**Katy Bourne** OBE
Sussex Police & Crime Commissioner

Tel: 01273 481561
Email: pcc@sussex-pcc.gov.uk
**www.sussex-pcc.gov.uk**

The Office of the
Sussex Police &
Crime Commissioner
Sackville House
Brooks Close, Lewes
East Sussex, BN7 2FZ

Sussex Police & Crime Commissioner

Matthew Porter
Horsham District Council
Planning Department
Parkside
Chart Way
Horsham
West Sussex
RH12 1RL

Jane Thatcher
Joint Commercial Planning Manager
Sussex and Surrey Police

Estate Department
L Block
Sussex Police Headquarters
Church Lane
Lewes
East Sussex
BN7 2DZ

[redacted]

Our Ref: 26/HDC/2087
Your Ref: DC/25/2087

4th February 2026

Dear Mr Porter,

**DC/25/2087 – Outline application for the demolition of existing buildings, and the re-development of the site for up to 108no. dwellings (including a mix of private and affordable housing units), with associated infrastructure including vehicular, cycle and pedestrian access, parking, landscaping, open space and play provision, and sustainable drainage with all matters reserved except access.**

I write on behalf of the Office for the Police and Crime Commissioner (PCC) for Sussex concerning outline application DC/25/2087 for the demolition of existing buildings, and the re-development of the site for up to 108no. dwellings (including a mix of private and affordable housing units), with associated infrastructure including vehicular, cycle and pedestrian access, parking, landscaping, open space and play provision, and sustainable drainage at Thakeham Tiles Ltd, Rock Road, Storrington, West Sussex RH20 3AD.

Sussex & Surrey Police are an active member of the National Police Estates Group (NPEG) and now act as one on all infrastructure and town planning related matters across their combined geographical area. Our approach to Section 106 requests is in accordance with national best practice recommended by the National Police Chief's Council (NPCC). The approach now adopted, has been tested at public inquiries nationally and found to be in accordance with the statutory CIL tests.

The large numbers of housing being developed across Sussex and more specifically within Horsham District will place a significant additional demand upon our police service. These impacts will be demonstrated in this submission and the necessity of investment in additional policing services is a key planning consideration in determination of this planning application.

This development will place permanent, on-going demands on Sussex Police which cannot be fully shouldered by direct taxation. Like many other public services, policing is not fully funded via public taxation. This request outlines a number of the capital costs that will be incurred by Sussex Police to enable safe policing of this development.

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All of the infrastructure outlined in this funding request has been found compliant with Regulation 122 of the Community Infrastructure Levy (CIL) and are considered directly related to the development in scale and kind and necessary to make the development acceptable in planning terms.

The application site is a greenfield site (arable field), that has a negligible impact on policing. Once developed this site will create an additional demand upon the Police Service that does not currently exist.

The Police will need to recruit additional staff and officers and equip them. The development will also require the services of a police vehicle and investment into Automatic Number Plate Recognition (ANPR) and speed awareness infrastructure. Staff and officers will also need to be accommodated in a premises that will enable them to serve the development. This request is proportionate to the size of the development and is intended to pay for the initial, additional costs resulting directly from the development for those areas where the police do not have existing capacity. The request also explains how the police service is funded, outlines National Planning Policy support for policing contributions and references numerous appeal decisions where police requests for developer contributions have been upheld.

Police forces nationally, are not able to support major development of the scale now being proposed for many of the nation's town and cities without the support from the planning system. If we are obliged to do so using our own resources only, then it is reasonable to conclude that there will be a serious risk of service degradation as existing coverage is stretched to encompass the new development and associated population growth. This is already evident across Sussex due to the significant numbers of housing being developed and clearly shown by the increasing numbers of recorded crimes in Sussex over the last year. Our force must ensure that development growth is supported by the infrastructure necessary to guarantee the safety and security of the new communities.

It is the responsibility of the PCC to ensure our Chief Constable has sufficient financial support to deliver a high level of policing to the residents of Sussex. Our Office continues to actively seek financial contributions via Section 106 agreements and CIL funds to support our capital program. This will enable Sussex Police to deliver the highest possible service to ensure the protection of the communities that we serve. In line with many other police forces Sussex & Surrey Police have updated our methodology for infrastructure requests to ensure our representations are transparent and provide an up to date, accurate reflection of our current capacity in the district.

Our new methodology has been developed through a joint partnership with Leicestershire, Thames Valley, West Mercia, Warwickshire and other active members of the National Police Estates Group (NPEG). This methodology was considered Community Infrastructure Levy Reg 122 compliant by Mr Justice Green in the case of Jelson v SoSCLG and Hinckley and Bosworth Council [2016] CO/2673/2016 (**Appendix 1**). In addition, there are a significant number of recent appeal decisions and High Court judgments supporting both the principle of police contributions and our methodology (see attached **appendices**). The principle of developer contributions towards Sussex and Surrey Police has recently (May 2024) been upheld by the Secretary of State in the allowed appeal relating to new 1,730 dwellings at Land at the former Wisley Airfield, Hatch Lane, Ockham, Surrey (Appeal ref: APP/Y3615/W/23/3320175 – **Appendix 2**).

I will go into further detail on the various items of infrastructure and provide evidence of their compliance with Regulation 122 tests.

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## 1. Police Funding and Development Growth

A primary issue for Sussex Police is to ensure that new development, like that proposed by application DC/25/2087 makes adequate provision for the future policing needs that it will generate. Like other public services, Sussex Police's primary funding is insufficient to be able to add capital infrastructures to support new development when and wherever this occurs. Furthermore, there are no bespoke capital funding regimes e.g. the Health Lift to provide capital either. The police therefore fund capital infrastructure by borrowing. However, in a service where most of the budget is staffing related, the Sussex Police capital programme can only be used to overcome pressing issues with existing facilities, or to re-provide essential facilities like vehicles once these can no longer be used.

Sussex Police endeavour to use our existing funds as far as they stretch to meet the demands of an expanding population and overwhelmingly for revenue purposes. However, it is the limit of these funds which necessitates the need to seek additional contributions via Section 106 requests and the CIL. This situation also prevails in other public services seeking contributions and there is nothing different here as far as policing is concerned. What is different is that the police do not enjoy capital income from the usual taxation sources. This evidences that the police do not make requests where other funds are available to meet their needs.

The reality of this financial situation is a major factor in our Forces planning and alignment with plans for growth in that whilst Sussex Police can plan using their revenue resources to meet their on-going, and to a limited extent, additional revenue costs these do not stretch to fund necessary additional investment in their infrastructures.

Sussex Police will continue to engage with Local Planning Authorities to ensure crime prevention is referenced within new local plan documents and provide crime prevention design advice to minimise the opportunities for crime within new development. Ensuring new development takes full consideration of crime prevention and the provision of adequate infrastructure to support policing is clearly outlined within the National Planning Policy Framework (NPPF, December 2024), relevant sections of the Planning Practice Guidance (PPG) and Section 17 of the Crime and Disorder Act 1998 (as amended).

Paragraph 20 ['Plan-Making'] of the NPPF states '*Strategic Policies should set out an overall strategy for the pattern, scale and design quality of places and make sufficient provision for: infrastructure for transport, telecommunications, security…*'. In addition, paragraph 96 of the NPPF ['Promoting healthy and Safe Communities'] states that '*Planning polices and decisions should aim to achieve healthy, inclusive and safe places which are safe and accessible, so that crime and disorder, and the fear of crime, do not undermine the quality of life or community cohesion…*'.

Furthermore, paragraph 101 of the NPPF states '*To ensure faster delivery of other public service infrastructure such as…blue light…local planning authorities should also work proactively and positively with promoters, delivery partners and statutory bodies to plan for required facilities and resolve key planning issues before applications are submitted. Significant weight should be placed on the importance of new, expanded or upgraded public service infrastructure when considering proposals for development.*'

Paragraph 102 states '*Planning Policies and decisions should promote public safety and take into account wider security and defence requirements by, anticipating and addressing possible malicious threats and other hazards (whether natural or man-made, especially in locations where large numbers of people are expected to congregate. Policies*

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*for relevant areas (such as town centre and regeneration frameworks), and the layout and design of developments, should be informed by the most up-to-date information available from the police and other agencies about the nature and potential threats and their implications. This includes appropriate and proportionate steps that can be taken to reduce vulnerability, increase resilience and ensure public safety and security. The safety of children and other vulnerable users in proximity to open water, railways and other potential hazards should be considered in planning and assessing proposals for development.'*

In the support of this request the following information is provided by Sajaki Rai, Accountant at Sussex Police and is a detailed commentary on Sussex Police's budget, which underpins the above statements:

**National funding**

Sussex Police receives 58% of its funding from central government and 42% from local taxation. Central government funding comprises of the Home Office Core Funding Settlement, the Department for Communities and Local Government (DCLG) Formula Funding, (together these are referred to as Central Government Grant or CGG for the proposes of this submission) and legacy Council Tax Grants (LCTG). LTCG are fixed and some elements of this are time limited, therefore, LCTG are not affected by variations in the funding formula.

The distribution of CGG is calculated by the Police Relative Needs Formula. This Police Funding Formula divides up how much money each police force receives from the overall central government funds. It takes into account a number of factors to assess demand in each area.

The first stage of the formula is to divide funds between the different activities that the police undertake. These activities, or workloads, can be broken down into five key areas (Crime, Incidents, Traffic, Fear of Crime, and Special Events).

A portion of total funding is also distributed according to population sparsity, to address the specific pressure created by the need to police rural areas.

The second stage is to divide funding for each of these workloads between the 43 local policing bodies of England and Wales. To do this, 'workload indicators' are calculated to estimate how much work each Police Force is expected to have in each of the key area compared to other forces. These estimates are calculated by socio-economic and demographic indicators that are correlated with each workload. Indicators of workload are used rather than data recorded crime levels to account for known variations in recording practices, and the funding model has been designed to avoid creating any incentives for forces to manipulate figures.

The formula consists of a basic amount per resident and a basic amount for special events, and top ups for the five key areas, sparsity, and area costs (which takes account for regional differences in costs).

The top-ups etc. are weighted and use specific categories of population, rather than a straightforward population figure, to determine grant allocations, for examples specific categories includes the population of various benefits, long-term unemployed, overcrowded households, hard pressed households, residents in terraced accommodation etc.

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Whilst the funding formula is influenced through allocation of a basic amount per resident, this does not necessarily lead to an increase in CGG Grant to Sussex Police. Putting aside the time delays between recognising population growth and this being fed into the funding formula, the overall pot available to all forces the CGG is limited and in fact has declined over the last few years as part of the Government's fiscal policy. Therefore, changes in general population or the specific population do not increase the overall funding made available through CGG, rather they would affect the relative distribution of grant between forces.

For the 2023/2024 year there was an increase in the CGG despite the ongoing recruitment scheme known as 'Operation Uplift' across the UK. This funding was ring fenced for revenue expenditure on employing new police officers. However, it can be stated with certainty that, this funding would be fully utilised in contributing to additional salary, revenue and maintenance costs (i.e. not capital items and not what is claimed here). This funding, therefore, would not be available to fund the infrastructure costs that are essential to support the proposed development growth.

To achieve the Operation Uplift Performance Grant, the Force is required to reach its target headcount in September '24 and '25 March. In addition, Sussex had approval from the Home Office to secure a grant of £48k per officer in 2024/25 to exceed the target by 60 officers. The central government uplift performance grant for 2025/26 has been reduced to £7.5m (2024/25 £9.1m). For Sussex to achieve the Operation Uplift Performance Grant the Force was required to reach its target headcount in September '24 and March '25. Further Op Uplift grant was provided to Sussex to recruit a further 39 Officers above the baseline for 2023/24. This revised target will be met for 2024/25 which ensures the Op Uplift Performance Grant will be paid in full.

The time horizon of our financial planning should also not be determined by the time horizon of financial support from central government. In July 2024 the incoming Chancellor of the Exchequer announced a multi-year spending review to conclude in spring 2025 (SR2025). They also announced changes to the Charter for Budget Responsibility to require spending reviews to be held every two calendar years, covering a spending period of at least three years, saying that this would ensure there will always be up to date medium-term departmental spending plans. The Chancellor indicated that the decision-making in SR2025 would reflect the government's 'mission-led' approach. She further announced that the government would establish a new Office for Value for Money (OVfM) to help it "put value for money at the heart of decision-making" and to recommend system reforms. Leading up to the SR2025 the government has issued a settlement for just the 2025/26 financial year.

The greater the uncertainty about future central government policy then the greater the need to demonstrate the PCC entity's long-term financial resilience, given the risks attached to its core funding.

**Local funding**

Sussex Police (precepting body) places a demand or precept on the district and borough councils in its area (billing authorities) for a sum of money to be raised through the council tax. The amount to be raised is divided by the Council Tax Base (CTB) or number of households to arrive at an average Band D council tax, from which all other bands of council tax are determined. The growth in the council tax or the amount each household pays is decided by the Police and Crime Commissioner (PCC), having regard to the DCLG rules concerning the need to hold a local referendum where the proposed spending

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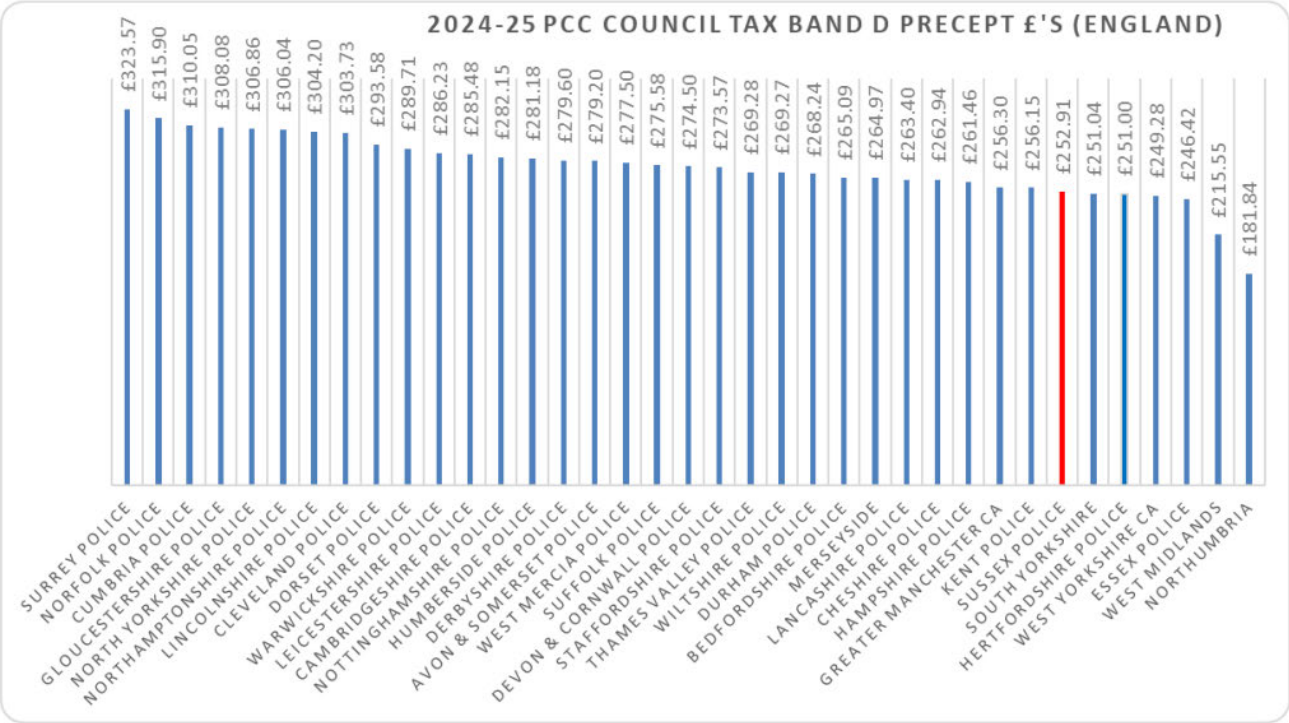
Brooks Close, Lewes
East Sussex, BN7 2FZ



increase in the precept is above a prescribed threshold, currently (2025/2026) £14 per Band D property to maintain real terms funding.

The council tax precept for Sussex was one of the lowest (31 out of 37) of English policing bodies during 2024/25 at £252.91 per annum for a Band D property. The table shows the range of precepts by policing body in England. The median was £274.50.




***Sussex PCC MTFS – page 43***

There remains potential for the council tax yield to increase simply through a growth in the CTB. However, it should be noted that the CTB is reduced for discounts and exemptions provided under the Local Council Tax Benefit Scheme (LCTBS) and may also be affected by collection rates. Therefore, a growth in households might not lead to a growth in council tax yield where those households benefit under the LCTBS.

Even with the £14 increase to the precept, expenditure will still have to be reduced by £5.0m to balance the budget in 2025/26. Plans are being progressed to mitigate the cost pressures already identified and forecast predominantly through the Transformation programme, and these are set out in the Medium Term Financial Strategy (MTFS) 2025-2029.

Most importantly, the higher council tax precept will allow our PCC to retain and invest in our workforce and continue supporting our Local Policing Program (LPP). Key considerations driving the precept increase decision included:

- Public demand on police services is increasing exponentially;
- Criminal investigations are becoming increasingly complicated, with huge amounts of digital material to identify, secure and analyse, against an exacting threshold for prosecution;

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- The public want to see investment in more visible, local policing, focusing on crimes like burglary and anti-social behaviour and they rightly want to feel safe on the roads, in public spaces and at night-time;
- The public also want to see improvements in the force's approach to public contact and more support to the 101 service;
- HMICFRS (Her Majesty's Inspectorate of Constabulary, Fire and Rescue Services) has recently acknowledged the public's concerns about changes to neighbourhood policing, and stressed the importance of community intelligence;
- And the PCC's consultations and correspondence with the public show that a majority of Sussex residents are prepared to support their police service through increased precept contributions.

**Savings**

Since 2010/11 Sussex Police have seen reductions to the grant funding provided by the Government to Policing Bodies in England and Wales. Sussex Police have worked hard to deliver savings and have made £109m of reductions and efficiencies to head towards balancing its books (source: Her Majesty's Inspectorate of Constabulary's (HMIC) Police Effectiveness, Efficiency and Legitimacy (PEEL) assessment and 2017/18 revenue budget).

The multi-year change programme continued to deliver complex transformation across Sussex Police during 2024/25. The savings will continue to be required. Savings of £5.0m are required in 2025/26 after the use of reserves to balance the budget and £24.3m in the following three years (MTFS). This is the 'budget gap' i.e. the difference between funding and the cost of policing which will need to be met by savings.

**Capital Funding**

The Government stopped providing an annual grant to support the capital and investment programme from 2022/23. However, specific capital grants may be issued for specific capital investment, for example, the Emergency Services Network.

For many years Sussex PCC has benefitted from substantial capital reserves, supported by capital receipts from the sale of operational buildings and assets or from revenue reserves assigned to capital investment. Most of these resources have now been utilised and as we move forward through the next 4 years and beyond, there is the necessity to fund through either Direct Revenue Funding (DRF) and external borrowing for specific projects. The capital financing approach remains to maximise the use of Capital Receipts to support the capital programme whilst maximising the overall benefit in underpinning the Revenue budget.

Local Authorities, including the PCC, can set their own borrowing levels based on their capital needs and their ability to pay for the borrowing. The levels will be set by using the indicators and factors set out in the Prudential Code. The borrowing costs are not supported by the Government so Sussex Police need to ensure they can fund the repayment costs. The Minimum Revenue Provision Statement sets out a prudent approach to the amount set aside for the repayment of debt. Borrowing is to be used to cover long life assets only.

Since there is no support from Government with Capital Grant, low reserve and as the pool of assets available for sale declines the financial support from these receipts diminishes, any local capital investment creates an additional financial burden on Sussex Police which will need to be funded through borrowing. With diminishing reserves and the

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Brooks Close, Lewes
East Sussex, BN7 2FZ



implications of borrowing such as high interest rate, both alternative funding mechanisms are inadvisable.

**Conclusions on funding**

Like many other public sector organisations, Sussex Police have seen a real terms reduction in grant funding in recent years, which has necessitated changes to the policing model. At the same time the demands placed on the police service increase, whilst the service must deal with the changing nature of crime at both the national and local level, for example, cybercrime, child sexual exploitation and terrorism are areas of particular concern. Additional funding granted towards policing will support and sustain local policing services to Sussex residents.

In conclusion, it remains necessary to secure Section 106 contributions or direct CIL funding for policing infrastructure, due to the direct link between the demand for policing services and the changes in the operational environment beyond Sussex Polices control i.e. housing growth and the subsequent and permanent impact it has upon policing.

Securing modest contributions means that the same level of service can be provided to residents of new development as it is to existing residents and without compromising frontline services. The consequence of no funding is that existing infrastructure will eventually become stretch to breaking point, and none of the communities we serve will received adequate policing.

Whilst national and local funding must continue to cover salary and maintenance costs, there would be insufficient funding to provide the infrastructure required for officers to carry out their jobs effectively, Sussex Police consider that these infrastructure costs arising directly as a result of the development proposed and that funding for the police under S106 or CIL is both necessary and justified.

**2. Assessment and Request**

Our Office have undertaken an assessment of the implications of growth and the delivery of housing upon the policing of Horsham district and in particular the areas of this district where new development is being directed towards. We have established that in order to maintain the current level of policing, developer contributions towards the provision of capital infrastructure will be required. This information is disclosed to secure essential developer contributions and is a fundamental requirement to the sound planning of the district. In the absence of developer contributions towards the provision of essential policing infrastructure, Sussex Police would raise **objection**, as the additional strain placed on our resources would have a negative impact on policing of both the development and force-wide policing implications within the district.

This submission will provide the most recent annual statistics for crime/incidents in Horsham District which will be compared to the number of existing households. This provides an incident per existing household (or person) within Horsham district which can then be used as the background to the various items of infrastructure outlined in this funding request.

Nationally, the Police Force ensure that we take regular legal advice and guidance from industry professionals on the applicability of NPPF tests relating to the application of Regulation 122 on our funding requests for S106 agreements and Infrastructure Development Plans. This included advice as to what is infrastructure which can be summarised as follows:

**Katy Bourne** OBE
Sussex Police & Crime Commissioner

Tel: 01273 481561
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- The first point to note is that '*infrastructure*' is not a narrowly defined term. Section 216 of the Planning Act 2008 provides a list of "*infrastructure*" but is clear that that list is non-exhaustive. That fact is demonstrated by the use of the word "*includes*" prior to the list being set out.

- There is no difficulty in the proposition that contributions towards Police infrastructure can be within the definition of infrastructure for the purposes of the 2008 Act. In policy terms this is reinforced by the reference to security infrastructure in paragraph 20 of the National Planning Policy Framework (December 2024).

- The Emergency and Rescue Service are recognised as '*infrastructure*' (including facilities and equipment) in the Levelling Up and Regeneration Act 2023 (Schedule 12, Section 204N, para 3 (h)).

- Infrastructure is not limited to buildings and could include equipment such as vehicles, communications technology, and surveillance infrastructure such as ANPR. Infrastructure could also include speed cameras/metres or Speed Indication Devices (SIDs) which are a mobile education tool for deployment by Neighbourhood Policing Teams at the roadside, displaying warning messages or speed to drivers.

The submission set out below is based on the same methodology previously found sound by Planning Inspectors, the Secretary of State and the High Court. The costs included in this submission are sites specific costs which are envisaged to be secured via a Section 106 agreement. The significant costs relating to revenue will be met by local and national taxation.

## 3. Current Policing requirements in the District of Horsham

Sussex Police's existing estate

At present, Neighbourhood policing in Horsham is delivered from Horsham and Steyning Police stations. Horsham is the main operational base for Neighbourhood Policing Teams (NPT) and Neighbourhood Response Teams (NRT) in the district. The Police Community Hub is our drop-in office within the Billingshurst Centre.

Sussex Police's current policing requirements and projections

For the last year (2024) Sussex Police recorded 25,259 (an increase of 214 incidents from 2023) incidents in the District of Horsham.

To determine the current policing requirements per household or individual person an approximate estimation of the number of households and population in the district is required. The 2021 census listed 62,371 households and 146,800 persons living in Horsham District with an average household size of 2.35 persons. Taking into account the number of recorded incidents and current number of households this results in 0.40 incidents per household (25,259/62,371) and 0.172 incidents per person (25,259 / 146,800) that require police attendance in the Horsham district each year.

Sussex Police have a duty to respond to all incidents and many of these incidents are not recorded as crimes. We deliver crime prevention and presence, attendance and service lead at emergencies e.g. RTA's or flooding, counter terrorism and community

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reassurance. We must also attend all incidents involving deaths, attend crowd and events policing, attend and input to community safety and crime partnerships, and provide referral responses when there are expressed concerns about the safety or children, the elderly and those with special needs.

**4. Breakdown of predicted incidents as a result of population increase in Horsham**

The proposed development of 108 residential units would have an estimated population of 254 persons (using average household size). Applying the current ratio of 'incidents' to predicted population then the development would generate an additional 44 incidents per year for Sussex Police to attend (0.172 x 254).

These incidents are likely to result in 13 additional recorded crimes per year attributed to this neighbourhood.

**5. Costs**

In order to mitigate against the impact of growth our office have calculated that the capital 'cost' of policing new growth as a result of this major planning application equates to **£6,500.**

These funds would be used for the future purchase of infrastructure to serve the proposed development. This cost will now be broken down clearly to show the capital infrastructure required to support these new officers.

The contribution requested will fund, in part, the following items of essential infrastructure and is broken down as follows;

**ANPR (Automatic Number Plate Recognition) Cameras**

Sussex Police are currently promoting a roll out of Automatic Number Plate Recognition (ANPR) Cameras throughout Sussex. The number and location of cameras is driven by the scale and location of new development and the road network in the area. Cross border crime is a growing issue in Sussex with criminals travelling from London and the surrounding Home Counties into Sussex to commit offences.

An assessment based on the development has been undertaken and recommends upgraded camera sites to be installed around the site and surrounding area. Our ANPR Manager actively monitors new development and existing ANPR camera coverage to mitigate against the impacts of development growth. Each camera is costed below, and requirements are assessed on the basis of the scale, location and proximity to the road network of the housing growth proposed over the development plan period. Sussex Police have identified approximate locations which require additional ANPR coverage which can be confidently shared with the Local Authority in due course.

ANPR cameras are used in three key ways by police forces: 1) to identify vehicles known to be used by criminals and disrupt their activity; 2) to gather intelligence and 3) to investigate crime. There are many benefits of ANPR cameras which can be used overtly or covertly and are regulated by the Regulation of Investigatory Powers Act 2000 (RIPA). Using cameras at either fixed locations or portable locations, images are captured and recorded along with the vehicle registration mark (VRM) or number plate, time and location of the vehicle, which can then be instantly checked against database recorded of vehicle of interest. The instant search of database records of vehicles of interest can

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confirm whether a vehicle associates with a known criminal has been in the area at the time of a crime. Importantly, ANPR can be used in real time. This means that police officers can intercept and stop the vehicle, check it for evidence and make arrests if necessary. The use of ANPR in this way has proved important in the detection and prosecution of many cases of major crime.

Three principal benefits of using ANPR are: 1) Increase the information and intelligence available to identify criminals; 2) Enable the police to deploy resources to respond to criminals of interest in real time; 3) Improve investigations after crimes have been committed. In addition to the benefits of ANPR coverage for the residents of this development the camera would also serve to identify any crimes occurring on the development site during the build process such as the theft of machinery or building materials. ANPR also serves as an effective preventative security measure for the development.

The cost of a fixed ANPR camera is shown below:

1) Upgraded camera site, Storrington – 1 camera = **£6,500**

Due to the sensitive nature of this infrastructure the exact location of the existing site cannot be revealed (in the public domain).

It should be noted that with regard to the provision of CCTV on site, all CCTV systems are owned and maintained by the local councils. The Police only review live data when required or demanded by incidents through portals. Officers can also access this information, post incident for evidential purposes. As such, Sussex Police will not be requesting contributions for on-site CCTV in this instance.

**6. Compliance with National Policy and CIL Regulations**

Following the abolition of CIL regulation 123, the funding of infrastructure is no longer restricted to 5 separate developer contributions. Within Horsham the majority of policing is carried out by the NRT/NPT teams, therefore our office would recommend funds received from Section 106 agreements should be spent directly on supporting these teams. Therefore, when contributions from new housing development are pooled it is sensible to do this based on NRT/NPT areas which in the case of this development is the Chantry and Thakeham NPT.

The assessment for these infrastructure contributions is outlined in CIL Regulation 122, which requires each item to meet the following three tests. From the numerous appeal / Secretary of State decisions and High Court judgements there is significant evidence that all the items listed in this request comply with CIL Regulation 122.

The costs which have been included in this request and have been found sound (and compliant with Regulation 122) in numerous appeal decisions included as **Appendix 2**. In the respect of equipment in particular, the Sketcheley house decision (page 19 of **Appendix 2**) makes specific reference to 'protective clothing, uniforms and bespoke training' and were endorsed by the Inspector in his report at paragraph 11.57 and by the Secretary of State at paragraph DL22.

It is therefore plain that the Secretary of State and numerous Planning Inspectors consider that National Planning Policy and legislation is capable of encompassing this type of infrastructure.

**Katy Bourne** OBE
Sussex Police & Crime Commissioner

Tel: 01273 481561
Email: pcc@sussex-pcc.gov.uk
www.sussex-pcc.gov.uk

The Office of the
Sussex Police &
Crime Commissioner
Sackville House
Brooks Close, Lewes
East Sussex, BN7 2FZ

Sussex Police & Crime Commissioner

**1. Necessary to make the proposed development acceptable in planning terms**

The creation of safe and accessible environments where crime and disorder, and the fear of crime do not undermine the quality of life or community cohesion is fundamental to planning for sustainable development as confirmed in the National Planning Policy Framework (NPPF, December 2024).

The adopted Horsham District Planning Framework (November 2015) lists one of the six priority themes for the Council as '*safer and healthier'*. Policy 33 (Development Principles) states that development shall be required to '*Incorporate measures to reduce any actual or perceived opportunities for crime or antisocial behaviour on the site and in the surrounding area…'*

Policy 39 (Strategic Policy: Infrastructure Provision) states that '*the release of land for development will be dependent on there being sufficient capacity in the existing local infrastructure to meet the additional requirements arising from new development, or suitable necessary mitigation arrangements for the improvement of the infrastructure, services and community facilities caused by the development being provided…to ensure required standards are met, arrangements for new or improved infrastructure provision, will be secured by planning obligation / Community Infrastructure Levy…'*

The Secretary of State has recognised that it is not a rigid requirement to have express reference to policing within local planning policy because the overarching principle of ensuring safe communities is recognised in the NPPF. The Planning Inspector in the case of North-west Leicester District Council vs Money Hill Consortium (**Appendix 4**) stated:

*'62. The obligations of the Undertaking, other than that to support Police operations, are all related to requirement of development plan policies and are all necessary to make the development acceptable in planning terms. They are all furthermore, directly related to the development, are fairly and reasonably related in scale and kind to the development, and are in place to mitigate the effects of the development. The Legal Agreement, setting aside the Police contributions, therefore complies with Regulation 122 of the CIL Regulations 2010. Furthermore, taking into account the submissions of NWLDP, LCC and LP, the Agreement complies with Regulation 123 of the CIL Regulations 2010.*

*63. The contributions of £219,029 towards Police infrastructure is not related to requirement of development plan policies. The figure has been arrived at following a close and careful analysis of the current levels of policing demand and deployment in Ashby. The proposed development, in terms of population increase, would have a quantifiable and demonstrable effect on the ability of the Police to carry out their statutory duties in the town. LP has not sought any contribution to some aspects of policing, such as firearms and forensics, but only for those where there is no additional capacity. The contribution is necessary because the new housing that would be created would place a demonstrable additional demand on Police resources in Ashby. The financial contributions to Police operations thus satisfies Regulation 122 of the Community Infrastructure Levy Regulations 2010 and a provision of the Undertaking would ensure that the contribution also satisfies Regulation 123 of the Community Infrastructure levy Regulations 2010.*'

The importance of policing contributions is importantly recognised in recent court judgments and considered an essential core principle of the NPPF. The judgment of Mr Justice Green 01/11/2016 (**Appendix 1**) with regard to the High Court challenge of

**Katy Bourne** OBE
Sussex Police & Crime Commissioner

Tel: 01273 481561
Email: pcc@sussex-pcc.gov.uk
www.sussex-pcc.gov.uk

The Office of the
Sussex Police &
Crime Commissioner
Sackville House
Brooks Close, Lewes
East Sussex, BN7 2FZ

Sussex Police & Crime Commissioner

Jelson Limited vs Secretary of State for Community and Local Government (1) Hinkley and Bosworth District Council stated:

'*The gist of the Inspectors reasons are adequately set out in paragraphs [44]-[47] (see above). She records that LP has adequately demonstrated that the sums would be spent on equipment and services which arose "…Directly from the new households occupying the proposed development". Accordingly she concluded, in terms of causality, that there was a proper nexus between the expenditure and the new development. She also records that the proposed spending was properly attributed between individual projects and procurement such as property adaption and contributions towards a vehicle in order to prevent a need for pooling contributions*.'

*'Mr Lambert cited empirical data based upon existing crime patterns and policing demand and deployment from nearby residential areas which established the direct and additional impacts of the development upon local policing. That data established that there would be an incremental demand in relation to such matters as calls and responses per year via the police control centre; an increase in annual emergency events within the proposed development; additional local non-emergency events which trigger follow-up with the public; additional recorded crimes in the locality based upon beat crime and household data and a proportionate increase in anti-social behaviour incidents an increase in demand of patrol cover; and, an increase in the use of vehicles equating to 12% of an additional vehicle over a six year period.'*

Moreover, the wider principles of sustainable development within the NPPF also require consideration of all necessary infrastructure requirements, as observed by Foskett J in *R. (Police and Crime Commissioner for Leicestershire) v Blaby DC and others* (**Appendix 3**). This judgment stated:

'*11. It is obvious that a development of the nature described would place additional burdens on local health, education and other services including the police force. The focus in this case is upon the effect upon the local police force. If it sought to shoulder those additional and increased burdens without necessary equipment (including vehicles and radio transmitters/receivers for emergency communications) and premises, it would plainly not be in the public interest and would not be consistent with a policy that encourages "sustainable development": see for example, paragraphs 17 of 79 of the National Planning Policy Framework (NPPF). It is that that leads to the Claimants interest in the matters*.'

As shown in section 1, there is no dedicated Government funding to comprehensively cover the capital costs associated with policing new housing development. Unless contributions from new developments are secured then Sussex Police would be unable to maintain the current levels of policing with resources diverted and stretched, inevitably leading to increased incidents of crime and disorder within the local area. Sussex Police strive the reduce the level of crime in the County however due to the significant numbers of new housing being brought forward the need for more front-line staff and associated infrastructure has never been more relevant as a fundamental planning policy consideration.

Appeal decision APP/C3240/W/16/3144445 (**Appendix 2**) issued on the 21st March 2017 provides further support for developer contributions towards the capital costs of additional policing infrastructure arising from new development. The Planning Inspector stated:

**Katy Bourne** OBE
Sussex Police & Crime Commissioner

Tel: 01273 481561
Email: pcc@sussex-pcc.gov.uk
www.sussex-pcc.gov.uk

The Office of the
Sussex Police &
Crime Commissioner
Sackville House
Brooks Close, Lewes
East Sussex, BN7 2FZ

Sussex Police & Crime Commissioner

*'165: There is no doubt that the proposed development would generate a need for policing and that need would require additional resources which have been calculated on a pro-rata dwelling basis. The Framework identifies a need for safe and accessible environments where crime and disorder, and the fear of crime, do not undermine quality of life or community cohesion. In addition, an extensive array of appeal decision supports the principle of police contributions. Overall, the balance of the evidence before me points to the obligation (based on the underlying pro-rata calculation) being necessary and proportionate mitigation for the development.'*

We would also bring to attention dicta from the High Court judgment by Mr Justice Foskett in Police and Crime Commissioner for Leicestershire vs Blaby Council (**Appendix 3**). Paragraph 61 and 62 of the judgment state:

*'61. I do not, with respect, agree that the challenge mounted by the Claimant in this case can be characterised as a quibble of a minor factor. Those who, in due course, purchase properties on this development, who bring up children there and who wish to go about their daily life in a safe environment, will want to know that the police service can operate efficiently and effectively in the area. That would want to know that the police service can operate efficiently and effectively in the area. That would plainly be "consumer view" of the issue. The providers of the service (namely, the Claimant) have statutory responsibilities to carry out and, as the witness statement of the Chief Constable makes clear, that itself can be a difficult objective to achieve in these financially difficult times. Although the sums at stake for the police contributions will be small in comparison to the huge sums that will be required to complete the development, the sums are large from the point of view of the police.*

*62. I am inclined to the view that if a survey of local opinion was taken, concerns would be expressed if it were thought that the developers were not going to provide police with sufficient contribution to its funding requirements to meet the demands of policing the new area: lawlessness in one area can have effects in another nearby area. Miss Wigley, in my judgment, makes some entirely fair points about the actual terms of the section 106 Agreement so far as they affect the Claimant.'*

Appeal decision APP/K2420/W/15/3004910 (**Appendix 2**) provides further evidence for developer contributions towards necessary policing infrastructure required to enable effective policing of new housing development. The Planning Inspector supported the methodology used for this calculation and compliance with the specific capital infrastructure items detailed in our request.

'44. *Leicestershire Police (LP) have demonstrated adequately that the sums request would be spent on a variety of essential equipment and services, the need for which would arise directly from the new households occupying the proposed development. It would be necessary, there, in order to provide on-site and off-site infrastructure and facilities to serve the development commensurate with its scale and nature consistent with LP Policy IMP1. The planning contribution would also enable the proposed development to comply with the Framework's core planning principle of supporting local strategies to improve health, social and cultural wellbeing and delivering sufficient community facilities to meet local needs*.'

In respect of the methodology used for this request the same Planning Inspector stated '47 – *I consider this to be a no less realistic and robust method of demonstrating the criminal incidents likely to arise in a specific area than the analysis of population data which is normally used to calculate the future demand for school places. The evidence*

**Katy Bourne** OBE
Sussex Police & Crime Commissioner

Tel: 01273 481561
Email: pcc@sussex-pcc.gov.uk
www.sussex-pcc.gov.uk

The Office of the
Sussex Police &
Crime Commissioner
Sackville House
Brooks Close, Lewes
East Sussex, BN7 2FZ



*gives credence to the additional calls and demands on the police service predicted by LP*'.

A financial contribution towards essential policing infrastructure is clearly essential to make new housing development acceptable in planning terms. The policing infrastructure items outlined in this request are essential to help support new officers required due to population growth and most importantly keep existing and future residents of Horsham District safe.

**2. Directly related to the proposed development**

There is a functional link between new development and the contributions requested. Put simply without new development taking place and the subsequent population growth there would be no requirement for the additional infrastructure. The additional population growth will lead to an increase in incidents, which will require a Police response. The infrastructure outlined in this request has been specifically identified by the NPT/NRT teams policing the areas of Horsham District as necessary to deal with the likely form, scale and intensity of incidents this new housing development will generate.

**3. Fairly and reasonably related in scale and kind to the proposed development.**

Securing proportionate developer contributions towards necessary capital expenditure is essential to help meet a proportionate increase in police infrastructure costs and to enable Sussex Police to maintain its current level of service in the borough. This infrastructure has been identified by Sussex Police as necessary to provide an appropriate level of policing to serve the proposed development and maintain the existing high level of community safety.

A clear numerical, evidence-based approach has been demonstrated which is supported by case law and recent appeal decisions by the Planning Inspectorate. The various items of capital expenditure and infrastructure requested are considered CIL compliant and are necessary to enable new officers to undertake their role to meet the policing needs of the development and mitigate impacts to existing resources. A reasonable and proportionate approach has been adopted.

We would also highlight two recent appeal decisions in Leicestershire (APP/F2415/A/12/2179844 & APP/X2410/A12/2173673, **Appendix 2**). In assessing the request from Leicestershire police for developer contributions towards infrastructure the Inspector commented at **para 29** of decision 2179844;

*'The written evidence submitted by Leicestershire Police detailed the impact the proposed development would have on policing, forecasting the number of potential incidents and the anticipated effect this would have on staffing, accommodation, vehicles and equipment. In view of the requirement of national planning policy to create safe and accessible environments where crime and disorder, and the fear of crime, do not undermine quality of life, it is considered that, on the evidence before me, a contribution towards policing is necessary to make the development acceptable in planning terms.'*

Furthermore, with regard to appeal decision 2173673, the Inspector is unequivocal in highlighting the acceptability of police contributions being recipients of developer's contributions;

**Katy Bourne** OBE
Sussex Police & Crime Commissioner

Tel: 01273 481561
Email: pcc@sussex-pcc.gov.uk
www.sussex-pcc.gov.uk

The Office of the
Sussex Police &
Crime Commissioner
Sackville House
Brooks Close, Lewes
East Sussex, BN7 2FZ



*'Adequate policing is so fundamental to the concept of sustainable communities that I can see no reason, in principle, why it should be excluded from the purview of S106 financial contributions, subject to the relevant tests applicable to other public services. There is no reason, it seems to me why police equipment and other items of capital expenditure necessitated by additional development should not be so funded, alongside, for example, additional classrooms and stock and equipment for libraries.'* [**Para 292**]

These appeal decisions confirm that the approach of Sussex Police in assessing the impact of development, having regard to an assessment of the potential number of incidents generated by growth is appropriate, and fundamentally it confirms that police infrastructure should be subject to developer contributions as the provision of adequate policing is fundamental to the provision of sustainable development.

Furthermore, the requirement to ensure that crime and the fear of crime is addressed through the planning process runs through the revised NPPF (December 2024);

Paragraph 20(b) retains reference to '*security'* infrastructure and advises that strategic policies should set out an overall strategy for the pattern, scale, design and quality of development, and make sufficient provision for:

*b) Infrastructure for transport, telecommunications, security, waste management, water supply, wastewater, flood risk and coastal change management, and the provision of minerals and energy (including heat).*

Paragraph 96(b) advises that planning policies should aim to achieve healthy, inclusive and safe places which:

'*are safe and accessible, so that crime and disorder, and the fear of crime, do not undermine the quality of life or community cohesion – for example through the use of beautiful, well-designed, clear and legible pedestrian routes and cycle routes, and high quality public space, which encourage the active and continual use of public areas.'*

Paragraph 101 states that:

'*To ensure faster delivery of other public infrastructure such as health, blue light, library, adult education, university and criminal justice facilities, local planning authorities should also work proactively and positively with promoters, delivery partners and statutory bodies to plan for required facilities and resole key planning issues before applications are submitted. Significant weight should be placed on the importance of new, expanded or upgraded public service infrastructure when considering proposals for development.'*

Paragraph 102 outlines the importance of engaging with the security services to inform planning policy decision and promote public safety and defence requirements. This will be achieved by:

a) *Anticipating and addressing possible malicious threats and natural hazards (whether natural or man-made), especially in locations where large numbers of people are expected to congregate. Policies for relevant area (such as town centre and regeneration frameworks), and the layout and design of developments, should be informed by the most up-to-date information available from the police and other agencies about the nature of potential threats and their implications. This includes appropriate and proportionate steps that can be taken to reduce vulnerability, increase resilience and ensure*

**Katy Bourne** OBE
Sussex Police & Crime Commissioner

Tel: 01273 481561
Email: pcc@sussex-pcc.gov.uk
www.sussex-pcc.gov.uk

The Office of the
Sussex Police &
Crime Commissioner
Sackville House
Brooks Close, Lewes
East Sussex, BN7 2FZ

Sussex Police & Crime Commissioner

*public safety and security. The safety of children and other vulnerable users in proximity to open water, railways and other potential hazards should be considered in planning and assessing proposals for development; and*

*b) Recognising and supporting development required for operational defence and security purposes, and ensuring that operational sites are not affected adversely by the impact of other development proposed in the area.*

The Glossary to the current NPPF (December 2024) includes an entry entitled 'Essential Local Worker'. It states '*these are public sector employees who provide frontline services in areas including health, education and community safety – such as NHS Staff, teachers, police, firefighters and military personnel, social care and childcare workers*'. This recognises the emergency services as essential for the public, alongside education and health.

I trust this sets out sufficiently our Office's request for infrastructure contributions relating to this development at Thakeham Tiles Ltd, Rock Road, Storrington, West Sussex RH20 3AD. In the absence of developer contributions towards the provision of essential policing infrastructure, Sussex Police would raise **objection**, as the additional strain placed on our resources would have a negative impact on policing of both the development and force-wide policing implications within the district.

I am more than happy to discuss the content of this submission with yourselves and support with any further evidence if considered necessary.

Yours sincerely

[redacted]

Jane Thatcher
BA (Hons), MSc, MRTPI
Joint Commercial Planning Manager
Sussex and Surrey Police

**Katy Bourne** OBE
Sussex Police & Crime Commissioner

Tel: 01273 481561
Email: pcc@sussex-pcc.gov.uk
**www.sussex-pcc.gov.uk**

The Office of the
Sussex Police &
Crime Commissioner
Sackville House
Brooks Close, Lewes
East Sussex, BN7 2FZ

Sussex Police & Crime Commissioner

# Part A

'What', 'where' and 'when' of infrastructure requirements relevant to application reference to DC/25/2087

| TOPIC | INFRASTRUCTURE REQUIREMENT | AREA | COST PER ITEM | QTY | TOTAL COST | | TIMING OF DELIVERY (Occupations) |
|---|---|---|---|---|---|---|---|
| Policing | ANPR | Storrington | £6,500 | 1 | £6,500 | | TBC |
| **Total** | | | | | **£6,500** | | |

**Katy Bourne** OBE
Sussex Police & Crime Commissioner

Tel: 01273 481561
Email: pcc@sussex-pcc.gov.uk
www.sussex-pcc.gov.uk

The Office of the
Sussex Police &
Crime Commissioner
Sackville House
Brooks Close, Lewes
East Sussex, BN7 2FZ

Sussex
Police & Crime
Commissioner

Enc.

**Appendix 1** – Jelson Ltd vs Secretary of State and Local Government (1) Hinkley and Bowsorth District Council (2) – 22/11/2016 (paragraphs 71-81)

**Appendix 2** – Examples of appeal decisions supporting police contributions

- APP/Y3615/W/23/3320175 – Land at the Former Wisley Airfield, Hatch Lane, Ockham, Surrey
- APP/E3715/W/21/3268629 – Land North of Coventry Road, Long Lawford, CV23 9BT
- APP/T3725/W/21/3270663 - Land South of Chesterton Gardens, Leamington Spa
- APP/W3710/W/20/3251042 - North Warwickshire and South Leicestershire College, Hinckley Road, Nuneaton, CV11 6LS
- APP/Y0435/W/20/3251121 - Land at Brickhill Street, South Caldecotte, Milton Keynes, MK17 9FE
- APP/R3705/W/19/3234056 - Land East pf Islington Farm, Tamworth Road, Wood End, Warwickshire
- APP/R3705/W/18/3196890 – Land to the south of Tamworth Road and to the west of the M42, Tamworth, B78 1HU
- APP/C3810/W/17/3187601 – Land west of Church Lane and south of Horsemere Green Lane, Climping, West Sussex, BN17 5RY
- APP/R3650/V/17/3171287 – Dunsfold Park, Stovolds Hill, Cranleigh, Surrey, GU6 8TB
- APP/R1845/W/17/3173741 – Land off The Lakes Road, Bewley, Worcestershire, DY12 2BP
- APP/C3105/W/17/3172731 – White Post Road, Banbury.
- APP/C3105/W/16/3163551 – Land off Howes Lane and Middleton Stoney Road, Bicester, Oxfordshire
- APP/C3810/V/16/3143095 – Land east of Fontwell Avenue, Fontwell, West Sussex, BN18 0SB
- APP/E3715/W/16/3147448 – Land at Ashlawn Road West, Rugby, Warwickshire
- APP/C3240/W/16/314445 – Land east of Kestrel Close / Beechfields Way, Newport, Shropshire
- APP/K2420/W/15/30004910 – Land off Sherbourne Road, Burbage, Leicestershire
- APP/G2435/A/14/2228806 – Money Hill, Land North of Wood Street, Ashby-de-la-Zouch, Leicestershire
- APP/X241-/W/15/3007980 – Land rear of 62 Iveshead Road, Shepshed, LE12 9ER
- APP/T3725/A/14/2221613 – Land at the Asps, bound by Europa Way (A452) to the east and Banbury Road (A425) to the west
- APP/T3725/A/14/2229398 – Land South of Gallows Hill / West of Europa Way, Heathcote, Warwick
- APP/G2435/W/15/3005052 – Land South of Greenhill Road, Coalville, Leicestershire
- APP/Q3115/A/14/2222595 – Land north of Littleworth Road, Benson
- APP/A2470/A/14/2222210 – Greetham Garden Centre, Oakham Road, Greetham, Oakham
- APP/A2470/A/14/2227672 – Land to the rear of North Brook Close, Greetham, Rutland
- APP/L2440/A/14/2216085 – Land at Cootage Farm, Glen Road, Oadby, Leicestershire
- APP/Y2430/A/14/2224790 - Land to the east of Nottingham Road, Melton Mowbray, Leicestershire
- APP/2460/A/14/2213689 – Land rear of 44-78 Ashby Road, Hinkley, Leicestershire
- APP/K2420/A/13/2208318 – Land surrounding Sketchley House, Watling Street, Burbage, Leicestershire
- APP/F2415/A/14/2217536 – Land off Fairway Meadows, Ullesthorpe, Leicestershire
- APP/K2420/A/13/2202658 & APP/A/13/2210904 – Land off (to the south of Spinney Drive and land off (to the east of) Brookside, Barlestone, Leicestershire
- APP/H1840/A/13/2199085 & APP/H1840/A/13/2199426 – Land off Pulley Lane, Newland Road and Primsland Way, Droitwich Spa

**Appendix 3** – The Queen (on the application of The Police and Crime Commissioner for Leicestershire) vs Blaby Council and Hallam Land (and other developers).

**Appendix 5** – APR1845W173173741 – Land of Lakes Road – Worcestershire

Neutral Citation Number: [2016] EWHC 2979 (Admin)

Case No: CO/2673/2016

**IN THE HIGH COURT OF JUSTICE**
**QUEEN'S BENCH DIVISION**
**ADMINISTRATIVE COURT**

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 22/11/2016

**Before** :

**MR JUSTICE GREEN**

- - - - - - - - - - - - - - - - - - - - -

**Between :**

| | |
|---|---|
| **Jelson Limited** | **Claimant** |
| **- and -** | |
| **Secretary of State for Communities and Local Government (1)** | |
| **Hinckley and Bosworth Borough Council (2)** | **Defendant** |

- - - - - - - - - - - - - - - - - - - - -
- - - - - - - - - - - - - - - - - - - - -

**Mr Lockhart-Mummery QC** (instructed by **Shakespeare Martineau**) for the **Claimant**
**Ms Blackmore** (instructed by **Government Legal Department**) for the **First Defendant**
**Ms Osmund-Smith** (instructed by **Solicitor to Hinckley & Bosworth Borough Council**) for the **Second Defendant**

Hearing date: 1st November 2016

- - - - - - - - - - - - - - - - - - - - -

# Approved Judgment

**MR JUSTICE GREEN :**

## A. Introduction: The Issue – "FOAN"

1. This case concerns a dispute over the calculation of "Full Objectively Assessed Need" for housing or "FOAN". This is a measure of the theoretical need that a local authority has for housing. It is required to be set by local authorities in accordance with paragraph [47] of the National Planning Policy Framework ("NPPF"). It is an important figure because it is used as a benchmark against which the "need" for a particular proposed development is measured, subject to the processes described below. I have described FOAN as a theoretical figure because once the FOAN is calculated in practice it is then modified to take account of relevant policy considerations. In practice the FOAN will almost always exceed the housing requirement figure that is set once policy is applied. For this reason FOAN has been termed a "policy-off" figure and the housing requirement ultimately fixed has been termed a "policy-on" figure. The policy on housing requirement will (or should) be worked out in the context of the preparation of a Local Plan. Problems however arise when there is no up-to-date Local Plan.

2. On the 12th May 2014 Jelson Limited ("the Claimant") applied to Hinckley and Bosworth Borough Council ("HBBC") for planning permission for residential development and associated infrastructure in relation to land off Sherborne Road, Burbage, Leicestershire. On the 12th November 2014 HBBC rejected the application and the Claimant appealed, by way of public inquiry, to the Inspector. By a decision made on the 4th May 2016 ("the Decision") the appeal was refused. A central issue at the inquiry was whether HBBC could establish that it had a five year supply of housing for the purposes of paragraph [47] NPPF. The Council argued that it could demonstrate a supply sufficient to meet demand for a period in excess of five years. The Claimant, however, argued that there was a supply of significantly less than five years. The nub of the dispute between the parties centred upon identification of a figure, or range of figures, as to the relevant numerical requirement. The Claimant argued that if HBBC was unable to demonstrate a supply of five years or more that this would have been a significant material consideration in favour of allowing the appeal (taking into account the presumption in favour of grant in paragraph [14] NPPF). In her Decision the Inspector held that there was, in fact, sufficient housing land in Hinckely and Bosworth to meet the housing needs for the following five years.

3. It is common ground that at the time of the inquiry HBBC had not adopted a new Local Plan since the coming into effect of the NPPF in March 2012. The Core Strategy ("CS") had been adopted in 2009 and this set out a housing requirement of 450 dwellings per annum ("dpa"). HBBC did not contend that the CS contained an assessment of or figure for FOAN in line with the requirement in paragraph [47] NPPF. Nonetheless HBBC argued that the evidence before the inquiry supported a conclusion that there was a housing requirement of 450 dpa.

