

OUTLINE PLANNING APPLICATION FOR RESIDENTIAL DEVELOPMENT OF UP TO 150 DWELLINGS

PLANNING STATEMENT

BARKBY ROAD, QUENIBOROUGH

ON BEHALF OF DAVID WILSON HOMES

**TOWN & COUNTRY PLANNING ACT 1990 (AS AMENDED)
PLANNING AND COMPULSORY PURCHASE ACT 2004**



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1.0 Introduction

- 1.1 This Planning Statement accompanies and supports an outline planning application in relation to proposed residential development on land west of Barkby Road, Queniborough. This statement sets out the site description, development proposals, planning history, the relevant planning policy and then goes on to assess the proposed development against those policies.
- 1.2 The proposals involve the development of up to 150 dwellings, the formation of a new vehicular access into the site from Barkby Road, and the provision of new areas of open space, landscaping, storm water attenuation and children's play.
- 1.3 The application includes the following plans and supporting documents:
- Site Location Plan and Illustrative Masterplan by Dominion Design;
 - Design and Access Statement by Pegasus Group;
 - Landscape and Visual Appraisal by Golby and Luck;
 - Landscape Note (dated 19th April 2018) by Golby and Luck;
 - Flood Risk Assessment and Drainage Strategy by RACE;
 - Transport Assessment by ADC Infrastructure;
 - Travel Plan by ADC Infrastructure;
 - Ecological Appraisal by Ramm Sanderson;
 - Arboricultural Assessment by FPCR;
 - Noise Assessment by Assured Acoustics; and
 - Archaeological Desk Based Assessment by University of Leicester Archaeological Services.
- 1.4 The purpose of this Planning Statement and supporting documents is to demonstrate that the proposed development is acceptable in planning terms, taking account of the development plan and material considerations and

confirming that there are no technical reasons why the development should not be permitted.

- 1.5 This statement begins with a description of the site and the surrounding area and goes on to provide a more detailed description of the development, followed by the relevant planning history. The report continues with a review of the relevant planning policy guidance, followed by an assessment of the proposed development having regard to the development plan and other materials considerations.
- 1.6 Particular attention is paid to the National Planning Policy Framework (the Framework) requirement for local planning authorities to identify sites sufficient to provide five years' worth of housing against identified housing requirements, with an additional buffer of 5% to ensure choice and competition, which is increased to 20% where there has been significant under-delivery of housing over the previous three years (paragraph 73).
- 1.7 The Charnwood Local Plan Core Strategy will be five years old on 9th November 2020 and the Council will therefore need to assess its five-year supply requirement against the standard methodology in accordance with the Framework. Against this requirement the Council have acknowledged that they cannot demonstrate a five-year supply of housing (as of 9th November 2020) and that the 'tilted balance' as set out at paragraph 11 applies. Paragraph 11 requires the Council to grant planning permission unless any adverse impacts would significantly and demonstrably outweigh the benefits of the development proposals.
- 1.8 The conclusion reached is that key material considerations in relation to the acknowledged housing land supply shortfall and the benefits associated with development of the site, justify its release for development and represents an opportunity to provide new housing (including affordable housing), to meet the pressing needs of the Borough, in a sustainable location.
- 1.9 The proposal is therefore in accordance with Section 38 (6) of the Planning and Compulsory Purchase Act 2004.

2.0 Site and Surrounding Area

- 2.1 The site lies on the southern edge of Queniborough, within the administrative boundaries of Charnwood Borough Council (CBC). The site extends to approximately 5.84ha.
- 2.2 The site currently comprises two field compartments, one comprising poor semi-improved grassland and the other arable land with poor semi-improved grassland margins. Hedgerows and trees are located along site and field boundaries. A public right of way (I84) bisects the site from the northern boundary to the southern boundary of the site – running in a north east – south westerly direction.
- 2.3 The site consists of agricultural land adjoining existing residential development to the north and industrial units to the west. To the north of the site lies existing dwellings off Avenue Road, The Riddings and Chestnut Close. To the east of the site lies Barkby Road, and further east lies the new Davidsons Homes development, known as Barley Fields, and Syston Cricket Club. To the south of the site lies open countryside, and to the west lies Queniborough Industrial Estate.
- 2.4 Queniborough is located approximately 9km to the north east of the centre of Leicester, just south of the A607 and approximately 16km from the M1. The existing facilities and services in Queniborough, and nearby Syston, are within walking distance of the application site.

3.0 The Proposals

- 3.1 This planning application proposes the development of up to 150 dwellings and is submitted in outline form (with all matters reserved for future approval, apart from access).
- 3.2 Access is to be determined as part of this application. The main vehicular access into the site is proposed to be taken from Barkby Road, via a new T-junction.
- 3.3 The application is accompanied by an Illustrative Masterplan (drawing no: QUEN-CONC-SK2_Rev E) which provides an indication of how the site could be developed to provide a mix of 1 to 5 bedroom homes, to include a range of house types, sizes and tenures, to create a sustainable, inclusive and mixed community. Policy compliant affordable housing of up to 40% will be provided on site, together with bungalows, to meet identified need.
- 3.4 The Illustrative Masterplan shows an area of public open space centrally located within the development (1.44ha of public open space), along the route of the Public Right of Way, as well as an area of children's play located to the south of the site. An area of surface water attenuation (circa 0.37ha) is located to the west of the proposed built development area.

4.0 Planning History

4.1 An outline planning application was submitted in February 2018 for up to 150 new dwellings, with associated works including open space, landscaping, drainage and access from Barkby Road (application reference number: P/18/0309/2). The planning application was refused by Charnwood Borough Council on 1st June 2018 for the following reasons:

1. Notwithstanding the Council's Housing Land Supply and the reduced weight that can be attached to policies for the supply of housing (being policy CS1 of the Core Strategy and saved policy ST/2 of the Adopted Borough of Charnwood Local Plan 1991-2006), the Local Planning Authority considers that the significant adverse impacts of the development proposal outweigh the benefits arising from the development. Policy CS1 of the adopted Charnwood Local Plan 2011 to 2028 Core Strategy relates to the hierarchy of sustainability of settlements in the Borough as locations for new development. The application site lies outside the limits on development of Queniborough and on Best and Most Verstile Agricultural Land. Queniborough is identified by Policy CS1 as being in the 'Other Settlement' category of its settlement hierarchy. There are currently commitments for in the region of 1,000 homes in the Other Settlements of which a significant proportion has been delivered or committed in and around Queniborough (notably opposite the application site). Policy CS1 identifies planned growth within Other Settlements should be at least 500 homes in the plan period from 2011 to 2028 which is sufficient to the meet the levels of planned provision. Further growth between 2014-2028 was therefore expected through small scale infill developments. The proposal is not small scale and the application site is not considered as infill. Concerns about the cumulative pattern of growth and the impact on the Area of Local Separation would have an impact on the individual identity of Queniborough and Syston and result in coalescence between the settlements and the proposals would not respect and maintain the separate identities of towns and villages in accordance with Policies CS2, CS11, CS12 and CS14 of the Core Strategy and saved Policy CT/4 of the Adopted Borough of Charnwood Local Plan 1991-2006. As such, the proposal is considered to be contrary to Core Strategy Policies CS1, CS2, CS11, CS12, CS14 and CS25, which seek to reflect the presumption in favour of sustainable development in a plan-led system contained in the National Planning Policy Framework. Furthermore it is contrary to saved

Policies ST/2, EV/1, CT/1, CT/2 and CT/4 of the Adopted Borough of Charnwood Local Plan 1991-2006 and the proposals would significantly and demonstrably cause harm that are not outweighed by the planning benefits of the scheme.

2. In the absence of a signed Planning Obligation, although a Draft Heads of Terms is noted, the proposal fails to deliver an appropriate level of affordable housing and contributions towards sustainable travel, ecology, education, libraries, civic amenity, community facilities and open space and play provision that are necessary to make the development acceptable in planning terms. The proposals would be contrary to Policies CS3, CS13, CS17 and CS24 of the Charnwood Local Plan 2011-2028, Core Strategy (2015) and adopted Housing Supplementary Planning Document (2017) and Community Infrastructure Levy Regulations.

5.0 Planning Policy and Guidance

5.1 This section sets out the key national and local planning policies which are material to the determination of this application.

National Planning Policy Framework (NPPF) 2019

5.2 The revised NPPF was published in February 2019 and replaces the previous version dated July 2018. The overarching policy objective remains the same, with a presumption in favour of sustainable development. Its policies are a material consideration in the determination of planning applications.

5.3 The purpose of the planning system is to contribute towards the achievement of sustainable development. Paragraph 8 sets out the three overarching objectives to achieving sustainable development: economic, social and environmental, which are interdependent and need to be pursued in mutually supportive ways. Paragraph 10 confirms that there is a presumption in favour of sustainable development at the heart of the Framework.

5.4 Paragraph 11 states that, for decision-taking, this means approving development proposals that accord with an up-to-date development plan without delay. Where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, planning permission should be granted unless the application of Framework policies that protect areas or assets of particular importance provides a clear reason for refusing the development proposed, or any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies of the Framework taken as a whole. Footnote 7 confirms that out-of-date includes where a Council cannot demonstrate a five-year supply of housing land.

5.5 Paragraph 13 confirms that Neighbourhood Plans should support the delivery of strategic policies contained in Local Plans, and should shape and direct development that is outside of these strategic policies. Paragraph 14 confirms that where the presumption applies, the adverse impact of allowing development that conflicts with the neighbourhood plan is likely to significantly and demonstrably outweigh the benefits, providing all of the following apply;

a) the neighbourhood plan became part of the development plan two years or less before the date on which the decision is made; b) the neighbourhood plan contains policies and allocations to meet its identified housing requirement; c) the local planning authority has at least a three year supply of deliverable housing sites (against its five year housing supply requirement, including the appropriate buffer as set out in paragraph 73); and d) the local planning authority's housing delivery was at least 45% of that required⁹ over the previous three years.

- 5.6 Paragraph 38 states that local planning authorities should approach decisions on proposed development in a positive and creative way. They should use the full range of planning tools available and work proactively with applicants to secure developments that will improve the economic, social and environmental conditions of the area. Decision-makers at every level should seek to approve applications for sustainable development where possible.
- 5.7 Section 5 of the Framework deals with the delivery of a sufficient supply of homes. Paragraph 59 advises that to support the Government's objective of significantly boosting the supply of homes, it is important that a sufficient amount and variety of land can come forward where it is needed. Paragraph 73 requires local planning authorities to identify and update annually a supply of specific deliverable sites sufficient to provide a minimum of five years' worth of housing against their housing requirement, or against their local housing need where strategic policies are more than five-years old. A buffer of 5% should apply to ensure choice and competition in the market for land. A 20% buffer applies where there has been significant under delivery of housing over the previous three years through the housing delivery test.
- 5.8 Section 8 of the Framework promotes healthy and safe communities, with paragraph 91 advising that decisions should aim to achieve healthy, inclusive and safe places which promote social interaction, are safe and accessible and enable and support healthy lifestyles.
- 5.9 Section 9 of the Framework promotes sustainable transport, with paragraph 102 stating that transport issues should be considered from the earliest stages of development proposals, so that the potential impacts of development on transport networks can be addressed.

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- 5.10 Paragraph 108 states that in assessing specific applications for development it should be ensured that appropriate opportunities to promote sustainable transport modes can be taken up and safe and suitable access to the site can be achieved for all users. Paragraph 109 confirms that development should only be prevented or refused on highway grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.
- 5.11 Section 11 of the Framework aims to make effective use of land in meeting the need for homes and other uses, while safeguarding and improving the environment and ensuring safe and healthy living conditions. Paragraph 118 advises that decisions should promote and support the development of under-utilised land and buildings, especially if this would help to meet identified needs for housing where land supply is constrained, and available sites can be used more effectively.
- 5.12 Section 12 aims to achieve well designed places with paragraph 124 advising that the creation of high-quality buildings and places is fundamental to what the planning and development process should achieve. Good design is a key aspect of sustainable development, creating better places in which to live and work, helping to make development acceptable to communities.
- 5.13 Paragraph 122 advises that decisions should support development that makes efficient use of land taking into account the identified need for different types of housing, local market conditions and availability, the availability and capacity of infrastructure and services, the desirability of preserving an area's prevailing character and the importance of securing well-designed, attractive and healthy places.
- 5.14 Section 14 of the Framework aims to meet the challenge of climate change, flooding and coastal change with paragraph 150 advising that new development should be planned for in ways that avoid increased vulnerability to the range of impacts arising from climate change. Paragraph 155 advises that inappropriate development in areas at risk from flooding should be avoided by directing development away from areas of highest risk.
- 5.15 Section 15 deals with conserving and enhancing the natural environment. Paragraph 170 advises that decisions should contribute to and enhance the

natural and local environment by recognising the intrinsic character and beauty of the countryside and the wider benefits from natural capital and ecosystem services.

- 5.16 Paragraph 180 requires decisions to ensure that new development is appropriate for its location, taking into account the likely effects of pollution on health, living conditions and the natural environment.
- 5.17 Section 16 of the Framework deals with the conservation and enhancement of the historic environment. Paragraph 193 advises that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation, irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm. In terms of less than substantial harm, paragraph 196 advises that this harm should be weighed against the public benefits of the proposal.

Planning Policy Guidance (PPG)

- 5.18 On 6 March 2014, the former Planning Minister Nick Boles announced the launch of the new Planning Practice Guidance (PPG) which reinforces and provides additional guidance on the policy requirements of the NPPF. The PPG is a web based resource that is continuously updated.
- 5.19 The PPG also provides extensive guidance on the matter of design, including listing the planning objectives that be achieved via good design. These include considering local character, landscape setting, safe, connected and efficient streets, crime prevention, security measures, access and inclusion, efficient use of natural resources and cohesive and vibrant neighbourhoods.
- 5.20 The role of health and wellbeing in planning is a consideration in the PPG: active healthy lifestyles should be encouraged, that are made easy through the pattern of development, good urban design, good access to local services and facilities; green open space and safe places for active play and food growing, and are accessible by walking and cycling and public transport.
- 5.21 The PPG reiterates the importance of, and provides guidance on, the assessment of housing need, including affordable housing. With regards to

housing delivery, it makes clear that past under-supply should be met, where possible, within the first 5 years of the plan period.

The Development Plan

- 5.22 Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise.
- 5.23 The development plan comprises the Borough of Charnwood Local Plan (adopted January 2004) and the Charnwood Local Plan Core Strategy (adopted November 2015). Key aspects of national planning policy guidance and the development plan of particular relevance to the consideration of the proposals are set out below.

Borough of Charnwood Local Plan (2004) (Saved Policies)

- 5.24 The Borough of Charnwood Local Plan sets out a locational strategy which seeks to focus development on the main urban area of Leicester, the County Town of Loughborough and on settlements capable of offering realistic transport choice along specified corridors. Paragraph 215 of the Framework advises that due weight should be given to policies in existing plans according to their degree of consistency with the Framework.
- 5.25 Policy ST/1 Overall Strategy for Charnwood details the plan's overall strategy for the Borough. It aims to generate sustainable patterns of development which remain generally compatible in scale and character with their location. The strategy also seeks to conserve, protect and enhance features of the historic, built and natural environment which are particularly valued by the community and that the quality of development is improved through the layout of sites.
- 5.26 Policy ST/2 Limits to Development establishes the existing built limits to settlements in order to distinguish between areas of development potential and restraint. The site lies outside the defined settlement limits for Queniborough.
- 5.27 Policy EV/1 Design seeks to ensure a high standard of design for developments which respect the character of the area, nearby occupiers and is compatible in mass, scale, layout, whilst using landforms and other natural features.

Development should meet the needs of all groups and create safe places for people.

5.28 Policies CT/1 General Principles for Areas of Countryside, Green Wedge and Local Separation and CT/2 Development in the Countryside set out a generally restrictive approach to new development in areas of countryside. Development is limited to small scale developments and re-use and adaptation of rural buildings for uses suitable in scale and nature.

5.29 Policy CT/4 Development in Areas of Local Separation sets out that development will only be acceptable in principle where the location, scale and design would ensure that the predominately open and undeveloped character of the area is retained, and the already narrow gap between settlements is not reduced. The application site is located within the designated Area of Separation between Queniborough/Syston/East Goscote.

5.30 Policy TR/18 Parking in New Development establishes maximum standards by which development should provide for off-street car parking, dependent on floorspace or dwelling numbers.

Charnwood Local Plan Core Strategy (2015)

5.31 The Charnwood Local Plan Core Strategy was adopted on the 9th November 2015 and becomes five-years old on the 9th November 2020. It sets out the strategy for the Borough for the plan period 2011 to 2028.

5.32 Policy CS1 Development Strategy sets out a requirements to provide at least 13,940 new homes over the plan period. The policy identifies a settlement hierarchy with development focused on the Leicester Principal Urban Area, and with the majority of the remaining growth directed to Loughborough and Shepshed. Queniborough is identified as an 'Other Settlement' where at least 500 new homes within settlement boundaries will be identified by the Site Allocations and Development Management Plan Document between 2011 and 2028.

5.33 Where a village has four or more key services and facilities (taken from the Service Centre criteria) and bus access to a Service Centre, town or the City they are generally able to serve some day to day needs of the people who live

there. Queniborough is identified as one of these villages. The Local Plan Core Strategy states that these villages may be suitable for some small-scale infill development to meet local needs.

- 5.34 Policy CS2 High Quality Design provides guidance on design, requiring new developments to make a positive contribution to Charnwood, resulting in places where people would wish to live through high quality, inclusive design, and where appropriate, architectural excellence.
- 5.35 Policy CS3 Strategic Housing Requirements sets out affordable housing requirements, with a target of 40% identified for Queniborough.
- 5.36 Policy CS11 Landscape and Countryside seeks to protect the character of the landscape and the countryside. The countryside is identified as the undeveloped area beyond the established settlement limits.
- 5.37 Policy CS12 Green Infrastructure seeks to protect and enhance green infrastructure assets.
- 5.38 Policy CS13 Biodiversity and Geodiversity seeks to conserve and enhance the natural environment and ensure that development takes into account impacts on recognised features.
- 5.39 Policy CS14 Heritage seeks to protect heritage assets and their setting.
- 5.40 Policy CS15 Open Spaces, Sports and Recreation deals with open space requirements in new developments to meet the standards set out in the Open Space Strategy. New developments should demonstrate how these open space standards will be met on-site or alternatively, if appropriate, off-site, having regards to local provision and viability.
- 5.41 Policy CS16 Sustainable Construction and Energy supports sustainable design and construction techniques. It also encourages the effective use of land by reusing land that has been previously developed
- 5.42 Policy CS17 Sustainable Travel sets out the Council's approach to sustainable travel, indicating that by 2028, the Council will seek to achieve a 6% shift from travel by private car to walking, cycling and public transport, requiring new major developments to provide walking, cycling and public transport access to

key facilities and services, safe and well-lit streets and routes for walking and cycling, and securing new and enhanced bus services from major developments and new bus stops where development is more than 400 metres walk from an existing bus stop.

- 5.43 Policy CS25 Presumption in Favour of Sustainable Development sets out the presumption in favour of sustainable development in accordance with the Framework and specifically paragraph 14.

Charnwood Local Plan Review (November 2019)

- 5.44 Charnwood Borough Council published the Draft Charnwood Local Plan 2019-2036 in late 2019, and consultation took place from November – December 2019. Once adopted, the new Local Plan will form part of the development plan and replace the Core Strategy (2015) and the saved policies of the Local Plan (2004). It is understood that pre-submission consultation will take place in early 2021, with adoption of the new Local Plan anticipated to
- 5.45 Consultation on the Draft Local Plan is the third stage of consultation on the emerging Local Plan; the first on the scope of the Local Plan took place in July 2016 and the second on the key issues and options took place in April 2018 – entitled 'Towards a Local Plan for Charnwood'.
- 5.46 Draft Policy LP1 sets out the overall spatial strategy for Charnwood of urban concentration and intensification; seeking to protect the most environmentally sensitive areas, with the pattern of development to provide a balance between homes, jobs and facilities. The emerging Local Plan seeks to make provision for at least 19,716 new homes between 2019 and 2036 and seeks to direct 945 new homes to the 'Other Settlements' (5% of new homes), of which Queniborough is one of these settlements.
- 5.47 Development will be directed to locations of the least environmental or amenity value and to locations at the lowest risk of flooding. Areas designated as Countryside, Areas of Local Separation, Green Wedges and Charnwood Forest Regional Park are identified on the Policies Map; in the context of the objective to conserve and protect the character of towns and villages and the intrinsic character and beauty of the countryside.

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- 5.48 Proposals for development which are not allocated in the Local Plan, but accord with the vision, pattern of development and other requirements of the spatial strategy are likely to be approved where a five year supply of homes cannot be demonstrated. In all other circumstances, new built development will be confined to sites allocated in the Local Plan and in Neighbourhood Plans, and other land within the Limits to Development, subject to specific exemptions in the Local Plan.
- 5.49 Draft Policy LP2 sets out requirements for new developments in terms of high quality design, and includes, respecting and enhancing character of the area, protecting amenity, add to the quality of the area, provide attractive, safe and well managed public and private amenity spaces to support active lifestyles, provide legible streets and spaces that support all users and encourage social interaction, and be resilient to climate change.
- 5.50 Draft Policy LP3 allocates sites for new housing. For Queniborough, two sites are proposed for allocation – 55 dwellings off Melton Road (site reference: HS71) and 100 dwellings at Threeways Farm (site reference: HS72).
- 5.51 Draft Policy LP4 seeks to secure 30% affordable housing from new developments, to generally be delivered on site and integrated with affordable housing. An independent viability assessment will be required in order to justify any need for a different level of provision.
- 5.52 Draft Policy LP6 sets out the emerging policy in relation to housing mix. The Council will seek a mix of house types, tenures and sizes, having regard to housing needs, market conditions, economic viability and site specific circumstances.
- 5.53 Draft Policy LP7 requires all new residential dwellings to meet the nationally described space standards.
- 5.54 Draft Policy LP19 seeks to manage development to protect the countryside’s intrinsic character and beauty through; requiring new development to protect landscape character and to reinforce sense of place and local distinctiveness, requiring new development to maintain the separate identities of towns and villages, and supporting the provision of community services and facilities that meet proven local needs as identified by a Neighbourhood Plan. Areas of Local

Separation will be protected unless new development clearly maintains separation between built up areas of settlements. Development will be supported in Green Wedges where the open and undeveloped character is retained, green networks are retained/created between the countryside and green spaces within urban areas, and public access is retained/enhanced, particularly for recreation.

- 5.55 Draft Policy LP22 requires the natural environment to be conserved and enhanced. Development proposals will be supported that; protect and enhance protected habitats and species, biodiversity networks and wildlife corridors, features of geodiversity value and water quality. A measurable net gain in biodiversity should be provided, preferably on site.
- 5.56 Draft Policy LP23 seeks to increase the number of trees in the Borough, and development proposals that maintain and extend tree cover will be supported; providing tree planting on site and retaining existing trees where appropriate.
- 5.57 Draft Policy LP24 seeks to conserve and enhance heritage assets and the historic environment; development proposals should protect and enhance heritage assets, and their significance and setting, incorporate Charnwood's distinctive local building materials and architectural details. The policy sets out that where the proposal would lead to less than substantial harm, this harm will be weighed against the public benefits of the proposal.
- 5.58 Draft Policy LP25 requires developments of over 10 dwellings to provide on-site open space, sport and recreation in accordance with standards. Such facilities should be accessible, functional, of high quality design, visible and safe.
- 5.59 Draft Policy LP30 requires new development to take account of sustainable construction processes, minimise construction waste, reduce waste, incorporate sustainable water management and efficiency measures, and encouraging the design and layout of new buildings to improve efficiency of heating, cooling and lighting, to maximise the potential for daylight and passive solar gain. Design and Access Statements are required for major developments.
- 5.60 Draft Policy LP31 seeks to direct development to areas with the lowest risk of flooding (Flood Zone 1), applying the Sequential Tests and Exception Tests

where necessary. Major development, and development in Flood Zones 2 and 3 require a Flood Risk Assessment to accompany the application submission. Development proposals are required to consider the cumulative impacts of proposals in areas susceptible to flooding. Development on greenfield sites should cause no net increase in the rate of surface water run off. The design of flood risk mitigation measures should be in keeping with the environment and incorporate sustainable drainage systems.

- 5.61 Draft Policy LP32 requires sustainable drainage systems (SuDS) as part of development proposals, requiring consideration at the masterplanning stage, and thought to be given to design, construction and ongoing maintenance. SuDS should meet minimum standards (Leicestershire County Council) and provide multifunctional benefits for amenity, recreation and wildlife, using natural features where possible.
- 5.62 Draft Policy LP33 requires new major development to provide walking, cycling and public transport access to key facilities and services, enhanced bus services to ensure the new development is no more than 400m walk from a bus stop. New sustainable transport infrastructure should be well designed. New dwellings should have a dedicated car parking space, to include appropriate means to recharge electric vehicles. All major proposals should have robust transport assessments and travel plans.
- 5.63 Draft Policy LP34 seeks to reduce congestion and improve the efficiency of the local and strategic road network; requiring the consideration of sustainable transport proposals first, and ensuring the impact of proposals on the road network is mitigated.
- 5.64 Draft Policy LP25 sets out car parking standards; reflecting the guidance included within the Leicestershire Highway Design Guide, ensuring new parking infrastructure is well design and in suitable, sustainable locations, and in accordance with wider transport objectives.

Queniborough Neighbourhood Plan (Submission Version May 2020)

- 5.65 The Queniborough Neighbourhood Plan was submitted to Charnwood Borough Council on 17th June 2020. Charnwood consulted on the Neighbourhood Plan from 3rd August to 12th October 2020, and therefore an independent Examiner

will now be appointed to undertake examination and, if the Neighbourhood Plan meets the basic conditions, a referendum ahead of it being 'made' as part of the development plan for the area.

- 5.66 The Queniborough Neighbourhood Area comprises the Parish of Queniborough, and the application site lies within this area. The Neighbourhood Plan at paragraph 1.14 sets out that *'little weight can be given to the new Local Plan and we will continue with the preparation of our Neighbourhood Plan'*. Paragraph 1.15 continues that *'the new Local Plan will not be finalised until the end of 2021. We expect the Neighbourhood Plan to be 'made' well before then. Once the new Local Plan is finalised, we may still have to review the Neighbourhood Plan to make sure it is in general conformity'*.
- 5.67 Policy Q6 sets out how the character of the landscape and countryside will be supported and protected. New developments are required to protect landscape character and consider and mitigate their impact on tranquillity. New development is required to maintain the separate identity of Queniborough; the predominately open and undeveloped character of Areas of Local Separation will be protected, unless new development clearly maintains the separation between the built-up areas of Queniborough and nearby Syston and East Goscote. The application site is located within the Area of Local Separation.
- 5.68 Policy Q9 supports infill housing within the Limits to Development. Policy Q10 allocates Queniborough Lodge, Melton Road, for some 132 dwellings, subject to the requirements of Policy Q10. The policy commentary (paragraph 7.17 onwards) confirms that previous planning permissions at this site have lapsed and it remains uncertain whether the site remains available for development.
- 5.69 Policy Q11 confirms that outside Limits to Development, support for housing development will be limited to Rural Exception Housing, Rural worker accommodation and individual dwellings of exceptional quality/innovative design, and the reuse/adaption of rural buildings. The application site lies outside the Limits to Development.
- 5.70 Policy Q13 requires new residential developments to meet the housing needs of older households and/or the need for smaller, low-cost homes for sale.

- 5.71 Policy Q15 requires development to reflect the distinctive and traditional character of Queniborough, unless development is of exceptional quality or innovative design.

Other Policy Considerations

Charnwood Design SPD

- 5.72 Charnwood adopted the Design SPD in January 2020, which provides guidance on design to support the Core Strategy 2011 – 2028 policies. The Design SPD is a material consideration in the determination of planning applications, providing additional guidance on Policies CS2 High Quality Design, Policy CS15 Open Space, Sport and Recreation, Policy CS16 Sustainable Construction and Energy and the Borough of Charnwood Local Plan saved Policy EV1 Design. The document is structured around a series of key principles, summarised below:

1. Respecting and enhancing the local character;
2. Providing attractive public and private spaces;
3. Well-connected and legible streets and spaces;
4. Creating multi-functional, safe and inclusive places;
5. Adapting to climate change; and
6. Protecting the amenity of existing and future occupiers.

