

# Proof Of Evidence: Planning.

## Evidence of Clare Clarke BA (Hons) MA MRTPI.

In Respect of Land North of Barkby Road, Syston.  
On behalf of Taylor Wimpey UK Ltd.

Date: 24 October 2023 | Pegasus Ref: P20-3155

Appeal Ref: APP/X2410/W/23/3325902 | LPA Ref: P/21/2639/2

Author: Clare Clarke

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# Contents.

1. Introduction.....	1
Qualifications and Experience.....	1
Involvement in the Planning Application.....	1
Scope of Evidence.....	1
2. Context.....	2
The Site.....	2
Proposed Development.....	2
Officer's Report.....	3
Plans Committee.....	3
Delegated Decision.....	5
CIL Compliance Statement.....	5
3. Main Issues.....	7
4. Statement of Common Ground.....	8
5. Development Plan.....	10
Most Important Policies.....	10
Saved Local Plan Countryside Policies ST/2, C T /1 and CT/2.....	10
Core Strategy Policy CS1: Development Strategy.....	11
Core Strategy Policy CS3: Strategic Housing Needs.....	13
Core Strategy Transport Policies CS17 and CS18.....	14
Other Development Plan Policies.....	15
Development Plan Compliance.....	19
6. Other Material Considerations.....	20
National Planning Policy Framework.....	20
Housing Land Supply and Tilted Balance.....	20
Emerging Development Plan.....	20
7. S106 Obligations and Conditions.....	24
Section 106 Obligations.....	24
Conditions.....	25
8. Interested Parties.....	26
Residential Amenity.....	26
Character and Appearance.....	26
Coalescence with neighbouring settlements.....	26
Traffic and highway safety.....	27
Drainage.....	27
Capacity of Health Services and Education Facilities.....	27
Ecology and wildlife.....	28
9. Planning Balance.....	30
Benefits of the Development.....	31
Adverse Impacts of Development.....	33



Planning Balance.....34

## **Appendices contents.**

Appendix A: EDP Ecology Note



# 1. Introduction

## Qualifications and Experience

- 1.1. My name is Clare Elizabeth Clarke. I am an Associate Planner at Pegasus Group, a development consultancy with offices throughout the country. I hold a Bachelor of Arts Degree with Honours in Geography from Leicester University and a Master of Arts in Town Planning from University of Central England (now Birmingham City University). I am a Member of the Royal Town Planning Institute.
- 1.2. I have over 20 years' experience in planning, working in a variety of planning roles, primarily in Local Government and more recently in planning consultancy. I joined Pegasus Group in January 2022, and I advise a range of clients in relation to the promotion of land through the development plan process, submission and management of planning applications and the process of appealing. Whilst in Local Government I represented the local planning authority at examination hearings.
- 1.3. The evidence I have prepared and provide to this Inquiry on behalf of Taylor Wimpey UK Ltd is true and given in accordance with the code of conduct of the Royal Town Planning Institute and I can confirm that the opinions expressed are my true and professional opinions.

## Involvement in the Planning Application

- 1.4. My colleague at Pegasus Group, Mr Guy Longley (Executive Director) submitted the planning application and performed the role of planning agent at the planning application stage until June 2023, when he retired.
- 1.5. I provided support on the application from March 2023 and fully took over as the planning agent in June, including submitting the appeal and presenting to the Plans Committee meeting on 17<sup>th</sup> August 2023, on behalf of the Appellant.
- 1.6. Accordingly, I am fully aware of, and understand, the planning and related issues involved in the Appeal.

## Scope of Evidence

- 1.7. My Proof of Evidence relates principally to matters of planning policy, benefits and the overall planning balance in respect of the appeal proposal. I also address concerns raised by Interested Parties.
- 1.8. A separate Proof of Evidence is provided on Highways and Transport matters, prepared by Mr Simon Tucker of David Tucker Associates.
- 1.9. I refer in this Proof of Evidence to documents that are listed in the agreed Core Documents List, using the abbreviations stylised '[CD XX]'

## 2. Context

### The Site

- 2.1. The site is located east of the settlement of Syston, adjacent to the limits to development defined in the saved policies of the Borough of Charnwood Local Plan (CD5.01 and CD5.02).
- 2.2. The site is proposed as a housing allocation in the Pre-Submission Draft Charnwood Local Plan (CD7.01 and CD7.02). Draft Policy DS3 Housing Allocations proposes to allocate the appeal site for 195 homes, allocation reference HA3: Land north of Barkby Road.
- 2.3. The site is approximately 8.29 hectares and consists of two arable fields. The site lies to the north of Barkby Road, and is bounded by Queniborough Road to the east, existing residential development along Hallaton Drive, John Frear Drive and Empingham Drive to the west, and open countryside to the north.
- 2.4. The site is located between two other proposed housing allocations in the emerging local plan (CD7.01 and CD7.02). To the south of Barkby Road is draft housing allocation HA1: Land South East of Syston for 960 homes, which is also controlled by the Appellant. And to the north of the appeal site is a draft allocation HA2 Barkby Road for 270 homes.

### Proposed Development

- 2.5. The outline planning application, the subject of this appeal, was submitted to Charnwood Borough Council (the Council) for up to 195 dwellings, together with associated affordable housing, open space, landscaping, drainage and play space facilities. All matters are reserved bar access which is proposed from Barkby Road.
- 2.6. The application was submitted on 20th December 2021 and included a full set of supporting documents and plan (CD1.01-CD1.20).
- 2.7. During the determination of the application, amended plans and additional supporting documents were provided to address consultee comments (CD2.01-CD2.19).
- 2.8. During the appeal process we agreed with the Council that the Concept Masterplan for the appeal site needed to be updated to reflect the amended access arrangements, agreed by the Highway Authority, Leicestershire County Council on 17th August 2023, after the appeal was submitted.
- 2.9. The Council have also requested that the Concept Masterplan be amended to show the land needed to deliver a future proposed roundabout, which would provide a joint access with the draft housing allocation HA1: Land South East Syston. General arrangement drawings of the proposed roundabout were submitted to the Borough Council and Local Highways Authority during consideration of the planning application (Response to LHA Comments, December 2022 - CD2.13).
- 2.10. An updated Site Location Plan was also required to correct a drafting error which incorrectly included a slither of land which is outside the title plans the development relates to. This was also corrected on the updated Concept Masterplan.

2.11. The final list of plans supporting the application are agreed in the Statement of Common Ground (CD9.08) and as follows:

- CD8.01 – Site Location Plan (P20–3155 001–01 Rev C)
- CD8.02 – Site Access Plan (20060–02 Rev F)
- CD8.03 – Concept Masterplan (P20–3155 003–01 Rev H)

2.12. The changes to these plans were found not to fundamentally alter the proposal and or prejudice the interests of interested parties and were accepted by the Inspector in the Post Case Management Conference Note (CD9.05).

## Officer's Report

2.13. An appeal against non-determination was submitted in July 2023. To inform a Statement of Case from the Council, the application was reported to Plans Committee on 17<sup>th</sup> August 2023 so that a resolution could be sought on how the application would have been determined by the Council.

2.14. The Officer's Report noted objections from members of the public which focused upon the accuracy of the submissions supporting the application, the impact on sense of place, traffic concerns, impact on house prices, concern for existing habitats, loss of green separation between settlements, overbearing and development in the countryside (paragraph 8.1 of CD4.01, final table).

2.15. The Officer's Report concludes at paragraph 10.14 (CD4.01) that:

*'The adverse impacts of the proposal, being those aspects of this report which conflict with policy are those relating to development beyond the defined limits of Syston, failure to safeguard a mineral reserve, highway safety, and the consequent inability to agree upon appropriate contributions toward infrastructure. Whilst the "tilted balance" described in 11d(ii) might outweigh the restriction imposed by the limits of development, and the minerals safeguarding, it cannot outweigh the considerations around road safety and related contributions to sustainable travel.'*

2.16. The Officer's Report (CD4.01) recommended the application be refused in the absence of a final formal response from the Highways Authority but at paragraph 10.17 (CD4.01) noted:

*'In the event that the local highway authority was satisfied with the proposals before them now, or as evolved during the course of the processing of the non-determination appeal, that consideration of the tilted balance might change, and the recommendation which follows might alter.'*

## Plans Committee

2.17. On 17<sup>th</sup> August 2023, the day of the Plans Committee meeting, a final response was received from the Highways Authority, Leicestershire County Council (CD3.26). This was too late to inform the Committee Extras Report but was referred to in the Case Officer's presentation to Committee.

- 2.18. The Case Officer, Mr Ward, explained to Committee that a response had been received from the Highways Authority and that this changed the planning balance. At the meeting Mr Ward verbally updated his recommendation to approval of planning permission subject to Section 106 and conditions, which were to be delegated to the Head of Planning and Growth.
- 2.19. The change to the Officer's recommendation was not captured in the original minutes of the meeting (CD4.02), but this was corrected at the following meeting of the Plans Committee and an amendment to the 17<sup>th</sup> August 2023 Plans Committee minutes was approved. This amendment is recorded in the 21<sup>st</sup> September 2023 Plans Committee Minutes (Minute 27, CD4.03).
- 2.20. The Committee debated the item and a proposal to approve the application failed. The Plans Committee Members resolved that, had they had the opportunity to determine the application they would have refused planning permission for the reasons listed in Recommendation A of the Officer Report, with the exception of reason four related to safe access and appropriate mitigation of traffic impacts (Minute 25a, CD4.02).
- 2.21. The reasons are set out below, as presented in the Officer's Report at paragraph 11.1 (CD4.01). The removed reason for refusal (4) is shown, but is struck through.

