



Department for
Communities and
Local Government

Mrs Janet Hodson
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ST14 8LN

Our Ref: APP/B3410/A/13/2193657
Your Ref: JVH/MARS/001

12 February 2014

Dear Madam,

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78
APPEAL BY MARSTON'S PLC
FOREST ROAD, BRANSTON, BURTON-UPON-TRENT, DE13 9TR
APPLICATION REF: P/2012/01359**

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Inspector, Brendan Lyons BArch MA MRTPI IHBC, who held a public local inquiry on 23 July, 12 September and 17 September 2013 into your clients' appeal against the failure of East Staffordshire Borough Council ("the Council") to give notice within the prescribed period of a decision on an application for outline planning permission for residential development including means of access, woodland, amenity planting and open space for approximately 300 dwellings on 17.16 hectares of land off Forest Road, Burton upon Trent, in accordance with application Ref: P/2012/01359.
2. On 15 March 2013, the 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 over 150 units on a site 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 decision

3. The Inspector recommended that the appeal 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.

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Procedural matters

4. The application for costs (IR1.7) made by your clients at the Inquiry is the subject of a decision letter being issued separately by the Secretary of State.

Policy considerations

5. 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. In this case, the development plan comprises the saved East Staffordshire Local Plan 2006 (LP). However, as this was not adopted in accordance with the Planning and Compulsory Purchase Act 2004, the Secretary of State gives it only limited weight. The Secretary of State also notes (IR19) that the Council has commenced work on a new East Staffordshire Local Plan but, for the reasons given the Inspector, the Secretary of State gives this very limited weight.
6. Other material considerations which the Secretary of State has taken into account include the *National Planning Policy Framework* (The Framework); *Technical Guidance to the National Planning Policy Framework* (March 2012); Circular 11/1995: *Use of Conditions in Planning Permission*; and the *Community Infrastructure Levy (CIL) Regulations 2010* as amended. The Secretary of State has also had regard to the fact that on 28 August 2013 Government opened a new national planning practice guidance web-based resource. However, given that the guidance has not yet been finalised, he has attributed it limited weight.

Main issues

7. The Secretary of State agrees with the Inspector that the main issues in this case are those set out at IR118.

Housing land supply

8. The Secretary of State notes the Inspector's comments at IR119-123 about the housing requirement but, as he agrees with the Inspector at IR124 that the absence of a five-year supply is common ground, he also sees no need to reach a definitive conclusion on the scale of shortfall. Instead, Secretary of State agrees with the Inspector at IR125 that permission should be granted for the appeal scheme 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.

Site suitability

9. For the reasons given at IR126-127, the Secretary of State agrees with the Inspector's conclusion at IR129 that there are strong material considerations to outweigh the development plan objection to the development of land outside the settlement boundary including the sustainability of the location in terms of access to local services and employment.

Landscape character and appearance

10. Although landscape and visual harm formed the core of the Council's case once they had accepted the absence of a five-year supply of housing land (IR130), the Secretary

of State agrees with the Inspector's conclusion at IR142 that, for the reasons given at IR131—141, any major adverse effects of the appeal proposal would be confined to the short term and that, in the long term, it would not have significant adverse effects on landscape character or visual amenity. He agrees that the scheme would be well designed to respond to the characteristics of the site and the surrounding landscape, rendering it compliant with the development plan and the Guidance.

Flood risk

11. For the reasons given at IR143-145, the Secretary of State agrees with the Inspector's conclusion at IR146 that the appeal proposal would comply with the Framework in respect of flooding issues. In particular, he notes that the site lies in Flood Zone 1 and is generally at a low risk of flooding; and that no objection was raised to the scheme by the Environment Agency or the water authority, subject to the imposition of conditions. He also agrees with the Inspector's conclusion that the proposed works for the scheme would produce beneficial rather than harmful effects beyond the site boundary and further downstream.

Highway safety

12. The Secretary of State agrees with the Inspector at IR152 that, for the reasons given at IR147-151 and subject to the measures mentioned therein, the appeal scheme would comply with the development plan and the guidance,

Conditions and obligations

13. The Secretary of State has considered the proposed conditions (IR113-114) and the Inspector's reasoning and conclusions thereon (IR153-162), 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 comply with Circular 11/95.

14. The Secretary of State has also considered the Planning Obligations as described by the Inspector at IR115-116, and agrees with him that the executed Section 106 Agreement dated 29 July 2013 forms a material consideration in the determination of the appeal (IR117). The Secretary of State has also considered the Inspector's reasoning and conclusions on the Agreement (IR163-167), and he is satisfied that the provisions can be considered to be compliant with CIL Regulation 122 and paragraph 204 of the Framework. He therefore agrees that full weight in support of the appeal proposal can be given to the obligations set out in the Agreement.

Overall Conclusions

15. As the relevant development plan policies are out of date, the Secretary of State gives significant weight to the fact that the Framework indicates that, in the absence of a 5 year housing land supply in an up-to-date, adopted development plan, planning permission should be granted for the proposal. He is satisfied that the appeal site is in a sustainable location for housing development; and that, as the adverse impacts of granting planning permission would not significantly and demonstrably outweigh the benefits when assessed against the Framework taken as a whole, he does not consider that there are any material considerations of sufficient weight to justify refusing planning permission.

Formal Decision

16. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendations. He hereby allows your clients' appeal and grants outline planning permission for residential development including means of access, woodland, amenity planting and open space for approximately 300 dwellings on 17.16 hectares of land off Forest Road, Burton upon Trent, in accordance with application Ref: P/2012/01359.
17. 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.
18. 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

19. 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.
20. 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

Timing/Commencement

1. No development shall take place until plans and particulars of the layout, scale and appearance of the buildings to be erected and the landscaping of the site (hereinafter called "the reserved matters") have been submitted to and approved in writing by the Local Planning Authority, and the development shall be carried out in accordance with those approved details.
2. Application for approval of the reserved matters shall be made to the Local Planning Authority before the expiration of three years from the date of this permission.
3. The development hereby permitted shall be begun before the expiration of two years from the date of the approval of the last reserved matter(s) to be approved.

Form of development

4. The development hereby permitted shall be carried out in accordance with the following approved plans subject to compliance with other conditions of this permission: Drawing Nos. 12/079-01 Location Plan (MPJ Design); A074090 006 Proposed Western Site Access Layout (White Young Green); A074090 007 Proposed Eastern Site Access Layout (White Young Green).
5. No development shall take place until details of any proposed phasing of development on the site 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.
6. No development shall take place on any phase of development as approved in accordance with condition 5, and no site works related to that phase of development shall be carried out until details of all slab levels and any re-grading proposed to the site 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.
7. No development shall take place until a written scheme of investigation securing the implementation of a programme of archaeological work has been submitted to and approved in writing by the Local Planning Authority. The programme of work shall be implemented in accordance with the approved details.
8. No development shall take place until details of all boundary treatments, including materials, finishes, heights and sections (where there are changes in topography) have been submitted to and approved in writing by the Local Planning Authority. The boundaries between new dwellings and the public realm shall consist of walls and/or railings and/or hedges. The boundary treatments shall be provided in accordance with the approved details prior to the first occupation of the part of the development to which they relate.

9. No development shall take place until a strategy for the provision and future management of public open space has been submitted to and approved in writing by the Local Planning Authority. The strategy shall include details of the following:
- Equipment for children's play areas;
 - Woodland planting and measures to enhance biodiversity;
 - A management plan for all areas of open space, planting within the public realm and biodiversity enhancement measures;
 - All materials to be used in hard landscaping;
 - Details of any proposed phasing of provision having regard to the requirements of Condition 5.

The public open space shall be provided and managed in accordance with the details of the approved strategy and thereafter shall be made available at all times for its designated purpose.

10. No development shall take place until a scheme of measures for the protection of hedgerows and trees to be retained during the course of development has been submitted to and approved in writing by the Local Planning Authority. The approved measures of protection shall be implemented prior to the commencement of works on any phase of development as approved in accordance with Condition 5 and shall remain in place at all times whilst construction work is taking place on that phase.
11. 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 first occupation of the development to which they relate as defined by the phasing plan approved in accordance with Condition 5 or the completion of that part of the development, whichever is the sooner; and any trees or plants which within a period of 5 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.

Highways / access

12. No development shall take place until details of all road construction, street lighting and drainage including longitudinal sections and means of draining roads to an acceptable outfall have been submitted to and approved in writing by the Local Planning Authority. The roads shall be constructed in accordance with the approved details.
13. No development other than that related to the provision of the new accesses shall be commenced until the accesses to the site approved in accordance with Condition 4 have been completed to base course level within the limits of the public highway.
14. No development shall take place until details of access, parking and turning areas to serve each dwelling have been submitted to and approved in writing by the Local Planning Authority. Prior to the first occupation of the dwelling to which it relates, the approved access, parking and turning areas shall be provided in a bound material in accordance with the approved details and shall thereafter be made available at all times for their designated purposes.

Drainage

15. No development shall take place until a scheme for the disposal of foul and surface waters has been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details.
16. The development hereby permitted shall be carried out in accordance with the recommendations of the Flood Risk Assessment by Opus International Consultants Limited dated April 2012 reference J-D0924-R01.

Pollution / health

17. No development shall take place until a contaminated land assessment and associated remedial strategy, together with a timetable of works, have been submitted to and approved in writing by the Local Planning Authority and the measures approved in that scheme shall be fully implemented. The scheme shall include all of the following measures:
 - a) The contaminated land assessment shall include a desk study to be submitted to the Local Planning Authority for approval. The desk study shall detail the history of the site uses and propose a site investigation strategy based on the relevant information discovered by the desk study. The strategy shall be approved by the Local Planning Authority prior to investigations commencing on site;
 - b) The site investigation, including relevant soil, soil gas, surface and groundwater sampling, shall be carried out by a suitably qualified and accredited consultant/contractor in accordance with a Quality Assured sampling and analysis methodology;
 - c) A site investigation report detailing all investigative works and sampling on site, together with the results of analysis, risk assessment to any receptors and a proposed remediation strategy shall be submitted to the Local Planning Authority. The Local Planning Authority shall approve such remedial works as required prior to any remediation commencing on site. The works shall be of such a nature as to render harmless the identified contamination given the proposed end-use of the site and surrounding environment including any controlled waters;
 - d) Approved remediation works shall be carried out in full on site under a quality assurance scheme to demonstrate compliance with the proposed methodology and best practice guidance. If during the works contamination is encountered which has not previously been identified then the additional contamination shall be fully assessed and an appropriate remediation scheme agreed with the Local Planning Authority;
 - e) Upon completion of the works, this condition shall not be discharged until a closure report has been submitted to and approved by the Local Planning Authority. The closure report shall include details of the remediation works and quality assurance certificates to show that the works have been carried out in full in accordance with the approved methodology. Details of any post-remedial sampling and analysis to show the site has reached the required clean-up criteria shall be included in the closure report together with the necessary documentation detailing what waste materials have been removed from the site.

18. No development shall take place until a Construction Management Plan has been submitted to and approved in writing by the Local Planning Authority. The Construction Management Plan shall include details of: routing of construction vehicles; loading and unloading of plant and materials; wheel washing facilities; measures to remove any mud or deleterious material deposited on the highway; measures for the suppression of dust; measures to mitigate noise and vibration; management of construction waste; parking for site personnel and visitors; a timetable for implementation. The development shall be carried out in accordance with the approved details.
19. Construction work shall not be carried out outside the hours of: Monday-Friday 07.30-19.00; Saturday 08.00-14.00. No work shall be carried out on Sundays and bank holidays.

Sustainable construction

20. No development shall take place until details of sustainability/energy saving measures and targets for the construction of the dwellings 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.