Section 106 Developer Contributions SPD

- 5.73 This document provides further details of the requirements for developer contributions in accordance with Policy ST/3 and considers the infrastructure requirements necessary for a development. It sets out requirements in relation to a range of services and facilities.

6.0 Assessment of Proposals

Principle of Development

- 6.1 Section 38(6) of the Planning and Compulsory Purchase Act, 2004 requires the determination of this application to be made in accordance with the development plan, unless material considerations indicate otherwise.
- 6.2 Whilst the Framework does not change the statutory status of the development plan as the starting point in decision making, it is an important material consideration in determining applications. The Framework constitutes the Government's view of what sustainable development means in practice for the planning system.
- 6.3 The Government's objective in publishing the Framework is to secure a significant culture change in the way planning applications are determined, with a clear presumption in favour of sustainable development, with local planning authorities proactively driving and supporting sustainable economic development to deliver the homes, business and industrial units and infrastructure the country needs. A key message in the Framework is the need for positive planning to boost significantly the supply of housing to meet the full objectively assessed housing needs for an area.
- 6.4 For decision taking, the Framework requires local planning authorities to approve development proposals that accord with the development plan without delay and, where a plan is absent, silent or policies are out of date, approving planning permission unless the adverse impacts would significantly and demonstrably outweigh the benefits, or specific Framework policies indicate that development should be restricted.
- 6.5 Annex 1 to the Framework provides guidance on the implementation of its policies, advising that the policies in the Framework are material considerations and should be taken into account in dealing with applications. Paragraph 213 notes that existing local plan policies should not be considered out-of-date simply because they were adopted prior to the publication of the latest version of the Framework, and that due weight should be given to them according to the degree of consistency with the Framework.

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- 6.6 For the purposes of this application, the development plan comprises the saved policies of the Borough of Charnwood Local Plan along with the policies in the Charnwood Local Plan Core Strategy. Due weight is to be given to relevant policies according to their degree of consistency with the Framework (paragraph 215) and the extent to which they can be considered out-of-date (paragraphs 14 and 49).
- 6.7 In respect of saved Local Plan policies, insofar as it sets out a strategy for housing provision, as the Plan was adopted in 2004 and made provision for housing requirements set out in the Leicestershire Structure Plan for the period 1991-2006, it is out of date.
- 6.8 The adopted Local Plan made provision for housing requirements only up to 2006, and therefore the plan policies cannot be considered up-to-date in terms of planning for future housing requirements. The housing requirements set out in the Local Plan were derived from the Leicestershire Structure Plan (1994) which required the provision of 556 dwellings a year over this plan period, significantly lower than the minimum requirement of 820 dwellings a year subsequently set out in the Charnwood Local Plan Core Strategy. The restrictive policies relating to limits to development (Policy ST/2) and countryside (CT/1 and CT/2) are relevant to the supply of housing and cannot therefore be considered up-to-date.
- 6.9 Whilst the principle of establishing settlement limits is not inconsistent with the NPPF, in the specific circumstances relating to Charnwood and Queniborough, where the settlement limits defined in 2004 have been exceeded and the tightly drawn limits do not allow for further development when set against a housing requirement expressed as a minimum, the policy is considered to be inconsistent with the NPPF and the objective of boosting significantly the supply of housing. These limits have been breached on a number of occasions in both Queniborough and Syston. In the case of Queniborough, the clearest illustration of this is the recent development by Davidsons Homes, located to the east of Barkby Road and adjacent to the application site (application reference number: P/14/0708/2). It is clear that the limits defined under Policy ST/2 do not reflect developments that have taken place since the Local Plan was adopted in 2004. On this basis, Policy ST/2 should be afforded the most limited weight.

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- 6.10 Policies CT/1 and CT/2 are in conflict with the cost/benefit approach of policies in the NPPF because they are specifically restrictive of housing other than in certain restrictive circumstances and do not allow for the balancing approach to be taken into account in the consideration of development.
- 6.11 The Charnwood Local Plan Core Strategy was adopted on the 9th November 2015 and will be five-years old on the 9th November 2020. Policy CS1, due to its age and lack of consistency with the Framework, can no longer be considered up to date, and the weight to be given to it is reduced. The NPPF advises that where strategic policies are five-years old, the five-year housing supply should be calculated on the basis of the standard methodology (paragraph 73). For the purposes of this application, the most important policies are therefore out-of-date.
- 6.12 In the determination period for this application, the Council's five-year land supply position is based on the annual housing requirement of 1,105 dwellings set out in the standard methodology. Based on this requirement the Council cannot demonstrate a five-year supply in accordance with the NPPF. This has been acknowledged by the Council in an email to Parish Councils dated 7th October 2020, which advises that the Council will no longer be able to demonstrate a five-year supply of housing from 9th November 2020. As a result, the 'tilted balance' as set out in paragraph 11 applies and permission should be granted unless any adverse impacts would significantly and demonstrably outweigh the benefits.
- 6.13 Paragraph 33 advises that policies in plans should be reviewed to assess whether they need updating at least once every five years and should be updated as necessary, with relevant strategic policies requiring updating if their applicable local housing need figure has changed significantly. The Council has recognised the need to prepare a new Local Plan and published a Draft Consultation version in November 2019. Work on this new plan is ongoing and therefore it will not be in place when the strategic policies in the Core Strategy become five-years old in November 2020. The draft Local Plan remains at an early stage of preparation, and therefore relevant policies can only be attributed very limited weight in decision making.
- 6.14 The Queniborough Neighbourhood Plan can only be given limited weight at this

time, given the unresolved objections to relevant policies, and the degree of consistency with the Framework and the emerging draft Local Plan. The Neighbourhood Plan has not yet been examined, proceeded to referendum or made. Our representations to the latest consultation (October 2020) have questioned whether the basic conditions are met, and specifically whether the Neighbourhood Plan will meet identified housing requirements.

- 6.15 The following section considers whether there are any adverse impacts that would significantly and demonstrably outweigh the benefits of the proposed development when assessed against relevant policies in the Framework.

Delivering A Sufficient Supply of Homes (Framework Section 5)

- 6.16 As outlined above, the Charnwood Core Strategy is five years old in November 2020 and the Council acknowledge that as of 9th November 2020 they will no longer be able to demonstrate a 5 year supply of housing land. The standard methodology confirms a housing need of 1,105 dwellings per annum, and Charnwood have confirmed that there will be a supply of 4.10 years.
- 6.17 We would also question a number of the Council's assumptions on delivery from strategic sites, and a more realistic assessment of delivery from these sources would reduce the supply further.
- 6.18 These proposals would deliver housing to help meet the Council's housing requirements and address the five year supply shortfall, and is in full accordance with the Government's aim to significantly boost the supply of housing. The delivery of affordable housing (up to 60 affordable dwellings), which will comprise a range of tenures, house types and sizes, based on local housing needs, is a significant benefit in creating a mixed and balanced community. The emerging draft Local Plan (Policy LP4) seeks to secure a threshold of 30% affordable housing from housing developments, in accordance with the latest evidence base.
- 6.19 It is also important to note that the Government is currently consulting on a revised standard methodology. For Charnwood, this results in a figure of 1,636 dwellings per annum, and if introduced would mean a supply of 2.77 years and a shortfall in excess of 3,800 dwellings.

6.20 David Wilson Homes is committed to bringing the site forward for development at the earliest opportunity. There are no physical or land ownership constraints affecting the site, and it is expected that, if approved, development on the site could be completed within 5 years, making an important contribution towards housing land supply in the Borough.

6.21 Given the acknowledged shortfall in supply, paragraph 11 of the NPPF is engaged and the Council should grant planning permission unless any adverse impacts would significantly and demonstrably outweigh the benefits.

6.22 The following sections demonstrate how the proposals will not result in any adverse impacts that would significantly and demonstrably outweigh the benefits of bringing forward a high-quality development in a sustainable location to address critical housing land supply shortfalls.

Building a Strong, Competitive Economy (Framework Section 6)

6.23 The proposed development involves the provision of new housing to help meet identifies shortfalls. New housing makes an important contribution to employment and is a key component of the government's strategy for economic recovery.

6.24 It is widely recognised that housebuilding has knock-on effects for other sectors, which leads to increased demand for building materials and equipment at the construction phase, as well as domestic furniture and carpets etc. following completion. This generates and sustains employment in other sectors. The July 2018 'Economic Footprint of House Building in England and Wales' report by the Home Builders Federation found that for every 1 job in housing construction, the scale of employment supported is equivalent to between 2.4 and 3.1 direct, indirect and induced jobs per new dwelling built. Taking an average of these figures, a multiplier of 2.75 has been used – i.e. for every 1 job in house building, a further 1.75 jobs are supported in the wider economy. The proposed development of 150 new dwellings could therefore support 412 direct, indirect and induced jobs.

Promoting Sustainable Transport (Framework Section 9)

6.25 A Transport Assessment and Travel Plan by ADC Infrastructure has been

produced to assess the proposed development in accordance with the NPPF.

- 6.26 The NPPF makes clear that the transport system needs to be balanced in favour of sustainable transport modes, giving people real choice about how they travel. The NPPF is clear that development should only be prevented or refused on transport grounds where the residual cumulative impacts of development are severe. The accompanying Transport Assessment demonstrates that in terms of transport, the residual cumulative impact of the proposed development shown on the illustrative masterplan, would be negligible.
- 6.27 The proposed development will be accessed via a priority-controlled T-junction on Barkby Road, designed to standard and with appropriate visibility.
- 6.28 The application site is accessible by sustainable travel modes. The illustrative masterplan includes a footway that will connect to the existing footway network on Barkby Road. The local pedestrian infrastructure is good and the services and facilities available within Queniborough and Syston are within walking distance of the application site. There are opportunities for cycle travel between the site and local attractions, and there are good opportunities for bus travel, with the number 5 bus route running along Syston Road between East Goscote and Leicester every 20 minutes. The additional demand for pedestrian, cycle and bus journeys can be accommodated by the existing infrastructure and proposed measures, including a Travel Plan, which includes the appointment of a Travel Plan Co-ordinator, travel packs for residents and free bus passes.
- 6.29 The proposed development would generate up to 116 two-way traffic movements in a peak hour. Most journeys will route to and from the north, via Barkby Road and Rearsby Road to the Queniborough roundabout. This roundabout would operate with spare capacity with the proposed development in place. Only seven vehicles would route through the Melton Road/Syston Route priority controlled T-junction, hence there would not be a material change to the operation of that junction.
- 6.30 The Syston Road/Rearsby Road/Queniborough Road/Barkby Road crossroads (Queniborough crossroads) is already over capacity. As a result of the proposed development, the worst delays that occur on Rearsby Road would increase by 17 seconds per vehicle and the longest queue would extend by

three vehicles. This is not a severe impact. Nevertheless, a mitigation scheme is proposed that has previously been accepted by Leicestershire County Council as Highways Authority. The scheme proposes the widening of the Rearsby Road approach to the crossroads. The scheme achieves a better than nil-detriment scenario. The scheme can be conditioned to be implemented prior to the 100th occupation.

- 6.31 Leicestershire County Council as Highway Authority, in their response to the 2018 planning application, concluded that *'the residual cumulative impacts of development can be mitigated and are not considered severe in accordance with paragraph 32 of the NPPF, subject to the conditions and contributions as outlined...'*. The previous Committee Report concludes that *'overall, the proposals would be considered acceptable in highway terms subject to appropriate planning conditions and contributions, in accordance with Policy CS17 and CS18 of the Core Strategy and would not be considered to result in severe impacts in accordance with the aims and objectives of the NPPF'*.
- 6.32 The proposed development would accord with the aims of the NPPF. The opportunities for sustainable travel would be taken up, safe and suitable access can be provided, and the proposed mitigation scheme to the Queniborough crossroads would improve the performance of the junction. The proposed development is in accordance with Policy CS17 and paragraph 108 and 109 of the NPPF and should therefore not be prevented on transport grounds.

Promoting Healthy and Safe Communities (Framework Section 8)

- 6.33 The proposed development is well located in relation to the range of community and social facilities available in Queniborough. Public consultation has taken place to ensure that the local community has been involved in the development of the proposals and further detail is set out in the Consultation Statement by Pegasus Group which accompanies the application.
- 6.34 Key local facilities and services are located within walking distance of the application site. To the north-east there is a cluster of local facilities along Queniborough Road and the adjoining Main Street, which includes Queniborough Methodist Church, Queniborough CofE Primary School. St Mary's Church and the local post office and convenience store. In addition, there is also a cluster of local amenities to the south-west of the site, notably Wreake

Valley Academy, St Peter and St Paul Primary School, Jubilee Medical Practice, as well as Aldi and Tesco supermarkets along Melton Road.

- 6.35 The proposals provide substantial open space and recreation opportunities which can contribute to the health and well-being of communities. These spaces offer recreational value, natural surveillance from roads, the public footpath and housing, and make use of existing landscape features.
- 6.36 The illustrative masterplan shows some 1.44ha of public open space provided within the proposed development. The illustrative masterplan shows areas of open space, a landscape gateway feature and children's play located within a green corridor that runs through the site along the route of the public right of way. The attenuation areas total 0.37ha to provide a total of 1.9ha of open space within the proposed development. This is a significant overprovision of open space against the Policy CS15 requirement of 0.96ha onsite open space provision.
- 6.37 The application is accompanied by a Noise Survey and Assessment by Assured Acoustics. An environmental noise survey was carried out between 4pm on 18th December and 6pm on 19th December 2017 in order to obtain representative daytime and night time noise levels at the site.
- 6.38 The main sources of noise are plant items on the industrial estate and traffic on Barkby Road and Melton Road. To reduce noise impact of an industrial fan on a limited number of residential gardens during the daytime, the illustrative masterplan shows a row of terraced houses with enhanced acoustic glazing and ventilation. The houses have been orientated so that gardens and garden facing rooms are well screened from the roof fan. Acoustic glazing and ventilation specifications are also proposed for dwellings fronting Barkby Road. The illustrative masterplan shows most of the gardens at this location are well screened, however where this does not occur, close boarded timber fence or brick wall at least 2m high should be erected to screen noise from Barkby Road. Remaining properties would be fitted with standard double glazing and trickle vents. This will ensure a suitable internal noise environment can be achieved.
- 6.39 Having regard to the above, the proposed development is considered to satisfy Section 8 of the Framework.

Achieving Well Designed Places (Framework Section 12)

- 6.40 The Framework emphasises the importance of achieving good design and advises that proposals that can demonstrate close working with those directly affected in evolving design proposals taking account of local views should be looked on more favourably. Pegasus Group has undertaken public consultation prior to the submission of the planning application, and the application is supported by a Consultation Statement, which sets out the amendments to the illustrative masterplan that have been made as a result of comments received from members of the public.
- 6.41 The accompanying Design and Access Statement by Pegasus Group outlines the approach that has been taken to developing the proposals for the site, demonstrating how the proposal will deliver a high quality urban design solution sympathetic to the local area. David Wilson Homes has established a strong reputation for delivering high quality developments across Leicestershire. The Design and Access Statement demonstrates how the proposals constitute good design in the context of the Framework, PPG, the principles of the Design SPD, Policy EV/1 and Policy CS2.
- 6.42 The Committee Report on the previous application considers the layout and the indicative masterplan, and concludes that *'the indicative layout could be capable of delivering a high quality development, but that further detail would need to be conditioned, in relation to the scale and mix of housing, detail of landscaping and the treatment of I84. This would need to be brought forward as part of a future Reserved Matters submission for the development to be considered to accord with the aims and objectives of saved policy EV/1 of the Local Plan and Policies CS2, CS3, CS11, CS12, CS13, CS16, and CS17 of the Core Strategy'*.
- 6.43 The Committee Report also considered the relationship to neighbouring properties, concluding that *'overall it is considered that issues of concern raised... could be designed out at the reserved matters stage, and the proposals could accord with saved Policy EV/1 of the Local Plan and Policy CS2 of the Core Strategy'*.

Meeting the Challenge of Climate Change, Flooding and Coastal Change (Framework Section 14)

- 6.44 The planning application is accompanied by a Flood Risk and Drainage Assessment by RACE, which demonstrates that the site can be satisfactorily drained and will not cause or increase flood risk elsewhere.
- 6.45 The proposed development lies within Flood Zone 1 and is therefore suitable for residential development. The drainage strategy proposes to maintain runoff rates at the existing greenfield rates. A minimum of two SUDs treatment trains are proposed which will assist in returning storm drainage flows back into the natural ground porosity (where achievable), and will assist in purification of storm water. The scheme makes appropriate provision to deal with surface water and the illustrative masterplan shows an area of storm water balancing at the site's western edge.
- 6.46 The previous committee report confirms that *'the comments of Lead Local Flood Authority have been noted and carefully considered and the issues raised by local residents regarding instances of localised flooding have also been given due consideration. Overall it is considered that there would be no sustainable reason, subject to appropriate conditions, why a development could not be brought forward at the reserved matters stage that could accord with the requirements of Policy CS16 of the Core Strategy and the aims and objectives of the NPPF'*.
- 6.47 The Flood Risk Assessment confirms that the proposals would not result in any adverse impact upon the current site drainage and within the surrounding area and therefore the requirements of paragraph 155, 163 and 165 of the Framework are satisfied.

Conserving and Enhancing the Natural Environment (Framework Section 15)

- 6.48 An Ecological Assessment by Ramm Sanderson, including a number of protected species surveys, has been prepared to consider the ecological impact of the proposed development and how biodiversity can be conserved and enhanced. The planning application also includes an updated ecological assessment to determine the current site conditions and whether any changes

have occurred since the previous survey. This concludes that there are no overriding ecological interests that would preclude development. New areas of informal open space and storm water attenuation areas provide opportunities for ecological enhancement.

- 6.49 The updated survey considers that, apart from hedgerows, the site is of low ecological value and provides negligible/low suitability for protected species. The hedgerows provide suitable foraging and commuting habitats for a range of species, along with bird nesting opportunities, and are therefore retained as shown on the illustrative masterplan.
- 6.50 While the grassland provides sub-optimal habitat for foraging reptiles it does not provide areas for hibernation, rest/shelter and therefore it is considered unlikely that reptiles, if present, will persist within the site. Furthermore, the site is largely unsuitable for Great Crested Newts (GCN). The two ponds located within 500m of the site which are not beyond barriers to dispersal, had a 'below average' suitability for breeding GCN when using the Habitat Suitability Index (HSI). A Precautionary Method of Works for GCN and reptiles is therefore recommended.
- 6.51 The planning application is accompanied by an Arboricultural Assessment by FPCR. The report considers that whilst the individual value of existing trees and hedges is limited, many of the groupings and in particular younger trees, have considerable potential in landscaping terms. The loss of tree and vegetation is minimal and easily mitigated and the illustrative masterplan shows opportunities to strengthen existing hedgerows to provide a landscape buffer.
- 6.52 In assessing the impact on ecology, wildlife and trees, the previous Committee Report confirms that *'overall, subject to appropriate planning conditions and a s106 package to secure management and delivery of ecological enhancement to land outside the red line application boundary, the proposals would be considered to be in accordance with Policy CS13 of the Core Strategy and relevant guidance within the National Planning Policy Framework'*.
- 6.53 The application is accompanied by a Landscape and Visual Appraisal (LVA) by Golby and Luck to consider the application site and assess its suitability in landscape and visual terms for the purposes of residential development. The

site's constraints and opportunities have been used to identify a landscape strategy for development within the site that has informed the illustrative masterplan.

6.54 In response to the identified landscape constraints the proposed development seeks to:

- Retain and reinforce the boundary hedgerows and tree cover. The proposal will also retain the recently planted tree cover at the southern boundary of the site, incorporated within a landscape buffer that will form part of the structural planting to the site softening the existing settlement edge;
- Retain the existing public right of way through the site within a landscaped greenway. The footpath will be an integral element of the greenway providing a landscaped transition between the narrow, fenced section of pathway leading from Avenue Road, and the wider farmland to the south. The open space will be designed to respond to the open space at the Millstone Lane development site to the south comprising a wide area of open space with fronting housing;
- The proposal will be retained within the framework of existing residential and commercial development. The scheme will not bring the settlements of Queniborough and Syston closer than they currently exist;
- The southern edge of the development will be designed to front the wider countryside to the south, creating a positive landscaped edge, and attractive gateway to the settlement along Barkby Road; and
- The proposal will be designed in accordance with the Local Authorities adopted design and residential amenity standards to secure a high quality extension to the settlement that does not compromise the setting of existing properties.

6.55 In landscape terms, the development proposal secures a scale and form of development in keeping with the established setting of the settlement responding to the landscape constraints of the site. The proposal will not result in the loss of any protected habitats or features, and will not affect the setting of a high value landscape. The proposal seeks the development of land that

affords an immediate framework of residential and commercial development that frames its northern, western, and eastern boundaries, set within a landscape identified by the Local Authority as having a medium to high capacity to accommodate development. It is important to note that there is only one open boundary to the countryside.

- 6.56 The proposed development will lead to the loss of open land within a designated Area of Local Separation, but it will not bring the settlements any closer than they currently exist. The settlements will remain separated by open land, and will retain their own separate character and identity, not resulting in a critical loss of junction. This issue is considered comprehensively in the accompanying LVA and the further Landscape Note by Golby and Luck (dated 19th April 2018). The proposed development is therefore considered to comply with emerging Neighbourhood Plan Policy Q6 which protects Areas of Local Separation unless new development clearly maintains the separation between the built-up areas of Queniborough and nearby Syston and East Goscote.
- 6.57 The illustrative masterplan has been designed to ensure that the proposed development will not significantly harm the character and appearance of the area or undermine the planning purpose or overall integrity of the wider Area of Separation. This was the approach taken in recent appeal decisions within Charnwood Borough – at Rothley (**Appendix 1**) and East Goscote (**Appendix 2**).
- 6.58 In summary, while the development of the site will result in the loss of open land within the ALS this will not lead to the coalescence of the two settlements and nor will it result in the loss of land that is critical to role and function of the ALS. It is considered that the loss of the site to development will not result in significant harm to the perceived separation between the two settlements, or the erosion of their separate character and identity. The proposed development is therefore considered to accord with Policy CT/4 and Policy CS11.
- 6.59 In relation to agricultural land, whereby previously the NPPF (2012) stated at Paragraph 112 that “*where significant development of agricultural land is demonstrated to be necessary, local planning authorities should seek to use areas of poorer quality land in preference to that of a higher quality*”, the NPPF

(2019) at Paragraph 170b) now simply requires planning decisions to recognise *"...the economic and other benefits of the best and most versatile agricultural land..."*. The loss of 5.84ha of agricultural land would have no notable impact on the economic benefits of the best and most versatile agricultural land and in fact there are significant economic benefits in developing the site for housing land. The loss of this small area of agricultural land does not weigh against the appeal proposals, particularly when considered against the significant benefits in favour of this development which are outlined within this statement.

Conserving and Enhancing the Historic Environment (Framework Section 16)

- 6.60 The planning application is accompanied by an Archaeological Desk Based Assessment by University of Leicester Archaeological Services, which in accordance with Section 12 of the Framework. The application site lies outside the Conservation Area and there are no scheduled monuments nearby.
- 6.61 There are a group of cropmarks representing an enclosure, which lie partially within the eastern field, and there is therefore some potential for prehistoric remains to be found within the assessment area. If necessary, further investigation works can be undertaken post determination. In accordance with the NPPF, should archaeology be confirmed to be present, full excavation and recording work based on the results of this initial assessment would be required. The proposals therefore comply with the requirements of Policy CS14.
- 6.62 The previous Committee Report assesses the impact on heritage and confirms that *'in conclusion and in accordance with the Act, guidance contained within the NPPF and Core Strategy Policy CS14, the proposed development will cause less than substantial harm to the significance of the designated archaeological heritage assets and would be considered appropriate with the aims and objectives of legislation, policies of the Development Plan and the NPPF as a material planning consideration'*.

FRAMEWORK POLICIES INDICATING DEVELOPMENT SHOULD BE RESTRICTED

- 6.63 Paragraph 11 of the Framework advises local planning authorities to grant

planning permission for proposals where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, unless the application of Framework policies that protect areas of assets of particular importance provide a clear reason for refusing the development proposed, or any adverse impacts would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. Footnote 6 gives examples of policies that protect areas or assets of particular importance, as follows;

- Habitat Sites (listed at paragraph 176);
- Sites designated as SSSIs;
- Land designated as Green Belt;
- Local Green Space;
- An Area of Outstanding Natural Beauty;
- A National Park (or within the Broads Authority) or defined as a Heritage Coast;
- Irreplaceable habitats;
- Designated heritage assets (and other heritage assets of archaeological interest referred to in footnote 63); and
- Areas at risk of flooding or coastal change.

6.64 The proposed development is not affected by any of these special designations.

Delivering Sustainable Development

6.65 The NPPF describes the presumption in favour of sustainable development as the golden thread running through both plan-making and decision-taking. There are three dimensions to sustainable development: economic, social and environmental, which are addressed in turn below:

- Economic – to help build a strong, response and competitive economy;
- Social – to support strong, vibrant and health communities; and
- Environmental – to contribute to protecting and enhancing our natural, built and historic environment.

Economic

- 6.66 The July 2018 'Economic Footprint of House Building in England and Wales' report by the Home Builders Federation found that for every 1 job in housing construction, the scale of employment supported is equivalent to between 2.4 and 3.1 direct, indirect and induced jobs per new dwelling built. Taking an average of these figures, a multiplier of 2.75 has been used – i.e. for every 1 job in house building, a further 1.75 jobs are supported in the wider economy. The proposed development could therefore support 412 direct, indirect and induced jobs.
- 6.67 New housing development also offers an opportunity to increase local expenditure as new residents will spend money on goods and services in the local area, supporting local businesses and helping to maintain the vitality of the local economy.

Social

- 6.68 The Planning Statement and Design and Access Statement confirms the wide range of local services and facilities that are available in Queniborough, which are located within an acceptable walking and cycling distance of the application site. The increased population that would result from these proposals would have a positive impact upon local businesses, including village shops and public houses.
- 6.69 The proposals will contribute towards the Council's five year housing land supply shortfall and have the potential to deliver social gains through the provision of new market and affordable housing along with associated areas of open space. The proposed development will provide up to 60 affordable dwellings, of a range of tenures, house types and sizes, which is a significant benefit.

Environmental

- 6.70 In terms of environmental impacts, the masterplan proposals have been carefully framed to ensure that the proposals minimise impacts on the natural and historic environment. The proposals seek to respect the landscape context, seeking to minimise the loss of hedgerows and trees, and with new

areas of planting and storm water attenuation providing the potential for ecological enhancement.

- 6.71 A well-designed scheme would be delivered, that would not undermine the planning purpose of the Area of Local Separation; it will not bring the settlements any closer than currently or result in the loss of land that is critical to the role and function of the Area of Local Separation, and Queniborough and Syston will retain their own separate character and identities. The illustrative masterplan has been designed to respect the landscape context, seeking to minimise the loss of hedgerows and trees, and securing a scale and form of development in keeping with the established setting of the settlement.
- 6.72 In summary, as discussed further in this report, and presented in the application as submitted, the development is considered sustainable development in accordance with the requirements and definitions of the NPPF.

7.0 Section 106 Heads of Terms

7.1 The applicant will enter into a Section 106 obligation (in the form of an agreement or undertaking) to ensure delivery of such requirements as are reasonable and which accord with the tests set out in Circular 05/2005 and the statutory limitations set out in article 122 of the Community Infrastructure Levy Regulations 2010 in respect of the grant of planning permission for this site. Consultation responses on the previous application indicate that contributions are likely in relation to the following Heads of Terms:

- Up to 40% affordable housing provision (noting that the emerging Local Plan seeks to set a threshold of 30% in accordance with the latest evidence base);
- Contributions towards primary education facilities;
- Contributions to sustainable travel, including Travel Plan monitoring, Travel Packs and Bus Passes;
- Contributions towards improved health facilities;
- Contributions towards outdoor sports facilities and allotments;
- Contributions towards waste/recycling; and
- Contributions to library facilities.

