POLICE
Surrey & Sussex
Working Together

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Our Ref 17.003
Your Ref CM/1/17/OUT

13th February 2017

Claire Potts
Planning Department
Arun District Council
Maltravers Road
Littlehampton
West Sussex
BN17 5LF

Dear Ms Potts,

Proposed Outline application with all matters reserved for the erection of up to 300 dwellings & 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 , together with open space & ancillary works, including car parking & drainage arrangements.

I write on behalf of Sussex Police with regard to the planning application CM/1/17/OUT which seeks to deliver 300 homes on the Land West of Church Lane & South of Horsemere Green Lane, Climping.

Sussex and Surrey Police have been working proactively with a number of Local Authorities outlining our infrastructure needs for relevant development plan periods. We have recently updated our methodology for our infrastructure requests to provide clarity and up to date details of our current infrastructure capacity. The additional information I now provide has previously been used only as background information however will now be included with all future funding requests submitted by Sussex and Surrey Police.

Our new methodology has been developed through a joint partnership with Leicestershire and Thames Valley Police and is Community Infrastructure Levy compliant as considered by Ian Dove QC. There are recent appeal decisions in favour of Police contributions and High Court judgements supporting this methodology which I attach. I will go into further detail on the various items of infrastructure and provide evidence of their compliance with Regulation 122 tests.

The additional population generated by this development will inevitably place an increased demand upon the existing level of policing for the area. In the absence of developer contributions towards the provision of additional infrastructure, Sussex Police would be unable to retain the high level of policing that is currently delivered in the Arun area and would therefore OBJECT to the development proposed.

ARUN DISTRICT COUNCIL CM/1/17/OUT

1. Overview of Financing Arrangements

Police Forces are funded by similar if not identical Central Government methods used to agree funding for all Local Authorities or other public services. The funding allocated to Police Forces via Home Office grants, the Council Tax precept and other specific limited grants is insufficient to fund in full requests for capital expenditure. Capital programmes are funded generally from a mixture of asset disposal (a finite option), redirection of revenue funding (with implications for operational policing), general capital grants or general reserves and prudential borrowing. Prudential borrowing is not a nil cost option, with any borrowing required to be repaid from revenue/income; repayments from this source having implications for the delivery of operational policing in a similar vein to redirection of revenue funding.

Funding settlements for the Police are determined in accordance with the current funding formulae which incorporates a number of criteria including historical population forecasts. Accordingly there is a lag between the level of revenue funding potentially available and the population to be policed.

The Government continues to provide annual Capital Grant to Forces which in the case of Sussex for 2016/17 and 2017/18 funds 5% of the capital programme in any one year. The majority of Forces fund the balance of their capital expenditure either through PFI arrangements or Prudential Code borrowing. Although PFI continues to be used by some Forces it is a diminishing resource with various shortcomings.

Police funding is divided into revenue and capital funding. The revenue funding stream relates broadly to the day-to-day running costs of the Force, that is the payment and management of staff, the ongoing costs relating to running and maintaining buildings and equipment and repayment of loans used to fund capital projects. The capital funding stream relates to the provision of additional buildings, information technology, vehicles, equipment and other infrastructure items required for assets including; existing police services and increased pressures and requirements placed on the Force as a consequence of growth in demand for services. Funding received by the Police via the Council Tax precept is generally used for revenue purposes and is not directed towards capital projects/programmes on the basis that directing funds towards such projects would diminish that available for the delivery of front line policing services.

The Police Crime Commissioner holds a shared responsibility with the Chief Constable for providing effective financial and budget planning for the short, medium and longer term. In consultation with the Chief Constable, the PCC is required to set a budget for the forthcoming year. However, the pressure on revenue funding is such that it is extremely unlikely that it could be made available to finance significant capital projects; in practical terms the revenue budget is insufficient to fund infrastructure projects.

It should also be noted that even with revenue raised from the Council Tax precept there has been a recognised funding gap created by inflation and a continuing expansion of the role of the Police service and the demands placed upon it. While there has been investment from central Government, this is often ring-fenced for particular initiatives and has not kept up with the demand for services. This means that Police Forces need increases in the Council Tax precept simply to 'stand still' in terms of costs of service provision. It is not possible to raise sufficient Council Tax precept to cover all inflationary increases and other costs pressures. A £5 (3.4%) increase in Council Tax precept to the Police has been approved for the 2016/17 budget however any increase of over 5% requires approval at referendum.

Therefore the funding gap is likely to increase, with less money for revenue spending, let alone capital projects. At the same time Police Forces suffered reductions in the level of the annual Police Grant (revenue) and Capital grants. As shown in table 3 (Revenue and Capital Budget 2016/17) Sussex Police were required to deliver £35 million in savings over 4 years which will limit capital funding for new infrastructure requirements.

TABLE 3: Estimated Annual Savings to 2019/20

	2016/17 £'000	2017/18 £'000	2018/19 £'000	2019/20 £'000	Total £'000
Savings Requirement	11,753	8,481	7,418	7,527	35,179

The Financial Summary for the draft Sussex Police Revenue Budget and Capital Programme for 2016/17 is set out below:

Total Non-Pay includes the following (although is not limited to):

- Buildings and Premises:
  - Repairs and maintenance of premises
  - Energy costs and water services
  - Utilities
  - Rent and service charges
  - Business Rates
  - Contract cleaning
  - Buildings and property insurance
- Transport
  - Vehicle service, maintenance and repairs
  - Vehicle fuel
  - Vehicle hire charges
  - Essential/casual car user costs
  - Travel expenses
  - Transport insurance
- Supplies and Services
  - Printing & stationery
  - Office Furniture and materials
  - Catering contracts
  - Clothing and uniform
  - Outsourced custody costs
  - Forensic costs
  - Investigation costs
  - Interpreters / translators / doctors
  - Telecommunications
  - Radios and airwave
  - Communications and computing
  - Specialist operational equipment
  - Operational expenses
  - Court and legal costs
  - Subscriptions and licences
  - Consultancy fees
  - Bank charges
  - Audit fees
  - Accommodation
  - Subsistence
- Third Party Payments
  - Payments to government bodies and agencies
  - Collaboration payments
  - PNC / PND costs (police national computer / database)
  - Third party insurance costs
  - NPAS (National Police Air Service)

Draft Revenue Budget 2016/17 — **Appendix A**

Spend Area	£'000
Employees	
Police Officer pay	125,222
Overtime	4,706
Pension Employers Contribution	26,288
Total Police Pay	**156,216**
Police Staff Pay	67,267
Police Staff Pension Deficit	1,233
PCSO Pay	9,668
Total Police Staff Pay	**77,168**
Other Employee Costs	1,533
Ill Health Pensions	2,855
Total Pay Costs	**4,388**
Buildings And Premises	9,508
Transport Costs	5,375
Supplies and Services	38,327
Total Non Pay	**53,210**
Gross Operational Delivery Budget	**290,982**
Fees, Charges & Specific Grants Income	(33,720)
Net Operational Delivery Budget (before savings)	**257,262**
Savings Requirement	(11,753)
Net Operational Delivery Budget	**245,509**
Office of PCC Budget	1,243
Community, Victims & Restorative Justice	3,132
Grant Income (Victims & Restorative Justice)	(1,498)
Financial Provisions & Reserve Transfers	2,093
Total PCC retained Budget	**4,970**
Total Police Fund	**250,479**
Financed by :	
Police Grant	97,828
Ex DCLG Grant	53,893
Council Tax Support Grants	13,202
Collection Fund Surplus/(Deficit)	0
Precept	85,557
Total Financing	**250,479**

Council tax precept

2. Proposed Capital and Investment Budget

Proposed Capital and Investment Programme and Financing

	2016/17 £'000	2017/18 £'000	2018/19 £'000	2019/20 £'000	Total £'000
Home Office Capital Grant	1,068	1,068	1,068	1,068	**4,272**
Revenue Contribution	2,517	2,025	2,025	2,117	**8,684**
Reserves and Receipts	23,229	11,854	7,957	2,850	**45,890**
Total Capital and Investment Programme	**26,814**	**14,947**	**11,050**	**6,035**	**58,846**

The capital and investment plans to 2020 require no additional borrowing but subject to assumptions on the profile of delivery of the programme and achievement of the capital receipts, the capital and investment reserves will be nearly exhausted by 2020, i.e. there is limited headroom for further new investment requirements. These could be significant in relation to new Emergency Services Network, further phases of ICT Infrastructure and enablement project, Digitalisation of Policing Services and Criminal Justice. The reducing level of investment reserves over the four year period means prioritisation of capital schemes may have to be reviewed and the current approach of not borrowing may have to be revisited before 2020 and/or provision made in revenue budget for financing of capital investment. The safe policing of new urban extensions depends on having revenue capacity to employ front line staff, which would compete with the need to provide the essential infrastructure outlined in this request.

3. Assessment and Request

Sussex Police has undertaken an assessment of the implications of growth and the delivery of housing upon the policing of the Arun District and in particular the major settlements in the 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 acknowledgment as a fundamental requirement to the sound planning of the District.

The additional population generated by the development will inevitably place an additional demand upon the existing level of policing for the area. In the absence of a developer contributions towards the provision of additional policing infrastructure the additional strain placed on our resources would have a detrimental impact on Forcewide policing.

The funding request will now provide the most recent annual statistics for crime/incidents in Arun which will be compared to the number of existing households. This provides an incident per existing household within Arun which can then be used as the background to the various items of infrastructure outlined in this funding request.

Firstly, I would also highlight a recent appeal decision for a scheme in Benson (APP/Q3115/A/14/2222595). In their assessment of the requests submitted for developer contributions, the Inspector commented (paras 51 - 52)

> *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 these 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 enure 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.

The Police regularly take 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.

• Infrastructure is not a narrowly defined term and the definition in the Planning Act 2008 provides a non exhaustive list to the extent that there is no difficulty in the proposition that contributions towards Police infrastructure can be within the definition.

• Infrastructure is not limited to buildings and could include equipment such as vehicles, communications technology, and surveillance infrastructure such as CCTV.

The submission set out below is based on the same methodology put before, and accepted by the Inspector above, in line with the Inspectors comment requests for contributions towards training have now been omitted.

4. Current Policing requirements in Arun

The recorded incidents in Arun account for a total of 9.4% (risen from 8.8% previous year) of incidents Sussex Police currently attended last year in the County (2015/16 incident records). There are 58,964 calls to the non-emergency switchboard in Arun and 43,652 were transferred to the non-emergency contact center. A total of 18,842 calls are received directly to the emergency assistance number (999) per year in Arun.

The 2011 census listed 66,700 households in the Arun District and taking into account net completions since this has increased by approximately 2662 (AMR 2014/15). There is no 2015/16 AMR available therefore the average completions per year (504) has been used for 2015/16.

The 2011 census listed the population of Arun as 149,518 which represented an average household consisting of 2.24 persons.

At present 69,362 households / 155,370 persons generates an annual total of 44,203 incidents per year that require a Police action. These are not necessarily all "crimes" but are calls to our contact centre which in turn all require a Police response/action. Effectively therefore placing a demand on resources. It should be noted that the total number of crimes recorded in this period was 9,209 which is only 21% of all the recorded incidents.

Taking into account the number of recorded incidents and current number of households this results in 0.637 incidents per household and 0.284 incidents per person that require police attendance in Arun each year. Sussex Police have a duty to respond to all incidents and many of these incidents are not recorded crimes. Sussex Police deliver crime prevention and presence, attendance and service lead at emergencies eg RTA's or flooding, counter terrorism and community 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.

5. Breakdown of predicted incidents as a result of population increase in Arun

The proposed development of 300 units would have an approximate population of 672 people (at 2.24 persons per household). Applying the current ratio of "incidents" to population then the development would generate an additional 191 incidents per year for Sussex Police to attend (0.284 x 672).

In total the Local Authority of Arun is served by; (all figures = FTE)

- 102 Uniformed Officers broken down as follows:
  - 6 NRT
  - 2 Staff

- 75 NPT
- 4 Police Enquiry officers
- 17 NPT (PCSO)

- 5 Dedicated support staff

The West Sussex division has 619 officers (SOCO, Forensics, Major Crime Unit) which cover the region (this excludes the 102 dedicated officers listed above. Recorded incidents in Arun amount to 20.3% of incidents in West Sussex therefore it is reasonable to allocate divisional 125.6 officers to the Arun District.

- 125.6 Divisional officers

Central staffing provision is provided and drawn upon when required. I have included the major support staff departments of Communications, Human Resources and Shared Business Services, which are all services provided force wide. There are 685 support staff in these three departments. Again utilising the ratio of incidents in the County (8.8%), 60 support staff are required to support the existing population of Arun.

- 65 Support Staff

Currently 44,203 incidents are attended by 227.6 officers per year in Arun which is a ratio of 194.2 incidents per officer, per year. To retain this current ratio of 194.2 incidents per officer per year, an additional 191 incidents per year would require 1 additional officers (98.4% of an officers workload). The expected incidents generated by this development amount to 98.4% of a FTE police officers workload.

Additional officers/staff required as a result of 300 additional houses

Total Additional Officers Required	0.98	191 (expected No. incidents arising from development) / 194.2 (No. incidents attended per year by an officer)
Total Additional Support Staff (Local/Central)	0.28	Existing ratio of support staff / police officers

6. COSTS

In order to mitigate against the impact of growth Sussex Police have calculated that the "cost" of policing new growth in the area equates to **£44,772.52** to fund 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 represents a pooled contribution towards the provision of new infrastructure to serve the site and surrounding area. The pooling of contributions towards infrastructure remains appropriate under the terms of the CIL Regs, provided this does not exceed 5 separate contributions and subject to other regulatory tests.

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

The contribution will mitigate against the additional impacts of new housing development in Arun because our existing infrastructures do not have the capacity to meet these and because like some other services we do not have the funding ability to respond to growth.

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

STAFF SET UP

The basic set up costs of equipping and training of staff;

OFFICER/PCSO			
Uniform	£873	0.98	£855.54
Radio	£525	0.98	£514.50
Workstation/Office Equip	£1508	(1508)*0.98	£1477.84
Police Staff			
Workstation/Office Equip	£1508	0.28	£422.24
TOTAL COST			**£3270.12**

Sussex Police would utilise the contribution in the following manner;

- **£2847.88** as a maximum of 1 of 5 pooled payments towards the costs of an additional officer to work in the Yapton neighbourhood policing team.
- **£422.24** as a maximum of 1 of 5 pooled payments towards the cost of 1 additional support staff member to be based at Littlehampton Police station.

It should be noted that these are necessary start-up capital costs incurred by Sussex Police to officers and staff to undertaking their role. The Planning Inspector in the attached appeal (APP/Q3115/A/14/2222595) considered these start-up costs were comply with regulation 122 of the CIL regulations and necessary infrastructure for policing.

PREMISES

At present policing within the Yapton Neighbourhood Policing Team is delivered from Littlehampton Police station. As outlined in the Police Crime Commissioners Estate Strategy 2013-2018 Littlehampton Police station is to be reprovided. This project has currently been delayed however will be brought forward in the next 5 years and will be outlined in the emerging Estate Strategy 2017-2022.

To estimate approximate costs for new floor space Sussex Police have used Saxon House in Newhaven as an example. This is a new build facility where we re-sited 6 police officers and PCSO's from the old Police Station to a new facility shared with East Sussex Fire and Rescue and Lewes District Council. We have 101m of sole use and shared use of communal areas. For new buildings such as Saxon House the cost is between £2500-3000/sqm. Sussex Police normally operate a policy of adapting existing building to form new floorspace for policing purposes. The cost of adaption would be lower at approximately £1250/sqm. The figure of £1600 is derived cost of adaptation/new build (Sussex Police operate an estate policy of delivering new accommodation principally through the adaptation of existing buildings as opposed to new build at a 80:20 ratio.

Sussex Police are required to maintain a high capacity of accommodation for staff and officers, with any additional capacity delivered via new works to provide floor space. Each new officer/member of staff is thereby allocated 16.8sqm (101sqm / 6) of floor space (workstation, storage, locker room etc).

This development requires 0.98 additional officers to maintain the existing level of policing in the District. The cost of sitting this officer at the re-provided Littlehampton Police Station would therefore be **£26,342.40** (£1600 x 16.8 x 0.98).

VEHICLES

A vital part of providing effective policing to the residents of Arun is maintaining the large fleet of vehicles. The three year pro rata lifetime cost of a standard vehicle is;

Patrol Vehicle – **£31,680**

Current fleet deployment within the Arun administrative area (serving 69,362 households) currently consists of 27 vehicles.

This equates to a cost of £12.33 (£31,680*27) / 69,362 per household. Accordingly therefore in order to maintain the existing level of fleet provision the development would generate a required contribution of **£3,699** (12.33 x 300)

- **£3,699** as 1 of 5 pooled payments towards the purchase of an additional vehicle for use by the Yapton Neighbourhood Policing Team.

Current fleet deployment within the Arun administrative area (serving 69,362 households) is broken down into the following departments (Neighbourhood Response Teams, Local Supports Teams, Crime Management, Neighbourhood Police Team, and Local Command).

MOBILE IT / DATA TERMINAL

Provision of mobile IT capacity to enable officers to undertake tasks whilst out of the office, thus maintaining a visible presence. Cost of each item - **£1,500**, therefore for this development (which generates 0.98 additional uniformed officers, the cost would be **£1,470 (1500 x 0.98)**.

- **£1,470** as a maximum of 1 of 5 pooled payments towards the purchase of an additional Mobile IT kit for officers working within the Yapton Neighbourhood Policing Team.

ANPR CAMERAS

Automatic Number Plate Recognition (ANPR) Cameras – Sussex Police would recommend a roll out ANPR Cameras throughout the area. There is a limited budget for this at present but a requirement to roll out more cameras. The number and location of cameras is driven by the scale and location of the proposed development and the road network in the area. Current coverage in Arun is limited. An assessment based on the significant planned growth within Arun District has been undertaken and it has been assessed that there is a requirement for additional ANPR camera coverage in the area to mitigate the impact of planned growth. Each camera is costed below, and requirement is assessed on the basis of the scale, location, and proximity to the road network of the proposed development. Operationally it has been determined that this development should support the contribution of **£8,500** towards the provision of ANPR in the area.

£8,500 for the cost of one fixed Site ANPR camera, intelligent dual lane reading Vector camera with infrastructure in place for single carriageway road. (1 x 8,500)

The precise location will be determined with regard to operational requirements. Sussex Police are happy to confidentially share this information with the Council regarding the precise location in due course.

RADIO COVER/CAPACITY

It is necessary to expand the capacity of our existing system to cater for additional calls as a result of the development. The development will increase the use of our radio system which is maintained at existing capacity by investing in additional hardware including servers, system refinement signal strengthening and improved transmission technologies. We spend £30,000 pa adding such capacity to the existing system in Arun which serves 69,362 households. Annual cost of these capacity increases to an existing household is £0.43. Capacity improvements will be undertaken annually and without these the system will fail to adequately carry both existing and additional calls as a result of this additional development. The additional cost of the additional capacity in relation to houses in this development will be **£129.**

The impact of the development on Policing with reduced Airwaves capacity will be increased attendance times, delays in message passing and the implications of this for attendance and apprehension. Occupiers and those that represent them will expect existing performance and attendance levels to be maintained.

CONTROL ROOM TELEPHONY

There are 58,964 calls to the non-emergency switchboard in Arun and 43,652 to the non-emergency contact center. A total of 18,842 calls are received directly to the emergency assistance number (999) per year in Arun. An additional 300 homes would generate an additional 255 calls per year to the non-emergency switchboard.

Police control room call handling equipment is used to capacity at peak times. Our call handling centre at Force HQ Lewes directs all calls and deploys resources to respond and continue monitoring. We know the capacity of the technology and the calls it currently handles [fixed around minimum times with callers] and will be expected to handle as a result of the proposed development. In order to deal with additional calls as a result of additional planned development across our sub region additional telephony, lines, licenses, workstations and monitoring screens will be required. This development would provide 300 additional houses. An approximate cost of maintaining this network is estimated at £4.54 per dwelling therefore this development should contribute **£1,362** towards the additional equipment needed to answer the additional calls.

Police preference is to use this money when the existing telephony is extended and renewed in 2018 however this does not prevent procurement of additional capacity in the meantime as a result of the impact of this development. There will be a call handling impact and delays in response times if we attempt to serve this development with our current telephony systems.

7. Compliance with National Policy and CIL Regulations

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.

Aruns publication version of the emerging Local Plan (2011-31) states that "In general, Arun is a relatively safe place with low incidence of crime, although fear of crime remains a significant issue which is highlighted in the Sustainable Community Strategy. Crime rates are relatively high in parts of Bognor Regis and Littlehampton, with part of River Ward, Littlehampton ranked within the worst 10% areas in England, and a number of other areas within Littlehampton and Bogor Regis falling within the worst 20%".

Policy DM1 (Aspects of form and design quality) lists 'Crime prevention' as the 6th consideration for new development proposals. When considering any application for development the Council will have regard to the following aspects:

6. Crime prevention

Provide security measures that make places feel safer. This shall be achieved through natural surveillance and human presence by locating building and play areas along public routes and spaces, and making a clear

division between private and public land to foster a mutual protection for the territorial belonging. With respect to crime prevention, regard shall be had in particular to the document 'New Homes 2010 – Secured by Design' and the 'Safer Places – The Planning System and Crime Prevention".

There is no dedicated Government funding to comprehensively cover the capital costs associated with policing the associated new development. Unless contributions from 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.

Developer contributions are therefore necessary to ensure development is in line with the wider objectives of sustainable development as set out in national and local planning policy. 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/K2420/W/15/3004910 provides further support for financial support for the capital costs of additional policing infrastructure arising from new development.

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

This methodology shows that this development would require significant capital expenditure from Sussex Police which otherwise would be allocated to essential revenue costs for front line policing purposes. A financial contribution is thereby essential to make this development acceptable in planning terms and to ensure accordance with the principles of sustainable development outlined in the NPPF.

2. Directly related to the proposed development

There is a functional link between the new development and the contributions requested. Put simply without the 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 identified above has been specifically identified as infrastructure required to deal with the likely form, scale and intensity of incidents that the development will generate.

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

The proposed developer contribution is proposed to help achieve a proportionate increase in police infrastructure to enable Sussex Police to maintain its current level of service in the area. As stated the contribution would assist in the provision of necessary infrastructure which has been identified through consultation with Inspector Marc Clothier (Arun) provide an appropriate level of policing to serve the proposed development and maintain an appropriate level of community safety.

A clear numerical approach has been demonstrated which is supported by case law and recent appeal decisions by the Planning Inspectorate. The various items of infrastructure requested are considered CIL compliant and are necessary to enable new officers to undertake their role to provide policing to existing and future residents of the Arun District.

I would also highlight two recent appeal decisions in Leicestershire (APP/F2415/A/12/2179844 & APP/X2410/A12/2173673, Enclosed). 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;

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 confirms 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 NPPF;

Paragraph 17 sets out the core planning principles and states that planning should, inter alia:

"...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"

Paragraph 58 states that local and neighbourhood plans policies should aim to ensure that developments, inter alia;

"create safe and accessible environments where crime and disorder, and the fear of crime, do not undermine quality of life or community cohesion"
Paragraph 69 sets out the role of the planning system in facilitating social interaction and creating healthy, inclusive communities and states that planning policies and decisions should aim to achieve places which promote;

"safe and accessible environments where crime and disorder, and the fear of crime, do not undermine the quality of life or community cohesion"
Paragraph 156 states that local planning authorities should set out strategic priorities in the Local Plan to deliver;

"...the provision of health, security, community and cultural infrastructure and other local facilities..."

I trust this sets out sufficiently Sussex Polices' request for infrastructure contributions relating to this development of 300 homes in Climping.

Thank you for the continued support of officers in securing policing infrastructure contributions to enable Arun to remain a safe, vibrant community for future generations.

Yours sincerely



Andrew Taylor
BA (Hons), MSc, MRTPI
Joint Commercial Planning Manager
Sussex and Surrey Police

Part A

'What', 'where' and 'when' of infrastructure requirements to relevant to application reference CM/1/17/OUT

TOPIC	INFRASTRUCTURE REQUIREMENT	AREA	LEVEL OF PRIORITY (CRITICAL / NECESSARY / PREFFERED)	TIMING OF DELIVERY			COST	INDICATIVE FUNDING GAP
				SHORT TERM (2017-2020)	MEDIUM TERM (2021-2028)	LONG TERM (2029 ONWARDS)		
Policing	Radios	Yapton	Necessary	x	x		£514.50 (£525 x 0.98)	£514.50
	Workstation/ Office Equipment for Police Officers	Yapton	Necessary	x	x		£1477.84 (1508) x 0.98)	£1477.84
	Workstation/Office Equipment for Police Staff	Yapton	Necessary	x	x		£422.24 (£1508 x 0.28)	£422.24
	Uniform	Yapton	Necessary	x	x		£855.54 (£873 x 0.98)	£855.54
	Adaption/improvements to Bognor Police Station	Littlehampton	Critical		x		£26,342.40 (1600 x 16.8 x 0.98)	£26,342.40
	Pooled payment towards contribution for an additional patrol vehicle	Yapton	Necessary		x	x	£3,699 ((£31,680*27) / 69,362))*300	£3,699
	Mobile IT / Data Terminal	Yapton	Necessary	x			£1470 (£1500 x 0.98)	£1470
	Fixed Site ANPR camera - single carriageway (infrastructure in place)	Yapton	Necessary		x		£8,500 (1 x £8,500)	£8,500

	Radio Cover/Capacity	Yapton	Critical	x	x		£129	£129
	Control Room Telephony	Yapton	Critical	x	x		£1,362	£1,362
TOTAL								**£44,772.52**

Enc.

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.

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> 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*

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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.

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Department for Communities and Local Government

Mr R J Gardner
GVA Grimley Ltd
3 Brindley Place
BIRMINGHAM
B1 2JB

Our Ref: : APP/X2410/A/12/2173673
Your Ref: Jelson Barrow on Soar

14 May 2013

Dear Sir,

TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78
APPEAL BY JELSON HOMES
LAND AT MELTON ROAD, BARROW UPON SOAR, LEICESTERSHIRE, LE12 8NN
APPLICATION REF: P/10/1518/2

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Inspector, Keith Manning BSc (Hons) BTP MRTPI, who held a public local inquiry on 7 days between 9 October 2012 and 16 January 2013 into your clients' appeal against the refusal of Charnwood Borough Council ("the Council") to grant outline planning permission for residential development at land at Melton Road, Barrow Upon Soar, Leicestershire, LE12 8NN, in accordance with application ref: P/10/1518/2.

2. On 18 June 2012, the appeal was recovered for the Secretary of State's determination, in pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act 1990, because it involves a proposal over 150 units on a site of more than 5 ha which would significantly impact on the Government's objective to secure a better balance between housing demand and supply and create high quality, sustainable mixed and inclusive communities.

Inspector's recommendation and summary of the decision

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

Matters arising following the close of the inquiry

4. Nicky Morgan MP wrote to the Planning Inspectorate on 2 April 2013 to point out that the Council's Cabinet would be considering their draft Core Strategy document at a meeting on 11 April with a view to approving it for consultation, and the Parish Council

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wrote to the Secretary of State on 7 May 2013 drawing attention to the revocation of the *East Midlands Regional Plan 2009 (RS)* and to the Council's approval of the Core Strategy for public consultation. Copies of this correspondence can be obtained by written application to the address at the bottom of the first page of this letter, and the points raised are covered in paragraph 5 below.

Policy considerations

5. In deciding this appeal, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise. In this case, following the revocation of the RS with effect from 12 April 2013, the Development Plan consists of the saved policies of the Charnwood Local Plan 1991-2006. The Secretary of State does not consider that the revocation of the RS raises any matters that would require him to refer back to the parties for further representations prior to reaching his decision on this appeal, and he is satisfied that no interests have thereby been prejudiced. He has also had regard to the fact that the Council is progressing work on its Core Strategy. However, as that is at an early stage in its preparation, he gives it little weight.

6. Other material considerations which the Secretary of State has taken into account include the National Planning Policy Framework (The Framework); *Technical Guidance to the National Planning Policy Framework* (March 2012); Circular 11/1995: *Use of Conditions in Planning Permission;* and the *Community Infrastructure Levy (CIL) Regulations 2010* as amended.

Main issues

7. The Secretary of State agrees with the Inspector that the main issues in this case are those identified by the Inspector at IR219.

