intractable differences between the parties. Both the SHLAA and the SAP inform each other and each allows promoters to be heard and for availability and achievability to be confirmed creating a rebuttable presumption as to their delivery.<sup>29</sup>

5.2.20 The Appellants' criticisms of the SHLAA differences were raised at the Bagley Lane Inquiry and the Inspector's conclusions below hold good in this case.

- a) Supply cannot be approached in a policy vacuum. Allocations and the 5 year supply need to reflect the CS strategy;
- b) Although volume house builders reject much of the supply from the city centre and the inner area, there are factors that would assist supply in those areas such as PRS and low cost builders;
- c) The viability of some city centre and inner area sites indicates that many sites are likely to be viable, albeit not with volume builders profit margins;
- d) The Council's build out rates based on past performance and publically stated anticipated rates are to be preferred;
- e) The input of the development industry is important; and
- f) The SHLAA is a snapshot in time.

Taking account of policy context and the other factors referred to above the Council's analysis is to be preferred.<sup>30</sup>

5.2.21 All this needs to be seen in the context of whether the Council's approach to achievability is realistic and reasonable, a fact already confirmed by the Bagley Lane Inspector:

- a) Challenges to a number of HLS matters were dismissed confirming there was no error in the legal approach to housing land supply;
- b) This endorsed the Council's approach to the SHLAA and its methodology to ensure consistency;

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<sup>28</sup> LCC/18 Paras 72-73, MMH/3/C App ID8

<sup>29</sup> CD/A/3 Para 4.6.17, LCC/18 Paras 74-78

<sup>30</sup> LCC/18 Para78

- c) A number of arguments in this case were also raised at Bagley Lane and dismissed. Arguments have narrowed and viability is no longer questioned. House price growth has strengthened to 6.5-7.5% in the city centre and inner area and sales have increased.<sup>31</sup>
- 5.2.22 The supply of housing should not be seen in isolation from the Strategy. Both the CS and Community Infrastructure Levy (CIL) Inspectors noted the housing requirement was large but concluded the Strategy was effective and deliverable. It has begun to deliver and the considerable activity will act as a catalyst for further growth. In addition the Council is being proactive with measures, including, amongst others, delivering housing itself and selling brownfield land in its ownership. The Strategy is delivering, albeit perhaps less rapidly than originally hoped.<sup>32</sup>
- 5.2.23 Some particular concerns were raised by the Appellants but must be put in context. Leeds is a large area with very many sites coming forward. It is therefore impossible for the Inspector to replicate the SHLAA or 5 year supply exercise. A broad range of sources of supply have been used in a realistic way. Whilst there is a need for robust evidence to support decisions that does not mean a letter from the landowner setting out his intentions. What it does mean is that the Council's assessment should be capable of being explained and evidenced. Where there is new information the details are updated hence following the round table session the Council reduced the number of units assessed as deliverable to 30,385. Although the Appellants disagree on key issues, the Council's position is realistic and none of the points raised are a bar to the inclusion of particular sites. The SHLAA and SAP are objective and can be tested.<sup>33</sup>
- 5.2.24 Wain Homes is illustrative in terms of 'other active uses'. In that case "factory that has not been derequisitioned" was considered unavailable but that is different to a surface car park such as Site 445 Jack Lane/Sweet Street. It previously had outline permission for residential development and has now been sold to the developer Caddick. It is close to Holbeck Urban Village, a key regeneration area, and is being actively promoted for development. The Appellants assert that there is no realistic prospect of housing in the 5 years from 2016. This defies the evidence.<sup>34</sup>
- 5.2.25 Regard has to be had to the Footnote 11 advice about planning permission. Site 200-401 Quarry Hill has outline planning permission for a mixed use including 715 flats. It has been in use as a temporary car park but was acquired in 2015 by a developer in association with Moda Living. A newspaper article indicates a start on site in 2017 with the first homes ready to rent by 2019. The Appellants do not allow for any development in the 5 years from 2016. This is impossible to justify and whilst there may be some room for an alternative view that falls far short of showing that the Council's view is unrealistic.<sup>35</sup>

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<sup>31</sup> CD/A/32 App 1 Sect 4, CD/G/18 Para 30 onwards, LCC/18 Para 79-81

<sup>32</sup> LCC/18 Paras 81-82

<sup>33</sup> CD/A/2 Para 3-012, LCC/18 Para 83-87

<sup>34</sup> LCC/18 Paras 91-94

<sup>35</sup> CD/A/32 Para 4.18 App 5, LCC/18 Para 95

- 5.2.26 Sites without planning permission, including those with expired consents, should be assessed against the Footnote 11 tests and a judgement formed in the light of all the information. The Council agrees that where there is evidence of an intention by a specific developer to develop in an identified timescale it is valuable but not a pre-requisite. Many of the sites are not greenfield sites outside settlements such that gaining permission is an uphill task. Most are brownfield sites in the Major Urban Area (MUA) where the Council's strategy supports development. In addition, viability appraisals have been carried out to identify areas where there is a real prospect of the market delivering housing. Indeed, at the CS EiP the development industry supported the Council's strategy and argued for even higher delivery figures.<sup>36</sup>
- 5.2.27 The Appellants' approach is unduly pessimistic. It is unrealistic to expect explicit commitment on each urban site when many are Council owned and made ready for sale through the Brownfield Land Programme. If a site is going to be offered to the market ready for development and offering a profitable development opportunity following a robust SHLAA process, there is a realistic prospect of housing delivery. For example site 649 Charity Farm Swinnow is questioned by the Appellants as there is no developer interest. However, the Council is brokering the sale for housing and the District Valuer has found the site to offer a profitable housing opportunity. There are no constraints and it would be realistic to include the site in the 5 year supply.<sup>37</sup>
- 5.2.28 In respect of delivery rates and lead-in times, the parties agree that specific information may be used or standardised information based on the average performance of other sites. Consequently the differences are matters of judgement that relate to the build out rates of traditional family housing in the outer areas rather than the inner areas and city centre.<sup>38</sup>
- 5.2.29 The Council's delivery rate is an average from completed sites in the district of 78 dpa and should be preferred to the unsubstantiated standardised figure of 50 dpa. The up-to-date averaged figures cannot be called unrealistic and suggest the house builders' figures are pessimistic, as the Bagley Lane Inspector concluded. The figures for flats are based on specific information from developers. Different views may be reasonable but the house builders seem to have been influenced by a pessimistic view of delivery by the PRS model.<sup>39</sup>
- 5.2.30 In addition, the SHLAA is based on 2015-2020 whereas the 5 year supply covers the period 2016-2021 and the lead-in times have been reconsidered as a result. As an example at East Leeds (707) the Appellants have only included 365 units but it is the single largest allocation in the district, it is high value greenfield land that will be central to the SAP and deliver a wide range of unit types. The capacity to 2028 is 4,446 units. No allowance has been made until 2018-19. The Council has reasonably assumed 50 dpa and it would be realistic to assume a number of outlets. In addition,

<sup>36</sup> LCC/10/A Para 4.37, LCC/18 Para 96-97

<sup>37</sup> LCC/18 Paras 97-98

<sup>38</sup> LCC/18 Paras 99-101

<sup>39</sup> LCC/10/A Para 4.112, LCC/18 Para 102-103

the East Leeds site and Skelton Gate (5217) are examples of where infrastructure requirements have been considered for provision alongside housing development.<sup>40</sup>

- 5.2.31 No sites have had their viability questioned and it is acknowledged that the primary and secondary markets are attractive to developers and investors. Indeed, in the tertiary market there is an active land market with specialist developers successfully developing and keen to acquire more land. Measures by the Council to make land available are highly relevant.<sup>41</sup>
- 5.2.32 The Appellants raise capability concerns relating to the specialist development sector. There is no evidence that sites identified through the SHLAA and SAP process would not be developed and the concern appears to be based on only three letters, each of which sets out plans for expansion. There is no justification for a blanket restriction on supply just because the development industry is not up to the job. This matter was also raised at Bagley Lane but the Inspector concluded, in a worse economic climate, that a supply of 26,500 units was deliverable.<sup>42</sup>
- 5.2.33 The ability of the PRS, particularly in the city centre, to perform, is also questioned by the Appellants but their view is pessimistic and does not reflect the evidence. The clearest example is site 407 the Dandara scheme in the Holbeck Urban Village area. The Appellants stance is that the site is only potentially viable, and is in a fringe location with doubts over funding and commitment. However, planning permission has been granted and the developer has committed to completion within two years of commencement. Public statements demonstrate that the PRS has looked at Leeds, which is currently the single primary target for investment. Quarry Hill already mentioned above is another example. This is a PRS scheme promoted by Moda Living which is party to a joint venture fund of £1bn. Moda intends to commence in early 2017 and deliver the first homes by 2019 with all units completed within 5 years. Not to include this site, as the Appellants don't, is absurd on the evidence.<sup>43</sup>
- 5.2.34 The note on tipping point indicates the safety margin that exists in the 5 year housing land supply figures. If the Council's position in relation to the 2015-16 completions is accepted, then after the round table session and with a 5% buffer the safety margin would be 6,249 houses. Even with a 20% buffer it would be 2,262.<sup>44</sup>
- 5.2.35 A view must be formed on the realism of the Council's position. Sites will come and go over time, and delivery rates alter, but with a safety margin of this magnitude, even accepting the Appellants' full case on requirement there would be a margin of 1,546 units. The Council's position is entirely realistic and reasonable and the Inspector and the SoS can have every confidence that there is a 5 year supply of land.<sup>45</sup>

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<sup>40</sup> See SHLAA, LCC/18 Paras 104-105

<sup>41</sup> LCC/18 Paras 106-108, Mr Roebuck XX Mr Williams

<sup>42</sup> LCC/10/A Para 4.82, LCC/18 Para 109

<sup>43</sup> CD/A/32 Paras 4.10, 4.14iii) App 2, LCC/10/A Para 4.64, LCC/18 Paras 111-114

<sup>44</sup> CD/A/38A, LCC/18 Para 115

<sup>45</sup> LCC/18 Para 115

### 5.3 Assessment Against Development Plan Policy

- 5.3.1 The Council considers that the proposal deliberately steps outside the plan-led system by seeking the release of the site for housing whilst it is under consideration for such a use through the SAP process. Only the SAP process, and not a Section 78 appeal, can conduct a comprehensive review of the relative merits of sites to allow the most sustainable to be chosen to provide housing. The proposal is contrary to the development plan and would cause significant harm to the plan-led system.<sup>46</sup>
- 5.3.2 The same position was adopted at the Bagley Lane appeal. The Inspector concluded UDPR Policy N34 was a saved policy that allowed review of PAS land through the plan system consistent with *Framework* paragraph 85. The SoS concluded in March 2015 that the CS was up to date, and that the Council had a 5 year supply of housing land, as a result of which it was appropriate for the SAP process to continue. It has advanced since that date. Although the SoS decision has since been quashed it was not on grounds relating to those conclusions. The judgement concluded that UDPR Policy N34 was not out of date and that there was no legal error in the approach to the issue of 5YHLS.<sup>47</sup>
- 5.3.3 N34 remains an up to date, saved, policy as the written justification for the policy sets out. "The suitability of the protected sites for development will be comprehensively reviewed as part of the preparation of the Local Development Framework, and in the light of the next Regional Spatial Strategy. Meanwhile, it is intended that no development should be permitted on this land that would prejudice the possibility of longer-term development, and any proposals for such development will be treated as departures from the Plan".<sup>48</sup>
- 5.3.4 This is reinforced by the UDPR Inspector who stated "the Policy does not and should not contain a presumption in favour of long-term development of these sites as firm decisions as to whether they should or should not be allocated for development cannot and should not be made until such time as the present plan is reviewed. The Appellant treats the PAS sites as akin to reserve housing allocations and maintains that they have been judged suitable and sustainable sites for development although they need to be assessed against the current policy context. However, they are not allocated for housing but placed in a policy restriction. The need for them, their role, their suitability and their specific function were all left to be considered at the end of the plan period."<sup>49</sup>
- 5.3.5 The Appellants' rely on extracts from *Planning Policy Guidance 2: Green Belts* but it is clear that a high level assessment was to be followed by a local plan review after 2016. In any event, the approach to sustainability as set out in the *Framework* is now different. The local plan review is underway and to grant permission now would be contrary to N34 which is in line with *Framework* paragraph 85.<sup>50</sup>

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<sup>46</sup> LCC/18 Para 10

<sup>47</sup> CD/G17 Paras 14 - 22 and 215-220, CD/G18

<sup>48</sup> CD/A/5, LVV/18 Para 12

<sup>49</sup> CD/A6 Paras 106.7-13, LCC/18 Para 13

<sup>50</sup> LCC/18 Paras 14-17

- 5.3.6 The Appellants' view is that PAS sites should be released for housing rather than Green Belt sites reviewed or released. The Council does not intend to allocate all the PAS sites but does intend to release a substantial amount of Green Belt land. However, that does not go to the weight to N34 or its breach. It is playing out the strategy endorsed by the CS, which in turn was found by an Inspector to be sound and compliant with the *Framework*. The large housing requirement makes it unsurprising that both Green Belt and non-Green Belt land will be required and a full review would enable the most sustainable to be identified.<sup>51</sup>
- 5.3.7 The Council is accused of being inconsistent, particularly in respect of Headley Hall a large site in the Green Belt. Policy in *Framework* paragraph 52 and CS Policy SP10 indicates that a new settlement can be sustainable by providing the infrastructure it needs. The alleged inconsistency would not warrant doing away with the process and simply planning by appeal. Whether the site should be released for housing is a question for the SAP. The plan process allows for the relative assessment of a large number of competing sites and full public engagement.<sup>52</sup>
- 5.3.8 The fact that the UDPR has a plan period to 31 March 2016 does not render Policy N34 out of date. It is saved with a role of ensuring that safeguarded land is assessed through a local plan review which is underway.<sup>53</sup>
- 5.3.9 Turning to the CS, it was adopted in November 2014 and is up-to-date. The spatial strategy within it is contained most relevantly in Policies SP1, SP6 and SP7, together with the role of the SAP. It includes a balance between greenfield and brownfield land, in CS Policy H1, and a quantum to be provided in the Major Urban Area (MUA), see Policy SP1 Table 2 and SP7. The CS must be read as a whole.<sup>54</sup>
- 5.3.10 It is also accepted that the CS has a development control function and CS Policies SP1 and SP6 should be used to assess development for conformity with the development strategy. The Policies should be applied in a common-sense way and when that is done the proposals are contrary to the central strategy of the CS. The site is agricultural land that contributes to the character and identity of the 'small settlement' which is below the MUA and Major Settlements in the development hierarchy and only provides basic services. Providing a significant amount of housing in such a settlement would not accord with CS Policies SP1 and SP6.<sup>55</sup>
- 5.3.11 CS Policy SP1 refers to the distribution and scale of development reflecting the hierarchy. The Appellants appear to suggest that any development in a smaller settlement would be acceptable in principle but this is difficult to square with the considered settlement hierarchy and spatial strategy. The proposals fail to accord with the development plan through CS Policies SP1, SP6, SP7 and H1.

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<sup>51</sup> CD/A/39, LCC/18/19

<sup>52</sup> LCC/18 Paras 19-21

<sup>53</sup> LCC/18 para 46

<sup>54</sup> LCC/18 Para 22-24

<sup>55</sup> LCC/18 Paras 25 and 26

- 5.3.12 The phased release of housing allocations is to support CS Policies SP1, SP6, SP7, and SP10. The SAP identifies existing permissions and former allocations and the balance is allocated by applying CS Policies. This includes the spatial strategy, with its focus on the MUA and major settlements, as well as its priorities for previously developed land and regeneration. Greenfield land in outer areas and smaller settlements fall well down the hierarchy and CS Policies H1 and SP6 require a relative assessment of sites to consider their overall sustainability and appropriateness in the light of the CS strategy. In advance of the SAP debate the proposal must be considered against the CS Policies. Phasing reflects the relative performance against CS strategy and the need for other more sustainable sites to come forward first.<sup>56</sup>
- 5.3.13 The Council's SAP is progressing but the Collingham site is not considered necessary during the plan period to 2028 as there are more sustainable sites to meet the need. The allocation of sites involves inter-related issues such as provision of necessary infrastructure. When considered in the round a Green Belt site may be more sustainable than a non-Green Belt site. The SAP allocates housing to make up the target through CS Policy H2 as explained in the supporting text. Policy H3 follows *Framework* paragraph 85 and identifies safeguarded land that is not allocated pending a local plan review.<sup>57</sup>
- 5.3.14 The Council accepts that the proposal, in itself, would not give rise to a prematurity reason for refusal but it would pre-judge the outcome of the SAP and undermine the process as the Inspector and SOS concluded in the Farsley case. This is what UDPR Policy N34 and CS Policies SP10 and H1 seek to avoid. Moreover there are about half a dozen appeals on safeguarded land currently undetermined. Even without the SAP there is a large supply of housing permissions, in 2014/15 permission was granted for 8,000 units. Consequently, the release of the site is unnecessary.<sup>58</sup>
- 5.3.15 UDPR Policy N34 is consistent with *Framework* paragraph 85, as the Farsley Inspector concluded, and identifies land safeguarded to meet longer-term development plan needs following a local plan review. It does not allocate such land. Moreover, this policy approach was recently endorsed by the CS Inspector as sound and consistent with the *Framework*.<sup>59</sup>
- 5.3.16 Reference has been made to Colman v SSCLG [2013] EWHC 1138 but that did not consider a safeguarding policy. The *Framework* is straightforward, the detailed merits of the sites should be addressed through a local plan review. N34 is consistent with the *Framework* and any balancing exercise should be considered through Section 38(6) and an appraisal as to whether the proposals amount to sustainable development applying the *Framework*. The Appellants' argument is hard to square with a refusal to accept that paragraph 85 is not a policy within the meaning of Footnote 9 which "indicate(s) development should be restricted".<sup>60</sup>

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<sup>56</sup> CD/A/10 5.2.2, Sect 1 and 2, table 1 p14, LCC/18 Paras 30-31

<sup>57</sup> CD/A/10, LCC/18 Paras 32-34

<sup>58</sup> LCC/18/Paras 35-36

<sup>59</sup> LCC/18 Paras 38-39

<sup>60</sup> CD/G4, LCC/18 Para 40

- 5.3.17 *Framework* paragraph 85 is a policy that “indicates development should be restricted” within the meaning of paragraph 14. It expressly stipulates that planning permission should only be generated following a local plan review. Footnote 9 only provides examples. The Appellants maintain that restrictions in Footnote 9 are permanent, but any restriction can be created, amended, or ended.<sup>61</sup>
- 5.3.18 The Appellants refer to “a policy vacuum on where new housing will come from”. *Framework* paragraph 14 refers to the development plan being silent in relation to decision taking and the consequence of the Appellants’ approach is that any authority that did not have an allocations plan would have a silent development plan, which is obviously absurd. The development plan is not silent in this case. Relevant policies are stated in the reasons for refusal and apply for development control purposes. The Council has granted permission for 8,000 units in the last year using those development plan policies.<sup>62</sup>
- 5.3.19 The CS is accepted to be up-to-date. The Council accepts that UDPR Policy N34 would be out of date in the absence of a 5 year HLS, in light of the Hopkins judgment, but there remains the question of what weight to give it given the consistency with the *Framework* and its objectives. The fact that the UDPR has a plan period to 31 March 2016 does not render it out of date. Policy N34 is saved and in force. Its purpose of safeguarding land is current and not out of date and was always intended to last beyond the plan period. Indeed, the Bagley Lane Inspector considered N34 to be up to date. Although that decision was prior to the end of the plan period that does not affect the policy’s purpose or currency. To argue otherwise would simply repeat the view that the PAS sites should be considered as reserve housing allocations with an identified trigger point, which they are not. The proposal fails to accord with development plan policies.<sup>63</sup>
- 5.4 Whether Occupants of the Proposed Development Would have Acceptable Access to Shops and Services**
- 5.4.1 The sustainability of the site relative to others in the HMCA in terms of facilities and access would be significantly affected by the proposal and site selection should be guided by the Settlement Hierarchy as reflected in the SAP. The addition of 150 units in Collingham would be significant increasing the size of the settlement by approximately 14-15%.<sup>64</sup>
- 5.4.2 Where development is contrary to the settlement hierarchy, as here, then CS Policy SP1 requires accessibility to be carefully assessed. This is also addressed through CS Policy SP6 i) and the supporting text. This is done through Accessibility Standards in the CS which “define the minimum standard that a new development will need to meet” echoing *Framework* paragraphs 32 and 34.<sup>65</sup>

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<sup>61</sup> MHH/12 Para 157

<sup>62</sup> LCC/18 Paras 42-43, MHH/3/A&B Para 3.2

<sup>63</sup> CD/L/8, LCC/18 Paras 44-47, MHH/3/A&B Para 3.2

<sup>64</sup> LCC/18 Para 123 & 126

<sup>65</sup> CD/A/3 Para 5.4.3, LCC/18 Para 124

- 5.4.3 The appeal proposals fail by some way to meet all the Standards. The village is remote from the MUA and in the context of Leeds has a poor bus service. The village has few local services and the site is not only distant from the centre of the village but the routes are substandard due to gradient or footpath width. These were considered and the Appellant could not suggest that the Standards could be met<sup>66</sup>
- 5.4.4 Collingham Primary School is at capacity and even when combined with Bardsey the two schools would not be able to absorb the 38 pupils that would be generated by the development. Either new facilities would have to be provided, for which there are no plans, or the children must go elsewhere. The same is true of the surgery, the expansion of which is not in the appellants' or the Council's gift. This is the consequence of promoting a large development in a smaller settlement.<sup>67</sup>
- 5.4.5 In summary, the proposal cannot be considered as sustainable within the meaning of the *Framework* as embodied in the adopted CS. The proposals would depart from key strategies and subvert the intended means of delivering them through the SAP.<sup>68</sup>

## 5.5 Effect on the Highway Network

- 5.5.1 Revised reason for refusal 4 relates to the effect of the proposals on the wider highway network and states that "the applicant has so far failed to demonstrate that the local highway infrastructure, including the wider network that will be affected by additional traffic as a result of this development, is capable of absorbing the additional pressures placed on it by the increase in traffic, cycle and pedestrian movements which will be brought about the proposed development".<sup>69</sup>
- 5.5.2 The Council's evidence indicated that investigations were on-going between the Appellants and the Highway Authority to devise a scheme to mitigate the development impact on the A58/A659 Harewood Road junction. An acceptable form of mitigation has now been identified, which for the avoidance of doubt does not propose the signalisation of the A58/Mill Lane/School Lane junction.<sup>70</sup>
- 5.5.3 Details of footpath widening have also been submitted to the Council as shown on drawing no 7119-015 and it is agreed that this could be secured by a condition. An *Addendum Highways Statement of Common Ground* sets out that as a consequence of agreeing the proposed junction improvements the revised reason for refusal 4 has been satisfied and will no longer be pursued by the Council.<sup>71</sup>