Report to the Secretary of State for Communities and Local Government

by **Brendan Lyons** BArch MA MRTPI IHBC

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

Date: 6 January 2014

TOWN AND COUNTRY PLANNING ACT 1990

EAST STAFFORDSHIRE BOROUGH COUNCIL

FOREST ROAD, BRANSTON, BURTON UPON TRENT DE13 9TR

APPEAL BY MARSTON'S PLC

Inquiry held on 23 July, 12 and 17 September 2013

Forest Road, Branston, Burton upon Trent DE13 9TR

File Ref(s): APP/B3410/A/13/2193657

File Ref: APP/B3410/A/13/2193657

Forest Road, Branston, Burton upon Trent DE13 9TR

- 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 Marston's PLC against East Staffordshire Borough Council.
- The application Ref p/2012/01359 is dated 24 September 2012.
- The development proposed is residential development including means of access, woodland, amenity planting and open spaces for approximately 300 dwellings on 17.16 hectares of land off Forest Road, Burton upon Trent.

Summary of Recommendation:

That the appeal be allowed and outline planning permission granted subject to conditions

Procedural Matters

1. The planning application that has given rise to this appeal was made on behalf of Marston's PLC ('the appellants') on 24 September 2012. The application sought outline planning permission for the development of approximately 300 dwellings on land off Forest Road, Burton upon Trent. The appeal against the failure of East Staffordshire Borough Council ('the Council') to issue a decision on the application was made on 25 February 2013.
2. On 15 March 2013, the appeal was recovered by the Secretary of State 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. The reason for the Secretary of State's direction was that the appeal involves proposals for residential development of over 150 units or on 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.
3. Having regard to the submission of the appeal, the planning application was considered by the Council's Planning Applications Committee on 18 March 2013. It was resolved that, had the Council retained jurisdiction, the application would have been refused on two grounds: firstly, that the site lies outside the settlement boundaries identified in the East Staffordshire Local Plan, where residential development is restricted by policy, so that the proposal would erode the rural character of the area; and secondly, that the proposal would have a significantly adverse landscape and visual impact¹.
4. On 9 April 2013, the Council informed the Planning Inspectorate that in respect of this appeal and three other forthcoming public inquiries into proposed residential development around Burton upon Trent, it would not seek to defend the position that a five-year supply of deliverable housing land could be demonstrated².
5. The Inquiry opened at Burton upon Trent Town Hall on 23 July 2013. Shortly before the opening of the Inquiry, the Council sought to submit revised evidence

¹ Committee report, update report and minutes at MAR8: Appendix 7

² Letter dated 9 April 2013 on appeal file, and at MAR8: Appendix 8

with regard to the five-year housing land supply³. After hearing some other evidence and statements by interested parties on matters of flooding and transport, the Inquiry adjourned on that day to allow the new evidence to be formally submitted and responded to. However, while the Inquiry stood adjourned, another inquiry was held into proposed development at a nearby site, Red House Farm⁴. As a result, the Council decided not to pursue its case on housing land supply in the current appeal and on 2 September agreed a Statement of Common Ground ('SoCG') with the appellants⁵. By the time the Inquiry resumed on 12 September, the Council had withdrawn the revised evidence. The Inquiry continued on that day and on 17 September with the Council offering no further evidence on the matter of housing land supply. The Inquiry closed on 17 September.

6. I made an unaccompanied visit to see the site and the surrounding area on 22 July. On 12 September, I made an accompanied inspection of the site and its immediate environs, including from the home of the interested party Mr Colin Stickland. On the day following the close of the Inquiry, and by agreement with the main parties, I carried out an unaccompanied observation of the site from longer range viewpoints that had been identified in evidence.
7. At the Inquiry an application for costs was made by the appellants against the Council. That application is the subject of a separate Report.

The Site and Surroundings

8. The appeal site is located to the south of Forest Road, which as the B5017 is a well-used local route from Burton upon Trent to the west. Forest Road and its continuation as Henhurst Hill form a continuous ribbon of development extending from the main built-up area of the town out into the open countryside.
9. The site comprises some 17.16 hectares of land, mainly made up of four fields divided by rectilinear hedgerows. The land rises quite steeply from the road, before levelling off as part of a plateau that continues to the south to woodland around Sinai Park, which is a listed building and scheduled monument. The road frontage is occupied by two areas of ancient woodland, one of which extends to the east of the main block of land, and which are protected by a Tree Preservation Order ('TPO') made in 2005⁶. Between the two blocks of woodland is a small modern estate of 17 detached houses, known as Oakley Grange, and an area of open land with some lock-up garages and a single-storey former scout hut, now used for dog training.
10. The eastern end of the site is faced by a row of terraced houses on the opposite side of Forest Road, which then gives way to a series of detached houses, set back from the road. The site is surrounded by fields on the other three sides, but just to the west is an area of housing known as Aviation Lane, which extends away from Forest Road to the same extent as the appeal site.
11. A small watercourse enters the site close to the western boundary and carries on through the woodland to join the Shobnall Brook, which originates to the north of

³ LPA4: Proof of Evidence of Anna Miller

⁴ Red House Farm, Burton upon Trent: Appeal Ref APP/B3410/A/13/2197299

⁵ CG2

⁶ Tree Preservation Order 207: Copy with appeal questionnaire documents

Forest Road. The combined watercourse then runs on through culverts under the Oakley Grange development and adjoining woodland, before eventually leaving the site at its north-eastern corner.

Planning Policy

12. The Council's intended reasons for refusal of the application refer to policies of the Regional Strategy for the West Midlands ('RS') and the saved policies of the Staffordshire and Stoke on Trent Structure Plan 1996-2011 ('SP')⁷. But these were revoked in May 2013 and no longer have effect. However, the Phase Two Revision to the RS was subject to examination in public, and the Report of the Panel issued in September 2009 provides the most recent fully tested evidence of a housing requirement for the borough⁸.
13. For the purposes of consideration of the appeal, the development plan consists of the saved policies of the East Staffordshire Local Plan ('LP')⁹, which was adopted in July 2006, with a plan period of 1996 to 2011. LP Policy H1 sets out a housing requirement of 6,500 dwellings to 2011, based on the provisions of the SP. Policy H2 seeks to manage the release of large windfall sites by prioritising previously developed land before greenfield sites, which are not to be released unless the housing requirement cannot otherwise be met.
14. LP Policy NE1 seeks to restrict development outside defined settlement boundaries to that required for the rural economy, otherwise appropriate in the countryside or community facilities accessible to the public. Policy NE14 requires development within the National Forest area to have regard to the landscape quality of the site and the National Forest context. The mechanism for securing suitable new planting in the National Forest area is set out by Policy NE15.
15. LP Policy BE1 requires development to be of high quality design, which responds positively to the context of the area surrounding the site. The policy is supported by the East Staffordshire Design Guide, adopted by the Council in 2008 as a Supplementary Planning Document ('SPD'), which contains advice on the achievement of design quality in residential development.
16. Other relevant guidance includes the Council's Housing Choice SPD, adopted in 2010, which covers the provision of affordable housing, and the County Council's Planning for Landscape Change¹⁰, which was adopted in 2001 as Supplementary Planning Guidance ('SPG') to the SP and continues to supplement the recently adopted Staffordshire and Stoke on Trent Joint Waste Local Plan¹¹. The SPG sets out a detailed analysis of landscape character areas across the county.
17. Relevant national policy is set out in the National Planning Policy Framework ('the Framework') issued in 2012. The guidance is aimed at the achievement through the planning system of sustainable development, whose three mutually dependent economic, social and environmental dimensions are set out. Paragraph 14 of the Framework states a presumption in favour of sustainable development, which for decision taking means approving without delay

⁷ CD2

⁸ CD1

⁹ CD3

¹⁰ CD5

¹¹ LPA10

development proposals that accord with the development plan, or where the development plan is 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 the Framework taken as a whole.

18. Paragraph 215 of the Framework advises that due weight should be given to relevant policies in existing plans according to their degree of consistency with the policies of the Framework.
19. The Council has commenced work on a new East Staffordshire Local Plan intended to cover the period from 2012 to 2031. Following publication of a Strategic Options Consultation in 2011, a Preferred Option was published for consultation in July 2012¹². In accordance with the guidance of paragraph 216 of the Framework on the weight to be attached to emerging plans, the Council accepts that very limited weight can be attached to this document in view of the stage of its preparation and the scope for further objections¹³.

Planning History

20. No reference is made to any recent relevant planning history. According to the Council officers' committee report¹⁴, the site formed part of a much larger site that was refused outline planning permission for residential development in 1988.
21. After the submission of the appeal, the appellants re-applied to the Council with an identical proposal¹⁵. At the time of the Inquiry no decision had yet been reached on this application.

The Proposals

22. Outline planning permission is sought for the erection of approximately 300 dwellings, together with woodland and amenity planting and areas of open space. All matters are reserved for later approval, except access to the site, which would take the form of two priority junctions with Forest Road, at the western and eastern corners of the site¹⁶.
23. An Indicative Layout Plan¹⁷ shows that the intended form of development would locate the main blocks of woodland and amenity planting and open space on the sloping northern area of the site, adjoining the retained existing woodland, and containing swales and ponds as storm detention features. The proposed housing would be laid out in four cells defined by the retained field hedgerows and linked by a loop road served by the two access roads. Typical street scene drawings¹⁸ show how development might appear in accordance with the parameters of the Design and Access Statement¹⁹.

¹² CD4

¹³ LPA3: para 3.6

¹⁴ Report included in appeal questionnaire documentation and at MAR8: Appendix 7

¹⁵ MAR7: para 4.13

¹⁶ Plan Nos. A074090 006 Proposed Western Site Access Layout and A074090 007 Proposed Eastern Site Access Layout comprise Figures 2 and 3 of APP9: Transport Assessment

¹⁷ PL2

¹⁸ PL3, PL4, PL5

¹⁹ APP12

24. The application was supported by a suite of technical documents, including assessments of the implications for transport, contaminated land and flooding, and a Landscape and visual Appraisal²⁰.

Agreed Facts

25. The SoCG²¹ includes a description of the site and of the proposed development, and the planning history of the site. Relevant development plan policies and supplementary guidance are identified. Heads of terms of potential conditions are agreed.

26. It is further agreed that:

- where a five-year supply of housing land does not exist, paragraph 49 of the Framework renders existing housing restraint policies out of date;
- the emerging housing requirement will necessitate the release of greenfield sites adjacent to the urban edge of main settlements, of which Burton is the most important;
- the Burton Urban Area extends westwards beyond the site to the Henhurst Hill/Hopley Road crossroads;
- the appeal site carries no national or local landscape designation;
- there are no technical reasons relating to highways, drainage, noise air quality, ecology or ground conditions for withholding planning permission;
- the Council accepts that its July 2013 Housing Calculation figures do not accord with the Framework and as a result it cannot demonstrate a five-year land supply.

27. The Council agrees not to adduce evidence on a new or recalculated five-year land supply during or after the Inquiry.

The Case for the appellants

28. The main points of the appellants' case are²²:

29. The proceedings leading to the conclusion of the appeal have been tortuous, but as a result the issues in this case are now particularly narrow. There can no longer be any development plan arguments against the proposals. The LP policies on which the Council have sought to rely are accepted as being conclusively out of date. There is an evident and undisputed need for further housing land to be identified in the short term. There is no substance in the Council's arguments relating to landscape impact. There is no sensible reason why permission should have been refused.