4. In Ground I the Claimant contends: (a) that the Inspector failed to have due regard and/or to understand the requirements of paragraph [47] NPPF; and/or (b) that she failed to understand and follow the principles of the Court of Appeal in *City and District of St Albans v Hunston Properties and SSCLG* [2013] EWCA Civ 1610 ("*Hunston*") and that of the High Court in *Gallagher Homes Limited v Solihull Metropolitan Borough Council* [2014] EWHC 1238, affirmed on appeal [2014]

EWCA Civ 1610 ("*Gallagher*"); and/or (c) that the Inspector failed to give proper reasons for concluding that there was a five year supply; and/or (d) that in any event the Inspector's approach to the identification of the FOAN was irrational and confused.

5. In Ground II the Claimant contends that the Inspector erred in not addressing and/or giving reasons for her conclusion that the Claimant make a contribution to the costs to be incurred by the police in providing additional police services to meet incremental demand for policing arising from the new development.

## B. Legal and Policy Framework

### (i) The test on appeal

6. The case comes before the Court by way of statutory application pursuant to section 288 Town and Country Planning Act 1990 ("TCPA 1990"). The legal principles which fall to be applied on such an application are well established. They are summarised in the judgment of Lindblom J, as he then was, in *Bloor Homes East Midlands Limited v SSCLG* [2014] EWHC 754 (Admin) at paragraph [19]. Because, one way or another, most are raised in this case, I set out the summary in full below:

> "19. The relevant law is not controversial. It comprises seven familiar principles:
>
> (1) Decisions of the Secretary of State and his inspectors in appeals against the refusal of planning permission are to be construed in a reasonably flexible way. Decision letters are written principally for parties who know what the issues between them are and what evidence and argument has been deployed on those issues. An inspector does not need to "rehearse every argument relating to each matter in every paragraph" (see the judgment of Forbes J. in Seddon Properties v Secretary of State for the Environment (1981) 42 P. & C.R. 26, at p.28).
>
> (2) The reasons for an appeal decision must be intelligible and adequate, enabling one to understand why the appeal was decided as it was and what conclusions were reached on the "principal important controversial issues". An inspector's reasoning must not give rise to a substantial doubt as to whether he went wrong in law, for example by misunderstanding a relevant policy or by failing to reach a rational decision on relevant grounds. But the reasons need refer only to the main issues in the dispute, not to every material consideration (see the speech of Lord Brown of Eaton-under-Heywood in South Bucks District Council and another v Porter (No. 2) [2004] 1 WLR 1953, at p.1964B-G).
>
> (3) The weight to be attached to any material consideration and all matters of planning judgment are within the exclusive jurisdiction of the decision-maker. They are not for the court. A

local planning authority determining an application for planning permission is free, "provided that it does not lapse into Wednesbury irrationality" to give material considerations "whatever weight [it] thinks fit or no weight at all" (see the speech of Lord Hoffmann in Tesco Stores Limited v Secretary of State for the Environment [1995] 1 WLR 759, at p.780F-H). And, essentially for that reason, an application under section 288 of the 1990 Act does not afford an opportunity for a review of the planning merits of an inspector's decision (see the judgment of Sullivan J., as he then was, in Newsmith v Secretary of State for [2001] EWHC Admin 74, at paragraph 6).

(4) Planning policies are not statutory or contractual provisions and should not be construed as if they were. The proper interpretation of planning policy is ultimately a matter of law for the court. The application of relevant policy is for the decision-maker. But statements of policy are to be interpreted objectively by the court in accordance with the language used and in its proper context. A failure properly to understand and apply relevant policy will constitute a failure to have regard to a material consideration, or will amount to having regard to an immaterial consideration (see the judgment of Lord Reed in Tesco Stores v Dundee City Council [2012] PTSR 983, at paragraphs 17 to 22).

(5) When it is suggested that an inspector has failed to grasp a relevant policy one must look at what he thought the important planning issues were and decide whether it appears from the way he dealt with them that he must have misunderstood the policy in question (see the judgment of Hoffmann L.J., as he then was, South Somerset District Council v The Secretary of State for the Environment (1993) 66 P. & C.R. 80, at p.83E-H).

(6) Because it is reasonable to assume that national planning policy is familiar to the Secretary of State and his inspectors, the fact that a particular policy is not mentioned in the decision letter does not necessarily mean that it has been ignored (see, for example, the judgment of Lang J. in Sea Land Power & Energy Limited v Secretary of State for Communities and Local Government [2012] EWHC 1419 (QB), at paragraph 58).

(7) Consistency in decision-making is important both to developers and local planning authorities, because it serves to maintain public confidence in the operation of the development control system. But it is not a principle of law that like cases must always be decided alike. An inspector must exercise his own judgment on this question, if it arises (see, for example, the judgment of Pill L.J. Fox Strategic Land and Property Ltd. v Secretary of State for Communities and Local Government [2013] 1 P. & C.R. 6, at paragraphs 12 to 14, citing the

> judgment of Mann L.J. in North Wiltshire District Council v Secretary of State for the Environment [1992] 65 P. & C.R. 137, at p.145)."

**(ii) Evidential considerations relating to the assessment of a FOAN**

7. The approach that inspectors should apply to the evidential tasks confronting them when assessing the FOAN has been considered on a number of occasions in recent case law. In *Shropshire Council et ors v BDW Trading et ors* [2016] EWHC 2733 (Admin) Mrs Justice Lang was confronted with an Inspector's decision which stated:

> "It is therefore clear that there is no recent evidence in line with the above requirements of the Framework and the PPG that offers any reliable support to the CS housing requirement, which is, in my view out-of-date being based on the RSS. Further, the Council accept that it is not suggested that the CS housing requirement will be the FOAN for their plan review and that the evidence will ultimately tell what their FOAN is. This confirms that the Council are not at the current time sure what its FOAN is and that this work is yet to be undertaken. In such circumstances, I consider that if the Council does not have a FOAN, then it does not have a robust housing requirement and therefore it must follow that it cannot demonstrate it has a five year housing land supply…"

8. In view of this the Inspector did not go on to assess the evidence and determine, for the purpose of resolving the issue arising, what a workable FOAN was. This omission was challenged. Shropshire Council argued:

> "The Claimant submitted that the Inspector erred in failing to engage with the evidence in respect of the FOAN or the Claimant's 'housing requirements', as referenced in bullet points 1 and 2 of NPPF 47. He was required to exercise his judgment on this issue, doing the best he could on the available evidence, even if it was unsatisfactory. In this case, there was sufficient material to enable him to do so, whether or not he could identify precise figures. He was also required to explain his reasons for arriving at his conclusions, which he failed to do."

9. Mrs Justice Lang agreed with this submission. She held:

> "21. There is substantial authority in support of the Claimant's submission that, in an appeal concerning housing development, an Inspector must address the issues of housing requirements and housing supply in his decision as they are likely to be material considerations and his judgment on those issues is an essential part of the application of the NPPF."

10. The conclusion that she arrived at is consistent with: *South Northamptonshire Council v Secretary of State for Communities and Local Government & Ors* [2014] EWHC

573 (Admin) at paragraph [19] per Ouseley J; *West Berkshire District Council v Secretary of State for Communities and Local Government & Ors* [2016] EWHC 267 (Admin) at paragraph [52] per Supperstone J; and, *(Gladman) v Secretary of State for Communities and Local Government & Ors* [2016] EWHC 683 (Admin) at paragraph [7(v)] per Patterson J.

11. In *Shropshire* (*ibid*) Mrs Justice Lang summed up the authorities in the following way:

> "27. In my judgment … Inspectors generally will be required to make judgments about housing needs and supply. However, these will not involve the kind of detailed analysis which would be appropriate at a Development Plan inquiry. The Inspector at a planning appeal is only making judgments based on the material before him in the particular case, which may well be imperfect. He is not making an authoritative assessment which binds the local planning authority in other cases."

12. In paragraphs [28] – [30] she set out various observations about the evidence collation process which, in my view, are pragmatic and sensible and accord with good administrative practice and with case law.

13. I summarise these points as follows: (a) an Inspector is required to make judgments as to the Claimant's current FOAN or housing requirements and its housing supply in order to decide the issues in an appeal; (b) paragraph [49] NPPF requires the Inspector to form his/her own judgment on the equation between housing needs and housing supply based upon the relevant evidence provided by the local planning authority and any other parties to the inquiry; (c) where a Local Plan is outdated other sources of information can and should be considered; (d) where there is no robust recent assessment of full housing needs, the household projections published by the DCLG should be used as the starting point; (e) an inspector must do the best possible with the material adduced and if needs be the Inspector must make the best of an unsatisfactory situation, making a choice between unsatisfactory sources; (f) if an Inspector is unable to identify a specific figure a bracket or range or an approximate uplift on the departmental projections suffice; (g) an inspector is not required to undertake the kind of detailed analysis which would be appropriate at a Development Plan inquiry; (h) an Inspector deciding an appeal on the best evidence available is not making a finding that is an authoritative assessment which binds the local planning authority in other cases; (e) in an exceptional case where the evidence before the Inspector is so lacking that it is impossible to perform an assessment the inspector must say so and give reasons to explain why it was not possible to determine a working FOAN figure or range.

**(iii) Relevant provisions of the NPPF and Policy Guidance**

14. The relevant policy and guidance material which applies to the setting of a "FOAN" is principally found in section 6 of the NPPF entitled "*Delivering a wide choice of high quality homes*". This introduces the concept of the "full objectively assessed need" for market and affordable housing in a "housing market area". These are the "FOAN" and the "HMA" concepts. Paragraphs [47] and [49] provide as follows:

> "47. To boost significantly the supply of housing, local planning authorities should:
>
> ● use their evidence base to ensure that their Local Plan meets the full, objectively assessed needs for market and affordable housing in the housing market area, as far as is consistent with the policies set out in this Framework, including identifying key sites which are critical to the delivery of the housing strategy over the plan period;
>
> ● identify and update annually a supply of specific deliverable sites sufficient to provide five years worth of housing against their housing requirements with an additional buffer of 5% (moved forward from later in the plan period) to ensure choice and competition in the market for land. Where there has been a record of persistent under delivery of housing, local planning authorities should increase the buffer to 20% (moved forward from later in the plan period) to provide a realistic prospect of achieving the planned supply and to ensure choice and competition in the market for land;
>
> ● identify a supply of specific, developable sites or broad locations for growth, for years 6-10 and, where possible, for years 11-15; for market and affordable housing, illustrate the expected rate of housing delivery through a housing trajectory for the plan period and set out a housing implementation strategy for the full range of housing describing how they will maintain delivery of a five-year supply of housing land to meet their housing target; and
>
> ● set out their own approach to housing density to reflect local circumstances."
>
> "49. Housing applications should be considered in the context of the presumption in favour of sustainable development. Relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a five-year supply of deliverable housing sites."

15. In the section of the NPPF entitled "*Plan-making*" under the heading "*Housing*", paragraph [159] urges local planning authorities to have a clear understanding of housing needs in their area and requires them to prepare a "*Strategic Housing Market Assessment*" ("*SHMA*"). It provides:

> "159. Local planning authorities should have a clear understanding of housing needs in their area. They should:
>
> ● prepare a Strategic Housing Market Assessment to assess their full housing needs, working with neighbouring authorities where housing market areas cross administrative boundaries. The Strategic Housing Market Assessment should identify the

scale and mix of housing and the range of tenures that the local population is likely to need over the plan period which:

— meets household and population projections, taking account of migration and demographic change;

— addresses the need for all types of housing, including affordable housing and the needs of different groups in the community (such as, but not limited to, families with children, older people, people with disabilities, service families and people wishing to build their own homes); and

— caters for housing demand and the scale of housing supply necessary to meet this demand;

● prepare a Strategic Housing Land Availability Assessment to establish realistic assumptions about the availability, suitability and the likely economic viability of land to meet the identified need for housing over the plan period."

16. Guidance makes clear that the setting of figures for a FOAN is not an exact science and no single approach will provide a definitive answer. Local authority plan makers should avoid expending significant resources on primary research but should, instead, seek guidance from secondary data. The most important source is housing projections produced by the DCLG. This is trend based data. It will need adjustment to take account of local conditions. This is made clear in formal guidance which is provided in PPG2(a)-014-20140306. Some relevant paragraphs from this Guidance are set out below:

"Housing and economic development needs assessments

Methodology: assessing housing need

**Paragraph: 014 Reference ID: 2a-014-20140306**

What methodological approach should be used?

Establishing future need for housing is not an exact science. No single approach will provide a definitive answer. Plan makers should avoid expending significant resources on primary research (information that is collected through surveys, focus groups or interviews etc and analysed to produce a new set of findings) as this will in many cases be a disproportionate way of establishing an evidence base. They should instead look to rely predominantly on secondary data (eg Census, national surveys) to inform their assessment which are identified within the guidance.

Revision date: 06 03 2014

**Paragraph: 015 Reference ID: 2a-015-20140306**

What is the starting point to establish the need for housing?

Household projections published by the Department for Communities and Local Government should provide the starting point estimate of overall housing need.

The household projections are produced by applying projected household representative rates to the population projections published by the Office for National Statistics. Projected household representative rates are based on trends observed in Census and Labour Force Survey data.

The household projections are trend based, ie they provide the household levels and structures that would result if the assumptions based on previous demographic trends in the population and rates of household formation were to be realised in practice. They do not attempt to predict the impact that future government policies, changing economic circumstances or other factors might have on demographic behaviour.

The household projection-based estimate of housing need may require adjustment to reflect factors affecting local demography and household formation rates which are not captured in past trends. For example, formation rates may have been suppressed historically by under-supply and worsening affordability of housing. The assessment will therefore need to reflect the consequences of past under delivery of housing. As household projections do not reflect unmet housing need, local planning authorities should take a view based on available evidence of the extent to which household formation rates are or have been constrained by supply.

Revision date: 06 03 2014

**Paragraph: 016 Reference ID: 2a-016-20150227**

How often are the projections updated?

The Government's official population and household projections are generally updated every two years to take account of the latest demographic trends. The most recent published Household Projections update the 2011-based interim projections to be consistent with the Office for National Statistics population projections. Further analysis of household formation rates as revealed by the 2011 Census will continue during 2015.

Wherever possible, local needs assessments should be informed by the latest available information. The National Planning Policy Framework is clear that Local Plans should be kept up-to-date. A meaningful change in the housing situation should be

considered in this context, but this does not automatically mean that housing assessments are rendered outdated every time new projections are issued.

The 2012-2037 Household Projections were published on 27 February 2015, and are the most up-to-date estimate of future household growth.

Revision date: 27 02 2015 See revisions

Related policy

National Planning Policy Framework

- Paragraph 17, bullet 1

**Paragraph: 017 Reference ID: 2a-017-20140306**

Can adjustments be made to household projection-based estimates of housing need?

The household projections produced by the Department for Communities and Local Government are statistically robust and are based on nationally consistent assumptions. However, plan makers may consider sensitivity testing, specific to their local circumstances, based on alternative assumptions in relation to the underlying demographic projections and household formation rates. Account should also be taken of the most recent demographic evidence including the latest Office of National Statistics population estimates.

Any local changes would need to be clearly explained and justified on the basis of established sources of robust evidence.

Issues will vary across areas but might include:

• migration levels that may be affected by changes in employment growth or a one off event such as a large employer moving in or out of an area or a large housing development such as an urban extension in the last five years

• demographic structure that may be affected by local circumstances or policies eg expansion in education or facilities for older people

Local housing need surveys may be appropriate to assess the affordable housing requirements specific to the needs of people in rural areas, given the lack of granularity provided by secondary sources of information.

Revision date: 06 03 2014 See revisions

**Paragraph: 018 Reference ID: 2a-018-20140306**

How should employment trends be taken into account?

Plan makers should make an assessment of the likely change in job numbers based on past trends and/or economic forecasts as appropriate and also having regard to the growth of the working age population in the housing market area. Any cross-boundary migration assumptions, particularly where one area decides to assume a lower internal migration figure than the housing market area figures suggest, will need to be agreed with the other relevant local planning authority under the duty to cooperate. Failure to do so will mean that there would be an increase in unmet housing need.

Where the supply of working age population that is economically active (labour force supply) is less than the projected job growth, this could result in unsustainable commuting patterns (depending on public transport accessibility or other sustainable options such as walking or cycling) and could reduce the resilience of local businesses. In such circumstances, plan makers will need to consider how the location of new housing or infrastructure development could help address these problems.

Revision date: 06 03 2014

**Paragraph: 019 Reference ID: 2a-019-20140306**

How should market signals be taken into account?

The housing need number suggested by household projections (the starting point) should be adjusted to reflect appropriate market signals, as well as other market indicators of the balance between the demand for and supply of dwellings. Prices or rents rising faster than the national/local average may well indicate particular market undersupply relative to demand. Relevant signals may include the following:

- Land Prices

Land values are determined by the demand for land in particular uses, relative to the supply of land in those uses. The allocation of land supply designated for each different use, independently of price, can result in substantial price discontinuities for adjoining parcels of land (or land with otherwise similar characteristics). Price premiums provide direct information on the shortage of land in any locality for any particular use.

- House Prices

Mix adjusted house prices (adjusted to allow for the different types of houses sold in each period) measure inflation in house prices. Longer term changes may indicate an imbalance between the demand for and the supply of housing. The Office for National Statistics publishes a monthly House Price Index at regional level. The Land Registry also publishes a House Price Index and Price Paid data at local authority level.

- Rents

Rents provide an indication of the cost of consuming housing in a market area. Mixed adjusted rent information (adjusted to allow for the different types of properties rented in each period) shows changes in housing costs over time. Longer term changes may indicate an imbalance between demand for and supply of housing. The Office for National Statistics publishes a monthly Private Rental Index.

- Affordability

Assessing affordability involves comparing house costs against the ability to pay. The ratio between lower quartile house prices and the lower quartile income or earnings can be used to assess the relative affordability of housing. The Department for Communities and Local Government publishes quarterly the ratio of lower quartile house price to lower quartile earnings by local authority district.

- Rate of Development

Local planning authorities monitor the stock and flows of land allocated, permissions granted, and take-up of those permissions in terms of completions. Supply indicators may include the flow of new permissions expressed as a number of units per year relative to the planned number and the flow of actual completions per year relative to the planned number. A meaningful period should be used to measure supply. If the historic rate of development shows that actual supply falls below planned supply, future supply should be increased to reflect the likelihood of under-delivery of a plan. The Department for Communities and Local Government publishes quarterly planning application statistics.

- Overcrowding

Indicators on overcrowding, concealed and sharing households, homelessness and the numbers in temporary accommodation demonstrate un-met need for housing. Longer term increase in the number of such households may be a signal to consider increasing planned housing numbers. The number of households accepted as homeless and in temporary

accommodation is published in the quarterly Statutory Homelessness release.

Revision date: 06 03 2014

**Paragraph: 020 Reference ID: 2a-020-20140306**

How should plan makers respond to market signals?

Appropriate comparisons of indicators should be made. This includes comparison with longer term trends (both in absolute levels and rates of change) in the: housing market area; similar demographic and economic areas; and nationally. A worsening trend in any of these indicators will require upward adjustment to planned housing numbers compared to ones based solely on household projections. Volatility in some indicators requires care to be taken: in these cases rolling average comparisons may be helpful to identify persistent changes and trends.

In areas where an upward adjustment is required, plan makers should set this adjustment at a level that is reasonable. The more significant the affordability constraints (as reflected in rising prices and rents, and worsening affordability ratio) and the stronger other indicators of high demand (e.g. the differential between land prices), the larger the improvement in affordability needed and, therefore, the larger the additional supply response should be.

Market signals are affected by a number of economic factors, and plan makers should not attempt to estimate the precise impact of an increase in housing supply. Rather they should increase planned supply by an amount that, on reasonable assumptions and consistent with principles of sustainable development, could be expected to improve affordability, and monitor the response of the market over the plan period.

The list of indictors above is not exhaustive. Other indicators, including those at lower spatial levels, are available and may be useful in coming to a full assessment of prevailing market conditions. In broad terms, the assessment should take account both of indicators relating to price (such as house prices, rents, affordability ratios) and quantity (such as overcrowding and rates of development).

Revision date: 06 03 2014."

## C. The Inspector's Decision and the evidence relied upon

17. In this section I address two principal matters. First, the SHMA which was relied upon by HBBC and by the Inspector to identify a range of figures for housing need which was then used as a benchmark for measuring the "need" for the proposed development. Second, the reasoning adopted by the Inspector.

### (i) The Leicester and Leicestershire Strategic Housing Market Assessment Report, June 2014 ("the SHMA")

18. In her Decision the Inspector relied, as a central and important source of data, upon the Leicester and Leicestershire Strategic Housing Market Assessment Report, June 2014 ("the SHMA"). The Report was prepared by consultants instructed on behalf of the various relevant authorities. It is appropriate to start by describing the methodology applied by the consultants to the exercise. The consultants explained that they had undertaken a comprehensive assessment of potential population and household growth. The starting points for the projections developed, in accordance with the PPG, were the latest (2011-based) CLG Household Projections updated to take account of the latest population data and to ensure that household formation rates did not project forward the recent falling trend in household formation brought about by the economic recession. The projections indicated a need for an average of 3,626 dpa to 2036 (with a slightly higher average of 3,774 dpa to 2031) across the Leicester and Leicestershire HMA. In line with the PPG the consultants tested these figures to see whether an additional uplift was required to respond to market signals and improve housing affordability, to enhance the delivery of affordable housing to meet identified needs, and to support some degree of growth in jobs at a local level. The consultants considered the state of the housing market including prices and transactions and whether there were signs of recovery. They also considered the level of housing needed to support baseline full costs of employment growth and differentiated local patterns of living and working and, in the light of their conclusions upon these matters, made some localised adjustments to assess housing need at a local authority level. Taking into account these factors the SHMA identified a need for between 3,630 – 4,060 homes per annum to 2036 across the HMA. The lower end of the range supported demographic projections whilst the higher end of the range supported strong delivery of both market and affordable housing taking account of the need for affordable housing and market signals and relative rates of economic growth in different parts of the area.

19. In an Executive Summary the authors set out a table entitled "*Conclusions regarding Overall Housing Need*":

| | Housing Need to 2031 | | Housing Need to 2036 | |
|---|---|---|---|---|
| | Lower | Upper | Lower | Upper |
| Leicester | 1250 | 1350 | 1230 | 1330 |
| Blaby | 360 | 420 | 340 | 400 |
| Charnwood | 810 | 820 | 770 | 780 |
| Harborough | 415 | 475 | 400 | 460 |
| Hinckley & Bosworth | **375** | **450** | 350 | 420 |
| Melton | 200 | 250 | 195 | 245 |
| NW Leicestershire | 285 | 350 | 270 | 330 |
| Oadby & Wigston | **80** | **100** | 75 | 95 |
| **Leicester & Leicestershire Total** | 3,775 | 4,215 | 3,630 | 4,060 |

(Emphasis added)

20. For the purpose of this judgment it is convenient to highlight at this early juncture two particular sets of figures which are set out in bold in the table above. First the range for HBBC (for the period to 2031) was 375-450. This was the range ultimately chosen by the Inspector to represent the FOAN. But it is also important for reasons which I set out later in some detail (see paragraphs [54ff] below) to observe that the equivalent range for Oadby & Wigston was 80-100. This is because in separate litigation that range was rejected by an Inspector and his findings were later upheld by both the High Court and by the Court of Appeal. The reasoning which led to the approval of the Inspector's alternative figure in that case is of some material significance to the analysis in the present case.

21. The conclusions, as set out in the table, did not take into consideration land supply, development or infrastructure constraints and the SHMA makes clear that local authorities would need to consider these issues in deriving a "*policy on*" distribution of housing provision i.e. a figure which is not the actual assessed need but a figure which is considered to be actually deliverable and which therefore takes into account a variety of policy criteria which might constrain the higher actual need figure. As such the figures in the SHMA purportedly amounted to a "*policy off*" assessment of housing need. I explain the significance of "*policy off*" and "*policy on*" more fully in paragraph [41] below. The SHMA also drew conclusions concerning the need for different types of homes. It identified that 21% of the need for affordable housing could be met by intermediate equity-based products with 79% of need for rented affordable housing (either at social or affordable rent levels). Taking into account expected changes to population structure, existing housing mix and market evidence, the SHMA identified strategic targets with a mix of housing needed within the HMA against which delivery could be monitored. The recommendations regarding the sizes of home need were incorporated into the following table:

| | 1-bed | 2-bed | 3-bed | 4+ bed |
|---|---|---|---|---|
| Market | 5-10% | 30-35% | 45-50% | 10-15% |
| Affordable | 35-40% | 30-35% | 20-25% | 5-10% |
| All Dwellings | 15-20% | 30-35% | 35-40% | 10-15% |

22. The needs of specified groups were considered, including elderly households, students, BME household and families. The SHMA indicated the need for between 240 – 720 additional housing units to be specialist accommodation across the HMA to meet the needs of the "older person" population each year. It further identified the need for 222 residential care bed spaces per annum.

23. Chapter 9 of the Report, in relation to "*Overall Housing Need*" makes clear that the "policy off" overall housing need would take into account both affordable and market housing. It described the approach adopted in paragraphs [9.4] – [9.7]:

> "9.4 The NPPF sets out that plans should be prepared on the basis of meeting full needs for market and affordable housing. Planning Practice Guidance sets out that the latest national projections should be seen as a starting point but that authorities may consider sensitivity testing projections in response to local circumstances and the latest demographic evidence.
>
> 9.5 In accordance with the Planning Practice Guidance, the 2011-based Sub-National Population Projections (SNPP) and related CLG Household Projections have formed the starting point for our assessment. When extended beyond 2021, these projections indicate household growth of 3,335 households per annum across the HMA between 2011 and 2031 and 3,159 between 2011 and 2036. However these projections assume that household formation rates seen over the 2001-11 period continue moving forward. These trends arguably build in a degree of suppression of household formation, a point which is acknowledged by CLG in the Planning Practice Guidance on Assessment of Housing and Economic Development Needs.
>
> 9.6 Against this context a sensitivity analysis has been developed exploring different projections of household formation rates and to take account of the latest migration data. This analysis concludes that the most appropriate means of projecting household formation would be based on the midpoint between the household formation rates in the 2008 and 2011 Household Projections. These updated projections indicate a need for 3,774 households per annum between 2011 and 2031 and 3,626 between 2011 and 2036. This represents a robust starting point for assessing housing needs in Leicester and Leicestershire based on population trends.

> 9.7 The guidance then sets three key tests which should be applied in order to identify whether there is a case to adjust the starting point. We see these tests as:
>
> • Do market signals point to a need to increase housing supply in order to address affordability and high demand?
>
> • Is there a need to increase overall housing supply in order to boost delivery of affordable homes to meet identified needs?
>
> • Is there evidence that an increase in housing supply is needed to ensure a sufficient labour supply to support forecast economic and employment growth in different parts of the HMA?"

24. In defining the FOAN for housing in an HMA the consultants adopted the following approach:

> "9.20 We have sought to draw the range of evidence together to define objectively-assessed need for housing. In doing so we have followed the following approach:
>
> • Define the base level of need with regard to the demographic projections;
>
> • Consider the case for adjustments in response to market signals. This points to a case for upwards adjustment in Melton and Harborough Districts;
>
> • Compare the demographic projections against the proportionate economic-led projections in regard to the scope to encourage local living and working;
>
> • Overlay the affordable housing evidence in regard to the % supply based on the demographic projections needed to support full affordable housing delivery;
>
> • Identify the higher level of the range to take account of the market signals, economic evidence and affordable housing need."

25. I turn now to Table 84 which is central to the dispute in this case. Paragraph [9.22] draws together, in Table 84, the consultants' conclusions over the period 2011-2031. It is in the following form:

> "The table below draws together our conclusions over the 2011-31 period. We consider that housing need over the 2011-31 period would fall between 3,775 – 4,215 homes per annum across the HMA. Local authority level figures are shown in the table.

**Table 84: OAN Conclusions 2011-2033**

| Homes Per Annum 2011-2031 | Demographic-Led Household Projections to 2031 | Higher Market Affordability Pressures | Supporting Proportionate Economic Growth | Affording Housing Need Per Annum | Affordable Need as % Demographic-Led Projection | OAN Range | |
|---|---|---|---|---|---|---|---|
| Leicester | 1,249 | | 1,057 | 527 | 42% | 1,250 | 1,350 |
| Blaby | 356 | | 388 | 352 | 99% | 360 | 420 |
| Charnwood | 814 | | 690 | 180 | 22% | 810 | 820 |
| Harborough | 415 | ✓ | 454 | 212 | 51% | 415 | 475 |
| Hinckley & Bosworth | 375 | | 467 | 248 | 66% | 375 | 450 |
| Melton | 202 | ✓ | 253 | 74 | 36% | 200 | 250 |
| NW Leicestershire | 284 | | 372 | 212 | 75% | 285 | 350 |
| Oadby & Wigston | 79 | | 173 | 163 | 206% | 80 | 100 |
| **LLLPA** | **3,774** | | **3,854** | **1,966** | **52%** | **3,775** | **4,215** |

The figures for HBBC are set out in the column headed "OAN Range". They are 375-450. The equivalent figures for Oadby are 80-100.

**(ii) The Inspector's decision ("the Decision")**

26. I turn from the SHMA to the reasoning adopted by the Inspector in her Decision. In the text below I summarise, in relatively narrative form, the Decision. I have, where appropriate, added references to the evidence which was referred to in the Decision.

27. The Inspector commenced her analysis by recording that local planning authorities were required to use their evidence base to ensure their Local Plans met the FOAN for market and affordable housing in the housing market area, in accordance with paragraph [47] NPPF. She observed that the HBBC Core Strategy ("CS") was adopted in 2009, predating the publication of the NPPF in 2012. The CS target was to delivery 9,000 dwellings up to 2026, i.e. 450 units per annum. This requirement, however, was derived from the East Midland Regional Plan which had been revoked. That particular plan based its dwelling targets upon 2004 household projections; in consequence, the CS requirement was <u>not</u> the FOAN and was therefore inconsistent with the NPPF. In paragraph [6] the Inspector therefore sought an alternative source of data. In this she turned to the SHMA:

> "6. The starting point for the calculation of OAN is demographic calculations based on the most recent, available population projections. This is made clear in paragraph 159 of the Framework which states that the strategic housing market assessment (SHMA) should identify the scale and mix of housing and the range of tenures that the local population is likely to need over the plan period which meet household and population projections, taking account of migration and demographic change. The Council, together with the

> other Leicestershire district and borough councils and Leicester City Council, commissioned a SHMA which was published in June 2014."

28. In paragraph [7] the Inspector identified the demographic calculations which resulted in the total number, expressed as a range, of people and households likely to live in the HMA during the relevant period irrespective of the type of dwelling which they might require. She stated that "*those needs*" (which included affordable housing) "*are the products of separate and different calculations and assessments. In theory, they are included within the total population arising from population projections and a demographic methodology and should be consistent with them*".

29. In paragraph [8] the Inspector identified that the principal dispute between the parties was whether affordable housing need was required to be fully "*met*" by the FOAN. I emphasise the phrase "*met*" because, as I discuss later, the Claimant alights upon this word as one of the pieces of evidence said to prove that the Inspector misdirected herself to the test to be applied. She recorded, albeit in outline, the Claimant's contention that the FOAN arising from the SHMA was a constrained "policy-on" figure and that, in consequence, the upper end of the range was not properly identified as it should be in an unconstrained, "policy-off" FOAN. She recorded the position of HBBC in the following terms:

> "8. … On the other hand, the Council concurs with the guidance set out in the Planning Advisory Service's technical advice note on the matter[3]. This describes those factors which should not contribute to OAN as being 'below the line'; they are matters which should not be included in the OAN calculation but which should be taken into account at a later stage when formulating provision targets. The technical advice note argues that affordable housing need is not measured in a way that is directly comparable with OAN and should not be a constituent of it; affordable housing should thus be below the line and a policy consideration."

30. In paragraph [9] the Inspector identified the relevant figures. Based upon demographic led household projections the bottom end of the FOAN range for HBBC up to 2031 was 375. This is set out in the first substantive column in Table 84 of the SHMA cited at paragraph [19] above. The Inspector then stated that due to the mechanism by which the vast majority of affordable housing was delivered (i.e. as a percentage of all residential schemes over a threshold of units, and subject to viability) it was always necessary to consider whether to increase the number of dwellings required overall in order to maximise the provision of affordable housing. She observed that this measure, which is referred to in the PPG (see paragraph [16] above), was a policy decision and was therefore appropriately calculated "*outside*" of the FOAN. The Inspector recorded that in HBBC the number of homes needed to support proportionate economic growth was identified in the SHMA as 467. This can be seen from the fourth column in Table 84 (*supra*) and the affordable housing need (in the fifth column) was 248 per annum. In order to support the provision of additional affordable housing, and a growth in employment/labour supply, therefore, the top end of the range was identified at 450. She said: "*... that is therefore a policy-on figure*".

31. In paragraph [10] she stated that there was no dispute but that there was a significant need for affordable housing in HBBC and that the most recent analysis was the SHMA which put the figure at approximately 250 dpa (see the fifth column, which sets out a figure of 248). She stated that in increasing the demographic produced figure of 375 to 450, which amounted to a 20% uplift, specifically to provide for affordable housing and economic growth the FOAN "*properly*" took account of that need.

32. The Inspector then addressed the Claimant's principal argument which was that the top end of the FOAN range should be at least 980 dpa since this was the figure identified in Table 48 of the SHMA as the total amount of housing necessary to deliver the indicated housing need under current policy. Table 48 is contained within paragraph [6.63] of the SHMA Report. It is set out in the following terms:

**Table 48**

| LA | Affordable Need | Affordable Housing Policy | Affordable Housing Policy (Mid-Point) | Annual Housing Need | Total Housing Required Based on Current Policy |
|---|---|---|---|---|---|
| Leicester | 496 | 15 – 30% | 23% | 2,157 | 53,925 |
| Blaby | 349 | 10 – 30% | 20% | 1,396 | 34,900 |
| Charnwood | 174 | 30% | 30% | 696 | 17,400 |
| Harborough | 208 | 30% | 30% | 832 | 20,800 |
| Hinckley & Bosworth | 245 | 20 – 40% | 30% | **980** | 24,500 |
| Melton | 71 | 40% | 40% | 176 | 4,400 |
| NW Leicestershire | 209 | 20 – 30% | 25% | 836 | 20,900 |
| Oadby & Wigston | 160 | 10 – 30% | 20% | **800** | 20,000 |
| LLLPA | 1,913 | | | 7,873 | 196,825 |

(Emphasis added)

33. For present purposes (the issue is analysed in detail below) the salient figures (in bold in the table above) to note from this table are (i) the "Annual Housing Need" figure of 980 for HBBC; and (ii) the equivalent Annual Housing Need figure of 800 for Oadby. The 980 figure is important because it was a key part of the Claimant's case that in relation to HBBC the SHMA recorded that there was an Annual Housing Need of 980 houses and that the Inspector therefore erred in failing to give this objectively arrived at figure any weight or credence at all. The 800 figure for Oadby is important because it is the equivalent of the 980 figure for HBCC. It is of relevance to this case because in the Oadby litigation the 800 figure was rejected as being relevant to FOAN so that, by parity of reasoning, if that is so for Oadby it should equally be so for HBCC, and as such throws the Claimant's key argument into doubt.

34. The Inspector rejected the argument based upon the 980 figure robustly. She described it as "*Clearly impracticable and unreasonable*". She came to this conclusion by extrapolating that 980 dba represented a requirement of 196,825 units in the HMA as a whole. This amounted to: "*... a considerable, inconsistent and thus unjustifiable increase on the 75,000 or so dwellings calculated from household projections to be needed by 2031*". The important point to observe here is the discrepancy of the 980 dpa figure with the figures based on household projections.

35. Of the figure of 980 dpa for housing needs set out in Table 48 the Inspector concluded:

> "11. … The 980 figure identified in the SHMA is thus purely theoretical although it could be used as a pointer to further policy adjustments, such as a change in the percentage of affordable housing required. Significant issues in the area such as shortcomings in housing provision, including affordable housing, should be addressed through the Local Plan."

36. The Inspector benchmarked her conclusion that Table 84, which included the 450 dpa figure, was appropriate by reference to population projections produced subsequent to the SHMA. The SHMA figure was based upon 2011 data (see paragraph [18] above). The new population projections were for 2012. Analysis of these demonstrated a need for 364 dpa in HBBC derived from the total figure for Leicestershire. The Inspector stated that this was lower than the bottom end of the SHMA FOAN but was generally consistent with it. The Inspector thus stated:

> "12. … In my opinion the figure confirms the Council's approach and validates the CS housing provision of 450 dwellings which is about 24% above that needed to meet demographic increases."

37. In paragraph [13] the Inspector stated that it was not her role, in the Decision, to identify an alternative FOAN. She did record, however, that the Appellant had calculated that, all things being equal, the housing land supply would fall below five years where the FOAN was 539 dpa. That figure would represent a 44% uplift on the 375 demographically-led household projection which, in the Inspector's opinion, would represent a considerable number of additional affordable dwellings. She therefore stated that had she (hypothetically) considered that the 450 dpa housing requirement was inadequate or "*wanting*" it would still not have been necessary to increase that figure beyond the 539 threshold whereby a five year supply was unavailable. The significance of this is that it is a good deal lower that than the Claimant's figure of 980 for inclusion in the FOAN range.

38. In paragraphs [14] – [16] the Inspector cited various authorities. In particular she recited that in the Oadby litigation (*Oadby & Wigston Borough Council v SSCLG, and, Bloor Homes Limited* [2015] EWHC 1879 (Admin) per Hickinbottom J ("*Oadby*")) the Court had found that the Inspector, in that case, had been entitled to exercise his planning judgment upon the basis of the evidence before him when arriving at the conclusion that the range for Oadby arising from the Leicestershire SHMA, i.e. the same document that was before the present Inspector, was "*policy-on*" and that it therefore failed properly to reflect the affordable housing need and the need generated by economic factors. The Inspector observed that a significant difference

between that case and the one before her was that in Oadby the Council's housing requirement figure of 80 – 100 dpa was well below the SHMA affordable housing need of 160 dpa. That judgment of the High Court *in Oadby* was subsequently endorsed by the Court of Appeal: [2016] EWCA Civ 1040 (27th October 2016).

39. Finally, the Inspector noted that in the Charnwood CS Examination concluded in September 2015, in the light of a thorough assessment, the Inspector there had recorded that the SHMA provided an up-to-date and robust assessment of housing need for the HMA and that the HBBC FOAN of 375 – 450 was a component of that overall figure.

40. In paragraphs [53] – [55] the Inspector set out her overall conclusions for dismissing the appeal:

> "53. I have found that there is a five year supply of housing land in the Borough at this time; relevant policies for the supply of housing are not, therefore, considered out-of-date. In these circumstances is not necessary for me to determine which those policies are. The proposed development would not protect or preserve the open landscape to the east of Burbage which, whilst not specifically designated, is an important setting for the village and separates it from the M69 corridor.
>
> 54. The benefits of the proposed development include the provision of market and affordable housing in an area where the latter is much needed. The site is also close to the village centre, where there are local services, and within easy reach of Hinckley town centre by public transport. New public open space would be created and there would be other social and economic benefits such as additional support for local facilities and businesses. Nonetheless, these benefits are not sufficient to outweigh the harm to the landscape. I do not agree that the proposal would improve access to the countryside.
>
> 55. I am aware that Burbage is part of Hinckley Sub Regional Centre and that the CS strategy is that the majority of housing will be located in and around it. The positive aspects of the scheme, including the benefits referred to above and also factors such as the lack of harm to ecological interests or the living conditions of nearby occupiers, make it consistent with several CS policies, as will be the case with the vast majority of proposed development. Since this proposal is clearly contrary to CS Policy 4, which is most relevant to proposals in Burbage and thus most important in this case, compliance with other, more general policies carries little weight. The proposed development would therefore be contrary to the development plan as a whole. I have taken into account all the matters raised but found no compelling arguments to allow the appeal."

## D. Ground I: Analysis

### (i) FOAN is "policy-off": The distinction with "policy-on"

41. The starting point for analysis is the distinction between "policy-on" and "policy-off". In this case the nub of the Claimant's argument (the details of which are set out at paragraph [46] – [51] below) is that the Inspector should have been calculating a "policy-off" FOAN but, in fact, wrongly calculated a constrained "policy-on" figure and in so doing misapplied relevant guiding principles. In *Gallagher* (*ibid*) in the High Court at paragraph [37] Hickinbottom J. made three observations about the process of establishing housing need which provide an explanation for the distinction which has emerged as between policy "*on*" and "*off*". These were approved of by the Court of appeal in that case and, more recently, have been further approved of by the Court of Appeal in *Oadby* (see paragraph [38] above). In particular it is now well established that FOAN is closely related to relevant demographic, trend based projections; but that the ultimate "housing requirement" may well be quite different to FOAN in that it is modified, and often constrained, by policy considerations. This has led, as I have already observed (cf paragraph [1] above), to FOAN being described as "*policy off*" and housing requirement as "*policy on*". The three observations of Hickinbottom J, which reflect these distinctions, were as follows:

> "(i) Household projections: These are demographic, trend-based projections indicating the likely number and type of future households if the underlying trends and demographic assumptions are realised. …
>
> (ii) Full Objective Assessment of Need for Housing: This is the objectively assessed need for housing in an area, leaving aside policy considerations. It is therefore closely linked to the relevant household projection; but it is not necessarily the same. An objective assessment of housing need may result in a different figure from that based on purely demographics …
>
> (iii) Housing Requirement: This is the figure which reflects, not only the assessed need for housing, but also any policy considerations that might require that figure to be manipulated to determine the actual housing target for an area. For example, built development in an area might be constrained by the extent of land which is the subject of policy protection, such as Green Belt or Areas of Outstanding Natural Beauty. Or it might be decided, as a matter of policy, to encourage or discourage particular migration reflected in demographic trends. Once these policy considerations have been applied to the figure for full objectively assessed need for housing in an area, the result is a "policy on" figure for housing requirement. Subject to it being determined by a proper process, the housing requirement figure will be the target against which housing supply will normally be measured."

### (ii) The judgment of the Court of Appeal in *Oadby*

42. Before turning to the particular issues arising in this case it is necessary to say a word about the judgment of the Court of Appeal in *Oadby*. The Court of Appeal was concerned with the self-same SHMA that is in issue in this case and which was relied upon by the Inspector. The Appellant Council appealed the order of Hickinbottom J dismissing its application under section 288 of the TCPA 1990 against the decision of the inspector allowing an appeal of the developer against the council's refusal of an application for outline planning permission for a development of up to 150 dwellings on land at Oadby in Leicestershire. Hickinbottom J. rejected the council's challenge to the decision on all grounds. The central issue in the appeal was whether the judge erred in holding that the Inspector had not misinterpreted paragraphs [47], [49], [157], [158] and [159] NPPF. In giving judgment Lindblom LJ observed that this was a case upon its facts and did not raise novel issues of points of principle. Nonetheless because of its strong evidential resonance in the present case it is of more than passing interest. It is also an informative case in that it highlights the robust deference that the Courts attach to the genuine planning judgments of Inspectors and, in particular, it exemplifies the workings of the statement in the PPG (see paragraph [16] above) that the calculation of FOAN is not an exact science.

43. The general tenor of the judgment is that, in accordance with well established principles, the judgment of an Inspector is not to be easily interfered with. If a conclusion is one of judgment the hurdle represented by irrationality is a very high one.

44. The judgment is also informative in that it highlights a number of evidential issues which reflect the principles that I have summarised at paragraph [13] above. An Inspector can, but need not, accept the analysis in an SHMA. So for instance an Inspector when confronted with an SHMA for a HMA is not bound to accept the apportionment in the SHMA as between different local authority areas if the Inspector considers that the criteria for apportionment are not adequate, bearing in mind that the analysis in a SHMA has not been subject to the sort of thorough testing that would occur in the formulation of a Local Development Plan (cf paragraphs [38] – [42]).

45. The NPPF is a broad statement of national policy and it requires an exercise of evaluative judgment when being applied to particular, local, decisions. The Court stated: "*This should come as no surprise to those familiar with the basic principles governing claims for judicial review and statutory applications seeking orders to quash planning decisions. As this appeal shows very well, the NPPF contains many broadly expressed statements of national policy, which, when they fall to be applied in the making of a development control decision, will require of the decision-maker an exercise of planning judgment in the particular circumstances of the case in hand*." (ibid paragraph [33]).

### (iii) The Claimant's submissions

46. I turn now to the Claimant's submissions. Mr Lockhart-Mummery QC started his submissions on behalf of the Claimant with four propositions.

47. First, in this case where there is no post-NPPF housing need requirement set out in a Local Plan the duty of the Inspector is to determine a "policy-off" (i.e. unconstrained)

figure for the number of dwellings to meet need for both market and affordable housing (to then be set against supply).

48. Second the theoretical figure is to be identified in full because FOAN is a "full" figure. It is not a figure to be "*met*" or actually "*provided*" which is the "*policy on*" figure which should come later in the Local Plan.

49. Third, in the present case the CS figure of 450 (see paragraph [27] above) is accepted by all concerned not to be the FOAN. However it was no coincidence that the Inspector arrived at a figure of 450 as the upper end of the FOAN range because in fact the Inspector had not derived a proper FOAN figure but had, in substance, simply adopted the old, irrelevant CS figure.

50. Fourth, the SHMA with its identification of 450 in Table 84 is a "*policy on*" figure and therefore not reliable. Mr Lockhart-Mummery QC based this submission upon the judgment of the High Court in *Oadby* (endorsed by the Court of Appeal) where Hickinbottom J held that the SHMA for Leicester incorporated various "*policy on*" considerations and that therefore the Inspector in that case had been right to adjust the SMHA based figures in order to arrive at an end figure which was not the same as that in the SHMA. At first instance Hickinbottom J had held that the SHMA was "*policy-on*" in two key respects. First, the figures used by Oadby BC were based upon its policy decision not to accommodate additional workers drawn to its area by increased employment opportunities. The Judge said that this was a "policy-on" consideration because "*… it affects adjacent areas who would be expected to house those additional commuting workers*", (ibid paragraph [34(i)]). He said that it might be policy off <u>if</u> there was evidence or a development plan or an agreement between the authorities to the effect that adjacent authorities agreed to increase their housing accommodation accordingly. But there was no such evidence. Second, he referred to the fact that the SHMA took into account the availability of private rented accommodation which did not meet the definition of affordable housing and this was therefore also a "policy-on" consideration (ibid paragraph [34(ii)]). Mr Lockhart-Mummery QC, armed with these examples, contended that the SHMA was (in essence) systematically flawed because its figures were not pure "*policy-off*".

51. Mr Lockhart-Mummery QC dissected the Decision of the Inspector and he highlighted various passages in which he argued that it could be seen that the Inspector had applied a thoroughly muddled approach to the calculation of FOAN in which she had variously confused "*policy-on*" with "*policy-off*", had taken account of data sources which themselves were confused and misleading, and had ignored highly relevant data which directly correlated to the total housing need for the area.

**(iv) The proper approach to the interpretation of the Inspector's Decision**

52. Notwithstanding the considerable forensic skill which this analytical exercise was conducted I do not agree with the analysis or the conclusion of Mr Lockart-Mummery QC. In coming to my own conclusion it is important that I stand back and apply to the Decision a substance over form analysis. The Inspector's decision is, with respect to her, quite dense. She uses professional shorthand to describe ideas and concepts and she cross refers, without elaborating, to different sources for both the evidence she relies upon and the policy guidance she considers to be relevant. I remind myself that such decisions are to be read and understood in their context and it is the task of the

Court to avoid semantic nit picking. I also bear in mind that the audience is a sophisticated and professional audience which will (or should) understand the short hand that the Inspector uses and which will also have an understanding of the relevant legislative and policy framework and context. In the text below I have highlighted the main criticism of the Decision and my response.

**(v) "Met": Decision paragraph [8]**

53. Mr Lockhart-Mummery QC argued that the Inspector erred when she said in paragraph [8] (see above at paragraph [29]) that a main area of dispute between the parties was whether affordable housing need "*should be fully met by the FOAN*". It was argued that by using the expression "*met*" she was confusing an affordable housing *requirement* with the ("*policy-on*") *meeting* of that requirement. In my view this is far too unforgiving an approach to interpretation. It is clear from the Decision read fairly as a whole that the Inspector was seeking to establish a working "policy off" FOAN for the purpose of resolving the dispute before her and she was doing this in accordance with demographically led, trend based, projections which took account of affordable housing need. There was in my view no confusion between absolute (policy off) need and actual (policy on) fulfilment.

**(vi) The Inspector erred in ignoring the figure of 980 dpa for Annual Housing Need in Table 48: The dog that did not bark**

54. The Claimant next argued that the upper end of the FOAN range should have been 980 or even more. They take this figure from Table 48 SHMA which is set out at paragraph [32] above. They argue that since in the SHMA this figure of 980 is under the heading "Annual Housing Need" then it is an objectively derived basis for housing need and to ignore it or reject it in the cursory way that the Inspector did and thereby not to use it as part of the FOAN range was irrational and/or reflected a misdirection and misunderstanding of the NPPF. In his reply submissions Mr Lockhart-Mummery QC clarified that it was not his case that the Inspector was *bound* to accept that figure but, rather, that she was required to take it into account.

55. I do not accept Mr Lockhart-Mummery QC's analysis of the 980 figure.

56. First, the 980 figure is derived from Table 48 SHMA. This is not a figure based upon demographic, trend-based, projections indicating the likely number and type of future households (See the articulation by Hickinbottom J above at paragraph [41]). It is a much looser and imprecise calculation premised upon affordable need and as such is not calculated according to the methodology identified in paragraph [159] NPPF and in the relevant Guidance.

57. Second, it will be seen that, in Table 48 (paragraph [32] above), the Annual Housing Need in HBBC of 980 has been determined to be exactly four times (4X) the "Affordable Need" figure (in column 2) of 245; put another way HBBC apply a precise 25% figure to "Annual Housing Need" to arrive back at the affordable need figure. It was explained by counsel for HBBC, and not challenged by the Claimant, that the 980 figure was very much a policy based figure which flows from the choice of the percentage or figure to be used to describe the relationship between affordable housing and Annual Housing Need. That multiplier or percentage could vary for all

sorts of perfectly rational yet transient policy considerations. It was for this reason that it was not a figure which could, sensibly, be used as part of a FOAN calculation.

58. Third, confirmation of these conclusions comes from the fact that the Annual Housing Need figure in Table 48 was not relied upon in the High Court and in the Court of Appeal in *Oadby*. There is for this reason a real probative significance in the dog that did not bark: The *Oadby* case concerned exactly the same SMHA as is in issue in this case and it also involved an analysis of the figures in Tables 48 and 84. As such there is an "Annual Housing Need" figure for Oadby which equates to the 980 figure for HBBC. In the case of Oadby the figure is 800 (see at paragraph [32] above). If Mr Lockhart-Mummery QC is correct in his elevation of the 980 figure in relation to HBBC into a figure of signal importance for the calculation of FOAN in relation to HBS then, *a fortiori*, the figure of 800 should equally have loomed large in the analysis in *Oadby*. Yet it did not.

59. Mr Lockhart-Mummery QC argued that, in effect, "Homer nodded". For inexplicable reasons the parties in that case, and the Court, overlooked the 800 figure and no doubt if his team had been arguing the *Oadby* case they would have relied upon the 800 figure. As such there was no significance at all in the dog that did not bark.

60. Ms Blackmore for the Secretary of State and Ms Osmund Smith for HBCC in the light of this undertook a forensic deconstruction of the point, which to my mind is wholly convincing. They pointed out that the 800 figure had in fact briefly emerged in the *Oadby* case only to be rapidly and deliberately submerged. This is clear from the judgment of Hickinbottom J where he recorded that in the SHMA the authors had not applied a percentage figure to housing need to arrive at a sensible FOAN because to have done so do so would have created an annual housing need figure of 800dpa which "*was clearly unrealistic and unviable*" ([2015] EWHC 1879 at paragraph [26(i)]). The Judge cross-referred to the SHMA itself (at paragraphs [6.80]) where the authors acknowledged that a total housing need figure based upon the assessment of affordable housing was "*unrealistic*". Thus it is not correct to say that the 800 figure was not part of the analytical fabric of the *Oadby* case. It was, but it was discarded as irrelevant: Homer did not nod. This is the context in which the Court of Appeal then came to endorse the Judge's finding that the Inspector acted correctly in finding that a figure of 147 sufficed as the FOAN for the purpose of the decision. It is worth setting out paragraphs [47] and [48] of the judgment of the Court of Appeal because they formerly endorse the 147 figure which is, plainly, a very far cry from a figure of 800:

> "47.Faced with making his own assessment of the appropriate level of housing need to inform the conclusion he had to draw under the policy in paragraph 49 of the NPPF, and doing the best he could in the light of the evidence and submissions he had heard, the inspector adopted an approximate and "indicative" figure of 147 dwellings per annum (paragraphs 33 and 34 of the decision letter), making no "specific allowance" for affordable housing (paragraph 35). Again, his conclusions embody the exercise of his own planning judgment, and I see no reason to interfere with them. He might simply have adopted a rounded and possibly conservative number to represent the global need for market and affordable housing in the council's area, such as the figure of 150 dwellings per annum, which in

> closing submissions for Bloor Homes Ltd. was said to be well below the actual level of need, or a higher figure closer to the 173 dwellings per annum referred to in the Strategic Housing Market Assessment. I accept that. But as Hickinbottom J. concluded, I do not think the court could conceivably regard the inspector's figure of 147 dwellings per annum as irrational, or otherwise unlawful.
>
> 48. Taken as a whole, therefore, the inspector's approach was in my view consistent with the decision of this court in *Hunston Properties Ltd.*, and lawful."