Housing land supply

8. The Secretary of State agrees with the Inspector that, for the reasons given at IR220-221, the presumption in favour of sustainable development set out in paragraph 14 of the Framework is engaged and the failure to demonstrate a 5 year supply of deliverable housing sites is a matter to which substantial weight must be accorded.

Sustainability

9. For the reasons given at IR222-232, the Secretary of State agrees with the Inspector's conclusion at IR233 that the appeal site's basic credentials in terms of natural resource conservation, potential for good design, choice of sustainable transport modes and scope for future improvement of public transport in response to demand are highly conducive to development of the type proposed. Like the Inspector (IR234), the Secretary of State recognises that other considerations impinge on the overall sustainability of the site, and he goes on to consider those individually below.

Highway safety

10. The Secretary of State notes (IR236) that the Highway Authority has not objected to the appeal proposals but that the junction of Grove Lane with Sileby Road/South Street does not provide the visibility to the left that, ideally, it should. Having carefully

considered the evidence summarised by the Inspector at IR235-243, the Secretary of State agrees with him (IR244) that it is appropriate to consider the matter of the safety of the Grove Lane junction in the round. He therefore agrees with the Inspector (IR244-245) that, despite its perceived deficiency in respect of visibility to the left, the junction operates safely and should not trigger prevention of the proposed scheme unless the impact of the proposed development on its continued safe operation would be demonstrably severe in the sense intended by paragraph 32 of the Framework.

11. Accordingly, for the reasons given at IR247-248, the Secretary of State agrees with the Inspector that it would not be unreasonable to conclude that the safety of the junction would not be materially diminished by the extra traffic from the proposed development. He also agrees with the Inspector (IR249) that, on the basis of the evidence seen by the Inspector, there would seem to be no reason why safety should be reduced for pedestrians or cyclists. Overall, therefore, he agrees (IR250) that the balance of evidence points to a judgement that highway safety would not be materially compromised by the appeal scheme and that only limited weight should be afforded to the perception of any such risk.

12. With regard to the site access itself (IR251-253), the Secretary of State agrees with the Inspector that there is no reason to disagree with the Highway Authority with regard to the need for a separate emergency access (IR252); and that no weight should be accorded to any potential deficiencies in the forward visibility to the access roundabout from the north east (IR253).

Traffic circulation in Barrow Upon Soar

13. Having regard to the Inspector's consideration of the traffic circulation issues arising from the concentration of traffic onto the listed Barrow Road bridge, and the periodic inundation of the alternative route via Slash Lane placing more pressure on the bridge when such flooding occurs (IR254-256), the Secretary of State agrees with the Inspector at IR257 that the key question is whether the extra traffic impact of the proposed development on flood days would be so severe as to render it untenable. Taking account of the Inspector's deliberations at IR258-264, including the appellant's off-site proposals to improve capacity through traffic management measures and the fact that the highway authority is satisfied with them, the Inspector concludes that he has seen no cogent evidence to suggest that the position would be untenable; and the Secretary of State sees no reason to disagree with that conclusion.

Flood risk

14. Like the Inspector, the Secretary of State considers that, despite the apprehension of local residents, the proposed development should not make matters worse in any significant way for the existing population (IR265-267) and may possibly improve the position for some existing householders (IR274). The Secretary of State also agrees with the Inspector (IR268) that, although the evidence produced so far has been sufficient to satisfy the Environment Agency that relevant objectives could be met, if more detailed investigation subsequently shows that they could not actually be satisfied, the development would not be able to proceed. Overall, for the reasons given at IR269-274, the Secretary of State agrees with the Inspector's conclusions at IR275-276 that there is no significant conflict with the intentions of the development plan or the Framework in respect of flood risk, and that any potential impact on foul

drainage and risk of surcharge arising from flooding of Fishpool Brook can be addressed by the imposition of conditions.

Infrastructure

15. Like the Inspector (IR301), the Secretary of State appreciates the local perception in the community of growth and consequent pressure. Nevertheless, having carefully considered the Inspector's deliberations on infrastructure provision at IR277-300 (and taking account of his conclusions on the terms of the planning obligation at paragraph 20 below), the Secretary of State agrees with the Inspector at IR 301 that the proposed development would provide the necessary mitigation, but little more, of its own impact and so should not lead to the deterioration in the quality of life which the Parish Council and others assert. He therefore also agrees with the Inspector (IR302) that the proposed development would not lead to a deterioration in the quality of life of existing residents sufficient to warrant dismissal of the appeal.

Accordance with the development plan and the Framework

16. For the reasons given at IR303-311, and taking account of the revocation of the RS, the Secretary of State agrees with the Inspector's conclusion at IR312 that the appeal scheme displays a very substantial degree of accordance with the development plan as a whole apart from the conflict with the protection of the countryside outside defined settlement boundaries - where the local plan intention has to be tempered by the presumption in favour of sustainable development in the Framework. The Secretary of State also agrees with the Inspector's more detailed conclusions with regard to accordance with the Framework at IR313-323.

17. Furthermore, like the Inspector, he has given careful consideration to the core principle with regard to "empowering people to shape their surroundings" (IR324), but he agrees with the Inspector that that pulls in the opposite direction to the presumption in favour of sustainable development that is engaged in this case. In coming to this conclusion, the Secretary of State agrees with the Inspector (IR326) that, as the aspiration to prepare a neighbourhood plan is clearly some time from fulfilment, with no firm programme for preparation, paragraph 14 of the Framework is inescapably influential in the context of the Framework as a whole, bearing in mind the sustainability of the appeal scheme in terms of its location and characteristics.

The planning balance

18. For the reasons given at IR327-337, the Secretary of State agrees with the Inspector at IR338 that, while there are harmful aspects to the appeal scheme to which weight should be accorded, these have to be weighed against the very substantial contribution to housing needs that the site is capable of providing in the context of an acknowledged shortage of suitable land and the inherent sustainability of the location. He also agrees that those aspects of the planning obligation which help to mitigate the impact of the proposed development should be accorded due weight and that, bearing in mind the policies of the Framework as a whole and the development plan taken as a whole, the presumption in favour of sustainable development should be the decisive factor.

Conditions and obligations

19. The Secretary of State has considered the Inspector's reasoning and conclusions on planning conditions as set out at IR197-215, and he is satisfied that the conditions as proposed by the Inspector and set out at Annex A to this letter are reasonable, necessary and comply with Circular 11/95.

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 4 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. For the reasons given at IR286, the Secretary of State agrees with the Inspector at IR287 that no weight should be given to the Travel Plan Penalty element of the planning obligation.

Overall Conclusions

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

Formal Decision

22. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendations. He hereby grants outline planning permission for residential development at land at Melton Road, Barrow Upon Soar, Leicestershire, LE12 8NN, in accordance with application ref: P/10/1518/2.

23. 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.

24. 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

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

26. A copy of this letter has been sent to the Council. A notification e-mail / letter has been sent to all other parties who asked to be informed of the decision.

Yours faithfully

JEAN NOWAK
Authorised by Secretary of State to sign in that behalf

ANNEX A

CONDITIONS

1. Details of the appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development begins and the development shall be carried out as approved.
2. Application for approval of the reserved matters shall be made to the local planning authority not later than three years from the date of this permission.
3. The development hereby permitted shall begin not later than two years from the date of approval of the last of the reserved matters to be approved.
4. No development shall commence until both a Master Plan in general conformity with the submitted Illustrative Masterplan 4045_ SK_ 001 rev E and a Design Code for the site have been submitted to and approved in writing by the local planning authority. Both shall substantially accord with the submitted Design and Access Statement Rev G. Any amendment to either shall be submitted to and approved in writing by the local planning authority. The Design Code shall address the following:-
    - i) Architectural and sustainable construction principles
    - ii) Character areas
    - iii) Lifetime home standards
    - iv) Car parking principles
    - v) Cycling provision including pedestrian and cycle links to adjoining land
    - vi) Street types and street materials
    - vii) Boundary treatments
    - viii) Building heights (which should be limited to a maximum height of three storeys, being located on the main street only, as indicated on pages 33/34 of the Design and Access Statement, and two storeys for the remaining parts of the development)
    - ix) Building materials
    - x) Provision of public open spaces (including timetable for implementation)
    - xi) Design of the site to accord with Secure by Design principles.
    - xii) Phases of development.

    Applications for approval of the reserved matters submitted pursuant to condition 2) above shall be in accordance with the Master Plan and Design Code as approved. In addition to the Design and Access Statement previously referred to, The Master Plan and Design Code and the reserved matters submitted for approval shall also accord with the principles set out in the following submitted documents: Flood Risk Assessment June 2010; Addendum to Flood Risk Assessment January 2011; Ecological Appraisal June 2010; Bats in Trees Addendum December 2010; Tree Assessment Report Rev A; and Badger Mitigation Strategy December 2010. Development shall be carried out in accordance with all matters approved pursuant to this condition.
5. Notwithstanding the generality of condition 4) above, the development hereby permitted shall be carried out in accordance with the following approved plans:

    4045_SK_005 Site Location Plan
    0940/SK/010 rev C Typical Badger Tunnel Detail
    0940/SK/013 rev E Melton Road Alternative Site Access Roundabout
    0940/SK/014 rev A Site Access Roundabout
    0940/SK/022 rev B Fishpool Brook Pedestrian Footbridge Crossing
    0940/ATR/002 rev A Proposed Site Access – Swept Path Analysis
    4045-L-01 rev D Types of Open Space

4045-L-02 rev A Extended Floodplain Area to be Regraded
4045-L-04 Public Open Space Phasing Plan
NTW/307/Figure 4 Rev A Indicative Floodplain Sections
NTW/307/Addendum Figure 1 Rev A Fishpool Brook Modelled Floodplain Extent

6. The maximum area of residential development on the site (excluding the areas of public open space, structural landscaping, meadow and SUDS) shall be defined on the Master Plan to be approved pursuant to condition 4) above and shall not exceed 8.32 hectares, and no more than 300 dwellings shall be constructed on the site.

7. No construction on any phase of the development hereby permitted shall commence until such time as the following details in respect of that phase have been submitted to and approved in writing by the local planning authority:

   a) Siting including details of proposed levels of ground surfaces and finished floor levels of all buildings and a number of selected typical sections across the phase.

   b) A landscaping scheme including details of all trees and hedgerow to be retained, full planting specification, timing or phasing of implementation, services above and below ground; and a landscape management plan covering a minimum period of 10 years following completion of the development. Any trees or plants removed, dying, being severely damaged or becoming seriously diseased within 5 years of planting shall be replaced in the following planting season by trees or plants of a size and species similar to those originally required to be planted;

   c) Treatment of all hard surfaced areas, including types and colours of materials street furniture, signing and lighting of all public spaces.

   d) Boundary treatment to all open areas where the site bounds other land (where confirmed in writing by the local planning authority to be required) including design, height, materials and colour finish.

   e) Details of the proposed standard signage for the footpaths at the points where footpath I 23 is proposed to be crossed by the new estate roads.

   f) Layout and design of children's play areas; Multi Use Games Area/skate park area and any other play/ recreation area within the development;

   g) Details of external lighting.

   Development shall be carried out in accordance with the approved details.

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

9. No development shall commence until drainage plans for the disposal of foul sewage have been submitted to and approved in writing by the local planning authority. No dwelling, in any phase of construction, shall be occupied until all the works necessary in respect of that phase have been implemented in accordance with the approved details.

10. No development shall commence until a surface water drainage scheme for the site, based on sustainable drainage principles and an assessment of the hydro-geological context of the development, including any requirement for the provision of a balancing pond, has been submitted to and approved in writing by the local planning authority. No dwelling, in any phase of construction, shall be occupied until all the works necessary in respect of that phase have been implemented in accordance with the approved details. The balancing pond, if required, shall be completed and be in operation before the occupation of the first dwelling on any phase.

11. No development shall commence until a scheme to install trapped gullies has been submitted to and approved in writing by the local planning authority. The scheme shall be implemented in accordance with the approved details. No dwelling, in any phase of construction, shall be occupied until all the works necessary in respect of that phase have been implemented in accordance with the approved details.

12. If during development contamination not previously identified is found to be present at the site then no further development should be carried out in that location until such time as a remediation strategy has been submitted to and agreed in writing by the local planning authority and the works carried out in accordance with the agreed strategy prior to re-commencement on that part of the site.

13. Prior to the commencement of development, a scheme for the protection of trees and hedges to be retained on site shall be submitted to and approved in writing by the local planning authority. The scheme shall include:-

    - Details of all trees and hedges to be retained on site.
    - Details of any works proposed in respect of any retained trees and hedges on site.
    - Details of operational and physical measures proposed for the protection of trees and hedges
    - Details of any ground works that are to be carried out within 10 metres of any tree or hedge identified as being retained.
    - Details of the methodology to be employed when carrying out ground or other works within 10 metres of any tree or hedge to be retained.

    Development shall be carried out in accordance with the approved details.

14. No development shall commence on any phase until the tree/hedge protection measures for that phase approved pursuant to condition 13) above have been fully implemented. The approved tree/hedge protection measures shall be retained and maintained in their approved form until development on the phase in which they are located is complete. Within the areas agreed to be protected, the existing ground level shall be neither raised nor lowered, and no materials or temporary building or surplus soil of any kind shall be placed or stored thereon unless approved as part of the details submitted to discharge the condition.

15. No development shall commence until a scheme of noise attenuation/mitigation measures (in order to reduce noise likely to be experienced in dwellings and private gardens from the use of the railway corridor to the south west of the site) has been submitted to and approved in writing by the local planning authority. No dwelling in any phase of the site identified by the scheme as being affected by railway noise shall be occupied until the required measures have been implemented in accordance with the approved scheme.

16. No development shall commence until details of the construction of the proposed access roundabout (as shown indicatively on drawing 0940/SK/013 Rev E) and the footpath/cycleway bridge across the Fishpool Brook (as shown indicatively on drawing 0940/SK/022 rev B) have been submitted to and approved in writing by the local planning authority. No dwelling on the site shall be occupied until the access roundabout and pedestrian bridge have been constructed in accordance with the approved details.

17. No development shall commence until a detailed scheme of works for the improvement of traffic flow at the Barrow Road Bridge of the type illustrated on WSP UK drawing numbered SK/017 Rev A has been submitted to and approved in writing by the local planning authority. No dwelling on the site shall be occupied until the improvement works at the bridge have been fully implemented in accordance with the approved details.

18. No development shall take place until a Construction Method Statement has been submitted to, and approved in writing by, the local planning authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:

i) the parking of vehicles of site operatives and visitors
ii) the routeing of construction traffic throughout the construction process and the mechanism for securing adherence to approved routes
iii) loading and unloading of plant and materials
iv) storage of plant and materials used in constructing the development
v) the erection and maintenance of security fencing
vi) wheel washing facilities
vii) measures to control the emission of dust and dirt during construction
viii) a scheme for recycling/disposing of waste resulting from the construction works
ix) precautionary measures to ensure that no badgers become trapped or injured during development work

19. No development shall commence until procedures have been initiated to upgrade the existing public footpaths I 23 and I 24 (part) beyond the edge of the meadow boundary to the eastern boundary of the application site to footpaths/cycleways. The upgrading works (including those approved through Condition 7) shall be completed prior to the occupation of 50% of the dwellings on the site.

20. No development shall commence until a scheme of electronic or other suitable signing to warn of flooding on Slash Lane has been submitted to and approved by the local planning authority. No dwelling on the site shall be occupied until the scheme has been fully implemented in accordance with the approved details.

21. No development shall commence until a scheme of public art to be delivered on site has been submitted to and agreed in writing by the local planning authority. Those elements of the approved public art scheme which are to be delivered on a particular phase of the development shall be delivered prior to the occupation of 80% of the dwellings in that phase.

22. No development shall commence until an assessment of the anticipated energy requirements arising from the development has been submitted to and approved in writing by the local planning authority. That assessment must demonstrate how a minimum of 10% of the energy requirements shall be secured from decentralised and renewable or low-carbon energy sources. Details and a timetable of how these measures are to be achieved, including details of any physical works on site, shall be submitted to and approved in writing by the local planning authority. The approved details shall be implemented in accordance with the approved timetable and retained as operational thereafter.

The Planning Inspectorate

Report to the Secretary of State for Communities and Local Government

by Keith Manning BSc (Hons) BTP MRTPI

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

Date: 13 March 2013

TOWN AND COUNTRY PLANNING ACT 1990

CHARNWOOD BOROUGH COUNCIL

APPEAL BY

JELSON HOMES

Inquiry opened on 9 October 2012

Land at Melton Road, Barrow Upon Soar, Leicestershire LE12 8NN

File Ref(s): APP/X2410/A/12/2173673

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File Ref: APP/ X2410/ A/ 12/ 2173673
Land at Melton Road, Barrow Upon Soar, Leicestershire LE12 8NN

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
- The appeal is made by Jelson Homes against the decision of Charnwood Borough Council.
- The application Ref P/10/1518/2, dated 12 July 2010, was refused by notice dated 9 December 2011.
- The development proposed is residential development.

Summary of Recommendation: The appeal be allowed, and planning permission granted subject to conditions

Procedural Matters

1. The Inquiry sat for seven days in total, from 9 October – 12 October and on 13 November 2012, and on 15 and 16 January 2013, having been unfortunately delayed in its completion by the serious illness of one of the parties' representatives. I visited the site and various other locations in Barrow Upon Soar, on an accompanied basis, on 6 December 2012.

2. For consistency, I use the spelling Barrow Upon Soar throughout. 'The Council' is a reference to the Charnwood Borough Council. 'The County Council' is a reference to the Leicestershire County Council and 'The Parish Council' is a reference to the Barrow Upon Soar Parish Council.

3. The application subject to appeal is in outline with all matters except access reserved for subsequent approval.

4. A Planning Agreement dated 4 October 2012 was submitted at the Inquiry, accompanied by a Deed of Variation dated 15 January 2013. This does not affect the substance of the Agreement, the signatories to which are Jelson Limited, the Council of the Borough of Charnwood and Leicestershire County Council.

5. The agreement provides for financial contributions in respect of Community Facilities, Healthcare, Policing, Education, Libraries, Pedestrian and Cycle Routes, Travel Passes, Travel Packs and Bus Shelters. It provides for a financial penalty in respect of the Travel Plan in prescribed circumstances.

6. The agreement also provides for the provision and maintenance of open space within the site and for the provision of Affordable Housing as part and parcel of the residential development proposed in accordance with an Affordable Housing Scheme to be approved by the Council prior to the commencement of the proposed development. 30% of the dwellings would be Affordable Housing as defined in the National Planning Policy Framework or any successor document.

7. A Statement of Common Ground (SoCG) between the Council and the appellant was agreed in May 2012 confirming a good measure of agreement across a broad spectrum of considerations. It lists the following as having been submitted in support of the application: Planning Statement (PS); Design and Access Statement (DAS); Transport Assessment (TA) , Addendum Transport Assessment (ATA), Framework Travel Plan (FTP), Updated Framework Travel Plan (UFTP), VISSIM Modelling Report (VMR), Stage One Road Safety Audit (RSA1); Flood Risk Assessment (FRA); Arboricultural Survey (AS); Ecological Survey (ECOS);

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Archaeological Information (AI); and an Acoustic Report (AR). There is also a submitted Addendum (AFRA) to the Flood Risk Assessment dated 17 January 2011. [The abbreviations are mine for the purposes of this report].

The Site and Surroundings

8. The site comprises approximately 15 hectares of agricultural land on the eastern edge of Barrow upon Soar. None of the land falls within the category of Best and Most Versatile. It is predominantly Sub-grade 3b with small pockets of Sub-grade 3c.[1]

9. The site fall into two distinct parts; a relatively low-lying area of meadow surrounded by mature hedgerows and semi-mature trees on its western side, associated with the line of Fishpool Brook and Breachfield Road; and a large sloping field surrounded by mature hedges and trees. The field slopes gently upwards towards the north-east and gives the impression of being part of a shallow bowl or valley side in the broader scale rural landscape beyond, with much of the existing built-up area of the village occupying a corresponding slope to the north-west. West of Fishpool Brook, houses on Breachfield Road stand elevated above much of their back garden areas, which are susceptible to flooding.

10. To the south, the site is bounded by the Midland Main Railway.

11. The site is traversed by two public footpaths.

Planning Policy

12. National Planning Policy, which is a material consideration, is contained in the Framework.

13. The development plan currently comprises the East Midlands Regional Plan (RSS) and saved policies of the Charnwood Local Plan 1991-2006 ('the local plan').

14. The Council's Core Strategy has not progressed since 2008 (Issues and Options stage) and it is common ground between the main parties that it should be accorded no weight in the determination of the appeal.[2]

15. It is common ground between the main parties that the Council's Supplementary Planning Guidance (SPG) documents *Leading in Design* and *S106 Developer Contributions* are relevant material considerations.[3]

16. While many policies in the development plan taken as a whole are relevant, an agreed range being set out in Section 4 of the SoCG, there are few which are in contention as policies which the proposed development would conflict with and these are confined to the local plan. The policies of the RSS were in force at the time of the Inquiry and remain in force at the time of my report. They may be accorded due weight on that basis. The following local plan policies merit explanation at this point, whereas other policies may need to be referred to and their gist explained at the relevant point in my conclusions. The text of the

[1] Doc 35
[2] SoCG paragraph 5.7
[3] Ibid paragraph 5.6

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following policies is reproduced in Appendix 2[4] to the evidence of Mr Thorley and elsewhere.

17. Local plan policy **TR/ 6** concerns the impact on highways of development on non-designated sites. Its first requirement (i) is that such development should not result in "unsafe and unsatisfactory operation of the highway system". This is not inconsistent in principle with the relevant intentions of the Framework, albeit paragraph 32 creates a test of "severity" for the residual impacts after mitigation that the local plan policy does not. The latter refers in its explanation to the "acceptability" and "unacceptability" of such impacts with relevant adopted standards to be fully taken into account.

18. Local plan policy **ST/ 1** is a multi-faceted policy concerning the development needs of the Charnwood Borough and, inter alia; promotes sustainable development; aims to conserve, protect and enhance those features of the environment particularly valued by the community; and seeks to protect the character and appearance of the countryside for its own sake, especially within areas of particularly attractive countryside and other areas of local landscape value. In principle, such intentions are not inconsistent with broadly equivalent intentions of the Framework.

19. Local plan policy **ST/ 2** effectively confines built development (subject to specified exceptions) to allocated sites and other land within identified limits to development. To the extent that such an intention supports the concept of development being plan-led, it is not inconsistent with the intentions and core principles of the Framework.

20. Policies **CT/ 1** and **CT/ 2** together seek to strictly control development in the open countryside, i.e. outside the development limits defined for settlements. Insofar as they recognise the intrinsic character and beauty of the countryside and seek to conserve environmental assets, the policies are not inconsistent with broadly equivalent intentions of the Framework.

21. A wide range of other relevant policies, including RSS policies, is listed in the SoCG, albeit with no suggestion of conflict. I refer to policies from this list only if it is necessary to do so.

Planning History

22. A previous application for residential development of the appeal site, Ref P/09/2376/2, was refused by the Council in March 2010 for nine reasons. In addition to concerns over the Grove Lane junction, these related primarily to an absence of certain supporting technical information and a number of site specific matters since addressed. It is common ground that none of the reasons concerned the principle of residential development on the site.

23. The application subject to appeal was refused for the following single reason:

"The existing junction of Grove Lane with South Street/ Sileby Road* is lacking in adequate visibility to the left out of Grove Lane. The proposal if approved would lead to increased dangers for road users and not be in the interests of highway safety. Accordingly, the development is contrary to policy TR/ 6 of the Borough of Charnwood Local Plan 2004." *(* NB For convenience, I refer to this throughout as 'the Grove Lane junction'.)*

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[4] A1a

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The Proposals

24. Although the application is in outline, considerable supporting information to explain and illustrate the intended manner of development of the site has been submitted, encapsulated in the Illustrative Masterplan.[5]

25. Within the envelope created by the existing boundary vegetation comprising hedgerows and trees, up to 300 dwellings of varying size and type would be constructed, arranged around a central loop road and access ways off. The loop would be designed to accommodate buses and access to the existing highway system would be via a new roundabout constructed on Melton Road at the north west extremity of the site, linked to an internal roundabout by a short stretch of road incorporating a badger tunnel and designed with the roundabouts to facilitate "run-over" for emergency access purposes in the event of carriageway blockage.

26. The public footpath crossing the site west to east would be retained, as would a route from Breachfield Road across to the south east extremity of the site, where the old footbridge across the railway has been demolished pending replacement by Network Rail. A new pedestrian/cyclist bridge across Fishpool Brook to Breachfield Road is proposed.

27. Open space would generally be disposed around the periphery of the site but a more substantial area of open space would correspond to the existing meadowland in the floodplain of the Fishpool Brook, the capacity of which would be increased by limited excavation and re-grading of the existing landform. A broadly equivalent area of open space would be created in the lower lying southern margin of the site near the railway. This would incorporate an attenuation pond. A multi-use games area, a play area and a community orchard would be located in the main area of open space in the south and west of the site.

Other Agreed Matters Defining the Common Ground

28. The SoCG sets out in detail what is agreed as common ground. The following points agreed by the main parties are salient:

- Following a lengthy period of negotiation and discussion between the appellant and officers of the Council, the application was reported to the Council's Development Control Committee in December 2011 with a recommendation for approval.

- The only robust and evidence-based housing targets for the Borough of Charnwood at present are those within the RSS and that these should be used to assess the five year supply for the purposes of the Framework. As at October 2011 the housing land supply for the period April 2012 to April 2017 was 2.63 years for the district as a whole. The position has not materially altered (for the better) since the application was refused and that it will not improve during the anticipated determination period of the appeal. Indeed, the August 2012 Addendum to the SoCG shows that as at June 2012, the supply position had worsened significantly, with only 1.98 years' supply of deliverable sites being available when a 20% buffer to compensate for under-

[5] Drawing No 4045_SK_001 rev E.

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delivery, as per the Framework, has been added to the base calculation. When divided between the Principal Urban Areas and the Non-Principal Urban Areas, this deficit equates to 0.59 years and 3.55 years supply respectively. It is common ground that the allocations in the local plan only cover the period to 2006 and are now expended. The Council will be unable to meet its needs on brownfield land alone and the majority of new housing will need to be on greenfield sites.

- Barrow Upon Soar is a sustainable location for development on the scale proposed. In the "Further Consultation" version of the emerging Core Strategy it is suggested as a "Service Centre", a higher order settlement for nearby villages with a range of community facilities including a supermarket, post office, primary school, secondary school, health centre, pharmacy, optician, library, cash points and public houses. It is suggested that the village could accommodate in the region of 500 new homes in the period to 2026.

- The site is within easy walking distance of the community facilities in the village centre of Barrow upon Soar, existing bus stops and the Barrow upon Soar railway station. It is also common ground that this gives ready access to the major centres of Leicester, Loughborough and Nottingham.

- The site is suitable and sustainable and that the proposals represent sustainable development for the purposes of paragraphs 14, 49, and 197 of the Framework and that the proposals comply with the intentions of paragraphs 37 and 38.

- The proposals accord with relevant policies of the RSS, notably Policy 3 and Policy 12, and that they will help to meet the housing needs of the district as set out in Policies 13a and SRS3.

- The proposals accord with a wide range of local plan policies but conflict with the intentions of policies ST/2, CT/1 and CT/2 which generally seek to restrict development in the countryside. Insofar as these policies concern the supply of housing land, it is common ground between the main parties that these should not be considered up-to-date in the context of paragraph 49 of the Framework bearing in mind the lack of a five–year supply of deliverable housing sites.[6]

- The residential development of the site is acceptable in principle.

- Save for the Grove Lane junction, the base data used in the preparation of the highways and transport assessments are robust and fit for purpose and that the inclusion of the FTP accords with the intentions of paragraphs 35 and 36 of the Framework.

- Save for the Grove Lane junction, all other impacts on the highways network would be satisfactorily mitigated by the package of highways measures proposed, including those for the Barrow Road Bridge.