Housing land supply

30. Having sought to resurrect the issue, the Council have conceded that they are unable to demonstrate that they have a five-year land supply. To that extent,

²⁰ APP1-APP15

²¹ CG2

²² Taken largely from MAR15: Closing Submissions

therefore, the matter may be regarded as not in dispute. However, given the history of the matter and the Council's attempt to suggest that they may have a five-year land supply it is only right that the appellants' case is fully explained even though it has not been explored in the oral evidence.

31. The Council do not concede that the five-year land supply shortfall is as great as the appellants contend. But it is common ground that the five-year supply is a litmus test and the policy consequences in terms of the Framework flow irrespective of how extensive the shortfall is. Nevertheless, the appellants contend that in terms of the planning balance the benefits of the proposal are significantly augmented by the extent of the land supply shortfall. The frailty of the Council's position needs to be exposed.
32. The Framework makes clear that the Council must demonstrate that they have a five-year supply, and that this exercise should be undertaken on an annual basis. This policy requirement is soundly based, because of the many variables that need to be inputted into the calculation and the need for the assumptions to be grounded on the same assessment date.
33. Paragraph 47 of the Framework also makes clear that the Council must include either a 5% or a 20% buffer to ensure choice and competition in the marketplace for housing land. Whilst "a record of persistent under delivery" is not defined in the Framework, the Council's performance meets any definition of persistent under delivery. On the evidence, it is beyond argument that the 20% buffer applies. Since 2007, the Council have never achieved their stated requirement of over 600 dwellings per year. The shortfall since 2006 is well over 900 houses, the equivalent of one and a half year's supply, or over 20% of the housing required.
34. The evidence also shows that when Phase 2 of the RS was being prepared, the Council welcomed growth and supported the figure of over 600 dwellings per year²³. They cannot now retreat from that position due to their own under-performance.
35. The Framework does not specifically advise how to address the backlog, but the issue is clear. Paragraph 47 requires the Council "to boost significantly the supply of housing", while earlier paragraphs emphasise that the provision of a supply of housing and the widening of choice are part of the social role of sustainable development. Seeking to meet a current shortfall in 10, 15 or 20 years in the future would not be consistent with the Framework. Every unchallenged decision which has considered this point has been determined in favour of making up the current shortfall within the first five years of the land supply calculation, known as the 'Sedgefield' approach. The Secretary of State has endorsed this approach in his decision of an appeal at Barnsley²⁴. The Leicestershire appeal decision referred to in the Council's withdrawn evidence that took an opposite approach is currently under challenge²⁵. There is no basis for spreading the backlog over the remaining plan period. Independent endorsement of the correct approach can be found in the recent Planning Advisory Service advice note²⁶.

²³ MAR8: Appendix 15

²⁴ MAR8: Appendix 20: Former North Gawber Colliery, Barnsley Appeal Ref APP/R4408/A/10/2138041

²⁵ LPA4: Appendix 7: Land at Shilton Road, Barwell, Leics Appeal Ref APP/K2420/A/12/2188915

²⁶ MAR9: Appendix 5

36. Where a Council has previously failed, the point of the Framework's policy, for instance in providing for the 20% buffer, is to seek to turn performance around by releasing more land and securing the opportunity for more housing development to occur.
37. A number of alternative figures have been postulated for the appropriate housing requirement in this instance, but when measured against any of the alternative requirements the Council are not able to demonstrate a five-year land supply. Other than a short period in 2012 when the Council adopted their own figure of 470 dwellings, the requirement since 2007 or 2008 has been acknowledged by the Council to be in excess of 600. Even in recent times their own "home-made" figure has exceeded 600.
38. This Inquiry is not the forum in which the Council's future development plan housing requirement will be settled. A future requirement is needed. The Structure Plan, which informed the LP, expired in 2011 and has since been abolished. But a suitable requirement must be identified to allow a sensible decision on this case. This question has arisen previously in the West Midlands, and in Staffordshire itself²⁷, so that the correct approach is well settled, which is to take the most recent independently tested figure; that is, the figure from the RS Phase 2 Review²⁸.
39. The reason for taking that figure is, firstly, that there is no extant development plan figure that could be of any assistance. Secondly, the RS figure was one (in particular in the Staffordshire context) which was in large measure locally derived and which the Council had endorsed. The Option 1 figure of 12,900 is very close to the 13,000 that the panel ultimately recommended to the Secretary of State. The final and most important reason for the use of the RS Phase 2 Review figures is the fact that those figures were the subject of extensive debate and were tested independently.
40. The requirement for independent testing and scrutiny is entirely consistent with the Framework's advice in paragraph 216 on the extent to which weight can be attached to emerging plans. The RS Phase 2 figures were the subject of objection and the resolution of that objection through testing and examination by the panel. This approach has been endorsed by Inspectors, including the Stafford appeal mentioned above²⁹, where after extensive debate the Inspector clearly endorsed the Phase 2 figures. The revocation of the RS is irrelevant, as it was well out of date and its figures had been overtaken by the Phase 2 Review.
41. The work recently carried out for the Council by GVA³⁰ is untested and has not been subject to any consultation or independent scrutiny. The choice for the Secretary of State is clear-cut: 650 dwellings per year is the obviously correct figure.
42. The question of housing supply must be determined against the backdrop of footnote 11 of the Framework, which makes clear that sites can only be considered deliverable where they are "available now, offer a suitable location for development now, and be achievable with a realistic prospect that housing will be

²⁷ MAR9: Appendix 2: Former Castleworks, Castle Street, Stafford, Ref APP/Y3425/A/12/2172968

²⁸ CD1

²⁹ MAR9: Appendix 2

³⁰ CD10

- delivered on the site within five years and in particular that development of the site is viable". The meaning of this was further considered in the case of *Wainhomes (South West) Holdings Limited v Secretary of State for Communities and Local Government*³¹, where the judge concluded that the inclusion of a site in an emerging plan did not mean that it should be considered deliverable.
43. There is no support in the Framework for counting sites that are unallocated and have yet to make a planning application. Furthermore, sites which are unallocated and which have made applications cannot be counted because of the uncertainties in relation to whether or not consent could be granted.
 44. Mrs Hodson has set out a detailed assessment of the availability and deliverability of the sites which the Council has relied upon³². Her analysis demonstrates that the supply of housing available is far less than the Council have suggested. It is clear that the five-year housing land supply is therefore far shorter than the Council's concession might imply. This additional analysis does not affect whether or not the policy consequences of a failure to have a five-year land supply apply in this case, but does show that significant weight ought to be ascribed to the benefit of providing additional housing through the appeal proposals.
 45. As a result of paragraph 49 of the Framework LP policies relevant to housing are out of date. Those policies include, in the present case, Policy NE1 which controls developments beyond settlement boundaries³³. The effects of that policy being out of date are twofold. Firstly, the settlement boundary cannot be relied upon as carrying material weight in restricting residential development. Secondly, the presumption in favour of sustainable development contained in paragraph 14 of the Framework applies. That shifts the fulcrum of the planning balance firmly in favour of the grant of planning permission.
 46. The Council's Committee never considered the merits of this proposal measured against the very different balance required by paragraph 14 of the Framework, but only based upon an assumption that there was a five-year land supply. It is therefore unknown to the Inquiry and the Secretary of State what their conclusion might have been measured against the appropriate equation in this case, namely that permission should be granted unless the benefits of the proposal were substantially and demonstrably outweighed by the harms.
 47. The Council has now also accepted³⁴ that Policy NE1 is out of date because of the age of the LP, which was drawn up prior to 2006 and expired in 2011. Its settlement boundaries were drawn after the development requirements to 2011 had been satisfied, and are no longer capable of accommodating current housing requirements. That can be easily demonstrated by the current spate of planning consents which are being granted beyond those settlement boundaries.
 48. The scale of the problem faced by the Council can be seen from the emerging Local Plan. The most recent Preferred Option can only carry very limited weight³⁵ but shows that greenfield sites will inevitably be required in Burton, and that the

³¹ MAR8: Appendix 17

³² MAR7: paras 6.18-6.21; MAR9: Appendix 1a-e

³³ CD3

³⁴ Charlotte El Hakiem in cross examination

³⁵ CD4

scale of those sites will be very substantial³⁶. An area of search for some 2,750 houses, which covers the appeal site, was identified.

49. The appeal site was not selected as part of that Preferred Option but that was in the context of a locally derived requirement of 8,935 homes. Further work has suggested a substantial increase in that figure to 11,648³⁷. As a result, the Preferred Option is in effect already out of date and there will be a need for a substantially re-ordered proposal which will have to incorporate a significant amount of additional new greenfield allocations.
50. This shows that not only is there a substantial requirement for additional housing development in the short term, illustrated by the failure to demonstrate a five-year supply, but also that in the medium to long term there remains a significant shortfall in the housing supply which has to be planned for, and for which at present the Council do not even have an illustrative solution.
51. The analysis shows that there is an indisputable need for further housing sites to be found and that the Council are unable to show that they have discharged the duty under the Framework to address and meet objectively assessed housing requirements in full. The policy consequence is that the appeal proposal derives very substantial support.

Character and appearance of the area

52. The only harm which the Council have in effect identified to be placed in the planning balance against the benefits of the proposal is harm to the landscape. That suggestion needs to be put in its policy context. Structure Plan Policy NC2 has been revoked³⁸. There is no other policy upon which the Council can place any particular reliance. The site is not the subject of any landscape designation whether at a local or national level. When the Council were considering the proposals for the emerging Local Plan they clearly did not regard landscape issues as presenting a significant constraint at Burton and did not commission a landscape study to inform their decisions. This was presumably on the basis that landscape issues were unlikely to be determinative.

Landscape character

53. The status of the County Council's document 'Planning for Landscape Change' ('PLC')³⁹ has been queried. The parent SP policy for this document has now been revoked, but the evidence which informed the compilation of the document remains a material consideration. The extract from the County Council's website confirms this position⁴⁰. The document contains material on landscape character analysis that has provided a useful framework for the landscape appraisal of the appeal site.
54. Concern must be raised about the Council's decision to invoke a notional reason for refusal in respect of landscape matters. The advice from their external consultants did not conclude that permission should be refused on landscape

³⁶ CD4

³⁷ CD10

³⁸ CD2

³⁹ CD5

⁴⁰ LPA10

- grounds⁴¹, but merely requested that further work be undertaken on certain aspects of the appellants' initial assessment. That work was never undertaken by the Council or requested from the appellants. The Council went on to oppose the application on landscape grounds based upon critical misconceptions of its landscape impact.
55. When Mr McKenna came to give his evidence it became clear for the first time that, following the production by the appellants of a formal Landscape and Visual Impact Assessment ('LVIA')⁴², there was in fact very little dispute over the detailed landscape analysis. The extent of the dispute as to the significance of the effects was limited simply to the impact on landscape character in the longer term. Whilst there was a difference in terms of the assessment of the magnitude of change in relation to the close views of the site, Mr McKenna accepted that this difference made no impact on the final effect arrived at.
56. Notwithstanding this apparent agreement between the landscape architects it is nevertheless important to understand the detailed merits of the proposal in landscape terms. The PLC defines the landscape character of the area as Settled Plateau Farmland Slopes. This landscape character type covers a wide area and is identified as being in need of enhancement. It is not a sensitive landscape that would present difficulties in absorbing development.
57. The Outwoods Farm development recently permitted by the Council is contained within the same landscape character type⁴³. It is a substantially larger development and one which on any view, including that of Mr McKenna, will be likely to have a significant landscape impact in terms of character. The committee report for that application makes no reference to PLC. It is clear that any sensitivity of that landscape character area is not such as to preclude development. It is an area whose characteristics are such that development can be readily absorbed without material harm.
58. The capacity to absorb development at the appeal site in terms of landscape character is shown by the detailed description of the characteristic landscape features and visual character set out in the PLC document. Mr McKenna has made much of the ribbon development around the site, but the description of the character area demonstrates that this is not a positive feature of the landscape character at all, in fact quite the opposite. The document notes "evidence... of commuter pressure and the urbanising influence of inter-war ribbon development..."⁴⁴. The presence of ribbon development further undermines the sensitivity of the landscape.
59. The difference between the landscape witnesses in relation to the long-term landscape character effects can be simply explained. Mr McKenna has downplayed the long-term beneficial effects of the substantial landscaping proposals and therefore grossly underestimated their significance in mitigating the landscape effects. He has also misunderstood and exaggerated the effect of the development on landscape resources. His conclusions are not a reliable basis for decision-making.