## 5.6 Effect on the Character and Identity of Collingham

- 5.6.1 CS Policy SP1(iii), which is consistent with paragraph 64 of the *Framework*, requires development to respect and enhance the local character and

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<sup>66</sup> LCC/18 Para 125

<sup>67</sup> LCC/18 Para126

<sup>68</sup> LCC/18 Para 127

<sup>69</sup> CD/L/4 Para 1.5 rfr4

<sup>70</sup> CD/L/6CParas 1.5-1.6

<sup>71</sup> CD/L/6C Paras 1.7-1.8, App A

identity of places. It is agreed that the site exhibits many of the key characteristics of the surrounding countryside. The landscape strategy is to maintain the integrity of settlements, conserve characteristic features, and reinforce the pattern of small rural villages whilst preserving their character and individual identities. New housing around villages is identified as a negative feature.<sup>72</sup>

- 5.6.2 The appeal site is open agricultural land that provides a setting to the village and separation from Bardsey. The approach from Bardsey is rural and the trees alongside the A58 and the Beck are unbroken by accesses and driveways until Millbeck Green is reached making an important contribution to the character of the area.<sup>73</sup>
- 5.6.3 The Appellants maintain that the site is more related to the village than the countryside, a view also reached by the UDPR Inspector. There will always be a degree of inter-relationship but the impact must be assessed. It is accepted that the countryside setting is important to the character of the village. Indeed, the UDPR Inspector recognised the countryside's role in providing separation from Bardsey and highlighted the value of the trees along the beck, albeit that he considered their controlled loss might be acceptable. The proposed development would urbanise views, lead to a loss of woodland and the introduction of an access road and bridge. The perceived separation from Bardsey would be reduced. The village would be extended west remote from its core, accentuated by the new access, to the detriment of the village's setting and character.<sup>74</sup>
- 5.6.4 Unusually, the 150 houses proposed are not shown on the illustrative plan, only some 110 units, so the impact cannot be assessed to enable a decision maker to say the proposal would be acceptable. In any event, the proposed housing would be intense, unlike the soft rural approach to this edge of the village. CS Policy H3 requires housing in Smaller Settlements to meet or exceed a density of 30 dph. The density of the proposal would be 35 dph compared to Crabtree Green, which is 7.6 dph and Millbeck Green which, even ignoring those properties with long gardens, is only 13 dph. Whilst this is only one parameter it is highly relevant.<sup>75</sup>
- 5.6.5 An area of Public Open Space is proposed in a part of the site that is in the Green Belt. This would not necessarily be inappropriate development but in the absence of levels the Council has taken a cautious approach. The proposal would be detrimental to the character and integrity of the surrounding area.<sup>76</sup>

## **5.7 Other Matters**

- 5.7.1 Since the submission of the appeal, further ecology surveys and a tree survey have been submitted and considered in detail. The Council considers that the surveys address the concerns set out in revised reason

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<sup>72</sup> CD/I1, LCC/18 Para 116-118

<sup>73</sup> LCC/18 Para 119

<sup>74</sup> CD/A/6 Para 849.3, LCC/18 Para 120

<sup>75</sup> MHH/7/B Para 4.24, MHH/7/C2 Fig RT-08, LLC/18 Para 121

<sup>76</sup> LCC/13/B, LCC/18

for refusal 6 and, consequently, that reason for refusal is no longer contested by the Council.<sup>77</sup>

- 5.7.2 A Flood Risk Assessment report and a Flood Risk Sequential Test report were submitted with the application and considered by the Environment Agency and the Council's Flood Risk Management Section. The proposed flood mitigation works would address direct flooding of the A58 and Crabtree Green from Collingham Beck, and significantly reduce the risk of flooding to a number of properties in Collingham and specifically to 22 properties on Millbeck Green.<sup>78</sup>
- 5.7.3 The Council's Highways Department and Highways England have raised no objection to the engineering design of the proposed access bridge and the Environment Agency is satisfied it would allow the required water flow beneath it. Appearance and materials could be controlled by conditions.<sup>79</sup>
- 5.7.4 Affordable housing would be provided in accordance with policy requirements and the Council accepts that noise, archaeology and heritage matters have no implications for developing the site and would not provide a basis for refusing planning permission.<sup>80</sup>

## 5.8 Section 106 Agreement and Conditions

- 5.8.1 At application stage, planning obligations were to be provided by an agreement or undertaking. Subsequently, a Community Infrastructure Levy was adopted in April 2015 and the CIL amount in this case would be £90/m<sup>2</sup> of residential floor space. However, some matters, affordable housing and a verification fee, a Metro Card contribution, an off-site works contribution, a flood prevention contribution, and a Travel Plan and a review fee, still require to be addressed through the S106 procedure. A note setting out the justification for the measures in the Agreement in respect of the tests set out in *Framework* paragraph 204 has been submitted.<sup>81</sup>
- 5.8.2 Through a process of iteration, the two main parties have agreed a list of suggested conditions for the Inspector's consideration against the tests set out in *Framework* paragraph 206.<sup>82</sup>

## 5.9 Planning Balance

- 5.9.1 The overall planning balance will be affected by the situation in respect of Housing Land Supply. The approach in Suffolk Coastal DC v Hopkins Homes Ltd [2016] EWCA Civ 168 should be followed. If there is no 5 year Housing Land Supply the policies relevant to the supply of housing will be deemed out-of-date. UDPR Policy N34 is such a policy but even so the weight to be given to the policy, and its breach, is a matter of judgement reflecting consistency with the *Framework*, the purpose of the policy and potentially the degree of any housing shortfall. In this case, N34 is the

<sup>77</sup> LCC/13/B Para 4.5, CD/L/4 Para 1.9 and 6.1

<sup>78</sup> CD/J/11, CD/J/17, LCC/13/B Para 4.6, CD/L/13 Paras 6.3-6.4

<sup>79</sup> CD/L/4 Para 6.7

<sup>80</sup> LCC/13/B Paras 4.6, 6.2 and 6.5

<sup>81</sup> CD/L18, CD/L/19A, LCC/13/B Sect 8

<sup>82</sup> CD/L/17C

only policy suggested to be out-of-date and it should be given very substantial weight.<sup>83</sup>

- 5.9.2 The presumption against the development through Section 38(6) is very strong regardless of whether there is a 5 year housing land supply. The benefits would to a large extent be generic and in any event would be provided if the SAP were allowed to run its course but in a comprehensive and balanced way. No case is made of any local need or benefit and no additional affordable housing is offered.<sup>84</sup>
- 5.9.3 The proposal would be contrary to, and undermine, the adopted CS and *Framework* paragraph 85. The proposal would deny the public expectation that PAS sites would be considered through a local plan review, which the SoS gave very considerable weight in a Gilden Way, Harlow decision, APP/N1540/A/11/2167480, a process already begun in Leeds.<sup>85</sup>
- 5.9.4 The appeal would cause significant and demonstrated harm, through breach of the development plan, through undermining the plan-led system, through predetermining decisions that are progressing through the due process, as well as the specific social and environmental harms caused by breaches of the spatial strategy and the settlement hierarchy, the lack of sustainability and accessibility relatively within Leeds, the harm to the environment, to the character of villages and the unsustainable strain on services due to the sale of development and harm to the highway network.<sup>86</sup>
- 5.9.5 The proposals are contrary to the development plan and the issues raised in this appeal are most properly addressed through the plan-led system and the conclusion of the SAP, In these circumstances, however struck, the development would be unacceptable, unsustainable and should be refused.<sup>87</sup>

## **6. The Case for Miller Homes and the Hills Family**

### **6.1. Introduction**

- 6.1.1 In the Collingham section of the Inquiry the Council called 3 witnesses, and the Appellants 4, as ecology evidence was not required. A number of interested persons, including the local MP, spoke. The 5 year HLS session for all three appeals received 3 days of evidence from 6 witnesses. This gives rise to two observations.<sup>88</sup>
- 6.1.2 Firstly, there can be no basis for anyone, including the public, to contend they have not had an opportunity to be heard. The sites have been put under a microscope for three weeks and time slots have been set aside for members of the public to comment. All planning points made have been addressed in evidence and submissions. Secondly, although the process is

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<sup>83</sup> MHH/12/Paras 151-152, CD/L/8 Para 49

<sup>84</sup> MHH/12 Para153 and 155

<sup>85</sup> MHH/3/C App ID15, MHH/12 Para 154

<sup>86</sup> MHH/12 Para 155

<sup>87</sup> MHH/12 Paras 158 and 156

<sup>88</sup> MHH/12 Paras 1-2

lengthy, the evidence of both sides has been tested in a thorough, fair and robust manner.<sup>89</sup>

## 6.2 Assessment of Housing Land Supply

- 6.2.1 The basis for taking this decision is set out in the *Framework* and *Guidance*. *Framework* paragraph 47 requires an objective assessment of housing need in the relevant administrative district, in this case Leeds City Council, and then to identify and update annually a supply of specific deliverable sites. That is sites which not only can, but will, come forward for housing. Paragraph 47 is refined by the *Guidance* which requires robust, up-to-date evidence to support the deliverability of sites ensuring its judgements are clearly and transparently set out.<sup>90</sup>
- 6.2.2 The adopted development plan sets out the housing requirement in CS Policy SP6. For the first 5 years, 2012 to 2017, the annual requirement is 3,660 units. For the next 11 years to 1 April 2028 the requirement is 4,700 units. An average over 16 years of 4,375 dwellings per annum.<sup>91</sup>
- 6.2.3 *Framework* paragraph 49 states that relevant policies for the supply of housing will be considered out of date if the local planning authority cannot demonstrate a 5 year supply of housing. Paragraph 14 states that if relevant policies are out of date then permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies of the *Framework* taken as a whole.<sup>92</sup>
- 6.2.4 There needs to be a balancing exercise, but within the parameter that there is a presumption in favour of granting permission. In doing that the Council needs to demonstrate that the harm from any grant would cause adverse impacts that would significantly and demonstrably outweigh the benefits. That is a high hurdle that is not met in these appeals.<sup>93</sup>
- 6.2.5 Significantly boosting the supply of housing is of critical importance but the supply of housing land is fraught with difficulties as judgements have to be made about what will happen in the future. The Appellants' experts have consistently stated that Leeds over predicts supply. The experts' evidence in relation to 2015-16 was only 16 units out, which is 99% accurate. In contrast the Council has a dismal record. Over the past 4 years of the CS requirement it has always got it completely and utterly wrong.<sup>94</sup>
- 6.2.6 It is agreed that the base line requirement in Leeds is 22,460. To that the shortfall must be added which is between 4,122-4,718 depending on which figure for empty homes is used. This shortfall has emerged during the lower requirement in the CS of 3,660 dwelling per annum that is set to rise to 4,700 in the coming years. The shortfall is to be met using the Sedgefield method with the full shortfall being met during 2016-2021.<sup>95</sup>

<sup>89</sup> MHH/12 Paras 3-5

<sup>90</sup> BDW/8 Paras 4.10-4.10.3

<sup>91</sup> BDW/7 Paras 13.1-13.6

<sup>92</sup> BDW/8 Paras 4.10.4-4.10.5

<sup>93</sup> BDW/8 Paras 4.11-4.14

<sup>94</sup> BDW/8 Paras 5.1.1-5.3.3

<sup>95</sup> CD/A/38A, BDW/8 Pra6.2.1-6.2.7

- 6.2.7 The buffer, of either 5% or 20%, required by *Framework* paragraph 47 needs to be added to the requirement. The Council has missed its target in each of the last 7 years and its evidence is that they will fail for another two years. In the first three years of the CS there has been a failure to meet targets every year and 2015-16 looks as if it will be no different on current figures. The shortfall for the three CS years at the lower target of 3,700 amounts to the equivalent of almost a whole year without any delivery.<sup>96</sup>
- 6.2.8 On past performance the buffer must be 20%. When the shortfall and the buffer are added to the requirement it comes to over 6,000 units in Leeds for the next 5 years. A daunting target. Statistics such as these prompted the SoS at Hardingstone to find a 20% buffer was required. All are agreed that the 20% buffer is not a punishment and would not require more houses in the plan period overall. 20% is justified because it is the only means, as paragraph 47 requires "...to provide a realistic prospect of achieving the planned supply".<sup>97</sup>
- 6.2.9 It is agreed that the base requirement in CS Policy SP6 is 22,460. It is also agreed that the shortfall and buffer have to be applied to the base requirement. The Council's figure with 5% buffer and more empties would be 27,911 whilst the Appellants' figure with less empties and 20% buffer would be 32,614. That equates to either 5,582 or 6,523 but the Appellants' should be preferred as the Council relies heavily on empties but with no evidential basis.<sup>98</sup>
- 6.2.10 The requirement is a minimum as CS Policy SP6 seeks "at least" the requirement set. The magnitude of the task is shown by the fact that before this Inquiry Leeds best year of completions was 3,800 in 2008. It is also material to look at completion levels for comparative cities. None gets even close to a figure of at least 5,582 units per annum.<sup>99</sup>
- 6.2.11 The position on supply is difficult as the timetable for adopting the SAP has not been met. Adoption is not now expected until at least December 2017. The best proxy is the December draft SHMAA 2015 but this is only a draft and is not finalised. Consequently there are a number of criticisms of the Council's assessment of housing land supply. Some of the sites will not deliver housing in the next 5 years and the document would not comply with Footnote 11 of the *Framework*, the *Guidance*, or the views of the Court in Wain Homes.<sup>100</sup>
- 6.2.12 Secondly, the document has emerged with little involvement of the house building industry, despite the *Framework* requiring them to be involved. Effectively Leeds has given up on the house builders as it considers them to be too pessimistic.<sup>101</sup>

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<sup>96</sup> BDW/7 Paras 13.7-13.11, BDW/8 Paras 5.4.1-5.4.4

<sup>97</sup> BDW/7 Paras 13.7-13.11, BDW/8 Paras 5.4.1-5.4.4

<sup>98</sup> CD/A/38A, BDW/8 Paras 7.1-7.7

<sup>99</sup> LCC/11/B App 1, BDW/8 Paras 7.7-7.12

<sup>100</sup> BDW/8 Paras 8.1-8.4.1.3

<sup>101</sup> BDW/8 Paras 8.4.2.1-8.4.2.3

- 6.2.13 Much turns on the Council's assertion that City Centre sites will come forward, but in the past it has seriously over calculated its area of supply. The volume house builders cannot bring forward viable development on centre sites. Some low cost builders with a different model can and whilst new low cost builders might pick up some slack there is no evidence that all sites will come forward. The Private Rented Sector (PRS) will not in itself solve the problem. As a concept it has not delivered in the past but what is needed is certainty now.<sup>102</sup>
- 6.2.14 The document also fails as there is a serious shortfall of supply in the next two years and it would not meet the requirement for 2016-17 and 2017-18. In addition it relies on sites, some 6,000 dwellings, that are not available now as there are other uses on them. Moreover there is speculative expectation of delivery of sites that do not have planning permission. Wain Homes determined that a factory that has not been derequisitioned was not available.<sup>103</sup>
- 6.2.15 The supply would be dependent on a huge number, 18,000, city centre units. An over optimistic reduction factor of 16.8% alone means that a tipping point is reached on the Appellants' figures with a 20% buffer. The document is also dependent on 15,347 dwellings, almost half the Council's supply case, that do not have planning permission. If 15,347 dwelling are removed then a tipping point is reached irrespective of which figures or buffer is used.<sup>104</sup>
- 6.2.16 Blanket lead in times based on site area have been used by the Council whereas the Appellants' have used a more sophisticated approach, including speaking with house builders. This latter is to be preferred. In any event, the estimate of supply does not conform with CS policies. The Farsley Inspector noted that the reliance on Centre sites would restrict delivery of affordable housing because policy only requires 5% in such locations. The distribution strategy SP7 would not be complied with because the vast majority of supply would be in just two areas.<sup>105</sup>
- 6.2.17 There is an element of double counting of windfalls. The Council has included a 2,500 windfall allowance but has also included 764 houses approved post 1 April 2015. There is also an allowance for large windfalls but there is no such provision in the CS and no evidence to justify an amount of 500. Finally the introduction of national space standards and optional Building Regulations will affect the actual numbers that can be physically achieved on sites.<sup>106</sup>
- 6.2.18 The position of the Council following the latest round table session is a supply of 34,160 dwellings. Unfortunately its approach does not meet the requirement for such sites to be robust and supported by evidence. Rather it is better characterised as if a site has a possibility of development then it must be considered in the supply. That leads only to a failure to hit the requirement which is what has happened far too often. The Appellants

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<sup>102</sup> BDW/8 Paras 8.4.2.4.1-8.4.2.4.5

<sup>103</sup> BDW/8 Para 8.4.2.4.6-8.4.4.3

<sup>104</sup> BDW/8 Paras 8.4.5.1-8.4.6.2

<sup>105</sup> BDW/8 Paras 8.4.7.1-8.4.8.3

<sup>106</sup> BDW/8 Paras 8.4.9-8.4.11.1

only accept around 55% of the Councils predicted supply. This would lead to it only having 2.87 years of supply if a 20% buffer is applied together with a proper assessment of supply.<sup>107</sup>

- 6.2.19 The Council repeatedly falls back on the Farsley decision. However, there can be no doubt that if the Farsley Inspector had known that there would be two subsequent years of under supply he would not have found a 5 year supply. The Inspector was misled by the Council's evidence to conclude that the Appellants' evidence was 'pessimistic'. However, on the contrary it has been proven to be accurate.<sup>108</sup>
- 6.2.20 The Council's delivery record for affordable housing is also poor and the target amounts to over 1,000 units a year. Delivery over the last 5 years is only around 49% of the SHMA requirement, a serious record of failure. There is therefore, a massive need for additional delivery for both market and affordable housing.<sup>109</sup>
- 6.2.21 The need for additional delivery is more marked since March 2016 as there is no development plan for delivery. The failure to produce an adopted SAP until December 2016 means there is no policy to set out how delivery of any houses, never mind the magnitude required, will actually take place. Housing in Leeds is at breaking point.<sup>110</sup>
- 6.2.22 The only hope offered by the Council is an expectation that the SAP will be adopted in December 2017. However, Leeds has failed to meet targets on any timetable and its optimism has always been misplaced. The only solution is to deliver housing now, not in December 2017 when even after the adoption of the SAP there will be a significant lead-in time. If the adoption of the SAP is awaited there would be no delivery until late 2018 early 2019.<sup>111</sup>

### **6.3 Assessment Against Development Plan Policy**

- 6.3.1 The 2009 SSD required completion of the development plan "promptly" but nearly 7 years later there is still no completed development plan in Leeds. The UDPR only makes housing land allocations up to 21 March 2016, whilst the CS indicates that it is not its role to identify individual sites and that the SAP will identify specific housing sites for 2012-2028. The SAP has not yet been adopted, or even submitted to the SoS for examination.<sup>112</sup>
- 6.3.2 In 2001 and 2006 the UDP and UDPR Inspectors tested the suitability of the site against the criteria in PPG2 Annex B and found it was: genuinely capable of development when required; located so as to promote sustainable development; and had regard to PPG3 Housing, PPG13 Transport, and environmental and landscape quality. The reasons for refusal ignore this development plan pedigree.<sup>113</sup>

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<sup>107</sup> BDW/8 Para 8.5

<sup>108</sup> BDW/8 Para 5.3.4

<sup>109</sup> BDW/7 Paras 13.11-13.13

<sup>110</sup> BDW/7 Paras 13.14-13.16.4

<sup>111</sup> BDW/7 Paras 13.16.5-13.17

<sup>112</sup> CD/A/3 Para 4.6.14, MHH/12 Paras 9 and 35

<sup>113</sup> CD/A/22 Annex B B2, B3, B4, MHH/12 Para 57

- 6.3.3 Paragraph 14 of the *Framework* addresses the situation where the development plan is absent, silent or where relevant policies are out-of-date. In those circumstances permission should be granted unless the adverse impacts would significantly and demonstrably outweigh the benefits when assessed against the policies of the *Framework* as a whole, or specific policies of the *Framework* indicate development should be restricted.<sup>114</sup>
- 6.3.4 Having regard to Colman [2013] EWHC 1138 (Admin) and Bloor [2014] EWHC 754 (Admin) the text of UDPR Policy N34 must be compared to *Framework* paragraphs 49 and 197. UDPR Policy N34 is clearly inconsistent with paragraphs 49 and 197 of the *Framework* as it acts as an outright bar to development with no allowance for any counteracting benefits. The reference to safeguarded land is in the context of expecting to have an up-to-date plan. With an up-to-date plan there would be no need to release safeguarded land. That does not apply here because the SAP is silent. There is no development plan document for allocation of housing, the development plan is silent and *Framework* paragraph 14 is engaged. Moreover, if there is no 5 year HLS the obvious choice for housing would be sites safeguarded for that purpose.<sup>115</sup>
- 6.3.5 The Council confirmed that N34 is a policy for the supply of land and that it was drawn up under a different policy regime and is not in accordance with current guidance. The UDPR expired on 31 March 2016 and there is no adopted development plan policy for housing allocation. Moreover the UDP policies relating to housing are time limited by the document itself as being "Over the period covered by the housing land policies of this plan (2003-16)." Despite this the Council was unable to concede that N34 is out of date although it confirmed that if a 5 year HLS could not be demonstrated then it would be.<sup>116</sup>
- 6.3.6 The argument that N34, which is consistent with *Framework* paragraph 85, is a Footnote 9 policy is misguided as those policies are intended to have long term effect, many are based in statute, and exclude housing use. By contrast N34 is expressly temporary in effect, controls land whose suitability has been assessed pursuant to PPG2 Annex B and during the intervening period protects against uses that would prejudice the uses of the land for development. N34 is, therefore, out of date on its own terms, inconsistent with Colman and out of date on that basis, and is only relevant as far as the development plan history demonstrates the suitability of the site in terms of PPG2 Annex B criteria.<sup>117</sup>
- 6.3.7 The development plan is silent on where 66,000 new dwellings should be located. Bloor [2014] EWHC 754 (Admin) found the development plan in that case was not silent because although there was no site allocation DPD to direct the delivery of 110 homes, there was a green wedge policy that prevented housing development on that site. This case differs as all 66,000 homes need to be allocated and there is no equivalent of the green

<sup>114</sup> MHH/12 Para 70, CD/A/1 Para 14

<sup>115</sup> MHH/12 Paras 38-39, 58,60 and 71

<sup>116</sup> MHH/12 Paras 59 and 72, CD/A/5 Para 7.1.3

<sup>117</sup> MHH/12 Paras 45-46 and 73

wedge policy. There is only UDPR Policy N34 that is out-of-date due to being time expired, failing the test of consistency in *Framework* paragraph 215, and because policies for the supply of housing are out-of-date as there is no 5 year HLS. The development plan is clearly 'silent' on the facts of this case.<sup>118</sup>

6.3.8 The CS was adopted after the introduction of the *Framework* and is up-to-date. It is ambitious as "The level of growth expected to occur by 2028 within Leeds is greater than any other authority within England". CS Policy SP6 sets a target of 'at least' 3,660 a year from 2012/13 to the end of 2016/17 but it is accepted that in the first 4 years LCC has fallen behind its target by 4,122 (LCC) or 4,718 (MHH). Worse still it has not met the minimum annual target of 3,660 in any of the first 4 years.<sup>119</sup>

6.3.9 A Settlement Hierarchy is at the heart of CS Policy SP1: Location of Development, whilst CS Policy SP6 indicates that the Settlement Hierarchy will "guide" the identification of where 66,000 new dwellings would be located. In addition to the housing requirement, CS Policy SP6 sets out a number of considerations to aid identification of sites including:

- i) Sustainable locations (which meet standards of public transport accessibility) supported by existing, or access to new, local facilities and services,(including Educational and Health Infrastructure);
- ii) Preference for brownfield and regeneration sites;
- iii) The least impact on Green Belt purposes;
- iv) Opportunities to reinforce or enhance the distinctiveness of existing neighbourhoods and quality of life of local communities through the design and standard of new homes;
- v) The need for realistic lead-in-times and build-out rates for housing construction;
- vi) The least negative and most positive impacts on green infrastructure, green corridors, green space and nature conservation; and,
- vii) Generally avoiding or mitigating areas of flood risk.