61. To further place the judgment into context the figure of 147 which was upheld was itself derived from the part of Table 84 which the Inspector in the present case takes a her point of departure. It is true that the "147" figure is not *itself* found in Table 84 but that is because the Inspector did not agree with the way in which the figures had been computed for Oadby in Table 84 so carried out his own assessment and modified the figure in the SHMA to arrive at the new figure. But the important point is that the logic used by the Inspector in the *Oadby* case, endorsed by the Courts, is the same logic as has been used by the Inspector in the present case. And both Inspectors rejected the "Annual Housing Need" figure set out in Table 48 (the Inspector in *Oadby* adopting a figure of 147 and the Inspector in this case expressly rejecting the 980 figure). The rejection of the 800 figure in *Oadby* was rational and sound, just as the rejection by the Inspector of the 980 figure in paragraph [11] of her decision is rational and sound in this case. When set in the above context it is plain that the Inspector was well within the legitimate scope of her judgment to conclude that the use of a 980 figure was "*clearly impractical and unreasonable*" (see paragraph [34] above).

62. In short the Inspector addressed herself to the 980 figure. She did not ignore it. But she did reject it upon the basis of her assessment that it was impractical and unreasonable. When measured against the analysis of the equivalent figure in *Oadby* and when it is understood that the 980 figure is not based upon a computational methodology that it is the norm for assessing FOAN, her view is mainstream, rational and correct.

**(vii) Did the Inspector use unreliable sources and ignore affordable housing?**

63. The Claimant next complains that the Inspector took into account unreliable evidence sources. In my judgment the Inspector applied a perfectly adequate test relying upon an adequate body of evidence. The approach she adopted was consistent with the approach to evidence collation and appraisal approved of in case law: See paragraph [13] above.

64. The relevant guidance makes it clear that there is no universally approved way of calculating FOAN and that the answer in each locality will be dependent upon local condition and the exigencies of the available evidence. Indeed, authorities are urged to rely upon secondary sources and not primary sources upon the basis that to conduct own-research would not be a proportionate use of resources: See paragraph [16] above.

65. In this case Ms Blackmore for the Secretary of State described the data sources before the Inspector as "*a messy basket of evidence*" and "*a large and somewhat unwieldy basket of evidence*". The approach adopted by the Inspector can be summarised as follows:

    i) First she analysed the figures in Table 84 of the SHMA based on demographic trend based population figures which she explained how, in her view, the range set out there (of 375-450) was arrived at (Decision paragraphs [9] – [10])

    ii) Then she rejected the Claimants figure of 980 which rejection I have concluded was entirely proper.

    iii) Next she observed that the SHMA was based upon 2011 data. So the Inspector then examined the 2012 population projections. This data showed a 364 dpa for the HBBC area which was lower than the figures in the SHMA FOAN but was "*generally consistent with it*" (Decision paragraph [12]).

    iv) Then she found that the 2012 data confirmed the 450 figure in the SHMA and in the CS which she noted was "*about 24% above that needed to meet demographic increases*".

    v) Next she benchmarked her conclusion against a figure of 539dpa which was the point at which the Claimants calculated in their evidence to her that the housing land supply would fall below the five year threshold. So, taking the Claimant's figures as accurate, she concluded that on her assessment of the range there was an ample safety margin: See paragraph [37] above.

    vi) Finally, she pointed out that in another Inspector's decision which she treated as comparable for the purpose (See Decision paragraph [17] - Charnwood) the Inspector had treated the SHMA as up to date and robust.

66. In my view this approach was rational and well within the Inspector's ordinary margin of judgment. I should deal briefly with a number of particular criticisms made by the Claimant.

67. It is said that in relying upon the CS figure of 450, when it was common ground that the CS was pre-NPPF and non-FOAN, the Inspector was in fact applying an incorrect and non-NPPF compliant methodology. I reject this argument. The Inspector compared her conclusions about the FOAN range with the CS simply as a possible benchmarking exercise. This is clear from Decision paragraph [12]. She accepted that the CS was not a FOAN but as a matter of logic this did not render it wholly inadmissible as a piece of evidence which could then be used to calculate, independently, the FOAN. So, for instance, if the 2009 figures had remained valid and not subject to change over time then there is no reason why that fact should not be accorded at least *some* proper degree of probative weight. I reject the suggestion that in using the CS as a benchmark the Inspector was improperly using that figure as the FOAN.

68. Next it is said that because the Inspector referred a document entitled "Objectively Assessed Need and Housing Targets Technical Advice Note" (July 2015, 2ed) which

suggested that affordable housing was a "*below the line*" (i.e. "policy-off") this proved that she had treated affordable housing as extrinsic to her assessment of the FOAN. This was because case law has now made clear that the FOAN was a measure of total housing need which necessarily included affordable housing and is "policy-off". As to this it is true that in the Decision the Inspector does refer to the Technical Advice (in Decision paragraph [8] and footnote [3]). This is not an official document and the relevant paragraphs cited do appear not to be consistent with case law. But this is in my view a classic illustration of the need to avoid directing an overly finely tuned forensic microscope at the reasoning in the decision. It would, of course, have been better had the Inspector either not referred to the Advice at all or recognised that it was (at least arguably) inconsistent with case law. But when one stands back it is not clear that she was doing any more than reciting an argument made to her. But more importantly, when one examines the approach actually taken it is clear that she did not ignore affordable housing from the FOAN.

69. The Inspector is also criticised for saying in Decision paragraph [13]: "*It is not my role in this decision to identify an alternative FOAN*". It is argued by reference to *Oadby* in the Court of Appeal that it is precisely the Inspector's job to calculate the FOAN where there is no up-to-date Local Plan (cf e.g. Paragraphs [38ff]). I am not entirely certain what the Inspector meant by this since she *did* go on and determine a FOAN range which in the circumstances she held to be sufficient for the task before her i.e. determining the appeal. I suspect she was saying no more than that she did not have to decide upon a definitive FOAN but that she did have to calculate a FOAN range sufficient to enable her to resolve the dispute arising before her on the appeal which is a proper approach to take: see paragraph [13] of this judgment above. Her conclusion in paragraph [13] of the Decision that her selected range was well below the figure that would put having a five year supply in jeopardy is consistent with this. But be that as it may this is an immaterial objection which does not go to the root of the Decision.

## E. Conclusion on Ground I

70. In conclusion on Ground I it is my judgment that the Inspector's Decision was squarely within the scope of the margin of discretion or judgment which must be accorded an Inspector in circumstances such as these. The application on this ground fails.

## F. Ground II: Failure on the part of the Inspector to ensure that potential section 106 contributions to Leicestershire Police complied with regulation 122 of the Community Infrastructure Levy Regulations 2010

### (i) The regulatory framework

71. Pursuant to Regulation 122(2) of the Community Infrastructure Levy Regulations 2010 ("the Regulations"), a planning obligation may only constitute a reason for granting planning permission for the development if the obligation is (a) necessary to make the development acceptable in planning terms: (b) directly related to the development; and (c), fairly and reasonably related in scale and kind to the development. Paragraphs [203] – [206] NPPF address planning conditions and obligations. They provide that local planning authorities should consider whether otherwise unacceptable development could be made acceptable through the use of

conditions or planning obligations but that planning obligations should only be used where it is not possible to address unacceptable impacts through a planning condition. Paragraph [204] states that planning obligations should only be sought where they meet conditions which, in essence, mirror those in Regulation 122(2). Paragraph [206] states that planning conditions should only be imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects.

**(ii) The reasoning in the Decision**

72. In the present case Leicestershire Police ("LP") sought a significant monetary contribution under Section 106 upon the basis that the proposed development would give rise to additional demands upon police services. The Inspector concluded that the LP had demonstrated adequately that the sums requested were to be spent upon a variety of essential equipment and services the need for which arose directly from the new households occupying the proposed developments. She set out her reasons in paragraphs [44] – [47] of the Decision. The reasons were in the following terms:

> "44. Leicestershire Police (LP) has demonstrated adequately that the sums requested would be spent on a variety of essential equipment and services, the need for which would arise directly from the new households occupying the proposed development. It would be necessary, therefore, in order to provide on-site and off-site infrastructure and facilities to serve the development commensurate with its scale and nature consistent with LP Policy IMP1. The planning contribution would also enable the proposed development to comply with the Framework's core planning principle of supporting local strategies to improve health, social and cultural well being and delivering sufficient community facilities and services to meet local needs.
>
> 45. In respect of compliance with CIL Regulation 123(3) the proposed spending has been apportioned to individual projects and procurement, such as property adaptation and a contribution towards a vehicle, in order to ensure no need for the pooling of contributions. In addition a clause of the undertaking which, in requiring written confirmation prior to payment that it would only be spent where there were no more than four other contributions, would provide a legal mechanism for ensuring full compliance with Reg. 123(3).
>
> 46. Evidence was submitted in the form of two maps with types of criminal incidents plotted on them. The first of these shows that there were several burglaries and thefts in the housing area adjacent to the appeal site during the year up to July 2014. The second map covers a larger area, this time in Blaby, and indicates a steady rate of incidents, mainly forms of stealing, in all types of residential area. I have no reason to believe that levels of crime differ significantly between Hinckley/Burbage and Blaby.

> 47. I consider this to be a no less realistic and robust method of demonstrating the criminal incidents likely to arise in a specific area than the analysis of population data which is normally used to calculate the future demand for school places. The evidence gives credence to the additional calls and demands on the police service predicted by LP."

**(iii) The Claimant's submission**

73. The Claimant argued, during the planning appeal, that as the population of an area increased so the overall rate of crime in a police area, and hence the demands placed upon resources, declined. This proposition was advanced upon the basis of official, statistical, information and was set out in a proof of evidence adduced on behalf of the Claimant.

74. For their part LP accepted that in the Leicester, Leicestershire and Rutland areas crime was at its lowest point for many years said to be due "*... to the excellent efforts of the police and its partners*".

75. LP, in its evidence, produced two maps the purpose of which was to establish that there was a pattern of crime in new housing estates. The Claimant did not challenge that evidence but LP did not, so it was argued, generate any evidence to establish that increased levels of housing produced more crime and, in consequence, increased demand upon services in the relevant LP area.

76. In the course of argument Mr Lockhart-Mummery QC said that the nub of the Claimant's objection was that the Inspector had failed properly to address the Claimant's evidence. He said that had the Inspector, acting properly within the scope of her margin of discretion and judgment, addressed but rejected the evidence, then the Claimant could have no objection. However, he argued, that there was no evidence that this analytical process had ever occurred since the Decision did not address the Claimant's evidence. He thus contended that the Inspector misdirected herself as to the evidence and/or had failed to give proper reasons for her Decision.

**(iv) Analysis**

77. I do not accept this submission.

78. First, it must be remembered that the Inspector had already dismissed the appeal and she was dealing with disputes relating to contributions upon an alternative basis only. In the circumstances it is not reasonable to have expected a detailed exegesis of the sort that might possibly have been expected had this been the true crux of the issue.

79. Second, and in any event, in my judgment her reasons were perfectly adequate. There was no reason for her to do other than explain why she accepted the evidence of LP. The Inspector was clearly aware of all the evidence because it had been tendered in the course of a public inquiry before her and had been the subject of cross examination, debate and submissions. The gist of the Inspector's reasons are adequately set out in paragraphs [44] – [47] (see above). She records that LP has adequately demonstrated that the sums would be spent on equipment and services which arose "*... directly from the new households occupying the proposed*

*development*". Accordingly she concluded, in terms of causality, that there was a proper nexus between the expenditure and the new development. She also records that the proposed spending was properly attributed between individual projects and procurement such as property adaptation and contributions towards a vehicle in order to prevent a need for pooling of contributions. She also observed that there was a clause of the undertaking which required written confirmation prior to payment that it would only be spent where there was no more than four other contributions which, she concluded, provided a legal mechanism for ensuring compliance with the Regulations of 123(3). She accepted the evidence tendered in the form of the two maps which she found established a "*steady rate of incidents*" in the Blaby area which she considered to be an adequate comparable. She also referred to predicted increases in calls and demands.

80. I have read all of the evidence placed before this Court which is said to be relevant to the issue. This includes, *inter alia*, a statement from Mr Michael Lambert on behalf of LP which sets out the justification for the contribution. In a section entitled "*The policing impact of 73 additional houses at the site*", Mr Lambert explains why, in the view of LP, the overnight population of the proposed development would be 170 persons and that, in terms of the relevant counterfactual, that represented an increase over demand "*from what is currently open fields*". Mr Lambert cited empirical data based upon existing crime patterns and policing demand and deployment from nearby residential areas which established the direct and additional impacts of the development upon local policing. That data established that there would be an incremental demand in relation to such matters as: calls and responses per year *via* the police control centre; an increase in annual emergency events within the proposed development; additional local non-emergency events which trigger follow-up with the public; additional recorded crimes in the locality based upon beat crime and household data and a proportionate increase in anti-social behaviour incidents; an increase in demand for patrol cover; and, an increase in the use of vehicles equating to 12% of an additional vehicle over a six year period. I have set out merely examples of the incremental costs which would be incurred by the development. It is apparent from Mr Lambert's report that the increase in cost is primarily of a variable nature; but there are some elements of fixed costs which need to be covered as well. Reading the document as a whole there can be no doubt but that LP tendered sufficient evidence to justify the Inspector's conclusions.

81. In short, the reasons given by the Inspector were brief but sufficient; and the evidence base before the Inspector, and adduced before the High Court, establishes that there was an ample evidence base upon which the Inspector was entitled to base her conclusion.

## G. Conclusion

82. For all the above reasons the application does not succeed.

# EXAMPLES OF APPEAL DECISIONS SUPPORTING THE POLICE

**Appeal Ref and Procedure: APP/Y3615/W/23/3320175 – Public Inquiry**

**Appeal Decision: Allowed – 24 May 2024**

**Planning Inspector: Christina Downes DipTP MRTPI**

**Appellants: Taylor Wimpey UK Limited**

**Land at the former Wisley Airfield, Hatch Lane, Ockham, Surrey**

**The development proposed includes a full planning application comprising:**

- **i) a realigned section of the proposed Wisley Lane Diversion, to include a roundabout with a stub road as the primary access to serve the new settlement from Ockham Interchange;**
- **ii) a road junction access into the proposed employment area from the proposed Wisley Lane Diversion;**
- **iii) a new road junction as a secondary access to serve the new settlement from Old Lane;**
- **iv) SANG and associated infrastructure, including SANG car parks;**
- **v) Restricted access from Ockham Lane.**

**The development proposed includes an outline planning application (with all matters reserved) for the phased development of part of a residential-led new settlement comprising:**

**Up to 1,730 dwellings (Class C3 use), 8 gypsy and travellers pitches, up to 100 units of housing for older people (Class C2 use) ), a mixed-use commercial local centre with public square, community hub and employment area alongside other commercial mixed-use neighbourhood centres located throughout and an employment area, (Classes E, F2(b), B2/B8, and sui-generis uses subject to specific planning permissions), a secondary school, a primary school, (Class F1(a)), up to 2 nurseries,(Class E (f)), also incorporating green infrastructure (including parks, neighbourhood greens and sports pitches (Class F2(c) and associated pavilion (Classes E(b) and (d), F2(b)), SANG other infrastructure, (Class E(b)), part of Wisley Lane Diversion between Ockham Interchange roundabout and realigned section of Wisley Lane Diversion, a vehicular / cycle / pedestrian sustainable transport corridor (linking the proposed Wisley Lane Diversion roundabout to Old Lane) and associated infrastructure and earthworks at land at the former Wisley Airfield (with construction access from Ockham Interchange and Elm Corner)**

**Force and Method of Appeal Representation: Surrey Police – Written Representations**

**Application: 22/P/01175 – Guildford Borough Council**

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*473. There is a financial contribution of £339,798 for staffing and equipment cost and other infrastructure relating to policing. There would also be an on-site office space of at least 24m2 plus dedicated WC facilities within the community building along with associated parking for the use of Surrey Police. This would comply with the Infrastructure Schedule and policy ID1 in the LPSS. An extremely detailed letter was submitted to the inquiry on behalf of the Police and*

*Crime Commissioner for Surrey. This made clear the demands that a new development of this size would make on police resources and that these demands could not all be met by public funding. The contribution would be paid in four tranches with 50% before the commencement of the first residential unit. The final 10% would be paid prior to the occupation of the 1,600th residential unit. Whilst this would be quite late in the development there would remain sufficient value in the site to ensure that this final payment would be made.*

474. *There was a query about the size of the contribution in that the justification in the aforementioned letter appeared to be £10,000 higher than an earlier calculation. However, it is clear that the earlier calculation was incorrect and that there was an internal inconsistency with regards to staffing costs. I am satisfied that the contribution as it stands in the Deed is correct and has been properly justified. The obligation requiring staged payments is reasonable in recognition that policing responsibilities would increase in step with the size of the new population. The on-site facilities would be provided prior to the occupation of 750 residential units by which time 70% of the contribution would also have been paid.*

479. *The community building is defined in the Deed as a flexible multi-use facility in the Local Centre. It would include a meeting space, community hall, police office, office for the Stewardship Body and welfare facilities. The obligations require details of its location, specification including parking, uses and equipment, and arrangements for its future management and maintenance. The community building is to be constructed by the occupation of the 750th residential unit. If an on-site healthcare facility is to be provided in the community building that element would not need to be completed until later as explained above. However, the decision as to whether on-site healthcare facilities are to be provided would be known well in advance. In order that the Borough Council is satisfied that the community building is fit for purpose there are inspection provisions, which also require any remedial action to be addressed.*

**Appeal Ref and Procedure: APP/E3715/W/21/3268629 – Public Inquiry**

**Appeal Decision: Allowed – 01 September 2021**

**Planning Inspector: M Philpott BA(Hons) MA MRTPI**

**Appellants: Mr David Joseph (Bloor Homes Limited)**

**Land North of Coventry Road, Long Lawford, CV23 9BT**

**The development proposed was originally described as '*development of 153 residential dwellings with associated landscaping, public open space and infrastructure, including an amended junction between the A428 Coventry Road and Back Lane'.***

**Force and Method of Appeal Representation: Warwickshire Police – Written Representations**

**Application: R17/1089 – Rugby Borough Council**

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*52. Contributions would also go towards the staffing, equipment, premises and vehicle requirements of Warwickshire Police and improvements to the library facilities at Rugby library. The contributions would address the impacts of the occupiers relying on these services. Both contributions are based on established methodologies within the borough and reflect the number of new occupiers. They meet the tests for planning obligations. Similarly, a contribution to address identified shortfalls in education provision also satisfies the tests.*

**Appeal Ref and Procedure: APP/T3725/W/21/3270663 – Public Inquiry**

**Appeal Decision: Allowed – 12 August 2021**

**Planning Inspector: Harold Stephens BA MPhil Dip TP MRTPI FRSA**

**Appellants: A. C. Lloyd (Homes) Ltd**

**Land south of Chesterton Gardens, Leamington Spa**

**The development proposed is an outline planning application for a residential development of up to 200 dwellings with associated access, landscaping and public open space (all matters reserved apart from access).**

**Force and Method of Appeal Representation: Warwickshire Police – Written Representations**

**Application: W/20/0617 – Warwick District Council**

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*53. The s106 Agreement is between (1) AC Lloyd Homes Limited (2) Ann Richardson, Janet Stallard & Robert McGregor (3) Warwick District Council and (4) Warwickshire County Council. The proposed planning obligations within the s106 Agreement are as follows…*

- *Police Contribution: £33,645 towards the recruitment and equipping of police staff, the provision of police vehicles and the provision of police office accommodation…*

*54. The tables in section 6 of the CIL Compliance Statement explain how the above planning obligations comply with the tests set out in Regulation 122(2) of the Community Infrastructure Levy Regulation 2010 (as amended) and paragraph 57 of the NPPF.*

*56. In my view, all of the obligations in the s106 Agreement are necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind to the development. Therefore, they all meet the tests within Regulation 122 (2) of the CIL Regulations and should be taken into account in the decision. The development makes adequate provision for any additional infrastructure and services that are necessary, including affordable housing, arising from the development.*

**Appeal Ref and Procedure: APP/W3710/W/20/3251042 – Public Hearing**

**Appeal Decision: Allowed – 09 November 2020**

**Planning Inspector: JP Sargent BA(Hons) MA MRTPI**

**Appellants: North Warwickshire & South Leicestershire College**

**North Warwickshire & South Leicestershire College, Hinckley Road, Nuneaton, CV11 6LS**

**The development proposed is the development of up to 195 dwellings together with the provision of a 3G sports pitch, associated public open space, and other green infrastructure, and landscaping.**

**Force and Method of Appeal Representation: Warwickshire Police – Written Representations**

**Application: 036050 – Nuneaton & Bedworth Borough Council**

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*40. I have considered the legal agreement against advice in the Framework and the tests in Regulation 122 of The Community Infrastructure Levy Regulations 2010, as well as the requirements of the development plan.*

*41. In the light of Borough Plan Policies H1, H2, HS1 and HS5, and having regard to the evidence before me, I have no grounds to find the intended affordable housing, and contributions to education, healthcare, primary care and policing would not be necessary, related to the development or proportionate. Using the agreement to secure the provision and management of the sustainable drainage scheme and the public open space is also appropriate.*

**Appeal Ref and Procedure: APP/Y0435/W/20/3251121 – Public Inquiry**

**Appeal Decision: Allowed – 14 October 2020**

**Planning Inspector: David Prentis BA BPI MRTPI**

**Appellants: HB (South Caldecotte) Ltd**

**Land at Brickhill Street, South Caldecotte, Milton Keynes, MK17 9FE**

**The development proposed is the development of the site for employment uses, comprising of warehousing and distribution (Class B8) floorspace (including mezzanine floors) with ancillary Class E office space, a small standalone office (Class E) and small café (Class E) to serve the development; car and HGV parking areas, with earthworks, drainage and attenuation features and other associated infrastructure, a new primary access of Brickhill Street, alterations to Brickhill Street and provision of Grid Road reserve to Brickhill Street.**

**Force and Method of Appeal Representation: Thames Valley Police – Written Representations**

**Application: 19/01818/OUT – Milton Keynes Council**

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*13. A draft s106 Agreement was discussed at the inquiry. As changes were made to the draft at a late stage, I allowed some time after the Inquiry for it to be signed. The signed version subsequently received was consistent with the final draft. The Agreement would provide for…*

- *schedule 7 – a public art strategy; an emergency services contributions; a public art contribution and a community facilities contributions…*

*41. The Council submitted a statement of compliance with the Community Infrastructure Levy Regulations (CIL Regulations) which set out the justification for the above obligations, including identification of relevant policies in Plan:MK (the adopted Local Plan). With the exception of the matters referred to below, the need for these obligations was agreed between the Council and the appellant and was not disputed by any other party. I see no reason to differ and have taken the obligations into account accordingly.*

**Appeal Ref and Procedure: APP/R3705/W/19/3234056 – Public Hearing**

**Appeal Decision: Dismissed – 30 April 2020**

**Planning Inspector: S J Lee BA(Hons) MA MRTPI**

**Appellants: Summix IFW Developments Ltd**

**Land East of Islington Farm, Tamworth Road, Wood End, Warwickshire**

**The development proposed is residential development (Class C3) with associated access, landscaping, open space and drainage infrastructure, with all matters reserved save access.**

**Force and Method of Appeal Representation: Warwickshire Police – Written Representations**

**Application: PAP/2018/0762 – North Warwickshire Borough Council**

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3. *A signed and dated S106 agreement was produced at the hearing. This includes an obligation to provide up to 50% affordable housing. It also requires the developer to make financial contributions towards the provision of sustainable travel packs, improvements to public rights of way and a bus stop, police services, youth provision, off-site leisure and healthcare. I shall return to this matter below.*

37. *I have considered the S106 Agreement in line with Regulation 122(2) of the Community Infrastructure Levy Regulations 2010 and paragraph 56 of the Framework. These state that planning obligations must only be sought where they are necessary to make development acceptable in planning terms, are directly related to the development and are fairly and reasonably related in scale and kind to the development.*

39. *Detailed correspondence outlining the requirements from the increased population for healthcare and policing was submitted by the relevant bodies in relation to the original application…*

42. *I conclude that the terms of the S106 agreement meet the tests set out above and thus I will take them all into account as material considerations. Nevertheless, all obligations other than that relating to affordable housing provide mitigation for the impacts of development, rather than any specific benefits.*

**Appeal Ref and Procedure: APP/R3705/W/18/3196890 – Public Hearing**

**Appeal Decision: Dismissed – 01 April 2019**

**Planning Inspector: Brendan Lyons BArch MA MRTPI IHBC**

**Appellants: Taylor Wimpey UK Ltd**

**Land to the south of Tamworth Road and to the west of the M42, Tamworth, B78 1HU**

**The development proposed is described as residential development of up to 150 dwellings, open space, landscaping, drainage features and associated infrastructure, with full approval of the principal means of access and all other matters reserved.**

**Force and Method of Appeal Representation: Warwickshire Police – Written Representations**

**Application: PAP/2017/0602 – North Warwickshire Borough Council**

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*46. I also accept that the other obligations of that UU, involving financial contributions to mitigate impacts on hospital, healthcare and police services would be policy and legally compliant.*

*48. I conclude that with the exception of the proposed biodiversity offsetting obligation, the proposal would provide adequate justified mitigation for the effects of development on local infrastructure.*

**Appeal Ref and Procedure: APP/C3810/W/17/3187601 – Public Inquiry**

**Appeal Decision: Allowed – 28 September 2018**

**Planning Inspector: Matthew C J Nunn BA BPL LLB LLM BCL MRTPI**

**Appellants: Mulgrave Properties LLP**

**Land west of Church Lane and south of Horsemere Green Lane, Climping, West Sussex, BN17 5RY**

**The development is described on the application form as "outline application for the erection of up to 300 dwellings and ancillary development comprising open space, a building within use class D1 of up to 875 sqm (net), a building for A1 use having a floor area of up to 530 sqm (net), together with open space and ancillary work, including car parking and drainage arrangements, with appearance, landscaping, layout and scale wholly reserved for subsequent approval; the access detail, showing the points of access to the development, and indicated on Bellamy Roberts drawings numbered 4724/004 and 4724/005 are access proposals to be determined at this stage of the application; for the avoidance of doubt all other detail within the site is to be determined as a reserved matter at a later stage."**

**Force and Method of Appeal Representation: Sussex Police – Written Representations**

**Application: CM/1/17/OUT – Arun District Council**

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*28. A planning obligation was completed on 3 September 2018. The obligation secures the provision of affordable housing at a rate of 30%. It also secures the following for the Council: an NHS contribution; a police contribution; sports facilities contributions (including towards sports pitches, sports hall and swimming pool). It also secures a community building and the provision of public open space (including play areas), and a travel welcome pack to occupiers of the dwellings on first occupation (to include a cycle voucher or bus travel season ticket). In terms of provisions in favour of WSCC, the obligation safeguards land for future highway works, as well as contributions to highway improvement works. It also secures the provision of fire hydrants, and suitable access for fire brigade vehicles and equipment, contributions to fire and rescue services, library facilities, and education (primary, secondary and sixth forth).*

*29. I have no reason to believe that the formulae and charges used by the Council and WSCC to calculate the various contributions are other than soundly based. Both the Council and WSCC have produced Compliance Statements which demonstrate how the obligations meet various Council policies and the Community Infrastructure Levy Regulations. The development would enlarge the local population with a consequent effect on local services and facilities. I am satisfied that the provisions of the obligation are necessary to make the development acceptable in planning terms, that they directly relate in scale and kind to the development, thereby meeting the relevant tests in the Revised Framework and the Community Infrastructure Levy Regulations.*

**Appeal Ref and Procedure: APP/R3650/V/17/3171287 – Public Inquiry**

**Secretary of State Decision: Allowed – 29 March 2018**

**Planning Inspector: Philip Major BA(Hons) DipTP MRTPI**

**Appellants: Dunsfold Airport Limited (DAL) and Rutland (DAL) Limited**

**Dunsfold Park, Stovolds Hill, Cranleigh, Surrey, GU6 8TB**

**The development proposed is a hybrid planning application; part Outline proposal for a new settlement with a residential development comprising 1800 units (Use Class C3), plus 7500sqm care accommodation (Use Class C2), a local centre to comprise retail, financial and professional, cafes/restaurant/takeaway and/or public house up to a total of 2150sqm (Use Classes A1, A2, A3, A4, A5); new business uses including offices, and research and development industry (Use Class B1a and B1b) up to a maximum of 3700sqm; storage and distribution (Use Class B8) up to a maximum of 11000sqm; a further 9966sqm of flexible commercial space (B1(b), B1(c), B2 and/or B8); non-residential institutions including health centre, relocation of existing Jigsaw School into new premises and provision of new community centre (Use Class D1) up to a maximum of 9750sqm; a two form entry primary school; open space including water bodies, outdoor sports, recreational facilities, canal basin and nature conservation areas; public transport routes, footpaths and cycleways; landscaping; the removal of three runways; all related infrastructure including roads, car and cycle parking, energy plant and associated equipment, water supply, telecommunications, drainage systems and waste water treatment facilities; and part Full application for the demolition of 8029sqm of existing buildings and the retention of 36692sqm of existing buildings, for their future use for a specified purpose as defined by the Use Classes as specified in the schedule of buildings and their use; and the temporary use of Building 132 for a construction headquarters.**

**Force and Method of Appeal Representation: Surrey Police – Interested Party**

**Application: W/2015/2395 - Waverley Borough Council**

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*33. Having had regard to the Inspector's analysis at IR308-316, the planning obligation dated 1 August 2017, paragraphs 203-205 of the Framework, the Guidance and the Community Infrastructure Levy Regulations 2010, as amended, the Secretary of State agrees with the Inspector's conclusion for the reasons given in IR317 that the obligation complies with Regulation 122 of the CIL Regulations and the tests at paragraph 204 of the Framework.*

*263. The development would place undue pressure on existing infrastructure. This includes schools, health facilities and sewerage. The Fire Service has been known to 'run out' of appliances and there are plans to close existing stations. In addition the service has lost many firefighter posts since 2010. Waverley is one of the worst areas for ambulance services and beds in hospitals are scarce. This proposal would also add to the burden upon the police.*

*312. A number of contributions are included in the Obligation. These are for such matters as the Cranleigh Leisure Centre replacement, provision for Surrey premises on site, and police equipment, as well as contributions to the improvements in public rights of way nearby, education facilities, and transport improvements. Given the increase in local population which*

*would result from this development all of these facilities and services would be put under increased pressure and would need to provide extra and improved services. The development is directly related to them, and the contributions are reasonable in scale and kind and where necessary would provide mitigation for the impacts of the development. There are no contributions which would fall foul of pooling restrictions and they therefore meet the tests of the CIL Regulations.*

317. *Taken overall I am satisfied that the S106 Agreement meets the tests of the CIL Regulations and PPG and can be taken into account in determining this application.*

**Appeal Ref and Procedure: APP/R1845/W/17/3173741 – Public Inquiry**

**Appeal Decision: Dismissed – 14 March 2018**

**Planning Inspector: Matthew C J Nunn BA BPL LLB LLM BCL MRTPI**

**Appellant: Gladman Developments Limited**

**Land off The Lakes Road, Bewdley, Worcestershire, DY12 2BP**

**The development is described as "outline planning permission for up to 195 residential dwellings (including up to 30% affordable housing), introduction of structural planting and landscaping, informal public open space, and children's play area, surface water flood mitigation and attenuation, vehicular access point from The Lakes Road and associated ancillary works. All matters to be reserved with the exception of the main site access off The Lakes Road"**

**Force and Method of Appeal Representation: West Mercia Police – Written Representations**

**Application: 16/0550/OUTL – Wyre Forest District Council**

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*63. I have no reason to believe that the formulae and charges used by the Council to calculate the various contributions are other than soundly based. In this regard, the Council has produced a detailed Compliance Statement which demonstrates how the obligations meet the relevant tests in the Framework and the Community Infrastructure Levy Regulations… It also explains the necessity for the police contribution and how monies would be spent…*

*64. The development would enlarge the local population with a consequent effect on local services and facilities. I am satisfied that the provisions of both the obligations… are necessary to make the development acceptable in planning terms, that they directly relate to the development, and fairly and reasonably relate in scale and kind to the development, thereby meeting the relevant tests in the Framework and the Community Infrastructure Regulations… Overall, I am satisfied that the planning obligations…accord with the Framework and relevant regulations, and I have taken them into account in my deliberations.*

**Appeal Ref and Procedure: APP/C3105/W/17/3172731 – Public Hearing**

**Appeal Decision: Allowed - 20 December 2017**

**Planning Inspector: Karen L Baker DipTP MA DipMP MRTPI**

**Appellant: Gladman Developments Limited**

**White Post Road, Banbury (Grid Ref. Easting: 445726 and Grid Ref. Northing: 238365)**

**The development proposed is 'up to 280 residential dwellings (including up to 30% affordable housing), introduction of structural planting and landscaping, informal public open space and children's play area, surface water flood mitigation and attenuation, vehicular access point from White Post Road and associated ancillary works.'**

**Force and Method of Appeal Representation: Thames Valley Police – Written Representations**

**Application: 15/01326/OUT – Cherwell District Council**

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54. *Policing: Thames Valley Police is seeking a financial contribution, based on a formulaic approach, towards the provision of additional resources to mitigate the impact of the proposed development. The Unilateral Undertaking includes a financial contribution of £40,303 towards the infrastructure of Thames Valley Police, including ANPR cameras, new premises, patrol vehicles and staff set up costs. Given the scale and nature of the proposed development, I am satisfied that the increase in population would lead to an increase in demand on police resources. As such, I am satisfied that this obligation would pass the statutory tests.*

**Appeal Ref and Procedure: APP/C3105/W/16/3163551 – Public Inquiry**

**Appeal Decision: Allowed - 28 November 2017**

**Planning Inspector: P W Clark MA MRTPI MCMI**

**Appellant: Albion Land Ltd**

**Land off Howes Lane and Middleton Stoney Road, Bicester, Oxfordshire**

**The development proposed is the erection of up to 53,000sq.m of floor space to be for B1, B2 and B8 (use classes) employment provision within two employment zones covering an area of 9.45ha; parking and service areas to serve the employment zones; a new access off the Middleton Stoney Road (B4030); temporary access of Howes Lane pending the delivery of the realigned Howes Lane; 4.5ha of residential land; internal roads, paths and cycleways; landscaping including strategic green infrastructure (GI); provisions of sustainable urban systems (SUDS) incorporating landscaped areas with balancing ponds and swales; associated utilities and infrastructure.**

**Force and Method of Appeal Representation: Thames Valley Police – Written Representations**

**Application: 14/01675/OUT – Cherwell District Council**

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*9. The proposal is accompanied by a signed and dated Unilateral Undertaking. In addition to the usual procedural, administrative and interpretative matters, the Unilateral Undertaking provides for…*

- *A Police contribution of £151.30 per dwelling up to a maximum of £22,693.96 paid in two instalments towards the increase in capital costs of providing neighbourhood policing…*

*38. …The appellant believes that a test of these obligations against the CIL regulations would reduce the burden. To put this concern into context, the total financial contributions for a typical 3-bedroomed house may be summed as follows…*

- *Police £151.30*

*44. Thames Valley Police has assessed that the development of the North-West Bicester eco-town, of which the development is part will generate: (i) a requirement for 15 new members of staff to police the additional population generated by the development; (ii) to be accommodated by an extension to and adaption of the existing Bicester Police Station; (iii) a control room/police network database at their Kidlington district headquarters; (iv) 4.5 additional patrol vehicles, 4.5 PCSO vehicles and 6 bicycles; (v) two additional Automatic Number Plate Recognition cameras; (iv) mobile IT kit for each police officer; and (vii) an increase in radio coverage.*

*45. Proposals are included in the Council's Infrastructure Delivery Plan. Each element would be delivered in phases. The first phase of additional personnel would be delivered by the 2000$^{th}$ dwelling (probably around the year 2028 according to the trajectory described in the Council's Infrastructure Delivery Plan), the second phase by the 3,500$^{th}$ dwelling (circa 2033) and the third phase by the 5,500$^{th}$ (out of 6,000) dwellings (circa 2043).*

*46. I am not convinced that the revenue costs of paying the salaries of the additional staff required is a cost attributable to the development, since the residents of the development will be paying in the usual way towards the funding of police salaries. To make a contribution through a planning obligation charged to the capital costs of buying their homes would be paying twice over and is not necessary. To that extent I do not regard the obligation contained in Schedule 2 of the Unilateral Undertaking as complying with the CIL Regulations. But the other elements represent capital costs which can be said to be attributable to the development.*

*47. The accommodation would be provided towards the end of the eco-town's build-out period (design work on Bicester Police Station to commence by the 4,900th dwelling, circa 2039). The building work would be started by the time of the 5,260th dwelling (circa 2042) and be completed by the time of the 5,500th dwelling (circa 2043).*

*48. The first phase of the control room would be rolled out by the 2,500th dwelling (circa 2029), the second phase circa 2043 by the time of the 5,500th dwelling. Phase 1 of the vehicle fleet would be delivered by the time of the 2,000th dwelling (circa 2028), the second phase by about the 3,500th dwelling (circa 2033) and the final phase by the 5,500th dwelling (circa 2043).*

*49. The two ANPR cameras would be installed by the time of the 2,000th dwelling (circa 2028). Phase 1 of the mobile IT equipment roll-out would be completed at the same time, Phase 2 by the 3,500th dwelling (circa 2033) and Phase 3 by the 5,500th dwelling (circa 2043). Phase 1 of the increased radio coverage would be completed by the 2,500th dwelling (circa 2029) and the second phase by the time of the 5,500th dwelling (circa 2043).*

*50. Because the obligation contained in Schedule 2 of the Unilateral Undertaking includes a payback requirement if the contribution is not spent or committed with 15 years of the final payment of the contribution (probably circa 2035), it is likely that the obligation would in fact only contribute to the ANPR cameras, the first phase of the control room, the first two phases of the IT equipment roll-out and the first phase of the increased radio coverage. In so far as that would be fairly and reasonably related in scale and kind to the development and is directly related to the development, I accept that the obligation contained in Schedule 2 of the Unilateral Undertaking complies with the CIL regulations and I have taken it into account in making my decision.*

**Appeal Ref and Procedure: APP/C3810/V/16/3143095 – Public Inquiry**

**Secretary of State Decision: Allowed - 13 July 2017**

**Planning Inspector: S R G Baird BA (Hons) MRTPI**

**Appellants: Fontwell Estates Limited & Global Technology Racing**

**Land east of Fontwell Avenue, Fontwell, West Sussex, BN18 0SB**

**The development proposed is up to 400 new dwellings, up to 500sq.m of non-residential floor space (A1, A2, A3, D1 and/or D2), 5,000sq.m of light industrial floorspace (B1 (b)/(c) and associated works including access, an internal road network, highway works, landscaping, selected tree removal, informal and formal open space and play areas, pedestrian and cyclist infrastructure, utilities, drainage infrastructure, car and cycle parking and waste storage.**

**Force and Method of Appeal Representation: Sussex Police – Written Representations**

**Application: WA/22/15/OUT – Arun District Council**

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*42. Having had regard to the Inspector's analysis at IR10.8-10.15 and IR11.61, the planning obligation dated 2 December 2016, paragraphs 203-205 of the Framework, the Guidance and the Community Infrastructure Levy Regulations 2010, as amended, the Secretary of State agrees with the Inspector's conclusion for the reasons given in IR11.61 that all the obligations, bar the NHS contribution which has not been substantiated and fails the CIL tests, comply with Regulation 122 of the CIL Regulations and the tests at paragraph 204 of the Framework and is necessary to make the development acceptable in planning terms, is directly related to the development, and is fairly and reasonably related in scale and kind to the development.*

*43. The Secretary of State has taken into account the number of planning obligations which have been entered into on or after 6 April 2010 which provide for the funding or provision of a project or type of infrastructure for which an obligation has been proposed in relation to the application (IR10.8-10.15 and IR11.61). The Secretary of State concludes that the obligations are compliant with Regulations 123(3), as amended.*

*1.4 The local planning authority (lpa) considered the application on the 25 November 2015 and resolved to grant planning permission subject to conditions and a S106 Agreement (CD 24). The applicants submit an engrossed S106 Agreement dealing with the provision of financial contributions relating to education; libraries; the fire service; highways and transport; police infrastructure; primary healthcare facilities; leisure facilities and the provision of affordable housing and public open space (CD 37). The applicants, the lpa and West Sussex County Council (WSCC) submitted notes on CIL R122 compliance (CDs 49, 55 & 52).*

*9.23 …Other responses included… Sussex Police – sought financial contribution towards the provision, maintenance and operation of Police infrastructure.*

*10.15 The payment of:*

- *£70,000 towards the provision of mobile IT kit, speed awareness kits and towards the re-provision of Littlehampton Police Station. CD 55 Appendix A1.7 provides a detailed justification by Sussex Police for the principal of the contribution. Whilst the Sussex Police request was originally for £109,714 the sum subsequently agreed is £70,000 (LPA 3);*

*11.61 All the obligations, bar the NHS contribution which has not been substantiated and fails the CIL tests, are necessary to make the development acceptable in planning terms, directly related to the development and fair and reasonably related in scale and kind to the development. Accordingly, the S106 Agreement is consistent with the guidance at Framework paragraph 204 and Regulations 122/123 of the CIL Regulations and where appropriate, I have attached weight to it in coming to my conclusion.*

**Appeal Ref and Procedure: APP/E3715/W/16/3147448 – Public Inquiry**

**Secretary of State Decision: Allowed - 10 July 2017**

**Planning Inspector: Martin Whitehead LLB BSc(Hons) CEng MICE**

**Appellants: David Wilson Homes (East Midlands) and Gallagher Estates Ltd**

**Land at Ashlawn Road West, Rugby, Warwickshire, CV22 5RZ**

**The development proposed is the demolition of existing buildings, erection of up to 860 dwellings, land for potential primary school, two vehicular accesses from Ashlawn Road and the provision of a bus link control feature to Norton Leys, open space, green infrastructure, landscaping and associated infrastructure, including sustainable urban drainage works.**

**Force and Method of Appeal Representation: Warwickshire Police – Written Representations**

**Application: R13/2102 - Rugby Borough Council**

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*30. Having had regard to the Inspector's analysis at IR158-166, the planning obligation dated 17 February 2017, paragraphs 203-205 of the Framework, the Guidance and the Community Infrastructure Levy Regulations 2010 as amended, the Secretary of State agrees with the Inspector's conclusion for the reasons given in IR166 that the obligation complies with Regulation 122 of the CIL Regulations and the tests at paragraph 204 of the Framework and is necessary to make the development acceptable in planning terms, is directly related to the development, and is fairly and reasonably related in scale and kind to the development.*

*156. Warwickshire Police (WP) requested a sum of £185,278 towards police infrastructure that would mitigate the impact of the proposed development. This contribution has not been disputed and should be secured in a S106 planning obligation. It reflects the precise need that would arise from the development of up 860 new homes on the appeal site based on WP's experience policing development in the area. The contribution would be used to mitigate the impact on infrastructure where there is no spare capacity and would accord with Core Strategy Policy CS10. Appendix 3 of the Core Strategy includes police as one of the critical infrastructure requirements to ensure delivery and mitigation, which are expected to be included in a S106 Agreement.*

*157. WP objects to the development proceeding without the necessary contributions as the resulting development could not be adequately policed, contrary to Core Strategy Policy CS13 and policies within the Framework. There is extensive evidence in WP's written representations which cover how the contribution request was calculated and compliance with Community Infrastructure Levy Regulations (CIL) Regulation 122 and 123(3). Each element of the contribution would be spent on an individual 'project' to meet the needs of the development alone, without the need for any pooling of contributions.*

*160. The Council, WCC and WP have provided documents to demonstrate CIL compliance. I have not received any evidence to demonstrate that the planning obligations would contravene any of the above Regulations.*

*165. …The obligations to secure a Police contribution would ensure that the money would be spent on police equipment, premises and vehicles that would be necessary to police the new development.*

*166. Based on the above, I have found that the planning obligations in the S106 Agreement meet the tests in CIL Regulation 122 and 123(3) and paragraph 204 of the Framework. I have therefore taken them into account in my conclusions and recommendations.*

**Appeal Ref and Procedure: APP/C3240/W/16/3144445 – Public Inquiry**

**Appeal Decision: Dismissed - 21 March 2017**

**Planning Inspector: David M H Rose BA (Hons) MRTPI**

**Appellant: Redrow Homes Limited**

**Land east of Kestrel Close/Beechfields Way, Newport, Shropshire, TF10 8QE**

**The development proposed is an outline application to include access for residential development for up to 170 dwellings with open space following demolition of 14 and 15 Kestrel Close, Newport, Shropshire, TF10 8QE**

**Force and Method of Appeal Representation: West Mercia Police – Rule 6 Party**

**Application: TWC/2015/1003 - Telford & Wrekin Council**

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*157. The planning obligation concluded after the close of the inquiry provides for… a contribution towards police premises, recruiting and equipping new officers and staff to serve the development and vehicles.*

*163. The current development plan is silent on police contributions although it is matter addressed in the emerging Telford and Wrekin Local Plan and the related Infrastructure Delivery Plan. The premises contribution is not controversial.*

*164. The legitimacy of contributions towards training new officers and the provision of equipment and vehicles is less clear cut in so far as it would, in effect, amount to a tariff payment with no exclusivity for the proposed development. Nonetheless, the sums sought are fully quantified against the policing requirement, which existing resources cannot meet, for the proposed development.*

*165. There is no doubt that the proposed development would generate a need for policing and that need would require additional resources which have been calculated on a pro-rata dwelling basis. The Framework identifies a need for safe and accessible environments where crime and disorder, and the fear of crime, do not undermine quality of life or community cohesion. In addition, an extensive array of appeal decisions supports the principle of police contributions. Overall, the balance of the evidence before me points to the obligation (based on the underlying pro-rata calculation) being necessary and proportionate mitigation for the development.*

**Appeal Ref and Procedure: APP/K2420/W/15/3004910 – Public Inquiry**

**Appeal Decision: Dismissed - 04 May 2016**

**Planning Inspector: Siân Worden BA DipLH MCD MRTPI**

**Appellant: Jelson**

**Land off Sherborne Road, Burbage, Leicestershire, LE10 2BE**

**The development proposed is residential development and associated infrastructure (73 dwellings).**

**Force and Method of Appeal Representation: Leicestershire Police – Rule 6 Party**

**Application: 14/00475/OUT - Hinckley and Bosworth Borough Council**

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*44. Leicestershire Police (LP) has demonstrated adequately that the sums requested would be spent on a variety of essential equipment and services, the need for which would arise directly from the new households occupying the proposed development. It would be necessary, therefore, in order to provide on-site and off-site infrastructure and facilities to serve the development commensurate with its scale and nature consistent with LP Policy IMP1. The planning contribution would also enable the proposed development to comply with the Framework's core planning principle of supporting local strategies to improve health, social and cultural wellbeing and delivering sufficient community facilities and services to meet local needs.*

*45. In respect of compliance with CIL Regulation 123(3) the proposed spending has been apportioned to individual projects and procurement, such as property adaptation and a contribution towards a vehicle, in order to ensure no need for the pooling of contributions. In addition a clause of the undertaking which, in requiring written confirmation prior to payment that it would only be spent where there were no more than four other contributions, would provide a legal mechanism for ensuring full compliance with Reg. 123(3).*

*46. Evidence was submitted in the form of two maps with types of criminal incidents plotted on them. The first of these shows that there were several burglaries and thefts in the housing area adjacent to the appeal site during the year up to July 2014. The second map covers a larger area, this time in Blaby, and indicates a steady rate of incidents, mainly forms of stealing, in all types of residential area. I have no reason to believe that levels of crime differ significantly between Hinckley/Burbage and Blaby.*

*47. I consider this to be a no less realistic and robust method of demonstrating the criminal incidents likely to arise in a specific area than the analysis of population data which is normally used to calculate the future demand for school places. The evidence gives credence to the additional calls and demands on the police service predicted by LP.*

*51. My overall conclusion on planning contributions is that those requested by LP and by LCC for the civic amenity site would be necessary to make the development acceptable in planning terms and would meet the other tests set out in the Framework. In those respects the submitted*

*planning obligation carries significant weight. The contribution sought for Burbage library would not.*

**Appeal Ref and Procedure: APP/G1630/V/14/2229497 – Public Inquiry**

**Secretary of State Decision: Allowed – 31 March 2016**

**Planning Inspector: Mrs KA Ellison BA, MPhil, MRTPI**

**Appellants: ERLP and the Merchant Venturers**

**Land at 'Perrybrook' to the north of Brockworth and south of the A417, Brockworth, Gloucestershire**

**The development proposed is a mixed use development of up to 1,500 dwellings including extra care housing, community facilities including A1, A2, A3, A4 and A5 local retail shops, B1/B8 employment uses, D1 health facilities and formal/informal public open space.**

**Force and Method of Appeal Representation: Gloucestershire Constabulary – Written Representations**

**Application: 12/01256/OUT – Tewkesbury Borough Council**

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*23. The Secretary of State agrees with the Inspector's assessment of the two planning obligations at IR14.12-14.21. He is satisfied that the requirements of the completed, signed and dated Section 106 agreements referred to at IR14.12 are in accordance with paragraph 204 of the Framework and the CIL Regulations 2010 as amended.*

*14.21 The Statement of Common Ground in respect of planning obligations sets out details of any relevant planning obligations made since 2010 and confirms that none of the obligations exceed the pooling restrictions in Regulation 123(3) of the Community Infrastructure Regulations 2010 (as amended). The obligations also accord with Regulation 122 in that they are necessary to make the development acceptable, directly related to it and are fair and reasonable in scale and kind.*

**Appeal Ref and Procedure: APP/G2435/A/14/2228806 – Public Inquiry**

**Secretary of State Decision: Allowed - 15 February 2016**

**Planning Inspector: John Braithwaite BSc(Arch) BArch(Hons) RIBA MRTPI**

**Appellant: Money Hill Consortium**

**Money Hill, Land North of Wood Street, Ashby-de-la-Zouch, Leicestershire**

**The development proposed is 605 residential dwellings including a 60 unit extra care centre (C2), a new primary school (D1), a new health centre (D1), a new nursery school (D1), a new community hall (D1), new neighbourhood retail use (A1), new public open space and vehicular access from the A511 and Woodcock Way.**

**Force and Method of Appeal Representation: Leicestershire Police – Rule 6 Party**

**Application: 13/00335/OUTM - North West Leicestershire District Council**

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17. *The Secretary of State has also considered the executed and signed Unilateral Undertaking; the Inspector's comments on this at IR61-63; paragraphs 203 and 205 of the Framework, and the Guidance. He considers that that the provisions offered by the Unilateral Undertaking would accord with the tests set out at paragraph 204 of the Framework and agrees with the Inspector that they would also comply with Regulations 122 and 123 of the CIL Regulations.*

63. *The contribution of £219,029 towards Police infrastructure is not related to requirements of development plan policies. The figure has been arrived at following a close and careful analysis of the current levels of policing demand and deployment in Ashby. The proposed development, in terms of population increase, would have a quantifiable and demonstrable effect on the ability of the Police to carry out their statutory duties in the town. LP has not sought any contribution to some aspects of policing, such as firearms and forensics, but only for those aspects where there is no additional capacity. The contribution is thus fairly and reasonably related in scale and kind to the development and is directly related to that development. The contribution is necessary because the new housing that would be created would place a demonstrable additional demand on Police resources in Ashby. The financial contribution to Police operations thus satisfies Regulation 122 of the Community Infrastructure Levy Regulations 2010 and a provision of the Undertaking would ensure that the contribution also satisfies Regulation 123 of the Community Infrastructure Levy Regulations 2010.*

**Appeal Ref and Procedure: APP/X2410/W/15/3007980 – Public Inquiry**

**Appeal Decision: Allowed - 08 February 2016**

**Planning Inspector: C Thorby MRTPI IHBC**

**Appellant: Rosconn Group**

**Land rear of 62 Iveshead Road, Shepshed, LE12 9ER**

**The development proposed is the erection of up to 77 dwellings following demolition of 62 Iveshead Road (access only to be determined)**

**Force and Method of Appeal Representation: Leicestershire Police – Interested Party**

**Application: P/14/0777/2 - Charnwood Borough Council**

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*19. Planning obligation. The necessity for contributions towards affordable housing, on site open space, policing, healthcare, travel plan, transport, education and civic amenity have been justified by comprehensive evidence from the local and County Council, and the Police Authority. There is no dispute that the provisions of the legal agreement would meet the Council's policy requirements, the tests set out in paragraph 204 of the National Planning Policy Framework (NPPF) and the CIL Regulations 122 and 123 relating to pooled contributions. I am satisfied that this is the case and am taking them into account.*

**Appeal Ref and Procedure: APP/T3725/A/14/2221613 – Public Inquiry**

**Secretary of State Decision: Allowed - 14 January 2016**

**Planning Inspector: Jennifer A Vyse DipTP DipPBM MRTPI**

**Appellant: Barwood Strategic Land II LLP**

**Land at The Asps, bound by Europa Way (A452) to the east and Banbury Road (A425) to the west**

**The development proposed is described on the application form as residential development (use class C3) for up to 900 dwellings, a primary school (use class D1), a local centre (use classes A1 to A5) and D1) and a Park and Ride facility for up to 500 spaces (sui generis) with access from Europa Way and Banbury Road, areas of public open space, landscaping enhancements and archaeological mitigation.**

**Force and Method of Appeal Representation: Warwickshire Police – Written Representations**

**Application: W/14/0300 - Warwick District Council**

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*32. The Secretary of State has had regard to the matters raised by the Inspector at IR13.1 – 13.5 and agrees with the Inspector's reasoning and conclusions on the two Unilateral Undertakings at IR14.137-14.161. In making his decision on this case, the Secretary of State has taken into account the provisions in the Unilateral Undertakings that do accord with Paragraph 204 of the Framework and do meet the tests in the CIL Regulations 2010 as amended.*

*Condition 7 - An area of land measuring no less than 0.5 hectare shall be reserved for a local centre. This area of land should broadly be in the location identified on drawing No EDP 1871/116C. Any reserved matters proposal for development on this land must provide a mix of A1 and A2 and A3 and A4 and D1 floorspace, and a police post and associated off-street servicing and parking facilities, all of which shall be delivered in accordance with the phasing plan.*

