



Sussex
Police & Crime
Commissioner

Andrew Taylor
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Our Ref 17.013
Your Ref WA/44/17/OUT

10th August 2017

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

Dear Ms Potts,

Re: Proposed Outline application with some matters reserved for up to 175 dwellings, new vehicular access, together with associated car parking, landscaping & community facilities to include allotments, play space & community orchard on the Land East of Tye Lane, Walberton.

I write on behalf of the Office for the Police and Crime Commissioner (PCC) concerning the outline planning application to provide up to 175 dwellings (and associated infrastructure) on the Land East of Tye Lane, Walberton.

Our office have assessed this planning application and determined that a financial contribution for essential policing infrastructure would be required to make this development acceptable in planning terms.

It is the responsibility of the PCC to ensure our Chief Constable has sufficient financial support to deliver a high level of policing to the residents of Sussex. Our office continues to actively seek financial contributions via Section 106 agreements and Community Infrastructure Levy funds to support our capital program. This will enable Sussex Police to deliver the highest possible service to ensure the protection of the communities that we serve.

In line with many other police forces Sussex & Surrey Police have updated our methodology for infrastructure requests to ensure our representations are transparent and provide an up to date, accurate reflection of our current capacity in the District.

The information provided 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, Thames Valley, and West Mercia Police Forces. This methodology was considered Community Infrastructure Levy REG122 compliant by Mr Justice Green in the case of Jelson v SoSCLG and Hinckley and Bosworth Council [2016] CO/2673/2016 (**Appendix**

1). In addition, there are a significant number of recent appeal decisions and High Court judgments supporting both the principle of Police contributions and our methodology (see attached appendices).

The principle of developer contributions towards Sussex Police has recently been upheld by the Secretary of State in the allowed appeal relating to new 400 homes on the land east of Fontwell Avenue, West Sussex (Appeal ref: APP/C3810/V/16/3143095 – **Appendix 2**).

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 new housing development in Arun will inevitably place an increased demand upon the existing level of policing for the area. The development of 175 homes would have a notable impact on the workloads of our existing neighbourhood policing team. 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 District.

1. Overview of our 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 (such as education and health). The funding allocated to Police Forces via Home Office grants, the Council Tax precept and other specific limited grants are insufficient to fund in full capital expenditure requirements. 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 borrowing. Borrowing is not a nil cost option, with any borrowing accruing interest and is 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. In addition, this only relates to revenue costs and not capital expenditure.

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. Our limited capital funding stream relates to the on-going maintenance of our estate, information technology, replacement of our existing fleet (when necessary), equipment and other infrastructure items required by the force. Our capital funding stream is only considered sufficient to maintain our existing estate and other assets and does not provide the necessary funding mechanism to support population growth. 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 and requirements.

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.

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 below Sussex Police are required to deliver £35 million in savings over 4 years which has severely limited 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

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.

The safe policing of new urban extensions and general increasing population depends on both having revenue capacity to employ front line staff and necessary capital expenditure. In the absence of capital expenditure requirements being funded by developers in order to meet the policing needs of their developments, revenue capacity would otherwise compete with the need to provide the essential infrastructure outlined in this request. Failure to adequately resource this additional demand could seriously undermine the ability the force to effectively police the City.

As a Police Force we use our existing funds as far as they stretch to meet the demands of an expanding population. Our budget is overwhelming used to support revenue costs, limiting our capital programme potential. The situation also prevails in other public services seeking contributions and there is nothing different here as far as policing is concerned. What is different is that Police do not enjoy effective capital income from the usual public taxation sources. The above evidences that Police do not make requests where we have other funds that will meet our needs. The reality of their financial situation is a major factor in our advance planning and alignment with plans for growth in that whilst we can plan using our revenue resources to meet our ongoing, and to a limited extent, additional revenue costs these do not stretch to fund necessary additional investment in our capital infrastructures.

3. Conclusions on funding

Like many other public sector organisations, Sussex Police have seen real term reduction in grant funding, which has necessitated changes to the policing model. Sussex Police have been proactive in rationalising our estate and selling underused sites to fund capital purchases. In future the demands on our service will only increase due to higher population and we are responding to the changing nature of crime at both a national and local level, for example, at this time cybercrime, child sexual exploitation and terrorism are areas of particular concern. This requires funding to fill specialist positions and expensive equipment necessary for these roles.

Whilst the previous Chancellors (Rt Hon MP George Osborne) announcement in November 2015 changed the emphasis away from austerity and provided protection of police funding, this relies on the maximum permissible increase in Council Tax and this does not allow room for necessary capital purchases.

In terms of local population and the number of households do not lead directly to an increase in Central Government Grant. Whilst there might be growth through the council tax generated by an increase in the CTB (Council Tax Base), this funding would not be available to fund the infrastructure that would be required to effectively police the proposed areas of new development in the District.

4. Assessment and Request

Sussex Police have undertaken an assessment of the implications of growth and the delivery of housing upon the policing of Arun and in particular the areas of 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 is a fundamental requirement to the sound planning of the District. In the absence of developer contributions towards the provision of essential policing infrastructure the additional strain placed on our resources would have a negative impact on policing of both the development and force wide policing implications within the District.

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

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

- The first point to note is that “*infrastructure*” is not a narrowly defined term. Section 216 of the Planning Act 2008 provides a list of “*infrastructure*” but is clear that that list is non-exhaustive. That fact is demonstrated by the use of the word “*includes*” prior to the list being set out.
- There is no difficulty in the proposition that contributions towards Police infrastructure can be within the definition of infrastructure for the purposes of the 2008 Act. In policy terms this is reinforced by the reference to security infrastructure in paragraph 156 of the National Planning Policy Framework.
- 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 previously found sound by Planning Inspectors, the Secretary of State and the High Court and has been found sound. The costs included in this submission are sites specific costs which are envisaged to be secured via a Section 106 agreement. The significant costs relating to revenue will be met by local and national taxation.

5. Current Policing requirements in the District of Arun

At present, Neighbourhood policing in Walberton is delivered from the Bognor Police station. As outlined in the Police Crime Commissioners Estate Strategy 2013-2018 Bognor Police Station is shown to be retained. This station currently supports a number of Forcewide and divisional support staff and officers who are required to deliver policing to the site and surrounding area of Walberton.

In the West Sussex region there were 49,535 crimes recorded in the 2016/17 financial year, risen from 45,035 the previous year. There were 10,028 crimes recorded in 2016/17 across the District of Arun, a rise from 9209 from the previous year. Overall, the recorded crimes in the District of Arun accounted for a total of 9% of all crimes recorded by Sussex Police last year. Importantly the 10,028 recorded crimes are only 24% of all the 41,015 recorded incidents recorded in Arun last year.

Sussex Police have a duty to respond to all incidents and many of these incidents are not recorded as 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 of children, the elderly and those with special needs. In total Sussex Police attended 10,028 crimes and a total of 41,015 incidents in the District of Arun over the 2016/17 financial year.

Sussex Police answered approximately 42,195 calls to the non-emergency contact centre and 52,660 calls to the non-emergency switchboard attributed to the Arun District. A total of 18,429 calls were also received directly to the emergency assistance number in the District.

The 2011 census listed 66,700 households and 149,518 persons in the Arun District and taking into account net completions since this has increased by approximately 3,047 (AMR 2015/16). There have been an average of 609 net completions over the last 5 years recorded, which is the closest figure to estimating the number of completions in the 2016/17 financial year. This brings the total number of existing homes in the District to approximately 70,356 with an average household consisting of 2.24 persons (149,518/66,700).

Taking into account the number of recorded incidents and current number of households this results in 0.583 incidents per household and 0.260 incidents per person that require police attendance in the Arun District each year.

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

The proposed development of 175 units would have a population of 392 people (at 2.24 persons per household). Applying the current ratio of "incidents" to population then the development would generate an additional 102 (101.9) incidents per year for Sussex Police to attend (0.260×392). These incidents are likely to result in 24.5 additional recorded crimes per year attributed to this neighbourhood per year.

7. Current breakdown of policing delivered in Arun

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 (9%), 61.6 support staff are required to support the existing population of Arun.

- 65 Support Staff

Existing uniformed dedicated Officers	102
Divisional officers	125.6
Support Staff	66.6

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 102 incidents per year would require 0.52 additional officers (52% of an officers workload). The expected incidents generated by this development amount to 52% of a FTE police officers workload.

Additional officers/staff required as a result of 175 additional houses

Total Additional Officers Required	0.52	101.9 (expected No. incidents arising from development) / 194.2 (No. incidents attended per year by an officer)
Total Additional Support Staff (Local/Central)	0.15	$(66.6/227.6) * X 0.52$ (Existing no of support staff / police officers) x No. new officers required

7. COSTS

In order to mitigate against the impact of growth our office have calculated that the capital “cost” of policing new growth as a result of this major planning application equates to **£22,709.91**. These funds would be used for the future purchase of infrastructure to serve the proposed development. This cost will now be broken down clearly to show the capital infrastructure required to support these new officers.

The contribution 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 CIL Regulations, provided this does not exceed five 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;

STAFF SET UP

The basic set up costs of equipping staff are listed below. Following the start of the 2017/18 tax year we have reviewed and updated the start-up costs per officer which are now as follows:

OFFICER			
Uniform	£775.60	0.52	£341.26

Radio/Phone	£765.73	0.52	£336.92
Workstation/Office Equipment	£1,118.00	0.52	£491.92
Body Worn camera	£680.00	0.52	£299.20
IT Equipment	£968	0.52	£425.92
TOTAL COST	£4307.33	0.52	£2,239.81

SUPPORT STAFF			
Workstation/Office Equipment	£1,118.00	0.15	£167.70
IT Equipment	£968	0.15	£145.20
TOTAL COST	£2,086		£312.90

Sussex Police would utilise the contribution in the following manner;

- **£2,239.81** as a maximum of 1 of 5 pooled payments towards the costs of an additional officer to work in the Walberton Neighbourhood Policing Team.
- **£312.90** as a maximum of 1 of 5 pooled payments towards the cost of 1 additional support staff member to be based at Bognor Regis Police station. .

It should be noted that these are necessary start-up capital costs incurred by Sussex Police to enable officers and staff to undertake their role.

PREMISES

At present, Neighbourhood policing in Walberton is delivered from the Bognor Police station. As outlined in the Police Crime Commissioners Estate Strategy 2013-2018 Bognor Police Station is shown to be retained.

Bognor Regis is a large police building which accommodates the NPT team which would service this development. Like many of our larger stations this operates at maximum capacity and any additional members of staff/officers would need to be supported by adaption/alteration/extension of the existing building. As outlined in the current Sussex Police estates strategy Bognor Regis Police station will be retained to accommodate the majority of growth in the District. Sussex Police have investigated the possibility of extending or adapting the existing premises to provide much needed floor space for new officers to manage growth in Arun. A financial contribution equivalent to the scale of the development is therefore sought from this development.

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 97-101m 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 floor space for policing purposes. The cost of adaption would be lower at approximately £1000-1250/sqm. The figure of £1350 is therefore derived from the 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 16.1sqm (97sqm / 6) of floor space (workstation, storage, locker room etc).

This development requires 0.67 additional staff/officers to maintain the existing level of policing in the District. The cost of sitting these officers/staff at Bognor Regis Police Station would therefore be **£14,562.45** (£1350 x 16.1 x 0.67).

(Note: Following the start of the 2017/18 tax year Sussex Police have reviewed and updated our premises requirements which are now shown above).

VEHICLES

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

Patrol Vehicle – **£31,680**

Current fleet deployment within the Arun administrative area (serving 70,356 households) currently consists of 28 divisional vehicles delivering policing directly to the residents of Arun.

Sussex Police are also required to maintain a large fleet of Forcewide vehicles which have not previously been taken into consideration, however are considered essential to enable Sussex Police to maintain its high standards of policing. There are 598 vehicles within the Forcewide fleet in departments such as major crime, road policing, counter terrorism. Although crime in Arun accounts for approximately 9% of the total crime in Sussex, there are 43 Forcewide vehicles currently allocated to deliver policing to the District. Maintaining our Forcewide fleet is essential to the success of Sussex Police and important to enable the force to efficiently combat cross border crime. There is currently no capacity to meet the additional policing needs this development will present, therefore a financial contribution towards increasing fleet capacity is sought from this development.

In total there are 28 divisional vehicles and 43 Forcewide vehicles delivering policing to the District of Arun.

	Department	Number of vehicles
Divisional	Crime management, Local command, Local investigations, Neighbourhood Policing Teams, Neighbourhood Response Teams, Response investigations	28
Forcewide	Crime support command, Dogs section, Firearms, Intel, Licensing, Major investigations, Public protection, Traffic, Training.	43

This equates to a cost of £31.97 (£31,680*71) / 70,356 per household. Accordingly in order to maintain the existing level of fleet provision the development would generate a required contribution of **£5,594.75** (31.97 x 175). This contribution would be utilised as follows:

- **£5,594.75** as 1 of 5 pooled payments towards the purchase of an additional vehicle for use by the Walberton Neighbourhood Policing Team.

It is vital to ensure fleet deployment is maintained in line with the existing population of Arun and therefore a financial contribution towards fleet capacity is essential to make this development acceptable in planning terms.

Vehicles are fundamental capital policing infrastructure to deliver community safety and address crime especially at neighbourhood level. Fleet deployment is related to the known policing demands of comparable developments in the locality.

The direct demand from the new development can be accurately forecast and delivering policing direct to this development will not be possible without additional vehicles to do so. Levels of demand and mitigations have been determined by the scale of the development and demonstrate only a proportion of a vehicle's time will be spent policing this development. We do not therefore seek the cost of a whole vehicle however a contribution to be pooled towards a new vehicle.

8. Compliance with National Policy and CIL Regulations

Firstly, the pooling of S106 contributions is acceptable under CIL regulation 123 subject to each infrastructure item not exceeding 5 separate developer contributions. Within Arun the majority of policing is carried out by the NRT/NPT teams, therefore our office would recommend funds received from Section 106 agreements should be spent directly on supporting these teams. Therefore, when contributions from new housing development are pooled it is sensible to do this based on NRT areas which in the case of this development is the Walberton NRT/NPT. At present there are S106 planning contributions secured to support the Walberton NRT/NPT, therefore complying with the pooling restrictions under CIL regulation 123. There are also no other S106 contributions secured towards the expansion of Bognor Regis police station.

The assessment for these infrastructure contributions is outlined in CIL Regulation 122, which requires each item to meet the following three tests. From the numerous appeal / Secretary of State decisions and High Court judgements there is significant evidence that all the items listed in this request comply with CIL Regulation 122. The costs of training officers have been omitted from this funding request however were recently found sound (and compliant with REG122) in appeal decision APP/C3240/W/16/314445.

In light of this recent decision, Sussex Police would be willing to provide further costs for this specific start-up costs which are currently omitted.

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.

Arun's 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 Bognor 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'.

The importance of policing contributions are recognised in recent court judgements and are an essential core principle of the NPPF.

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

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

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

The importance of policing contributions is importantly recognised in recent court judgements and considered an essential core principle of the NPPF. The judgement of Mr Justice Green 01/11/2016 (**Appendix 1**) with regard to the High Court challenge of Jelson Limited vs Secretary of State for Community and Local Government (1) Hinkley and Bosworth District Council stated:

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

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

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

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

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

Appeal decision APP/C3240/W/16/314445 (**Appendix 3**) issued on the 21st March 2017 provides further support for developer contributions towards the capital costs of additional policing infrastructure arising from new development. The Planning Inspector stated:

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

We would also bring to attention to high court judgement by Mr Justice Foskett in *Police and Crime Commissioner for Leicestershire vs Blaby Council*). Paragraph 61 and 62 state:

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

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

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

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

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

A financial contribution towards essential policing infrastructure is clearly essential to make this development acceptable in planning terms. The policing infrastructure items outlined in this request are essential to help

support new officers required due to population growth and most importantly keep existing and future residents of Arun and specifically Walberton safe.

2. Directly related to the proposed development

There is a functional link between new development and the contributions requested. Put simply without new development taking place and the subsequent population growth there would be no requirement for the additional infrastructure. The additional population growth will lead to an increase in incidents, which will require a Police response. The costs have also been apportioned to NRT teams policing the area of Walberton where a rise in police incidents will occur as a result of this development. The infrastructure outlined in this request has been specifically identified as necessary to deal with the likely form, scale and intensity of incidents new housing development will generate.

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

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

A clear numerical, evidence based approach has been demonstrated which is supported by case law and recent appeal decisions by the Planning Inspectorate. The various items of capital expenditure and infrastructure requested are considered CIL compliant and are necessary to enable new officers to undertake their role to meet the policing needs of the development and mitigate impacts to existing resources. A reasonable and proportionate approach has been adopted. As noted above, certain items of necessary expenditure which could have been requested have not been for reasons set out earlier.

We would also highlight two recent appeal decisions in Leicestershire (APP/F2415/A/12/2179844 & APP/X2410/A12/2173673, **Appendix 5**). 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”

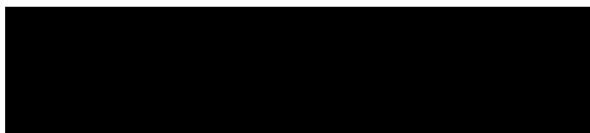
Paragraph 156 states that local planning authorities should set out strategic priorities in the Local Plan to deliver;

“...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 175 homes on the land east of Tye Lane, Walberton.

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

Yours sincerely

A large black rectangular box used to redact the signature of Andrew Taylor.

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

Part A

'What', 'where' and 'when' of infrastructure requirements relevant to application reference to WA/44/17/OUT

TOPIC	INFRASTRUCTURE REQUIREMENT	AREA	COST PER ITEM	QTY	TOTAL COST	TIMING OF DELIVERY (Occupations)	
						1 st occupation	75 th occupation
Policing	Uniform	Walberton	£775.60	0.52	£403.31	£403.31	
Policing	Radio/Phone	Walberton	£765.73	0.52	£398.18	£398.18	
Policing	Body warn camera	Walberton	£680.00	0.52	£353.60	£353.60	
Policing	IT equipment	Walberton	£968.00	0.67	£648.56	£648.56	
Policing	Workstation/office equipment	Walberton	£1,118	0.67	£749.06	£749.06	
Policing	Premises	Bognor Regis	-		£14,562.45		£14,562.45
Policing	Fleet	Walberton	-		5,594.75	5,594.75	
Total					£22,709.91		
						£8,147.46	£14,562.45

Enc.

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

Appendix 2 - APP/C3240/W/16/314445 – Land east of Kestrel Close / Beechfields Way, Newport, Shropshire, TF10 8QE

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

Appendix 4 - North-west Leicester District Council vs Money Hill Consortium – Money Hill, Land North of Wood Street, Ashby-De-La-Zouch (paragraphs 61-63)

Appendix 5 – Examples of appeal decisions supporting police contributions

- APP/C3810/V/16/3143095 – Land east of Fontwell Avenue, Fontwell, West Sussex, BN18 0SB
- APP/E3715/W/16/3147448 – Land at Ashlawn Road West, Rugby, Warwickshire
- APP/C3240/W/16/314445 – Land east of Kestrel Close / Beechfields Way, Newport, Shropshire
- APP/K2420/W/15/30004910 – Land off Sherbourne Road, Burbage, Leicestershire
- APP/G2435/A/14/2228806 – Money Hill, Land North of Wood Street, Ashby-de-la-Zouch, Leicestershire
- APP/X241-/W/15/3007980 – Land rear of 62 Iveshead Road, Shepshed, LE12 9ER
- APP/T3725/A/14/2221613 – Land at the Asps, bound by Europa Way (A452) to the east and Banbury Road (A425) to the west
- APP/T3725/A/14/2229398 – Land South of Gallows Hill / West of Europa Way, Heathcote, Warwick
- APP/G2435/W/15/3005052 – Land South of Greenhill Road, Coalville, Leicestershire
- APP/Q3115/A/14/2222595 – Land north of Littleworth Road, Benson
- APP/A2470/A/14/2222210 – Greetham Garden Centre, Oakham Road, Greetham, Oakham
- APP/A2470/A/14/2227672 – Land to the rear of North Brok Close, Greetham, Rutland
- APP/L2440/A/14/2216085 – Land at Cootage Farm, Glen Road, Oadby, Leicestershire
- APP/Y2430/A/14/2224790 - Land to the east of Nottingham Road, Melton Mowbray, Leicestershire
- APP/2460/A/14/2213689 – Land rear of 44-78 Ashby Road, Hinkley, Leicestershire
- APP/K2420/A/13/2208318 – Land surrounding Sketchley House, Watling Street, Burbage, Leicestershire
- APP/F2415/A/14/2217536 – Land off Fairway Meadows, Ullesthorpe, Leicestershire
- APP/K2420/A/13/2202658 & APP/A/13/2210904 – Land off (to the south of Spinney Drive and land off (to the east of) Brookside, Barlestone, Leicestershire
- APP/H1840/A/13/2199085 & APP/H1840/A/13/2199426 – Land off Pulley Lane, Newland Road and Primslan Way, Droitwich Spa
- APP/F2415/A/12/2183653 – Land South of Hallbrook Primary School, Crowfoot Way, Broughton Astley, Leicestershire
- APP/X2410/A/13/2196928 & APP/X/2410/A/13/2196929 – Land of Mountsorrel Lane, Rothley, Leicestershire
- APP/T2405/A/13/2200867 – Land at Seine Lane/Forest Road, Enderby, Leicestershire
- APP/T2405/A/13/2193758 & APP/T2405/A/13/2193761 – Land east of Springwell Lane, Whetstone, Leicestershire
- APP/G2435/A/13/2192131 – Land south of Moira Road, Ashby-de-la-Zouch
- APP/X2410/A/12/2173673 – Land at Melton Road, Barrow Upon Soar, Leicestershire
- APP/X2410/A/12/2187470 – Land at (the former) Rearsby Rose Ltd, Melton Road, East Goscote
- APP/F2415/A/12/2179844 – Land north of Bill Crane Way, Lutterworth, Leicestershire



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

Case No: CO/2673/2016

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 22/11/2016

Before :

MR JUSTICE GREEN

Between :

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

Claimant

Defendant

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

Hearing date: 1st November 2016

Approved Judgment

MR JUSTICE GREEN :

A. Introduction: The Issue – “FOAN”

1. This case concerns a dispute over the calculation of “Full Objectively Assessed Need” for housing or “FOAN”. This is a measure of the theoretical need that a local authority has for housing. It is required to be set by local authorities in accordance with paragraph [47] of the National Planning Policy Framework (“NPPF”). It is an important figure because it is used as a benchmark against which the “need” for a particular proposed development is measured, subject to the processes described below. I have described FOAN as a theoretical figure because once the FOAN is calculated in practice it is then modified to take account of relevant policy considerations. In practice the FOAN will almost always exceed the housing requirement figure that is set once policy is applied. For this reason FOAN has been termed a “policy-off” figure and the housing requirement ultimately fixed has been termed a “policy-on” figure. The policy on housing requirement will (or should) be worked out in the context of the preparation of a Local Plan. Problems however arise when there is no up-to-date Local Plan.
2. On the 12th May 2014 Jelson Limited (“the Claimant”) applied to Hinckley and Bosworth Borough Council (“HBBC”) for planning permission for residential development and associated infrastructure in relation to land off Sherborne Road, Burbage, Leicestershire. On the 12th November 2014 HBBC rejected the application and the Claimant appealed, by way of public inquiry, to the Inspector. By a decision made on the 4th May 2016 (“the Decision”) the appeal was refused. A central issue at the inquiry was whether HBBC could establish that it had a five year supply of housing for the purposes of paragraph [47] NPPF. The Council argued that it could demonstrate a supply sufficient to meet demand for a period in excess of five years. The Claimant, however, argued that there was a supply of significantly less than five years. The nub of the dispute between the parties centred upon identification of a figure, or range of figures, as to the relevant numerical requirement. The Claimant argued that if HBBC was unable to demonstrate a supply of five years or more that this would have been a significant material consideration in favour of allowing the appeal (taking into account the presumption in favour of grant in paragraph [14] NPPF). In her Decision the Inspector held that there was, in fact, sufficient housing land in Hinckley and Bosworth to meet the housing needs for the following five years.
3. It is common ground that at the time of the inquiry HBBC had not adopted a new Local Plan since the coming into effect of the NPPF in March 2012. The Core Strategy (“CS”) had been adopted in 2009 and this set out a housing requirement of 450 dwellings per annum (“dpa”). HBBC did not contend that the CS contained an assessment of or figure for FOAN in line with the requirement in paragraph [47] NPPF. Nonetheless HBBC argued that the evidence before the inquiry supported a conclusion that there was a housing requirement of 450 dpa.
4. In Ground I the Claimant contends: (a) that the Inspector failed to have due regard and/or to understand the requirements of paragraph [47] NPPF; and/or (b) that she failed to understand and follow the principles of the Court of Appeal in *City and District of St Albans v Hunston Properties and SSCLG* [2013] EWCA Civ 1610 (“*Hunston*”) and that of the High Court in *Gallagher Homes Limited v Solihull Metropolitan Borough Council* [2014] EWHC 1238, affirmed on appeal [2014]

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

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

B. Legal and Policy Framework

(i) The test on appeal

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

“19. The relevant law is not controversial. It comprises seven familiar principles:

(1) Decisions of the Secretary of State and his inspectors in appeals against the refusal of planning permission are to be construed in a reasonably flexible way. Decision letters are written principally for parties who know what the issues between them are and what evidence and argument has been deployed on those issues. An inspector does not need to “rehearse every argument relating to each matter in every paragraph” (see the judgment of Forbes J. in *Seddon Properties v Secretary of State for the Environment* (1981) 42 P. & C.R. 26, at p.28).

(2) The reasons for an appeal decision must be intelligible and adequate, enabling one to understand why the appeal was decided as it was and what conclusions were reached on the “principal important controversial issues”. An inspector’s reasoning must not give rise to a substantial doubt as to whether he went wrong in law, for example by misunderstanding a relevant policy or by failing to reach a rational decision on relevant grounds. But the reasons need refer only to the main issues in the dispute, not to every material consideration (see the speech of Lord Brown of Eaton-under-Heywood in *South Bucks District Council and another v Porter* (No. 2) [2004] 1 WLR 1953, at p.1964B-G).

(3) The weight to be attached to any material consideration and all matters of planning judgment are within the exclusive jurisdiction of the decision-maker. They are not for the court. A

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12. In paragraphs [28] – [30] she set out various observations about the evidence collation process which, in my view, are pragmatic and sensible and accord with good administrative practice and with case law.
13. I summarise these points as follows: (a) an Inspector is required to make judgments as to the Claimant's current FOAN or housing requirements and its housing supply in order to decide the issues in an appeal; (b) paragraph [49] NPPF requires the Inspector to form his/her own judgment on the equation between housing needs and housing supply based upon the relevant evidence provided by the local planning authority and any other parties to the inquiry; (c) where a Local Plan is outdated other sources of information can and should be considered; (d) where there is no robust recent assessment of full housing needs, the household projections published by the DCLG should be used as the starting point; (e) an inspector must do the best possible with the material adduced and if needs be the Inspector must make the best of an unsatisfactory situation, making a choice between unsatisfactory sources; (f) if an Inspector is unable to identify a specific figure a bracket or range or an approximate uplift on the departmental projections suffice; (g) an inspector is not required to undertake the kind of detailed analysis which would be appropriate at a Development Plan inquiry; (h) an Inspector deciding an appeal on the best evidence available is not making a finding that is an authoritative assessment which binds the local planning authority in other cases; (e) in an exceptional case where the evidence before the Inspector is so lacking that it is impossible to perform an assessment the inspector must say so and give reasons to explain why it was not possible to determine a working FOAN figure or range.

(iii) Relevant provisions of the NPPF and Policy Guidance

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

“47. To boost significantly the supply of housing, local planning authorities should:

- use their evidence base to ensure that their Local Plan meets the full, objectively assessed needs for market and affordable housing in the housing market area, as far as is consistent with the policies set out in this Framework, including identifying key sites which are critical to the delivery of the housing strategy over the plan period;
- identify and update annually a supply of specific deliverable sites sufficient to provide five years worth of housing against their housing requirements with an additional buffer of 5% (moved forward from later in the plan period) to ensure choice and competition in the market for land. Where there has been a record of persistent under delivery of housing, local planning authorities should increase the buffer to 20% (moved forward from later in the plan period) to provide a realistic prospect of achieving the planned supply and to ensure choice and competition in the market for land;
- identify a supply of specific, developable sites or broad locations for growth, for years 6-10 and, where possible, for years 11-15; for market and affordable housing, illustrate the expected rate of housing delivery through a housing trajectory for the plan period and set out a housing implementation strategy for the full range of housing describing how they will maintain delivery of a five-year supply of housing land to meet their housing target; and
- set out their own approach to housing density to reflect local circumstances.”