Reasons for Refusal	
1	The proposed development is on land which sits outside the limits to development for Syston identified on the Borough of Charnwood Local Plan 1991-2006 Proposals Map, adopted January 2004, and within Countryside. The form of development proposed does not fit with the exceptions defined in the Charnwood Local Plan (2004) and is therefore in conflict with its policies ST/2, CT/1 and CT/2.
2	The application site is within a Mineral Safeguarding Area, as defined in "Mineral and Waste Safeguarding, Charnwood Borough, Document S2/215" published December 2015. The application is not accompanied by a Mineral Assessment of the effect of the proposed development on the mineral resource beneath or adjacent to it. It is therefore in conflict with Policy M11 (safeguarding of Mineral Resources) of the Leicestershire Minerals and Waste Local Plan up to 2031, adopted in 2019.
3	The applicant has not undertaken a sufficient level of archaeological investigation as required by NPPF Section 16, paragraph 194 to assist the local planning authority in understanding the heritage impacts of the scheme and thereby inform a balanced planning decision, as required by NPPF paras. 194, 195 and 203. The proposal is therefore in conflict with policy CS14 in the Core Strategy, and with Policy EV8 of the draft Charnwood Local Plan 2021-37.
4	<del>Based upon the latest formal consultation response from the Local Highway Authority, dated 7th January 2023, the proposal has not demonstrated, to the satisfaction of the Local Highway Authority, that the access to the development is safe, and that the downstream impact of traffic generated by this proposal has been adequately considered, and the identified impacts mitigated appropriately. The proposal is therefore in conflict with the guidance in the Design Manual for</del>

	<del>Roads and Bridges. It is therefore in conflict with Policy CS2 in the Core Strategy and Policy DS5 in the emerging local plan, in respect of access arrangements.</del>
5	Planning obligations relevant to the proposal have not been agreed with Leicestershire County Council in respect of Highways and sustainable travel. The proposal is therefore in conflict with Policies CS17 and CS24 in the Core Strategy, and CC5 in the emerging local plan. At the date of writing policies INF1 and INF2 of the ELP have limited weight, but the proposal, without agreement between the applicant and LCC on contributions and obligations, is in conflict with these policies.
6	The development creates demand for open space, education provision and healthcare services which cannot be met by existing services. Additionally there is a need to secure affordable housing and an appropriate mix of type tenure and size of home in order to ensure that the proposal complies with development plan policy CS3. These matters would normally be secured by way of a Section 106 Legal Agreement but this has not at this time been provided. Accordingly the development fails to comply with policies CS3 and CS24 of the Development Plan and would lead to significant and demonstrable harm which would outweigh the benefits of the scheme.

2.22. In addition, the Plans Committee also resolved to approve Recommendation B in the Officer's Report which stated at paragraph 11.2 (CD4.01):

*'That delegated authority be given to the Head of Planning and Growth to respond to any changed circumstances in the context of the non-determination planning appeal which might alter the council's position. This authority would extend to whether to withdraw some or all reasons for refusal. It would also authorise him to agree the terms of a S106 agreement and planning conditions, which will be required by the Planning Inspectorate, regardless of the recommended decision'.*

## Delegated Decision

2.23. On 12<sup>th</sup> September 2023 the Council published a delegated decision by the Head of Planning and Growth (CD4.04) which withdrew all of the Reasons for Refusal in relation to the appeal site, which the Plans Committee resolved to adopt as being the Council's position at the forthcoming planning appeal.

2.24. The delegated decision report noted:

*'Now that the Council's planning and legal officers have had an opportunity to consider that Highway Authority response, it is the considered opinion of the Head of Planning and Growth that the Planning Authority should withdraw all of the proposed reasons for refusal of planning permission.*

2.25. The report stated that differences remain between the parties about the necessary planning conditions and about obligations, which will be resolved by the Planning Inspectorate after Inquiry.

## CIL Compliance Statement



- 2.26. The Highways Response received on the day of Plans Committee (CD3.26) advised that the impacts of the development on highway safety would not be unacceptable, and when considered cumulatively with other developments, the impacts on the road network would not be severe. The response stated that based on the information provided, the development therefore does not conflict with paragraph 111 of the National Planning Policy Framework (2021), subject to the conditions and/or planning obligations outlined in this report.
- 2.27. The conditions and planning obligations outlined in the Highway Authority response were the subject of further discussion between the Council, Highway Authority and Appellant, in relation to the CIL compliance of the requirements.
- 2.28. The required conditions and planning obligations included:
- a contribution under the Interim Charnwood Transport Contribution Strategy of £2,445,323.71 to contribute towards mitigating the wider impacts of the development on the highway and transport network within Charnwood Borough, which otherwise cumulatively with other developments would be severe as identified through evidence prepared by Charnwood Borough Council to underpin its Local Plan;
  - the implementation of offsite junction improvements at the Fosse Way – High Street junction, pre- occupation; and
  - a contribution of £7,500 was also required towards the TRO for removal of the existing demarcated on-street parking provision on the southeast bound and northwest bound carriageway on Melton Road in order to facilitate the junction improvements.
- 2.29. Further discussions between the parties culminated in Leicestershire County Council revising the requirements and submitting a CIL Compliance Statement to the appeal (CD9.02) on 15<sup>th</sup> September and a further update (CD9.06) on 4<sup>th</sup> October 2023. The statement removes the requirements set out in paragraph 2.26 of the Highway Authority response (CD3.26) and instead requires a proportional contribution of £263,991.00, towards Local Highway Mitigation to mitigate the impacts of the development on the local road network in Syston.
- 2.30. The Council's response to the Leicestershire County Council CIL Compliance Statement (CD9.07) confirms that:
- It is the opinion of Charnwood Borough Council that the planning obligations requested by Leicestershire County Council in their statement of justification dated 4th October 2023, in respect of the "local highway mitigation" are consistent with the limitations on the use of planning obligations described in Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended).*

### 3. Main Issues

3.1. My evidence seeks to address the Main Issues of planning policy, CIL compliance of the local highway mitigation and planning balance.

3.2. I deal with this issue as follows:

- Summary of matters agreed in the Statements of Common Ground.
- Development Plan Policies.
- Other Material Considerations:
  - National Planning Policy Framework ('the Framework');
  - Housing supply and the tilted balance; and
  - Emerging Local Plan.
- Section 106 and Conditions.
- Interested Parties submissions.
- The Planning Balance including the benefits and adverse impacts.

## 4. Statement of Common Ground

4.1. Two Statements of Common Ground have been submitted as part of this appeal. The first was entered into by the Appellant and the Council on 20<sup>th</sup> September 2023 (CD9.04) and the second was entered into by the Appellant and the Council in October 2023 and submitted alongside this Proof of Evidence (CD9.08).

4.2. The key issues agreed:

- The final list of submitted plans.
- The relevant Development Plan policies.
- The relevant material considerations.
- The Council is unable to demonstrate a five year housing land supply.
- The tilted balance set out in the Framework's presumption in favour of sustainable development at paragraph 11 (d) (ii) is engaged on two counts. Firstly, as some of the most important policies with respect to the supply of housing, and relevant to the appeal, are out of date. Secondly, the Council is unable to demonstrate a five-year supply of deliverable housing land.
- The emerging Local Plan allocates the appeal site for 195 homes under Draft Policy DS3, reference HA3.
- Syston is a sustainable Service Centre on the edge of the Leicester Urban Area.
- The existing facilities and services available within Syston, are located within walking distance of the appeal site.
- The proposed access arrangement shown in Drawing 20060-02 Rev F (CD8.02) will provide safe and suitable access to the site.
- A Deed of Dedication will be secured through the Section 106 to safeguard the land required to provide a design compliant roundabout junction in the future to serve the appeal site and proposed strategic allocation HA1 in the emerging Local Plan, to the south of the site.
- The County are no longer pursuing the request for a £2,445,323.71 contribution under the Interim Charnwood Transport Contribution Strategy set out in their final response dated 17th August 2023.
- A contribution of £263,991.00 to be secured through the Section 106 towards Local Highway Mitigation to mitigate the impacts of the development on the local road network in Syston.
- The site is not a 'valued landscape' for the purposes of Paragraph 174 of the Framework. Nor is the site subject of any national or local landscape designations. The site is not unique or remarkable for landscape purposes.



- The site is capable of being developed with suitable ecological mitigation and enhancement.
- The proposed development is acceptable with respect to flooding and drainage considerations.
- The proposed development does not fall within the setting of any heritage asset and trail trenching has confirmed that the necessary archaeological work can be secured through condition.
- There will be no impacts in respect of land contamination.

## 5. Development Plan

- 5.1. Section 38(6) of the Planning and Compulsory Purchase Act 2004 (PCPA) requires applications for planning permission to be determined in accordance with the development plan unless material considerations indicate otherwise.
- 5.2. The development plan for the purposes of this appeal comprises:
- Charnwood Local Plan Core Strategy ('the Core Strategy'), adopted in 2015, which covers the period from 2011 to 2028 (CD5.03).
  - Saved policies of the Borough of Charnwood Local Plan ('the saved Local Plan policies'), adopted in 2004, which covers the period 1991 to 2006 with selected policies saved in 2007 (CD5.01 and CD5.02).
  - Leicestershire Mineral and Waste Local Plan, adopted in 2019, which covers the period to 2031 (CD5.04).