[6] SoCG paragraph 6.12

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- Save for the impact on the Grove Lane junction, the proposals fully comply with the relevant transport policies of the local plan and the intentions of paragraphs 32 and 35 of the Framework.
- The proposals demonstrate a high standard of design and that they comply with the design policies EV1 and H16 of the local plan, the Council's *Leading by Design* SPG and Section 7 of the Framework 'Requiring good design'.
- There would be no adverse impact on the living conditions of existing residents in the vicinity of the site and that an adequate standard of residential amenity for up to 300 dwellings within the site can be achieved and that this would not be compromised by noise from the railway. There would, it is agreed, be no conflict with the intentions of the relevant local plan policies in this respect.
- The interests of nature conservation would not be compromised and that biodiversity would be maintained or enhanced, satisfying relevant policies in the local plan and according with the relevant intentions of paragraph 118 of the Framework.
- Existing flooding in the area would not be exacerbated by the proposed development and that the resulting increased capacity of the floodplain of Fishpool Brook would be a benefit with the potential to reduce the risk of flooding in the gardens of the adjacent properties on Breachfield Road. It is therefore agreed that the relevant policies and intentions of the local plan and the Framework in respect of flood risk and climate change would be complied with.
- Save for the policing contribution, the provisions of the planning obligation accord with relevant local policy, meet the intentions of the Framework and comply with the CIL Regulations.

29. The only area of disagreement between the main parties concerns the safety of the Grove Lane junction, specifically with regard to visibility to the left.

The Case for Jelson Homes (Docs 2, 44, A1, A2, A3 & A4)

The salient material points are:

30. This is an appeal in respect of a single reason for refusal, on highway grounds, issued contrary to the advice of the Council's own officers and that of the highway authority.

31. It is agreed that the proposal represents sustainable development in a sustainable location that would contribute to overcoming a severe shortfall of housing land, would provide needed affordable housing and that the presumption in favour of sustainable development applies.

32. Policies 1, 3, 12, 13a, 14, 15 and SRS3 of the RSS are complied with and it was accepted by the Council that this was so. The proposal would deliver market and affordable housing in accordance with the relevant targets adjacent to a service centre without infringing any environmental restraint in the RSS.

33. The local plan contains policies to prevent development in the countryside outside settlements defined to accommodate a level of housing need that is now historical. It was prepared in the 1990s. Current needs cannot be met by the

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local plan and require that development takes place on substantial areas of land classified by the local plan as "countryside" adjoining urban areas or settlements, the boundaries of which reflect historical needs. There is therefore a conflict within the development plan and section 38(5) of the Planning and Compulsory Purchase Act 2004 requires that the RSS prevails.

34. The development plan as a whole is complied with and the alleged conflict with policy TR/6 of the local plan is not accepted.

35. In any event the Framework now provides, at paragraph 32, that proposals should only be refused (on highways grounds) where the impacts are severe. The second bullet point thereof clearly refers to the access to the site itself, a matter that can be controlled by the developer, whereas the third bullet point refers to the wider highway network. Safety is important, but real evidence of danger has not been demonstrated. The risk referred to by the Council and others is theoretical.

36. Overall, the proposals conform to the development plan and should be approved without delay according to paragraph 14 of the Framework.

37. It is agreed that the policies preventing development in the countryside are out-of-date and they are in any case deemed to be so by virtue of paragraph 49 of the Framework. The proposition put by Mr Reid for the Council, that they should nevertheless attract substantial weight, is untenable. His approach was rejected in two recent appeal decisions in Charnwood[7] and he accepted the approach in the Bishop's Cleeve decision[8] that such policies should be given substantially reduced weight. Following the approach in the Worsley decision[9], very little weight should be accorded to the Council's 27 September 2012 decision regarding what may be an emerging local plan strategy. These are simply early thoughts on its part.

38. The objection to the proposal on highway grounds cannot be sustained. There is no material shortfall in visibility. On the basis of appropriate calculations[10], visibility to the left ('Y –distance') of some 38 metres is required but some 42 metres[11] is actually available.

39. The accident record over many years confirms the Grove Lane junction to be a safe junction. The evidence of experience clearly demonstrates this to be so. Circa 1.5 million vehicles per annum use it, together with many pedestrians and cyclists. Its physical circumstances have remained constant and over the eight years for which formal accident records are now available there have been none recorded relating to visibility. There have been two recent accidents[12] but one (3 October 2012) occurred 500 metres to the east and there is no evidence that lack of visibility played any part in the accident of 27 September 2012.

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[7] Documents 36 & 37
[8] Appendix 7 to evidence of Mr Thorley
[9] Appendix 6 to evidence of Mr Thorley
[10] Evidence of Mr Young paragraph 6.3.12 and Appendix H
[11] Subsequently confirmed to be 42.5 metres with one metre encroachment or 40.3 metres with 0.75 metres encroachment (Doc 20).
[12] Docs 8 and 10

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40. In any event Manual for Streets[13] states that there is no evidence of a relationship between reduced visibility and the potential for accidents and there is no evidence that an increase in traffic will lead to any increased risk of accidents. The TMS report[14] shows that the statistical correlation is nowhere near that which would be required to demonstrate a reliable relationship between the two factors. This junction has huge spare capacity. Increasing flows will not have any effect on the potential for accidents.

41. There is no evidence that the relevant criterion (i) of local plan policy TR/6 would be breached and no evidence of any harmful impact on the highway network.

42. It should be borne in mind as context that the proposed development will add only 30 movements to the left turn in the peak hour, which would be imperceptible, the average "queue" over this period being less than one vehicle. Any delays will be minimal and will not lead to frustrated drivers taking risks.

43. Two factors should be taken into account in calculating the appropriate visibility requirement, the appropriate 85th percentile speed and the appropriate MfS2 calculations.

44. The speed survey of the appellant's consultant, Mr Young, is to be preferred to that of the Council's consultant, Mr Bancroft. It complied with the mandatory TA22/81 requirement of 200 readings. Furthermore these readings were taken beyond the potential influence of local or bank holidays. The appropriate wet weather correction was made, whereas no such correction was made by Mr Bancroft whose recorded speed of 31.4 mph was not so corrected despite conditions being observed as merely damp/intermittent rain. The further readings[15] were inappropriately contrary to TA22/81 methodology being over a 24 hour period and thereby distorting the results with high speeds.

45. Mr Young's Stopping Sight Distance (SSD) calculation correctly made no allowance for HGVs and buses in compliance with the guidance because 2.9% HGV/bus content in the recorded vehicles was by reference to 2 X 3 hour periods rather than simply peak hours. It is therefore reliable.

46. If it is assumed that such vehicles should be included then the MfS2 reduction for buses of 10% (not accounted for by Mr Bancroft) should be applied to HGVs also. This is consistent with everyday observation and the admittedly small sample of readings referred to by Mr Young which show a 10.03% reduction. This approach results in a SSD of 40.83m.[16]

47. The amended figures from Mr Bancroft[17] are wrong because they do not make any speed reduction and the Council's preferred figure of 47.5 makes no speed reduction at all. In summary, the 43.86 metre splay distance requirement is based on the incorrect speed of 31.48mph; the 42.93 metre requirement is based on the WSP speed but uncorrected for wet weather; the 38.21 metre requirement is correct; and all the figures in the right hand column are wrong as they fail to allow for the lower speeds of HGVs and buses.

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[13] Referred to generally as MfS (or more specifically MfS1 or MfS2 as appropriate)
[14] Doc 9
[15] C1b Appendix I to the evidence of Mr Bancroft
[16] Rebuttal evidence of Mr Young, but based on Mr Bancroft's speed, not Mr Young's.
[17] 09/10/12 *Statement to address amendment to visibility calculation* (Mr Bancroft C1c)

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48. As far as the available visibility is concerned, there is agreement between all three highway witnesses following a visit to the junction observed by the Inspector. From 2.4m on the centre line of Grove Lane (a starting point accepted by Mr Bancroft) there is a Y distance of 42.5m to a 1m off-set and Mr Bancroft accepted[18] a 1.3m off-set, so on his evidence there would be materially more than 42.5m. From 2.4m offset by 1m to the centre of the left turning lane there is a Y distance of 40.3m to a 0.75m off-set. But such a small offset cannot be justified because there is a virtually non-existent possibility of a motorcycle being closer into the kerb on approach from the east.

49. Mr Young's measurements are not only vindicated but found to be understated and there plainly is no material shortfall in visibility, even on the basis of unreliable speeds.

50. However the requirement should be calculated the junction has proved to be very safe and drivers in any event take more care at restrictions on the road network. If the objection were to prevail, moreover, needed development would be stifled at countless locations as Mr Young explained that the majority of junctions in most towns and cities are substandard; and that would be flatly contrary to the intentions of the Framework. The conventional approach to such matters is used in the recent appeal decision[19] at Bramcote Road, Loughborough and a similar approach is advocated here. In any event, if ever the operation of the junction required improvement, there is adequate scope for improvement.

51. The additional points raised by the Parish Council and others have no support from either the Council or the highway authority.

52. The highways objections raised by the Parish Council cannot be substantiated. First, at the site access it is inappropriate to rely on DMRB[20], which is primarily for motorways and trunk roads when the proper guidance for this location, applied by the highway authority, is MfS. If the 85th percentile speed of 34.5mph is correct the required SSD is 52.5m which is achievable.[21] There is no problem with levels.

53. The visibility requirements of MfS are not absolute and applying the necessary wet weather reduction gives a 28.5 mph speed generating a requirement of 38 metres, which is available.

54. The single point of access contested as inappropriate by the Parish Council raises no objection from the highway authority whose own guidance advocates assessment of the matter on a site-by-site basis and concludes that a cul-de-sac may be the best solution in certain circumstances.

55. Thirdly, conflict with local plan policy TR/6 or the Framework does not arise at the Barrow Road Bridge as in the peak hour the development would add an imperceptible 93 vehicles and there is no evidence that this would make any difference to the safety or satisfactory operation of the bridge. The proposed

[18] Paragraph 5.5 of the evidence of Mr Bancroft
[19] Doc 37, para. 29
[20] *Design Manual for Roads and Bridges*
[21] Rebuttal evidence of Mr Young Appendix D

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improvements would more than offset any impact as is shown by the LINSIG output in the ATA.

56. The VISSIM model showed the effects of the MOVA system proposed as reducing delay by around 13% with a consequential 2-3% improvement in capacity at the bridge accepted as an improvement arising from the development by the highway authority. It was accepted by Mr Cage in cross-examination that paragraph 6.3 of the later report,[22] which stated that the CD modelling the traffic flows showed the impact of development at the bridge, was misleading.

57. Mr Cage's second proof is of no assistance because the model deployed assumes fixed timings which ignores the reality and negates the purpose of the MOVA system proposed, which shares out capacity according to demand at any given time. In fact, table 3.2/3.3 of the relevant report shows an improvement in capacity that exceeds the impact of the development with consequential benefits for base traffic. There would be a decrease not an increase in queuing at the bridge.

58. There are other problems with the figures and results and, in summary, the report is not reliable evidence, whereas the WSP model is.

59. So far as Appendix B to the report[23] is concerned, it simply ignored the proposed improvements to hatching which would enable the optimum location of stop lines for a 9/10 second intergreen phase.

60. The occasional flooding at Slash Lane cannot be a highway objection to the proposed development. Unlike the Redland development[24], there is no proposal to take access at this location. A number of the other points raised in respect of the bridge scheme are matters for detailed design.

61. Two thirds of the development will be within 400 metres of a good bus service to Leicester and Loughborough and the extremities within 800 metres, which is comfortably accessible and both the Council and the highway authority consider this a sustainable location. Access to the rail station and good services is also easy.

62. Even without the rail footbridge to the south-east corner of the site the accessibility of the proposed development would be good and the Council and the highway authority are satisfied that is so. In any event network Rail are pursuing its replacement, having obtained permission and approached landowners. Mr Cage thinks it could be built within five years.

63. The Breachfield Road junction with Grove Lane (a short one-way stretch) is an existing situation with no record of accidents. The developer is entitled to assume that people will continue to observe the law here.

64. The concern of the Parish Council as set out in its statement of case is with the impact of the proposed development on the existing community and its facilities, as set out in evidence by Mr Cantle, not the proposition in its closing submissions that deliverability over a five year period is in doubt. The technical material

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[22] Doc 26
[23] Ibid.
[24] Ref T/APP/X2410/A/95/259402/P4 at Appendix A to PC3

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supporting the proposal satisfies the Council and the highway authority in that context and the appellant is an experienced developer well versed in addressing practical issues.

65. Service capacity constraints in Barrow (identified by the Council as a service centre appropriate for growth) are to be addressed by the section 106 obligation that meets the requirements of the relevant statutory providers. This also provides for benefits sought by the Parish Council.

66. The benefits of the proposed development for the whole settlement will include; increased floodplain capacity; improvements at Barrow Road Bridge; the introduction of warning signs to alert people of flooding on Slash Lane; upgraded pedestrian and cycle links to the centre of the village; the services of a Travel Plan Co-ordinator; additional public open space and some additional community facilities.

67. Despite this, the Parish Council maintains that Barrow has had enough of development and can take no more, a position adopted by many residents and Barrow upon Soar Community Association (BUSCA). It is not for the developer to remedy the perceived deficiencies referred to by the latter, but the substantial S106 contributions are agreed as appropriate by the local planning authority and the statistics demonstrate that Barrow's growth has been comparable to other settlements and relatively less in some cases. It is calculated that less than 20% of the village population object to the proposal, rather than the overwhelming majority as claimed.

68. 'Amber' values in the Council's assessment of potential service centres[25] do not preclude growth, simply some constraints. Several of the potential service centres are constrained in some respect. The 'amber' status in respect of health services is historic and rectified and the appropriate contribution in the planning obligation is supported by the Primary Care Trust and the Council. The excellence of care at the health centre was explained by Dr Parker who was careful to explain not that this would be jeopardised but that future improvement would be more challenging. Similarly, education is not threatened and very substantial contributions to education are provided for with the support of the relevant authorities.

69. Parking difficulties in the village centre are aggravated by commuter parking and is not a matter peculiar to this village, being also a question of management. Few objectors refer to landscape and visual impact and the site has no special designations. In the Worsley decision previously referred to substantial harm in that respect was outweighed by the benefits of housing gain.

70. No part of the developed area would be outside Flood Zone 1 according to the FRA which has been rigorously assessed by the Environment Agency, whose findings have subsequently been verified by the new hydraulic model of the Fishpool Brook catchment it has created. The proposals comply with the relevant policies of the Framework and there will be some betterment in that although gardens on Breachfield Road will continue to flood the occurrence and severity of

[25] *Charnwood 2028 Local Development Framework (LDF) Core Strategy Service Centre Capacity Assessment (Final Report) December 2011* ('SCCA') – Appendix D to Evidence of Mr Cantle (PC4) and Appendix 2 to Evidence of Mr Thorley (A1a)

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such events will be reduced. With appropriate planning conditions as recommended by the EA, there is no reason to resist the proposal on surface or foul water drainage grounds.

71. **In conclusion**, the proposals comply with the development plan as a whole and should be approved without delay.

The Case for Charnwood Borough Council (Docs 4, 43, C1 & C2)

The salient material points are:

72. The application was refused because members disagreed with their officer's view. This was based on advice from the highway authority. Although this recognised the Grove Lane junction to be deficient it decided, all other objections having been addressed, that it could not support an objection on the basis of the one single issue of visibility alone.

73. At the time of application the appellant recognised that the junction fell short of the relevant visibility standard but now claims it will be met.

74. This standard is that the 'x' distance should be measured from a point 2.4m back from the give way line in the centre of the carriageway. The 'y' distance depends on variables affecting the SSD.

75. On a robust assessment the visibility splay is inadequate and the junction will not operate safely, giving rise to conflict with policy TR/6(i) of the local plan and the intentions of the Framework.

76. The conflict with the development plan is not outweighed by other considerations and the appeal should be dismissed.

77. Two recent appeals[26] in the Charnwood District have been allowed because of the inadequate housing land supply but that makes little difference to the merits of this case. In particular the junction inadequacy on its own should preclude the grant of permission in this case. None of the appeal decisions referred to in evidence by the appellant[27] involved determinative highway inadequacies and they are of limited assistance in this case.

78. The Council is cognisant of the benefits of the proposed development (these are set out for example in the officer's committee report) and the appellant has not suggested that the Council was not aware of them.

79. The main issue for the Council is the adequacy of the visibility for left turning traffic at the Grove Lane junction.

80. UK practice (as explained by MfS2) generally focuses on SSD. Paragraph 10.3.1 explains how the minimum SSD is deployed. This shows why a cautious approach is necessary to permitting additional traffic at junctions with inadequate visibility.

81. Although MfS2 explains, on the basis of research undertaken by TMS, that there was no evidence to suggest that failure to provide standard visibility at junctions

[26] Docs 36 & 37
[27] Appendices 3 – 7, 12 – 14 and 16 – 18 to A1 Evidence of Mr Thorley

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resulted in an increase in injury collisions at 'high-risk' urban sites, it did not conclude that the evidence disproved the assumption that this would be so. The outcome of the research should be treated with caution and it is significant that MfS2 does not jettison the concept of adequate visibility splays being required.

82. Without local evidence to the contrary, it says, a reduction from recommended visibility will not necessarily lead to a significant problem.

83. Local evidence goes beyond the Personal Injury Accident (PIA) record. It means all relevant local circumstances, including the particular features of the junction.

84. In this case these include: frequent overrunning of the kerb (where it is dropped to facilitate crossing by pedestrians) by left turning vehicles so as to avoid encroaching onto the westbound lane used by oncoming vehicles; the route is also well used by cyclists; there are a number of private drives impinging on the junction layout, adding to potential conflicts; marked turning lanes are often ignored; and bus turning manoeuvres using the entire carriageway cause oncoming vehicles to brake suddenly.

85. This local evidence militates in favour of caution as it may simply be good fortune that there are no recorded PIAs, rather than the junction being safe as the appellant suggests.

86. It became common ground that the appropriate point in the carriageway to measure the 'y' distance to is 1 metre in from the carriageway edge.

87. Based on one day surveys the parties variously calculated the appropriate wet weather speed for calculating SSD as 28.51mph (appellant) and 31.38mph (Council). In view of these differences a subsequent survey was undertaken by the Council between Thursday 30 August and Monday 3 September 2012, giving a 7 day average 85th percentile speed of 32.8mph.

88. The Council's interpretation is that wet weather conditions do not have a major impact on speeds at this junction and it may therefore be unwise to rely on the lowest 85th percentile speed of 28.51mph advocated by the appellant.

89. Notwithstanding criticism from the appellant that the Council's survey did not comply with TD22/81 guidance, aspects of its own work failed to comply, including reliance on single day surveys. Moreover, informed interpretation of the guidance by experienced professionals is more important than the quantity of vehicles included. Therefore surveying only 100 vehicles rather than the 200 advocated by the guidance is common practice among professionals, usually acceptable to highway authorities. The Council's results are reliable.

90. Buses and HGVs have different characteristics in this context, with slower deceleration making for longer SSD and hence longer visibility splays, but guidance suggests that, in combination, bus and HGV traffic of less than 5% of total flow need not be assessed, subject to local circumstances. The appellant's TA did not contain information on the composition of traffic flow but both the appellant and the Council commissioned further survey work to address the point.

91. However, the appellant's survey covered only the AM and PM peak hours, contrary to MfS2 guidance, whereas the Council's work covered 24 hour periods in which the proportion of HGVs/buses significantly exceeds the 5% threshold.

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The only criticism by the appellant was that the survey was 30 August to 3 September, which, although school term time locally, was not entirely neutral given that results could still be affected by the holiday period. This is a flimsy criticism, not based on guidance, which should be rejected.

92. It was agreed by the appellant that on the basis of the Council's data HGVs/buses should be taken into account. However, no separate survey of HGV/bus speeds has been undertaken by any party and therefore the information is imperfect.

93. In these circumstances the 85th percentile speed for all vehicles should not be used as it includes buses and HGVs.

94. Although MfS2 does not recommend it, the appellant sought to argue that there should be a 10% reduction of the 85th percentile speed for HGVs as well as buses, indicating how constrained the junction is. No such reduction is warranted in relation to HGVs. The practical consequences are that an overtaking HGV driver might not see a driver emerging from Grove Lane until it is too late to stop.

95. The available splay measured to the agreed 1 m point in the carriageway is agreed to be 42.5m.[28]

96. The appellant considers the required splay length to be 38m, but this assumes a wet weather 85th percentile speed of only 28.51mph, much lower than that observed by the Council in wet weather and lower than the ATC data suggests the average 7 day 85th percentile speed is. The appellant's splay length takes no account of the different deceleration rate for HGVs and buses.

97. The Council concludes that the required splay length is 47.5m, using an 85th percentile speed of 31.48mph, which is reasonable given that it is in the middle of the three available measured speeds, also reasonably not discounting buses and HGVs as there is insufficient data upon which to do so. The Council's assessment is more robust and is to be preferred.

98. That leads to a shortfall against the available splay of 5m which is in excess of 10% and not de minimis. MfS2 does not endorse unlimited flexibility but rather says that 'y' distances should be based on the recommended SSD values. While a reduction in visibility will not necessarily lead to road safety problems, that depends on local evidence.

99. The Council submits that the shortfall in visibility is a serious one and should not be accepted. Its evidence is that adding additional traffic as proposed would lead to a situation on the highway that is unsafe and unsatisfactory and hence there is conflict with policy TR/6 of the local plan.

100. This policy is not out-of-date and is in any event consistent with the aims of the Framework.

101. The threshold of severity the appellant claims to be the meaning of paragraph 32 of the Framework is not relevant to this as there is either a well founded highway safety concern or there is not and it would be extraordinary if planning permission could not be refused on the basis of a really serious (as opposed to

[28] Doc 20

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severe) risk to highway safety. It is more likely that the "safety" part of paragraph 32, the second bullet point, applies here, whereas the third bullet point is concerned with convenience, delay etc where severity is a more meaningful concept.

102. **In conclusion**, the appeal should be dismissed.

The Case for Barrow Upon Soar Parish Council (Docs 3, 42 & PC1 - PC4)

The salient material points are:

103. The Parish Council does not oppose the principle of residential development in the settlement but believes it cannot support substantial development of the type proposed in this case without major infrastructure improvements, principally the upgrading of Slash Lane to provide two flood free links to the A6 and the provision of a new or significantly upgraded health centre. These concerns are evidenced by the Parish Plan final report, the NHS response to the application and the lack of permissions for major house building in the last 12 years.[29]

104. But for the Secretary of State's intervention and consequent inquiry, the application would not have been sufficiently scrutinised in terms of deliverability in the context of meeting the Charnwood shortfall in housing land supply. Moreover, the proposed development is not "sustainable development" of the type envisaged by the Framework and insufficient mitigation is provided in respect of local infrastructure constraints, the consequences of which are articulated by those with local knowledge and experience.

105. The Parish Council's concerns lead to technical objections concerning traffic impact, safety, sustainability and flood risk management and practical objections in respect of the ability of the village infrastructure to cope with this and other housing development that may occur.

106. The Council's emerging core strategy shifts the emphasis away from the identified service centre settlements such as Barrow Upon Soar.

107. The proposed development will increase the risk of accidents at the Grove Lane junction and the wider highway network is severely constrained. The approaches to the village are subject to capacity issues as a consequence of growth in traffic with attendant safety concerns, notably when Slash Lane is flooded for typically 2 or 3 days around 12 times a year. The exacerbation of these concerns by the proposed development will not be adequately mitigated.

108. The site access arrangements and external linkages are inadequate.

109. There should be at least two points of access for a development on this scale, one of which could be an emergency access. This should be separate from the principal access and the proposed arrangements in this case are unacceptable. The development could be marooned by a road accident or a fuel spillage.

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[29] Appendix G to the Parish Council's evidence in fact records, inter alia, the grant of permission for 360 dwellings to David Wilson homes (land between Cotes Road and Willow Way Ref P/04/0999/2 in outline and subsequent reserved matters P/05/2778/2)

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110. There is insufficient assurance from the submitted material that adequate forward visibility to the access roundabout on approach from the north east could be achieved without tree removal and re-grading of third party land.

111. There will be a risk that the short section of Grove Lane that is one-way to the north of its junction with Breachfield Road will be increasingly abused by impatient drivers, an occurrence which anecdotal evidence suggests to be periodic and which led to a recorded accident with a pedestrian on 17 December 2008. This is a further indicator that the main vehicular route to the site is constrained.

112. The Grove Lane junction has been considered in great detail and the Parish Council endorses the case made by the Council. The second scenario agreed by the parties[30] is considered appropriate, i.e. Splay 2: 2.4 (offset 1 metre east of centreline) x 40.3 x 0.75 (encroachment) metres. This is because right turning vehicles constrain the observed propensity of left turning drivers to position themselves at the centreline for maximum turning advantage.

113. The majority of vehicles turning left emerge from the junction and impinge on the opposite carriageway to avoid overrunning the kerb.

114. Even with speed cushions the surveyed wet weather speed recorded by the Council is 31mph and should not be reduced further for the purposes of calculating the splay requirement. The requisite 45m visibility is not available.

115. Both MfS2 and the WSP supporting research paper are caveated by cautions as to their conclusions regarding the relationship between visibility at junctions and accidents. It is common sense that constrained visibility to the left reduces the necessary attention that drivers can give to traffic approaching from the right.

116. This is the principal route from the site and it is unsuitable for serving significant new housing development.

117. With regard to the proposed improvements at the Barrow Road Bridge, the ATA acknowledges that MOVA control is only likely to result in a 2-3% increase in capacity. Moving the stop lines closer prevents HGVs passing or causes vehicles passing to take additional time. The humpback of the bridge restricts visibility and deters efficient use of the green phase. Cyclists now have a dedicated phase that will negate the proposed capacity improvements. The absence of an adverse impact from this has not been demonstrated. The location of the signal heads cannot be optimised because the bridge is a listed structure.

118. The anticipated MOVA improvements will only materialise if both approaches are not at saturation. The WSP VISSIM model underestimated the queues and therefore didn't account for queuing vehicles beyond the purview of the model, a deficiency that will be exacerbated by anticipated traffic growth. The proposed 'hurry loop' to prevent vehicles queuing back onto the Jerusalem roundabout will cause excessive queuing from the west in the AM peak.

119. Barrow upon Soar is a constrained location due to periodic flooding of Slash Lane and the Barrow Causeway. It is primarily a dormitory settlement and travel beyond it to work and for main food shopping and leisure is a constant necessity.

[30] Doc 20

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No meaningful improvements to current travel patterns are proposed and the principles of paragraph 32 of the Framework need to be applied.

120. The sustainability credentials of the proposal are questionable as far as travel is concerned, with most residents travelling to work by car outside the settlement. There is no new employment proposed and no linkage across the railway and parking facilities in the village centre are inadequate.

121. Without the replacement footbridge, the programme for which is uncertain, over one third of the site would be in excess of 400m from a bus stop. The footpath crossing of Fishpool Brook will be within the flood alleviation area and if raised to avoid the water would impede flow, a scenario that has not been modelled.

122. The proposed improved pedestrian routes to the village centre are subject to a number of deficiencies and it has not been demonstrated that the £40,000 provided for improvement will be adequate. It is questionable whether the routes are truly "walkable" and hence whether the centre is within 10 minutes walk of the site as advised by MfS.

123. The Travel Plan target of a 14% modal shift away from the private car is unlikely to be realised as it has no real incentives. There is no proposed increase in the level of bus services and no proposed changes to train services or accessibility to the train station.

124. The train station suffers from the lack of car parking or drop-off facilities; it is only accessible by a large number of steps and is unmanned with an isolated platform with little in the way of shelter. It is an overstatement to say that it offers an excellent level of service. Its existence does not automatically make the appeal site sustainable. Only 1% of the Barrow Upon Soar population used the train to travel to work in 2001 and despite increased rail patronage the level of service remains unaltered, indicative of the usage made. Similarly the existence of a half-hourly bus service does not automatically make the appeal site sustainable. It is the practical ability to use such services on a sustained basis that is material. The Travel Plan does not and cannot provide that level of reassurance. The Travel Plan Co-ordinator may be of some benefit but without improved services there is little that can be achieved. The Travel Plan Penalty is nowhere near the level of funding that would be required to improve services.

125. The gaps in the technical information concerning the site development profile, sewage disposal and ground conditions mean that there is insufficient means to assess whether the houses proposed can be delivered within five years, with question marks also in respect of highway capacity, traffic flow and surface water drainage.

126. Ground conditions including a Phase 1 contamination survey have yet to be investigated but it is known that that there are lime kilns within the site and old mine workings in the vicinity. The effect on works required to drain the site is unknown.

127. The potential increase in surface water flows have not been properly assessed and flood risk and flood management issues will be exacerbated, together with foul drainage difficulties. There is doubt about the ability of the site to contain its surface water flows so as to ensure no further increase in flood risk to adjoining land and this could affect layout and hence housing yield.