“49. Housing applications should be considered in the context of the presumption in favour of sustainable development. Relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a five-year supply of deliverable housing sites.”

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

“159. Local planning authorities should have a clear understanding of housing needs in their area. They should:

- prepare a Strategic Housing Market Assessment to assess their full housing needs, working with neighbouring authorities where housing market areas cross administrative boundaries. The Strategic Housing Market Assessment should identify the

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

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

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

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

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

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

“Housing and economic development needs assessments

Methodology: assessing housing need

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

What methodological approach should be used?

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

Revision date: 06 03 2014

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

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

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

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

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

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

Revision date: 06 03 2014

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

How often are the projections updated?

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

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

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

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

Revision date: 27 02 2015 See revisions

Related policy

National Planning Policy Framework

- Paragraph 17, bullet 1

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

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

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

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

Issues will vary across areas but might include:

- migration levels that may be affected by changes in employment growth or a one off event such as a large employer moving in or out of an area or a large housing development such as an urban extension in the last five years
- demographic structure that may be affected by local circumstances or policies eg expansion in education or facilities for older people

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

Revision date: 06 03 2014 See revisions

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

How should employment trends be taken into account?

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

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

Revision date: 06 03 2014

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

How should market signals be taken into account?

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

- Land Prices

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

- House Prices

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

- Rents

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

- Affordability

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

- Rate of Development

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

- Overcrowding

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

accommodation is published in the quarterly Statutory Homelessness release.

Revision date: 06 03 2014

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

How should plan makers respond to market signals?

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

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

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

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

Revision date: 06 03 2014.”

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

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

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

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

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

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

(Emphasis added)

20. For the purpose of this judgment it is convenient to highlight at this early juncture two particular sets of figures which are set out in bold in the table above. First the range for HBBC (for the period to 2031) was 375-450. This was the range ultimately chosen by the Inspector to represent the FOAN. But it is also important for reasons which I set out later in some detail (see paragraphs [54ff] below) to observe that the equivalent range for Oadby & Wigston was 80-100. This is because in separate litigation that range was rejected by an Inspector and his findings were later upheld by both the High Court and by the Court of Appeal. The reasoning which led to the approval of the Inspector’s alternative figure in that case is of some material significance to the analysis in the present case.
21. The conclusions, as set out in the table, did not take into consideration land supply, development or infrastructure constraints and the SHMA makes clear that local authorities would need to consider these issues in deriving a “*policy on*” distribution of housing provision i.e. a figure which is not the actual assessed need but a figure which is considered to be actually deliverable and which therefore takes into account a variety of policy criteria which might constrain the higher actual need figure. As such the figures in the SHMA purportedly amounted to a “*policy off*” assessment of housing need. I explain the significance of “*policy off*” and “*policy on*” more fully in paragraph [41] below. The SHMA also drew conclusions concerning the need for different types of homes. It identified that 21% of the need for affordable housing could be met by intermediate equity-based products with 79% of need for rented affordable housing (either at social or affordable rent levels). Taking into account expected changes to population structure, existing housing mix and market evidence, the SHMA identified strategic targets with a mix of housing needed within the HMA against which delivery could be monitored. The recommendations regarding the sizes of home need were incorporated into the following table:

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

22. The needs of specified groups were considered, including elderly households, students, BME household and families. The SHMA indicated the need for between 240 – 720 additional housing units to be specialist accommodation across the HMA to meet the needs of the “older person” population each year. It further identified the need for 222 residential care bed spaces per annum.
23. Chapter 9 of the Report, in relation to “*Overall Housing Need*” makes clear that the “policy off” overall housing need would take into account both affordable and market housing. It described the approach adopted in paragraphs [9.4] – [9.7]:

“9.4 The NPPF sets out that plans should be prepared on the basis of meeting full needs for market and affordable housing. Planning Practice Guidance sets out that the latest national projections should be seen as a starting point but that authorities may consider sensitivity testing projections in response to local circumstances and the latest demographic evidence.

9.5 In accordance with the Planning Practice Guidance, the 2011-based Sub-National Population Projections (SNPP) and related CLG Household Projections have formed the starting point for our assessment. When extended beyond 2021, these projections indicate household growth of 3,335 households per annum across the HMA between 2011 and 2031 and 3,159 between 2011 and 2036. However these projections assume that household formation rates seen over the 2001-11 period continue moving forward. These trends arguably build in a degree of suppression of household formation, a point which is acknowledged by CLG in the Planning Practice Guidance on Assessment of Housing and Economic Development Needs.

9.6 Against this context a sensitivity analysis has been developed exploring different projections of household formation rates and to take account of the latest migration data. This analysis concludes that the most appropriate means of projecting household formation would be based on the midpoint between the household formation rates in the 2008 and 2011 Household Projections. These updated projections indicate a need for 3,774 households per annum between 2011 and 2031 and 3,626 between 2011 and 2036. This represents a robust starting point for assessing housing needs in Leicester and Leicestershire based on population trends.

9.7 The guidance then sets three key tests which should be applied in order to identify whether there is a case to adjust the starting point. We see these tests as:

- Do market signals point to a need to increase housing supply in order to address affordability and high demand?
- Is there a need to increase overall housing supply in order to boost delivery of affordable homes to meet identified needs?
- Is there evidence that an increase in housing supply is needed to ensure a sufficient labour supply to support forecast economic and employment growth in different parts of the HMA?”

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

“9.20 We have sought to draw the range of evidence together to define objectively-assessed need for housing. In doing so we have followed the following approach:

- Define the base level of need with regard to the demographic projections;
- Consider the case for adjustments in response to market signals. This points to a case for upwards adjustment in Melton and Harborough Districts;
- Compare the demographic projections against the proportionate economic-led projections in regard to the scope to encourage local living and working;
- Overlay the affordable housing evidence in regard to the % supply based on the demographic projections needed to support full affordable housing delivery;
- Identify the higher level of the range to take account of the market signals, economic evidence and affordable housing need.”

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

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

Table 84: OAN Conclusions 2011-2033

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

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

(ii) The Inspector’s decision (“the Decision”)

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

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

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

28. In paragraph [7] the Inspector identified the demographic calculations which resulted in the total number, expressed as a range, of people and households likely to live in the HMA during the relevant period irrespective of the type of dwelling which they might require. She stated that *“those needs”* (which included affordable housing) *“are the products of separate and different calculations and assessments. In theory, they are included within the total population arising from population projections and a demographic methodology and should be consistent with them”*.
29. In paragraph [8] the Inspector identified that the principal dispute between the parties was whether affordable housing need was required to be fully *“met”* by the FOAN. I emphasise the phrase *“met”* because, as I discuss later, the Claimant alights upon this word as one of the pieces of evidence said to prove that the Inspector misdirected herself to the test to be applied. She recorded, albeit in outline, the Claimant’s contention that the FOAN arising from the SHMA was a constrained *“policy-on”* figure and that, in consequence, the upper end of the range was not properly identified as it should be in an unconstrained, *“policy-off”* FOAN. She recorded the position of HBBC in the following terms:
- “8. ... On the other hand, the Council concurs with the guidance set out in the Planning Advisory Service’s technical advice note on the matter³. This describes those factors which should not contribute to OAN as being ‘below the line’; they are matters which should not be included in the OAN calculation but which should be taken into account at a later stage when formulating provision targets. The technical advice note argues that affordable housing need is not measured in a way that is directly comparable with OAN and should not be a constituent of it; affordable housing should thus be below the line and a policy consideration.”
30. In paragraph [9] the Inspector identified the relevant figures. Based upon demographic led household projections the bottom end of the FOAN range for HBBC up to 2031 was 375. This is set out in the first substantive column in Table 84 of the SHMA cited at paragraph [19] above. The Inspector then stated that due to the mechanism by which the vast majority of affordable housing was delivered (i.e. as a percentage of all residential schemes over a threshold of units, and subject to viability) it was always necessary to consider whether to increase the number of dwellings required overall in order to maximise the provision of affordable housing. She observed that this measure, which is referred to in the PPG (see paragraph [16] above), was a policy decision and was therefore appropriately calculated *“outside”* of the FOAN. The Inspector recorded that in HBBC the number of homes needed to support proportionate economic growth was identified in the SHMA as 467. This can be seen from the fourth column in Table 84 (*supra*) and the affordable housing need (in the fifth column) was 248 per annum. In order to support the provision of additional affordable housing, and a growth in employment/labour supply, therefore, the top end of the range was identified at 450. She said: *“... that is therefore a policy-on figure”*.

31. In paragraph [10] she stated that there was no dispute but that there was a significant need for affordable housing in HBBC and that the most recent analysis was the SHMA which put the figure at approximately 250 dpa (see the fifth column, which sets out a figure of 248). She stated that in increasing the demographic produced figure of 375 to 450, which amounted to a 20% uplift, specifically to provide for affordable housing and economic growth the FOAN “properly” took account of that need.
32. The Inspector then addressed the Claimant’s principal argument which was that the top end of the FOAN range should be at least 980 dpa since this was the figure identified in Table 48 of the SHMA as the total amount of housing necessary to deliver the indicated housing need under current policy. Table 48 is contained within paragraph [6.63] of the SHMA Report. It is set out in the following terms:

Table 48

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

(Emphasis added)

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

34. The Inspector rejected the argument based upon the 980 figure robustly. She described it as “*Clearly impracticable and unreasonable*”. She came to this conclusion by extrapolating that 980 dba represented a requirement of 196,825 units in the HMA as a whole. This amounted to: “... *a considerable, inconsistent and thus unjustifiable increase on the 75,000 or so dwellings calculated from household projections to be needed by 2031*”. The important point to observe here is the discrepancy of the 980 dpa figure with the figures based on household projections.
35. Of the figure of 980 dpa for housing needs set out in Table 48 the Inspector concluded:
- “11. ... The 980 figure identified in the SHMA is thus purely theoretical although it could be used as a pointer to further policy adjustments, such as a change in the percentage of affordable housing required. Significant issues in the area such as shortcomings in housing provision, including affordable housing, should be addressed through the Local Plan.”
36. The Inspector benchmarked her conclusion that Table 84, which included the 450 dpa figure, was appropriate by reference to population projections produced subsequent to the SHMA. The SHMA figure was based upon 2011 data (see paragraph [18] above). The new population projections were for 2012. Analysis of these demonstrated a need for 364 dpa in HBBC derived from the total figure for Leicestershire. The Inspector stated that this was lower than the bottom end of the SHMA FOAN but was generally consistent with it. The Inspector thus stated:
- “12. ... In my opinion the figure confirms the Council’s approach and validates the CS housing provision of 450 dwellings which is about 24% above that needed to meet demographic increases.”
37. In paragraph [13] the Inspector stated that it was not her role, in the Decision, to identify an alternative FOAN. She did record, however, that the Appellant had calculated that, all things being equal, the housing land supply would fall below five years where the FOAN was 539 dpa. That figure would represent a 44% uplift on the 375 demographically-led household projection which, in the Inspector’s opinion, would represent a considerable number of additional affordable dwellings. She therefore stated that had she (hypothetically) considered that the 450 dpa housing requirement was inadequate or “*wanting*” it would still not have been necessary to increase that figure beyond the 539 threshold whereby a five year supply was unavailable. The significance of this is that it is a good deal lower than the Claimant’s figure of 980 for inclusion in the FOAN range.
38. In paragraphs [14] – [16] the Inspector cited various authorities. In particular she recited that in the Oadby litigation (*Oadby & Wigston Borough Council v SSCLG, and, Bloor Homes Limited* [2015] EWHC 1879 (Admin) per Hickinbottom J (“*Oadby*”)) the Court had found that the Inspector, in that case, had been entitled to exercise his planning judgment upon the basis of the evidence before him when arriving at the conclusion that the range for Oadby arising from the Leicestershire SHMA, i.e. the same document that was before the present Inspector, was “*policy-on*” and that it therefore failed properly to reflect the affordable housing need and the need generated by economic factors. The Inspector observed that a significant difference

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

39. Finally, the Inspector noted that in the Charnwood CS Examination concluded in September 2015, in the light of a thorough assessment, the Inspector there had recorded that the SHMA provided an up-to-date and robust assessment of housing need for the HMA and that the HBBC FOAN of 375 – 450 was a component of that overall figure.
40. In paragraphs [53] – [55] the Inspector set out her overall conclusions for dismissing the appeal:

“53. I have found that there is a five year supply of housing land in the Borough at this time; relevant policies for the supply of housing are not, therefore, considered out-of-date. In these circumstances it is not necessary for me to determine which those policies are. The proposed development would not protect or preserve the open landscape to the east of Burbage which, whilst not specifically designated, is an important setting for the village and separates it from the M69 corridor.

54. The benefits of the proposed development include the provision of market and affordable housing in an area where the latter is much needed. The site is also close to the village centre, where there are local services, and within easy reach of Hinckley town centre by public transport. New public open space would be created and there would be other social and economic benefits such as additional support for local facilities and businesses. Nonetheless, these benefits are not sufficient to outweigh the harm to the landscape. I do not agree that the proposal would improve access to the countryside.

55. I am aware that Burbage is part of Hinckley Sub Regional Centre and that the CS strategy is that the majority of housing will be located in and around it. The positive aspects of the scheme, including the benefits referred to above and also factors such as the lack of harm to ecological interests or the living conditions of nearby occupiers, make it consistent with several CS policies, as will be the case with the vast majority of proposed development. Since this proposal is clearly contrary to CS Policy 4, which is most relevant to proposals in Burbage and thus most important in this case, compliance with other, more general policies carries little weight. The proposed development would therefore be contrary to the development plan as a whole. I have taken into account all the matters raised but found no compelling arguments to allow the appeal.”

D. Ground I: Analysis

(i) FOAN is “policy-off”: The distinction with “policy-on”

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

"(i) Household projections: These are demographic, trend-based projections indicating the likely number and type of future households if the underlying trends and demographic assumptions are realised. ...

(ii) Full Objective Assessment of Need for Housing: This is the objectively assessed need for housing in an area, leaving aside policy considerations. It is therefore closely linked to the relevant household projection; but it is not necessarily the same. An objective assessment of housing need may result in a different figure from that based on purely demographics ...

(iii) Housing Requirement: This is the figure which reflects, not only the assessed need for housing, but also any policy considerations that might require that figure to be manipulated to determine the actual housing target for an area. For example, built development in an area might be constrained by the extent of land which is the subject of policy protection, such as Green Belt or Areas of Outstanding Natural Beauty. Or it might be decided, as a matter of policy, to encourage or discourage particular migration reflected in demographic trends. Once these policy considerations have been applied to the figure for full objectively assessed need for housing in an area, the result is a "policy on" figure for housing requirement. Subject to it being determined by a proper process, the housing requirement figure will be the target against which housing supply will normally be measured."

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

42. Before turning to the particular issues arising in this case it is necessary to say a word about the judgment of the Court of Appeal in *Oadby*. The Court of Appeal was concerned with the self-same SHMA that is in issue in this case and which was relied upon by the Inspector. The Appellant Council appealed the order of Hickinbottom J dismissing its application under section 288 of the TCPA 1990 against the decision of the inspector allowing an appeal of the developer against the council's refusal of an application for outline planning permission for a development of up to 150 dwellings on land at Oadby in Leicestershire. Hickinbottom J. rejected the council's challenge to the decision on all grounds. The central issue in the appeal was whether the judge erred in holding that the Inspector had not misinterpreted paragraphs [47], [49], [157], [158] and [159] NPPF. In giving judgment Lindblom LJ observed that this was a case upon its facts and did not raise novel issues of points of principle. Nonetheless because of its strong evidential resonance in the present case it is of more than passing interest. It is also an informative case in that it highlights the robust deference that the Courts attach to the genuine planning judgments of Inspectors and, in particular, it exemplifies the workings of the statement in the PPG (see paragraph [16] above) that the calculation of FOAN is not an exact science.
43. The general tenor of the judgment is that, in accordance with well established principles, the judgment of an Inspector is not to be easily interfered with. If a conclusion is one of judgment the hurdle represented by irrationality is a very high one.
44. The judgment is also informative in that it highlights a number of evidential issues which reflect the principles that I have summarised at paragraph [13] above. An Inspector can, but need not, accept the analysis in an SHMA. So for instance an Inspector when confronted with an SHMA for a HMA is not bound to accept the apportionment in the SHMA as between different local authority areas if the Inspector considers that the criteria for apportionment are not adequate, bearing in mind that the analysis in a SHMA has not been subject to the sort of thorough testing that would occur in the formulation of a Local Development Plan (cf paragraphs [38] – [42]).
45. The NPPF is a broad statement of national policy and it requires an exercise of evaluative judgment when being applied to particular, local, decisions. The Court stated: *“This should come as no surprise to those familiar with the basic principles governing claims for judicial review and statutory applications seeking orders to quash planning decisions. As this appeal shows very well, the NPPF contains many broadly expressed statements of national policy, which, when they fall to be applied in the making of a development control decision, will require of the decision-maker an exercise of planning judgment in the particular circumstances of the case in hand.”* (ibid paragraph [33]).

(iii) The Claimant's submissions

46. I turn now to the Claimant's submissions. Mr Lockhart-Mummery QC started his submissions on behalf of the Claimant with four propositions.
47. First, in this case where there is no post-NPPF housing need requirement set out in a Local Plan the duty of the Inspector is to determine a “policy-off” (i.e. unconstrained)

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

48. Second the theoretical figure is to be identified in full because FOAN is a “full” figure. It is not a figure to be “*met*” or actually “*provided*” which is the “*policy on*” figure which should come later in the Local Plan.
49. Third, in the present case the CS figure of 450 (see paragraph [27] above) is accepted by all concerned not to be the FOAN. However it was no coincidence that the Inspector arrived at a figure of 450 as the upper end of the FOAN range because in fact the Inspector had not derived a proper FOAN figure but had, in substance, simply adopted the old, irrelevant CS figure.
50. Fourth, the SHMA with its identification of 450 in Table 84 is a “*policy on*” figure and therefore not reliable. Mr Lockhart-Mummery QC based this submission upon the judgment of the High Court in *Oadby* (endorsed by the Court of Appeal) where Hickinbottom J held that the SHMA for Leicester incorporated various “*policy on*” considerations and that therefore the Inspector in that case had been right to adjust the SMHA based figures in order to arrive at an end figure which was not the same as that in the SHMA. At first instance Hickinbottom J had held that the SHMA was “*policy-on*” in two key respects. First, the figures used by Oadby BC were based upon its policy decision not to accommodate additional workers drawn to its area by increased employment opportunities. The Judge said that this was a “*policy-on*” consideration because “... *it affects adjacent areas who would be expected to house those additional commuting workers*”, (ibid paragraph [34(i)]). He said that it might be policy off if there was evidence or a development plan or an agreement between the authorities to the effect that adjacent authorities agreed to increase their housing accommodation accordingly. But there was no such evidence. Second, he referred to the fact that the SHMA took into account the availability of private rented accommodation which did not meet the definition of affordable housing and this was therefore also a “*policy-on*” consideration (ibid paragraph [34(ii)]). Mr Lockhart-Mummery QC, armed with these examples, contended that the SHMA was (in essence) systematically flawed because its figures were not pure “*policy-off*”.
51. Mr Lockhart-Mummery QC dissected the Decision of the Inspector and he highlighted various passages in which he argued that it could be seen that the Inspector had applied a thoroughly muddled approach to the calculation of FOAN in which she had variously confused “*policy-on*” with “*policy-off*”, had taken account of data sources which themselves were confused and misleading, and had ignored highly relevant data which directly correlated to the total housing need for the area.

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

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

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

(v) “Met”: Decision paragraph [8]

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

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

54. The Claimant next argued that the upper end of the FOAN range should have been 980 or even more. They take this figure from Table 48 SHMA which is set out at paragraph [32] above. They argue that since in the SHMA this figure of 980 is under the heading “Annual Housing Need” then it is an objectively derived basis for housing need and to ignore it or reject it in the cursory way that the Inspector did and thereby not to use it as part of the FOAN range was irrational and/or reflected a misdirection and misunderstanding of the NPPF. In his reply submissions Mr Lockhart-Mummery QC clarified that it was not his case that the Inspector was *bound* to accept that figure but, rather, that she was required to take it into account.
55. I do not accept Mr Lockhart-Mummery QC’s analysis of the 980 figure.
56. First, the 980 figure is derived from Table 48 SHMA. This is not a figure based upon demographic, trend-based, projections indicating the likely number and type of future households (See the articulation by Hickinbottom J above at paragraph [41]). It is a much looser and imprecise calculation premised upon affordable need and as such is not calculated according to the methodology identified in paragraph [159] NPPF and in the relevant Guidance.
57. Second, it will be seen that, in Table 48 (paragraph [32] above), the Annual Housing Need in HBBC of 980 has been determined to be exactly four times (4X) the “Affordable Need” figure (in column 2) of 245; put another way HBBC apply a precise 25% figure to “Annual Housing Need” to arrive back at the affordable need figure. It was explained by counsel for HBBC, and not challenged by the Claimant, that the 980 figure was very much a policy based figure which flows from the choice of the percentage or figure to be used to describe the relationship between affordable housing and Annual Housing Need. That multiplier or percentage could vary for all

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

58. Third, confirmation of these conclusions comes from the fact that the Annual Housing Need figure in Table 48 was not relied upon in the High Court and in the Court of Appeal in *Oadby*. There is for this reason a real probative significance in the dog that did not bark: The *Oadby* case concerned exactly the same SMHA as is in issue in this case and it also involved an analysis of the figures in Tables 48 and 84. As such there is an “Annual Housing Need” figure for Oadby which equates to the 980 figure for HBBC. In the case of Oadby the figure is 800 (see at paragraph [32] above). If Mr Lockhart-Mummery QC is correct in his elevation of the 980 figure in relation to HBBC into a figure of signal importance for the calculation of FOAN in relation to HBS then, *a fortiori*, the figure of 800 should equally have loomed large in the analysis in *Oadby*. Yet it did not.
59. Mr Lockhart-Mummery QC argued that, in effect, “Homer nodded”. For inexplicable reasons the parties in that case, and the Court, overlooked the 800 figure and no doubt if his team had been arguing the *Oadby* case they would have relied upon the 800 figure. As such there was no significance at all in the dog that did not bark.
60. Ms Blackmore for the Secretary of State and Ms Osmund Smith for HBCC in the light of this undertook a forensic deconstruction of the point, which to my mind is wholly convincing. They pointed out that the 800 figure had in fact briefly emerged in the *Oadby* case only to be rapidly and deliberately submerged. This is clear from the judgment of Hickinbottom J where he recorded that in the SHMA the authors had not applied a percentage figure to housing need to arrive at a sensible FOAN because to have done so would have created an annual housing need figure of 800dpa which “*was clearly unrealistic and unviable*” ([2015] EWHC 1879 at paragraph [26(i)]). The Judge cross-referred to the SHMA itself (at paragraphs [6.80]) where the authors acknowledged that a total housing need figure based upon the assessment of affordable housing was “*unrealistic*”. Thus it is not correct to say that the 800 figure was not part of the analytical fabric of the *Oadby* case. It was, but it was discarded as irrelevant: Homer did not nod. This is the context in which the Court of Appeal then came to endorse the Judge’s finding that the Inspector acted correctly in finding that a figure of 147 sufficed as the FOAN for the purpose of the decision. It is worth setting out paragraphs [47] and [48] of the judgment of the Court of Appeal because they formerly endorse the 147 figure which is, plainly, a very far cry from a figure of 800:

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

closing submissions for Bloor Homes Ltd. was said to be well below the actual level of need, or a higher figure closer to the 173 dwellings per annum referred to in the Strategic Housing Market Assessment. I accept that. But as Hickinbottom J. concluded, I do not think the court could conceivably regard the inspector's figure of 147 dwellings per annum as irrational, or otherwise unlawful.

48. Taken as a whole, therefore, the inspector's approach was in my view consistent with the decision of this court in *Hunston Properties Ltd.*, and lawful.”

61. To further place the judgment into context the figure of 147 which was upheld was itself derived from the part of Table 84 which the Inspector in the present case takes as her point of departure. It is true that the “147” figure is not *itself* found in Table 84 but that is because the Inspector did not agree with the way in which the figures had been computed for Oadby in Table 84 so carried out his own assessment and modified the figure in the SHMA to arrive at the new figure. But the important point is that the logic used by the Inspector in the *Oadby* case, endorsed by the Courts, is the same logic as has been used by the Inspector in the present case. And both Inspectors rejected the “Annual Housing Need” figure set out in Table 48 (the Inspector in *Oadby* adopting a figure of 147 and the Inspector in this case expressly rejecting the 980 figure). The rejection of the 800 figure in *Oadby* was rational and sound, just as the rejection by the Inspector of the 980 figure in paragraph [11] of her decision is rational and sound in this case. When set in the above context it is plain that the Inspector was well within the legitimate scope of her judgment to conclude that the use of a 980 figure was “*clearly impractical and unreasonable*” (see paragraph [34] above).
62. In short the Inspector addressed herself to the 980 figure. She did not ignore it. But she did reject it upon the basis of her assessment that it was impractical and unreasonable. When measured against the analysis of the equivalent figure in *Oadby* and when it is understood that the 980 figure is not based upon a computational methodology that it is the norm for assessing FOAN, her view is mainstream, rational and correct.

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

63. The Claimant next complains that the Inspector took into account unreliable evidence sources. In my judgment the Inspector applied a perfectly adequate test relying upon an adequate body of evidence. The approach she adopted was consistent with the approach to evidence collation and appraisal approved of in case law: See paragraph [13] above.
64. The relevant guidance makes it clear that there is no universally approved way of calculating FOAN and that the answer in each locality will be dependent upon local condition and the exigencies of the available evidence. Indeed, authorities are urged to rely upon secondary sources and not primary sources upon the basis that to conduct own-research would not be a proportionate use of resources: See paragraph [16] above.

65. In this case Ms Blackmore for the Secretary of State described the data sources before the Inspector as “*a messy basket of evidence*” and “*a large and somewhat unwieldy basket of evidence*”. The approach adopted by the Inspector can be summarised as follows:
- i) First she analysed the figures in Table 84 of the SHMA based on demographic trend based population figures which she explained how, in her view, the range set out there (of 375-450) was arrived at (Decision paragraphs [9] – [10])
 - ii) Then she rejected the Claimants figure of 980 which rejection I have concluded was entirely proper.
 - iii) Next she observed that the SHMA was based upon 2011 data. So the Inspector then examined the 2012 population projections. This data showed a 364 dpa for the HBBC area which was lower than the figures in the SHMA FOAN but was “*generally consistent with it*” (Decision paragraph [12]).
 - iv) Then she found that the 2012 data confirmed the 450 figure in the SHMA and in the CS which she noted was “*about 24% above that needed to meet demographic increases*”.
 - v) Next she benchmarked her conclusion against a figure of 539dpa which was the point at which the Claimants calculated in their evidence to her that the housing land supply would fall below the five year threshold. So, taking the Claimant’s figures as accurate, she concluded that on her assessment of the range there was an ample safety margin: See paragraph [37] above.
 - vi) Finally, she pointed out that in another Inspector’s decision which she treated as comparable for the purpose (See Decision paragraph [17] - Charnwood) the Inspector had treated the SHMA as up to date and robust.
66. In my view this approach was rational and well within the Inspector’s ordinary margin of judgment. I should deal briefly with a number of particular criticisms made by the Claimant.
67. It is said that in relying upon the CS figure of 450, when it was common ground that the CS was pre-NPPF and non-FOAN, the Inspector was in fact applying an incorrect and non-NPPF compliant methodology. I reject this argument. The Inspector compared her conclusions about the FOAN range with the CS simply as a possible benchmarking exercise. This is clear from Decision paragraph [12]. She accepted that the CS was not a FOAN but as a matter of logic this did not render it wholly inadmissible as a piece of evidence which could then be used to calculate, independently, the FOAN. So, for instance, if the 2009 figures had remained valid and not subject to change over time then there is no reason why that fact should not be accorded at least *some* proper degree of probative weight. I reject the suggestion that in using the CS as a benchmark the Inspector was improperly using that figure as the FOAN.
68. Next it is said that because the Inspector referred a document entitled “Objectively Assessed Need and Housing Targets Technical Advice Note” (July 2015, 2ed) which

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

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

E. Conclusion on Ground I

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

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

(i) The regulatory framework

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

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

(ii) The reasoning in the Decision

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

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

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

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

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

(iii) The Claimant’s submission

73. The Claimant argued, during the planning appeal, that as the population of an area increased so the overall rate of crime in a police area, and hence the demands placed upon resources, declined. This proposition was advanced upon the basis of official, statistical, information and was set out in a proof of evidence adduced on behalf of the Claimant.
74. For their part LP accepted that in the Leicester, Leicestershire and Rutland areas crime was at its lowest point for many years said to be due “... *to the excellent efforts of the police and its partners*”.
75. LP, in its evidence, produced two maps the purpose of which was to establish that there was a pattern of crime in new housing estates. The Claimant did not challenge that evidence but LP did not, so it was argued, generate any evidence to establish that increased levels of housing produced more crime and, in consequence, increased demand upon services in the relevant LP area.
76. In the course of argument Mr Lockhart-Mummery QC said that the nub of the Claimant’s objection was that the Inspector had failed properly to address the Claimant’s evidence. He said that had the Inspector, acting properly within the scope of her margin of discretion and judgment, addressed but rejected the evidence, then the Claimant could have no objection. However, he argued, that there was no evidence that this analytical process had ever occurred since the Decision did not address the Claimant’s evidence. He thus contended that the Inspector misdirected herself as to the evidence and/or had failed to give proper reasons for her Decision.