### Most Important Policies

- 5.3. The most important policies in the determination of this appeal are:
- Saved Policy ST/2: Limits to Development
  - Saved Policy CT/1: General Principles for Areas of Countryside, Green Wedge and Local Separation
  - Saved Policy CT/2: Development in the Countryside
  - Core Strategy Policy CS1: Development Strategy
  - Core Strategy Policy CS3: Strategic Housing Needs
  - Core Strategy Policy CS17: Sustainable Travel
  - Core Strategy Policy CS18: The Local and Strategic Road Network

### Saved Local Plan Countryside Policies ST/2, C T /1 and CT/2

- 5.4. The Borough of Charnwood Local Plan saved policies identify the appeal site as outside the limits to development of Syston, within the area designated as Countryside. These policies seek to safeguard the Countryside beyond the settlement boundaries and resist development.
- 5.5. These boundaries were however identified in the context of the land needed to meet historic housing requirements, identified in the Leicester and Leicestershire Structure Plan for the period 1991-2006. At that time Charnwood's housing requirement was 8,350 dwellings for the period 1991 and 2006, equivalent to 557 homes a year (CD5.01, paragraph 4.14).

- 5.6. This plan period ended 17 years ago and the current local housing need figure for Charnwood, using the standard methodology, is 1,105 dwellings a year. This is a 98% increase. The adopted limits to development are significantly out of date and fail to respond to up to date housing needs.
- 5.7. The limits to development, adopted in 2004 also no longer reflect the position on the ground. There have been substantial levels of development permitted and delivered outside the limits over the past 19 years.
- 5.8. In Syston alone there have been two additional major housing developments permitted outside the limits to development, delivering a total of 250 homes:
- Land south of Barkby Road, 149 dwellings (application reference: P/13/O925/2)
  - Land off Millstone Lane, 101 dwellings (application reference: P/14/O393/2)
- 5.9. This is in addition to the 420 homes allocated on two sites in the Borough of Charnwood Local Plan for Syston (Policy H/2, CD5.01 and CD5.02).
- 5.10. The proposed development is a breach of the Borough of Charnwood Countryside saved policies; however these policies no longer reflect the position on the ground or take account of an up-to-date assessment of need and the Council cannot demonstrate a five year supply of deliverable housing land. The Borough of Charnwood Local Plan saved policies ST/2, C T /1 and CT/2 are therefore substantially out of date.
- 5.11. The weight that can be attributed to these out of date policies is limited as they are not consistent with paragraph 174 of the Framework, which sets out a more flexible approach to development in the countryside.

## **Core Strategy Policy CS1: Development Strategy**

### **Sustainable Location**

- 5.12. The Core Strategy Policy CS1 sets out the development strategy for the Borough between 2011–2028. The policy identifies Syston as one of six sustainable Service Centres, the most sustainable settlements outside the urban areas of Leicester, Loughborough and Shepshed.
- 5.13. The Core Strategy supporting text confirms that the Service Centres are all home to at least 3,000 people and the good range of services and facilities and good transport links allow them to provide for the daily needs of the people living there as well as supporting nearby communities (paragraph 4.44, CD5.03).

### **Housing Provision in Service Centres**

- 5.14. Policy CS1 sets out to positively plan for the role of Service Centres by providing for at least 3,000 new homes and approximately 7 hectares of employment land within and adjoining Service Centres between 2011 and 2028 and responding positively to sustainable development which contributes towards meeting our development needs, supports the strategic vision and makes effective use of land.
- 5.15. The policy importantly refers to at least 3,000 new homes and the supporting text explains that before the plan was adopted there were commitments for around 3,500 homes in

Service Centres (paragraph 4.45, CD5.03), which means the minimum policy figure had already been exceeded before the plan was adopted.

- 5.16. The supporting text goes on to suggest that the commitments in the Service Centres were sufficient to meet the levels of planned provision and therefore the expectation was that only small-scale windfall developments within the settlement boundaries would be needed between 2014 and 2028. The supporting text also sets out that greenfield locations may be appropriate where there is a recognised local housing and insufficient capacity within built-up areas to meet that need (paragraph 4.46, CD5.03).
- 5.17. In reality, the commitments at the point of adoption of the Core Strategy have not been sufficient to meet the planned levels of provision. There have been two extended periods when the Council has been unable to demonstrate a five-year supply: immediately following the adoption of the Core Strategy due to the slow delivery of the three planned Sustainable Urban Extensions and since November 2020 when the Core Strategy became five years old, and the supply was measured against the latest local housing need figure from the standard method.
- 5.18. The Core Strategy plan period comes to an end in the next five years and in total 46 homes were recorded as complete at the three Sustainable Urban Extensions in April 2023 (Five Year Supply Sites List CD10.02). Based on the current housing trajectory in the Authority Monitoring Report (page 19 CD.10.5) only a third of the homes included in the Core Strategy housing trajectory for the plan period (Appendix 1, CD5.03) at the three Sustainable Urban Extensions will have been delivered (2,335 homes of a total of 7,035). Despite this, strong delivery rates have been achieved in the Borough during the plan period, in large part due to planning permissions being approved for development outside settlement limits, including those which have contributed to further exceeding the minimum Core Strategy housing figures for the Service Centres.
- 5.19. The Authority Monitoring Report shows that in total 3,760 homes have completed in the six Service Centres between the start of the plan period in 2011 and the end of March 2022 (CD.1005), with a further 893 homes projected to be completed by the end of the plan period in 2028, a total of 4,653 homes. This reflects the sustainable nature of these settlements meaning applications have continued to be approved to meet on-going housing needs.

### **Housing Requirement**

- 5.20. Policy CS1 is set within the context of the Core Strategy making provision for at least 13,940 homes between 2011 and 2028, the equivalent of 820 homes a year over 17 years. This housing requirement is derived from the Leicester and Leicestershire Strategic Housing Market Assessment published in 2014 (CD5.03, paragraph 4.2) which evidenced the need for homes across the market area to 2031. This assessment identified an Objectively Assessed Need for 820 homes a year in Charnwood to meet demographic needs and accommodate new jobs and economic growth.
- 5.21. This assessment of housing needs was updated in 2017 by the Leicester & Leicestershire Housing and Economic Development Needs Assessment which identified an Objectively Assessed Need for 994 homes a year between 2011-2036. Then in 2018 the Government introduced the Standard Methodology to replace the need to prepare Strategic Housing Market Assessments. The latest Local Housing Need figure from the standard method for Charnwood Borough is 1,105 homes per annum (taking account of the latest affordability

ratio data published in March 2023). This is an additional 285 homes per annum compared to the adopted Core Strategy target of 820 homes, a 35% increase.

- 5.22. The Pre-Submission Draft Local Plan is based on an earlier Local Housing Need figure of 1,111 new homes a year for the period 2021–2037, reflecting the standard method figure at the point of submission. The Examination in Public has also considered the issue of unmet need from Leicester, with hearings in June 2022 paused to allow participants to make representations on this matter. Hearing sessions were held in October 2022 to specifically examine this issue and consider the apportionment of 78 homes a year of Leicester’s unmet need to Charnwood in the Leicester and Leicestershire Statement of Common Ground (CD10.03).
- 5.23. The Inspectors concluded in a Post Hearing Session Letter (CD10.07) that the minimum local housing need figure to 2036 for Charnwood is 1,189 homes a year. This is 1,111 homes to address Local Housing Need plus 78 homes a year to meet the unmet need from Leicester. This minimum requirement informing the emerging Local Plan is an additional 369 homes per annum compared to the adopted Core Strategy target of 820 homes, a 45% increase.

### **Settlement Hierarchy**

- 5.24. A Settlement Hierarchy Assessment undertaken in 2020 (CD10.06) to support the emerging Charnwood Local Plan highlights that Syston functions as part of the Leicester Urban Area and is distinct from the other Service Centres due to the level of choice of services and facilities. The evidence re-categorises Syston as an Urban Settlement alongside Shepshed, Thurmaston and Birstall. This settled evidence moves it up the settlement hierarchy to the second rung, below only Loughborough as the main urban area.

### **Development Strategy Compliance**

- 5.25. The proposed development is in accordance with the development strategy set out in Policy CS1. It will deliver development in a sustainable location, contributing towards meeting continuing development needs and supporting the strategic vision of the Core Strategy by delivering growth where there is a choice to walk and cycle and access jobs. The site is located in a sustainable location, with the existing facilities and services available within Syston within walking distance of the appeal site.
- 5.26. Core Strategy Policy CS1 is out of date due to the lack of five year supply and also because the housing requirement does not reflect up to date assessments of need, the strategy focuses on three Sustainable Urban Extensions which have been slow to deliver and the settlement hierarchy does not reflect an up-to-date assessment of the role and function of Syston. The reasons the policy is out of date further supports the principle of development on the appeal site which can meet on-going and immediate housing needs within a sustainable location.
- 5.27. Policy CS1 is however broadly consistent with the Framework as it seeks to direct the majority of development to the most sustainable locations by setting out a settlement hierarchy. This policy can therefore be afforded significant weight.