The Collingham site is consistent with i), ii), vi) and vii). The Council's main contention is that the site does not, in its view, comply with Policy SP6 i) that requires sustainable locations. Despite seeking to have "the least impact on Green Belt purposes" the SAP proposed 3,000 homes at Headley Hall that lies in the Green Belt some distance from any settlement.<sup>120</sup>

6.3.10 CS Table 1 and Map 3 identify Collingham as a "Smaller Settlement" whilst Maps 4 and 15 also denote it as a "Lower Order Local Centre". CS Policy SP7 requires housing provision in Smaller Settlements (2,300 infill and 5,200 extension) and also a distribution across Housing Market

<sup>118</sup> MHH/12 Paras 10 and 61

<sup>119</sup> CD/A/3 Para 4.1.3, Table 1 p24, Map 3 facing p25, MHH/12 Paras 12-13, 16 and 62

<sup>120</sup> CD/A/3 SP6, MHH/121 Paras 14-18 and 63-64

Characteristic Areas. Collingham is in the Outer North East HMCA where 5,000 units are required. When SP6 and SP7 are read together it is apparent that Collingham is a suitable location for development which is why the Council was unable to demonstrate any conflict with SP6 and SP7.<sup>121</sup>

6.3.11 The supporting text to CS Policy SP10 refers back to the UDPR and introduces PAS land that “will provide one of the prime sources for housing allocations in the LDF”. Collingham is identified as a PAS site and the CS reference to a realistic supply of land presumably requires the PAS land to be suitable for development if and when required.<sup>122</sup>

6.3.12 CS Policy H1 commits the Council to maintaining a 5 year HLS. It also requires the SAP to phase the release of its allocations based on:

- i) Geographical distribution in accordance with SP7;
- ii) Previously developed land targets (65% first five years and 55% thereafter;
- iii) Locations that have the best public transport accessibility;
- iv) Locations with the best accessibility to local services; and,
- v) Locations with least impact on Green Belt objectives.

It has been accepted that the release of Collingham would not lead to excessive greenbelt development in terms of Policy H1. Whether it has ‘best’ public transport is debatable but it is a Lower Order Local Centre and so accords with H1iii) and is not in the Green Belt and so accords with H1iv).<sup>123</sup>

6.3.13 HLS is considered above but the Outer North East HMCA is under supplied in terms of Policy SP7. It should provide 5,000 units (8%) but in 2015-2020 only 858 (3%) are anticipated. This ought to trigger monitoring as set out in CS App 4 and CS Policy ID1. It has been suggested that monitoring cannot be undertaken here as the SAP is not adopted and consequently there are no allocated sites. If true, the supply in the HMCAs would remain unaddressed until the SAP is adopted in 2017 at the earliest. This is inconsistent with the *Framework’s* commitment to boost housing.<sup>124</sup>

6.3.14 This conclusion brings the CS ‘General Policy’ into play which requires that proposals that accord with the CS “will be approved without delay unless material considerations indicate otherwise.” The appeal proposal would be compliant with the CS and its policies should not be used to withhold planning permission.<sup>125</sup>

6.3.15 The Publication Draft SAP was published in September 2015, over two years after publication of the Issues and Options Plan that generated 7,000 representations. The realism of having a plan ready for submission to the

<sup>121</sup> CD/A/3 2<sup>nd</sup> map after p 43, CD/A/3 Paras 4.6.14 and 4.8.6, MHH/12 Paras 18-19

<sup>122</sup> MHH/12 Paras 21-23 and 62-64

<sup>123</sup> CD/A/3 Policy H1, Mr Elliot XE by App, MHH/12 Para 27

<sup>124</sup> MHH/12 Paras 28-29, CD/A/3 PP 133 and 167, Mr Elliot XE by App

<sup>125</sup> MHH/12 Paras 68-69

SoS by December 2017 when the Draft SAP has generated 10,000 representations needs to be considered. Indeed, the SCG states that the Council consider that limited weight can be accorded to the emerging SAP whilst the Appellant considers that only very limited weight should be afforded to it.<sup>126</sup>

- 6.3.16 A Green Belt Release document shows that 14,372 homes are proposed to be provided on the Green Belt. The UDPR safeguarded land to avoid the use of Green Belt land when the UDPR was replaced. The Council will need to demonstrate exceptional circumstances to justify this release of land against a background of the SAP Examiner knowing that 5,285 of the 14,372 could be provided on non Green Belt land removed from the Green Belt previously for exactly that purpose.<sup>127</sup>
- 6.3.17 The EiP is not a foregone conclusion and the appeal cannot be premature when the SAP intention to release considerable Green Belt land has not been tested. In the Outer North East the Draft SAP proposes 3,153 in the Green Belt whilst ignoring the capacity of non-Green Belt land at Collingham. Moreover, now that the proposal for 3,000 dwellings at Headley Hall has been abandoned the Council needs to decide how to deliver 5,000 dwellings in the Outer North East HMCA. Headley Hall, and other alternative locations suggested, conflict with CS Policy SP10 as the required Green Belt release would not be around a smaller settlement but freestanding development in open Green Belt countryside. 150 dwellings at Collingham would not prejudice the outcome of the plan process.<sup>128</sup>
- 6.3.18 In terms of prematurity, the *Guidance* notes "arguments that an application is premature are unlikely to justify a refusal of planning permission other than where it is clear that the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, taking policies in the *Framework* and any other material considerations into account". The Council's evidence does not carry out any balancing exercise and so fails.<sup>129</sup>
- 6.3.19 Paragraph 14 also sets out two tests both of which must be met to justify refusal. In respect of ii) the emerging plan in the form of the SAP is not at an advanced stage. At best it might be adopted by the end of 2017. Indeed, 60% of the homes required in the Outer North East HMCA are now at large with the withdrawal of the Headley Hall site. New sites may be coming forward as the Council claims but are unlikely to rapidly fill such a large gap. Indeed, such sites should already be in the SAP and the PAS sites should be quickly revisited for inclusion. Since the adoption of the CS only 236 units have been delivered in the Outer North East HMCA against a requirement of 1,200. In terms of policy for, and actual delivery of, housing the Council is in crisis.<sup>130</sup>
- 6.3.20 The test in *Framework* paragraph i) considers development that would be so substantial that to grant permission would undermine the plan process.

<sup>126</sup> CD/L/4 Para 5.9, MHH/12 Paras 47 and 51

<sup>127</sup> CD/A/39, MHH/12 Para 48

<sup>128</sup> MHH/12 Para 49

<sup>129</sup> MHH/12 Paras 75-76

<sup>130</sup> MHH/12 Paras 77-79

The proposal would represent only 3% of the total need in the Outer North East HMCA and a tiny fraction of the overall need. The floodgates argument does not bear scrutiny and the proposal would not set a precedent. If the Council is unable to demonstrate a 5 year HLS then prematurity ceases to be an issue but is in any event unsustainable as the Council has not undertaken a balancing exercise, the 'scale' test is not met and the SAP is not at an advanced stage.<sup>131</sup>

- 6.3.21 A *Collingham Neighbourhood Plan* is being produced. Consultation was undertaken on a pre-submission draft plan and the Parish Council has considered all the comments made and is revising it in preparation for submitting the final draft to the City Council for examination. The document does not specifically allocate any sites for housing and as such is in accordance with the Publication Draft SAP. However, it does include Policy D on the design of future development. Given the status of the emerging *Neighbourhood Plan*, the City Council considers that only limited weight can be given to it.<sup>132</sup>

#### **6.4 Whether Occupants of the Proposed Development Would have Acceptable Access to Shops and Services**

- 6.4.1 CS Policy SP11 is linked to CS Policy T2, which requires new development to meet Accessibility Standards set out in the CS. Collingham is identified as a safeguarded site and as such is required by the CS to be a realistic site. In those circumstances, the site must be suitable for development if required. That means the reasons for refusal relating to settlement suitability and the Accessibility Standards are not arguable.<sup>133</sup>
- 6.4.2 The proposal is not in conflict with the *Framework* or the development plan as it currently exists. Indeed, significant benefits flow from the proposal falling within the three strands of sustainable development. In Economic terms there are no identified adverse impacts whilst construction employment opportunities, National Homes Bonus payments, spend in the local economy and increased potential customers for bus services would be a bonus.<sup>134</sup>
- 6.4.3 In Social terms the Council identify adverse impacts due to social exclusion if there were insufficient school places, the location at the edge of the settlement, and reliance on the private car. The Appellants consider that benefits would flow from the provision of affordable and market housing, taking up unused primary school places, the positive impact on the vitality and viability of the village together with amenity and recreational benefits and educational opportunities in terms of wildlife/greenspace.<sup>135</sup>
- 6.4.4 Finally, in terms of the environment, the Council maintains that the urbanising influence of a high density development and the loss of a greenfield site would be compounded by reliance on the private car. This would be counteracted by the provision of more than 4 hectares of multi-

<sup>131</sup> MHH/12 Paras 80-81

<sup>132</sup> LCC/132/B Paras 5.14-5.15

<sup>133</sup> CD/A/3 p107 and APP 3, MHH/12 Paras 25, 52 and 85

<sup>134</sup> MHH/12 Para 83

<sup>135</sup> MHH/12 Para 83

functional greenspace improving provision for wildlife. Green infrastructure would provide visual amenity. Flood prevention would be improved, a cycle path provided, and tree planting would help tackle climate change.<sup>136</sup>

- 6.4.5 The balance falls comprehensively in favour of granting permission and would do so even more if fewer alleged adverse impacts were considered realistic.<sup>137</sup>
- 6.4.6 The Council has concerns about the impact on the Lady Elizabeth Hastings CoE Primary School in Collingham. It assumes that 5 pupils per year group would be generated by the proposed 150 houses. Evidence indicates that in the likely year of first occupation of the dwellings there would be 7 places available in the reception year with 5 available spaces in the following year. The new pupils could, therefore, be accommodated. The Council then asserted that the 5 pupils could not be accommodated in the other year groups. This was not substantiated by evidence.<sup>138</sup>
- 6.4.7 Similarly, no account has been taken of the CIL contribution or whether the school could make use of CIL funds to expand its infrastructure or resources. The Council could have provided the Inquiry with such evidence but did not do so. CIL contributions are exactly the right mechanism for delivering required school places should there be a shortfall.<sup>139</sup>
- 6.4.8 A similar point was taken in relation to healthcare as the GP's surgery in Collingham has indicated it has no plans to expand. Again CIL contributions would be available but the expansion of a local surgery is a market decision for the providers. If such an argument were to succeed surgeries could dictate where residential development should be built.<sup>140</sup>
- 6.4.9 Turning to the CS Accessibility Standards, the Council originally sought to represent them as a minimum requirement but that was shown to be untenable when other sites such as Spofforth Hill, Wetherby, had lower Accessibility scores but had been granted planning permission. This demonstrates that there is flexibility in the application of the Standards.<sup>141</sup>
- 6.4.10 The site has been a PAS site since 2001 and so was considered by Inspectors for the UDP in 2001 and the UDPR in 2006. Guidance required the site to be "sustainable" and "genuinely capable of development". Little, other than the bus timetables, has changed in the intervening period. At the time of safeguarding the site the Council's preferred option was to allocate it for housing and the Inspector's principal reason for not allocating the site was the existence of an alternative site that would not involve the loss of Grade 2 agricultural land, not accessibility. The Council has now 'changed its shirt' and relies on current guidance and the Accessibility Standards to support that position although the site is still a PAS site that must be a 'realistic' allocation.<sup>142</sup>

<sup>136</sup> MHH/12 Para 83

<sup>137</sup> MHH/12 Para 84

<sup>138</sup> MHH/12 Paras 117-119

<sup>139</sup> MHH/12 Para 120

<sup>140</sup> MHH/12 Para 121

<sup>141</sup> CD/A/3 p165 Table 2, MHH/12 Para 86

<sup>142</sup> CD/A/22 Annex B2 and B3, CD/A/3 App 3 Table 2p165, MHH/3/C App ID1 Paras 839.8-11, MHH12 Paras 87-89

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- 6.4.11 Criterion 1 of the Standards is for housing to be within a 15 minute walk (1200 metres) of local services. There would be two routes, both of which the Council maintains would be inadequate. The first along the A659 would be 1400 metres from the centre of the site with an average gradient of 1in10. This would not meet the Standard but would not be an obstacle to many residents.<sup>143</sup>
- 6.4.12 The alternative route is 800 metres and runs alongside the A58, as it did in 2001 when the Inspector, concluded "Even allowing for the fact that it is alongside the A58 this would not be such a long distance as to mean that all or even most residents should find it necessary to get in a car to go to them (the local services)". The Council now contends that it is not only a question of distance but also quality. Part of the site would be widened to 1.5 metres and a 600 metres long section that appears to be 1 metre or less wide is in fact some 1.2 metres wide but has become overgrown. This width of footway would allow residents and those with pushchairs to use the footway and pass each other.<sup>144</sup>
- 6.4.13 The Council accepted that street lighting could be funded from CIL contributions and did not challenge that restoration of the footway was at the Council's discretion. The improvements identified could be secured by the proposals and ensure that the site meets Criterion 1.<sup>145</sup>
- 6.4.14 New bus stops would be provided with provision for real time service information and shelters. The stops would be within 250 metres on Leeds Road and 500 metres on Harewood Road. The requirement for a 15 minute service to a major public transport interchange is unduly inflexible. Cottingham is towards the outer edge of the district and so much closer to other high-order centres such as Wetherby, Boston Spa and Harrogate. Residents of the proposal would be more likely to work in those centres than residents living nearer to Leeds. Services to these high-order centres meet the Standard of a 15 minutes journey and it is considered that the objective of providing choice of public transport to employment opportunities would be met.<sup>146</sup>
- 6.4.15 Notwithstanding the difference between the parties over the footway, it is agreed that primary education and healthcare facilities would be within a 20 minute walk. Subject to the proposed footway improvements Criterion 3 would therefore be met. In respect of secondary education, there is no school in Collingham and interchange in Leeds would not help. The secondary school in Wetherby is accessible by a half hourly service. However, there are dedicated bus services with 16 school buses running between Collingham and secondary schools daily. The capacity of the school buses might need to be increased but alternative provision already exists to fulfil the objectives of this criterion.<sup>147</sup>
- 6.4.16 In terms of Criterion 5, Access to City/Town Centres within a 5 minute walk to a bus stop offering a 15 minute service frequency, the nearest
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<sup>143</sup> MHH/12 PARas 90-91

<sup>144</sup> MHH/12 Paras 91-93, MHH/3/C AppID1 Para 839.8, CD/H/3 p68, CD/H/14 Para 5.9 p74

<sup>145</sup> MHH/12 Para 94

<sup>146</sup> MHH/12 Paras 95-97

<sup>147</sup> MHH/12 Paras 98-99

town centre is Wetherby which offers a further link to Harrogate. Ignoring the Harrogate link, there are two bus services to Wetherby an hour, and two to Leeds city centre giving a combined service of 4 buses an hour. Whilst the Council notes that there is a reduced evening service, the Accessibility Standard criteria relate to weekday daytime service levels. If a flexible approach is taken the objective, if not the precise requirement, of the Standard is met.<sup>148</sup>

6.4.17 If the Council's contention that the Standards are a minimum is accepted, the entire Outer North East HMCA requirement of 5,000 homes would have to be delivered in Wetherby and Harewood. The 16 other settlements in the HMCA do not meet the criterion of 4 buses an hour to a city centre. The appeal site has been given an accessibility rank of 2 which is "Public transport not in line with CS Standards" but this ignores the availability of local services. Under the Council's own guidance the site's accessibility rank should be '3', "Public transport not in line with CS Standards but availability of local services (local centre, schools etc)". This leads to a sustainability score of 7 which would make the site the highest scoring safeguarded site in accessibility terms in the Outer North East HMCA. Of the allocated sites only Wetherby scores higher and a number such as Scarcroft Lodge and Bramham score lower.<sup>149</sup>

6.4.18 Collingham has a greater proportion of single occupant car journeys to work (84.6%) than the district average (59.1%), partly due to its geographic location compared to dwellings in the main urban areas. However, the Council is sceptical about the potential of a Travel Plan to encourage measures to reduce journeys such as car sharing. Whilst conceding that such Plans are a tool to address reliance on the private car, the Council could not demonstrate any assessment of benefits or any form of balancing exercise. Inflexibility will not assist in meeting housing needs, and the Standards have been relaxed in respect of other residential schemes. In any event, an objective assessment under the SAP criteria shows the appeal site to be the most accessible of the safeguarded sites and ranks highly amongst the allocated sites. With a modicum of flexibility the site would satisfy the objectives of the CS Accessibility Standards and would not represent a sufficient reason to justify withholding planning permission.<sup>150</sup>

## 6.5 Effect on the Highway Network

6.5.1 Revised reason for refusal 4, relating to site access and the ability of the highway network to accommodate the traffic generated, is no longer pursued by the Council. It is accepted that the site access and the Wattle Syke junction would be acceptable, and that the impact on the A58/A659 junction can be made acceptable by the implementation of mitigation measures. It is also agreed that the mitigation measures could be secured by condition.<sup>151</sup>

<sup>148</sup> MHH/12 Para 100

<sup>149</sup> CD/A/110 p231, MHH/12 Paras 101-102

<sup>150</sup> MHH/12 Paras 104-107

<sup>151</sup> CD/L/6C Para 4.3, MHH/12 Para 55

## **6.6 Effect on the Character and Integrity of Collingham**

- 6.6.1 The appeal site is a greenfield site in agricultural use and was removed from the Green Belt in the 2001 UDP. The Council's evidence does not identify that the development is unacceptable in principle, but maintains that it is of vital importance. There has been no change in the setting of the site since 2001 but the Council's view differs fundamentally from that of the UDP Inspector who considered that it relates "as much to the urban area as to the wider area of open countryside" and that its contribution toward protecting the open countryside "is limited". Notably neither the draft *Neighbourhood Plan* nor the *Village Design Statement* identify the site as vital to the character of the settlement. Indeed, the latter acknowledges the SAP designation and that the site may be developed at some stage. It also sets out key views across the village, none of which are of, or include, the appeal site.<sup>152</sup>
- 6.6.2 The appeal site continues to be PAS land in the SAP and so cannot be vital to the character of Collingham. The requirement to designate 10% of the housing land for the plan period as PAS inescapably means the appeal site could be developed. Indeed, the next port of call would be Green Belt which would be contrary to the objective of safeguarding land.<sup>153</sup>
- 6.6.3 Although the Council contends that the loss of approximately 6 trees to create an access would be harmful, it does not object to the loss in principle and withdrew reason for refusal 6. In relation to the loss of trees, the UDP Inspector noted that "Provided that the replacements were sufficient in number and carefully located, I do not consider that the provision of a vehicular access to the site would necessarily harm the appearance of either this part of Collingham or the adjacent SLA". The contention that the removal of those trees would make the site more visible ignores the moderating effect of the proposed tree planting creating a woodland some 10metres deep. Existing housing would also be seen first before the proposed when approaching Collingham. Limited glimpses would be seen on approach and the character of the settlement would not be significantly affected.<sup>154</sup>
- 6.6.4 In relation to the creation of a development platform outside flood zone 1, only 9.3% of the developable site would require raising with a maximum increase of 1-1.1 metres tapering down to meet existing levels. The Council acknowledged that re-grading would be minimal and was no longer in issue. It was also agreed that an acceptable design and appearance of the proposed bridge could be ensured by condition.<sup>155</sup>
- 6.6.5 The Council contends that on the basis of the Masterplan, which shows 110-120 dwellings, a development of 150 units as proposed would lead to over-development. This ignores two principles. Firstly, the application is in outline with layout and design reserved matters. The scheme follows the existing built form and will be largely self-contained. The report to

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<sup>152</sup> CD/A/33, CD/A/17, LCC/13/B Para 6.11, MHH/3/C App ID1 Para839.3, MHH/12 Paras 108-109

<sup>153</sup> MHH/12 Para 109

<sup>154</sup> CD/L/4 Para 1.8, MHH/3/C App ID1 Para 839.5, MHH/7/C2 Photo RT-04-01, MHH/12 Paras 110-111

<sup>155</sup> MHH/12 Para112

Committee notes that bungalows on the eastern boundary will not have an unacceptable impact on the living conditions of neighbours whilst houses on the northern boundary would be a sufficient distance from the boundary to ensure no adverse impact. In addition, it was accepted that the distance between the built form of Collingham and Bardsey would not be reduced.<sup>156</sup>

6.6.6 The second principle is compliance with the development plan. Density levels are required to meet or exceed the levels identified in CS Policy H3, which is 30 dph in Smaller Settlements and would mean 132 dwellings on this site. The CS states that levels should only be reduced for “exceptional townscape reasons”. There is nothing exceptional in terms of character or any overriding concern in design terms that would justify a lower density. Indeed, density is a key driver in meeting housing requirement figures.<sup>157</sup>

6.6.7 CS Policy H4 states that 40% of all dwellings shall be three bedrooms or more. As most apartments in the inner area and city centre will be 1-2 bedroom, many of the larger scale homes will be in the outer HMCAs of Leeds affecting the density of any development in those locations.<sup>158</sup>

## 6.7 Other Matters

6.7.1 The need for additional Affordable Housing in Leeds is acute and the most recent SHMA identified an annual need of 1,158 affordable housing dwellings. On the Council's latest figures 54% of overall delivery would be in the city centre and inner area where only 5% of units would be required to be affordable. In these circumstances one might expect considerable weight to be attached to the delivery of Affordable Houses in Collingham. The proposal would provide 35% affordable houses leading to 52 affordable homes if 150 were built.<sup>159</sup>

6.7.2 The scheme would provide improvements to the flood defence measures provided by the Environment Agency in 2010. On site engineering works would moderate the surge potential of Collingham Beck reducing the peak water level during a flood event. A contribution would also be made towards a new off-site flood wall along the A58. The wall would reduce the likelihood of the road, and properties in Crabtree Green, from flooding.<sup>160</sup>

6.7.3 The proposed public open space would provide some 4.45 hectares of new recreation and leisure facilities and the extensive green infrastructure would be a significant benefit. The Council's concerns about the future management of such provision can be allayed by the provision of an ecological management plan, which is good practice.<sup>161</sup>

6.7.4 That part of the site within the Green Belt would provide a semi-natural habitat without compromising the openness. The amenity space adjacent to the development would be open to all, not just residents, and would also

<sup>156</sup> CD/J/2 Para 10.54, MHH/7/A Paras 1.9-1.12, MHH/12 Para 114

<sup>157</sup> MHH/12 Paras 15 and 32

<sup>158</sup> MHH/12 Paras 31-32, CD/A/3 Para 5.2..9

<sup>159</sup> MHH/12 Para 1682, CD/A/3 Para 5.2.13

<sup>160</sup> MHH/6/B Para 7.26, MHH/12 PARas 123-124

<sup>161</sup> MHH/12 Paras 125-126

provide a cycleway linkage, and has the potential to incorporate footpath linkages, including a secondary route to the primary school.<sup>162</sup>

## **6.8 Section 106 Agreement and Conditions**

6.8.1 A signed Section 106 Agreement was submitted to the Inquiry which would provide for affordable housing, public transport, travel planning, off-site highway works, drainage and flood alleviation works. In the event permission is granted, CIL will be payable in accordance with the Council's Charging Schedule. Consequently, reason for refusal 7 no longer stands.<sup>163</sup>

6.8.2 An agreed list of suggested conditions has been prepared by the parties and is a matter for the Inspector.<sup>164</sup>

## **6.9 Planning Balance**

6.9.1 LCC faces a housing crisis as, on its own figures, housing delivery has not reached the minimum requirement for the last 7 consecutive years, and nor will it for a further 2 years. This is against the background of having the largest housing requirement in the country. The site has been appraised over the long term and identified as a potential residential site. The site is safeguarded in the PAS and planning permission should have been given for a number of reasons:

- i) It comes under CS General Policy;
- ii) The Council does not have a 5 year HLS;
- iii) *Framework* paragraph 14 is in play as policies are out of date and the development plan is silent; and,
- iv) The proposal represents sustainable development.