(iv) Analysis

77. I do not accept this submission.
78. First, it must be remembered that the Inspector had already dismissed the appeal and she was dealing with disputes relating to contributions upon an alternative basis only. In the circumstances it is not reasonable to have expected a detailed exegesis of the sort that might possibly have been expected had this been the true crux of the issue.
79. Second, and in any event, in my judgment her reasons were perfectly adequate. There was no reason for her to do other than explain why she accepted the evidence of LP. The Inspector was clearly aware of all the evidence because it had been tendered in the course of a public inquiry before her and had been the subject of cross examination, debate and submissions. The gist of the Inspector’s reasons are adequately set out in paragraphs [44] – [47] (see above). She records that LP has adequately demonstrated that the sums would be spent on equipment and services which arose “... *directly from the new households occupying the proposed*

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

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

G. Conclusion

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



Department for
Communities and
Local Government

Mr John Richards
Fontwell Estates Ltd
C.O Dandara Ltd
KD Tower
Cotterells
Hemel Hempstead
Herts HP1 1FW

Our ref: APP/C3810/V/16/3143095
Your ref: WA/22/15/OUT

13 July 2017

Dear Sir

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 77
APPLICATION MADE BY FONTWELL ESTATES LIMITED & GLOBAL TECHNOLOGY
RACING
LAND EAST OF FONTWELL AVENUE, FONTWELL, WEST SUSSEX BN18 0SB
APPLICATION REF: WA/22/15/OUT**

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Inspector, S R G Baird BA (Hons) MRTPI, who carried out an Inquiry between 1-3 November 2016 into your client's application for outline planning permission for up to 400 new dwellings, up to 500 sq. m of non-residential floor space (A1, A2, A3, D1 and/or D2), 5,000 sq. m of light industrial floorspace (B1 (b)/(c) and associated works including access, an internal road network, highway works, landscaping, selected tree removal informal and formal open space and play areas, pedestrian and cyclist infrastructure, utilities, drainage infrastructure, car and cycle parking and waste storage, in accordance with application ref: WA/22/15/OUT, dated 5 May 2015.
2. On 20 January 2016, the Secretary of State directed, in pursuance of Section 77 of the Town and Country Planning Act 1990, that your client's application be referred to him instead of being dealt with by the local planning authority, Arun District Council.

Inspector's recommendation and summary of the decision

3. The Inspector recommended that planning permission be granted, subject to conditions.
4. For the reasons given below, the Secretary of State agrees with the Inspector's conclusions and agrees with his recommendation. He has decided to grant planning permission subject to conditions. A copy of the Inspector's report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

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Phil Barber, Decision Officer
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Matters arising since the close of the Inquiry

5. On 8 March 2017, the Walberton Neighbourhood Development Plan (WNDP) was made. The Secretary of State has taken account of the Inspector's comments at IR11.26 that a post-examination version of the WNDP was published after the close of the inquiry and that this post-examination version could proceed to referendum in February 2017. Given the plan had reached post-examination stage and was close to referendum at the time of the Inquiry, the Secretary of State is satisfied that the making of the WNDP does not necessitate additional referrals back to parties on this matter.
6. On 10 April 2017 Arun District Council published the proposed modifications to the Local Plan for public consultation.
7. On 17 May 2017 the Secretary of State referred back to the parties to invite representations on the implications, if any, of the Supreme Court judgment in the cases of *Suffolk Coastal District Council v Hopkins Ltd & Secretary of State for Communities and Local Government*; and *Richborough Estates Partnership LLP v Cheshire East Borough Council & Secretary of State for Communities and Local Government* [2017] UKSC 36. He circulated the representations he had received.
8. The Secretary of State has also received a number of other representations which were submitted too late to be considered by the Inspector, as set out in Annex B to this letter. He has given careful consideration to these representations but, as they do not raise new matters that would affect his decision, he has not considered it necessary to circulate them to all parties.
9. In reaching his decision, the Secretary of State has taken account of all the representations received. Details of these representations are at Annex B. Copies are not enclosed with his letter but will be provided on application to the address at the foot of the first page of this letter.

Policy and statutory considerations

10. In reaching his decision, 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.
11. In this case the development plan consists of saved policies of the Arun District Local Plan (ALP) adopted in 2003; the Barnham and Eastergate Neighbourhood Development Plan 2014-2029 (BENP), made on 16 July 2014; and the WNDP, made on 8 March 2017. The Secretary of State considers that the development plan policies of most relevance to this case include ALP Policies GEN 2, GEN3, as set out by the Inspector at IR4.2 and WNDP Policy HP 1 as set out at IR4.11 and IR4.22.
12. Other material considerations which the Secretary of State has taken into account include the National Planning Policy Framework ('the Framework') and associated planning guidance ('the Guidance'), as well as the Written Ministerial Statement (WMS) of 12 December 2016 on Neighbourhood Plans and the Community Infrastructure Levy (CIL) Regulations 2010 as amended.

Emerging plan

13. The emerging plan comprises the Arun Local Plan 2011-2031 (eALP). The Secretary of State considers that the emerging policies of most relevance to this case include Policy H SP 1 as set out by the Inspector at IR4.11.

Main issues

14. The Secretary of State agrees with the Inspector that the main issues are those set out at IR11.1.

The need for housing and employment sites in Arun District and the supply of deliverable sites to meet those needs

15. The Secretary of State has given careful consideration to the Inspector's reasoning at IR11.3-11.8 and agrees with his analysis. As part of the reference back exercise, representations were made by parties on the position of the housing land supply. The Secretary of State has taken the evidence into account, and in light of the Council's representation that the position of the housing land supply is 1.92 years, and adopting a 'policy off' position until the adoption of the emerging Local Plan, he concludes, for the reasons set out by the Inspector, that the HLS is less than two years.

The effect of the proposal on the character and appearance of the area, including any effects on the South Downs National Park

16. The Secretary of State has given careful consideration to the Inspector's analysis at IR11.9-11.12. For the reasons given at IR11.11, he agrees with the Inspector that during the construction period and establishment of the landscape structure, the scheme would have a moderate adverse effect on the landscape, and in terms of visual impact, there would be slight to substantial effects to short distance views.
17. For the reasons given at IR11.9-11.11, the Secretary of State agrees with the Inspector's conclusion at IR11.12 that whilst residents would experience a change to the character and appearance of the area, the landscape and visual impact of the application would not be materially adverse and would conserve the landscape and scenic beauty of the South Downs National Park.

The effects of the traffic generated by the proposal on highway safety and traffic conditions

18. For the reasons given at IR11.13 the Secretary of State agrees that there is no reason to disagree with the conclusions in the Transport Assessment (TA) which accompanied the application which concludes that there would be no unacceptable highway effects.

Whether the proposal would maximise sustainable transport solutions

19. The Secretary of State has given careful consideration to the Inspector's analysis at IR11.14-11.15 and he agrees with the Inspector that he has no reason to disagree with the parties that Fontwell is a sustainable location for development.

Whether the proposal would provide satisfactory living conditions for future residents, having regard, amongst other matters, to the proximity of events at Fontwell Park

20. The Secretary of State has given consideration to the Inspector's analysis at IR11.16-11.18. Like the Inspector, the Secretary of State observes that the provision of adequate

separation between the proposed unit for GTR, the other commercial units and nearby dwellings are matters that could be addressed as part of a reserved matters submission. The Secretary of State acknowledges that the proposed conditions include those to ensure that the operation of the commercial/retail units would be controlled in terms of their operating hours, visual impact and noise to ensure that their effect on residents' living conditions were acceptably mitigated.

21. Turning to the impact of the operation of Fontwell Racecourse, the Secretary of State agrees with the Inspector at IR11.17 that based on the evidence provided, there is no reason to conclude that the racing activities associated with the course would have an adverse effect on prospective residents' living conditions.
22. In regard to the one-off event, a Monster Truck Rally, the Secretary of State has considered the Inspector's analysis at IR 11.18 and agrees with his conclusion that whilst there would be noise issues for prospective residents from on-off activities of this nature, given their limited duration it would not, on its own, be a reason to dismiss the application.

The effect of the proposal on biodiversity

23. The Secretary of State has considered the Inspector's analysis at IR11.19–11.22 and agrees with his conclusion that the applicants have carried out appropriate and robust assessments of the potential impact of the development on the local ecology and biodiversity. All trees subject to a Tree Preservation Order would be maintained. For the reasons set out at IR11.19-11.22 the Secretary of State agrees with the Inspector's conclusion that the proposal would not have an unacceptable effect on local biodiversity.

Whether the proposal would appropriately contribute to the provision of infrastructure requirements directly related to the proposed development

24. The Secretary of State has carefully considered the Inspector's analysis at IR11.23-11.25, and like the Inspector, he has had specific regard to paragraph 204 of the Framework and Regulations 112/123 of the CIL Regulations. The Secretary of State agrees with the Inspector that all the obligations, bar the NHS contribution, are necessary to make the development acceptable in planning terms. The Secretary of State agrees with the Inspector's assessment, for the reasons given, not to attach weight to this part of the S106 agreement. Therefore, like the Inspector, the Secretary of State concludes that the proposal would appropriately contribute to the provision of infrastructure requirements directly related to it (IR11.25).

Whether the proposal would prejudice the preparation of the WNDP and/or whether it would accord with that plan

Prejudice to Preparation

25. The Secretary of State has had regard to the fact that the WNDP has now been made and forms part of the development plan and is given due weight. For the reasons given in IR11.26-11.27, the Secretary of State agrees with the Inspector's conclusion that the application has not prejudiced its preparation.

Conflict with Relevant WNDP Policies

26. For the reasons given by the Inspector at IR11.29 the Secretary of State agrees that a grant of planning permission would not authorise the removal of the building Old Smithy.

The Secretary of State agrees that if the building makes it on to the Local list, its demolition or retention would be a matter for the reserved matters application. He further agrees that there is no conflict with WNDP Policy VE 5.

27. For the reasons given by the Inspector at IR11.29, the Secretary of State agrees with the Inspector that there is no conflict with WNDP Policy HP 2.
28. The Secretary of State has considered the Inspector's comments at IR11.31-IR11.32 and he agrees, for the reasons given, that the supporting text in the WNDP is not reflected in how Policy HP 1 is constructed or read on its face, and that the WNDP does not make specific provision for the application. As such the Secretary of State agrees with the Inspector that the application would conflict with the wording of WNDP Policy HP 1 as the application site is outside the BUAB of Fontwell and the Plan.

Whether the proposal accords with the BENP

29. For the reasons given at IR11.34 the Secretary of State agrees that the application is not in an area defined in BENP Policy ES3, and thus finds no conflict with that policy. He further notes that the EPC no longer relies on conflict with Policy ES4, and he concludes there is no such conflict.
30. The Secretary of State agrees with the Inspector (IR11.36) that there is nothing in the evidence to suggest that, subject to careful consideration at the reserved matters stage, the application would result in a form of development that would conflict with BENP Policies ES5 or ES6.
31. For the reasons set out by the Inspector at IR11.36, the Secretary of State agrees that, subject to the imposition of appropriate conditions, the development of this part of the site would not have a materially adverse effect on development within the EPC area, and as such concludes that there would be no conflict with BENP Policy EE3.
32. The Secretary of State agrees (IR11.37) that the application site is identified under eALP Policy H SP1 which deals with strategic housing. He further agrees that the proposal could not be defined as small residential development, infill or a redevelopment site. As such he concludes, in agreement with the Inspector, that there is no conflict with BENP Policy HP2.
33. He agrees that the BENP and Policy H1 – Specific Site Allocation have to be read in the context of the respective roles of Neighbourhood Plans which deal with local, non-strategic needs and Local Plans which deal with strategically assessed needs across the whole district.
34. The Secretary of State has considered the Inspector's comments at IR11.40 that Policy HP 1 (the bold text) refers only to a site allocated to meet local need. The Secretary of State agrees with the Inspector's conclusion that in light of this and when viewed in the context of the respective roles of Neighbourhood Plans and Local Plans, the application cannot be held in conflict with Policy HP 1. He further agrees with the Inspector's reasoning at IR11.40 that there is no other specific provision in the BENP that would restrict development on the application site.
35. Like the Inspector, the Secretary of State has had regard to the submissions made about the relevance of the Crane v SSCLG [2015] EWHC 425 (Admin) and his decision in the Yapton appeal. For the reasons set out in IR11.41, the Secretary of State agrees that the positions in those cases are materially different. The Secretary of State agrees that unlike

in the case of Crane, the BENP has not considered all of the sites and this judgement did not take account of the relative roles of Neighbourhood Plans and Local Plans in allocating development. He further agrees that at Yapton, a BUAB has been defined and the plan makes specific provision for further local allocations should the local planning authority require it. The Secretary of State agrees with the Inspector that this is not the case with the BENP.

36. As such the Secretary of State agrees with the Inspector's conclusion at IR11.42 for the reasons given that there would be no conflict with the relevant policies of the BENP and the plan as a whole

Whether the proposal would accord with any other relevant adopted or emerging development plan policies

Arun Local Plan

37. For the reasons given by the Inspector at IR11.43-IR11.44, the Secretary of State agrees with the Inspector's conclusion that there would be no conflict with Policy GEN 7; Policy GEN 8; Policy GEN28; Policy GEN29 and Policy DEV17. He further agrees with the Inspector's conclusion that as the site lies outside the BUAB it is categorised as countryside and the scheme would conflict with ALP Policies GEN 2 and GEN 3.

Emerging Arun Local Plan

38. The Secretary of State has carefully considered the Inspector's analysis at IR11.45-11.47. The Secretary of State notes that since the Inquiry, the Council has published proposed modifications to the emerging Local Plan and he has taken into account those modifications and representations received on this matter in reaching his decision. The Secretary of State notes that the proposed modifications are yet to be finally examined and adopted. Given that there has been an almost doubling of the OAN to 919 dpa and a housing land supply that currently stands at around 1.92 years, the Secretary of State considers that limited weight can be attached to the eALP.

Any significant social, economic or environmental impacts not covered above

39. The Secretary of State agrees with the Inspector that no other material issues relating to social, economic or environmental issues were raised at the Inquiry.

Prematurity

40. The Secretary of State has given careful consideration to the Inspector's analysis in respect of prematurity at IR11:53-11:55. For the reasons given at IR11.54, the Secretary of State agrees that against a housing requirement over the plan period of 18,000 units, the application does not come close to the threshold of being significant or in closing off other options in terms of spatial strategy when the revised eALP is published. He also concludes, in agreement with the Inspector at IR11.55 that the eALP can no longer be considered as being at an advanced stage as there is no indication as to when a revised plan will be published, examined or adopted. As such the Secretary of State considers that little weight should be attached to the potential for this application to undermine the plan making process.

Planning conditions

41. The Secretary of State has given consideration to the Inspector's analysis at IR10.1-10.6 and IR11.58-11.60, the recommended conditions set out at the end of the IR and the reasons for them, and to national policy in paragraph 206 of the Framework and the relevant Guidance. He is satisfied that the conditions recommended by the Inspector comply with the policy test set out at paragraph 206 of the Framework and that the conditions set out at Annex A should form part of his decision.

Planning obligations

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

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

Planning balance and overall conclusion

44. For the reasons given above, the Secretary of State considers that the application is not in accordance with ALP Policies GEN 2 and GEN 3 and WNDP Policy HP 1 and is not in accordance with the development plan overall. He has gone on to consider whether there are material considerations which indicate that the proposal should be determined other than in accordance with the development plan.

45. Given the absence of a 5 year supply of deliverable housing sites, the Secretary of State considers that paragraph 14 of the Framework is engaged. The Secretary of State considers that as the Council cannot demonstrate a 3 year supply, the Written Ministerial Statement on Neighbourhood Planning does not apply.

46. He therefore considers that planning permission should be granted unless (a) any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against policies in the Framework as a whole or (b) specific policies in the Framework indicate development should be restricted.

47. Given the significant shortfall, the Secretary of State considers that only limited weight can be attached to the conflict with ALP Policies GEN 2 and GEN 3 and WNDP Policy HP 1. Given the significant shortfall in the HLS position and the fact that the spatial strategy of the eALP is likely to be subject to major change, to service an OAN that has almost doubled in the last 3 years, the Secretary of State considers the relevant policies within the publication version of the eALP should be given little weight.

48. The Secretary of State considers that little weight should be attached to the potential for this application to undermine the plan making process for the reasons set out above.
49. The Secretary of State considers that this application would: make a substantial contribution to housing and affordable housing in the district; make a valuable contribution to the local economy; boost the sustainability of Fontwell and give the local community a substantial area of public open space. These are benefits to which the Secretary of State attaches significant weight to in the planning balance.
50. There are no specific policies in the Framework that indicate that this development should be restricted. For the reasons set out above, the Secretary of State concludes that the adverse impacts do not significantly and demonstrably outweigh the benefits when assessed against the Framework as a whole.
51. The Secretary of State therefore concludes that outline planning permission should be granted, subject to conditions.

Formal decision

52. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. He hereby grants outline planning permission, subject to the conditions set out in Annex A of this decision letter, for up to 400 new dwellings, up to 500 sq. m of non-residential floor space (A1, A2, A3, D1 and/or D2), 5,000 sq. m of light industrial floorspace (B1 (b)/(c) and associated works including access, an internal road network, highway works, landscaping, selected tree removal informal and formal open space and play areas, pedestrian and cyclist infrastructure, utilities, drainage infrastructure, car and cycle parking and waste storage, in accordance with application ref: WA/22/15/OUT, dated 5 May 2015.
53. 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

54. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged. This must be done by making an application to the High Court within 6 weeks from the day after the date of this letter for leave to bring a statutory review under section 288 of the Town and Country Planning Act 1990.
55. 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.
56. A copy of this letter has been sent to Arun District Council, Eastergate Parish Council and Walberton Parish Council and notification has been sent to others who asked to be informed of the decision.

Yours faithfully

Philip Barber Authorised by Secretary of State to sign in that behalf

Annex A

PLANNING CONDITIONS

1. Details of the layout, scale, appearance, and landscaping (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 3 years from the date of this permission.
3. The development hereby approved shall be begun before the expiration of 5 years from the date of this permission, or before the expiration of 2 years from the date of the approval of the last of the reserved matters to be approved, whichever is the later.
4. The development hereby permitted shall be carried out in accordance with the approved plans:
57631-101 Rev P2 – Site Location Plan;
1186-02 Rev D - Access to Arundel Road;
1186-03 Rev G - Access to A29, Fontwell Avenue;
1186-05 Rev A – Proposed Roundabout Improvement;
6233-A-08 Rev C - Tree Retention Plan - Detailed Access Junction.
5. No development shall take place until a detailed scheme of phasing for the construction of the dwellings and associated highways and public areas has been submitted to and approved in writing by the local planning authority. The scheme shall include a schedule identifying the order of commencement and completion within each phase of construction. This scheme shall identify the curtilage of the main commercial area of the development as referred to in condition 20. Development shall be carried out in accordance with the approved details.
6. Prior to the commencement of construction works on each phase of the development a schedule of materials and finishes to be used for external walls and roofs of the proposed buildings shall be submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.
7. Prior to the commencement of any residential development, a Design Code Masterplan shall be submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved Design Code Masterplan.
8. The landscape details referred to in Condition 1 shall include a landscape management plan, including long-term design objectives, management responsibilities and maintenance schedules for all landscape areas other than privately owned domestic gardens. The landscape management plan shall be implemented in accordance with the approved details.
9. No residential development shall take place until details of the laying out of and a timetable for the provision and future maintenance of Public Open Spaces has been

submitted to and approved in writing by the local planning authority. The layout details submitted in compliance with Condition 1 shall define the boundaries of such areas, their proposed use, equipment, and their means of enclosure and all other structures to be installed. Development shall be carried out in accordance with the approved details.

10. Prior to the commencement of construction works on each phase of the development, details of hard and soft landscaping and details of existing trees and hedgerows to be retained, shall be submitted to, and approved in writing by the local planning authority. The approved landscaping details shall be carried out in the first planting and seeding season, following the occupation of the buildings or the completion of the development of that phase, whichever is the sooner, and any trees or plants which, within a period of 5 years from the completion of development, die, are removed or become seriously damaged or diseased, shall be replaced in the next planting season with others of similar size and species, unless the local planning authority gives written consent to any variation.
11.
 - (a) Prior to the commencement of development or other operations being undertaken on site a scheme for the protection of the retained trees produced in accordance with BS5837:2012 (Trees in relation to design, demolition and construction: Recommendations), which provides for the retention and protection of trees, shrubs and hedges to be retained on or adjacent to the site, including trees which are the subject of a Tree Preservation Order currently in force, shall be submitted to and approved in writing by the local planning authority. No development or other operations shall take place except in complete accordance with the approved protection scheme;
 - (b) No operations shall be undertaken on site in connection with the development hereby approved (including any tree felling, tree pruning, demolition works, soil moving, temporary access construction and/or widening or any operations involving the use of motorised vehicles or construction machinery) until the protection works required by the approved protection scheme are in place;
 - (c) No excavations for services, storage of materials or machinery, parking of vehicles, deposit or excavation of soil or rubble, lighting of fires or disposal of liquids shall take place within any area designated as being fenced off or otherwise protected in the approved protection scheme;
 - (d) Protective fencing shall be retained intact for the full duration of the development hereby approved and shall not be removed or repositioned without the prior written approval of the local planning authority.
12. Prior to the commencement of construction works on each phase of the development, full details of the proposed surface water drainage scheme shall be submitted to and approved in writing by the local planning authority. The design should follow the hierarchy of preference for different types of surface water drainage disposal systems as set out in Approved Document H of the Building Regulations and the recommendations of the SUDS Manual produced by the Construction Industry Research and Information Association. Winter groundwater monitoring to establish highest annual ground water levels and Percolation testing to BRE Digest 365 standards, or similar approved standards, will be required to support the design of any Infiltration Drainage. No building shall be occupied until the complete surface water drainage system serving the property has been implemented in accordance with the agreed details and the implemented scheme shall be maintained in good working order in perpetuity.

13. No infiltration of surface water drainage into the ground is permitted other than with the express written consent of the local planning authority, which may be given for those parts of the site where it has been demonstrated that there is no resultant unacceptable risk to controlled waters. Development shall be carried out in accordance with the approval details.
14. Prior to the commencement of construction works on each phase of the development full details of the maintenance and management of the SUDs system shall be set out in a site-specific maintenance manual and submitted to, and approved in writing, by the local planning authority. The manual is to include details of financial management and arrangements for the replacement of major components at the end of the manufacturers recommended design life. Upon completed construction of the SUDs System, the owner or management company shall strictly adhere to and implement the recommendations contained within the manual.
15. Prior to the commencement of construction works on each phase of the development details of a proposed foul drainage system shall be submitted to and approved in writing by the local planning authority including details of its siting, design and subsequent management/maintenance, if appropriate. No dwelling shall be occupied until works for the disposal of sewage have been fully implemented in accordance with the approved details.
16. Piling or any other foundation designs using penetrative methods shall not be permitted other than with the express written consent of the local planning authority, which may be given for those parts of the site where it has been demonstrated that there is no resultant unacceptable risk to groundwater. Development shall be carried out in accordance with the approved details.
17. Prior to the commencement of construction works on each phase of the development or any preparatory works, a detailed ecological enhancement scheme based on the recommendations within the supporting ecological statement, which shall include the installation of bat boxes throughout the site, shall be submitted to and approved in writing by the local planning. All approved details shall then be implemented in full and in accordance with the agreed timings and details.
18. No demolition, ground clearance or vegetation clearance works shall take place within the bird nesting season (between 1 March and 31 August inclusive in any year). If such works cannot be undertaken outside of the nesting season, a nesting bird check shall be required, which should be undertaken by a suitably qualified ecologist immediately prior to the works taking place. Subsequently if any active nest sites are identified, these nests should remain undisturbed until all the young have fledged naturally.
19. No development shall take place, including any works of demolition, until a Construction Management Plan (to include a Construction Traffic Management Plan) has been submitted to and approved in writing by the local planning authority. Thereafter the approved Construction Management Plan shall be implemented and adhered to throughout the entire construction period. The Construction Management Plan shall provide details as appropriate but not necessarily be restricted to the following matters:
 - a). the anticipated number, frequency and types of vehicles used during construction;

- b). the parking of vehicles by site operatives and visitors;
- c). the loading and unloading of plant, materials and waste;
- d). the storage of plant and materials used in construction of the development;
- e). the erection and maintenance of security hoarding;
- f). the provision of wheel washing facilities and other works required to mitigate the impact of construction upon the public highway (including the provision of temporary Traffic Regulation Orders);
- g). details of public engagement both prior to and during construction works.

Construction of the development shall then be carried out in accordance with the agreed Construction Management Plan.

20. The following applies to the commercial area of the development as identified in the phasing plan submitted under condition 5 above:
- a.) No commercial vehicles (not including private vehicles solely in use for the private use of staff or visitors) shall be operated within the commercial area of the development except between the hours of: 07.00 and 19.00 hours on Mondays to Fridays inclusive; 07.00 and 13.00 hours on Saturday, not at any time on Sundays or Public Holidays;
 - b.) deliveries and dispatches by commercial vehicles to and from the commercial area of the development shall only be made to or from the site between the hours of 07.00 - 19.00 hours Monday to Friday, 08.00 - 13.00 hours on Saturday and at no time on Sundays, Bank or other Public Holidays;
 - c.) no raw materials, finished or unfinished products or parts, crates, packing materials or waste shall be stacked or stored on the commercial area of the development except within the buildings or storage areas approved by the local planning authority.
 - d.) prior to construction of the commercial area of the development, details of the forecourt layout and drainage and the position and intensity of all lighting fittings for the commercial uses within this area shall be submitted to and approved in writing by the local planning authority. When in operation all lighting shall be operated in accordance with the approved details. The approved drainage provision shall be implemented prior to the commercial area of the development coming into operation.
21. Prior to the commencement of development of the commercial area of the development, a scheme shall be submitted to and approved in writing by the local planning authority which specifies the provisions to be made for the control of noise emanating from the commercial area of the development. Prior to the commercial area of the development coming into operation, all agreed physical measures for the control of noise will be implemented. The use of the commercial area will be operated in accordance with any agreed continuing requirements for the control of noise from the site.
22. At least 10% of the energy supply of the development shall be secured from decentralised and renewable or low-carbon energy sources or equivalent fabric first standards that would secure a 10% reduction in energy use. Details and a timetable of how this is to be achieved, including details of physical works on site, shall be submitted to and approved in writing by the local planning authority as a part of the reserved matters submissions required by condition 2. The approved details shall be

implemented in accordance with the approved timetable and retained as operational thereafter.

23. No development shall take place until details for the implementation of a programme of archaeological work in accordance with a written scheme of investigation has been submitted and approved in writing by the local planning authority. The development shall thereafter be carried out in accordance with the approved scheme.
24. No part of the development hereby permitted shall be occupied until the completion of the improvements to the A27/A29 Fontwell Roundabout shown on Drawing Number 1186-05 Rev A - Proposed Roundabout Improvements.
25. Prior to the commencement of construction works on each phase of the development a Travel Plan shall be submitted to and approved in writing by the local planning authority and implemented. The Travel Plan shall include arrangements for monitoring and effective enforcement.
26. Prior to the commencement of development a Non-Motorised Users Audit shall be undertaken for the construction stage of the development, and its findings shall be reflected in the Construction Management Plan required under condition 19. Prior to the commencement of each phase of the development Non-Motorised Users Audits shall be undertaken and their findings taken into account.
27. Prior to the commencement of development, details shall be submitted to and approved in writing by the local planning authority regarding the provision of an emergency access from the site onto Arundel Road. Prior to occupation of no more than 100 dwellings, the emergency access shall be provided in accordance with the approved details.