⁴¹ LPA1: Appendix 3

⁴² MAR4

⁴³ MAR13: Committee report

⁴⁴ CD5

60. The reasons for this are, firstly, the provision of additional woodland and tree planting reflects and reinforces the positive features of the visual character of the landscape area⁴⁵. Secondly, the National Character Area Profile of the wider area within which the site sits recognises the opportunity for growth and development to offer the potential to enhance local green space⁴⁶. This is an opportunity which is seized by the appeal proposals in the provision of substantial amounts of amenity woodland for the benefit not only of the new residents of the development but also to the wider community. Thirdly, the Council's Green Infrastructure Study identifies Burton as an area in which there is an existing deficit of natural green space⁴⁷. In seeking to address that deficit by providing a kind of open space which is currently scarce in the area, the proposals again augment and improve the landscape character of the area, leading to significant benefits in the longer term. These features, both individually and cumulatively, endorse the judgement reached by Ms O'Connor that, after the undoubtedly significant initial impact of the development, there will be beneficial effects in the longer term neutralising that impact on landscape character and creating positive enhancement.
61. Mr McKenna's assertions in relation to the extent of the landscape effects are significantly overstated. He was unable to identify anywhere within the application proposals where retaining walls or extensive fencing would be needed and yet had criticised the scheme as if they would be required. His proof of evidence had asserted that there would be loss of mature and semi-mature trees but he was unable to identify any that would actually be affected by the development. In fact the detailed and carefully designed landscape proposals avoid any such losses⁴⁸. His observations about the loss of hedgerows and field patterns were also misconceived. The fields will disappear to be replaced in places by residential development, but the field patterns will remain through the retention of the hedgerows, with only very localised loss where access roads need to cross them. The appeal proposals are sensitive to the landscape resources present on the site.
62. Mr McKenna was keen to emphasise the fact that the existing ribbon development lies within a valley form. However, such a feature is not, as he would have it, unique to this location, and the occasional glimpses of countryside beyond the development do not dilute the clear experience of being within an urban area at the point of passing the appeal site in Forest Road. Furthermore, the detailed landscape proposals retain the valley sides as open woodland, both preserving the amenity of the area and providing open space opportunities. There is no substance to any of the criticisms of the site and its proposals in landscape character terms.

Visual effects

63. Both experts agree as to the significance of the visual effects involved. That is of considerable importance in relation to the overall judgement to be reached. It is also of significance in showing that the basis of the Council members' resolution

⁴⁵ CD4, page 135

⁴⁶ MAR6: Appendix 9, page 32

⁴⁷ MAR6: Appendix 7

⁴⁸ MAR6: Appendix 10

in the case does not reflect the evidence which the Council have in fact offered to the Inquiry.

64. The only views which are said to experience a significant effect are those immediately adjacent to the site. But where development is inevitably going to be required immediately adjacent to settlements it is equally inevitable that any development will have an effect comparable in significance to the appeal proposals. Mr McKenna accepted that landscape effects of that kind could not be considered a bar to development: otherwise no development would occur. The exceedingly localised visual effects of the site are a key landscape advantage of the development proposals. The appeal site is well contained in visual terms and will not give rise to any widespread landscape harm.
65. The material which is before the Inquiry is in stark contrast to the landscape commentary provided in the committee report⁴⁹, which stated that the development would be visible from public rights of way to the south of the site and that there would be long distance views of the proposals contributing to landscape harm. It had to be accepted by Mrs El Hakiem that those suggestions simply had no foundation either in the external report which the Council had commissioned on the application or in the Council's evidence to the Inquiry. The impression created for the members was significantly misleading as to the actual landscape consequences of permission being granted.

Conclusion on landscape impact

66. There will be some inevitable landscape harm, but that harm is of a kind which would inevitably occur at any site upon which residential development might occur. In effect it is the least harm that could arise from such a development meeting housing requirements. Any landscape harm that would occur would take place within an area of reduced landscape sensitivity. This area is therefore better able to accommodate change and hence more suitable for development. Because of the need for enhancement and the opportunities for improvements to landscape character which development can provide in this area over time the impact on landscape character is neutral with elements of enhancement. Visual effects of the proposal occur only from viewpoints immediately adjacent to the site. The development has therefore an exceedingly localised visual impact. Again, the provision of extensive landscaping provides significant mitigation in relation to the visual effect of the development such that any visual impact is exceedingly modest. There is therefore little if any harm to be placed into the planning balance.

Other matters

67. Concerns have been expressed by interested parties in relation to highways impacts. The appellants' evidence has explained how these impacts have been assessed and how mitigation proposals have evolved, as well as the resolution of those issues with the highway authority⁵⁰. The Inquiry has also had an updated statement from the highway authority setting out how the highways contributions will be deployed in order to address the impacts from the development's traffic⁵¹.

⁴⁹ MAR8: Appendix 7

⁵⁰ MAR1

⁵¹ IP8; IP9

There is no basis in relation to highway infrastructure for refusing planning permission.

68. Particular concern has been expressed in relation to flood risk and dealing with surface water from the site. The evidence of Mr Precious explained how the detailed engineering solution for surface water run-off from the site should assist local watercourses in coping with surface water during times of heavy rainfall⁵². Thus as a result of the appeal proposals it is anticipated that there will be an improvement in the drainage infrastructure in and around the site leading to a further benefit from the development.
69. Other infrastructure requirements have been addressed through the Section 106 obligation which provides for contributions to meet and resolve any impacts caused by additional burdens on local physical and social infrastructure. The obligation also makes provision to address requirements for affordable housing in a manner acceptable to the Council.

The planning balance

70. There is nothing in Mrs El Hakiem's proof of evidence to suggest that a proper planning balance had been assessed against the shift in favour of development caused by the absence of a five-year housing land supply and by reliance on an out of date LP policy. The word "benefit" does not feature in her written evidence, when that is clearly the starting point for any proper striking of the balance under the presumption in favour of sustainable development. This fundamentally undermines the objectivity and coherence of the Council's case.
71. To strike the balance correctly it is essential to commence with an understanding of the benefits which the development brings. That is of course the benefit of providing homes to meet the need which exists now as a result of the failure to maintain a five-year land supply for housing. A critical ingredient of housing need is that for affordable housing. The appeal proposals provide local people in need with an immediate opportunity to obtain a decent home
72. In addition, there are significant benefits associated with the provision of natural green space in the extensive new amenity woodland provided as part of the proposals. These will go some way to addressing an existing deficit in the area for this type of space. Furthermore, the drainage proposals will seek to resolve existing issues in respect of the capacity of the existing drainage infrastructure around the site as well as providing a safe and suitable solution to ensure that the site is properly drained.
73. These are very significant and weighty benefits in the planning balance. The presumption in favour of sustainable development requires substantial and demonstrable harm to outweigh those benefits. As set out above the only point upon which the Council now rely is the question of landscape effects and, as the evidence amply demonstrates, the landscape effects of this site are no more or less than will be the consequence of meeting housing needs on any site at the periphery of Burton. Such sites are inevitably required if needs now and for the future are going to be met in accordance with the injunction in the Framework that housing needs must be met in full.

⁵² MAR8: Appendix 22

74. The Council's case does not even begin to explain how, when seen against the presumption in favour of sustainable development, there could be any decision other than that planning permission should be granted. There is little if any harm, let alone substantial and demonstrable harm, which could be legitimately set against the very significant benefits which the appeal proposals would deliver.

Appellants' Conclusion

75. The Council's approach to their decision in response to the appeal and also to the production of their case at the appeal has been both incoherent and unsustainable. When tested, elements of the Council's case have been shown to be conclusively unsound. The evidence clearly demonstrates that measured against the presumption in favour of sustainable development, which must apply in this case, the case in support of the grant of permission is overwhelming. The only sensible outcome is a recommendation to the Secretary of State that planning permission be approved.

The Case for the Council

76. The main points of the Council's case are⁵³:

77. The appeal proposal, by virtue of its size and location, would cause an adverse major impact on the landscape character of the site and should be dismissed. Located on a greenfield site, covering 17.16ha of agricultural land, the proposed development would be both too large and too stark. It would be outside the development boundary and would represent a divergence from the existing pattern of ribbon development that leads westwards out of Burton. The stark imposition of a new neighbourhood of 300 dwellings would be visible from surrounding viewpoints and would harm their visual amenity.

78. The Council submits that, although it cannot demonstrate a five-year housing land supply, this appeal should be dismissed because the harm to the landscape and to visual amenity outweighs any benefits of the scheme. The Secretary of State is invited to prefer the conclusions of David McKenna over those of the appellants' landscape witness, Mary O'Connor. His opinions are supported by the balance of the evidence.

79. Chapter 11 of the Framework sets out the need to protect and enhance valued landscapes within the planning system, in order to enhance the natural and local environment. Decisions should encourage the effective use of land by re-using land that has been previously developed. This consideration will need to be weighed in the balance, as against paragraph 14, where there is a presumption in favour of sustainable development. That presumption is rebutted when, in the case where the development plan is absent, silent or relevant policies are out of date, any adverse impacts of the scheme would significantly and demonstrably outweigh the benefits.

80. The Council's case is that the impacts of this proposal on landscape and visual amenity are so adverse that they significantly outweigh the benefits. The saved LP Saved Policy BE1 and the SP Policy NC2 are also relevant.

⁵³ Taken largely from LPA13 Closing Submissions

81. Furthermore, the site has not been identified in the Council's 2011 Strategic Options or 2012 Preferred Option⁵⁴ documents. The sites included in those documents reflect the Council's assessment of suitable sites for housing, taking into account the effects of such development. There are better sites available where the impact would not be as adverse and unmitigated.
82. The fact that the Council did not request an Environmental Statement should have no bearing on the outcome of this inquiry. Environmental Impact Assessment operates under a totally different regime and takes account of different criteria to those under consideration in this appeal. In particular, landscape impact and effect on visual amenity are not relevant to such a decision.
83. Similarly, the Council's decision to grant permission on the land at Upper Outwoods should have no bearing on this appeal. That proposal was approximately three times the size of this one, and the site considerably larger. The landscape features there were very different: being located along the valley floor and cradled by sloping land on all sides, making the impact on the landscape different and negligible, as compared to major in this case. In Upper Outwoods, one cannot see into the valley from the road, which is not the case at Forest Road, where the proposal is located on the valley side, exposing it more in the landscape. Upper Outwoods is adjacent to the Burton urban edge whereas Forest Road is not. The two proposals do not resemble each other.