## **Core Strategy Policy CS3: Strategic Housing Needs**



- 5.28. Core Strategy Policy CS3 seeks an appropriate mix of homes having regard to identified housing needs. It sets out an affordable housing target based on the 2014 Strategic Housing Market Assessment and a viability assessment prepared before the adoption of the Core Strategy.
- 5.29. The Core Strategy supporting text sets out that between 2011 and 2031 the estimated number of affordable homes required to address outstanding and newly arising needs is 180 houses a year (paragraph 5.13, CD5.03). The Core Strategy therefore includes a target of 3,060 new affordable homes to be delivered with our partners in Charnwood between 2011 and 2028 (paragraph 5.18, CD5.03).
- 5.30. The latest Authority Monitoring Report (AMR) published in December 2022 (CD10.05) shows that a total of 1,898 affordable homes had been completed by 31st March 2022. This leaves 1,162 affordable homes to provide by 2028, an average 194 affordable homes a year. The AMR notes this means that supply remains on track, although just below expected trajectory.
- 5.31. The most recent update on affordable housing needs in Charnwood is provided by the Leicester and Leicestershire Housing and Economic Needs Assessment published in 2022 (CD10.01, Table 9.40). This identifies a need for 455 affordable rented homes a year in Charnwood and notes that there is an acute need for rented affordable housing in all parts of the County of Leicestershire (para 9.119, CD10.01). This is significantly higher than the current target of 180 affordable homes a year, which also includes intermediate homes.
- 5.32. The assessment suggests a need for 372 affordable home ownership homes, which is a total of 827 homes a year, but the study notes at paragraph 9.119 (CD10.01) that this is the highest possible requirement for Affordable Home Ownership and those in need may choose to purchase the cheapest market homes, be unable able to obtain mortgages or may wish to privately rent.
- 5.33. This new assessment of need will be used to inform the emerging Local Plan, alongside updated viability assessments. Whilst this new evidence means the Core Strategy supporting text is significantly out of date, the purpose of the policy is reinforced by the new evidence.
- 5.34. The appeal site will deliver a policy compliant 30% affordable housing, a total of 59 homes. This will include 39 affordable rented homes and 20 shared ownership or First Homes. The mix of affordable homes requested by the Council's Housing Officer has been reflected in the draft Section 106.
- 5.35. Policy CS3 seeks an appropriate mix of house types, tenure and size of homes and is therefore consistent with the Framework and should therefore be afforded significant weight.

## **Core Strategy Transport Policies CS17 and CS18**

- 5.36. Core Strategy Policies CS17: Sustainable Travel and CS18: The Local and Strategic Road Network aim to deliver sustainable travel improvements and require network improvements as identified by appropriate Transport Assessments.

- 5.37. The appeal proposals are consistent with these policies as presented in the evidence of Mr Tucker.
- 5.38. The site is in walking and cycling distance of Syston Town Centre which has a range and choice of services and facilities. The Merton Primary School is within a 15-minute walk from the site entrance. A regular and frequent bus service can also be accessed from Melton Road, within 15 minutes walk, providing access to Leicester, Melton Mowbray and East Goscote.
- 5.39. The nearest bus stops are just over 600m from the centre of the site and provide access to the Centrebus 100, which provide five buses a day on weekdays and four buses on a Saturday to Melton Mowbray. Policy CS17 requires new or enhanced bus services where the new development is more than 400m from an existing bus stop. A contribution is to be secured which can be used to improve the bus service through the Section 106 agreement.
- 5.40. Both policies are consistent with the Framework as they seek to ensure new development does not result in an unacceptable impact on highway safety, or a severe residual cumulative impact on the road network (paragraph 111 of the Framework) and to promote sustainable travel choices (paragraph 112 of the Framework). Policies CS17 and CS18 can therefore be afforded significant weight.

## **Other Development Plan Policies**

- 5.41. Other policies in the development plan are relevant to the determination of this appeal, as agreed in the Statement of Common Ground [CD9.04], and I have assessed the appeal proposals against each of these policies below.

### **Policy CS2: High Quality Design & Saved Policy EV/1: Design**

- 5.42. Policy CS2 requires new developments to respect and enhance the character of the area and saved policy EV/1 supports development that is of a design, scale, layout and mass compatible with the locality, and which uses materials appropriate to the locality. These policies also seek to protect the amenity of existing and future residents.
- 5.43. As this is an outline application, the housing design principles will be considered and determined at reserved matters stage, however the application was supported by a Design and Access Statement (CD1.06) and a Concept Masterplan (CD8.03) has been prepared to demonstrate how development can respond to the landscape and key features of the site, provide areas of open space, and achieve a permeable development which makes the most of the existing Public Right of Way which passes through the site.
- 5.44. A key part of the vision for the site, which is set out in the Design and Access Statement, is designing a development which promotes active travel and provides access to green space. The Concept Masterplan shows that the appeal site can integrate with the existing settlement and respond to existing features within the site such as the mature oak tree, existing hedgerows, and the public right of way.
- 5.45. The proposed development therefore accords with Policies CS2 and EV/1.

### **Policy CS11: Landscape and Countryside**

- 5.46. A Landscape and Visual Appraisal (CD1.19) supports the appeal proposal. The appraisal finds that the site does not lie within or form part of any landscape designation, nor does it lie within or form part of any Green Wedge or Local Separation Area designation.
- 5.47. The appraisal concludes that there will be inevitable localised effects on landscape but that the proposed development is considered to be entirely consistent with the settlement edge landscape character.
- 5.48. The proposed development would conserve and enhance existing trees and hedgerows where possible and introduce substantial new planting to reduce the impact of the urban edge on the surrounding countryside. The appraisal therefore finds that:

*'development of the site would result in moderate/minor adverse effects on the local landscape context, and an overall negligible effect upon the wider Wreake Valley LCA.'* (paragraph 7.5 CD1.19)'

- 5.49. In terms of visual amenity, this appraisal finds that:

*'the effects of the proposed development would be localised due to the level of physical containment by Syston to the west, undulating topography and Queniborough to the north, and high ground to the east and south beyond Barkby Lane. Visibility of the site is further restricted by the strongly treed/wooded character of the landscape to the east of Queniborough Road and around Barkby. The proposed development would merge into the modern and recently extended eastern urban edge of Syston, which already exerts an influence on the surrounding landscape.'* (paragraph 7.8–7.9, CD1.19)

- 5.50. The limited harm identified and the proposed landscape strategy for the site mean the proposed development accords with Policy CS11.

### **Policy CS13: Biodiversity and Geodiversity**

- 5.51. An Ecological Appraisal (CD1.07) supports the appeal proposal and this finds that the site comprises two arable fields, bounded by species-poor, heavily managed hedgerows and wet and dry ditches (paragraph 1.3, CD1.07). There are no overriding ecological interests that would preclude development and no statutory designations within the application site, and none nearby that would be materially affected by the proposals.

- 5.52. The appraisal finds that:

*'The habitats identified on-site predominantly comprise those of low (Site-level or less) intrinsic ecological importance, which presents an opportunity to enhance the biodiversity value of the site, as a result of the proposed development. However...surveys have identified some valuable habitat features and protected species that will need to be respected and embedded into any future Reserved Matters applications.'* (paragraph 5.2, CD1.07).

- 5.53. To respond to these local ecologically important features, the majority of the hedgerows/ditches and the mature trees are to be retained and provided with appropriate buffers. A pre-commencement check for badgers and sensitive clearance methodologies in relation to nesting birds and reptiles are recommended and are to be secured through condition. A condition for an Ecological Construction Method Statement (ECMS) will ensure new planting, creation of wildlife-friendly SuDS features and sensitive lighting scheme and

enhancement measures (i.e. bat and bird boxes and extensive new planting) are provided to ensure that biodiversity value and opportunities for a range of protected and notable species are increased as a result of the proposed development (paragraph S9, CD1.07).

- 5.54. A Biodiversity Net Gain Assessment Technical Note (CD2.03) was also prepared to consider the implications of the need to remove and replace the hedgerow to the south of the site to accommodate a footpath on the roadside, which was requested by the Highway Authority. This provides a baseline assessment of the site and the anticipated net gain in biodiversity that could be achieved based on the Concept Masterplan and landscape strategy. Ecological mitigation would be considered as part of a detailed reserved matters application, and the assessment identified the potential for 14.94% net gain in habitats and 48.18% net gain in hedgerows.
- 5.55. Taking into account the proposed conditions, the appeal proposals accord with Policy CS13 and comply with legislation and planning policy at all levels in relation to nature conservation. It also meets the upcoming national requirement and proposed emerging local Plan requirement for 10% net gain from development sites.

#### **Policy CS14: Heritage**

- 5.56. An Archaeological and Heritage Assessment (CD1.11) supports the appeal proposal. This assessment identified no designated or non-designated heritage assets on, or within, the application site itself. It also confirmed that the proposed development will not result in an adverse impact on, harm to, or loss of significance from any of the identified designated heritage assets.
- 5.57. Further archaeological assessment was required by a new Conservation Officer at the Council, following the submission of the appeal. Trial trenching has been undertaken during September and an Archaeological Evaluation Report (CD2.19) was submitted to the Council on 6<sup>th</sup> October 2023 which confirmed that there are no features on site that would require to be preserved in situ or designed around.
- 5.58. A final report was submitted to the Council on 23<sup>rd</sup> October 2023 (CD2.20) which confirms that 33 trenches were excavated throughout the Site, of which only three trenches contained features of archaeological interest. The report concludes that the heritage interest identified can be properly safeguarded by attaching a condition to any consent granted requiring the archaeological excavation and recording (plus off-site assessment, analysis, reporting and archiving). The results from the rest of the site indicate only agricultural furrows and drainage features are present and therefore no further archaeological work outside of the potential mitigation area is necessary.
- 5.59. The archaeological interest identified was of local interest and can be mitigated through a condition for a programme of work ahead of development commencing, such a condition is proposed. The appeal proposals therefore accord with Policy CS14.

#### **Policy CS15: Open Spaces, Sports and Recreation**

- 5.60. Policy CS15 requiring new developments to meet the standards set out in the Open Spaces Strategy.
- 5.61. The Concept Masterplan illustrates how accessible multi-functional green space, natural and semi-natural open space and provision for children's play can be met on-site and the

draft Section 106 outlines the elements of open space, sport and recreation which will be met through off site contributions, in line with the request from the Council's Open Space Officer.