The notion that any city could deliver over 11,000 units in a single year is absurd and over reliance on the, as yet untested, PRS model to solve the problem of delivery is naïve.<sup>165</sup>

6.9.2 The appeal site is safeguarded and in a sustainable location. It is also compliant with the CS spatial distribution policy and would help meet the need for 5,000 homes in the Outer North East HMCA, a deficit of 60%. The reasons for refusal have been thoroughly tested through the Inquiry process. There are clear economic, social and environmental benefits that stem from the proposal that far outweigh the adverse impacts identified and planning permission should be granted.<sup>166</sup>

## **7. The Cases for Interested Persons**

7.1. At application stage, the 30 October 2014 report to the City Plans Panel states that there had been 560 representations relating to the proposal

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<sup>162</sup> MHH/7/B Paras 5.23, 5.29, and Paras 5.35-39, MHH/12 Para 126

<sup>163</sup> CD/L/19A,

<sup>164</sup> CD/L/17C

<sup>165</sup> MHH/12 Para 170-171

<sup>166</sup> MHH/12 Paras 172-173

and summarises the issues raised. At appeal stage there were five written representations, and in addition oral submissions were made by Mrs Harrigan, Julian Holmes, Mr Armitage, Jeremy Lenighan, Alex Shelbrooke MP, Alastair Smyth and Councillor Rachel Proctor.<sup>167</sup>

- 7.2. The submissions generally reflect the issues identified and aired at the Inquiry except that a number of members of the public raised flooding /drainage as a concern although it was not raised as a reason for refusal by the Council. It is notable that there is now no objection from many consultees including, the Environment Agency, Health and Safety Executive, Flood Risk Management, Yorkshire Water, and the West Yorkshire Archaeology Advisory Service, albeit subject to conditions in some cases. No new matters have been raised that would justify a recommendation other than that reached in this report.<sup>168</sup>

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<sup>167</sup> CD/J/2

<sup>168</sup> CD/J/2

## 8. The Inspector's Conclusions

### 8.1. Introduction

- 8.1.1 Matters in dispute were highlighted when the Inquiry opened. I consider that the main considerations are: whether the Council has a 5 year HLS; whether the proposals conform to the development plan policies; whether occupants of the proposed development would have acceptable access to shops and services; the effect on the highway network; the effect on the character and identity of the village; and, other matters including affordable housing.
- 8.1.2 Collingham is a Smaller Settlement within the CS settlement hierarchy whilst under the UDPR the site was designated as a PAS. The SAP will resolve the Council's view as to which PAS sites should be included in the SAP on the basis of their planning merits. This accords with CS policies and meeting the Council's housing delivery and locational strategies.<sup>[5.1.1]</sup>
- 8.1.3 There can be no basis for anyone, including the public, to contend they have not had an opportunity to be heard. The sites have been examined in detail and time has been set aside for members of the public to comment. All planning points made have been addressed in evidence and submissions.<sup>[6.1.1, 6.1.2]</sup>

### 8.2 Assessment of Housing Land Supply

- 8.2.1 *Framework* paragraph 47 sets out the objective of significantly boosting the supply of housing. Local plans are required to ensure that the full objectively assessed needs (FOAN) are met for both market, and affordable, housing. There is also a requirement to identify and update annually a supply of specific deliverable sites sufficient to provide 5 years of housing against the housing requirement with an additional buffer of 5% (moved forward from later in the plan period) to ensure choice and competition in the market for land. Where there has been a record of persistent under delivery of housing, local planning authorities should increase the buffer to 20% (moved forward from later in the plan period) to provide a realistic prospect of achieving the planned supply and to ensure choice and competition in the market for land.<sup>[5.2.1, 6.2.1]</sup>
- 8.2.2 It is common ground that the most appropriate period for consideration of the 5 year requirement is 1 April 2016 to 31 March 2021. The annual requirement derives from CS SP6 and is a minimum figure. For the first 5 years of the Plan, 2012 to 2017, the annual requirement is 3,660 units whilst for the next 11 years to 1 April 2028 the requirement will be 4,700 units. It is agreed that the base requirement is 22,460 in this case (1 year at 3,660 + 4 years at 4,700).<sup>[5.2.1, 6.2.2, 6.2.6, 6.2.10]</sup>
- 8.2.3 Any shortfall, and a buffer, needs to be added to the requirement. The *Guidance* sets out that local planning authorities should aim to deal with any undersupply in the first 5 years of the plan period where possible. It is agreed in this case that the shortfall is to be met using the 'Sedgefield method' with the full shortfall being addressed during 2016-2021.<sup>[5.2.3, 6.2.6]</sup>

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- 8.2.4 There is common ground on completions against targets, except in relation to empties where there is disagreement for empties in 2015-2016. The agreed undersupply for 2012-2015 is 3,758.<sup>[6.2.6, 6.2.9]</sup>
- 8.2.5 The disputed figure for empties has been compiled in the same way as other years, which are accepted by the Appellant, and is the same number as that submitted to Government in relation to payment of New Homes Bonus. The base data involves individuals' Council Tax information and so cannot be disclosed. However, I see no reason to doubt the Council's figure which sits within the range of annual empties figures.<sup>[5.2.4]</sup>
- 8.2.6 *Framework* paragraph 47 requires a buffer, of either 5% or 20%, to be added to the requirement but the parties disagree as to which. The higher buffer is required where there has been persistent undersupply. However, the *Guidance* states that identifying a record of persistent undersupply is a matter of judgement. There is no universally applicable test but it goes on to state that assessment of local delivery is likely to be more robust if a longer term view is taken.<sup>[5.2.5, 5.2.6, 6.2.7]</sup>
- 8.2.7 In five pre-recession years, from 2003/4, the requirement rose from 1930 to 2260 and there was an oversupply of around 5,000. In the three following recessionary years, the adopted targets were 2,260 and 4,300. The latter a step-up under the Regional Spatial Strategy. Against the lower figure supply exceeded the target by 643 whilst against the RSS, the requirement in which it is now acknowledged was unrealistic, there was an undersupply of 7,517. In the recovery/CS period 2012 to 2016 the requirement was 3,660 and there has been a cumulative undersupply of 4,122. Only when the RSS target is included is a cumulative undersupply shown for the housing market cycle. Whilst the Council considers that no weight should be given to the RSS target as it would be a meaningless exercise, to ignore it in favour of a lower requirement would produce a flawed assessment. The RSS figure was that adopted at the time and it was found to be incorrect only in hindsight. I do not consider that it should be ignored but the weight afforded to it should be significantly reduced.<sup>[5.2.8, 5.2.9]</sup>
- 8.2.8 Notwithstanding that, an alternative approach, albeit that it does not cover a full financial cycle, is to consider performance against the CS. Whilst this does not follow the approach of the Bagley Lane Inspector which the Council endorses, it would reflect the *Guidance* which states that there is no universally applicable test. It would reflect the best available local evidence. The Housing Requirement is large and was adopted to be ambitious. It has not been met, albeit that completions are increasing.<sup>[5.2.13]</sup>
- 8.2.9 The Council has missed its target in each of the last 7 years and its evidence is that it will fail for another two years. In the first three years of the CS there has been a failure to meet targets every year and 2015-16 looks as if it will be no different on current figures. The shortfall for the three CS years at the lower target of 3,700 amounts to the equivalent of almost a whole year without any delivery. I consider this demonstrates persistent undersupply indicating that a 20% buffer should be applied.<sup>[6.2.7]</sup>
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- 8.2.10 The Council maintains that the purpose of the buffer, which is to ensure choice and competition and, in the case of the 20% buffer, a realistic prospect of the planned supply being achieved, should be considered. I disagree that the application of a 20% buffer would have the opposite purpose to that suggested by the *Framework*. It would advance supply, such as PAS land, from later in the Plan period. There is a large volume of permitted residential development in Leeds and large areas of Inner Areas and City Centre are available for development. The issue would, therefore, appear not to be due to an absence of competition and supply. However, there is little evidence that undersupply can be laid at the door of the volume house builders seeking to build other than in accordance with the Council's adopted strategy. [5.2.13]
- 8.2.11 On past performance the buffer must be 20%. Indeed, even the Council accepts that if there was an under supply next year it could properly be considered a 20% authority. When the shortfall and the buffer are added to the requirement it comes to over 6,000 units in Leeds for the next 5 years. Similar statistics prompted the SoS at Hardingstone to find a 20% buffer was required. All are agreed that the 20% buffer is not a punishment but it is justified because it is the only means, as *Framework* paragraph 47 states "...to provide a realistic prospect of achieving the planned supply". [6.2.8]
- 8.2.12 The Council's requirement figure assuming 5% buffer would be 27,911 whilst the Appellants' figure based on a 20% buffer would be 31,898. That equates to either 5,582 or 6,379 units required annually for the 5 year period. [6.2.9]
- 8.2.13 The shortfall has emerged during the lower requirement in the CS of 3,660 dwellings per annum which is set to rise to 4,700 in the coming years. The size of the task is shown by the fact that prior to the Inquiry Leeds's best year for completions was 3,800 in 2008. No other authority gets close to a figure of at least 5,582 units a year. [6.2.6, 6.2.10]
- 8.2.14 Turning to supply, sites are promoted through both the SHLAA and SAP processes. The Council then forms a view on sustainability, availability and achievability. The SHLAA relies on sites promoted through the SAP which raises a rebuttable presumption as to deliverability. [5.2.19]
- 8.2.15 The SHLAA is based on an enormous amount of information resulting from an iterative process but is a snapshot in time. In Leeds there is a large number of sites, many relatively small. The 2015 SHLAA, from which the 5 year supply is derived, follows the same methodology as the 2014 SHLAA which was the subject of considerable consultation with the development industry. Differences between the parties have led to there being little consultation between the volume house builders and the Council on the 2015 SHLAA despite the *Framework* stating that the input of the development industry is important. [6.2.11, 6.2.12]
- 8.2.16 The Council's adjusted 5 year supply position following the round table sessions is 34,160 units, marginally over the 5 years requirement of 31,898. A reduction of 2,262 units would lead to a tipping point where the housing supply would become less than 5 years based on my finding above. However, rather than being robust and supported by evidence, the

Council appears to add sites to the list when there is only the possibility of development. The Appellants only accept around 55% of the Council's predicted supply. This would lead to it only having 2.87 years of supply if a 20% buffer is applied together with the Appellant's assessment of supply. I consider the true position would be between the two but closer to the Appellants.<sup>[6.2.18]</sup>

- 8.2.17 Neither main party suggests that the decision maker should analyse every site and reassess them against the Footnote 11 test. The 'tipping point' note is acknowledged as helpful as it shows the 'safety margin' within the assessed supply. If the Council's figures in relation to completions is accepted then with a buffer of 5% there would be a safety margin of 6,249 following the round table session. With a 20% buffer, which I consider justified, the safety margin would be only 2,262.<sup>[5.2.23]</sup>
- 8.2.18 *Framework* Footnote 11 states that to be considered deliverable, sites should be available now, offer a suitable location for development now, and be achievable with a realistic prospect that housing will be delivered on the site within 5 years and in particular that development of the site is viable. Sites with planning permission should be considered deliverable until permission expires, unless there is no longer clear evidence that schemes will not be implemented within 5 years, for example they will not be viable, there is no longer a demand for the type of units, or sites have long term phasing plans.<sup>[5.2.16]</sup>
- 8.2.19 The issues have narrowed as the Appellant does not claim that any sites are unviable. Viability assessment of sites in the city centre and inner areas for the Council indicates that a significant proportion would be viable, albeit not achieving the profit margins sought by the volume house builders. House price growth is now 6.5-7.5% in the city centre and inner areas.<sup>[5.2.21]</sup>
- 8.2.20 *Guidance* is clear that the need for robust evidence in support of the SHLAA and 5 year supply means that the Council's assessment of a site as deliverable must be capable of being explained and evidenced. The Council assesses 30,385 units as deliverable but the realism of this view needs to be considered against the failure over a number of years to meet targets that have turned out to be optimistic, not realistic.<sup>[5.2.23]</sup>
- 8.2.21 *Guidance* addresses Footnote 11 issues. Sites would be considered available when there is confidence that there are no legal or ownership problems. Where there are problems an assessment of when they could realistically be overcome must be made. Achievability is a judgement about viability and the timescale within which a site is capable of development. Sites should not be 'assumed' to be deliverable. The Council contends that it has considered each site against the Footnote 11 tests. Paragraph 47, refined by *Guidance* requires robust, up-to-date evidence to support the deliverability of sites ensuring its judgements are clearly and transparently set out. The judgements need to be realistic not optimistic. The Appellants' expert's evidence in relation to 2015-16 was only 16 units out, which is 99% accurate, whereas over the past few years of the CS requirement the Council has consistently got judgements wrong and under supplied. I therefore prefer the Appellants' evidence.<sup>[6.2.5]</sup>

- 8.2.22 Differences raised by the Appellant in relation to the SHLAA were considered at the Bagley Lane Inquiry. I agree that allocations, permissions, and the 5 year supply should reflect the CS policy focus on the City Centre and Inner Area. The Council maintains that around 18,000 City Centre sites will come forward. The volume house builders cannot bring forward viable development on City Centre sites although some low cost builders with a different financial model can and would. [5.2.20, 6.2.15]
- 8.2.23 Whilst new low cost builders might pick up some slack, and the provision of City Centre sites would be assisted by regeneration projects, the emerging market for the private rental sector (PRS), the activity of low cost builders and improvements at Holbeck Urban Village, there is little evidence that all sites will be built out. Certainty is needed but the Private Rented Sector (PRS) has not delivered in the past. An 'over optimistic reduction' factor of 16.8% alone means that a tipping point would be reached on the Appellants' figures with a 20% buffer. [5.2.23, 6.2.15]
- 8.2.24 The Council repeatedly falls back on the Bagley Lane, Farsley decision. However, despite that judgement indicating that there was no error in law in the approach to housing land supply, the planning context has changed in the intervening period. Farsley was a different snapshot in time, the Interim Housing Supply Policy has been withdrawn, the CS has been adopted, and undersupply has taken place for longer. Rather than being 'pessimistic' the Appellants view has been proven to be reasonably accurate and it is the Council's view that has proved to be overly optimistic. [6.2.19]
- 8.2.25 The position on supply is difficult as the SAP will not be adopted until at least December 2017 and the best proxy, the December draft SHMAA 2015, is not finalized. There is a serious shortfall of supply in the next two years. Moreover, the document is dependent on 15,347 dwellings, roughly half the Council's supply case, that do not have planning permission. If 15,347 dwellings are removed then a tipping point is reached irrespective of which figures or buffer is used. There is also a reliance on some sites, with around 6,000 dwellings, that are currently in other use.
- 8.2.26 Sources contributing to the Council's 5 year supply following the round table sessions consists of:
- i) 30,385 units on identified sites (15,347 of which do not have planning permission);
  - ii) 2,500 smaller windfalls over 5 years;
  - iii) 1,000 empty homes over 5 years;
  - iv) Minus 225 demolitions over 5 years; and,
  - v) 500 large windfalls over 5 years. [5.2.15]
- 8.2.27 Items ii) to v) are mainly agreed but in any event the figures are relatively insignificant compared to the numbers of units on identified sites. However, their acceptance adds to the robustness of the numbers. In addition, the introduction of national space standards and optional building

regulations will affect the actual numbers that can physically be accommodated on sites. [5.2.15]

- 8.2.28 It is acknowledged that 16,571 units with planning permission derive from the 2015 to 2020 SHLAA whilst the equivalent figure in the 2016-21 trajectory is 14,770. In the absence of clear evidence that the permissions would not be implemented in the 5 year period all these must count, although in reality some of these sites would 'fall by the wayside' and others would be brought forward. The main challenges relate to the achievability of sites or whether there is a realistic prospect of houses being delivered in the 5 year period. [5.2.17]
- 8.2.29 Differences between the parties on delivery rates and lead-in times are matters of judgement and different views have been reached. The up-to-date 5 year supply covers the period 2016-21, not 2015 to 2020, consequently lead in times have been reconsidered. It is agreed that either site specific information, as favoured by the Appellant, or standardised information based on averages from other sites, as used by the Council, may be used. The Council's standardised delivery rate for houses is 78 dpa whilst the volume house builder's rate is 50. Likewise there is a difference in views about the realistic figure for flats although the Council accepts that a difference of view may not be unreasonable. Some differences were highlighted. [5.2.28, 5.2.29]
- 8.2.30 A number of sites such as 649 Charity Farm are Council owned and the Council is brokering the sale of the land, which has been specifically assessed as representing a profitable housing opportunity. However, no evidence of developer interest has been provided for this Phase 3 UDPR site with no planning history. There is a difference between the parties of 60 units which I consider reflects the Council's strong optimism. [ 5.2.24, 5.2.27]
- 8.2.31 Reference has been made to the Wain Homes judgement and sites in other uses. The inclusion of a site in the SHLAA or SAP provides some evidence of deliverability as the Brickyard Lane decision APP/E2001/A/13/2200981) illustrates but is not in itself necessarily evidence of achievability and availability. [ 5.2.18, 5.2.24, 6.2.11]
- 8.2.32 A number of examples were highlighted. Site 445 Jack Lane/Sweet Street is a flat brownfield site in the city centre that is close to Holbeck Urban Village and has been sold to a developer. It is actively being promoted for development and no abnormal costs or impediments have been identified. However, although it had an outline consent for residential it is in active use as a car park. Lead in times, including extinguishing the car park use if necessary and addressing reserved matters, means that there would not be an immediate realistic prospect of housing delivery. There is a difference between the parties of 296 units again reflecting the Council's optimism. [5.2.24]
- 8.2.33 Another example is Quarry Hill, site 200-411, which has also been in temporary use as a car park. The viability of the site is not in issue and it has recently been promoted for mixed use including 715 flats. Moreover it has an outline planning permission, was acquired by a developer in conjunction with Moda Living in 2015 and an newspaper article notes the

intention to develop from early 2017 with the first homes ready to rent by 2019. [5.2.25]

- 8.2.34 Notwithstanding this, the agent has indicated a 10 year delivery programme with no certainty over which elements would come forward first. Moreover a multi storey car park is required for WYP before any residential development can take place. Even though Leeds city centre is now the regional target for growth in the PRS sector there must be significant doubt over how many units would be completed in the 5 year period and there is a difference of about 600 units between the parties. [5.2.24, 5.2.25]
- 8.2.35 Finally, East Leeds Extension is the largest single location in the district and is stated to be central to the SAP. It is a greenfield site in a very high value area and will offer a wide range of unit types. The total capacity across the plan period to 2028 is 4,446. It is an example of where infrastructure has been considered alongside development. Given the scale of the site the Council considers that it would be reasonable to assume 50 dpa, below the average build out rates, but to assume a number of outlets. [5.2.30]
- 8.2.36 However, the Appellants' witnesses are agents for the majority of land owners involved. Delivery rates have been sought direct from the developers, there are no live applications in the middle or southern sections of the site, and the current application has been with the Council for 4 years. 20% of the site covered by live applications is in the control of Persimmon who will be the only party that could submit reserved matters applications once outline application and Section 106 matters are resolved. Parcels of land in separate ownership are yet to be marketed and there is a requirement for infrastructure that has not been delivered and will take time. In East Leeds as a whole the difference between the parties is 1,115 units. The Appellants' approach has been branded as pessimistic as they only include 365 units for the East Leeds Extension but in my view the approach is realistic compared to the highly optimistic approach of the Council. [5.2.30]
- 8.2.37 Another difference between the parties appears to be the prospect of delivery by the PRS model. An example of the model is the Dandara scheme in Holbeck Urban Village (Site 407). Although the Appellants consider this a fringe site with doubts about funding and commitment, the site has planning permission, the developer is on site and has committed to deliver the units within two years of commencement. [5.2.33]
- 8.2.38 In the MUA and inner areas there is a wide range of developers active in the market. Both the primary and secondary markets are attractive to developers and investors alike and even in tertiary areas there is an active land market with specialist developers keen to acquire more. The Appellants' concern, albeit based on three letters that also outline expansion plans, is the capability of developers in this tertiary market to increase capacity. The lack of capacity in the specialist low cost market could affect the 5 year supply as specialist developers are a finite resource. A different view was reached at Bagley Lane but I am not aware of the evidence that conclusion was based on. [5.2.31]