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128. The exacting requirements of the Environment Agency's suggested condition (8)[31], the lack of discussions with Severn Trent Water and the configuration of the existing drainage diminish confidence in the occupation of any dwellings on the site within 5 years. This is highlighted by the fact that the appellant has not had discussions with Severn Trent Water and the knowledge that the sewer is at capacity due to gradient and already discharges at times of peak flow. The opportunities for redirecting the flow away from this catchment are limited and the construction of a new sewer would require a tunnel under the railway and the crossing of third party land, possibly with a need to upgrade a pumping station. There is therefore no certainty that any houses on the site could be occupied within 5 years.

129. There are concerns about the impact of the culvert under the railway being blocked and the revised modelling that took some account of this took no account of the impact of serviceable pedestrian crossing points for Fishpool Brook.

130. EA acceptance of the revised FRA was not without reservation and the exacting requirements of the suggested conditions (5), (7) and (8)[32] should be borne in mind.

131. The EA response is detailed and prescriptive and indicates that much detailed work is yet to be done, including soakage tests. No assessment of the consequences of exceedance of the propose drainage systems in extreme events such that water flows directly into Fishpool Brook and no conclusions can be drawn on the adequacy of the drainage proposals.

132. The EA remains concerned because it advocates the lifting of floor slabs to 48m AOD. However, a large element of the proposed development is below 48m AOD and the raising of slab levels to that height has unknown consequences for the layout.

133. The absence of blockage modelling highlights the issue that at a flood level of 48m there would be an impact on the floor slabs of existing houses on Breachfield Road.

134. The proposed and any additional pedestrian crossings of Fishpool Brook will cause more flooding of properties upstream than has currently been modelled.

135. There will be a greater risk of debris in the brook and consequent blocking of the culvert during significant events with deeper flooding of the properties on Breachfield Road as a consequence.

136. The local health centre will be placed under unacceptable pressure and the mitigation proposed in the form of a contribution for extra car parking spaces will not address the underlying concern regarding a health centre operating at capacity.

137. The education contributions, which are phased, will not guarantee the provision of new classrooms and the same applies to contributions to community facilities and other contributions. The proposed mitigation will not deliver the necessary

[31] Doc 29 Revised Draft Conditions
[32] Ibid

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facilities to achieve the improvements now required from the planning system by paragraph 9 of the Framework.

138. **In conclusion**, the proposals will not lead to a better quality of life or positive improvements as advocated by the Framework but rather it will lead to deterioration in the quality of life currently enjoyed by Barrow Upon Soar residents. Although they seek to meet the Charnwood housing shortfall, they remain incomplete and uncertain in delivery with harmful impacts such as not to be the type of sustainable development the Framework encourages. The grant of outline consent would have a number of adverse effects and the appeal should be dismissed.

The Cases for Interested Parties

The salient material points are:

Mr Hilsdon (Docs 32 & 34)

139. Gardens in Breachfield Road flood on a regular basis. This won't affect the new residents but the situation for existing residents will be made worse. There is a danger that the culvert under the railway will block, making the situation worse. What guarantee do the residents have that these things will not occur? Old mine workings could exacerbate drainage and flood problems.

Mr Willcocks

140. The travel plan will not work. Experience of commuting to Leicester prior to retirement is that the service is poor, unreliable and overcrowded. There are only two carriages on the relevant trains and the station is rudimentary. The railway is only useful for a journey to work if the stations are walkable at both ends of the journey.

Dr Sarah Parker (Doc 5 re: GPs' practice at the Barrow Upon Soar Health Centre)

141. The health centre was purpose built in 1980 around which time the practice list of 4,500 was broadly comparable to the population. The current population of Barrow Upon Soar is circa 6,320 but the practice list is around 8,650. New types of patient place new demands on a practice and at present the clinical skills available match the demographic profile.

142. The premises have adapted in response to a rising population, with S106 monies from another development being used for refurbishment in 2011, bringing into use rooms vacated by district nurses, health visitors and school nurses pursuant to NHS re-organisation. The limited surgery space is shared to manage clinical availability and evening appointments are offered on a Wednesday.

143. The practice boundary has been redrawn to curtail pressure and patients are no longer accepted from outside the boundary. The appeal site is within it and will therefore have an impact, as only under exceptional circumstances can GPs lists be closed.

144. The objection arises because the appeal proposal comes hard on the heels of the challenge posed by the ongoing construction of 360 houses elsewhere in Barrow Upon Soar.

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145. The Practice is challenged by the rising population, having been rated "deep amber" by the PCT prior to refurbishment and there are ongoing uncertainties arising from further NHS reorganisation. The health centre is currently operating at 70% over capacity and will be 90% over if the appeal scheme is developed. There is no prospect of NHS funded capital investment at present. Adding patients to the current practice list will cause deterioration in the services offered.

146. The central location of the health centre is appreciated by patients for its good public transport links but at busy times the car park is often full.

147. The quality of care provided is good and the Practice is keen to improve it further. The continued rapid growth of the Practice population would make achieving improvement extremely challenging and would be detrimental to the care of both existing and future patients.

148. The appeal should be dismissed.

Nicky Morgan MP (Doc 16 on behalf of constituents in Barrow Upon Soar)

149. First, the former Planning Minister Greg Clark and the former Local Government Minister Bob Neill have both emphasised the Government's commitment to Localism and empowering communities to shape their neighbourhoods through neighbourhood plans as the Parish Council wants to do. This is clear in the Framework. To ignore residents' concerns is to ignore the policy intentions of Localism. I have not been contacted by a single resident of Barrow Upon Soar in favour of this development. The community has had more than its fair share of new development through the large Willow Road development. This proposal outside the village limits is a step too far.

150. Secondly, the Secretary of State needs to be aware of the vulnerability of Councils such as Charnwood, which does not yet have a core strategy in place, to speculative applications such as this. The framework says weight can be given to an emerging core strategy and in September 2012 the Council indicated its intention that service centres including Barrow upon Soar would share 200 homes between them over 15 years, whereas this proposal is for 300 homes in Barrow Upon Soar alone.

151. Thirdly, the development would put intolerable strains on the physical and social infrastructure of the settlement and it is inconceivable that the residents of the proposed development would use public transport rather than their cars. The development cannot be considered sustainable.

152. The appeal should be dismissed.

Mr Rowland (Doc 18 Landmark Planning for Barrow Residents' Action Group)

153. BRAG supports the Council's reason for refusal.

154. The appeal site is on rising land and prominent. The proposed development would harm the landscape and the harm could not be mitigated by the proposed landscaping scheme. It would therefore be contrary to saved local plan policies CT/1 and CT/2.

155. The harm to the rural landscape and the danger to highway safety would outweigh the benefit of reducing Charnwood's housing land deficit.

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156. The appeal should be dismissed.

Councillors Ranson and Fryer (Docs 17 & 40)

157. We support the Parish Council, the Barrow Residents' Action Group (BRAG) and the residents in their opposition to the development.

158. Its adverse effects would significantly outweigh its benefits when assessed against the Framework as a whole. It is over dominant and alters the whole character of the village. The roads will not cope and access to the schools is under stress as roads serving them do not have the scope to be improved. More than 500 houses have been built or approved in 10 years and the High Street facilities suffer from lack of parking already. It is unrealistic to suppose people will walk to the shops and back.

159. Slash Lane is often closed by flooding and more warning signs would do little to help drivers already committed to using the route through the village, which takes traffic from other villages en route to the A6, M1 and A46.

160. The health centre is heavily oversubscribed and access to it from the appeal site would be by car, adding to congestion.

161. Existing residents have made welcome the occupiers of many new houses in recent years. They are not "NIMBYs" but do object to the sheer scale of what is proposed. The changing climate is increasingly disrupting the road system through flooding around the village and the measures proposed will not help. Huge investment is needed, for example at Slash Lane.

162. The appeal should be dismissed.

Mr Wilson

163. Experience suggests that, with the fire station being based in Loughborough, there will be problems of accessibility for it if the roads are congested at times of flood.

Mr Burton (Doc 39)

164. This is the first area to flood in Leicestershire, up to 12 times per year. Traffic congestion is always caused, with of a mile in length. The police put signs up and additional signs will not help as most people know when roads will be closed.

165. The abuses of the one-way system between Breachfield Road and Melton Road are not reported to the police. The station is inaccessible due to the many steps and people are more likely to drive in any event because they can visit superstores and the like during the course of their journeys, or they will drive to the station and park on roads near the station.

166. The sewer is at capacity and subject to storm overflows, but Severn Trent Water tends not to object. However, there has been no mention of the water Framework Directive which requires rivers to be improved by 2027. It is doubtful if surface water can be dealt with using SUDS

167. Previous applications in the countryside have been rejected and nothing has changed to justify this one.

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Mr Smith (Doc 19)

168. There is a highway danger at the Melton Road/Breachfield Road/Babington Road junction close to the appeal site as illustrated on my annotated plan.[33]

169. MOVA might help with Barrow Road Bridge but the wider area including Slash Lane needs to be looked at.

Councillor Forrest (Chair of BRAG)

170. Local residents are not "NIMBYs". Lots of them have had new houses "in their back yard". Barrow Upon soar is a great place to live and we do welcome newcomers, but we are at saturation point and enough is enough. The infrastructure will not cope.

County Council (represented by Mr Prendergrast, Mrs Owen, Mr Kettle and Mr Tyrer) (Docs CC1 & CC2)

171. In its essentials, the position of the County Council is as set out in the written evidence submitted and there is little to add. A Civic Amenities site is no longer required as one has been provided at Mountsorrel.

172. The adopted County Council policy in respect of developer contributions is the *Statement of Requirements for Developer Contributions in Leicestershire* (SRDCL) which is the starting point for negotiating appropriate contributions, the latest review of which was in 2007.

173. There are written submissions from Mr Tyrer, the Developer Contributions Officer and Mr Cook in respect of highways and transportation matters.

Mrs Anderson (Doc 15 for Leicestershire and Rutland Primary Care Trust)

174. The concerns expressed by the practice regarding the pressure of extra patients are echoed[34] but in terms of consequential capacity improvements to premises the need would be for extra parking capacity, for which a £30,000 contribution is sought.

Mr Page

175. Traffic on Grove Lane/Melton road is at the capacity of the highway and creates a potential danger to children.

Mrs Noon (Doc 28 for CPRE Charnwood District Group)

176. The County Council has given insufficient weight to the appeal decision referenced T/APP/X2410/A/95/259402/P4[35] regarding the disruptive effect to traffic of flooding on Slash Lane. This is relevant to any additional development in Barrow Upon Soar. The circumstances have not changed in the 14 years that have since elapsed but rather they have been exacerbated.

177. This is an important appeal decision and consideration should be given to the increased volumes of traffic that the proposed development would add to various

[33] Doc 19
[34] Doc 15
[35] Included also as Appendix 2 to Doc 28

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routes in Barrow Upon Soar that are already disrupted by flooding and the appeal should be dismissed for this reason.

Mrs Reed

178. Parked vehicles disrupt the flow of traffic, especially lorries, on the eastern approach to the Barrow Road Bridge and this will undermine the proposed improvements.

Mr Pepper

179. Cyclists will inevitably slow traffic as it passes over Barrow Road Bridge because of the configuration of the highway and cycling has been encouraged in Barrow Upon Soar. Mountsorrel Lane also floods and that practically leaves the bridge as the only route. 30% of residents in a Parish Plan survey cited flood disruption as a reason not to build.

Mr Hobbs

180. A trial run of MOVA should be considered as set out in letter.[36]

Mrs Rodgers (Doc 41 for Barrow Upon Soar Community Association)

181. BUSCA is looking to build a new purpose built community centre in the village to accommodate a variety of activities in response to identified needs.[37] Dual use of the Humphrey Perkins School facilities, including the sports hall, has been curtailed for practical reasons. Little attention has been given by the developers, or by the Council, to the detrimental impact of a large influx of new residents and the social consequences.

182. In order to maintain social cohesion it is imperative that the village has the facility BUSCA hopes to build at an estimated cost of around £1.5 million. This is an essential facility that would be necessitated by the proposed development and the sum proposed in the planning obligation (£100,000) will not cover the cost.

Written Representations

The salient material points are:

The County Council

183. The signing of the S106 planning obligation obviated the need for the representatives of the County Council who had prepared evidence to be called as witnesses. That evidence therefore effectively becomes written submissions.

184. The gist of the evidence in respect of financial contributions to education and library services is that they are based on formulae in the SRDCL,[38] adopted by the County Council as Supplementary Planning Guidance.

185. In respect of education, the proposed development will not affect the high school but will impact on the primary and upper schools, which are full and predicted to remain so. This will give rise to a need for funding of school places

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[36] Doc 31
[37] Detailed in Doc 41
[38] *The Statement of Requirements for Developer Contributions in Leicestershire*

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at circa £12,099 per primary school place and circa £18,355 per upper school place, the deficit in the number of places relative to the number of dwellings being calculated according to standard formulae.

186. The contributions sought are proportionate, necessary and directly related to the development. They are therefore CIL compliant.

187. In respect of library facilities, the contribution would be used to improve the lending stock and computing facilities at Barrow Upon Soar Library and reconfigure its internal space to provide for additional public access. Calculated by standard formulae, the contribution sought is proportionate, necessary and directly related to the development. It is therefore CIL compliant.

188. The contributions for public transport and pedestrian and cycle improvements stem from the core principle of the Framework that patterns of growth should be actively managed to make the fullest possible use of public transport, walking and cycling, and focus significant development in locations which are or can be made sustainable.

189. The proposed enhancements to the walking and cycling routes to the High Street, the Humphrey Perkins High School and the Sileby Road bus stops are necessary to cater for and encourage increased use in accordance with travel plan objectives. £40,000 is proportionate and the need stems from the development given the likely demand that development on this scale will give rise to. The Travel Packs Contribution, 6 month public transport passes and the funding of two bus shelters are necessary, proportionate and directly related to the proposed development, the object being to facilitate and encourage public transport use from the outset.

190. The Travel Plan Penalty will become payable if monitoring demonstrates that the modal shift target of 14% in the Travel Plan is not achieved. This penalty will incentivise the developer to seriously implement the travel plan and give comfort to the County Council that further funding would be available to encourage modal shift if targets are not met. The penalty is necessary, directly related and proportionate.

Nicky Morgan MP

191. The application was refused prior to the finalisation of the Framework. This clarifies the meaning of sustainable development and the impact on the roads, schools and health services in particular render it unsustainable in terms of the Framework. There is a five year land supply in the local area. The development will, by taking open countryside, harm the character and visual amenity of the area contrary to saved policies CT/1 and CT/2 of the local plan. It is also contrary to saved policy ST/1(ii) because it is clear from the level of objection that this landscape is "particularly valued by the local community". The refusal on highway safety grounds is supported.

Barrow Upon Soar Parish Council

192. It is misleading for the appellant to suggest that the Borough Council has previously supported the proposed development "in principle". The application is speculative and exploits the Borough Council's failure to deliver a Local Development Framework. It is unsustainable because it is on greenfield valuable

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agricultural land outside the limits to development, visually dominant on high ground, and will overload healthcare and schools in the village.

Leicestershire Constabulary

193. The policing contribution is necessary, proportionate and directly related to the development. It is therefore CIL compliant.

Barrow Residents' Action Group

194. The appeal site is on rising land and prominent. The proposed development would harm the landscape and the harm could not be mitigated by the proposed landscaping scheme. It would therefore be contrary to saved local plan policies ST/1(ii), CT/1 and CT/2. The harm to the rural landscape and the danger to highway safety would outweigh the benefit of reducing Charnwood's housing land deficit.

Private Individuals

195. There is a great weight of correspondence from local residents. In reading this I have discerned a number of consistent themes:

- First, there is a widespread feeling that the village community has witnessed rapid expansion and that it is outgrowing the physical and social infrastructure available to it.
- Secondly, there is a concern at the loss of countryside around the village.
- Thirdly, there is a concern with highway safety, especially at the Grove Lane junction
- Fourth, many people believe that the capacity of the highways is near its limit, certainly at peak times, and that the problems are particularly intense because periodic flooding already disrupts flows.
- Fifth, there is a perception that the proposed development will increase flooding.

196. In addition, there are numerous comments raising concerns which include; the effect on the living conditions of neighbouring residents, parking pressure in the village centre, noise and disturbance to existing residents, destruction of trees and hedges, inadequate public transport, harm to biodiversity, loss of agricultural land, unsuitable ground conditions, potential to increase crime and disorder, the slow progress or halting of existing residential developments for lack of demand, encouragement of car-based travel building and the disregard of the opportunities for using existing empty properties.

Conditions and the Planning Obligation

Conditions

197. A number of suggested conditions (SC) were agreed between the Council and the appellant.[39] Discussion of these at the Inquiry was inclusive of the Parish Council and interested local residents.

[39] Doc 29

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198. I have reviewed the SC in the light of the advice in Circular 11/95 *The Use of Conditions in Planning Permissions* and the relevant tests therein, together with the advice of the Framework. Some require minor rewording to more closely accord with the relevant advice of the circular and others may usefully be combined for economy, but in general they are appropriate.

199. The standard timescales (SC1) for an outline permission and submission of reserved matters are appropriate but these should be more precisely expressed so as to define the reserved matters and the associated timescales.

200. Accordance with the definitive plans (SC2) should be prescribed by condition for the avoidance of doubt and in the interests of good planning but general accordance with supporting documents is an imprecise approach. However, precision may be introduced by requiring the submission of details for approval by the local planning authority in relevant cases to be in accordance with the principles contained therein. Bearing in mind, inter alia, the planning obligation, I do not consider the approach appropriate for the TA, the ATA, the UFTP or VISSIM modelling. It is inappropriate to address the proposed off-site works at Barrow Road Bridge in this fashion as the land involved is not in the control of the appellant. However, bearing in mind that these are essentially traffic management measures susceptible to refinement and I am not persuaded, having considered the evidence and observed the relevant circumstances of the bridge on site, by the proposition [117] that there would be impediments to its detailed implementation in practice that could not be readily resolved, I consider it could appropriately be dealt with separately through a Grampian style condition. (See also my comments on SC15 below.)

201. The various assessments have been based on a maximum of 300 new houses and as this number is not specified in the description of the development or the application, which is simply for "residential development" it is necessary to limit the number to a maximum of 300 (SC3) by specific condition. Moreover, it is necessary to prescribe the maximum developable area bearing in mind the importance of flood alleviation, the scope for SUDS and the role of the structural landscaping, with a Master Plan creating an overarching framework for the submission of reserved matters. However, the submitted masterplan is purely illustrative. This difficulty may be overcome by the approach advanced in SC4, as this builds on the general principle illustrated to create a firm framework and phasing programme, the latter being necessary for a development on this scale, in my view. I see no difficulty in requiring general conformity to the illustrated principles according to which the proposal has been advocated as a sustainable form of development. This would not fail the test of precision as those principles are spatially expressed on the illustrative masterplan and articulated in the Design and Access Statement. It would be for the Council to reasonably consider whether or not the Master Plan and Design Code submitted pursuant to the relevant condition were in general conformity with them.

202. SC5 increases the focus on the detailed implementation of any particular phase approved pursuant to SC4 and this seems to me to be an entirely necessary and reasonable approach.

203. The site is known to have some archaeological potential including the remains of lime kilns of varying age from early post-medieval until perhaps as recently as the nineteenth century, but the Archaeological Services team at the University of

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Leicester is satisfied that the matter can be addressed by a programme of work following a written Scheme of Investigation.[40] This may be secured by a condition such as SC6.

204. Although SC7 – SC9 are all essentially concerned with drainage it seems to me that, in the circumstance of the site, the matters addressed are most practically dealt with by separate conditions specifically concerned with sustainable surface water drainage, foul sewage and the specific detail of trapped gully provision in each phase of development.

205. The site is currently in arable use and there is no reason to suspect widespread contamination. However, its archaeological characteristics suggest that disturbance of buried deposits might, in places, give rise to concern and hence, on balance, a precautionary condition of the type suggested (SC10) is appropriate.

206. SC11 seeks to protect retained trees and hedges on the site as the development progresses through phases. It would require an overall scheme to be first approved, supplemented as necessary by the implementation of the approved measures as each phase commences (SC12). This seems to me to be a logical and methodical approach to this important matter that it is necessary to address in the interests of sustainability.

207. SC13 reflects the concerns regarding the impact of the railway on the living conditions of future occupiers of parts of the site and while there is no reason to constrain development in principle for that reason, suitable detailed measures to secure amenity are necessary.

208. SC14 effectively requires the precise details of the access applied for to be resolved and the works, including the pedestrian and cyclists' bridge over the Fishpool Brook to be fully implemented before any dwelling is occupied; and I consider this to be necessary as these involve the sole vehicular access and the principal pedestrian route anticipated.

209. SC15, in effect, partially replicates the suggested content of SC2 insofar as it specifically concerns the off-site works for the Barrow Road Bridge traffic management scheme to improve its capacity, and involves further consideration of the details of the improvement, notwithstanding the satisfaction of the highway authority with the details submitted to date. This is necessary and will potentially cater for the effects of the cyclists phase subsequently introduced. Being off-site on land not controlled by the appellant, it needs to be negatively expressed in 'Grampian' style and to ensure early delivery and benefit the condition should, as suggested, make first occupation of a dwelling contingent upon its implementation.

210. SC16 – SC18 are best combined within the purview of a standard form of construction management condition suitably adapted to include, inter alia, the precautions to be taken in respect of badgers passing through the works.

211. SC19, if appropriately cross-referenced to the details of design, would require the retained public footpaths within the site to be upgraded by the time half the houses are occupied. This seems a reasonable and necessary precaution to

[40] Doc 24

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ensure that such improvements are incorporated in the development in a timely fashion whilst accommodating any unavoidable delay.

212. The Slash Lane Flood warning system (SC20) is promoted as a benefit of the proposal and a means of mitigating the impact of extra traffic on such occasions and is seen as such by the highway authority. Despite some scepticism amongst third parties as to its value or efficacy I am nevertheless satisfied that it is necessary to secure the benefit by condition.

213. Insofar as public art (SC21) is required by the provisions of the development plan, it is necessary to secure its implementation by condition. Local plan policy EV/43 seeks to make public art integral to the design of major developments and, given this development plan rationale for the condition, it is not in my view inappropriate, in this instance, to seek to reinforce the quality of the detailed scheme design in this way.

214. Insofar as the Framework encourages renewable energy as an important aspect of sustainability, it is necessary to reinforce this locally on a development of this scale by a condition such as SC22.

215. The Parish Council promoted a condition to minimise the risk of flooding caused by the blocking of the Fishpool Brook culvert under the railway line, suggesting that the land as far as the culvert is in the control of the appellant and that the test of necessity is met by the need to avoid such blockage. However, I am not persuaded that this is appropriate or necessary as the potential blockage of culverts is a universal and ongoing matter for the appropriate authorities rather than the developer of any particular site. Moreover, I do not consider the risk of blockage to be demonstrably increased by the proposed development as the risk of unauthorised disposal of items likely to cause such a problem would arguably be reduced by the greater surveillance of the Fishpool Brook that is likely.

Planning Obligation

216. The Framework sets the tests for planning obligations consistent with the statutory requirements of the Community Infrastructure Levy Regulations 2010 (CIL Regulations). The Council's evidence addresses in some detail[41] the developer contributions provided for and concludes, with reservations regarding the Travel Plan Penalty, that all bar the Policing Contribution are compliant with the relevant tests and the CIL Regulations. The separate matter of Affordable Housing in the obligation is justified on the basis of local and national policy and the relevant local evidence base. The precise level of affordable housing is a matter of negotiation on the specifics of any particular site, but it seems to me that 30% affordable, to be tailored to local needs as regards the mix of Social Rented Dwellings and Intermediate Affordable Dwellings, is a reasonable expectation on a greenfield site of this nature. The rationale for the Education and Library Facilities contributions is set out in the written evidence of the County Council,[42] which also refers to the original request for a Civic Amenity contribution, subsequently dropped as a result of convenient local facilities with adequate capacity having been provided.

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[41] C2 Evidence of Mr Reid, Section 3
[42] CC1 Evidence of Mr Tyrer

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217. I have no reason to depart from the Council's analysis in respect of Public Open Space/Recreation and Community Facilities, Education and Library Services, all of which are calculated on the basis of established practice locally and with a view to specific provision in response to the predicted impacts of the proposed developments. Full weight may be accorded to those elements of the Planning Obligation. They 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.

218. More substantial comment, to which I return in due course in the context of my conclusions regarding infrastructure, is necessary on the financial contributions provided for in respect of Highways and Transport, Policing and Health.

Conclusions

References are made, where appropriate, to previous parts of the report by indicating the relevant paragraph number thus [0].

Main Considerations

219. I have identified the following main considerations in this case:

(i) Whether the Council can demonstrate a five year supply of deliverable housing;

(ii) The sustainability of the proposed development;

(iii) The effect of the proposed development on highway safety, in particular its effect on the safe operation of the junction of Grove Lane with Sileby Road and South Street ('the Grove Lane junction');

(iv) The effect of the proposed development on traffic circulation within Barrow Upon Soar, including at times of flooding;

(v) The effect of the proposed development on flood risk;

(vi) The effect of the proposed development on the infrastructure of the village and whether its impacts may be adequately mitigated by the provisions of the planning obligation;

(vii) Whether the proposed development accords with the development plan for the area in respect of highway safety and the protection of the countryside;

(viii) The accordance of the proposed development with the intentions of the National Planning Policy Framework ('the Framework') regarding the delivery of a wide choice of high quality homes, good design and the promotion of healthy communities; and

(ix) Whether any harm arising from the proposals would be outweighed by other considerations, i.e. the planning balance.

(i) Housing Land Supply

220. The Council accepts that it cannot demonstrate a five year supply of deliverable housing sites and there was no substantive, evidence-based, challenge from any party regarding this. Accordingly, the Council accepts that the local plan policies

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concerning housing land supply, specifically, cannot be considered up-to-date. [28]

221. I have no reason to doubt the position and it merits no further discussion other than to note that the presumption in favour of sustainable development set out in paragraph 14 of the Framework is thereby engaged. The failure to demonstrate a five year supply of deliverable housing sites is a matter to which substantial weight must be accorded.

(ii) Sustainability

222. Sustainability is a multi-faceted concept most authoritatively articulated in the Framework for present purposes. It merits some attention in that the sustainability credentials of the site are questioned by many, albeit not the Council [28], including numerous local residents who object to the proposals.

223. In land resource terms it has been established that the site does not comprise Best and Most Versatile land [8] and hence the loss of farmland does not weigh significantly against the proposal in sustainability terms, given the inevitability of having to develop greenfield sites in the Council's area.

224. Moreover, I am satisfied that there are no seriously adverse implications from the point of view of biodiversity. Again this is common ground between the main parties [28]. It seems to me that, if anything, the enrichment of habitat through extensive landscaping with appropriate species and the additional benefits afforded by individual suburban gardens in the fullness of time would be a benefit, notwithstanding that some species associated with farmland would be unlikely to return to the site itself.

225. Insofar as design is an important facet of sustainability, the qualities of the layout are such that it is common ground [28] between the main parties that relevant objectives would be met or would be capable of being achieved at the detailed design stage. It seems to me that the proposals balance the need to make efficient use of the site with the need to provide adequate open space to not only create a pleasant setting but also to accommodate appropriate SUDS measures and flood attenuation in a practical fashion.

226. The majority of the site is within a reasonable walking distance of the village centre. I noted that at reasonable walking pace it is 10-15 minutes and the upgrading of the routes would encourage their use. The south eastern part of the site is the least accessible at present, including to the bus stops on Sileby Road to the south. However, the evidence before me suggests [62] that Network Rail fully intends to replace the closed pedestrian crossing point of the railway that currently disrupts the footpath network with a footbridge and I have no reason to believe that this replacement will not in due course be implemented. The layout of the site makes for the encouragement of trips on foot and by bicycle and certainly facilitates such modes for those who wish to utilise them in preference to using a car for local journeys.

227. More strategically, the existence of the railway station, which provides access to major centres for employment, shopping and leisure, is a major advantage of the settlement of Barrow Upon Soar which would be readily shared by residents of the proposed development. I acknowledge that the station is perhaps more properly described as a 'halt' rather than a 'station', insofar as the latter is more

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commonly understood as a substantial building or group of buildings with ticket office, staff and possibly shops and cafés. Nevertheless, the fact of the matter is that it exists and enables the population of Barrow Upon Soar to make ready use of the railway to travel to a variety of important destinations for employment, shopping, leisure and many other services, should they choose to do so. It may not be the most comfortable of facilities but for the majority of able-bodied people it is a perfectly practicable proposition.