Annex B – Schedule of representations

SCHEDULE OF REPRESENTATIONS

General representations

Party	Date
Jon D Cann	11 February 2017, 4 February 2017, 3 December 2016, 30 October 2016
Walberton Parish Council	4 February 2017
John Richards Dandara	7 February 2017
Luke Simpson Adams Hendry (on behalf of the Eastergate Parish Council)	7 February 2017

Representations received in response to the Secretary of State's letter of 17 May 2017

Charles Mills, Daniel Watney LLP (on behalf of the applicants)	25 May 2017
Gordon Bell	31 May 2017
Luke Simpson Adams Hendry (on behalf of Eastergate Parish Council)	31 May 2017
Neil Crowther, Arun DC	9 June 2017
Gordon Bell	15 June 2017
Luke Simpson Adams Hendry (on behalf of Eastergate Parish Council)	15 June 2017

Report to the Secretary of State for Communities and Local Government

by S R G Baird BA (Hons) MRTPI

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

Date: 1 March 2017

TOWN AND COUNTRY PLANNING ACT 1990

APPLICATION BY

FONTWELL ESTATES LIMITED

&

GLOBAL TECHNOLOGY RACING

ARUN DISTRICT COUNCIL

Inquiry held on 1 November 2016

Land East of Fontwell Avenue, Fontwell, West Sussex BN18 0SB

File Ref: APP/C3810/V/16/3143095

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GLOSSARY

AH	Affordable Housing
ALP	Arun Local Plan
BENP	Barnham & Eastergate Neighbourhood Plan
BUAB	Built Up Area Boundary
CD	Core Document
eWNDP	Emerging Walberton Neighbourhood Plan
EI	Examining Inspector
EPC	Eastergate Parish Council
Framework	National Planning Policy Framework
ha	Hectare(s)
HA	Highway Authority
HE	Highways England
HLS	Housing Land Supply
IM	Illustrative Masterplan
LGA	Local Green Space
LP	Local Plan
lpa	Local Planning Authority
NP	Neighbourhood Plan
OAN	Objectively Assessed Need
PPG	Planning Practice Guidance
SoCG	Statement of Common Ground
SoS	Secretary of State
TA	Transport Assessment
WMS	Written Ministerial Statement
WSCC	West Sussex County Council
WPC	Walberton Parish Council

File Ref: APP/ C3810/ V/ 16/ 3143095

Land East of Fontwell Avenue, Fontwell, West Sussex BN18 0SB

- The application was called in for decision by the Secretary of State by a direction, made under section 77 of the Town and Country Planning Act 1990 on 20 January 2016.
- The application is made by Fontwell Estates Limited & Global Technology Racing.
- The application Ref WA22/15/OUT is dated 5 May 2015.
- The development proposed is up to 400 new dwellings, up to 500 sq. m of non-residential floor space (A1, A2, A3, D1 and/or D2), 5,000 sq. m of light industrial floorspace (B1 (b)/(c) and associated works including access, an internal road network, highway works, landscaping, selected tree removal informal and formal open space and play areas, pedestrian and cyclist infrastructure, utilities, drainage infrastructure, car and cycle parking and waste storage.
- The reason given for making the direction was consistency with policy on calling-in planning applications.
- On the information available at the time of making the direction, the following were the matters on which the Secretary of State particularly wished to be informed for the purpose of his consideration of the application are: the conflict with the made Barnham and Eastergate Neighbourhood Plan and any other matters the Inspector considers relevant.

Summary of Recommendation: The application be approved.

1. Preliminary Matters

- 1.1 This is an outline application with all matters other than access reserved. Plans submitted with the application are listed at Annex A. At the opening of the inquiry, the applicants requested that the application be considered on the basis of revised illustrative plans; Annex B, Plans 13 to 19. There were no objections and no party would be prejudiced by the application being considered on the basis of the revised illustrative plans. The recommendation is based on the principles contained in revised plans.
- 1.2 The Secretary of State (SoS) confirmed¹ that in exercise of the powers conferred on him by Regulations 12(1) and 6(4) the Town and Country Planning (Environmental Impact Assessment) Regulations 2011 (SI 2011/1824) the development is not Environmental Impact Assessment development.
- 1.3 A Pre-Inquiry Note was issued identifying matters to be addressed (CD 1). These are:
- whether the proposal would accord with the Barnham and Eastergate Neighbourhood Development Plan (BENP);
 - whether the proposal would prejudice the preparation of the Walberton Neighbourhood Development Plan and/or whether it would accord with that plan (WNDP);
 - whether the proposal would accord with any other relevant adopted or emerging development plan policies and the weight to be attached to such policies;

¹ 5 October 2016

- the need for housing and employment sites in Arun District and the supply of deliverable sites to meet those needs;
 - the effect of the proposal on the character and appearance of the area, including any effects on the South Downs National Park;
 - the effect of the traffic generated by the proposal on highway safety and traffic conditions;
 - whether the proposal would maximise sustainable transport solutions;
 - whether the proposal would provide satisfactory living conditions for future residents, having regard, amongst other matters, to the proximity of events at Fontwell Park;
 - the effect of the proposal on biodiversity;
 - whether the proposal would appropriately contribute to the provision of infrastructure requirements directly related to the proposed development;
 - any other significant social, economic or environmental impacts not covered above.
- 1.4 The local planning authority (lpa) considered the application on the 25 November 2015 and resolved to grant planning permission subject to conditions and a S106 Agreement (CD 24). The applicants submit an engrossed S106 Agreement dealing with the provision of financial contributions relating to: education; libraries; the fire service; highways and transport; police infrastructure; primary healthcare facilities; leisure facilities and the provision of affordable housing and public open space (CD 37). The applicants, the lpa and West Sussex County Council (WSCC) submitted notes on CIL R122 compliance (CDs 49, 55 & 52).
- 1.5 Walberton Parish Council (WPC) signed an Addendum Statement of Common Ground (aSoCG) with the applicants and the lpa (CD 5). WPC no longer wished to proceed as a joint Rule 6 Party with Eastergate Parish Council (EPC). WPC became a Rule 6 Party in its own right.
- 1.6 By close of the inquiry agreement was reached between WPC and the lpa on modifications to the Walberton Neighbourhood Development Plan 2015-2035, Regulation 15 Submission – Autumn 2015 (CD 8). WPC confirmed that an amended plan, the Walberton Neighbourhood Development Plan 2015-2035 – Post Examination Version would be published on 9 November 2016 and that a Referendum would be held on 1 February 2017 (CD 56, WPC 6 & WPC 7).
- 1.7 The amended WNDP was submitted after the close of the inquiry and the parties were given the opportunity to comment. Representations were received from the applicants, the lpa and EPC (APP 16, LPA 7 & EPC 6). These submissions raise matters of substance, on which, in the interests of fairness, the applicants, the lpa and WPC were given an opportunity to comment (APP 17, LPA 8 & WPC 8). The position of the parties on the modified version of the WNDP is reported within their cases.
- 1.8 On 12 December 2016 a Written Ministerial Statement (WMS) concerning Neighbourhood Planning was published (INSP 1). The WMS sets out a change to Government policy with regard to the circumstances under which relevant policies for the supply of housing within Neighbourhood Plans (NP)

are automatically deemed to be out of date where there is a lack of a housing land supply (HLS).

- 1.9 By the close of the inquiry, the lpa had not published an up-to-date HLS statement. Then, the most recent statement on HLS was contained at paragraph 3.17 of an Inspector's report to the SoS on the Yapton Appeal held in July 2015 (CD 10).
- 1.10 Before offering the parties an opportunity to comment on the implications of the WMS, I sought an update from the lpa on the 5-year HLS position (INSP 2). The Local Plan Sub-Committee on the 6 December 2016 received a report setting out the current HLS for a "Policy Off" position (LPA 9). On 15 December 2016, the lpa report was circulated to the other parties with an invitation to submit comments on the WMS and the weight that should now be attached to relevant policies for the supply of housing. In January 2017 the HLS was updated by the lpa (LPA 10). The responses of the parties are included within their cases.
- 1.11 Unaccompanied site visits were made to the site and its surroundings prior to the inquiry on 31 October 2016 and following the close of the inquiry on 4 November 2016. The list of documents includes opening and closing submissions and proofs of evidence from the main parties. The proofs of evidence are as originally submitted and do not take account of how that evidence may have been affected by cross-examination or subsequent discussions and agreement between the parties. In reporting the cases for the main parties, I have used the opening and closing submissions as the basis for their cases.

2. The Proposal

- 2.1 The application is for residential development of up to 400 dwellings, up to 500 sq. m of non-residential floor space (Use Classes A1, A2, A3, D1 and/or D2), 5,000 sq. m of light industrial floorspace [Use Classes B1 (b)/(c)] and associated works including off-site highway works, landscaping and public open space (Plan 15).
- 2.2 The residential component would have a net development area of some 11.4ha with a maximum density of 35 dwellings per hectare (dph). Building heights would be mostly 2-storey with some 2.5 and 3-storey buildings as design features (Plan 19). Some 30% of the dwellings would be affordable homes (AH). The industrial site extends to some 0.85ha and is located in the north-west corner of the site. The industrial unit, which would have a maximum height of some 12m, is intended for use by a local firm, Global Technology Racing (GTR), as a headquarters building. GTR would retain its existing nearby premises at Denmans Lane. Some 4.5ha of public open space would be located in the northern part of the site and comprise a sports pitch, a pavilion, play areas of various sizes and informal open space.
- 2.3 Vehicular access to the residential scheme would be from Fontwell Avenue (A29) via a ghost island priority junction (Plan 4). Vehicular access to the industrial unit would be from Arundel Road via a ghost island priority junction staggered with the entrance to the petrol filling station/services on the northern side of Arundel Road (Plan 3). A pedestrian and an emergency only vehicular access would be provided off Arundel Road. Pedestrian and cycle only accesses would be provided off Fontwell Avenue, Arundel Road and Wandleys Lane (Plans 18 & 15). Off-site highway works include improvements to the A27/A27 roundabout to the north-west of the site and reducing the speed limit on Fontwell Avenue to 40 mph.

3. The Site and Surroundings

- 3.1 The site extends to some 17.8ha of open land adjoining the settlement boundary of Fontwell (Plan 1). The land comprises a series of irregularly sized paddocks and fields primarily used for stock and equestrian grazing with associated boundary hedgerows, trees and vegetation. Several of the trees are covered by Tree Preservation Orders. Although the land is generally flat, it falls gently to the south, west and south-east. The western part of the site is located within the EPC administrative area and the eastern part is within the WPC administrative area.
- 3.2 To the north are residential properties fronting on to Arundel Road. Beyond Arundel Road, is the main residential area of Fontwell and beyond that is the South Downs National Park. Located at the junction of Arundel Road and the A27 is a service area consisting of a petrol filling station, motel and fast food restaurant (APP 10 VP4). Located on Arundel Road to the east is a row of 4 shops, which include a village store. The eastern boundary is formed by mature trees and hedgerows and Wandleys Lane. Here, Barn Farm and its associated buildings project into the site. The southern boundary of the site is formed by dense trees and hedgerows. Here, the site adjoins a Care Home and residential properties. The western boundary is formed by Fontwell Avenue. This boundary is planted with mature trees with high canopies offering views into the site (APP VP5). To the west of Fontwell Avenue is Fontwell Racecourse set back behind an open area used for car parking on race and event days and for some events. To the north of the racecourse and located at the junction of Fontwell Avenue and the A27 are a hotel and a public house/restaurant.

4. Planning Policy and Other Relevant Guidance

Development Plan

- 4.1 The relevant parts of the development plan are, the saved policies of the Arun District Local Plan 2003 (ALP) and the made BENP 2014-2029.
- Arun Local Plan 2003 (CD 6)
- 4.2 The majority of the application site is outside the built-up area boundary (BUAB) for Fontwell identified by *Policy GEN 2 – Built-up Area Boundary*. Outside the BUAB, development will not be permitted unless it is consistent with other ALP policies. *Policy GEN 3 - Protection of the Countryside* states that except for several categories of development, none of which relate to the application proposal, development will not be permitted outside the BUAB.
- 4.3 *Policy GEN 7 – The Form of New Development* sets out design requirements for new development. Permission will only be granted for schemes displaying a high quality design and layout. *Policy GEN 8 – Development and the Provision of Infrastructure* requires development to be provided with adequate and appropriate infrastructure. *Policy GEN 28 – Trees and Woodlands* says that development will not be permitted if it would result in damage to or the loss of trees protected by a Tree Preservation Order unless the benefits of the development would outweigh the amenity value of the trees. *Policy GEN 29 – Nature Conservation across the District* says that development will only be permitted on sites which contain semi-natural habitats or features of nature conservation interest where these can be largely retained. *Policy DEV 17 – Affordable Housing* requires AH to be provided when a proposal is for 25 or more dwellings. The scale and type of AH will be dependent on identified local housing need, character of the area, suitability of the site and market conditions at the time of the application.
- Barnham and Eastergate Neighbourhood Development Plan 2014-29 (CD 7)
- 4.4 *Policy ES3- The Local Gap/Green Infrastructure Corridor*, broadly precludes development within these gaps/corridors. The BENP refers back to the ALP Proposals Map for a definition of Local Gaps. Within the BENP area, the only designated green gap is between Barnham and Eastergate (ALP Policy Area 11(iv)). The application site is not within this area.
- 4.5 *Policy ES4 – Protection of Open Views* says that open views towards the countryside or across open spaces will be maintained if possible. The supporting text to this policy identifies that residents' value the connection with the open countryside. The policy notes that the creation of public space within new developments does not make up for the loss of open countryside.
- 4.6 *Policy ES5 – Quality of Design* requires a high standard of design. *Policy ES6 – Contribution to Local Character* requires new development to contribute positively to the character of the 2 villages.
- 4.7 *Policy H1 – Specific Site Allocation* allocates a site for at least 60 dwellings in Eastergate. The supporting text notes that this allocation is in addition to any strategic allocation that may be made in the Local Plan (LP) for housing on the larger site to the south of Barnham and Eastergate. *Policy H2 -*

Windfall Sites provides for permission to be granted for small residential developments on infill and redevelopment sites.

- 4.8 *Policy EE3 – Support for New Commercial Uses* states that new development for Class B1 uses, including light industry, will be supported where the impact on surrounding residential and community amenity is acceptable and other policy considerations are complied with.

Emerging Development Plans

- 4.9 These include the emerging Arun Local Plan 2011-2031, Publication Version, October 2014 (eALP) and the eWNDP 2015-2035.

Arun Local Plan 2011-2031 - Publication Version October 2014 (CD 9).

- 4.10 The eALP was submitted for examination in February 2015. Following a material increase in the Objectively Assessed Need (OAN) for housing (CD 23) the eALP examination has been suspended to allow the lpa to review potential locations for development.
- 4.11 *Policy H SP1 – Strategic Housing, Parish and Town Council Allocations* proposes to accommodate strategic housing in 6 ways, one of which is described as Site Specific Allocations Development Plan Document for Ford and Fontwell. Ford and Fontwell have been identified as potential locations for housing growth in the later part of the plan period. The eALP recognises that both Ford and Fontwell lack some key services and growth may enable the creation of settlements that are more sustainable. The eALP notes that there is currently insufficient evidence to establish a quantum of housing growth in Ford and Fontwell, therefore Site Specific Development Plan Document(s) will be prepared to establish if sites can be allocated to improve the sustainability of these settlements.
- 4.12 The eALP also seeks to provide for strategic housing through Parish and Town Allocations. The parishes of Eastergate and Walberton are allocated 100 and 50 dwellings respectively. The policy states, that all NPs shall provide for the stated number of housing units within their area. The 100 and 50 dwellings are noted in the eALP as minimum allocations and are in addition to the strategic allocations.
- 4.13 *Policy SD SP2 – Built-up Area Boundary* states that outside the BUAB apart from Strategic, Site Specific and Broad Allocations, development will not be permitted unless consistent with other plan policies. *Policy C SP1 – Countryside* states that outside the BUAB as well as outside the Strategic, Site Specific and Broad Allocations the countryside will be safeguarded for its own sake. Development will not be permitted unless it falls with several identified categories, none of which apply to this application.

Walberton Neighbourhood Development Plan (WPC 7)

- 4.14 The WNDP was submitted to the lpa in October 2015 (CD 8), was the subject of examination in March 2016 and the Examiner's Report was published in July 2016 (CD 27).

- 4.15 In the October 2015 version, *Policy VE1 – Designation of Local Green Space* sought to designate part of the application site (Fontwell Meadows) as a Local Green Space (LGS). Whilst the Examiner recommended that Fontwell Meadows was suitable to be designated as LGS he concluded overall that the plan did not comply with the basic conditions that would enable it to proceed to Referendum (CD 27 page 81).
- 4.16 The lpa issued a Decision Notice on the October 2015 version disagreeing with the recommendation for the Fontwell Meadows LGS designation on the grounds it did not satisfy the requirements of Framework paragraph 77 (CD 34). The lpa's position was that for the WNDP to proceed to a Referendum, it should be revised so that Fontwell Meadows was not designated as LGS.
- 4.17 WPC has published a modified WNDP 2015-2015 Post-Examination Version (WPC 7). In the Post Examination Version, the Fontwell Meadows LGS is deleted. The lpa confirms that the Post Examination Version, complies with the legal requirements and basic conditions of the Localism Act 2011, and that it can proceed to Referendum (LPA 7 & WPC 6).
- 4.18 In the October 2015 and Post-Examination Versions of the WNDP, *Policy VE 3- Protection of Trees and Hedgerows* states that development that damages or results in the loss of ancient trees, trees of arboricultural and amenity value, hedgerows or significant ground cover will be resisted.
- 4.19 In the October 2015 and Post-Examination Versions of the WNDP, *Policy VE 5 - Buildings and Structures of Character*, requires that "*proposals relating to them will be expected to retain their local distinctiveness and removal of part or all of them will not be permitted unless it can be demonstrated that they cannot be put to alternative beneficial or viable use*". Schedule 5A identifies buildings and structures "Locally Listed" by the lpa, none of which are in Fontwell. Schedule 5B identifies the Old Smithy, which is within the application site as a building which should be added to the Local List. *Policy HP 2 - Land to the east of The Old Police House Fontwell*, both the October 2015 and Post-Examination Versions of the WNDP identify this site for residential development. This site includes the Old Smithy and is part of the application site. The October WNDP allocates the site for 6 dwellings and the Post-Examination version allocates the site for a minimum of 6 dwellings.
- 4.20 Both the October 2015 and Post-Examination Versions of the WNDP provide for the minimum 50 dwellings allocated under eALP Policy H SP1. Section 5.4 - Key Housing Aims of both versions of the NP provide for a strategy of dispersing housing and avoiding development on large sites. However there are material differences in the text and supporting text of *Policy HP 1 – Spatial Plan of the Parish* between the October 2015 and Post-Examination Versions of the plan.
- 4.21 The October 2015 version of the WNDP Policy HP 1 supports development on sites allocated in the plan, and precludes development outside the BUAB unless the plan makes specific provision for development (CD 8).
- 4.22 In the Post-Examination version, the text of Policy HP 1 says "*By reference to Emerging Policies SD SP2 – Built-up Area Boundary, CSP1 – Countryside, GI*

SP 1- Green infrastructure and development, SD SP3 – Gaps between Settlements, Policy H SP1 – Strategic housing, parish and town council allocations and other relevant policies... Development proposals for other new dwellings outside the Built-up areas will be resisted unless the Plan has made specific provision for these proposals". A note has been added to the supporting text indicating that Policies HP 1 and HP 2 "...are to be read in conjunction with noting that PC supports the grant of planning permission at Fontwell Meadows with the revised proposals and the transfer of 4.5ha of Open Public Space to the Parish" (WPC 7).

National Planning Policy and Guidance

- 4.23 National planning policy is set out in the National Planning Policy Framework (Framework) and planning guidance is contained in Planning Practice Guidance (PPG). I have had regard to relevant sections of the Framework including paragraphs 11 to 17; 47 to 50; Section 11; paragraphs 150 to 162; 182 to 185; 196 to 198 and paragraphs 204 and 216 and relevant sections of PPG including ID 41. Regard has been had to the WMS on Neighbourhood Planning published on the 12 December 2016 (INSP 1).

5. The Case for Fontwell Estates Limited & Global Technologies Racing

The material points are:-

Introduction

- 5.1 This is a mixed-use scheme to include: up to 400 market and affordable homes; new headquarters premises for a successful local business; several small shops/services and community facilities and the provision of a substantial amount of public open space. Whilst much of the dispute centres on housing and policy, the benefits of the scheme as a whole must not be lost sight of.
- 5.2 The application is in outline apart from access and the lpa would have granted planning permission (CD 24). The lpa's position is significant given the recent revision to the Illustrative Masterplan (IM - Plan 15), which is the subject of an aSoCG (CD 5). As part of the applicants' engagement with the local community, the revised IM shows the relocation and significant enlargement of the public open space (POS) to some 4.5ha. The S106 Agreement would transfer the POS to WPC (CD 37). WPC has withdrawn its opposition to the application, provided that any permission it is conditioned to the revised IM and accompanied by a S106 Agreement.

The Development Plan

- 5.3 As the site lies outside the BUAB and is categorised as countryside the scheme would conflict with ALP Policies GEN 2 and GEN 3. The BUABs are set to accommodate perceived development needs up until 2011. These policies are out-of-date in terms of the Framework paragraph 14 presumption in favour of sustainable development. These policies are also out-of-date because the lpa cannot show a 5-year HLS (Framework paragraph 49). EPC concedes² this double reason for out-datedness.
- 5.4 BENP Policy ES3- The Local Gap/Green Infrastructure Corridor is not relevant to this application and EPC no longer argues that the application conflicts with BENP Policy ES4 - Open Views. EPC's case on conflict solely relates to BENP Policy H1, which allocates a site for 60 homes and Policy H2 - Small Windfall Sites. EPC's case proceeds on the basis of a misunderstanding both of the meaning and effect of these policies. When properly construed having regard to the role of NPs (local, non-strategic, needs) when compared with LPs (strategic, objectively assessed needs across the whole district) these BENP policies are not breached. A development that includes some 400 homes is plainly strategic and that is how the eALP regards it.
- 5.5 There is no conflict with the BENP and Policies H1 and H2 are neutral in so far as the application is concerned³. The starting point is the text of Policy H1 and much is made by EPC of the wording of paragraph 9.1.4, second bullet point (CD 7 page 36). Although EPC suggest⁴ that this reference relates only

² X-Examination of Mr Simpson.

³ Mr Mills Evidence-in-Chief.

⁴ X-Examination of Mr Redwood.

to a future strategic allocation “*on the larger site to the south of Barnham and Eastergate*”, (not the application site) it concedes⁵ that the Policy H1 allocation is additional to the eALP strategic allocations. EPC’s concession is based on the history and chronology which led to paragraph 9.1.4. This was:

- (a) the BENP was made in July 2014, before the publication version of the eALP in October 2014;
- (b) the Examiner’s report in May 2014 indicates that the BENP was working from the Summer 2013 version of the eALP (CD 38 paragraph 13.10). In the 2013 version of the eALP, the list of strategic housing allocations, Policy SP11, made no reference to Fontwell;
- (c) the list of strategic housing allocations did mention what later became BENP paragraph 9.1.4, second bullet point, which was inserted on the Examiner’s recommendation because it was “*highly misleading*” for the supporting text to Policy H1 not to mention of the then known eALP strategic allocation;
- (d) the obvious conclusion is: that had Fontwell been included in the eALP before the examination of the BENP, there would a reference to Fontwell in paragraph. 9.1.4;
- (e) EPC concedes, that it makes sense to read paragraph 9.1.4, as referencing future strategic allocations more generally. This would recognise the different roles of NPs (local needs) and LPs (strategic, district-wide needs).

5.6 Stepping beyond the BENP text, an error of approach in EPC’s evidence⁶ is to suggest that the ALP BUABs are implicitly carried over into the BENP. This is wrong; nowhere in the BENP is there a policy setting a BUAB for Barnham and Eastergate. EPC accepts⁷ that nowhere in the BENP does it say that the ALP BUAB boundaries are to be taken as still applicable so far as the BENP is concerned. Indeed, quite the opposite, Policy H1 contains 2 clear contra-indications of such an intention. First, there is a site allocation for 60 units outside the BUAB and second, paragraph 9.1.4 refers to additional strategic allocations, which inevitably will be outside the BUAB. Although EPC accepts⁸ both points it persists with this misinterpretation of the BENP.

5.7 There is a fundamental point of principle to be noted, which explains why the application has nothing to do with, and therefore does not conflict with, BENP Policies H1 and H2. This goes back to the fundamental distinction in national policy between LPs, which deal with strategic objectively assessed needs across the whole district and NPs, which deal with local non-strategic needs (Framework paragraphs 183-185). The point is most clearly made by Holgate J in *Crownhall Estates v Chichester DC* [2016] EWHC 73 (Admin) paragraph 29 (iv)-(v):

“iv) Paragraphs 14, 47 and 156 to 159 of the NPPF deal with the preparation of local plans. Thus local planning authorities responsible for preparing local

⁵ X-Examination of Mr Simpson.

⁶ Mr Simpson Evidence-in-Chief.

⁷ X-Examination of Mr Simpson.

⁸ X-Examination of Mr Simpson.

plans are required to carry out a strategic housing market assessment to assess the full housing needs for the relevant market area (which may include areas of neighbouring local planning authorities). They must then ensure that the local plan meets the full, objectively assessed needs for the housing market area, unless, and only to the extent that, any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the NPPF taken as a whole, or specific policies in the NPPF indicate that development should be restricted (St Albans City Council v Hunston Properties [2013] EWCA Civ 1610; Solihull Metropolitan B.C. v Gallagher Estates Ltd [2014] EWCA Civ 1610).

v) Those policies in the NPPF (and hence the principles laid down in Hunston and Gallagher in the interpretation of those policies) do not apply to the preparation by a qualifying body of a neighbourhood plan. Although a neighbourhood plan may include policies on the use of land for housing and on locations for housing development, and may address local needs within its area, the qualifying body is not responsible for preparing strategic policies in its neighbourhood plan to meet objectively assessed development needs across a local plan area. Moreover, where the examination of a neighbourhood plan precedes the adoption of a local plan, there is no requirement to consider whether it has been based upon a strategy to meet objectively assessed housing needs.” (CD 51)

- 5.8 EPC accepts⁹ the distinction that there cannot be a conflict between a proposal and a policy where the purpose of each is to address an entirely different type of need. BENP Policy H1 is necessarily and expressly additional to strategic allocations because it must recognise that the NP process runs separate to but cannot undermine a District-wide LP process, and cannot be considered in isolation. This is a proposal located in an area, Fontwell, where there is an eALP allocation. Thus, the application site is not addressing “local” need alone rather it addresses the wider needs of the district as a whole. This distinction is made particularly clearly in Framework paragraph 16, second bullet point, which mandates NPs to “*plan positively to support local development, shaping and directing development in their area that is outside the strategic elements of the Local Plan*”.
- 5.9 A further key error of principle at the heart of EPC’s case regarding BENP Policies H1 and H2 is to conflate genuine conflict between a policy and a proposal, with a mere lack of positive support in a policy for a proposal. The applicants accept they cannot claim the benefit of positive support in BENP Policies H1 and H2. Policy H1 allocates a site for housing and this application is not that site. Thus, it cannot be said that the application conflicts with Policy H1 in the sense alleged by EPC. Similar logic applies to Policy H2 which supports small windfall development. The application site is not a small windfall site thus it cannot claim the support of this policy. But this does not mean that it conflicts with it. Neither Policy H1 nor Policy H2 has anything to do with strategic schemes such as the application site. There is nothing in

⁹ X-Examination of Mrs Chaffe & EPC 4 paragraph 5.1.

either policy, or in the rest of the BENP, to actually restrict development on the application site, such as BUAB or LGS policies.