8.2.39 The need for additional delivery is even more marked since March 2016 as there is no longer a development plan for delivery. The failure to produce an adopted SAP until December 2017 means there is no policy to set out how delivery of any houses, never mind the magnitude required, will actually take place. The only hope offered by the Council is an expectation that the SAP will be adopted in December 2017. However, Leeds has failed to meet targets in the past. Although accused of being pessimistic I consider that the house builders have been realistic. The resultant figures are not definitive, but they clearly indicate that the safety margin of 2,262 is soon whittled away when realism is applied. I consider that it is the Council which has been overly optimistic and has failed to demonstrate a robust 5 year housing land supply. The solution is to deliver housing now, not in December 2017 when even after the adoption of the SAP there will be significant lead-in times with no delivery likely until late 2018 early 2019. Even considering the cumulative number of dwellings in Appeals A, B and C would have no material bearing on my conclusions concerning supply. [6.2.21, 6.2.22]

8.2.40 The Council's delivery record for affordable housing is also poor and the target amounts to over 1,000 units a year. Delivery over the last 5 years is only around 49% of the SHMA requirement, a serious failure. There is, therefore, a significant need for additional delivery for both market and affordable housing. [6.2.20]

8.2.41 The proposals would make a contribution to affordable housing as part of the strategy to meet the area's needs over the plan period. However, the housing strategy relies on centre and inner area sites which compared to the appeal proposal would effectively restrict the delivery of affordable housing because policy only requires 5% in such locations whilst some sites will provide no affordable housing at all. Whilst the proposals would only provide affordable housing in accordance with development plan policies, such provision should be welcomed. [5.7.1, 5.7.2, 6.7.1, 6.7.2, 6.7.3]

### 8.3 Assessment Against Development Plan Policy

8.3.1 Section 38(6) of the *Planning and Compulsory Purchase Act 2004* indicates that determinations under the Planning Acts should be made in accordance with the development plan, unless material considerations indicate otherwise. The development plan in this case includes the saved provisions in the UDPR 2006 and the CS adopted in November 2014. The proposal should be considered against the development plan as a whole, and the *Framework* is also a material factor to be considered. [4.1, 6.2.1]

8.3.2 As I have concluded that there is no 5 year HLS, *Framework* paragraphs 49 and 14 must be applied. I consider that UDPR policy N34 is a policy for the supply of Housing, as did the Inspector in the Farsley case, and as there is no HLS the policy cannot be considered up to date and paragraph 14 must be considered. The Council considers that paragraph 85 is a specific policy under *Framework* Footnote 9 that indicates that development should be restricted. However, rather than being a restrictive policy paragraph 85, at bullet points three and 4, specifically indicates that safeguarded land, whilst not allocated at the present time, is to meet longer term development needs. It is not, therefore, restrictive, on the contrary it

envisages development. The test that then applies is whether any adverse impacts of granting permission significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework as a whole. The conclusion of this test will be a material consideration to be weighed in the balance when considering whether material considerations exist to outweigh the presumption in favour of the development plan in accordance with Section 38(6).

- 8.3.3 At the time the Council reached its decision on this proposal, an Interim Housing Delivery Policy was in place. However, that Policy was withdrawn in February 2015 due, in part at least, to the stage reached by the SAP process, and the adoption of the CS. The SAP will resolve the Council's view as to which PAS sites should be included on the basis of their planning merits. Consequently, assessment against the Interim Policy was not appropriate and the proposal was taken back to the Plans Panel for assessment in the light of the current policy context. The amended reasons for refusal are the outcome of that reassessment and, although the Appellants expressed some 'unease' at the revised reasons for refusal, the evidence at the Inquiry addressed the amended position. I do not, therefore, consider that anyone has been disadvantaged by considering the revised reasons for refusal<sup>[4.2]</sup>
- 8.3.4 The 2009 SSD required completion of the development plan "promptly" but nearly 7 years later there is still no completed development plan in Leeds.<sup>[6.2.1]</sup>
- 8.3.5 UDPR Policy N34, which was saved, is the most relevant UDPR policy in this case. It addresses PAS sites and indicates that they will be reviewed as part of the local plan process. A comparative SAP process is underway to address the delivery of housing in the District. The explanatory text sets out the purpose of Policy N34 as "to achieve now a definition of the Green Belt and its boundaries which will survive 'well into the next century'". Importantly the text goes on to say "ie beyond the Plan period for land use allocations (which is approximately to 2016)". It also states "It is intended that no development should be permitted on this land that would prejudice the possibility of longer-term development, and any proposals for such development will be treated as departures from the Plan".<sup>[5.2.1, 5.2.2, 5.2.3]</sup>
- 8.3.6 There are four reasons why an incomplete development plan might be important:
- i) The development plan might be silent as to where housing allocations might go;
  - ii) UDPR Policy N34 might be out of date as it relates to a period of time that has now passed;
  - iii) UDPR Policy N34 might be out of date if it fails the test of consistency with the Framework; and
  - iv) UDPR Policies for the supply of housing might be out of date as there is no 5 year housing land supply.

Although Policy N34 might be out of date it is still part of the development. The weight to be given to it in the planning balance must be considered.

- 8.3.7 In 2001 and 2006 the UDP and UDPR Inspectors tested the suitability of the site against the criteria in *Planning Policy Guidance 2: Green Belts* Annex B and found it was: genuinely capable of development when required; located so as to promote sustainable development; and had regard to PPG3 Housing, PPG13 Transport, and environmental and landscape quality.<sup>[6.2.2]</sup>
- 8.3.8 The approach to sustainability as set out in the *Framework* is now different. A local plan review is underway and to grant permission now would be contrary to *Framework* paragraph 85 and UDPR Policy N34.<sup>[5.2.5]</sup>
- 8.3.9 The Council states that it does not intend to allocate all the PAS sites but does intend to release a substantial amount of Green Belt land. That is endorsed by the CS, which has been found to be sound and compliant with the *Framework*. The large housing requirement makes it unsurprising that both Green Belt and non-Green Belt land will be required and a full review would enable the most sustainable sites to be identified.<sup>[5.2.6]</sup>
- 8.3.10 In the Outer North East HMCA the Draft SAP proposes 3,153 units in the Green Belt whilst ignoring the capacity of non-Green Belt land at Collingham. Moreover, now that the proposal for 3,000 dwellings at Headley Hall has been abandoned the Council needs to decide how to deliver 5,000 dwellings in the Outer North East HMCA. The Council is accused of being inconsistent, particularly in respect of Headley Hall a large site in the Green Belt. However, policy in *Framework* paragraph 52 and CS Policy SP10, indicates that a new settlement can be sustainable by providing the infrastructure it needs. Proposing a site such as Headley Hall would not necessarily, therefore, be inconsistent with policy.<sup>[5.2.7]</sup>
- 8.3.11 The Council considers that the proposal deliberately steps outside the planned system by seeking the release of the site for housing whilst it is under consideration for such a use through the SAP process. I agree that only the SAP process, and not a Section 78 appeal, can allow for the relative assessment of a large number of competing sites. In a Section 78 appeal the proposal has to be considered on its planning merits against development plan policies.<sup>[5.2.1]</sup>
- 8.3.12 The Council confirmed that N34 is a policy for the supply of land, a conclusion also reached by the Farsley Inspector who concluded that it could be considered up-to-date in the context that pertained at that time, including the existence of a 5 year land supply. The SoS decision has since been quashed in its entirety although the Council states it was not on grounds relating to those conclusions. The UDPR Plan period was 1998 to 2016 and Policy N34 was not at that point time expired. That context has since changed as the Plan period for land use allocations ended in March 2016. UDP policies relating to housing are time limited by the document itself as being "Over the period covered by the housing land policies of this plan (2003-16)". The Policy is therefore now out of date.<sup>[5.2.2, 6.2.5]</sup>
- 8.3.13 The CS indicates that it is not its role to identify individual sites and that the SAP will identify specific housing sites for 2012-2028. The SAP has not

yet been adopted, or even submitted to the SoS for examination. Policy N34 is now time expired and in this context the development plan is silent and 150 dwellings at Collingham would not prejudice the outcome of the overall plan process.<sup>[5.2.18]</sup>

- 8.3.14 The use of UDPR Policy N34 to prevent development would be contrary to the *Framework*. In addition, as N34 is a policy for the supply of housing, in the absence of a 5 year HLS the provisions of *Framework* paragraph 49 would apply. This states that relevant policies for the supply of housing will be considered out of date if the local planning authority cannot demonstrate a 5 year supply of housing. Paragraph 14 states that if relevant policies are out of date then permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies of the *Framework* taken as a whole.
- 8.3.15 The Council maintains that UDPR Policy N34 is not out of date but that conflicts with the subsequent conclusion of the Boston Spa appeal Inspector who notes that the Council “acknowledges that it needed to release sites beyond those in the UDPR and in advance of the Core Strategy, and sought to do so in a controlled way using the Interim Policy. However, that approach indicates that Policy N34 and, thus, the provision of housing land within the UDPR were out of date”. I concur with this view, as did the SoS.
- 8.3.16 Paragraph 14 of the *Framework* addresses the situation where the development plan is absent, silent or where relevant policies are out-of-date. In those circumstances permission should be granted unless the adverse impacts would significantly and demonstrably outweigh the benefits when assessed against the policies of the *Framework* as a whole, or specific policies of the *Framework* indicate development should be restricted.<sup>[6.2.3]</sup>
- 8.3.17 The written justification for N34 indicates that any proposals for long term development “will be treated as departures from the Plan”. This is reinforced by the UDPR Inspector who stated “the Policy does not and should not contain a presumption in favour of long-term development of these sites as firm decisions as to whether they should or should not be allocated for development cannot and should not be made until such time as the present plan is reviewed.”<sup>[5.2.3]</sup>
- 8.3.18 The UDPR Policy N34 safeguarded land is not allocated. The purpose of the PAS land is to protect the Green Belt by providing a generous amount of land for long term development. This provision has already taken place, which is not to say that every PAS site is suitable for housing development. The application of the Policy does not, therefore, indicate permission should be refused. However, to grant permission now would pre-judge the outcome of the SAP process in relation to some sites, and so would to some extent undermine it. The need for housing means that this would have to be weighed in the planning balance.
- 8.3.19 Having regard to Colman [2013] EWHC 1138 (Admin) and Bloor [2014] EWHC 754 (Admin) in the context of consistency with the *Framework*, the text of UDPR Policy N34 should be compared to *Framework* paragraphs 49

- and 197. Although the Appellant considers that the policy is inconsistent with those paragraphs of the *Framework* as it acts as an outright bar to development with no allowance for any counteracting benefits, the explanatory text requires a review of the site's suitability which seems to me to be an allowance for counteracting matters to be weighed.<sup>[6.2.4]</sup>
- 8.3.20 The reference to safeguarded land in Framework paragraph 85 is in the context of expecting to have an up-to-date plan. With an up-to-date plan there would be no need to release safeguarded land. That does not apply here because the SAP is silent. There is no development plan document for the allocation of housing, the plan is silent and *Framework* paragraph 14 is engaged. Moreover, as there is no 5 year HLS the obvious choice for housing would be sites safeguarded for that purpose.<sup>[5.2.15]</sup>
- 8.3.21 I note the Council's view that the consequence of the Appellants' approach is that any authority without an allocations plan would have a silent development plan but each case should be considered on its merits. Whilst development plan decisions have been made, as in this report, that is not the same as allocating sites<sup>[5.2.15]</sup>
- 8.3.22 The *Framework* notes that sites should be assessed through a local plan review. UDPR Policy N34 is consistent with Framework paragraph 85 in that respect. Reference has been made to Colman v SSCLG [2013] EWHC 1138 but that case did not consider a safeguarding policy. However, N34 is out of date and inconsistent with Colman. It is only relevant as far as the development plan history demonstrates the suitability of the site in terms of PPG2 Annex B criteria. Reference has been made to Bloor [2014] EWHC 754 (Admin) but this case differs from that as there is no equivalent of the Bloor green wedge policy.<sup>[6.2.7]</sup>
- 8.3.23 The Council accepts that in the absence of a 5 year HLS, and in light of the Hopkins judgment, UDPR Policy N34 would be out of date but there remains the question of what weight to give it given any consistency with the *Framework* and its objectives. As the policy is time expired I consider that it should only be given little weight.<sup>[5.2.19]</sup>
- 8.3.24 Any adverse impacts due to the development should be balanced against the benefits of granting planning permission now to see if they significantly and demonstrably outweigh them leading to a presumption in favour of sustainable development.
- 8.3.25 The CS is up-to-date. It was produced after the *Framework* and was found to be sound and consistent with it. It contains a distribution strategy that was considered at the EiP and is set out in CS Policies SP1, SP6 and SP7 in particular. These policies focus on regeneration and, amongst other matters, promote a settlement hierarchy reflecting greenfield/brownfield locations and the ability of sites to respect and enhance the local character and integrity of places. The CS is ambitious as "The level of growth expected to occur by 2028 within Leeds is greater than any other authority within England".<sup>[5.2.9, 6.2.8]</sup>
- 8.3.26 A Settlement Hierarchy is at the heart of CS Policy SP1, whilst CS Policy SP6 indicates that the Settlement Hierarchy will "guide" the identification of where 66,000 new dwellings would be located. In addition to the

housing requirement, CS Policy SP6 sets out a number of considerations to aid identification of sites, including having the least impact on Green Belt purposes. Safeguarded land, was taken out of the Green Belt to protect its long term future and so would satisfy CS Policy SP6.<sup>[6.2.8]</sup>

- 8.3.27 CS Policies SP1 and SP6 should be applied in a common-sense way and used to assess development for conformity with the development strategy. The site is agricultural land that contributes to the character and identity of the 'small settlement' which is below the MUA and Major Settlements in the development hierarchy and only provides basic services. Policy SP1 refers to the distribution and scale of development reflecting the hierarchy.<sup>[5.2.10]</sup>
- 8.3.28 CS Policy SP6 sets a target of 'at least' 3,660 units a year from 2012/13 to the end of 2016/17 but it is accepted that in the first 4 years the Council has fallen behind its target by over 4,000. Worse still it has not met the minimum annual target of 3,660 in any of the first 4 years.<sup>[6.2.9]</sup>
- 8.3.29 CS Table 1 and Map 3 identify Collingham as a "Smaller Settlement" whilst Maps 4 and 15 also denote it as a "Lower Order Local Centre". CS Policy SP7 addresses housing provision in Smaller Settlements (2,300 infill and 5,200 extension) and also a distribution across Housing Market Characteristic Areas. Collingham is in the Outer North East HMCA where 5,000 units are required. When SP6 and SP7 are read together it is apparent that Collingham is a suitable location for development.<sup>[6.2.10]</sup>
- 8.3.30 The supporting text to CS Policy SP10 refers back to the UDPR and introduces PAS land that "will provide one of the prime sources for housing allocations in the LDF". The Collingham site is identified as a PAS site and the CS reference to a realistic supply of land indicates that PAS land will be suitable for development if and when required.<sup>[6.2.11]</sup>
- 8.3.31 CS Policy H1 commits the Council to maintaining a 5 year HLS. It also requires the SAP to phase the release of its allocations based on geographical distribution in accordance with SP7 and previously developed land targets (65% first five years and 55% thereafter). The 5 criteria for release include:
- ii) Locations that have the best public transport accessibility;
  - iii) Locations with the best accessibility to local services; and,
  - iv) Locations with least impact on Green Belt objectives.

It has been accepted that the release of Collingham would not lead to excessive greenbelt development in terms of Policy H1. Whether it has 'best' public transport is debatable but it is a Lower Order Local Centre and so accords with H1 iii) and is not in the Green Belt and so accords with H1iv). CS Policy H5 would be met as the proposal would provide affordable housing as required by the CS.<sup>[6.2.12]</sup>

- 8.3.32 The phased release of housing allocations is to support CS Policies SP1, SP6, SP7, and SP10. The SAP identifies existing permissions and former allocations and the balance is allocated by applying CS Policies. This includes the spatial strategy, with its focus on MUA and major settlements, as well as its priorities for previously developed land and regeneration.

Greenfield land in outer areas and smaller settlements falls well down the hierarchy. In advance of the SAP debate the proposal must be considered against the CS Policies. Phasing reflects the relative performance against CS strategy and the need for other more sustainable sites to come forward first.

- 8.3.33 HLS is considered above but the Outer North East HMCA is under supplied in terms of Policy SP7. It should provide 5,000 units (8%) but in 2015-2020 only 858 (3%) are anticipated. It has been suggested that monitoring cannot be undertaken as the SAP is not adopted and consequently there are no allocated sites. The supply in the HMCAs would therefore remain unaddressed until the SAP is adopted in 2017 at the earliest. This is inconsistent with the *Framework's* commitment to boost housing. [6.2.13]
- 8.3.34 Overall, the appeal proposal would be generally compliant with the CS and its policies should not be used to withhold planning permission. This conclusion brings the CS 'General Policy' into play which requires that proposals that accord with the CS "will be approved without delay unless material considerations indicate otherwise. The CS has been adopted since 2014 and I do not consider that the proposal would undermine its implementation. [6.2.14]
- 8.3.35 In terms of the development plan, only UDPR Policy N34 would be breached but this should attract little weight as it is time expired. The most relevant policies of the up-to-date CS, Policies H5, SP1, SP6 and SP7 would be complied with and overall there would be general compliance with the Plan. There needs to be a balancing exercise, but within the parameter that there is a presumption in favour of granting permission. To justify refusal would require it to be demonstrated that the harm from any grant would cause adverse impacts that would significantly and demonstrably outweigh the benefits.
- 8.3.36 The Council is progressing its SAP identifying sites to be allocated. CS Policy HG2, and the explanatory text, explain the distribution with reference to the CS. The Council considers that the allocation of sites involves inter-related issues such as provision of necessary infrastructure and maintains that, when considered in the round, a Green Belt site may be more sustainable than a non-Green Belt site.
- 8.3.37 A Green Belt Release document shows that 14,372 homes are proposed to be provided on the Green Belt. The UDPR safeguarded land to avoid the use of Green Belt land when the UDPR was replaced. The Council will need to demonstrate very special circumstances to justify this release of land against a background of the SAP Examiner knowing that 5,285 of the 14,372 could be provided on non-Green Belt land previously removed from the Green Belt for exactly that purpose. [6.2.16]
- 8.3.38 However, the SAP has not yet been adopted, or even submitted to the SoS for examination. The Publication Draft SAP was published in September 2015, over two years after publication of the Issues and Options Plan that generated 7,000 representations. The realism of having a plan ready for submission to the SoS by December 2017, when the Draft SAP has generated 10,000 representations, is questionable. Indeed, the SCG

states that the Council consider that only limited weight can be accorded to the emerging SAP whilst the Appellant considers that only very limited weight should be afforded to it.<sup>[6.2.15]</sup>

- 8.3.39 The SAP EiP is not a foregone conclusion when the SAP intention to release considerable Green Belt land has not been tested. In the Outer North East HMCA the Draft SAP proposes 3,153 dwellings in the Green Belt whilst ignoring the capacity of non-Green Belt land at Collingham. Moreover, now that the proposal for 3,000 dwellings at Headley Hall has been abandoned the Council needs to decide how to deliver 5,000 dwellings in the Outer North East HMCA. There is no policy basis for allocating Green Belt sites and the Council could not identify another authority with a comparative approach. Even the Council considers that the SAP will not be adopted until winter 2017 at the earliest and accepts that only limited weight can be given to it at this time. The provision of 150 dwellings at Collingham would not prejudice the outcome of the SAP process.<sup>[6.2.17]</sup>
- 8.3.40 In terms of prematurity the *Guidance* notes “arguments that an application is premature are unlikely to justify a refusal of planning permission other than where it is clear that the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, taking policies in the *Framework* and any other material considerations into account”. The Council’s evidence does not carry out any balancing exercise and so would not justify refusal.<sup>[6.2.18]</sup>
- 8.3.41 Moreover, paragraph 14 sets out two tests, both of which must be met to justify refusal. The test in *Guidance* paragraph 14 i) considers development that would be so substantial that to grant permission would undermine the plan process. I am unaware of the detailed evidence given to the Farsley Inquiry that led to the Inspector and SoS concluding that the scheme in that case would undermine the plan process. Notwithstanding the Council’s view on the cumulative effect of six appeals involving PAS land, the proposal in this case would represent only a tiny fraction of the overall need. The ‘scale’ test would not be met and in these circumstances the plan process would not be significantly undermined.<sup>[6.2.19]</sup>
- 8.3.42 In respect of ii) the emerging plan in the form of the SAP is not at an advanced stage. There is a shortfall of around 6,000 units due to site withdrawals since the publication of the SAP. These will have to be replaced. There are some 10,000 representations, many related to the use of PAS sites, and further consultation will be necessary. There will have to be an EiP that is likely to be contested as the intention to release considerable Green Belt land has not been tested. The Inspector might also have modifications. At best the SAP might be adopted by the end of 2017 and the Council accepts that little weight can be given to it at this stage. The second test is not met and the proposal would not be premature. Indeed, the Council accepts that the proposal, in itself, would not give rise to a prematurity reason for refusal. In any event, as the Council is unable to demonstrate a 5 year HLS then prematurity ceases to be an issue.<sup>[6.2.20]</sup>
- 8.3.43 The Council maintains that there is a large supply of housing permissions, with permission being granted for 8,000 units in 2014/15. However, 60% of the homes required in ONE are now unallocated due to the withdrawal of

the Headley Hall site. New sites may be coming forward, as the Council claims, but such sites should already be in the SAP and the PAS sites are not being revisited. Since the adoption of the CS only 236 units have been delivered in the Outer North East HMCA against a requirement of 1,200.<sup>[6.2.18]</sup>