228. This is an important consideration in terms of the concept of sustainability, to which the long view is intrinsic. Transient factors such as the state of the rolling stock or the quality of the service are less important than the fact of heavy and permanent infrastructure investment having already been undertaken, thereby representing an asset to be capitalised upon as needs dictate. The fact that usage is apparently low at present [124][43] does not detract from the fundamental long term advantage of the railway as a focus for residential development.

229. The Framework[44], importantly, puts it thus: (Planning should)... *"actively manage patterns of growth to make the fullest possible us of public transport, walking and cycling, and focus development in locations which are or can be made sustainable"*. This core principle places Barrow Upon Soar in a category of existing settlements which are inherently sustainable and, moreover, the appeal site itself is all within an entirely comfortable walking distance of the station[45]. Many of the houses would be within 800m and none would be further than one kilometre, equivalent to a 10-15 minute comfortable walk for most. [28,61]

230. In addition, the existence of regular local bus services, for the most part within 400m[46] of the proposed houses with the potential for diversion through the site in due course, complements the more strategic accessibility afforded by the railway. [25,28,61]

231. It is relevant in this context to note in full the reported comments of the County Council's Director of Environment and Transport, set out in full in Appendix 3 to *Charnwood 2028 Local Development Framework (LDF) Core Strategy Service Centre Capacity Assessment (Final Report) December 2011* ('the SCCA') [68]. These were that Barrow Upon Soar..."*is well served by bus services, and has a railway station but accessibility for pedestrians is currently limited to stairs only. However, existing public transport levels are insufficient to cater for the level of modal shift away from the car that would be required in order for the village to be considered suitable for a further significant expansion in housing provision."*

232. The third key element in the equation as regards the sustainability of the location is the existence of a village centre with a good range of services that is already accessible on foot for those with the time and inclination to walk, and can be made more pleasantly so by the measures provided for in the planning obligation. There is no reason to regard the site as disadvantageous or discouraging to the use of bicycles.

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[43] PC1 Evidence of Mr Cage, Appendix 1
[44] Paragraph 17
[45] ATA fig 3.2
[46] ATA Fig 3.1

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233. For the above reasons I conclude that the appeal site's basic credentials in terms of both natural resource conservation, potential for good design, choice of sustainable transport modes and, importantly, scope for future improvement of public transport in response to demand, are in fact highly conducive to development of the type proposed.

234. It is of course the case that many other considerations impinge on the overall sustainability of the site and those that are of potentially decisive importance, namely highway safety, traffic circulation, flood risk and village infrastructure are separately considered below in order that an assessment in the round within the context of the development plan and the Framework can be made.

(iii) Highway safety

235. Grove Lane joins Sileby Road/South Street in the form of a section of one-way street with left turning and right turning lanes. The visibility to the right is entirely adequate but the visibility to the left is constrained by an existing property and it was agreed,[47] on the basis of on-site measurement during the course of the Inquiry, that the available visibility was, in practical terms, 42.5 metres to a 1 metre offset from the kerb. [48].

236. Much evidence was adduced regarding observed speeds on the road, adjustments for wet weather conditions and the composition of the traffic, to which I have given careful consideration. It seems to me, bearing in mind not only the totality of the evidence but also the response of the Highway Authority, which does not object to the proposals that, were the junction being constructed today, a more generous 'Y' distance of around 45 metres would be provided as a matter of course. Correspondence between the appellant's highway engineers and the highway authority[48] indicates its view that 45 metres was the appropriate standard to work to and that this could be achieved by the use of a 1.31m offset from the kerb. In other words, the layout of the junction does not provide the visibility to the left that, ideally, it should [114] [38 - 50, 73-99 and 112 – 114 for detail of the cases put].

237. This perceived deficiency must, in my view, be considered in the light of a number of factors, including the, albeit cautious, conclusion in MfS2 that there is no invariable relationship between visibility and collision risk. A second contextual factor is the reality that numerous junctions in urban areas are below current standards but are not normally reconfigured unless there is evidence of safety problems arising on a regular basis as a consequence. Otherwise they are left alone to carry volumes of traffic far in excess of those that originally typified the streets, on the basis that drivers exercise the necessary degree of caution as circumstances demand. The proposition was advanced that, if absolute standards were to be routinely applied to junctions in the network at a distance from individual application sites, this would unnecessarily inhibit the development of urban areas [50].

238. In response to my questions on that matter, Mr Young, for the appellant, explained the reality of the general picture very clearly and I concur with the commonsense assessment that he gave. Moreover, the Framework, at

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[47] Doc 20
[48] ATA, Appendix A email from Younus Seedat to Stephen Yeates 25/01/11 @16:46

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paragraph 32, sets out an approach which takes account the need for safety at the site access itself and residual cumulative impacts on the network that must be severe if development is to be prevented or refused. While it was submitted on behalf of the Council [101] that severity is a concept that that is inapplicable to the safe operation of a junction, i.e. it is either safe or it is not, I do not consider that the real world operates in that way. It would of course be wrong to sanction any development that self-evidently gave rise to significant deterioration in road safety without effective mitigation of the problem, but there is no cogent evidence to suggest that would be the case here.

239. MfS advises that local evidence should be taken into account in exercising the necessary judgement about any junction and the evidence in this instance is a sustained freedom from recorded accidents at the Grove Lane junction. It is of course the case that lack of accidents related to visibility is not proof that a substandard junction is inherently safe, but it does strongly suggest that it operates in practice in a safe manner because of its particular circumstances and the response of the drivers using and approaching the junction to such circumstances.

240. I observed the operation of the Grove Lane junction both as a driver and as a bystander on a number of occasions during the course of my visit to the area. There is no doubt that larger vehicles emerging from the junction to turn left do impinge on the far side of the carriageway, but they appear to do so in a cautious manner which gives adequate time where necessary for vehicles approaching from the east to adjust their speed to accommodate the manoeuvre. I also observed that certain other vehicles turning left do cross the lowered kerb so as to remain within the nearside of the highway whilst effecting the manoeuvre, whereas the great majority had no need to do that. The tyre marks and the evidence of my own eyes suggest that this is a regular, if not unduly frequent, occurrence, but the fact remains that large numbers of vehicles have exited the junction over the years without mishap. On the basis of agreed flows the junction carries in excess of 1.5 million vehicles annually, albeit right turning as well as left turning [39].

241. The reasons for the evidently safe operation of the junction may well include driver knowledge of its characteristics, including the lack of turns into it by reason of its one-way flow. But I also note that the approach to the junction from the east is up a perceptible gradient which is traffic calmed to some extent with occasional speed cushions and subject to the "friction" of parked cars where parking is not restricted and the improved forward visibility that results where it is, the net result being that drivers unfamiliar with the road are likely to approach the junction from the east with appropriate caution rather than assuming that they may proceed with impunity at a constant speed, as would be the tendency for instance on a free-flowing rural road. The urban and complex driving conditions give rise to a driver response that meets the circumstances, as is the case in countless situations throughout the country.

242. Competing assessments on the part of the appellant and the Council[49] make for a range of required visibility from 38.21m to 43.86m when appropriate reductions in average speeds to account for HGVs and buses are made [47].

[49] Doc 44, paragraph 25

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The actual visibility based on what I consider to be an appropriate offset from the kerb of 1 metre, inside of which the highly unlikely and extremely rare occurrence of a motorcycle overtaking another vehicle overtaking a parked vehicle would not be entertained by its rider owing to the risk of kerb clipping, grids etc, is 42.5m from the centre line of Grove Lane[50]. This comfortably exceeds the mid-point of the range, which is fractionally over 41m. Therefore, if the appellant is right in its calculation of 38m[51] being the appropriate distance there is clearly no deficiency at all but the Council's more cautious approach without speed reductions for HGV/Bus content in the flows would produce a deficiency of the order of 3% against the 42.5m available. Using the appellant's surveyed speed uncorrected for wet weather, the 42.93m requirement would give a deficiency of around 1%. Only the most extreme requirement canvassed of 47.5 metres (Council's preferred figure with no speed reductions at all) would give a deficiency of around 10%.

243. Clearly a deficiency of that order would not be de minimis, but it is material that a more pragmatic approach was taken by the highway authority itself, which regarded 45 metres as being the desirable visibility and in any event does not object to the proposed development, and that the appellant's approach, in my view, more closely accords with the totality of the relevant available advice, little of which is wholly prescriptive, and contains the necessary ingredient of judgement on the circumstances and evidence.

244. I therefore consider it is appropriate to consider the matter of the safety of the Grove Lane junction in the round, bearing in mind the contextual considerations I have described, the lack of recorded accidents that could be ascribed to visibility, and the fact that the highway authority has at no time considered the junction to be in any sense a priority for improvement, notwithstanding that it is one of the principal junctions in the settlement of Barrow Upon Soar. I am also conscious that its one-way operation makes for a simpler pattern of movement and interaction between road users than would be the case if it were a conventional two-way flow with traffic entering it from the main road. It is pertinent to bear in mind the advice originally set out in MfS1[52] concerning driver reaction and stopping sight distances, the various strands of local evidence and the revised guidance in MFS2[53]. All things considered, I conclude that, despite its perceived deficiency in respect of visibility to the left, the junction, on the basis of that local evidence, operates safely and would not, understandably, be a priority candidate for improvement on the basis of current usage.

245. In my estimation, the deficiency, such as it is, is of marginal significance when the judgement is made in the round and should not trigger prevention of the proposed development unless the impact upon its continued safe operation would be demonstrably severe in the sense intended by paragraph 32 of the Framework. In the ordinary course of events developers cannot reasonably be expected to address imperfections in the existing network unless the impact of the proposals would be significantly adverse.

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[50] Doc 20
[51] Doc 44 paragraph 19
[52] MfS1 7.5
[53] MfS2 10.1 – 10.5

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246. That begs the question in this instance of whether the impact of additional traffic on the junction would be so significant as to undermine its currently safe operation.

247. The traffic forecast calculations accepted by the highway authority and the parties as the correct basis of calculation show that with no allowance for modal shift as a result of the Travel Plan but with allowance for unreduced[54] traffic growth to 2020 the proposed development would add some 62 right turners and some 30 left turners during the am peak hour to the one way exit from Grove Lane. PICADY results show that the consequential delays per vehicle at 2020[55] would be of the order of a few seconds only for left turners and a little longer for right turners, with less than one vehicle being added to the left turning queue and 1.3 vehicles being added to the right turning queue. The ratio of flow to capacity would be 0.401 for left turners and 0.58 for right turners, well within the accepted capacity threshold of 0.850. Similarly, the pm peak flows would be well within capacity.

248. On that basis, it is evident that the junction would continue to operate comfortably within capacity at the busiest times, with little additional delay for drivers that might otherwise cause impatient behaviour that could potentially undermine the demonstrably safe current operation of the junction. It seems to me that the evidence demonstrates conclusively that the junction should continue to operate without significant change when the additional traffic from the development has built up to its maximum anticipated level, which would in any event be a gradual process which would allow drivers to adjust their habits to compensate for any perceptions of additional delay in any event. Bearing all the relevant considerations in mind, I see no reason why, on a robust assessment, the safety of the junction would be materially diminished by the extra traffic from the proposed development.

249. Nor do I see any reason on the basis of the evidence before me [39, 83 - 85] why pedestrian safety in the vicinity of the junction should be any less than it is now, or that safety for cyclists would be diminished. In relation to the latter, I am conscious that MfS2 notes that greater visibility at T- junctions is associated with higher cycle collision rates.

250. For all the above reasons, while I understand the perception of the Council and the Parish Council that the imperfection of the Grove Lane junction with regard to its geometry and visibility to the left would be a cause for concern [72 - 101, 112 – 116] albeit not one ultimately shared by the highway authority, if the proposed development were to go ahead, I consider that the balance of evidence points conclusively to the judgement that highway safety would not be materially compromised by it. I therefore accord only limited weight to that perception and accordingly, I am unable to conclude that the effect of the proposed development would have an unacceptable impact in those terms as far as the Grove Lane junction is concerned. It follows that the claimed conflict with criterion (i) of local plan policy TR/6, set out in the Council's sole reason for refusal [23], is not, in my estimation, substantiated.

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[54] Surveyed flows at the junction have decreased between 2009 and 2012

[55] Capacity assessment updated to 2020 at request of highway authority and summarised in evidence of Mr Young at table 5.3 of his evidence (A2)

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251. I turn now briefly to the matter of the site access itself. The Council raises no objection to the proposed site access [28] and neither does the highway authority. The Parish Council, on the other hand maintained that the vehicular access to the site itself would be unsatisfactory in two principal respects, namely the single access point (with no separate emergency access) and the forward visibility to the access roundabout from the north east [109, 110].

252. The more usual approach is to provide for two or more access points on a development of this size, or a separate emergency access, but that is not always possible, a fact recognised by the highway authority's own guidance[56] which advocates assessment on a site-specific basis [54]. In this case, the requisite emergency access would be 'designed in' to the access roundabouts and short connecting road by the provision of over-run areas to be constructed sufficiently firmly and kept free of obstruction so as to allow emergency vehicles the option of leaving the carriageway itself to get round any obstruction within it. Clearly there is always the possibility that an incident such as a road traffic accident or fuel spillage could close the access itself for a while, but in such circumstances emergency vehicles would be able to reach the relevant area and no doubt by-pass it on the over-run area provision in the event that a simultaneous emergency occurred within the housing area beyond. The highway authority is entirely satisfied on this point [28] and I have no reason to disagree. There are no objections from the relevant emergency service providers in any event.

253. As far as the forward visibility to the roundabout is concerned, the relevant and appropriate guidance in MfS2 suggests that on the current observed speeds the necessary distance is around 52 metres and that, it is claimed by the appellant can be achieved, even when the changing levels of the land and adjacent land are taken into account as the Parish Council suggests. Having carefully studied the levels information on Drawing No 0940/SK/014 rev A and the drawing at Appendix D to Mr Young's rebuttal evidence,[57] and having observed the lie of the land and positioning of retained trees at my site visit I am satisfied that is so. The Highway authority has no objection to the proposed geometry either. Moreover, the speeds measured by the Parish Council in this 30 mph limit are clearly a driver response to the highway geometry as it currently exists, not the geometry proposed, which would include a signified roundabout and a more curved road, both of which would tend to reduce speeds in any event. This is not, in my estimation, a significant point against the proposed development which would create conflict with the intentions of the development plan or the Framework in respect of highway safety and no weight should be accorded to it [52,53,110].

(iv) Traffic circulation in Barrow Upon Soar

254. The particular geography of Barrow Upon Soar tends to concentrate traffic entering and leaving the settlement via the nearby A6 onto the historic Barrow Road Bridge, a listed structure. The alternative route to and from the A6 via Slash Lane to the east of the settlement is regularly inundated by flooding, albeit there appear to be no reliably precise records of exactly how many days in the year it is wholly impassable to motor vehicles.[58] Nevertheless, from all that I

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[56] The so-called '6 C's' guidance (Appendix C to PC1 Evidence of Mr Cage)
[57] A3
[58] See for example paragraph 13.1 of evidence of Mr Cage on flooding (PC3)

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saw and heard I have no doubt that this is a strategic difficulty for the settlement, indeed a difficulty that contributed to the dismissal of an appeal in of an appeal in 1997 [60,176]. I have studied this decision carefully and it seems to me that the circumstances of the site were different in that it was directly related to the possibility of providing a flood reduced link via Slash Lane to ensure the accessibility of the business premises at that time proposed, but there were in any event a range of other substantiated objections to the proposal and the Inspector concluded, amongst other things, that... *"such consequences of poorly sited development are particularly unnecessary at this time when there is no urgent need for further employment land to be released and when there is to be debate over how to best provide for future needs in the context of the emerging Local Plan."* [59]

255. At the strategic level a further distinguishing feature was the lack of demonstrable need for the release of employment land at the time and I am also conscious that housing development has continued apace in Barrow Upon Soar, especially on its northern fringe, despite the obvious difficulty that the periodic severance of Slash Lane and other routes causes. Nevertheless, it seems to me that in the ordinary course of events the expansion of the settlement without resolution of the problem via public investment in the necessary works, however funded, does weigh against the current proposal in the absence of a clear mechanism, set out for example in an up to date development plan, so as to overcome the difficulty, which, unresolved, must ultimately limit the growth of the settlement, especially if climate change increases its frequency.

256. Against that, the settlement is established and must continue to thrive despite those intermittent difficulties which load additional traffic onto the more reliable route across Barrow Road Bridge, leading on such occasions to additional and widespread congestion. The relationship of the proposed development to the Slash Lane difficulty is not so direct or unique that it would be reasonable to require resolution of the problem, which is common to the entire settlement, to be funded by the appellant in this case and there is no suggestion from the Council or the highway authority (neither of which objects to the proposed development on the grounds of the Slash Lane situation) that it should be. Some mitigation of the extra impact of the proposed development on 'flood days' is arguably necessary but has been catered for by the commitment to extra warning signs, albeit these do not address the root cause of the difficulty.

257. The key question is whether the extra traffic impact of the proposed development on flood days would be so severe as to render the development untenable as a consequence of the extra loadings on the Barrow Bridge route on those occasions which disrupt the traffic flow and cause congestion in the settlement in any event, but I have no cogent evidence to suggest that a critical threshold would be crossed so as to render the existing unfortunate situation wholly unacceptable.

258. Moreover, the appellant's off-site proposals to improve the capacity of the Barrow Road Bridge through the use of some additional traffic management measures, including the repositioning of the traffic lights and stop-lines and the installation of MOVA technology would serve to ease, it seems to me, the position

[59] Ibid paragraph 33

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on flood days in the same way that it would on the ordinary days when Slash Lane and sometimes Mountsorrel Lane, apparently, are closed. Clearly the congestion would be greater and more enduring on such occasions but that simply reflects the current position without the proposed Barrow Road Bridge improvements necessitated by the additional traffic from the development proposed in this instance.

259. The effectiveness of those proposed improvements was questioned by the Parish Council [117,118], albeit not the Council or the highway authority, on a number of counts. While I can see that an overly ambitious approach to repositioning the stop lines could potentially cause difficulties in the event of large vehicles meeting at the point of constriction, I have no doubt that precise positioning at the point of implementation would minimise the risk of such an occurrence. Moreover, there is no cogent evidence that the listing of the structure would necessarily inhibit the most advantageous re-positioning of the traffic signals. It does seem that the recent introduction of a dedicated cyclists' phase by the highway authority has the potential to require further modification to the proposals, but the highway authority is the instigator of that and I have no doubt that adjustments could be made as it considers necessary.

260. Fundamentally, it seems to me, the MOVA system proposed, being a dynamic means of traffic management in response to the prevailing circumstances, has the potential for continuous adjustment, for example in the event of the so-called 'hurry loop' introducing unintended consequences[60], to achieve the optimum outcome at a bridge which has served the settlement and will continue to do so on the basis of alternating one-way flows. The appellant's VISSIM modelling was criticised as being too limited in its scope on the approach roads, for example stopping short of the 'Jerusalem Roundabout' but the inclusion of the additional traffic in a wider purview would tend to dilute its significance in any event. Ultimately, all such modelling has its limitations and the Parish Council's evidence failed to convince me that its VISSIM modelling ultimately gave a more accurate prediction. It seems to me that the CD visualisation of the predicted traffic movement failed to take into account matters that would be properly addressed by experienced drivers on a day to day basis, such as minimising delays caused by right turners into Proctor's Park Road.

261. In any event, the addition of around 90 vehicles in the peak hour or around 1.5 vehicles per minute, whilst not perhaps, at 6% increase, imperceptible as the appellant claims[61], would certainly not give rise to insurmountable or unacceptable levels of increase in congestion relative to the existing situation, even if the installation of the proposed measures were to be less effective than predicted. While I have no doubt that there are occasions when the bridge does give rise to difficulties in the settlement, I observed it on a number of occasions, including my formal site visit (timed to observe am peak conditions at the Jerusalem Roundabout.) I can only conclude, having done so, that, given the constriction in the network that the bridge must inevitably create, for the most part it operates as well as can reasonably be expected and that, with the benefit of the improvements proposed, it will continue to do so and may even experience some improvement as the appellant claims. It is significant that the highway

[60] Doc 42 paragraph 5.16
[61] Doc 44 paragraph 39

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authority is satisfied with the proposed mitigation of additional flows on the network in this respect and that there is in any event continuing scope for refinement of a system that is intrinsically sensitive to demand at any time and allocates the available capacity of the bridge accordingly, i.e. an intelligent system. A 'trial run', as has been suggested by a local resident [180], would, in the circumstances, neither be practical, nor, in my view, necessary.

262. All in all, given the proposed improvements, there is no reason to consider that the increased traffic at the Barrow Road Bridge would lead to any conflict with the intentions of the development plan or those of paragraph 32 of the Framework, which says that decisions should take account of, inter alia, whether... *"improvements can be undertaken within the transport network that cost effectively limit the significant impacts of the development. Development should only be prevented or refused on transport grounds where the residual cumulative impacts of development are severe."* The residual impact of the proposal on the Barrow Road Bridge following the introduction of the proposed MOVA system, even if were to fail to fully live up to live up to its promise of more than compensating for the impact of the proposed development[62], could by no stretch of the imagination be described as 'severe' even though some adverse impact might at some point on some occasions conceivably occur.

263. Moreover, the visibility towards the bridge is perfectly adequate from both directions and would remain so even after the adjustments proposed to the signal heads were effected. There is no convincing evidence to demonstrate that visibility at the bridge, or the layout of the road, is in any sense a cause of undue danger. The bridge is an inconvenience known, logically, to most drivers in the peak hours and almost certainly to a sizeable majority of those using it outside those hours. The only potentially decisive question is one of consequential materially and unacceptably reduced capacity on the highway network and, for the reasons previously explained, I do not consider that to the case in any event.

264. Finally, as regards the day to day operation of the highway network elsewhere, there was contention; from the Parish Council [111][63] that abuse of the short stretch of one-way routeing between the junction of Breachfield Road with Grove Lane, between it and Melton Road; and from Mr Smith [168][64] regarding the speed of traffic passing the junction of Babbington Road with Melton Road in the vicinity of the northern end Breachfield Road; that both were potential sources of danger, underlining constraints in the network. With regard to the latter point, I consider that the introduction of the proposed site access roundabout (Drawing No 0940/SK/014 rev A) would advantageously change the geometry of Melton Road, improving visibility whilst calming traffic. As regards the former point, it can only reasonably be assumed that local motorists will obey the law and resist the temptation to short–cut. If anything, a perception of increased flow, such as it would be, would reduce that temptation rather than increase danger, in my view. I do not consider that either point would amount to a conflict with local plan policy TR/6 or the intentions of Framework policy concerning road safety and, again, I am conscious that there is no objection from the highway authority.

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[62] Ibid paragraph 45
[63] Doc 42 paragraph 5.4
[64] Doc 19

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(v) Flood risk

265. Flood risk is not an objection raised by the Council, which is satisfied on the basis of the technical evidence and the position of the Environment Agency (EA) that, with the imposition of appropriate conditions, the appropriate standard of mitigation will be achieved, principally through siting the dwellings wholly within Flood Zone 1 within a specified maximum area, by SUDS techniques to maintain run-off rates of surface water at the existing greenfield level and by an engineered increase in the capacity of the existing floodplain of Fishpool Brook. The latter would ameliorate[65], it is suggested, albeit not eliminate, the problems for existing householders on Breachfield Road with rear gardens bounded by the brook.

266. Having visited certain of the gardens and studied, in particular, the photographs[66] submitted by Mr Hilsdon and Mr Burton, as well as those appended[67] to the FRA and AFRA, I can well appreciate the apprehension of residents [139] that flooding of Fishpool Brook would be exacerbated, notwithstanding that their gardens are clearly designed and profiled to cope with such periodic flooding. It plainly occurs. It cannot be pleasant, and the prospect of it increasing would be a cause for dismay. However, such a prospect is not borne out by the evidence, even though it was not possible for the FRA to survey this private land specifically, causing reliance on so-called 'glass wall' modelling techniques.

267. Understandable apprehension is no substitute for robust evidence and the FRA and its submitted addendum to address masterplan amendments provides just that. The evidence of Mr Rassool, sections 3.00 – 6.00 in particular, demonstrates very effectively that a robustly pessimistic or conservative approach in the modelling has been taken and that there could well be the prospect of a slight improvement in the experience of the householders, albeit that flooding of their lower gardens will still occur. The proposed development would not, therefore, be a panacea. However, I am satisfied that a careful approach has been taken, rooted in the appropriate scientific principles and, on that basis, the proposed development should certainly not make matters worse in any significant way. The EA's updated modelling[68] provides a further level of comfort on the issue. Moreover, the note prepared by Mr Rassool[69] in response to Mr Hilsdon's concerns about drainage from old mine workings[70] deals authoritatively, in my view, with that matter.

268. The Parish Council's submissions on flooding[71] are extensive but miss the essential point that, whilst stating that its requirements would be "exacting", the work undertaken satisfies the EA, and the essential point also that such requirements can be secured through the imposition of appropriate planning conditions such that the development could not proceed if more detailed investigations belie the conclusion that, in principle, all relevant requirements

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[65] AFRA paragraphs 1.16, 1.17 and 1.23
[66] Docs 32 and 39 respectively
[67] Appendices I and A respectively
[68] Ref NTW307/TN1 (Appendix B to A4 Evidence of Mr Rassool)
[69] Doc 38
[70] Doc 32
[71] Doc 42 Section 4.0

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appear capable of being satisfied on the basis of the work undertaken to date. This is an outline application for a large development with sufficient scope for flexibility, for example in attenuation capacity, regarding SUDS techniques built into the basic masterplan; and it would negate the spirit and purpose of the outline procedure if the expense of comprehensive and definitive investigation and design of the end state solution were to be required in advance of the certainty of planning permission that might be withheld for other reasons. It is sufficient at this stage to demonstrate to the EA and, with the benefit of its advice, the decision maker, that the most up to date and refined modelling available, in combination with a site layout that incorporates the principles that would enable the relevant objectives to be met, give sufficient comfort that a practicable solution is in prospect. I have seen no evidence sufficiently compelling to convince me that is not the case.

269. Moreover, it seems to me that future investigation of the permeability of the sub-strata in detail, bearing in mind the above, may improve upon the situation, if it proves better than has been portrayed,[72] although there would be no adverse consequences if it did not.

270. Further, while I note the contention that the modelling did not account for any reduction in capacity of the floodplain of Fishpool Brook if, for example, a causeway approach were to be adopted in its design, I am conscious that other solutions could be considered which would allow the free passage of floodwater in any event, whilst maintaining the passage of pedestrians across the low lying area. Alternatively, acceptance of the partial submergence of an at grade pedestrian route as a temporary inconvenience would not significantly undermine the sustainability credentials of the site as alternative routes would be available via the principal access to the site. Although perhaps not ideal, I do not consider the consequences of the pedestrian link crossing the floodplain to be intrinsically insurmountable and I have no reason to consider that the consequences in terms of flood risk would be sufficient to change my overall assessment that the flood risk modelling is adequate.

271. Nor do I consider the alleged increase in risk of the culvert under the railway blocking to be a matter to which weight should be accorded. The culvert is presently rather inaccessible and consequently rarely observed. Hence debris potentially causing a blockage is likely to go unreported. More natural surveillance of the Fishpool Brook could just as readily reduce the risk of blockage as more public access to the adjacent land might increase it. I have no evidence to suggest that this is a serious criticism of the scheme which should carry any weight. Similarly, the maintenance of the culvert is ultimately the responsibility of Network Rail and I have no evidence that the potential for increased scour is a serious threat to its structural integrity or continued effectiveness.

272. The Parish Council's submission [132] that the EA recommendation to keep floor slabs at 48 metres AOD or above to cater for potential 50% blockage of the culvert in the 1 in 100 year plus climate change event would cause significant problems is not borne out by the evidence. The western edge of the development area shown on the masterplan, within which the layout is

[72] Ibid paragraph 4.6

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illustrative, broadly corresponds with the 48m contour shown on the site survey drawing included as Appendix A to the FRA. It is plain to me that the necessary precautionary minimum slab level which the EA recommends would readily be achieved by the scheme as currently conceived without unduly radical revisions to the layout. Moreover, the AFRA[73] shows the 100 year plus 20% for climate change modelled floodplain to be well below this level, such that any blockage would have to cause flooding at significant additional depth over a very extensive area to cause significant problems in that respect. That possibility is plainly remote in the extreme when the relevant contours are studied.