8.0 Conclusions

- 8.1 The Charnwood Local Plan Core Strategy was adopted on the 9th November 2015 and will be five-years old on the 9th November 2020. The NPPF advises that where strategic policies are five-years old, the five-year housing supply should be calculated on the basis of the standard methodology (paragraph 73).
- 8.2 The Council has recognised the need to prepare a new Local Plan and published a Draft Consultation version in November 2019. Work on this new plan is ongoing and therefore will not be in place when the strategic policies in the Core Strategy become five-years old in November. For the purposes of this application, the most important policies for determining the application are therefore out-of-date.
- 8.3 As of 9th November 2020, and therefore during the determination period for this application, the Council's five-year land supply position should be based on the annual housing requirement of 1,105 dwellings set out in the standard methodology. Based on this requirement the Council cannot demonstrate a five-year supply in accordance with the NPPF. As a result, the 'tilted balance' as set out in paragraph 11 applies and permission should be granted unless any adverse impacts would significantly and demonstrably outweigh the benefits. This position has been acknowledged by the Borough Council in an email to Parish Councils dated 7th October 2020.
- 8.4 The 2004 Local Plan made provision for housing requirements only up to 2006, and therefore the saved plan policies cannot be considered up-to-date in terms of planning for future housing requirements.
- 8.5 The Queniborough Neighbourhood Plan can only be given limited weight at this time, given the unresolved objections to relevant policies, and the degree of consistency with the Framework and the emerging draft Local Plan. The Neighbourhood Plan has not yet been examined, proceeded to referendum or made. Our representations to the latest consultation (October 2020) have questioned whether the basic conditions are met, and specifically whether the Neighbourhood Plan will meet identified housing requirements. Additionally, the emerging new Charnwood Local Plan can also only be given limited weight at this stage, given the relatively early stage of preparation.

8.6 This statement has explained in detail the benefits and impacts of the proposed development and the extent to which mitigation measures are proposed to limit any impact. Table 1 below summaries this assessment and demonstrates that the majority of impacts arising from the scheme are positive and the only neutral impacts are landscape and visual and transport. There were no objections raised in relation to technical aspects by the relevant statutory consultees for the previous application.

Table 1: Proposed Development Benefits and Impacts

Positive Benefits	Neutral
Market housing – important to help meet Council's identified needs, in light of the acknowledged five year supply shortfall, including the provision of bungalows to meet identified need.	Landscape and visual impact
Affordable housing – the provision of up to 60 affordable dwellings (up to 40%) – to help meet affordable need, comprising a mixture of tenures.	Transport impact
A mix (size, type and tenure) of housing in a sustainable location, creating a mixed and balanced community.	
High quality design – David Wilson Homes are 5 Star House Builder with a reputation for building high quality developments across Leicestershire.	
Economic benefits – including approximately 412 direct and indirect jobs, increased expenditure in local shops and services, New Homes Bonus.	
Access and connectivity – pedestrian and cycle linkages, including a green link centrally along the existing Public Right of Way. Amenities in Queniborough and Syston are within walking distance, and	

there are good opportunities for bus travel.	
Sustainable travel measures – highly sustainable and accessible location, retention of Public Right of Way, and the scheme will provide travel packs and bus passes (through a Travel Plan).	
Ecological benefits – retention and enhancement of perimeter vegetation, native species planting, landscape buffer and structural planting.	
Health and wellbeing – a well-connected neighbourhood with good access to public open space, S106 contribution towards local health facilities.	
Provision of Public Open Space; including onsite Children’s Play, and a green link through the site along the Public Right of Way.	

- 8.7 Given the identified housing land supply shortfall, the Council needs to take full advantage of suitable and deliverable development opportunities in sustainable settlements within the Borough, with a good range of services and facilities providing for the day-to-day needs of residents. In the new emerging Local Plan, the Council is proposing the allocation of housing in a number of Other Settlements, recognising that these settlements represent suitable locations for further growth to help meet identified housing requirements.
- 8.8 The proposed development of the application site for up to 150 dwellings, including much needed affordable units, represents a suitable, available and achievable residential development opportunity.
- 8.9 The proposals are informed by a full range of supporting technical studies which confirm that there are no technical constraints that would prevent the development of this site.
- 8.10 The proposal would involve the development of greenfield land but the effect

on the coalescence of Queniborough and Syston would not be harmful. Other environmental and social benefits would be provided, and the scheme constitutes sustainable development. There are no Framework policies that protect areas of assets of particular importance that provide a clear reason for refusing these proposals. Any adverse environmental impacts of granting planning permission would not outweigh the benefits. In light of this, the presumption in favour of sustainable development set out in paragraph 11 of the NPPF, permission should be granted.

Appendix 1: Rothley Appeal



Department for
Communities and
Local Government

Mr Paul Stone
Signet Planning Ltd
Strelley Hall
Nottingham
NG8 6PE

Our Ref: APP/X2410/A/13/2196928 &
APP/X2410/A/13/2196929
Your Ref: EM1891

8 April 2014

Dear Sir,

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78
APPEALS BY WILLIAM DAVIS LTD
LAND OFF MOUNTSORREL LANE, ROTHLEY, LEICESTERSHIRE
APPLICATION REFs: P/12/2005/2 and P/12/2456/2**

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Inspector, Harold Stevens BA MPhil DipTP MRTPI FRSA, who held a public local inquiry on 10-13 December 2013 into your clients' appeal against the failure of Charnwood Borough Council ("the Council") to give notice within the prescribed period of their decisions on applications for planning permission for:

Appeal A: construction of a maximum of 250 dwellings, replacement primary school, change of use from dwelling to medical facility, change of use from agricultural land to domestic curtilages, green infrastructure, potential garden extensions, construction of a relief road, and demolition of barns in accordance with application ref: P/12/2005/2, dated 20 September 2012; and

Appeal B: an area of public open space including water balancing ponds and green infrastructure in accordance with application ref: P/12/2456/2 dated 21 November 2012.

2. On 29 May 2013, the appeals were recovered for the Secretary of State's determination, in pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act 1990, because they involve proposals over 150 units or on sites of more than 5 ha which would significantly impact on the Government's objective to secure a better balance between housing demand and supply and create high quality, sustainable mixed and inclusive communities.

Inspector's recommendation and summary of the decision

3. The Inspector recommended that the appeals be allowed and outline planning permission granted. For the reasons given below, the Secretary of State agrees with the Inspector's conclusions and recommendations. A copy of the Inspector's report

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

Tel 0303 444 1626
Email pcc@communities.gsi.gov.uk

(IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

Procedural matters

4. The application for costs (IR1.1) made by your clients at the Inquiry is the subject of a decision letter being issued separately by the Secretary of State.
5. The Secretary of State notes (IR8.2-8.9) that the parties agreed at the inquiry that the description of the proposals should be amended to read:

Appeal A:

“A hybrid planning application for a maximum of 250 dwellings, access, green infrastructure, a relief road, balancing ponds, public open space and demolition of barns”

Appeal B:

“Change of use from agricultural land to Biodiversity Park.”

The Secretary of State is satisfied that all interested persons were given an opportunity to express their views on these changes and there is no evidence of prejudice. He has therefore determined the appeals on the revised basis.

6. Following publication of the planning practice guidance on 6 March 2014, the Secretary of State wrote to you and the Council on 17 March to seek views on any points of relevance to your clients' case; and you responded on 31 March on behalf of both parties confirming that your clients and the Council are content that the new guidance on the relevant topics does not materially alter the considerations in this case. A copy of your response may be obtained on written request to the address at the foot of the first page of this letter.

Policy considerations

7. In deciding these appeals, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise. In this case, the development plan comprises the saved policies of the Charnwood Borough Council Local Plan 2004 (LP); and the Secretary of State agrees with the Inspector that the policies most pertinent to the main issues in these appeals are those set out at IR1.22-1.27. Like the Inspector (IR1.28), he gives them due weight according to their degree of consistency with the *National Planning Policy Framework* (The Framework), as set out at IR1.34.
8. The Secretary of State has also taken account of the *Charnwood Local Plan 2006 to 2028 Core Strategy (CS) (Pre-Submission Draft)* (IR1.29-1.32); and he is aware that, since the close of the appeal inquiry, the examination into the soundness of the CS has been opened. Nevertheless, for the reasons given at IR1.32 (particularly with regard to unresolved objections), he attributes little weight to it.
9. In addition to the Framework, other material considerations which the Secretary of State has taken into account include *the planning practice guidance* referred to in paragraph 6 above, and the *Community Infrastructure Levy (CIL) Regulations 2010* as amended.

Main issues

10. The Secretary of State agrees with the Inspector that the main issues in this case are those set out at IR1.4 and also referred to at IR8.1.

Appeal A

Consistency with development plan and sustainability

11. For the reasons given at IR8.10-8.22, the Secretary of State agrees with the Inspector's conclusion at IR8.24 that the appeal proposal would accord with a wide range of development plan policies but that there would be limited conflict with Policy CT/4 (development in Areas of Local Separation (ALS)) to which he gives some weight (see paragraph 13 below). The Secretary of State also agrees with the Inspector that, as agreed by the parties (IR8.23), the appeal site is in a sustainable location for housing development.

Housing needs and land supply

12. For the reasons given at IR8.25-8.29, the Secretary of State agrees with the Inspector's conclusion at IR8.30 that the release of the appeal A site is necessary to meet the housing needs of the Borough. Whilst acknowledging the steps that have been taken towards the adoption of a CS since the close of the appeal inquiry, he agrees with the Inspector's observation at IR8.26 that there is currently little evidence of sufficient sites having been allocated to provide a 5 year housing land supply. He also agrees (IR8.27-8.29) that paragraph 14 of the Framework is engaged because the local plan is out-of-date so that the presumption in favour of sustainable development applies.

Character and appearance of the area, including the purpose and integrity of the ALS

13. Like the Inspector (IR8.31), the Secretary of State accepts that, if the appeal succeeds, there would be a reduction in openness and the character of the existing ALS between Mountsorrel and Rothley would be changed. However, he also agrees with the Inspector at IR8.39 that, for the reasons given at IR8.32-8.38, the proposed development would not significantly harm the character and appearance of the area or undermine the planning purpose or overall integrity of the wider ALS. He also agrees that the countervailing environmental benefits, including those arising from the landscaping proposals in the appeal scheme master plan and the careful design of the relief road to include significant areas of new planting, more than outweigh the loss of ALS and the limited landscape harm caused by the loss of green field land.

Appeal B

14. Having regard to the Inspector's comments at IR8.7-8.9, and noting that the Council have resolved that Appeal B is acceptable on its own terms (IR8.51), the Secretary of State agrees with the Inspector at IR8.55 that the Appeal B proposal is wholly in accordance with the Framework and with the local plan and that there are no other material considerations which indicate planning permission should not be granted.

Conditions and obligations

15. The Secretary of State has considered the proposed conditions and the Inspector's reasoning and conclusions thereon (IR8.40-8.41), and he is satisfied that the conditions as proposed by the Inspector and set out at Annex A to this letter are reasonable, necessary and comply with the terms of the planning practice guidance.
16. The Secretary of State has also considered the Planning Obligations as described by the Inspector at IR8.42-8.47. He agrees with the Inspector (IR8.42) that all the provisions included in the executed Section 106 Agreement dated 13 December 2013 are necessary and comply with the Framework and Regulation 122 of the CIL Regulations. He also agrees with the Inspector (IR8.43-8.46) that the completed s106 Unilateral Undertaking, dated 13 December 2013, between the Appellant, the Council and the Police and Crime Commissioner for Leicestershire (APP10) meets the tests of Regulation 122 and the Framework and should be regarded as a material consideration. However, the Secretary of State agrees with the Inspector that, for the reasons given at IR8.47, the signed and completed S106 Unilateral Undertaking, dated 13 December 2013, between the Appellant, the Council and NHS England (Leicestershire and Lincolnshire) (APP13) does not meet the tests of Regulation 122, and he therefore gives it no weight.

Overall Conclusions

17. The Secretary of State concludes that, as the development plan is out-of-date and the Council cannot demonstrate a 5 year supply of housing land, there is a strong case for allowing this appeal and granting planning permission unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies of the Framework taken as a whole. He acknowledges that the proposed development would represent a limited conflict with the development plan through its effect on the purpose and integrity of the ALS, but he considers that this harm would be limited and insufficient to undermine its continuing planning function. Therefore, having regard to the other benefits of the appeal proposals, he concludes that, overall, the scheme represents a suitable and sustainable development where other material considerations clearly outweigh the limited development plan conflict.

Formal Decision

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

Appeal A: a maximum of 250 dwellings, access, green infrastructure, a relief road, balancing ponds, public open space and demolition of barns, in accordance with amended application ref: P/12/2005/2, dated 20 September 20112; and

Appeal B: change of use from agricultural land to Biodiversity Park in accordance with amended application ref: P/12/2456/2 dated 21 November 2012.

19. An applicant for any consent, agreement or approval required by a condition of this permission for agreement of reserved matters has a statutory right of appeal to the Secretary of State if consent, agreement or approval is refused or granted conditionally or if the Local Planning Authority fail to give notice of their decision within the prescribed period.

20. This letter does not convey any approval or consent which may be required under any enactment, bye-law, order or regulation other than section 57 of the Town and Country Planning Act 1990.

Right to challenge the decision

21. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged by making an application to the High Court within six weeks from the date of this letter.

22. A copy of this letter has been sent to the Council.

Yours faithfully

JEAN NOWAK

Authorised by Secretary of State to sign in that behalf

CONDITIONS

APPEAL A - Appeal Ref: APP/X2410/A/13/2196928

- 1) Insofar as this decision grants full planning permission for the relief road as indicated in the application, the development, hereby permitted, shall be begun not later than 2 years from the date of this permission.
- 2) The development of the relief road shall be carried out only in accordance with the details and specifications included in the submitted application, as amended by the revised drawings Nos. NTT/2033/HD/104 rev P3, NTT/2033/HD/104 rev P4, NTT/2033/HD/105 rev P4, NTT/2033/HD/106 rev P4, NTT/2033/HD/100 P11, NTT/2033/008 rev P2 showing the layout and design of the relief road.
- 3) Insofar as this decision grants outline planning permission for those parts of the development other than the relief road, details of the layout, scale, appearance, access, landscaping and proposed ground levels and finished floor levels of all buildings (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the Local Planning Authority before any development begins, in accordance with the phasing scheme as agreed under condition No. 5 below and the development shall be carried out as approved.
- 4) The application(s) for approval of reserved matters shall be made within three years of the date of this permission and the development shall be begun not later than two years from the final approval of the last of the reserved matters.
- 5) No development, including site works, shall take place until a phasing scheme in respect of the relief road, pedestrian/cycle access routes to the site, public open space, recreational, children's play areas, Biodiversity Park and the residential areas has been submitted to and agreed in writing by the Local Planning Authority. The development shall be carried out in accordance with the agreed phasing scheme.
- 6) No development, including site works, shall take place until details of the disposal of foul sewage have been submitted to and approved in writing by the Local Planning Authority. The scheme shall be implemented in accordance with the approved details before the development is brought into use.
- 7) No development, including site works, shall take place until a surface water drainage scheme for the site, based on sustainable drainage principles and an assessment of the hydrological and hydro geological context of the development, has been submitted to and approved in writing by the Local Planning Authority. The drainage strategy should demonstrate the surface water run-off generated up to and including the 100 year critical storm plus an appropriate allowance for climate change will not exceed the run-off from the undeveloped site following the corresponding rainfall event.
The scheme shall subsequently be implemented in accordance with the approved details before the development is completed.
The scheme shall also include:

- details of how the scheme shall be maintained and managed after completion
 - sustainable drainage techniques or SuDS incorporated into the design in line with The SUDS manual C697. A development of this type should incorporate at least two treatment trains.
 - details to show the outflow from the site is limited to the maximum allowable rate, i.e. greenfield site run-off
 - design details of the proposed balancing ponds, including cross-sections and plans. This includes all connections to any receiving watercourse.
- 8) The development permitted by this planning permission shall be carried out in accordance with the approved Flood Risk Assessment (FRA) Revision B and the mitigation measures detailed within the FRA produced by BWB Consulting and dated March 2013.
- 9) No development, including site works, shall take place until a Construction Method Statement has been submitted to, and approved in writing by, the Local Planning Authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:-
- (i) the routing of construction traffic;
 - (ii) the times of construction work;
 - (iii) the parking of vehicles of site operatives and visitors;
 - (iv) loading and unloading of plant and materials;
 - (v) storage of plant and materials used in constructing the development
 - (vi) measures to control the emission of dust and dirt (including a scheme for wheel cleaning) during construction to ensure that the highway is kept free of mud, water and stones;
 - (vii) a scheme for recycling/disposing of waste resulting from demolition and construction works;
 - (viii) measures to protect the trees and hedges to be retained on the application site during the duration of the construction works;
 - (ix) measures to protect the wildlife habitats and wildlife corridors during the duration of the construction works.
- 10) No development, including site works, shall take place until a Phase II ground investigation has been undertaken to establish the full nature and extent of any contamination of the site and the results of the investigation together with details of any remediation strategy necessary to render the site safe shall be submitted to the Local Planning Authority for their assessment and written approval. Any remediation works required by the approved strategy shall be carried out in accordance with the approved remediation strategy.
- 11) No development in any phasing as agreed under condition 5, including site works, shall take place until a landscaping scheme for the respective phase, to include those details specified below, has been submitted to and agreed in writing by the Local Planning Authority:
- (i) the treatment proposed for all ground surfaces, including hard areas;
 - (ii) full details of tree planting;

- (iii) planting schedules, noting the species, sizes, numbers and densities of plants;
 - (iv) finished levels or contours;
 - (v) any structures to be erected or constructed;
 - (vi) functional services above and below ground; and
 - (vii) all existing trees, hedges and other landscape features, indicating clearly those to be removed.
- 12) The landscaping schemes for the development shall be fully completed, in accordance with the details agreed under the terms of condition No. 11, in the first planting and seeding seasons following the first occupation of any part of the development or in accordance with a programme previously agreed in writing by the Local Planning Authority. Any trees or plants removed, dying, being severely damaged or becoming seriously diseased, within 5 years of planting shall be replaced in the following planting season by trees or plants of a size and species similar to those originally required to be planted.
- 13) No development, including site works, shall take place until a Green Infrastructure Biodiversity Management Plan, including long term design objectives, management responsibilities and maintenance schedules, including ecological measures for all landscape areas, other than domestic gardens, has been submitted to and agreed in writing by the Local Planning Authority. The agreed Green Infrastructure Biodiversity Management Plan shall then be fully implemented.
- 14) The details to be submitted in accordance with condition No. 3 shall include open space/children's play area provision at a rate of 200 square metres per 10 dwellings of which 75 square metres per 10 dwellings must include play equipment.
- 15) The details to be submitted in accordance with condition No. 3 shall include open space provision for recreational use by adults, youth and for general amenity purposes.
- 16) No development, including site works, shall take place until all existing vehicular accesses to the site have been identified and details submitted to and approved in writing by the Local Planning Authority to show how and when the accesses that are to become redundant as a result of this proposal shall be closed permanently and the existing vehicular crossings reinstated.
- 17) No development, including site works, shall take place until a scheme of public art within the built fabric of the development, including its future management and a timetable for its implementation, has been submitted to and agreed in writing by the Local Planning Authority. The agreed scheme shall be fully implemented in accordance with the agreed timetable.
- 18) No development, including site works, shall take place until the applicant or developer has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation which has been previously submitted to and agreed in writing by the Local Planning Authority, and no development shall take place except in accordance with the approved details.

APPEAL B - Appeal Ref: APP/X2410/A/13/2196929

- 1) The development, hereby permitted, shall be begun not later than 3 years from the date of this permission.
- 2) The use hereby permitted shall not commence until a landscaping scheme, to include those details specified below, has been submitted to and agreed in writing by the Local Planning Authority:
 - (i) the treatment proposed for all ground surfaces, including hard areas;
 - (ii) full details of tree planting;
 - (iii) planting schedules, noting the species, sizes, numbers and densities of plants;
 - (iv) all existing trees, hedges and other landscape features, indicating clearly those to be removed.
- 3) The landscaping scheme shall be fully completed, in accordance with the details agreed under the terms of the above condition, in the first planting and seeding seasons following the commencement of the use or in accordance with a programme previously agreed in writing by the Local Planning Authority. Any trees or plants removed, dying, being severely damaged or becoming seriously diseased, within 5 years of planting shall be replaced in the following planting season by trees or plants of a size and species similar to those originally required to be planted.
- 4) The use hereby permitted shall not commence until a Green Infrastructure Biodiversity Management Plan, including long term design objectives, management responsibilities and maintenance schedules for the area, has been submitted to and agreed in writing by the Local Planning Authority. The agreed landscape management plan shall then be fully implemented.

Report to the Secretary of State for Communities and Local Government

by Harold Stephens BA MPhil Dip TP MRTPI FRSA

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

Date: 27 January 2014

Town and Country Planning Act 1990

Two appeals by William Davis Ltd

Local Planning Authority: Charnwood Borough Council

Land off Mountsorrel Lane, Rothley, Leicestershire LE7 7PS

File Refs: APP/X2410/A/13/2196928 & APP/X2410/A/13/2196929

Inspector's Report

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File Ref: APP/X2410/A/13/2196928 (APPEAL A)
Land off Mountsorrel Lane, Rothley, Leicestershire LE7 7PS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for outline planning permission.
- The appeal is made by William Davis Limited against Charnwood Borough Council.
- The application Ref P/12/2005/2 is dated 20 September 2012.
- The development proposed is the construction of a maximum of 250 dwellings, replacement primary school, change of use from dwelling to medical facility, change of use from agricultural land to domestic curtilages, green infrastructure, potential garden extensions, construction of relief road (details to be agreed as part of the submission) and demolition of barns.

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

File Ref: APP/X2410/A/13/2196929 (APPEAL B)
Land off Mountsorrel Lane, Rothley, Leicestershire LE7 7PS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for outline planning permission.
- The appeal is made by William Davis Limited against Charnwood Borough Council.
- The application Ref P/12/2456/2 is dated 21 November 2012.
- The development proposed is an outline application for an area of public open space including water balancing ponds and green infrastructure.

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

1. Procedural Matters

- 1.1 At the Inquiry an application for costs was made by William Davis Limited against the Charnwood Borough Council. This application is the subject of a separate Report.
- 1.2 The Inquiry was held at the Ramada Hotel, High Street, Loughborough into two appeals by William Davis Limited on 10-13 December 2013. I made accompanied site visits on 12 December 2013 to the appeal sites and other sites. I also visited other sites on an unaccompanied basis.
- 1.3 The appeals were recovered by the Secretary of State (SoS) by a direction, made under section 79 and paragraph 3 of Schedule 6 of the Town and Country Planning Act 1990, on 29 May 2013. The reason for this direction is that the appeals involve proposals for residential development of over 150 units or on sites over 5 hectares, which would significantly impact on the Government's objective to secure a better balance between housing demand and supply and create high quality, sustainable, mixed and inclusive communities.
- 1.4 On the information available at the time of making the direction, the statements of case and the evidence submitted to the Inquiry, the following are the matters on which the SoS needs to be informed for the purpose of his consideration of these appeals:

- (i) *The extent to which the proposed development is consistent with the development plan for the area and would deliver a sustainable form of development;*
- (ii) *Whether the proposed development is necessary to meet the housing needs of the Borough bearing in mind the housing land supply position;*
- (iii) *The effect of the proposed development on the character and appearance of the area including the purpose and integrity of the Area of Local Separation;*
- (iv) *Whether any permission should be subject to any conditions and, if so, the form these should take; and*
- (v) *Whether any planning permission granted should be accompanied by any planning obligations under section 106 of the 1990 Act and, if so, whether the proposed terms of such obligations are acceptable.*

1.5. There are two Statements of Common Ground (SoCG); one for Appeal A,¹ and one for Appeal B.² There is a Section 106 Planning Obligation Agreement,³ and two Section 106 Unilateral Undertakings⁴ and a List of Suggested Conditions for each appeal.⁵ The Appellant, the Council and other parties have also provided a separate list of documents which each submitted to the Inquiry. Copies of all the proofs of evidence, appendices and summaries have been supplied to the SoS. The document lists are set out at the end of this Report.

The Sites and Surroundings

1.6 There are agreed site descriptions for both appeals in the SoCGs.

The main points for each site are:

1.7 **Appeal Site A** covers about 26.22 hectares and is located in Rothley, Leicestershire. Vehicular access would be off the junction of Mountsorrel Lane and Walton Way to the west and Loughborough Road to the east. Appeal site A is part of a larger area of land controlled by the Appellant which comprises about 32.82 hectares. 6.6 hectares relate to land to the south of the appeal site which is the subject of conjoined Appeal B.

1.8 To the north of Appeal Site A is residential development, which is separated from the site by a narrow watercourse (Sic Brook), sports fields and a site with the benefit of planning permission for housing. Adjacent farmland defines the southern limits of the site. To the east there is a garden centre (Brooklea Nursery). The western boundary is marked by the rear gardens of properties fronting Mountsorrel Lane, Mountsorrel Lane itself and a cemetery.

1.9 There are a number of hedges crossing the site and existing trees as shown in Design and Access Statement (DAS). The site generally falls north to south down towards Rothley Brook (circa 47m AOD). The northern part of the site,

¹ INQ3

² INQ4

³ APP9

⁴ APP10 and APP13

⁵ APP22A and APP22B

adjacent the Linkfield Road area, actually falls to the north-west (circa 57m AOD). The highest point (circa 69m AOD) sits to the south of this and forms a ridge line; some 12 metres higher than the north-west boundary.

- 1.10 There are no public footpaths or bridleways across the site. The site is currently used predominantly as grazing land with some arable farmland. The site is situated close to a number and range of community facilities. These facilities are listed in the SoCG⁶ with walking distances taken from the centre of the site except where specified.
- 1.11 **Appeal Site B** covers about 6.6 hectares and is located in Rothley, Leicestershire. Pedestrian access would be off Mountsorrel Lane to the west and Loughborough Road to the east. To the north of the site there are fields which are the subject of an appeal for residential development and a relief road (Appeal A). The adjacent Rothley Brook defines the southern limits of the site. To the east is Loughborough Road. The western boundary is marked by the rear gardens of properties fronting Mountsorrel Lane, Rothley Tennis Club and Rothley CoE Primary School.
- 1.12 The site comprises trees, hedges, grassland and wetland habitat. The hedges crossing the site and existing trees are shown in the DAS.⁷ The site falls within the Environment Agency's designated flood zones 2 and 3. Rothley Brook Local Wildlife Site (LWS) and Farnham Bridge Marsh LWS occur within or on the site boundary. There are no heritage assets on the appeal site. There are no public footpaths or bridleways across the site.

The Proposals and the Council's Putative Reason for Refusal

- 1.13 Although the Council did not determine the applications within the appointed time, it subsequently reported both applications to the Plans Committee on 20 June 2013. With regard to the application for residential development and the link road (Appeal A) the officer's report (CBC02) explained that the Council would have refused this application for the following putative reason. The Council's resolution to refuse the application is at CBC01 and for convenience I set it out below:

"The local planning authority is of the opinion that the proposal would lead to the loss of an Area of Local Separation resulting in a significantly narrowed and reduced actual and perceived gap of open undeveloped land between the villages of Rothley and Mountsorrel contrary to the saved policy CT/4 in the adopted Borough of Charnwood Local Plan. This would be contrary to interests of the well established planning policies and emerging policies in the Charnwood Local Plan to prevent the coalescence and merging of villages in the Soar Valley. This significant adverse impact is considered to outweigh the benefits of allowing the development because of the harmful effect it would have on the purpose and integrity of the Area of Local Separation and would undermine its continuing planning function".

- 1.14 With regard to the application for the Biodiversity Park (Appeal B) this was also reported to the Council's Plans Committee on 20 June 2013 (see CBC04)

⁶ INQ3

⁷ APP16

following the lodging of the appeal against non determination and it was resolved that planning permission would have been granted subject to conditions (see CBC03). It was considered that this development could be delivered without the housing and link road development and without an adverse impact on the Area of Local Separation (ALS) and was therefore considered acceptable.