- 8.3.44 The final draft of the *Collingham Neighbourhood Plan* is being prepared for submission to the City Council for examination. The document does not specifically allocate any sites for housing and as such is in accordance with the Publication Draft SAP. In any event, given the status of the emerging Neighbourhood Plan, the City Council considers that only limited weight can be given to it at this and I agree with that view.<sup>[6.2.21]</sup>

#### **8.4 Whether Occupants of the Proposed Development Would Have Acceptable Access to Shops and Services**

- 8.4.1 The Council maintains that development should be guided by the Settlement Hierarchy, in the CS, and the SAP. The addition of 150 units in Collingham would increase the size of the settlement by approximately 14-15%. In such circumstances CS Policy SP1 requires accessibility to be assessed. This is also addressed through CS Policy SP6 i) and the supporting text. CS Policy SP11 is linked to CS Policy T2, which requires new development to meet Accessibility Standards set out in the CS.<sup>[5.4.1, 5.4.2, 6.4.1]</sup>
- 8.4.2 Accessibility Standards in the CS “define the minimum standard that a new development will need to meet” echoing *Framework* paragraphs 32 and 34. The Council maintains that the appeal proposal fails to meet all the Standards. The village is remote from the MUA and, in the context of Leeds, has a poor bus service. The village has relatively few local services and the site is some distance from the centre of the village. However, other sites such as Spofforth Hill, Wetherby, had lower Accessibility scores than the appeal site but have been granted planning permission. This demonstrates the Council’s flexibility in the application of the Standards.<sup>[5.4.2, 5.4.3, 6.4.9]</sup>
- 8.4.3 Moreover, if the Council’s contention that the Standards are a minimum is accepted, the entire Outer North East HMCA requirement of 5,000 homes would have to be delivered in Wetherby and Harewood as the 16 other settlements in the HMCA do not meet the criterion of 4 buses an hour to a city centre. The appeal site has been given an accessibility rank of 2 which is “Public transport not in line with CS Standards” but this ignores the availability of local services. Under the Council’s own guidance the site’s accessibility rank should be ‘3’, “Public transport not in line with CS Standards but availability of local services (local centre, schools etc)”. This leads to a sustainability score of 7 which would make the site the highest scoring safeguarded site in accessibility terms in the Outer North East HMCA. Of the allocated sites only Wetherby scores higher and a number such as Scarcroft Lodge and Bramham score lower.<sup>[6.4.17]</sup>
- 8.4.4 Collingham is identified as a safeguarded site and as such is required by the CS to be a realistic site. In those circumstances, the site must be suitable for development if required, notwithstanding settlement suitability and the Accessibility Standards.<sup>[6.4.1]</sup>

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- 8.4.5 The site has been a PAS site since 2001 and was considered by UDP and UDPR Inspectors. Guidance required the site to be “sustainable” and “genuinely capable of development”. Little, other than a reduction in bus frequency, has changed in the intervening period. At the time of safeguarding the site Leeds’s preferred option was to allocate it for housing and the Inspector’s principal reason for not doing so was the existence of an alternative site that would not involve the loss of Grade 2 agricultural land, not accessibility. The Council now relies on current guidance and the Accessibility Standards to support its position, although the site is still a PAS site that must be a ‘realistic’ allocation.<sup>[6.4.10]</sup>
- 8.4.6 Benefits flow from the *Framework*’s three strands of sustainable development, economic, social and environmental. The balance falls significantly in favour of granting permission. In the context of the Outer North East HMCA the proposal is relatively sustainable and would not conflict with the *Framework* or the development plan as it currently exists <sup>[6.4.2, 6.4.3, 6.4.4, 5.4.5, 6.4.2, 6.4.5]</sup>
- 8.4.7 The Standards require housing to be within a 15 minute walk (1200 metres) of local services. There would be two routes which the Council states are substandard due to gradient or footpath width. The first, along the A659, would be 1400 metres from the centre of the site with an average gradient of 1in10. This would not meet the Standard but would not be an obstacle to many residents.<sup>[6.4.11]</sup>
- 8.4.8 The alternative route is 800 metres and runs alongside the A58. The UDP Inspector, concluded “Even allowing for the fact that it is alongside the A58 this would not be such a long distance as to mean that all or even most residents should find it necessary to get in a car to go to them (the local services)”. I concur with this view. Part of the footway would be widened to 1.5 metres and a 600 metres long section that appears to be 1 metre or less wide is in fact some 1.2 metres wide but has become overgrown. This width of footway would allow residents and those with pushchairs to use the footway and pass each other.<sup>[6.4.12]</sup>
- 8.4.9 Street lighting could be funded from CIL contributions and the fact that restoration of the footway is at the Council’s discretion was not challenged. The improvements identified could be secured by the proposals and ensure that the site meets Criterion 1.<sup>[6.4.13]</sup>
- 8.4.10 New bus stops would be provided with provision for real time service information and shelters. The stops would be within 250 metres on Leeds Road and 500 metres on Harewood Road. The requirement for a 15 minute service to a major public transport interchange is unduly inflexible in this case. Collingham is towards the outer edge of the district and so much closer to other high-order centres such as Wetherby, Boston Spa and Harrogate. Residents of the proposal would be more likely to work in those centres than residents living nearer to Leeds. Services to these high-order centres meet the Standard of a 15 minutes journey and I consider that the objective of providing choice of public transport to employment opportunities would be met.<sup>[6.4.14]</sup>
- 8.4.11 Notwithstanding the difference between the parties over the footway, it is agreed that primary education and healthcare facilities would be within a
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20 minute walk. Subject to the proposed footway improvements Criterion 3 would, therefore, be met. In respect of secondary education, there is no school in Collingham but the secondary school in Wetherby is accessible by a half hourly service. However, there are dedicated bus services with 16 school buses running between Collingham and secondary schools daily. Alternative provision already exists to fulfil the objectives of Criterion 3.<sup>[6.4.15]</sup>

- 8.4.12 In terms of Criterion 5, Access to City/Town Centres within a 5 minute walk to a bus stop offering a 15 minute service frequency, the nearest town centre is Wetherby which offers a further link to Harrogate. Ignoring the Harrogate link, there are two bus services to Wetherby an hour, and two to Leeds city centre giving a combined service of 4 buses an hour. Whilst the Council notes that there is a reduced evening service, the Accessibility Standard criteria relate to weekday daytime service levels. If a flexible approach is taken the objective, if not the precise requirement, of the Standard would be met.<sup>[6.4.16]</sup>
- 8.4.13 Collingham Primary School is at capacity and it is alleged that even when combined with Bardsey the two schools would not be able to absorb the 38 pupils that would be generated by the proposed development. Either new facilities would have to be provided, for which there are no plans, or the children must go elsewhere. However, forecasts indicate that there would be places in the first two year groups for the numbers that would be generated in the first two years of occupation of the proposed dwellings. The Council subsequently asserted that the 5 pupils a year could not be accommodated in the other year groups. This was not substantiated by evidence. Similarly, no account has been taken of the CIL contribution or whether the school could make use of funds to expand its infrastructure or resources. The Council could have provided the Inquiry with such evidence but did not do so.<sup>[5.4.4, 6.4.6, 6.4.7]</sup>
- 8.4.14 A similar point was taken in relation to healthcare as the GP's surgery in Collingham has indicated it is at capacity but has no plans to expand. Expansion is not in the appellants' or the Council's gift, but is a market decision for the providers, although CIL contributions could be available. If arguments about lack of healthcare were to succeed surgeries could dictate where residential development should be built.<sup>[5.4.4, 6.4.7, 6.4.8]</sup>
- 8.4.15 Collingham has a greater proportion of single occupant car journeys to work (84.6%) than the district average (59.1%), partly due to its geographic location compared to dwellings closer to the main urban areas. However, that would not justify scepticism about the potential of a Travel Plan to encourage measures to reduce journeys, such as car sharing.<sup>[6.4.18]</sup>
- 8.4.16 The Council has not demonstrated any assessment of benefits or any form of balancing exercise. The Standards have been relaxed in respect of other residential schemes but in any event, an objective assessment under the SAP criteria shows the appeal site to be the most accessible of the safeguarded sites and ranks highly amongst the allocated sites.<sup>[6.4.18]</sup>
- 8.4.17 With a modicum of flexibility the site would satisfy the objectives of the CS Accessibility Standards and consequently the Standards would not

represent a sufficient reason to justify withholding planning permission. Inflexibility will not assist in meeting housing needs.<sup>[6.4.18]</sup>

## **8.5 Effect on the Highway Network**

- 8.5.1 When the Council determined the application it considered that the Appellant had not demonstrated that the highway network was capable of absorbing the additional pressures placed on it by the increase in traffic, cycle and pedestrian movements that the proposal would generate.<sup>[5.5.1]</sup>
- 8.5.2 Investigations continued to devise a scheme to mitigate the impact of the development on the A58/A659 Harewood Road junction. An acceptable form of mitigation has now been identified which does not propose the signalisation of the A58/Mill Lane/School Lane junction.<sup>[5.5.2, 6.5.1]</sup>
- 8.5.3 Details of footpath widening have also been submitted as shown on drawing no 7119-015 and it is agreed that this could be secured by a condition. An *Addendum Highways Statement of Common Ground* sets out that as a consequence of agreeing the proposed junction improvements the revised reason for refusal 4 has been satisfied and is no longer pursued by the Council. Residents also expressed concern about the impact on the highway network but there is little evidence that would justify reaching a different conclusion to that of the highway authority.<sup>[5.5.3, 6.5.1]</sup>

## **8.6 Effect on the Character and Identity of Collingham**

- 8.6.1 The site exhibits many of the key characteristics of the surrounding countryside. CS Policy SP1(iii) requires development to respect and enhance the local character and identity of places, whilst the landscape strategy seeks to maintain the integrity of settlements, conserve characteristic features, and reinforce the pattern of small rural villages whilst preserving their character and individual identities. New housing around villages is identified as a negative feature.<sup>[5.6.1]</sup>
- 8.6.2 The appeal site is a greenfield site in agricultural use and was removed from the Green Belt in the 2001 UDP. There has been no change in the setting of the site since then when the UDP Inspector stated that the site relates "as much to the urban area as to the wider area of open countryside" and that its contribution toward protecting the open countryside "is limited". Neither the draft *Neighbourhood Plan* nor the *Village Design Statement* identify the site as vital to the character of the settlement. The appeal site continues to be PAS land in the SAP which means the appeal site could be developed at some stage. It also sets out key views across the village.<sup>[5.6.2, 5.6.3, 6.6.1, 6.6.2]</sup>
- 8.6.3 There will always be a degree of inter-relationship and it is accepted that the countryside setting is important to the character of the village. It was also accepted that the distance between the built form of Collingham and Bardsey would not be reduced and so the countryside's role in providing separation from Bardsey would be maintained. The trees along the beck on the approach from Bardsey contribute to the rural character but I agree with the UDPR Inspector who noted that "Provided that the replacements were sufficient in number and carefully located, I do not consider that the

provision of a vehicular access to the site would necessarily harm the appearance of either this part of Collingham or the adjacent SLA". [5.6.2, 5.6.3]

- 8.6.4 Although roughly half a dozen trees would be lost, the proposed planting would create a woodland some 10 metres deep. When approaching Collingham existing housing would be seen before the proposed dwellings were glimpsed. Consequently views would not be urbanised and the character of the settlement would not be significantly affected. Indeed, although the Council contends that the loss of trees to create an access would be harmful, it does not object to the loss in principle and withdrew reason for refusal 6. [6.6.3]
- 8.6.5 Unusually the illustrative Masterplan shows 110-120 dwellings on the site, whilst the proposal is for up to 150. However, the proposal is in outline with layout and design reserved matters. The scheme would generally follow the existing built form and be largely self-contained and the Council would retain control over the details when submitted. The report to Committee notes that bungalows on the eastern boundary would not have an unacceptable impact on the living conditions of neighbours whilst houses on the northern boundary would be a sufficient distance from the boundary to ensure no adverse impact. [5.6.4, 6.6.5]
- 8.6.6 The density of the proposal would be 35 dph compared to nearby development at Crabtree Green, which is 7.6 dph and Millbeck Green which, even ignoring those properties with long gardens, is only 13 dph. As a result the Council considers that the proposed housing would be 'intense'. However, CS Policy H3 requires housing in Smaller Settlements to meet or exceed a density of 30 dph. The CS states that density should only be reduced for "exceptional townscape reasons". There is nothing exceptional in terms of character or any overriding concern in design terms that would justify a lower density in this case. 30 dph would mean at least 132 dwellings on the site. [5.6.4, 6.6.6]
- 8.6.7 As most apartments in the inner area and city centre will be 1-2 bedroom many of the larger scale homes will be in the outer HMCAs. This is necessary to comply with the requirement of CS Policy H4 which states that 40% of all dwellings shall be three bedrooms or more. [6.6.7]
- 8.6.8 An area of Public Open Space is proposed in a part of the site that is in the Green Belt. This would not necessarily be inappropriate development and despite the absence of levels I consider the Council's approach overcautious for an outline application. In relation to the creation of a development platform outside flood zone 1, only 9.3% of the developable site would require raising with a maximum increase of 1-1.1 metres tapering down to meet existing levels. The Council acknowledged that re-grading would be minimal and was no longer in issue. It was also agreed that an acceptable design and appearance of the proposed bridge could be required by condition. [5.6.5, 6.6.4]
- 8.6.9 I conclude that the proposal would preserve the character and identity of Collingham in accordance with the aims of CS Policies SP1(iii), H3 and H4.

## **8.7 Other Matters**

- 8.7.1 Leeds desperately needs additional Affordable Housing. The most recent SHMA identified an annual need of 1,158 affordable dwellings but the Council's latest figures indicate that 54% of overall delivery would be in the city centre and inner area where only 5% of units would be required to be affordable. The proposal would provide 52 affordable homes if 150 were built. In these circumstances, affordable housing would be provided in accordance with policy requirements and this should be welcomed. [5.7.4, 6.7.1]
- 8.7.2 A Flood Risk Assessment report and a Flood Risk Sequential Test report were submitted with the application and considered by the Environment Agency and the Council's Flood Risk Management Section. The scheme would provide improvements to the flood defence measures provided by the Environment Agency in 2010, specifically to 22 properties on Millbeck Green. On site engineering works would moderate the surge potential of Collingham Beck reducing the peak water level during a flood event. A contribution would also be made towards a new off-site flood wall along the A58. The wall would reduce the likelihood of the road, and properties in Crabtree Green, from flooding. This would be of general benefit to the village. [5.7.2, 6.7.2]
- 8.7.3 The Council's Highways Department and Highways England have raised no objection to the engineering design of the proposed access bridge and the Environment Agency is satisfied it would allow the required water flow beneath it. Appearance and materials could be controlled by conditions. [5.7.3]
- 8.7.4 The proposed public open space would provide some 4.45 hectares of new recreation and leisure facilities and the green infrastructure would be a significant benefit. Concerns about the future management of such provision would be addressed by the provision of an ecological management plan. That part of the site within the Green Belt would provide a semi-natural habitat without compromising the openness. The amenity space adjacent to the development would be open to all, not just residents, and would also provide a cycleway linkage, and has the potential to incorporate footpath linkages, including a secondary route to the primary school. [6.7.3, 6.7.4]
- 8.7.5 Since the submission of the appeal, further ecology surveys and a tree survey have been submitted and considered. The Council accepts that the surveys address the concerns set out in revised reason for refusal 6 and, consequently, that reason for refusal is no longer contested. The Council accepts that noise, archaeology and heritage matters have no implications for developing the site and would not provide a basis for refusing planning permission. There is little evidence to justify any other conclusion. [5.7.1, 5.7.4]

## **8.8 Section 106 Obligation and Conditions**

- 8.8.1 At application stage, planning obligations were to be provided by an undertaking or agreement. Subsequently a Community Infrastructure Levy has been adopted in April 2015, which in this case would require a charge

of £90/m<sup>2</sup> of residential floor space. However, there are still some matters that require addressing by means of a Section 106 Obligation.

- 8.8.2 A signed Section 106 Agreement dated 29 April 2016 has been submitted. The matters it covers are affordable housing and a verification fee; a Travel Plan and monitoring fee; a Metrocard contribution, a flood prevention contribution and an off site bus stop contribution, none of which are covered by CIL contributions. A note justifying why the Council considers that the S106 matters are justified in terms of the tests set out in *Framework* paragraph 204 has been produced.
- 8.8.3 Affordable housing is necessary to comply with CS Policy H5 that requires the provision of 35% affordable housing in this location. It would be provided on site and so be directly related to the development. It is fair and reasonable as the Policy is based on evidence regarding housing need. The Council would have to administer the affordable housing contribution which would be based on the actual staff time and resources expended in the verification process.
- 8.8.4 CS Policy T2 and the Council's Travel Plans SPD seek to improve the accessibility of the site. A Travel Plan would need to be monitored to ensure realistic targets were set. Reviewing the Travel Plan would be directly related to the development as there is a need to encourage the provision of alternative, more sustainable, transport. The monitoring fee is based on the scale of development and covers staff time. The SPD sets out a number of packages to make developments more sustainable, including the requirement for a MetroCard for each dwelling, which would be directly related to the development. The measure is necessary to encourage alternative forms of transport, by directly covering the cost of a card per dwelling for one year and subsidising the provision for a further two years.
- 8.8.5 Some off-site works would also be needed. The site would generate demand for transportation and the provision of shelters, raised kerbs, information displays and Real Time information at two bus stops, one in each direction as interchanges in Leeds are outside the maximum travel time, would meet the tests.
- 8.8.6 Finally, flood alleviation and mitigation works would be necessary due to the history of flooding in the area. The proximity to the Beck and proposed changes to levels means the contribution and works would be directly related to the development and fairly and reasonably related in scale and kind.
- 8.8.7 In addition, the parties have agreed a schedule of 27 conditions. These address: approval of details; timing of implementation; Archaeology; Flood Risk and Drainage; Ground Conditions; Ecology and Trees; Public Open Space; Highways and Construction.
- 8.8.8 Conditions 1 and 4 are standard outline permission time conditions, whilst condition 2 clarifies the development and sets a parameter in terms of the number of dwellings. In the interests of clarity and the avoidance of doubt the approved drawings are identified in condition 3.

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- 8.8.9 The site lies within an area of archaeological significance and condition 5 would provide for investigation prior to any development on the appeal site. Conditions 6 to 10 relate to flood risk and drainage and are necessary to preclude causing any increased flooding and provide for suitable drainage. Ground conditions and contamination are the subject of conditions 11 to 13 which seek to ensure remediation of the site should it be found to be necessary.
- 8.8.10 Mitigation for ecological impacts and the protection of retained trees are sought by conditions 14 to 16 whilst conditions 17 and 18 require the provision of public open space and a landscape buffer zone respectively to comply with policy requirements. Conditions 19 to 25 require various highway improvement works to improve the access and address the impact on the wider highway network. Provision for electric vehicle charging points, cycle storage and pedestrian and cycle links together with surfacing and drainage of vehicular areas are also sought to encourage more sustainable transportation options. Finally, conditions 26 and 27 would require a Construction Method Statement and restrict working hours both in the interests of safeguarding the living conditions of the occupiers of nearby housing.
- 8.8.11 I consider that the suggested conditions are all necessary and comply with the tests set out in *Framework* paragraph 206. Similarly, the Agreement provisions meet the tests in *Framework* paragraph 204 and are necessary to make the proposals acceptable.

## 8.9 Planning Balance

- 8.9.1 The Council has not demonstrated a 5 year HLS and the policies relevant to the supply of housing are therefore deemed out-of-date. UDPR Policy N34 is the only relevant such policy and the proposal would not comply with it. The weight to be given to it, and its breach, is a matter of judgement. As the policy is out-of-date I consider that it can only be given little weight.
- 8.9.2 The Council maintains that the presumption against the development through Section 38(6) is very strong regardless of whether there is a 5 year HLS. The Appellant puts no case for any local need or benefit and no additional affordable housing is offered. However, whilst the benefits might to some extent be generic, and would be provided if the SAP were allowed to run its course, this needs to be considered in the context of Leeds.
- 8.9.3 On Leeds own figures, housing delivery has not reached the minimum requirement for the last 7 consecutive years, and nor will it for a further 2 years. This is against the background of having the largest housing requirement in the country. The site has been appraised over the long term and identified as a potential residential site. The site is safeguarded in the PAS and is in a relatively sustainable position.
- 8.9.4 Notwithstanding the Council's views, I consider that the appeal site is generally compliant with the CS spatial distribution policies and would help meet the need for 5,000 homes in the Outer North East HMCA, a deficit of 60%. There are clear economic, social and environmental benefits that stem from the proposal that far outweigh the adverse impacts identified.

- 8.9.5 The Council maintains that the proposal would undermine the adopted CS and the plan led system, and *Framework* paragraph 85, and deny the public expectation that PAS sites would be considered through a local plan review. This was a factor to which the SoS gave very considerable weight in a Gilden Way, Harlow decision, APP/N1540/A/11/2167480. However, the site has been under a microscope and time has been set aside for the public to comment. I am not aware of the comparability of the position in Harlow but the severity of the housing shortfall in this case warrants the approach recommended in this report.<sup>[6.1.1, 6.1.2]</sup>
- 8.9.6 In addition to undermining the plan-led system, through determining a proposal that was progressing through the due process, the Council also alleges specific social and environmental harms caused by breaches of the spatial strategy and the settlement hierarchy, the lack of sustainability and accessibility relatively within Leeds, the harm to the environment, to the character of villages and the unsustainable strain on services due to the scale of development and harm to the highway network.
- 8.9.7 However, as set out above, the proposal would be in line with the spatial strategy and settlement hierarchy, in the context of the Outer North East HMCA the proposal would also be relatively sustainable and accessible. There would be little harm to the environment, or to the character of the village, and mitigation would be provided for the additional strain that would be put on local schools and other services. Indeed, the proposal would also provide for flood defences that would benefit neighbouring properties in the village.

## **9. Overall Conclusions and Recommendation**

### **9.1. Overall Conclusion**

- 9.1.1 Considering the balance required by *Framework* paragraph 14, UDPR Policy N34 is out-of-date and attracts little weight. Any adverse impacts due to granting permission would not significantly and demonstrably outweigh the benefits of boosting significantly the supply of housing when assessed against the policies in the *Framework* taken as a whole. Applying both the paragraph 14 and Section 38(6) tests the proposal should be allowed.

### **9.2 Recommendation**

- 9.2.1 I recommend that the appeal be allowed and planning permission be granted, subject to the Unilateral Undertaking, and the conditions set out in Appendix C of this report.