- 5.62. The appeal proposals accord with Policy CS15 and the findings of the Council's Open Space Assessment and Playing Pitch Strategy.

#### **Policy CS16: Sustainable Construction and Energy**

- 5.63. Policy CS16 encourages sustainable design and construction and the provision of renewable energy.

- 5.64. As this is an outline application, the details of sustainable measures would be considered and secured at reserved matters stage. The Design and Access Statement (CD1.06) sets out sustainable construction measures which could be adopted in the design of buildings, engineering and construction of the development.

- 5.65. The proposed development therefore accords with Policy CS16.

#### **Policy CS24: Delivering Infrastructure**

- 5.66. Policy CS24 seeks to ensure that development contributes to the reasonable costs of on site and, where appropriate off site infrastructure arising from development.

- 5.67. The draft Section 106 secures this and ensures the proposed development accords with Policy CS24.

#### **Saved Policy TR/18 Parking Provision in New Development**

- 5.68. Policy TR/18 sets out that planning permission will not be granted for development unless off-street parking for vehicles, including cycles, and servicing arrangements are included to secure highway safety and minimise harm to visual and local amenities.

- 5.69. As this is an outline application, the details of parking provision would be considered and secured at reserved matters stage but there are no constraints to achieving this. The development proposal therefore accord with Policy TR/18.

#### **Policy M11 Safeguarding of Mineral Resources**

- 5.70. Policy M11 seeks to safeguard mineral resources including sand, gravel, limestone, igneous rock, surface coal, fireclay, brick clay and gypsum. The policy requires that planning applications for non-mineral development within a Mineral Safeguarding Area should be accompanied by a Mineral Assessment of the effect of the proposed development on the mineral resource beneath or adjacent to it.

- 5.71. The site is within a Minerals Safeguarding Area and the application was not supported by a Mineral Assessment. Whilst Leicestershire County Council did not raise an objection to the application, the Council noted in the Officer Report (paragraph 9.92, CD4.01) that the County Council had assessed the site as an allocated site, whereas it is currently still a proposed allocation. As a result, the site does not meet the test of the policy which exempts sites allocated in an adopted plan on the basis that unnecessary mineral sterilisation is considered as part of the plan preparation and site selection process.

5.72. The appeal proposals do not therefore accord with Policy M11. I address this further below.

### **Development Plan Compliance**

5.73. The proposed development complies with some of the most important Development Plan policies including CS1: Development Strategy, CS3: Strategic Housing Needs and the transport policies. The proposed development does not comply with the Borough of Charnwood Local Plan Saved Policies, these policies identify the land as Countryside and restrict new development. The saved policies are, however, substantially out of date.

5.74. There are also other material considerations which indicate that this development should be permitted. The key material considerations are the provisions of the Framework, the presumption in favour of sustainable development and the emerging and advanced Draft Local Plan which proposes to allocate this site for 195 homes.

## 6. Other Material Considerations

### National Planning Policy Framework

- 6.1. I will address the implications of the NPPF in respect of Paragraph 11 and the presumption in favour of sustainable development below and I address the economic, social and environmental objectives to achieve sustainable development in my conclusions.
- 6.2. In December 2022 the Government undertook consultation on proposed revisions to the NPPF. On 5 September 2023 the Secretary of State for the Department for Levelling Up, Housing and Communities issued a written ministerial statement to update policy on planning for onshore wind development in England.
- 6.3. The Government's formal response to the wider proposals in the National Planning Policy Framework consultation are anticipated later this autumn. Given the significant level of objections and the proposed reforms being scrutinised and criticised by the House of Commons Levelling Up, Housing and Communities Committee, I attach no weight to the proposed changes at this stage.
- 6.4. Should a revised version of the NPPF be published before this appeal is determined, that would be material and I reserve the right to comment further in that scenario.

### Housing Land Supply and Tilted Balance

- 6.5. The first key material consideration which indicates that this development should be permitted is the lack of housing land supply in the Borough and therefore the engagement of the tilted balance.
- 6.6. The Charnwood Five Year Supply Statement published in June 2023 for the period 1 April 2023 – 31 March 2028 (CD10.02) identifies that the Council is only able to demonstrate 4.27 years of supply.
- 6.7. The large scale of housing need in Charnwood means this is a substantial shortfall of 1,161 homes over the next five years 2023-2028.
- 6.8. In accordance with Footnote 8 of the Framework, which states that a lack of five year supply renders the most important policies automatically out of date, the 'tilted balance' set out in paragraph 11 (d) of the Framework is engaged.
- 6.9. The current Development Plan policies are based on an historic assessment of need that cannot deliver the scale of development required.
- 6.10. This does not change the statutory status of the Development Plan as the starting point for decision making, but the weight to be given to the most important policies is a matter for the decision taker and the decision taker should however grant planning permission unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits.

### Emerging Development Plan

- 6.11. The second key material consideration which indicates that this development should be permitted is the emerging Local Plan.

#### **Submitted Draft Local Plan**

- 6.12. The Council published the Regulation 19 Pre-Submission Draft Local Plan 2021 – 2037 for consultation in July 2021, and consultation took place until 23rd August 2021 (CD7.01 and CD7.02).
- 6.13. Once adopted, the new Local Plan will form part of the development plan and replace the Core Strategy (CD5.03) and the saved policies of the Local Plan (CD5.01 and 5.02). The relevant policies from the emerging Local Plan are set out below.

#### Draft Policy DS1: Development Strategy

- 6.14. Draft Policy DS1: Development Strategy sets out the overall spatial strategy of urban concentration and intensification, with some limited dispersal to other areas of the Borough. The most environmentally sensitive areas are to be protected, and the proposed pattern of development will provide a balance between homes, jobs and facilities. The draft policy identifies Syston as part of the Urban Area of Leicester, moving the settlement up the hierarchy from the current Service Centre status.
- 6.15. A housing requirement of at least 17,776 homes between 2021 and 2037 is set out with provision made for at least 19,461 new homes. Of these 7,358 homes are directed to the Leicester Urban Area (Birstall, Syston and Thurmaston), a total of 38%, with 31% directed to Loughborough and the remaining to Service Centres and Other Settlements.

#### Draft Policy DS3: Housing Allocations

- 6.16. Draft Policy DS3: Housing Allocations allocates the appeal site, land north of Barkby Road, Syston for 195 dwellings, under Draft Policy Reference HA3. The policy supports development that is cohesive and integrated with other allocations set out in this plan including in relation to the provision of new schools and other infrastructure and in accordance with the site-specific requirements set out.
- 6.17. Draft Policy DS3 (HA3) sets out the site-specific requirement for land north of Barkby Road and confirms that development proposals at site HA3 will be supported, where they are accompanied by a Flood Risk Assessment which responds to the evidence of flood risk on the site and demonstrates how mitigation of those risks, including securing appropriate site access arrangements, can be satisfactorily achieved so as to meet the Exception Test. It also sets out that development will be supported where a contribution to the reasonable costs of the provision of a new 2 form entry primary school located at allocation site HA1: Land South East of Syston.
- 6.18. The proposed development is fully policy compliant with the emerging draft allocation. The application was supported by a Flood Risk Assessment and Drainage Strategy which demonstrates how the requirements of Policy DS3 (HA3) are satisfied and there are no technical objections from the Lead Local Flood Authority. Contributions to primary education have also been agreed with the Local Education Authority with flexibility built into the request for this to contribute towards the construction of a new school.



6.19. This appeal site was submitted in support of the emerging Local Plan. The latest emerging Local Plan Housing Trajectory prepared to support examination hearings and published in September 2023 (CD10.12) includes the site and shows it delivering a total of 80 dwellings in the five years between 2023 and 2028. It is part of the Council's long term plan for the Borough and anticipated to contribute to housing supply within the next five years.

#### Other Relevant Policies

6.20. Draft Policy DS5: High Quality Design requires new developments to make a positive contribution to Charnwood, by responding positively to the local distinctiveness of the area and providing attractive and functional places where people will want to live, work and visit. Six criteria are set out in the policy to achieve this. The proposed development is consistent with these criteria and complies with this emerging policy.

6.21. Draft Policy EV1: Landscape seeks to carefully manage development to protect the Borough's distinctive landscape by requiring new development to protect landscape character and to reinforce sense of place and local distinctiveness; and maintain the separate identities of our towns and villages. The proposed development complies with this emerging policy.

6.22. Draft Policy EV6: Conserving and Enhancing Biodiversity and Geodiversity seeks to conserve, restore and enhance our natural environment for its own value and the contribution it makes to our communities and economy and ensure it is resilient to current and future pressures. The draft policy seeks 10% biodiversity net gain which is achievable on this site. The proposed development, subject to the proposed conditions, complies with this emerging policy.

6.23. Draft Policy EV8: Heritage seeks to conserve and enhance our historic environment including our heritage assets, including archaeological assets, for their own value and the contribution they make to the community, environment and economy. The proposed development, subject to the proposed conditions, complies with this emerging policy.

6.24. Draft Policy EV9: Open Spaces, Sport and Recreation looks to meet needs including through the provision of on-site facilities in accordance with standards, and off site provision where on site provision is not possible or desirable. The proposed development complies with this policy, with facilities to be secured through a Section 106.

6.25. Draft Policy CC5: Sustainable Transport supports sustainable patterns of development which will minimise the need to travel and seek to support a shift from travel by private car to walking, cycling and public transport. The proposed development is in a sustainable location and is informed by a robust transport assessment and travel plan and complies with this emerging policy.

6.26. Draft Policy INF1: Infrastructure and Developer Contributions supports development that is supported by robust evidence of the infrastructure needed to mitigate impacts and support sustainable development and contributes to the reasonable costs of on site, and where appropriate off site, infrastructure needed to mitigate the impacts of the development. The proposed development is supported by a Section 106 agreement and complies with this emerging policy.