- 5.10 BENP Policies H1 and H2, as with the rest of the NP, because they neither support nor restrict, are entirely neutral as regards the application. EPC is reluctant¹⁰ to accept this word, despite conceding the logically identical proposition that there is “*no specific policy in the BENP restricting the development proposed on the application site*”. The oft-repeated refrain of EPC is to “*read the plan as a whole*”. But such a reading does not entitle EPC to introduce words into the policies that do not exist. The question of identifying a conflict necessarily involves looking at the specific policies, the words on the page, not relying on something vague and abstract.
- 5.11 EPC submit that the applicants’ approach is contrary to the decision of Lindblom J in *Crane v SSCLG* [2015] EWHC 425 (Admin), in which a proposal was held to be in conflict with a NP with a similar but not the same pair of housing policies to those in the BENP: i.e. specific allocations, together with a windfall policy (CD 28). On this the applicants submit that:
- (a) there is a critical difference between Crane and the present case. In Crane, the parish council in making its NP considered all of the relevant sites, including sites put forward by Mr Crane, when formulating the NP’s housing policies (CD 28 paragraph 45). By contrast, EPC’s evidence¹¹ highlights that the Fontwell site was not considered in the process of making the BENP. Had the application site been included and rejected, it might have lent greater support to the argument as to conflict;
 - (b) the Court did not hear argument as to the critical distinction between LPs (strategic) and NPs (non-strategic), and therefore did not grapple with this issue. This is important given the differences between the NP housing policies in Crane and the supporting text to BENP Policy H1;
 - (c) in any event, the applicants submit that Crane was wrongly decided on this point. The statutory duty is to make the determination “*in accordance with*” the development plan unless material considerations indicate otherwise. Where a NP neither supports a determination to grant permission nor a determination to refuse permission then it says nothing about what determination would be in accordance with the NP. It is truly “neutral” in this regard; it does not say grant permission or refuse permission;
 - (d) even if the applicants are wrong on the question of conflict, and the application does not accord with an array of made and emerging NP policies, then Framework paragraphs 14 and 49 apply. This is the conventional approach: housing supply policies in all plans are out-of-date and the Framework paragraph 14 presumption applies.
- 5.12 Although EPC seeks to rely on the SoS’s decision in the Yapton appeal, this decision is currently under legal challenge (CD 26). EPC submits that the cases are very similar, and that permission should be refused on a similar basis to the Yapton decision. There are 2 relevant policies in the Yapton

¹⁰ X-Examination of Mr Simpson.

¹¹ EPC 4 paragraph 4.7.

Neighbourhood Plan (YNP) (APP 6 Appendix K). Policy BB1: Built-Up Area Boundary says that proposals outside the BUAB will not be permitted save in certain prescribed circumstances. Policy H1: Housing Requirement indicates that a minimum housing requirement “*will be established by the emerging Arun Local Plan*”, subject to a 20% buffer. The policy notes that the YNP identifies allocations and, critically for the SoS’s reasoning in the Yapton decision, provides that “*additional allocations will be made if the emerging Arun Local Plan requires such action*”. Thus, there is an in-built mechanism for more housing allocations if the need to do so arises through the eALP.

- 5.13 In the Yapton case, the SoS decided that Policy H1 has “*flexibility to allow any shortfall in housing supply to be met*”, thereby giving it “*significant*” weight despite being “*underpinned by an outdated OAN*” (CD 26 paragraphs 15 & 16). The SoS, while finding no breach of Policy H1, gave “*very substantial negative weight*” to the conflict between the proposal and Policy BB1 on BUABs (CD 26 paragraph 18).
- 5.14 EPC concedes¹² that the BENP neither contains a BUAB policy nor a pledge to make additional allocations if the need arises. However, EPC refuses to acknowledge that the differences are significant, despite the presence of a BUAB policy being the basis for refusal of permission in Yapton. The policies in Yapton and the present case are so different that it is impossible to rely on the SoS’s line of reasoning to justify a refusal of permission here¹³.
- 5.15 If the applicants are wrong and the conclusion is reached that the application does conflict with BENP policies then these policies would also, by reason of Framework paragraph 49 and the WMS¹⁴, be out of date. This is because the lpa cannot show either a 5 or a 3-year supply of deliverable housing sites (APP 18 & LPA 10). Whilst EPC acknowledges that the lpa cannot show a 5-year HLS it submits that the lpa has a 3.01-year HLS (EPC 7).
- 5.16 There is a considerable difference between the HLS the lpa says it has (1.92-years) and that claimed by EPC (3.01-years). Given the quantitative approach of the WMS it is unsurprising that EPC would want to demonstrate that a HLS of over 3 years exists in order for relevant housing supply policies within the BENP to be considered up-to-date. However, such a claim must be based on robust evidence and EPC’s evidence is fundamentally flawed. As the responsible Authority for both housing delivery and auditing of data, greater weight should be given to the evidence supplied by the lpa supported by WSCC. Unlike EPC there is no advantage for the lpa to present the HLS figure as anything other than what it factually is.
- 5.17 All parties agree that the lpa has a 5-year HLS requirement over the period 2016-21 of 7,372 units. A housing supply of 4,423 units is required for the lpa to be able to demonstrate a 3-year HLS.

¹² X-Examination of Mr Simpson.

¹³ Evidence-in-Chief of Mr Mills.

¹⁴ INSP 1.

Source of Supply

- 5.18 The lpa concludes that it has a HLS of 1.92 years based on up-to-date commitment data provided by WSCC, projected completion data and an associated summary table. The lpa includes a further 695 projected completions over the requisite 5-year period to include figures in made NPs; windfalls; small sites with planning permission of less than 6 units; and Housing & Economic Land Availability Assessments (HELAA) sites within the BUAB alongside a discount of 10% for non-implementation. In contrast, EPC relies on Appendix 4.2 of the 2016 HELAA when establishing projected completions from commitments. The individual site proformas set out in HELAA Appendix 4.2, including the projected potential yearly yields, would appear to be derived from an identical earlier data set compiled by WSCC. The lpa confirms that the information it provides is the most up-to-date and will be used to inform the forthcoming AMR (LPA 10). In this context, it is unclear why EPC have not used the most up-to-date WSCC data and have relied on the 2016 HELAA. The superseded WSCC projected commitment data from the 2016 HELAA relied upon by EPC is considered to deliver a total of 2,600 units over the period 2016-2021 which reduces to 2,340 applying the 10% discount. This can be compared with a total of 2,444 units contained within the updated WSCC projected commitment data which reduces to 2,200 applying the 10% discount. EPC has overestimated projected commitment data in Table 6.1 of their report by 140 units which should be subtracted from the total (EPC 7).
- 5.19 EPC's calculation of deliverable sites includes every non-strategic site within Appendices 1.1 and 1.2 of the 2016 HELAA which are assessed as being "deliverable". EPC has simply taken each of the 45 sites (assuming exclusion of NEWA14 and RU8), and totalled the number of homes that the HELAA assesses could be delivered on these sites within the period 2016-2021 and added this into the 5-year HLS calculation. EPC concludes that this adds a further 1,851 deliverable units within the next 5 years, discounted to 1,666 to include 10% non-implementation. The WMS requires a definitive 3-year HLS to be in place in order for a particular NPs housing policies not to be considered out-of-date. However, it is clear that EPC, by relying on the entirety of the sites within HELAA Appendices 1.1 and 1.2, has sought to consciously construct a contrived HLS calculation that is neither in accordance with the Framework, PPG nor follows best practice.
- 5.20 Framework paragraph 47 requires the lpa to identify and update annually a supply of specific deliverable sites sufficient to provide 5-years' worth of housing against their housing requirements. Framework Footnote 11 makes it clear that in order to be considered deliverable, sites should be available now, offer a suitable location for development now, and be achievable with a realistic prospect that housing will be delivered on the site within 5 years and in particular that development of the site is viable. Sites with planning permission should be considered deliverable until a permission expires, unless there is clear evidence that schemes will not be implemented within 5 years, e.g. they will not be viable, there is no longer a demand for the type of units or sites have long term phasing plans.

- 5.21 Framework paragraphs 150 to 185 deal with “Plan Making” and paragraph 158 says that each lpa should ensure that their LP is based on adequate, up-to-date and relevant evidence about the economic, social and environmental characteristics and prospects of the area. Framework Paragraph 159 then explains that this evidence base should include, for housing, a Strategic Housing Land Availability Assessment to establish realistic assumptions about the availability, suitability and the likely economic viability of land to meet the identified need for housing over the Plan period. PPG recognises that, *“the assessment of land availability is an important step in the preparation of Local Plans”*. PPG supports the Framework by explaining that *“the assessment forms a key component of the evidence base to underpin policies in development plans for housing and economic development, including supporting the delivery of land to meet identified need for these uses. From the assessment, plan makers will then be able to plan proactively by choosing sites to go forward into their development plan documents to meet objectively assessed needs”*. Crucially, PPG then goes on to state that *“the assessment is an important evidence source to inform plan making but does not in itself determine whether a site should be allocated for development. This is because not all sites considered in the assessment will be suitable for development (e.g. because of policy constraints or if they are unviable). It is the role of the assessment to provide information on the range of sites which are available to meet need, but it is for the development plan itself to determine which of those sites are the most suitable to meet those needs”* .
- 5.22 The HELAA is prepared by the lpa, as required by the Framework, to specifically inform the production of the eALP. As per the PPG, the purpose of the document is not to suggest that particular sites should be allocated for development or that planning permission should be granted, but rather to identify a range of spatial development options that, subject to more detailed assessment, may be deliverable and/or developable in order to assist the lpa with meeting its housing target.
- 5.23 EPC’s report contains fundamental errors derived from reliance on an eALP evidence base document, the HELAA, which was never prepared with intention to inform a 5-year HLS calculation (EPC 7).

Neighbourhood Plan Conflict

- 5.24 HELAA Appendices 1.1 and 1.2 contain a total of 29 sites which are currently located outside any BUAB defined by the ALP or a constituent NP. EPC’s case is based on the argument that this application should be refused planning permission solely due to a perceived conflict with the made BENP. This is in direct contrast to EPC’s approach to calculating a 5-year HLS. EPC suggests that no less than 25 sites which are currently located outside the BUAB, covered by a made or emerging NP but are not allocated by those NPs, will definitively be granted planning permission and delivered within the next 5 years i.e. a total of 1,401 units. However, if a planning application did come forward on any of these 25 sites and the lpa does have a HLS of over 3 years as claimed by EPC, then the interpretation of the WMS would mean that full weight would be given to the NPs for the areas in which they are located. Lying outside the BUAB and not being allocated for development within a NP which has full weight by application of WMS would mean development would

likely be refused. Clearly such sites cannot be considered to be deliverable and thus fall out of the supply calculation.

- 5.25 The necessary exclusion of these sites would mean that the HLS would fall below 3 years and BENP policies would remain out-of-date. This is an entirely cyclical argument and it is evident that good planning practice dictates that any sites located outside the BUAB and covered by, but not allocated for development within, a made NP should be removed from the supply calculation. This would remove 1,401 units from EPC's calculation. There is also the obvious and inherent contradiction within EPC's 5-year HLS calculation. EPC includes various sites within HELAA Appendices 1.1 and 1.2 that fall outside the BUAB within Eastergate and Barnham Parishes, as defined by the ALP, and are not allocated for development within the BENP. EPC's report considers these sites to be deliverable within 5 years. To be deliverable there is therefore an acceptance they are policy compliant i.e. no conflict with the NP and/or are supported by the Parish Council. It is difficult to reconcile this position given the case that EPC presents to justify a refusal of the application. If these sites are considered to be deliverable then by the same reasoning, the application site has to be too, especially given the accepted absence of any technical or infrastructure grounds for refusal.

Yapton

- 5.26 PPG clearly states that the HELAA does not in itself determine whether a site should be allocated for development because not all sites considered will be suitable including those where policy constraints apply. There are 2 examples of where the "Policy Off" approach to calculating the 5-year HLS position taken by EPC results in the inclusion of sites which conflict with the Framework and PPG as there is clearly not a realistic prospect they will be developed within 5 years. HELAA Appendix 1.2 includes site ref. Y6014OUT at Yapton which is considered able to deliver 100 units over the next 5-year period. This is the site that was dismissed by the SoS in September 2016 (CD 26). This is a clear example of a site which from a HELAA perspective is suitable, available, achievable and developable but due to existing policy conflicts, has been dismissed by the SoS. Therefore, it is not realistic to expect that the site would contribute 100 units to the 5-year HLS. HELAA Appendix 1.2 also includes Site Y1916OUT at Yapton which, similar to the one above, has been recovered for determination by the SoS. Given that the SoS dismissed a very similar application in the same village, applying identical policies, it is not realistic to consider that the site will deliver 88 units over the next 5-year period. 180 units should be removed from EPC's Table 6.1.

Arundel

- 5.27 EPC's Table 6.1 includes 2 sites which do not fall within lpa area but are controlled by the South Downs National Park Authority. These are AB10 in HELAA Appendix 1.2 for 6 units and a NP allocation for the Former Castle Stables for 14 units. This would remove 20 units from EPC's Table 6.1.

Repetition

- 5.28 Site 74 is included twice within HELAA Appendices 1.1 and 1.2. This would remove 56 dwellings from EPC's Table 6.1.

Extant Planning Permissions

- 5.29 Site PS14 has an extant planning permission for 9 new dwellings but is included in the HELAA for 17. This removes a further 8 units EPC's Table 6.1.

Viability

- 5.30 Framework Footnote 11 is explicit that in order to be considered "deliverable" it is imperative that "*...development of the site is viable*". The Arun Viability Appraisal does not consider Site HP3 for 8 units to be viable. This site cannot be considered deliverable having regard to Framework Footnote 11 and a further 8 units should be deleted from EPC's Table 6.1.

10% Discount

- 5.31 The applicants agree that it is reasonable to apply a 10% non-implementation discount to commitment sites. However, it does not agree that this would automatically apply to HELAA Appendix 1.1 and 1.2 sites. The vast majority of these sites do not benefit from planning permission and there is a much higher degree of uncertainty not only in respect of eventual non-implementation but also whether a planning application will be submitted, approved, implemented and dwellings completed within the next 5-year period. The vast majority of HELAA Appendix 1.1 and 1.2 sites should not be considered as deliverable in the HLS calculation. If sites are included, then, given the much greater degree of uncertainty, a much higher discount should be applied. For example, a number of the sites that were included in the 2012 SHLAA remain undeveloped.

Timescales

- 5.32 Several sites included within HELAA Appendices 1.1 and 1.2 do not have planning permission. For these sites to deliver over the next 5-year period, would require applications to be prepared; submitted; determined; reserved matters and/or condition applications to be made; site preparation works undertaken; construction and completion all within a very short timescale. For example, the 25 sites located outside the BUAB and within, but not allocated by, a made NP, should be expected to have timescales that would be significantly elongated. The planning application for the Yapton site (Y6014OUT) was submitted in June 2014 and did not receive a decision until September 2016 some 2.5 years into the planning process. Such sites should not be considered as deliverable in relation to the HLS calculation, however if an element is to be included then an additional 2.5 year determination period should be factored into the timescales for delivery. This would impact on the overall amount of housing deliverable over any 5-year period.

Windfalls

- 5.33 EPC applies a 75 dpa windfall figure to each year over the period 2016-2021. The applicants suggest that this is likely to double-count commitments where planning permission has already been granted on sites of less than 6 units. Windfalls are only applied to the latter years of the 5-year HLS calculation.

Deliverability

- 5.34 There are numerous examples of sites within HELAA Appendix 1.2 where the assessment identifies that additional work is required to ensure that these sites are deliverable. There are several such sites that fail the Framework paragraph 47 test of representing a “realistic” prospect that housing will be delivered within 5 years. These include the following categories.
- a. **Non-Residential Use:** Site NEWA15 is included within HELAA Appendix 1.2 for 35 units but has recently been proposed for an alternative use, with a planning application being refused in March 2016 for a commercial car showroom. The HELAA entry recognises that the site may be suitable for residential or commercial uses but it would appear that commercial use is the most likely future use for the site. Thus, it is not “realistic” to assume that 35 units would be delivered in 2017-2018. Site 5 is listed for residential development or as a camp site. It is certainly not “realistic” to assume that the site would be brought forward for new housing in preference to the potential camp site use.
 - b. **Comprehensive Development:** There are examples of sites that are not deliverable in isolation and require other land to come forward in parallel. Site 103 for 35 units specifically states that “*...the site has future potential on its own. However, the site could be considered as part of a comprehensive development including adjacent land*”. This is a recommendation made within a HELAA to inform future eALP making. Thus, in isolation this site does not have a realistic prospect that housing will be delivered within 5 years;
 - c. **Availability:** There are examples where the availability of a site for development appears to be uncertain. The entry for Site FP1 clearly states that “*attempts to contact agent February/March 2012 unsuccessful. Availability unknown*”. Therefore, it is not “realistic” to assume that the site would deliver 110 units over the next 5-year period and certainly not with development commencing during the next monitoring year as currently projected. Site FP1 appears to have been granted planning permission for use as an Engineering and Technology Park associated with the University of Chichester (BR/54/16/PL) and is not therefore available for residential development. A further example is Site 99 for 20 units where the HELAA reports that the agents have suggested the site may be available “soon” but would not provide any specific timescales.
 - d. **Relocation of Existing Uses:** Site NEWFG2 considered able to deliver 25 units is reliant on the relocation of an existing allotment use which covers approximately half the site. Thus, it is not “realistic” to assume that the site would deliver 25 units over the next 5-year period as there is specific uncertainty regarding the re-provision of the existing allotments.
 - e. **Site Constraints:** There are several examples of sites within HELAA Appendices 1.1 and 1.2 that have specific constraints identified. Site LU12 comprises a former landfill site with the recommendation that further investigation needs to be undertaken. Sites 5 and 14 are located on Flood Zone 2/3 land. Whilst the HELAA considers that development could be achievable, clearly these are significant potential constraints to delivery within 5-years;

- f. Strategic Planning: There are examples of individual HELAA entries which are intended to form part of much larger strategic development options to be considered through the eALP. Sites 74, 74a and NEWY23 are being considered together as a comprehensive development option. This would impact on potential deliverability timescales and it is not “realistic” to assume that the 3 sites would deliver 138 units within the next 5-years.
 - g. Cumulative Impact: EPC’s methodology fundamentally disregards any cumulative infrastructure or service impacts that could arise should every single site identified within HELAA Appendices 1.1 and 1.2 come forward within 5 years. In such a scenario, the impact of each site would not be assessed individually, as the HELAA currently does, but would need to be considered cumulatively especially in respect of highway, utility and social and community facility impacts.
- 5.35 EPC¹⁵ seeks to rely on the Yapton decision to show how, even if the BENP policies are considered out-of-date, they can still be given significant weight. The considerable differences in the policies at play in Yapton and in the present case undermine EPC’s case. Two recent NP plan decisions of the SoS on sites in Cheshire are relevant (CDs 53 & 54). In both decisions the SoS followed the conventional approach of finding the NP housing policies, although the proposals conflicted with them, to be out-of-date in terms of Framework paragraph 49, leading to an application of the presumption at Framework paragraph 14, second bullet, limb one.
- 5.36 In the first decision (CD 53), the NP was made in April 2016 and the SoS, *“whilst sharing [the Inspector’s] appreciation of the frustration which the [local] community will feel if this appeal is allowed”*, goes on to attach *“limited weight”* to conflict with the NP policies (CD 53 paragraphs 5, 10 & 11). The overall tilted Framework paragraph 14 planning balance at paragraphs 16 to 18 of the decision letter concludes by saying: *“the Secretary of State concludes that the sustainability of the appeal scheme along with the fact that the relevant policies for the supply of housing land in Cheshire East are out of date outweigh the fact that the NP has only relatively recently been made [together with other harms]”*.
- 5.37 In the second decision, the NP was also made in April 2016, but the housing policies are held to be *“out-of-date”* (CD 54 paragraphs 15 & 18). The conventional Framework paragraph 14 tilted balance is then applied at paragraphs 27 to 32. Although the SoS at paragraph 30 acknowledges, in the context of assessing the social component of sustainability, *“the important role of neighbourhood planning”* and *“the role which the community have played in preparing the [NP] and that it is a matter of circumstance that the plan already contains policies which are out-of-date as a result of the housing situation of the authority”*. However, even within the social element, before turning to the balance as a whole, the SoS finds the benefits – *“much needed homes, including affordable homes”*, with community facilities – *“weigh in favour of the appeal proposal”*.

¹⁵ X-Examination of Mr Simpson.

- 5.38 Here, if it is concluded that granting permission would not be in accordance with the made BENP, the same conventional approach of applying Framework paragraph 14 in a straightforward manner must be followed, rather than according some special or pre-eminent status to neighbourhood planning over and above everything else. There is no basis for giving special, extra, status to made NPs in law or policy.

Material Considerations

- 5.39 Turning to other material considerations: there are 2 emerging development plans. First in time is the October 2014 Publication Version of the eALP (CD 9). The eALP must be approached with caution because it is based on an OAN of 580 dpa. The lpa now confirms¹⁶ that the OAN is significantly higher at 919 dpa (CD 10). Thus, the way in which the balance is struck in the 2014 version of the eALP between allocations, their timing, and land protected from development is fundamentally out-of-step with the up-to-date evidence and needs to be overhauled.
- 5.40 The applicants do not accept that the application conflicts with various policies in the 2014 eALP once the meaning and effect of the draft policies in question are properly understood. However, if the applicants are wrong about that, then no weight should be given to conflicts with any draft policies which restrict the supply of housing because the 2014 eALP is fundamentally out-of-step with the up-to-date evidence on the OAN and does not seek to meet it and the lpa cannot show a 5-year HLS.
- 5.41 Conversely to the extent that the 2014 eALP points to Fontwell as a potential location for a strategic site allocation for housing this should be given some weight and more so given the significant increase in the OAN since draft Policy H SP1 concerning Fontwell was written. As to this latter point, one should not get too hung up on the exact wording of the 2014 eALP in this regard e.g. in relation to timing, as the acknowledged need for new homes is so much more pressing now when compared to 2 years ago. Since then the lpa has included 400 homes on the application site in all the scenarios it wishes to consider as a means of addressing the increase in the OAN (APP 6 Appendices A & B).
- 5.42 EPC concedes¹⁷ that the balance struck in the eALP between where housing should and should not go is "*hopelessly out-of-date*", thereby giving rise to the same double out-datedness as the policies in the 2003 ALP in that it does not grapple with up-to-date OAN nor is there a 5-year HLS. This applies to both Policy SD SP 2 Built-Up Area Boundary and Policy C SP1 Countryside both of which are subject to the strategic allocations (CD 9 pages 46 & 47).
- 5.43 Strategic housing in Fontwell is envisaged in the eALP October 2014 Publication Version. EPC's case relies heavily on what is said about Fontwell, which is of course a snap-shot in time and indeed at an early stage in the lpa's interest in Fontwell for housing. Things have moved on very significantly since then. Not only has the OAN risen dramatically, but the lpa's approach to

¹⁶ Mr Redwood Evidence-in-Chief.

¹⁷ X-Examination Mr Simpson.

Fontwell has evolved considerably. The lpa resolved in June 2015, in response to the higher OAN, to work out the location of additional homes through an updating of the sustainability appraisal. The lpa openly acknowledged its preferences for a location at the time, which included 400 homes at Fontwell (APP 5 paragraph 5.4).

- 5.44 EPC makes much of the eALP Inspector's letter dated 28 July 2015, which at notes the lpa's preferences and cautions against a "*risky pre-determination*" and "*prematurely closing off other options*" (CD 50 paragraphs 11 & 12). The applicants' response is four-fold.
- 5.45 First, it is important to place the Fontwell preference in the context of the wider search for locations to meet the OAN. At 919 dpa, the total number required over the 20-year plan period will be over 18,000 dwellings and 400 dwellings at Fontwell would be some 2% of this wider figure. Therefore, the selection of Fontwell is not significant enough to result in the "*closing off*" of other options. As such the understandable concern of the Inspector is more theoretical than real when applied to Fontwell specifically. It might make a good deal more sense when thinking of the 2,000 now 3,000 homes allocation at Barnham-Eastergate-Westergate.
- 5.46 Second, as EPC concedes¹⁸, the inquiry has seen no evidence of any such potential options for other and/or additional locations in a mix that does not include Fontwell. Third, EPC suggests that the July letter shows that the lpa's approach to Fontwell is out-of-favour with the Inspector. This is a misinterpretation. The letter does no more than caution the lpa against pre-determination, without expressing a view as to the merits or otherwise of the preference for housing at Fontwell.
- 5.47 Fourth, the lpa responded appropriately to the July letter and had a considered look at the options on an open-minded basis (APP 6 Appendix A). All 4 of the options assessed in March 2016 envisage 400 homes at Fontwell. The lpa again reviewed the location of sites in September 2016 (APP 6 Appendix B). The lpa has not just cut and pasted all the previous sites and done nothing more. Instead, it has thought carefully about where the sites should go, listing 15 allocations, including the application site. Several had changed over time, some removed, some reduced, some added to. It is wrong to see any pre-determination in this. The lpa has considered all the options and concluded that 400 dwellings at Fontwell is a must-have.
- 5.48 The other and more recent, emerging development plan is the eWNDP which is to be the subject of a Referendum in February 2017 (WPC 7). WPC does not object to the application on any basis, including conflict with the eWNDP. The eWNDP confirms that it is, "*...consistent with the current Local Plan but is prepared in anticipation of a new "emerging" Local Plan*" (WPC 7 paragraph 2.3). In relation to the application site, the key change to the eWNDP is that Policy VE 1 and Schedule 4 have been revised to remove the application site from the list of areas proposed to be designated as LGS.

¹⁸ X-Examination Mr Simpson.

- 5.49 EPC's submission that the proposed development conflicts with various policies in the eWNDP is based on a misunderstanding of the meaning and effect of the policies in question and/or of the role of NPs. If the applicants are wrong about that then the policies in question should be given little if any weight because the eWNDP would, if these policies are read and applied as EPC contend, serve to frustrate and inhibit meeting the current assessment of the OAN, and because the lpa cannot demonstrate a 3-year HLS.
- 5.50 As to conflict with eWNDP policies, EPC highlights Policy VE 5 and Schedule 5B on Buildings of Special Character (WPC 7 pages 28 & 47). EPC suggest that the proposal seeks the demolition of the Old Smithy, a building recommended to become a Locally Listed building. EPC concedes¹⁹ that: the power to add buildings to the Local List belongs to the lpa, not WPC. Policy VE 5, if the WNDP is made, does not have the effect of designating the building in question. It is plain from the wording of Policy VE 5 and Schedule 5B, that it would be up to the lpa to designate the building. Moreover, the application is far from wedded to a demolition of the Old Smithy. An outline planning permission would not authorise the demolition of the building. Whether the building should be demolished or retained is for the reserved matters stage. There is no conflict with Policy VE 5 and Schedule 5 of the modified WNDP.
- 5.51 Conflict with Policy HP 2 is also alleged. This policy allocates a small part of the application site for a minimum of 6 dwellings. EPC concedes²⁰ that the lack of conflict is evident from the wording of the policy itself i.e. the allocation is only activated "*if that permission [the application] is refused*".
- 5.52 Various sections of the post-examination WNDP refer to maintaining gaps, separating villages and protecting green spaces which bring the countryside (WPC 7 paragraphs. 4.1, 4.2 and 5.3). Such policies and ambitions should be understood in the context of the eWNDP as a whole, which explicitly supports the strategic residential allocation and subsequent development of the application site. In respect of the eWNDP as a whole, it is considered that the modified plan supports the application.
- 5.53 EPC's concern regarding the processes followed by the lpa and WPC regarding the preparation of the WNDP are not specifically relevant to the application site (EPC 6). The Policy HP 1 note simply represents a factual statement on WPC's publicly stated position of support for the application and its intention is to ensure that this support is reflected through the eWNDP (WPC 7 page 30). It is not the role of this inquiry to consider legal issues surrounding the preparation of the WNDP.
- 5.54 Even were the WNDP to proceed to Referendum without the Policy HP 1 note, it would be wrong as a matter of first principle to read the WNDP without acknowledging that WPC supports the grant of planning permission on this site. The most important points are ones which go to weight, whatever the WNDP ends up saying or not saying. WPC explicitly supports the grant of planning permission. This position puts all the technical and legal arguments

¹⁹ X-Examination Mr Simpson.

²⁰ X-Examination Mr Simpson.

raised by EPC into their proper context. If the WNDP proceeds to Referendum with the note in it, and in due course is "made" then it will be lawful and must be treated as such unless it is quashed in whole or part following any legal proceedings that may be brought.