273. In the final analysis, the expert responsible statutory consultee is content that the approach to flood risk at outline stage is sufficient to engender confidence that its requirements can be met in practice. This is powerful evidence of the ability of the scheme to comply with relevant policy regarding flood risk in the Framework and associated technical guidance and a position to which substantial weight and credence is to be accorded. The logic of the approach to flood risk within the design of the scheme is compelling and I am satisfied that in principle it effectively addresses the matter, with a firm prospect of the broad approach to the disposition and extent of land uses illustrated being retained in broadly the same form at detailed design stage. The illustrative masterplan has a logic to it that has clearly taken into account the relevant precautionary requirements regarding flood risk. In short, I am satisfied that the evidence shows that, subject to the imposition of the EA's requirements, the proposed development would not be subject to fluvial inundation on any reasonable assessment of risk and nor would it materially increase flood risk elsewhere in the catchment.

274. For all the above reasons I am able to conclude that, whilst the definitively detailed measures have not been designed at this stage, the evidence, including the evident satisfaction of the EA, which is fully aware of the master plan proposals for the site, clearly indicates that in practice they will be effective in avoiding any increase in flood risk; and may possibly give rise to betterment that could, on occasion, improve the position of certain of the existing householders whose lower rear gardens are currently affected by flooding.

275. There is, therefore, no significant conflict with the intentions of the development plan or the Framework in respect of flood risk.

276. As to the potential impact of the flooding of Fishpool Brook on foul drainage and the risk of surcharge, I see no reason in principle why appropriate design measures could not be incorporated to secure the system, thereby effecting an improvement on the current situation. The matter is capable of being addressed as necessary by planning condition.

(vi) Infrastructure

277. It is apparent that Barrow Upon Soar, over a number of decades, has expanded through the development of housing estates from its original core. Its location on the north east side of the of the River Soar, which effectively separates the settlement from the group of settlements comprised of Loughborough, Quorn and Mountsorrel, makes it relatively freestanding but there is little to suggest that it is notably self-contained despite its identification as a 'Potential Service Centre' in

[73] Figure 1

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the evidence base for the Council's forthcoming Core Strategy. Nevertheless, in the context of an expansion of the total Charnwood population of 15.4%, the document in question (SCCA) [68] indicates, at Table 7, that other settlements - Mountsorrel (36.9%), Rothley (30%) and Wymeswold (24.5%) – have expanded in population terms relatively more in the period 1991 – 2009. Barrow Upon Soar, by comparison, has expanded by some 20.6% in population terms over the same period, with 619 houses having been built. Clearly, this expansion is ongoing with the continuing development at the Willow Road site in the northern part of the settlement, together with smaller sites, as the Parish Council's evidence clearly indicates, suggesting a likely increase of the order of 50% since 2001 if the proposed development in this case were to be allowed and constructed.[74]

278. Table 12 of the SCCA broadly classifies the range of facilities on a comparative basis as between their level of provision in the identified Service Centres. In the case of Barrow Upon Soar 'Services and facilities', 'Quality of centre', 'Opportunities for improvement' and 'Planning constraints' are ranked as "reasonable" with a moderate level of capacity constraint, whilst 'Transport access', 'Employment self-containment' and 'Infrastructure capacity' are ranked as "fair" with a significant level of capacity constraint. No category is ranked as poor or as giving rise to a very significant or potentially overriding level of constraint.

279. The classification is broad and has yet to be tested through independent examination. Moreover, the development strategy itself for the district has yet to be settled in terms of the emerging plan and it is common ground between the main parties that it should be accorded no weight in the determination of the appeal [14]. Nevertheless, the evidence base presents a picture that is perhaps less constrained than the very clear perception of the Parish Council and the numerous local residents [103 -105, 136,137, 141-148,151,158-161,170,174,181,182 185] who have made representations that the physical and social infrastructure of Barrow Upon Soar is unduly stretched, although elsewhere in the SCCA [68] specific concerns are highlighted. For example, Table 2 notes the highway authority's concern that the Barrow Road bridge is constrained in capacity terms and that the settlement is prone to disruption when Sileby Road and Slash lane are flooded, together with the comment that *"it is not readily apparent how these issues might be addressed in order to accommodate further housing growth in the village"*.

280. I also note that Table 11 of the SCCA indicates, inter alia, that there is potential for improvement through contributions to *"capacity of services and facilities where justified"* and that there is the opportunity to..."*Improve provision for buses, cycling and walking plus better traffic management to help reduce pressures. New highway capacity only considered where no other reasonable alternative can address traffic related problems."*

281. These matters go to the heart of my previous consideration of the suggested planning conditions and the planning obligation submitted and what, because of the statutory CIL tests, may or may not be accorded weight in the decision making process as far as the latter is concerned, notably in relation to the

[74] PC4 Evidence of Mr Cantle paragraphs 2.2 – 2.7

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financial contributions provided for in respect of Highways and Transport, Policing and Health.

282. The County Council's written evidence to inform the Inquiry [183 – 190] includes details[75] of the manner in which specified contributions for Highways and Transport are intended to be spent and my conclusions are summarised below.

283. The bus shelter and pedestrian and cycle routes contributions relate to physical works and infrastructure so as to more effectively serve the proposed development by public transport and physically link it into the existing built village with improved access to the village centre and the Humphrey Perkins High School. They involve capital expenditure which is necessary to make the development acceptable in the sense of keying it in to the fabric of the settlement and this is directly related to the development and, it seems to me, fairly and reasonably related to it in scale and kind. Full weight may be accorded to this element of the Planning Obligation.

284. It is common ground between the main parties that the site is sustainably located. The 'Travel Pass Contribution' is essentially a form of revenue expenditure effectively, albeit indirectly, subsidising the provision of rail and bus services for a temporary period to induce good habits in potential customers. There can be no guarantee that such habits will continue. People tend to be rational in the exercise of transport choice and, if it suits their needs to make use of the public transport services to which the site is inherently accessible, they will do so; otherwise they will use other means, whether that be bicycle, motorcycle or motor car. However, insofar as it would promote sustainable transport habits to capitalise on the advantages of the site's location, thereby contributing to the promotion of sustainable transport advocated by the Framework, the contribution may be regarded as a necessary complement to help ensure that the sustainability credentials of the development are maximised at the outset.

285. The obligation also provides for a 'Travel Packs Contribution'. Such packs are undoubtedly good practice. They may influence the behaviour and travel choices of a proportion of the occupants of the proposed houses, initially at least. Again, to the extent that they would promote sustainable transport habits from the outset, they may be regarded as a necessary complement to help ensure that the sustainability credentials of the development are fully utilised early on. The packs would clearly be directly related to the development proposed and I have no reason to consider the sums of money involved disproportionate.

286. However, the Travel Plan Penalty (CC2, para. 3.3) cannot, logically, be necessary to make the development acceptable in planning terms. It caters for the possibility that, notwithstanding the services of a Community Travel Plan Co-ordinator (CTC) for a temporary period[76] whilst the development takes place, the Travel Plan fails to meet its target of 14% modal shift away from the private car, which of itself is a laudable objective in policy terms. However, by the time that failure had become apparent, the houses would have been built and occupied and the additional measures to pursue modal shift objectives that the £45,000 penalty would fund would be further physical measures or travel packs and passes, it is said, but the latter would only be for a temporary period. It is also

[75] CC2 Evidence of Mr Cook
[76] Fourth Schedule to planning obligation, paragraph 5.3.7

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said that the penalty provides an incentive for the developer to seriously implement the measures in the travel plan but, realistically, in the context of a development of 300 new houses and, possibly, a commensurate reduction in the base value of the land in any event, I cannot see that this would be so. It may have merit as a signal that necessary good practice is expected, but I do not consider such an arrangement to be necessary to make the development acceptable in planning terms in the longer term. The concept of necessity, in my view has to be more robust than a measure that, at best, would seek to retrofit good practice and unspecified physical measures at some point in the future after the development had been implemented in any event.

287. For these reasons, I do not consider that any weight should be accorded to that particular element of the planning obligation.

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[77] addresses this matter at Section 12 and his Appendix 10[78] 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."*

[77] A1
[78] In A1a

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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.

295. The 'Healthcare' contribution of £30,000 is solely for the improvement of the health centre car park rather than, for example, additional consulting space, albeit more efficient use of space and hence easier parking should, in principle, help to improve the efficiency of throughput as people have less difficulties in prompt attendance. The PCT,[79] despite its reservations about the impact of the proposed development on its ability to deliver continuously improving services

[79] Doc 15

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through the health centre, nevertheless sees this specific action as complementary to premises improvement funded by previous S106 monies. Given the inevitable increase in patient numbers that the proposed development would give rise to, it does appear to be a considered and specified use of funds for a relevant capital project to cater for additional demand rather than simply a bid to overcome an existing deficiency. In the circumstances that have been described to me [145,146,174] it would therefore meet the relevant tests and may be accorded weight.

296. For the above reasons, I consider the contributions to the infrastructure of Barrow Upon Soar and encouragement of public transport use that would be delivered via the executed obligation should be accorded weight in the planning balance, but that the Travel Plan Penalty ought not to be accorded weight.

297. The majority of the provisions in the obligation are necessary to the grant of planning permission and do otherwise meet the relevant tests, the upshot being that the concerns of the residents and the Parish Council concerning pressures on the physical and social infrastructure of the village are capable of being met, but only barely so in the context of individual applications for development such as this one. The reality is that the mitigation of impact is confined to that which may directly be ascribed to the proposed development. Therefore, whilst the impact of development might be mitigated in the sense of services and infrastructure ultimately remaining no more stretched than previously, the perception is one of increased pressure on a finite quantum of service provision; hence the sentiment expressed in the Parish Council's closing submissions that the proposals will not lead to a better quality of life or positive improvements as advocated by the Framework but rather it will lead to deterioration in the quality of life currently enjoyed by Barrow Upon Soar residents [138].

298. I have previously drawn conclusions in respect of traffic and the highways infrastructure which, with the measures proposed, the highway authority considers will cope and I do not consider that the residual cumulative impacts would be severe. Therefore, bearing in mind the principle set out in paragraph 32 of the Framework and notwithstanding that the existing situation is perceived as unsatisfactory, certainly on flood days when one or more routes out of the settlement is closed, refusal would not be warranted on that ground, albeit the prospects for further growth in the absence of more radical measures would in my view be questionable and would ideally be addressed in the context of the development plan.

299. As I have noted, the planning obligation makes sufficient provision to mitigate the impacts of the proposed development on schools, libraries, policing, open space and recreation facilities and community facilities. In other words, the status quo would be broadly maintained at the existing level of pressure, whereas, it seems to me that local residents and the Parish Council feel that the existing level of pressure is already unsatisfactory due to the pace of growth in the relatively recent past. Perhaps understandably in the circumstances, a single proposal to construct up to 300 additional dwellings is perceived as too much for the community to absorb. It would of course be built out over a period of time, albeit relatively short, and the planning obligation makes provision for that in terms of stepped contributions as specified thresholds are crossed in respect of, for example, education. In other words, funds would be released proportionate to the impact over time.

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300. The Health Centre and its services are clearly under pressure from an increasing population [141-148], albeit its commitment to excellence suggests that it would cope even if anticipated improvements are delivered less rapidly than might be hoped for. However, notwithstanding my previous observations on the generality of public services for the community in the context of policing, I do not consider that the limits to growth of a settlement can in principle be determined by the availability of health service resources that the increasing population would have to avail itself wherever it was housed in any event. It seems to me that such services are inherently malleable and capable of being expanded locally to meet demand, much in the same way as commercially provided services in a settlement respond to the opportunities created by additional population, albeit in the case of public services the necessary funding is prone to different disciplines and priorities. Put simply, it would be absurd to turn away needed housing simply because the present number of medical staff in a particular settlement was set at a finite number. The answer is clearly to improve upon their availability through the established funding channels to match population growth. The adequacy or otherwise of such funding is not a matter for me to address. Provision is made, in this instance, for the physical improvement of the capacity of the Health Centre car park so as to improve efficiency and help mitigate the impact [145] of significantly increased patient numbers.

301. In all the circumstances, while I can appreciate the local perception in the community of growth and consequent pressure, the reality is that in accordance with the CIL Regulations and the relevant formulae where applicable used by the public services, the proposed development would provide for the necessary mitigation, but little more, of its own impact and on that basis should not lead to the deterioration in the quality of life that the Parish Council and others assert. If additional benefits were to be provided for in the sense of positive but extraneous improvements not directly related to the proposed development, I would not be able to recommend that they should be given weight in the determination of the appeal. The most obvious example of this would be the funding sought by BUSCA for a community centre. I have no doubt that it would be perceived as a substantial benefit by the community, but funding of that order is not on offer and could not weigh in favour of the proposed development if it were.

302. In the final analysis, the approach adopted by the appellant, the Council and the County Council to the provision of physical and social infrastructure is, in the main, the correct one insofar as it aims to provide for proportionate mitigation of impact. There is no lack of such mitigation that would weigh decisively against the proposed development in this case, whatever the perception to the contrary might be. The provision made is sufficient, in accordance with relevant legislation and local and national policy. Given that position, I do not accept the proposition that in those terms the proposed development would lead to a deterioration in the quality of life of existing residents sufficient to warrant dismissal of the appeal.

(vii) Accordance with the development plan

303. The appellant maintains that the proposed development accords with the development plan as a whole [32-34,71]. I consider it more correct to say that there is substantial accordance with many aspects of the development plan, but clear conflict with certain key elements of it.

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304. It is common ground between the main parties that the proposed development accords with a wide range of policies [21,28], both in the RSS and in the local plan. I have no reason to depart from that analysis.

305. The Council [23] alleges conflict with policy TR/6 but I have concluded that there is no conflict with that policy.

306. It is common ground that the proposals conflict with the intentions of policies ST/2, CT/1 and CT/2 which generally seek to restrict development in the countryside [28].

307. More specifically: ST/2 seeks to confine development to allocated sites within the defined limits of settlements and the appeal site lies outside the defined limit for Barrow Upon Soar. CT/1 seeks to strictly control development in the open countryside outside such limits to specified categories of essentially rural development. CT/2 permits development that would not harm the character and appearance of the countryside and which would safeguard its historic, nature conservation, amenity and other local interest value.

308. The conflict with ST/2 is self-evident. Moreover, suburban housing estates do not fall within the purview of what is contemplated by policy CT/2. The rural ambience of the appeal site would be transformed into that of such an estate and in that sense the conflict with CT/2 is clear, albeit there is no objection on the grounds of nature conservation or historic value in this instance.

309. Third parties [191,194] have specifically cited conflict with local plan policy ST/1(ii) in the sense that the nature of the many objections was indicative of the value ascribed by the community to the appeal site. Policy ST/1 states that, in providing for the development needs of the Borough measures will be taken to, amongst other things……*"conserve, protect and enhance those features of the natural, historic and built environment which are particularly valued by the community"*...but gives no objective criteria by which to identify such features, specifically, albeit the explanation associated with the policy at paragraphs 2.24 – 2.27 appears to imply by its topic coverage that criterion (ii) is primarily concerned with heritage assets and designated sites, rather than the more nebulous concept simply of environment that is valued. On that basis, there would be no conflict with the policy as the appeal site contains no such assets or designations or features otherwise formally recognised.

310. Notwithstanding the groundswell of objection to the prospective loss of the site to development, I therefore do not consider the policy as originally conceived and drafted would be contravened in the manner that has been suggested and there is no suggestion from the Council that this would be the case, either in the SoCG or the evidence of Mr Reid. In terms of impact the loss of "ordinary" undesignated countryside that the appeal site represents would undoubtedly be keenly felt by a significant section of the community. However, although pleasant in its present rural appearance, the site is well contained by the vegetation at its margins that has the potential to be retained and strengthened in the overall landscaping scheme that would be necessary. The sloping nature of the site does make for prominence but the nature of the topography is such that this would be largely confined to visibility from within the existing settlement and the outer margins would be below the skyline given the nature of the topography [9] and would in some respects mirror the existing development on the gently sloping land to the west of the Fishpool Brook. This is particularly

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evident when the site is viewed in context from its north-eastern margin. If it is necessary to release this greenfield site for development, there are, in my estimation, no overriding aesthetic objections to doing so based on development plan policy.

311. What the SoCG does confirm is the Council's view that policies ST/2, CT/1 and CT/2, being adopted prior to 2004, may only be given weight commensurate with the extent that they comply with the provisions of the Framework.[80] Moreover, it also confirms the Council's view that the policies, whilst generally restricting development in the countryside, also relate to the supply of housing and are "out of date" when considered in the context of paragraph 49 of the Framework because the Council is unable to demonstrate a five year supply of deliverable housing land [28]. I have no reason to depart from that analysis.

312. For the above reasons, I consider the proposed development displays a very substantial degree of accordance with the development plan as a whole, bar conflict with the protection of the countryside outside defined settlement boundaries. However, that local plan intention must be tempered by the presumption in favour of sustainable development as set out in paragraph 14 of the Framework. The Council accepts that the proposed development represents sustainable development [28] and I have drawn a similar conclusion in my initial broad analysis of its sustainability credentials. Nothing in my subsequent analysis of the main considerations would lead me to an alternative view.

(viii) Accordance with the Framework

313. The Framework promotes sustainable development and I have concluded that the proposal represents sustainable development in a sustainable location where a variety of transport choices, including rail travel, are already available and could in principle be improved upon.

314. I have also concluded, with the pedestrian and cycling measures provided for, that safe and suitable access to the site can be achieved for all and that the improvements to the operation of the Barrow Road Bridge would help to limit the impact of additional traffic and that the residual cumulative impacts of the proposed development in transport terms would not be severe and that the Grove Lane junction geometry is not, in the light of local evidence and circumstances, a sufficient reason to withhold planning permission.

315. The Travel Plan measures provided for can only serve to improve the situation and at least encourage the sustainable transport choices necessary to serve broad policy intentions articulated in the Framework. This represents good practice that accords with the spirit of the Framework's intentions in respect of promoting sustainable transport, albeit I do not consider the Travel Plan Penalty to be justified. Moreover, the site is capable of being readily linked in to the existing fabric of the settlement in terms of footpaths and cycleways and there is no reason to doubt that this objective will ultimately be better realised at the south-eastern extremity of the site when Network Rail fulfils its putative obligations[81] by constructing a footbridge to restore the footpath connection across the tracks.

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[80] SoCG paragraph 6.13

[81] Submitted Planning Statement, paragraphs 8.15 – 8.23 and Doc 44, paragraph 56

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316. The layout of the site avoids placing residential development in the floodplain of the Fishpool Brook, allows for increasing its capacity and, moreover would enable houses to be placed above the required level to future proof them in respect of the potential effects of climate change, whilst allowing sufficient scope through SUDS techniques not to increase levels of run-off. The generous provision of open space within the proposed development required to achieve these outcomes would also facilitate recreational activity, a pleasantly landscaped setting and the promotion of biodiversity.

317. Many of the above characteristics assist the promotion of a healthy community and the housing proposed, which would be 30% affordable would make a valuable contribution to the delivery of a wide choice of high quality homes. Although there is evident and widespread concern that the existing community of Barrow Upon Soar will struggle to accommodate the additional population, especially in view of ongoing expansion as a result of permissions granted in the relatively recent past, the executed planning obligation would at least mitigate the impact of additional population in a proportionate manner commensurate with statutory requirements, even if compensating provision for perceived pressure already arising from existing expansion would not be added to that mitigation. The proposed development achieves what it must in terms of the latter.

318. The design of the proposed houses themselves is a reserved matter but given the carefully conceived layout to address a number of the above matters, I have no reason to consider that a standard of design appropriate to the essentially suburban nature of the existing settlement could not be achieved. The layout itself is also a reserved matter but its importance to the acceptability of the proposal is such that it would be necessary to secure its essential principles through the imposition of a planning condition (SC4 as previously referred to). The Framework of course provides for that approach.

319. As the proposed development is able to adequately address flood risk, the appeal site is not subject to any specific policies in the Framework that would inhibit its development in the manner indicated by paragraph 14 (Footnote 9 to the Framework refers). Nor would the development involve the loss of Best and Most Versatile land as discouraged by paragraph 112.

320. Bearing all of the above in mind and the acknowledged inability of the Council to demonstrate a five year supply of deliverable housing sites, together with its acknowledgement that policies ST/2, CT/1 and CT/2 may thereby not be considered up-to-date, and my conclusion that in any event the proposed development displays a very substantial degree of accordance with the development plan as a whole, I have no doubt that the presumption in favour of sustainable development is, in principle, engaged.

321. The Parish Council submitted [125 – 131] that the practical difficulties associated with bringing the site into development would inhibit its full development within a five year period, but that approach is in my view a misconception as to the relevant approach to land availability as conceived by the Framework at paragraph 47. To enter the five year land supply an unallocated site such as this must be granted planning permission, not necessarily full permission, with a realistic prospect that housing will be delivered on the site within five years. There is no clear evidence in this case that the scheme would

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or could not be delivered over a five year period. There is no evidence to suggest that it is not viable, or that there is no longer a demand for the types of units (primarily family housing) proposed. For practical reasons the build-out of a site such as this should and would be phased, but that is a sequence of events, not in this case a means of preventing development prior to specified dates.

322. There would of course be practical matters to address, conditions precedent to discharge and consents to be gained before development could commence, but that is by no means unusual for a greenfield development on this scale. There is nothing to suggest that that an experienced developer, with the surety of an outline planning permission, would not invest heavily and with alacrity in the necessary up-front efforts to bring a site such as this into development. It is in no way dependent on a significant publicly funded infrastructure programme that might have to be implemented in advance. Even though other agencies such as Severn Trent Water and the highway authority may be involved in various ways they have statutory obligations in any event and the major financial resources needed would be in the control of the developer, to be deployed through other agencies where necessary.

323. It cannot of course be guaranteed that all the dwellings would be built and occupied within five years but there is, in my view, a realistic prospect of substantial delivery, thereby facilitating the availability of needed houses as the Framework intends. At this juncture, there is no cogent evidence that would significantly belie the appellant's intention or ability to secure substantial delivery within an appropriate timescale. I have no reason to doubt that, building on the work undertaken so far, vigorous concerted action by an experienced house builder would bring the development into being within a realistic timescale. Approval in principle is the essential catalyst to the necessary action on a site such as this. Little weight should, in my view, therefore be placed on the Parish Council's submissions in this respect.

324. The Framework does incorporate the core principle that decision taking should be... *"genuinely plan-led, empowering people to shape their surroundings, with succinct local and neighbourhood plans setting out a positive vision for the future of the area".* This principle was most forcefully put by Nicky Morgan MP [149] and is without doubt material. It pulls in the opposite direction to the presumption in favour of sustainable development that is engaged by this case and I have given considerable thought to those representations, summarised below.

325. The Council itself specifically states that no weight should be accorded to its emerging core strategy and it is clear that with the exception of the single highway safety reason for refusal based on conflict with local plan policy TR/6 it considers the proposal to be not only sustainable but substantially in accordance with the development plan as it currently stands, with the obvious exception of policies ST/2, CT/1 and CT/2, which it says are "out-of-date". Bar its conclusion on policy TR/6 I have no reason to take a different view in this case and therefore place less weight on Mrs Morgan's proposition than might be appropriate in other circumstances.

326. Moreover, in respect of the neighbourhood planning process, Mr Cantle confirmed, in response to my question on the matter, that it was the Parish Council's intention, following discussions with the Council, to follow the progress

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and context of the core strategy insofar as its aspiration to prepare a neighbourhood plan was concerned. That is clearly some time off and Mr Cantle confirmed that the Parish Council did not have 'Frontrunner' status in the neighbourhood planning initiative. Nor do I have any evidence of a firm programme of preparation (albeit reference is made by the Parish Council to the spirit and implementation of the Localism Act 2011).[82] Accordingly, although the representations on the point merit weight in the context of the first core principle of the Framework, and might be regarded as an adverse impact in terms of public expectations, the presumption set out in paragraph 14 is inescapably influential in the context of the Framework as a whole, bearing in mind the sustainability of the proposal in terms of its location and characteristics.

(ix) The planning balance

327. The background to this appeal includes an uncontested shortfall in residential land supply in Charnwood Borough. A development of the order of 300 dwellings, deliverable at pace once necessary investigative and detailed design work and associated approvals are achieved, would make a significant contribution to reducing that shortfall, representing around 10% of the current deficit.[83] Nearly a third of the dwellings would be affordable. This quantum of housing in that context is a benefit which merits substantial weight.

328. Notwithstanding the existing disruption to road traffic that the settlement periodically experiences as a consequence of the flooding of strategic highway connections, the evidence demonstrates that on a day to day basis the traffic flows generated by the proposed development would be accommodated by the highway network, with specific improvements to the Barrow Road Bridge provided for, without the modal shift intended by the Travel Plan and its associated incentives and penalty. If that shift occurs it would be a bonus and a significant benefit, but I am unable to conclude that it would be necessary for the development to go ahead, or that it would be necessary to make it sustainable.

329. The essential characteristics of the settlement in this context are that it is served by a railway and bus services. The infrastructure for public transport is already in place, with connections to a variety of significant destinations. The existence of such infrastructure is particularly advantageous in the case of rail. Services are potentially capable of being improved in response to demand as the operators may see fit. The settlement has an accessible centre, albeit with parking difficulties as many are, but can be reached on foot from the site by those wishing to do so, relatively easily. Given the existence of the settlement and the public transport infrastructure, the location of the site is inherently sustainable. This weighs heavily in favour of the proposed development.

330. Other aspects of sustainability, including the direction of development away from Best and Most Versatile land and the protection and promotion of biodiversity, would be well served by the proposals.

331. While the highway safety arguments of the Council and others are not in my estimation substantiated in all the local circumstances, the perception that further traffic growth should not be contemplated is understandable in a

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[82] PC4 Evidence of Mr Cantle, paragraph 4.3
[83] Addendum to SoCG shows a shortfall of 2,980 units at June 2012

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settlement that is regularly disrupted by flooding on the highway network. This is a matter to which some, weight should, in my view, be accorded. If it is a problem that merits significant investment to overcome it, it is an existing and long-established problem that cannot reasonably be resolved by private funding from an individual developer such as the appellant. The proposed development would not worsen the flooding, but its occupants are potentially inconvenienced by it, if they choose to travel by car on flood days. While the problems of Barrow Upon Soar in this regard must ultimately inhibit the further growth of the settlement if not resolved, I am unable to conclude on the evidence that the present periodic disruption is a sufficient reason in itself to refuse permission for the development at issue, large though it may be. The matter does weigh against the development but not, in my view, decisively so.

332. The outline design of the development has the potential to at least adequately mitigate the potential run–off through SUDS techniques. It would not place the new dwellings proposed at risk from fluvial inundation and could create some marginal improvement for existing homeowners with gardens prone to flooding. Importantly, the Environment Agency is satisfied that, with the measures it recommends, the development may go ahead without causing harm in this context.

333. Given the expansion of the village, recently and in previous decades, the concerns of the community regarding its social as well as its physical infrastructure are understandable and should, in the circumstances, be accorded weight. This is a material concern. However, within the constraints of what is permitted by the CIL Regulations, the appellant has made provision to mitigate the impact of the proposed development, calculated in the main according to the established formulae of the relevant service providers. Clearly, there will be additional pressure but, given that provision, the existing situation should not be materially worsened even if no tangible improvements are perceived. Due weight should be therefore accorded to the planning obligation entered into by the appellant, the Council and the County Council.

334. While the dismay of the local health centre at the prospect of additional pressure on its services must be acknowledged, I do not accept that such pressure should count decisively against the development. Such services must perforce adapt to demand within the budgetary constraints within which they operate and the obligation provides for physical improvements to the operation of the centre, albeit to the car park, in any event. Only limited weight should therefore be accorded to the representations made against the proposals on such grounds.

335. There is no significant conflict with an extensive range of policies identified in the SoCG [21] and this is a factor to which significant weight should be accorded. Nor have I found there to be significant conflict, in practice, with the intentions of local plan policy TR/6. Again, this is a factor to which significant weight should be accorded. There is clear conflict with the intentions of local plan policies ST/2, CT/1 and CT/2 but, insofar as the effective operation of these policies is contingent upon an adequate supply of housing land in the form of specific allocations or unallocated land within the existing settlement boundaries, these policies are rendered out-of-date by paragraph 49 of the Framework and it is common ground that is so. I have no reason to take a different view and the

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weight that might otherwise be accorded to such harmful conflicts is thereby reduced.

336. The conflict with local plan policy ST/1 alleged by certain parties [191,194] is not borne out, on analysis, by the terms of the policy and its explanation. The sense of prospective loss expressed by local residents regarding the appeal site as a positive contribution to the rural setting of Barrow Upon Soar is real nevertheless and merits weight insofar as the intrinsic character and beauty of the countryside is valued by the Framework.