*Ken Barton*

INSPECTOR



Jonathan Dunbavin BSc     Director ID Planning, Leeds  
MA TP

For the joint Inquiry session on April 19-21 relating to Housing Land Supply  
only

Phillip Roebuck FRICS     Director Cushman and Wakefield, Leeds

**INTERESTED PERSONS:**

Mrs Harrigan     Collingham Residents' Action Group (CRAG)

Julian Holmes     Collingham with Linton Parish Council

Mr Armitage

Jeremy Lenighan

Alex Shelbrooke MP

Alastair Smyth

Cllr Rachel Proctor

## APPENDIX B - DOCUMENTS

### Core Documents

#### National and Local Planning Policy

CD/A1	National Planning Policy Framework
CD/A2	National Planning Policy Guidance
CD/A3	Leeds City Council Core Strategy 12 November 2014
CD/A4	Unitary Development Plan 2001 Extract  Chapter 14 Aireborough, Horsforth and Bramhope  Chapter 17 Morley  Chapter 24 Wetherby
CD/A4(A)	Unitary Development Plan Volume 1 Written Statement
CD/A5	Unitary Development Plan Review 2006 Vols 1 and 2
CD/A5(A)	Unitary Development Plan Review 2006 Volume 1 Written Statement
CD/A6	Unitary Development Plan Inspector Reports
CD/A6(A)	Inspectors Report Chapter 5
CD/A7	Unitary Development Review Inspector Reports
CD/A7(A)	Unitary Development Review Inspector Reports Foreword
CD/A8	Interim Policy – Potential Release of Sites of Protected Areas of Search
CD/A9	Leeds City Council Natural Resources and Waste Local Plan
CD/A9A	Leeds City Council Natural Resources and Waste Local Plan September 2015 Adopted Policies Minerals 13 and 14
CD/A10	Leeds City Council Consultation Draft SAP & Background Documents 2015
CD/A11	Leeds City Council Community Infrastructure Levy Charging Schedule April 2015
CD/A12	Leeds City Council Community Infrastructure Levy Regulation 123 List September 2014
CD/A12A	Leeds City Council Community Infrastructure Levy Regulation 123 List Amendments November 2015
CD/A13	Leeds City Council Open Space, Sport and Recreation Assessment July 2011
CD/A14	SPG4: Greenspace Relating to New Housing Development
CD/A15	SPG: 25 Greening the Built Edge
CD/A16	Collingham Conservation Area Appraisal and Management Plan
CD/A17	Village Design Statement: Collingham with Linton

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CD/A18	Bramhope Conservation Area Appraisal and Management Plan
CD/A19	Extract Appendix D to BS4102:2013 Biodiversity – Code of Practice for Planning and Development
CD/A20	Extracts from Hundt L (2013) Bat Surveys: Good Practice Guidelines 2 <sup>nd</sup> Edition
CD/A21	DCLG – Consultation on Proposed Changes to National Planning Policy December 2015
CD/A22	PPG2: Green Belts
CD/A23	Site Allocations Plan Sustainability Appraisal - Publication Draft September 2015
CD/A24	Site Allocations Plan and AVLAAP – Infrastructure Background Paper September 2015
CD/A25	Site Allocations Plan Section 3: Area Proposals: 7 Outer North West – Publication Draft September 2015
CD/A26	Site Allocations Plan Site Assessment Document Breary Lane East, Bramhope LS16 Site Plan HG2-17 SHLAA Ref 1080 3367A
CD/A27	Site Allocations Plan Section 3: Area Proposals: 6 Outer North East – Publication Draft September 2015
CD/A28	Site Allocations Plan Site Assessment Document Leeds Road, Collingham Site Plan HG3-18 SHLAA Ref 2135
CD/A29	Bramhope Village Design Statement
CD/A/30	Leeds District Valuer's Report May 2014
CD/A/31	Leeds District Valuer's Report October 2014
CD/A/32	David Newham's Rebuttal of Philip Roebuck's Evidence
CD/A/33	Collingham Neighbourhood Plan Draft
CD/A/34	Housing Land Supply Schedule
CD/A/34A	Housing Land Supply Schedule with LCC comments
CD/A/34B	Agreed Housing Land Supply Schedule
CD/A/35	Press Article about Morgan Agents
CD/A/36	Newham Brief and Viability Appraisal Information
CD/A/37	Extracts from SHLAA of disputed sites
CD/A/38	5 Year Housing Land Supply Tipping Point
CD/A/38A	Amended 5 Year Housing Land Supply Tipping Point
CD/A/39	Green Belt Releases in SAP

## Appeal A Application Documents

CD/B1	Application Letter 25 November 2013
CD/B2	Application Letter (2) 27 November 2013
CD/B3	Application Form (without personal data) 22 November 2013
CD/B4	Site Location Plan (drawing no P12 4567 02) 14 November 2013

CD/B5	Site Survey Plan (S7898) June 2013
CD/B6	Indicative Development Master Plan (D12 4567 51 Rev B) 25 March 2014
CD/B7	Development Master Plan (D12 4567 50) 14 November 2013
CD/B8	Proposed Access Arrangements Plan (ITM8086-GA-012 Rev A) August 2014
CD/B9	Planning Case Report November 2013
CD/B10	Design and Access Statement November 2013
CD/B11	Statement of Community Involvement Report November 2013
CD/B12	Draft Heads of Terms
CD/B13	Minerals Recovery Statement
CD/B14	Transport Assessment (Volume 1 Reports and Figures) November 2013
CD/B15	Transport Assessment (Volume 2 Appendices) November 2013
CD/B16	Travel Plan (updated version) July 2014
CD/B17	Stage 1 Desk Study Report June 2013
CD/B18	Tree Survey July 2013
CD/B19	Cultural Heritage – Desk Based Assessment Report July 2013
CD/B20	Flood Risk Assessment November 2013
CD/B21	Foul and Surface Water Drainage Strategy October 2013
CD/B22	Ecological Appraisal July 2013
CD/B23	Noise Impact Assessment July 2013
CD/B24	Agricultural Land Appraisal July 2013
CD/B25	Affordable Housing Pro-forma
CD/B26	Archaeological Investigations Evaluation Report March 2014
CD/B27	Planning Performance Agreement 28 March 2014
CD/B28	Major Site Notice 13 December 2013
CD/B29	Site Notice 10 January 2014
CD/B30	Site Notice 23 January 2014
CD/B31	Site Notice 14 March 2014
CD/B32	Site Notice 11 April 2014

### **Appeal A Correspondence with Local Planning Authority**

CD/C1	Acknowledgement of Receipt of a Request for Pre-Application Advice 12 July 2013
CD/C2	Letter – JB Pre-Application Letter 7 August 2013
CD/C3	Email – Pre-Application Meeting Request 9 August 2013

CD/C4	Email – Arrangement of Pre-Application 16 August 2013
CD/C5	Letter – Screening Opinion 1 November 2013
CD/C6	Email – Planning Performance Agreement 28 November 2013
CD/C7	Email – Correspondence regarding Sustainability Appraisal 3 December 2013
CD/C8	Email – Correspondence regarding Planning Performance Agreement 4 December 2013
CD/C9	Acknowledgement Letter 5 December 2013
CD/C10	Email – Archaeological Works 27 January 2014
CD/C11	Email – Position Statement to CPP 27 January 2014
CD/C12	Email – Transport – S106 4 February 2014
CD/C13	Email – withdrawal from CPP 12 February 2014
CD/C14	Email – JB Request for Consultee Responses 20 February 2014
CD/C15	Email – LCC Request for Progress Meeting 27 February 2014
CD/C16	Email – Trail Trenching Report 18 March 2014
CD/C17	Email – Application to Plans Panel 20 March 2014
CD/C18	Email – Confirmation of Revised Scheme and LCC Acknowledgement 27 March 2014
CD/C19	Email – Confirmation of Plans Panel 28 March 2014
CD/C20	Email – I Transport Response to LCC Highways Comments 8 May 2014
CD/C21	Email – Revised Masterplan for discussion, including plan (reference: D14 4567 OP3) 12 May 2014
CD/C22	Email – I-Transport and LCC Transport Models, including attachments 9 July 2014
CD/C23	Email - JB and LCC Outstanding Highway Issues 17 July 2014
CD/C24	Email - I-Transport – Submit updated Travel Plan (attachment is CD/BDW/B(3)/16) 18 July 2014
CD/C25	Email - I-Transport – location for Bus Stop, including updated drawings (references: ITM8086-GA-008 and ITM8086-GA-009) <i>[both superseded by ITM8086-GA-Rev A]</i> . 18 July 2014
CD/C26	Email - I-Transport – Submit Transport Model, including updated LINSIG Model (A650/Common Lane Junction) 23 July 2014 with further emails dated 23.07.2014 and 29.07.2014 containing additional commentary.
CD/C27	Email - Comments – Transport – S106 28 July 2014
CD/C28	Email - Extension of PPA 29 July 2014
CD/C29	Letter – City Plans Panel 30 July 2014
CD/C30	Email - Submission of Revised Access Plan, including site access drawing (reference: ITM8086/GA/12/Rev A) 7 August 2014
CD/C31	Email - Highways Update 7 August 2014
CD/C32	Planning Performance Agreement 31 March 2013

CD/C33 Planning Performance Agreement 28 March 2014

## **Appeal A Consultee Responses**

CD/D1	Natural England 10 December 2013
CD/D2	Waste Management 11 December 2013
CD/D3	Neighbourhood and Housing (Environmental Protection) 19 December 2013
CD/D4	Environment Agency 20 December 2013
CD/D5	Coal Authority 19 December 2013
CD/D6	Yorkshire Water 2 January 2014
CD/D7	Public Rights of Way and Map 7 January 2014
CD/D8	West Yorkshire Archaeology 7 January 2014
CD/D9	Mains Drainage 7 January 2014
CD/D10	West Yorkshire Archaeology Advisory Service January 2014
CD/D11	Metro 29 January 2014
CD/D12	Transport Development Services (Highways) 30 January 2014
CD/D13	Transport Policy (Travel Wise) 3 February 2014
CD/D14	Highways Agency 18 February 2014
CD/D15	Transport Development Services (Highways) 4 April 2014
CD/D16	Public Rights of Way 14 April 2014
CD/D17	LCC Children's Services Calculation 14 January 2014
CD/D18	Travel Plan (Travel Wise) 6 August 2014

## **Appeal A Committee Reports, Correspondence and Decision Notice**

CD/E1	City Plans Panel Committee Report 13 February 2014
CD/E2	Plans Panel Committee Report 10 April 2014
CD/E3	Minutes – City Plans Panel 7 August 2014
CD/E4	City Centre Panel Report 7 August 2014
CD/E5	City Plans Committee Report 7 August 2014
CD/E6	Decision - Refusal of Planning Permission 8 August 2014
CD/E7	City Plans Committee Covering Report 5 November 2015
CD/E8	City Plans Committee Report 7 August 2014
CD/E9	Minutes – City Development Plans 7 August 2014
CD/E10	Development Plans Panel Report & Minutes 19 January 2016

CD/E11	City Plans Panel Committee Report 19 January 20216
CD/E12	Plans Panel Committee Report 13 February 2015
CD/E/13	Report to Environment & Housing Scrutiny Board 22 March 2016

## **Appeal A Appeal Documentation**

CD/F1	Appeal Form 4 February 2015
CD/F2	Bespoke Timetable
CD/F3	Leeds City Council Statement of Case
CD/F4	Appellant's Statement of Case
CD/F5	Planning Statement of Common Ground – General December 2015 (Signed)
CD/F5(A)	Amended list of Planning Conditions
CD/F5(B)	Amended list of Planning Conditions
CD/F5(C)	Agreed list of Planning Conditions including Reasons
CD/F6	Planning Statement of Common Ground – 5 Year Housing Land Supply (Signed)
CD/F7	Planning Statement of Common Ground – Highways (Signed)
CD/F7A	Technical Note Updated Highways Statement of Common Ground (Signed)
CD/F8	Letter – The Planning Inspectorate – ID1
CD/F9	Letter – The Planning Inspectorate – ID2
CD/F10	Letter – The Planning Inspectorate – ID3
CD/F11	Bundle of submissions made by interested parties at Appeal Stage
CD/F12	Unilateral Undertaking
CD/F12(A)	Amended Unilateral Undertaking
CD/F13A	East Ardsley Settlement Boundary as drawn by a resident for Councillor Dunn
CD/F13B	Submission read by Mr Aveyard
CD/F13C	Skeleton of submission by Mr Bywater and extract from a report referred to
CD/F14	Affordable Housing Statement of Common Ground 25 Feb 2016
CD/F14(A)	Affordable Housing Statement of Common Ground 29 Feb 2016 Unsigned
CD/F14(B)	Affordable Housing Statement of Common Ground 29 Feb 2016 Signed
CD/F15	Justification for Unilateral Undertaking

## **Appeals A B and C Housing Documents**

CD/G1	Planning for Growth Ministerial Statement 31 March 2011
CD/G2	Laying the Foundations: A Housing Strategy for England

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CD/G3	Statement on Housing and Growth 6 December 2012
CD/G4	Inspectors Report to Leeds City Council 5 December 2014
CD/G5	Report of the Director of City Development 13 March 2013
CD/G6	Leeds Strategic Housing Market Assessment Update May 2011
CD/G7	Leeds Strategic Housing Land Availability 2014
CD/G8	Leeds Local Development Framework Authority Monitoring Report 2011/2012
CD/G9	Leeds Unitary Development Plan – Chapter 17 Morley
CD/G10	Leeds City Council Housing Land Supply Spring Statement 31 March 2014
CD/G11	Building the homes we need: A Programme for the 2015 Government 2014
CD/G12	Fixing the foundations: Creating a more prosperous nation July 2015
CD/G13	Leeds City Council Draft Strategic Housing Land Availability Assessment update December 2015
CD/G14	Neighbourhoods for Living: Guide for Residential Design for Leeds SPG 2003
CD/G15	Designing for Community Safety May 2007
CD/G16	Sustainable Urban Drainage June 2004
CD/G17	S78 Town and County Planning Act 1990 – Appeal Decision –Bagley Lane Inspector 1 Report APP/N4720/A/13/2200640 – (Inquiry opened 19 November 2013)  Bagley Lane Inspector Report 2 APP/N4720/A/13/2200640 (Reopened Inquiry 11, 12, 13, 14 November 2014)  Secretary of State for Department of Community and Local Government Decision Letter Bagley Lane
CD/G18	Thornhill Estates v Secretary of State for CLG (1) Leeds City Council (2) and Farsley Residents Group (3) [CO/1791/2015]
CD/G19	Miller Homes Limited v Leeds City Council Case No: CO/6890/2013

## Appeals A B and C Highway Documents

CD/H1	My Journey West Yorkshire Local Transport Plan 2011-2026, West Yorkshire Local Transport Plan Partnership October 2012
CD/H2	Design Manual for Roads & Bridges – TD42/95 - Geometric Design of Major/Minor Priority Junctions, Volume 6, Section 2, Part 6
CD/H3	Manual for Streets – Department of Transport 2007
CD/H4	Manual for Streets 2 – Chartered Institution of Highways and Transportation September 2010
CD/H5	Street Design Guide, Leeds Local Development Framework, Supplementary Planning Document, Main Report August 2009
CD/H6	Core Strategy, Leeds Local Development Framework, Development Plan Document, Consolidated Core Strategy comprising Publication Draft Feb 2012 and Pre-Submission Changes Dec 2012 (CD0A) April 2013
CD/H7	Public Transport Improvements and Developer Contributions, Leeds Local Development

	Framework, Supplementary Planning Document August 2008
CD/H8	Travel Plans, Leeds Local Development Framework, Supplementary Planning Document February 2015
CD/H9	Leeds Unitary Development Plan (Review 2006), Volume 1: Written Statement July 2006
CD/H10	Land at Bradford Road, East Ardsley, Transport Assessment, Volume 1 Report and Figures (ITM8086-003A R) 19 November 2013
CD/H11	Land at Bradford Road, East Ardsley, Transport Assessment, Volume 2 Appendices (ITM8086-003A R) 19 November 2013
CD/H12	Land at Bradford Road, East Ardsley, Travel Plan, (ITM8086-004B R) 15 July 2014
CD/H13	Planning for Public Transport in Developments – IHT 1999
CD/H14	Guidelines for Providing for Journeys on Foot – IHT 2000
CD/H15	Inclusive Mobility DoT December 2005
CD/H16	Planning Practice Guidance – Travel Plans, Transport Assessments and Statements in Decision Taking.
CD/H17	TRICS Good Practice Guide 2013
CD/H18	See CD/H14
CD/H19	Transport Evidence Bases in Plan Making and Decision Taking (was originally CD/H15)

## **Appeals A B and C Landscape Documents**

CD/I1	Leeds Landscape Character Assessment 1994
CD/I2	Landscape Character Assessment Guidance for England and Scotland 2002
CD/I3	Guidelines on Landscape and Visual Impact Assessment (LI/IEMA) 2013
CD/I4	Natural England National Character Area 38 2015

## **Appeal B (Collingham) Application Documents**

CD/J1	Decision Notice 30 October 2014
CD/J2	City Plans Panel Report 30 October 2014
CD/J3	Application Letter 17 January 2014
CD/J4	Notice 1 and Covering Letters 17 January 2014
CD/J5	Planning Application Form 17 January 2014
CD/J6	Archaeological Desk Based Assessment February 2014
CD/J7	Sustainability Statement January 2014
CD/J8	Statement of Community Involvement January 2014
CD/J9	Noise Assessment 17 January 2014
CD/J10	Gas Risk Assessment 20 November 2013
CD/J11	Flood Risk Sequential Test January 2014

CD/J12	Geo-Environmental Appraisal September 2013
CD/J13	Air Quality Assessment 13 September 2013
CD/J14	Artificial Lighting Assessment 16 January 2013
CD/J15	Transport Assessment January 2010 <sup>4</sup>
CD/J16	Travel Plan October 2010 <sup>3</sup>
CD/J17	Flood Risk Assessment January 2014
CD/J18	Collingham Beck Modelling Study and Mitigation Proposals May and June 2013
CD/J19	Ecological Appraisal January 2014
CD/J20	Kingfisher Survey October 2013
CD/J21	Bat Activity Survey October 2010 <sup>3</sup>
CD/J22	Great Crested Newt Survey 2 July 2014
CD/J23	Riparian Mammal Survey July 2014
CD/J24	Design and Access Survey January 2014
CD/J25	Tree Survey 15 April 2013
CD/J26	Draft Heads of Terms for S106 Agreement 2014
CD/J27	Masterplan 18 December 2013
CD/J28	Location Plan Ref P134827-O2 December 2013
CD/J29	Plan and Elevation of Bridge over Collingham Beck Drawing 35800/001 Rev A 9 April 2013
CD/J30	Tree Report Proposed Access 2 September 2013
CD/J31	Ecological Management Plan October 2015
CD/J32	Bat Impact Assessment October 2015
CD/J33	Planning Statement
CD/J34	Plans Panel Report November 2015
CD/J35	White Clawed Crayfish Survey

#### **Appeal B (Collinham) Consultee Responses**

CD/K1	LCC Ecology Consultation Response 14 January 2016
CD/K2	Scoping Letter to LCC dated 3 July 2013
CD/K3	LCC Consultation Note dated 12 August 2013
CD/K4	Scoping Letter to Highways England (Formerly Highways Agency) dated 26 June 2013
CD/K5	Highways England e-mail dated 4 July 2013
CD/K6	Consultation Comments dated 19 March 2014
CD/K7	Consultation Comment from NGT Team (Undated)

CD/K8	Consultation Comment re Travel Plan 11 February 2014
CD/K9	E-mail from Neil Chamberlin (Highways) dated 29 April 2014
CD/K10	E-mail from Neil Chamberlin (Highways) dated 15 August 2014
CD/K11	E-mail from Neil Chamberlin (Highways) dated 16 October 2014
CD/K12	E-mail from Nathan Huntley (NGT Group) dated 6 May 2014
CD/K13	E-mail from David Stocks (Bridges Section) dated 19 September 2014
CD/K14	E-mail from David Stocks (Bridges Section) dated 8 October 2014
CD/K15	E-mail to Neil Chamberlin, including attachments, dated 27 March 2014
CD/K16	E-mail to Neil Chamberlin, including attachments, dated 7 April 2014
CD/K17	E-mail to Neil Chamberlin attaching Location of Flood Wall Plan dated 7 April 2014
CD/K18	E-mail to Nathan Huntley, including attachments, dated 11 April 2014
CD/K19	E-mail, including attachments, dated 10 September 2014
CD/K20	E-mail to Christine Hamshire, attaching revised Travel Plan, dated 17 October 2014
CD/K21	E-mail to Neil Chamberlin, including attachments, dated 28 November 2014

### **Appeal B (Collingham) Appeal Documents**

CD/L1	Appeal Form
CD/L2	Appellant's Statement of Case December 2014
CD/L3	Council's Statement of Case December 2014
CD/L4	Planning Statement of Common Ground – General
CD/L5	Planning Statement of Common Ground – 5 Year Housing Land Supply
CD/L6A	Planning Statement of Common Ground – Highways February 2016
CD/L6B	Appendices to Highways SCG
CD/L/6C	Addendum to Highways Statement of Common Ground
CD/L/7	Draft S106 Agreement
CD/L/8	Suffolk Coastal District Council v Hopkins Homes Ltd and SoS
CD/L/9	Wychavon District Council v SoS & Crown House Developments
CD/L/10	Walton & Co representation on behalf of Bramhope Parish Council
CD/L/11	Bloor Homes v SoS & Hinkley and Bosworth B C
CD/L/12	Colman v SoS & North Devon DC & RWE Renewables Ltd
CD/L/13	APP/R0660/A/13/2203282 Alsager decision
CD/L/14	Note re 5 Year Requirement
CD/L/15	Representation read by Collingham Residents' Action Group

CD/L/16	Representation read by Collingham with Linton Parish Council
CD/L/17A	Superseded Draft List of Conditions
CD/L/17B	Draft List of Conditions (Track Changes)
CD/L/17C	Agreed List of Draft Conditions
CD/L/18	Justification for S 106 Agreement
CD/L/19	Unsigned S106 Agreement

**Appeal C (Bramhope) Application Documents**

CD/O1	Decision Notice 28 August 2014
CD/O2	City Plans Panel Report 28 August 2014
CD/O3	Application Letter 31 October 2013
CD/O4	Planning Application Form and Certificates 31 October 2013
CD/O5	Red Line Boundary Plan 488A/20B 1 May 2013
CD/O6	Illustrative Masterplan 488A/30A 20 August 2013
CD/O7	Proposed Access and Junction Improvements Plan 7120-005\Rev\B September 2013
CD/O8	Design and Access Statement 17 October 2013
CD/O9	Environmental Statement Volume 1 – Main Text and Figures October 2013
CD/O10	Environmental Statement Volume 2 - Technical Appendices October 2013
CD/O11	Environmental Statement Non Technical Summary October 2013
CD/O12	Planning Statement October 2013
CD/O13	Retail Statement October 2013
CD/O14A	Draft Heads of Terms for Section 106 Obligation October 2013
CD/O/14B	Draft Section 106 Agreement
CD/O15	Statement of Community Involvement October 2013
CD/O16	Transport Assessment October 2013
CD/O17	Travel Plan October 2013
CD/O18	Transport Assessment Addendum July 20104
CD/O19	Sandersons Submission to Highways relating to Access Drawing 7120-005 28 April 2015
CD/O20	EIA – Reg 22 Submission 14 January 2016