- 1.15 The application in Appeal A was submitted in outline form with all matters save for access reserved for future consideration. The application in Appeal B was also submitted in outline but with all matters reserved for future consideration. The reader should be aware that there were considerable discussions between the Appellant and the Council on both applications prior to the submission of these appeals and these resulted in various changes being made to the proposals to try and overcome the concerns of the Council on a number of issues. Section 6 of Mr Morley's proof explains in more detail the changes that were made and the revised plans that were received by the Council. As a result of these various changes I asked at the outset of the Inquiry for clarification of the description of the both proposals, a list of the plans on which both proposals should be based and a list of the documents submitted with both appeals.
- 1.16 In this regard the reader should refer to documents APP12A, APP12B, APP14 and APP20 which were agreed by the Appellant and the Charnwood Borough Council. Document APP12A confirms that in relation to Appeal A the description of the proposal has now changed from that shown on the original application form to:
- "A hybrid planning application for a maximum of 250 dwellings, access, green infrastructure, a relief road, balancing ponds, public open space and demolition of barns."*
- Document APP20 also explains that the changes are compliant with the Wheatcroft principles.⁸ Document 12B confirms that in relation to Appeal B the description of the proposal has now changed from that shown on the original application form to:
- "Change of use from agricultural land to Biodiversity Park."*
- Document APP14 sets out the agreed list of plans for both appeals and Document 16 sets out the agreed list of documents supporting both appeals.
- 1.17 The Appeal A proposal is described in Section 3 of the SoCG.⁹ The most helpful plan is the Illustrative Masterplan P-A3. This indicates the areas proposed for a maximum of 250 dwellings, the proposed access via a link road, the proposed green infrastructure, balancing ponds, public open space and community orchard.
- 1.18 The Appeal B proposal is described in Section 3 of the SoCG.¹⁰ The most helpful plan is the Illustrative Masterplan P-B3. This indicates that of the 6.6 hectares some 5.73 hectares would comprise the Biodiversity Park and the

⁸ Wheatcroft v Secretary of State [1981] 1EGLR139

⁹ INQ3

¹⁰ INQ4

remainder would be green infrastructure. Pedestrian access to the site would be off Mountsorrel Lane to the west, Loughborough Road to the east and the proposed residential development to the north.

Environmental Impact Assessment (EIA)

- 1.19 The proposed development falls within the description at paragraph 10(b) of Schedule 2 of the 2011 Regulations,¹¹ being an urban development project on a site exceeding 0.5ha. No Screening Opinion was issued by the LPA. The SoS considered the matter and having taken into account the criteria in Schedule 3 to the above Regulations came to the view that the proposed development would not be likely to have a significant effect on the environment by virtue of factors such as its nature, size or location. Accordingly, in exercise of the powers conferred on the SoS by Regulations 12(1) and 6(4) of the above Regulations, the SoS issued a Screening Direction on 12 September 2013 to the effect that this development is not EIA development. I agree that the proposed development is not EIA development and therefore it does not require the submission of an Environmental Statement.

Planning Policy

- 1.20 The development plan for the area includes the saved policies of the Charnwood Borough Council Local Plan 2004 (CBCLP). A list of the relevant policies is set out in the SoCG for each site. A copy of the Saving Letter dated 21 September 2007 and the detailed wording of all the policies is also included on the file.
- 1.21 Set out below are those policies which are most pertinent to the main issues in these appeals. However, the Conclusions and Recommendations in this Report have taken account of all relevant policies.

Charnwood Borough Council Local Plan 2004 (Saved Policies)

- 1.22 *Policy ST/1 – Overall Strategy for Charnwood* – sets the overall framework for development in the Borough, ensuring that needs of the community are met and that features of the natural and built environment are protected and safeguarded where necessary. *Policy ST/2 – Limits to Development* – indicates that development will be limited to within the existing Limits to Development boundaries of existing settlements, subject to specific exceptions set out in the Local Plan. *Policy ST/3 – Infrastructure* – ensures that developers provide financial contributions for related infrastructure or community facilities.
- 1.23 *Policy H/5 - Affordable Housing on Unallocated Sites* – seeks to secure the provision of the appropriate amount of affordable housing with a range of house types on windfall sites. *Policy H/16 – Design and Layout of New Housing Developments* – seeks to ensure that high standards of design are achieved in terms of scale, character of the area, privacy, landscaping and creating a safe and secure environment.
- 1.24 *Policy CT/1 - General Principles for Area of Countryside, Green Wedge and Local Separation* - states that development within these areas will be strictly

¹¹ The Town and Country Planning (Environmental Impact Assessment) Regulations 2011
www.planningportal.gov.uk/planninginspectorate Page 8

controlled. The policy allows permission for the re-use and adaptation of rural buildings for uses suitable in scale and nature, and small-scale new built development, where there would not be a significant adverse environmental impact and the proposal would meet certain criteria. *Policy CT/2 – Development in the Countryside* - states that in areas defined as Countryside, developments acceptable in principle will be permitted where it would not harm the character and appearance of the countryside and provided it could safeguard its historic, nature conservation, amenity and other local interests. *Policy CT/4 – Development in Areas of Local Separation* – states that in Areas of Local Separation development would be acceptable in principle where the predominantly open and undeveloped character of the area is retained and gaps between settlements not reduced.

- 1.25 *Policies RT/3 – RT5* set standards for the provision of play and recreation spaces in new development. *Policy RT/12* indicates that areas of open space for recreation, amenity, structural landscaping and natural green space will be required in association with new development. *Policy EV/43 – Percent for Art* calls for works of public art to be provided as an integral part of new major development, where it can be readily seen by the public.
- 1.26 *Policy TR/1 – The Specified Road Network* - seeks to ensure that development is not granted which results in serious congestion on the main traffic routes through the Borough, or otherwise prejudice the ability to provide for safe and efficient movement of traffic. *Policy TR/6 – Traffic Generation from New Development* - indicates that developments which would result in unsafe and unsatisfactory operation of the highway system or have a significant impact on the environment will not be permitted, unless measures are proposed to overcome any harmful effects.
- 1.27 *Policy TR/16 – Traffic Calming* - seeks to ensure measures are included to reduce traffic speeds and assist in the creation of higher quality and safer living and working environments within and in the vicinity of development sites. *Policy TR/17 – Impact of Traffic on Minor Roads* - indicates that developments which would result in significant changes to the amount of traffic using rural or roads through villages with safety or environmental implications will not be permitted, unless measures are proposed to overcome any harmful effects. *Policy TR/18 – Parking Provision in New Development* - seeks to set the maximum standards by which development should provide for off street car parking dependent on floorspace or dwelling numbers.
- 1.28 The CBCLP was not adopted in accordance with the Planning and Compulsory Purchase Act 2004 therefore, in accordance with the NPPF paragraph 215 and accompanying footnote 39, due weight should be given to these policies according to their degree of consistency with the NPPF.

Charnwood Local Plan 2006 to 2028 Core Strategy (Pre-Submission Draft)

- 1.29 The Council's Pre-Submission Draft Core Strategy (CS) was considered by Cabinet on 11 April 2013 and approved for consultation. The SoCG sets out an indicative timetable for the preparation of the CS which anticipates a Public Examination in April 2014 and Adoption in October 2014. The emerging CS sets out a development strategy for the provision of homes and jobs in Policy

CS1.¹² The priority location for growth will be the Leicester Principal Urban Area, where 7,260 homes and up to 46 hectares of employment will be delivered by 2028. The majority of the remaining growth will be met at Loughborough and Shepshed where at least 6,450 homes and up to 22 hectares of employment land will be delivered by 2028.

- 1.30 A small amount of housing and employment development is anticipated in the Service Centres to maintain their facilities and services to benefit the people who live there and to support surrounding communities. A total of 3,170 homes and up to 7 hectares of employment land will be delivered in the Service Centres. Mountsorrell and Rothley are identified as Service Centres in the emerging CS. There is no specific policy relating to ALS in the CS. However, the emerging CS envisages the continued use of ALS but with the boundaries to be reviewed through a Sites Allocations and Development Management Development Plan Document (DPD) which is planned to be adopted in June 2015.
- 1.31 Policy CS11 of the emerging CS¹³ relates to landscape and countryside. It indicates that the predominantly open and undeveloped character of ALS will be protected unless new development clearly maintains the separation between built-up areas of settlements. Policy CS12 relates to Green Infrastructure and recognises the need to protect and enhance green infrastructure for communities. It specifically supports proposals related to the River Soar which provide high quality walking and cycling links between the corridor and Charnwood's towns and villages. Policy CS13 supports developments that protect biodiversity and geo-diversity and those that enhance, restore or re-create biodiversity.
- 1.32 In accordance with paragraph 216 of the NPPF, account can be taken of emerging policies but the weight attached to such documents and policies will depend on their stage of preparation, extent to which there are unresolved objections and the degree of consistency between these emerging policies and the NPPF. It is agreed between the main parties that the weight that can be attributed to the emerging CS is limited as there are significant unresolved objections.¹⁴

Supplementary Planning Documents

- 1.33 The Council has issued a number of Supplementary Planning Documents (SPD) that are of relevance. The '*Leading in Design*' SPD (October 2006) encourages, promotes and inspires higher design standards in development. The '*Making it Easy*' SPD (February 2006) is a set of guidelines for creating buildings and environments that are accessible for all people with disabilities. The '*S106 Developer Contributions*' SPD (October 2007) ensures the provision of reasonably related infrastructure that is appropriate to the type and scale of development and the circumstances of the particular locality. The '*Affordable Housing*' SPD (October 2005) sets out the need for affordable housing. It seeks

¹² APP17

¹³ CBC12

¹⁴ INQ3 paragraph 6.10

a minimum of 30% affordable housing units on sites of this size for new housing.

National Planning Policy Framework (NPPF) (2012)

- 1.34 The NPPF has the presumption in favour of sustainable development at its heart and this has three dimensions: economic, social and environmental. It is confirmed that applications should be determined in accordance with the development plan unless material considerations indicate otherwise. The NPPF is one such material consideration. Paragraph 215 makes it quite clear that the NPPF can override development plan policy that is not consistent with its provisions. Paragraph 49 of the NPPF indicates that relevant policies for the supply of housing will not be considered up-to-date if the Council is unable to demonstrate a five-year supply of deliverable housing sites. Paragraph 14 of the NPPF indicates that where the development plan is absent, silent or relevant policies are out-of-date, planning permission should be granted unless any adverse effects of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies of the NPPF as a whole or unless specific NPPF policies indicate development should be restricted.

2. THE CASE FOR CHARNWOOD BOROUGH COUNCIL (CBC)

The main points are:

Introduction

- 2.1 It is common ground that: (a) Appeal B is acceptable on its own terms; the matter in dispute relates to Appeal A; (b) the Council cannot demonstrate a 5 year supply and therefore the housing supply policies of the development are out of date pursuant to paragraph 49 of the NPPF; (c) by operation of the NPPF, the appeals should be allowed unless the harm to the ALS significantly and demonstrably outweighs the benefits of the scheme; (d) by operation of paragraph 215 of the NPPF, due weight should be accorded to the development plan depending on the degree of consistency with the NPPF; (e) 83% of the Borough is covered by countryside and 5% of the countryside is subject to protection as ALS and Green Wedge. The appeal sites lie within a designated ALS; and (f) the northern cluster of proposed new housing, which hugs the edge of Mountsorrel, is unlikely to have an unacceptable impact. The Council's concerns relate to the impact of the larger southern cluster of houses and the relief road on the ridge.

Status of the ALS

- 2.2 It is also common ground that the appeal site has the following attributes agreed by Mr Rech in cross examination: (a) it possesses relatively coherent countryside character; (b) it makes a positive contribution to local distinctiveness on account of the fact that it is typical of the landscape character area to which it lies; (c) its predominant appearance is open and natural, notwithstanding the presence of urban features in the vicinity; (d) presently, it fulfils its planning function of providing open and undeveloped land to maintain separation between the villages; (e) it is visually more impressive than most urban fringe sites; and (f) it is of higher landscape quality than the remaining part of the eastern part of the ALS on account of

the fact that it has a more coherent field pattern and better preserved trees and hedgerows.

- 2.3 The SoS is invited to accept that the appeal site forms part of an enclave of countryside which presently carries a strong impression of separation between Mountsorrel and Rothley.
- 2.4. Policy CT/4 states that within an ALS development will only be permitted where the predominately open and undeveloped character of the area is retained and the already narrow gap between settlements is not reduced.¹⁵ The intent of the policy is crystal clear. The words are written in plain English. The explanatory text could not be more explicit: "These already narrow gaps should remain predominately open and undeveloped to secure effective separation" (at paragraph 6.24).
- 2.5 In his 2000 Local Plan report the Inspector noted: "It is my opinion that there is still a need to maintain an effective area of separation between Mountsorrel and Rothley in order to retain their own identities."¹⁶ Importantly, he describes the gap between the two settlements as "already narrow".
- 2.6 At that time, he found: "In my view, with the ridge line moving closer towards Rothley, the gap between the two settlements would be materially reduced in visual terms...I cannot agree with the objectors that the objection site would be developed in a manner which provides for the continued protection of the separate characters, and setting, of the settlements of Rothley and Mountsorrel, without affecting adversely the ALS."¹⁷
- 2.7 Later, he concluded: "I consider that the proposal would significantly diminish the physical and visual separation between Mountsorrel and Rothley, and materially harm their characters and separate identities."¹⁸
- 2.8 In 1980 an Inspector considered the character and role of the southern part of the appeal site. That appeal related to residential development in the location of the proposed southern cluster as shown at LPA1. The Inspector concluded: "despite the ribbon of development along Mountsorrel Lane, however, I consider that the open countryside separating the 2 settlements is the dominant feature in the landscape, particularly when viewed from the outskirts of Rothley...The shallow valley to the east of Mountsorrel Lane is pleasing in appearance, and together with the ridge to the north, it provides an emphatic visual and physical separation between Rothley and Mountsorrel."¹⁹
- 2.9 Of course, the policy architecture under which the appeal was dismissed is quite different to that which exists today, but this central aesthetic assessment is just as applicable now as it was then. Mr Rech agreed that the appearance of the site has not changed materially in the last 33 years. It is clear that the Appellant intends to build its southern cluster of housing on the very area of

¹⁵ See Mr Morley's Appendix CBC07

¹⁶ See Mr Morley's Appendix CBC08 paragraph 4.1134

¹⁷ Ibid. paragraph 4.1135

¹⁸ Ibid. paragraph 4.1136

¹⁹ See Mr Morley's Appendix CBC15 paragraph 17

land which the Inspector found provided an emphatic visual and physical separation between Rothley and Mountsorrel.

- 2.10 The Appellant avers that the existing gap between the villages of some 800m is not narrow. Indeed, Mr Rech described the gap as "wide". This is not credible. In this regard, the Appellant finds itself in a minority of one. The CBCLP states all the gaps to which Policy CT/4 relate are narrow. In respect of this particular ALS, the Inspector in the 2000 Local Plan report describes the gap between the two settlements as "already narrow". The SoS is invited to agree with not only the Council but also the Inspector and the development plan that the gap is already narrow.
- 2.11 In these circumstances, Mr Rech agreed that where a gap is already narrow the terms of Policy CT/4 should be applied with rigour. So it is here.

Is Policy CT/4 consistent with the NPPF?

- 2.12 It is submitted that the policy is consistent with the NPPF. The Appellant avers that Policy CT/4 is inconsistent with the NPPF because it provides a blanket ban on residential development by incorporation of Policy CT/1. It is not accepted that this is the case given that the restriction on land use applies to a very small part of the Borough's land. Even if the policy is considered to sit uncomfortably with the more permissive approach of the NPPF, it is telling that emerging Policy CS11 (the successor ALS policy to Policy CT/4) introduces a more flexible approach. This shall be returned to later.
- 2.13 Addressing the Appellant's allegation head-on, it is noted that it is common ground that the aspiration of maintaining areas of open land in order to keep separation between settlements is an enduring and well-established principle of planning.
- 2.14 Second, whilst not expressly referred to in the NPPF, it can be seen that the purpose of such a local designation finds support in the NPPF:
- (a) One of the Core Planning Principles recognises "the intrinsic character and beauty of the countryside" and the need "to take account of the different roles and character of different areas;"²⁰ and
 - (b) In plan-making local authorities are told to "identify land where development would be inappropriate, for instance because of its environmental or historic significance"²¹ — this is precisely what the development plan does now and in its emerging form.
- 2.15 In determining whether the restrictive nature of Policy CT/4 is consistent with the NPPF, the SoS is assisted by the conclusion reached by other decision makers. In the Rearsby Roses decision 8 months ago, the Inspector found that the ALS designation in the Borough, founded upon Policy CT/4, "does not clearly conflict with the Framework."²²

²⁰ NPPF paragraph 17

²¹ NPPF paragraph 157

²² Mr Morley's Appendix CBC16

- 2.16 Further assistance is provided in the recovered decision at Land North of Stephenson Way, Coalville which addresses the weight to be attached to the Green Wedge designation.²³ The Inspector concluded that the restrictive Green Wedge policy (Policy E20) "is not out of date and that it remains relevant and that it merits significant weight in the appeal" (paragraph 311). The SoS agreed with this conclusion, finding that "the saved policies in the NWLLP [which includes Policy E20] should be given most weight" (paragraph 10). Importantly, the SoS notes "the period the NWLLP covers ended in 2006, but he agreed that the Green Wedge here has served and continues to serve a useful and much valued planning purpose, and that it should only be lost for very compelling land use planning reasons" (paragraph 13). Overall the SoS concludes that he agrees with the Inspector that "overall the proposals cannot be regarded as sustainable development" (paragraph 19). The view of the SoS could not be clearer: restrictive policies designed to significantly inhibit built development to maintain separation between particular settlements is up to date and entirely consistent with the pro-growth imperative of the NPPF.
- 2.17 The Peggs Green decision, 9 months ago, relates to an appeal for 5 houses within a Green Wedge in Leicestershire.²⁴ The Inspector records that although the appeal site was then within the Green Wedge designation the emerging CS disapplies this designation to it. In short, the Green Wedge designation was a dead man walking and would die imminently. The Inspector concludes: "The fact that the Framework does not provide for the designation of Green Wedges does not in itself make the policy inconsistent...In my opinion, the designation in protecting an area of landscape provides a useful strategic planning function, and although it is intended that the designation will be deleted, until the CS is adopted it will continue to perform that function. It is a function that is not inconsistent with the Framework and in particular the environmental role of planning in contributing to protecting and enhancing the natural, built and historic environment" (paragraph 8). If the Inspector accorded weight to a designation which was to die imminently, greater weight should be afforded the ALS here, which is intended to live on for the next plan period.
- 2.18 These appeal decisions fly in the face of the position advanced by the Appellant at this Inquiry. It is plain that there is no conflict between Policy CT/4 and the NPPF. It is clear that the aspiration to maintain open land between settlements to prevent coalescence is a longstanding and well-established principle of planning. There is nothing eccentric or old fashioned about Policy CT/4. It is a perfectly conventional and acceptable means of protecting land which serves an important planning function.
- 2.19 It is telling that the Appellant has been unable to identify a single decision of an Inspector or SoS which adopts the approach which it advances at this Inquiry. This speaks volumes.
- 2.20 The central proposition at the centre of the Appellant's case is that the ALS designation, as provided by the terms of Policy CT/4 is inconsistent with the NPPF and therefore no weight should be accorded to it. For the reasons given, this is quite simply a bad point.

²³ Mr Morley's Appendix CBC18

²⁴ Mr Morley's Appendix CBC22

2.21 By operation of paragraph 215 of the NPPF, it is common ground that due weight should be accorded to the development plan depending on the degree of consistency with the NPPF. Given that the ALS is not in material conflict with the thrust of the NPPF, full weight should be attached to it.

Weight to be attached to the ALS Designation

2.22 It is common ground that the ALS is a longstanding designation and has protected the appeal site for the last 3 decades.

2.23 This is not a case where some elderly local designation has become redundant through the passage of time. This is not a case where the designation is intended to come to an end in the foreseeable future. The ALS, embodied by saved Policy CT/4, lives on in the emerging CS. Policy CS11 states expressly: "We will protect the predominately open and undeveloped character of ALSs unless new development clearly maintains the separation between the built up areas of these settlements."²⁵

2.24 Mr Stone agreed in cross examination that this emerging policy:

- (a) Does not tolerate a marginal degree of separation as separation must be clear; and
- (b) If it is concluded that a residual gap of 240m is insufficient, the terms of the policy will be offended.

2.25 The explanatory text accompanying Policy CS11 states that "the retention of ALS will be balanced against the need to provide new development, including homes, in the most sustainable locations" (paragraph 7.15). It is plain that Policy CS11 properly responds to the pro-growth imperative of the NPPF by introducing a more flexible element to its wording by allowing residential development if its impact is not unacceptable.

2.26 The emerging CS is to be submitted to the SoS by the end of 2013. To date, 20 consultation responses have been received by the Council. They are broadly supportive of the continuing role of ALS. There is only one which challenges the appeal site's designation as an ALS. It was the Appellant. This speaks volumes. Again, the Appellant finds itself in a minority of one. The SoS can be satisfied, at the very least, that Policy CS11 is likely to form part of the adopted new development plan. Further, notwithstanding that a review of the boundaries of the ALS is to be undertaken, given the location of the appeal site in the centre of the ALS it is highly improbable that the boundaries will be amended so radically so as to delete the appeal site from it. If it were, the integrity and purpose of this ALS would be fatally undermined.

2.27 The SoS is invited to judge the ALS as it is constituted now. It is a matter of record that there is to be a review of the boundaries of the ALS. There is no evidence before the Inquiry that the part of the ALS which relates to the appeal site is ripe for deletion. That the boundary of the ALS may be altered in some unknown way at some future point in time is speculative. Even if the

²⁵ See Mr Morley's Appendix CBC12

boundary were to be altered, Mr Morley explained in evidence that given its central location the appeal site is not an obvious candidate for removal.

- 2.28 The ALS and Green Wedge designations protect 5% of the Borough. Therefore, 78% of the Borough which comprises open countryside is undesignated. It follows as a matter of common sense that in order to make good the significant housing supply shortfall, it is not inevitable that the ALS designation will be largely lost. This is not a Local Planning Authority whose area is covered by large swathes of designated land (such as Green Belt, AONB or Conservation Areas) which mean that other land is inevitably vulnerable to development. To put it simply, there is plenty of undesignated land beyond the built limits of settlements to provide the much needed housing.
- 2.29 There is a dispute as to whether Policy CT/4 should be characterised as a housing supply policy to which paragraph 49 of the NPPF applies. Whilst, of course, the restrictive nature of Policy CT/4 has an impact on the distribution of housing in the Borough the Council respectfully prefers the judgement of Lang J over that of Lewis J. It cannot convincingly be described as a housing supply policy.²⁶

Extent of Harm

- 2.30 There is agreement between the parties that the photomontages before this Inquiry are methodologically sound and can assist the SoS in determining the appeals.
- 2.31 It is common ground that if the appeal succeeds:
- (a) there will be a reduction in openness;
 - (b) the character of the appeal site will be fundamentally altered; and
 - (c) operational development in the form of the new relief road will connect Mountsorrel Lane and Loughborough Road across the ALS.
- 2.32 The reduction in openness and the substantial narrowing of the gap between the villages of over two thirds is significant, since Mr Rech agreed in cross examination that it is the very openness of the appeal site which helps it to fulfil its planning function under Policy CT/4.
- 2.33 As a matter of approach it is common ground that one should not merely undertake an arithmetic exercise of measuring the length of the residual gap between the villages, but must consider the perception of separation Mr Rech agreed with this in cross examination. In this way, the decision maker should undertake a quantitative and a qualitative assessment. The extent to which the Appellant seeks to reduce the exercise to comparing minimum distances, it falls into error.
- 2.34 As a matter of fact, it is common ground that the minimum length of the separation will fall from in the region of 800m to 240m. On any reckoning this represents a significant reduction in the extent of separation. The Appellant points approvingly to the western part of the ALS, where the minimum length

²⁶ See paragraph 8.18 of my Report

of the separation is less than the residual gap between the villages if the appeal succeeds. Little turns on this point. The two parts of the ALS are not physically connected and there is little inter-visibility between the two. Mr Rech confirmed in cross examination that in reality each part functions as a distinct enclave of open land.

- 2.35 Turning to the qualitative assessment, the Council is confident that the Inspector will conclude that on the ground the siting of the southern cluster of housing and the relief road on the conspicuous ridge will cause a significant detraction to the sense of separation.
- 2.36 It is agreed that 10 new openings will be created in the existing hedgerow, which shall lead to the removal of a length of 250m. It is difficult to afford credibility to Mr Rech's characterisation that this loss is "very minimal". It is fair to report that as part of the mitigation, 1km of new hedgerow is to be planted along the relief road and the new access road serving the northern boundary of the main housing area. However, Mr Rech confirmed in cross examination that existing hedgerows are far more valuable in landscape terms than recently planted ones. It can therefore be seen that notwithstanding the net increase in hedgerow, that which will be lost is of a higher aesthetic value contributing to the legible field pattern than the new planting which is designed to provide screening for the road.
- 2.37 The material harm caused to existing hedgerows and the attendant impact on the coherence of the field pattern weighs against the appeal.
- 2.38 The proposed scheme comprises 2 clusters of housing. The northern cluster is intended to form part of Mountsorrel. The southern cluster is intended to form part of Rothley. It is common ground that the two clusters are intended to be connected by the new relief road. Doubtless the SoS will have in mind the extent to which the fact that the single proposed scheme straddles the two settlements can be said to maintain the separateness of the settlements or whether it is likely to have the opposite effect.
- 2.39 It is clear when one visits the site that the southern cluster does not relate well to edge of Rothley. It is perceived as an urban extension rather than the 'rounding off of the village.
- 2.40 It is common ground that the relief road is not required to make the proposal acceptable since the two clusters of housing could be adequately accessed from the existing Mountsorrel Lane.²⁷ The Council does not doubt that the provision of the new road brings benefits to the existing residents in the area and enjoys the support of the Highway Authority. However, the Council must consider the road in the round, rather than simply in highway terms. Given that it is not necessary to make the development acceptable, one must consider whether the benefits of its construction outweigh what Mr Rech conceded was some harm.

²⁷ Agreed by Mr Stone in cross examination and see also paragraph 2.10 of the Highway Assessment at Mr Stone's Appendix 21

- 2.41 The Council remains firmly of the view that the location of the relief road on the ridge means that it is to be sited on the most visually prominent part of the appeal site. The road is to be built in accordance with Manual for Streets. It is to be two lanes in width, with provision for cyclists and pedestrians and street lit in parts. Such a well-used road is likely to prove to be a significant detracting influence on this most conspicuous part of the ALS. The harm to the ALS is exacerbated by the fact that the road snakes through the main part of open land of the appeal site, which by operation of the s106 Agreement, is to be kept in agricultural use. The location of the relief road, bisecting the open land which the Appellant has expressly designed to have the important role in maintaining the open and undeveloped land between the villages, will inevitably have the effect of reducing the effectiveness of the land in performing this vital function.
- 2.42 Put simply, the SoS cannot be satisfied that the relief road is needed and the benefits of its provision outweigh the considerable cost to the character of this elevated part of the ALS.

The Development Plan

- 2.43 The Appellant's case on Policy CT/4 is confused. Mr Stone confirmed in cross examination that it was offended by the appeal proposal. In contrast, Mr Rech vociferously denied that it was breached. He argued at some length that the deployment of a volume of well-chosen green infrastructure will prevent the loss of openness and so comply with Policy CT/4.
- 2.44 It is plain that the construction of up to 250 houses together with a new road would inevitably undermine the integrity of the ALS. It was utterly unconvincing for Mr Rech to suggest otherwise and aver that the policy is not breached at all. The idea that a masterly sophisticated green infrastructure would have such a marked effect so as to mean that the presence of 250 houses would not cause a loss of open and undeveloped land lacks credibility.