- 5.55 If the WNDP stalls as a result of the issues raised by EPC, then it should be given less weight and would not form part of the Section 38(6) Development Plan in any event. Weight should however still be afforded to evidence provided by WPC that it supports the granting of planning permission on the application site.
- 5.56 EPC's reference to *Cherkley Campaign Ltd v Mole Valley District Council (2014) EWCA Civ. 567* is surprising and contradictory given the weight that EPC gives to the acknowledgement within the BENP that Policy H1 recognises that a strategic allocation may be made in the eALP for housing on the larger site to the south of Barnham and Eastergate. This reference is not contained in the wording to Policy H1, but within the supporting text at paragraph 9.1.4. If the SoS agrees with EPC's argument in respect of the weight to be afforded to the note when reading WNDP Policy HP 1, this would equally apply to BENP Policy H1 and accompanying paragraph 9.1.4.
- 5.57 Here, the primary material consideration is that the application should be determined by applying the relevant part of the presumption in favour of sustainable development in Framework paragraph 14. This is that unless material considerations indicate otherwise permission should be granted "*unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole*".
- 5.58 EPC contends that Framework paragraph 198, which says, "*Where a planning application conflicts with a neighbourhood plan that has been brought into force, planning permission should not normally be granted*" falls within the words at the end of Framework paragraph 14 (limb 2) which says "*specific policies in this Framework indicate development should be restricted*" so that the presumption in favour of sustainable development does not apply. If the applicants' case is accepted that the proposals do not conflict with the made BENP then the point does not arise.
- 5.59 If it is concluded that there is inconsistency with the BENP, then EPC's case is wrong in law as it is based on an incorrect interpretation of the meaning and effect of Framework paragraphs 198 and 14. EPC's case is inconsistent with the SoS's approach in the Yapton decision (CD 26 paragraph 33), and with the approach set out in PPG.
- 5.60 EPC's argument is wrong in law because:
- (a) in Framework paragraph 14, the first bullet of "decision-taking" applies where the proposal accords with the development plan. The second bullet applies where the proposal does not accord. Accordingly, before either limb of the second bullet is even considered, it is crucial to note that in all such cases the proposal is established to not accord with the development plan;

- (b) in Framework paragraph 198, the second sentence is a re-statement of the statutory position, i.e. the word “*normally*” accounts for where material considerations indicate otherwise;
- (c) there are various such re-statements of the statutory position in the Framework at paragraphs 2, 11, 12 and 196;
- (d) if EPC is correct that Framework paragraph 198 is a policy restricting development within the meaning of Framework paragraph 14, second bullet point, second limb, then the same must apply to policies such as Framework paragraph 12;
- (e) since the second bullet point is always concerned with proposals not in accordance with the development plan, then policies such as Framework paragraph 12 would always apply, and the second limb would always be engaged;
- (f) EPC’s interpretation would make a nonsense of Framework paragraph 14 and the Framework as a whole, and would render the second bullet point, first limb wholly redundant. This cannot be the correct interpretation of the policies as a matter of law.
- (g) EPC draws attention to what is said in the Framework concerning the importance the Government attaches to the spatial vision of local communities articulated in the NP “as distinct from other parts of the development plan”. This misunderstands the Framework which contains similar sentiments about the LP too i.e. the Government attaches significance to empowering local people to make LPs and NPs equally: see Framework paragraphs 1, 17 - first bullet point, 150 and 155.

5.61 Thus, if the policy in Framework paragraph 198 is that where there is conflict with a NP permission should normally be refused is a “*specific policy*” which indicates “*development should be restricted*” within the terms of limb 2 of Framework paragraph 14 and operates so as to dis-apply the presumption in favour of sustainable development, so too by similar logic would the policies in the Framework which make the same point about the development plan more generally, which of course includes NPs i.e. Framework paragraphs 2, 11, 12 and 196. This would mean that limb 1 of Framework paragraph 14, which sets out the tilted balance, i.e. whether adverse impacts significantly and demonstrably outweigh the benefits, would always be dis-applied even though it only ever arises where the proposal does not accord with the development plan. This is nonsense; the Cheshire and Yapton decisions by the SoS apply the conventional approach via Framework paragraph 14, second bullet point, limb 1, rather than opting for EPC’s perverse reading of Framework paragraphs 198 and 14.

5.62 Returning to the part of Framework paragraph 14 which does apply; the only adverse effect which EPC relies on is inconsistency with the made BENP and the eWNDP. EPC’s point depends upon Framework paragraphs 183 to 185 and in particular 198 which concern NPs and what is said to be some form of special or elevated status for NPs. This argument does not arise if the applicants’ case that the proposals do not conflict with the BENP is accepted. However, if the argument is engaged then the applicants say that it is fundamentally misplaced as it does not properly understand the meaning and effect of the Framework. Framework paragraphs 183 to 185 simply stress

the local, non-strategic role of NPs as opposed to the strategic role of LPs and Framework paragraph 198 neither gives enhanced status to NPs as compared with other statutory development plans, nor modifies the application of section 38(6) of the Act. The passage in Framework paragraph 198 simply reflects what is said about the development plan, which of course includes made NPs, in Framework paragraphs 2, 11, 12 and 196. To the extent that it is thought that the Yapton decision and/or the Framework and/or guidance on neighbourhood planning suggests or implies otherwise then this would be wrong in law for the reasons above.

Character and Appearance (APP 9, 10 & 11)

- 5.63 It is common ground that there would be no adverse impacts on landscape character and on views from the South Downs National Park as determined by the Landscape and Visual Appraisal (CD 5 paragraph 11; APP 9 & APP 11). The proposed Public Open Space would not constitute an “*anti-local demarcation zone between the current settlement and their apparently unwelcome new residents*” (IP 2). There would be green movement corridors connecting the existing with the new, and distinguishing between open space that “separates”, e.g. woodland, and open space that “integrates” like recreational land. Based on the revised IM, the open space is firmly in the latter camp. Given that the application is for “up to” 400 homes, concern regarding a higher residential density following the enlargement of the public open space, would be addressed fully at the reserved matters stage.
- 5.64 In respect of landscape effects, the scheme would create:
- moderate adverse effect to the local Landscape Character Type 16 (Fontwell-Eastergate Mosaic) during construction, a slight adverse effect at completion and a not-significant and neutral effect after a 15 year establishment period;
 - a not-significant neutral effect to the character of the South Downs National Park (SD1 Western Downs), during construction, at completion and following a 15-year period;
 - a moderate adverse effect on the site-specific landscape resource during construction and slight adverse effect at completion due to the loss of open fields with the new grassland with new woodland not fully established. This is would reduce to not significant and neutral after 15 years establishment.
- 5.65 In respect of the visual effects the scheme would create:
- slight to substantial effects to short distance views during construction and completion, reducing to not-significant to moderate after 15 years establishment;
 - not significant and neutral effect on medium distance views from the west, south and east during construction, upon completion, and after a 15 year establishment period;
 - a not significant and neutral effect on local and distant views from the National Park during construction, upon completion, and post mitigation.

- 5.66 Whilst the application would result in adverse effects of varying degrees to visual amenity, this is only experienced from locations along the immediate boundaries of the site. Beyond, the site is well contained and the application would have a not significant neutral effect on the visual amenity.
- 5.67 The site is also viewed in the context of the peri-urban²¹ landscape which surrounds it and the post-war built up areas of Fontwell; the A47 and its service station, hotel and fast food restaurant; Fontwell Racecourse and its associated buildings, stadia and parking areas; and the public house all within a landscape that is dominated by glasshouses and equestrian use. The site is not a “valued landscape” as set out at Framework paragraph 109 and has medium value in GLVIA3 terms. The site is not an international, national or locally designated landscape (Framework paragraph 113). The scheme would have a not-significant and neutral effect on the South Downs National Park, and therefore conserves its landscape and scenic beauty (Framework paragraph 115).
- 5.68 The scheme takes the opportunity to improve the character and quality of an area and the way it functions. It places community facilities at its centre, and structures residential and employment development appropriately around a landscape led concept, providing green facilities and movement routes within and beyond the site boundary.
- 5.69 In respect of the ALP, the landscape effects of the application on the local landscape character are modest, and should be considered in accordance with the Framework in weighing up the scheme’s benefits and effects (Policy GEN 3). The application has a high quality design strategy, which is deliverable and would evolve further at reserved matters stage to deliver a high quality scheme (Policy GEN 7). The application also places existing trees and woodland as a key feature, only removing vegetation to facilitate access, and where no other alternative exists (Policy GEN 28).
- 5.70 In respect of the eWNDP, the application is designed to minimise damage to ancient trees/trees of amenity value (Policy VE 3); street lighting and lighting generally would be dealt with at reserved matters design stage (Policy VE 8); the scheme provides an appropriate average density of 35 dph (Policy HP 11); the design approach is of high quality and would contribute positively to local character (Policy HP 13); the application proposes several new public footpath and cycle connections (Policy GA 1); significant recreational facilities are placed centrally and an appropriate design, scale and character (Policy CL 7), and although the application does not provide allotments, it provides much needed neighbourhood outdoor sports, children’s play and a pavilion to serve these facilities (Policy CL 8).
- 5.71 With regard to the BENP, the application does not affect the Local Gap/Green Infrastructure Corridor between Eastergate and Barnham (Policy ES3); a Landscape and Visual Appraisal was submitted with the planning application (Policy ES4); the detailed design of the scheme is expected to be in accordance with the Barnham and Eastergate Design Guide if it is adopted as

²¹ Land immediately adjoining an urban area; between the suburbs and the countryside.

a Supplementary Planning Document by the time of any reserved matters submission (Policy ES5). An Arboricultural Impact Assessment was submitted with the application and the scheme has taken care to retain and protect all possible trees, hedgerows and woodlands (Policy ES10); the scheme promotes an extended internal cycleway and pedestrian network that function logically within the site, but also connects desired routes off site (Policy GA2). The scheme intentionally places recreational facilities at its centre, within a well-connected and overlooked location, at an appropriate scale and without causing neighbouring amenity issues (Policy CLW3). The site does not include LGSs (Policy CLW6), or existing open space (Policy CWL7) and has no existing public access; the scheme has a high quality, design led concept, an approach that would be continued through reserved matters stages to provide an appropriate and high quality form of development (Policies H4, H5 and H6).

Highway Safety and Sustainable Transport (APP 12 & 13)

- 5.72 It is common ground that Fontwell is a sustainable location for development and that traffic generated by the application would not result in a severe residual impact following the delivery of identified mitigation measures, which include sustainable transport solutions (CD 5 paragraph 14; APP 13 & CD 55). A local resident raised concerns about the sustainability of the location, given the lack of transport infrastructure and lack of proximity to schools. Framework, paragraphs 29, 32 and 34, recognise there is a difference in national sustainable transport policy between urban and rural areas. This is borne out in the very different average distances to schools and means of transport to schools set out in the 2014 National Travel Survey. The application site constitutes a sustainable rural location. The proposal also has the support of the WSCC as Highway Authority, provided that agreed mitigation is secured. The agreed mitigation is critical to assessing sustainability from a transport perspective. The application would deliver, amongst other things: a new bus service linking the site to both Barnham Station and the local schools; a new cycle path from the site to the existing cycle path at Walberton Green or other cycle improvements and a new footpath around the perimeter of Walberton Playing Field (CD 49, section 6.1-2, and the CD 37). These are in addition to the linkages that would integrate the application site and its residents with Fontwell.

Living Conditions for Future Residents

- 5.73 The Ipa Committee Report addresses this issue in the noise section (CD 24 pages 77 to 79). This issue arose from an initial concern expressed by the EHO, in relation to "Monster Trucks" events at Fontwell Racecourse. The normal events at the race course were never in issue. The concern is robustly rejected in the Committee Report for the simple reason that the "Monster Trucks" event was a one-off 2-hour occasion in June 2015. This therefore cannot be of any significance in making the decision here.

Biodiversity

- 5.74 There are no ecology or biodiversity issues in relation to the application (CD 5 paragraph 10 & APP 15). The application would not affect the conservation status of any international, national and non-statutory designated site.

- 5.75 The habitats identified are of no more than site level or local level ecological value. The key habitat including the majority of the hedgerows, mature trees and areas of broadleaved woodland would mostly be retained. All TPO trees would be retained.
- 5.76 Loss of habitats including the improved and species poor semi-improved grassland, small lengths of hedgerows and tall ruderal habitats would only result in minor negative effect to receptors of local level importance. The mitigation package comprises the creation and long term management of: species rich grassland, species rich neutral grassland, new hedgerows/areas of native species scrub planting, new native species trees, wetland habitats in drainage swales. The provision of such habitats would provide minor positive effects to biodiversity.
- 5.77 Great crested newts, dormice, badger or bat roosts were not identified. Thus these ecological receptors are not a statutory ecological constraint to the development. The provision of new roost sites for bats throughout the site would provide long term minor positive effects for the local population.
- 5.78 The majority of the bat activity was identified along hedgerows and the main foraging areas/commuting routes are along the eastern and western site boundaries. Mitigation for the removal of short lengths of hedgerows is provided and a sensitive lighting scheme would be used throughout the development. This mitigation would result in minor positive effects.
- 5.79 Detailed studies confirm the application site is not used by the Barbastelle Bat colonies at the Slindon/Goodwood Estates. Only occasional Barbastelle Bat activity was identified across the site in 2014 and 2016 survey periods. Given the survey results, the application would not adversely affect the Barbastelle Bat colonies at the Slindon/Goodwood Estates and the proposed mitigation would ensure the potential effects to Barbastelle Bat locally are negligible.
- 5.80 The breeding bird assemblage is common and the majority of the species identified would readily adapt to residential situations. The mitigation would provide minor positive effects to breeding birds.
- 5.81 The application of appropriate working methods during construction and the mitigation outlined above would ensure the killing/injury of grass snakes is avoided and long term minor positive effects are likely.
- 5.82 The evidence shows that the application retains the majority of primary habitats of ecological interest and where a loss of local level receptors has been anticipated mitigation would be provided to ensure no significant loss to biodiversity. The application is in accordance with all national/local planning policies and relevant wildlife requirements. The application complies with the Framework, Wildlife and Countryside Act 1981 (WCA) (*as amended*), the NERC Act 2006; Circular 06/2005; ALP Policies GEN 28, GEN 29 and GEN 30 and eALP Policy ENV DM5 and ENV SP1.

Provision of infrastructure requirements directly related to the proposed development.

- 5.83 This matter is fully covered in the S106 Agreement, in the CIL Compliance Analysis, and in the CIL Justification Statement (CD 37, CD 55, & CD 52).

Any significant social, economic or environmental impacts not covered

- 5.84 There are no such impacts.

Sustainable Development and Prematurity

- 5.85 Interested persons submit that to apply the presumption in favour of sustainable development it must first be established that the proposal is sustainable. Residents say that that sustainability has not been properly established. The applicants draw attention to the judgment of Jay J in *Cheshire East BC v SSCLG & Renew Land Developments* [2016] EWHC 571 (Admin) at paragraphs 19 to 26. At paragraph 23, Jay J explains: *"In my judgment, this is not, and cannot be, a question of assessing whether the proposal amounts to sustainable development before applying the presumption within paragraph 14. This is not what paragraph 14 says, and in my view would be unworkable. Rather, paragraph 14 teaches decision-makers how to decide whether the proposal, if approved, would constitute sustainable development."* Paragraph 19 of the judgement says: *"In my judgment, the answer is to be found in the language of paragraph 14 of the NPPF. Where the second bullet point applies, because the development plan is absent, silent or relevant policies are out of date, the proposal under scrutiny will be sustainable development, and therefore should be approved, unless any adverse impacts significantly and demonstrably outweigh the benefits"*. In other words, the test of sustainability is Framework paragraph 14, rather than something logically prior to it.
- 5.86 In any event, even if the decision-taker has to decide whether the proposal constitutes sustainable development in its own right as a separate exercise to the application of Framework paragraph 14, it is the applicants' case that the proposal scores positively and very well in relation to each of the 3 roles (economic, social and environmental) of sustainable development set out in Framework paragraph 7 and elaborated throughout the Framework.
- 5.87 As to prematurity, it is suggested that this is a case in which both limbs of the PPG test for refusal are satisfied: *"(a) the development proposed is so substantial, or its cumulative effect would be so significant, that to grant permission would undermine the plan-making process by predetermining decisions about the scale, location or phasing of new development that are central to an emerging Local Plan or Neighbourhood Planning; (b) the emerging plan is at an advanced stage but is not yet formally part of the development plan for the area"*.
- 5.88 Interested persons do not accept that the decision in this case does not concern development that is central to the eALP, despite it being a housing figure of 400, which is some 2% of the overall housing need for the district over the plan period. Instead, it is submitted that any strategic housing would satisfy the test in limb (a). This is not what the guidance says, and would if correct lead to many more refusals on prematurity grounds than is intended by the understandably high threshold set in national policy. It would mean that permissions for much needed large housing developments would be refused and one would have to wait a number of years until the LP

was adopted before one could do anything of substance to meet pressing and ever-increasing housing needs. This would be a very poor outcome.

- 5.89 As to Limb (b), interested persons do not accept the significance of the 18-month suspension of the eALP, due to the OAN being hugely under-shot, and the fact that a new eALP is some months away. This means that the eALP is not at an advanced stage. Whilst EPC notes that the eALP is not at an advanced stage, it was acknowledged however that the lpa, who are the party entitled to make a prematurity objection according to the guidance, do not do so in this case (EPC 2 paragraph 43c).
- 5.90 Accordingly, there is little if anything to put into the adverse impacts side of the Framework paragraph 14 equation. There are several major benefits amongst which are:
- (a) the provision of 400 new homes would make a substantial contribution to the pressing and growing need for housing in the district, the lpa cannot demonstrate a 5-year HLS and there is a significant shortfall of housing land (LPA 10). This is accepted²² by EPC as carrying significant weight. The applicants suggest the weight to be attached to this benefit should be very significant. Attaching very significant weight is more appropriate given the ever increasing OAN, and the significant shortfall in the 5-year HLS which EPC acknowledges²³ as massive;
 - (b) 30% (120) of the units would be AH making a substantial contribution to the significant need in the district. EPC accepts²⁴ that this provision should attract significant weight. Given that the amount of AH proposed constitutes over 6 months of the need across the district, it is more appropriate to attach very significant weight to this benefit;
 - (c) the proposed B1 development would make a valuable contribution to the local, regional and national economy. Whilst EPC attributes²⁵ significant weight to this benefit attaching very significant weight is more fitting;
 - (d) the A1/A2/A3/D1/D2 (small shops/services/facilities) floorspace would boost the sustainability of Fontwell. EPC gives some weight to this²⁶. However, the lack of some facilities in Fontwell means that the proposed new community facilities warrant very significant weight;
 - (e) the proposed POS would be a substantial asset for the community. Through the S106 Agreement, a large (4.5ha) area of public open space would be transferred to WPC, who would hold the land in perpetuity for the benefit of local people. This amount of public open space significantly exceeds the policy requirement for a scheme such as this. EPC gives²⁷ some weight to this benefit. However, Fontwell currently has nothing like this amount of proposed public open space, and given that it would be held by WPC it is a benefit that should attract very significant weight.

²² X-Examination of Mr Simpson.

²³ Mr Simpson Evidence-in Chief.

²⁴ X-Examination of Mr Simpson.

²⁵ X-Examination of Mr Simpson.

²⁶ X-Examination of Mr Simpson.

²⁷ X-Examination of Mr Simpson.

- 5.91 These worthwhile benefits align well with the policies in the Framework taken as a whole. When applying Framework paragraph 14 it is readily apparent that the adverse impacts, if any and such as they are, of granting planning permission would not “*significantly and demonstrably*” outweigh the benefits of doing so. Indeed, the adverse impacts do not come anywhere near to significantly and demonstrably outweighing the benefits, and even if it is concluded that there are various breaches of adopted, made and emerging plans, these adverse impacts would certainly not significantly and demonstrably outweigh the benefits of granting permission.
- 5.92 It is acknowledged that determining the application in accordance with the development plan would point to a refusal of the application because of Policies GEN 2 and 3 in the ALP. If EPC’s case on the made BENP is accepted, then Policies H1 and H2 of the BENP would also point to a refusal of the application. The applicants’ case depends upon the second limb of S38 (6) namely where material considerations indicate otherwise than determining the application in accordance with the Plan. It is here under the heading material considerations that the combination of the very significant benefits of the application, coupled with the fact that all the policies relied on by EPC in the ALP and the made BENP are out-of-date, and in view of the ever-increasing and ever-increasingly unmet OAN and a significant shortfall in HLS, points overwhelmingly and decisively to granting permission for this highly commendable scheme, applying the presumption in favour of sustainable development in the relevant part of Framework paragraph 14.

6. The Case for Arun District Council

The material points are:-

Introduction

- 6.1 The lpa resolved to approve the application subject to conditions and S106 Obligations.

The Development Plan

Arun Local Plan 2003 (CD 6)

- 6.2 The application site immediately adjoins and is outside the BUAB as defined by Policy GEN 2. Policy GEN 3 presumes against development outside the BUAB. However, the BUAB is out-of-date as it was defined on the basis of housing need for the plan period 2003-2011 and because the lpa is unable to show a 5-year HLS.

- 6.3 The emphasis on good design in Policy GEN 7 is consistent with the Framework and is not out-of-date. The requirement in Policy GEN 8 to provide appropriate infrastructure complies with the Framework and is not out-of-date. Consistent with the emphasis in Framework paragraph 50 on creating inclusive and mixed communities, Policy DEV 17 requires AH to be provided for sites of 25 or more dwellings and is not out-of-date.

Barnham & Eastergate Neighbourhood Development Plan (CD 7)

- 6.4 BENP Policy ES3 broadly precludes development within the Local Gap/Green Infrastructure Corridor. The BENP refers back to the ALP Proposals Map for a definition of Local Gaps. Within the BENP area, the only local gap is between Barnham and Eastergate (LP Policy Area 11(iv)). The application site is not within this area. Thus, whilst BENP Policy ES3 is not strictly engaged by this application, it is relevant to note that the site is outside the part of the BENP area where development is most strictly controlled.
- 6.5 BENP Policy ES4 states that “*Open views towards the countryside or across open spaces will be maintained if possible...*” Given that this policy recognises that there is a balance to be struck where open views may be affected, it is not a policy restraining housing such that, in the absence of a 3-year²⁸ HLS, it should be considered out-of-date. BENP Policy ES5 requires a high standard of design and is consistent with the Framework emphasis on good design. BENP Policy ES6 requires new development to contribute positively to the character of the 2 villages with new development being “...*designed to respond to the specific character of the site and its local surroundings and to create a sense of place*”. This policy accords with the emphasis in the Framework on ensuring that policies and decisions respond to local character.
- 6.6 BENP Policy H1 allocates a site for “*at least*” 60 dwellings in Eastergate “*provided that the development meets the requirements of the policies set out in this Plan and the Arun District Local Plan*”. The supporting text states

²⁸ December 2016 WMS on Neighbourhood Planning.

that the allocation is “*in addition to*” inter alia “*any strategic allocation that may be made in the Local Plan for housing on the larger site to the south of Barnham and Eastergate*”. EPC points out that there is no reference here to the specific allocation being “*in addition to*” any other strategic allocation in the LP. However, when the BENP was being made, the lpa had not published the 2014 version of the eALP, which identified, for the first time, Ford and Fontwell as a location for strategic housing in Policy H SP1. This eALP allocation was to take account of the lpa’s large and increasing OAN for housing. Instead, the BENP was predicated on a 2013 version of the eALP, which made no reference to land at Ford and Fontwell. Paragraph 9.14 of the supporting text to BENP Policy H1 must therefore be read in that context. If that is done, it can be properly inferred that the policy intention in BENP paragraph 9.1.4 is to make clear that the specific site allocation in Policy H1 is to be “*...in addition to...*” any strategic allocation that may be made in a LP that includes the BENP area.

- 6.7 BENP Policy H2 provides for permission to be granted for small residential developments on infill and redevelopment sites. The application is a strategic scheme and this policy is not engaged.

The Emerging Development Plan

The Emerging Arun Local Plan

- 6.8 Examination of the eALP 2011-2031 started in June 2015 and was suspended in February 2016 to enable the lpa to review the plan in the light of a materially higher OAN (CD 23).
- 6.9 Policy H SP1 - Strategic Housing, Parish and Town Council Allocations proposes to accommodate strategic housing requirements in several ways, one of which is through a “*Site Specific Allocations Development Plan Document for Ford and Fontwell*”. Under the heading “*Ford and Fontwell*”, the draft policy states, “*Ford and Fontwell have been identified as potential locations for housing growth in the later part of the plan period. Both these areas lack some key services and growth may enable the creation of settlements that are more sustainable. There is currently insufficient evidence to establish a quantum of housing growth in Ford and Fontwell, therefore Site Specific Development Plan Document(s) will be prepared for the Local Plan to establish if sites can be allocated to improve the sustainability of these settlements.*”
- 6.10 Policy H SP1 also provides for strategic housing through “*Parish and Town Allocations*”. The parishes of Eastergate and Walberton are allocated 100 and 50 dwellings respectively. Policy H SP1 states: “*All Neighbourhood Development Plans shall provide for the stated number of housing units with respect to their Parish and Town Council areas. It should be noted that these are minimum allocations. [...] Parish and town council allocations are in addition to the strategic allocations.*”
- 6.11 Applying the criteria in Framework paragraph 216, moderate weight can be given to eALP Policy H SP1 due to the relatively advanced stage of preparation of the eALP. It is accepted that the policy is still subject to unresolved objection, which reduces the weight that could otherwise be given

to it, but a moderate degree of weight is still significant. Updating the emerging spatial housing strategy to take account of the up-to-date position on the OAN, will require the identification of more, not fewer, strategic locations for housing, and the eALP will comply fully with the Framework.

Emerging Walberton Neighbourhood Development Plan (WPC 7)

- 6.12 Following examination of the WNDP and objections by the lpa, WPC has published a revised eWNDP (CD 27, CD 25, WPC 6 & 7). The lpa is satisfied that the revised WNDP complies with the legal requirements and basic conditions of the Localism Act 2011 and can proceed to Referendum (LPA 7).
- 6.13 Emerging WNDP, Policy VE 5 refers to buildings and structures of character, and requires that *“proposals relating to them will be expected to retain their local distinctiveness and removal of part or all of them will not be permitted unless it can be demonstrated that they cannot be put to alternative beneficial or viable use”*. Schedule 5B identifies the Old Smithy, located within the application site as a building that should be added to the lpa’s Local List. The application, which is in outline only, would not lead to the removal of this building. The scheme could be developed in a manner which allows this building to be retained, whether as a matter of the developer’s preference or because policy requires it. This is an issue for the reserved matters stage. The application is not in conflict with Policy VE 5. Moreover, eWNDP Policy HP 2 identifies part of the application site for residential development (minimum of 6 dwellings), thereby accepting the principle of residential development.
- 6.14 Emerging WNDP Policy HP 1 supports development on sites allocated in the plan and precludes development outside the BUAB (WPC 7). The key housing aims, Section 5.4, provide for a strategy of dispersing housing, and avoiding development on large sites. Whilst the application conflicts with these aims, the aims are inconsistent with the strategic allocation in the eALP. Policy HP 1 and section 5.4 of the eWNDP have not been amended, but it does now make clear that the housing policies are to be read in conjunction with noting that WPC supports the grant of planning permission at Fontwell Meadows.
- 6.15 The lpa is satisfied that the modification needs to be made to ensure that the draft Order meets the basic conditions set out in Schedule 4B paragraph 8(2) of the 1990 Act (LPA 8). PPG advises²⁹: *“A draft neighbourhood plan or Order must be in general conformity with the strategic policies of the development plan in force if it is to meet the basic condition. Although a draft Neighbourhood Plan or Order is not tested against the policies in an emerging Local Plan the reasoning and evidence informing the Local Plan process is likely to be relevant to the consideration of the basic conditions against which a neighbourhood plan is tested. For example, up-to-date housing needs evidence is relevant to the question of whether a housing supply policy in a neighbourhood plan or Order contributes to the achievement of sustainable development.”* and *“The local planning authority should work with the qualifying body to produce complementary neighbourhood and Local Plans. It*

²⁹ Paragraph 009 Reference ID: 41-009-20160211.

is important to minimise any conflicts between policies in the neighbourhood plan and those in the emerging Local Plan, including housing supply policies.” The lpa considers the note is necessary to comply with the basic conditions as it puts beyond doubt that Policy HP 1 cannot prejudice the identification of Fontwell Meadows as a strategic housing allocation under eALP Policy H SP1.

- 6.16 EPC accepts that the lpa is entitled to make modifications that are needed to secure that the draft Order meets the basic conditions mentioned in the 1990 Act. The lpa rejects EPC’s submissions that the addition of the note is unlawful and that residents would be unfairly deprived of an opportunity to express a view on it. Residents will have the opportunity to express a view on the eWNDP in its final form when it is put to a Referendum. In light of the revisions to the eWNDP to reflect that WPC no longer objects to the application, any alleged issue in relation to this Policy HP 1 falls away.