**Appeal C (Bramhope) Appeal Documents**

CD/P1	Appeal Form
CD/P2	Leeds City Council's Statement of Case
CD/P3	Appellant's Statement of Case February 2015

CD/P4	Planning Statement of Common Ground February 2015
CD/P/5A	Planning Statement of Common Ground – Highways February 2015
CD/P/5B	Appendices to Highways SCG
CD/P/5C	Addendum Highways SCG
CD/P/6A	Superseded Draft List of Conditions
CD/P/6B	Draft List of Conditions (Track Changes)
CD/P/6C	Agreed List of Draft Conditions
CD/P/7	Justification for S106
CD/P/8	Unsigned S106 Agreement
CD/P/8A	Signed S106 Agreement
CD/P/9A	Superseded S106 relating to Alternative Roundabout Access
CD/P/9B	Unsigned S106 relating to Alternative Roundabout Access
CD/P/10	Submission read by Cllr Anderson

## **Leeds City Council's Documents Appeal A**

LCC/1	Council's Statement of Case – see CD/F3
LCC/2	Council's Opening Statement
LCC/3/A	Adam Harvatt's Summary Proof of Evidence
LCC/3/B	Adam Harvatt's Proof of Evidence and Appendices (Planning Policy)
LCC/3/C	Adam Harvatt's Note on Land Proposed for Release for Housing
LCC/4/A	Victoria Hinchliff Walker's Summary Proof of Evidence
LCC/4/B	Victoria Hinchliff Walker's Proof of Evidence (Planning Balance and Planning Obligations)
LCC/4/C	Appendices to Victoria Hinchliff Walker's Proof of Evidence
LCC/4/D	A3 copy of HMCA Area Outer South West plan
LCC/5/A	James Howe's Summary Proof of Evidence
LCC/5/B	James Howe's Proof of Evidence (Highways)
LCC/5/C	Appendices to James Howe's Proof of Evidence
LCC/5/D	James Howe's Rebuttal Proof of Evidence
LCC/5/E	Appendices to James Howe's Rebuttal Proof of Evidence
LCC/5/F	Note to Inquiry Regarding Site Access Assessment
LCC/5/G	E-mail dated 4 February re Junction Modelling

LCC/6A	Maggie Gjessing's Rebuttal Proof of Evidence (Affordable Housing)
LCC/6B	Appendices to Maggie Gjessing's Rebuttal Proof of Evidence
LCC/7	Closing Submissions (other than Housing Land Supply)

## **Leeds City Council's Documents Appeal B**

LCC/8	Council's Statement of Case (Collingham) – see CD/L3
LCC/9	Council's Opening Statement
LCC/10/A	Martin Elliot's Proof of Evidence Appeals B and C
LCC/10/B	Appendices to Martin Elliot's Proof of Evidence Appeals B and C
LCC/10/C	Martin Elliot's Rebuttal Proof of Evidence
LCC/10/D	Council's 5 year supply position 1 April 2016 – 31 March 2021
LCC/10/E	Photographs of SHLAA sites
LCC/10/F	Nathanial Lichfield and Partners submission to SAP Publication Draft
LCC/10/G	E-mail dated 17 December 2015 re Tyersal SHLAA site
LCC/10/H	Bundle of documents forming Council's comments on Grove Road, Boston Spa Decision
LCC/11/A	Matthew Brook's Summary Proof of Evidence Appeals B and C
LCC/11/B	Matthew Brook's Proof of Evidence Appeals B and C
LCC/11/C	Update on five year housing land supply requirement
LCC/12/A	Adam Harvatt's Summary Proof of Evidence Appeals B and C
LCC/12/B	Adam Harvatt's Proof of Evidence Appeals B and C
LCC/13/A	Adam Ward's Summary Proof of Evidence
LCC/13/B	Adam Ward's Proof of Evidence
LCC/13/C	Appendices to Adam Ward's Proof of Evidence
LCC/14/A	Adrian Hodgson's Summary Proof of Evidence
LCC/14/B	Adrian Hodgson's Proof of Evidence
LCC/14/C	Appendices to Adrian Hodgson's Proof of Evidence
LCC/14/D	Adrian Hodgson's Rebuttal Proof of Evidence Appeal B

## **Leeds City Council's Documents Appeal C**

LCC/15	Council's Statement of Case (Bramhope)
LCC/16/A	Carol Cunningham's Summary Proof of Evidence

LCC/16/B	Carol Cunningham's Proof of Evidence
LCC/16/C	Appendices to Carol Cunningham's Proof of Evidence
LCC/17/A	Adrian Hodgson's Summary Proof of Evidence
LCC/17/B	Adrian Hodgson's Proof of Evidence
LCC/17/C	Appendices to Adrian Hodgson's Proof of Evidence
LCC/17/D	Adrian Hodgson's Rebuttal Proof of Evidence Appeal C
LCC/18	Closing Submissions
LCC/19	SoS Decision on Brickyard Lane Melton Park APP/E2001/A/2200981
LCC/19A	Judgement on Brickyard Lane Melton Park

## **Barratt David Wilson Homes and The Ramsden Partnership's Documents**

BDW/1	Appellants' Statement of Case – see CD/F4
BDW/2	Appellants' Opening Statement
BDW/3/A	James Stacey's Summary Proof of Evidence
BDW/3/B	James Stacey's Proof of Evidence (Planning and Affordable Housing)
BDW/3/C	Appendices to James Stacey's Proof of Evidence
BDW/4/A	Jeremy Smith's Proof of Evidence (Landscape)
BDW/4/B	Appendices to Jeremy Smith's Proof of Evidence
BDW/4/C	Jeremy Smith's Summary Proof of Evidence
BDW/4/D	Parish Boundary on Modern OS Base
BDW/5/A	Mark Johnson's Executive Summary, Proof of Evidence, and Appendices (Planning)
BDW/5/A App 18	Appendix 18 to Mark Johnson's Proof of Evidence
BDW/5/B	Site Allocations Plan Overview
BDW/5/C	Bundle of documents forming Barratt David Wilson Homes's response to the Council's comments on Grove Road, Boston Spa Decision
BDW/6/A	Vanessa Eggleston's Proof of Evidence (Transport and Highways)
BDW/6/B	Appendices to Vanessa Eggleston's Proof of Evidence
BDW/6/C	Vanessa Eggleston's Summary Proof of Evidence
BDW/6/D	Vanessa Eggleston's Rebuttal Proof of Evidence
BDW/6/E	Appendices to Vanessa Eggleston's Rebuttal Proof of Evidence
BDW/7	Closing Submissions (except for 5 Year HLS)

BDW/8 Closing Submission on 5 Year HLS on behalf of both Appellants

## **Miller Homes and The Hill Family's Documents Appeal B (Collingham)**

MHH/1	Appellants' Statement of Case – see CD/L2
MHH/2	Appellants' Opening Statement
MHH/3/A&B	Jonathan Dunbavin's Proof and Summary Proof of Evidence
MHH/3/C	Appendices to Jonathan Dunbavin's Proof of Evidence
MHH/3/D	Undated letter from Morgans
MHH/3/E	Keepmote/Strata Sites purchased from LCC
MHH/3/F	Press article dated 6 April 2016
MHH/3/G	Press article dated 2 December 2015
MHH/3/H	Agenda item dated 26 November 2015
MHH/4/A	Philip Roebuck's Proof of Evidence (Appeals B & C)
MHH/4/B	List of Sites falling within certain categories
MHH/4/C	E-mail confirmation of sale of Westland Road to Spinko Ltd
MHH/5/A	David Colley's Summary Proof of Evidence
MHH/5/B	David Colley's Proof of Evidence
MHH/5/C	Appendices to David Colley's Proof of Evidence
MHH/6/A	Kevin Tilford's Summary Proof of Evidence
MHH/6/B	Kevin Tilford's Proof of Evidence
MHH/6/C	Appendices to Kevin Tilford's Proof of Evidence
MHH/6/D	A3 version of maps in appendices
MHH/6/E	Comparison between baseline and proposed 1 in 100yr CC event
MHH/7/A	Dick Longdin's Summary Proof of Evidence
MHH/7/B	Dick Longdin's Proof of Evidence
MHH/7/C1	Appendices Vol 1 to Dick Longdin's Proof of Evidence
MHH/7/C2	Appendices Vol 2 (A3) to Dick Longdin's Proof of Evidence
MHH/7/D	Erratum sheet to Appendices Vol 2

## **Miller Homes Documents Appeal C (Bramhope)**

MHH/8/A&B	Jonathan Dunbavin's Proof and Summary Proof of Evidence
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MHH/8/C	Appendices to Jonathan Dunbavin's Proof of Evidence
MHH/8/D	Bundle of documents forming Miller Homes and the Hills family's response to the Council's comments on Grove Road, Boston Spa Decision
MHH/9/A	Philip Roebuck's Proof of Evidence (See MHH/4/A)
MHH/10/A	Ian Ladbroke's Summary Proof of Evidence
MHH/10/B	Ian Ladbroke's Proof of Evidence (utilising the original site access point)
MHH/10/C	Ian Ladbroke's Proof of Evidence (utilising the alternative site access point opposite The Poplars)
MHH/10/D	Appendices to both of Ian Ladbroke's Proofs of Evidence
MHH/10/E	Ian Ladbroke's Rebuttal Proof of Evidence
MHH/11/A	Nicola Jacobs Summary Proof of Evidence
MHH/11/B	Nicola Jacobs Proof of Evidence
MHH/11/C	Appendices (A3) to Nicola Jacobs Proof of Evidence
MHH/11/D	Figures (A3) to Nicola Jacobs Proof of Evidence
MHH/12	Closing Submissions relating to Leeds Road, Collingham and Breary Lane East, Bramhope on behalf of Miller Homes and the Hills Family

## **APPENDIX C – SCHEDULE OF CONDITIONS APP/N4720/W/14/3001559**

### **Land at Leeds Road Collingham**

#### **Approval of details**

- 1) 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.
- 2) The development hereby permitted shall comprise no more than 150 dwellings.
- 3) The development hereby permitted shall be carried out in accordance with the following plans:

Site Location Plan P13 4827 02

Sections/Cross Sections 35800/001 Rev A

Block Plan/Layout Plan 35800/002 Rev A

Sections/Cross Sections 35800/04 Rev A

#### **Timing of Implementation**

- 4) Application for approval of all reserved matters shall be made to the local planning authority before the expiration of three years from the date of this permission. The development hereby permitted shall be begun before the expiration of two years from the date of approval of the last of the reserved matters to be agreed.

#### **Archaeology**

- 5) No development shall take place until the applicant, or their agents or successors in title, has secured the implementation of a programme of archaeological recording. This recording must be carried out by an appropriately qualified and experienced archaeological consultant or organisation, in accordance with a written scheme of investigation which has been submitted by the applicant to, and approved in writing by, the local planning authority.

#### **Flood Risk and Drainage**

- 6) The development hereby permitted shall be carried out in accordance with the approved Flood Risk Assessment (FRA) compiled by Weetwood dated January 2014 v1.2, and the mitigation measures detailed in paragraphs 4.2, 4.3, and 4.4 of the FRA.

The mitigation measures shall be fully implemented prior to occupation and subsequently in accordance with the timing/phasing arrangements embodied within the scheme.

- 7) The site shall be developed with separate systems of drainage for foul and surface water on and off site.
- 8) No piped discharge of surface water from the application site shall take place until works to provide a satisfactory outfall for surface water have been completed in accordance with the FRA prepared by Weetwood dated January 2014 (Reference 2300/FRA\_Final v1.2) with details to be submitted to, and approved in writing by, the local planning authority before development commences.
- 9) Development shall not commence until details of the proposed means of disposal of foul and surface water drainage, including details of any balancing works and off-site works, have been submitted to, and approved in writing by, the local planning authority. The works shall be implemented in accordance with the approved scheme before the development is brought into use, or as set out in the approved phasing details.
- 10) The development shall not be occupied until details of the management and long term maintenance of the Sustainable Urban Drainage System and flood alleviation and mitigation works within the site has been submitted to and approved in writing by the local planning authority. The approved details, including maintenance, shall be implemented before the development is brought into use, or as set out in the approved phasing details

### **Ground Conditions**

- 11) The approved Phase I Desk Study report indicates that a Phase II Site Investigation is necessary, and therefore development shall not commence until a Phase II Site Investigation Report has been submitted to, and approved in writing by, the local planning authority. Where remediation measures are shown to be necessary in the Phase II Report and/or where soil, or soil forming material, is being imported to site, development shall not commence until a Remediation Statement demonstrating how the site will be made suitable for the intended use has been submitted to, and approved in writing by, the local planning authority. The Remediation Statement shall include a programme for all works and for the provision of Verification Reports.
- 12) If Remediation is unable to proceed in accordance with the approved Remediation Statement, or where significant unexpected contamination is encountered, the local planning authority shall be notified in writing immediately and operations on the affected part of the site shall cease. An amended or new Remediation Statement shall be submitted to, and approved in writing by, the local planning authority prior to any further remediation works which shall thereafter be carried out in accordance with the revised Remediation Statements.
- 13) Remediation works shall be carried out in accordance with the approved Remediation Statement. On completion of those works the verification report(s) shall be submitted to the local planning authority in accordance with the approved programme. The site, or phase of a site, shall not be brought into use until such time as all verification information has been approved in writing by the local planning authority.

## **Ecology and Trees**

- 14) Removal of trees T1, T2, and T3 and retention of Trees T4, T5, and T6 as shown in Figure 1 of the Bat Impact Assessment report dated October 2015 by Brooks Ecological ref R-1485-o6 shall be carried out in full accordance with the recommendations of the same report. Written confirmation by an appropriately qualified ecologist will be provided to the local planning authority within 6 weeks of tree removal taking place.
- 15) No development shall take place until the following ecological reports and details, including details for implementation, have been submitted to and approved in writing by, the local planning authority:
- a) An Ecological Bridge Design Statement (EBDS) that addresses any adverse impacts on bats commuting and foraging below and above the new bridge;
  - b) A "Lighting Design Strategy for Bats";
  - c) A Construction Environmental Management Plan (CEMP);
  - d) A Biodiversity Enhancement and Management Plan (BEMP);
  - e) Details of bat roosting and bird nesting opportunities

The approved plans and reports shall be implemented in accordance with the approved details.

- 16) No site clearance, preparatory work or development shall take place until a scheme has been drawn up that identifies the trees to be retained on the site (the retained trees), the measures to be taken for their protection (the tree protection plan) and the appropriate working methods (the arboricultural method statement) in accordance with BS5837 (2012): *Trees in relation to construction – Recommendations* and submitted to and approved in writing by the local planning authority. The retained trees shall be protected as described and approved. Both the tree protection plan and the arboricultural method statement shall be accompanied by appropriate drawings showing details of changes in level, foundations and paving, boundary treatment, utilities routes and proposed landscaping operations, in so far as they may affect the retained trees. Such measures shall be retained for the duration of any approved works.

## **Public Open Space**

- 17) The development hereby permitted shall not begin until a scheme has been submitted to, and approved in writing by, the local planning authority for the provision of 80m<sup>2</sup> of on-site public open space per dwelling or 1.2 hectares overall based upon a maximum development of 150 dwellings. The scheme shall include details of the siting, layout, landscaping, maintenance, and long term management of the open space. The on-site public open space shall be provided prior to completion of the development in accordance with the approved scheme.
- 18) The development hereby permitted shall not begin until a scheme for the provision of a landscaped buffer zone on the western boundary has been submitted to, and approved in writing by, the local planning authority. The

scheme shall include the location, layout, planting plans, schedule of species, timetable for implementation and long term management scheme. The scheme should include for the provision of native tree planting in order to provide a transition from open countryside to development and should provide for the retention and improvement of any public rights of way that falls within it. The buffer zone shall be laid out in accordance with the approved details and maintained as a buffer zone for the lifetime of the development.

## Highways

- 19) Prior to the commencement of development, details shall be submitted to, and approved in writing by, the local planning authority of arrangements to secure the following highway improvement works which shall be implemented and completed prior to occupation of the first dwelling:
  - a) The site access as shown indicatively on Drawing No 7119-005 rev F, including the provision of street lighting for the area of the proposed 30 mph limit, relocation of speed limit and VAS sign as well as the two new bus stops;
  - b) The widening of the footway between the proposed site access and Crabtree Green shown indicatively on Drawing No 7119-015; and
  - c) The works to widen the footway to Leeds Road identified on Drawing No 7119-019 Rev A.
- 20) No development shall take place until details have been submitted to and approved in writing by the local planning authority of arrangements to secure the following highway improvements which shall be implemented and completed prior to occupation of the first dwelling or other approved timetable but not later than occupation of the 50<sup>th</sup> dwelling:
  - a) The highway works at the Wattlesyke junction shown indicatively on Drawing No 7119-006 rev D road incorporating MOVA with associated queue detection equipment;
  - b) The highway works at the junction of the A58 Main Street and A659 Harewood Road shown indicatively on Drawing NO 7119-016 Rev B, incorporating MOVA with associated queue detection equipment; and
  - c) The culvert strengthening works at Wattlesyke junction to accommodate the proposed highway works.
- 21) No development shall take place until a scheme for the provision of electric vehicle charging points, to be provided within each garage hereby approved, shall have been submitted to, and approved in writing by, the local planning authority. The approved scheme shall be implemented prior to occupation of the respective dwellings.
- 22) The access hereby approved shall not be brought into use until works have been undertaken to provide the visibility splays shown on approved Drawing No 7119-005 Rev F.

- 23) The development shall not be occupied until details of the proposed pedestrian/cycle link through the site as part of route 66 of the National Cycle Network has been submitted to, and approved in writing by, the local planning authority. The route shall be implemented prior to occupation of any of the houses hereby approved and subsequently maintained and kept unobstructed.
- 24) Cycle storage shall be provided for each dwelling in accordance with details that have been submitted to, and approved in writing by, the local planning authority.
- 25) The development shall not be occupied until all areas shown on the approved plans to be used by vehicles have been fully laid out, surfaced and drained such that surface water does not discharge or transfer onto the highway. These areas shall not be used for any other purpose thereafter.

### **Construction**

- 26) No development shall take place 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:
- a) The parking of site operatives and visitors vehicles within the site;
  - b) The loading and unloading of plant and materials within the site;
  - c) The storage of plant and materials within the site;
  - d) The erection and maintenance of security hoarding including decorative displays and facilities for public viewing where appropriate;
  - e) Wheel washing facilities;
  - f) Measures to control the emissions of dust and dirt during construction;
  - g) A scheme for the recycling/disposing of waste resulting from the construction works; and,
  - h) Routes of construction traffic.
- 27) Construction works shall not take place outside 0800 hours to 1800 hours Mondays to Fridays and 0830 to 1600 hours on Saturdays nor at any time on Sundays or Bank Holidays.

**APPENDIX D – GLOSSARY**

CIL	Community Infrastructure Levy
CS	Core Strategy 2014
EiP	Examination in Public
Framework	National Planning Policy Framework
FOAN	Full Objectively Assessed Need
Guidance	National Planning Practice Guidance
HLS	Housing Land Supply
HMCA	Housing Market Character Area
Km	Kilometres
LEAP	Local Equipped Area of Play
MUA	Major Urban Area
SAP	Site Allocations Plan
SSD	Secretary of State's Direction
SHLAA	Strategic Housing Land Availability Assessment
SHMA	Strategic Housing Market Assessment
SoS	Secretary of State
SPD	Supplementary Planning Document
SSD	Secretary of State's Direction
PAS	Protected Area of Search
PRS	Private Rented Sector
RFC	Ratio of Flow to Capacity
SCG	Statement of Common Ground
TPO	Tree Preservation Order
UDP	Unitary Development Plan
UDPR	Unitary Development Plan Review 2006



## **RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT**

**These notes are provided for guidance only and apply only to challenges under the legislation specified. If you require further advice on making any High Court challenge, or making an application for Judicial Review, you should consult a solicitor or other advisor or contact the Crown Office at the Royal Courts of Justice, Queens Bench Division, Strand, London, WC2 2LL (0207 947 6000).**

The attached decision is final unless it is successfully challenged in the Courts. The Secretary of State cannot amend or interpret the decision. It may be redetermined by the Secretary of State only if the decision is quashed by the Courts. However, if it is redetermined, it does not necessarily follow that the original decision will be reversed.

### **SECTION 1: PLANNING APPEALS AND CALLED-IN PLANNING APPLICATIONS**

The decision may be challenged by making an application for permission to the High Court under section 288 of the Town and Country Planning Act 1990 (the TCP Act).

#### **Challenges under Section 288 of the TCP Act**

With the permission of the High Court under section 288 of the TCP Act, decisions on called-in applications under section 77 of the TCP Act (planning), appeals under section 78 (planning) may be challenged. Any person aggrieved by the decision may question the validity of the decision on the grounds that it is not within the powers of the Act or that any of the relevant requirements have not been complied with in relation to the decision. An application for leave under this section must be made within six weeks from the day after the date of the decision.

### **SECTION 2: ENFORCEMENT APPEALS**

#### **Challenges under Section 289 of the TCP Act**

Decisions on recovered enforcement appeals under all grounds can be challenged under section 289 of the TCP Act. To challenge the enforcement decision, permission must first be obtained from the Court. If the Court does not consider that there is an arguable case, it may refuse permission. Application for leave to make a challenge must be received by the Administrative Court within 28 days of the decision, unless the Court extends this period.

### **SECTION 3: AWARDS OF COSTS**

A challenge to the decision on an application for an award of costs which is connected with a decision under section 77 or 78 of the TCP Act can be made under section 288 of the TCP Act if permission of the High Court is granted.

### **SECTION 4: INSPECTION OF DOCUMENTS**

Where an inquiry or hearing has been held any person who is entitled to be notified of the decision has a statutory right to view the documents, photographs and plans listed in the appendix to the Inspector's report of the inquiry or hearing within 6 weeks of the day after the date of the decision. If you are such a person and you wish to view the documents you should get in touch with the office at the address from which the decision was issued, as shown on the letterhead on the decision letter, quoting the reference number and stating the day and time you wish to visit. At least 3 days notice should be given, if possible.