Landscape character

84. The East Staffordshire Design Guide states that residential development must relate well to its context, advising that "...open sites...require development which is well located in terms of site constraints and opportunities, where form and function are well-resolved and where the appearance of the building is appropriate within the landscape or townscape setting"⁵⁵. Of further importance is how the scale and height of the scheme relate to the surrounding terrain.
85. The surrounding landscape is detailed in the PLC SPG document, which describes the site as being "settled plateau farmland slopes"⁵⁶. Landscape enhancement is noted as being necessary in the area. The SPG sets out the characteristic landscape features of the area to include: hedgerow oak and ash trees, broadleaved woodland, irregular hedged field patterns, small streams, undulating and sloping landform. These unique features of the landscape mean that there is a high level of need for sensitive, sympathetic and coherent planning of the land use. The SPG provides examples of landscape use which are incongruous to the character, such as modernised dwellings, busy roads and commuter properties.
86. The site, which is described as agricultural with an uneven topography, with a definite openness due to its position of the sides of a slope and on an elevation, is sensitive to landscape change. The open rural setting of the land beyond the application site to the south contributes to this distinctive character.
87. The site wraps around the small recently constructed development at Oakley Grange and a dense ancient woodland lies across the site frontage. The

⁵⁴ CD4

⁵⁵ LPA3: Appendix C3, paragraph 1.3.69

⁵⁶ LPA3: Appendix C4, p 133

- peripheral boundaries to the east, west and south are defined by existing hedgerows which are proposed to be retained. The site is generally split into quarters by hedge-lines running in a north-south and east-west direction. The land slopes upwards for approximately half the site's depth before the overall gradient eases towards and beyond the southern boundary.
88. These features add up to produce a site which forms the boundary between the urban built form and the rural area on the edge of Burton. The prominence of the site and the high number of dwellings would severely detract from the character of this landscape.
89. Mr McKenna's evidence was clear in its critique of the Appraisal submitted by the appellants as part of the planning application⁵⁷. It consisted of a mere desk study, which was not transparent in its methodology and conclusions.
90. As set out in his proof⁵⁸ and maintained in oral evidence at the Inquiry, Mr McKenna described the importance of the ribbon development aspect of the site. This occurs where a single property is built adjacent to an existing road with countryside remaining behind it. The combination of the ribbon development and the agricultural nature of the land make the site a very distinctive approach into Burton upon Trent. None of the other approaches to Burton have this feature and his evidence noted the attractiveness of the openness and area as you drive into Burton, which was striking and memorable⁵⁹. Ms O'Connor agreed that there was a transition from the linear development along the B5017 into a clearly more rural countryside setting⁶⁰. It was agreed that this proposal would be a departure from the linear character of the development and be out of step with that particular characteristic of the existing landscape.
91. There is little dispute between the witnesses about the assessment of the landscape character, as applying the standard guidance to take account of the landscape condition, landscape value and the landscape's sensitivity to change.
92. Mr McKenna's assessment, accepted by Ms O'Connor, placed the condition of the landscape as 'Good'⁶¹, meaning that there were recognisable landscape structures, characteristic patterns and combinations of landform and land cover which are still evident. Such a classification also means that there are some features worthy of conservation, some detracting features but also scope to improve the management of the land use. The classification was at the higher end of the scale of landscape conditions.
93. The value of the landscape, again accepted by Ms O'Connor, is assessed as 'Medium'⁶². The site therefore possesses medium importance or quality and rarity with limited potential for substitution. These two assessments then led to a finding that the landscape was of 'Medium' sensitivity, meaning that it would only be able to accommodate limited change⁶³.

⁵⁷ LPA1: section 2

⁵⁸ LPA1: section 3

⁵⁹ David McKenna, in cross-examination

⁶⁰ Mary O'Connor, in cross-examination

⁶¹ LPA1: Appendix 1, Table 1

⁶² LPA1: Appendix 1, Table 2

⁶³ LPA1: Appendix 1, Table 3

94. The level of impact of the proposal is accepted by the appellants. It goes without saying that the impact during construction of the scheme would be high and the magnitude of change would be major-moderate. But significantly, there would be a high magnitude of landscape impact immediately post-construction as the form of development would be totally out of character and there would be substantial alteration to the key elements and features of the baseline landscape with irretrievable loss of the agricultural fields, trees and hedgerows in this characteristic valley setting.
95. Ms O'Connor agreed that the 300 dwellings would represent a significant change to the site: from open fields to a new neighbourhood, translating to a 'High' magnitude of effect, i.e. a total loss or substantial alteration to key elements/features/characteristics of the baseline or introduction of elements considered to be totally uncharacteristic when set within the attributes of the receiving landscape⁶⁴. What this means when set against Mr McKenna's assessment of significance of impact⁶⁵ is crucial: the extent of the significance of the impact is 'Major-moderate' in this case. And this impact would continue during the operation of the site, post-construction.
96. This high magnitude of impact, of major-moderate significance, constitutes an adverse impact which would significantly outweigh the benefits of the scheme. Although the appellants suggest that tree screening would mitigate such an impact, it is submitted that this would not be a solution all through the year and would only be a secondary measure insufficient to counter the high level of impact. Fifteen years post-construction, the impact of the development would have settled and the semi-mature trees would bring back some of the wooded characteristics of the site which currently has substantial hedgerow. However, this would not alter the impact due to village expansion and extensive fencing and retaining walls especially when the trees were not in leaf. The dominant vertical features of the site would be the housing which would still cloak and detract from the natural undulating landform.
97. Despite the obvious point that 300 dwellings could only represent an incongruous feature when set against the settled plateau farmlands, Ms O'Connor insisted that the scheme would not be incongruous⁶⁶. This indicates the appellants' uncompromising approach to this appeal: how a proposal of 300 dwellings in the open countryside assessed as locally sensitive, causing a major/moderate impact, can be described otherwise is untenable. The Council's case is that this proposal would be excessive, insensitive and out of place.

Visual amenity

98. It is agreed by the witnesses that the viewpoints indicate impact on the visual perspectives of the site. Of particular note is the impact on the residents on Forest Road overlooking the site. The outlook currently consists of a view over the road over a mature hedge towards attractive fields enclosed by a strong framework of trees and hedgerow. The houses most sensitive to the impact are those in the north side of Forest Road which are on a higher elevation. Similarly, the houses on Oakley Grange which experience a direct view of the site will be

⁶⁴ LPA1: Appendix 1, Table 4

⁶⁵ LPA1: Appendix 1, Table 5

⁶⁶ Mary O'Connor, in cross-examination

adversely affected, the existing vegetation not providing sufficient screening. Their views from the rear of the properties currently overlook attractive fields enclosed by hedgerows and trees and this would be lost entirely if this appeal were allowed.

Council's conclusion

99. It is submitted that, taking into account the impact on the landscape and on visual amenity, there are sufficiently adverse impacts to outweigh the benefits and the appeal should be dismissed.

The case for others who appeared at the Inquiry

100. Objections to the proposal were made at the Inquiry by two interested parties, each of whom provided a brief written statement of his concerns.

*Mr Colin Stickland*⁶⁷

101. Mr Stickland is a resident of Lordswell Road, which opens off Forest Road to the east of the site, closer to the town centre. His chief concern related to flood risk. In 33 years as a resident, he had witnessed severe flooding in the area on 4 occasions, as well as other close calls, which tended to cast doubt on the assumption in the Flood Risk Assessment ('FRA')⁶⁸ that flooding was a 1 in 30 year event.

102. Inadequate consideration had been given by the appellants' consultants to conditions downstream of the site. The concerns raised by many residents at the appellants' consultation event in July 2012 had been ignored. Some 400 written objections were received by the Council.

103. The problem arises because the Shobnall Brook, which passes through the site close to Forest Road, is joined by several tributaries, which together drain an extensive area of hillside. The brook then flows behind houses on Forest Road and Lordswell Road. The existing deep channel fills with water in storm conditions. The brook then enters a 48 inch culvert, which cannot cope with the volume of water, so that flooding occurs on roads and gardens. The Environment Agency has now taken some action to try to improve operation of the culvert, but any additional discharge to Shobnall Brook could only add to existing problems. It is also proposed to discharge surface water from the proposed Red House Farm development into this system.

104. The appellants claimed to have modelled the site, but their observations were taken during an exceptionally dry spring season. A deeper understanding of the wider system is required, rather than reliance on theoretical models. Storm conditions can also throw up freak events. Any disturbance of the existing arrangements would pose an additional serious risk.

*Councillor Michael Bowering*⁶⁹

105. Councillor Bowering is the local ward councillor and has 60 years' experience of the area. He concurred with the previous statement on flooding issues.

⁶⁷ IP10: Note of Statement by Mr Stickland

⁶⁸ APP4

⁶⁹ IP7: Note of statement by Councillor Bowering

106. The site is outside the development boundary and comprises greenfield land. The Council has explained in its report on a subsequent application exactly why the proposal should be refused. It is a great disappointment that other statutory agencies are unable to see the wider picture and outcomes of this type of development.
107. It is accepted that there must be a great deal of additional housing in the borough. Over 4000 homes are planned in Branston ward alone. Much of this is being treated in a positive manner, but inappropriate development must be resisted.
108. Traffic issues on the very steep and winding Forest Road are legendary in Burton, particularly at the eastern end of the appeal site where the road narrows. HGV traffic uses the route as a rat run. The appellants rely too much on other appeal decisions rather than on the circumstances of this particular site.

Written Representations

Staffordshire County Council

109. A proof of evidence was submitted on behalf of the County Council as education authority⁷⁰, but was not presented at the Inquiry. The evidence refers to the support of the Framework for a proactive approach to meeting the education needs of new and existing communities. The document sets out an assessment of the need for additional education provision likely to be generated by the appeal proposal at primary, secondary and post-16 levels. In accordance with the County Council's Education Planning Obligations Policy⁷¹, financial contributions are identified to meet the cost of the additional provision at each level, with a request that that these be funded through a planning obligation.
110. The County Council's as highway authority raised no objection to the planning application, subject to the imposition of conditions and the conclusion of a planning obligation. An Explanatory Note⁷² was provided for the Inquiry setting out the policy context for the mitigation to be addressed by means of the obligation, and the basis for the contributions sought, largely as a proportion of an integrated strategy for the borough, broken down to ward level. An Additional Explanatory Note⁷³ was later submitted, that gives further detail of the background to the need for traffic calming on the Forest Road/Shobnall Road corridor.

Interested parties

111. Written representations were made at the appeal stage by four interested parties. The letter from Branston Parish Council⁷⁴ states its formal objection, but without going into detail, on grounds of infrastructure, flooding and traffic. That from the East Staffordshire Sports Council⁷⁵ confirms that no objection is made. The two letters from local residents⁷⁶ object on grounds of highway safety due to

⁷⁰ IP5: Proof of Evidence of Andrew Marsden, County Commissioner for Access for Learning

⁷¹ IP6

⁷² IP8

⁷³ IP9

⁷⁴ IP4

⁷⁵ IP2

⁷⁶ IP1; IP3

increased traffic, noting other proposed developments nearby; drainage infrastructure and flooding; loss of countryside; effect on existing residents.

112. At the application stage, just over 500 letters of objection were received, very many of them adopting one of two similar pro-formas, and these are summarised in the committee report⁷⁷. The main concerns are on grounds of policy, as the site is not allocated; highway safety and poor site access; noise, air and light pollution; flooding; visual impact on the landscape; precedent for further development nearby; impact on local services.

Conditions and obligations

113. Heads of terms for conditions to be applied in the event of the appeal being allowed were agreed as part of the SoCG⁷⁸. The full text of a schedule of 23 conditions was subsequently agreed between the parties, with a further 3 conditions disputed by the appellants⁷⁹. These relate to the use of sustainable construction and energy saving measures, the submission of a transport master plan and the potential contamination of imported soil. The justification for the agreed and disputed conditions is considered later in this report.