*11.5 Warwickshire Police and West Mercia Police: They requested a S106 contribution to provide police infrastructure necessary to enable the direct delivery of policing services to the site. No objections were received from either the Council or the appellant and so it was assumed that HE request met the relevant statutory tests. It was a surprise, therefore, to see on the Statement of CIL compliance, that the request was considered not to be compliant, notwithstanding that the Obligation did include the requested provision. The correspondence sets out why, in their view, the contribution is CIL compliant and is supported by four Appendices.*

*13.18 Police: the obligation secures the provision of a building for use as a police office, of at least 200 square metres gross internal floor area (together with service connections and external parking) to be located within the local centre that forms part of the development scheme. In addition, a contribution of £187,991 is secured, payable to the Council to fund the provision, fitting out and equipping of the police office.*

*14.154 Police: As set out in the CIL Compliance Schedule, the appellant is not satisfied that the arrangement is CIL compliant, with the Council being of the view that insufficient evidence was available to come to an informed view on the matter. However, no evidence was before the Inquiry to support those concerns.*

*14.155 Having had sight of the Schedule, Warwickshire Police and West Mercia Police submitted further correspondence on the matter, dated 10 April 2015. They demonstrate that the arrangement has been arrived at after careful analysis of the current and planned levels of policing in the area. With reference to existing local deployment reflecting actual policing demands and local crime patterns, it is confirmed that five additional staff would be required to serve the development proposed. Policing of the area is delivered currently from three separate premises (in Warwick, Leamington and Leek Wooton) all of which are already maintained to capacity. I am in no doubt therefore, that a new police office would need to be provided on the site, and fitted out, in order to accommodate the additional staff. I consider the arrangement to be necessary to make the development acceptable, it is directly related to the development proposed and to mitigating the impacts that it would generate, and it is fairly and reasonably related in scale and kind to the development. The arrangement therefore meets the relevant tests. Moreover, as a discrete project to which no more than five developments would contribute, I have no reason to suppose, on the basis of the information before me, that there would be any conflict with CIL Regulation 123.*

**Appeal Ref and Procedure: APP/T3725/A/14/2229398 – Public Inquiry**

**Secretary of State Decision: Allowed - 14 January 2016**

**Planning Inspector: Robert Mellor BSc DipTRP DipDesBEnv DMS MRICS MRTPI**

**Appellant: Gallagher Estates Ltd**

**Land South of Gallows Hill / West of Europa Way, Heathcote, Warwick**

**The development proposed is a residential development up to a maximum of 450 dwellings; provision of two points of access (one from Europa Way and one from Gallows Hill); comprehensive green infrastructure and open spaces including potential children's play space; potential footpaths and cycleways; foul and surface water drainage infrastructure and ground modelling.**

**Force and Method of Appeal Representation: Warwickshire Police – Interested Party**

**Application: W/14/0681 - Warwick District Council**

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*33. Having examined the completed and signed S106 Planning Agreement and considered the commentary and views at IR349 - 356 and the Inspector's assessment at IR462 - 467, the Secretary of State concludes that the obligations in the Agreement accord with Paragraph 204 of the Framework and meet the tests in the CIL Regulations 2010 as amended.*

*353. The Council has submitted a summary table of S106 contributions (Document AD13) to demonstrate that the Regulation 123 limit of a maximum of 5 contributions to infrastructure would not be exceeded. The Council has also submitted a CIL Regulations Compliance Statement (Document AD14) which sets out the justification for each obligation, matters of agreement and matters of dispute. Appendix D explains that the monitoring fee is necessary as the large scale housing site with multiple contributions requires additional monitoring work. It sets out how the sum has been calculated including the activities to be carried out and the hourly rate of the officer.*

*354. Mr T Jones represents Warks and West Mercia Police Authority. He appeared at the Inquiry in a round table session to further provide evidence in support of the need for the financial contribution for police services that is included in the submitted S106 planning obligation agreement. There is supporting written evidence at OIP7, OIP22, and OIP23. The contribution is sought to support police services for the local area to accommodate the rising need generated by this new development. Appeal decisions by the Secretary of State have been submitted in support of such contributions APP/X2410/A/12/2173673 (Document OIP22) and APP/X2410/A/13/2196928/APP/X2410/A/13/ 2196929 (Document OIP23). In each case the Secretary of State agreed with the Inspector that the contributions were compliant with Regulation 122 of the CIL Regulations. The Inspector's Report for the first case noted that contributions had previously been supported in some appeals and not in others.*

*462. The S106 planning obligation agreement between the LPA and the Appellant and landowners covers all the matters referred to as reasons for refusal [349-352]]. However the Appellant has queried whether all of the obligations satisfy the requirements of the Community Infrastructure*

*Levy Regulations 2010 (as amended) and the Obligation Agreement itself provides that if the 'Planning Inspector or Secretary of State in the Decision Letter' concludes that any of the planning obligations or the monitoring fee or any part of the obligation are incompatible with Regulations 122 or 123 of the Community Infrastructure Levy Regulations 2010 (as amended) then that shall cease to have effect. In particular the Appellant queries the legality of the monitoring fee and the contributions to police and health services. The LPA has provided a CIL compliance statement [353].*

*464. The contributions for police services are similar to those which the Secretary of State has previously endorsed as compliant with Regulation 122 [354]. I consider that the CIL compliance statement shows that they are also compliant with Regulation 123 [353].*

**Appeal Ref and Procedure: APP/G2435/W/15/3005052 – Public Inquiry**

**Appeal Decision: Allowed - 05 January 2016**

**Planning Inspector: Harold Stephens BA MPhil DipTP MRTPI FRSA**

**Appellant: Gladman Developments Ltd**

**Land South of Greenhill Road, Coalville, Leicestershire**

**The development proposed is described as development of up to 180 dwellings, including a retail unit, access and associated infrastructure (outline-all matters reserved apart from part access).**

**Force and Method of Appeal Representation: Leicestershire Police – Rule 6 Party**

**Application: 14/00614/OUTM - North West Leicestershire District Council**

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*69. The contribution to Leicestershire Police (LP) has been justified following a close and careful analysis of the current levels of policing demand and deployment in the beat area. The financial contribution would be spent on start-up equipment, vehicles, additional radio call capacity, PND additions, additional call handling, ANPR, Mobile CCTV, additional premises and hub equipment. No part of the LP contribution provides for funding towards any infrastructure project that would offend the restriction on pooling. In my view, the LP contribution is fully compliant with Regulations 122 and 123 of the CIL Regulations.*

**Appeal Ref and Procedure: APP/Q3115/A/14/2222595 – Public Inquiry**

**Appeal Decision: Allowed - 02 June 2015**

**Planning Inspector: P W Clark MA MRTPI MCMI**

**Appellant: RJ & S Styles**

**Land North of Littleworth Road, Benson**

**The development proposed is described as (1) the erection of 125 dwellings with associated access, open space and landscaping and (2) 41 retirement flats and 11 retirement bungalows with associated parking and car share facilities.**

**Force and Method of Appeal Representation: Thames Valley Police – Written Representations**

**Application: P14/S0673/FUL - South Oxfordshire District Council**

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*51. The necessity, relevance and proportionality of these and the other elements of the planning agreement are set out in three documents submitted to the Inquiry. They* (include)*… a letter from Simon Dackombe Strategic Planner, Thames Valley Police. With one exception they provide convincing (and undisputed) evidence that the obligations comply with regulation 122 of the CIL Regulations.*

*52. The exception is that part of the contribution sought for policing which relates to the training of officers and staff. Whereas all the other specified items of expenditure relate to capital items which would ensure for the benefit of the development, staff training would provide qualifications to the staff concerned and would benefit them but these would be lost if they were to leave the employ of the police and so are not an item related to the development. I therefore take no account of this particular item in coming to a decision on the appeal. This does not, however, invalidate the signed agreement.*

**Appeal Ref and Procedure: APP/A2470/A/14/2222210 – Public Hearing**

**Appeal Decision: Allowed - 26 May 2015**

**Planning Inspector: Christopher J Anstey BA (Hons) DipTP DipLA MRTPI**

**Appellant: Hanover Developments Ltd**

**Greetham Garden Centre, Oakham Road, Greetham, Oakham LE15 7NN**

**The development proposed is the redevelopment of the former Greetham Garden Centre for residential development for up to 35 dwellings, and provision of access.**

**Force and Method of Appeal Representation: Leicestershire Police – Interested Party**

**Application: 2013/0956/OUT - Rutland County Council**

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2. *Refusal Reason 2 related to the failure in the appeal application to make any commitment to developer contributions. As part of the appeal submissions two unilateral undertakings have been submitted. I consider that these two undertakings are compliant with* paragraph 204 *of the* National Planning Policy Framework *(*the Framework) *and* Regulation 122 *of the* CIL Regulations 2010. *In arriving at this view I have taken account of the replies from the Council and the Police Authority to the Planning Inspectorate's letter of 5 May 2015 relating to 'pooled' contributions. The first unilateral undertaking, dated 22 January 2015, makes provision for various contributions towards health services, indoor activity services, libraries, museums, outdoor sports, open space, children's services and policing. As the contribution to policing is in line with the amount per dwelling specified in the adopted Developer Contributions Calculation increasing this amount would not be justified. The second unilateral undertaking, dated 12 March 2015, will ensure that at reserved matters stage a Section 106 agreement is drawn up to secure 35% affordable housing. Consequently I believe that Refusal Reason 2 has now been addressed.*

**Appeal Ref and Procedure: APP/A2470/A/14/2227672 – Written Representations**

**Appeal Decision: Allowed - 19 May 2015**

**Planning Inspector: Ian Radcliffe BSc(Hons) MCIEH DMS**

**Appellant: Larkfleet Homes**

**Land to the rear of North Brook Close, Greetham, Rutland LE15 7SD**

**The development proposed is construction of 19 residential dwellings, including garages and associated infrastructure.**

**Force and Method of Appeal Representation: Leicestershire Police – Written Representations**

**Application: 2013/1042/FUL - Rutland County Council**

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16. *The proposed development would increase demands on the Market Overton Doctor's Practice. The building is not large enough to cater for the additional patients that it has been calculated would live in the area as a result of planned new housing development including the appeal site. Similarly, the police service delivers its service locally from premises at Oakham. This facility is at capacity and the new development would generate a need for additional space, equipment, information handling and communications. A financial contribution is therefore necessary to mitigate the effect of the development by expanding the Doctor's Surgery and police service provision.*

**Appeal Ref and Procedure: APP/L2440/A/14/2216085 – Public Inquiry**

**Appeal Decision: Allowed - 10 February 2015**

**Planning Inspector: Geoffrey Hill BSc DipTP MRTPI**

**Appellant: Bloor Homes Ltd**

**Land at Cottage Farm, Glen Road, Oadby, Leicestershire LE2 4RL**

**The development proposed is development of land for up to 150 dwellings (Use Class C3) and associated infrastructure, including pedestrian and vehicular access, open space and structural landscaping.**

**Force and Method of Appeal Representation: Leicestershire Police – Rule 6 Party**

**Application: 13/00478/OUT - Oadby & Wigston Borough Council**

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*82. A completed planning obligation, in the form of an agreement made under Section106 of the Town and Country, was submitted at the inquiry (Document OW15). I have considered the submitted planning obligation against the tests set out at paragraph 204 of NPPF.*

*83. In general terms, the agreement establishes a commitment to provide 30% affordable dwellings, support for sustainable transport, the provision of open space for public use, and financial contributions for education, the county council library service and police infrastructure. The terms of the offered agreement were discussed, and whether the contributions put forward were directly related to the development being proposed. Nothing was said at the inquiry to indicate that what is being offered is unreasonable, disproportionate, or likely to be covered by other sources of financial support or revenue.*

*84. I am satisfied that, in the light of the matters discussed at the inquiry, and taking into account the written submissions relating particularly to the police contribution (document LP1), all the offered contributions and undertakings are necessary to make the development acceptable in planning terms, are directly related to the development and reasonably related in scale and kind to the development.*

**Appeal Ref and Procedure: APP/X2410/A/14/2222358 – Public Hearing**

**Appeal Decision: Allowed - 23 January 2015**

**Planning Inspector: P W Clark MA MRTPI MCMI**

**Appellant: Gladman Developments Ltd**

**Tickow Lane, Shepshed, Loughborough, Leicestershire, LE12 9LY**

**The development proposed is 180 dwellings.**

**Force and Method of Appeal Representation: Leicestershire Police – Interested Party**

**Application: P/13/1751/2 - Charnwood Borough Council**

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*15. The planning obligation makes provision for a financial contribution to policing costs in the form of whichever of three alternatives (if any) is determined to meet the tests for planning obligations set out in regulation 122 of the CIL Regulations. A further provision of the obligation allows for the exclusion of any component of the obligation if this Decision concludes that it does not meet those same tests.*

*16. From the many other planning appeals which were presented to me, I draw the following precepts. Policing is a statutory service which is funded at public expense but so too are many other services which are the subject of planning obligations to offset the impact of a development upon those services; that consideration alone does not cause a planning obligation to fail the CIL tests.*

*17. It is commonly accepted that the day to day running costs of a servicing a development would be covered by revenues to the service provider, such as Council Tax. On the other hand, capital expenditure arising directly from the needs of a development might not be provided in time or at all within the priorities of a public service provider and, if not provided, the development would have an unacceptable impact. If the investment would be necessary to make the development acceptable in planning terms, then it would satisfy one of the CIL tests. In this case, the evidence which the police provided concerning their capital financing made clear the difficulties they would face in funding capital expenditure and the consequential unacceptable impact in the form of a dilution of their services over a more extensive area.*

*18. Applying this precept to the itemised entries in option (c) of the "Police Contribution" as defined in the obligation, I do not find anything other than the references to training in item (i) which would not fall within a reasonable definition of capital expenditure. Training however, is not a necessary adjunct to the creation of new posts; they could (and some would say should) be filled with already qualified and trained personnel. Moreover, whereas the other items would be retained by the police force in the event of a recruit leaving the service, any training would not. I doubt even the most creative accountant could convincingly define that as capital expenditure.*

*19. Although it is correct to say that the spatial impact of a development upon policing cannot be precisely quantified because nothing can be known for certain in advance about the crime rates*

*likely to occur, the same is true of impacts on other services; impacts on traffic generation can only be estimates based on measurements of similar development elsewhere; likewise, impacts on the provision of schools can only be based on estimates of the child population likely to arise derived from analyses of similar developments elsewhere. Yet such estimates are commonly accepted and, in the current case, those put forward by the police were not discredited. Nor were alternative ways of apportionment suggested. For these reasons I have no difficulty with the basis on which the police have estimated the impact on their services likely to arise from this proposed development. I am satisfied that the outcome is fairly and reasonably related in scale to the development.*

20. *It is fair to say that the police have gone into far greater detail in analysing the impact of the development on their capital expenditure than is normal amongst service providers. In consequence, the closer scrutiny which that invites may make it appear that it should not be "necessary" for such petty amounts to be recouped from a developer through a planning obligation and that the small adverse impacts upon police capital expenditure should be tolerated in light of the wider benefits of the development as a whole.*

21. *But each is a building block to a larger sum and there are parallels with the way some other services calculate the impacts of developments on their services, as set out in the Council's S106 Developer Contributions Supplementary Planning Document. In addition, I recall paragraph 61 of Mr Foskett's judgement which was brought to my attention; although the sums at stake for the police contributions will be small in comparison to the huge sums that will be required to complete the development, the sums are large from the point of view of the police. Therefore, I do not doubt their necessity.*

22. *I conclude that the provisions made in option (c) of the "Police Contribution" entry of the obligation, adjusted to remove the second sentence of paragraph (i) would comply with the CIL regulations. With that obligation in place, the development would have an acceptable effect on policing, in compliance with section (xviii) of Local Plan policy ST/1 which requires developments to provide for public services and with policy ST/3 which requires development to provide for infrastructure if lacking.*

**Appeal Ref and Procedure: APP/Y2430/A/14/2224790 – Public Hearing**

**Appeal Decision: Allowed - 06 January 2015**

**Planning Inspector: Thomas Shields MA DipURP MRTPI**

**Appellant: Davidsons Developments Limited**

**Land to the east of Nottingham Road, Melton Mowbray, Leicestershire**

**The development proposed is residential development for up to 85 dwellings with associated infrastructure, access and areas of open space.**

**Force and Method of Appeal Representation: Leicestershire Police – Interested Party**

**Application: 14/00078/OUT - Melton Borough Council**

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*28. In the completed Agreement there are covenants relating to affordable housing, police service requirements, open space and maintenance, bus stop and bus shelter provision, bus travel, a travel plan co-ordinator and travel packs, off-site traffic signal works, civic amenity, leisure facilities, library facilities, Melton Country Park facilities, and training opportunities. Support for infrastructure requirements is provided in saved LP Policy OS3 and within the County Council's SPG11. In addition, at the Hearing Mr Tyrer, the County Council's Developer Contributions Officer, and Mr Lambert, the Growth and Design Officer for Leicestershire Police, provided detailed information and justification of the infrastructure requirements and how financial contributions would be spent.*

*30. I am satisfied that the proposed planning obligations are necessary, directly related, and fairly and reasonably related in scale and kind to the proposed development, in accordance with Regulation 122 of the Community Infrastructure Levy Regulations 2010.*

**Appeal Ref and Procedure: APP/M2460/A/14/2213689 – Public Hearing**

**Appeal Decision: Allowed - 04 December 2014**

**Planning Inspector: Richard Clegg BA(Hons) DMS MRTPI**

**Appellant: Mr J Kent**

**Land rear of 44-78 Ashby Road, Hinckley, Leicestershire, LE10 1SL**

**The development proposed is described as 'residential development'.**

**Force and Method of Appeal Representation: Leicestershire Police – Interested Party**

**Application: 2013/0862/04 - Leicestershire County Council**

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*39. A police contribution of £13,756 is included in the planning obligation. Detailed evidence in support of this level of contribution has been submitted by the Police and Crime Commissioner. It is clear that the increase in the local population from up to 60 dwellings on the appeal site would place additional demands on the police. Contributions are not sought across the board. The representations identify those areas where there is spare capacity and they have not been taken into account in calculating the overall level of contribution. A need has been identified in the following areas: start-up equipment, vehicles, radio call capacity, database capacity, call-handling, automatic number plate recognition cameras, mobile CCTV, premises, and hub equipment. Details are provided of the purpose to which the funding would be put, and, in the case of each area where a need has been identified, the level of contribution has been calculated in relation to the size of the appeal proposal, even if this means that some expenditure is required from the police budget. The policing contribution is necessary to make the development acceptable in planning terms, and it also complies with the other statutory tests.*

**Appeal Ref and Procedure: APP/K2420/A/13/2208318 – Public Inquiry**

**Secretary of State Decision: Allowed - 18 November 2014**

**Planning Inspector: David Cullingford BA MPhil MRTPI**

**Appellant: Rainier Properties Limited**

**Land surrounding Sketchley House, Watling Street, Burbage, Leicestershire**

**The development proposed is described as an outline application for the 'demolition of Nos.11 and 13 Welbeck Avenue to create vehicular and pedestrian access and redevelopment of the site to provide up to 135 dwellings, public and private open space together with landscaping and associated infrastructure (all matters reserved except for the point of access).'**

**Force and Method of Appeal Representation: Leicestershire Police – Rule 6 Party**

**Application: 13/00529/OUT - Hinckley and Bosworth Borough Council**

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*22 The Secretary of State has considered the terms of the planning obligation submitted at the inquiry and considered by the Inspector at IR11.54-11.57; and he agrees with him at IR11.57 that these contributions meet the Framework test and comply with CIL regulations.*

*8.1 Policing is a service that is always available and responds to demand on an 'equal access' basis; the level and efficiency of that response depends on the facilities available. Calls and deployments are monitored and give an indication of the level of services delivered to the 45,400 households in the Borough or the 6393 houses in Burbage. In 2011 there were 83,315 calls from the Borough, 9,386 of which required emergency attendance and 5,314 entailing some 'follow up'. In Burbage there were 11,664 calls, 314 emergencies and 744 attendances; last year there were 419 recorded incidents. Those incidents largely entail burglary, car related crime and theft and there are geographical concentrations at the commercial units around Hinckley Island and the town centre. Some 372 incidents of anti-social behaviour are recorded in Burbage and regular patrolling and local community contact maintained by the Neighbourhood Policing team, located at Hinckley Local Policing Unit.*

*8.2 The integrated nature of policing means that many different operational units are involved in responding to recorded incidents. Staff at the Local Police Unit, the hub at Braunston, the Basic Command Unit at Loughborough, the Force HQ at Enderby, tactical support, road safety, communications and regional crime can all be involved. Some 270 staff are employed to deliver policing in the Borough and about 80% of their time is devoted to such activities. The minimum number of staff is deployed to meet existing levels of demand, which means that there is little additional capacity to extend staffing to cover additional development. The aim is to deploy additional staffing and additional infrastructure to cover the demand from new development at the same level as the policing delivered to existing households. Hence, additional development would generate a requirement for additional staff and additional personal equipment (workstations, radios, protective clothing, uniforms and bespoke training), police vehicles of varying types and functions, radio cover (additional base stations and investment in hardware, signal strengthening and re direction), national database availability and interrogation, control*

*room telephony, CCTV technologies, mobile units, 'beat drop in hubs', premises and the like. Yet, the prognosis is that 'It is sensible to assume that most of the capital requirements incurred by growth will not be covered by existing mainstream central and local funding'. Hence, the necessity to seek developer contributions to ensure that existing levels of service can be maintained as growth continues.*

*8.3 The proposed development is expected to increase the overnight population of this settlement by at least 307 people and a net addition of 133 new houses must bring additional policing demands. Extrapolating from existing empirical data indicates that the scheme would generate annual additions of some 239 calls and responses, 28 emergency events, 16 non-emergency events, 9 additional recorded crimes and 8 recorded anti-social behaviour incidents. In turn those events would require additional vehicle use, more radio calls, greater use of the PND systems to process and store crime records and intelligence, further deployment of mobile CCTV technologies and additional access for beat staff in a local Hub, not to mention consequences for support and HQ staff.*

*8.4 The Framework supports the provision of the facilities and services needed in a community. This is one of the 'core principles' and SPDs are indicated to be an appropriate means to assist applicants in understanding the obligations that proposals might generate. The Framework advocates the creation of healthy and inclusive environments where crime and disorder and the fear of crime do not undermine the quality of life. Policy IMP1 of the Local Plan reflects that advice and provides an over-arching justification for the contributions sought. And, the Leicestershire County Council Statement of Requirements sets out the provisions that should be made towards the need for additional policing that might be due to new development.*

*8.5 The contribution requested amounts to £44,711 to mitigate the additional impacts estimated to accrue directly from the proposed development. These contributions are required to upgrade the capacity of existing infrastructure, which would not otherwise be sufficient to meet the likely demand from the scheme. It is anticipated that staff salaries and day to day routine additional costs would be met by rate revenues. A programme to procure the additional facilities required would be agreed as a clause in a legal agreement. The contributions sought would be directly related in scale and kind to the development, so that the completion of some infrastructures would require funding from elsewhere. But, the contribution would be used wholly to meet the direct impacts of this development and wholly in delivering the policing to it. On the basis of advice, the level of contributions sought are not based on a formula but derived solely from the direct impact of the scheme on policing. This has elicited support at appeal. A detailed explanation of the methods used to calculate each element of the total contribution is offered together with the justification for it derived from the advice in the Framework. It is shown that the contributions sought are directly related to the development, fairly and reasonably related in scale and kind to the scheme and necessary to make the development acceptable in planning terms. There would thus be CIL compliant.*

*11.57 The Contributions towards… additional policing… are directly related to the development, proportionate to the scheme and necessary to make the proposal acceptable in planning terms. Hence, I consider that the contributions sought can be considered to be CIL compliant.*

**Appeal Ref and Procedure: APP/F2415/A/14/2217536 – Public Hearing**

**Appeal Decision: Allowed - 21 August 2014**

**Planning Inspector: Jane Miles BA (Hons) DipTP MRTPI**

**Appellant: Ullesthorpe Court Hotel and Golf Club Ltd**

**Land off Fairway Meadows, Ullesthorpe, Leicestershire**

**The development proposed is new housing development on Land off Fairways Meadows, Ullethorpe.**

**Force and Method of Appeal Representation: Leicestershire Police – Interested Party**

**Application: 13/01228/OUT - Harborough District Council**

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*31. Returning to the unilateral undertaking, I have already mentioned obligations relating to measures to promote more sustainable modes of transport, which are necessary to make the development acceptable. The undertaking also includes provision for contributions towards library facilities and police services and, given the justifications provided, I find that these are also necessary to make the development acceptable.*

*32. Taking account also of the information provided to explain how the various contributions are calculated and how they would be used, I find that all the obligations would be directly related to the development and fairly and reasonably related to it in scale and kind. The tests in Regulation 122 of the Community Infrastructure Levy Regulations 2010 and in the Framework are therefore satisfied and thus I have had regard to all the obligations.*

**Appeal Refs and Procedure: APP/K2420/A/13/2202658 and APP/K2420/A/13/2210904 – Public Hearing**

**Appeal Decision: Appeal A Dismissed and Appeal B Allowed - 18 August 2014**

**Planning Inspector: Mark Dakeyne BA (Hons) MRTPI**

**Appellant: Alexander Bruce Estates Ltd**

**Land off (to the south of) Spinney Drive and land off (to the east of) Brookside, Barlestone, Leicestershire**

**Appeal A - The development proposed is the erection of 49 new dwellings, landscaped public open space and creation of a formal wetland habitat with boardwalk access.**

**Application: 12/01029/FUL – Hinckley and Bosworth Borough Council**

**Appeal B – The development proposed is erection of 49 dwellings with landscaped open space.**

**Force and Method of Appeal Representation: Leicestershire Police – Interested Party**

**Application: 13/00735/FUL - Hinckley and Bosworth Borough Council**

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*34. The contribution to Leicestershire Police has been justified based on crime statistics within the area and demands that would arise from the development. It would fund equipment and infrastructure to support additional personnel within the beat area, not the staffing itself. In terms of civic amenity contributions, the nearest household waste and recycling disposal site is at Barwell. Figures were provided indicating that the site is at or above capacity at peak periods such as Bank Holiday weekends. The contributions would assist in the acquisition of an additional storage container to cater for the waste from this and other new housing developments in the area.*

*35. The Council considers that the police and civic amenity contributions do not meet the tests within Regulation 122 of the Community Infrastructure Regulations (CIL) but does not provide much evidence to support its position. In contrast Leicestershire Police and the County Council have provided significant justification for the contributions, including reference to a number of recent appeal decisions where such contributions have been supported by Inspectors and the Secretary of State.*

*36. The contributions would accord with Policies IMP1, REC2 and REC3 of the LP and the Council's Play and Open Space Guide SPD. In addition the contributions to the County Council are supported by the Statement of Requirements for Developer Contributions in Leicestershire.*

*37. The obligations within the S106 agreements are necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind to the development. Therefore, they meet the tests within CIL Regulation 122 and should be taken into account in the decision. I consider that the conditions set out in Paragraph 2.9 of the agreement are satisfied and that the obligations should become effective.*

**Appeal Refs and Procedure: APP/H1840/A/13/2199085 and APP/H1840/A/13/2199426 – Public Inquiry**

**Secretary of State Decision: Appeals A and B Allowed - 02 July 2014**

**Planning Inspector: Harold Stephens BA MPhil Dip TP MRTPI FRSA**

**Appellants: Barberry Droitwich Ltd (Appeal A) and Persimmon Homes Limited & Prowting Projects Ltd (Appeal B)**

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

**Appeal A - The development proposed is an outline planning application for the development of land for up to 500 dwellings (Class C3); up to 200 unit care facility (Class C2); provision of mixed use local centre to include shop (Class A1); financial & professional services (Class A2); restaurants & café (Class A3); drinking establishment (Class A4); hot food takeaway (Class A5); offices (Class B1a) and police post; indoor bowls facility; means of access and estate roads; public open space; landscaping and infrastructure.**

**Application: W/11/01073/OU – Wychavon District Council**

**Site at Land North of Pulley Lane and Newland Land, Newland, Droitwich Spa**

**Appeal B - The development proposed is an outline application for the construction of a maximum of 265 dwellings with associated car parking, access, infrastructure provision and open space.**

**Force and Method of Appeal Representation: West Mercia Police – Written Representations**

**Application: W/12/02336/OU - Wychavon District Council**

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

1.15 *With regard to **Appeal A** the planning application was submitted in outline form with all matters reserved except for access. A schedule of the application documents and plans on which the SoS is requested to determine the proposal is at BDL 13. The reader should note that the most helpful plan in this schedule is the Indicative Masterplan. The proposed development is described as including the following components…*

- *A police post*

6.25 *…With other development already underway there is over a 12% increase in the town's population which amounts to a massive effect on local services such as doctors, dentists, schools and the police…*

*8.88 A S106 obligation (BDL5) was submitted at the inquiry and is agreed by the main parties… From all the evidence that is before me I consider that the provisions of the S106 Agreement complies with paragraph 204 of the NPPF and meets the 3 tests of Regulation 122 of the CIL Regulations 2010. I accord the S106 Agreement significant weight and I have had regard to it as a material consideration in my conclusions…*

**Appeal Ref and Procedure: APP/F2415/A/12/2183653 – Public Inquiry**

**Secretary of State Decision: Dismissed - 17 April 2014**

**Planning Inspector: Stephen Roscoe BEng MSc CEng MICE**

**Appellant: Mr IP Crane**

**Land South Of Hallbrook Primary School, Crowfoot Way, Broughton Astley, Leicestershire**

**The proposal is a development of 111 dwellings including a new community hall, sports pitches and associated parking, open space, access and landscaping.**

**Force and Method of Appeal Representation: Leicestershire Police – Rule 6 Party**

**Application: 12/00494/OUT - Harborough District Council**

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*22. The Secretary of State agrees with the Inspector's assessment of the Section 106 agreement dated 23 May 2013 at IR62-76. He agrees that all of the contributions would be necessary to make the proposal acceptable in planning terms and would accord with the CIL Regulations 2010 and the tests in paragraph 204 of the Framework (IR77).*

*70. The contribution towards policing has been requested by the Police and Crime Commissioner for Leicestershire [PCCL/ML/1]. The proposal would increase the workload of the Leicestershire Constabulary in terms of additional calls, non-emergency follow ups and additional vehicle miles amongst other things. The contribution would enable the force to respond to this increased workload. It would therefore accord with CS Policy CS12 and the Local Infrastructure Schedule in the CS [HDC13].*

*77. All of the above contributions would therefore be necessary to make the proposal acceptable in planning terms and be directly and reasonably related to it in scale and kind. They would therefore also accord with Regulation 122 of the Community Infrastructure Levy Regulations 2010 as amended.*

**Appeal Refs and Procedure: APP/X2410/A/13/2196928 and APP/X2410/A/13/2196929 – Public Inquiry**

**Secretary of State Decision: Appeals A and B Allowed - 08 April 2014**

**Planning Inspector: Harold Stevens BA MPhil DipTP MRTPI FRSA**

**Appellant: William Davis Ltd**

**Land off Mountsorrel Lane, Rothley, Leicestershire, LE7 7PS**

**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**

**Application: P/12/2005/2 – Charnwood Borough Council**

**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.**

**Force and Method of Appeal Representation: Leicestershire Police – Rule 6 Party**

**Application: P/12/2456/2 - Charnwood Borough Council**

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*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.*

*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. 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, the contribution per dwelling amounted to approximately £300 whereas in the Land at Melton Road appeal APP/X2410/A/12/2173673, 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 documentation 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 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.*

*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. The LPA has indicated that it is neutral in relation to the request.*

*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…*

*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… The Appellant is not satisfied that these contributions are CIL compliant. The LPA has indicated that it is a neutral in relation to both requests.*

*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 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 LP, provides a statement of compliance with the CIL Regulations 2010.*

*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.*

*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 Regulation 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.*

**Appeal Ref and Procedure: APP/T2405/A/13/2200867 – Public Inquiry**

**Appeal Decision: Dismissed - 02 January 2014**

**Planning Inspector: Martin Whitehead LLB BSc(Hons) CEng MICE**

**Appellants: Mrs S Shropshire-Boddy, H Knowles and J E Smith**

**Land at Seine Lane/Forest Road, Enderby, Leicestershire**

**The development proposed is the erection of up to 244 dwellings, public open space, landscaping and vehicular access.**

**Force and Method of Appeal Representation: Leicestershire Police – Rule 6 Party**

**Application: 12/0823/1/OX - Blaby District Council**

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*41. At the inquiry, the appellants submitted an engrossed Section 106 Agreement. The planning obligations would secure 30% affordable housing, contributions towards a bus service, bus passes, travel packs, highway improvements, healthcare, libraries, police and the maintenance of the proposed footbridge and public open space that would form part of the scheme. I have considered the evidence provided in writing and at the inquiry, including that from Leicestershire County Council regarding contributions towards libraries and from Leicestershire Police regarding contributions towards policing services and facilities, to demonstrate that the obligations meet the tests in Community Infrastructure Levy Regulation 122.*

**Appeal Refs and Procedure: APP/T2405/A/13/2193758 and APP/T2405/A/13/2193761 – Public Hearing**

**Appeal Decision: Appeals A and B Allowed - 01 August 2013**

**Planning Inspector: Martin Whitehead LLB BSc(Hons) CEng MICE**

**Appellant: David Wilson Homes (East Midlands)**

**Land east of Springwell Lane, Whetstone, Leicestershire LE8 6LT**

**Appeal A: The development proposed is residential development of up to 150 dwellings and parkland with associated access, infrastructure and landscaping.**

**Application: 12/0952/1/OX – Blaby District Council**

**Land off Countesthorpe Road and Springwell Lane, Whetstone, Leicestershire**

**Appeal B: The development proposed is formation of access for use by construction traffic in conjunction with proposed residential development.**

**Force and Method of Appeal Representation: Leicestershire Police – Written Representations**

**Application: 12/0951/1/PY - Blaby District Council**

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*28. The appellant has submitted an engrossed Section 106 Agreement for Appeal A after the close of the hearing. The planning obligations would secure 25% affordable housing, contributions towards public transport, cycling, a travel pack, highway improvements, healthcare, libraries, police and the maintenance of the public open space that would form part of the scheme. I have considered the evidence provided in writing and at the hearing in support of the contributions to satisfy myself that the obligations meet the tests in Community Infrastructure Levy (CIL) Regulation 122. These tests are that the obligation is necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonable related in scale and kind to the development.*

*33. Leicestershire Police (LP) has supported the need for contributions towards policing services and facilities in its statement and at the hearing. The required contributions are significantly less than those considered by the previous Inspector, and LP have suggested that it has used a different method of calculation, based on the impact of the development itself. Therefore, I am satisfied that the sum provided for in the obligation is necessary to make the development acceptable in planning terms, having regard to the requirements in paragraph 58 of the Framework to create safe and accessible environments where crime and disorder, and the fear of crime, do not undermine quality of life or community cohesion.*

*35. Having regard to the above, I conclude on the Section 106 Agreement that all the planning obligations meet the tests in CIL Regulation 122 and paragraph 204 of the Framework. Without the obligations, the proposal would fail to accord with the relevant development plan policies and would have unacceptable impacts on local facilities and services and affordable housing in the District.*

**Appeal Ref and Procedure: APP/V3120/A/13/2192205 – Written Representations**

**Appeal Decision: Allowed – 25 July 2013**

**Planning Inspector: Tim Wood BA(Hons) BTP MRTPI**

**Appellant: Gladman Developments Ltd**

**Barnett Road, Steventon, Oxfordshire, OX13 6AJ**

**The proposal is for residential development of up to 50 dwellings, landscape, open space, highway improvement and associated works.**

**Force and Method of Appeal Representation: Thames Valley Police – Written Representations**

**Application: P12/V1980/O – Vale of White Horse District Council**

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*21. The completed Unilateral Undertaking and Planning Obligation (the latter being the agreement with the County Council) contain other obligations including ones relating to contributions towards police, street naming, works of art, education, public transport, bus stop, library and museum. On the basis of the evidence submitted, I am satisfied that all of these obligations satisfy the tests of Regulation 122 of the CIL regulations.*

**Appeal Ref and Procedure: APP/V3120/A/13/2191911 – Public Inquiry**

**Appeal Decision: Allowed – 11 July 2013**

**Planning Inspector: J.P. Watson BSc MICE FCIHT MCMI**

**Appellant: Hallam Land Management Ltd**

**Land east of Drayton Road, Abingdon, Oxfordshire**

**The development proposed is described as 160 residential dwellings, open space, a new access off Drayton Road, engineering (including ground modelling) works, infrastructure works (including drainage works, utilities provision and site reclamation), car parking and lighting.**

**Force and Method of Appeal Representation: Thames Valley Police – Written Representations**

**Application: P12/V2266/FUL – Vale of White Horse District Council**

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*95. The planning obligation between the site owners, the Appellant and Vale of White Horse District Council makes provision for various on- and off-site elements. The on-site elements include a work of art, street nameplates and waste and recycling bins and the off-site elements include sports facilities and equipment for the Police. I find insufficient evidence to support the work of art contribution and so I attribute little weight to it. I am satisfied that in all other respects the planning obligation meets the three tests in Framework paragraph 204, and so I attribute full weight to the planning obligation in those respects.*

**Appeal Ref and Procedure: APP/G2435/A/13/2192131 - Public Inquiry**

**Appeal Decision: Allowed - 30 May 2013**

**Planning Inspector: Colin Ball DArch DCons RIBA IHBC**

**Appellant: J S Bloor (Measham) Ltd**

**Land south of Moira Road, Ashby-de-la-Zouch LE65 2NJ**

**The development proposed in 2009 was described as the erection of 83 no. dwellings with associated garaging and formation of new access road to Moira Road.**

**Force and Method of Appeal Representation: Leicestershire Police – Rule 6 Party**

**Application: 09/00620/FUL - North West Leicestershire District Council**

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*36. …The additional population would also bring additional policing requirements, which would need to be addressed.*

*37. The s106 Agreement would effectively bind the appellant to providing 18 affordable dwellings as part of the development. It would also require the appellant to make, and the District Council and County Council to disburse, contributions of…*

- *£24,903 towards the capital costs of policing the development*

*39. Evidence submitted to the inquiry showed that, without these contributions, the development would not be acceptable in planning terms because of its harmful impact on local infrastructure. These measures are therefore necessary to mitigate that impact. The need for additional facilities arises directly from the development of the site so the contributions are directly related to it. The extent of additional provision in each case has been carefully considered and is proportionate, appropriate and no more than is necessary to meet the additional demands, so the provisions of the Agreement are fairly and reasonably related in scale and kind to the development. The provisions of the Agreement therefore comply with 203 of the Framework and meet the tests of Regulation 122 of the CIL Regulations 2010. I therefore consider that the harmful impact of the proposal on local infrastructure would be satisfactorily overcome by the binding planning obligations.*

**Appeal Ref and Procedure: APP/X2410/A/12/2173673 – Public Inquiry**

**Secretary of State Decision: Allowed - 14 May 2013**

**Planning Inspector: Keith Manning BSc (Hons) BTP MRTPI**

**Appellant: Jelson Homes**

**Land at Melton Road, Barrow Upon Soar, Leicestershire, LE12 8NN**

**The development proposed is residential development (300 dwellings).**

**Force and Method of Appeal Representation: Leicestershire Police – Written Representations**

**Application: P/10/1518/2 - Charnwood Borough Council**

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*20. With regard to the Planning Obligation (IR4, IR216-218, and IR283-301), the Secretary of State is satisfied that the provisions set out in the signed and sealed Planning Agreement dated 14 October 2012, as varied by the Deed of Variation dated 15 January 2013 (to make its provisions conditional upon their items being determined by the Secretary of State to meet the statutory tests) can be considered to be compliant with CIL Regulation 122…*

*288. The 'Police Authority Contribution' is for £177,255. The manner in which the authority would seek to spend it is set out in the Third Schedule to the Planning Obligation. By letter to the Planning Inspectorate of 6 August 2012, the Leicestershire Constabulary explained in some detail its approach to the use of S106 monies for police infrastructure throughout the county, supported by a number of appeal decisions in which it was concluded that the contributions in each case passed the relevant tests and could therefore be accorded weight. The letter appends (Appendix 2) a useful note from the Association of Chief Police Officers which draws the distinction between capital expenditure on equipment and premises, the basic infrastructure of policing, and revenue expenditure which might reasonably be expected to be supported by the increased number of households. A January 2012 policy statement from the Leicestershire Police Authority 'Policing Contributions from Development Schemes' is also included. This sets out its approach to the increased pressure on policing from additional housing development. The document includes at Section 7 the principles whereby financial contributions will be deployed, including provision for repayment if the police authority fails to spend the contributions, linkage to the development in question and use for additional needs arising from it and a "clear audit trail demonstrating that financial contributions have been used in a manner that meets the tests" (in the subsequently cancelled Circular 05/2005 Planning Obligations.)*

*289. Those tests are essentially the same as those of the extant CIL Regulations and hence there is a clear recognition by the Leicestershire Police Authority that development is not simply a source of additional finance to be spent in an unspecified or unrelated way. Moreover, the appellant in this case has "signed up" to the Policing Contribution, albeit under, it seems, protest. The evidence of Mr Thorley addresses this matter at Section 12 and his Appendix 10 is a paper on the topic that refers to a number of appeal decisions where a contribution to policing has not been supported, for example the appeal in Sapcote (Ref APP/T2405/A/11/2164413) in which the Inspector comments, in paragraph 41 of his decision, that… "it has not been shown, in the light*

*of the statutory tests, that the contribution would be directly linked to the impacts arising from the appeal proposal."*

*290. Equally, the material submitted by the Police Authority under cover of its letter of 6 August 2012 includes a number of appeal decisions pointing in the opposite direction, for example the appeal in Bottesford (Ref APP/Y2430/A/11/2161786) where the Inspector comments, in paragraph 68, that "there was also specific justification of the individual elements within this global sum directly related to the circumstances of the appeal proposal. Therefore the contribution does meet all three tests for CIL compliance."*

*291. The Inspectors will have reached their own conclusions on the particular evidence and submissions put to them at appeal and I shall approach the evidence in this case in the same way, i.e. on its merits. It seems to me 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. 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."*

*292. Adequate policing is so fundamental to the concept of sustainable communities that I can see no reason, in principle, why it should be excluded from the purview of S106 financial contributions, subject to the relevant tests applicable to other public services. There is no reason, it seems to me why police equipment and other items of capital expenditure necessitated by additional development should not be so funded, alongside, for example, additional classrooms and stock and equipment for libraries.*

*293. In this case, the planning obligation clearly sets out in its third schedule the items anticipated to be needed as a consequence of policing the proposed development alongside the existing settlement and apportioned accordingly. It seems to me to be sufficiently transparent to be auditable and at a cost equivalent to, perhaps (if 300 dwellings are constructed) £590.85 per dwelling, it does not equate to an arbitrary "roof tax" of the type complained of, whatever previous practice may have been.*

*294. For these reasons I am of the view that the 'Police Authority Contribution' is compliant with the CIL Regulations and that weight should therefore be accorded to it as a means of mitigating the predicted impact of the development.*

**Appeal Ref and Procedure: APP/W0340/A/12/2189422 – Written Representations**

**Appeal Decision: Allowed – 13 May 2013**

**Planning Inspector: Anthony Lyman BSc(Hons) DipTP MRTPI**

**Appellant: Shanley Homes Ltd**

**1055 & 1057 Oxford Road, Tilehurst, Reading, RG31 6YE**

**The development proposed is the demolition of the existing dwellings of 1055 and 1057 Oxford Road and the erection of 29 No. dwellings with associated access, parking, turning and landscaping.**

**Force and Method of Appeal Representation: Thames Valley Police – Written Representations**

**Application: 12/02111/OUTMAJ – West Berkshire Council**

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13. A signed and dated s106 Unilateral Undertaking (UU) has been submitted relating to the provision of nine affordable dwellings on the site, and committing the appellants to various financial contributions regarding highway infrastructure; open space provision; library services; health care requirements; adult social care provision; education and equipment for Thames Valley Police. The Council has confirmed that the layout and mix of proposed affordable housing is appropriate, with which I agree. The Council has also submitted statements and topic papers justifying the need for the financial contributions which I have considered with regard to the statutory tests in regulation 122 of the Community Infrastructure Levy Regulations 2010. From the evidence submitted, the provisions of the UU fairly and reasonably relate to the development proposed and meet the tests. I have, therefore, accorded the UU appropriate weight.

**Appeal Ref and Procedure: APP/X2410/A/12/2187470 – Public Hearing**

**Appeal Decision: Allowed - 15 April 2013**

**Planning Inspector: Paul E Dobsen MA (Oxon) DipTP MRTPI FRGS**

**Appellant: GEG Properties**

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

**The development proposed is "erection of 60 dwellings following demolition of nursery buildings and formation of site access (revised scheme)".**

**Force and Method of Appeal Representation: Leicestershire Police – Interested Party**

**Application: P/12/1709/2 - Charnwood Borough Council**

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*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.*

*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).*

**Appeal Ref and Procedure: APP/F2415/A/12/2179844 – Public Hearing**

**Appeal Decision: Allowed - 14 February 2013**

**Planning Inspector: Kay Sheffield BA(Hons) DipTP MRTPI**

**Appellant: William Davis Limited**

**Land north of Bill Crane Way, Lutterworth, Leicestershire.**

**The application sought outline planning permission for residential development with associated infrastructure, public open space and provision of vehicular and pedestrian access without complying with a condition attached to planning permission Ref 11/00117/OUT, dated 23 January 2012.**

**Force and Method of Appeal Representation: Leicestershire Police – Written Representations**

**Application: 12/00613/VAC - Harborough District Council**

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*26. The UU covenants in favour of the Council contributions in respect of the provision and maintenance of open space as part of the development and towards allotments, cemetery provision, policing services, medical facilities, recycling, community facilities and the provision of 30% of the units of affordable housing. The UU also covenants in favour of the Leicestershire County Council financial contributions towards education, public transport measures including bus stops, travel packs and bus passes, and library provision.*

*27. Whilst the Council and the County Council confirmed that the terms of the submitted UU were acceptable, the appellant questioned whether the contribution in respect of policing was compliant with the tests set out in the CIL Regulations. The appellant suggests that there is no evidence that the proposed development would result in a need for increased police resources. It is also argued that there should be no automatic assumption that the development should bear the cost of the provision of additional policing since the anticipated growth of such costs in this area could have been budgeted for and the new residents will generate Council Tax revenue.*

*28. However, it is recognised by both the County Council and the Council's guidance that a contribution towards policing could be triggered if there is a need arising from the development. The guidance therefore establishes the principle of a contribution although there needs to be clear evidence that the level of contribution would be justified having regard to the tests set out in the CIL Regulations.*

*29. The written evidence submitted by Leicestershire Police detailed the impact the proposed development would have on policing, forecasting the number of potential incidents and the anticipated effect this would have on staffing, accommodation, vehicles and equipment. In view of the requirement of national planning policy to create safe and accessible environments where crime and disorder, and the fear of crime, do not undermine quality of life, it is considered that, on the evidence before me, a contribution towards policing is necessary to make the development acceptable in planning terms.*

30. *Whilst the additional staff, accommodation, vehicles and equipment detailed by the Police could not be regarded as being for the exclusive use of the development, they would be necessary to provide for the effective policing of and to attend incidents on the site. In addition the number of staff and level of resources required to police the development has been based on the number of incidents estimated to be generated by the site. In respect of policing services the UU makes provision for the payment of £426 per dwelling and this is the figure sought by Leicestershire Police. The level and range of the mitigation would therefore appear to be directly related to the development and also to be fairly and reasonably related in scale and kind to it.*

31. *I have had regard to the fact that the s106 Agreement, dated 18 January 2012, in respect of the existing outline planning permission makes provision for a contribution of £606 per dwelling for policing. The appellant has indicated that this agreement was concluded under time pressure and the police have had a change in policy since, under which only major developments would be targeted for contributions. However, the report also states that contributions would be pursued where a significant impact on policing is foreseen and can be quantified. It would appear that the most relevant implication of the change in policy is that the contribution required by the police in respect of this appeal was reduced following quantification of the anticipated effect of the development. This affirms my view that the UU before me meets the CIL tests.*

32. *Reference has been made to a number of appeal decisions where it has been concluded that the police contributions failed to meet the tests and others where a contrary conclusion has been reached. However, I am not aware of the scope of the evidence provided in these cases and a comparison with the appeal cannot therefore be made.*

33. *On the basis of the evidence before me, therefore, I am satisfied that the contribution towards policing set out in the UU is necessary, directly related to the development and fairly and reasonably related to it in scale and kind – as required by the tests set out in the CIL Regulations. I conclude the same with regard to the elements of the UU which are not in dispute and I have taken the UU into consideration in reaching my decision.*

Neutral Citation Number: [2014] EWHC 1719 (Admin)

Case No: CO/831/2014

**IN THE HIGH COURT OF JUSTICE**
**QUEEN'S BENCH DIVISION**
**ADMINISTRATIVE COURT IN BIRMINGHAM**

Birmingham Civil Justice Centre
Priory Courts
Birmingham

Date: 27/05/2014

**Before** :

**MR JUSTICE FOSKETT**

- - - - - - - - - - - - - - - - - - - - -

**Between :**

| | |
|---|---|
| **The Queen (on the application of The Police and Crime Commissioner for Leicestershire)** | **Claimant** |
| **- and -** | |
| **Blaby District Council** | **Defendant** |
| **-and-** | |
| **(1) Hallam Land Management Limited**<br>**(2) David Wilson Homes Limited**<br>**(3) Davidsons Developments Limited**<br>**(4) BDW Trading Limited**<br>**(5) Leicestershire County Council**<br>**(6) Martin Frank Spokes**<br>**(7) Richard Thomas Spokes**<br>**(8) Helen Joans Jones**<br>**(9) Frances Alison Mark Hicks**<br>**(10) The Trustees of the Will Trusts of Eric Roderick Brook Drummond** | **Interested Parties** |

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**Jenny Wigley and Thea Osmund-Smith** (instructed by **East Midlands Police Legal Services**) for the **Claimant**

**David Elvin QC** (instructed by **Marrons Shakespeare LLP**) for the **Defendant**
**Charles Banner** (instructed by **King Wood & Mallesons SJ Berwin LLP**) for **Interested Parties 1-4 & 10**
**Alex Goodman** (instructed by **Legal Services of Leicestershire County Council**) for **Interested Party (5)**

Hearing date: 21 May 2014

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# Approved Judgment

**Mr Justice Foskett:**

## Introduction

1. This case concerns a substantial development called the "New Lubbesthorpe" scheme to the south west of Leicester for which the Defendant, as local planning authority for the district, resolved on 1 November 2012 to grant planning permission subject to certain conditions and to the conclusion of a suitable agreement under section 106 of the Town and Country Planning Act 1990 ("the 1990 Act") between certain parties.

2. The section 106 agreement was concluded on 13 January 2014 and outline planning permission was granted on 14 January 2014.

3. The Claimant's Claim Form seeking judicial review of the grant of planning permission was issued on 24 February 2014. The focus of the proposed challenge is upon the effect and implications of the section 106 agreement so far as the Claimant is concerned. The section 106 agreement provides for its own termination if the planning permission is quashed (see paragraph 17.7 of the agreement).

4. On 21 March 2014 Hickinbottom J ordered that the application for permission to apply for judicial review be heard on 21 May 2014 on a "rolled-up" basis and gave various directions. On 16 April he gave the Claimant permission to amend his grounds. He was of the view that the resolution of the claim required expedition. The urgency arises because the funding of £5 million from the Department of Transport (derived from what are known as "Pinch Point monies" under the Department's scheme to assist funding highways infrastructure) for the M1 motorway bridge required to implement the scheme may be at risk if not spent before 31 March 2015. Plans are already in place for the temporary closure of the M1 on Christmas Day 2014 to lower the main bridge span into place (see paragraphs 6 and 7 below).

5. The hearing did indeed take place on 21 May and all Counsel completed their submissions within the day.

6. Because of the urgency, this judgment has been prepared in a little over 24 hours after the conclusion of the hearing, is inevitably shorter than might otherwise have been the case and has not received the refinement it might have received if there had been longer to prepare it. Inevitably, I have had to focus on those aspects of the argument that, in my view, represent the strongest grounds for claiming the relief sought rather than dealing with all matters raised.

## The nature of the development

7. The outline planning application submitted in February 2011 was for -

> "… 4,250 dwellings, a mixed use district centre and two mixed use local centres featuring a supermarket, retail, commercial, employment, leisure, health, community and residential uses, non-residential institutions including a secondary school, primary schools and nurseries, an employment site of 21 hectares, open spaces, woodlands, new access points and associated facilities and infrastructure, and detailed proposals

> for two new road bridges over the M1 motorway and M69 motorway, and two road access points from Beggars Lane and new accesses from Meridian Way, Chapel Green/Baines Lane and Leicester Lane."

8. The site for the development is open and undeveloped land stretching over 394 hectares and is separated from Leicester by the M1 motorway. This explains the need for one of the two road bridges referred to in the outline application and to which reference was made in paragraph 4 above. The bridge is undoubtedly a key component in making this development possible.

9. According to the witness statement dated 13 March 2014 of Ms Lynne Stinson, a Project Manager within the Environment and Transport Department of the 5th Interested Party (Leicestershire County Council), the development will generate £159 million of investment in new infrastructure, buildings and new parks and other open spaces and approximately 1530 full-time equivalent jobs. It will, according to her statement, provide a significant proportion of the new housing identified in the Defendant's Core Strategy (as amended) as needed in the district in the period to 2029.

10. Whether those claims are justified is not a matter for the court, but the fact that they are made in those terms indicates the scale of the proposed development. The aerial photographs demonstrate the substantial area of land involved and Miss Jenny Wigley, who appeared with Miss Thea Osmund-Smith for the Claimant, described the development as a "new town" which seems an appropriate description. It will take many years to complete if it proceeds. The identities of some of the Interested Parties will give an indication of the commercial interests at stake.