Whether the proposal would accord with the BENP

- 6.17 EPC no longer relies³⁰ on a conflict with BENP Policy ES4 - Protection of Open Views. Whilst BENP Policy ES5 requires a high standard of design, this is an outline application supported by a comprehensive Design and Access Statement, with opportunity to refine aspects of the design at the reserved matters stage. Thus, it cannot be argued that the application breaches BENP Policy ES5. The lpa is satisfied that the application does not breach BENP Policy ES6 which requires new development to contribute positively to the character of the 2 villages.
- 6.18 Whilst BENP Policy H1 allocates a site for at least 60 dwellings, it is, of necessity, neutral in relation to the application because the strategic level of housing proposed in the application is far beyond anything that is, or ever could, be delivered by a NP. Therefore, it can properly be inferred from BENP paragraph 9.1.4 supporting Policy H1 that the specific allocation is not only “*in addition to*” the strategic allocation that was being contemplated at the time that policy was prepared; but also the clear policy intention is that is “*in addition to*” any strategic allocation identified in the eALP process. This reflects the proper relationship between strategic plan-making at the LP level, and non-strategic plan-making at the NP level, in accordance with the Framework. The contention that this strategic proposal breaches a housing policy that only deals, and can only deal, with non-strategic housing, is unarguable. BENP Policy H2 provides for permission to be granted for small residential developments on infill and redevelopment sites. As the application proposes a strategic level of housing, this policy is neutral in relation to it.

- 6.19 It follows that the application does not breach any policy in the made BENP.

Whether the proposal would prejudice the preparation of the WNDP and/ or whether it would accord with that plan

- 6.20 Any argument about the proposal prejudicing the preparation of the eWNDP by being promoted in advance of the potential designation of part of the site as LGS in the eWNDP has now fallen away. WPC also confirmed that it no

³⁰ X-Examination of Mr Simpson.

longer objects to the application proposal, in principle. Therefore any issue in relation to eWNDP Policy HP1 falls away.

- 6.21 The application is in outline and as such there is no issue of concern in relation to eWNDP Policy VE 5 and Policy HP 2 already accepts, in any event, the principle of residential development on a part of the site. It follows that the application would not breach any policy in the modified eWNDP.

Whether the proposal would accord with any other relevant adopted or emerging development plan policies and the weight to be attached to such policies

ALP

- 6.22 As the application site is outside the BUAB identified in Policy GEN 2, it does not comply with Policy GEN 3. However, Policies GEN 2 and GEN 3 are out-of-date and any breach of those policies should be given little weight.
- 6.23 As an outline application with a comprehensive Design and Access Statement, it is consistent with the requirements of Policy GEN 7 to provide a high standard of design. The application, by virtue of the obligations secured in the S106 Agreement, would also provide adequate and appropriate infrastructure, and accord with Policy GEN 8. The application provides for 30% AH, and so accords with Policy DEV 17. The application complies with all other relevant ALP policies that are not out-of-date. Insofar as it breaches relevant out-of-date policies, those breaches should be given little weight.

eALP

- 6.24 Specific provision is made for strategic housing in Ford and Fontwell in Policy H SP1, and the application is not inconsistent with that policy as drafted. Policy H SP1 proposes a site-specific DPD for the site, with an emphasis on improving the sustainability of the settlement. Such improvements would be secured by the application in the form of sustainable transport measures, recreational facilities and a neighbourhood centre. Fontwell is already served by a reasonable range of shops and services within easy walking distance of the site including an off-licence, newsagent, convenience store, café/restaurant and public house (CD 24). The application accords with the spatial strategy for housing in the eALP, and in particular Policy H SP1, and there is no breach of any other relevant eALP policy. Compliance with the eALP should be given moderate weight in the planning balance.

The need for housing and employment sites in Arun District and the supply of deliverable sites to meet those needs

- 6.25 The SoCG noted that the lpa cannot demonstrate a 5-year HLS to reflect the OAN position of 845 dwellings per annum. It is common ground that a review of the HLS is highly likely to show that the HLS remains significantly less than 5 years. Since then, based on an assessment by GL Hearn, the lpa is working to an OAN of 919 dpa (CD 10). The lpa has updated the HLS as of 31 March 2016 which shows a HLS of 1.92 years (LPA 10). The WMS on Neighbourhood Planning sets out that relevant policy for the supply of housing in a made NP should not be considered out-of-date under Framework paragraph 49 where the lpa cannot demonstrate a 3-year HLS.

- 6.26 The HLS position is at a point in time i.e. 31 March 2016. As EPC relies on permissions granted since that date to demonstrate a 3-year land supply then a full and proper assessment of, amongst other things, completions and lapsed permissions is also required over that same period (EPC 7 paragraph 6.7). That is the reason why a full HLS assessment is done at a point in time with complete data, thus the permissions EPC refers to are not included in the lpa's assessment.
- 6.27 The HELAA is not a policy document and sites are identified in accordance with the methodology in the PPG. The lpa only includes within the HLS, HELAA sites within the BUAB as these accord with extant planning policies. Those sites identified as deliverable outside the BUAB are simply sites with potential. As the HELAA explains, it does not follow that planning permission will be granted as they are currently contrary to policy. It is bizarre that these sites are relied upon by EPC as, in areas where there are made NPs, these sites could all be contrary to the development plan and at significant risk of call-in. There are sites listed in the HELAA as deliverable outside the BUAB in both Walberton and Eastergate. These sites have not been included within the lpa's HLS calculation but EPC rely on them to make its HLS case, whilst at the same time objecting to the application. However, the reasons why these sites are now considered to be acceptable and deliverable and not the application site are not explained.
- 6.28 The Appendix 1.1 HELAA sites are those considered to be deliverable. Appendix 1.2 HELAA sites are included by EPC within the HLS as commitments. However, these are sites with "potential" and only those sites (some 76 units) that would accord with current policy are included in the supply. HELAA sites outside BUABs were not included within the December 2016 calculation of supply and contrary to EPC's suggestion have not been "excluded" between December and January as they were not there to start with. No strategic sites are contained within the HLS because, at this time, on the basis that the lpa has to produce a "Policy Off" position.
- 6.29 The lpa takes a pragmatic approach to windfalls. No inclusion is made within the first 3 years because none of the windfalls have planning permission. Next year, those small sites with planning permission that have been completed will be classed as windfall completions. Windfalls and small scale sites are included alongside each other and an average of 75 per year is included in the HLS to avoid any double counting.
- 6.30 NP allocations are already included within the commitments. Furthermore, the site EPC identified at Arundel is within the South Downs National Park and not in Arun District. The Littlehampton Academy site has been included within the supply for 70 dwellings as a made NP site as it did not benefit from planning permission at 31 March 2016. Subsequently this site has been granted permission for 68 dwellings. An additional 10 cannot therefore be added. Made NP sites included within the 5-year supply have been increased by 9 dwellings over that included in LPA 10. This is as a result of a further review of the data being assessed for completion of the AMR.
- 6.31 The lpa has prepared a robust, Framework compliant, "Policy Off" HLS position as of 31 March 2016. After a non-implementation rate has been

applied, the HLS stands at 1.92 years. Thus, the lpa's position that there is a substantial and long-standing shortfall in the HLS is maintained. The lpa cannot show a 5-year HLS such that relevant housing supply policies in the ALP cannot be considered up-to-date. Moreover, the lpa cannot show a 3-year HLS and having regard to the criteria set out in the WMS, the relevant housing supply policies in the BENP cannot be considered up-to-date. This application would make a significant contribution to reducing this shortfall in the delivery of housing and should be given very substantial weight in the planning balance.

The effect of the proposal on the character and appearance of the area, including any effects on the South Downs National Park

- 6.32 It is common ground that the application would have no adverse impact on the landscape or visual character of the area or on views from the South Downs National Park.

The effects of the traffic generated by the proposal on highway safety and traffic conditions

- 6.33 It is common ground that traffic generated by the application would not result in a severe residual cumulative impact.

Whether the proposal would maximise sustainable transport solutions

- 6.34 The lpa is satisfied that the application would maximise opportunities for sustainable transport through the relevant S106 Obligations, in particular, bus transport (CD 37).

Whether the proposal would provide satisfactory living conditions for future residents, having regard, among other matters, to the proximity of events at Fontwell Park

- 6.35 The EHO's concern arose from the impact of a single event which lasted for a short period and is a matter that was considered fully by the Members (CD 24 page 78). PPG refers³¹ to factors which influence whether or not noise should be considered a basis for objecting on planning grounds, including "*non-continuous sources of noise, the number of noise events and the frequency and pattern of occurrence of the noise*". The lpa is satisfied that concern about the noise generated by a single short event does not provide a basis for refusing permission.

The effect of the proposal on biodiversity

- 6.36 No party objects to the scheme on ecological or biodiversity grounds. The lpa's ecologist, the Sussex Wildlife Trust and Natural England do not object to the application on ecological grounds.

³¹ Paragraph. 006; Ref ID: 30-06-2014 1224

Whether the proposal would appropriately contribute to the provision of infrastructure requirements directly related to the proposed development

- 6.37 The lpa is satisfied that the application would contribute adequately to infrastructure requirements. The S106 contributions would comply with the tests in CIL regulation R122 (2) (CD 55).

Any significant social, economic or environmental impacts not covered above

- 6.38 The lpa is satisfied that there are no other planning impacts that need to be considered in determining this application.

Planning Balance

- 6.39 Given the lack of a 3 and 5-year HLS, relevant housing supply policies in the development plan are out-of-date and the weighted planning balance in Framework paragraph 14 must be applied. Planning permission should be granted unless the adverse impacts of the application significantly and demonstrably outweigh the benefits.
- 6.40 The adverse impacts of the application are very limited: there is a breach of relevant HLS policies in the ALP, but those policies are of such vintage that any breach can only be given little weight. Taking a generous approach, it might be said that the application would have some adverse visual impact in close views of the site, but this would not come close to providing a basis for a refusal.
- 6.41 Set against this, the application would:
- accord with the BENP (substantial weight), eALP (moderate weight) and the eW NDP (moderate weight);
 - make a significant contribution to meeting the lpa's substantial and long-standing HLS deficit (very substantial weight);
 - provide much-needed AH in a District where there is a long-standing shortfall of provision (very substantial weight);
 - deliver a sizeable area of commercial floorspace with all the positive economic impacts that this entails (substantial weight);
 - make a significant contribution to meeting local infrastructure requirements, including investment in the much-needed improvements to the A29 (substantial weight);
 - secure a sizeable area of public open space for the local community in perpetuity (moderate weight).
- 6.42 In the planning balance, it is plain that the adverse effects of the application do not come close to significantly and demonstrably outweighing this series of extensive benefits. Accordingly, the lpa invites the SoS to grant planning permission for the application.

7. The Case For Eastergate Parish Council

The material points are:-

INTRODUCTION

- 7.1 EPC seek to assist in the determination of the first 3 issues identified in the Pre-Inquiry Advice Note (CD 1). These are:
- (a) whether the application would accord with the BENP;
 - (b) whether the application would prejudice the preparation of the WNDP and/or whether it would accord with that Plan;
 - (c) whether the application would accord with any other relevant adopted or emerging development plan policies and the weight to be attached to such policies.
- 7.2 The correct and lawful approach to the planning balance is to decide the application in accordance with the policies of the development plan unless material considerations indicate otherwise.³² The consequence of Framework paragraph 49 being engaged is that the SoS must also consider Framework paragraph 14. Framework paragraph 14 creates a policy presumption in favour of the grant of planning permission unless the adverse consequences significantly and demonstrably outweigh the benefits (limb 1) or specific Framework policies indicate development should be restricted (limb 2).
- 7.3 In carrying out the planning balance, it is sensible to deal with limb 2 first. A breach of Framework paragraph 198 is a situation in which the Framework indicates that development should be restricted within the scope of Footnote 9 to Framework paragraph 14 and limb 2 is engaged. This is clearly the case as Footnote 9 is non-exhaustive,³³ and Framework paragraph 198 plainly directs refusal as the normal response to a breach of a NP. That goes further than some other Footnote 9 policies, such as heritage coasts, which do not³⁴. Framework paragraph 198 is clearly a situation where “*development should be restricted*” and says so in those terms. The concession by the Defendant in *Woodcock Holdings v SSCLG* [2015] EWHC 1173 (Admin) that Framework paragraph 198 does not “*give enhanced status to neighbourhood plans as compared with other statutory development plans ...*” is not determinative of the point (CD 29 paragraph 24).
- 7.4 Framework paragraph 198 does not simply re-state the statutory presumption in favour of the development plan. That position is clearly set out at Framework paragraph 196 within the same “Decision Taking” section with footnotes referencing the legislation. Framework paragraph 198 must be communicating something additional about the status of NPs as an important and, necessarily, post-Framework part of the development plan.
- 7.5 It is not the case, that Framework paragraph 14 would be “circular” in such a situation. Framework Paragraph 198 is a consideration to be taken into

³² S.38(6) Planning and Compulsory Purchase Act 2004 read with s.70(2) Town and Country Planning Act 1990.

³³ *Forest of Dean DC v SSCLG* [2016] EWHC 421 (Admin.) per Coulson J at [20] (CD 43).

³⁴ Framework paragraph 114.

account when determining how to weigh the harm flowing from a breach of NP policies in situations where the development plan may be absent, silent or out-of-date, as a recognition of the importance the Government attaches to the spatial vision of local communities articulated in the NP, as distinct from other parts of the development plan, in such a situation. The consequence of Framework paragraph 198 being engaged and breached is that the Framework paragraph 14 tilted balance in favour of permission is disengaged, and replaced by a policy presumption in favour of the “shared vision” within the NP unless material considerations outweigh that presumption.

- 7.6 As Lindblom LJ held of Footnote 9 policies in *Suffolk Coastal DC v Hopkins Homes Ltd* [2016] EWCA Civ. 168, he says³⁵: *“The purpose of the footnote, we believe, is to underscore the continuing relevance and importance of these NPPF policies where they apply. In the context of decision-taking, such policies will continue to be relevant even “where the development plan is absent, silent or relevant policies are out-of-date”. This does not mean that development plan policies that are out-of-date are rendered up-to-date by the continuing relevance of the restrictive policies to which the footnote refers. Both the restrictive policies of the NPPF, where they are relevant to a development control decision, and out-of-date policies in the development plan will continue to command such weight as the decision-maker reasonably finds they should have in the making of the decision. There is nothing illogical or difficult about this, as a matter of principle.”*
- 7.7 It is not however a “knockout blow” as the applicants characterise it. Both inherent within Framework paragraph 198 and Footnote 10 is a recognition that other material considerations may indicate that the application should be determined otherwise than in accordance with that policy presumption. Even if EPC is wrong about that, and the policy presumption operates in the reverse, EPC has gone on to perform the limb 1 balance, carefully assessing the scheme benefits and the harms and considering whether the latter significantly and demonstrably outweighs the benefits.

ACCORD OR CONFLICT WITH THE BENP

- 7.8 The application conflicts with Policy H1 and derives no support from Policy H2, and accordingly conflicts with the BENP as a whole. Policy H1 explains that the BENP seeks to deliver 200 units over the plan period, and as 158 units had already been granted planning permission the plan sought to allocate the remaining 42 units. However, Policy H1 goes further, and allocates land for 60 units at a strategic site shown on the Proposals Map.
- 7.9 Recognising that the place of NPs is not to *“promote less development than set out in the Local Plan or undermine its strategic policies”*,³⁶ the BENP notes within the reasoned justification that the 60 unit allocation is in addition to implementable planning permissions and *“any strategic allocation that may be made in the Local Plan for housing on the larger site to the south of Barnham and Eastergate”*. Whilst the reasoned justification cannot provide additional policy hurdles, it serves as an aid to interpretation of the policy:

³⁵ (CD 42 paragraph 39)

³⁶ Framework paragraph 184.

see: R(Cherkley Campaign Ltd) v Mole Valley DC [2014] EWCA Civ. 567 per Richards LJ at paragraph 21.

- 7.10 Accordingly, the strategy within this most recently adopted part of the development plan provides for 60 new dwellings over and above any committed permissions and a strategic allocation made in the eALP on land south of Barnham and Eastergate. This is to deliver the shared vision recorded within the plan as follows: *“The Plan gives local people the power to decide where new housing should go and how the villages could change. Without the Plan Arun District Council would make these decisions on behalf of the people of Barnham and Eastergate.”* and *“This entire document forms the Neighbourhood Development Plan for the area to which it relates - the villages of Barnham and Eastergate. If to any extent a policy in the Neighbourhood Development Plan conflicts with any other statement or information in the plan, the policy is to prevail.”*³⁷
- 7.11 There is no mention of any other strategic site, and certainly no mention of ad-hoc large-scale development coming forward outside the plan making process and, as acknowledged by the applicants³⁸, Policy H2, is plainly not engaged by this scheme. Accordingly, the only rational conclusion is that the application conflicts with BENP Policies H1 and H2 and therefore the development plan taken as a whole.
- 7.12 The above conclusion was also the original evidence of the applicants.³⁹ However, in an unusual turn of events, the applicants’ planning witness made a radical about-turn in oral evidence, and gave evidence that there was no conflict with the BENP. This was on the sole basis that he was persuaded of an alternative construction of the BENP, put in cross-examination to EPC’s planning witness by the applicants’ advocate. Such a fundamental change of position on such a central issue cannot but affect the weight to attach to the applicants’ planning evidence. At the very least, it means that, until mid-way through the inquiry, the balance of professional opinion was that there was conflict with the BENP. That puts to bed the suggestion made by the lpa in opening that identifying a conflict with the BENP was *“unarguable”*.
- 7.13 The applicants’ latest position that there is no conflict with the BENP because there is no BUAB policy or no specific policy restricting development on this site is wrong. There are notable parallels with the Broughton Astley Neighbourhood Plan which was the subject of consideration by the High Court in *Crane v SSCLG* [2015] EWHC 425 (Admin.) (CD 28). There, Lindblom J rejected the submission that a conflict with the NP could not be identified in a situation where it lacked BUAB policies or a policy restricting development on the appeal site (CDs 37 & 38).
- 7.14 He explained in general terms that: *“the neighbourhood plan embodies the “shared vision” of the community in Broughton Astley for their neighbourhood. It displays a comprehensive approach to planning at the neighbourhood level in the period from 2013 to 2028. It is the means by*

³⁷ Paragraphs 1.2.3-1.2.4 on page4 BENDP.

³⁸ X-Examination of Mr Redwood.

³⁹ Mr. Mills Proof of Evidence, paragraph 4.40.

which the parish council has chosen – as paragraph 185 of the NPPF puts it – “to shape and direct sustainable development in [its] area” in that period (CD 28 paragraph 41). And, in common to the BENP strategy, Lindblom J found that: “...it is in my view significant that housing development on sites other than the allocations in policy H1 is deliberately provided for in the way that it is in policy H3. Apart from “windfall” proposals coming forward under that policy, the plan does not provide for, or envisage, any housing development in excess of the 528 dwellings on the sites allocated under policy H1. Policy H3 goes no further than to allow for development “on sites of less than 5 dwellings on previously developed land”. If the intention had been to accept the development of housing on larger, unallocated sites, a policy drafted in this way would not have been included in the plan.” (CD 28 paragraph 43).

7.15 Lindblom J concluded that: *“It follows from my understanding of the relevant provisions of the neighbourhood plan that a proposal for housing on a site other than those allocated in policy H1 will only accord with the plan if it finds support in policy H3 as a “windfall” proposal, and is consistent with other relevant policies. Larger proposals for housing on unallocated sites will not accord with the plan. They will be contrary to its strategy for housing development in policies H1 and H3. They will therefore be in conflict both with the neighbourhood plan itself and with the development plan as a whole.”* (CD 28 paragraph 46).

7.16 Lindblom J made the important point, equally applicable here and to which the applicants have no real answer, that: *“...If the interpretation of the plan urged on me by [the Claimant] were right, there would have been no point in the parish council going through the exercise of selecting the sites it allocated for housing development and formulating the policies and text which support those allocations. That, I think, is beyond any sensible dispute”.* (CD 28 paragraph 48). It is therefore inescapable that there is a conflict with the BENP taken as a whole. Any other conclusion is clearly wrong (CD 28 paragraph 49).

What is the weight to attach to that conflict?

7.17 As the lpa cannot demonstrate a 5-year supply of deliverable housing sites, Framework paragraph 49 operates to render policies for the supply of housing as being not-up-to-date. The December WMS modifies that position saying that relevant policies for the supply of housing in a made NP should not be deemed to be out-of-date under Framework paragraph 49 where the lpa can demonstrate a 3-year supply of deliverable housing sites (INSP 1). EPC do not dispute the OAN, the level of completions, the extent of the shortfall or the requirement figures provided by the lpa. The only matter of contention relates to the sources of supply used in coming to an overall HLS figure.

7.18 PPG provides guidance on identifying a future supply of land which is suitable, available and achievable within the plan period. Lpas should: identify sites and broad locations with potential for development; assess their development potential, and; assess their suitability for development and the likelihood of

development coming forward (availability and achievability)⁴⁰. Aside from using this assessment as an evidence base to underpin policies in the eALP the guidance suggests that it is to be used to identify sites to go forward into development plan documents to meet OAN.

- 7.19 PPG⁴¹ states that when identifying sites and broad locations to be included within the assessment, that as wide a range as possible of potential sites for development should be identified. PPG also says that sites which have particular policy constraints should be included for the sake of comprehensiveness and that the constraints must clearly be set within the assessment. This relates to the Framework paragraph 17 core principle to proactively drive and support sustainable economic development to deliver homes. Framework paragraph 17 also says that every effort should be made to objectively identify and then meet the housing needs of the area, responding positively to wider opportunities for growth. PPG⁴² says that constraints identified such as those relating to physical and policy constraints on sites identified within the assessment may need to be revisited in the event that there are insufficient sites to meet the objectively assessed need.
- 7.20 PPG⁴³ advises on what constitutes “deliverable” i.e. *“Deliverable sites for housing could include those that are allocated for housing in the development plan and sites with planning permission (outline or full that have not been implemented) unless there is clear evidence that schemes will not be implemented within 5 years. However, planning permission or allocation in a development plan is not a prerequisite for a site being deliverable in terms of the 5-year supply. 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. If there are no significant constraints (e.g. infrastructure) to overcome such as infrastructure sites not allocated within a development plan or without planning permission can be considered capable of being delivered within a 5-year timeframe.”*
- 7.21 In November 2016, the lpa produced an updated version of its HELAA (LPA 11). This document, aims to assist in the identification of suitable sites for development to enable it to maintain an adequate supply of land to meet its OAN. In December 2016, the lpa, considered an update on the 5-year HLS, identified at that time as 2.21 years, and options for increasing the HLS. In January 2017, the lpa provided a further update in response to a request for further information from EPC (EPC 7 Table 3.2).
- 7.22 The January 2017 update outlines that the HLS is 1.92 years and is informed by sites contained within made NPs, windfalls, and HELAA sites within the BUAB. The lpa verified that this supply figure should be subject to a 10% discount to account for the level of certainty in bringing these sites forward. The lpa states that this figure amounts to 685 which includes a reduction of 10%. The figure for projected 5-year supply is confirmed as 2,827 dwellings.

⁴⁰ Reference ID: 3-001-20140306.

⁴¹ Reference ID: 3-011-20140306.

⁴² Reference ID: 3-026-20140306.

⁴³ Reference ID: 31-031-20140306.

The lpa also provides the projected gross completions as part of the West Sussex Housing Land Supply Study (April 2016). Projected gross completions between 2016/2017 and 2020/2021 totalled 2,444 dwellings.

- 7.23 There is a clear difference between the HLS in December 2016 and that in January 2017 despite only being 2 months apart (EPC 7 Tables 3.1 & 3.2). The main difference is the projected supply which, on the basis of the lpa figures, appears to have dropped by 285 dwellings over this 2-month period. The lpa has not provided sufficient information to EPC to enable the sources of projected supply to be disseminated from the supply calculations provided.

Land Availability Assessment (HELAA)

- 7.24 The HELAA aims to assess sites which could potentially contribute towards the future supply of housing. The HELAA includes sites identified within previous versions in 2010 and 2012 as well as further sites identified as a result of the Call for Sites between May and June 2016.
- 7.25 The HELAA identifies land outside of the BUAB to be a potential constraint due to conflict with eALP policies which seek to make optimal use of land within the existing settlement boundaries. However, the HELAA does acknowledge that it would not be possible to accommodate all future development including housing need within the BUAB. The HELAA refers to Framework paragraph 47 which requires lpas to identify and update annually a supply of specific deliverable sites sufficient to provide 5-years' worth of housing against their housing requirements and a supply of developable sites or broad locations for growth for housing over the longer term. Sites with planning permission should be considered deliverable until permission expires, unless there is clear evidence that schemes will not be implemented within the first 5 years reflecting the Framework definition.
- 7.26 The HELAA outlines all deliverable sites in a summary table at Appendix 1.1 – Deliverable Sites. The HELAA concludes that there are 45 (general) sites considered to be deliverable. However, some of these sites are only partly deliverable within the next 5 years. The trajectory shows that of the 2,195 units in total, 1,851 are deliverable between 2016/2017 and 2020/2021. HELAA Appendix 4.1 provides details of specific commitment sites, i.e. those with extant planning permissions. Appendix 4.2 provides a trajectory for these sites and demonstrates that out of a total of 3,641 units some 2,600 units will be delivered within the 5 years to 2021.
- 7.27 The HELAA shows that, within the next 5 years, a total of 4,451 units could be delivered from identified deliverable (general) sites and commitment sites alone. Applying a 10% discount to account for non-implementation, the HELAA can show a realistic prospect that 4,006 units can be delivered within the next 5 years. This is significantly higher than the projected supply of 2,827 units provided by the lpa in January 2017. The difference between the projected supply value provided by the lpa in January 2017 and the HELAA can be primarily attributed to the fact that the lpa have excluded all the HELAA sites located outside the BUAB (LPA 10).
- 7.28 Eighteen sites listed in HELAA Appendix 1.1 are outside the BUAB. These 18 sites, referred to as deliverable, contribute an additional 849 units within the

next 5 years. The HELAA also identifies 20 deliverable (Strategic) Sites alongside the 45 deliverable (General) Sites. Although the HELAA does state that these strategic sites are additional to the level of supply since they are being assessed through the Sustainability Appraisal process, despite demonstrating their projected potential yields and trajectory throughout the plan period, a significant number of which lie within the period 2016–2021.

Options for Boosting Short-Term Housing Supply

- 7.29 In December 2016 on the basis a HLS of 2.21-years the Ipa adopted the following options to boosting the HLS (LPA 9). These are:
- (a) Option 1 (a) - invite planning applications on sites identified as being deliverable within the HELAA where they are considered sustainable and will not prejudice the plan or infrastructure delivery;
 - (b) Option 1 (b) - invite planning applications on first phases of sites being investigated for potential strategic allocations. Planning applications would only be granted if the proposed development is able to demonstrate that it does not adversely affect the delivery of the whole allocation and that infrastructure can be delivered as a proportion of the whole allocation;
 - (c) Option 2 (b) - remove all current parish/town allocation numbers from the eALP. The Ipa would instead use the HELAA evidence to identify a target for small sites to be allocated through a Small Sites DPD (EPC 7 Appendix 3).

EPC's 5-year Housing Land Supply

- 7.30 Taking into account the requirements of Framework paragraph 17 and the guidance at Framework Footnote 11, EPC 7 Table 6.1 uses information contained within the HELAA to show a HLS of more than 3 years.

Deliverable (General Sites)

- 7.31 The HELAA states that there are 2,195 units identified as Deliverable (General). The trajectories contained within HELAA Appendix 1.2 demonstrate that 1,851 units on General Sites will be provided over the next 5 years. In EPC Table 6.1 a 10% discount has been applied to deliverable HELAA sites.

Commitment Sites

- 7.32 The HELAA states that 3,641 units will come forward as part of commitment sites from extant permissions for residential development. Of these, based on trajectories in HELAA Appendix 4.2, some 2,600 units are deliverable within the next 5 years. At EPC 7 Table 6.1 a 10% discount has been applied to commitments to cater for lapses.

Windfalls

- 7.33 Although there is no requirement to include a windfall allowance in either the 5-year HLS or housing supply trajectory, in the context of the Framework and the emphasis on boosting housing supply, the housing requirement figure for an area is not a ceiling and therefore the numbers of new dwellings provided by windfall sites can be treated as additional supply over and above that

provided by extant planning permissions and LP housing allocations. Reliance on windfalls to achieve the housing requirements of the area clearly does not provide the same level of certainty and commitment in achieving the objectively assessed need as would be secured through planned allocated sites. However, where windfalls have historically been a major component of housing supply and where there is evidence available that indicates they will continue to provide a reliable supply source, it is logical to make an allowance for them in housing supply calculations.

- 7.34 The HELAA demonstrates that the average number of windfall completions over the last 10 years have been at a rate of 75 dpa. To avoid double counting, the first 3 years of the 5-year period often do not include windfalls, as they should already be accounted for within commitment sites. However, here, the commitment sites within the HELAA do not account for sites providing fewer than 5 dwellings. Thus, the risk of double counting is limited and an assumption has been made that in accordance with past trends of windfall delivery, 75 dwellings will be completed per annum over the next 5 years. No discount has been applied to windfall figures as these already represent an average figure based on past annual trends.