114. The appeal is accompanied by a certified copy of an executed Section 106 Agreement made between the appellants, the Council and the County Council⁸⁰. The Agreement sets out planning obligations enforceable by the Council in respect of:

- provision of affordable housing to comprise 15% of the dwellings on the site, and a contribution of up to £1,367,758 for further off-site provision, together with mechanisms for their allocation and future management;
- provision of public open space, equipped play spaces and areas of woodland planting to reflect the site's inclusion within the area of the National Forest, together with arrangements for their future transfer and management, including the payment of a maintenance contribution of £308,256.

115. Obligations enforceable by the County Council comprise:

- payment of contributions of some £694,953 towards primary education provision, £747,990 towards secondary education provision and £162,243 towards sixth form provision;
- payment of contributions of £255,000 towards off-site highway works and £36,000 towards traffic calming on the Forest Road corridor;
- provision of a daytime bus service between the site and Burton upon Trent town centre at 30 minute frequency, for a period of three years or full occupation of the completed development;
- payment of a sum of £6200 to cover the cost of monitoring and review of the Travel Plan.

⁷⁷ Report and letters included in appeal questionnaire documentation

⁷⁸ CG2

⁷⁹ CG3

⁸⁰ CG1

116. The Agreement allows for recalculation of the education contributions on approval of reserved matters in accordance with agreed formulas, with any increase over the sums set out above to be offset by a reduction in the off-site affordable housing provision, so that the total amount of all contributions would be capped at £3,878,400.
117. The Agreement forms a material consideration in the determination of the appeal, whose merits are considered later in this report.

Inspector's Conclusions

[Numbers in square brackets refer to previous paragraphs above]

118. Having regard to the Secretary of State's reasons for recovering the appeal, to the reasons for objection to the proposal by the Council and others [2, 3, 101, 105, 111, 112], and to the evidence and other submissions to the Inquiry, I consider the main issue in the appeal to be:

Whether, if there is less than a five year supply of developable housing land, the proposal would amount to a sustainable form of development in accordance with national and local policy, having particular regard to:

- The suitability of the site for residential development, with respect to its location outside identified settlement boundaries;
- The effect on landscape character and appearance.

Housing land supply

119. It is common ground between the main parties to the appeal that the Council cannot demonstrate a five-year supply of deliverable housing land. Following the withdrawal of its substitute evidence, and as agreed in the SoCG, the Council tendered no evidence on the matter.[5]

120. The appellants' original evidence to the Inquiry had sought to illustrate the shortfall in supply when measured against the requirement recommended by the RS Phase 2 Panel Report and also against the lower requirement put forward by the Council's emerging LP Preferred Option, concluding very significant shortfalls in each case.[44]

121. It is not disputed that the withdrawal of the Council's substitute evidence followed from its acceptance at the recent Red House Farm inquiry that it could not stand over the assumptions made in its latest re-calculation of the supply. The appellants' supplementary evidence includes its detailed critique, as tendered at the earlier inquiry, of the assumptions made and of the Council's estimate of the current supply. Its conclusion is that the actual supply falls considerably short of the Council's revised requirement, whether or not recent approvals were taken into account.[44]

122. The Council maintains its position that the shortfall in supply is not as severe as claimed by the appellants. In the absence of detailed evidence to support this view, it is difficult to give weight to it. But equally, without detailed interrogation of the appellants' evidence at the Inquiry, it is difficult to reach sound conclusions on each of the alleged potential shortcomings in the Council's position.

123. Certain of the appellants' propositions are convincing, in particular the appropriateness of the RS Phase 2 Panel recommendation as the most reliable tested housing requirement, over the as yet untested recommendations of the Council's consultants. Similarly, the justification for a 20% rather than a 5% buffer to reflect persistent past under-delivery appears strong, based on the figures shown, and the merit of the 'Sedgefield' approach in addressing that under-delivery is in accord with the Framework's objective of significantly boosting housing supply.[35] There is greater scope for dispute, and hence a lower level of certainty, applicable to the analysis of the sites that are said to

make up the supply. Furthermore, the precise contribution of recent approvals would merit detailed analysis. Even in the absence of direct challenge to the evidence, endorsement of the appellants' conclusions would not be appropriate.

124. However, in this instance, as the absence of a five-year supply is common ground, it is not necessary for me to reach a definitive conclusion on the scale of the shortfall. Paragraph 49 of the Framework advises that local policies on the supply of housing should be considered out-of-date once a five-year supply cannot be demonstrated. The appellants accept that the policy consequences follow, irrespective of the degree of any shortfall. Instead, they seek to add weight to the planning balance in favour of the appeal proposal because of the perceived need for additional housing to address the shortfall.[31, 44]
125. It follows that saved LP Policies H1 and H2 on the supply of housing cannot be considered up-to-date. In accordance with the guidance of paragraph 14 of the Framework, the presumption in favour of sustainable development should apply. As the site is not affected by other specific policies of the Framework that would indicate a restriction on development, this means, as outlined earlier in this report, 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.[17]

Site suitability

126. The Council's first notional reason for refusal of the application related to the site's location outside the identified settlement boundary for Burton upon Trent, and the inappropriateness of development to the rural character of the area. Reference was made to saved LP Policies BE1 and NE1, and also to saved SP Policy H11, which has since been cancelled.
127. The Council no longer seeks to defend this potential ground for refusal. It accepted at the Inquiry that LP Policy NE1 is now out-of-date. The primary objective of this policy is the protection of the countryside outside defined settlement boundaries. This remains a valid objective consistent with the guidance of the Framework, which includes among its core principles recognition of the intrinsic character and beauty of the countryside. But by its contribution to the control of the location of additional housing, the policy does have an impact on housing supply. I agree that the policy is out-of-date because the boundaries it seeks to defend were based on development requirements that were planned up to 2011 and in the case of housing had already been largely met by the time of the LP's adoption. The boundaries no longer reflect current needs.[47]
128. The need for significant greenfield development was acknowledged by the Council as long ago as 2008 in its response to the RS Phase 2 Review and is reflected in the emerging LP.[48] It is accepted that limited weight can be given at this stage to the 2012 Preferred Option, but it is notable that the appeal site lies within the broad area identified by Figure 5.7 of the document for housing growth to the west of Burton. While the site is not specifically listed in the document, the Council has accepted in the run-up to the Inquiry that the housing requirement set out in the Preferred Option, which was considerably lower than the RS Phase 2 recommendation, will need to increase before adoption of the new LP.[49] The site would be well placed to contribute to meeting any such increase.

Conclusion on suitability

129. For the reasons set out above, I conclude that there are strong material considerations to outweigh the development plan objection to the development of land outside the settlement boundary. The site immediately adjoins the defined boundary. Although somewhat removed from the main built-up area, the established developed character of Forest Road provides a strong link to the town centre. It is not disputed that the location is sustainable in terms of access to local services and employment, including by public transport. The SoCG records that there are no objections to development on grounds of noise, air quality, ecology or ground conditions, and I have found no evidence to the contrary. Subject to the resolution of other issues considered below, the site would be suitable in principle for development.[10, 26]

Landscape character and appearance

130. The Council's second notional reason for refusal of the application was based on the proposal's anticipated significant landscape and visual impact, and this now forms the core of the Council's case. Landscape and visual harm are considered likely to significantly and demonstrably outweigh any benefits of the proposal, so that the Framework's presumption in favour of sustainable development would not apply.[78]

131. The intended reason for refusal referred to saved SP Policy HC2 and to saved LP Policy BE1. Notwithstanding the Council's continued reference to the SP policy in its closing submissions, there is no doubt that the policy has been revoked and no longer has effect in the consideration of the appeal. The objective of LP Policy BE1 for high quality design that responds to its context is consistent with the guidance of the Framework. The policy should therefore be afforded its full development plan weight. The policy specifically refers to the need to respond to the characteristics of the site and the surrounding landscape's character and appearance. The policy is relevant to the consideration of the appeal proposal.[52, 80]

Landscape character

132. Both main parties to the appeal have drawn on the landscape classification set out in the County Council's Planning for Landscape Change SPG ('PLC'). Although the relevant SP policies have now been revoked, the document remains in force to supplement the development plan. Its undisputed comprehensive assessment and recommendations provide a useful material consideration.[53]

133. The landscape classifications of a document such as PLC are inevitably widely drawn, so that it is unlikely that any one individual area will share all of the key characteristics of the classification to which it is ascribed. However the character of the appeal site and its surroundings appear broadly consistent with the identified character of the 'Settled plateau farmland slopes' classification.[56, 85]

134. The PLC identifies urban fringe characteristics as detrimental to the landscape quality, among them the urbanising influence of inter-war ribbon development. Forest Road/Henhurst Hill provides a classic example of this form of development. I find no reason to endorse the Council expert's assessment that the road corridor provides a distinctive feature of positive value on the approach to the town centre. For much of its length the road appears as relatively

commonplace urban/suburban development. Where occasional perceptions of the wider valley slopes beyond the houses are available, such as around the appeal site, they tend to emphasise the incongruous nature of the existing development. Maintenance of the ribbon character would not provide a strong reason to oppose the appeal proposal. Instead, the presence of development has reduced the sensitivity of the landscape, making it more suitable to accommodate change.[58, 90]

135. The Council's written evidence is based on criticisms of the Landscape and Visual Appraisal submitted with the application. Following the completion by the appellants' expert of a full Landscape and Visual Impact Assessment ('LVIA') the areas of dispute narrowed considerably, and principally related to the longer – term effects of development.[55]
136. The appeal proposal would represent a significant broadening of the extent of development in the valley. This pattern is already present nearby at Aviation Lane and at Lordswell Road to the east. But the indicative layout and DAS show that the appeal proposal would take much greater care than either of those two areas to respond to the character of the landscape and to assimilate the development.
137. In particular, the proposal to cover most of the sloping valley side with areas of tree planting, open space and water management, all linking with the adjoining retained woodland, would provide a very positive landscape feature. The retention of existing field hedgerows and their individual trees would provide a strong framework that would allow the existing field pattern to persist in the new layout. Perimeter tree planting would help greatly to screen the bulk of the proposed houses on the plateau top.[61]
138. There would be a change in character from the existing largely open fields, particularly evident during the construction phase and the early years post-completion, but over time the design measures proposed would successfully mitigate impacts. For that reason I endorse the appellants' expert assessment of the medium to long-term effect on landscape character as major but neutral or even moderately beneficial, rather than that of the Council, which has tended to over-state the impacts. There is no evidence to support the Council's concern that extensive fencing or retaining walls would form persistently harmful landscape features in the medium to long term or that significant loss of trees and hedgerows would occur.[59, 60, 61, 94, 95, 96]

Visual effects

139. The Council accepts that significant visual impacts on sensitive receptors would be mainly confined to residents of the small number of houses facing the site on Forest Road, in particular those with elevated positions towards the western end of the site, and of a small number of houses on Oakley Grange whose first floor windows address the site.[98]
140. These residents, and people passing on the B5017, currently have a view of the sloping green valley side offset by hedgerows. There is little doubt that the short-term visual impact of development would have a major adverse effect. However, in line with my conclusions above, I accept the appellants' assessment that, as new tree planting matured over time, the effect would reduce to minor.[66]

141. The site is not prominent in the wider landscape. I was able to visit the longer-range viewpoints identified in the appellants' LVIA, which were agreed at the Inquiry as being comprehensive. I found that the site has very limited presence in views from public vantage points to the north of Forest Road. The development would be seen from the public footpath and open access land near Sinai Park to the south, but in the context of the existing Aviation Lane/Henhurst Ridge houses and play area, with which it would align, and well screened by proposed tree planting. Perimeter screening and intervening hedgerows would also be effective in softening views from Aviation Lane itself.