6.27. Draft Policy INF2: Local and Strategic Road Network supports development that is supported by a robust transport assessment of the impact of the development on the road

network, including any cumulative impacts and provides the necessary infrastructure to mitigate the impacts of the development with infrastructure which supports sustainable transport choices prioritised, contributing to the reasonable costs of measures required to mitigate the cumulative impacts of the development strategy upon the local and strategic road network. The proposed development is supported by a Transport Assessment and Section 106 agreement and complies with this emerging policy.

### **Local Plan Examination**

- 6.28. Charnwood Draft Local Plan 2021 – 2037 was submitted on 3rd December 2021 for Examination. Hearing sessions commenced on the 28th June 2022 but were adjourned on 29th June with a further hearing sessions on the 25th and 26th October to consider issues of Leicester’s unmet needs. The Examination reconvened sessions between the 7th February and 22nd February 2023 for all remaining matters. A post Examination letter was published by the Inspectors on 23rd May 2023 confirming to the Council what additional work is needed ahead of Main Modification consultation (CD10.08).
- 6.29. On 27th September the Council launched consultation on a number of documents, in line with the Inspectors’ letter, including a Sustainability Appraisal Addendum, Additional Housing Supply Update, updated housing trajectory, Draft Transport Strategy document and Updated Viability Assessment (CD10.09–CD10.17). The consultation ends on 8th November 2023.
- 6.30. The latest Local Development Scheme (CD10.04) set out the Council’s expectation that the Local Plan would be adopted by September 2023, however this was prepared before the February 2023 Hearing Sessions and the post Examination letter from the Inspectors. The Council’s Statement of Case (CD9.03) sets out that adoption will be in March 2024, following further consultation on Main Modifications in November and December 2023.

### **Weight of Emerging Local Plan Policies**

- 6.31. Paragraph 48 of the Framework sets out the weight that can be given to emerging Local Plan policies as a material consideration in determining planning applications.
- 6.32. The plan is at an advanced stage and all the relevant policies are consistent with the Framework, but there are unresolved objections to Draft Policy DS1: Development Strategy and Draft DS3: Housing Allocations, so whilst the Development Strategy is consistent with the policies in the Framework, the weight that can be attributed to these emerging policies is limited at this stage. The same is true to Draft Policies INF1: Infrastructure and Developer Contributions and INF2: Local and Strategic Road Network.
- 6.33. The other relevant draft policies can be attributed moderate weight as there are no unresolved objections to these policies and they are consistent with the Framework. This is consistent with the view of the Council as set out in their Statement of Case, with the exception that they include reference to the emerging Countryside Policy C1, which is not relevant to this appeal as this site is a draft allocation in the emerging plan.

## 7. S106 Obligations and Conditions

### Section 106 Obligations

- 7.1. A draft Section 106 agreement will be submitted between the appellant and landowner, and the Borough Council and Leicestershire County Council, the latest draft is provided at CD9.09.
- 7.2. The agreement reflects the obligations as set out in the agreed updated Statement of Common Ground (CD9.08). The agreement also includes provision for a Deed of Dedication to dedicate land within the site to the Highway Authority, to safeguard the land required to provide a design compliant roundabout junction in the future to serve the appeal site and proposed strategic allocation HA1: Land South East of Syston in the Draft Local Plan, to the south of the site.
- 7.3. A main issue for this appeal is the CIL compliance of the local highway mitigation contribution. Section 2 of this proof sets out the background to this matter and explains that the Highway Authority have requested a contribution to overcome cumulative impacts of the proposed draft allocated sites HA1 South East Syston, HA2 Barkby Road and the appeal site (draft allocation HA3: Land North of Barkby Road), as set out in Leicestershire County Council's Updated CIL Compliance Statement (CD9.06).
- 7.4. As set out in the Transport Assessment supporting the application (CD1.15), the Appellant's Statement of Case (CD9.01), and the Appellant's Highway Proof of Evidence, the agreed evidence demonstrates that the proposed development does not have an unacceptable impact on highway safety or create a severe impact on the road network.
- 7.5. The Highway Authority have, however, come to the view that when the site is considered cumulatively with other draft allocated sites, the impacts on the road network require local highway mitigation to prevent severe impacts. The Appellant has therefore agreed to pay a proportional contribution, to the local highway mitigation, as set out Mr Tucker's Proof of Evidence.
- 7.6. A proportional contribution would also be sought from adjacent draft allocations HA1 South East Syston to the south of the appeal site and HA2 Barkby Road to the north of the appeal site. HA1 is in the control of the appellant, and there is a Planning Performance Agreement in place with the Council to support the submission of an outline application next year. An independent Design Review Panel took place on 11<sup>th</sup> October 2023 and a Masterplan Framework Document has been prepared to inform the outline application. HA2 is the subject of a live and active detailed planning application registered in July 2022 (planning application reference P/22/O354/2) and it is in the control of another housebuilder, Jelson. The application was resubmitted on 18<sup>th</sup> October to respond to feedback from consultees on a range of matters including in relation to design, housing mix and children's play provision.
- 7.7. The Council and Highway Authority have discussed the CIL compliance of the request, and the Appellant has been party to these discussions and is content with the updated CIL Compliance Statement submitted by Highway Authority (CD9.06) and the requested contribution of £263,991.00 for local highway mitigation, as recorded in the Updated Statement of Common Ground (CD9.08).



- 7.8. This and the other obligations within the draft agreement can be delivered without harming the viability of the proposed development. The Council are understood to be preparing a CIL Compliance Statement.

### **Conditions**

- 7.9. Draft conditions are being discussed between the Appellant and the Council and an update will be provided ahead of the Inquiry opening.

## 8. Interested Parties

- 8.1. There are a number of other matters raised by interested parties.
- 8.2. The application was supported by a full range of evidence addressing these matters including a Transport Assessment, Travel Plan, Planning Statement, Design and Access Statement, Ecological Appraisal and Flood Risk Assessment which was supplemented by an Updated Flood Risk Assessment, Biodiversity Net Gain Assessment Technical Note and a range of additional transport information during the Council's consideration of the application.
- 8.3. The matters raised are addressed in turn below.

### **Residential Amenity**

- 8.4. Ms Lord and Ms Hubbard raise concerns about the overbearing impact of the proposed development and the impact on the views from existing properties.
- 8.5. The proposed development site is located adjacent to existing development to the west, however the existing homes would be separated from the new development by existing and proposed landscaping and open space as shown on the Concept Masterplan (CD8.03).
- 8.6. The Council have not identified any potential for harm to the residential amenity.
- 8.7. This is an outline application, and any future reserved matters application would have to demonstrate how the proposal would not cause any harm to residential amenity in terms of overlooking, overshadowing or overbearing impact.
- 8.8. The Concept Masterplan (CD8.03) and Design and Access Statement (CD1.06) have been informed by consideration of the existing properties to the west of the site and the need to protect the amenity of existing homes whilst ensuring the development is integrated with the existing built form of the settlement.

### **Character and Appearance**

- 8.9. The proposed development is located beyond (but directly adjacent to) the settlement boundary of Syston as defined in the Borough of Charnwood Local Plan. The application was supported by a Landscape and Visual Appraisal which finds that the development would result in limited localised harm to the landscape through the urban development of an existing arable field.
- 8.10. The appraisal concludes that the that development of the site would have limited effects on the local landscape context, and very little effect upon the wider Wreake Valley Local Character Area. In terms of visual amenity, this appraisal finds that the effects of the proposed development would be localised due to the level of physical containment of the site.

### **Coalescence with neighbouring settlements**

- 8.11. The site is not located in an area designated as a Local Area of Separation or Green Wedge, the policy designations used to protect against the coalescence of settlements. The

proposed development is a logical extension of the urban form of Syston and would not compromise the separation of Syston from Queniborough, Barkby or Thurmaston, the neighbouring settlements.

### **Traffic and highway safety**

- 8.12. Ms Lord raises concerns about traffic impacts. The evidence of Mr Tucker deals with impacts on the local road network. He demonstrates that there is a comprehensive (and agreed) evidence base which properly assesses the scheme and demonstrates that there would be no unacceptable impact on highway safety, and no severe residual cumulative impact on the road network.

### **Drainage**

- 8.13. The site is located within Flood Zone 1 being at low risk of fluvial flooding. Ms Hubbard correctly notes that the site does however experience flooding, and this is from surface water flooding, which particularly affects the central area of the site.
- 8.14. A Flood Risk Assessment (CD1.18) undertaken by Travis Baker, peer reviewed by BWB (CD2.04) at the request of the Local Lead Flood Authority confirms that the pluvial flows pose a high flood risk without mitigation. The two assessments shows that the increase in risk of surface water flooding from the development can however be mitigated through a surface water drainage system designed to ensure that flood storage volumes are retained onsite for critical storm events up to the 1 in 100-year return period plus an allowance for climate change. Further design features will ensure surface levels are designed to ensure that flood flows are not directed toward dwellings in the event of a failure within the drainage system and a flood compensation scheme will be incorporated. There will also be the removal of debris and intrusive vegetation from the existing watercourse.
- 8.15. The overall catchment within the site will be contained by a series of four surface water sewer networks, each network leading to an online attenuation basin and then discharged at a restricted flow to greenfield run-off rates.
- 8.16. The Lead Local Flood Authority raised no objections subject to conditions.