**The concerns of the Claimant**

11. It is obvious that a development of the nature described would place additional and increased burdens on local health, education and other services including the police force. The focus of this case is upon the effect upon the local police force. If it sought to shoulder those additional and increased burdens without the necessary equipment (including vehicles and radio transmitters/receivers for emergency communications) and premises, it would plainly not be in the public interest and would not be consistent with a policy that encourages "sustainable development": see, for example, paragraphs 17 of 79 of the National Planning Policy Framework ('NPPF'). It is that that leads to the Claimant's interest in these matters.

12. Needless to say, the Claimant does not challenge the principle of the proposed development, nor is the potential amount of the provision of funding for police services by the developers in issue, but the concerns that have led to this application derive from what Miss Wigley submits is (i) an alleged inadequate provision of certain aspects of such funding at appropriate times during the course of the development and (ii) a lack of a clear commitment in the section 106 agreement (to which the Claimant is not a party) that anything will in fact be paid by the developers for premises required by the police in order to serve the community created by the development.

13. The need to provide funding for police resources had, of course, been identified during the discussions leading to the grant of planning permission and, as I have indicated, agreement was reached on the amount that would be required and met by the developers. However, the Claimant contends that there were procedural deficiencies in the final stages of that process that left the police out of the relevant negotiations and ought to lead to the planning permission being quashed or that the result, so far as the funding of police resources is concerned, was irrational and should, accordingly, be quashed on that basis also. The focus, as I have said, is on when certain features of the funding should, in effect, come on-stream during the development and whether there is a sufficiently clear commitment as to funding for police premises.

14. When the resolution for the grant of planning permission was passed on 1 November 2012, the resolution contained the following provision:

> "That planning application 11/0100/1/OX be referred to the Secretary of State as a departure under the Town and Country Planning (Consultation) (England) Direction 2009 as the application proposal is a departure to the Blaby District Local Plan (1999).
>
> That consequent upon the Secretary of State deciding not to intervene planning permission be granted subject to:
>
> The applicants entering into an agreement pursuant to Section 106 of the Town and Country Planning Act 1990 to secure the following:
>
> …
>
> - All CIL compliant capital infrastructures for Policing necessitated by the development and including officer equipment, communications, CCTV, vehicles and premises, the precise terms of this contribution to be settled by further negotiation."

15. The reference to "CIL compliant capital infrastructures" related to the funding of police requirements through a planning obligation under section 106 of the 1990 Act, which in order to be "CIL compliant" must meet the tests specified in Regulation 122(2) of the Community Infrastructure Levy ('CIL') Regulations 2010. Those tests require that the sums are –

> "(a) necessary to make the development acceptable in planning terms;
>
> (b) directly related to the development; and
>
> (c) fairly and reasonably related in scale and kind to the development."

16. The relevance of the CIL tests will be apparent in due course.

17. The parties to the section 106 agreement concluded on 13 January 2014 were the Defendant, the County Council (the highway and education authority for the area), the Second, Fourth and Sixth-Tenth Interested Parties (collectively known as "the owner") and the First and Third Interested Parties (the beneficiaries of certain charges and options for the site). The agreement runs to over 170 pages including appendices and contains extremely detailed provisions concerning the way in which the development would proceed.

18. The provision that has given rise to the concerns of the Claimant is at paragraph 2 of Schedule 3 to the Agreement which reads as follows:

> "2.1 The Owner shall pay to the District Council the Police Service Equipment Contribution no later than Occupation of 2,600 Dwellings and shall not Occupy more than 2,600 Dwellings until it has paid the Police Service Equipment Contribution to the District Council.
>
> 2.2 (Subject to the Owner and the District Council at that time agreeing or it having been determined in accordance with clause 23 that the contribution is necessary and if so its appropriate level having regard to the progress of the Development and the availability of Police Service facilities within the area and the appropriate relevant policy guidance at the time) the Owner shall pay the Police Service Premises Contribution to the District Council no later than the Occupation of 3,750 Dwellings and shall not Occupy more than 3,750 Dwellings until it has paid the Police Service Premises Contribution."

19. The Police Service Equipment Contribution referred to in paragraph 2.1 is defined elsewhere in the agreement as "the sum of £536,834 towards police equipment" and the Police Service Premises Contribution referred to in paragraph 2.2 is defined as "a sum not to exceed £1,089,660 towards the acquisition of premises or extension to existing premises such sum to be ascertained in accordance with [paragraph 2.2] of the Third Schedule. Those sums are, of course, to be paid by the "owner" (in effect, the developers) to the Defendant which would then be responsible for paying them over to the Claimant. Reference to Clause 23 is to a provision entitled "Dispute Provisions" that provide for reference to an independent expert in the event of disputes arising under the agreement. That procedure would, of course, only be available to a party to the agreement which the Claimant was not. It should also be noted that the possibility of the police (or any other non-party) relying on the Contracts (Rights of Third Parties) Act 1999 was excluded by clause 17.2 of the agreement.

20. Whilst the figures referred to in relation to equipment and premises costs did reflect figures that had been discussed and agreed between the Claimant and the Defendant, the terms of paragraphs 2.1 and 2.2 as to the circumstances in which those sums would be paid had not been the subject of express agreement and, the Claimant would argue, resulted from an inadequate process of engagement by the Defendant with the issues affecting the services that the Claimant would be required to provide and led to provisions that are irrational.

21. So far as the Police Service Equipment Contribution is concerned, Miss Wigley contends that it is irrational that it should be paid only when 2,600 homes are occupied because the contribution sought and agreed was calculated on the basis of 4,250 homes being constructed (each of which would contribute rateably to costs of the additional demand on policing infrastructure) and yet 2,600 homes would have to policed without any additional resources to do so before the payment was received. There would be several thousand residents *in situ* before the police received any contribution towards the equipment recognized as necessary to fulfill its tasks. In her Skeleton Argument she asserts that an analogous position in the education sphere would be asking hundreds of pupils generated by the development to wait a decade before providing them with somewhere to study.

22. In relation to the Police Service Premises Contribution, which is required to provide accommodation for the additional staff said to be required to deal with the policing issues of the development, the trigger provided in the agreement, subject to the terms set out in parentheses at the beginning of paragraph 2.2, is that it may be necessary to await the construction and occupation of 3,750 homes before any prospect of payment materializes. Miss Wigley submits that it cannot rationally be suggested that over £1 million towards additional police premises should be paid by the developers only when the final 500 homes in the development remain to be constructed. She says that an element of need for such services arises from the occupation of the first home, if not before, and she also raises the spectre of the real possibility that at that stage in the development no further homes will be built, the result being that the developers will avoid a liability to contribute to policing costs that will have been required from a much earlier stage and which the police, in order to fulfill their public role, will have to have met from other sources prior thereto. She also submits that the prefatory words in parentheses at the beginning of paragraph 2.2 mean (a) that the payment of any sum is contingent on agreement as to its necessity between the owner (as defined: see paragraph 17 above) and the Defendant and (b) that the level of any payment, even if agreed in principle, is uncertain and would be capped at the figure specified. In terms of the financing of premises pending receipt of such sum as may be paid under this provision, she says in view of the uncertainties that there would be no realistic prospect of borrowing against the commitment provided by the section 106 agreement.

23. She contrasts the provisions of the section 106 agreement relating to the police with the health care provision that affords an absolute commitment to pay the first of two sums agreed as necessary to expand an existing health centre on the occupation of no more than 150 houses and the second on the occupation of no more than 250 houses. Equally, funds for an onsite health centre are to be released on the occupation of 900 houses.

24. Those submissions are made by way of comment on the terms of paragraphs 2.1 and 2.2 as they stand. I will return to those submissions after dealing with the history that led to their formulation in those terms. That history is of importance to the way it is contended that public law grounds exist for the court to interfere in the way Miss Wigley submits is appropriate.

**The background to the terms of the section 106 agreement affecting the police**

25. It is first necessary to re-trace steps briefly to the resolution passed on 1 November 2012 (see paragraph 14 above).

26. As indicated above, this development proposal had been in gestation for a number of years before the resolution was passed. The police were involved in the negotiations prior thereto. The background from the perspectives of the parties involved is set out in the various witness statements and I need not deal with that background in detail. During the period of two years or so prior to November 2012 the view was taken by those representing the development interests in the site (and supported, at least to some extent, by the Defendant) that the sums sought by the police to be included as sums for which the developers should be liable were not CIL compliant (see paragraph 15 above). Sums in excess of £3 million were being sought. It seems that the view of the developers was that "an on-site police facility within the local community building would be more appropriate, relevant and beneficial to future residents" than what the police had in mind that stage. I need not go into details for present purposes, but that position obtained throughout 2012 and was reflected in the viability report prepared by DTZ on 20 September 2012 which was submitted as evidence to the Examination in Public session on 10 October 2012. It contained no allowance for contributions to police funding, but merely contained reference to the provision of community buildings on site to include a police presence.

27. In the run up to the planning committee meeting on 1 November 2012 there was something of an impasse, the Claimant maintaining the position that something over £3 million was required as the police contribution and the developers and the Defendant maintaining the position that this was excessive and not CIL compliant. Against that background the Claimant maintained an objection to any resolution in favour of the grant of planning permission. That impasse was resolved on the day of the meeting in a flurry of e-mails between the Claimant's Finance Director and the Deputy Chief Executive of the Defendant in which the formula that became reflected in the resolution (the material parts of which are set out in paragraph 14 above) was agreed. The Deputy Chief Executive of the Defendant acknowledged that the intention behind the words was that "this is all up for negotiation in the future".

28. That then is how matters were resolved at that stage. There was then a period during which it was necessary for the application to be considered by the Secretary of State. Discussions between the various parties were not actively renewed until the Secretary of State had indicated that he did not intend to call in the application. By the time that further discussions commenced in about March/April 2013, the potential of Pinch Point funding for the M1 bridge was "on the cards" and an application for such funding had been submitted to the Department of Transport.

29. On 10 April 2013 Mr Andrew Senior, the Lubbesthorpe project manager for the Defendant, told Mr Michael Lambert, the Growth and Design Officer employed by the Claimant, that "viability work" was continuing and that it would "inform the section 106 negotiations especially levels of affordable housing." He told him that the section 106 agreement was being negotiated and that the level of affordable housing had been changed from that originally contemplated. He referred to the bid for Pinch Point funding and said that, if successful, it would "free up the developers' funds" and help to deliver, amongst other things, the early completion of the "east-west spine road". It is clear that there remained differences about the police funding. By an e-mail of 22 August 2013, following a meeting a few days earlier, Mr Senior offered

some thoughts on how the Claimant might set out its case for a police contribution. It reflected on the approach to deciding on the level of policing necessary and how the appropriate infrastructure was identified, particularly how it would "relate directly" to the development (cf. CIL requirement (b)). He cited as an example the issue of a police car that would spend some time at the development site and some time elsewhere and raised the question of apportionment. It was plainly designed to be (and I am sure was taken as) a helpful contribution to the discussions.

30. The e-mail contained this paragraph to which Mr David Elvin QC, for the Defendant, drew attention as part of his response to the Claimant's arguments:

> "The final element would be how any contribution was to be phased, for smaller developments this would not be much of an issue, given that Lubbesthorpe would potentially have a 20 year delivery time the phasing of contributions would need to be established. I would suggest this was done, as with other services, on the basis of thresholds which identify when any existing capacity is used to trigger the extra resources, clearly once a trigger is reached a range of infrastructure would be required. There would be a range of triggers across the period of the building."

31. Mr Lambert responded to that in a lengthy e-mail of 4 September 2013. I need not quote it all, but Miss Wigley referred to the following paragraph:

> "**Viability.** We need to be guided by you on this however we remain concerned that policing attracts fair and reasonable consideration on a par with other services if the development cannot afford the infrastructure it will need. We have heard about your successes in attracting growth funds for road infrastructure and welcome these. We need to see please how this will reduce pressure on other necessary infrastructures and so we again ask for an up to date overview of this particularly if decisions have to be made about what will be delivered in relation to policing and other necessary infrastructures."

32. Mr Senior acknowledged receipt of the lengthy e-mail and commented that the approach was "sound" but emphasised that his comments should not be taken to imply the support of the Defendant for any particular bid. Mr Lambert shortly afterwards asked for Mr Senior's "guidance on viability" given the external funding for the road that was then on offer. Mr Senior's reply was that it had not to-date been the claim of the applicants that "overall the scheme is unviable", but he drew attention to the fact that they had pointed out that there is "a cost of up front infrastructure to be delivered which affects cash flow especially in Phase 1." He said that over the life of the scheme "the additional funding will improve the overall viability of the scheme" and suggested that the Claimant prepare its bid and the issue of viability could be addressed if it was raised in due course.

33. Mr Lambert had been working up a new bid which was sent to the Defendant by means of a letter under cover of an e-mail of 27 September. I need not try to summarise it save to say that the total sum sought was just over £1.79 million, a

substantial reduction from the original bid. Notwithstanding that, Mr Senior challenged a number of the items comprising the list constituting the bid as not being CIL compliant. One such element was the element for "additional premises" which, he argued, had not been "fully justified", but may be "capable of being supported" as the development proceeds. He suggested a review formula that would include discussions between the developers, the Defendant and the Claimant.

34. Mr Lambert responded to that in detail by an e-mail of 15 October 2013. Again, I need not deal with that in detail, but the paragraph dealing with the proposed review clause should be noted:

> "We accept the need for review clauses but this cannot be to the extent that there is no commitment or quantum at the outset when [planning permission] is issued and we cannot accept that the owner or the [the local planning authority] will be determining what we need. Neither are responsible for delivering policing. We are, and know what we need. You are supposed to be planning at outline not putting if off. Imagine the response if this was the review mechanism for schools or health or anything else i.e. wait till schools are overcrowded or people can't access health to provide premises essential for delivery. That is not the approach of [the National Planning Policy Framework]."

35. A meeting took place on 23 October, attended *inter alia*, by Mr Rob Back, the Planning and Economic Development Group Manager of the Defendant. He wrote to Mr Lambert on 24 October in which he acknowledged that some of the items sought were now accepted as meeting the CIL tests, but still maintaining that some did not, or were not sufficiently evidenced for that purpose. The letter contained this paragraph towards its conclusion:

> "You have also explained that the police would be happy to work with the developer to agree a phased contribution to the costs above in line with the rate of development on the site. This approach could be significant to assisting the developers cash flow and we will explore this with them in more detail. We would be grateful if you could confirm that this approach may be appropriate to all elements of the police infrastructure related to the site."

36. Mr Lambert replied by letter of 28 October acknowledging that he appreciated that the Defendant was attempting to conclude the section 106 Agreement as soon as possible and that there was "a sense of urgency". The paragraph dealing with the possible phasing of the police contribution reads as follows:

> "There are two elements to phasing. First what we will need and when, and we have looked at this before for you. Indeed what I attach in relation to vehicles demonstrates this to an extent. As I said at our meeting we need to sit down and work through this. Second our willingness and goodwill to borrow against the Section 106 contract. The latter depends on the

> contractual commitment, which we have asked for and haven't seen, and our goodwill. Our goodwill erodes the more our fully justified request is dismissed and changes offered without good reason."

37. There was a meeting on 31 October attended by Mr Back and others from the Defendant and Mr Lambert and the Finance Officer of the Claimant. Mr Back refers to it in his witness statement, but Mr Lambert does not. Mr Back says this about what was said:

> "… we confirmed that the … developers consortium was not claiming that the development was financially unviable and that the role of financial appraisal in relation to [the development] was limited to phasing and deliverability. In response it was explained by Mr Lambert that the police had the ability to borrow against a Section 106 obligation in order to enable the timely delivery of infrastructure."

38. The following day (1 November) Mr Senior sent an e-mail to Mr Lambert summarising the items that the Defendant considered should be included in the section 106 Agreement in relation to police funding. In fact a good deal of the bid previously made (see paragraph 33 above) was agreed, including the additional premises contribution in the sum previously claimed. There were some reductions in the bids for start up equipment, vehicles and Automatic Number Plate Recognition, but the list was as follows:

> "Items for inclusion in the agreement

| | |
|---|---|
| Start-up equipment | £71,388 |
| Vehicles 3 off | £47,415 |
| Additional radio transmitter | £350,000 |
| Additional radio call capacity | £7,650 |
| PND additions | £4,887 |
| Additional call handling | £10,115 |
| ANPR 4 off | £32,888 |
| Mobile CCTV | £4,500 |
| Hub equipment | £8,000 |
| Total | £536,843 |

> Trigger points for these items need to be agreed, usually based on number of occupations."

39. That list was on a document attached to the e-mail and the balance of the document, which related to the premises element of the police contribution, read as follows:

> "Extensions to existing premises to a maximum of £1,089,660
>
> A review of the need for extensions to existing premises at the commencement of Phase 3 (or other agreed trigger point)
>
> Agreed funds to be paid in the flowing stages
>
> 10% within 2 weeks of notice from the police confirming that are proceedings with extensions
>
> 10% within 2 weeks of agreed design stage
>
> 40% within 2 weeks of the issue of tender for the construction contract
>
> 40% within 3 months of commencement of construction."

40. Mr Senior said that he had "included trigger points which you may wish to amend, but not for the equipment which I will need you to supply."

41. Mr Lambert replied to this e-mail on 7 November 2013 stating the following at the outset:

> "The main issue for us in this is the lack of developer commitment to premises …. I am afraid what is proposed virtually removes the covenant as far as our premises are concerned and having successfully made the case for this to your satisfaction, i.e. that what we seek will be necessary when this development is built, we can't then move away from this and come back to the developer at future points to make the case afresh."

42. The e-mail continued with various suggestions based upon the premise that the developers commit to funding part of what the police needed as a covenant in the section 106 agreement and the review mechanism to apply to the rest. The suggestion, on this basis, was that the Claimant would build to accommodate 14 staff to serve the development and would "aim to start the project at the 1200 trigger".

43. This e-mail was forwarded by Mr Senior to Mr Paul Burton, a Director of the 1st Interested Party, on 11 November who replied in the following terms:

> "We discussed on Friday the terms you believe to have some weight under the CIL requirements. We reached agreement on those contributions following our discussion about the payment timing and the review of the premises. It appears that this compromise to move matters forward is not being accepted by

> Michael Lambert and there may still be a risk of him JR proceedings.
>
> As you know, my view and the view of the other consortium members is that these requests are unreasonable and I find it amazing that the Lubbesthorpe scheme will generate the need for 14 staff. I would like to discuss tomorrow the possibility of the Police continuing to argue their case, potentially to the courts and whether we can secure an agreement from them that if they accept your proposals that they will agree to not to take the point any further. If not, I am not sure there is much advantage to the consortium to accept terms that they wholeheartedly disagree with. Something to discuss tomorrow with the solicitors."

44. That e-mail referred to a meeting that had been held on 8 November and one to be held the following day which Mr Burton attended with a good number of others, including Mr Senior and Mr Back of the Defendant, at which the outstanding issues concerning the section 106 agreement were discussed and resolved.

45. I think I should record what each of those who attended says about those meetings because it would appear that it was the combined effect of those meetings that constituted the "decision" about the section 106 agreement that underlies the Claimant's challenge in these proceedings.

46. Mr Senior said this:

> "41. On 8 November 2013 a meeting was held between the Council and the development consortium the outcome of which was summarised in an email from Paul Burton of the consortium on 11 November …. The discussion referred to in the e-mail considered two issues; first the cash flow of the scheme and the cost of the infrastructure to be provided in phase 1 and secondly how the police request which the Council felt should be given some weight could be supported. It was proposed all the items except premises could come forward at the end of phase 2. The premises could then be subject to a review as part of a viability review at the beginning of phase 3. This review would consider whether the provision of affordable housing could be increased towards the Council's aspiration of 25% across the whole site, the Council having accepted a reduction in affordable housing percentage to help facilitate the development. If the need for [police] premises was agreed at the time of the review, this would be funded.
>
> 42. On 12 November 2013, a meeting was held between the Council and solicitors representing the County Council, and development consortium respectively. At that meeting it was agreed to incorporate the above proposals into the Section 106 Agreement. The discussion at the meeting took into account the issues of viability, compliance by the requests with the CIL

> Regulations and the decision to accept the proposal resulted from a balanced judgement as to how to deliver as much of the police request as possible, albeit not within the time scales that they had requested, and at the same time deliver a viable development."

47. Mr Back said this:

> "14. On 12th November 2013 the Council organised a meeting with representatives of the Lubbesthorpe Consortium, Leicestershire County Council and legal representatives from each of the above. This meeting considered all elements of the … S106 agreement including the proposed policing contribution. At the meeting Council officers explained that we accepted that some elements of the request made by [the police] were compliant with the relevant Community Infrastructure Regulations. At this time, the developer consortium did not agree with the Council's position but Council officers were able to negotiate a favourable position for [the police] partly due to the need to achieve a completed agreement in order to realise the M1 bridge Pinch Point funding. The financial pressures on the early phases of the development and the overall priorities for Lubbesthorpe were discussed as a result of which it was agreed that the policing contributions would need to be triggered from the end of the second phase of the development. At the end of this meeting all parties agreed that further substantive changes to the agreement would be minimised in order to commence the complex process of completing the agreement with all parties.
>
> 15. In the context of the meeting described above it became clear that we ought to communicate the end of the negotiation process, particularly as it was clear that some service providers would not be receiving everything that they had requested, and/or that monies would be provided at a date other than that requested. On this basis I wrote to [the police] on 18th November to confirm that the position we had communicated at an earlier stage of the process (1st November 2013) was the Council's final position on this matter …. I note with some surprise that [the police] claim not to have received this letter. Whilst this is unfortunate, I take some comfort in the fact that the letter only reiterated the Council's already communicated position in any event.
>
> 16. It is entirely understood and appreciated that the … S106 agreement is not a facsimile of the contribution request submitted on behalf of [the police]; it is worth emphasising that the Council was fully aware of this situation when the application was reported to the Development Control Committee for determination and remained the case at the point the agreement was completed. … the Report to Committee …

> states "It will noted that the request for funding from the Police has only been agreed to in part". This report and the associated recommendation and resolution should have clearly set the expectations of [the police] in this matter. As the detail of the [the police] request was examined over the course of the following months there were multiple communications … between the Council and [the police] that made it abundantly clear that the Council did not accept the full extent of the [police] request. There could have been no expectation on the part of [the police] of any other conclusion."

48. Mr Burton said this:

> "26. The meeting on 12 November … was called to finalise the outstanding issues in the s.106 agreement and it was critical to the delivery of the M1 bridge. The structure and timing of at least two highways contributions were discussed and resolved at this meeting …. Both contributions were pushed back in the programme of delivery works to secure a contribution. There has been no suggestion by the local highways authority that this was inappropriate ….
>
> 27. I recall at the November 12th meeting that there was specific discussion about the outstanding requests for contributions on the part of the Leicester City Council and the Claimant. These two issues, in my mind, were very similar in nature in that I did not see a clear link between the requests and the acceptability in planning terms of the Scheme.
>
> 28. In relation to the contributions sought by the Claimant, the key points of the discussion were the relevance of these contributions to the Scheme, their negative effect on the precarious cash-flow position of the project in the early phases and on the overall viability, and the now urgent need to bring s.106 negotiations to a conclusion so as to secure planning permission in the light of the funding position in relation to the M1 bridge …. There was debate as to the level and timing of the various contributions leading to the provisions that were ultimately documented in the s.106 agreement.
>
> 29. The outcome of this discussion was that significant contribution would be made to the Police (notwithstanding my significant reservations as to their CIL compliance) on the proviso that it did not add to the existing very heavy burden of the already agreed financial contributions and infrastructure obligations to be undertaken at the early stage of the development, so as not to risk the viability or deliverability of the scheme. This was entirely consistent with other decisions taken that day, on both highways and the bus station ….

> 30. I recall the Defendant's officers being comfortable with the eventual position reached on not just the Claimants' obligations but also the overall package of planning obligations that were discussed."

49. On 15 November 2013, Mr Lambert e-mailed Mr Senior saying that he had not heard from him and expressing concern about the "premises commitment and whether what we suggest will be included in the agreement." If it was to be included then he would, he said, "come back on vehicles and training and triggers", but if not he would need to take advice on the next steps. He emphasised that the issue was "fundamental" for the Claimant.

50. Mr Senior replied later that day saying that "[we] have not finished the final wording but there is provision for premises and I will get back to you early next week with the wording." Mr Lambert replied shortly afterwards and again stressing the importance of the premises element of the contribution being "triggered and paid for in Phase 1" of the development. He said he could provide the triggers for the other items "pretty quickly".

51. The reality, of course, is that the decisions had been made by then.

52. An odd feature of this case is that the letter written by Mr Back to the Claimant's Finance Director dated 18 November 2013 (to which he referred in his witness statement) explaining the position was never received by the Claimant. Everyone accepts that was so and so do I: indeed there are communications from Mr Lambert to Mr Senior and others thereafter that would, in the ordinary course, have referred to the letter had it been received. The letter does, however, reflect a relatively contemporaneous justification for the decision reached and it is worth quoting the substantive paragraphs:

> "As you will be aware from our e-mail of 1 November, we set out the contributions which we support and when these will be triggered. Following negotiations with the applicant, it has been agreed that the £536,834 will be paid at the end of the second phase of development. The agreement will contain a commitment towards premises and a payment up to a maximum of £1,089,660 towards the premises that are agreed following a review of the needs of the police at the time.
>
> I am aware that these contributions and the associated triggers do not match those requested by your organisation however please be assured that we have sought to achieve the best result for Lubbesthorpe and the wider community. The trigger points have been agreed with the applicants in the light of the full range of contributions that have been sought and the Council have sought to balance all of the infrastructure and funding requirements associated with this complex development.
>
> We have previously explained the urgency and timescales involved with this matter and we have today agreed with the developer that no further changes to agreement will be sought.

> To make further changes would potentially jeopardise the funding of the M1 bridge and would potentially impact the viability and deliverability of the whole development."

53. Because this was not received, so far as the Claimant as concerned, there were no further communications from the Defendant on the section 106 agreement until it was sent in its concluded form under cover of an e-mail dated 29 January 2014.

## The legal arguments

54. Before turning to the legal arguments, I should highlight a fact that Miss Wigley emphasises, namely, that there had never been any suggestion that the scheme was not viable, even before the £5 million of Department of Transport money became available. Mr Elvin and Mr Alex Goodman (for the 5th Interested Party) do not dispute that, but emphasise that it has always been the position of the development consortium that cash flow, particularly in the early stages of the development was a major issue.

55. I will address each of the Grounds advanced by Miss Wigley.

Ground 1

56. This is formulated as follows:

> "The Council erred in failing to include provisions with the section 106 agreement to secure adequate and timely contributions towards policing so as to properly mitigate the adverse impact of the development. The Council also erred in failing to have regard to whether the section 106 agreement was adequate to achieve the necessary and required mitigation when it granted planning permission; the Agreement is fundamentally flawed and fails to achieve what is necessary to make the development acceptable in planning terms. No reasons have been given for the actions taken by the Council in respect of the Police contribution and why it has been dealt with differently to other contributions, and accordingly, the Council have acted irrationally."

57. Miss Wigley says that the Defendant having agreed the principle of the police contribution, the legitimacy of the contributions vis-á-vis the CIL tests and the figures referred to in paragraphs 38 and 39 above, its task as planning authority, in accordance with the resolution of 1 November 2012, was to enter into a section 106 agreement "to secure" the provisions identified in the resolution which, of course, included the provisions concerning the police contribution. For the reasons summarised in paragraphs 20-24 above, she submits that, irrationally, this has not been achieved in relation to the premises contribution (because of the lack of commitment and the uncertainties) and neither has it been achieved in relation to the equipment contribution because rationally-derived trigger-points have not been identified. As to the latter (whilst it might also go to Ground 3), the submission is that the Defendant needed information from the police to enable it to define those trigger-points and failed to obtain it. She also submits, on the basis of what has been revealed

of the decision-making process leading to the section 106 agreement, that the necessary balancing exercise was neither rational nor fair.

58. Whilst she put the matter in a number of ways, the summary I have given above reflects the substance of this argument. She recognises the high threshold there is in this context for establishing such a ground of challenge: see, e.g., *R (Newsmith Stainless Ltd) v Secretary of State for the Environment* [2001] EWHC Admin 74, Sullivan J, as he then was, at [8].

59. Mr Elvin contends that the argument comes perilously close to a simple submission that the Defendant should have accepted the Claimant's approach and that no other rational course existed. That, he submits, is not sufficient and amounts to nothing more than a challenge to the planning merits of the considerations leading to the section 106 Agreement. He says that the evidence of those present at the meeting of 12 November 2013 demonstrates that those participating were aware of the Claimant's position, that it was taken into account along with the position of others and an assessment made of what was reasonable in the light of the cash flow issues that faced those endeavouring to put together the final, effective package of provisions to be incorporated in the section 106 Agreement. A planning judgment was reached that earlier trigger points for the financial contributions were not required to make the development acceptable and a material consideration was also not risking the timely delivery of the development itself.

60. Mr Goodman supports this approach and, in his Skeleton Argument, sought to characterise the argument that the decision was Wednesbury unreasonable and "hopelessly unarguable" and amounted to nothing more than "an impermissible quibble" about the merits of one relatively small factor within a very complex and far reaching decision."

61. I do not, with respect, agree that the challenge mounted by the Claimant in this case can be characterised as a quibble about a minor factor. Those who, in due course, purchase properties on this development, who bring up children there and who wish to go about their daily life in a safe environment, will want to know that the police service can operate efficiently and effectively in the area. That would plainly be the "consumer view" of the issue. The providers of the service (namely, the Claimant) have statutory responsibilities to carry out and, as the witness statement of the Chief Constable makes clear, that itself can be a difficult objective to achieve in these financially difficult times. Although the sums at stake for the police contributions will be small in comparison to the huge sums that will be required to complete the development, the sums are large from the point of view of the police.

62. I am inclined to the view that if a survey of local opinion was taken, concerns would be expressed if it were thought that the developers were not going to provide the police with a sufficient contribution to its funding requirements to meet the demands of policing the new area: lawlessness in one area can have effects in another nearby area. Miss Wigley, in my judgment, makes some entirely fair points about the actual terms of the section 106 Agreement so far as they affect the Claimant.

63. However, the issue is whether the strength of the argument to that effect surmounts the very high threshold for establishing irrationality in the sense required for the challenge to be successful. I am unable to accept that they do cross this threshold.

Whilst I can understand that the Claimant may feel that its approach has simply been rejected by the developers because it is inconvenient and that its persistence has been an irritant, the evidence does suggest that the Defendant has considered the matter properly and has reached a rational and sustainable conclusion even if it is not one with which everyone would agree.

Ground 2

64. This is formulated thus:

> "In all circumstances, given the size and significance of the development, and the failure to secure appropriate mitigation of the impact of the development, it was incumbent upon the Officers to either return to matter to Committee for determination or articulate their reasons for accepting the Agreement in the terms they did. In the absence of any reasons, the inference is that the Council have acted irrationally."

65. As articulated orally by Miss Wigley, this was effectively a restatement of the proposition that the planning committee had directed the officers to negotiate a section 106 agreement that secured CIL compliant police contributions (see paragraph 57 above) and that they had not done so. This should, she submits, have resulted in the matter being referred back to the planning committee. As she put it in the Skeleton Argument, having regard to the wording of the committee resolution and, in particular, the way in which the "premises contribution" was to be dealt with under the section 106 agreement, it was incumbent on the officers to report back to the members their inability to act in accordance with the resolution and to explain their proposed alternative course. She submits that it cannot be said with any certainty that the members would have been satisfied with the proposed course of action.

66. The well-known case of *R (Kides) v South Cambridgeshire District Council* [2002] EWCA Civ 1370 was referred to in this context as was the observation of the Court of Appeal in *R. (Dry) v West Oxfordshire DC* [2011] 1 P. & C.R. 16 at [16].

67. I do not really feel that this ground adds anything in real terms to the first ground (or indeed to Ground 3 that I will consider below). It does seem to me that Mr Elvin was right to submit that the resolution required the section 106 agreement to embrace "all CIL Compliant capital infrastructures for Policing", that "the precise terms of this contribution [are] to be settled by further negotiation" and that this makes it clear that the committee envisaged that the further negotiations on this matter would be undertaken by the officers.

68. That, as it seems to me, is sufficient to dispose of this argument. In any event, in the particular circumstances of this case, whilst some questions might have been raised by members about the terms concerning the police contributions, it is fanciful to suggest that a scheme such as this would have foundered on such an issue. Given the new funding stream constituted by the Pinch Point funding, a resolution to defer the grant of permission pending further negotiations would, to my mind, have been so unlikely as to be a consideration that can safely be disregarded.

Ground 3

69. This is formulated thus:

> "Furthermore, arising out of the correspondence, contact and agreement with the Council in this matter, the Police had a legitimate expectation that the Council would consult them on the level of and timing of the delivery of the contribution and that the outcome of those discussions would be represented in the Agreement."

70. The foundation for this argument is the sequence of correspondence, meetings and other communications in the period running up to November 2013 to which I have referred above (see paragraphs 28-43 above).

71. There is, of course, a good deal of authority on the issue of legitimate expectation. I am quite prepared to accept for present purposes that a course of dealing between two parties in the kind of context with which this case is concerned can in some circumstances give rise to a legitimate expectation that some particular process will be followed by the public authority the subject of the challenged decision before the decision is taken. The course of dealing can be on such a basis that the necessarily "clear and unambiguous" representation upon which such an expectation is based may arise.

72. Did anything of that nature arise in this case? I do not think so. What one can see from the communications to which I have referred is a pattern of negotiation, in effect between the Claimant and the developers with the Defendant as the intermediary, where no unequivocal representation was made by the Defendant that could have led to an expectation that it would be consulted "on the level of and timing of the delivery of the contribution". That having been said, however, there can be little doubt that the Defendant was aware of the Claimant's view on the timing of the premises contribution which, in one sense, was the most significant part of what was required by way of infrastructure funding. The equipment contribution was discussed and the police could have given "chapter and verse" on that if they had chosen to do so prior to the final discussions between the Defendant and the developers. However, I do not see any basis for a specific obligation on the Defendant's part to inquire about that.

73. There is no evidence to suggest that the way in which the Claimant's position was handled during the prolonged negotiations towards the section 106 agreement was markedly different from that of the other parties who also engaged in the process whatever the ultimate outcome may have been. It seems to me that the accommodating approach of Mr Senior from August 2013 onwards was simply born of a desire to facilitate a smoothing of the passage towards a resolution of the impasse that otherwise existed and that it would be wrong to read it in any other way.

74. It seems to me that there was, at least initially, a difference of view about the approach to how the police contribution should be calculated (one apparently shared by others around the country at the time). That there was a revision of the approach during the negotiations is plain. That may have been aided by the decision in the Jelson Homes appeal to which Miss Wigley drew my attention. At all events, as it seems to me, there was nothing in what occurred during the various communications

that could reasonably have led the police to believe that it would be consulted on the specific terms of the section 106 agreement. As Mr Elvin submitted, the Claimant did make representations which the evidence suggests were considered. That, in my judgment, is as far as any legitimate expectation could take the Claimant.

Ground 4

75. This was added by a late amendment for which leave was granted by Hickinbottom J. As formulated it is as follows:

> "The Council has breached Article 36 of the Town and Country Planning (Development Management Procedure) (England) Order 2010."

76. The acronym 'DMPO' is applied to this order.

77. The contention is that that Article 36(3)(b) required the "travelling draft" of the section 106 agreement to be placed on the local planning register and that the Defendant's failure to do so invalidates the planning permission.

78. Article 36(3) is as follows:

> (3) Part 1 of the register shall contain in respect of each such application and any application for approval of reserved matters made in respect of an outline planning permission granted on such an application, made or sent to the local planning register authority and not finally disposed of—
>
> (a) a copy (which may be photographic or in electronic form) of the application together with any accompanying plans and drawings;
>
> (b) a copy (which may be photographic or in electronic form) of any planning obligation or section 278 agreement proposed or entered into in connection with the application;
>
> (c) a copy (which may be photographic or in electronic form) of any other planning obligation or section 278 agreement entered into in respect of the land the subject of the application which the applicant considers relevant; and
>
> (d) particulars of any modification to any planning obligation or section 278 agreement.

79. This follows Article 36(2) which provides that "each local planning register authority shall keep, in [two] parts, a register of every application for planning permission relating to their area".

80. Whilst I have had very little opportunity to give this issue mature consideration, I find it difficult to find within Article 36(3)(b) an obligation that "travelling drafts" of a section 106 agreement should be placed on the register. Mr Goodman submitted that Article 36 is not intended to require that every iteration of a document "under

construction" by negotiation must be put on the planning register and I am inclined to agree that that is so.

81. At all events, Mr Elvin and Mr Goodman seem to me to have the complete answer to this allegation in this case, namely, that there is no evidence or even a claim that the Claimant checked the local planning register before the planning permission was granted and accordingly no prejudice could have arisen. If there was any failure to comply with Article 36(3)(b), it could have had no impact on the outcome of this case.

82. The evidential basis for the contention about the lack of material on the register is a witness statement of Rebecca Philips, a solicitor with the Derbyshire Constabulary, who made certain requests and enquiries of the Defendant's planning office. However, there is a factual issue joined by virtue of Mr Senior's second witness statement when he says that the various drafts of the section 106 agreements in question were available for inspection in hard form in the Council's files on request. I cannot resolve any issues of fact on this application and, in any event for the reasons I have given, it is unnecessary to do so.

## Conclusion

83. I have not been able to cover every nuance of the arguments advanced. However, I am of the view that the grounds of challenge to the grant of planning permission do not succeed.

84. I repeat that, looked at objectively, there are features of the way the police contribution in this case was dealt with in the section 106 agreement that are not very satisfactory and, as I have said, some legitimate criticisms seem to me to be open to the formulation of the trigger mechanism. I rather suspect that, irrespective of the outcome of this case, the issue of the timing of the police contributions will have to be re-visited before the development proceeds too far to ensure that those who are considering purchasing properties on the development will have the reassurance that it will be properly and efficiently policed. However, that does not amount to, or evidence the need for, a conclusion at this stage that what was agreed between the Defendant and the developers was irrational or that there was anything unfair about the way the Defendant dealt with the issue.

85. The case was dealt with as a "rolled up" hearing. Mr Elvin is quite right to say that a claimant in such a situation should not be given permission to apply for judicial review "just because everyone is present at the hearing". A "rolled up" hearing is often directed when there is a need for expedition and that is plainly why Hickinbottom J directed such a hearing in this case. The other aspect to the position advanced by Mr Elvin is that merely because a claimant loses at a "rolled up" hearing does not mean that permission to apply for judicial review should not be granted.

86. If this case had not been as urgent as it is and a judge had applied his or her mind to the usual considerations at the permission stage, I believe the Claimant would probably have overcome the relatively low threshold of "arguability" on Grounds 1 and 3, but not on grounds 2 and 4. Accordingly, I grant permission on Grounds 1 and 3, although I dismiss the substantive claims, but I refuse permission to apply for judicial review on Grounds 2 and 4.

87. I would express my appreciation to all Counsel for their assistance, both in their oral submissions and in writing.

## Permission to appeal

88. Because of the urgency and because of my non-availability in the next few weeks, it was agreed at the conclusion of the hearing that I should assume that any losing party would wish me to consider the issue of permission to appeal. It would be convenient for me to do so here.

89. This arises in relation to grounds 1 and 3 (because I have refused permission on grounds 2 and 4 and the normal route is a direct application to the Court of Appeal in relation to such grounds). Whilst I have treated grounds 1 and 3 as having crossed the arguability threshold for the purposes of permission to apply for judicial review, having heard the full argument I was satisfied that the grounds should not succeed. I am of the view that there is no realistic prospect of success on an appeal if pursued and, accordingly, I refuse permission to appeal.

90. Again, it was agreed by all parties that I should exercise my power effectively to foreshorten any period for seeking permission to appeal from the Court of Appeal. I will direct that any Appeal Notice seeking permission to appeal must be lodged within 7 days of the hand down of this judgment, that the notice must be served on all other parties and that an application in writing for an expedited consideration of the issue of permission to appeal must be made by the Claimant. It would, of course, be open to the other parties to make representations on this issue if so advised.

91. Arrangements will have been made for the final form of this judgment to be handed down on my behalf by a judge sitting in Birmingham during the week beginning 26 May and the 7-day period will commence on that day.

Department for Communities and Local Government

Mr J Bompas
Iceni Projects
Flitcroft House
114-116 Charing Cross Road
London WC2H 0JR

Our Ref: APP/G2435/A/14/2228806

15 February 2016

Dear Sir

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78**
**APPEAL BY MONEY HILL CONSORTIUM: MONEY HILL, LAND NORTH OF WOOD STREET, ASHBY-DE-LA-ZOUCH**

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Inspector, John Braithwaite BSc (Arch) BArch(Hons) RIBA MRTPI, who held a public local inquiry on 8 and 10 September 2015 into your client's appeal against the decision of North West Leicestershire District Council (the Council) to refuse planning permission for 605 residential dwellings including a 60 unit extra care centre (C2), a new primary school (D1), a new health centre (D1), a new nursery school (D1), a new community hall (D1), new neighbourhood retail use (A1), new public open space and vehicular access from the A511 and Woodcock Way, in accordance with application Ref 13/00335/OUTM dated 22 April 2013, at Money Hill, land north of Wood Street, Ashby-de-la-Zouch.

2. The appeal was recovered for the Secretary of State's determination on 3 December 2014, in pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act 1990 because it involves a residential development of more than 150 units on a site of more than 5 hectares, which would significantly impact on the Government's objective to secure a better balance between housing demand and supply and create high quality, sustainable, mixed and inclusive communities.

## Inspector's recommendation and summary of the decision

3. The Inspector, whose report is enclosed with this letter, recommended that the appeal be allowed. For the reasons given below, the Secretary of State agrees with the Inspector and has decided to allow the appeal and grant planning

Department for Communities and Local Government
Philip Barber, Decision Officer
Planning Casework
3rd Floor Fry Building
2 Marsham Street
London SW1P 4DF

Tel: 030344 42853
Email: PCC@communities.gsi.gov.uk

permission. All paragraph numbers, unless otherwise stated, refer to the Inspector's report (IR).

## Procedural matters

4. For the reasons in IR9 and IR64-66, the Secretary of State agrees with the Inspector that the amended scheme is not materially different to the original and is not so changed that the interests of any party to the appeal are compromised (IR67). He also agrees with the Inspector's conclusions in IR67 on the implementation of the original scheme. Like the Inspector, the Secretary of State has considered the original and amended schemes on their merits (IR67).

5. The Secretary of State has had regard to correspondence submitted too late to be considered by the Inspector, as set out in Annex B to this letter. He has carefully considered these representations but, as they do not raise new matters that would affect his decision, he has not considered it necessary to circulate them to all parties. Furthermore, the Secretary of State wrote to the inquiry parties on 14 December 2015, inviting comment on: any implications the Ashby-de-la-Zouch Draft Neighbourhood Plan may have for the planning balance in the case; and on any material change in circumstances, fact or policy, which may have arisen since the close of the inquiry. The responses received were circulated for further comment on 11 January 2016. A list of the representations received is set out in Annex C to this letter. The Secretary of State has carefully considered these but is satisfied that they do no raise any new material considerations sufficient to affect the decision in this case. Copies of the representations listed in Annexes B and C can be made available on written request to the address at the foot of the first page of this letter.

6. In coming to his decision, the Secretary of State has taken into account the Environmental Statement (ES) and the ES Addendum prepared in accordance with the Town and Country Planning (Environmental Impact Assessment) Regulations 2011, as amended (IR5 and 9). The Secretary of State is satisfied that the ES and the ES Addendum comply with the above regulations and that sufficient information has been provided for him to assess the environmental impact of the proposals.

## Policy considerations

7. In deciding the appeal, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise. In this case, the development plan comprises the saved policies of the North West Leicestershire Local Plan 1991 – 2006 (LP), which was adopted in August 2002.

8. Other material considerations which the Secretary of State has taken into account include: The National Planning Policy Framework (the Framework); the Planning Practice Guidance (the Guidance); and the Community Infrastructure Levy (CIL) Regulations.

9. The Secretary of State notes that the main parties agreed that no weight can be attached to the emerging North West Leicestershire Local Plan, for the reasons in IR12. The Secretary of State notes that the Council recently undertook a

public consultation on a draft Local Plan, but does not consider that the emerging Local Plan can be afforded any more than very limited weight at this stage. The Secretary of State also notes that consultation has now closed on the Ashby-de-la-Zouch Draft Neighbourhood Plan (NP) and, given the stage it has reached in its progress towards adoption, affords it very limited weight.

10. In accordance with section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the LB Act), the Secretary of State has paid special regard to the desirability of preserving those listed structures potentially affected by the scheme or their settings or any features of special architectural or historic interest which they may possess. The Secretary of State has also paid special attention to the desirability of preserving or enhancing the character or appearance conservation areas, as required by section 72(1) of the LB Act.

**Main Issue**

11. The Secretary of State agrees with the Inspector that the main issue in this case, taking all relevant matters into account, is whether the proposal would be sustainable development (IR68).

Development Plan

12. The Secretary of State notes that, for the reasons in IR14, the appeal proposal conflicts with LP policy S3; but that the LP's housing policies only made provision to meet the need for new homes in the district until 2006 and are consequently are out of date (IR14). He notes the Council's view that a new Local Plan will have to identify land outside the existing limits to development to meet the present and future need for housing, and that policy S3 is out of date (IR14). He agrees with the Council that, in the circumstances, no weight should be attached to the conflict with policy S3 (IR14).

Sustainable development

13. For the reasons in IR82-84, he agrees with the Inspector that the proposed development satisfies the economic, social and environmental roles of sustainable development; and that it would be sustainable development (IR85).

Housing need and supply

14. Paragraph 47 of the Framework requires local planning authorities to identify and update annually a supply of specific deliverable sites to provide five years of housing against their housing requirements. The Secretary of State notes that the appellant has not disputed the Council's contention that it has a five year supply of housing land (IR87). He agrees with the Inspector that local planning authorities must also plan for housing supply beyond the five year period and, as set out in paragraph 47 of the Framework, identify a supply of sites for 6-10 years and, where possible, 11-15 years (IR87). He agrees with the Inspector that there is also a current national imperative to boost the supply of housing and, in recognition of this, the Council rightly does not cite their five year housing land supply as a reason to withhold planning permission (IR87). The Secretary of State attaches significant weight to the fact that the proposed development would provide for 605 new homes of which up to 182 would be affordable.

Other matters

15. For the reasons in IR69-74, the Secretary of State agrees with the Inspector that the development, either in its original or amended form, would not compromise **highway safety** or result in any significant increase in **traffic congestion** (IR74). For the reasons in IR75, he also agrees that it would not have any significant effect on the **character of the area**. He also agrees that the development would not cause any demonstrable harm to the setting of **Ashby Conservation Area** or the setting of any **listed building** within it and therefore that paragraphs 133 and 134 of the Framework are not engaged (IR76). For the reasons in IR77-78, he agrees that the development would not place an unacceptable burden on **local infrastructure** (IR78); and, for the reasons in IR79-81, that, as well as easy access by cycle and walking to local services, residents of the development would have access to a mode of **transport** to the town centre other than the car (IR81).

**Conditions and obligations**

16. The Secretary of State has considered the schedules of conditions included within the IR; the Inspector's comments at IR160; paragraphs 203 and 206 of the Framework and the Guidance. He is satisfied that the proposed conditions are reasonable and necessary and meet the tests of paragraph 206 of the Framework.

17. The Secretary of State has also considered the executed and signed Unilateral Undertaking; the Inspector's comments on this at IR61-63; paragraphs 203-205 of the Framework, and the Guidance. He considers that that the provisions offered by the Unilateral Undertaking would accord with the tests set out at paragraph 204 of the Framework and agrees with the Inspector that they would also comply with Regulations 122 and 123 of the CIL Regulations.

**Planning Balance and Conclusion**

18. 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. For the reasons set out in IR14 and 86, the Secretary of State agrees with the Inspector that LP policy S3 is out of date. For the reasons set out in this letter, the Secretary of State also considers that the emerging North West Leicestershire Local Plan and the Ashby-de-la-Zouch Draft Neighbourhood Plan should be afforded very limited weight.

19. The Secretary of State agrees with the Inspector that, taking all relevant matters into account, the proposed development would not cause harm to any matters of acknowledged importance; and that it satisfies the economic, social and environmental roles set out in paragraph 7 of the Framework and would be sustainable development (IR85). The appellant has not disputed the Council's contention that they have a five year supply of housing land (IR87). However, the Secretary of State agrees with the Inspector that local planning authorities must also plan for housing supply beyond the five year period; that there is also a current national imperative to boost the supply of housing; and that, in recognition of this, the Council rightly does not cite their five year housing land supply as a reason to withhold planning permission (IR87). The Secretary of

State attaches significant weight to the fact that the proposed development would provide for 605 new homes of which up to 182 would be affordable.

20. Paragraph 49 of the Framework states that housing applications should be considered in the context of sustainable development, and paragraph 14 states that there is a presumption in favour of sustainable development and that, for decision taking, this means, where relevant policies in the development plan are out-of-date, granting planning permission for development unless any adverse effects of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole (IR88). The Secretary of State agrees with the Inspector that in this case there are no demonstrable adverse effects to take into account and the development would be sustainable development (IR88). He also agrees with the Inspector that, for this principal reason, determination of the appeal may be made other than in accordance with the development plan (IR88).

**Formal Decision**

21. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. He hereby grants planning permission for the amended scheme for 605 residential dwellings including a 60 unit extra care centre (C2), a new primary school (D1), a new health centre (D1), a new nursery school (D1), a new community hall (D1), new neighbourhood retail use (A1), new public open space and vehicular access from the A511 and Woodcock Way, on land at Money Hill, land north of Wood Street, Ashby-de-la-Zouch, subject to the conditions listed in the Annex A to this letter.

22. 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.

23. 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**

24. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged. This must be done by making an application to the High Court within six weeks from the date of this letter for leave to bring a statutory review under section 288 of the Town and Country Planning Act 1990.

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

Yours faithfully

*Philip Barber*

**Philip Barber**
Authorised by the Secretary of State to sign in that behalf

**Annex A**

## Conditions

1. Save for the details of vehicular access into the site from Woodcock Way (if applicable) and the A511, details of the access, appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") for the relevant phase (as defined under Condition 5 below) shall be submitted to and approved in writing by the Local Planning Authority before any development begins in respect of the relevant phase.

2. Plans and particulars of the reserved matters referred to in condition 1 above, relating to the access save for the details of vehicular access into the site from Woodcock Way(if applicable) and the A511, appearance, landscaping, layout, and scale shall be submitted in writing to the Local Planning Authority and shall be carried out as approved.

3. Application for approval of the reserved matters for the relevant phase (as defined under condition 5 below) shall be made to the Local Planning Authority before the expiration of three years from the date of this permission and the development hereby permitted shall begin before the expiration of two years from the date of approval of the last of the reserved matters for that phase to be approved.

4. The proposed development shall be carried out strictly in accordance with the following plans:

- Application Boundary Plan – Rev A 29.06.2015
- Site Access plans (06 Rev F)

5. Notwithstanding conditions 1, 2 and 3 above, the first reserved matters application shall include a masterplan for the whole of the site setting out indicative details of site layout, areas of open space / children's play, landscaping, density parameters and scale, as well as details of any proposed phasing of development. The masterplan shall accord with the principles of the submitted Design and Access Statement. All subsequent reserved matters applications shall be in accordance with the approved masterplan unless any alteration to the masterplan is first agreed in writing by the Local Planning Authority. All development of the site shall thereafter be undertaken in accordance with the agreed phasing and timetable details (or any alternatives subsequently agreed in writing by the Local Planning Authority).

6. A total of no more than 605 dwellings shall be erected on the area shown as ‘residential’ (18.23 hectares) and ‘health centre/residential’ (0.52 hectares) as shown on Parameter Plan 1 – Land Use and Amount – Rev D 10.06.2015.

7. No development shall commence on the site (or, in the case of phased development, in respect of the relevant phase) until such time as precise details of all means of mitigation measures as set out in the Environmental Statement, including timetables for their provision in respect of the development (or, in the case of phased development, in respect of that phase), have been submitted to and

agreed in writing by the Local Planning Authority. The measures shall be implemented in accordance with the agreed details and timetables.

8. No development shall commence on the site until such time as a Design Code for the entirety of the developed area shown on Parameter Plan 1 – Land Use and Amount – Rev D 10.06.2015 has been submitted to and agreed in writing by the Local Planning Authority. The Design Code shall substantially accord with the principles and parameters described and illustrated in the Design and Access Statement, and demonstrate compliance with Building for Life 12 (or any subsequent replacement standard issued by the Design Council / CABE or any successor organisation). The development shall thereafter be carried out in accordance with the agreed Design Code.

9. Notwithstanding the submitted details, no construction work shall commence on site until such time as intrusive site investigation works in respect of potential risks to the proposed development arising from former coal mining operations together with precise details of any required mitigation and a timetable for its implementation have been submitted to and agreed in writing by the Local Planning Authority. Where the agreed details indicate that mitigation is required, the development shall be carried out strictly in accordance with the agreed mitigation and timetable.

10. The development hereby permitted shall not be carried out other than in strict accordance with the submitted Flood Risk Assessment (FRA) dated 14 March 2013, ref. 031052 (ES Appendix 14-1) and Drainage Strategy Revision 01, Dated 20 March 2013, ref. 031052 (ES Appendix 14 -2) and the following mitigation measures detailed within the FRA:

- Limiting the discharge rate for surface water run-off and provision of surface water attenuation storage on the site, so that it will not exceed the run-off from the undeveloped site and not increase the risk of flooding off-site - FRA sections 6.0 and 7.4, and Drainage Strategy sections 3.1, 5.1, 7.1 to 7.3.6;
- Management of Silt and the prevention of pollution of the watercourse during the construction phase - FRA section 7.3;
- Provision of safe access and egress within the site - FRA section 7.2;
- Finished floor levels - FRA section 7.1

Unless any alternative programme is first agreed in writing by the Local Planning Authority, none of the dwellings hereby permitted shall be occupied until such time as the mitigation measures have been fully implemented in accordance with the above details.