Valued Landscape

- 2.45 The SoS is invited to accept that the appeal site falls to be convincingly characterised as a valued landscape on account of the fact that it serves an important role in providing an area of open and undeveloped land to provide meaningful separation between the villages. This value not only reflects its explicit protection in the development plan for the last 3 decades, but also the amenity value derived from views across it from roads and existing properties which overlook it. The value of the appeal site is enhanced by its rarity; there is only a very small area of land between the villages.
- 2.46 If the land falls to be characterised in this way, it follows that the appeal site is subject to two layers of protection: Policy CT/4 and paragraph 109 of the NPPF which requires that development must not only maintain but also enhance the character of the area. It is clear to all who have eyes to see that the siting of 250 houses, even with the most sophisticated mitigation scheme known to man, must have an adverse impact on what is presently an open and natural piece of land. Whatever the extent of the adverse impact, the development will offend the requirement of paragraph 109 'to do no harm'.

- 2.47 In these circumstances, the planning balance tips decisively against the acceptability of the appeal proposal.

Conclusion

- 2.48 The appeal offends the development plan and important parts of the NPPF. It is submitted that the harms identified significantly and demonstrably outweigh the accepted benefits of both schemes in terms of the provision of market and affordable housing, provision of POS and ecological gains.
- 2.49 The proposal cannot convincingly be characterised as sustainable development in the terms sought by Government.
- 2.50 The SoS is invited to dismiss both appeals. If it is concluded that Appeal A is to be allowed, the Council agrees that Appeal B should be allowed also.

THE CASE FOR WILLIAM DAVIS LTD

The main points are:

Introduction

- 3.1 At the outset of the Inquiry the Inspector outlined the main issues in this case. These are set out at paragraph 1.4 of this Report. There is no need to repeat them here but they will be addressed individually and they provide a structure for these submissions. The views of interested persons will also be assessed.

(i) Compliance with the Development Plan and sustainable development principles

- 3.2 The development plan for the purposes of this case consists of the saved policies of the CBCLP (adopted 2004). This document was only intended to make provision for development needs (including housing) up to 2006. The "Saving Letter" dated 21 September 2007²⁸ saved a variety of policies but did so subject to express caveats that (i) saved policies would be replaced "promptly" — this was especially important for CBC because by 21 September 2007 the plan was already a year past the end date (2006) of the period for which it was intended to make development provisions; and (ii) where policies were adopted "some time ago" (i.e. in 2004)

"...it is likely that material considerations in particular the emergence of new national and regional policy and also new evidence, will be afforded considerable weight in decisions. ..."

- 3.3 These caveats have direct relevance to the application of the development plan in this case. Section 38 (6) requires that

"If regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination

²⁸ Mr Morley's Appendix CBC10

must be made in accordance with the plan unless material considerations indicated otherwise."

3.4 The "material considerations" referred to in this case must include at least (i) the NPPF and (ii) the "Saving Letter".

3.5 The NPPF makes clear that:

"This National Planning Policy Framework does not change the statutory status of the development plan as the starting point for decision making."

3.6 However, paragraph 215 establishes what the approach is in respect of saved plans such as this one:

"In other cases and following this 12-month period, due weight should be given to relevant policies in existing plans according to their degree of consistency with this framework (the closer the policies in the plan to the policies in the Framework, the greater the weight that may be given)."

3.7 It is necessary therefore to test the consistency of the saved policies with the NPPF.

3.8 Only one development plan policy is raised by CBC in the putative reason for refusal: Policy CT/4: Area of Local Separation (ALS). The policy cross-refers to Policy CT/1 in terms of restricting the type of development that might be allowed. Any such types of potentially acceptable development identified in Policy CT/1 to be acceptable must also meet the criteria in Policy CT/4. This is the control mechanism of Policy CT/4. However, the purpose of Policy CT/4 is to prevent settlements merging with each other.

3.9 The case of COLMAN²⁹ identifies the consequences of paragraph 215 of the NPPF in decision taking at appeal. In that case Parker J characterised the relevant policies in that case in this way:

"These policies are, in my view, on their own express terms, very far removed from the 'cost/benefit' approach of the NPPF."³⁰

3.10 If this "cost/benefit" approach is applied to Policy CT/4, it is found somewhat wanting as its central intention and its control mechanism is to avoid anything other than the development identified in Policy CT/1 being brought forward in the ALS. However, the purpose of the policy is consistent with the NPPF because all parties to the Inquiry agree that, in principle, that it is a sound planning aspiration to seek to maintain separation of settlements.

3.11 What is the answer to this quandary? The solution is to conclude that the purpose aspect of Policy CT/4 is consistent with the NPPF but that the control mechanism aspect is not because it represents an outright ban on open

²⁹ Mr Stone's Appendix APP10 - see paragraphs 6 and 16

³⁰ *ibid* at paragraph 22

market housing within the ALS, without the possibility of any countervailing benefit outweighing the prohibition.

3.12 This analysis is also helpful in deciding how the question in paragraph 49 of the NPPF must be answered, namely: Is Policy CT/4 a "relevant policy for the supply of housing"?

3.13 There are two conflicting High Court judgments in this respect: WILLIAM DAVIS³¹ and COTSWOLD DISTRICT COUNCIL.³² The approaches of the two judges are apparently irreconcilable and one of them must be wrong.

3.14 In this case the preference that the SoS may have for one or other authority is tempered by the fact that the paragraph 49 decision is not central to this case because:

(i) the paragraph 215 COLMAN test of consistency with the NPPF must be undertaken independently of the paragraph 49 question whether or not Policy CT/4 is a policy for the supply of housing;

(ii) the answer to the paragraph 49 question results in the presumption in paragraph 14 of the NPPF being activated or not: in this case it has been accepted that for five reasons the paragraph 14 presumption exists in this case.³³ The Appellant does not need therefore to rely on the test in paragraph 49 to enjoy the presumption in favour of development in paragraph 14 of the NPPF.

3.15 If a choice were essential, which it is not, the SoS is invited to prefer the approach in COTSWOLD because the control mechanism in Policy CT/4 is clearly very relevant to the supply of housing: it represents an absolute ban on open market housing in the ALS. The effect of Policy CT/4 is therefore very relevant to the supply of housing. The approach taken in DAVIS is correct to point out that paragraph 49 of the NPPF is within the housing section. However that section presumes that there will be adequate housing provision in the plan. This is clearly not the case here and paragraph 49 needs to be read with this in mind. Furthermore, the limits to development and ALS (and Green Wedge) boundaries were all drawn in the 2004 plan reflecting housing needs up to 2006 only. Housing needs are obviously greater in 2013 and the emerging CS³⁴ acknowledges that the ALS boundaries will have to be redrawn as part of the Site Allocations and Development Management DPD process. This also serves to demonstrate the direct link between ALS and provision of housing.

3.16 For these reasons it is submitted that Inspector Morgan puts the position correctly in the Sapcote decision:

³¹ CBC17 at paragraph 47

³² APP4 at paragraph 72

³³ Accepted by Mr Morley in cross examination

³⁴ CBC12 at paragraph 7.14 and Mr Morley's proof of evidence at paragraph 13.6

"In this case, no such district-wide supply exists, and Policy C4 of the BDLP, insofar as it is a relevant policy imposing restraint on housing supply, has also to be considered out-of-date."³⁵

This policy analysis enabled the Inspector to regard ALS Policy C4 as having two characteristics:

- (i) the purpose aspect as described in paragraph 14 of the decision

"The AoS performs the important function of preserving the separate identities of both settlements. Although the appeal scheme would not physically reduce the measure of that separation, it would reduce the perception of their separateness. This would be harmful to the function of the AoS thus rendering the development in conflict with policy C4 of the BDLP. The extent of this harm however, needs to be quantified."

and

- (ii) the restriction aspect as described in paragraph 48 of the decision set out above.

Is the Development consistent with the Development Plan?

- 3.17 The answer to this question is that the proposal conforms with the purpose of Policy CT/4 because it maintains an adequate area of separation between Mountsorrel and Rothley. It is in this sense that Mr Rech's evidence argues for compliance with the purpose of Policy CT/4.

"7.32 The overall analysis of policy matters is carried out by Mr Stone. The primary purpose of the CT/4 is to keep settlements separate, and this is a desirable aspiration. It is my opinion that the careful design approach adopted by the appeal proposals meets that aspiration, and the Mountsorrel and Rothley maintain their individual identities following completion of the appeal development"³⁶

- 3.18 The arguments relating to why Mr Rech is right in this analysis falls to be considered below under Main Issue (iii). If that conclusion is right, i.e. there is no breach to the purpose of Policy CT/4 then the technical breach relating to the control mechanism ought to have little weight attached to it.

- 3.19 Three further points relating to the technical breach of the control mechanism are as follows:

- (i) the control mechanism fails the paragraph 215 test in the NPPF for reasons set out above; and
- (ii) whichever view is taken on the paragraph 49 "policy for supply of housing test" it is the fact that CBC desperately needs additional housing

³⁵ Mr Stone's Appendix 23 at paragraph 48

³⁶ Mr Rech's proof of evidence at paragraph 7.32

and this must be relevant when deciding what weight to attach to Policy CT/4;

- (iii) CBC has taken the view elsewhere that Policy CT/4 is a policy relevant to housing and that it is out of date
- (a) *"Whilst the proposal would therefore be contrary to the policy CT/1, CT/3 and CT/4 of the saved policies of the local plan, it is acknowledged that these policies in terms of their allocation of housing developments is (sic) out of date. ..."*³⁷
- (b) *"Jelson's Application – land off Halstead Road (P/13/1008/2), Mountsorrel the officer report to Plans Committee (12th September 2013) states 'In these appeals the Council has conceded in Statements of Common Ground policies that constrain housing (ST/1, CT/1, CT/2 and ST/2) are out of date'. Whilst the sites in question were not within an Area of Local Separation there is an acknowledgment that policies that constrain housing, which would include CT/4, where appropriate, are 'out of date'."*³⁸

3.20 It is trite law that to accord with the development plan a proposal does not have to comply with each and every policy or proposal therein. In this case only Policy CT/4 is alleged to be breached. If the breach is only technical as argued above, and if it is accepted that the purpose of ALS is preserved by the development then a strong case is made out that the proposal is consistent with the development plan, taken as a whole. Even if a contrary view were to be taken, the breach of Policy CT/4 has to be assessed in the context of paragraph 14 of the NPPF as required under Main Issue (ii) below.

Would the proposed development deliver a sustainable form of development?

3.21 Yes, it would. There are three dimensions to sustainable development as set out in the NPPF at paragraph 7. Mr Morley accepted all of the benefits identified in Mr Stone's Table at page 43 of his proof of evidence. The SoCG accepts that *"The site is in a sustainable location for housing development."*³⁹

(ii) Whether the proposed development is necessary to meet the housing needs of the Borough bearing in mind the housing land supply position

3.22 CBC's housing land supply is in crisis. It lies between 2.93⁴⁰ and 2.6 years.⁴¹ There is no good reason why the Sedgfield approach should not apply here. If there were a 10% non implementation discount as applied at Honeybourne⁴² and elsewhere these supply figures would be less. The annual requirement runs at over 1,000 homes.⁴³ The CS will not be adopted until October 2014 at

³⁷ APP8 page 20 3rd complete paragraph lines 1-3

³⁸ Mr Stone's proof of evidence paragraph 3.6

³⁹ INQ3 page 18 paragraph 7.1 (xvii)

⁴⁰ INQ3 page 15 paragraph 6.8

⁴¹ INQ3 page 22 paragraph 8.14

⁴² Mr Stone's Appendix 13

⁴³ INQ3 page 15 paragraph 6.8 - Annual requirement 1,014

the earliest – almost 1 year away. Mr Morley did not know if the CS would guarantee a 5 year supply when adopted. Mr Stone explained that large sites such as promoted in the emerging CS at Policy CS1⁴⁴ take between 18 months – 2 years to start delivering homes that can be occupied. In so far as the Site Allocations and Development Management Policies DPD will be expected to supplement the 5 year supply it will not be adopted until June 2015⁴⁵ and is already 8 months behind schedule.⁴⁶

- 3.23 Mr Morley accepted that until the Site Allocations and Development Management Policies DPD was adopted it was only through development control decisions such as this that an attempt can be made to achieve a 5 year housing land supply that paragraph 47 of the NPPF requires. Mr Stone's Appendix 18 includes the Council's Assessment of 5 Year Housing Land Supply as at 31 March 2013. At page 5 of that Assessment Figure 1 line c shows expected completions in CBC in 2013-2014 will total 536 homes. This is against an annual housing requirement of 1,014. From these figures it is clear that not much progress is being made.
- 3.24 All of these factors combine to create a compelling case for urgency of action and lend considerable weight to the merits of this proposal.
- 3.25 There is no doubt that paragraph 14 of the NPPF is engaged in this case because, as Mr Morley accepted in cross examination:
- (i) the housing policies of the CBCLP are "out of date" because the plan is 7 years beyond its intended life span;
 - (ii) in so far as Policy CT/4 restricts supply of housing it is "out of date" (as the Committee Report in APP8 accepts). This admission represented abandonment of what he said there at paragraph 8.3 of his proof of evidence;
 - (iii) Policy CT/4 is inconsistent with the cost benefit analysis in COLMAN and therefore fails the paragraph 215 test and is therefore "out of date" as far as paragraph 14 is concerned;
 - (iv) the saved policies of the CBCLP are "silent" within the meaning of paragraph 14 as to where the admitted housing need should be located: it only says where development cannot go;
 - (v) the emerging CS itself acknowledges that Policy CT/4 is "out of date" because it anticipates a review of its boundaries as part of the Site Allocations and Development Management Policies DPD;

"The retention of Areas of Local Separation will be balanced against the need to provide new development, including new homes, in the most sustainable locations."⁴⁷

⁴⁴ APP17 pages 31-32

⁴⁵ INQ3 paragraph 6.11

⁴⁶ Mr Morley in cross examination

⁴⁷ Mr Morley's Appendix 12 paragraph 7.15

- 3.26 Because paragraph 14 of the NPPF is engaged, the balance identified therein is required. Mr Stone has carried out that exercise and his Table demonstrates that the case in favour of the grant of planning permission is overwhelming.
- 3.27 It is admitted that no paragraph 14 footnote 9 "specific policies" apply to the site.⁴⁸
- 3.28 Release of this site is necessary to meet housing needs of the Borough.

(iii) The effect of the proposed development on the character and appearance of the area including the purpose and integrity of the Area of Local Separation;

- 3.29 The first point to note in this Main Issue is that the Inspector has included for consideration a matter which is not raised in the putative reason for refusal, namely the effect on the character and appearance of the area. Secondly, Mr Radmall accepted the factual reliability of the Landscape and Visual Appraisal (LVIA). Thirdly, this is not a valued landscape as set out in the NPPF. It is not a NPPF footnote 9 site, nor is it an Area of Particularly Attractive Countryside site and Rothley Parish Council does not object to its development.

Character of the Area

- 3.30 The purpose of analysis of the effect of development on the character of the area is to enable the NPPF paragraph 14 "adverse impacts"/"benefits" balancing exercise to be undertaken. Even if this assessment were to conclude that there were adverse impacts on the character of the countryside, that conclusion would represent an "adverse impact" in respect of the "environmental role" of sustainable development. That is far from an end to the matter as CBC appears to believe.
- 3.31 If that balance is carried out correctly the process should be as follows:
- (i) environmental benefits of the scheme should be identified;
 - (ii) environmental disadvantages should be identified;
 - (iii) benefits and disadvantages of the "social" and "economic" roles should be identified;
 - (iv) all factors at (i) – (iii) must be put into the balance as paragraphs 8 and 14 require.
- 3.32 Mr Radmall's evidence failed to follow this process. He reached the conclusion at (iv) without considering the social and economic roles. In this respect his approach is flawed. He also failed to take into account the environmental benefits identified in Mr Stone's Table at paragraph 43 of his proof:

- "- *Biodiversity Park*
- *Enhanced biodiversity within housing site*

⁴⁸ Mr Morley in cross examination

- *Provision of comprehensive accessible green infrastructure network protecting and enhancing existing landscape features*
- *Creation of new right of way connecting Rothley across to the Soar Valley*
- *Protections of ALS in perpetuity"*

Mr Morley accepted that each of these were relevant countervailing benefits to set off the loss of ALS and the landscape harm caused by loss of greenfield countryside.

- 3.33 The effect on the character of the area is essentially an issue for the Inspector rather than argument but
- (i) all of Mr Radmall's viewpoints were from Rothley where the Parish Council does not object to the development;
 - (ii) he agreed that the two alternative locations for housing development (on the ridge or adjacent to Homefield Lane) would be worse;
 - (iii) he admitted his photomontages had not taken into account planting proposals which in time would soften the appearance of the new development (as Mr Rech's Appendix 2 Figs 7 and 8: Aerial Perspectives demonstrate).
 - (iv) existing urban fringe uses, such as the nursery with its unattractive outside storage, detract from the character of the area.
- 3.34 Another factor is that the Site Allocations and Development Management Policies DPD will involve the potential for housing to be examined in this location. Any housing is bound to bring about change.
- 3.35 The scheme before the SoS is one which has emerged slowly and carefully and advice from the consultant to both Parish Councils, Mr Will Antill, has been taken on board. The scheme would bring about significant change but it has been carefully designed in terms of location to limit adverse effects. In particular
- (i) the site has remarkably limited visibility⁴⁹;
 - (ii) the built development avoids the ridge⁵⁰;
 - (iii) the long sections demonstrate that from Homefield Lane the built development avoids the skyline⁵¹ and the LVIA regards the residents of Homefield Lane as High Sensitivity⁵²;
 - (iv) the development accords with advice in Trent Valley Washlands Key Characteristics⁵³

⁴⁹ Mr Rech's Appendix 2 Fig 6

⁵⁰ Mr Rech's Appendix 2 Figs 3 and 4

⁵¹ Mr Rech's Appendix 6 Fig 3

⁵² LVIA page 25

- “- *Constant presence of urban development, mostly on valley sides, in places sprawling across the valley and transport corridors following the valley route;*
 - *Contrasts of secluded pastoral areas, with good hedgerow structure, and open arable with low hedges;* (It will be recalled that there is a net gain of hedgerows under the scheme APP15)
 - *Strong influence of riparian vegetation, where rivers are defined by lines of willow pollards and poplars;*” (features present in the Biodiversity Park which will be managed pursuant to the s106)”
- (v) the recreational opportunities created are consistent with the emerging CS aspirations for Green Infrastructure;⁵⁴
- (v) the Biodiversity Park and the Agricultural Areas are "locked in" by the S106 for as long as CBC regard these areas as being worthy of being kept free from development. So long as it does, no Inspector or Judge would release the land from the constraints which the S106 imposes.

3.36 The character and appearance of the area would change: that is inevitable as it is a greenfield site. Mr Morley has accepted that most of the 2,000 plus homes required to get up to a 5 year supply will need to be provided on greenfield sites. The change is therefore inevitable somewhere and acceptable here and is associated with important counterbalancing environmental benefits.

Effect on Purpose and Integrity of ALS

3.37 The question here is not whether the extent of the ALS would change — it obviously would — but rather what is the effect of that. Policy CT/4 is not a landscape quality policy and the Council accepts that a new road can be located within countryside locations (ALS) without affecting the importance of their openness as at Woodthorpe.⁵⁵

3.38 The relevant statistics are agreed and are set out in Mr Rech’s Note to the Inspector.⁵⁶ It is the fact that ALS are often narrow: the western part of the Mountsorrel/Rothley ALS is 100 m wide or less at its narrowest. The pinch point west of Mountsorrel Lane is about 150m wide.⁵⁷ There is no evidence that, at this distance, the ALS becomes ineffective. Consideration of the plans showing ALS elsewhere in Mr Rech’s Appendix 4 shows that ALS gaps are often narrow.

⁵³ LVIA page 13

⁵⁴ Mr Morley’s Appendix CBC12 paragraph 7.17 and Mr Rech in answer to Inspector’s question

⁵⁵ APP11 page 48

⁵⁶ APP19 Agreed dimensions and APP15: hedgerow lost and net gain overall

⁵⁷ Measured by Mr Rech

- 3.39 Most telling of all, the Committee Report for Land at Allendale Road took the view that a gap of 105-150m between the proposed development at the site and Woodthorpe Village was acceptable

*"... It is concluded therefore, that the settlement of Woodthorpe would be adequately protected by the proposal and that the integrity of the ALS would still be retained. ..."*⁵⁸

This gap was regarded by the Loughborough Local Plan Inspector as being incapable of reduction:

*"... the present gap represented the minimum necessary for the recognition of Woodthorpe as a separate and freestanding settlement. ..."*⁵⁹

The 1995 Study expressly accepted this assessment:

*"In line with the Inspector's findings following the Loughborough Local Plan Inquiry it is accepted that the gap presently defined between Woodthorpe and Loughborough is realistically the minimum that is acceptable to provide meaningful separation for Woodthorpe to remain as a freestanding settlement."*⁶⁰

It is impossible to understand how a very substantial reduction of such a sensitive gap can be regarded as acceptable yet a gap of 240m post development at the appeal site is not acceptable. This point is explored further in the costs application.

- 3.40 The gap on the eastern side post development would compare favourably with the gap on the western side in terms of width. Add to that the fact that only a small percentage of the ALS is lost to development. There is no objection to the northern cluster of housing.⁶¹
- 3.41 The only fair conclusion to reach is that, post development, there would remain a robust and adequate ALS between Mountsorrel and Rothley — and the Rothley Parish Council agrees with that assessment which is why it has chosen not to object.

(iv) Whether any permission should be subject to any conditions and, if so, the form these should take;

- 3.42 At the time of writing it is understood that these are agreed.

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

⁵⁸ APP11 page 48: 2nd and 3rd paragraphs

⁵⁹ Mr Rech's Appendix 4 paragraph 7.2

⁶⁰ Mr Rech's Appendix 4 paragraph 7.5

⁶¹ CBC closing submissions paragraph (f)

- 3.43 There are three planning obligations: (i) to CBC/LCC (ii) to the Police and Crime Commissioner for Leicestershire and (iii) to the NHS.

CBC/LCC

- 3.44 The Appellant accepts that these commitments are CIL compliant.

Police and Crime Commissioner for Leicestershire

- 3.45 The Inspector will note that in relation to the 200 + 130 = 330 homes at the Parkers' Sites⁶² the Police made similar requests. CBC came off the fence in that Committee Report and said the sums were not CIL compliant. It is simply unreasonable for the Parkers' developments to pay nothing to the Police and for this development to be required to pay over £100,000. The Coalville Inspector declined to find similar claims CIL compliant.⁶³

NHS

- 3.46 Whether this claim passes the CIL test depends entirely upon the acceptability of the "formula" approach. One can readily understand such an approach passing muster at a Charging Schedule Examination but here the claim is made in respect of (i) a surgery which has not got a "live" claim, (ii) where it is not known if any claim would succeed, nor (iii) the cost of any improvements which (iv) may or may not be approved by the NHS. There is also an issue that the capital sum paid would or may increase the capital value of the property in the Practice's hand for which the Appellant is not given any credit. This latter argument is not addressed by the Inspector in the Coalville Inspector's Report.

INTERESTED PERSONS

- 3.47 Much has been heard of the democratic process and of localism. Parish Councils represent grass roots localism and Rothley Parish Council has decided not to object to this scheme. This manifestation of localism has attracted bitter criticism but that is often what democracy entails: hard choices where the good of many sometimes comes at a cost of disadvantages to the few.
- 3.48 Granting of planning permission outside of the development plan process and its consistency with localism has been considered by the Courts. In TEWKESBURY,⁶⁴ Males J found that authorities which did not have a 5 year supply had to expect land releases outside of the development plan process. The criticism in terms of localism should not be of the developers but of CBC which, 8 years after the end date of its last plan, is still some way off having its emerging CS adopted. That process could be postponed if, as is the case in NW Leicestershire, the Examination reveals that the CBC CS has an inadequate housing provision.

⁶² APP8 and APP11

⁶³ CBC18: Inspector's Report paragraph 302

⁶⁴ APP5 paragraphs 49-52 and 72

3.49 Mountsorrel Parish Council does object but according to Mr Rech the visual impact of the development is less from that direction. One thing the long standing Chairman of the Parish Council was adamant about was the need for a new link road. Those who say it is not necessary do so for other than traffic reasons it would seem.

OVERALL CONCLUSIONS

3.50 This LPA is in housing crisis but is not doing enough to address the housing deficit. This development has very considerable benefits associated with it which are not disputed by Mr Morley. Any fair minded person looking at the plus – minus audit would conclude that the disadvantages have not outweighed the benefits.

3.51 The sole basis for refusal rests on the effect of this proposal on the ALS. That effect is acceptable in its own right for reasons given above. To regard the impact as so seriously adverse as to warrant refusal

(i) ignores the extent of the housing crisis;

(ii) ignores the other benefits associated with the scheme; and

(iii) creates a different standard for ALS distances at Mountsorrel – Rothley than CBC has accepted at a more sensitive location at Loughborough – Woodthorpe.

3.52 We ask you to recommend the grant of planning permission and we ask the SoS so to grant.

4. THE CASE FOR LEICESTERSHIRE COUNTY COUNCIL (LCC)

4.1 The County Council is a Rule 6 party at the Inquiry and a key provider of various items of social and other infrastructure. In that role, it has no objection in principle to the appeal proposals, but in the event that planning permission is granted, wishes to secure justified and otherwise appropriate financial contributions, by way of a Section 106 Planning Agreement (to which it is a signatory), towards the costs and provision of the necessary infrastructure.⁶⁵

4.2 LCC has an interest in contributions towards sustainable transport improvements and traffic calming measures, education and libraries. Aware of the responsibilities imposed by the CIL Regulations 2010, it has submitted suitably detailed and robust evidence to the Inquiry on all of these matters, providing an explanation of the statutory and policy basis for seeking contributions, the quantum of monies sought and details of the services and facilities which would be provided by LCC to serve the development.⁶⁶

4.3 LCC2 comprises two documents: one which sets out the public transport and traffic calming contributions and the second document sets out the key

⁶⁵ APP9

⁶⁶ LCC1, LCC2, LPA2 and APP9

requirements for an education and a library facilities contribution. LCC2 refers to both Government policy and to LCC's own adopted policies for planning obligations. Particular reference is made to Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended) which states that a planning obligation may only constitute a reason for granting planning permission if the obligation is: necessary to make a development acceptable in planning terms; directly related to the development and fairly and reasonably related in scale and kind to the development (the CIL tests). Document APP9 is the Deed of Agreement prepared under section 106 of the Town and Country Planning Act 1990 which would deliver the obligations entered into by the Appellant, the LPA and LCC if planning permission is granted for the proposed development.

- 4.4 There is also a Statement of CIL compliance with the CIL Regulations 2010 at LPA2. This is intended to assist the reader as it summarises how each of the obligations contained in the bilateral Agreement (APP9) complies with the legal requirements of Regulation 122 of the CIL Regulations 2010. It explains the quantum and the justification for seeking each contribution. Each contribution is listed in LPA2 as it appears in the Agreement.
- 4.5 In summary, a sum of £16,582 Additional Sustainable Transport Contribution is sought by LCC if any bus service is provided or diverted along the proposed link road within 5 years of first occupation of the final dwelling. A bus pass contribution of £650 per dwelling is sought for the provision of two bus passes and £52.85 per dwelling for the provision of a travel pack by LCC. The sum of £725,940.60 is sought as a contribution towards the provision by LCC of two new classrooms at the new school proposed in Rothley or any successor education facilities. The sum of £90,000 is sought as a contribution towards the traffic calming measures along Walton Way, Mountsorrel. The sum of £13,590 is sought as a contribution towards the provision of improved library facilities and stock at Rothley Library. Finally, a sum of £16,991 is sought towards improvements to encourage sustainable modes of travel including such as bus stop improvements, information display cases, a bus shelter and real time information.
- 4.6 All of the contributions which LCC has requested are therefore justified and reasonable in themselves and meet the requirements of the CIL tests. Insofar as the SoS is not satisfied that a contribution within the Agreement meets the requirements of the CIL Regulations, clause 1.2.10 of the Deed of Agreement (page 7) enables that provision to be severed from the Agreement without affecting the lawfulness of the remaining parts.