Conclusion on landscape character and appearance

142. I conclude that any major adverse effects of the proposal would be confined to the short term and that in the long term it would not have significant adverse effects on landscape character or visual amenity. The scheme would be well designed to respond to the characteristics of the site and the surrounding landscape, and in that regard would comply with LP Policy BE1 and with the guidance of the Framework.

Other matters

Flood risk

143. The planning application was supported by the submitted FRA⁸¹ and FRA Addendum⁸², and the appeal by written⁸³ and oral evidence to the Inquiry.[68]

144. No objection is raised by the Environment Agency or the water authority, subject to the imposition of conditions. The evidence confirms that the site lies within Flood Zone 1 and is itself generally at low risk of flooding. The potential risk near the proposed western access, where the existing water course would pass under the proposed road, could be addressed by the detailed design of the access.

145. The main issue relates to the site's contribution to flooding further downstream. The very real concern raised by local residents is understandable. It is clear that the Shobnall Brook is subject to rapid transformation in character during storm conditions.[101] However, there is convincing evidence that the system of swales and ponds outlined in the FRA would provide a sustainable solution to the surface water drainage of the site. The discharge to Shobnall Brook would be restricted to the level of a 1 in 1 year event. As a result, discharge from the site during more extreme storm events, up to and including the 1 in 100 year plus climate change event, would be less than currently experienced and spread over a longer period. Direct runoff from the site onto adjoining land would also be reduced. The proposal would produce beneficial rather than harmful effects beyond the site boundary and further downstream.[68]

146. I conclude that the proposal would comply in this respect with the guidance of the Framework⁸⁴.

⁸¹ APP4

⁸² APP5

⁸³ MAR8: Appendix7

⁸⁴ Framework, paragraph 103

Highway safety

147. The planning application was supported by the submitted TA⁸⁵ and draft Travel Plan⁸⁶. No objection was raised by the Council or by the County Council as highway authority, subject to the imposition of conditions and the conclusion of a planning obligation.
148. The appellants' evidence to the Inquiry⁸⁷ responds to the concerns raised by Councillor Bowering, local residents and Branston Parish Council.[108, 111, 112] Notwithstanding those concerns, there is insufficient evidence to indicate that Forest Road/Henhurst Hill suffers from excessive traffic congestion or usage by heavy commercial vehicles. My own observations on visits to the site, including during the evening peak hour, did not lead me to any different conclusion. The accident record involving pedestrians and cyclists does not indicate any significant safety issue.
149. It is acknowledged that the proposal would result in increased traffic on the route, but any adverse effect on the highway network should be adequately mitigated by the improvements to be funded by the planning obligation, which, as set out in the County Council's Explanatory Note, would form part of an integrated approach that takes account of other proposed development.[110] These measures and the enhancement of bus services past the site would encourage use of non-car modes of travel, as would the submitted Travel Plan, whose implementation would also be funded by the planning obligation.
150. Traffic calming measures on Forest Road, as set out in the Additional Explanatory Note would enhance safety on the route.[110] Safe operation of each of the proposed access points would be achieved by the provision of visibility to comply with national standards for this type of junction and prevailing traffic speeds.
151. Adverse highway impacts during the construction period could be mitigated by means of conditions, including the approval of a Construction Management Plan.
152. Subject to the measures outlined above, I conclude that the proposal would comply with saved LP Policy T1, which requires new development not to harm the safe and efficient use of the highway network, and with the guidance of the Framework, which advises that development should only be prevented on transport grounds where the residual cumulative impacts would be severe⁸⁸.

Conditions

153. The list of agreed and disputed conditions [113] was discussed at the Inquiry, where it was further agreed that several of the proposed conditions could be amalgamated to avoid duplication. I concur that these consolidated agreed conditions, subject to some minor amendments in the interests of greater precision as now set out in Annex 1 to this report, would be reasonable and

⁸⁵ APP9

⁸⁶ APP10

⁸⁷ MAR1

⁸⁸ Framework, paragraph 32

- necessary for the reasons given and would otherwise meet the tests of the Framework and of Circular 11/95⁸⁹.
154. Conditions 1-3 are needed to apply the statutory timescales for the approval of reserved matters and the commencement of development.
155. Conditions 4-11 are needed to ensure a satisfactory form of development, in association with approval of the reserved matters. As the proposed layout and street sections are indicative at this stage, only the site boundary plan and access plans require full approval. Approval of phasing is needed to ensure that the impact of development of this scale would be controlled over time. Because of the sloping nature of much of the site, considerable re-grading would almost certainly be required. Approval of the final land form and house levels is justified. A proportionate scheme of archaeological investigation is needed to ensure that any historic interest of the site is preserved. Approval of the final proposals for boundary treatments, the provision and management of open space, the protection of trees and hedges and the maintenance of landscaping are all necessary to ensure high quality design and a good standard of amenity for future residents.
156. Conditions 12-14 are needed to ensure safe and convenient access to the proposed houses and the adequate provision of safe and sustainably designed parking.
157. Conditions 15 and 16 are necessary to ensure that the proposed development is drained in a sustainable manner and that the effects on flooding are fully taken into account, with outfall from the site restricted to existing levels.
158. Conditions 17-19 are required to ensure that the health and living conditions of future and adjoining residents are properly protected, both during the construction period and over the lifetime of the development.
159. Condition 20 is an adaptation of one of the three conditions disputed by the appellants.[113] The justification for the condition rests on the strong support of the Framework for development to respond to the impact of climate change, which can go beyond satisfying the minimum requirements of the Building Regulations. The need for a condition on this matter was accepted in the SoCG. As drafted, the condition requires measures and targets to be proposed, so that compliance would be clearly related back to the approved details.
160. Of the other two disputed conditions, I accept the appellants' view that the submission of a transport master plan would not be justified as many of the matters specified have already been addressed in the submitted Transport Assessment and Travel Plan, and impacts identified for mitigation by the planning obligation have been agreed. Access is submitted for full approval at this stage and the highway authority has not objected.
161. There is no evidence that the potential contamination of imported soil is an issue of significance on the proposed development. The Council was not able to specify how the condition could be readily enforced. Imposition of the proposed condition would not be justified.

⁸⁹ DoE Circular 11/95: The use of conditions in planning permissions

162. Should the Secretary of State be minded to allow the appeal, I recommend that the conditions set out in Annex 1 be attached to the grant of outline planning permission.

Obligations

163. The obligations enforceable by the Council relate to affordable housing, open space and tree planting.[114]

164. Saved LP Policy H12, which seeks an appropriate element of affordable housing on all large residential developments, is consistent with the guidance of the Framework. The Council's 2010 Strategic Housing Market Assessment indicates a need for some 169 affordable units per year, which translates into a requirement for approximately 30% provision on large sites, subject to viability⁹⁰. The proposed provision of 15% on-site with a financial contribution towards up to 15% off-site accords with the Council's adopted Housing Choice Supplementary Planning Document (SPD)⁹¹. The concept of a contributions cap to address viability concerns and avoid excessive demands on development is consistent with the guidance of the Framework. The scope for variation in the off-site contribution to reflect the cap would be reasonable.

165. The provision of adequate on-site open space and play areas would accord with saved LP Policy L2 and the proposed National Forest planting with saved LP Policies NE14 and NE15, all of which are consistent with the guidance of the Framework. The arrangements for future management by the Council or by a company are necessary to ensure the continued delivery of the open space and planting benefits.

166. The obligation enforceable by the County Council with regard to education provision accords with the County's adopted policy and with the guidance of the Framework, as set out in the County's evidence [109, 115]. The obligations with respect to off-site highway works and traffic calming of Forest Road are necessary to mitigate the transport impacts of the development, in accordance with saved LP Policy T1 [115]. Implementation of the Travel Plan, which justifies payment of an appropriate contribution towards monitoring costs, and the augmentation of bus services are consistent with the Framework's support for sustainable transport modes.

167. I conclude that all of the obligations contained within the submitted Section 106 Agreement would comply with the tests set by the Framework and by Regulation 122 of the Community Infrastructure Levy Regulations 2010, in that they are necessary to make the development acceptable in planning terms, directly related to the proposed development and fairly and reasonably related to the development in scale and kind. I consider that full weight in support of the appeal proposal can be given to the obligations set out in the Agreement.

Overall Conclusions

168. For the reasons set out above, I conclude that the proposal would provide a sustainable form of development. The settlement boundaries protected by the development plan must be considered out-of-date. The acknowledged shortfall in

⁹⁰ CD9: para 7.5

⁹¹ CD7: Appendix 1

housing supply indicates a short-term need to provide additional land in sustainable locations, while the emerging longer-term strategy shows that substantial greenfield releases will be required. Any harm to landscape character and appearance would be mainly confined to the short to medium term. Subject to final resolution at reserved matters stage, the proposal would provide a well designed solution that respects its landscape context. Subject to the resolution of conditions, other aspects of the scheme would be controlled to ensure satisfactory outcomes, including surface water drainage. The predicted performance of the sustainable drainage solution should in fact result in some modest benefit to flooding issues downstream of the site. Other impacts on infrastructure would be adequately mitigated by the agreed planning obligations.

169. The proposal would produce substantial benefits in the form of additional housing, including much needed affordable housing, and new open space, accessible both to existing and proposed residents of the area. The proposal's benefits would outweigh the immediate harm to the landscape by the development of currently open land.

170. In accordance with the guidance of paragraph 14 of the Framework, planning permission should be granted.

Recommendation

171. I recommend that the appeal should be allowed and outline planning permission granted subject to conditions.

Brendan Lyons

INSPECTOR

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Suella Fernandes of Counsel	Instructed by Sherrie Grant, Solicitor, East Staffordshire Borough Council
She called:	
David McKenna MA BEng(Hons) CMLI	Senior Studio Associate Landscape Architect IBI Taylor Young
Charlotte El Hakiem BA(Hons) MRTPI	Planning Officer East Staffordshire Borough Council
Clarification points added by: Anna Miller	Interim Planning Manager East Staffordshire Borough Council
Sherrie Grant	Solicitor East Staffordshire Borough Council
Steve Payne	Housing Strategy Officer East Staffordshire Borough Council

FOR THE APPELLANTS:

Ian Dove QC	Instructed by Janet Hodson, JVH Town Planning Consultants Ltd
Nina Pindham of Counsel	
They called:	
Andrew Precious MEng MICE	Senior Engineer Mott MacDonald
Jamie Cassie MIHT	Associate WYG Transport Planning
Mary O'Connor DipLA(Glos) MSc AIEEMA MLI	Associate Director WYG Planning & Environment
Janet Hodson BA(Hons) DipTP MRTPI	Principal JVH Town Planning Consultants Ltd

INTERESTED PERSONS:

Colin Stickland	Local resident
Michael Bowering	Ward Councillor
Geoffrey Evenson	Staffordshire County Council

DOCUMENTS

Planning Application

Plans

PL1	12/079-01 Location Plan 1:2500 – MPJ Design Associates Ltd	Sept 2012
PL2	12/079-02 Illustrative layout v.1 1:1250 - MPJ Design Associates Ltd	Sept 2012
PL3	12/079-03 Streetscene A - MPJ Design Associates Ltd	Sept 2012
PL4	12/079-04 Streetscene B - MPJ Design Associates Ltd	Sept 2012
PL5	12/079-05 Streetscene C - MPJ Design Associates Ltd	Sept 2012
PL6	15921 Topographical Survey - Midland Survey Ltd	Jan 2012