11. Notwithstanding the submitted details and other conditions, no development shall commence on the site until such time as a surface and foul water drainage scheme for the entire developed area shown on Parameter Plan 1 – Land Use and Amount – Rev D 10.06.2015 (or, in the case of phased development, for the relevant phase of the development), based on sustainable drainage principles and an assessment of the hydrological and hydrogeological context of the development, together with a timetable for its implementation in respect of the development (or, in the case of phased development, for that phase), has been submitted to and agreed

in writing by the Local Planning Authority. The scheme shall subsequently be implemented in accordance with the agreed details and timetable. The scheme shall include:

- Surface water drainage system/s to be designed in accordance with either the National SUDs Standards, or CIRIA C697 and C687, whichever are in force when the detailed design of the surface water drainage system is undertaken;
- Limiting the discharge rate and storing the surface water run-off generated by all rainfall events up to the 100 year plus 20% for commercial, 30% for residential (for climate change) critical rain storm so that it will not exceed the run-off from the undeveloped site and not increase the risk of flooding off-site;
- Provision of surface water run-off attenuation storage to accommodate the difference between the allowable discharge rate/s and all rainfall events up to the 100 year plus 20% for commercial, 30% for residential (for climate change) critical rain storm;
- Detailed design (plans, cross, long sections and calculations) in support of any surface water drainage scheme, including details on any attenuation system, and the outfall arrangements; and
- Details of how the on-site surface water drainage systems shall be maintained and managed after completion and for the lifetime of the development, to ensure long term operation to design parameters.

No development shall be carried out (or, in the case of phased development, no development in that phase shall be carried out), nor any part of the development shall be brought into use at any time unless in accordance with the agreed scheme and timetable.

12. The development hereby permitted shall not be commenced until such time as a scheme to detail each individual watercourse crossing (including pedestrian footbridge and vehicular crossings) demonstrating that no raising of ground levels, nor bridge soffit levels as set will result in elevated flood levels, and that there will be no loss of flood plain storage due to the provision of any new crossing of the Money Hill Brook, has been submitted to and agreed in writing by the Local Planning Authority in consultation with the Environment Agency and Lead Local Flood Authority (LLFA). The scheme shall include, but not be exclusive of:

- Limiting the number of crossings of the Money Hill Brook, and removal/upgrade of any existing crossings;
- Crossings to be provided as clear span bridges or arches in preference to any culverting (including the upgrading of existing crossings, where upgrading is required or proposed);
- Bridge soffits set a minimum of 600mm above the modelled 100 year plus 20% (for climate change) flood level applicable at the crossing site;
- Bridge abutments set back beyond the top of the natural bank of the watercourse;

- Where necessary, culverts designed in accordance with CIRIA C689 (including up sizing to provide a free water surface and natural bed), and to have a minimum width / length of culvert essential for access purposes;
- Provision of compensatory flood storage for all ground levels raised within the 100 year flood plain applicable at any crossing sites, including proposed location, volume (calculated in 200mm slices from the flood level) and detailed design (plans, cross, and long sections) of the compensation proposals;
- Compensatory flood storage provided before (or, as a minimum, at the ground works phase) of the vehicle bridge and any other crossing construction;
- Detailed designs (plans, cross, long sections and calculations) in support of any crossing;
- Details of how the scheme shall be maintained and managed after completion; and
- A timetable for the relevant works.

The scheme shall be fully implemented and subsequently maintained in accordance with the approved details including the timing / phasing arrangements embodied within the scheme.

13. No development shall commence until a construction working method statement to cover all watercourse works (including pedestrian and vehicular crossings and any other works within 8 metres of any watercourse) has been submitted to and agreed in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved scheme.

14. Notwithstanding the submitted details and other conditions, no development (save for demolition works) shall commence on the site (or, in the case of phased development, in respect of the relevant phase) until a further Risk Based Land Contamination Assessment has been submitted to and agreed in writing by the Local Planning Authority (or, in the case of phased development, in respect of that phase). The Risk Based Land Contamination Assessment shall identify all previous uses, potential contaminants associated with those uses, a conceptual model of the site indicating sources, pathways and receptors, and potentially unacceptable risks arising from contamination at the site and shall be carried out in accordance with:

- BS10175:2011+A1:2013 Investigation of Potentially Contaminated Sites Code of Practice;
- BS8485:2007 Code of Practice for the Characterisation and Remediation from Ground Gas in Affected Developments; and,
- CLR 11 Model Procedures for the Management of Land Contamination, published by the Environment Agency 2004.

15. If, pursuant to Condition 14 above, any unacceptable risks are identified in the Risk Based Land Contamination Assessment, a Remedial Scheme and a Verification Plan shall be submitted to and agreed in writing by the Local Planning Authority. The Remedial Scheme shall be prepared in accordance with the requirements of CLR 11

Model Procedures for the Management of Land Contamination, published by the Environment Agency 2004, and the Verification Plan (which shall identify any requirements for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action) shall be prepared in accordance with the requirements of Evidence Report on the Verification of Remediation of Land Contamination Report: SC030114/R1, published by the Environment Agency 2010, and CLR 11 Model Procedures for the Management of Land Contamination, published by the Environment Agency 2004. If, during the course of development, previously unidentified contamination is discovered, development shall cease on the affected part of the site and it shall be reported in writing to the Local Planning Authority within 10 working days. No work shall recommence on that part of the site until such time as a Risk Based Land Contamination Assessment for the discovered contamination (to include any required amendments to the Remedial Scheme and Verification Plan) has been submitted to and agreed in writing by the Local Planning Authority. Thereafter, the development shall be undertaken in accordance with the agreed details and thereafter be so maintained.

16. No part of the development hereby permitted shall be brought into use until such time as a Verification Investigation for the relevant part of the site has been undertaken in line with the agreed Verification Plan for any works outlined in the approved Remedial Scheme relevant to either the whole development or that part of the development and a report showing the findings of the Verification Investigation for the relevant part of the site has been submitted to and agreed in writing by the Local Planning Authority. The Verification Investigation Report shall:

- Contain a full description of the works undertaken in accordance with the agreed Remedial Scheme and Verification Plan;
- Contain results of any additional monitoring or testing carried out between the submission of the Remedial Scheme and the completion of remediation works;
- Contain Movement Permits for all materials taken to and from the site and/or a copy of the completed site waste management plan if one was required;
- Contain Test Certificates of imported material to show that it is suitable for its proposed use;
- Demonstrate the effectiveness of the approved Remedial Scheme; and
- Include a statement signed by the developer, or the approved agent, confirming that all the works specified in the approved Remedial Scheme have been completed.

17. There shall be no infiltration of surface water drainage into the ground at any time other than in accordance with details first submitted to and agreed in writing by the Local Planning Authority. Development shall be undertaken strictly in accordance with the submitted Outline Construction Environmental Management Plan (Revision 01, March 2013, ref. 031052).

18. Notwithstanding the submitted details and other conditions, no development shall commence in any phase until such time as a timetable for the undertaking of updated surveys in respect of badgers in the relevant phase (and including the

specification of maximum periods between undertaking of surveys and commencement of work on the relevant phase) has been submitted to and agreed in writing by the Local Planning Authority. No development shall thereafter be undertaken at any time in that phase unless the relevant surveys have been undertaken in accordance with the approved details and the results (including mitigation measures and a timetable for such mitigation where appropriate) have been submitted to and agreed in writing by the Local Planning Authority, and the development shall thereafter be undertaken strictly in accordance with the agreed mitigation measures and timetable.

19. No hedgerows, trees or shrubs shall be removed during the months of March to August inclusive unless first agreed in writing by the Local Planning Authority. Should nesting birds be found during construction work, all construction work within 5 metres of the nest (which could constitute a disturbance) shall cease immediately, and shall not resume until such time as the young have left the nest.

20. Notwithstanding the submitted details and other conditions, the first reserved matters application in respect of the development (or, in the case of phased development, the first reserved matters application in respect of the relevant phase) shall be accompanied by full details of all measures proposed in respect of the enhancement and / or management of the ecology and biodiversity of the development (or in respect of phased development, that phase), including proposals in respect of future maintenance and a timetable for the implementation of the relevant measures. The development shall thereafter be undertaken and occupied in accordance with the agreed measures and timetable.

21. Notwithstanding the submitted details, all reserved matters applications for the erection of non-residential development shall include full details of the proposed buildings' anticipated level of achievement in respect of criteria / sub-categories contained within the Building Research Establishment's Environmental Assessment Method (BREEAM). No building shall be brought into use until such time as an assessment of the building has been carried out by a registered BREEAM assessor and a BREEAM Certificate has been issued for the relevant building certifying that the relevant BREEAM Level has been achieved.

22. Notwithstanding the provisions of the Town and Country Planning (Use Classes) Order 1987 (as amended) (or any order revoking or re-enacting that Order), the total gross floorspace of uses falling within Class A1 of that Order shall not exceed 560 square metres at any time, nor shall the total gross floorspace of any single retail unit exceed 460 square metres at any time, unless planning permission has first been granted by the Local Planning Authority.

23. The first reserved matters application submitted pursuant to this permission (or, in the case of phased development, the first reserved matters application in respect of the relevant phase) shall include a detailed Archaeological Mitigation Strategy for the respective area(s). The Strategy shall be based upon the results of a programme of exploratory archaeological fieldwalking and trial trenching undertaken within the relevant area(s) in accordance with a Written Scheme of Investigation (WSI) first submitted to and agreed in writing by the Local Planning Authority. Both the WSI and final Strategy shall include an assessment of significance and research questions, and:

- The programme and methodology of site investigation, recording and post-investigation assessment (including the initial fieldwalking and trial trenching, assessment of results and preparation of an appropriate mitigation scheme);
- The programme for post-investigation assessment;
- Provision to be made for analysis of the site investigation and recording;
- Provision to be made for publication and dissemination of the analysis and records of the site investigation;
- Provision to be made for archive deposition of the analysis and records of the site investigation;
- Nomination of a competent person or persons / organisation to undertake the works set out within the Written Scheme of Investigation; and
- A detailed timetable for the implementation of all such works / measures.

No development shall take place at any time within the relevant area other than in accordance with the agreed Written Scheme of Investigation, Strategy and timetable for that area.

24. Notwithstanding the submitted details and other conditions, no development shall commence on the site until such time as a scheme of structural landscaping to the A511 (indicating species, densities, sizes and numbers of proposed planting both within and outside of the application site, as appropriate, together with all existing trees and hedgerows on the land including details of those to be retained, and those to be felled / removed), together with a timetable for its implementation, has been submitted to and agreed in writing by the Local Planning Authority. No development shall be occupied at any time unless all measures specified in the agreed scheme required to be implemented by the relevant stage / phase have been undertaken in full in accordance with the agreed details.

25. Notwithstanding the submitted details and other conditions, no development shall commence (or, in respect of a phased development, no development shall commence in the relevant phase) until such time as details specifying which of the proposed tree protection measures shown on drawing no. SJA TPP 12139-02a within the development (or, in respect of a phase development, that phase) are proposed to be implemented in respect of the construction of the proposed accesses / roads (together with a timetable for their implementation) have been submitted to and agreed in writing by the Local Planning Authority. No development (or, in respect of a phased development, no development in the relevant phase) shall be undertaken at any time unless all of the agreed protection measures relating to the relevant stage / phase are in place. Within the fenced off areas there shall be no alteration to ground levels, no compaction of the soil, no stacking or storing of any materials and any service trenches shall be dug and back-filled by hand.

26. Save for any works associated with the formation of the access as shown on drawing no. 06 Rev F, no part of the development shall be occupied until such time as the A511 site access junction as shown on drawing no. 06 Rev F has been provided in full and is available for use by vehicular traffic.

27. No development shall commence on the site until such time as a scheme for the provision of a new or diverted bus service serving the development, and providing a connection between the site and Ashby de la Zouch town centre, has been submitted to and agreed in writing by the Local Planning Authority. The submitted scheme shall include hours of operation, service frequencies, routeing and provision of necessary on and off site infrastructure (including pole and flag, bus shelter, raised kerbs and information display cases). The scheme shall include any works / measures required for the initial implementation of the scheme, together with a phased programme for the implementation of any measures required by the scheme as the development progresses. No more than 131 dwellings constructed pursuant to this Planning Permission shall be occupied until such time as the whole of the approved scheme is fully operational.

28. No development shall commence on the site until such time as a construction management plan, including wheel cleansing facilities and vehicle parking facilities, site compound(s), materials' storage areas and a timetable for their provision, has been submitted to and agreed in writing by the Local Planning Authority. The development shall thereafter be carried out in accordance with the approved details and timetable.

29. No more than 30 dwellings shall be accessed off Woodcock Way.

## Annex B

**Correspondence submitted after the close of the inquiry or too late to be considered by the Inspector**

| Correspondent | Date |
|---|---|
| Paul Andrew | 17 November 2015 |
| Ashby de la Zouch Civic Society | 26 November 2015 |
| the late Lorna Titley | 2 December 2015 |
| Iceni Projects | 27 January 2016 |

## Annex C

**Representations received in response to reference back to parties**

| Correspondent | Date |
|---|---|
| North West Leicestershire District Council | 17 December 2015 |
| David Price | 2 January 2016 |
| Iceni Projects | 5 & 18 January 2016 |
| the late Lorna Titley | 7 & 18 January 2016 |
| Ashby de la Zouch Town Council | 7 & 18 January 2016 |
| Nottingham Road and Wood Street Action Group (NORAG) | 7 January 2016 |
| Ashby de la Zouch Civic Society | 7 & 17 January 2016 |
| Paul Andrew | 7 & 20 January 2016 |

The Planning Inspectorate

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

**by John Braithwaite BSc(Arch) BArch(Hons) RIBA MRTPI**

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

**Date: 21 October 2015**

**TOWN AND COUNTRY PLANNING ACT 1990**

**NORTH WEST LEICESTERSHIRE DISTRICT COUNCIL**

**APPLICATION**

**by**

**MONEY HILL CONSORTIUM**

Inquiry held on 8 and 10 September 2015

Money Hill, Land north of Wood Street, Ashby-de-la-Zouch, Leicestershire

File Ref: APP/G2435/A/14/2228806

**File Ref: APP/G2435/A/14/2228806**

**Money Hill, Land north of Wood Street, Ashby-de-la-Zouch, Leicestershire**

- The appeal was recovered for decision by the Secretary of State by a direction, made under section 79 of the Town and Country Planning Act 1990, on 3 December 2014.
- The application was made by Money Hill Consortium to North West Leicestershire District Council.
- The application Ref 13/00335/OUTM is dated 22 April 2013.
- The development proposed is 605 residential dwellings including a 60 unit extra care centre (C2), a new primary school (D1), a new health centre (D1), a new nursery school (D1), a new community hall (D1), new neighbourhood retail use (A1), new public open space and vehicular access from the A511 and Woodcock Way.
- The reason given for the direction is that the appeal involves a residential development of more than 150 units on a site of more than 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.

**Summary of Recommendation: The appeal be allowed.**

## Procedural Matters

1. The application was made in outline form with all matters except for part access reserved for future consideration.

2. The application was refused for four reasons, as set out in a Statement of Common Ground (ID4), but at a Planning Committee Meeting on 6 January 2015 North West Leicestershire District Council (NWLDC) resolved not to pursue the first three reasons for refusal. The fourth reason relates to housing and affordable housing supply.

3. The application was opposed by Leicestershire County Council (LCC) and by Leicestershire Police (LP). Prior to the Inquiry LCC and LP were granted Rule 6(6) status under the provisions of the Inquiries Procedure Rules. Their concerns related to mitigation of the effects of the development and to the provisions of the Unilateral Undertaking, made pursuant to Section 106 of the Town and Country Planning Act 1990, that has been put forward by the Appellant. A final draft of the Section 106 Undertaking was submitted at the Inquiry and a signed and dated version was submitted after the close of the Inquiry.

4. Though they have maintained the fourth reason for refusal of the application NWLDC did not present any evidence at the Inquiry. Instead, they made a position statement. This is reported below.

5. The proposed development is EIA development for the purposes of the Town and Country Planning (Environmental Impact Assessment) Regulations 2011. The planning application was thus accompanied by an Environmental Statement (ES). The ES has been found to meet the requirements of the EIA Regulations.

## The Site and Surroundings

6. The appeal site is 43.6 hectares of undulating open farmland, which rises roughly from the south to the north, to the north-west of Ashby-de-la-Zouch. The site is bounded to the west, south and south-east by existing town development, to the north by further farmland, and to the north-east by the A511 trunk road.

## The Proposed Development as made to the Council

7. The principal element of the proposed development is the construction of 605 dwellings, of which 60 units would be within an extra care centre, on 20.18 hectares at a density of 29.9 dwellings per hectare. The development would also include a primary school, a health centre, a community hall, neighbourhood retail use, public open space (9.88 hectares) and flood attenuation areas (3.87 hectares). The principal access into the site would be via a new roundabout junction on the A511 and a secondary access would be via Woodcock Way that has a junction with Nottingham Road, the main road into the town from the east.

## The Proposed Development as amended prior to the Inquiry

8. After the application was submitted to the Council the Money Hill Consortium 'lost control' of part of the application site. This part of the site is known as the 'Verney field'. The Woodcock Way access into the site is into the Verney field and the field has been the subject of a planning application (Ref. no. 15/00354/OUT) for up to 70 dwellings, which was refused by NWLDC and is the subject of an appeal (Ref. No. APP/G2435/A/14/3019451).

9. The amended development is the same as that generally described in paragraph 7 but would not include any development on the Verney field. Consequently, the area for residential development would reduce to 18.75 hectares, with a consequent increase in housing density to 32.2 dwellings per hectare, public open space would reduce to 8.77 hectares, and flood attenuation areas would reduce to 3.46 hectares. The amended scheme has been the subject of assessment under the provisions of the Town and Country Planning (Environmental Impact Assessment) Regulations 2011 (EIA) and an ES Addendum is included with the Inquiry Documents (ID23).

10. The Appellant maintains that the amendments to the original scheme are minor and has requested, under the principle established in *Bernard Wheatcroft Ltd v Secretary of State for the Environment (1982) 43 P & CR 233 (Wheatcroft)*, that the appeal be determined on the basis of the amended schemed. This matter is reported and concluded on below. ID5 is the plans that accompanied the application and ID6 is the plans for the amended development.

## Planning Policy

Local planning policy

11. The development plan, for the purposes of Section 38(6) of the Planning and Compulsory Purchase Act 2004, comprises saved policies of the North West Leicestershire Local Plan 1991 – 2006 (LP), which was adopted on 22 August 2002. LP policy S3 states that development will be permitted on land outside the limits to development, identified on proposals maps as countryside, but only if it is for one of five given purposes. General housing is not one of the five purposes.

Emerging local planning policy

12. A draft Core Strategy was passing through the statutory process towards adoption but was withdrawn in October 2013. A revised draft CS has been prepared but it is not expected to pass through the statutory process to adoption before December 2016. The main parties agreed, as set out in the Statement of Common Ground (ID4), that no weight can be attached to the emerging CS.

## The Case for North West Leicestershire District City Council (NWLDC)

The material points of the case made by NWLDC are:

13. The Appellant proposes to deliver a balanced development of up to 605 new homes (of which 30 per cent would be affordable homes), new primary and nursery schools, a health centre, a community hall, a shop and open space on a green field site adjoining the north eastern edge of Ashby de la Zouch.

Planning policy framework

14. The development plan comprises saved LP policies. LP policy S3 restricts the development of new homes outside the limits to development that are shown on proposals maps. The appeal site lies outside the limits to development around Ashby de la Zouch. It therefore conflicts with policy S3. However, the LP's housing policies only made provision to meet the need for new homes in the district until 2006. Consequently they are out of date. Policy S3 is a counterpart to those policies in the sense that it restricts the development of new homes in the countryside in order to direct them to sites allocated for that purpose. Since it is inevitable that a new Local Plan will have to identify land outside the existing limits to development to meet the present and future need for housing policy S3 is also out of date. In the circumstances, no weight ought to be attached to the conflict with policy S3. Instead, the merits of the proposal should be assessed by reference to the National Planning Policy Framework (NPPF).

15. The NPPF places great weight on boosting significantly the supply of market and affordable housing. Where, as in this case, policies for the supply of housing contained in a local plan are out of date, the presumption in favour of sustainable development applies. That means planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies of the NPPF as a whole. The factual question of whether development would actually cause harm is to be approached positively. Local planning authorities should look for solutions rather than problems and decision makers at every level should try to approve applications for sustainable development where possible.

Application of the NPPF to the appeal proposals

16. In May 2014 the Planning Committee refused to grant planning permission for the scheme because Councillors were not persuaded it constituted sustainable development. The notice of decision cited four reasons for refusal. In summary, they were:-

a. The scheme did not make adequate arrangements for pedestrian access to the town centre. That was thought likely to cause new residents to place too much reliance on the private car, resulting in an unsustainable form of development;

b. Woodcock Way was thought to be unsuitable for providing vehicular access to up to 30 dwellings;

c. Highways England had issued a "holding objection" because they were concerned the scheme might prejudice the safe and efficient operation of the A42 Trunk Road;

d. The Appellants had not made adequate provision for affordable housing; the Council's Affordable Housing Supplementary Planning Document requires 30 per cent of the new homes to be affordable whereas the Appellant's offer was unclear and appeared to be likely to yield rather a significantly lower contribution.

17. The decision to refuse planning permission was not taken lightly. The Council knows it must build many more new homes for people to live in. It is also acutely aware of the need to build more affordable houses: the Leicester and Leicestershire Strategic Housing Market Assessment identifies a need to deliver around 209 such homes in the District each year. The Council also recognised that the appeal site had previously been identified for residential development in the first draft Core Strategy. Although that document has been withdrawn, that previous notation makes it very difficult to argue plausibly that in principle the development of houses at Money Hill is unsustainable. Instead the reasons for refusal highlighted concerns about the detail of what was proposed rather than the general suitability of Money Hill to accept significant housing development.

18. Matters did not rest there. The appeal process requires all parties to support their case with evidence which demonstrates clearly why planning permission ought to be refused. They are also required to act reasonably. As the Council set about gathering and testing its evidence, and through the preparation of the Statement of Common Ground, Officers were persuaded that it would be difficult to continue reasonably to contest the first three reasons for refusal. Specifically, it became apparent that:-

a. A satisfactory bus service could be provided to and from the town centre. Further, there is potential to create convenient, safe and attractive routes for pedestrians and cyclists to and from shops, community facilities and jobs in the centre of Ashby (and elsewhere in the town);

b. Woodcock Way is capable of serving 30 houses safely;

c. The development would not prejudice the safe and free flow of traffic on the A42 trunk road.

19. Officers drew comfort for their conclusions from information supplied to them by the local highway authority, Leicestershire County Council, and by Highways England. Neither maintained an objection to the scheme (Highways England withdrew their holding objection on 22 December 2014). Adopting the "solution driven approach" that is advocated by the NPPF, Officers decided to report the matter back to Councillors with a recommendation that the first three reasons for refusal should be withdrawn. The Planning Committee accepted this recommendation on 15 January 2015. That change of stance has since been vindicated by the absence of any objection to the Appellant's highways proposals by either the local highway authority or Highways England. It is also relevant to note the Appellant's amended proposal deletes access from Woodcock Way.

20. Thus for the purpose of applying the presumption in favour of sustainable development the Council accepts that the scheme would not cause any harm to the safe and free flow of vehicular, cycle or pedestrian traffic. It is also satisfied that the appeal site is well located and will be properly serviced by sustainable forms of transport so that residents of the new homes will be able to travel to and from the town centre without necessarily having to resort to using their cars.

Affordable housing

21. When the appeal proposals were considered by the Planning Committee the Appellant did not appear to be committed to providing a policy compliant contribution of 30 per cent affordable housing. That was unacceptable. Ashby de la Zouch is an attractive, historic market town. House prices held up well during the recession and the housing market remains healthy. The site is not constrained by problems that might impose exceptional costs on development and undermine its viability. In principle, therefore, a full policy compliant contribution of 30 per cent affordable housing ought to be made. Indeed an Affordable Housing Viability Study published in 2009 indicated the potential to deliver up to 35 per cent affordable housing on sites in the town. The Council cannot afford to be relaxed about achieving affordable housing targets. As has been noted, there is an acute need for affordable housing throughout the district. In that context sites which cannot satisfy this important social need but which consume the countryside might properly be regarded as failing to deliver sustainable development.

22. Happily, this difference between the parties has been resolved. The Unilateral Undertaking that has been submitted by the Appellant contains an obligation to provide 30 per cent affordable housing subject to an independent assessment of the viability of that level of contribution. The Council is satisfied that the terms of the undertaking are robust and equitable. They also give effect to the NPPF's injunction that development should be deliverable.

The planning balance

23. Every household in the district should be able to obtain a decent home that they can afford. This is quite simply a top priority. The delivery of 605 new homes (of which up to 182 would be affordable) in a sustainable location close to shops, community facilities and employment would make a really substantial contribution towards meeting that priority. That should be accorded considerable weight. In the absence of an up-to-date LP the fact that a recent appeal proved the Council possesses a 5 year supply of deliverable land for housing does not diminish the weight to be attached to the Appellant's offer to build more new homes; a 5 year supply is the minimum amount of land that must be shown to be available. It is not a cap on development.

24. English Heritage has not objected to the scheme and the Council is satisfied that the development would not harm the setting of any listed building. The Appellant has addressed flooding and water quality issues to the satisfaction of the Environment Agency and Severn Trent Water. The County Ecologist and Natural England are satisfied the scheme would not adversely affect the River Mease Special Area of Conservation (SAC) or other ecological interests.

25. On the other side of the balance it is recognised that the scheme would result in the loss of countryside and good quality agricultural land. The countryside is not protected by any special designation. However, it is plainly valued by local people. Its loss is therefore a matter of regret. The Council also recognises local people are concerned about traffic congestion in the town. However, a balance has to be struck between meeting the need for new housing and causing some harm to the environment. In this case the need for new homes is decisive and it is not considered that the harm associated with this provision would be so great as to justify dismissing the appeal.

26. Other potentially adverse impacts of the scheme would be offset by the discharge of planning obligations contained in the undertaking which make contributions towards the cost of new schools and school places, open space, library, healthcare, police and community infrastructure. The Council supports each of these contributions. Other harm that might be caused by the scheme can be overcome by conditions that have been agreed between the parties.

## The Case for Leicestershire County Council (LCC)

The material points of the case made by LCC are:

27. Financial contributions are sought towards primary, secondary and upper school education, library facilities, and sustainable transport. The latter element includes a bus pass contribution, a travel pack contribution and a bus stop improvement and information display case contribution. The contributions are necessary because the new housing proposed would place additional demand on education and library resources and on the achievement of sustainable transport options for the intended residents of the development. The contributions are fairly and reasonably related in scale and kind to the development and are directly related to that development. The contributions therefore satisfy Regulation 122 of the Community Infrastructure Levy Regulations 2010.

28. The primary school contribution is directly related to the development because a new primary school would be constructed on the site. If circumstances dictate that this does not occur if the development is implemented then the contribution would be used to extend the primary school at the Holywell Spring Farm development in Ashby. This would be the first such contribution. The secondary school contribution would be the second such contribution towards an increase in capacity at Ivanhoe College and the upper school contribution would be the fifth such contribution towards addressing pupil capacity issues at Ashby College. The library contribution would be the fifth such contribution towards the reconfiguration of the existing library in Ashby and the sustainable transport contribution would be used to mitigate matters arising from the development itself. The financial contributions sought thus satisfy Regulation 123 of the Community Infrastructure Levy Regulations 2010.

## The Case for Leicestershire Police (LP)

The material points of the case made by LP are:

29. A contribution of £219,029 is sought towards Police infrastructure that would mitigate the impact of the proposed development. This figure has been arrived at following a close and careful analysis of the current levels of policing demand and deployment in Ashby, 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 605 new homes on the appeal site.

30. LP has not sought any contribution to some aspects of policing, such as firearms and forensics, but only for those aspects where there is no additional capacity. The contribution is thus fairly and reasonably related in scale and kind to the development and is directly related to that development. The contribution is necessary because the new housing that would be created would place additional

demand on Police resources in Ashby. The contribution therefore satisfies Regulation 122 of the Community Infrastructure Levy Regulations 2010.

31. LP confirms that no element of the contribution would be pooled with any other contribution to fund an infrastructure project. Indeed, the undertaking provides that the contribution would only be payable on receipt of written confirmation from LP that each component of the contribution would be spent on a project with no more than four other contributions. There is certainty therefore that the contribution satisfies Regulation 123 of the Community Infrastructure Levy Regulations 2010.

## The Case for Money Hill Consortium

The material points of the case made by Money Hill Consortium are:

The proposed amendments to the application

32. The principle governing whether a planning application may be amended on appeal, as set out in *Wheatcroft*, is aimed at preventing unfairness where the development is *"so changed"* by the amendment *"that to grant it would be to deprive those who should have been consulted on the changed development of the opportunity of such consultation"*.

33. This breaks down into two sub-issues. First, does the amendment involve a significant change to what has been applied for? Secondly, if it does, would there be a 'consultation deficit': i.e. have interested parties been deprived of the opportunity to comment on the amended scheme? If the answer to both these questions is 'Yes', then allowing the amendment would be unfair and unlawful. If the answer to either of those questions is 'no' then there is no unfairness and the amendment is permissible.

34. In the present case the answer to both questions is 'No'.

35. Firstly, the amendments involve minor, rather than significant, changes. No changes are proposed to the description of the development for which planning permission is sought. No alterations are proposed to the application red line, the amendments are confined to changes to the layout shown in the parameter plans to show that the Verney Land is not an integral part of the development, and the development can be delivered without the Verney Land (a scenario which has also been tested for EIA purposes in the ES Addendum). Given that layout is a reserved matter and the small size of the amendments proportionately to the scale of the overall application, these changes can properly be described as minor.

36. Secondly, there is no 'consultation deficit'. The proposed amendments have been subject to extensive consultation and publicity comprising the following:-

a. The publication of a notice in the local press;

b. The display of a site notice;

c. Direct mailing to the extensive range of statutory consultees and local residents in the list provided by Mr Churchill in Examination in Chief (ID2);

d. Depositing copies of the amended material for public inspection at the Council's offices and at the offices of the Appellant's planning consultants.

37. This consultation and publicity has thus at least matched that which would have been undertaken pursuant to the Town and Country Planning (Development Management Procedure) (England) Order 2015 (the DMPO) if the amendments had been pursued as a new planning application. In fact, it has exceeded the statutory requirements under the DMPO in that local residents, including not just those originally consulted by the Local Panning Authority but all those who objected to the original application, have been directly mailed with the amended plans (which is not a requirement of the DMPO).

38. Not only have members of the public been provided with an opportunity to comment on the amendments, very many of them have taken up that opportunity through the submission of written representations and through appearing at the Inquiry. Councillor Ball confirmed in cross-examination that the Town Council were aware of the amendments and that they had a meeting prior to the commencement of the inquiry at which they could have discussed the amendments; that they did not do so is a matter for them. What matters is they were given a reasonable chance to do so.

39. The observations submitted by email on 4 September by Ms Eri Wong of the Transport Department at the LCC do not alter the above analysis. Two points are made in the email:

1. The first relates to emergency access, but Ms Wong concludes in relation to that point that LCC is "prepared to take a flexible approach" in that regard and to defer to the views of the emergency services. The police, the NHS and the Fire and Rescue Service were all directly mailed with the proposed amendments and none have objected. Mr Cross for LCC confirmed on the first day of the Inquiry that "LCC does not take a point" in relation to emergency access. Mr Burbridge explained in examination-in-chief that there were multiple options for emergency access and that he was satisfied in his expert judgment that the development was capable of providing acceptable emergency access arrangements. His evidence was not challenged.

2. The second point in Ms Wong's email is, in essence, that (i) the amendments change the access arrangements for the appeal scheme in that the sole access for which permission would be granted is off the A511 and (ii) LCC has not had time to ascertain the implications of that change for the commercially viability of the proposed bus service. Ms Wong has not attended the inquiry and her observations have therefore not been able to be tested in cross-examination. That limits the weight to be given to what she says. Moreover, LCC has been given the same consultation period on the amendments that it would have had under the DMPO for a new application. In any event, Ms Wong's point is without merit for the following reasons:

    a. The premise is incorrect: whilst the amendments clarify that the development of the Verney field is not an integral or necessary part of the appeal scheme, the access arrangements which would be within the scope of the permission (if granted) remain the same. In other words, if permission is granted, the Appellant will still be permitted, but will not be required, to bring forward access via Woodcock Way.

b. In any event, the premise does not justify the conclusion. The proposed conditions include a Grampian condition requiring prior approval of the details of the bus service including, in particular, its routing. If LCC considers upon reflection that the routing which is ultimately proposed pursuant to that condition means that the service would not be commercially viable, they will be able to make representations to that effect and if the Council agrees then the condition will not be discharged. The proposed amendments to the appeal scheme will therefore not deprive LCC of making such points as they see fit on this issue.

c. The critical question in considering whether dealing with the bus service by way of a Grampian condition is acceptable is whether there is some, as opposed to no, prospect of that condition being discharged within the lifetime of the permission. No one, including LCC, has suggested there is zero prospect of the condition being discharged. LCC did not object to the viability of the bus service when it was envisaged that the route would enter the site via the A511 and exit via Woodcock Way. As Mr Burbridge has explained, by reference to the email from Mr Jenkins (ID12), an expert in bus public transport matters, the additional journey time that would be involved if the route both entered and exited via the A511 is minimal and would not have any material effect on viability. It should also be noted that the 'Enhanced Connectivity Contribution' of £400k in the Section 106 package is drafted in terms that would cover seed-funding of the bus service, should that be considered necessary following the assessment by LCC of sustainable transport connectivity which itself is to be funded by the Section 106 obligations.

40. In the light of the foregoing points, the case for allowing the amendments to be made is compelling.

Submissions on the merits of the amended scheme

41. The principle of development has never been in dispute between the Council and the Appellant. Indeed the Council has even resisted development elsewhere on the basis that it conflicts with the preferred direction for future growth which is at Money Hill. None of the four reasons for refusal originally imposed by Members went to the principle of development.

42. As the Statement of Common Ground records (see in particular at 4.1), and as the Council has reiterated at this Inquiry, it is now common ground between the Council and the Appellants that the appeal should be allowed. Reasons for refusal 1-3 have been withdrawn. Reason for refusal 4, which relates to affordable housing, is agreed to be capable of being dealt with by a planning obligation and is therefore not put forward as a basis for dismissing the appeal.

43. Such a Statement of Common Ground between the Appellant and the Local Planning Authority ought not to be rejected without very sound reasons. The Inquiry procedure relies upon such Statements as narrowing the issues. There are no planning issues now between the Appellant and the Council. This unusual position reflects the long-standing hard work that has gone into the preparation and promotion of this scheme.

44. There are no sound reasons here for departing from the agreed position of the Local Planning Authority and the Appellant. The case for granting permission is compelling. The central points are as follows (without prejudice to the generality of the case put forward by the Appellant in its evidence and in the documentation accompanying the application).

45. First, whilst the appeal scheme is in limited breach of the ageing Local Plan which covered the period 1991-2006 (in particular saved policy S3), it is common ground that the Local Plan is out of date for the purposes of NPPF paragraph 14 (regardless of whether the Council can demonstrate a five year housing land supply) because the District's housing needs cannot be met by reliance solely on allocations contained within the Local Plan. Policy S3 can therefore be given limited weight.

46. Secondly, the consequence of the Local Plan being out of date is that, applying NPPF paragraph 14, the presumption in favour of sustainable development means that permission should be granted unless the adverse impacts of doing so significantly and demonstrably outweigh the benefits.

47. Thirdly, the benefits of the appeal scheme are substantial in number and in significance. They include:

a. The delivery of a substantial amount of housing which would provide a telling contribution to boosting significantly the supply of housing in the District, in line with the objective set out in NPPF paragraph 47;

b. The provision, as part of that housing contribution, of a significant amount of affordable housing (30% subject to viability), in a desirable location where market housing prices are robust;

c. The provision of 60 units of extra care housing, which would promote the NPPF paragraph 50 objective of planning for a mix of housing based upon the needs of different groups in the community;

d. The delivery of a range of substantial improvements to local infrastructure as set out in the Section 106 unilateral undertaking;

e. Direct economic benefits associated with the new development, including over 125 full time jobs;

f. The additional lifeblood that the development's population would generate to help sustain and enhance local facilities;

g. Environmental benefits including new planting, a contribution towards the reduction of phosphate affecting the River Mease SAC, the long-term retention of existing trees and hedgerows, and the promotion of sustainable transport opportunities; and

h. The delivery of all these benefits in a sustainable location.

48. Fourthly, such adverse impacts as there are do not come remotely close to significantly and demonstrably outweighing the benefits of granting permission. The converse is true: the benefits both outnumber and outweigh the adverse impacts. In particular:

a. The development would not have any significant adverse impacts from a highways and transportation perspective. In this regard, as Mr Burbridge explained in examination-in-chief, regard has been had out of an abundance of caution to the cumulative impact of the appeal scheme together with the proposed but as-yet-unpermitted development on the Verney field – the combined effect of both schemes is acceptable regardless of whether the Verney field scheme were to take its access from Woodcock Way or from the A511;

b. Whilst any greenfield development of this scale is bound to have some landscape and visual impact, that impact in the present case is limited due to the site being relatively visually contained;

c. No unmitigable adverse impacts on ecology are alleged;

d. The Council was satisfied that the development would not result in an undue loss of residential amenity by local residents and it is notable that those local residents who spoke at the inquiry did not focus on this issue;

e. Whilst the development will result in the loss of some agricultural land, this was not considered by the Council to be an overriding consideration nor is it an uncommon feature of greenfield development which, in this District at least, has a necessary role to play in the delivery of market and affordable housing requirements; and

f. In relation to heritage assets, our primary submission is that the development would not cause any harm. The English Heritage letter dated 31 May 2013 does not appear to take any great issue with this analysis; at its highest, it could be said to identify only a sliver of less-than-substantial-harm to the setting of Ashby Castle against the context that the view from the Castle to Money Hill *"does not appear to be an axis with particular special significance over and beyond being part of the landscape that was visible around town from the tower (in contrast say to views towards the medieval parkland…)"*. It is notable that Mr Tandy on behalf of the Ashby Civic Society did not, at the Inquiry, allege that the development would have any heritage impact. Whilst harm to heritage assets must be given considerable importance and weight, that weight must be tempered by the limited degree of the harm (if any) and it is clearly outweighed by the benefits of the proposed development.

49. Fifthly, for similar reasons to those already given above, the appeal scheme represents sustainable development; it makes significant contributions to each dimension of sustainable development referred to in NPPF paragraph 7.

50. Sixthly, the support that the NPPF provides for the development, and the benefits of the scheme that trigger that support, are material considerations that justify a decision other than in accordance with the development plan for the purposes of Section 38(6) of the Planning and Compulsory Purchase Act 2004.

51. It is inevitable that when a greenfield scheme of this size is proposed there will be a degree of resistance among local residents concerned about the effect that this will have. This case is no exception. However, whilst local residents who have made written and/or oral observations at the Inquiry, the truth is that they

have not provided any sound planning grounds to justify the dismissal of this appeal. Their principal concern relates to the impact of the development on the local highway network. Mr Burbridge has explained in oral evidence, consistently with the transport assessment work in the written documentation before the inquiry, that the development can be accommodated safely and satisfactorily in highway terms. In particular, most peak hour traffic would be heading away from Ashby to destinations further afield and would therefore not contribute to congestion within the town, whereas a range of options for accessing the town centre by sustainable means (on foot, cycling and by bus) would exist and would be developed further as the details of the development are worked up at the reserved matters stage. Mr Burbridge also explained that the assumptions in the traffic modelling were conservative and clearly had sufficient headroom to accommodate the various other developments consented in the locality. His evidence was not contradicted by any technical evidence before the inquiry, and LCC in its local highway authority role do not take issue with his conclusion that the development can be acceptably accommodated on the highway network. There is simply no evidential basis for dismissing the appeal on highways grounds.

Submissions on the merits of the original scheme

52. The above analysis applies equally to the appeal scheme in its unamended form. In particular, whilst the layout shown on the original parameter plans indicates some development on the Verney field, which is currently outside the Appellant's control:-

a. Given that layout is a reserved matter, there is no legal obstacle to reserved matters coming forward with a layout that redistributes the development away from the Verney Land. The ES Addendum has tested that scenario and so the possibility of such an outcome has been adequately subject to EIA and shown to be acceptable. Further EIA can also be required at reserved matters stage if the Council considers it necessary;

b. In any event, there is no requirement in planning law that the applicant for planning permission must have an interest in, let alone control over, all or even part of the land in respect of which permission is sought. Whilst the likely timing of a development's delivery is capable in principle of affecting the weight to be given to the claimed housing supply benefits, this is not a point that can be taken here even if there was no scope for reserved matters redistributing the development away from the Verney field. That is because the land ownership issue would only affect a relatively small portion of the development.

Conclusion

53. The proposed amendments to the appeal scheme should be allowed. They do not involve significant changes and in any event there is no 'consultation deficit' and therefore no unfairness in allowing them to be adopted.

54. The appeal scheme (amended or not) represents sustainable and beneficial development. Although it is in limited breach of the out-of-date LP, there are compelling material considerations that justify the grant of permission other than in accordance with the development plan.

## Representations made by interested parties

The material points of the cases made by those who appeared at the Inquiry and who submitted written representations are:

55. Ashby is a medieval market town of about 5000 dwellings where the town centre is protected by a conservation area. The first CS proposed an increase in the population of Ashby by the construction of 750 houses, solely at Money Hill, but since it was withdrawn the town has become a magnet for housing developers because development at other towns in the District, such as Coalville, is constrained. The 605 dwellings proposed at Money Hill would be only the first part of a development of 1800 new dwellings which would constitute, in itself and setting aside other developments, an increase of 36% in the size of the town. If a single development of such a scale is to be built then it must be done with proper consideration of the road network, schools, healthcare, drainage, sewerage, car parking and recreational facilities, which are all currently overstretched.

56. The principal concern is with regard to traffic problems on Nottingham Road/Wood Street, the main road leading into the town from the east. This road links the town to major edge-of town retailers and to the outside world via the A42 at junction 13. Its carriageways and footways are narrow and there have been many accidents over the years including a fatality. At the time of the 2002 LP examination it was recognised that the road had reached saturation point (17,600 vehicles per day) and that to allow more traffic would endanger highway and pedestrian safety. The opening of the A511 Ashby bypass provided massive relief and Nottingham Road is now used by 15,500 vehicles per day though queues in both directions are normal. The 1350 new dwellings already permitted will take traffic back beyond saturation point.

57. The A511 Ashby bypass, particularly its junctions with Nottingham Road and the A42, suffers severe congestion and would not cope with the 605 proposed dwellings on top of the 1350 already permitted. The Highways Agency has removed their holding objection on the impact on junction 13 of the A42 on the basis that a plan is funded and in place to upgrade this junction. No such plan is in place and no developer funding for any upgrade is committed. The Highway Authority are aware of these circumstances but have refused to object to the proposed development.

58. The late changes to the proposed development have raised unresolved issues. The only vehicular access into the town would require a two mile journey, a safe pedestrian access into the town is not certain, the bus route has been significantly modified and has not been tested for viability, and the single access to 605 dwellings and other uses from the A511 has not been tested and is contrary to the maximum of 400 dwellings permissible under Highway Authority policy. No viable traffic mitigation is proposed to ensure the sustainability of the proposed scheme and to avoid the gridlock that is projected.

59. Other concerns are with the impact of the development on the water environment and in particular the River Mease SAC, the impact of the development on the vibrancy of the town centre, and the insufficient capacity of the town's middle and senior schools to cope with the increase in pupil numbers. The Council can now demonstrate a five year housing land supply and LP policy S3 can therefore be considered up to date.

## Conditions and Section 106 Unilateral Undertaking

60. The Council and the Appellants have agreed a list of conditions for both the original and amended schemes (ID13 and ID14). These were discussed at the Inquiry as were conditions suggested by the Ashby Civic Society; which have either been addressed in the agreed conditions, are covered by provisions of the Section 106 undertaking, or do not relate to matters that need to be addressed by imposition of conditions. The agreed conditions have been amended where necessary in the interests of clarity and precision and to delete phrases that would allow the possibility of un-consulted alterations to previously agreed details. The conditions meet the tests for conditions set out in the National Planning Practice Guidance and are set out in schedules attached to this report. The reasons for the conditions are set out in the schedules.

61. A final draft Section 106 Unilateral Undertaking was submitted at the close of the Inquiry and a signed and dated version was submitted after the close of the Inquiry. The undertaking makes provision for the payment of contributions that would include the construction of a new on-site primary school or the expansion of an existing school, a sum of £1,081,508 for the provision of a new design centre at Ivanhoe College, a sum of £1,110,487 for the provision of a specialist teaching area at Ashby School, a sum of £201,878 to enhance healthcare facilities, a sum of £18,260 to enhance library facilities, a sum of £201,029 to support Police operations in the town, and a sum of £105,651 to upgrade and enhance public rights of way in the vicinity of the site.

62. The obligations of the Undertaking, other than that to support Police operations, are all related to requirements of development plan policies and are all necessary to make the development acceptable in planning terms. They are all, furthermore, directly related to the development, are fairly and reasonably related in scale and kind to the development, and are in place to mitigate the effects of the development. The Legal Agreement, setting aside the Police contribution, therefore complies with Regulation 122 of the CIL Regulations 2010. Furthermore, taking into account the submissions of NWLDP, LCC and LP, the Agreement complies with Regulation 123 of the CIL Regulations 2010.

63. The contribution of £219,029 towards Police infrastructure is not related to requirements of development plan policies. The figure has been arrived at following a close and careful analysis of the current levels of policing demand and deployment in Ashby. The proposed development, in terms of population increase, would have a quantifiable and demonstrable effect on the ability of the Police to carry out their statutory duties in the town. LP has not sought any contribution to some aspects of policing, such as firearms and forensics, but only for those aspects where there is no additional capacity. The contribution is thus fairly and reasonably related in scale and kind to the development and is directly related to that development. The contribution is necessary because the new housing that would be created would place a demonstrable additional demand on Police resources in Ashby. The financial contribution to Police operations thus satisfies Regulation 122 of the Community Infrastructure Levy Regulations 2010 and a provision of the Undertaking would ensure that the contribution also satisfies Regulation 123 of the Community Infrastructure Levy Regulations 2010.

## Conclusions

*Numbers in square brackets at the end of each paragraph refer to earlier paragraphs in this Report.*

The amended scheme

64. The amended scheme, setting aside the application for 70 dwellings on the Verney field, is not appreciably different to the original scheme. Housing density would be slightly higher and there would be slightly less public open space but there is no reason to suppose that a detailed scheme put forward at reserved matters stage would be unacceptable. Flood attenuation areas would also be slightly reduced but there is no evidence to suggest that there would be any increased risk of flooding or any adverse consequences for the water environment. Furthermore, the amended scheme has been assessed against the EIA Regulations and this assessment has not raised any issues. The appeal site is the same in both schemes and the amendments can properly be described as minor. [35, 58]

65. There is the possibility, if this appeal is allowed and the appeal for the proposed development on the Verney field is successful, that the appeal land would be developed for 675 dwellings rather than 605. If all other factors are acceptable then this would constitute the efficient use of land and would result in an increased contribution to housing and affordable housing supply. The appeal for the Verney field development will be determined on its own merits as will the appeal that is the subject of this report. [48]

66. The Appellant has undertaken a consultation exercise for the amended scheme and all parties who made representations on the original scheme were consulted. The consultation period ended before the close of the Inquiry and all representations made have been taken into account. The consultation process undertaken by the Appellant was responsibly made and is afforded significant weight. [36-38, 58]

67. The amended scheme is not materially different to the original scheme and is not so changed that the interests of any party to the appeal are compromised. The original scheme, if allowed, could be implemented if the appeal for the Verney field is dismissed but, equally, if that appeal is allowed the original scheme could be implemented on the basis of amendments made to it at reserved matters stage. The original and amended schemes will thus be considered on their merits.

The main issue

68. The main issue is whether the proposed development, taking all relevant matters into account, would be sustainable development

Traffic congestion and highway safety

69. The limit in Highway Authority guidance on the number of dwellings that can be accessed from a single access point is only a recommendation and neither the Authority nor any of the emergency services have commented on this aspect of the development. Residents of the town, if the appeal scheme is built out, envisage traffic congestion in the town returning to the level that existed before the A511 Ashby by-pass was brought into use. But there is no evidence to indicate that this would occur. Residents of the proposed dwellings, travelling by car to go to and return from work in locations outside Ashby, would not drive through the town; the A511, which would be the sole access into the site in the

amended scheme and the principal access into the site in the original scheme, provides access to other towns in all directions. [51, 56, 58]

70. It is also not likely that such residents would detour through the town to drop children at schools in the town because this would add significantly to their journey time and it would probably be quicker, given the proximity of the site to the town centre and schools, for these children to walk or cycle to school. In this regard the site is recognised to be in a sustainable location relative to the town centre and local infrastructure, and improvements to footpath links to the town centre and schools could be part of a detailed scheme at reserved matters stage.

71. In the original scheme no more than 30 dwellings would be accessed via Woodcock Way, which has a junction with Nottingham Road to the east of the town centre. Car journeys to and from work, resulting from such a limited number of dwellings and given that these journeys would almost certainly not pass through the town, would be inconsequential.

72. Whilst negotiations with a bus operator for a bus service to link the proposed development to the town are ongoing, based on negotiations to date and the size of the development which would be likely to provide sufficient passengers to sustain a service, there is every reason to suppose that a bus service would be initiated and maintained into the future. This service would provide another alternative mode of transport to the motor car for access by children to schools and would benefit all residents of the proposed development. [39, 58]

73. Just as school age children would be able to walk or cycle to school residents who work in the town would be able to do likewise. Some residents of the proposed development, possibly those who are infirm or who intend to make significant purchases in the town, might travel by car into the town centre. But it is unlikely that they would do so during the rush hour periods. Furthermore, there are two major supermarkets and other large retail outlets at the east end of the town and these could be accessed by car from the proposed development without the need to drive through the town. The proposed development is not likely to result in any significant or even discernible increase in traffic congestion in Ashby.

74. Nottingham Road/Wood Street does have bends but it is not unusually narrow or otherwise difficult to travel along in any type of vehicle. Pavements are narrow in places but not, in any location, so narrow that pedestrians are at any danger from passing vehicles. Footpath links from the site to the town centre, in any event, do not require use of the pavements to Nottingham Road/Wood Street. School children from the proposed development might need to cross Nottingham Road to Ashby School but no concern has been expressed for their safety in doing so. The Highway Authority, furthermore, has raised no concerns regarding the safety of highway users on Nottingham Road/Wood Street and there is no evidence to indicate that the development would prejudice the safe and free flow of traffic on the A511 or the A42 trunk road. The proposed development, either in its original or amended form, would not compromise highway safety or result in any significant increase in traffic congestion. [56]

The character of the area

75. There are very few comments about the effect of the proposed development on the character of the area in representations made either at application or appeal stage. This may be because it has long been envisaged that Money Hill,

given its sustainable location, would be developed for housing. Some residents have commented that they value the site and that the development would harm the character of the area. But, other than a footpath that extends along the south boundary of the site and veers through it slightly in two locations, there is no public access through the site. The site therefore has no recreational value and it can be valued only for the outlook that is available over it. The loss of this outlook for some residents and the loss of a part of the countryside surrounding the town, a part which is separated from further countryside by the A511, would be regrettable but the proposed development would not have any significant effect on the character of the area. [48]

The historic heritage of the area

76. Part of the south boundary of the site abuts the Ashby-de-la-Zouch Conservation Area (ACA). Within the ACA are many listed buildings including Ashby Castle, which is on the south side of the town centre and which is a Grade I listed building. From the top of the ruined keep of the castle there is a view across Money Hill, as well as views in other directions. The proposed development would replace a section of countryside in this view but it would be seen in the context of existing development to the west and south-east. English Heritage has not raised any substantive concerns with regard to heritage assets and Mr Tandy, at the Inquiry and appearing on behalf of Ashby Civic Society, did not either. The proposed development would not cause any demonstrable harm to the setting of Ashby Conservation Area or to the setting of any listed building within it. Paragraphs 133 and 134 of the NPPF are not therefore engaged. [48]

Local infrastructure

77. Ashby is not a large town and the proposed development is within easy walking and especially cycling distance of all existing services and facilities. It is a thriving town and the additional population resulting from the development would help to sustain these existing services and facilities. Section 106 undertakings would result in financial contributions for many elements of local infrastructure. These contributions would include the construction of a new on-site primary school or the expansion of an existing school, a sum of £1,081,508 for the provision of a new design centre at Ivanhoe College, a sum of £1,110,487 for the provision of a specialist teaching area at Ashby School, a sum of £201,878 to enhance healthcare facilities, a sum of £18,260 to enhance library facilities, a sum of £201,029 to support Police operations in the town, and a sum of £105,651 to upgrade and enhance public rights of way in the vicinity of the site. [26, 47, 59]

78. The proposed development includes a community hall, a neighbourhood retail use, and public open space that would be accessible to new and existing residents of the town. Taking these factors into account and the various aforementioned provisions of the Section 106 Unilateral Undertaking, the proposed development would not place an unacceptable burden upon local infrastructure.