5. THE CASE FOR THE POLICE AND CRIME COMMISSIONER FOR LEICESTERSHIRE (LP) (Rule 6 party)

- 5.1 The sum of £106,978 is sought by The Police and Crime Commissioner for Leicestershire (LP) towards Police infrastructure that would mitigate the impact of the proposed development. That figure has been arrived at following a close and careful analysis of the current levels of policing demand and deployment in Charnwood, so that the impact of the development could be properly assessed and a contribution sought that accurately reflects the precise need that would arise from the development of 250 new homes on the appeal site. LP3 page 17 contains an itemised breakdown of the

anticipated expenditure on Police services/items dedicated towards the appeal development.

- 5.2 It is noted that the Landowner in this matter does not accept that any part of the Police Contribution meets the CIL tests as recited in the Unilateral Undertaking at clause 1.2.10.⁶⁷ However, there appears to be no criticism by the Appellant of the approach taken by LP to the contribution requested, and no evidence has been produced to undermine the conclusions LP arrive at as to the nature and level of contribution required to mitigate the impact of the proposed development on LP resources.
- 5.3 The sum requested equates to approximately £427.91 per dwelling. That sum can only be arrived at by working backwards - it is not a roof tax applied to all proposed residential developments in the force area because that would not reflect the individual circumstances and needs of each development. For example, in the Land south of Moira Road appeal APP/G2435/A/13/2192131,⁶⁸ the contribution per dwelling amounted to approximately £300 whereas in the Land at Melton Road appeal APP/X2410/A/12/2173673,⁶⁹ the contribution worked out to be £590.85 per dwelling. In both instances, the requests were found to be CIL compliant.
- 5.4 Mr Lambert explains through the documentation⁷⁰ submitted in respect of the initial application and for this appeal why the Police seek contributions, including the planning policy justification at both national and district level, and the difficulties associated with funding new infrastructure items in response to growth in residential development which places additional demand on police resources. The Inspector considering the Land at Melton Road Appeal at paragraph 291 accepted that "the introduction of additional population and property to an area must have an impact on policing, in the same way as it must on education and library services for example," and went on to conclude;
- "Moreover, it also seems to me that the twelfth core planning principle of the Framework, that planning should... "take account of and support local strategies to improve health, social and cultural wellbeing for all, and deliver sufficient community and cultural facilities and services to meet local needs", can only be served if policing is adequate to the additional burdens imposed on it in the same way as any other local public service. The logic of this is inescapable. Section 8 of the Framework concerns the promotion of healthy communities and planning decisions, according to paragraph 69, should aim to achieve places which promote, inter alia, "safe and accessible environments where crime and disorder, and the fear of crime, do not undermine quality of life or community cohesion."*
- 5.5 Those conclusions were endorsed in the SoS's decision letter at paragraph 20.
- 5.6 Mr Lambert also explains why current revenue sources e.g. Council tax receipts, are insufficient to respond to growth in residential development, and

⁶⁷ APP10

⁶⁸ LP3 - Mr Lambert's proof and Appendices

⁶⁹ Ibid.

⁷⁰ LP1-LP4

are unable to fund much needed infrastructure to mitigate the additional demand placed on police resources by that growth. That position was examined and verified by external consultants employed by Local Councils in the Leicestershire Growth Impact Assessment of 2009; the Executive Summary is reproduced at Mr Lambert's Appendix 4.

- 5.7 There is no spare capacity in the existing infrastructure to accommodate new growth and any additional demand, in circumstances where additional infrastructure is not provided, would impact on the ability of police to provide a safe and appropriate level of service and to respond to the needs of the local community in an effective way. That outcome would be contrary to policy and without the contribution the development would be unacceptable in planning terms. It is right, as the Inspector accepted in the Melton Road decision (paragraph 292), that adequate policing is fundamental to the concept of sustainable communities. It is therefore necessary for the developer to provide a contribution so that adequate infrastructure and effective policing can be delivered; that is provided for through the Unilateral Undertaking APP10.
- 5.8 Mr Lambert has addressed each and every item of infrastructure required in his evidence and has sought to justify each request by reference to the 3 tests of Regulation 122 of the 2010 Regulations and also paragraph 204 of the NPPF. Those tests provide the framework in which LP work to assess the appropriate level of contribution necessary to mitigate the impact of residential development - a process which is under constant review to keep requests up-to-date and accurate as demonstrated by the recent letter dated 14 November 2013 amending the total sum sought in respect of Police vehicles downwards to reflect the fact that an average of 10% of the original value of a vehicle will be redeemed upon disposal.⁷¹
- 5.9 Furthermore, LP confirms that the contribution can be, and would be spent on infrastructure to serve the appeal development because the sum requested is not required to meet with a funding deficit elsewhere or to service existing development. The contribution sought is therefore directly related to the development.
- 5.10 In conclusion, the request for a contribution towards additional Police infrastructure to mitigate the impact of the appeal proposal is a necessary, carefully considered and lawful request. The request is directly related to the development and to mitigating the impacts it would generate based on an examination of present demand levels and existing deployment in the District.
- 5.11 The request is wholly related to the scale and kind to the appeal development and the Inspector, and SoS are respectfully asked to conclude the same.
- 5.12 The Appellant does not accept that any part of the LP requested contribution meets the tests of Regulation 122 of the CIL Regulations 2010.⁷² The LPA has indicated that it is neutral in relation to the request.⁷³

⁷¹ LP4

⁷² APP10 Clause 1.2.10 page 6

⁷³ LPA2

6. INTERESTED PERSONS WHO APPEARED AT THE INQUIRY

- 6.1 **Mr David Allard** is the Chairman of Mountsorrel Parish Council (MPC). He said that for the last 40 years Mountsorrel has been a focus for growth but without the associated social infrastructure such as shopping and community facilities seen elsewhere in the Soar Valley. That growth has placed a disproportionate burden on the social infrastructure in the locality. The Rolls Royce factory and various shoe factories have disappeared leading to high levels of commuting. Most of this development has been on the south side of Mountsorrel.
- 6.2 He said the Quorn-Mountsorrel bypass was constructed in 1991 and since then traffic on Linkfield Road has grown considerably. There is a constant stream of traffic to the A6 on its way to Loughborough. There is an urgent need for a relief road. MPC is concerned about the settlements' identity and separation. It wants the relief road but not the development. The proposed development would only exacerbate the problems rather than improve the position. The MPC objects very strongly to the areas proposed for development.
- 6.3 **NHS England (Leicestershire and Lincolnshire)** is responsible for the provision of primary healthcare to serve residents in those areas. Since most new residents register with a GP practice, large new housing developments such as is proposed here would have a major impact on the capacity of GP practices to deliver healthcare.
- 6.4 The NHS request for S106 developer contributions relies on a Department of Health calculator to estimate the number of additional consultations that the scheme would give rise to, assuming a total scheme population of 605. In this case there are two GP practices in Mountsorrel. Out of the total patient list of both practices, Alpine House Surgery has 87.7% of the patients and Linkfield Road has 12.3% of the patients. Assuming the current ratio of patient registrations then the 605 new patients would be divided as follows: Linkfield Road - 74 new patients and Alpine House - 531 new patients. In this case it is possible to build additional capacity into the existing Alpine House Surgery to provide 2/3 consulting rooms plus associated space which would enable the NHS to handle the increasing workload. The total contribution requested by the NHS for this purpose is £111,095.82.
- 6.5 Document IP1 sets out the basis of the request in more detail. It explains that the NHS has limited resources to support investment in GP premises. The organisation is currently focusing on supporting an agreed investment plan which does not include the Mountsorrel practices. The proposed extension would need to be able to meet all of the current NHS standards for surgery premises. The indicative size of the premises requirements has been calculated based on typical sizes of surgery projects. The cost per sq m has been identified by a quantity surveyor experienced in health care projects. The NHS considers that the request is CIL-compliant and that the contribution would be delivered through a Deed of Unilateral Undertaking (APP13).
- 6.6 The Appellant does not accept that any part of the NHS requested contribution meets the tests of Regulation 122 of the CIL Regulations 2010.⁷⁴ The LPA has indicated that it is neutral in relation to the request.⁷⁵

⁷⁴ APP13 Clause 1.2.10 page 6

⁷⁵ LPA2 page 1

- 6.7 **Mr Julian Deeming** is a member of the Rothley Mountsorrel Greenbelt Preservation Group (RMGPG). The members of the RMGPG strongly object to the proposals and in particular about the loss of open land between Rothley and Mountsorrel. They oppose the development primarily because if it is allowed it would lead to the loss of the villages' individual community identities. The Group strongly agrees with the recommendation of CBC to not allow the development to proceed.
- 6.8 He said that the current ALS has been protected for the last 30 years and CBC is working to safeguard local community identity by seeking to continue this protection in the future through the emerging CS, a move which they collectively welcome.
- 6.9 He pointed out that the developers are suggesting that the degree of separation will not be significantly eroded by the proportion of land they plan to develop. However, any development which accommodates 250 houses cannot be deemed as insignificant and would inevitably reduce what is currently there. For local residents this is not small, it is a major change to the landscape and environment. Evidence of this can be found in the CBC evidence of Peter Radmall, which clearly states arguments which counter those put forward by the developers. Living in these villages puts local residents in a strong position to judge the impact on the communities.
- 6.10 He stated that the current ALS is important because it helps to define the villages and prevents the conurbation of this area, which increasingly threatens the local environment. The proposed area of development is vital green space and maintains the rural character of the villages providing opportunities for agriculture and wildlife habitat. This green space needs to be protected. This proposal would have a significant visual impact on the landscape especially along the ridgeline making this development visible from all directions, totally changing the vista and therefore the character of the environment. The fact that this area of land has not been altered by public access has helped to preserve both environment and community character.
- 6.11 He claimed that the RMGPG is hugely concerned by potential flooding on the site. Numerous photographs are available of flooding taking place well beyond the areas of flooding indicated within the plans. The majority of people who contacted CBC regarding the development were opposed to the proposal and despite the changes to the plans made by the developers, they remain opposed. Many people in these two communities do not want this development to happen and have been motivated to express their feelings through the democratic processes available. There would also be a loss of farmland.
- 6.12 He stated that the RMGPG remains unconvinced by arguments which claim to show the benefits of the proposed link road. They are hugely concerned about the visual impact of the road especially going over the ridgeline. With regard to the proposed Community Orchard he wondered who it is for, who would maintain it and who would have access to it? These questions have not been adequately answered. Currently swathes of the land have been allowed to over-grow due to lack of maintenance which is an indication of the care that the developers would take with the land in the village of Rothley.
- 6.13 He said that the wide, open spaces are a haven for wildlife, far more than indicated by the two day wildlife survey carried out on behalf of the

developers. The local ecosystem would be damaged by this development and he questioned whether the proposed new wildlife areas would be a benefit.

- 6.14 Mr Deeming urged the Inspector to follow the decision of local people, the Parish Council and the CBC and not allow this development to take place. Given the Government's localism agenda and the strength of local opposition these appeals should be dismissed and planning permission refused.
- 6.15 **Mr Kendall** is a member of Upper Mountsorrel Lane Residents' Association (UMLRA). The Group consists of about 40 households on Mountsorrel Lane and Badgers Bank. Mr Kendall confirmed that the Group is in complete agreement with all the points raised by RMGPG. Mr Kendall referred to the existing ribbon of development along Mountsorrel Lane and then to the appeal decision made in 1981 by Inspector D F Binnion. He quoted from paragraphs 16, 17 and 18 of the appeal decision.
- 6.16 Mr Kendall said that despite this ribbon of development the Inspector considered that the open countryside separating the two settlements is the dominant feature in the landscape, particularly viewed from the outskirts of Rothley. Situated just to the south of the ridge, the development, in particular the roofs, would be visible from the south and south east, despite the proposed landscaping. The shallow valley to the east of Mountsorrel Lane is pleasing in appearance and together with the ridge to the north it provides an emphatic visual and physical separation between Rothley and Mountsorrel.
- 6.17 Mr Kendall stated that the Inspector considered that the proposal, although small in area, would nevertheless have a significant adverse effect on the attractive character and appearance of an important area of open countryside between the two settlements. Furthermore, it seems that approval would make pressure for similar development on each side of Mountsorrel Lane leading in due course to the coalescence and detrimental to the character, form and appearance of Rothley and Mountsorrel.
- 6.18 Mr Kendall considered that the Appellant was retaining land to the east of the current appeal site for future housing development but it would not be developed for a further 20 years. He said that Rothley Parish Council may not oppose the development but the views of the Parish Council are certainly not the views of local residents. He claimed that applications made by the Appellant always seemed to be supported by the Parish Council but that applications made by any other major developer are opposed.⁷⁶ He asked that the appeal be dismissed and that planning permission be refused.
- 6.19 **Councillor Diane Wise** represents Rothley and Thurcaston. Her main concern relates to the loss of separation between Rothley and Mountsorrel. She said that in the past few years numerous planning applications have been allowed, mainly on appeal. This has resulted in the villages along the route of the A6 being almost merged into one long ribbon of development and the loss of integrity for all the villages. Despite Section 106 contributions the impact has been great, resulting in overcrowded schools, lack of sufficient health facilities and problems with the parking of cars on the inadequate road systems. If the

⁷⁶ See IP4

appeals are granted the separation between Rothley and Mountsorrel would be greatly reduced. This will again impact on the integrity of both villages. The appeals should be dismissed and planning permission refused.

7. Written Representations

- 7.1 A number of letters were received both before and during the Inquiry from local residents.⁷⁷ The vast majority of them object to the proposals, for much the same reasons summarised under the appearances by Interested Persons in the preceding section. No significant new matters are raised.

⁷⁷ See CBC02, CBC04 and INQ2
www.planningportal.gov.uk/planninginspectorate

8. CONCLUSIONS

[In this section the numbers in superscript refer to the earlier paragraph numbers of relevance to my conclusions.]

- 8.1 Points (i) to (iii) set out at paragraph 1.4 above relate to the matters about which the SoS needs to be informed and cover the main considerations of prime significance in these appeals. The conclusions that follow are structured to address each of the points (i) to (iii) in turn. I then proceed to examine conditions in point (iv) that might be imposed should the SoS determine that planning permission should be granted and then the issue of planning obligations under s106 of the 1990 Act in point (v) before giving my overall conclusions and recommendations. ^[1.4]

Introduction

- 8.2 **Appeal A** relates to a site to the south of Mountsorrel and to the north of the village of Rothley. To the west is Mountsorrel Lane and to the east is Loughborough Road. The southern residential areas of Mountsorrel and sports pitches form the northern boundary of the site whilst the northern extent of the flood zone of Rothley Brook forms the southern boundary. Brooklea Nursery lies to the east between the site and Loughborough Road. To the west the site boundary extends to Mountsorrel Lane except where there are existing residential properties in the form of ribbon development and a cemetery. The land rises about 24m from Rothley Brook to the south of the site to the ridge line running east to west adjacent to the sports pitches of Rothley Sports and Social Club and then falls about 12m down to the rear of properties on Whatton Oaks. The site is a collection of fields of varying sizes separated by mature native hedges and trees. ^[1.7-1.10]

- 8.3 Appeal A was lodged with the SoS against non-determination of the application. The original application was submitted in outline form with all matters save for access reserved for future consideration. However, there were considerable discussions between the Appellant and the Council prior to the submission of this appeal to try and overcome the concerns of the Council. Section 6 of Mr. Morley's proof explains in more detail the changes that were made and the revised plans that were received by the Council. As a result of these various changes both parties have agreed that the description of the proposal in relation to Appeal A should be amended as follows:

"A hybrid planning application for a maximum of 250 dwellings, access, green infrastructure, a relief road, balancing ponds, public open space and demolition of barns." ^[1.15-1.16]

- 8.4 In the Wheatcroft case it was held that the decision maker could give permission for something different to that applied for provided, that the resultant development was not of a materially different character and no prejudice was caused to consultees. The main part of the test in judging whether or not the proposed development is 'substantially' different is whether prejudice is likely to be caused. Whilst the amendments to the scheme are of significance it cannot be argued that the development as a whole is substantially different than that which was applied for. Document APP20 explains that the changes are compliant with the Wheatcroft principles. I am

satisfied that interested persons have been notified and had the opportunity to express their views and there is no evidence of prejudice in this case.^[1.16]

8.5 It follows that Appeal A should be determined on the basis of the amended description and the revised plans. Document APP14 sets out the agreed list of revised plans for Appeal A and Document 16 sets out the agreed list of documents supporting this appeal. Appeal A proposal is described in more detail in Section 3 of the SoCG (INQ3). The most helpful plan is the Illustrative Masterplan P-A3. This indicates the areas proposed for a maximum of 250 dwellings, the proposed access via a link road, the proposed green infrastructure, balancing ponds, public open space and community orchard.^[1.17]

8.6 **Appeal B** relates to an area of land excluded from Appeal site A because of the risk of flooding. The site comprises trees, hedges, grassland and wetland habitat. The site falls within the Environment Agency's designated flood zones 2 and 3 and lies to the south of the proposed residential site in Appeal A. Appeal B was also lodged with the SoS against non-determination of the application. The original application was submitted in outline form with all matters reserved for future consideration. Like Appeal A this proposal was subject to discussions with the Council. Section 6 of Mr. Morley's proof explains in more detail the changes that were made and the revised plans that were received by the Council. As a result of these various changes both parties have agreed that the description of the proposal in relation to Appeal B should be amended as follows:

"Change of use from agricultural land to Biodiversity Park"^[1.11-1.12, 1.14-1.16]

8.7 In relation to Appeal B the proposal is also compliant with the Wheatcroft principles. I am satisfied that interested persons have been notified and had the opportunity to express their views and that there is no evidence of prejudice in this case. Document APP14 sets out the agreed list of revised plans for Appeal B and Document 16 sets out the agreed list of documents supporting this appeal. The Appeal B proposal is described in Section 3 of the SoCG (INQ4). The most helpful plan is the Illustrative Masterplan P-B3. This indicates that of the 6.6 hectares some 5.73 hectares would comprise the Biodiversity Park and the remainder would be green infrastructure. Pedestrian access to the site would be off Mountsorrel Lane to the west, Loughborough Road to the east and the proposed residential scheme to the north.^[1.16, 1.18]

8.8 The proposed development falls within the description at paragraph 10(b) of Schedule 2 of the 2011 EIA Regulations, being an urban development project on a site exceeding 0.5ha. No Screening Opinion was issued by the LPA. The SoS considered the matter and having taken into account the criteria in Schedule 3 to the above Regulations came to the view that the proposed development would not be likely to have a significant effect on the environment by virtue of factors such as its nature, size or location. Accordingly, in exercise of the powers conferred on the SoS by Regulations 12(1) and 6(4) of the above Regulations, the SoS issued a Screening Direction on 12 September 2013 to the effect that this development is not EIA development. I agree that the proposed development is not EIA development and therefore it does not require the submission of an Environmental Statement.^[1.19]

8.9 The Council resolved that planning permission would have been granted against non determination for the Biodiversity Park (Appeal B) subject to conditions. The matters in dispute relate to Appeal A.^[1.14] I shall therefore start with **Appeal A** and deal with compliance with the development plan and sustainable development principles:

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

8.10 The statutory development plan for the area includes the saved policies of the Charnwood Borough Council Local Plan 2004 (CBCLP). A list of the relevant policies is set out in the SoCG for each site. A copy of the Saving Letter dated 21 September 2007 and the detailed wording of all the policies is also included on the file. The CBCLP saved policies will remain in place until they are formally superseded by the Council's CS and other development plan documents. However, it is noteworthy that the Core Strategy (CS) is still at a relatively early stage and its adoption is not anticipated until October 2014. A Site Allocations and Development Management Policies DPD is likely to be adopted some time after that in June 2015.^[1.20, 2.43-2.44, 3.1-2]

8.11 The parties agree the relevant policies in the SoCGs. The policies are summarised in paragraphs 1.22 – 1.27 of my Report and there is no need to repeat them here. The Council acknowledges that the CBCLP is time expired and that its housing policies are out of date. However, it argues that the saved CBCLP countryside policies, in particular Policy CT/4 referring to ALS, remain relevant and retain the full weight of development plan policy. The Appellant maintains that the CBCLP was only intended to make provision for development needs up to 2006. It is argued that the "Saving Letter" dated 21 September 2007 saved a variety of policies but did so subject to two caveats: (i) saved policies would be replaced "promptly" – this was important for CBC as the plan was already a year past the end date of 2006; and (ii) policies were adopted "some time ago" in 2004. Hence, the Appellant argues that only due weight not full weight should be afforded to relevant policies.^[2.1, 2.18, 3.2]

8.12 I accept that the caveats referred to by the Appellant have a direct relevance to the application of the development plan in this case. The NPPF and the "Saving Letter" are material considerations and paragraph 215 of the former advises that from March 2013 onwards due weight should be given to relevant policies in existing plans according to the degree of consistency with the NPPF. It is necessary to test the consistency of the saved policies with the NPPF.^[3.3-3.7]

8.13 Only one development plan policy is raised by CBC in the putative reason for refusal: Policy CT/4: Area of Local Separation (ALS). The policy cross-refers to Policy CT/1 in terms of restricting the type of development that might be allowed. For any such types of potentially acceptable development identified in Policy CT/1 to be acceptable they must also meet the criteria in Policy CT/4. This is the control mechanism of Policy CT/4. However, the purpose of Policy CT/4 is to secure effective separation and to prevent settlements merging with each other.^[3.8]

8.14 The NPPF contains many references to the need to conserve and enhance the natural environment and one of its core principles is that planning should

recognise the intrinsic character and beauty of the countryside (paragraph 17). It stresses the continuing need to protect valued parts of the countryside from development, including through plan-making, which may (paragraph 157) "indicate broad locations for strategic development on a key diagram and land use designations on a proposals map." Paragraph 157 goes on to say that Local Plans should also identify land where development would be inappropriate, for instance because of its environmental ... significance. Elsewhere paragraph 76 refers to the scope for designating land as Local Green Space.^[2.14-2.15]

- 8.15 Both main parties rely on various Inspectors' appeal decisions/SoS decisions and High Court judgments. The Council refers to a 1980 appeal decision on the southern part of the site, the 2000 Local Plan Report together with decisions at East Goscote, Coalville and Peggs Green. It is argued that these decisions fly in the face of the position advanced by the Appellant at the Inquiry. The Appellant refers, amongst others, to decisions at Knowstone (Colman), Coalville, Cotswold and Sapcote.^[2.5, 2.8, 2.15- 2.17, 3.9, 3.13, 3.16]
- 8.16 The case of Colman identifies the consequences of paragraph 215 of the NPPF in decision taking at appeal. In that case Parker J characterised the relevant policies in this way: *"These policies are, in my view, on their own express terms very far removed from the 'cost/benefit' approach of the NPPF."* If this "cost/benefit" approach is applied to Policy CT/4, it is found somewhat wanting as its central intention and its control mechanism is to avoid anything other than the development identified in Policy CT/1 being brought forward in the ALS. However, the purpose of the policy is consistent with the NPPF because all parties to the Inquiry agree that, in principle, that it is a sound planning aspiration to seek to maintain separation of settlements.^[3.9-3.10]
- 8.17 Therefore, I agree with the Council that Policy CT/4 does not clearly conflict with the NPPF and I give it due weight, even though the NPPF does not specifically refer to ALS. But that does not mean that all land within existing ALS in the Borough should be permanently sterilised from development; instead, I consider that each case for development within an ALS should be considered on its merits. Policy CT/4 cannot be given full weight because it represents an outright ban on open market housing within the ALS, without the possibility of any countervailing benefit outweighing the prohibition.^[2.15, 3.11]
- 8.18 This analysis is also helpful in deciding how the question in paragraph 49 of the NPPF must be answered, namely: is Policy CT/4 a "relevant policy for the supply of housing"? There are two conflicting High Court judgments in this respect: Coalville and Cotswold. The approaches of the two judges are apparently irreconcilable. However, the paragraph 49 decision is not central to this case because the paragraph 215 Colman test of consistency with the NPPF must be undertaken independently of the paragraph 49 question whether or not Policy CT/4 is a policy for the supply of housing. In this case it has been accepted by CBC that for 5 reasons the paragraph 14 presumption exists. The Appellant does not need therefore to rely on the test in paragraph 49 to enjoy the presumption in favour of development in paragraph 14 of the NPPF.^[3.12-3.14]
- 8.19 If a choice were essential, which it is not, the SoS is invited to prefer the approach in Cotswold because the control mechanism in Policy CT/4 is clearly very relevant to the supply of housing: it represents an absolute ban on open

market housing in the ALS. The effect of Policy CT/4 is therefore very relevant to the supply of housing. The approach taken in Coalville is correct to point out that paragraph 49 of the NPPF is within the housing section. However, that section presumes that there will be adequate housing provision in the plan. This is clearly not the case here and paragraph 49 needs to be read with this in mind. Furthermore, the limits to development and ALS (and Green Wedge) boundaries were all drawn in the CBCLP 2004 reflecting housing needs up to 2006 only. Housing needs are obviously greater in 2013 and the emerging CS acknowledges that the ALS boundaries will have to be redrawn as part of the Site Allocations and Development Management Policies DPD process. This also serves to demonstrate the direct link between ALS and provision of housing.^[3.15]

- 8.20 At first blush the proposals are contrary to Policy CT/4 of the CBCLP. However, if the matter is considered more closely it quickly becomes apparent that the proposal would maintain an adequate area of separation between Mountsorrel and Rothley. The ALS have a strategic role and are intended to act as small, open, rural buffers whose main purpose is to prevent neighbouring settlements from merging or coalescing. If that analysis is correct and there is no breach to the purpose of Policy CT/4 then the technical breach relating to the control mechanism ought to have little weight attached to it. This needs to be examined under Main Issue (iii).^[3.18]
- 8.21 Plainly the control mechanism under Policy CT/4 fails the paragraph 215 test in the NPPF for reasons set out above and cannot be given full weight. Furthermore, whatever view is taken on the paragraph 49 "policy for supply of housing test" it is the fact that CBC desperately needs additional housing and this must be relevant when deciding what weight to attach to Policy CT/4. It is noteworthy that CBC has taken the view elsewhere that Policy CT/4 is a policy relevant to housing and that it is out of date.^[2.29, 3.19]
- 8.22 To accord with the development plan a proposal does not have to comply with each and every policy or proposal therein. In this case only Policy CT/4 is alleged to be breached and the proposed development would accord with a host of other policies subject to conditions. If the breach is only technical as argued above, and if it is accepted that the purpose of ALS is preserved by the development then a strong case is made out that the proposal is consistent with the development plan, taken as a whole. Even if a contrary view were to be taken, the breach of Policy CT/4 has to be assessed in the context of paragraph 14 of the NPPF as required under Main Issue (ii) below.^[3.20]
- 8.23 The main parties agree that the proposed development would deliver a sustainable form of development. There are three dimensions to sustainable development as set out in the NPPF at paragraph 7. Mr Morley accepted all of the benefits identified in Mr Stone's Table at page 43 of his proof of evidence. The SoCG accepts that the appeal site is in a sustainable location for housing development.^[3.21]
- 8.24 In relation to Issue (i) I conclude that the proposal would accord with a very wide range and a large number of development plan policies but it would not be consistent with a strict interpretation of Policy CT/4 of the CBCLP. The saved policies including Policy CT/4 still merit due weight as development plan policies. Although there would be some conflict with this policy, this, for the

reasons stated above, would be limited. The proposed development would accord with the 3 dimensions to sustainable development set out in paragraph 7 of the NPPF.