337. The intentions embodied in the first core principle of the Framework concerning plan-led development and local empowerment at the neighbourhood level is also a material consideration to which weight should be accorded. However, substantial harm or potential harm in that respect has not been demonstrated in this instance, and there is substantial accordance with the intentions of the Framework to promote sustainable development, in this case contributing to the delivery of a wide choice of high quality homes in a well designed scheme that facilitates healthy lifestyles.

338. While I am bound to report that there are harmful aspects to this development to which weight should be accorded, these must be weighed against the very substantial contribution to housing needs that the site is capable of providing in the context of an acknowledged shortage of suitable land and the inherent sustainability of the location. Those aspects of the planning obligation which may be taken into account to mitigate the impact of the proposed development should also be accorded due weight. The presumption in favour of the sustainable development, bearing in mind the policies of the Framework as a whole and the development plan taken as a whole, should therefore be the decisive factor in this case.

Overall Conclusion and Recommendation

339. In the light of the above main considerations and having taken full account of all other matters raised, I consider the balance of planning advantage to be in favour of the scheme. I therefore recommend that the appeal be allowed and planning permission granted, subject to the conditions set out in the attached annex.

Keith Manning

Inspector

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Annex: Schedule of Recommended Conditions

1) Details of the appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development begins and the development shall be carried out as approved.

2) Application for approval of the reserved matters shall be made to the local planning authority not later than three years from the date of this permission.

3) The development hereby permitted shall begin not later than two years from the date of approval of the last of the reserved matters to be approved.

4) No development shall commence until both a Master Plan in general conformity with the submitted Illustrative Masterplan 4045_ SK_ 001 rev E and a Design Code for the site have been submitted to and approved in writing by the local planning authority. Both shall substantially accord with the submitted Design and Access Statement Rev G. Any amendment to either shall be submitted to and approved in writing by the local planning authority. The Design Code shall address the following:-

   i) Architectural and sustainable construction principles
   ii) Character areas
   iii) Lifetime home standards
   iv) Car parking principles
   v) Cycling provision including pedestrian and cycle links to adjoining land
   vi) Street types and street materials
   vii) Boundary treatments
   viii) Building heights (which should be limited to a maximum height of three storeys, being located on the main street only, as indicated on pages 33/34 of the Design and Access Statement, and two storeys for the remaining parts of the development)
   ix) Building materials
   x) Provision of public open spaces (including timetable for implementation)
   xi) Design of the site to accord with Secure by Design principles.
   xii) Phases of development.

   Applications for approval of the reserved matters submitted pursuant to condition 2) above shall be in accordance with the Master Plan and Design Code as approved. In addition to the Design and Access Statement previously referred to, The Master Plan and Design Code and the reserved matters submitted for approval shall also accord with the principles set out in the following submitted documents: Flood Risk Assessment June 2010; Addendum to Flood Risk Assessment January 2011; Ecological Appraisal June 2010; Bats in Trees Addendum December 2010; Tree Assessment Report Rev A; and Badger Mitigation Strategy December 2010. Development shall be carried out in accordance with all matters approved pursuant to this condition.

5) Notwithstanding the generality of condition 4) above, the development hereby permitted shall be carried out in accordance with the following approved plans:

   4045_SK_005 Site Location Plan
   0940/SK/010 rev C Typical Badger Tunnel Detail
   0940/SK/013 rev E Melton Road Alternative Site Access Roundabout
   0940/SK/014 rev A Site Access Roundabout
   0940/SK/022 rev B Fishpool Brook Pedestrian Footbridge Crossing
   0940/ATR/002 rev A Proposed Site Access – Swept Path Analysis
   4045-L-01 rev D Types of Open Space
   4045-L-02 rev A Extended Floodplain Area to be Regraded
   4045-L-04 Public Open Space Phasing Plan
   NTW/307/Figure 4 Rev A Indicative Floodplain Sections

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NTW/307/Addendum Figure 1 Rev A Fishpool Brook Modelled Floodplain Extent

6) The maximum area of residential development on the site (excluding the areas of public open space, structural landscaping, meadow and SUDS) shall be defined on the Master Plan to be approved pursuant to condition 4) above and shall not exceed 8.32 hectares, and no more than 300 dwellings shall be constructed on the site.

7) No construction on any phase of the development hereby permitted shall commence until such time as the following details in respect of that phase have been submitted to and approved in writing by the local planning authority:

a) Siting including details of proposed levels of ground surfaces and finished floor levels of all buildings and a number of selected typical sections across the phase.

b) A landscaping scheme including details of all trees and hedgerow to be retained, full planting specification, timing or phasing of implementation, services above and below ground; and a landscape management plan covering a minimum period of 10 years following completion of the development. Any trees or plants removed, dying, being severely damaged or becoming seriously diseased within 5 years of planting shall be replaced in the following planting season by trees or plants of a size and species similar to those originally required to be planted;

c) Treatment of all hard surfaced areas, including types and colours of materials street furniture, signing and lighting of all public spaces.

d) Boundary treatment to all open areas where the site bounds other land (where confirmed in writing by the local planning authority to be required) including design, height, materials and colour finish.

e) Details of the proposed standard signage for the footpaths at the points where footpath I 23 is proposed to be crossed by the new estate roads.

f) Layout and design of children's play areas; Multi Use Games Area/skate park area and any other play/ recreation area within the development;

g) Details of external lighting.

Development shall be carried out in accordance with the approved details.

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

9) No development shall commence until drainage plans for the disposal of foul sewage have been submitted to and approved in writing by the local planning authority. No dwelling, in any phase of construction, shall be occupied until all the works necessary in respect of that phase have been implemented in accordance with the approved details.

10) No development shall commence until a surface water drainage scheme for the site, based on sustainable drainage principles and an assessment of the hydro-geological context of the development, including any requirement for the provision of a balancing pond, has been submitted to and approved in writing by the local planning authority. No dwelling, in any phase of construction, shall be occupied until all the works necessary in respect of that phase have been implemented in accordance with the approved details. The balancing pond, if required, shall be completed and be in operation before the occupation of the first dwelling on any phase.

11) No development shall commence until a scheme to install trapped gullies has been submitted to and approved in writing by the local planning authority. The scheme shall be implemented in accordance with the approved details. No dwelling, in any phase of

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construction, shall be occupied until all the works necessary in respect of that phase have been implemented in accordance with the approved details.

12) If during development contamination not previously identified is found to be present at the site then no further development should be carried out in that location until such time as a remediation strategy has been submitted to and agreed in writing by the local planning authority and the works carried out in accordance with the agreed strategy prior to re-commencement on that part of the site.

13) Prior to the commencement of development, a scheme for the protection of trees and hedges to be retained on site shall be submitted to and approved in writing by the local planning authority. The scheme shall include:-

- Details of all trees and hedges to be retained on site.
- Details of any works proposed in respect of any retained trees and hedges on site.
- Details of operational and physical measures proposed for the protection of trees and hedges
- Details of any ground works that are to be carried out within 10 metres of any tree or hedge identified as being retained.
- Details of the methodology to be employed when carrying out ground or other works within 10 metres of any tree or hedge to be retained.

Development shall be carried out in accordance with the approved details.

14) No development shall commence on any phase until the tree/hedge protection measures for that phase approved pursuant to condition 13) above have been fully implemented. The approved tree/hedge protection measures shall be retained and maintained in their approved form until development on the phase in which they are located is complete. Within the areas agreed to be protected, the existing ground level shall be neither raised nor lowered, and no materials or temporary building or surplus soil of any kind shall be placed or stored thereon unless approved as part of the details submitted to discharge the condition.

15) No development shall commence until a scheme of noise attenuation/mitigation measures (in order to reduce noise likely to be experienced in dwellings and private gardens from the use of the railway corridor to the south west of the site) has been submitted to and approved in writing by the local planning authority. No dwelling in any phase of the site identified by the scheme as being affected by railway noise shall be occupied until the required measures have been implemented in accordance with the approved scheme.

16) No development shall commence until details of the construction of the proposed access roundabout (as shown indicatively on drawing 0940/SK/013 Rev E) and the footpath/cycleway bridge across the Fishpool Brook (as shown indicatively on drawing 0940/SK/022 rev B) have been submitted to and approved in writing by the local planning authority. No dwelling on the site shall be occupied until the access roundabout and pedestrian bridge have been constructed in accordance with the approved details.

17) No development shall commence until a detailed scheme of works for the improvement of traffic flow at the Barrow Road Bridge of the type illustrated on WSP UK drawing numbered SK/017 Rev A has been submitted to and approved in writing by the local planning authority. No dwelling on the site shall be occupied until the improvement works at the bridge have been fully implemented in accordance with the approved details.

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

i) the parking of vehicles of site operatives and visitors

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ii) the routeing of construction traffic throughout the construction process and the mechanism for securing adherence to approved routes

iii) loading and unloading of plant and materials

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

v) the erection and maintenance of security fencing

vi) wheel washing facilities

vii) measures to control the emission of dust and dirt during construction

viii) a scheme for recycling/disposing of waste resulting from the construction works

ix) precautionary measures to ensure that no badgers become trapped or injured during development work

19) No development shall commence until procedures have been initiated to upgrade the existing public footpaths I 23 and I 24 (part) beyond the edge of the meadow boundary to the eastern boundary of the application site to footpaths/cycleways. The upgrading works (including those approved through Condition 7) shall be completed prior to the occupation of 50% of the dwellings on the site.

20) No development shall commence until a scheme of electronic or other suitable signing to warn of flooding on Slash Lane has been submitted to and approved by the local planning authority. No dwelling on the site shall be occupied until the scheme has been fully implemented in accordance with the approved details.

21) No development shall commence until a scheme of public art to be delivered on site has been submitted to and agreed in writing by the local planning authority. Those elements of the approved public art scheme which are to be delivered on a particular phase of the development shall be delivered prior to the occupation of 80% of the dwellings in that phase.

22) No development shall commence until an assessment of the anticipated energy requirements arising from the development has been submitted to and approved in writing by the local planning authority. That assessment must demonstrate how a minimum of 10% of the energy requirements shall be secured from decentralised and renewable or low-carbon energy sources. Details and a timetable of how these measures are to be achieved, including details of any physical works on site, shall be submitted to and approved in writing by the local planning authority. The approved details shall be implemented in accordance with the approved timetable and retained as operational thereafter.

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APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

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She called	
Mr Chris Bancroft Adv Tip TS FCILT	Director, Bancroft Consulting
Mr Iain Reid DipTP DipLD MRTPI	Director, Iain Reid Landscape Planning Limited

FOR THE APPELLANT:

Christopher Lockhart-Mummery QC	
He called	
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Mr Alan Young BSc (Hons) MBA CEng MICE FCIHT	Senior Technical Director, WSP
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FOR THE BARROW UPON SOAR PARISH COUNCIL:

John Pugh-Smith	Of Counsel
He called	
Parish Councillor Peter Cantle CertEd DipComEd	Barrow Upon Soar Parish Council
Mr Jonathan Cage Eng (Hons) MSc CEng MCIHT MICE	Managing Director, Create Consulting Engineers Limited

INTERESTED PERSONS:

Councillor P Ranson	Ward Councillor
Councillor H Fryer	Ward Councillor
Dr Sarah Parker	GP Barrow Upon Soar Health Centre, on behalf of Dr NHR Simpson and Partners
Mrs Nicky Morgan MP	MP for the Loughborough constituency
Councillor S Forrest	Chair of BRAG
Mr P Rowland	Landmark Planning on behalf of BRAG
Mr J Prendergrast	Solicitor, Leicestershire County Council (LCC)
Mrs Owen	LCC
Mr Kettle	LCC
Mr A Tyrer	Development Contributions Officer LCC
Mrs A Anderson	Primary Care Premises Manager, Leicester, Leicestershire and Rutland PCT Cluster
Mrs J Noon	CPRE Charnwood Group
Mrs S Rodgers	Vice Chair Barrow Upon Soar Community Association
Mrs P Reed	Local resident

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Mr K Pepper	Local resident
Mr T Burton	Local resident
Mr C Smith	Local resident
Mr P Hilsdon	Local resident
Mr A Willcocks	Local resident
Mr D Wilson	Local resident
Mr K Page	Local resident
Mr G Hobbs	Local resident
Mrs Burrows	Local resident
Mr R Billson	Local resident
Mr T Anderson	Local resident
Mrs C Hilsdon	Local resident
Mr D Ellison	Local resident

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INQUIRY DOCUMENTS

1 Council's notification letter
2 Appellant's opening submissions
3 Parish Council's opening submissions
4 Council's opening submissions
5 Dr Sarah Parker's speaking notes
6 Report to Cabinet of 27 September 2012 re local development framework
7 Minutes of Cabinet meeting of 27 September 2012
8 Email exchange of 9 October 2012 between Create Consulting Engineers and Leicestershire Police re Incident 82: 03/10/2012 and Incident 460: 27/09/2012
9 Extract (pages 13 – 16) from TMS report *Safer Roads for Everyone*
10 Email exchange of 4 October between Parish Council and Leicestershire Police re Incident 460: 27/09/2012
11 Tables of Estimated Population Increase in Barrow Upon Soar
12 Letter dated 5 May 2011 from Parish Council with Parish Council minutes of 02/11/10, 7/12/10, 13/04/11, 03/07/11 and 06/07/11
13 Email from Alison Saunders (08 October 2012 @ 14:24) with Technical notes from Create Consulting Engineers Ltd re Micro-simulation Traffic Model, email exchange with Leicestershire Police re Incident 460: 27/09/2012 and Telephone Note by Mark Allen (dated 08/10/120 re conversations on 3/10/12 with Richard Clay and Kingsley Cook of Leicestershire County Council.
14 2001 Census data re Travel to Work
15 Representation from Primary Care Trust re impact of proposed development on GP practice at Barrow Health Centre
16 Statement by Nicky Morgan MP
17 Statement by Councillors Ranson and Fryer
18 Statement by Barrow Residents Action Group
19 Annotated map of local road network by Mr Charles Smith
20 Agreement by Bancroft Consulting, WSP and Create Consulting re achievable visibility at South Street/Sileby Road/ Grove Lane junction
21 Report of the Overview Scrutiny Group re Local Development Framework Position Report and Way Forward: Cabinet – 27 September 2012
22 East Midlands Trains Timetable (Leicester-Nottingham-Cleethorpes) 09/12/12 to 18/05/13
23 Committee Report of 9 December 2009 on Application Ref P/09/2376/2
24 University of Leicester letter dated 5 July 2010 concerning archaeological work
25 Various emails (12/01/10, 11/11/10 & 14/02/11) from Network Rail (Margaret Lake) to Council (Neil Thompson)
26 CCE VISSIM Model Report
27 Email from GVA 24/10/12 re CCE VISSIM Model Report and response from Parish Council (Lesley Bell 29/10/12) with comments from Jonathan Cage of CCE
28 Statement from Charnwood District Group CPRE
29 Revised Draft Conditions
30 Extract (R A Crowder) Chapter 7 Hydraulic Analysis and Design
31 Letter from Mr Hobbs to PINS dated 27/11/12
32 Letter from Mr Hilsdon received by PINS 24/12/12 'Record of Flooding, Fishpool Brook. Barrow upon Soar 1983-2012'
33 Email from Parish Council dated 10/01/13 with Analysis of Comments
34 Letter from Mr Hilsdon received by PINS 10/01/13 re; mine workings
35 (Soar Valley Local Plans) Agricultural Land Classification of appeal site
36 Appeal Ref. APP/X2410/A/12/2177327 (Iveshead Road, Shepshed)
37 Appeal Ref. APP/X2410/A/12/2177036 (Bramcote Road, Loughborough)
38 Note by Mr Rassool in response to letter from Mr Hilsdon (Doc 32 above)

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39 Set of photos of flooding at locations in Barrow Upon Soar submitted by Mr Burton
40 Concluding statement from Councillors Ranson and Fryer
41 Statement from Barrow Upon Soar Community Association
42 Closing Statement – Barrow upon Soar Parish Council
43 Closing Submissions – Charnwood Borough Council
44 Closing Submissions – Appellant

S106 Planning Agreement dated 4 October 2012 (with Deed of Variation dated 15 January 2013)

Proofs of Evidence

Appellant

A1 Evidence of Mr Thorley
A1a Appendices to A1
A2 Evidence of Mr Young (Volume 1)
A2a Appendices to A2 (Volume 2)
A3 Rebuttal evidence of Mr Young
A4 Evidence of Mr Rassool

Council

C1 Evidence of Mr Bancroft (Volume 1)
C1a Appendices A-E to C1 (Volume 2)
C1b Appendices F-N to C1 (Volume 3)
C1c Statement to address amendment to visibility calculation (Mr Bancroft)
C2 Evidence of Mr Reid

Parish Council

PC1 Evidence of Mr Cage – highways, transport, sustainability
PC2 Evidence of Mr Cage – flood risk and drainage
PC3 Evidence of Mr Cage – Slash Lane flooding
PC4 Evidence of Councillor Cantle
PC5 Appendices to PC4

County Council

CC1 Evidence of Mr Tyrer
CC2 Evidence of Mr Cook

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Department for
Communities and
Local Government

RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT

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

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

SECTION 1: PLANNING APPEALS AND CALLED-IN PLANNING APPLICATIONS;
The decision may be challenged by making an application to the High Court under Section 288 of the Town and Country Planning Act 1990 (the TCP Act).

Challenges under Section 288 of the TCP Act

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

SECTION 2: AWARDS OF COSTS

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

SECTION 3: INSPECTION OF DOCUMENTS

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

https://www.gov.uk/government/organisations/department-for-communities-and-local-government

The Planning Inspectorate

Appeal Decision

Inquiry held on 1- 4 December 2015 and 11 February 2016.
Site visit made on 12 February 2016.

by Siân Worden BA DipLH MCD MRTPI

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

Decision date: 04 May 2016

Appeal Ref: APP/K2420/W/15/3004910
Land off Sherborne Road, Burbage, Leicestershire LE10 2BE

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
- The appeal is made by Jelson against the decision of Hinckley & Bosworth Borough Council.
- The application Ref 14/00475/OUT, dated 12 May 2014, was refused by notice dated 12 November 2014.
- The development proposed is residential development and associated infrastructure.

Decision

1. The appeal is dismissed.

Application for costs

2. At the Inquiry an application for costs was made by Jelson against Hinckley & Bosworth Borough Council. This application is the subject of a separate Decision.

Procedural Matter

3. The planning application was in outline with all matters apart from access reserved for later determination.

Main Issues

4. I consider that the main issues in this case are:
   - whether there is a 5 year supply of housing land in the Borough, and
   - the effect of the proposed development on the character and appearance of the surrounding landscape.

Reasons

Housing land supply - OAN

5. In order to boost significantly the supply of housing local planning authorities are required to use their evidence base to ensure that their Local Plan meets the full, objectively assessed needs (OAN) for market and affordable housing in the housing market area[1]. The Hinckley and Bosworth (H&B) Core Strategy (CS) was adopted in 2009, predating the publication of the National Planning

[1] The Framework paragraph 47

Policy Framework (the Framework) in 2012. The CS target is to deliver 9000 dwellings up to 2026, that is, 450 units per annum. This requirement, however, is derived from the revoked East Midlands Regional Plan, the dwelling targets in which were based on 2004 household projections. The CS requirement is not the OAN and is not, therefore, consistent with the Framework.

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[2].

7. Demographic calculations result in the total number, expressed as a range, of people and households likely to live in the Borough during the plan period, regardless of the type of dwelling which they might desire or require. The latter needs, for example the numbers requiring housing for families; for older people; for those with low mobility; or for those who cannot afford market 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.

8. A main area of dispute between the parties is whether affordable housing need should be fully met by the OAN. The appellant's view is that the OAN arising from the SHMA is a constrained or policy-on figure and that, consequently, the upper end of the range is not properly identified. 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.

9. Based on demographic-led household projections the SHMA concluded that the bottom end of the OAN range for H&B up to 2031 was 375. Due to the mechanism by which the vast majority of affordable housing is delivered, that is as a percentage of all residential schemes over a threshold of units (and subject to viability), it might be necessary to increase the number of dwellings required overall in order to maximise the provision of affordable housing. This measure, which is referred to in PPG[4], is a policy decision and thus appropriately calculated outside of OAN. In H&B the number of homes needed for supporting proportionate economic growth was identified through the SHMA as 467 and the affordable housing need as 248 per annum[5]. In order to

[2] *Leicester and Leicestershire Strategic Housing Market Assessment,* GL Hearn and Justin Gardner Consulting.
[3] *Objectively Assessed Need and Housing Targets* Technical advice note, second edition July 2015.
[4] PPG Reference ID: 2a-029-20140306
[5] SHMA Table 84

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support the provision of additional affordable housing and a growth in employment/labour supply, therefore, the top end of the range[6] was put at 450; that is therefore a policy-on figure.

10. There is no dispute that there is a significant need for affordable housing in Hinckley and in Burbage. The most recent analysis is in the SHMA which puts the figure at about 250 dpa. In increasing the demographically produced figure of 375 up to 450, a 20% uplift, specifically to provide for affordable housing and economic growth, the OAN properly takes account of that need.

11. The appellant's view is that the top of the OAN range should be at least the 980 dwellings identified in the SHMA[7] as the total amount of housing necessary to deliver the indicated housing need under current policy. This is clearly impractical and unreasonable; the corollary would be a requirement of 196,825 units in the HMA as a whole, a considerable, inconsistent and thus unjustifiable increase on the 75,000 or so dwellings calculated from household projections to be needed by 2031. 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.

12. Since the SHMA was produced more recent population projections, for 2012, have been published. Analysis of them shows a need for 364 dpa in H&B derived from the total figure for Leicestershire. This is lower than the bottom end of the SHMA OAN but generally consistent with it. 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.

13. It is not my role in this decision to identify an alternative OAN. The appellant has calculated however that, all things being equal, the housing land supply would fall below five years where the OAN was 539 dpa[8]. This figure would be a 44% uplift on the 375 demographically-led household projection which, to my mind, would represent a considerable number of additional affordable dwellings. If I had considered, therefore, that the 450 dph housing requirement was wanting it would still not have been necessary to increase it beyond the 539 threshold whereby a five year supply was not available.

14. Over recent years policy and guidance on OAN, and specifically the inclusion or otherwise of affordable housing, has been interpreted in a number of judgements and inspectors' decisions and reports. In Satnam Millennium Ltd v Warrington Borough Council (Feb 2015) the judge found that the assessment of full OAN for housing had not taken account of the substantial need for affordable housing. It is not clear, however, whether he intended that the full affordable housing need should be included in the OAN.

15. In respect of the Oadby and Wigston v Bloor Homes case (July 2015) the Court found that the inspector had been entitled to exercise his planning judgement on all of the evidence before him. He had lawfully concluded that the range arising from the Leicestershire SHMA, the same document as is central to this

[6] SHMA Table 84
[7] SHMA Table 48
[8] Inquiry Document 21

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case, was "policy on" and that it failed properly to reflect the affordable housing needs and the needs generated by economic factors. A significant difference between that case and the one before me here is that in Oadby and Wigston the Council's housing requirement figure of 80-100 dpa was well below the SHMA affordable housing need of 160 dpa.

16. The judgement in Kings Lynn v Elm Park Holdings (July 2015) stated that the Framework made it clear that affordable housing needs should be addressed in determining the full OAN, but neither it nor the PPG suggested that they had to be met in full by the full OAN. This judge disagreed with the conclusions of the Oadby and Wigston v Bloor Homes judge.

17. The inspector undertaking the Charnwood CS examination concluded in September 2015, after a thorough assessment, that the Leicester and Leicestershire SHMA provided an up-to-date and robust assessment of housing needs in the HMA. He agreed that the OAN for the Housing Market Area (HMA) should be 4,215 dpa; the H&B OAN of 375-450 is a component of that overall figure. These conclusions further support the Council's position.

Housing land supply *- buffer*

18. A borough's five year supply should include an additional buffer of at least 5%, moved forward from later in the plan period[9], but where there has been a record of persistent under delivery the buffer should be increased to 20%. Advice on determining persistent under delivery is given in PPG which states that it is a question of judgment for the decision maker. It adds that there can be no universally applicable test or definition and the assessment of a local delivery record is likely to be more robust if a longer term view is taken which will account for the peaks and troughs of the housing market cycle[10].

19. The appellant's view is that, as the issue is whether the Council will be able to deliver the housing requirement set out in the adopted development plan, only performance during that plan period should be assessed, namely since 2006. It points out that this period is long enough to cover peaks and troughs. The Council's 14 year monitoring period undoubtedly takes a longer term view, although I note that only the two most recent years of the previous plan period (2004/5 and 2005/6) are necessary to bring the balance into the black.

20. The period at the beginning of a plan period, when sites allocated in the previous plan have been mainly built out and new allocations have yet to be confirmed by adoption, can amount to a trough. In this case it was succeeded by the national recession. It is thus reasonable to include a peak period, for example the years up to 2006/07, in the monitoring period. The position might be different if there was a continuing undersupply but this is not the case. During the two most recent monitoring years completions were 30 units above the requirement (in 2013/14) and 302 greater (2014/15). In my judgement, therefore, there has not been persistent under delivery and a buffer of 5% is sufficient. The appellant has drawn my attention to a recent (October 2015) housing trajectory. The projected number of completions for 2015/16 is 379[11] which would be a shortfall of 71, or 16%, on the required 450 units pa. This would not make a significant dent in the total units when calculated over the

[9] The Framework, paragraph 47
[10] PPG Reference ID: 3-035-20140306
[11] Housing Trajectory, RT PoE, Appendix 11

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longer period adopted by the Council. Furthermore, as it is not a confirmed figure it cannot carry much weight.

Housing land supply *– deliverable sites*

21. Only deliverable sites can contribute towards the five year supply of housing land. The Framework defines deliverable sites as those which are available now, offer a suitable location for development now, and are achievable with a realistic prospect that housing will be delivered on the site within five years and in particular that development of the site is viable. Sites with planning permission should be considered deliverable until permission expires, unless there is clear evidence that schemes will not be implemented within five years[12]. Local planning authorities will need to provide robust, up to date evidence to support the deliverability of sites, ensuring that their judgements on deliverability are clearly and transparently set out[13].

22. The appellant has not challenged the contribution expected to be made by small sites to the available supply but four of the large sites are questioned. Sites AS100 and AS833 both have consents for care homes; the appellant argues that both also have a history of unimplemented permissions contrary to the advice set out in PPG[14]. At the first permission has been extended up to May 2016 and the site has been cleared. I agree with the Council that, despite the site not being marketed, there is evidence of a firm intention to develop the site. At the second the agent confirmed an intention to submit a further application by the end of 2015 and this had come forward by the time of the inquiry. There are no significant infrastructure constraints at either of these sites.

23. It was the appellant's view that AS893 was not available now as it was in use as a gymnasium. Outline consent had, however, been resolved for a grant in November 2014 with negotiations regarding the S106 agreement being the only hurdle to its finalisation. To my mind there is a clear aim to develop the site and it is available. The final site challenged by the appellant, AS306/307, is in multiple ownerships with a former brickworks, which would need remediation, just outside the boundary. There is a consent which has been extended until June 2016. The Council had spoken to the agent in November 2015 and he had reported developer interest with the landowner wishing to exchange contracts in December 2015. As with the second care home site, no units were scheduled to come forward until later in the five year period. All in all I consider that these four sites can be considered to be suitable, available and achievable.

24. Some units from two Sustainable Urban Extensions (SUEs) at Barwell (200 dwellings) and East Shilton (130 dwellings) are also included in the Council's housing land supply calculation[15]. These substantial and ambitious proposals, which are identified in the CS and the subject of an Area Action Plan adopted in September 2014, are bound to take much longer to get off the ground than a common or garden residential development. Delays to an initial timetable are not unusual and need not be fatal to delivery.

[12] The Framework, paragraph 47, footnote 11
[13] PPG Reference ID: 3-031-20140306
[14] PPG Reference ID: 3-020-20140306
[15] AM PoE Table 1 on page 6

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25. At Barwell a resolution to grant outline permission was made in April 2013, confirmed in March 2015 following an affordable housing viability study, and negotiations on a S106 are, according to the Council, nearing completion. In respect of East Shilton, at a developer forum in November 2015[16] attended by interested house builders and H&BBC all parties confirmed their full commitment to bringing forward the SUE. The appellant owns land at East Shilton on which approximately 250 dwellings would be provided. Although the appellant intended delivery of those 250 to run alongside that of other potential interests in the area, its commitment to the Earl Shilton SUE was not affected.