### **Capacity of Health Services and Education Facilities**

- 8.17. Mr Lord raises concerns about the impact of the proposed development on schools and health facilities in Syston. The draft Section 106 Agreement (CD9.09) confirms that the proposed contributions will provide for local services and facilities to be improved to accommodate the proposed development's impacts.
- 8.18. This includes a contribution towards of £94,984.03 towards expanding The County Practice and Jubilee Medical Practice to meet the population increase. The NHS Leicester, Leicestershire & Rutland ICB calculated the contribution using the Building Cost Information Service (BCIS) 2022 to indicate the cost of providing additional accommodation for health centres, clinics, and group practice surgeries (CS3.28). In line with the request from the ICB Commissioning Group, the Section 106 includes provision for this to be paid before any homes are occupied.
- 8.19. It also includes the necessary contributions to local schools. The Education Authority consultation response (CD9.06) set out that this development will yield 59 primary aged

children and that taking account of the capacity at The Merton Primary School and other primary schools within a two-mile walking distance from the development there would be an overall deficit of 37 places. Therefore, a partial request for contributions in respect of the primary education sector of £679,172 is to be secured through the Section 106.

### **Ecology and wildlife.**

- 8.20. Ms Hubbard raises a number of detailed issues in relation to the proposed development including concerns about the impacts on habitat, species and biodiversity and the robustness of the survey work undertaken in this regard.
- 8.21. The application the appeal relates to was supported by an Ecological Appraisal (CD1.07). The appraisal was underpinned by a range of ecological survey work, consisting of an Extended Phase 1 Survey, breeding bird surveys, a great crested newt (*Triturus cristatus*) Habitat Suitability Index (HSI) assessment and bat activity surveys (manual transects and automated static detectors). This is an appropriate level of work to inform the determination of an outline application, with further work to follow to inform a future Reserved Matters application.
- 8.22. The above surveys identified the following key ecological features/receptors pertinent to the development proposals (paragraph 3.52, CD1.07):
- Farmland breeding birds: assemblage of Local-level importance;
  - Bat roost potential in three trees on-site;
  - Bat foraging/commuting: moderate bat assemblage of Local-level importance;
  - No evidence of current presence of badgers, but potential for new setts to be built onsite prior to commencement of development;
  - Potential occasional presence of grass snake on-site, Site-level importance; and
  - Presence of a hedgehog, Site-level importance.
- 8.23. The appraisal confirmed that the habitats identified on-site predominantly comprise those of low (Site-level or less) intrinsic ecological importance but that the surveys have identified some valuable habitat features and protected species that will need to be respected and embedded into any future Reserved Matters applications (paragraph 5.2, CD1.07).
- 8.24. The ecology surveys were undertaken in 2021 and therefore, although they are formally up to date for the purposes of this appeal, it was considered prudent to update these surveys in 2023 to identify whether any changes to the baseline have occurred that would be material to the impact assessment, mitigation recommendations and conclusions drawn in the Ecological Appraisal supporting the submission. A note explaining what survey work was undertaken is included at Appendix A of this proof.
- 8.25. The update survey work has confirmed that the current ecology baseline at the Site remains largely unchanged and no material changes in habitats or species that would alter the significance of potential effects, or the proposed mitigation. The submitted Ecological

Appraisal (CD1.07) therefore remains valid for the purposes of informing the appeal and determination process.

- 8.26. Ms Hubbard raises particular concerns about the presence of badgers and bats.

#### Badgers

- 8.27. Badgers and their setts are protected in the UK under the Protection of Badgers Act 1992. The appraisal notes that previous ecological work that was carried out on the wider strategic site (that included the site) located five active outlier badger setts, with the closest sett (and latrine) being c.50m south of the site, across the Barkby Road. A record of badger was also returned in the field to the north of the site. A thorough search was therefore undertaken during the Extended Phase 1 survey, for any evidence of use by badgers within the site, and also as part of the subsequent site visits for bat surveys, with no badger setts or other signs being found. There were several rabbit holes along the northern hedgerow on-site (H2) (paragraph 3.40–41, CD1.07).
- 8.28. The appraisal notes that as there are known badger clans in the area it is likely that badgers occasionally traverse the site and that there are opportunities for sett-building within and around the boundaries of the site, such that the future presence of badgers and their setts cannot be ruled out (paragraph 3.42, CD1.07). The Ecological Appraisal therefore recommends, as a precaution, that a pre-commencement update badger check should be carried out, to ensure that there has been no new colonisation by badgers within the construction area and that any excavations created during construction works that are deeper than a metre be covered over at night or should have a sloping side, to prevent any badgers or other nocturnal wildlife from becoming trapped (paragraph 4.37, CD1.07)
- 8.29. On the basis of these precautionary mitigation measures, the appraisal confirms that the proposed development will not contravene any legislation or planning policies relating to badgers (paragraph 4.39, CD1.07).

#### Bats

- 8.30. All British bat species, and their roosts, are fully protected under European and domestic legislation, through the Conservation of Species and Habitats Regulations 2017 (as amended) and the Wildlife and Countryside Act 1981 (as amended), respectively. Bat activity surveys were undertaken seven bat species were recorded, five species recorded during the transect surveys and seven species recorded during the static detector surveys (paragraph 3.30, CD1.07).
- 8.31. There are two tree trees identified that have high bat roost potential and these are to be retained within public open space areas. There is also greenspace proposed between the two trees, with additional foraging habitat proposed in the form of wildlife-friendly SuDS features, which connects with greenspace in the wider landscape to the north (paragraph 4.29, CD1.07).
- 8.32. The appraisal identifies the need for sensitive lighting scheme, vegetation on either side of the main and secondary roads to be allowed to grow and appropriate buffering. It also recommends that artificial bat roost features are incorporated into at least four of the new buildings on the periphery of the development, and that four bat boxes are installed on suitable mature trees (paragraph 4.30–32, CD1.07).



- 8.33. The Ecological Appraisal (CD1.07) and Biodiversity Net Gain Assessment (CD2.03) prepared in support of the application have been reviewed and accepted by the Council's Ecologist and appropriate conditions agreed.

## 9. Planning Balance

- 9.1. Section 38(6) of the Planning and Compulsory Purchase Act 2004 (PCPA) requires applications for planning permission be determined in accordance with the Development Plan unless material considerations indicate otherwise.
- 9.2. The Development Plan relevant to the appeal comprises the Charnwood Core Strategy, adopted in 2015, which covers the period from 2011 to 2028, the saved policies of Borough of Charnwood Local Plan, adopted in 2004 covering the 1991 to 2006 and the Leicestershire Mineral and Waste Local Plan, adopted in 2019, which covers the period to 2031. It is common ground that the Council cannot demonstrate a five year supply of deliverable housing land and that the presumption in favour of sustainable development in paragraph 11 (d) from the Framework, the tilted balance, is engaged. Accordingly, in line with paragraph 11d) of the Framework and footnote 8, the development policies most important for determining the appeal are out of date, and planning permission should be granted unless one of the exceptions apply.
- 9.3. The first exception relates to the application of policies in the Framework which protect areas or assets of particular importance. There are no applicable policies from Footnote 7 which are relevant to the appeal site. The second exception provides that any adverse impacts of doing so would significantly or demonstrably outweigh the benefits when assessed against the Framework taken as a whole.
- 9.4. In my assessment of the relevant development plan policies to determine the Appeal in Section 5, I identify that the most important policies are the Borough of Charnwood saved policies ST/2 (Limits to Development), CT/1 (General Principles for Areas of Countryside, Green Wedge and Local Separation) and CT/2 (Development in the Countryside) and Core Strategy Policies CS1 (Development Strategy), CS3 (Strategic Housing Needs), CS17 (Sustainable Travel) and CS18 (The Local and Strategic Road Network).
- 9.5. Being out of date does not change the primacy of the Development Plan. The evidence underpinning the Core Strategy housing policies (CS1 and CS3) is out of date, but these policies remain otherwise consistent with the Framework and significant weight can be afforded to this policy. Significant weight can also be afforded to the two transport Core Strategy policies (CS17 and CS18) as these policies are consistent with the Framework. The proposed development complies with the Core Strategy policies. It is located in a sustainable location, within walking and cycling distance of Syston Town Centre which has a range and choice of services and facilities. A contribution towards highways mitigation is being made through the Section 106 agreement which can be used towards improving walking, cycling and enhanced bus services.
- 9.6. The saved policies of the Borough of Charnwood Local Plan are significantly out of date, adopted in 2004, not consistent with the Framework and prepared in the context of the Leicester and Leicestershire Structure Plan and a housing requirement of 557 homes a year, almost half the current local housing need requirement of 1,105 homes a year. The development proposed breaches the saved policies (ST/2, CT/1 and CT/2) as the site is located within the Countryside, however these policies can only be afforded limited weight.

9.7. The proposed development also complies with the emerging Local Plan policies and the draft allocation of the site for 195 homes (DS3: Housing Allocations, allocation reference HA3: Land north of Barkby Road, Syston).

9.8. I now turn to assess the benefits of the development, and any harm that would arise.

## **Benefits of the Development**

9.9. The NPPF sets out three dimensions to sustainable development which the proposed development should be assessed against.

### **Social benefits**

9.10. This development would deliver substantial social benefits, including providing a mix of market properties and affordable homes.

#### Housing Supply

9.11. This development will make a significant contribution towards meeting the immediate housing needs arising within the Borough, and in the context of a significant shortfall in deliverable housing land supply.

9.12. The Appellant is a housebuilder with the intention of delivering the site within the next five years.

9.13. As set out in this proof, the Council has been unable to demonstrate a five-year supply of housing since November 2020, and there remains a significant shortfall of 1,161 homes over the next five years against the local housing need (at 1st April 2023).