Transport options

79. Negotiations with a local bus operator on the original scheme envisaged the provision of a bus service that entered the site from the A511 and exited the site via Woodcock Way. LCC raised no concerns with the viability of such a service. A bus service for the amended scheme would enter and exit the site via the A511 but the route would not be significantly longer than that for the original scheme

and there is no reason to suppose that it would be any less viable. The provision of a bus service is not included in the Section 106 undertaking because there is no detailed agreement with a bus operator in place. However, a recommended condition would require this matter to be addressed before development is commenced and there is, given the negotiations that have already taken place and on the evidence available, a real prospect that a bus service for either scheme would be provided, as agreed by the local planning authority, and before 131 dwellings have been constructed in accordance with the condition. [39, 58]

80. The Section 106 undertaking includes the payment of an enhanced connectivity contribution of up to £400,000 to assess existing public transport, cycle and pedestrian connectivity and permeability in the town, and to implement measures to improve cycle and pedestrian connectivity between the site and the town centre. The undertaking also includes the payment of £650 per dwelling for the purpose of providing each dwelling with two six month bus passes and the payment of £11,674 to upgrade two bus stops on Nottingham Road. The undertaking is drafted so that part of the connectivity contribution would go towards 'seed funding' the bus service thus ensuring its initial viability before the development is completed and, as is likely, the service becomes viable. [39]

81. There is a real prospect that the aforementioned condition would result in a bus service being provided and there is also a real prospect that, given the size of the development, the bus service would become viable. As well as easy access by cycle and walking to local services, residents of the proposed development would have access to a mode of transport to the town centre other than by motor car.

Paragraph 7 of the NPPF

82. Paragraph 7 of the NPPF states that there are three dimensions to sustainable development: economic, social and environmental. In terms of the economic role, the development would result in the creation of construction jobs, new and existing employment opportunities in the town would have a greater pool of potential employees to draw from, and the new residents of the town would contribute to the vitality of the town's shops and facilities. The proposed development satisfies the economic role of sustainable development. [47]

83. In terms of its social role the most important factor is the provision, through the Section 106 undertaking, of 30% affordable housing and a 60 unit extra care facility. There is a significant shortfall in the provision of affordable housing in the District and the provision of extra care units is nationally less than it should be. Furthermore, there is no reason to suppose that the development would not be of high quality and all parts of the development would be within easy walking and cycling distance of shops, facilities and services in the town. The proposed development satisfies the social role of sustainable development. [21, 47]

84. There is no evidence to indicate that ecology or biodiversity interests would be harmed and the development would not threaten the environment of the River Mease SAC. The site is subdivided by hedgerows and it has other biodiversity credentials. But the proposed development would have significant areas of open space and all residential gardens, to a lesser or greater extent, include features and opportunities for the enhancement of biodiversity. The proposed development would result in the loss of agricultural land but, on balance, the proposed development satisfies the environmental role of sustainable development. [48, 59]

Conclusion

85. The proposed development, having taken all relevant matters into account, would not cause harm to any matters of acknowledged importance. The proposed development, furthermore, satisfies the economic, social and environmental roles set out in paragraph 7 of the NPPF and would be sustainable development.

86. Planning applications must, with regard to Section 38(6) of the Planning and Compulsory Purchase Act 2004, be determined in accordance with the development plan unless material considerations indicate otherwise. The NPPF postdates the LP. Paragraph 215 of the NPPF states that due weight should be given to relevant policies in existing plans according to their degree of consistency with the framework and paragraph 216 states that the weight to be given to policies in emerging plans should accord to the stage of preparation of the plan. With regard to paragraphs 215 and 216, LP policy S3 is out-of-date and the emerging CS is afforded no weight.

87. Paragraph 47 of the NPPF requires local planning authorities to identify and update annually a supply of specific deliverable sites to provide five years of housing against their housing requirements. The Appellant has not disputed the Council's contention that they have a five year supply of housing land. But local planning authorities must also plan for housing supply beyond the five year period and, as set out in paragraph 47, identify a supply of sites for 6-10 years and, where possible, 11-15 years. There is also a current national imperative to boost the supply of housing and, in recognition of this, the Council rightly does not cite their five year housing land supply as a reason to withhold planning permission.

88. Paragraph 49 of the NPPF states that housing applications should be considered in the context of sustainable development, and paragraph 14 states that there is a presumption in favour of sustainable development and that, for decision taking, this means, where relevant policies in the development plan are out-of-date, granting planning permission for development unless any adverse effects of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the NPPF taken as a whole. There are no demonstrable adverse effects to take into account and the development would be sustainable development. Determination of the appeal, for this principal reason, may be made other than in accordance with the development plan.

**Recommendations**

89. I recommend that planning permission be granted for the amended scheme subject to conditions set out in a schedule appended to this report, or, if this recommendation is not accepted, for the original scheme also subject to conditions set out in a schedule appended to this report.

90. I recommend that planning permission be granted for 605 residential dwellings including a 60 unit extra care centre (C2), a new primary school (D1), a new health centre (D1), a new nursery school (D1), a new community hall (D1), new neighbourhood retail use (A1), new public open space and vehicular access from the A511 and Woodcock Way on land at Money Hill, Land north of Wood Street, Ashby-de-la-Zouch.

*John Braithwaite*

Inspector

## APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

| | |
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| Mr T Leader | Of Counsel instructed by Ms A Lowe, Solicitor to NWLDC |
| He was assisted by | |
| Mr A Murphy BA(Hons) MSc MRTPI | Director of Stansgate Planning |

FOR THE APPELLANT:

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| Mr C Banner | Of Counsel instructed by Iceni Projects Limited |
| He called | |
| Mr D Churchill MRTPI | Director of Iceni Projects Limited |
| Mr C Burbidge BSc(Hons) MSc MCIHT MCILT MRTPI | Director of Iceni Projects Limited |

FOR LEICESTERSHIRE COUNTY COUNCIL (LCC):

| | |
|---|---|
| Mr A Cross | Solicitor |
| He was assisted by | |
| Mr A Tyrer BA(Hons) MRTPI | Development Contributions Officer at Leicestershire County Council |

FOR LEICESTERSHIRE POLICE (LP):

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|---|---|
| Ms J Wigley | Of Counsel |
| She was assisted by | |
| Mr M Lambert | Growth and Design Officer at Leicestershire Police |

INTERESTED PERSONS:

| | |
|---|---|
| Mr M Ball | Ashby Town Council |
| Ms L Titley | Local resident |
| Mr T Gregory | Local resident |
| Mr C Tandy | Vice President of Ashby-de-la-Zouch Civic Society |
| Mr D Price | Local resident |

## INQUIRY DOCUMENTS LIST

1 NWLDC's letter of notification of the Inquiry and list of those notified.

2 List of those notified on the amended scheme.

3 Appellant's Opening Statement.

4 Statement of Common Ground.

5 Plans of the original scheme.

6 Plans of the amended scheme.

7 Statement by Mr M Ball on behalf of Ashby Town Council.

8 Statement by Mr C Tandy on behalf of Ashby-de-la-Zouch Civic Society.

9 Statement by Mr T Gregory.

10 Letter from Macpherson Coaches to Iceni Projects Ltd dated 25 July 2014.

11 Letter from Macpherson Coaches to Iceni Projects Ltd dated 25 July 2013.

12 E-mail from Mr D Jenkins to Iceni Projects Ltd dated 5 September 2015.

13 Suggested conditions for the original application.

14 Suggested conditions for the amended application.

15 Notes on conditions for the original and amended applications.

16 Suggested conditions for the original application by Ashby-de-la-Zouch Civic Society.

17 Suggested conditions for the amended application by Ashby-de-la-Zouch Civic Society.

18 Submission by Ashby-de-la-Zouch Civic Society.

19 Extract from The Definitive Map of Rights of Way.

20 Final draft of Section 106 Unilateral Undertaking.

21 Closing Statement by the Local Planning Authority.

22 Appellant's Closing Submissions.

23 Environmental Statement Addendum.

## SCHEDULE 1 – RECOMMENDED CONDITIONS FOR ORIGINAL APPLICATION

1. Save for the details of vehicular access into the site from Woodcock Way and the A511, details of the access, appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") for the relevant phase (as defined under Condition 5 below) shall be submitted to and approved in writing by the Local Planning Authority before any development begins in for the relevant phase.

Reason: To comply with the requirements of Section 92 of the Town and Country Planning Act 1990 as amended.

2. Plans and particulars of the reserved matters referred to in condition 1 above, relating to the access save for the details of vehicular access into the site from Woodcock Way and the A511, appearance, landscaping, layout, and scale shall be submitted in writing to the Local Planning Authority and shall be carried out as approved.

Reason: To comply with the requirements of Section 92 of the Town and Country Planning Act 1990 as amended.

3. Application for approval of the reserved matters for the relevant phase (as defined under condition 5 below) shall be made to the Local Planning Authority before the expiration of three years from the date of this permission and the development hereby permitted shall begin before the expiration of two years from the date of approval of the last of the reserved matters for that phase to be approved.

Reason: To comply with the requirements of Section 92 of the Town and Country Planning Act 1990 as amended.

4. The proposed development shall be carried out strictly in accordance with the following plans:

- Site location plan (020 Rev J 21.03.2013)
- Parameters plans (021 Rev K 2.07.2013, 023 Rev J 21.03.2013, 024 Rev J, 21.03.2013 and 025 Rev J 21.03.2013)
- Site Access plans (06 Rev F)

Reason: In the interests of certainty.

5. Notwithstanding conditions 1, 2 and 3 above, the first reserved matters application shall include a masterplan for the whole of the site setting out indicative details of site layout, areas of open space / children's play, landscaping, density parameters and scale, as well as details of any proposed phasing of development. The masterplan shall accord with the principles of the submitted Design and Access Statement. All subsequent reserved matters applications shall be in accordance with the approved masterplan unless any alteration to the masterplan is first agreed in writing by the Local Planning Authority. All development of the site shall thereafter be undertaken in accordance with the agreed phasing and timetable details.

Reason: To ensure that the development of the site (including where undertaken in a phased manner) takes place in a consistent and comprehensive manner, and to ensure that the proposed development delivers the proposed residential and non-residential development at the appropriate time.

6. A total of no more than 605 dwellings shall be erected pursuant to the planning permission hereby granted.

Reason: To define the scope of the permission.

7. No development shall commence on the site (or, in the case of phased development, in respect of the relevant phase) until such time as precise details of all means of mitigation measures as set out in the Environmental Statement, including timetables for their provision in respect of the development (or, in the case of phased development, in respect of that phase), have been submitted to and agreed in writing by the Local Planning Authority. The measures shall be implemented in accordance with the agreed details and timetables.

Reason: To ensure the development and associated impacts take the form envisaged in the Environmental Statement.

8. No development shall commence on the site until such time as a Design Code for the entirety of the developed area has been submitted to and agreed in writing by the Local Planning Authority. The Design Code shall substantially accord with the principles and parameters described and illustrated in the Design and Access Statement, and demonstrate compliance with Building for Life 12 (or any subsequent replacement standard issued by the Design Council / CABE or any successor organisation). The development shall thereafter be carried out in accordance with the agreed Design Code.

Reason: To ensure an appropriate form of design, and to comply with Policies E4 and H7 of the North West Leicestershire Local Plan.

9. Notwithstanding the submitted details, no construction work shall commence on site until such time as site investigation works in respect of potential risks to the proposed development arising from former coal mining operations, together with precise details of any required mitigation and a timetable for its implementation, have been submitted to and agreed in writing by the Local Planning Authority. Where the agreed details indicate that mitigation is required, the development shall be carried out strictly in accordance with the agreed mitigation and timetable.

Reason: To ensure the safe development of the site.

10. The development hereby permitted shall not be carried out other than in strict accordance with the submitted Flood Risk Assessment (FRA) dated 14 March 2013, ref. 031052 (ES Appendix 14-1) and Drainage Strategy Revision 01, dated 20 March 2013, ref. 031052 (ES Appendix 14 -2) and the following mitigation measures detailed within the FRA:

- Limiting the discharge rate for surface water run-off and provision of surface water attenuation storage on the site, so that it will not exceed the run-off from the undeveloped site and not increase the risk of flooding off-site (FRA sections 6.0 and 7.4 and Drainage Strategy sections 3.1, 5.1, 7.1 to 7.3.6);
- Management of silt and the prevention of pollution of the watercourse during the construction phase (FRA section 7.3);
- Provision of safe access and egress within the site (FRA section 7.2);
- Finished floor levels (FRA section 7.1).

Unless any alternative programme is agreed in writing by the Local Planning Authority, none of the dwellings hereby permitted shall be occupied until such time as the mitigation measures have been fully implemented in accordance with the above details.

Reason: To prevent flooding by ensuring the satisfactory storage / disposal of surface water from the site and to reduce the risk of flooding to the proposed development.

11. Notwithstanding the submitted details and other conditions, no development shall commence on the site until such time as a surface and foul water drainage scheme for the entire developed area (or, in the case of phased development, for the relevant phase of the development), based on sustainable drainage principles and an assessment of the hydrological and hydrogeological context of the development, together with a timetable for its implementation in respect of the development (or, in the case of phased development, for that phase), has been submitted to and agreed in writing by the Local Planning Authority. The scheme shall subsequently be implemented in accordance with the agreed details and timetable. The scheme shall include:

- Surface water drainage system/s to be designed in accordance with either the National SUDs Standards, or CIRIA C697 and C687, whichever are in force when the detailed design of the surface water drainage system is undertaken;
- Limiting the discharge rate and storing the surface water run-off generated by all rainfall events up to the 100 year plus 20% for commercial and 30% for residential (for climate change) critical rain storm so that it will not exceed the run-off from the undeveloped site and not increase the risk of flooding off-site;
- Provision of surface water run-off attenuation storage to accommodate the difference between the allowable discharge rate/s and all rainfall events up to the 100 year plus 20% for commercial, 30% for residential (for climate change) critical rain storm;
- Detailed design (plans, cross, long sections and calculations) in support of any surface water drainage scheme, including details on any attenuation system, and the outfall arrangements; and
- Details of how the on-site surface water drainage systems shall be maintained and managed after completion and for the lifetime of the development, to ensure long term operation to design parameters.

No development shall be carried out (or, in the case of phased development, no development in that phase shall be carried out), nor any part of the development shall be brought into use at any time unless in accordance with the agreed scheme and timetable.

Reason: To prevent the increased risk of flooding, to improve and protect water quality, to improve habitat and amenity, and to ensure the development is provided with a satisfactory means of drainage.

12. The development hereby permitted shall not be commenced until such time as a scheme to detail each individual watercourse crossing (including pedestrian footbridge and vehicular crossings) demonstrating that no raising of ground levels, nor bridge soffit levels as set will result in elevated flood levels, and that there will

be no loss of flood plain storage due to the provision of any new crossing of the Money Hill Brook, has been submitted to and agreed in writing by the Local Planning Authority in consultation with the Environment Agency and Lead Local Flood Authority (LLFA). The scheme shall include, but not be exclusive of:

- Limiting the number of crossings of the Money Hill Brook, and removal/upgrade of any existing crossings;
- Crossings to be provided as clear span bridges or arches in preference to any culverting (including the upgrading of existing crossings, where upgrading is required or proposed);
- Bridge soffits set a minimum of 600mm above the modelled 100 year plus 20% (for climate change) flood level applicable at the crossing site;
- Bridge abutments set back beyond the top of the natural bank of the watercourse;
- Where necessary, culverts designed in accordance with CIRIA C689 (including up sizing to provide a free water surface and natural bed), and to have a minimum width / length of culvert essential for access purposes;
- Provision of compensatory flood storage for all ground levels raised within the 100 year flood plain applicable at any crossing sites, including proposed location, volume (calculated in 200mm slices from the flood level) and detailed design (plans, cross, and long sections) of the compensation proposals;
- Compensatory flood storage provided before (or, as a minimum, at the ground works phase) of the vehicle bridge and any other crossing construction;
- Detailed designs (plans, cross, long sections and calculations) in support of any crossing;
- Details of how the scheme shall be maintained and managed after completion; and
- A timetable for the relevant works.

The scheme shall be fully implemented and subsequently maintained in accordance with the approved details including the timing / phasing arrangements embodied within the scheme.

Reason: To avoid adverse impact on flood storage, to reduce the risk of flooding to the proposed development and future occupants, to reduce the risk of flooding to adjacent land and properties, to improve and protect water quality, to improve habitat and amenity, and to ensure future maintenance of the surface water drainage system.

13. No development shall commence until a construction working method statement to cover all watercourse works (including pedestrian and vehicular crossings and any other works within 8 metres of any watercourse) has been submitted to and agreed in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved scheme.

Reason: To protect local watercourses from the risk of pollution.

14. Notwithstanding the submitted details and other conditions no development (save for demolition works) shall commence on the site (or, in the case of phased development, in respect of the relevant phase) until a further Risk Based Land

Contamination Assessment has been submitted to and agreed in writing by the Local Planning Authority (or, in the case of phased development, in respect of that phase). The Risk Based Land Contamination Assessment shall identify all previous uses, potential contaminants associated with those uses, a conceptual model of the site indicating sources, pathways and receptors, and potentially unacceptable risks arising from contamination at the site and shall be carried out in accordance with:

- BS10175:2011 + A1:2013 Investigation of Potentially Contaminated Sites Code of Practice;
- BS8485:2007 Code of Practice for the Characterisation and Remediation from Ground Gas in Affected Developments; and,
- CLR 11 Model Procedures for the Management of Land Contamination, published by the Environment Agency 2004.

Reason: To ensure that the land is fit for purpose, to ensure protection of controlled waters and to accord with the aims and objectives in respect of pollution as set out in the National Planning Policy Framework.

15. If, pursuant to Condition 14 above, any unacceptable risks are identified in the Risk Based Land Contamination Assessment, a Remedial Scheme and a Verification Plan shall be submitted to and agreed in writing by the Local Planning Authority. The Remedial Scheme shall be prepared in accordance with the requirements of CLR 11 Model Procedures for the Management of Land Contamination, published by the Environment Agency 2004, and the Verification Plan (which shall identify any requirements for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action) shall be prepared in accordance with the requirements of Evidence Report on the Verification of Remediation of Land Contamination Report: SC030114/R1, published by the Environment Agency 2010, and CLR 11 Model Procedures for the Management of Land Contamination, published by the Environment Agency 2004. If, during the course of development, previously unidentified contamination is discovered, development shall cease on the affected part of the site and it shall be reported in writing to the Local Planning Authority within 10 working days. No work shall recommence on that part of the site until such time as a Risk Based Land Contamination Assessment for the discovered contamination (to include any required amendments to the Remedial Scheme and Verification Plan) has been submitted to and agreed in writing by the Local Planning Authority. Thereafter, the development shall be undertaken in accordance with the agreed details and thereafter be so maintained.

Reason: In order to make appropriate provision for natural habitat within the approved development and to ensure that all species are protected having regard to the Wildlife and Countryside Act 1981 as amended and The Conservation of Habitats and Species Regulations 2010.

16. No part of the development hereby permitted shall be brought into use until such time as a Verification Investigation for the relevant part of the site has been undertaken in line with the agreed Verification Plan for any works outlined in the approved Remedial Scheme relevant to either the whole development or that part of the development and a report showing the findings of the Verification Investigation for the relevant part of the site has been submitted to and agreed in writing by the Local Planning Authority. The Verification Investigation Report shall:

- Contain a full description of the works undertaken in accordance with the agreed Remedial Scheme and Verification Plan;
- Contain results of any additional monitoring or testing carried out between the submission of the Remedial Scheme and the completion of remediation works;
- Contain Movement Permits for all materials taken to and from the site and/or a copy of the completed site waste management plan if one was required;
- Contain Test Certificates of imported material to show that it is suitable for its proposed use;
- Demonstrate the effectiveness of the approved Remedial Scheme; and
- Include a statement signed by the developer, or the approved agent, confirming that all the works specified in the approved Remedial Scheme have been completed.

Reason: To ensure that the land is fit for purpose, to ensure protection of controlled waters and to accord with the aims and objectives in respect of pollution as set out in the National Planning Policy Framework.

17. There shall be no infiltration of surface water drainage into the ground at any time other than in accordance with details first submitted to and agreed in writing by the Local Planning Authority. Development shall be undertaken strictly in accordance with the submitted Outline Construction Environmental Management Plan (Revision 01, March 2013, ref. 031052).

Reason: To protect controlled water receptors.

18. Notwithstanding the submitted details and other conditions, no development shall commence in any phase until such time as a timetable for the undertaking of updated surveys in respect of badgers in the relevant phase (and including the specification of maximum periods between undertaking of surveys and commencement of work on the relevant phase) has been submitted to and agreed in writing by the Local Planning Authority. No development shall thereafter be undertaken at any time in that phase unless the relevant surveys have been undertaken in accordance with the approved details and the results (including mitigation measures and a timetable for such mitigation where appropriate) have been submitted to and agreed in writing by the Local Planning Authority, and the development shall thereafter be undertaken strictly in accordance with the agreed mitigation measures and timetable.

Reason: In the interests of nature conservation.

19. No hedgerows, trees or shrubs shall be removed during the months of March to August inclusive unless first agreed in writing by the Local Planning Authority. Should nesting birds be found during construction work, all construction work within 5 metres of the nest (which could constitute a disturbance) shall cease immediately, and shall not resume until such time as the young have left the nest.

Reason: In the interests of nature conservation.

20. Notwithstanding the submitted details and other conditions, the first reserved matters application in respect of the development (or, in the case of

phased development, the first reserved matters application in respect of the relevant phase) shall be accompanied by full details of all measures proposed in respect of the enhancement and / or management of the ecology and biodiversity of the development (or in respect of phased development, that phase), including proposals in respect of future maintenance and a timetable for the implementation of the relevant measures. The development shall thereafter be undertaken and occupied in accordance with the agreed measures and timetable.

Reason: In the interests of nature conservation.

21. Notwithstanding the submitted details, all reserved matters applications for the erection of non-residential development shall include full details of the proposed buildings' anticipated level of achievement in respect of criteria / sub-categories contained within the Building Research Establishment's Environmental Assessment Method (BREEAM). No building shall be brought into use until such time as an assessment of the building has been carried out by a registered BREEAM assessor and a BREEAM Certificate has been issued for the relevant building certifying that the relevant BREEAM Level has been achieved.

Reason: To ensure the environmental integrity of the scheme is secured.

22. Notwithstanding the provisions of the Town and Country Planning (Use Classes) Order 1987 (as amended) (or any order revoking or re-enacting that Order), the total gross floorspace of uses falling within Class A1 of that Order shall not exceed 560 square metres at any time, nor shall the total gross floorspace of any single retail unit exceed 460 square metres at any time, unless planning permission has first been granted by the Local Planning Authority.

Reason: To ensure the development takes the form envisaged by the Local Planning Authority, for the avoidance of doubt, and to ensure satisfactory control over the impact of the development on nearby centres.

23. The first reserved matters application submitted pursuant to this permission (or, in the case of phased development, the first reserved matters application in respect of the relevant phase) shall include a detailed Archaeological Mitigation Strategy for the respective area(s). The Strategy shall be based upon the results of a programme of exploratory archaeological fieldwalking and trial trenching undertaken within the relevant area(s) in accordance with a Written Scheme of Investigation (WSI) first submitted to and agreed in writing by the Local Planning Authority. Both the WSI and final Strategy shall include an assessment of significance and research questions, and:

- The programme and methodology of site investigation, recording and post-investigation assessment (including the initial fieldwalking and trial trenching, assessment of results and preparation of an appropriate mitigation scheme);
- The programme for post-investigation assessment;
- Provision to be made for analysis of the site investigation and recording;
- Provision to be made for publication and dissemination of the analysis and records of the site investigation;
- Provision to be made for archive deposition of the analysis and records of the site investigation;

- Nomination of a competent person or persons / organisation to undertake the works set out within the Written Scheme of Investigation; and
- A detailed timetable for the implementation of all such works / measures.

No development shall take place at any time within the relevant area other than in accordance with the agreed Written Scheme of Investigation, Strategy and timetable for that area.

Reason: To ensure satisfactory archaeological investigation and recording.

24. Notwithstanding the submitted details and other conditions, no development shall commence on the site until such time as a scheme of structural landscaping to the A511 (indicating species, densities, sizes and numbers of proposed planting both within and outside of the application site, as appropriate, together with all existing trees and hedgerows on the land including details of those to be retained, and those to be felled / removed), together with a timetable for its implementation, has been submitted to and agreed in writing by the Local Planning Authority. No development shall be occupied at any time unless all measures specified in the agreed scheme required to be implemented by the relevant stage / phase have been undertaken in full in accordance with the agreed details.

Reason: In the interests of amenity and to ensure that the development is appropriate in its National Forest setting.

25. Notwithstanding the submitted details and other conditions, no development shall commence (or, in respect of a phased development, no development shall commence in the relevant phase) until such time as details specifying which of the proposed tree protection measures shown on drawing no. SJA TPP 12139-02a within the development (or, in respect of a phase development, that phase) are proposed to be implemented in respect of the construction of the proposed accesses / roads (together with a timetable for their implementation) have been submitted to and agreed in writing by the Local Planning Authority. No development (or, in respect of a phased development, no development in the relevant phase) shall be undertaken at any time unless all of the agreed protection measures relating to the relevant stage / phase are in place. Within the fenced off areas there shall be no alteration to ground levels, no compaction of the soil, no stacking or storing of any materials and any service trenches shall be dug and back-filled by hand.

Reason: To ensure that existing trees are adequately protected during construction in the interests of the visual amenities of the area.

26. Save for any works associated with the formation of the access as shown on drawing no. 06 Rev F, no part of the development shall be occupied until such time as the A511 site access junction as shown on drawing no. 06 Rev F has been provided in full and is available for use by vehicular traffic.

Reason: To provide vehicular access to the site, including for construction traffic, and in the interests of highway safety.

27. No development shall commence on the site until such time as a scheme for the provision of a new or diverted bus service serving the development, and providing a connection between the site and Ashby de la Zouch town centre, has been submitted to and agreed in writing by the Local Planning Authority. The submitted scheme shall include hours of operation, service frequencies, routeing and provision of necessary on and off site infrastructure (including pole and flag, bus shelter, raised kerbs and information display cases). The scheme shall include any works / measures required for the initial implementation of the scheme, together with a phased programme for the implementation of any measures required by the scheme as the development progresses. No more than 131 dwellings constructed pursuant to the planning permission shall be occupied until such time as the whole of the approved scheme is fully operational.

Reason: To ensure adequate steps are taken to provide a choice in mode of travel to and from the site.

28. No development shall commence on the site until such time as a construction management plan, including wheel cleansing facilities and vehicle parking facilities, site compound(s), materials' storage areas and a timetable for their provision, has been submitted to and agreed in writing by the Local Planning Authority. The development shall thereafter be carried out in accordance with the approved details and timetable.

Reason: In the interests of highway safety and to prevent unacceptable on-street parking.

29. No more than 30 dwellings shall be accessed off Woodcock Way.

Reason: To limit access to the site off Woodcock Way.

## SCHEDULE 2 – RECOMMENDED CONDITIONS FOR AMENDED APPLICATION

1. Save for the details of vehicular access into the site from Woodcock Way (if applicable) and the A511, details of the access, appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") for the relevant phase (as defined under Condition 5 below) shall be submitted to and approved in writing by the Local Planning Authority before any development begins in respect of the relevant phase.

Reason: To comply with the requirements of Section 92 of the Town and Country Planning Act 1990 as amended.

2. Plans and particulars of the reserved matters referred to in condition 1 above, relating to the access save for the details of vehicular access into the site from Woodcock Way(if applicable) and the A511, appearance, landscaping, layout, and scale shall be submitted in writing to the Local Planning Authority and shall be carried out as approved.

Reason: To comply with the requirements of Section 92 of the Town and Country Planning Act 1990 as amended.

3. Application for approval of the reserved matters for the relevant phase (as defined under condition 5 below) shall be made to the Local Planning Authority before the expiration of three years from the date of this permission and the development hereby permitted shall begin before the expiration of two years from the date of approval of the last of the reserved matters for that phase to be approved.

Reason: To comply with the requirements of Section 92 of the Town and Country Planning Act 1990 as amended.

4. The proposed development shall be carried out strictly in accordance with the following plans:

- Application Boundary Plan – Rev A 29.06.2015
- Site Access plans (06 Rev F)

Reason: In the interests of certainty.

5. Notwithstanding conditions 1, 2 and 3 above, the first reserved matters application shall include a masterplan for the whole of the site setting out indicative details of site layout, areas of open space / children's play, landscaping, density parameters and scale, as well as details of any proposed phasing of development. The masterplan shall accord with the principles of the submitted Design and Access Statement. All subsequent reserved matters applications shall be in accordance with the approved masterplan unless any alteration to the masterplan is first agreed in writing by the Local Planning Authority. All development of the site shall thereafter be undertaken in accordance with the agreed phasing and timetable details (or any alternatives subsequently agreed in writing by the Local Planning Authority).

Reason: To ensure that the development of the site (including where undertaken in a phased manner) takes place in a consistent and comprehensive manner, and to ensure that the proposed development delivers the proposed residential and non-residential development at the appropriate time.

6. A total of no more than 605 dwellings shall be erected on the area shown as 'residential' (18.23 hectares) and 'health centre/residential' (0.52 hectares) as shown on Parameter Plan 1 – Land Use and Amount – Rev D 10.06.2015.

Reason: To define the scope of the permission.

7. No development shall commence on the site (or, in the case of phased development, in respect of the relevant phase) until such time as precise details of all means of mitigation measures as set out in the Environmental Statement, including timetables for their provision in respect of the development (or, in the case of phased development, in respect of that phase), have been submitted to and agreed in writing by the Local Planning Authority. The measures shall be implemented in accordance with the agreed details and timetables.

Reason: To ensure the development and associated impacts take the form envisaged in the Environmental Statement.

8. No development shall commence on the site until such time as a Design Code for the entirety of the developed area shown on Parameter Plan 1 – Land Use and Amount – Rev D 10.06.2015 has been submitted to and agreed in writing by the Local Planning Authority. The Design Code shall substantially accord with the principles and parameters described and illustrated in the Design and Access Statement, and demonstrate compliance with Building for Life 12 (or any subsequent replacement standard issued by the Design Council / CABE or any successor organisation). The development shall thereafter be carried out in accordance with the agreed Design Code.

Reason: To ensure an appropriate form of design, and to comply with Policies E4 and H7 of the North West Leicestershire Local Plan.

9. Notwithstanding the submitted details, no construction work shall commence on site until such time as intrusive site investigation works in respect of potential risks to the proposed development arising from former coal mining operations together with precise details of any required mitigation and a timetable for its implementation have been submitted to and agreed in writing by the Local Planning Authority. Where the agreed details indicate that mitigation is required, the development shall be carried out strictly in accordance with the agreed mitigation and timetable.

Reason: To ensure the safe development of the site.

10. The development hereby permitted shall not be carried out other than in strict accordance with the submitted Flood Risk Assessment (FRA) dated 14 March 2013, ref. 031052 (ES Appendix 14-1) and Drainage Strategy Revision 01, Dated 20 March 2013, ref. 031052 (ES Appendix 14 -2) and the following mitigation measures detailed within the FRA:

- Limiting the discharge rate for surface water run-off and provision of surface water attenuation storage on the site, so that it will not exceed the run-off from the undeveloped site and not increase the risk of flooding off-site - FRA sections 6.0 and 7.4, and Drainage Strategy sections 3.1, 5.1, 7.1 to 7.3.6;
- Management of Silt and the prevention of pollution of the watercourse during the construction phase - FRA section 7.3;

- Provision of safe access and egress within the site - FRA section 7.2;
- Finished floor levels - FRA section 7.1

Unless any alternative programme is first agreed in writing by the Local Planning Authority, none of the dwellings hereby permitted shall be occupied until such time as the mitigation measures have been fully implemented in accordance with the above details.

Reason: To prevent flooding by ensuring the satisfactory storage / disposal of surface water from the site and to reduce the risk of flooding to the proposed development.

11. Notwithstanding the submitted details and other conditions, no development shall commence on the site until such time as a surface and foul water drainage scheme for the entire developed area shown on Parameter Plan 1 – Land Use and Amount – Rev D 10.06.2015 (or, in the case of phased development, for the relevant phase of the development), based on sustainable drainage principles and an assessment of the hydrological and hydrogeological context of the development, together with a timetable for its implementation in respect of the development (or, in the case of phased development, for that phase), has been submitted to and agreed in writing by the Local Planning Authority. The scheme shall subsequently be implemented in accordance with the agreed details and timetable. The scheme shall include:

- Surface water drainage system/s to be designed in accordance with either the National SUDs Standards, or CIRIA C697 and C687, whichever are in force when the detailed design of the surface water drainage system is undertaken;
- Limiting the discharge rate and storing the surface water run-off generated by all rainfall events up to the 100 year plus 20% for commercial, 30% for residential (for climate change) critical rain storm so that it will not exceed the run-off from the undeveloped site and not increase the risk of flooding off-site;
- Provision of surface water run-off attenuation storage to accommodate the difference between the allowable discharge rate/s and all rainfall events up to the 100 year plus 20% for commercial, 30% for residential (for climate change) critical rain storm;
- Detailed design (plans, cross, long sections and calculations) in support of any surface water drainage scheme, including details on any attenuation system, and the outfall arrangements; and
- Details of how the on-site surface water drainage systems shall be maintained and managed after completion and for the lifetime of the development, to ensure long term operation to design parameters.

No development shall be carried out (or, in the case of phased development, no development in that phase shall be carried out), nor any part of the development shall be brought into use at any time unless in accordance with the agreed scheme and timetable.

Reason: To prevent the increased risk of flooding, to improve and protect water quality, to improve habitat and amenity, and to ensure the development is provided with a satisfactory means of drainage.

12. The development hereby permitted shall not be commenced until such time as a scheme to detail each individual watercourse crossing (including pedestrian footbridge and vehicular crossings) demonstrating that no raising of ground levels, nor bridge soffit levels as set will result in elevated flood levels, and that there will be no loss of flood plain storage due to the provision of any new crossing of the Money Hill Brook, has been submitted to and agreed in writing by the Local Planning Authority in consultation with the Environment Agency and Lead Local Flood Authority (LLFA). The scheme shall include, but not be exclusive of:

- Limiting the number of crossings of the Money Hill Brook, and removal/upgrade of any existing crossings;
- Crossings to be provided as clear span bridges or arches in preference to any culverting (including the upgrading of existing crossings, where upgrading is required or proposed);
- Bridge soffits set a minimum of 600mm above the modelled 100 year plus 20% (for climate change) flood level applicable at the crossing site;
- Bridge abutments set back beyond the top of the natural bank of the watercourse;
- Where necessary, culverts designed in accordance with CIRIA C689 (including up sizing to provide a free water surface and natural bed), and to have a minimum width / length of culvert essential for access purposes;
- Provision of compensatory flood storage for all ground levels raised within the 100 year flood plain applicable at any crossing sites, including proposed location, volume (calculated in 200mm slices from the flood level) and detailed design (plans, cross, and long sections) of the compensation proposals;
- Compensatory flood storage provided before (or, as a minimum, at the ground works phase) of the vehicle bridge and any other crossing construction;
- Detailed designs (plans, cross, long sections and calculations) in support of any crossing;
- Details of how the scheme shall be maintained and managed after completion; and
- A timetable for the relevant works.

The scheme shall be fully implemented and subsequently maintained in accordance with the approved details including the timing / phasing arrangements embodied within the scheme.

Reason: To avoid adverse impact on flood storage, to reduce the risk of flooding to the proposed development and future occupants, to reduce the risk of flooding to adjacent land and properties, to improve and protect water quality, to improve habitat and amenity, and to ensure future maintenance of the surface water drainage system.

13. No development shall commence until a construction working method statement to cover all watercourse works (including pedestrian and vehicular crossings and any other works within 8 metres of any watercourse) has been submitted to and agreed in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved scheme.

Reason: To protect local watercourses from the risk of pollution.

14. Notwithstanding the submitted details and other conditions, no development (save for demolition works) shall commence on the site (or, in the case of phased development, in respect of the relevant phase) until a further Risk Based Land Contamination Assessment has been submitted to and agreed in writing by the Local Planning Authority (or, in the case of phased development, in respect of that phase). The Risk Based Land Contamination Assessment shall identify all previous uses, potential contaminants associated with those uses, a conceptual model of the site indicating sources, pathways and receptors, and potentially unacceptable risks arising from contamination at the site and shall be carried out in accordance with:

- BS10175:2011+A1:2013 Investigation of Potentially Contaminated Sites Code of Practice;
- BS8485:2007 Code of Practice for the Characterisation and Remediation from Ground Gas in Affected Developments; and,
- CLR 11 Model Procedures for the Management of Land Contamination, published by the Environment Agency 2004.

Reason: To ensure that the land is fit for purpose, to ensure protection of controlled waters and to accord with the aims and objectives in respect of pollution as set out in the National Planning Policy Framework.

15. If, pursuant to Condition 14 above, any unacceptable risks are identified in the Risk Based Land Contamination Assessment, a Remedial Scheme and a Verification Plan shall be submitted to and agreed in writing by the Local Planning Authority. The Remedial Scheme shall be prepared in accordance with the requirements of CLR 11 Model Procedures for the Management of Land Contamination, published by the Environment Agency 2004, and the Verification Plan (which shall identify any requirements for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action) shall be prepared in accordance with the requirements of Evidence Report on the Verification of Remediation of Land Contamination Report: SC030114/R1, published by the Environment Agency 2010, and CLR 11 Model Procedures for the Management of Land Contamination, published by the Environment Agency 2004. If, during the course of development, previously unidentified contamination is discovered, development shall cease on the affected part of the site and it shall be reported in writing to the Local Planning Authority within 10 working days. No work shall recommence on that part of the site until such time as a Risk Based Land Contamination Assessment for the discovered contamination (to include any required amendments to the Remedial Scheme and Verification Plan) has been submitted to and agreed in writing by the Local Planning Authority. Thereafter, the development shall be undertaken in accordance with the agreed details and thereafter be so maintained.

Reason: In order to make appropriate provision for natural habitat within the approved development and to ensure that all species are protected having regard to the Wildlife and Countryside Act 1981 as amended and The Conservation of Habitats and Species Regulations 2010.

16. No part of the development hereby permitted shall be brought into use until such time as a Verification Investigation for the relevant part of the site has been undertaken in line with the agreed Verification Plan for any works outlined in the

approved Remedial Scheme relevant to either the whole development or that part of the development and a report showing the findings of the Verification Investigation for the relevant part of the site has been submitted to and agreed in writing by the Local Planning Authority. The Verification Investigation Report shall:

- Contain a full description of the works undertaken in accordance with the agreed Remedial Scheme and Verification Plan;
- Contain results of any additional monitoring or testing carried out between the submission of the Remedial Scheme and the completion of remediation works;
- Contain Movement Permits for all materials taken to and from the site and/or a copy of the completed site waste management plan if one was required;
- Contain Test Certificates of imported material to show that it is suitable for its proposed use;
- Demonstrate the effectiveness of the approved Remedial Scheme; and
- Include a statement signed by the developer, or the approved agent, confirming that all the works specified in the approved Remedial Scheme have been completed.

Reason: To ensure that the land is fit for purpose, to ensure protection of controlled waters and to accord with the aims and objectives in respect of pollution as set out in the National Planning Policy Framework.

17. There shall be no infiltration of surface water drainage into the ground at any time other than in accordance with details first submitted to and agreed in writing by the Local Planning Authority. Development shall be undertaken strictly in accordance with the submitted Outline Construction Environmental Management Plan (Revision 01, March 2013, ref. 031052).

Reason: To protect controlled water receptors.

18. Notwithstanding the submitted details and other conditions, no development shall commence in any phase until such time as a timetable for the undertaking of updated surveys in respect of badgers in the relevant phase (and including the specification of maximum periods between undertaking of surveys and commencement of work on the relevant phase) has been submitted to and agreed in writing by the Local Planning Authority. No development shall thereafter be undertaken at any time in that phase unless the relevant surveys have been undertaken in accordance with the approved details and the results (including mitigation measures and a timetable for such mitigation where appropriate) have been submitted to and agreed in writing by the Local Planning Authority, and the development shall thereafter be undertaken strictly in accordance with the agreed mitigation measures and timetable.

Reason: In the interests of nature conservation.

19. No hedgerows, trees or shrubs shall be removed during the months of March to August inclusive unless first agreed in writing by the Local Planning Authority. Should nesting birds be found during construction work, all construction

work within 5 metres of the nest (which could constitute a disturbance) shall cease immediately, and shall not resume until such time as the young have left the nest.

Reason: In the interests of nature conservation.

20. Notwithstanding the submitted details and other conditions, the first reserved matters application in respect of the development (or, in the case of phased development, the first reserved matters application in respect of the relevant phase) shall be accompanied by full details of all measures proposed in respect of the enhancement and / or management of the ecology and biodiversity of the development (or in respect of phased development, that phase), including proposals in respect of future maintenance and a timetable for the implementation of the relevant measures. The development shall thereafter be undertaken and occupied in accordance with the agreed measures and timetable.

Reason: In the interests of nature conservation.

21. Notwithstanding the submitted details, all reserved matters applications for the erection of non-residential development shall include full details of the proposed buildings' anticipated level of achievement in respect of criteria / sub-categories contained within the Building Research Establishment's Environmental Assessment Method (BREEAM). No building shall be brought into use until such time as an assessment of the building has been carried out by a registered BREEAM assessor and a BREEAM Certificate has been issued for the relevant building certifying that the relevant BREEAM Level has been achieved.

Reason: To ensure the environmental integrity of the scheme is secured.

22. Notwithstanding the provisions of the Town and Country Planning (Use Classes) Order 1987 (as amended) (or any order revoking or re-enacting that Order), the total gross floorspace of uses falling within Class A1 of that Order shall not exceed 560 square metres at any time, nor shall the total gross floorspace of any single retail unit exceed 460 square metres at any time, unless planning permission has first been granted by the Local Planning Authority.

Reason: To ensure the development takes the form envisaged by the Local Planning Authority, for the avoidance of doubt, and to ensure satisfactory control over the impact of the development on nearby centres.

23. The first reserved matters application submitted pursuant to this permission (or, in the case of phased development, the first reserved matters application in respect of the relevant phase) shall include a detailed Archaeological Mitigation Strategy for the respective area(s). The Strategy shall be based upon the results of a programme of exploratory archaeological fieldwalking and trial trenching undertaken within the relevant area(s) in accordance with a Written Scheme of Investigation (WSI) first submitted to and agreed in writing by the Local Planning Authority. Both the WSI and final Strategy shall include an assessment of significance and research questions, and:

- The programme and methodology of site investigation, recording and post-investigation assessment (including the initial fieldwalking and trial trenching, assessment of results and preparation of an appropriate mitigation scheme);

- The programme for post-investigation assessment;
- Provision to be made for analysis of the site investigation and recording;
- Provision to be made for publication and dissemination of the analysis and records of the site investigation;
- Provision to be made for archive deposition of the analysis and records of the site investigation;
- Nomination of a competent person or persons / organisation to undertake the works set out within the Written Scheme of Investigation; and
- A detailed timetable for the implementation of all such works / measures.

No development shall take place at any time within the relevant area other than in accordance with the agreed Written Scheme of Investigation, Strategy and timetable for that area.

Reason: To ensure satisfactory archaeological investigation and recording.

24. Notwithstanding the submitted details and other conditions, no development shall commence on the site until such time as a scheme of structural landscaping to the A511 (indicating species, densities, sizes and numbers of proposed planting both within and outside of the application site, as appropriate, together with all existing trees and hedgerows on the land including details of those to be retained, and those to be felled / removed), together with a timetable for its implementation, has been submitted to and agreed in writing by the Local Planning Authority. No development shall be occupied at any time unless all measures specified in the agreed scheme required to be implemented by the relevant stage / phase have been undertaken in full in accordance with the agreed details.

Reason: In the interests of amenity and to ensure that the development is appropriate in its National Forest setting.

25. Notwithstanding the submitted details and other conditions, no development shall commence (or, in respect of a phased development, no development shall commence in the relevant phase) until such time as details specifying which of the proposed tree protection measures shown on drawing no. SJA TPP 12139-02a within the development (or, in respect of a phase development, that phase) are proposed to be implemented in respect of the construction of the proposed accesses / roads (together with a timetable for their implementation) have been submitted to and agreed in writing by the Local Planning Authority. No development (or, in respect of a phased development, no development in the relevant phase) shall be undertaken at any time unless all of the agreed protection measures relating to the relevant stage / phase are in place. Within the fenced off areas there shall be no alteration to ground levels, no compaction of the soil, no stacking or storing of any materials and any service trenches shall be dug and back-filled by hand.

Reason: To ensure that existing trees are adequately protected during construction in the interests of the visual amenities of the area.

26. Save for any works associated with the formation of the access as shown on drawing no. 06 Rev F, no part of the development shall be occupied until such time as the A511 site access junction as shown on drawing no. 06 Rev F has been provided in full and is available for use by vehicular traffic.

Reason: To provide vehicular access to the site, including for construction traffic, and in the interests of highway safety.

27. No development shall commence on the site until such time as a scheme for the provision of a new or diverted bus service serving the development, and providing a connection between the site and Ashby de la Zouch town centre, has been submitted to and agreed in writing by the Local Planning Authority. The submitted scheme shall include hours of operation, service frequencies, routeing and provision of necessary on and off site infrastructure (including pole and flag, bus shelter, raised kerbs and information display cases). The scheme shall include any works / measures required for the initial implementation of the scheme, together with a phased programme for the implementation of any measures required by the scheme as the development progresses. No more than 131 dwellings constructed pursuant to this Planning Permission shall be occupied until such time as the whole of the approved scheme is fully operational.

Reason: To ensure adequate steps are taken to provide a choice in mode of travel to and from the site.

28. No development shall commence on the site until such time as a construction management plan, including wheel cleansing facilities and vehicle parking facilities, site compound(s), materials' storage areas and a timetable for their provision, has been submitted to and agreed in writing by the Local Planning Authority. The development shall thereafter be carried out in accordance with the approved details and timetable.

Reason: In the interests of highway safety and to prevent unacceptable on-street parking.

29. No more than 30 dwellings shall be accessed off Woodcock Way.

Reason: To limit access to the site off Woodcock Way.

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**RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT**

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

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

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

The decision may be challenged by making an application for permission to the High Court under section 288 of the Town and Country Planning Act 1990 (the TCP Act). This new requirement for permission to bring a challenge applies to decisions made on or after 26 October 2015.

**Challenges under Section 288 of the TCP Act**

With the permission of the High Court under section 288 of the TCP Act, decisions on called-in applications under section 77 of the TCP Act (planning), appeals under section 78 (planning) may be challenged. Any person aggrieved by the decision may question the validity of the decision on the grounds that it is not within the powers of the Act or that any of the relevant requirements have not been complied with in relation to the decision. An application for leave under this section must be made within six weeks from the date of the decision.

**SECTION 2: ENFORCEMENT APPEALS**

**Challenges under Section 289 of the TCP Act**

Decisions on recovered enforcement appeals under all grounds can be challenged under section 289 of the TCP Act. To challenge the enforcement decision, permission must first be obtained from the Court. If the Court does not consider that there is an arguable case, it may refuse permission. Application for leave to make a challenge must be received by the Administrative Court within 28 days of the decision, unless the Court extends this period.

**SECTION 3: AWARDS OF COSTS**

A challenge to the decision on an application for an award of costs which is connected with a decision under section 77 or 78 of the TCP Act can be made under section 288 of the TCP Act if permission of the High Court is granted.

**SECTION 4: INSPECTION OF DOCUMENTS**

Where an inquiry or hearing has been held any person who is entitled to be notified of the decision has a statutory right to view the documents, photographs and plans listed in the appendix to the Inspector's report of the inquiry or hearing within 6 weeks of the 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.

The Planning Inspectorate

# Appeal Decision

Inquiry opened 24 October 2017

Accompanied site visit made on 3 November 2017

**by M C J Nunn BA BPL LLB LLM BCL MRTPI**

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

**Decision date: 14 March 2018**

**Ref: APP/R1845/W/17/3173741**
**Land off The Lakes Road, Bewdley, Worcestershire, DY12 2BP**

- 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 Gladman Developments Ltd against Wyre Forest District Council.
- The application Ref: 16/0550/OUTL is dated 9 September 2016.
- The development is described as "outline planning permission for up to 195 residential dwellings (including up to 30% affordable housing), introduction of structural planting and landscaping, informal public open space, and children's play area, surface water flood mitigation and attenuation, vehicular access point from The Lakes Road and associated ancillary works. All matters to be reserved with the exception of the main site access off The Lakes Road".

## Decision

1. The appeal is dismissed and planning permission is refused.

## Preliminary Matters

2. The Inquiry opened on 24 October 2017, and sat on 25, 26, 27 & 31 October, and 1 & 2 November 2017. In addition to my accompanied site visit on 3 November 2017, I made unaccompanied visits to the site and its surroundings on other occasions, before, during and after the Inquiry. Housing Land Supply issues were discussed as part of a 'Round Table Session'.

3. The application is made in outline with all matters except access reserved for subsequent determination. An illustrative Development Framework Plan (Ref 7166-L-02 Rev P) has been provided showing how the development might be accommodated.

4. Two planning obligations, both dated 8 November 2017, have been submitted. I deal with these in the body of my decision.

5. The Council failed to determine the application within the prescribed period. The Council's Committee Report of 20 June 2017 advises that, had it determined the application, it would have refused permission for six reasons[1].

[1] Committee Report [CD 5.1] and Minutes [CD 5.2]

6. One of the Council's putative refusal grounds related to air quality, and specifically the effect on the Welch Gate Air Quality Management Area (AQMA). Following further negotiations, the Council has confirmed that it is satisfied with the measures proposed in one of the planning obligations and has withdrawn its objections in terms of the effect on air quality[2].

## Main Issues

7. The main issues are:

   i. the effect of the proposal on the character and appearance of the area, including the landscape;

   ii. the effect on the significance of heritage assets, including the Bewdley Conservation Area and statutorily listed buildings; and

   iii. whether the Council can demonstrate a five year supply of deliverable housing sites; if it cannot, whether the adverse impacts would significantly and demonstrably outweigh the benefits of the scheme; or whether specific policies indicate development should be restricted.

## Reasons

*Planning Policy Context*

8. The relevant legislation[3] requires that the appeal be determined in accordance with the statutory development plan unless material considerations indicate otherwise. The statutory development plan comprises the Core Strategy (CS), adopted 2010, which plans for the period between 2006-2026; and the Site Allocations and Policies Local Plan (SAPLP), adopted 2013, which contains development management policies for the district and allocates sites for particular uses. The Council refers, in its putative refusal grounds, to Policies DS01, DS03 and CP12 of the CS, and Policies SAL.DPL1, SAL.UP6 of the SAPLP.

9. The National Planning Policy Framework ('the Framework') sets out the Government's up-to-date planning policies and is a material consideration in planning decisions. The Framework does not change the statutory status of the development plan for decision making. Importantly, however, the Framework advises at Paragraph 215 that due weight should be given to relevant policies in existing plans according to their degree of consistency with the Framework. Paragraph 14 of the Framework is also clear that where the development plan is absent, silent or out of date, permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. Paragraph 14 also notes that specific policies of the Framework may indicate development should be restricted.

10. Policy DS01 (Development Locations) of the CS sets a housing requirement of 4000 dwellings over the plan period, and identifies Bewdley as a 'Market Town' within the settlement hierarchy. It states that limited opportunities for development to meet local needs will be identified on brownfield sites. DS03 (Market Towns) of the CS states, amongst other things, that Bewdley's

[2] Council's Closing Submissions, Paragraph 2 [Inquiry Document (ID) 38]
[3] Section 38(6) of the 2004 Act

contribution towards the District's housing needs will be limited primarily to the provision of affordable housing to meet local needs on allocated sites. A mixed use scheme is identified in the town centre. Policy SAL.DPL1 (Sites for Residential Development) of the SAPLP is concerned with delivering the housing requirement of Policy DS01 of the CS and restricts development to identified locations, and within Bewdley, to small windfall sites for 5 or less dwellings on previously developed land within areas allocated primarily for residential development. The appellant acknowledges that the appeal proposal does not fall within these policy criteria.

11. The CS was adopted against a housing evidence base derived from the now revoked West Midlands Regional Spatial Strategy that does not reflect the up-to-date full objectively assessed need that Paragraph 47 of the Framework requires. The SAPLP was also adopted on the basis of the housing requirement figure within the CS. The Council accepts that the housing policies are not up-to-date. This diminishes the weight that can be attached to any conflict with Policies DS01 and DS03 of the CS and SAL.DPL1 of the SAPLP insofar as they relate to housing land supply. It is also sufficient, in itself, to engage the so called 'tilted balance' of Paragraph 14 in favour of granting permission. However, the Council contends there are specific policies in this instance which indicate that development should be restricted: namely Paragraph 134 of the Framework, dealing with heritage assets, and Paragraph 109, concerned with valued landscapes. I shall return to these matters in due course.

12. Policy CP12 (Landscape Character) of the CS requires new development to protect and where possible enhance the unique character of the landscape. Where appropriate to landscape character, small scale development meeting the needs of the rural economy, outdoor recreation, or to support the delivery of services for the local community will be supported, subject to meeting all other relevant criteria with the development plan. The appellant's view is that Policy CP12 of the CS is inconsistent with the Framework for various reasons: it is not criteria based, it lacks a hierarchical approach requiring that protection is commensurate with landscape status, and it arbitrarily restricts proposals to 'small scale development' that meet certain criteria. I accept that the thrust of the Framework has moved away from a 'blanket protection' of the countryside, to a more hierarchical approach of consideration of landscape value, and that it places no restriction on the size of development.

13. That said, the Framework refers to the planning system performing various roles, including an environmental one. This involves contributing to protecting and enhancing the natural, built and historic environment[4], as well as amongst other things, taking account of the different roles and character of different areas, and recognising the intrinsic character and beauty of the countryside[5]. The Framework specifically states planning should contribute to conserving and enhancing the natural environment[6]. So whilst certain aspects of Policy CP12 do not reflect up to date guidance, the requirement 'to protect and where possible enhance the unique character of the landscape' is not in fundamental conflict with the underlying aims of the Framework, and so it can be afforded some weight.