26. In my opinion the evidence presented to the inquiry indicates a realistic prospect that the SUEs would deliver units by the end of the five year supply period. In addition the numbers forecast to come forward by then are modest. The Sketchley House[17] inspector's concerns in respect of the SUEs were voiced in September 2014 prior to the agreement to re-negotiate the Barwell S106 obligation and before the East Shilton developer forum.

27. I have not seen any compelling arguments as to why the Council's 5% discount on large sites and 9% on small sites are not sufficient to account for the non-implementation of planning permissions.

28. The appellant also questions several of the residential allocations in the draft Site Allocations and Development Management Policies Development Plan Document (DPD). In March 2015 the Council approved the setting up of a company wholly owned by H&BBC whose purpose would be to build houses for sale and rent. That strikes me as a positive initiative confirming the Council's intentions to bring forward land in its ownership which has been set aside for housing development; it can only assist that process. The draft DPD is nearing the end of its examination with main modifications, which are changes necessary to make the plan sound, having recently (February/March 2016) been the subject of consultation. None of the modifications concern fundamental changes to the housing requirement, allocated sites or the housing land supply. Having also considered the Council's responses on the disputed sites[18] I am confident that the number of dwellings on allocated sites is realistic and appropriate.

29. Finally on the matter of deliverable sites, the Council's calculation of housing land supply[19] is five years and ten months; an 'overprovision' (column h) of 461 units makes the period comfortably longer than five years. It thus provides for some slippage or non-delivery of the sites comprising the housing supply.

Housing land supply *– conclusions*

30. All in all I have found that the calculation of OAN takes account of the substantial need for affordable housing and is otherwise sound. In addition there is no record of persistent under delivery and a 5% buffer is adequate. The identification of sites contributing to the five year supply and the prediction of when and how many dwellings will be delivered is reasonable. I therefore conclude that there is sufficient housing land in H&B to meet housing needs for the following five years.

[16] Inquiry document 13b
[17] APP/K2420/A/13/2208318
[18] Inquiry document 13a
[19] AM PoE Table 1 on page 6

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31. My findings are supported to some extent by those of the inspector deciding the Markfield Road, Ratby case who concluded as recently as October 2015[20] that the housing land supply calculation submitted by H&B Council to that inquiry was as sound a calculation as was possible to make at that time. In reaching his decision he had not explored the OAN but had considered the position in respect of the buffer and deliverable sites including the SUEs. Overall he found that there was sufficient housing land in the Borough to meet requirements for the next five years.

32. I am aware that some of the quoted cases are the subject of legal challenge. Unless and until they are quashed or overturned, however, they are either law or, in the case of inspectors' reports and decisions, carry significant weight.

Character and appearance of the landscape

33. Burbage is a village to the south east of the town centre which has been absorbed by the urban mass of Hinckley. The appeal site comprises two fields on the outermost, eastern side of the village; they are part of an undeveloped parcel of land between the edge of Burbage, which is also the edge of the Hinckley urban area, and the M69. The proposal is for residential development in the region of seventy three dwellings, 20% of which would be affordable units.

34. To take account of the different roles and character of different areas, recognising the intrinsic character and beauty of the countryside is one of the Framework's core planning principles[21]. It also states that the planning system should contribute to the natural and local environment by protecting and enhancing valued landscapes[22]. A letter from the Minister of State for Housing and Planning[23] emphasises that, outside of designated areas which enjoy a high level of protection, the impact of development on the landscape can be an important material consideration. He stresses the need to take full account of all the dimensions which contribute to sustainable development, that is to say the environmental as well as the social and economic.

35. The Leicestershire Round long distance footpath crosses the site emerging in Sherborne Road. The illustrative masterplan indicates that its current route would be maintained passing through a main area of public open space proposed within the new development. I am sure that this area could be landscaped, including for example with indigenous species, to reflect the character of the surrounding landscape and that it would be pleasant. Nonetheless, from it a considerable number of houses would be visible to the north and particularly to the south. The current view to the south is of a grassy field sloping gently upwards to a hedgerow with scattered trees visible behind and, from the outer part of the route, the steeple of the church. Despite the modern housing at the edge of the site, it is a timeless, archetypal vista which would be spoiled by the proposed development; the experience of recreational walkers on the public right of way (PROW), whether covering many miles or enjoying a local stroll, would be harmed.

36. The boundary between the existing housing off Salisbury Road and the appeal site is defined by a low hedgerow. Over it can be seen the modern dwellings

[20] APP/K2420/W/15/3003301
[21] The Framework, paragraph 17
[22] The Framework, paragraph 109
[23] Brandon Lewis MP to Simon Ridley, Chief Executive of the Planning Inspectorate, dated 27 March 2015

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closest to it and some of the settlement behind, a typically suburban view. The dense, high conifer hedge along the northern boundary of the site is also uncharacteristic of the countryside setting. Nevertheless, when facing away from these detracting features, the appeal site with its enclosing hedgerows and glimpsed views to the open countryside beyond, has landscape value. This is recognised by the appellant who describes the condition of the site and surrounding area as fair and as being of medium/high scenic quality[24]. I noticed its attractiveness during my February site visit and am confident that, in the spring and summer when the hedgerows come into full leaf, it is more pleasant still.

37. That value diminishes as one progresses towards the motorway; the hedgerows are lower, the landscape becomes more open, and the intrusion of the pylons and motorway is more apparent. These effects on the land around it emphasise the largely unspoilt character of the appeal site. From the extensive residential area to the west, the open countryside, and especially the appeal site, is glimpsed from Salisbury Road and seen clearly from Ilminster Close, Sherbourne Road and Dorchester Road. It is clear from the number of objections to the scheme from local people that many of them value living close to this rural area. To my mind, the appeal site contributes to the identity of Burbage providing, at least for those who can see it, a reminder that they are in a village.

38. It would not be possible or desirable, and is not intended, to supplement the existing hedgerows to the extent where they blocked all views. The proposed development would thus be visible from the PROW on the approach to Burbage. From that location it is likely that, once construction was completed, there would not be a significant change from the existing view; I do not consider that the increased area of housing development would be harmfully noticeable. The site is also visible, however, from viewpoints on the surrounding roads such as Aston Lane and Lychgate Lane, particularly where the latter rises over the motorway. From these locations I consider that the proposed development would be perceived as bulging out from the clearly defined, existing urban edge and encroaching into the currently undeveloped parcel of open countryside between Burbage and the motorway.

39. CS Policy 4, entitled *Development in Burbage*, is a fairly broad-brush but comprehensive policy setting out a list of social, economic and environmental objectives for the settlement. The first section is mainly concerned with Burbage's function as a local centre, which also supports Hinckley's role as a sub-regional centre, whilst the second part concerns the settlement's character and sense of place.

40. A requirement under the second section is that the open landscape to the east of Burbage, which provides an important setting for the village, should be protected and preserved. Thus, although there is no designating line drawn around the protected area, in describing broadly where it is and its importance it seems to me that Policy 4 defines a valued landscape. Furthermore, and despite not being set out in a list, the policy identifies characteristics against which to assess proposals; these include that the landscape is open, that it provides an important setting for the village and that it separates Burbage from the M69 corridor. I do not consider that the policy amounts to a blanket ban

[24] Gary Holliday Proof of Evidence paragraph 6.7

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on all development. Unlike the policy before the inspector in the Coalville case[25], CS Policy 4 is not, therefore, significantly inconsistent with paragraphs 109 or 113 of the Framework.

41. I do not see any inconsistency, either, between the Council's decisions in this case and on Lutterworth Road[26]; land to the south of Burbage is not explicitly protected by Policy 4. Indeed, it could be seen to support my finding that Policy 4 identifies a valued landscape, namely the land to the east of Burbage only.

42. My conclusion on the issue of character and appearance is that the proposed development would not protect or preserve the open landscape to the east of Burbage, contrary to CS Policy 4. This policy carries significantly more weight than the less discriminating Policy NE5 of the H&B Local Plan, adopted 2001, which protects the open countryside for its own sake and is not site-specific.

43. At the moment it is possible to have access to all parts of the appeal site and many local people have reported that it is well-used, especially by children playing. Apart from on the route of the footpath other recreational use is, however, informal and permissive. Moreover, although the proposed areas of public open space within the new development would be smaller, it would be possible for children to play safely there. Other recreational use could still take place in the fields beyond the appeal site which appear to be similarly accessible albeit that they are less visually attractive. For these reasons I have given little weight to the existing recreational use of the appeal site other than of the footpath.

Planning contributions *– Leicestershire Police*

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[27].

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[28] 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

[25] APP/G2435/W/15/3005052
[26] Inquiry Document 28
[27] The Framework paragraph 17
[28] Inquiry document 20

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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[29].

Planning contributions – *Leicestershire County Council*

48. The appellant is not challenging the proposed contributions for services provided by Leicestershire County Council (LCC) apart from those for the civic amenity site and library.

49. The nearest civic amenity site to the proposed development is that at Barwell. This site has a capacity to hold 162 tonnes of waste at any one time. During particularly busy periods, such as May bank holidays, this can be significantly exceeded leading to containers being full and even the site being closed. The proposed development would create additional demand for the facilities of this site and I agree that a financial contribution towards measures to increase its capacity, proportional to that demand, would be necessary and reasonable. The identified project would be a canopy to protect an additional storage area from the weather, the cost of which would require further S106 contributions. At the current time there was, potentially, only one other payment likely to be made to this project and thus a contribution from the proposed development would comply with CIL Reg. 123(3).

50. The requested contribution for the library would be put to purchasing a public access computer. There are currently four such computers at Burbage library falling short of the government's advisory 0.6 per 1000 population which equates to nine. Library computers are used not only to give public access to digital sources but also to teach computer skills to members of the public. To my mind it is likely that a majority of the new households would have access to a computer at home. I do not consider, therefore, that a need for more public computers at Burbage library arising from the proposed development has been demonstrated.

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[30]. In those respects the submitted planning obligation carries significant weight. The contribution sought for Burbage library would not.

52. Of the other appeal decisions which have been drawn to my attention by LCC in support of their requested contributions those at Fairway Meadows[31] and land north of Bill Crane Way[32] do not deal with library contributions in any detail.

[29] M Lambert Proof of Evidence, pp 11 & 12
[30] the Framework paragraph 2004
[31] APP/F2415/A/14/2217536
[32] APP/F2415/A/12/2179844

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Although the inspector at the Workhouse Lane appeal[33] found that LCC had provided a clear and detailed analysis of capacity and requirements to justify the amounts sought, including for libraries, as I am not aware of the circumstances of that case I cannot draw any helpful comparisons with it.

Overall Planning Balance and Conclusions

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.

56. For the reasons given above I conclude that the appeal should be dismissed.

Siân Worden

Inspector

[33] APP/K2420/A/13/2202989

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APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Thea Osmund-Smith of Counsel	
She called	
Andrew Murphy BA(Hons) MSC MRTPI	Stansgate Planning Consultants Ltd
Dr David Hickie BSc(Hons) MA PhD CMLI CEnv MIEMA IHBC	David Hickie Associates
Justin Gardner	Justin Gardner Consulting

FOR THE APPELLANT:

Christopher Lockhart-Mummery QC	Instructed by Bilfinger GVA
He called	
Robert Thorley BA(Hons) DipTP MRTPI	Director, Bilfinger GVA
Gary Holliday	FPCR Environment & Design Ltd

FOR THE FIRST RULE 6 PARTY:

Nina Pindham of Counsel	
She called	
Martin Lambert	Leicestershire Police

FOR THE SECOND RULE 6 PARTY:

Andrew Cross and Alex Strickland	
They called	
Andrew Tyrer	Leicestershire County Council

INTERESTED PERSONS:

Martin Preston Simon Straker Richard Causon Roger Goodger	Local residents also speaking on behalf of Sherborne Road Residents' Group
Mary Sherwin Brent Watson Beth Watson Nicola Holloway Mary Tarney	Local residents speaking for themselves and, in some cases, other residents of the area.

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DOCUMENTS

1 Extracts from *The Police and Crime Plan* & *Leicestershire Police's response to the funding challenge*.
2 Minor corrections to Rob Thorley's proof of evidence
3 Committee report on Barwell SUE
4 Appeal decision APP/X0360/A/13/2209286 - extract
5 Appeal decision APP/L2440/A/14/2209286
6 High Court Challenge Judgement re Banbury Road, Adderbury 3.2.2015
7 Planning Committee 11.11.2014 minutes re appeal site
8 Schedule of contributions claimed in H&B district – superseded
8a Library and Civic Amenity contributions
8b Relevant S106 contributions claimed in H&B district since 6.4.2010 – agreed with BC
8c Library and Civic Amenity contributions - updated
8d Email from A Tyrer to R Thorley re Education Contributions in Burbage 10.2.16
8e Note from H&B BC re CIL compliance
8f Email from S Bowler to A Tyrer re allocation of contribution 10.2.16
8g Email from M Lambert to S Atha re joint CIL compliance statement 10.2.16
9 Email from M Lambert to R Thorley re Draft response to GVA letter 26.11.15; letter from R Thorley to M Lambert 18.11.15; schedule of contributions in Leicestershire.
10 2 photos of the landscape in the vicinity of the Ratby site
11 Ratby site - proposed layout
12 Extract from the GVLIA 3rd edition
13a Note from H&BBC re large sites challenged by R Thorley
13b Agenda of Developer Forum on Earl Shilton SUE – 6.11.15
14 Observations of Burbage Parish Council – relationship of Burbage Neighbourhood Development Plan to appeal.
15 Statement of Common Ground November 2015
16 Judgement – Wainhomes (South West) Holdings Ltd & Sec of State for Communities and Local Government, 25.3.13
17 Judgement – Phides Estates (Overseas) Ltd & Sec of State for Communities and Local Government & Shepway District Council & David Plumstead, 26.3.15
18 Extract from final report of H&B Council's Earl Shilton and Barwell Area Action Plan, 4.8.14
19 Judgement – South Northamptonshire Council & Sec of State for Communities and Local Government & Barwood Land and Estates Ltd, 10.3.14
20 Covering email and maps showing recorded crime incidents, 3.12.15
21 Potential range for FOAN
22 H&BBC report on setting up of the housing development company.
23 Judgement – Bloor Homes East Midlands Ltd & Sec of State for Communities and Local Government & H&BBC, 19.3.14
24 Appeal decision APP/X2410/W/15/3007980
25 Appeal decision APP/G2435/W/15/3019451
26 Appeal decision APP/G2435/W/15/3005052
27 Appeal decision APP/X2410/W/15/3004925
28 H&BBC committee report re land to the south west of Lutterworth Road, Burbage
29 Judgement – Anita Colman & Sec of State for Communities and Local

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Government & North Devon District Council & RWE Npower Renewables Ltd, 9.5.13
30 Secretary of State's decision on inspector's recommendation re Land off Mountsorrel Lane, Rothley, Leicestershire, 8.4.14

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The Planning Inspectorate

Appeal Decision

Hearing held on 5 December 2012
Site visit made on 5 December 2012

by Kay Sheffield BA(Hons) DipTP MRTPI

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

Decision date: 14 February 2013

Appeal Ref: APP/F2415/A/12/2179844
Land north of Bill Crane Way, Lutterworth, Leicestershire.

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with a condition subject to which a previous planning permission was granted.
- The appeal is made by William Davis Limited against the decision of Harborough District Council.
- The application Ref 12/00613/VAC, dated 26 April 2012, was refused by notice dated 4 July 2012.
- 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.
- The condition in dispute is No 3 which states that: The development hereby approved shall be carried out in general accordance with the plan "Indicative Site Layout B" (Drawing Ref: 10-116 SK09).
- The reason given for the condition is: To ensure a satisfactory form of development that mitigates impact on the character and appearance of the countryside and the Conservation Area settlement of Bitteswell and to accord with Policies IN/1, EV/5, EV/11 and EV/16 of the Harborough District Local Plan and the aims and objectives of PPS1 "Delivering Sustainable Development", PPS3 "Housing" and PPS5 "Planning for the Historic Environment".

Decision

1. The appeal is allowed and planning permission is granted for residential development with associated infrastructure, public open space and provision of vehicular and pedestrian access at land north of Bill Crane Way, Lutterworth, Leicestershire in accordance with the application Ref 12/00613/VAC dated 26 April 2012, without compliance with condition number 3 previously imposed on planning permission Ref 11/00117/OUT dated 23 January 2012 but subject to the other conditions imposed therein, so far as the same are still subsisting and capable of taking effect and subject to the following new condition:

   The development hereby approved shall be carried out in general accordance with the plan entitled Indicative Site Layout A 10-116 SK08 with regard to the extent of the area of the site to be used for the erection of housing.

Procedural matters

2. The outline planning permission for the residential development of the appeal site restricted the area which could be built upon in order to mitigate the effect of the development on the character and appearance of the countryside and the Bitteswell Conservation Area. In imposing the condition which placed this

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restriction on the development the Council relied on policies of the Harborough District Local Plan, 2001 (the LP) and various Planning Policy Statements (PPS) in force at the time. However, subsequent to the granting of the outline permission the Council adopted the Harborough District Local Development Framework Core Strategy, 2011 (the CS) and whilst the Council's reasoning behind the refusal of the application to vary the condition reflected the reason for its initial imposition, it relied on policies of the CS which has replaced most of the LP.

3. In addition the PPS's cited by the Council in the reason for imposing the condition on the outline permission have been cancelled by the National Planning Policy Framework, 2012 (the Framework). The Framework reaffirms the statutory duty to determine planning applications and appeals in accordance with the development plan unless material considerations indicate otherwise. It also indicates that for 12 months from the date of its publication decision-takers may continue to give full weight to relevant policies adopted since 2004 even if there is a limited degree of conflict with the Framework. Since the Council relied on policies of the CS in refusing permission and this was only adopted in 2011 full weight can be attributed to them in the determination of the appeal.

4. Therefore, in determining the appeal, regard has been had to extant policies of the LP, policies of the CS and the guidance in the Framework.

5. On 11 December 2012 the Government made an Order in Parliament to revoke the Regional Strategy for the East of England with effect from 3 January 2013. Whilst the Regional Strategy forms part of the development plan, none of its policies have been relied on in evidence by the parties. I am therefore satisfied that the revocation of the Regional Strategy does not alter my conclusions in respect of the appeal.

Main Issue

6. The main issue is the effect the variation of the condition to allow a greater part of the site to be built upon would have on the character and appearance of the countryside and whether it would preserve or enhance the setting of the Bitteswell Conservation Area.

Reasons

The appeal site and its surroundings

7. The appeal site is undeveloped land in the open countryside but lies at the edge of the built development of Lutterworth. The southern and eastern boundaries of the site are marked by Bill Crane Way and Leicester Road respectively and to the north and west are open fields, Bitteswell Brook forming the western boundary. To the south of the site is a modern residential estate set back from the carriageway of Bill Crane Way behind landscaped verges. To the south west lies the settlement of Bitteswell, a large proportion of which is designated as a Conservation Area and within which the Church of St Mary, a Grade II* Listed Building, is located.

8. The appeal site currently consists of three open fields with the ground levels falling in an east to west direction across the site, dropping down towards Bitteswell Brook. The extent of the built development as allowed by the condition which is in dispute is restricted to the largest of these fields which

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would leave land at the western end open. The variation of the condition proposes extending the built development into part of this open area which would bring the development closer to Bill Crane Way along a greater part of the site frontage with the highway and would reduce the distance between the built development and Bitteswell Brook.

Planning Policy

9. The Council acknowledged that at the time it took the decision to refuse to vary the condition, it did not have a five year supply of housing land. However, recently published figures confirmed that at 30 September 2012 a supply in excess of five years and including a 5% buffer as required by paragraph 47 of the Framework was available.

10. Nevertheless Policy CS2 of the CS requires at least 700 dwellings to be provided in Lutterworth over the plan period. In addition Policy CS14 of the CS indicates that in the provision of new housing, any extensions to the settlement boundary will take place to the north of the town. Whilst the appellant contended that there would be a shortfall in the number of dwellings, the evidence does not indicate that the target for Lutterworth would not be met. Notwithstanding this, there is no reason to resist development which may result in this figure being exceeded, particularly in light of the guidance in the Framework which seeks to boost significantly the supply of housing.

11. The use of the appeal site for residential development has been established by the outline planning permission and although the Council has an adequate supply of housing land, it is considered that there are no policy reasons with regard to housing land supply to resist an increase in the number of dwellings by increasing the area of the site which could be built upon.

12. The coalescence of Bitteswell with Lutterworth has evidently been of long standing concern to the Council and extant Policy EV/3 of the LP identifies an area between the settlements within which development that would adversely affect the open character of the land or result in a reduction in the existing open land separating them would be resisted. The western end of the appeal site abuts the northern boundary of the separation area. Policy CS14 of the CS maintains the principle of a separation area and states in the justification of the policy that the proximity of Lutterworth and Bitteswell demands an approach which in seeking appropriate location for additional housing development, avoids coalescence.

13. In the Council's Areas of Separation Review, 2011 consideration has been given to the designation of the separation area in the light of the policy context set by the CS. This document is a technical report which will provide evidence to help inform the preparation of the Council's Allocations Plan and it is acknowledged that as part of this process the extent of the separation area may alter.

14. However, the likely location of new development has been taken into account in assessing where existing separation may be threatened. Although the land to the south of the appeal site, which is currently within the separation area, and that to the west are both recommended in the report to be considered for allocation within an Area of Separation, the appeal site has not been identified for inclusion. In addition the extent of the built development proposed would be offset from the boundaries of the site with the separation area ensuring

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open land would be directly adjacent to it. Although the extent of the separation area will be subject to further consideration as part of the development plan, a need to keep any part of the appeal site free from development has not been highlighted in the Review and given that open space retained within the site would continue to support the Council's aim to ensure that the coalescence of Lutterworth and Bitteswell does not take place, it is considered that there is insufficient reason to warrant dismissal of the appeal on these grounds.

Effect on character and appearance

15. At present there are clear views from the site and its immediate surroundings towards Bitteswell, its Conservation Area, the church and the mature trees which form a prominent feature of the Conservation Area and the surrounding landscape. However, these views would change and become more restricted by the development allowed by the outline permission and it is therefore the additional effect of the increased development being sought by the variation of the condition which needs to be assessed.

16. The appeal site is reviewed in the Council's Lutterworth and Broughton Astley Landscape Character Assessment and Landscape Capacity Study, 2011 which will be used to inform the Council's Local Development Documents. It gives a detailed analysis of the sensitivity of the land around the edge of Lutterworth and assesses the capacity to accommodate future development, particularly residential. Although it may have some bearing on further consideration given by the Council to the extent of the separation area in the preparation of the Allocations Plan, limited weight can be attributed to it in the determination of this appeal.

17. The study identifies the part of the appeal site on which development is allowed by the outline permission as having a medium capacity for development and the land on which the additional built development is being sought as having a low capacity. The study recognises that there are important views from Bill Crane Way towards Bitteswell which show the open countryside to the north west and the separation between Lutterworth and Bitteswell. It also considers that the development of this land would not relate well to the existing residential development on the northern edge of Lutterworth or to Bitteswell and would compromise the separation between the two settlements. The study concludes that given the prominent nature of the slopes within the parcel, their visibility from the surrounding area and their importance in the setting of Bitteswell it is not considered appropriate to develop this area of land.

18. However these comments are made in relation to an area of land which stretches along Bitteswell Brook and includes part of the separation area set out in the Areas of Separation Review, 2011. The appeal site forms only a small part of its eastern edge and development on it would be seen not only in the context of existing built development but also in the context of the development allowed by the outline permission which itself will restrict views of the open countryside to the north west and will be highly visible from the surrounding area.

19. The main effect of the proposed increase in the area of the built development on the surrounding area would be in views from Bill Crane Way looking in a westerly direction from its junction with Leicester Road. The extent of the built development being sought would bring the development closer to the frontage

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with Bill Crane Way which would reduce the extent of the view of Bitteswell, its church and the Conservation Area. However, the development would relate well to both the existing and proposed developments and although views towards Bitteswell would be reduced, when these are considered in the light of the restriction which would be placed on them by the development already permitted it is considered any additional harm which may be caused to the character or appearance of the area or the setting of the Conservation Area would not be significant.

20. The northern boundary of the appeal site is marked by a mature hedge and it is proposed that this would be supplemented by a belt of tree planting which would break up views of the built development from this direction. In addition the properties would be seen against the backdrop of the existing residential development to the south. Also in views from Bitteswell the properties, which would be set on lower ground, would be seen against the backdrop of the development allowed by the outline permission as well as in the context of existing development. Although the distance between the development and the Bitteswell Conservation Area would be reduced, ample separation would be retained to ensure that the effect of the additional built development would not cause harm to its setting.

21. Similarly from the south, a relatively wide section of open land would remain on the western boundary of the site which would allow views through to the open countryside beyond. Although the outline permission would allow a greater expanse of open space, it is considered that the reduction as part of the appeal proposal would still ensure that adequate separation between the two settlements would remain and that the setting of the Conservation Area and Bitteswell Brook would be preserved, particularly in views from the public footpath which crosses the western end of the appeal site on a line parallel to the brook.

22. In addition, the permission for the development of the site was granted in outline and although the submitted drawings showed an indicative layout of the site, this is a matter which, together with the design of the dwellings, requires approval. Although the Council is of the opinion that the design and layout of the development would not satisfactorily mitigate its effect on its surroundings, there is no definitive evidence that the detailed design of the overall scheme would not ensure that views of the open countryside and towards the Conservation Area from significant viewpoints both outside the site and from within the development would not be treated sensitively.

23. The evidence therefore leads me to conclude that the effect of the additional built development would not be detrimental to the character and appearance of the countryside and would preserve the setting of the Bitteswell Conservation Area, in accord with Policies CS11, CS14 and CS17 of the CS which seek to ensure development respects the context in which it is taking place.

Unilateral Undertaking

24. A signed Unilateral Undertaking (UU) under Section 106 (s106) of the Town and Country Planning Act, 1990 was submitted to the hearing. It covers the same range of contributions as the s106 agreement in respect of the outline planning permission although the level of the contributions has been adjusted to reflect the increase in the number of dwellings as a consequence of the increased area to be developed.

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25. The UU would not replace the s106 agreement already in place thus ensuring that contributions would be required whichever permission was implemented. However, its wording makes some matters dependent on the UU being found to be compliant with the tests set out in Regulation 122 of the Community Infrastructure Levy Regulations, 2010 (the CIL Regulations). These tests are whether the UU is necessary to make a development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind to the development.

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 as 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[1] 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

[1] Leicestershire County Council Statement of Requirements for Developer Contributions in Leicestershire, 2006 and Harborough District Council Planning Obligations Developer Guidance Note, 2009.

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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.

Conclusions

34. For the reasons given above, and having had regard to all other matters raised, it is concluded that the variation of the condition to allow a greater part of the site to be built upon would not be detrimental to the character or appearance of the countryside and would preserve the setting of the Bitteswell Conservation Area. The appeal is therefore allowed and planning permission is granted.

Kay Sheffield

Inspector

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APPEARANCES

FOR THE APPELLANT:

Mark Flood BA(Hons) DipTP MRTPI	Insight Town Planning Limited.
Simon Roper-Pressdee BSC(Hons) PGCert MIHBC PIFA	Senior Associate Director, CgMs Consulting.
Phil Rech BA(Hons) BPhil MLI	Director, FPCR Environment and Design Limited.
Elizabeth Marjoram LLB	Partner, Bird, Wilford and Sale Solicitors.

FOR THE LOCAL PLANNING AUTHORITY:

Nicholas White	Planning Officer.
Adrian Eastwood MRTPI	Development Control Manager.

INTERESTED PERSONS:

Andrew Tyrer BS(Hons) MRTPI	Development Contributions Officer, Leicestershire County Council.
John Prendergrast	Principal Solicitor, Leicestershire County Council.
Steve Kettle	Modernising Services Manager, Leicestershire County Council.

DOCUMENTS

1 Council's notification letter dated 1 November 2012 and circulation list regarding the arrangements for the hearing.

2 Statement submitted by Andrew Tyrer on behalf of Leicestershire County Council.

3 Signed Section 106 Unilateral Undertaking.

4 Plan showing the boundary of the Bitteswell Conservation Area.

5 Planning Obligations Developer Guidance Note, 2009.

6 Assessment of Local Community Provision and Developer Contribution, 2010.

7 Decision letter in respect of Appeal Ref: APP/T2405/A/10/2125563, Land off Huncote Road, Stoney Stanton, Leicestershire, LE9 4DH.

8 Areas of Separation Review, December 2011.

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