Supporting Documents

APP1	Extended Phase I Habitat Survey - Absolute Ecology Oct 2011
APP2	Tree Inspection for Bat Roost Potential - Absolute Ecology April 2012
APP3	Activity Survey for Bats and Birds - Absolute Ecology June 2012
APP4	Flood Risk and Runoff Assessment - Opus International Consultants (UK) Ltd April 2012
APP5	FRA Addendum - Opus International Consultants (UK) Ltd August 2012
APP6	Phase 1 (Desk Study) and Soakaway Investigation Report - Opus International Consultants (UK) Ltd Feb 2012
APP7	Air quality assessment – WYG August 2012
APP8	Noise Assessment – WYG August 2012
APP9	Transport Assessment - WYG Transport Planning Sept 2012
APP10	Residential Travel Plan - WYG Transport Planning Sept 2012
APP11	Building For Life – JVH Town Planning Consultants Ltd Sept 2012
APP12	Planning Design and Access Statement - JVH Town Planning Consultants Ltd Sept 2012
APP13	Scale and Massing Statement – MPJ Design Associates August 2012
APP14	Environmental Performance Statement - MPJ Design Associates Ltd Sept 2012
APP15	Landscape and Visual Appraisal – WYG October 2012

Appellants- Marstons PLC

Evidence

MAR1	Proof of Evidence of Jamie Cassie
MAR2	Summary of Evidence of Mary O'Connor
MAR3	Proof of Evidence of Mary O'Connor
MAR4	Evidence of Mary O'Connor- Appendix 1: LVIA
MAR5	Evidence of Mary O'Connor- Appendix 2: LVIA Figures
MAR6	Evidence of Mary O'Connor- Other Appendices 3-15
MAR7	Proof of Evidence of Janet Hodson
MAR8	Proof of Evidence of Janet Hodson: Appendices 1-24
MAR9	Supplementary Proof of Evidence of Janet Hodson and Appendices 1-5

Inquiry Documents

MAR10	Opening Submissions
MAR11	Final Draft Section 106 Agreement showing changes
MAR12	Closing Submissions on Behalf of the Council to Inquiry into Appeal at Red House Farm, Burton upon Trent Ref APP/B3410/A/13/2197299
MAR13	Report to Council Planning Applications Committee 8 July 2013- Application Ref P/2013/00429: Land at Upper Outwoods Farm, Beamhill Road, Burton upon Trent
MAR14	Plan showing housing sites to west of Burton upon Trent
MAR15	Costs Submissions
MAR16	Closing Submissions
MAR17	Corrections to LPA's Response to Costs Application

East Staffordshire Borough Council

Evidence

LPA1	Proof of Evidence of David McKenna and Appendices 1-3
LPA2	Landscape Appraisal by IBI Taylor Young 19.06.2013
LPA3	Proof of Evidence of Charlotte El Hakiem and Appendices A-C4
LPA4	Proof of Evidence of Anna Miller and Appendices 1-15 (later withdrawn)

Inquiry Documents

LPA5	Letter of notification of the Inquiry
LPA6	Court of Appeal Judgment: R (oao Erine Kides) v South Cambridgeshire District Council [2002] EWCA Civ1370
LPA7	Opening Submissions
LPA8	Comments on planning application by Highway Authority, 7 March 2013
LPA9	Comments on planning application by Mr M Lewis, 22 November 2012
LPA10	Extract from County Council website: Planning for Landscape Change Supplementary Planning Guidance
LPA11	Comments on planning application by Housing Strategy, 6 March 2013
LPA12	List entry: Sinai Park
LPA13	Closing Submissions
LPA14	Response to Appellants' Costs Application

Interested Parties

Appeal Submissions

IP1	Letter from Mr Garry Hill, 26 March 2013
IP2	Letter from East Staffordshire Sports Council, 29 March 2013
IP3	Letter from Mrs Mary Riddell, 2 April 2013
IP4	Letter from Branston Parish Council, 19 April 2013

Evidence

IP5	Staffordshire County Council: Proof of Evidence of Andrew Marsden, County Commissioner for Access for Learning
IP6	Staffordshire County Council: Education Planning Obligations Policy Annual Update 2008/09

Inquiry Documents

IP7	Note of statement by Councillor Michael Bowering
IP8	Staffordshire County Council: Explanatory Note relating to the Highway Sum in Schedule 4 Off-Site Highway Contribution in the Section 106 Agreement
IP9	Staffordshire County Council: Additional Explanatory Note relating to the Traffic Calming Sum in Schedule 4 Off-Site Highway Contribution in the Section 106 Agreement
IP10	Note of Statement by Mr Colin Stickland with covering letter dated 16 September 2013

Agreed Documents

CG1	Copy of executed Section 106 Agreement 29 July 2013
CG2	Statement of common ground 2 September 2013
CG3	Schedule of conditions

Core Documents

- CD1 West Midlands Regional Strategy Phase Two Revision: Report of the Panel Vol1 Sept 2009
- CD2 Staffordshire and Stoke on Trent Structure Plan 1996-2011
- CD3 East Staffordshire Local Plan Adopted July 2006
- CD4 East Staffordshire Local Plan: Planning for Change Preferred Option July 2012
- CD5 Staffordshire County Council: Planning for Landscape Change Supplementary Planning Guidance May 2001
- CD6 East Staffordshire Borough Council: East Staffordshire Design Guide Supplementary Planning Document June 2008
- CD7 East Staffordshire Borough Council: Housing Choice Supplementary Planning Document December 2010
- CD8 East Staffordshire Borough Council: Greenfield Land Release for New Communities Policy Statement
- CD9 East Staffordshire Borough Council: Strategic Housing Market Assessment Conclusions December 2010
- CD10 GVA: East Staffordshire SHMA- The Future Housing Market June 2013
- CD11 Plan of Burton upon Trent 1:10,000

Annex 1

Recommended Conditions

Timing/Commencement

1. No development shall take place until plans and particulars of the layout, scale and appearance of the buildings to be erected and the landscaping of the site (hereinafter called "the reserved matters") have been submitted to and approved in writing by the Local Planning Authority, and the development shall be carried out in accordance with those approved details.
2. Application for approval of the reserved matters shall be made to the Local Planning Authority before the expiration of three years from the date of this permission.
3. The development hereby permitted shall be begun before the expiration of two years from the date of the approval of the last reserved matter(s) to be approved.

Form of development

4. The development hereby permitted shall be carried out in accordance with the following approved plans subject to compliance with other conditions of this permission: Drawing Nos. 12/079-01 Location Plan (MPJ Design); A074090 006 Proposed Western Site Access Layout (White Young Green); A074090 007 Proposed Eastern Site Access Layout (White Young Green).
5. No development shall take place until details of any proposed phasing of development on the site 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.
6. No development shall take place on any phase of development as approved in accordance with condition 5, and no site works related to that phase of development shall be carried out until details of all slab levels and any re-grading proposed to the site 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.
7. No development shall take place until a written scheme of investigation securing the implementation of a programme of archaeological work has been submitted to and approved in writing by the Local Planning Authority. The programme of work shall be implemented in accordance with the approved details.
8. No development shall take place until details of all boundary treatments, including materials, finishes, heights and sections (where there are changes in topography) have been submitted to and approved in writing by the Local Planning Authority. The boundaries between new dwellings and the public realm shall consist of walls and/or railings and/or hedges. The boundary treatments shall be provided in accordance with the approved details prior to the first occupation of the part of the development to which they relate.
9. No development shall take place until a strategy for the provision and future management of public open space has been submitted to and approved in writing by the Local Planning Authority. The strategy shall include details of the following:
 - Equipment for children's play areas;
 - Woodland planting and measures to enhance biodiversity;

A management plan for all areas of open space, planting within the public realm and biodiversity enhancement measures;
All materials to be used in hard landscaping;
Details of any proposed phasing of provision having regard to the requirements of Condition 5.

The public open space shall be provided and managed in accordance with the details of the approved strategy and thereafter shall be made available at all times for its designated purpose.

10. No development shall take place until a scheme of measures for the protection of hedgerows and trees to be retained during the course of development has been submitted to and approved in writing by the Local Planning Authority. The approved measures of protection shall be implemented prior to the commencement of works on any phase of development as approved in accordance with Condition 5 and shall remain in place at all times whilst construction work is taking place on that phase.
11. 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 first occupation of the development to which they relate as defined by the phasing plan approved in accordance with Condition 5 or the completion of that part of the development, whichever is the sooner; and any trees or plants which within a period of 5 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.

Highways / access

12. No development shall take place until details of all road construction, street lighting and drainage including longitudinal sections and means of draining roads to an acceptable outfall have been submitted to and approved in writing by the Local Planning Authority. The roads shall be constructed in accordance with the approved details.
13. No development other than that related to the provision of the new accesses shall be commenced until the accesses to the site approved in accordance with Condition 4 have been completed to base course level within the limits of the public highway.
14. No development shall take place until details of access, parking and turning areas to serve each dwelling have been submitted to and approved in writing by the Local Planning Authority. Prior to the first occupation of the dwelling to which it relates, the approved access, parking and turning areas shall be provided in a bound material in accordance with the approved details and shall thereafter be made available at all times for their designated purposes.

Drainage

15. No development shall take place until a scheme for the disposal of foul and surface waters has been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details.
16. The development hereby permitted shall be carried out in accordance with the recommendations of the Flood Risk Assessment by Opus International Consultants Limited dated April 2012 reference J-D0924-R01.

Pollution / health

17. No development shall take place until a contaminated land assessment and associated remedial strategy, together with a timetable of works, have been submitted to and approved in writing by the Local Planning Authority and the measures approved in that scheme shall be fully implemented. The scheme shall include all of the following measures:
- a) The contaminated land assessment shall include a desk study to be submitted to the Local Planning Authority for approval. The desk study shall detail the history of the site uses and propose a site investigation strategy based on the relevant information discovered by the desk study. The strategy shall be approved by the Local Planning Authority prior to investigations commencing on site;
 - b) The site investigation, including relevant soil, soil gas, surface and groundwater sampling, shall be carried out by a suitably qualified and accredited consultant/contractor in accordance with a Quality Assured sampling and analysis methodology;
 - c) A site investigation report detailing all investigative works and sampling on site, together with the results of analysis, risk assessment to any receptors and a proposed remediation strategy shall be submitted to the Local Planning Authority. The Local Planning Authority shall approve such remedial works as required prior to any remediation commencing on site. The works shall be of such a nature as to render harmless the identified contamination given the proposed end-use of the site and surrounding environment including any controlled waters;
 - d) Approved remediation works shall be carried out in full on site under a quality assurance scheme to demonstrate compliance with the proposed methodology and best practice guidance. If during the works contamination is encountered which has not previously been identified then the additional contamination shall be fully assessed and an appropriate remediation scheme agreed with the Local Planning Authority;
 - e) Upon completion of the works, this condition shall not be discharged until a closure report has been submitted to and approved by the Local Planning Authority. The closure report shall include details of the remediation works and quality assurance certificates to show that the works have been carried out in full in accordance with the approved methodology. Details of any post-remedial sampling and analysis to show the site has reached the required clean-up criteria shall be included in the closure report together with the necessary documentation detailing what waste materials have been removed from the site.
18. No development shall take place until a Construction Management Plan has been submitted to and approved in writing by the Local Planning Authority. The Construction Management Plan shall include details of: routing of construction vehicles; loading and unloading of plant and materials; wheel washing facilities; measures to remove any mud or deleterious material deposited on the highway; measures for the suppression of dust; measures to mitigate noise and vibration; management of construction waste; parking for site personnel and visitors; a timetable for implementation. The development shall be carried out in accordance with the approved details.

19. Construction work shall not be carried out outside the hours of: Monday-Friday 07.30-19.00; Saturday 08.00-14.00. No work shall be carried out on Sundays and bank holidays.

Sustainable construction

20. No development shall take place until details of sustainability/energy saving measures and targets for the construction of the dwellings 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.



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.