Issue (ii) Whether the proposed development is necessary to meet the housing needs of the Borough bearing in mind the housing land supply position;

- 8.25 Plainly CBC's housing land supply is in crisis. It lies between 2.93 and 2.6 years. There is no good reason why the Sedgefield approach should not apply here. If there were a 10% non implementation discount as applied at Honeybourne and elsewhere these supply figures would be less. The annual requirement runs at over 1,000 homes. The emerging CS will not be adopted until October 2014 at the earliest – almost 1 year away. Mr Morley did not know if the CS would guarantee a 5 year supply when adopted. Mr Stone explained that large sites such as promoted in the emerging CS at Policy CS1 take between 18 months – 2 years to start delivering homes that can be occupied. In so far as the Site Allocations and Development Management Policies DPD will be expected to supplement the 5 year supply it will not be adopted until June 2015 and is already 8 months behind schedule.^[3.22]
- 8.26 Mr Morley accepted that until the Site Allocations and Development Management Policies DPD was adopted it was only through development control decisions such as this that an attempt can be made to achieve a 5 year housing land supply that paragraph 47 of the NPPF requires. Mr Stone's Appendix 18 includes the Council's Assessment of 5 Year Housing Land Supply as at 31 March 2013. At page 5 of that Assessment Figure 1 line c shows expected completions in CBC in 2013-2014 will total 536 homes. This is against an annual housing requirement of 1,014. From these figures it is clear to me that not much progress is being made.^[3.23]
- 8.27 All of these factors combine to create a compelling case for urgency of action and lend considerable weight to the merits of this proposal. There is no doubt that paragraph 14 of the NPPF is engaged in this case because, as Mr Morley accepted, the housing policies of the CBCLP are "out of date" because the plan is 7 years beyond its intended life span. He also accepted that in so far as Policy CT/4 restricts the supply of housing it is "out of date" (as the Committee Report in APP8 accepts). This admission represented the abandonment of what he said there at paragraph 8.3 of his proof of evidence.^[3.24-3.25]
- 8.28 In my view, Policy CT/4 is inconsistent with the cost benefit analysis set out in the Colman case. It fails the paragraph 215 test and is therefore "out of date" as far as paragraph 14 is concerned. The saved policies of the CBCLP are "silent" within the meaning of paragraph 14 as to where the admitted housing need should be located: it only says where development cannot go. Moreover, the emerging CS itself acknowledges that Policy CT/4 is "out of date" because it anticipates a review of its boundaries as part of the Site Allocations and Development Management Policies DPD.^[3.35]
- 8.29 Because paragraph 14 of the NPPF is engaged, the balance identified therein is required. Mr Stone has carried out that exercise and his Table at paragraph 43 of his proof demonstrates that the case in favour of grant of planning

permission is overwhelming. The SoS should also be aware that no paragraph 14 footnote 9 "specific policies" apply to the site.^[3.26-3.27]

- 8.30 On the second issue I conclude that the release of this site is necessary to meet housing needs of the Borough.

Issue (iii) The effect of the proposed development on the character and appearance of the area including the purpose and integrity of the Area of Local Separation;

- 8.31 It is common ground that if the appeal succeeds there would be a reduction in openness. The minimum length of the separation would fall from about 800m to 240m. By building up to 250 dwellings on a greenfield site, the proposed development would clearly affect the existing ALS between Mountsorrel and Rothley and the character of the appeal site would be radically changed. The appeal site is relatively well contained. There is consequently a limited visual envelope within which the effects of potential development may be experienced. However, as can be seen from the representative viewpoints, there would be significant visibility of the new development from the existing settlement edges along Mountsorrel Lane, Oldfield Lane, Halywell Nook and further to the south east, at Homefield Lane, beyond the Rothley Brook. Furthermore, operational development in the form of the proposed new relief road would connect Mountsorrel Lane and Loughborough Road across the ALS.^[2.31-2.34, 3.37, 6.9, 6.15, 6.19, 7.1]
- 8.32 However, in my opinion, there are several reasons for thinking that the impact of the development on the ALS would be quite limited and not very harmful - much less fatal - to its overall purpose, integrity or character. First, the main built component of the proposed development would extend Rothely in a primarily eastward direction out from Mountsorrel Lane, contained to the north by Rothley Cemetery. This would mirror the westerly most extent of the village towards The Ridings. The retained ALS distance between the northern edge of the expanded Rothley would be entirely consistent with the separation which exists to the west of Mountsorrel Lane at its narrowest point. However, in the case of the proposed development, the sense of separation is reinforced by the more prominent ridge so the level of harm arising from landscape and visual matters is no more than limited in overall terms.^[2.31, 2.38-2.39, 3.35, 6.9, 6.15, 6.19, 7.1]
- 8.33 Secondly, I accept that the designated ALS referred to in Policy CT/4 covers a total of 121.4 hectares and was defined in 1995. It encompasses all the undeveloped land extending west from the A6 Quorn - Mountsorrel Bypass across to The Ridings on the edge of Swithland, merging with the Ridgeway Separation Area. However, it is noteworthy that the residential component of the appeal proposals would account for only 6.8% of this total combined ALS. Even taking the eastern area of the ALS in isolation (59.7hecatres) the proposed development would account for only 14% of the area leaving 86% free from residential development. In short, only a small percentage of the total ALS would be lost to development.^[3.38, 3.40]
- 8.34 Thirdly, it is clear that CBC and many local people, including members of RMGPG, UMLRA, MPC, Councillor Wise and others, greatly value this green area of open countryside and want to preserve its status as ALS which has protected it hitherto from development. Whilst I appreciate that the appeal site is considered attractive at a local level it is also true that it has never been

designated as a result of its perceived landscape character or quality. It consists primarily of grazing pasture subdivided by a comparatively intact hedgerow framework. The existing settlement edges provide the context to the north, west and south with the A6 corridor and employment zones to the east and the Soar valley floodplain beyond. Topographically, the bulk of the site comprises the south facing valley slopes of the Rothley Brook. It is significant that the appeal site was not included within the Areas of Particularly Attractive Countryside designations as defined in the CBCLP. It is not a valued landscape as set out in the NPPF and it is not a NPPF footnote 9 site.^[3.29]

- 8.35 Fourthly, the master plan has been sensitively designed to ensure that the built development components can be successfully assimilated into the local landscape context in a manner which is consistent with the key characteristics of the national character area known as the Trent Valley Washlands and the key characteristics of the local assessment – the Rothley Brook Character Area. Specifically this includes retention of a broad area of green separation utilising the higher land along the southern fringe of Mountsorrel and avoiding built development on the ridge. At its narrowest point, a gap of 240m between new built development is maintained. It also includes retention of the Rothley Brook within the proposed Biodiversity Park, thus protecting a second broad area of green separation along the Homefield Lane edge of Rothley. At its narrowest point this is 330m wide.^[3.32]
- 8.36 Importantly, containment of the residential development would be within existing field compartments, subdivided by retained hedgerows forming greenways. Built development would be on the valley slopes which is identified as being characteristic of the Trent Washlands and the Rothley Brook Character Areas. The long sections demonstrate that from Homefield Lane the built development would avoid the skyline. Although there would be 10 new openings created in the existing hedgerows and the removal of a length of 250m it is fair to report that as part of the mitigation 1km of new hedgerow would be planted along the relief road and the new access road serving the northern boundary of the main housing area.^[2.36, 3.35]
- 8.37 The creation of a very robust and well connected green infrastructure framework reinforcing and enhancing the existing network of hedgerows with new woodland planting would also be in accordance with the specific management guidelines for the Rothley Brook Character Area. In my view, this would ensure that there would be a strong layering effect of natural vegetation filtering views of settlement edges. The delivery of the Biodiversity Park under Appeal B and the comprehensive green infrastructure framework would also bring significant recreational and wildlife benefits which are consistent with the emerging CS aspirations for green infrastructure.^[3.35]
- 8.38 Finally, the Council expresses concern about the location of the relief road on the ridge which I agree is the most visually prominent part of the site. However, I note that the detailed design of the relief road includes significant areas of new planting, the use of shallow cutting and carefully designed lighting of very high environmental quality in order to minimise disruption. The design has also been agreed with the County Highways Authority. In my view the road can be sensitively assimilated and would be perceived by users as a semi-rural route for the majority of its length. Whilst I accept that the proposed housing could be adequately accessed from Mountsorrel Lane it is also true that the new road would bring benefits to existing residents in the

area and enjoys the support of the MPC. The SoS should note that Policy CT/4 is not a landscape quality policy and that any harm arising from its location in the ALS would be mitigated in perpetuity by the operation of the s106 Agreement which would keep the adjoining land in agricultural use. [2.31, 2.40-2.42, 3.47, 6.9, 6.15, 6.19, 7.1]

- 8.39 For all those reasons on the third main issue I conclude that the proposed development would not significantly harm the character and appearance of the area or undermine the planning purpose or overall integrity of the wider ALS. The countervailing environmental benefits more than outweigh the loss of ALS and the limited landscape harm caused by the loss of green field land.

Issue (iv) whether any permission should be subject to any conditions and, if so, the form these should take;

- 8.40 A list of suggested conditions for Appeal A was discussed at the Inquiry at a round table session. These conditions were subsequently revised and document APP22A represents a high level of agreement between the Appellant and CBC as to the conditions which should be imposed in the event that planning permission is granted. I have considered the suggested conditions in the light of the tests of Circular 11/95. [3.42]

- 8.41 Conditions 1-4 are necessary to ensure that the development will not start until all reserved matters are approved and that the development should be carried out in accordance with the revised plan for the link road. Condition 5 relates to the submission of a phasing scheme and is necessary to ensure that all elements of the scheme are carried out in a timely manner. Conditions 6-8 relate to drainage matters and are necessary to ensure that the site can be properly drained without flooding. Condition 9 is necessary to ensure a satisfactory development of the site. Condition 10 is necessary to ensure that a detailed ground investigation is undertaken together with details of any remediation strategy to avoid pollution of ground and surface waters. Conditions 11-13 relate to landscaping and are necessary in the interests of visual amenity. Conditions 14 -15 relate to open space and play provision and are necessary to ensure a satisfactory development. Condition 16 relates to the closure of existing accesses and is necessary in the interests of highway safety. Condition 17 relates to the provision of public art and is necessary to ensure a satisfactory development in the interests of visual amenity. [3.42]

Issue (v) whether any planning permission granted should be accompanied by any planning obligations under section 106 of the 1990 Act and, if so, whether the proposed terms of such obligations are acceptable.

- 8.42 APP9 is a signed and completed s106 Planning Obligation Agreement, dated 13 December 2013, between the Appellant, the LPA and LCC. The Agreement covers the following matters: Schedule 1, additional sustainable transport improvements, bus pass, travel pack, education, highways, libraries and sustainable transport contributions; Schedule 2, affordable housing; and Schedule 3, Open Space. Document LPA2 is a statement which has been agreed by the Appellant, the LPA and LCC. It provides a summary of the obligations contained in the Agreement and how each complies with the legal requirements of Regulation 122 of the CIL Regulations 2010. All of these contributions were discussed at the Inquiry. I consider that all of the provisions

of the s106 Agreement are necessary. They meet the 3 tests of Regulation 122 of the CIL Regulations 2010 and the criteria in paragraph 204 of the NPPF. I accord the s106 Agreement significant weight and I have had regard to it as a material consideration in my conclusions. ^[3.44, 4.1-4.6]

- 8.43 The Appellant has also submitted two s106 Unilateral Undertakings in respect of financial contributions requested by the Police and Crime Commissioner for Leicestershire Police (LP) and NHS England (Leicestershire and Lincolnshire). The Appellant is not satisfied that these contributions are CIL compliant. The LPA has indicated that it is neutral in relation to both requests. Both Unilateral Undertakings were discussed at the Inquiry in relation to their CIL compliance. ^[3.45, 5.1-5.12]
- 8.44 APP10 is a signed and completed s106 Unilateral Undertaking, dated 13 December 2013, between the Appellant, the LPA and the LP. The sum of £106,978 is sought by the LP towards Police infrastructure to mitigate the impact of the development. Schedule 1 of the Undertaking provides details of the contribution and how it would be used to deliver adequate infrastructure and effective policing. Document LP2, prepared by the LP, provides a statement of compliance with the CIL Regulations 2010. ^[3.45, 5.1-5.12]
- 8.45 In my view the sum of £106,978 has been arrived at following a close and careful analysis of the current levels of policing demand and deployment in Charnwood, so that the impact of the development could be properly assessed and a contribution sought that accurately reflects the precise need that would arise from the development of 250 new homes on the appeal site. The LP has confirmed that the contribution would be spent on infrastructure to serve the appeal development and is not required to meet a funding deficit elsewhere or to service existing development. ^[3.45, 5.1-5.12]
- 8.46 I consider that the contribution is necessary to make the development acceptable; it is directly related to the development and to mitigating the impacts that it would generate and it is fairly and reasonably related in scale and kind to the development. The Undertaking therefore meets the 3 tests of Regulation 122 of the CIL Regulations 2010 and the criteria in paragraph 204 of the NPPF. I accord the Undertaking significant weight and I have had regard to it as a material consideration in my conclusions. ^[3.45, 5.1-5.12]
- 8.47 APP13 is a signed and completed s106 Unilateral Undertaking, dated 13 December 2013, between the Appellant, the LPA and NHS England (Leicestershire and Lincolnshire). The sum of £111,095.82 is sought by the NHS to provide for an extension to the Alpine House Surgery, 86 Rothley Road, Mountsorrel. The contribution request is based on current capacity issues at the surgery. It is calculated on the basis of an indicative size of premises and recent new surgery projects. Whilst I accept that the proposed development could result in an increased patient population and patient consultations, I am not persuaded by a claim that is entirely based on a 'formula' approach. The claim is made in respect of a Mountsorrel surgery which is not included in the agreed GP premises investment plan and therefore there is no 'live' scheme to support the claim. Moreover, the precise cost of any improvements is not known or whether any claim for funding would be approved by the NHS. There is also an issue in relation to the capital sum that would be paid and whether, or not, that may increase the capital value of the premises and how the Appellant would be credited for this. I agree with the Appellant that the basis for making the request, in terms of internal decision making procedures

remain somewhat obscure and the total sum cited is not sufficiently clearly related to the proposed development. Overall, I consider that the basis of the request is not adequately justified. I therefore find that this Undertaking does not meet the tests of Regulation 122 of CIL Regulations and I have not taken it into account in this appeal.^[3.46, 6.3-6.6]

Overall Conclusion on Appeal A

- 8.48 The proposed development would have a somewhat harmful effect on the purpose and integrity of the ALS. However, this harm would be limited and would not be sufficient to undermine its continuing planning function or to cause the coalescence of Mountsorrel and Rothley. There would be some slight harm to be weighed in the overall planning balance. The proposed development is not consistent with a strict interpretation and application of Policy CT/4 of the CBCLP and there would be some limited conflict with this policy. However, due to its accord with all other policies, I consider there is no overall conflict with the development plan. However, even if a contrary view were to be taken, the breach of Policy CT/4 has to be assessed in the context of the balancing exercise required by paragraph 14 of the NPPF.
- 8.49 The NPPF at paragraph 49 advises that policies for the supply of housing should not be considered up-to-date if the LPA cannot demonstrate a five year supply of deliverable housing sites. In this case there is no disagreement about the matter. As the SoCG confirms there is only 2.6 years supply of housing land and these figures do not allow for a non-implementation discount. One of the main purposes of the NPPF is to stimulate the delivery of housing nationally and particularly in those areas where there are demonstrable shortfalls. The housing policies of the CBCLP are therefore clearly out of date. In my view, this significant shortfall in the Borough's housing land supply is an important factor which counts strongly in favour of the appeal scheme.
- 8.50 The balancing exercise carried out by the Appellant at page 43 of Mr Stone's proof is compelling. It demonstrates that the case in favour of granting planning permission is overwhelming. The proposed development would deliver tangible benefits in the form of much needed market and affordable housing (30%) in an accessible location adjacent to both Rothley and Mountsorrel. Both settlements are recognised as service centres in the emerging CS. The site is well related to facilities and would further support the development of economic and social capital in the locality. The proposed relief road and traffic calming would be beneficial and the overall environmental benefits would be significant with enhanced biodiversity and new pedestrian and cycle links. In all circumstances the development represents a suitable and sustainable development where other material considerations clearly outweigh the limited development plan conflict.

Appeal B – Land off Mountsorrel Lane, Rothley

- 8.51 The Council resolved that planning permission would have been granted against non determination for the Biodiversity Park subject to conditions. The Council considers that Appeal B is acceptable on its own terms and in the event that planning permission is granted for Appeal A the Council agrees that Appeal B should be allowed also.^[1.14, 2.1]

- 8.52 The submitted documents and plans provide what works are envisaged for this site. The proposal is to maintain the area as informal open space with a footpath network linking Mountsorrel Lane in the west, the sports field to the south (Homefield Lane), Loughborough Road to the east and the proposed residential development to the north. The footpath onto Loughborough Road would involve the removal of some trees to allow access and a suitable visibility splay.^[1.16, 1.18]
- 8.53 Document CBC04 provides details of the responses from statutory consultees and other responses. The central issue is whether a biodiversity park is considered acceptable in this location. Management and enhancement of the Biodiversity Park would safeguard biodiversity interests in the local area, limit the impacts of development on biodiversity in the surrounding environment and provide opportunities to create new habitats. The proposal would benefit both existing local residents and those who would move to the area if permission is granted for the proposed residential development immediately to the north of this appeal site.^[1.14, 2.1]
- 8.54 A list of suggested conditions for Appeal B was discussed at the Inquiry at a round table session. These conditions were subsequently revised and document APP22B represents a high level of agreement between the Appellant and CBC as to the conditions which should be imposed in the event that planning permission is granted. I have considered the suggested conditions in the light of the tests of Circular 11/95. All of the conditions are necessary to ensure that the appearance of the completed development is satisfactory and will be assimilated into its surroundings.^[3.42]

Overall Conclusion on Appeal B

- 8.55 The proposal is wholly in accordance with the provisions of the NPPF and the aforementioned policies of the CBCLP, which in this instance are in accord with the NPPF, and there are no other material considerations which indicate planning permission should not be granted.

9. RECOMMENDATIONS

- 9.1 I recommend that Appeal A be allowed and planning permission be granted subject to conditions.
- 9.2 I recommend that Appeal B be allowed and planning permission be granted subject to conditions.

Harold Stephens

INSPECTOR

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Mr Jack Smyth of Counsel Instructed by Mr Richard Thurling, Head of
Strategic Support, Charnwood Borough Council

He called Mr Michael Morley BSc (Hons) Dip TP MRTPI
Mr Peter Radmall MA BPhil MLI

FOR THE APPELLANT:

Mr Jeremy Cahill QC Instructed by Mrs Lizzie Marjoram Messrs Bird,
Assisted by Nina Pindham Wilford and Sale, Solicitors, Loughborough

He called Mr Phil Rech BA (Hons) BPhil LD CMLI
Mr Paul Stone BSc (Hons) Dip TP MRTPI

FOR LEICESTERSHIRE COUNTY COUNCIL: (a Rule 6 party)

Ms Nisha Varia Solicitor with LCC

She called Andrew Tyrer BA (Hons) MSc MRTPI Developer
Contributions Officer, LCC
Sharon Townsend - Strategic Officer Children &
Young Peoples Services (CYPS) (Education) LCC
Steve Kettle - Modernising Service Manager, Adults
& Communities (Library services) LCC
Younus Seedat - Senior Engineer, Highways
Service, LCC

FOR THE POLICE AND CRIME COMMISSIONER FOR LEICESTERSHIRE: (a Rule 6 party)

Mrs Thea Osmund-Smith of Counsel

She called Mr Michael Lambert Dip TP MRTPI

FOR MOUNTSORREL PARISH COUNCIL

Mr David Allard Chairman of the Parish Council

INTERESTED PERSONS:

Mrs Amanda Anderson NHS England (Area Team) Leicestershire and
Lincolnshire

Mr Julian Deeming Rothley – Mountsorrel Greenbelt Preservation
Group

Mr David Kendall Upper Mountsorrel Lane Residents' Association
Councillor Diane Wise Local Councillor for Rothley and Thurgate

INQUIRY DOCUMENTS

- INQ1 Notification Letter
- INQ2 Written representations submitted following the issue of the SoS's Direction to recover the applications
- INQ3 Statement of Common Ground Appeal A
- INQ4 Statement of Common Ground Appeal B

ADDITIONAL DOCUMENTS SUBMITTED ON BEHALF OF CHARNWOOD BOROUGH COUNCIL

- LPA1 T/APP/5302/A/81/131/G6 Appeal decision map
- LPA2 Statement of Compliance with CIL Infrastructure Regulations 2010
- LPA3 Charnwood Borough Council SPD Section 106 Developer Contributions
- LPA4 Closing Submissions
- LPA5 Costs Submissions

ADDITIONAL DOCUMENTS SUBMITTED ON BEHALF OF THE APPELLANT

- APP1 Updated light spillage diagram - 11 December 2012
- APP1A Email from LCC to William Davis Ltd's traffic consultants BWB Consulting re. Mountsorrel Lane, Rothley Street Lighting - 11 December 2013
- APP2 Appellant's representations in relation to objection to emerging CS - 19 July 2013
- APP3 Plan 7 and Plan 8 relating to William Davis' previous application
- APP4 Cotswold DC v SSCLG, Fay and Son Ltd/Cotswold D.C. v SSCLG, Hannick Homes and Developments Ltd [2013] EWHC 3719 (Admin)
- APP5 Tewkesbury BC v SSCLG, Comparo Ltd, Welbeck Strategic Land LLP [2013] EWHC 286 (Admin)
- APP6 Land at Willow Meadow Farm, Ashbourne, Derbyshire Dales DC Appeal Decision APP/P1045/A/13/2195546 - 9 October 2013
- APP7 Land off Barford Road, Bloxham, Cherwell DC – SoS decision 23 September 2013
- APP8 Land north of Ling Road, Committee Report - 8 January 2013
- APP9 Section 106 Agreement between Adrian Clarke, Rodney Clarke, Andrew Terence Clarke and Stephen Robert Clarke, William Davis Ltd, Charnwood Borough Council and Leicestershire County Council
- APP10 Section 106 Unilateral Undertaking between Adrian Clarke, Rodney Clarke, Andrew Terence Clarke and Stephen Robert Clarke, William Davis Ltd, the Council of the Borough of Charnwood and the Police and Crime Commissioner for Leicestershire
- APP11 Land west of Allendale Road, Loughborough, Leicestershire - Committee Report - 8 January 2013
- APP12A Agreed amendment to description of development - Appeal A -12 December 2013
- APP12B Agreed amendment to description of development - Appeal B - 12 December 2013
- APP13 Section 106 Unilateral Undertaking between Adrian Clarke, Rodney Clarke, Andrew Terence Clarke and Stephen Robert Clarke, William Davis Ltd, the Council of the Borough of Charnwood and the NHS England (Leicestershire and Lincolnshire)
- APP14 List of plans for both Appeal A and Appeal B -12 December 2013
- APP15 Note regarding loss of hedgerows - 11 December 2013

- APP16 List of documents for both Appeal A and Appeal B -12 December 2013
- APP17 Core Strategy Key Diagram
- APP18 Overlay Diagram (Allendale Road development and Area of Separation)
- APP19 Note regarding Schedule of Agreed Distances and Areas between the Appellant and Charnwood Borough Council - 12 December 2013
- APP20 Statement of compliance with Wheatcroft principles
- APP21 Note regarding statistics
- APP22A List of Suggested Conditions for Appeal A
- APP22B List of Suggested Conditions for Appeal B
- APP23 Opening Statement
- APP24 Closing Submissions
- APP25 Costs Submissions

ADDITIONAL DOCUMENTS SUBMITTED BY LEICESTERSHIRE COUNTY COUNCIL

- LCC1 Rothley new school site diagram
- LCC2 Proof of evidence of Andrew Tyrer with Appendices

ADDITIONAL DOCUMENTS SUBMITTED BY LEICESTERSHIRE POLICE

- LP1 Melton Borough Council Core Strategy: Inspector's Conclusions
- LP2 Statement of compliance with CIL Regulations 2010
- LP3 Mr Lambert's Proof of evidence and Appendices
- LP4 Mr Lambert's letter dated 14 November 2013 amending the total sum sought in respect of Police vehicles
- LP5 Closing submissions

INTERESTED PERSONS' DOCUMENTS

- IP1 Statement by Amanda Anderson on behalf of Leicester, Leicestershire County and Rutland PCT Cluster - October 2012
- IP2 Statement by Julian Deeming on behalf of Rothley-Mountsorrel Greenbelt Preservation Group
- IP3 Statement by David Kendall on behalf of Upper Mountsorrel Lane Residents' Association
- IP4 Upper Mountsorrel Lane Residents' Association leaflet
- IP5 Extracts from "Rothley: Then and Now"
- IP6 Statement by Diane Wise, Councillor for Rothley and Thurcaston
- IP7 Email from NHS England (Leicestershire and Lincolnshire) regarding Deed of Unilateral Undertaking - Land off Mountsorrel Lane, Rothley - 12 December 2013

ANNEX - RECOMMENDED CONDITIONS

APPEAL A - Appeal Ref: APP/X2410/A/13/2196928

Time limit Full application

- 1) Insofar as this decision grants full planning permission for the relief road as indicated in the application, the development, hereby permitted, shall be begun not later than 2 years from the date of this permission.

Details of road

- 2) The development of the relief road shall be carried out only in accordance with the details and specifications included in the submitted application, as amended by the revised drawings Nos. NTT/2033/HD/104 rev P3, NTT/2033/HD/104 rev P4, NTT/2033/HD/105 rev P4, NTT/2033/HD/106 rev P4, NTT/2033/HD/100 P11, NTT/2033/008 rev P2 showing the layout and design of the relief road.

Reserved matters

- 3) Insofar as this decision grants outline planning permission for those parts of the development other than the relief road, details of the layout, scale, appearance, access, landscaping and proposed ground levels and finished floor levels of all buildings (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the Local Planning Authority before any development begins, in accordance with the phasing scheme as agreed under condition No. 5 below and the development shall be carried out as approved.

Reserved matters time limit

- 4) The application(s) for approval of reserved matters shall be made within three years of the date of this permission and the development shall be begun not later than two years from the final approval of the last of the reserved matters.

Phasing

- 5) No development, including site works, shall take place until a phasing scheme in respect of the relief road, pedestrian/cycle access routes to the site, public open space, recreational, children's play areas, Biodiversity Park and the residential areas has been submitted to and agreed in writing by the Local Planning Authority. The development shall be carried out in accordance with the agreed phasing scheme.

Drainage

- 6) No development, including site works, shall take place until details of the disposal of foul sewage have been submitted to and approved in writing by the Local Planning Authority. The scheme shall be implemented in accordance with the approved details before the development is brought into use.

- 7) No development, including site works, shall take place until a surface water drainage scheme for the site, based on sustainable drainage principles and an assessment of the hydrological and hydro geological context of the development, has been submitted to and approved in writing by the Local Planning Authority. The drainage strategy should demonstrate the surface water run-off generated up to and including the 100 year critical storm plus an appropriate allowance for climate change will not exceed the run-off from the undeveloped site following the corresponding rainfall event. The scheme shall subsequently be implemented in accordance with the approved details before the development is completed. The scheme shall also include:
- details of how the scheme shall be maintained and managed after completion
 - sustainable drainage techniques or SuDS incorporated into the design in line with The SUDS manual C697. A development of this type should incorporate at least two treatment trains.
 - details to show the outflow from the site is limited to the maximum allowable rate, i.e. greenfield site run-off
 - design details of the proposed balancing ponds, including cross-sections and plans. This includes all connections to any receiving watercourse.
- 8) The development permitted by this planning permission shall be carried out in accordance with the approved Flood Risk Assessment (FRA) Revision B and the mitigation measures detailed within the FRA produced by BWB Consulting and dated March 2013.

Construction method and tree/hedge protection

- 9) No development, including site works, shall take place until a Construction Method Statement has been submitted to, and approved in writing by, the Local Planning Authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:-
- (i) the routing of construction traffic;
 - (ii) the times of construction work;
 - (iii) the parking of vehicles of site operatives and visitors;
 - (iv) loading and unloading of plant and materials;
 - (v) storage of plant and materials used in constructing the development
 - (vi) measures to control the emission of dust and dirt (including a scheme for wheel cleaning) during construction to ensure that the highway is kept free of mud, water and stones;
 - (vii) a scheme for recycling/disposing of waste resulting from demolition and construction works;
 - (viii) measures to protect the trees and hedges to be retained on the application site during the duration of the construction works;
 - (ix) measures to protect the wildlife habitats and wildlife corridors during the duration of the construction works.

Land contamination

- 10) No development, including site works, shall take place until a Phase II ground investigation has been undertaken to establish the full nature and extent of

any contamination of the site and the results of the investigation together with details of any remediation strategy necessary to render the site safe shall be submitted to the Local Planning Authority for their assessment and written approval. Any remediation works required by the approved strategy shall be carried out in accordance with the approved remediation strategy.