[4] Paragraph 7
[5] Paragraph 17
[6] Paragraph 17

14. Policy SAL.UP6 (Safeguarding the Historic Environment) of the SAPLP requires that proposals affecting heritage assets, including their setting, should demonstrate how these assets will be protected, conserved and, where appropriate, enhanced. It sets out criteria to be considered for development proposals affecting heritage assets. The policy does not accurately reflect the approach to heritage assets in the Framework[7] in terms of distinguishing between designated and non-designated heritage assets, or in terms of assessing harm or assessing public benefits. Furthermore, the approach in respect of conservation areas in the second part of the policy does not reflect either the relevant tests in the Framework or the relevant planning legislation[8]. This diminishes the weight that can be attached to any conflict with this policy.

*Emerging Policy*

15. A new plan is currently being prepared. A *Local Plan Review: Preferred Options Document (2016-2034)*[9] was published in June 2017 for consultation to enable residents, local businesses and other stakeholders to express their views. It explains that two options of the spatial strategy have been put forward for consultation because of 'the difficult choices that will have to be made'[10]. The Council has not relied on any emerging policies in its putative reasons for refusal, although the Statement of Common Ground lists a number of emerging policies relevant to the appeal[11]. The emerging plan is scheduled for adoption in February 2019. However, it is still subject to various outstanding objections, and its policies may be subject to change. It is still a considerable way from adoption. In these circumstances, I cannot give its policies significant weight in this appeal.

16. Bewdley has been designated as a Neighbourhood Area and work is underway by the Town Council to produce a Neighbourhood Plan. Although consultation events have taken place, a formal plan has not yet been produced for consultation. As things stand, there is no draft Neighbourhood Plan to take into account at this stage.

*Character and Appearance - Landscape*

17. The irregularly shaped appeal site forms an expansive group of sloping fields abutting the urban edge of the settlement of Bewdley. The fields are defined by hedgerows and the undulating topography generally falls towards the base of the valley. The site's south western boundary is defined by Dry Mill Lane and its south eastern boundary by The Lakes Road. To the south is residential development. Further to the west lies the Wyre Forest Nature Reserve and Site of Special Scientific Interest. A public footpath (BW518) runs across the site from Dry Mill Lane to Dowles Road. Further to the east at the bottom of the valley, outside the site, flows the River Severn. There is a play area, accessed from the junction of Tudor Road and Lyttleton Road on the south eastern boundary.

18. The appeal site lies within the 'Wyre Forest Plateau Regional Character Area', and at a more local level, the 'Forest Smallholdings and Dwellings' Character

[7] Section 12
[8] Planning (Listed Buildings and Conservation Areas) Act 1990
[9] CD 8.1
[10] Paragraph 1.7 [CD 8.1]
[11] Paragraph 3.1.3

Type, which occurs solely around the fringes of Wyre Forest. It is described as characterised by a small scale pattern of hedged pastures and orchards assarted[12] from woodland with an intimate spatial character[13]. The description also refers to an intricate network of narrow, interlocking lanes and wayside dwellings. Advice on management is given in an Advice Sheet[14] which mentions that the area's 'rustic charm' can be easily destroyed and the aim should be to conserve through appropriate planning controls and design guidance.

19. The appellant's assessment is that the site is considered to be of 'medium/high' landscape value[15], although it is noted that it is not protected by any specific national or local landscape designation, nor has it ever been[16]. Nor is it subject to any ecological or other environmental designation. The appellant acknowledges that the site is in good condition, but says there are no rare features within the site and it is typical of the area. Whilst there is a public footpath across the site, with attractive long distance views across the valley, it is an area of farmland on the edge of the settlement. It cannot be regarded as an intrinsically sensitive site, being influenced by the existing edge of Bewdley along its boundary to the south east and south west. It does not contain any demonstrable physical characteristics that would elevate the site above that of general countryside.

20. Applying the principles of the *Guidelines for Landscape and Visual Impact Assessment, Third Edition* (GLVIA3)[17] the appellant concludes that in terms of the site itself, there would be a 'major/moderate adverse' effect on the landscape on completion of the scheme, reducing to 'moderate/adverse' once the associated planting and green infrastructure has matured[18]. In wider views, it is concluded that landscape effects would be quite localised with the development ultimately forming an extension to the existing residential edge of Bewdley. Effects for the wider landscape area are said to be 'moderate/minor adverse' on completion, reducing to 'minor adverse' once planting and landscaping has matured[19].

21. Whatever character 'label' is attached, the character of the site and surroundings is clear from site inspection. From my own observations, I consider that the site and its wider surroundings form part of a very attractive valley landscape, with a gently rolling topography. Composed of fields, and punctuated and peppered by intermittent deciduous tree cover and hedgerows, a pleasing, intimate yet open character results. The local landscape remains intact and unspoilt, and its elements are in good condition. Indeed, the predominant impression when walking along Footpath BW518, away from Dry Mill Lane, is of entering an attractive, open and rural landscape, with excellent long range views across the River Severn Valley, to the Wyre Forest, and in the far distance, the Clent Hills. The urban edge of Bewdley, and specifically the properties in Dry Mill Lane and The Lakes Road, play a minimal role and do not

[12] i.e. cleared from the forest
[13] Landscape Character Assessment, pp 58-59 [CD 7.1]
[14] Advice Sheet – Smallholdings & Dwellings [CD 9.19]
[15] Mr Nye's Proof, Paragraphs 3.24 & 6.2
[16] For example, an Area of Great Landscape Value, designated in the Worcestershire County Structure Plan
[17] ID 20
[18] Mr Nye's Proof, Paragraph 5.10
[19] Mr Nye's Proof, Paragraph 5.6

dominate the site to any great extent. Nor does the existing residential development undermine the site's tranquillity to any degree. Indeed, the impression I formed on my site inspections was of being in a peaceful and tranquil rural location.

22. Whilst the fields themselves comprising the site have no formal recreational use, they nonetheless provide an important setting and context for the footpath, which is well used and popular with local people. The footpath is promoted by the Tourist Information Centre as part of two circular walks[20]. It is also mentioned in an historic 1926 'Official Guide to Bewdley' which notes that 'from its very elevated position, you have indeed a lovely view of the wooded and magnificent valley of the Severn beneath'[21]. I acknowledge that this guide was written many years ago, and there has been significant new development in Bewdley that has inevitably changed the experience. However, the panoramic views of the landscape from the footpath still remain intact.

23. The proposed coverage of the fields with new housing either side of the footpath means views from it would be compromised. The intrusion of urban built form would fundamentally alter users' experiences of this important section of the footpath. Rather than walking through a series of open fields that form part of a much wider rural landscape, and from which there are panoramic views, it would in effect become a walk through a housing estate. Most users are likely to find their experience and enjoyment of the footpath seriously impaired by such changes to the landscape. I acknowledge the illustrative plans show a 'green corridor' either side of the footpath. New pathways are also proposed through and around the site, linking into the existing public footpath, along with an extensive area of public open space[22]. Whilst these features would create some degree of permeability across the site, they do not alter my fundamental concerns regarding the harmful effect of the development.

24. Turning to views in the wider landscape, I observed the site from various points, in longer range views from the opposite side of the valley, including from the public bridleway (KF525) south of Hall's Farm and the public footpath at Crundalls Farm. From these vantage points, although seen at a distance and within the context of a larger panorama, there are nonetheless clear views towards the site. In fact, the site is conspicuous, covering a wide expanse of gently sloping land that contributes to the wider rural landscape and setting of Bewdley. The development would be seen as significantly expanding the urban edge of Bewdley. The visual intrusion of built development over this significant swathe of rural land, sloping down the valley side, would harm this attractive landscape.

25. The appeal site is promoted on the basis that it should be regarded as essentially an area adjacent to, and read in the context of, the built development of Bewdley. However, the site is not well-contained, and there are extensive views of it from the wider landscape, including from the other side of the valley. The proposal would not mark a natural rounding off of the settlement, nor would it be adequately assimilated with it. Rather, it would

[20] CD 12.7, Appendix 1
[21] CD 12.7 Appendix 2
[22] Mr Nye's Proof, Appendix 4 & 5

project significantly into the open countryside, destroying its existing open, rural character. The appeal site forms an important part of a series of undulating fields that merge with the wider sweep of rural land beyond the built-up confines of Bewdley.

26. The scheme proposes additional structural planting along the boundaries, and within the site to supplement the existing vegetation, hedgerows and trees to minimise the impact of new housing. However, I am not convinced that these measures, even once established over time, would be fully effective in altering the perception of urban development behind the vegetative screening. In the winter months when deciduous trees lose their leaves and vegetation dies down, the houses would inevitably be more obvious. Moreover, because of the site's sloping topography and position on the side of the valley, any landscaping, no matter how extensive, would not be particularly effective in screening or mitigating the impact of the development in longer range views from the opposite side of the valley. And whilst it is proposed to retain as much of the existing hedgerow as possible, sections of it will be removed to facilitate access within the site[23].

27. There was disagreement as to whether the site should be classified as a 'valued landscape' in terms of the Framework[24]. The appellant mentions that valued landscapes should show some demonstrable physical attribute that takes them beyond mere countryside[25], and that the site does not demonstrate the characteristics identified in Box 5.1 of GLIVIA3[26] that can assist in the identification of such areas. The appellant also notes this is a relatively recent contention of the Council, and highlights that the putative reason for refusal refers to the permanent urbanisation and irrevocable change to an '*important'* landscape rather than a '*valued'* one. I am not convinced that much turns on the difference in terminology because, according to the Oxford English Dictionary's definition, '*important'* can mean '*of great significance or value'*.

28. There is no definition within the Framework as to what a 'valued landscape' actually means. GLVIA3 is clear that the fact that an area of landscape is not designated nationally or locally does not mean it does not have any value[27]. In my judgement, this site forms an intrinsic part of a landscape which is of significant value in the locality and wider area. As noted, a well used footpath runs across the site from which there are panoramic views and the landscape's attractive characteristics can be readily observed. The footpath's importance in terms of how the area is appreciated is acknowledged in published documents, including by the Tourist Information Centre, and in an historic guide book for Bewdley. There are also sweeping vistas of the site from the other side of the valley. The historic hedgerows remain largely intact and the site displays the character of 'assarted enclosure', a historic resource comprising less than 2% of the district[28]. Whilst the area is not formally designated in landscape terms, it does not follow that the site is without merit or value. Nor does the absence of a formal designation prevent the scheme having a harmful effect. I consider

[23] Statement of Common Ground, Paragraph 4.4.4
[24] Paragraph 109
[25] CD 11.7
[26] ID 20
[27] Paragraph 5.26
[28] CD 12.5. page 82

that this site has significant local value, and is capable of being defined as a valued landscape.

29. A question then arises as to whether a 'valued landscape' is a restrictive policy in terms of Footnote 9 of Paragraph 14 of the Framework, which in turn has implications as to whether the 'tilted balance' should apply. I have been provided with various appeal decisions concluding that valued landscapes should be considered a restrictive policy[29] and those taking a contrary view[30]. Paragraph 109 does not indicate any particular approach or methodology as to how 'valued landscape' status should be weighed in the planning balance.

30. Footnote 9 does not provide an exhaustive list but merely provides examples[31]. However, the examples given include sites protected under the Birds and Habitats Directive, those designated as Sites of Special Scientific Interest, Green Belts, Local Green Space, Areas of Outstanding Natural Beauty, Heritage Coasts, National Parks (or the Broads Authority), designated heritage assets, and locations at risk from flooding or coastal erosion. It is notable that these examples all relate to statutorily protected or formally or specifically designated sites, assets or interests. This is not the case for this landscape.

31. In the absence of any substantive legal judgement on the point, and taking account of the above, I do not consider that a valued landscape, of itself, necessarily to be an example of a policy which cuts across the underlying presumption in favour of development. Rather, I am of the view it requires me to consider any harm as part of the normal planning balance. Therefore, I do not consider the tilted balance of Paragraph 14 should be displaced on this basis.

32. I am aware that the County Council's acting Landscape Officer did not raise an 'outright' objection to the scheme, but was not able to support the application 'in its current form'[32]. However, assessments in respect of impacts on the character and appearance of landscapes inevitably involve qualitative matters of judgement, and are rarely clear cut. From my own observations, and the evidence at the Inquiry, I am satisfied that the Council's objections on landscape grounds are justified. I take the view that the appellant's evidence has underestimated the impact of the proposal, as well as undervaluing the overall sensitivity and value of this site.

33. The site was assessed for the purposes of a Housing and Economic Land Availability Assessment (HELAA)[33]. Although the appellant states that the site was considered by the panel to be suitable for the delivery of housing, the HELAA commented that only a small amount of development may be possible on the southern part of the land, closest to the urban area, subject to land being allocated through the Local Plan[34]. Importantly, the HELAA does not identify as suitable for development the much larger expanse of land proposed in this scheme. The fact that it identified a much smaller area as a candidate for further comparative assessment during the plan-making process is not a reason to justify the appeal development.

[29] ID 1
[30] ID 2
[31] The footnote is prefaced by the words 'for example'
[32] CD 4.1, pages 3-5
[33] CD 9.6
[34] CD 9.6, page 20

34. To sum up, I conclude that the encroachment of new development on to this large undeveloped swathe of open land would have very significant and adverse effects for the rural landscape. The site is close to various sensitive recreational 'receptors', particularly the Footpath BW518 that crosses the site, and it is visible in longer range views from viewpoints across the valley. The development would cause a significant incursion into the open countryside and seriously harm the rural character of the locality. As such, the proposal would conflict with Policy CP12 of the CS. It would also conflict with the Framework which requires the planning system to contribute to protecting and enhancing the natural environment[35], as well as recognising the intrinsic character of the countryside[36]. It would not protect and enhance a valued landscape[37]. All these factors weigh very heavily against the proposals.

*Effect on the significance of heritage assets*

35. The Bewdley Conservation Area[38], comprising a large proportion of the town centre, is of considerable significance in terms of its architectural and historic interest. It contains many statutorily listed buildings, including the River Bridge (Grade I) and St Annes Church (Grade II*) and various buildings in the High Street and in Wribbenhall facing the River. The town sits largely within the valley bottom, and is split into two parts either side of the central Severn River, connected by the bridge. There are many building types, including timber framed buildings from the late medieval period to the 17th Century, and properties from the Georgian, Victorian and Edwardian periods. The Conservation Area Character Appraisal notes that the rural setting of the town is an important component of its character. It states that it is important to conserve the rural setting of the town and Conservation Area, and to recognise the interrelationship between the Conservation Area and overall setting[39].

36. The appeal site neither falls within the Conservation Area nor directly abuts it. The Framework defines the setting of a heritage asset as the surroundings in which it is experienced and its extent is not fixed[40]. The Council has suggested two main aspects to assessing effect of development on the significance of the Conservation Area[41]. First, how the development of the appeal site would affect the relationship between the Conservation Area and its wider context, as perceived from various points outside it; and second, how the development would affect existing views from within the conservation area towards the site.

37. In terms of the first aspect, I acknowledge that the appeal site makes some contribution to the setting and significance of the Conservation Area because it forms part of the rural hinterland surrounding the town. This relationship can be seen from various points outside the conservation area where the appeal site and conservation area are visible together. For example, the site is prominent in views from the Bridleway KF525 to the south of Halls Farm, and from Crundalls Farm. However, in many of these longer range views where both the town and appeal site are visible together, the viewer is simply

[35] Paragraph 7
[36] Paragraph 17
[37] Paragraph 109
[38] CD 9.18
[39] CD 9.17
[40] Glossary
[41] Mr Bassett's Proof, paragraph 3.18

observing Bewdley (and its associated Conservation Area) as an urban settlement within the wider countryside, along with more recent residential development on its outskirts.

38. I have already found that the proposed expansion of development into open countryside would have a seriously harmful effect on the rural landscape. However, whilst the appeal scheme would enlarge the expanse of more recent development on the edge of the town, I am not convinced the overall perception of the Conservation Area itself within the wider landscape would be fundamentally altered by the appeal development. Hence, in terms of the degree of direct harm to the significance of the Conservation Area itself, and its relationship with the wider landscape context, the effect would be limited.

39. In terms of the second aspect, the appeal site is visible from certain points within the Conservation Area, including from the Severn Valley Railway Station (from the footbridge and viaduct), and from the River Bridge and Quayside in Wribbenhall. I acknowledge that the appeal site makes some contribution to the setting and significance of the Conservation Area because it forms part of the rural hinterland that is visible in views from these points within the Conservation Area. However, the appeal site represents a very small component in the overall vistas from these viewpoints. I consider that the development would have a limited effect on existing views from within the Conservation Area towards the site.

40. The Council has raised concerns regarding light spillage from the development, arguing that it would erode the ability to appreciate the Conservation Area in its setting. However, there is already a significant swathe of residential development between the Conservation Area and the appeal site, including the 20th Century housing in Woodthorpe Drive. Any additional lighting must be viewed in this context and I do not consider the effect on the Conservation Area would be especially marked in this respect.

41. In terms of statutorily listed buildings affected by the development, the Council has identified only Severn Heights on Dowles Road (Grade II). The listing description identifies this as a timber framed building with rendered infill walls and a tiled roof. It dates from the 17th Century with early 19th Century additions, and some late 20th Century alterations. The appeal site forms part of the wider setting of this listed building, and its undeveloped rural character reinforces the building's sense of isolation in the countryside. To that extent, it contributes to its significance.

42. The appeal scheme would result in residential development moving closer to this listed building. However, the setting of this building would not be affected to a significant degree by the scheme because of the steeply sloping topography towards the valley bottom, the heavily wooded enclosure the house experiences, and the very limited inter-visibility between the appeal site and listed building. Furthermore, the lower field closest to Severn Heights is proposed to be retained undeveloped as an amenity area, thereby minimising the impact on the listed building's setting.

43. Both the appellant and the Council agree that the overall degree of harm to heritage assets would be less than substantial in terms of the Framework, and I share that view. But there is a clear difference of opinion between the parties

as to how the harm should be categorised. The appellant argues that the proposal would have only a negligible degree of harm to the significance of the Conservation Area itself and the statutorily listed Severn Heights[42]. Thus the appellant contends the harm to heritage assets should be at the bottom end of the 'less than substantial harm' spectrum. The Council, by contrast, argues the harm lies on a significantly higher point on the spectrum.

44. To my mind, the proposal would result in some very limited harm to the setting of the Conservation Area. In respect of the listed building, the relevant legislation requires that where considering whether to grant permission for development that affects a listed building or its setting, special regard shall be had to the desirability of preserving the building or its setting[43]. I have found the proposal would result in some impact to the setting of Severn Heights and, to that extent, would therefore fail to preserve its setting, contrary to the relevant legislation. However, the effect on its setting would be very marginal.

45. Overall, for the reasons above, I consider that the level of harm to heritage assets should be placed at the lower end of the spectrum. In accordance with the Framework, the harm to heritage assets, albeit less than substantial, needs to be weighed against the public benefits of the proposal.

*Housing Land Supply*

46. The Council maintains it has a 5.69 year supply of housing[44], whereas the appellant says it is only 1.24 years[45]. This difference arises because of various areas of disagreement: first, the housing requirement figure that should be used. The Council contends 300 dwellings per annum (dpa), whereas the appellant prefers 332 dpa; second, the appropriate 'buffer' - whether 5% or 20%, depending on the extent of any shortfall; and third, the extent of the supply, including whether the sites relied on by the Council are deliverable, and whether certain types of 'C2' units (residential institutions) are to be included in the calculations in terms of past completions and future supply.

Requirement figure

47. Policy DS01 (Development Locations) requires 4,000 dwellings to be provided over the plan period. The Council acknowledges that this requirement figure no longer represents the Objectively Assessed Housing Needs for the district (OAHN)[46], and is therefore out of date. However, there is disagreement as to what the OAHN should be for the purposes of this appeal. Amion Consultants were appointed by the Council to produce an OAHN for the Council as part of the evidence base for the emerging Local Plan.

48. The Amion Report[47] (April 2017) identifies a range between 199-332 dpa. The appellant favours the figure of 332 dpa at the top of the range based on, amongst other things, the significant need for affordable housing, the worsening affordability of housing in the area, and household formation suppression that has resulted from a lack of supply against need over the past

[42] Mr Clemons Proof, Paragraphs 7.12 & 7.14
[43] S66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990
[44] Council's Closing Submissions [ID 38] & HLS Update Note [ID 34]
[45] Appellant's Closing Submissions, Paragraph 6.8
[46] Mr Round's Proof, Paragraph 14
[47] CD 9.1

10 years[48]. The higher figure would also help 'boost significantly' the supply of housing in accordance with the Framework.

49. The requirement range identified in the Report results primarily because of different assumptions concerning a number of key variables: migration, unattributed population change, household formation rates, and economic activity. The Report, having regard to various factors, recommends a figure of 300 dpa[49] and rejects the higher figure of 332 dpa. Importantly, this judgement was entirely Amion's rather than the Council's. The Council explained at the Inquiry[50] that the recommended figure was based on a careful analysis of the data and the most appropriate scenarios with regard to migration, and other judgements, including in terms of headship rates, market signals such as house prices, relative affordability and vacancy rates, and economic forecasts. For example, in respect of migration, the Report favours a long term trend approach based on the actual results of the 2011 census as a 'reality check' (PG-Long-term), rather than one based wholly on projections (PG-Long-term- X)[51]. Thus it was explained that the 332 dpa scenario (PG-Long-term-X) is based on forecasts that are not wholly reliable.

50. Establishing the future need for housing is not an exact science and no single approach will provide a definitive answer[52]. Professional judgements have to be made on technical evidence which may permit a range of possible outcomes. Moreover, and importantly, it is my firm view that any future housing requirement figure will need to be discussed, fully analysed and tested through the local plan examination process, with the opportunity for a full range of stakeholders and participants to comment. It is established case law that it is not part of my remit, in determining a planning appeal, to conduct an examination into the housing land requirements of the emerging local plan. Indeed, to do so may prejudge the findings of the Local Plan Inspector. In these circumstances, and for this specific appeal only, I have no good reason to discount the recommendations of the Amion Report, which appears to be based on thorough, robust and sound analysis. Therefore, I consider the 300 dpa figure to be appropriate, which equates to a dwelling requirement of 5,400 for the period 2016 to 2034.

Appropriate buffer

51. The next stage is to consider the appropriate buffer. Policy DS05 of the CS is concerned with the phasing and implementation of the 4,000 dwellings for the period covering 2006-2026, derived from Policy DS01. Although this figure is accepted as out of date, it does nonetheless provide a yardstick by which to measure past performance. Policy DS05 identifies an explicit stepped delivery over the five year phasing periods to ensure delivery over the plan period, as follows: 2006/07 to 2010/11 – 240 dwellings per annum; 2011/12 to 2015/16 - 326 dwellings per annum; 2016/17 to 2020/21 - 196 dwellings per annum; and 2021/22 to 2025/26 – 94 dwellings per annum. The Council has met its

[48] As per the evidence of Mr Venning and Mr Donagh
[49] Paragraph 5.3
[50] Evidence of Mr Bullock
[51] Council's Closing Submissions, Paragraph 35
[52] Paragraph: 014 Reference ID: 2a-014-20140306

stepped trajectory in only 3 years in the period from 2006 to 2016 resulting in a deficit of 301 units[53].

52. The Council's view is that, whilst Policy DS05 seeks to 'front load' delivery of sites, it does not constitute a formal 'requirement' for each five year period. Rather, according to the Council, the phased figures of the Policy are merely 'aspirational'. It mentions that the target for annual monitoring purposes has always been 200 dpa and, using this figure, the Council has exceeded its target in the period 2006-2016[54]. It also draws attention to Paragraph 4.2 of the SAPLP which states that in order to meet the housing target of the CS, "*an indicative annual average of 200 net additional dwellings will be required during the plan period*". The Council's most recent Housing Land Supply Report of September 2017 (HLS Report) notes that, although for four of the years in this period completions were below the requirement of 200 dwellings, the cumulative difference in delivery was always positive and the average annual delivery over this period was 254 dwellings against a requirement of 200[55].

53. In my view, on any ordinary reading of Policy DS05, the completions should be measured against the clearly expressed stepped trajectory. The Policy unequivocally states that the Plan "*will deliver the following average annual net additions of dwellings within the District across the five year phasing periods*". This seems to be more than mere aspiration. Moreover, the reasoned justification to the Policy notes that '*the trajectory demonstrates that a higher build rate will be required for the first ten year period up until 2016*'[56]. The Monitoring and Implementation Framework tables[57] within the CS also confirm the stepped trajectory of Policy DS05.

54. The Council is already behind in the revised OAHN requirement since 2016 against the higher 300 dwelling target, recording an under-delivery of 34 units for 2016-17 and 78 dwellings for the first five months of 2017/18[58]. This, together with the failure to meet the stepped trajectory requirement of Policy DS05 leads me to conclude that there has been persistent under-delivery, and that a 20% buffer is appropriate in order to provide a realistic prospect of achieving the planned housing supply.

Supply

55. This raises the issue of the inclusion of C2 within the completion figures. The HLS report expressly notes that C2 uses (such as nursing and care homes) have been excluded from the housing requirement figure, as it is catered for separately, and therefore should not be counted as part of the housing completions[59]. However, the Council has sought to distinguish between two types of 'care' accommodation: first, institutions with bed spaces, which are always accepted to be C2 use; and second, self contained dwellings in which older people live independently with or without the need for care, and where there is debate as to whether they should be regarded as C2.

[53] Mr Tait's Proof, Table at page 15
[54] Core Strategy requirement of 4,000 divided by the 20 year plan period (2006-2016)
[55] CD 9.4, Paragraph 3.3
[56] Paragraph 5.64
[57] Pages 97 onwards
[58] CD 9.4, Paragraph 3.3
[59] CD 9.4, paragraph 2.4

56. The Council argues the key question is whether a particular scheme is for institutional bed spaces or for self-contained dwellings and not to 'fixate' on whether it is described as C2 or not in an application or permission. In other words, if a scheme comprises self contained dwellings, that should be counted within the five year supply. On this basis, the Council argues that the former British Sugar Site, Kidderminster[60] (112 units) should be included in their completions and Land at Tan Lane, Stourport[61] (60 units) in future supply.

57. Much time could be spent debating different approaches to definitions, and how individual schemes should be classified. In terms of the British Sugar Site, although the plans appear to show independent units, the permission clearly describes '*Residential units of extra care (Class C2)'* and *'Residential Units for Adults with Learning Difficulties Extra Care (Class C2)*'. In respect of Tan Lane, although the Council says the units are Class C3 and the plans appear to show individual apartments, a condition of the permission clearly states that '*at no time shall any unit be occupied as a single dwelling (C3) independent of the extra care facility'*[62]. Taking a straightforward approach, it seems to me that these schemes cannot properly be classified as ordinary dwellinghouses falling within Class C3. For the purposes of this appeal, I find these units should therefore be excluded from the calculations.

58. There was considerable disagreement as to whether there was a realistic prospect of sites being deliverable within the five year period. A schedule of disputed sites was produced setting out the parties' respective cases[63]. In essence, the appellant seeks to remove sites altogether or shift them beyond the five year period for delivery on the basis that many have a history of non-delivery, with various constraints requiring resolution before development can proceed. This results in a supply figure of 570 units. The Council's more optimistic view results in a supply figure of 1927 units[64]. Given the contradictory evidence supplied on these sites, and my limited knowledge of them, it is difficult to reach a definitive view. However, I set out the consequences for overall housing supply for each side's position below.

Overall conclusions on housing land supply

59. I have found that the Amion Report's recommended figure of 300 units should be used as the annual requirement, and that a 20% buffer is appropriate. In terms of supply, I have removed the disputed 'C2' units from the calculations. However, the exact supply figure is more difficult to discern because of the contradictory evidence of the parties concerning individual sites. Even on the most optimistic basis, and accepting the Council's preferred supply figure of 1927 units, it can only show a 4.69 year supply. Using the appellant's heavily discounted supply figure of 570 units (and also assuming an annual requirement of 300 units and a 20% buffer) a supply of just 1.39 years exists[65]. If the appellant's preferred annual figure of 332 units is used against this lower supply figure (and again adopting the 20% buffer) it reduces further

[60] ID35
[61] ID36
[62] Condition 4 of 2015/0173
[63] ID22
[64] ID34
[65] ID 34

to 1.24 years. It is clear that, on any of these scenarios, the Council cannot demonstrate a five year supply of housing.

**Planning Obligations**

60. The appellant has completed two planning obligations, one by agreement and one by unilateral undertaking (UU), both dated 8 November 2017[66]. The UU secures the provision of affordable housing at a rate of 30%, in accordance with the Council's policy requirement. Based on 195 dwellings, this would equate to up to 59 affordable units. It also secures provision of open space, by requiring an open space scheme to be submitted to the Council, and the open space to be transferred to a management company. It secures provision of a sustainable urban drainage system (SUDS). It secures financial contributions towards primary school education at St Annes CE Primary School and Bewdley Primary School (based on different rates depending on dwelling size). It also secures a sum towards policing (£11,058) and towards improving public transport by providing a new bus stop on The Lakes Road (£10,000), and solar powered real time bus information (£2,000).

61. The other obligation by agreement relates to air quality mitigation and comprises a financial contribution of £950,000 for the provision of six Euro VI buses to serve routes through Welch Gate. These new lower emission buses would replace the existing higher emitting buses. Such measures would mitigate the impact of the development on the Welch Gate AQMA. Indeed, the appellant's evidence is that these measures would actually result in beneficial air quality effects in the AQMA.

62. The obligation also includes £66,000 for a 'PEMS'[67] monitoring fee to test nitrogen emissions from the new buses. The appellant has presented cogent evidence that the PEMS monitoring fee is unnecessary[68]. I accept that there is nothing to suggest that the buses will not perform as predicted, and that the buses themselves are equipped with appropriate diagnostics to indicate the performance of the emissions control system. I therefore conclude that, were I minded to allow the appeal, this element of the agreement should be struck out.

63. I have no reason to believe that the formulae and charges used by the Council to calculate the various contributions are other than soundly based. In this regard, the Council has produced a detailed Compliance Statement[69] which demonstrates how the obligations meet the relevant tests in the Framework[70] and the Community Infrastructure Levy Regulations[71]. The level of provision of affordable housing would comply with the Council's policy requirement. The Compliance Statement also sets out how the primary school education contribution has been calculated, and confirms it would be spent in schools close to the development. It also explains the necessity for the police contribution and how monies would be spent, and that the contributions for the bus shelter and information is necessary to maximise sustainable modes of transport.

[66] ID 23
[67] Portable Emissions Measurement System
[68] Evidence of Professor Laxen
[69] ID 40
[70] Paragraph 204
[71] Regulation 122 & 123

64. The development would enlarge the local population with a consequent effect on local services and facilities. I am satisfied that the provisions of both the obligations, excluding the PEMS contribution, are necessary to make the development acceptable in planning terms, that they directly relate to the development, and fairly and reasonably relate in scale and kind to the development, thereby meeting the relevant tests in the Framework and the Community Infrastructure Levy Regulations. In terms of the air quality measures, these would not only mitigate adverse impacts, but result in beneficial impacts within the AQMA, conveying benefits to the wider population. Overall, I am satisfied that the planning obligations (minus the PEMS contribution) accord with the Framework and relevant regulations, and I have taken them into account in my deliberations.

**Overall Conclusions and Planning Balance**

65. The relevant legislation requires that the appeal be determined in accordance with the development plan, unless material considerations indicate otherwise. The Framework states that proposals should be considered in the context of the presumption in favour of sustainable development, which is defined by the economic, social and environmental dimensions and the interrelated roles they perform. The Council accepts that the housing policies are not up-to-date and that this is sufficient, of itself, to engage Paragraph 14 of the Framework.

66. Paragraph 14 of the Framework explains how the presumption in favour of sustainable development applies. Where the development plan is absent, silent, or the relevant policies are out of date, permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. Alternatively, specific policies in the Framework may indicate development should be restricted. Although I have found that valued landscapes do not fall within that latter category, the Framework is clear those relating to heritage assets do. Hence the 'public benefits' test of Paragraph 134 relating to heritage assets is engaged in this case.

67. There is no doubt that additional housing arising from this scheme would be a weighty public benefit for the area. It would introduce much needed private and affordable housing for local people. It would boost the supply of housing in accordance with the Framework, contributing up to 195 dwellings, of which up to 59 would be affordable. It would bring about additional housing choice and competition in the housing market. The contribution of the site to both market and affordable housing requirements of the district is a matter of considerable importance. As such, I accord these benefits substantial weight in the planning balance.

68. The scheme would generate other economic and social benefits[72]. It would create investment in the locality and increase spending in shops and services[73]. It would result in jobs during the construction phase and, according to the appellant, result in construction spending of around £19.03 million. The new homes bonus would bring additional resources to the Council[74]. I acknowledge that the site is in a reasonably sustainable location, within range of the shops,

[72] As detailed in CD 1.16
[73] Household expenditure from the development is estimated by the appellant to be around £6.84 million per year
[74] Estimated to be around £1.8 million over the 6 years following completion of development

services, schools and the other facilities of Bewdley. There is a convenience store adjacent to the site, on the corner of The Lakes Road and Dry Mill Lane. There are bus services available in the locality and, at a greater distance, a railway station at Kidderminster. A range of employment opportunities exist in Bewdley and Kidderminster. I agree that, in all these respects, the scheme would comply with the economic and social dimensions of sustainability.

69. Some environmental benefits would also occur. There is the potential for biodiversity enhancement through additional planting and provision of green infrastructure[75] as well as the provision of a large SUDS. A substantial area of public open space is also proposed[76]. Of particular significance is the mitigation scheme for the Welch Gate AQMA to be secured by the UU. This involves replacing the existing high emitting buses that currently pass through the AQMA with new buses that emit substantially less pollution. The evidence suggests that the mitigation will more than offset the increase in emissions associated with the scheme, and will result in beneficial impacts within the AQMA, as well as the wider area. This should assist the achievement of the annual mean nitrogen dioxide objective and contribute to the Council's Air Quality Action Plan. I accord the potential improvements to air quality significant and positive weight in the planning balance.

70. As noted above, Paragraph 134 of the Framework requires the harm to the significance of heritage assets to be balanced against the public benefits of the scheme. In addition, Paragraph 132 requires that, when considering the impact of a proposed development on the significance of heritage assets, great weight should be given to their conservation. However, for the reasons explained, I consider that the level of harm to heritage assets would be limited and should be placed at the lower end of the 'less than substantial' spectrum. In this case, I find that any harm to heritage assets would be outweighed by the scheme's public benefits. As a consequence, I find that the so called 'tilted balance' of Paragraph 14 of the Framework is not displaced in this instance.

71. Importantly, the Council cannot demonstrate a five year supply of housing. At best, the Council can only demonstrate a 4.69 year supply. Adopting the appellant's discounted supply schedule, based on the same assumptions, the five year supply reduces to 1.39 years. On the appellant's preferred basis, it is only 1.24 years[77]. That latter figure is a very serious shortfall and attracts substantial weight in favour of granting permission for the proposals. However, the absence of a five year supply cannot override all other considerations. Moreover, there is no compelling reason why the additional development required to assist in making up the 5 year deficit has to be sited at this particular location.

72. In this case, I have serious concerns in respect of the very significant and adverse effects for the rural landscape. I have found the scheme would cause very serious material harm to the character and appearance of the area, and specifically to this valued landscape. This would conflict with Policy CP12 of the CS. It would also be contrary to the requirements of the Framework to contribute to protecting and enhancing the natural environment[78], recognising

[75] Ecology Statement of Common Ground
[76] Approximately 38% of the site, Proof of Evidence of Mr Lane, page 65
[77] Based on 332 units per annum
[78] Paragraph 7

the intrinsic character and beauty of the countryside[79] and protecting and enhancing valued landscapes[80]. Consequently, I consider that the proposal would have very serious and harmful consequences in terms of the environmental dimension of sustainability with regards to the impact on landscape character. As such, I do not consider the scheme as a whole can be regarded as a sustainable form of development.

73. I have carefully weighed the significant shortage in housing supply in the balance as well as other benefits that would arise from the scheme. I have considered the contribution of the proposals towards addressing the undersupply of housing, both market and affordable. However, in this case, I consider that the adverse impacts of granting permission, specifically the very serious material harm to the rural character of the locality and incursion of development into the countryside would significantly and demonstrably outweigh the benefits of the scheme, when assessed against the policies in the Framework taken as a whole. I reach this view even on the basis of the appellant's preferred housing supply figure. For the reasons given above, I conclude that the appeal should be dismissed.

*Matthew C J Nunn*

INSPECTOR

[79] Paragraph 17
[80] Paragraph 109

## APPEARANCES

**FOR THE COUNCIL**:

| | |
|---|---|
| Mr Hugh Richards | Of Counsel, instructed by Wyre Forest District Council |

He called

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| Peter Bassett | Conservation Officer, Wyre Forest District Council |
| Neil Furber | Principal Landscape Architect, Pleydell Smithyman |
| Dr Mark Broomfield | Specialist Consultant, Ricardo Energy & Environment |
| Dr Michael Bullock | Director of arc4 |
| Helen Smith | Spatial Planning Manager, Wyre Forest District Council |
| Paul Round | Development Manager, Wyre Forest District Council |

**FOR THE APPELLANT**:

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| Mr Paul Cairns | Of Queens Counsel, instructed by Gladman Developments Ltd |

He called

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| Keith Nye | Director, FPCR Environment & Design Ltd |
| Jason Clemons | Director, WYG |
| George Venning | Director, Bailey Venning Associates |
| James Donagh | Director, Barton Wilmore LLP |
| Jason Tait | Director, Planning Prospects Ltd |
| Mark Clements | Director, PRIME Transport Planning |
| Professor Duncan Laxen | Managing Director, Air Quality Consultants |
| Laurie Lane | Planning Director, Gladman Developments Ltd |

**INTERESTED PERSONS**

| | |
|---|---|
| Ms M Brittain | Local resident |
| Mr B Maloy | Local resident |

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| Mr G Roberts | Local resident |
| Mrs L Stanczyszyn | Local resident |
| Mr I Machin | Local resident |
| Mr M Moreton | Local resident |
| Mrs S Preedy | Local resident |
| Mr R Stanczyszyn | Local resident |
| Mr P Edmundson | Town Councillor |
| Mrs C Edginton-White | Town Councillor |
| Mr Davenport | Local resident |
| Mr D Laberty | Local resident |

## DOCUMENTS SUBMITTED AT THE INQUIRY

1. Appeal decision APP/Z1510/W/17/3172575, Land off Wethersfield Road, Finchingfield, Essex CM7 4NS
2. Appeal decision APP/J0405/W/16/3158833, Land north of Aylesbury Road, Wendover, Buckinghamshire
3. Opening Statement on behalf of Gladman Developments Ltd
4. Opening Statement on behalf of Wyre Forest District Council
5. Statement of Mrs M Brittain
6. Statement of Mr B Maloy
7. Statement of Mr G Roberts
8. Statement of Mrs L Stanczyszyn
9. Statement of Mr I Machin
10. Statement of Mr M Moreton
11. Statement of Mr R Preedy & Mrs S Preedy
12. Statement of Mr R Stanczyszyn
13. Statement of Calne Edginton-White (Councillor, Planning Committee) & Nick Farress (Town Clerk), Bewdley Town Council
14. Statement (Poem) of Mrs Avril
15. Statement of Councillor P Edmundson, Bewdley Town Council
16. Panoramic View of Mr Bassett
17. Email trail of Adam Mindykowski, Neil Furber and Paul Round
18. Email trail of Lucy Flanagan, Ben Horovitz, Neil Furber
19. Inspector's Interim Conclusions, South Worcestershire Development Plan (March 2014)
20. Extract of Guidelines for Landscape and Visual Impact Assessment, Third Edition
21. Appeal decision APP/A2280/W/15/3012034, Land North of Moor Street, Rainham
22. Schedule of disputed large housing sites
23. Planning Obligation by Agreement dated 8 November 2017 (including 'Blue Pencil' Note), and Unilateral Undertaking dated 8 November 2017
24. List of Draft Conditions
25. Report on Examination into Wyre Forest Site Allocations and Policies Local Plan & Kidderminster Central Area Action Plan (May 2013)

26. Graph showing change in $NO_2$ levels with/without scheme and mitigation
27. Horsefair Kidderminster AQMA showing bus route
28. Air Quality Update 2017, Worcestershire Regulatory Services
29. Missing Survey Sheets, Mr Furber's Appendix 2
30. Site Visit Route & Viewpoints
31. Note on Socio-Economic Calculations
32. Planning Obligation Note: Unilateral Undertaking
33. Planning Obligation Note: Air Quality Mitigation
34. Housing Land Supply Inquiry Update Note, 30 October 2017
35. Planning permission, Former British Sugar Site
36. Planning permission, Tan Lane
37. Appeal decision APP/G2435/W/15/3005052, Land South of Greenhill Road, Coalville, Leicestershire
38. Closing Submissions on behalf of the Local Planning Authority
39. Closing Submissions on behalf of Gladman Developments Ltd
40. CIL Compliance Statement, Wyre Forest District Council

## Core Documents List

**CD1 Planning Application Documents**

1.1 Application Covering Letter and Application Form
1.2 Location Plan (including Application Red Line) (Drawing No. 7166-L-01 Rev C)
1.3 Development Framework Plan (Drawing No. 7166-L-02 Rev P)
1.4 Design & Access Statement
1.5 Landscape and Visual Assessment
1.6 Transport Assessment
1.7 Travel Plan
1.8 Ecological Appraisal
1.8a Great Crested Newt Survey Report
1.8b Reptile Survey
1.8c Confidential Badger Survey
1.9 Arboricultural Report
1.10 Flood Risk Assessment
1.11 Air Quality Assessment
1.12 Noise Assessment
1.13 Heritage Assessment
1.14 Archaeological Assessment
1.15 Statement of Community Involvement
1.16 Socio-Economic Impact Assessment
1.17 Planning Statement
1.18 Site Access (Drawing No. P16016-003-C)
1.19 Foul Drainage Analysis
1.20 Draft S106 Heads of Terms

**CD2 Additional & Amended Reports submitted after validation**

2.1 Breeding Bird Survey Report
2.2 Bat Survey Report
2.3 Flood Risk Assessment Rev A (December 2016)
2.4 Flood Risk Assessment Rev B (January 2017)
2.5 Supplementary Ecology Report (February 2017)
2.6 Visitor Survey Results Table
2.7 Air Quality Assessment Addendum (February 2017)
2.8 Highways Technical Note 01 (17 February 2017)
2.9 Wyre Forest: Housing Need Statement (October 2016)
2.10 Traffic Modelling Outputs (mini-roundabout junction)
2.11 Potential Junction Improvements Plan (mini-roundabout) (Welch Gate/Dog Lane/Load Street Junction) (drawing No. P16016-004)
2.12 Potential Junction Improvements Plan (priority arrangement) (Welch Gate/Dog Lane/Load Street Junction) (drawing No. P16016-005)
2.13 Traffic Modelling Outputs (priority junction)

**CD3 Correspondence**

3.0 Local Planning Authority
3.1 Highways Authority

**CD4 Consultation Responses**

4.1 WCC Policy (20 October 2016)
4.2 WCC Highways (25 October 2016)
4.3 WFDC Policy (2 November 2016)
4.4 WFDC Policy RLA Appendix 2 (2 November 2016)
4.5 WFDC Conservation (19 October 2016)
4.6 WCC Air Quality
4.7 WCC Environmental Health (21 September 2016)

4.8 Historic England (26 September 2016)
4.9 CPRE (27 September 2016)
4.10 WFDC Disability Action (28 September 2016)
4.11 LLFA North Worcestershire Water Management
4.12 Bewdley Town Council
4.13 Ramblers Association
4.14 Adrian Scruby - Historic
4.15 Alison Barnes - Education
4.16 Alvan Kingston - Arboricultural Comment
4.17 Andrew Morgan - Police
4.18 Bewdley Civic Society
4.19 Gillian Driver - Natural England
4.20 Kate Bailey - Affordable
4.21 Michelle Lowe - Noise
4.22 Paul Allen - Countryside Officer
4.23 Peter Aston · Designing out Crime
4.24 Severn Trent Water
4.25 Steve Bloomfield - Wildlife Trust Conservation officer
4.26 LLFA - observations Highfield House
4.27 LLFA - Objection removed email
4.28 AQMA - Neil Kirby - Following SH request
4.29 AQMA - Neil Kirby
4.30 Gillian Driver - NE Response
4.31 Paul Allen - Countryside Officer
4.32 Steve Hawley - County Highways comments
4.33 CH2M Bewdley Welch Gate Junction Assessment TN (FINAL)
4.34 Steve Bloomfield - Wildlife Trust - Updated comments
4.35 Bewdley Housing Survey Report v1
4.36 Confirmation from Bewdley that they accept the survey Dec 2016
4.37 Bewdley TP - Consultation AQMA Report

**CD5 Committee Report**
5.1 Committee Report
5.2 Committee Meeting Minutes

**CD6 The Development Plan**
6.1 WFDC Core Strategy (2006-2026) adopted December 2010
6.2 WFDC Proposals Map (Bewdley extract)
6.3 WFDC Site Allocations and Policies Local Plan (2006 – 2026) adopted July 2013
6.4 Inspector's Report WFDC Core Strategy (dated 19 October 2010) (extracts)
6.5 Regional Spatial Strategy Panel Report (extracts)

**CD7 Supplementary Planning Documents**
7.1 Worcestershire County Council Landscape Character Assessment Supplementary Guidance (October 2011)
7.2 Affordable Housing SPD (July 2014)
7.3 Design Guidance SPD (June 2015)
7.4 Planning Obligations SPD (September 2016)

**CD8 Emerging Development Plan**
8.1 Local Plan Review – Preferred Options document (June 2017)
8.2 Wyre Forest District Council Preferred Option Document, June 2017: Gladman Development's Representations
8.3 Local Plan Issues and Options Paper (September 2015) (extracts)

**CD9 Evidence Base for Emerging Development Plan**

9.1 WFDC Local Plan Review: Amion Consulting OAHN Report (April 2017)
9.2 WFDC Bewdley Housing Survey Report (June 2016)
9.3 Bewdley Town Council Letter (Housing Needs)
9.4 5YHLS report – Wyre Forest District Council Five Year Housing Land Supply Report at 1st September 2017
9.5 WFDC Appendices to 5 Year Housing Land Supply Report - September 2017
9.6 Housing and Economic Land Availability Assessment and Appendices (HELAA) October 2016 (extracts)
9.7 Settlement Hierarchy Technical Paper (October 2009)
9.8 Core Strategy Final Sustainability Appraisal Report (January 2010) (extracts)
9.9 Housing and Economic Land Availability Assessment (2016) (Bewdley extracts)
9.10 Green Belt Strategic Analysis (September 2016) (extracts)
9.11 Worcestershire's Local Transport Plan 2006 / 2011 (LTP 2) (extracts)
9.12 Worcestershire Local Transport Plan 3: Transport Strategy (extracts)
9.13 Worcestershire Local Transport Plan 3: Transport and Air Quality Policy (extracts)
9.14 Air Quality Action Plan (June 2013) (extracts)
9.15 Air Quality Action Plan Progress Report for Worcestershire April 2015 – March 2016 (September 2016) (extracts)
9.16 Historic Environment Technical Paper (2012) (extracts)
9.17 Conservation Area Character Appraisal (Jan 2015)
9.18 Conservation Area Boundary Plan, WFDC
9.19 Landscape Type Advice Sheet: Forest small holdings and dwellings
9.20 Landscape Type Advice Sheet: Principal timbered farmlands

**CD10 Appeal Decisions**

10.1 Site at Land off Barford Road, Bloxham APP/C3105/A/13/2189896
10.2 Land at Rosery Cottage and 171 Evendons Lane, Wokingham APP/X0360/A/13/2198994
10.3 Little Tarnbrick Farm, Blackpool Road, Kirkham, Preston APP/M2325/A/13/2196027
10.4 Land off Bath Road, Leonard Stanley APP/C1625/A/13/2207324
10.5 Land adjoining Hay House, Tibberton, Newport, Shropshire APP/C3240/W/15/3003907
10.6 Land and Buildings Off Watery Lane, Curborough, Lichfield APP/K3415/A/14/2224354
10.8 Land off Milltown Way, Leek, Staffordshire APP/B3438/W/15/3005261
10.9 Enabling works to allow implementation of full runway alternation during easterly operations at Heathrow Airport APP/R5510/A/14/2225774
10.10 Land at Land West of Horcott Road, Fairford APP/F1610/W/16/3157854
10.11 Land north of Gloucester Road, Tutshill, Chepstow APP/P1615/W/15/3003662

**CD11 Court of Appeal and High Court Judgments**

11.1 Bedford Borough Council v SSCLG and Nuon UK Ltd [2013] EWHC 2847 (Admin), 26 July 2013
11.2 St Albans City and District Council v Hunston Properties Limited and SSCLG [2013] EWCA Civ 1610, 12 December 2013
11.3 Hunston properties Ltd v SSCLG and St Albans City and District Council [2013] EWHC 2678 (Admin), 05 September 2013
11.4 Gallagher Homes Limited and Lioncourt Homes Limited v Solihull Metropolitan Borough Council [2014] EWHC 1283 (Admin), 30 April 2014
11.5 Crane v SSCLG and Harborough District Council [2015] EWHC 425 (Admin), 23 February 2015

11.6 Phides Estates V SSCLG and Shepway DC and David Plumstead [2015] EWHC 827 (Admin), 26 March 2015
11.7 Stroud District Council v SSCLG and Gladman Developments Limited [2015] EWHC 488 (Admin), 6 February 2015
11.8 Colman V SSCLG and North Devon DC and REW Npower [2012] EWHC 1138 (Admin)
11.9 Forest of Dean District Council v SSCLG and Gladman Developments Limited [2016] EWHC 2429 (Admin), 4 October 2016
11.10 R(on the application of Graham Williams) v Powys County Council [2017] EWCA Civ 427, 9 June 2017
11.11 Steer v SSCLG and Catesby Estates Ltd and Amber Valley Borough Council [2017] EWHC 1456 (Admin), 22 June 2017
11.12 Suffolk Coastal District Council v Hopkins Homes Ltd and Richborough Estates; Partnership LLP and Cheshire East Borough Council [2017] UKSC 37 (Admin), 10 May 2017
11.13 Barwood Strategic Land v East Staffordshire Borough Council and SSCLG [2017] EWCA Civ 893, 30 June 2017
11.15 Gladman Developments Ltd v Daventry District Council and SSCLG [2016] EWCA Civ 1146, 23 November 2016
11.16 The Queen (on the application of) Emily Shirley And Michael Rundell v SSCLG [2017] EWHC 2306 (Admin), 15 September 2017
11.17 Daventry District Council v SSCLG and Gladman Developments Ltd [2015] EWHC 3459 (Admin), 2 December 2015
11.18 R(Leckhampton Green Land Action Group Ltd) v Tewkesbury Borough Council[2017] EWHC 198 (Admin), 9 February 2017
11.19 Oadby & Wigston Borough Council v SSCLG and Bloor Homes Limited [2016] EWCA Civ 1040, 27 October 2016

**CD12 Landscape Documents**

12.1 Worcestershire County Structure Plan (1996 - 2011) Areas of Great Landscape Value – chapter 5
12.2 Photography and photomontage in Landscape and Visual Impact Assessment. Advice note 01/11 (The Landscape Institute, 2011)
12.3 An Approach to Landscape Character Assessment (Christine Tudor, Natural England) 2014
12.4 Worcestershire County Landscape Character Assessment Technical Handbook (2013)
12.5 Worcestershire Historic Landscape Characterisation (2012)
12.6 Hedgerow Regulations – a guide to the law and good practice (1997)
12.7 BSNTG Landscape Review Statement (Pleydell Smithyman 2017)
12.8 Mid Severn Sandstone Plateau National Character Area (NCAP66)

**CD13 Heritage Documents**

13.1 HEGPA. Note 3 – Setting of Heritage Assets, Historic England, 2015
13.2 National Heritage List for England ref: 1166700
13.3 Worcestershire Revised Edition (Buildings of England) (Pevsner Architectural Guides: Buildings of England) 2007 by Alan Brooks (Author), Nikolaus Pevsner (Author)
13.4 Historic England: Seeing the History in the View: A Method for Assessing Heritage Significance in Views (2011)
13.5 Wyre Forest District Council Local Heritage List for Bewdley

**CD14 Air Quality Documents**

14.1 Air Quality Consultants report referenced J2943A/3/F3 "Air quality note: Bus emissions in Bewdley AQMA" (August 2017)
14.2 Ricardo Energy and Environment Independent Review (August 2017)

14.3 Air Quality Consultants report referenced J2943B/4/F2 "Response to Comments from Ricardo Energy and Environment" (September 2017)
14.4 Air Quality Consultants report referenced J2943B/6/F1 "Brief Note on Bus Emissions at Varying Speeds" (September 2017)
14.5 Air Quality Consultants report "Emissions of Nitrogen Oxides from Modern Diesel Vehicles" (January 2016)
14.6 AQ section of the PPG
14.7 International Council on Clean Transportation, "NOx emissions from heavy duty and light-duty diesel vehicles in the EU: Comparison of real-world performance and current type-approval requirements," (December 2016)

**CD15 Other General Planning Documents**

15.1 The Lakes Road Development Assessment –Wyre Forest Transport Model (CH2M) (July 2016)
15.3 DCLG consultation document "Planning for the right homes in the right places" (September 2017)
15.5 Planning Advisory Service website – 5YHLS FAQs
15.6 SWDP, Inspector's Report, Annex A (February 2016)
15.7 LPEG Appendix 6 'Housing and Economic Development Needs Assessment' Revised NPPG Text' March 2016
15.8 White Paper: Fixing our broken housing market (February 2017)
15.9 Housing Delivery in Wyre Forest 2015/16

**CD16 Relevant Post Appeal Correspondence**

16.1 3rd Party Final Comments
16.3 WCC to Prime Email – Development Proposals
16.4 Email from Adam Mindykowski regarding Landscape Viewpoints
16.5 Email from Peter Bassett regarding Landscape Viewpoints
16.6 Correspondence from Dr Suzanne Mansfield to NE