9.14. The appeal site will make a significant contribution to meeting the social objective of ensuring a sufficient number and range of homes can be provided, substantial weight is attributed to this benefit.

#### Affordable Housing

9.15. The provision of 30% affordable housing on this site will make a substantial contribution to the Council's annual affordable housing requirement.

9.16. The Core Strategy seeks to deliver 3,060 affordable homes during the plan period (2011 to 2028), 180 homes a year. The Council's Authority Monitoring Report (1 April 2021 – 31 March 2022) identifies that, as of 1st April 2022, a total of 1,898 affordable dwellings have been completed over the plan period since 2011. This represents 62% of the target of 3,060 and an average delivery rate of 173 homes per year.

9.17. The remaining 38% of affordable homes accordingly need to be completed in the remaining 6 years of the plan (to 2028). This will require an uplift in affordable housing delivery to an average of 194 homes a year for the final six years for the target of 3,060 affordable homes to be met.

9.18. The Leicester and Leicestershire Housing and Employment Needs Assessment dated June 2022 (Appendix I) provides the most up to date consideration of affordable housing needs within the Borough and identifies an on-going need for affordable homes. Taking account

of the Framework definition of affordable housing and the latest information, including on housing costs it finds a need for 455 rented affordable homes per year and 372 affordable home ownership homes. This is a total of 827 affordable homes a year.

- 9.19. This is significantly higher than the levels of affordable housing currently being delivered within the Borough. The provision of affordable housing is a substantial benefit of the scheme. The proposed development would deliver 30% affordable housing, a total of 59 homes.
- 9.20. The contribution this site can make to the supply of affordable housing is attributed substantial weight.

#### Delivering Homes in a Sustainable Location

- 9.21. The Core Strategy recognises the importance of the local service and facilities available in Syston. The latest Settlement Hierarchy Assessment evidence highlights that the choice of services and facilities is far greater in Syston than for any of the other Service Centres.
- 9.22. These services and facilities make Syston a highly sustainable location for new development and the proposed development accords with Policy CS1 which directs development to sustainable locations including Service Centres. The target in the policy for Service Centres is not a ceiling requirement and there is no evidence to suggest that going beyond the stated figure is unacceptable, particularly when there is an identified need to do so. Additional housing allocations for Syston are proposed in the emerging Local Plan including the appeal site, demonstrating it is a sustainable location.
- 9.23. It is agreed in common ground that the appeal site represents a sustainable location for development. Syston Town Centre and key services and facilities are within walking and cycling distance. There are opportunities for non-car mode trips to the primary school, shops and a frequent bus serves to Leicester and Melton Mowbray for work and higher order services. The sustainably location reduces the need to rely on the private car.
- 9.24. The benefits of this scheme in terms of the provision homes in a sustainable location supported by a range and choice of services and facilities should be attributed moderate weight.

#### Highway Improvements

- 9.25. The Transport Assessment process concluded that the development would not result in a severe impact on junction capacity or safety. Following additional sensitivity testing that included allowances for committed and allocated sites, it is acknowledged that there would be some increase in delay at local junctions. Therefore, it is proposed that the development will provide a proportional highway mitigation contribution towards highway improvements which will improve the operation of the local highway and improve public transport / non car accessibility to all users within the area. The residual benefit to the transport network is therefore attributed limited weight.

#### **Economic benefits**

- 9.26. A number of economic benefits will be created by the proposed scheme, notably:
- Construction employment opportunities.

- Contribution of the construction phase to economic output.
- Contribution of the permanent jobs to economic output.
- Household expenditure associated with residents of the new dwellings.
- Contribution to Council Tax.

9.27. These benefits cascade down the supply chain through indirect and induced effects during the construction phase.

9.28. Paragraph 8 (a) of the Framework sets out an economic objective 'to help build a strong, responsive and competitive economy, by ensuring that sufficient land of the right type is available in the right places and at the right time to support growth...'. This includes sufficient land for housing which is a key contributor to a successful economy. Paragraph 81 of the Framework states 'Significant weight should be placed on the need to support economic growth and productivity, taking into account both local business needs and wider opportunities for development'.

9.29. Once the construction phase is over, economic spend and investment both directly (from residents) and indirectly (from Council Tax and new Homes Bonus) assists with the retention and development of accessible local services and community facilities such as local shops supporting the rural economy.

9.30. These economic benefits should be attributed limited weight.

### **Environmental benefits**

9.31. The proposed development seeks to make the most efficient use of this greenfield site whilst providing environmental benefits incorporated into the significant areas of open space within the proposed layout, including retaining and strengthening existing hedgerows where possible and providing new habitats.

9.32. A Concept Masterplan has been submitted in support of this application, which demonstrates that the site can be developed to an appropriate density, whilst retaining most of the natural assets of the site and delivering a significant biodiversity net gain. It is currently estimated that this could potentially be 15% for habitats and 48% for hedgerows, with exact figures to be confirmed through the reserved matters process.

9.33. The site will deliver new open space provision for the benefit of new and existing residents.

9.34. The proposed development provides benefits to biodiversity, beyond that required by soon to be enacted legislation via the new Environment Act. In accordance with the present requirements of the NPPF paragraph 175, I attach moderate weight to the environmental benefits.

### **Adverse Impacts of Development**

9.35. The proposed development breaches the saved policies of the Borough of Charnwood Local Plan ST/2 (Limits to Development), CT/1 (General Principles for Areas of Countryside, Green Wedge and Local Separation) and CT/2 (Development in the Countryside). These policies designated the site as outside the limits to development and within the

Countryside where development is resisted. These policies are however significantly out of date, adopted in 2004, they fail to take account of changes on the ground or the on-going housing needs in the Borough and are afforded limited weight. The conflict with these policies is therefore also attributed limited weight.

- 9.36. The proposed development also breaches Leicestershire Minerals and Waste Local Plan Policy M11 which seeks to safeguard mineral resources including sand, gravel, limestone, igneous rock, surface coal, fireclay, brick clay and gypsum. The policy requires that planning applications for non-mineral development within a Mineral Safeguarding Area should be accompanied by a Mineral Assessment of the effect of the proposed development on the mineral resource beneath or adjacent to it.
- 9.37. The site is within a Minerals Safeguarding Area and the application was not supported by a Mineral Assessment. Whilst Leicestershire County Council did not raise an objection to the application as it is a draft allocation, there is however a breach of the policy as the site is not yet allocated. This means the site does not meet the test of the policy which exempts sites allocated in an adopted plan on the basis that unnecessary mineral sterilisation is considered as part of the plan preparation and site selection process.
- 9.38. The site has however been assessed as part of the Local Plan process and this assessment considered the need to avoid unnecessary sterilisation and balanced the impact on minerals areas with a range of other factors to identify the sites proposed for allocation. The Council found that the benefits of this site across a range of sustainability criteria outweighed the impacts on minerals. In this context the conflict with Policy M11 is attributed limited weight.
- 9.39. It is acknowledged that the proposed development would result in a degree of landscape change within the immediate context of the site. However, the Landscape and Visual Appraisal of the site found that the impacts would be localised and that proposed development is entirely consistent with the settlement edge landscape character and would not therefore result in any contraventions with local planning policy. This impact is not considered to be limited and this is supported by the Council's proposed allocation of the appeal site in the emerging Local Plan. This adverse impact on the landscape is therefore attributed limited weight.
- 9.40. The potential to harm archaeology on the site has been mitigated by site investigations and can be further mitigated through the proposed condition. This potential for harm to archaeology is fully mitigated and therefore the impact of the development on archaeology is neutral.
- 9.41. Whilst the proposed development would result in increased vehicular movements, the Transport Assessment found that there are no material impacts arising in the context of the operation of the highway network, highway safety or residential amenity. The proposed development therefore has no material harm on the highway which needs to be considered in the planning balance.

## **Planning Balance**

- 9.42. The proposed development is in compliance with the majority of the relevant policies in the adopted Development Plan including Core Strategy Policy DS1 (Development Strategy), DS3 (Strategic Housing Needs), DS17 (Sustainable Travel) and DS18 (The Local and Strategic

Road Network). The proposals do, however, breach the significantly out of date saved Local Plan policies relating the limits to development and countryside (ST/2, CT/1 and CT/2) and the Minerals and Waste Local Plan Policy M11 (Safeguarding of Mineral Resources).

- 9.43. It is a matter of common ground, however, that the policies most important to the appeal proposal are out of date and accordingly, the tilted balance set out in Paragraph 11 (d) of the Framework's presumption in favour of sustainable development is engaged. For decision-taking this means that planning permission should be granted, unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
- 9.44. The evidence is that there is an immediate need for additional housing and an acute need for additional affordable housing and this site would help address this.
- 9.45. The site is outside the limits to development, in the Countryside and in a Minerals Safeguarding Area, but it is in a sustainable location, as recognised by the Core Strategy Policy CS1 and the emerging and well progressed Local Plan, which includes the site as a draft allocation.
- 9.46. The technical evidence supporting the application demonstrates that appeal proposal is acceptable in all other respects for the reasons set out in this proof.
- 9.47. The development would have social, economic and environmental benefits including making a substantial contribution towards boosting the supply of much needed market and affordable housing.
- 9.48. The site is in control of a single housebuilder on the edge of Syston, a sustainable settlement. The site is therefore suitable, available and achievable, making it deliverable within the next five years.
- 9.49. The adverse effects of the proposal do not significantly and demonstrably outweigh the benefits. Accordingly, the material considerations are of sufficient weight to indicate that the appeal proposal should be granted permission.

Town & Country Planning Act 1990 (as amended)  
Planning and Compulsory Purchase Act 2004

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