Landscaping

- 11) No development in any phasing as agreed under condition 5, including site works, shall take place until a landscaping scheme for the respective phase, to include those details specified below, has been submitted to and agreed in writing by the Local Planning Authority:
 - (i) the treatment proposed for all ground surfaces, including hard areas;
 - (ii) full details of tree planting;
 - (iii) planting schedules, noting the species, sizes, numbers and densities of plants;
 - (iv) finished levels or contours;
 - (v) any structures to be erected or constructed;
 - (vi) functional services above and below ground; and
 - (vii) all existing trees, hedges and other landscape features, indicating clearly those to be removed.

- 12) The landscaping schemes for the development shall be fully completed, in accordance with the details agreed under the terms of condition No. 11, in the first planting and seeding seasons following the first occupation of any part of the development or in accordance with a programme previously agreed in writing by the Local Planning Authority. Any trees or plants removed, dying, being severely damaged or becoming seriously diseased, within 5 years of planting shall be replaced in the following planting season by trees or plants of a size and species similar to those originally required to be planted.

- 13) No development, including site works, shall take place until a Green Infrastructure Biodiversity Management Plan, including long term design objectives, management responsibilities and maintenance schedules, including ecological measures for all landscape areas, other than domestic gardens, has been submitted to and agreed in writing by the Local Planning Authority. The agreed Green Infrastructure Biodiversity Management Plan shall then be fully implemented.

Recreation

- 14) The details to be submitted in accordance with condition No. 3 shall include open space/children's play area provision at a rate of 200 square metres per 10 dwellings of which 75 square metres per 10 dwellings must include play equipment.

- 15) The details to be submitted in accordance with condition No. 3 shall include open space provision for recreational use by adults, youth and for general amenity purposes.

Existing accesses

- 16) No development, including site works, shall take place until all existing vehicular accesses to the site have been identified and details submitted to and approved in writing by the Local Planning Authority to show how and when the accesses that are to become redundant as a result of this proposal shall be closed permanently and the existing vehicular crossings reinstated.

Public Art

- 17) No development, including site works, shall take place until a scheme of public art within the built fabric of the development, including its future management and a timetable for its implementation, has been submitted to and agreed in writing by the Local Planning Authority. The agreed scheme shall be fully implemented in accordance with the agreed timetable.

Archaeology

- 18) No development, including site works, shall take place until the applicant or developer has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation which has been previously submitted to and agreed in writing by the Local Planning Authority, and no development shall take place except in accordance with the approved details.

RECOMMENDED CONDITIONS

APPEAL B - Appeal Ref: APP/X2410/A/13/2196929

- 1) The development, hereby permitted, shall be begun not later than 3 years from the date of this permission.
- 2) The use hereby permitted shall not commence until a landscaping scheme, to include those details specified below, has been submitted to and agreed in writing by the Local Planning Authority:
 - (i) the treatment proposed for all ground surfaces, including hard areas;
 - (ii) full details of tree planting;
 - (iii) planting schedules, noting the species, sizes, numbers and densities of plants;
 - (iv) all existing trees, hedges and other landscape features, indicating clearly those to be removed.
- 3) The landscaping scheme shall be fully completed, in accordance with the details agreed under the terms of the above condition, in the first planting and seeding seasons following the commencement of the use or in accordance with a programme previously agreed in writing by the Local Planning Authority. Any trees or plants removed, dying, being severely damaged or becoming seriously diseased, within 5 years of planting shall be replaced in the following planting season by trees or plants of a size and species similar to those originally required to be planted.
- 4) The use hereby permitted shall not commence until a Green Infrastructure Biodiversity Management Plan, including long term design objectives, management responsibilities and maintenance schedules for the area, has been submitted to and agreed in writing by the Local Planning Authority. The agreed landscape management plan shall then be fully implemented.



Department for Communities and Local Government

RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT

These notes are provided for guidance only and apply only to challenges under the legislation specified. If you require further advice on making any High Court challenge, or making an application for Judicial review, you should consult a solicitor or other advisor or contact the Crown Office at the Royal Courts of Justice, Queens Bench Division, Strand, London, WC2 2LL (0207 947 6000).

The attached decision is final unless it is successfully challenged in the Courts. The Secretary of State cannot amend or interpret the decision. It may be redetermined by the Secretary of State only if the decision is quashed by the Courts. However, if it is redetermined, it does not necessarily follow that the original decision will be reversed.

SECTION 1: PLANNING APPEALS AND CALLED-IN PLANNING APPLICATIONS;

The decision may be challenged by making an application to the High Court under Section 288 of the Town and Country Planning Act 1990 (the TCP Act).

Challenges under Section 288 of the TCP Act

Decisions on called-in applications under section 77 of the TCP Act (planning), appeals under section 78 (planning) may be challenged under this section. Any person aggrieved by the decision may question the validity of the decision on the grounds that it is not within the powers of the Act or that any of the relevant requirements have not been complied with in relation to the decision. An application under this section must be made within six weeks from the date of the decision.

SECTION 2: AWARDS OF COSTS

There is no statutory provision for challenging the decision on an application for an award of costs. The procedure is to make an application for Judicial Review.

SECTION 3: INSPECTION OF DOCUMENTS

Where an inquiry or hearing has been held any person who is entitled to be notified of the decision has a statutory right to view the documents, photographs and plans listed in the appendix to the report of the Inspector's report of the inquiry or hearing within 6 weeks of the date of the decision. If you are such a person and you wish to view the documents you should get in touch with the office at the address from which the decision was issued, as shown on the letterhead on the decision letter, quoting the reference number and stating the day and time you wish to visit. At least 3 days notice should be given, if possible.

Appendix 2: Rearsby Roses Appeal



Appeal Decision

Hearing held on 27 March 2013

Site visit made on 28 March 2013

by P E Dobsen MA (Oxon) DipTP MRTPI FRGS

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

Decision date: 15 April 2013

Appeal Ref: APP/X2410/A/12/2187470

Land at (the former) Rearsby Roses Ltd, Melton Road, East Goscote LE7 4YP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by GEG Properties against the decision of Charnwood Borough Council.
 - The application (Ref: P/12/1709/2), dated 13 August 2012, was refused by notice dated 12 October 2012.
 - The development proposed is "erection of 60 dwellings following demolition of nursery buildings and formation of site access (revised scheme)".
-

Decision

1. The appeal is allowed and outline planning permission is granted for the erection of 60 dwellings following demolition of nursery buildings and formation of site access, on land at the former Rearsby Roses Ltd, Melton Road, East Goscote LE7 4YP, in accordance with the terms of the application, Ref: P/12/1709/2, dated 13 August 2012, and the plans submitted with it, subject to the conditions in the attached schedule.

Preamble to statement of main issue

2. The application is in outline, with all matters reserved except for access. It is supported by a design and access statement and by various technical and other studies, as listed in a Statement of Common Ground (SCG, para. 2.2). The SCG confirms that there are no technical or design issues between the main parties, and that design details and miscellaneous other matters could be addressed by a number of agreed planning conditions [Doc 6].
3. Likewise, the main parties agree that the provision of some 18 dwellings as affordable housing (30% of 60, in accordance with the Council's policy), together with various financial contributions towards local infrastructure - including payments to the Council, Leicestershire County Council and Leicestershire Police - would be met by the terms of a unilateral planning obligation [Doc 4], submitted at the hearing.
4. Thus the main issue between the main parties is the principle of development on what is at present a greenfield site designated as part of an Area of Local Separation (ALS) between the 2 villages of East Goscote and Rearsby.

5. The following matters in particular are disputed: i) the weight of saved local plan policies aimed at protecting the countryside, notably in ALSs, from significant development; ii) the nature and degree of any harmful impact from the proposed development on the East Goscote/Rearsby ALS, in terms of its strategic purpose and integrity, and its landscape characteristics and value; and iii) whether any conflict with policy is outweighed by the Council's acknowledged lack of a 5 year housing land supply, and/or by the presumption in favour of sustainable development stated in the National Planning Policy Framework ("the Framework").
6. Although local residents - both from East Goscote and Rearsby - have raised additional matters (such as traffic generation and nature conservation) as grounds for objection, it seems to me that they too are primarily opposed to the principle of development on the ALS, and the possibility, as they see it, of that leading to further "losses" of the ALS which might close the existing open countryside gap between the 2 villages.

Main Issue

7. With the preceding points in mind, I find that the main issue, in the light of the relevant development plan and other (Framework) policies, is whether the proposed development of 60 houses would harm the purpose, integrity and landscape character of the Area of Local Separation (ALS) between East Goscote and Rearsby; and if so, whether that harm is outweighed by: a) pressing considerations of housing land supply, in particular the Council's acknowledged lack of a 5 year supply, and/or b) the national (Framework) policy presumption in favour of sustainable development.

Reasons

8. *Background - The site and its surroundings:* The appeal site, some 4.7 ha. in size and approximately rectangular in shape, lies on the east side of Melton Road, and adjacent to the north of an area of modern housing (at Lilac Way etc.) It is a greenfield site, currently grassed and used for horse grazing, but previously used for rose growing. It is flat and devoid of any significant topographical or other features, but is surrounded in part by hedges and intermittent small hedgerow trees. Its northern part contains a cluster of buildings and other structures associated with the former rose business; according to the application particulars, these would be demolished and removed, and this part of the site retained as open, grassed paddocks.
9. The site forms the south-eastern salient (my term) of an extensive designated¹ ALS between the 2 villages of East Goscote to the south and Rearsby to the north. The larger part of this ALS comprises farmland on the west side of Melton Road, between it and the railway line to Melton Mowbray. The smaller part lies east of Melton Road, but by virtue of the appeal site itself extends further to the south on this eastern side of the road, reflecting the southerly projection of Rearsby on this side. Thus the ALS boundary has a staggered form - it extends further to the north on the western side of the road, and further to the south on the eastern side. This means that the area proposed to be developed is already bounded and contained on 2 sides by modern housing - in Lilac Way to the south, and at The Meadows and The Headland to the west, up to the junction with Broome Lane.

¹ In the Charnwood Borough Local Plan 1991-2006

10. East of Melton Road, the ALS includes other open and undeveloped land between the appeal site and Grange Avenue, which marks the southernmost extent of built development in Rearsby. This is apparently unused, or used only for rough grazing, and is contained by boundary lines of mature trees.
11. East Goscote and Rearsby both lie north of the much larger settlement of Syston, beyond the northern-most fringes of Leicester, and within the valley of the River Wreake. While Rearsby is much the older of the two in origin, as reflected in its picturesque medieval bridge and the church and listed buildings in its central conservation area, East Goscote - somewhat larger - was built mainly in the 1960s, but with some more recent additions². Thus, as I saw during my site visit, the 2 villages are generally rather different in age, built form and character. Both however have a range of local services and facilities (more fully described in the appellants' statements), and bus services along Melton Road.
12. *Background - Development Plan and Framework policies:* At the date of the hearing, the development plan still comprised the East Midlands Regional Strategy (EMRS), adopted in 2009, and the saved policies of the Borough of Charnwood Local Plan (BCLP), adopted in 2004. The plan period for the EMRS was 2006-2026, and that of the BCLP 1991-2006. However, the EMRS was formally revoked before this decision was issued, as the revocation order came into force on 12 April 2013 (Doc 5). Therefore the only remaining part of the development plan is limited to the saved policies of the BCLP.
13. While the EMRS no longer forms part of the development plan and has no continuing status, the BCLP saved policies will remain in place until they are formally superseded by the borough's Core Strategy and other development plan documents (CS). However, CS preparation remains at a relatively early stage, and I was told that its adoption is not likely to occur until some time late in 2014. A site allocations DPD is likely to be adopted some time after that.
14. The Council acknowledges that the BCLP is time-expired, and that its housing strategy and allocations are out of date. However, it argues that the saved BCLP countryside policies, in particular policy CT/4 referring to ALSs, remain relevant and retain the full weight of development plan policy. For their part, the appellants maintain that there are no relevant and up to date development plan policies, and that in these circumstances greater weight should be given to the national policies in the Framework.
15. Para. 215 of the Framework advises that (from March 2013 onwards) due weight should be given to relevant policies in existing plans according to their degree of consistency with the Framework.
16. The Framework contains many references to the need to conserve and enhance the natural environment, and one of its core principles is that planning should recognise the intrinsic character and beauty of the countryside. It stresses the continuing need to protect valued parts of the countryside from development, including through plan-making, which may (para. 157) "indicate broad locations for strategic development on a key diagram and land use designations on a proposals map". Para. 157 goes on to say that Local Plans should also identify land where development would be inappropriate, for instance because

² Such as that around Lilac Way in the 1990s

of its environmental ... significance". Elsewhere, para. 76 refers to the scope for designating land as Local Green Space.

17. I conclude from all these references that local planning authorities may still identify areas (other than Green Belt) where various types of countryside protection policies may apply, whether those are the subject of saved policies or are new policies in local development frameworks. Therefore I agree with the Council that saved BCLP policy CT/4 does not clearly conflict with the Framework, and I give it some weight, even though the Framework does not specifically refer to ALSs. But that does not mean that all land within existing ALSs in the borough should be permanently sterilised from development; instead, I consider that each case for development within an ALS should be considered on its merits. Therefore I turn next to the planning merits of the appeal proposals.

Conclusions on the main issue

18. *Effects of proposed development on the purpose, integrity and character of the ALS between East Goscote and Rearsby:* BCLP policy CT/4, Areas of Local Separation, aims to keep such areas³ open, and substantially free of development. Thus the ALSs have a strategic role, and are intended to act as small, open, rural buffers whose main purpose is to prevent neighbouring settlements from merging or coalescing.
19. By building 60 houses on a greenfield site, the proposed development would clearly affect the existing ALS between East Goscote and Rearsby. It would significantly reduce its extent on the east side of Melton Road, and when seen from virtually any direction would replace open views of a large field with views of 2 storey housing, estate roads and footpaths, a play area and other ancillary development. Thus the character and appearance of the site itself would be changed radically.
20. However, in my opinion there are several reasons for thinking that the impact of the development on the ALS would be quite limited, and not very harmful - much less fatal - to its overall purpose, integrity, or character. In brief, these reasons are as follows.
21. First, the site is already contained on 2 sides by built development, which acts as a backdrop in views of it from various viewpoints and directions. Thus it is located on the northern edge of East Goscote, and not in the open countryside as such. Second, owing to the aforementioned "stagger" in the ALS's plan form, the minimum extent of the open and undeveloped gap between the two villages would not be reduced any further, although it would, of course, be reduced on the east side of Melton Road.
22. But (third), even on that eastern side there would still remain a substantial open gap - both actual and "perceived" - between the northern edge of built development on the appeal site and Grange Avenue in Rearsby, which is the nearest built development to the north. This retained gap would include both the northern part of the appeal site itself, which as mentioned above would be kept open and undeveloped, and the large, tree-fringed paddock between that and Grange Avenue. In my judgement, this gap would be sufficiently wide to prevent any demonstrable coalescence or merging between the villages, which could lead to the undesirable diminution of their separate identities.

³ As defined in the BCLP proposals map

23. Fourth, in terms of its intrinsic landscape character and value, no one at the hearing argued that the appeal site itself is particularly interesting or attractive. Like the rest of the ALS, it has not been designated for its *landscape* value, but only for its location and function as a small part of the ALS. Indeed, it both looks like, and is, rather a dull and featureless flat expanse of grass, overlooked by nearby houses and bordered by the busy Melton Road.
24. For all those reasons, I consider that the proposed development would not significantly harm the landscape character of the site, or undermine the planning purpose or overall integrity of the wider ALS. Nor would it necessarily lead (as assumed by some local residents) to any further loss or erosion of the ALS in this area.
25. Nevertheless, under this heading there would be some slight harm, to be weighed in the overall planning balance. The other side of the balance includes considerations of housing land supply, and the Framework presumption in favour of sustainable development. I now turn to these.
26. *Considerations of housing land supply:* Since there is no disagreement about this matter, I can be very brief. Housing land requirements in Charnwood have in recent years been based on the adopted figures in the EMRS, and there is as yet no new district-wide requirement to work to. As the SCG confirms, in June 2012 there was a district-wide housing supply of only 1.98 years for the period 2013-2018, a shortfall of 2980 dwellings. Even the Council's latest, informal estimate (at December 2012) only reduces that shortfall slightly, to 2168 dwellings. These figures allow for and include a "buffer" of 20%⁴ as described in para. 47 of the Framework.
27. The Framework advises at para. 49 that policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a five-year supply of deliverable housing sites.
28. It must be emphasised that one of the main purposes of the Framework is to stimulate the delivery of housing nationally, and particularly in those areas where there are demonstrable shortfalls. In my view, this significant shortfall in the borough's housing land supply is an important factor which counts strongly in favour of the appeal scheme.
29. *Presumption in favour of sustainable development:* The presumption is stated in para.14 of the Framework. This advises that where the development plan is absent, silent or relevant policies are out of date, permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against Framework policies taken as a whole.
30. In this appeal, the Council acknowledges that the CBLP - the only remaining part of the development plan - is significantly out of date. But as noted above some of its saved policies, including policy CT/4 on ALSs, still merit due weight as development plan policies. Although there would be some conflict with this policy, this, for the reasons stated above, would be limited.
31. The proposed development itself would provide much-needed and well-designed new housing in an accessible location in a reasonably "sustainable" settlement (East Goscote), not far from Leicester. The village contains a

⁴ "where there has been a record of persistent under delivery of housing"

primary school, and a number of other facilities, shops and services of its own and is also accessible to and fairly well connected with other higher-level facilities and services in larger centres nearby, including Syston, Sileby and Leicester.

32. I therefore find, on balance, that the proposed development should benefit from the national policy presumption in favour of sustainable development.

Summary of conclusions

33. The proposed development would have a somewhat harmful effect on the purpose and integrity of the ALS. However, this harm would be limited, and would not be sufficient to undermine its continuing planning function, or to cause the coalescence (or even near-coalescence) of East Goscote and Rearsby. The larger part of the ALS would be unaffected, and even on the eastern side of Melton Road adequate physical and visual separation between the two villages would be maintained.
34. In line with Framework housing policies, the acknowledged absence of a 5 year land supply in Charnwood strongly supports the proposals, as does the provision of additional housing per se, including 18 affordable dwellings. There are no significant access, technical, environmental or design issues which cannot be addressed by planning conditions, and various necessary contributions to local infrastructure would be met by a planning obligation. On balance, the proposals represent sustainable development to which the Framework's presumption in favour should apply.

Deed of Undertaking

35. At the hearing the appellants tabled a signed and executed S106 unilateral planning obligation containing various clauses including: (in schedule 1) those relating to the provision of 18 units of affordable housing; (in schedule 2) the payment of monies to the Council comprising a health facilities contribution (approx. £14,000), a police contribution (approx. £25,000), and an open space contribution (approx. £42,000); and (in schedule 3) payments to Leicestershire County Council towards education (approx. £110,000) and transport (approx. £17,000); together with miscellaneous matters.
36. There was some discussion at the hearing as to the justification for some of the financial contributions sought. However, having regard to all the evidence to the hearing, and the criteria in para. 204 of the Framework, I am satisfied that all these provisions for infrastructure payments are necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind to the development. They also meet the 3 statutory tests set out in regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended).

Conditions

37. All 20 planning conditions agreed by the main parties are necessary for the development to proceed, and they would also meet all the other tests for conditions in Circular 11/95 *The use of conditions in planning permissions*.
38. Conditions 1-3 are conventional reserved matters conditions, requiring details of the scheme's appearance, landscaping, layout and scale, and setting appropriate time limits. Condition 4 requires the submission of a design code,

and condition 5 an ecological management plan, including the details of a defined corridor allowing badger movements to and from a known sett near the site. Condition 18, also related to nature conservation, requires the provision of bird and bat boxes within the scheme.

39. Conditions 6-8 concern landscaping details and works, in the interests of providing an attractive green setting for the housing areas. Likewise, conditions 19 and 20 require the retention of a number of identified boundary trees, and measures for their protection during building works. Conditions 9, 10 and 11 require further details of the scheme's drainage and sewage disposal, and a programme of archaeological investigation. Condition 13 requires a further investigation of potential ground contamination and remediation.
40. In the interests of highways safety and ease of movement, conditions 14 and 15 relate to the provision of the new site access, and the closure of the existing access from Melton Road. Owing to the scale of the development, and the need to encourage sustainable travel modes, condition 16 requires the submission and implementation of a residential travel plan. To minimise inconvenience to local residents and road users during the construction period, condition 12 sets out the matters and measures to be covered by a construction method statement, and requires their implementation.
41. I have considered all the other matters raised in the evidence and at the hearing, including both main parties' references to other recent appeal decisions on greenfield housing proposals in Charnwood and elsewhere in Leicestershire. Whatever the outcome, all of these cases exhibit some features in common with this appeal, but in other respects they are quite different. Neither this, nor any other matter alters or outweighs my conclusions on the main issue in this appeal.

Paul Dobsen

INSPECTOR

Schedule of conditions

- 1) Details of the appearance, landscaping, layout, scale, and proposed ground levels and finished floor levels of all buildings (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development begins and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than two years from the date of this permission.
- 3) The development hereby permitted shall begin not later than one year from the date of approval of the last of the reserved matters to be approved.
- 4) No development shall commence until a Design Code for the site has been submitted to and approved in writing by the local planning authority. This shall follow principles established within the Design and Access Statement

dated July 2012. Any amendment to the code shall be submitted to and approved in writing by the local planning authority.

The Design Code shall address the following:-

- Architectural and sustainable construction principles
- Lifetime home standards
- Car parking principles
- Street types and street materials
- Boundary treatment
- Building heights as indicated in the Design and Access Statement
- Building materials
- Provision of open space (including timetable for implementation and any availability for public use)
- Design of the site to accord with Secure By Design principles
- A lighting scheme designed to minimise impact on wildlife

5) The areas of open space shown on the plans shall be managed in accordance with an Ecological Management Plan which shall be agreed in writing prior to the occupation of the first dwelling and implemented in accordance with the agreed details. In addition, the badger corridor on the Southern and Eastern boundaries shall be approximately 3.5m in width and be provided in accordance with the measures identified in the submitted Ecological Assessment.

6) No development, including site works, shall begin until a landscaping scheme, to accord with the Influence landscape design strategy (July 2012), has been submitted to and agreed in writing by the local planning authority. The scheme shall set out the following:

- i) the treatment proposed for all ground surfaces, including hard areas;
 - ii) full details of tree planting;
 - iii) planting schedules, noting the species, sizes, numbers and densities of plants;
 - iv) finished levels or contours;
 - v) any structures to be erected or constructed;
 - vi) functional services above and below ground; and
 - vii) all existing trees, hedges and other landscape features, indicating clearly those to be removed.
- viii) the new wildlife pond including cross section, depth, and profile.

7) All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development, whichever is the sooner; and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.

8) The hedge located along the eastern boundary of the application site shall be retained and maintained at a height no lower than 3 metres. The hedges along the southern and western boundaries of the site shall be retained and maintained at a height no lower than two metres. Any part of the hedge which is removed, dying, severely damaged or becoming seriously diseased shall be replaced with hedge plants of such size and species as previously agreed in writing by the local planning authority, within one year of the date of any such loss.

9) No development shall commence until the applicant or developer has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation which has been previously submitted to and agreed in writing by the local planning authority, and no development shall take place except in accordance with the approved details.

10) No development shall commence until details of a sustainable drainage system for the site have been submitted to and approved in writing by the local planning authority. The scheme shall subsequently be implemented in accordance with the approved details before the development is completed. The scheme shall ensure that flood risk is not increased and that water quality is not reduced as a result of the development.

11) No development shall take place until details of the disposal of foul sewage have been submitted to and approved in writing by the local planning authority. The scheme shall be implemented in accordance with the approved details before the development is brought into use.

12) No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by, the local planning authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:-

i) the routing of construction traffic

ii) the times of construction work which shall not take place outside 08.00 hours to 19.00 hours Mondays to Fridays and 08.30 hours to 13.00 hours on Saturdays and not at any time on Sundays and Public Holidays

iii) the parking of vehicles of site operatives and visitors

iv) loading and unloading of plant and materials

v) storage of plant and materials used in constructing the development

vi) measures to control the emission of dust and dirt during construction including measures to ensure that the highway is kept free of mud, water, stones etc.

vii) a scheme for recycling/disposing of waste resulting from demolition and construction works

viii) measures to protect the hedges located along the eastern, southern and western boundaries of the application site during the duration of the construction works.

13) No development shall take place until a Phase II ground investigation has been undertaken to establish the full nature and extent of any contamination of the site and the results of the investigation together with details of any remediation strategy necessary to render the site safe shall be submitted to the local planning authority for their assessment and written approval. Any remediation work required by the approved strategy shall be carried out prior to the occupation of the first dwelling.

14) Prior to the occupation of the first dwelling on the site, the applicants shall construct, complete and open for use the access works shown on White Young Green drawing numbered A072719/35/18/007.

15) The existing vehicular access that becomes redundant as a result of this proposal shall be closed permanently and the existing vehicular crossing reinstated in accordance with a scheme that shall first have been submitted to and approved by the local planning authority in consultation with the highway authority within one month of the new access being brought into use.

16) No part of the development shall be occupied until details of a Residential Travel Plan for the development as a whole has been submitted to and agreed in writing by the local planning authority. The travel plan shall be implemented in accordance with the agreed details.

17) No dwelling shall be occupied until a scheme of public art within the built fabric of the development, including its future management and a timetable for its implementation, has been submitted to and agreed in writing by the local planning authority. The agreed scheme shall be fully implemented in accordance with the agreed timetable.

18) Details of a scheme to incorporate bird and bat boxes within the proposed building fabric shall be submitted to and agreed by the local planning authority prior to the commencement of the development. The scheme shall be implemented in accordance with the agreed details.

19) The existing trees on the south west boundary, the north east boundary and the eastern boundary of the site, named as trees T1, T2, T6, T7, T8, T9 and T10, and W1 as indicated on the drawing 4876-A-02 and within the Arboricultural Assessment dated December 2011, shall be retained and shall not be felled, lopped, topped or uprooted without the previous written agreement of the local planning authority. Any trees removed, dying, being severely damaged or becoming seriously diseased shall be replaced with trees of such size and species as previously agreed in writing by the local planning authority within one year of the date of any such loss, for a period of 5 years from the date development begins.

20) No development, including site works, shall commence until each tree shown to be retained on the approved plan has been protected, in a manner which shall have first been submitted to and agreed in writing by the local planning authority. Each tree shall be protected in the agreed manner for the duration of building operations on the application site. Within the areas agreed to be protected, the existing ground level shall be neither raised nor lowered, and no materials or temporary building or surplus soil of any kind shall be placed or stored thereon. If any trenches for services are required in the protected areas, they shall be excavated and back-filled by hand and any tree roots encountered with a diameter of 5cm or more shall be left un-severed.

APPEARANCES

FOR THE APPELLANTS:

Mr. G. Longley BSc DipTP MRTPI	Pegasus Planning
Mr. J. Golby BA DipLA MA CMLI	Pegasus Landscape Design
Mr. J. Deakin	David Wilson Homes (prospective developer)

FOR THE LOCAL PLANNING AUTHORITY:

Mr. N. Thompson BA DipTP	Principal Planning Officer
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INTERESTED PERSONS:

Mr. M. Lambert (represented by Ms. T. Osmund-Smith)	For Police and Crime Commissioner for Leicestershire (re S106 contributions)
Mr. J. Prendergrast	Principal Solicitor, Leicestershire County Council
Mr. A. Tyrer	Leics CC (re S106 contributions)

Local residents:

Mr. J. Lambert	For Parish Councils of East Goscote and Rearsby
Ms. S. Johnson	Rearsby Lodge Farm
Ms. W. Sutton	1 The Headland
Mr. R. Pocock	1664 Melton Road
Ms. B. Gaylard	1664 Melton Road
Mr. K. Holme	1764 Melton Road

DOCUMENTS (tabled at the hearing)

- 1 List of persons present at hearing
- 2 Letter of notification of hearing
- 3 Written responses to Doc 2
- 4 S106 unilateral planning obligation, put in by the appellant
- 5 Revocation Order (SI 2013 No. 269) re East Midlands Regional Strategy and
Written Ministerial Statement dated 14 March 2013
- 6 List of agreed planning conditions, in the event of a successful appeal

PLANS

- A The application plans (as listed in Statement of Common Ground)