Sites granted planning permission since 1st April 2016

- 7.35 Since 1 April 2016, 2 planning applications have been permitted which propose 27 units of residential development. These are not included as commitment sites within the HELAA. EPC considers that there may be other planning permissions for residential development granted since 1 April 2016, which have not been included in the lpa's January 2017 HLS. However, for the purposes of this calculation, only 2 additional sites have been identified and these 2 sites have been discounted by 10%.

Sites allocated within Made NP's

- 7.36 Here, there are a high number of made NPs. The lpa confirms that the January 2017 HLS position includes NP allocations (LPA 10). However, very few of the NP's provide a trajectory for allocated sites. EPC has reviewed the NP sites and identified those that are not included in the HELAA but have been shown to be deliverable within the 5 years to 2021 within a NP. In addition, where there are discrepancies between the number of dwellings detailed in the HELAA and the NPs the NP figures have taken precedence.

Deliverable HELAA (Strategic Sites)

- 7.37 There are a significant number of deliverable (Strategic) HELAA sites which could contribute towards the 5-year HLS. The lpa has elected to invite planning applications for the first phases of development on some of the Strategic Sites identified in the HELAA. It is likely that at least some of these strategic sites would contribute towards the 5-year HLS. However, at this stage Strategic HELAA sites have not been included in EPC 7 Table 6.1.

Conclusion on HLS

- 7.38 EPC calculates the HLS as being at least 3.01 years and as such all of the WMS criteria are met. Therefore, the housing policies within the BENP should

be given full weight in the consideration of this application as they can no longer be considered to be out-of-date. Conflict between the application and the BENP should be afforded very substantial weight. However, if it is concluded that the WMS criteria are not met there should be no change in the weight to be applied to BENP or other development plan policies i.e. the weight to attach to the conflict with out-of-date policies is substantial.

- 7.39 The above conclusion is supported by Lindblom LJ who held in *Suffolk Coastal DC v Hopkins Homes Ltd* [2016] EWCA Civ. 168 at paragraphs 46 and 47:

“We must emphasize here that the policies in paras 14 and 49 of the NPPF do not make “out-of-date” policies for the supply of housing irrelevant in the determination of a planning application or appeal⁴⁴. Nor do they prescribe how much weight should be given to such policies in the decision. Weight is, as ever, a matter for the decision-maker ... Neither of those paragraphs of the NPPF says that a development plan policy for the supply of housing that is “out-of-date” should be given no weight, or minimal weight, or, indeed, any specific amount of weight. They do not say that such a policy should simply be ignored or disapplied. That idea appears to have found favour in some of the first instance judgments where this question has arisen. It is incorrect.”

One may, of course, infer from para.49 of the NPPF that in the Government's view the weight to be given to out-of-date policies for the supply of housing will normally be less than the weight due to policies that provide fully for the requisite supply. The weight to be given to such policies is not dictated by government policy in the NPPF. Nor is it, nor could it be, fixed by the court. It will vary according to the circumstances, including, for example, the extent to which relevant policies fall short of providing for the five-year supply of housing land, the action being taken by the local planning authority to address it, or the particular purpose of a restrictive policy—such as the protection of a “green wedge” or of a gap between settlements. There will be many cases, no doubt, in which restrictive policies, whether general or specific in nature, are given sufficient weight to justify the refusal of planning permission despite their not being up-to-date under the policy in para.49 in the absence of a five-year supply of housing land. Such an outcome is clearly contemplated by government policy in the NPPF. It will always be for the decision-maker to judge, in the particular circumstances of the case in hand, how much weight should be given to conflict with policies for the supply of housing that are out-of-date. This is not a matter of law; it is a matter of planning judgment”.

- 7.40 The SoS has recently explained in the Yapton decision how a conflict with a made NP is to be weighed in balance (CD 26). Whilst the applicants have submitted 2 recent decisions where the SoS allowed appeals in breach of a NP, the Yapton decision is the most helpful (CDs 53 & 54). Yapton, whilst being very recent, was decided against the same emerging eALP and the same substantial uplift in the OAN as this application is to be. The interaction between the NP and the eALP in the Yapton case is therefore the most useful to the determination of an application in this District.

⁴⁴ Emphasis added by EPC.

- 7.41 Like the BENP, the Yapton NP has passed examination, and it also *“complies with the Framework”*.⁴⁵ Like Yapton, the BENP expressly acknowledges an additional strategic allocation, over and above its allocations, to be made through the LP making process.⁴⁶ Whilst there is not the same “promise” to revise the NP to “make” those allocations, in reality that distinction is meaningless, because there is no ability to review a NP, merely make a new one, and strategic allocations made in the LP would, in any event, supersede the NP by virtue of S38(5) Planning and Compulsory Purchase Act 2004.
- 7.42 As the BENP has in substance the same flexibility, the SoS’s conclusions are properly read across: *“He notes that Policy H1 states that “additional allocations will be made if the emerging Arun Local Plan requires such action or if the identified housing sites do not proceed”. As such he concludes that whilst the YNP is currently underpinned by an outdated OAN (IR 11.9), Policy H1 has flexibility to allow any shortfall in housing supply to be met. As such he gives significant weight to the housing policies of the YNP”*.⁴⁷
- 7.43 Having regard to Framework paragraph 198, the SoS afforded *“substantial weight”* to the conflict with the NP,⁴⁸ and accordingly found the proposal would not to comply with the social limb of sustainability.⁴⁹ The BENP was the product of extensive local engagement, with a very high endorsement at Referendum⁵⁰. In this context and the SoS’s decision in Yapton, very substantial weight should be attached to any conflict with the BENP.
- 7.44 The applicants seeks to distinguish Yapton by pointing out that, unlike Yapton, BENP has no BUAB polices. This argument goes nowhere because: either, taken as a whole, the absence of an allocation for the application site in the BENP can only mean there is a conflict with the plan as a whole (see *Crane* above), or alternatively, the agreed conflict with the saved BUAB policies of the ALP (Policies GEN 2 and GEN 3) carry significant weight in this instance because, like the BUAB policies in the Yapton Plan, they are performing the current spatial function of upholding an *“effective means to shape and direct development in the neighbourhood planning area in question”*.⁵¹ As such, whilst out-of-date, they still should carry substantial weight because they are performing a current and important spatial function, supporting the BENP in this particular location see: Suffolk Coastal DC above at paragraph 47 and the BENP plainly envisaged the boundary policies would remain, aside from the allocation in Policy H1 and the spatial allocations made via the eALP, which will result in a revision to the BUAB policies in any event.

PREJUDICE TO THE EMERGING WALBERTON NEIGHBOURHOOD PLAN

- 7.45 Following Examination, the Regulation 15 Submission Autumn 2015 Walberton Neighbourhood Plan was recommended to proceed to Referendum

⁴⁵ CD 26 DL 15.

⁴⁶ CD 7 Policy H1.

⁴⁷ CD 26 D 15.

⁴⁸ CD 26 DL 36.

⁴⁹ CD 26 DL 36.

⁵⁰ Evidence-in-Chief Mrs Chaffe.

⁵¹ CD 26 DL 16.

(CD 8). However, the lpa sought a modification to the Plan, to delete Policy VE 1, which allocates some of the application site as a LGS (CD 25). The remainder of the policies are proceeding to Referendum and should therefore carry significant weight in line with Framework paragraph 216 as they are now not subject to any unresolved objection.

- 7.46 There is conflict with the spatial vision of the 2015 version WNDP as set out within Policies HP 1 and HP 2. This is a view shared by the lpa in its proof of evidence.⁵² In particular:
- (a) Policy HP 1 explicitly prevents development “*in the gaps and countryside within the plan boundary and separating the three villages in the parish ...*”. As the application site is not within the exceptions at Schedule 7 there is an unavoidable conflict;
 - (b) Policy HP 2 allocated land to the east of the Old Police House in Fontwell for 6 dwellings on previously developed land. The application would frustrate delivery of this allocation at the planned scale;
 - (c) Policy VE 5 protects “Buildings of Special Character” by resisting their removal unless it can be demonstrated that they cannot be put to an alternative beneficial viable use. It also recommends that the Old Smithy is Locally Listed by the lpa through the eALP. The Old Smithy is proposed to be demolished⁵³. There is no evidence before the inquiry of its inability to be used for a beneficial viable use. The identification of this building through the WNDP as meeting the criteria of being a building of special character, the acceptance of that proposition by the Examiner, in spite of the applicant’s objections, means there is an unavoidable conflict with Policy VE 5.
- 7.47 Taken as a whole, the application would wholly undermine the spatial vision within the 2015 WNDP as amended by the schedule of modifications contained within the lpa’s decision statement.⁵⁴ That conflict would cause demonstrable harm to a building of special character. The only rational conclusion is that the application would conflict with the emerging WNDP as it was before the inquiry, and should attract substantial negative weight.
- 7.48 WPC has published a modified version of the WNDP and the lpa has produced a revised Decision Statement which indicates that the plan should proceed to Referendum with the exception of some of the Examiners recommendations (WPC 6 & 7). This is a common process in the making of NPs and is enabled by Paragraph 12(6) of Schedule 4B to the Town and Country Planning Act 1990. However, the Decision Statement also sets out a number of additional amendments agreed between WPC and the lpa (WPC 6). The Table at pages 15 to 23 outlines the proposed modifications associated with these discussions, although no minutes of this meeting are available. The preamble at paragraph 3.2 of the Decision Statement states that the associated Table outlines the alterations made to the draft plan under paragraph 12(6) of Schedule 4B to the 1990 Act (as applied by S38A of 2004 Act) in response to

⁵² LPA 5, paragraph 86.

⁵³ APP 6 Appendix E, paragraph.5.

⁵⁴ CD 25.

each of the Examiner's recommendations and the justification for this as well as outlining any further modifications agreed by the lpa and WPC.

- 7.49 The only provision within Schedule 4B of the 1990 Act for the lpa to make post-examination modifications to the WNDP is at Paragraph 12(6), which sets out the circumstances under which they may do so. These are:
- a) modifications that the authority consider need to be made to secure that the draft order meets the basic conditions mentioned in paragraph 8(2);
 - (b) modifications that the authority consider need to be made to secure that the draft order is compatible with the Convention rights;
 - (c) modifications that the authority consider need to be made to secure that the draft order complies with the provision made by or under sections 61E(2), 61J and 61L;
 - (d) modifications specifying a period under section 61L(2)(b) or (5); and
 - (e) modifications for the purpose of correcting errors.
- 7.50 The modifications at pages 15 to 23 of the Decision Statement do not fall within the terms of these criteria. Given the significance of the modifications, it is important that those who "*live, work or carry on business in the neighbourhood area*" have the opportunity to make representations on the latest modifications as these could have a bearing upon the application of policies within the plan. The process described in the November Decision Statement suggests that with the exception of the discussions with WPC there has been no consultation on the latest modifications. This is particularly important given that 611 responses were received by WPC during the initial consultation process, many of which related to the application site. Whilst there is an opportunity for residents to have a final say on the modifications through the Referendum, the Regulations are clear that the plan should be publicised for consultation prior to submission to the lpa.
- 7.51 The modification to Policy VE 1, removing the Fontwell Meadows LGS Designation is not an area of contention given that EPC accepts that WPC is not progressing the LGS designation.
- 7.52 A note has been added to the supporting text to Policy HP 1, which states: "*Policies HP 1 and HP 2 are to be read in conjunction with noting that the PC supports the grant of planning permission at Fontwell Meadows with the revised Dandara proposals and the transfer of 4.5 hectares of Open Public Space to the Parish. See page 23 paragraph 2.*" The note does not alter the conflict between the applicants' scheme and Policy HP 1 or Policy HP 2. This amendment is not an amendment to the wording of Policy HP 1 and it refers only to the opinion of WPC. Whilst the note confirms that WPC supports the application it does not outline that the application complies with Policy HP 1 or HP 2 of the WNDP. In *Cherkley Campaign Ltd v Mole Valley District Council* [2014] EWCA Civ. 567, the Judge held that the policy is the wording in the policy box and the text is an aid to the interpretation of that policy but cannot add extra policy tests. EPC submits that the application still conflicts with Policy HP 1 and HP 2 for the reasons set out above.
- 7.53 The note added to Policy HP 1 has not been subject to independent examination. If it is determined that this note has a significant bearing on

- how Policy HP 1 and HP 2 should be interpreted and applied, then the change would have the effect of altering the policies which have been subject to consultation and examination. The Examiner has not had the opportunity to determine whether or not the addition of the reference to the application scheme meets the basic conditions set out at Schedule 4B of the 1990 Act.
- 7.54 EPC submits that the note is merely a reference to the application and that it does not have a bearing on the policies contained within the plan. This would not impinge on the Examiner's assessment and specifically the conclusions as to whether or not the WNDP meets the basic conditions set out at Schedule 4B. The proposed amendment is an addition to the WNDP, as opposed to the removal of a draft policy which may be expected at the post examination stage e.g. as is the case in respect of the LGS designations.
- 7.55 Paragraph 15(d) of the Neighbourhood Planning (General) Regulations 2012 requires the qualifying body to submit a statement explaining how the proposed NP meets the requirements of paragraph 8 of Schedule 4B of the Town and Country Planning Act 1990. As far as EPC is aware, no such statement has been prepared and submitted relating to the latest amendments.
- 7.56 The Policy HP 1 note and other post-examination modifications do not appear to have been subject to consultation. Whilst WPC has indicated that it now supports the application on the basis of the revised scheme, there does not appear to be any evidence available to demonstrate that parishioners have had a chance to comment on this proposed post-examination amendment to the WNDP or indeed other amendments relating to the application site.
- 7.57 It is noted that the foreword to the WNDP states in part: "*Walberton Parish Council set up a steering group to do this. The steering group ensured that parishioners had a real say in the preparation of this Walberton Neighbourhood Development Plan (the Plan). It is a plan for the future of the Parish that reflects parishioners' views about what changes should occur in their area, rather than leaving such decisions to the local planning authorities – Arun District Council and the South Downs National Park Authority.*" If it is considered that the note has the effect of altering the application of Policies HP 1 and HP 2, then this would seem to be at odds with the statement that the plan reflects the parishioners' views because at this point the parishioners do not appear to have been consulted on the amendments. Whilst it may be the case that they have been consulted there is no evidence available to demonstrate this.
- 7.58 Regulation 14 of the Neighbourhood Planning (General) Regulations 2012 sets out the detailed steps that a qualifying body must take to ensure that pre-submission consultation and publicity takes place prior to the submission of a plan proposal to the lpa. These steps were undertaken by WPC and the NP Steering Group prior to submission to the Examiner and lpa, and a significant volume of responses were received in response to this consultation. Given the number of responses which referred to the application site during the NP consultation, it is reasonable to assume that a significant number of people who "*live, work or carry on business in the neighbourhood area*" may want to make representations to the recent post

examination changes and specifically the note at Policy HP 1 made by WPC. There is no evidence available to demonstrate that they have been given the opportunity to do so. These changes have not been recommended by the Examiner and have not been subject of Independent Examination.

- 7.59 It is EPC's submission that the lpa does not have the ability afforded to make modifications under Paragraph 12 (5) of Schedule 4B of the 1990 Act. Firstly, the modification to the Policy HP 1 subtext is not proposed by the lpa, it is proposed by the WPC and should therefore be subject to Regulations 14 and 15 of the Neighbourhood Planning (General) Regulations 2012. Secondly, even if it is argued that the lpa is recommending the modifications, Paragraph 12 (6) as highlighted in paragraph 7.49 above, sets out the circumstances under which they may do so.
- 7.60 EPC submits that none of these criteria apply in relation to the Policy HP 1 note referring to the application. Indeed, in the September 2016 Decision Statement, there is no objection to the Examiner's recommendations on Policy HP 1 (CD 25). The Examiner found that Policy HP 1 accorded with the basic conditions subject to modifications. None of these modifications related to making reference to the application scheme. Thus, if the lpa were altering the subtext to Policy HP 1 for the reasons outlined at Paragraph 12(6) then they would have proposed this modification in the September Decision Statement as they did so with regard to Policy VE 1 on the basis that it did not meet the basic conditions.
- 7.61 The proposed modifications that have arisen outside of and after the Examination process, do not currently comply with the Neighbourhood Planning (General) Regulations 2012. The extent to which they can be relied upon as part of the decision making process for this inquiry is questioned. Notwithstanding this point, if the SoS concludes that the modifications can be relied upon, then EPC submit that they do not alter the effect of Policy HP 1 or HP 2. On this basis the application is still in conflict with the WNDP.

Does the proposal accord with the eALP?

- 7.62 The applicants' contention that the application site is an emerging allocation in the eALP is wrong. Policy H SP1 in the eALP provides that: "*Strategic housing growth shall be accommodated as follows ..Site specific Allocations Development Plan Document for Ford and Fontwell...*". The reasoned justification provides: "*Ford and Fontwell have been identified as potential locations for housing growth in the later part of the plan period. Both these areas lack some key services and growth may enable the creation of settlements that are more sustainable. There is currently insufficient evidence to establish a quantum of housing growth in Ford and Fontwell, therefore Site Specific Development Plan Document(s) will be prepared for the Local Plan to establish if sites can be allocated to improve the sustainability of these settlements.*"
- 7.63 The eALP "Housing Trajectory" envisages that development at Fontwell would come forward after 2025.⁵⁵ Nowhere within the draft housing strategy or

⁵⁵ CD 9 page 386.

anywhere within the eALP is there mention of which site in Fontwell is envisaged. The applicants' assertion that: *"...there can be no doubt that when Members resolved to proceed with the Publication Version published in October 2014 that their agreement to development at Fontwell was on the basis of the Inquiry Site – the only site in Fontwell that had been presented to them"*⁵⁶ is a highly misleading statement. First, the map which informed the Members' workshop⁵⁷ shows at least 2 sites within Fontwell (FON3 & FON5). Second, that fact is reinforced by the notes of the meeting⁵⁸ which records that *"not all groups mentioned sites. One group specified FON5, another all sites."* Third, an attempt by a Member to include the application site within the publication version of the eALP was expressly rejected^{59 60}.

- 7.64 The lpa confirms⁶¹ that (a) no DPD has yet been adopted for Fontwell, or is even in gestation, and (b) that no main modifications have been made to the publication version of the eALP. Applying Framework paragraph 216, the weight to attach to the eALP is limited because: (a) the published plan contains no reference to the application site, there are others in the minds of Members, an attempt to add this site was rejected and, a site at Fontwell is only intended to come forward after 2025; (b) the distribution strategy is subject to a significant number of unresolved objections and (c) the plan is not at an advanced stage. However, the applicants rely upon a resolution of the Council on 17 June 2015 to consider an option of least 400 homes at Fontwell *"tested through the evidence base and SA"*. The LP Inspector expressed his significant concern about the lpa's resolution to pursue land at Fontwell (CD 50). He says: *"In my view this approach amounts to a risky pre-determination of 'the most appropriate strategy when considered against the reasonable alternatives' in catering for an OAN of 641pa. Proceeding in that way could prematurely close off other options for meeting any annualised OAN, whether 641, 758 or any other figure, and may create potential for legal challenge. Since 641pa is well short of the Hearn report figure it cannot be assumed that the above options would necessarily play the same roles (or perhaps even figure) within a spatial strategy setting out to provide for a full OAN."*
- 7.65 The applicants note that, following this "warning shot" about pre-determination, the lpa has still plumped for 400 units at Fontwell in all its preferred options to meet the new OAN in a March 2016 note.⁶² There has however been no expression by the LP Inspector as to the soundness of this strategy or whether this, still, amounts to a *"risky pre-determination"* of the distribution strategy to meet the uplifted OAN. Again, the lpa may have fallen into the same trap.
- 7.66 The applicants' characterisation of this site as an emerging strategic allocation, inevitably coming forward through the emerging LP is therefore

⁵⁶ APP 7 Rebuttal proof, paragraph 4.4.

⁵⁷ APP 8 Appendix C.

⁵⁸ APP 8 Appendix B page 6

⁵⁹ APP 8 Appendix D.

⁶⁰ CD 48.

⁶¹ X-Examination of Mr Redwood.

⁶² APP 6 Appendix A.

simply wrong. EPC submits⁶³ *“strategic suggests it is part of a strategy”*. The only sensible conclusion is that the application site is not an emerging strategic allocation in the eALP, and the application derives no material support from it. This is simply an ad-hoc application, of a strategic scale, coming forward outside the eALP process on a site which has no certainty of being allocated in the eALP⁶⁴, which serves to undermine the shared spatial vision of local people in the BENP and conflicts with the BUAB of the eALP. No material support from the eALP should weigh against a conflict with the development plan.

- 7.67 Even if it is accepted that the application site is an emerging allocation, it is subject to objections and the LP Inspector has not expressed any view on the soundness of Fontwell as accommodating housing development. The weight to attach to that material consideration as against a conflict with the BENP, in accordance with Framework paragraph 216, is very limited. In the Yapton decision, the SoS noted the unresolved objections and agreed that *“there is no certainty as to where future housing allocations will be made ...”*⁶⁵.

CONCLUSION

- 7.68 This application conflicts with central policies of the ALP and the BENP, and therefore the development plan taken as a whole. Pursuant to S38 (6), that conflict must be recorded and substantial weight must be attached to it. That position is entirely consistent with the SoS's recent practice in this District, to give effect to the shared spatial vision of local people through the NP process and articulated within Framework paragraphs 184, 185 and 198.
- 7.69 EPC acknowledges there are other material considerations in play which need to be carefully considered to determine whether the application should be determined otherwise than in accordance with the development plan. EPC acknowledge these and the weight to attach to them. However, there is also the harm flowing from conflict with the eWNDP and BUAB policies of the ALP.
- 7.70 The applicants' proposal derives no support from the eALP as it is not a draft strategic allocation, and attempts to make it into one have, so far, been met with concern from the LP Inspector. However, even if EPC is wrong the weight to attach to that emerging allocation is very limited, in light of the unresolved objections to the distribution strategy in general, the stage of preparation and the SoS's accurate conclusion in the Yapton appeal that *“...there is no certainty as to where future housing allocations will be made...”*.⁶⁶ EPC submits that the benefits of the application are significantly and demonstrably outweighed by the harm, and specific policies in the Framework indicate development should be restricted and planning permission should be refused.

⁶³ X-Examination of Mr Simpson.

⁶⁴ X-Examination of Mr. Redwood.

⁶⁵ CD 26, DL14.

⁶⁶ CD 26 DL 14.

8. The Case for Walberton Parish Council

The material points are:

- 8.1 Following discussions with the applicants and the lpa based on a revised IM, a S106 Agreement and modifications to the eWNDP, WPC and the NP Steering Group support the grant of planning permission on Fontwell Meadows (Plan 15, CD 37 & WPC 7). The lpa has made clear its intention to include the application site as a Strategic Allocation in the eALP. In these circumstances, WPC believes that if the SoS refuses the application, it would be a pyrrhic victory for parishioners and a fresh application on this site would more than likely be successful. Whilst the grant of planning permission would result in more houses on one site than residents would have wanted it would result in the transfer of some 4.5ha of open space to WPC to be retained in perpetuity and secures other substantial benefits (CD 37).

Background to the WNDP

- 8.2 Following public consultation, the WNDP was published in October 2015 and the Examiner's Report issued in July 2016 (CDs 8 & 27). Other than one point of substantial difference, the majority of the Examiner's recommendations were accepted by the lpa and WPC. As part of the public consultation, residents made clear that, although they accepted the need for further development, they opposed any large developments that would substantially alter the character of our villages. Although the Examiner's Report supported the designation of Fontwell Meadows as LGS, the lpa did not. The lpa indicated that unless the LGS allocation was deleted, the WNDP could not proceed to a Referendum (CD 34).
- 8.3 WPC could have challenged the lpa's Decision Statement. However, the facts have changed and this has 2 related consequences. As the eALP has changed, this prompted a modification to the WNDP, which in turn encouraged discussions on a compromise. WPC must act in the best interests of its residents and secure as far as is possible an outcome on this site in accordance with the views of the residents. WPC recognises that there is a need in the District for more housing and it has sought to be proactive.
- 8.4 Given the evolving situation, WPC is sure residents' wishes have been carefully identified and acted on at every stage. The purpose of the Referendum is to approve the outcomes of a legally choreographed process, one that involves not only capturing a fluid situation but also accommodating the Examiner's recommendations and the lpa. Those changes necessitated consequential modifications to the WNDP. Both actions were properly achieved under the legislation as confirmed by the revised Decision Statement and NP (WPCs 6 & 7).
- 8.5 EPC focuses on the note to Policy HP 1 but does not mention that, as the note states, it is to be read in conjunction with paragraph 4.1.2, Vision and Core Objectives. This paragraph says *"In order to achieve certainty on Fontwell Meadows, the PC has signed a section 106 agreement under which, if planning permission is given and exercised for development on Fontwell Meadows, 4.5 hectares of Open Space will be gifted by the developer to the PC and other benefits will be provided for the Parish. Although the decision*

has not yet been made and is not covered by the policies of the NP this is noted here so that the policies can be read in conjunction with the making of the decision [See policies HP 1 and HP 2].” Policies HP 1 and HP 2 are clearly targeted by the note and worded to cover a situation in which no planning decision has yet been made. This note is simply a statement of fact to reflect WPC’s position and evidence to the inquiry.

- 8.6 WPC contends that the changes embodied by the note and its reference were consequential on the rejection by the lpa of the Examiner’s recommendation. The changes allow for approximately half of the site to be Public Open Space. WPC considers that it has a clear view of local opinion as to green gaps and Public Open Space, achieved through its Parish Survey and Open Days and has imported that element of consultation into the revised NP.
- 8.7 The above is supported by considering the outcome if no change to the Plan had been made. In the absence of the note and its reference, no open space would be referenced and secured; something clearly contrary to local opinion. WPC submit that it is hard to maintain on one hand that the note has no effect at all on Plan policies and on the other that local opinion has not been considered in WPC policy making. This is contradictory to EPC’s view whereby it maintains that the BENP should be read as a whole.

Response on the WMS and EPC’s Submissions

- 8.8 EPC’s approach appears to be that the HELAA - Deliverable General Sites inside and outside the BUAB should be included in calculating whether a 3-year HLS exists. WPC submits that these sites cannot be included, given that the HELAA adopts a non-cumulative approach and although a listing in HELAA is a material consideration, it is a long way short of a grant of consent.
- 8.9 The evidence base shows that Walberton Parish currently has 875 houses. The WNDP includes an agreement for some 150 houses on the application site. Subject to the outcome of this inquiry, this would allow for a further 200 houses on the parish boundary to go ahead. Thus, including its own allocations, the WNDP is supporting applications for 210 houses, a 24% increase, and is enabling a further 200 houses, as above, a 47% increase in the parish housing stock.
- 8.10 The lpa proposes, via the HELAA, that a further 341 houses are built in the WPC area, as Deliverable General Sites, over the next 5 years as opposed to 3 years. This increase, along with what the WNDP is already accepting, adds 751 houses, 86%, to current stock. WPC suggests that for a rural parish this cannot be a practically sustainable figure and timescale. It is unlikely that all relevant infrastructure, facilities and services used now by its parishioners have the requisite 46% spare capacity.
- 8.11 Whereas a developer’s contribution to expanding for example social care and medical services or pre-school, primary and secondary schools, or transport would normally be acceptable this is unworkable over a period as short as 3 or 5 years since. Without question, physical implementation by the various agencies involved will be necessary.

- 8.12 EPC proposes that the HELAA Deliverable General Sites inside and outside the BUAB be included in the WMS 3-year HLS calculation. Conversely, WPC believes that inclusion of sites that have not been promoted in a NP is contrary to the concept of Localism. Indeed, WPC had believed that it was exactly this point, i.e. the resolution for the grant of permission on a site not in its NP, on which the EPC case against the application was predicated.
- 8.13 If the sites for the 86% housing stock increase over 5 years in this Parish cannot evidentially be justified as sustainable, whether ranked sequentially or taken as an indivisible whole, then the LP Inspector may very well question the allocation approach that the lpa has adopted for this and other parishes. This may lead the LP Inspector to query the entirety of the lpa's parish allocation procedure. WPC does not accept that the HELAA figures for Deliverable General Sites can usefully be included for the purpose of meeting the WMS conditions without undermining the integrity of the planning process.

9. The Cases for Interested Persons

The material points are:

- 9.1 *Mr. N Smith (IP 1)*. In 1997 a proposal here for a large scale residential development was rejected by the SoS⁶⁷ on the grounds of its scale. The current application would quadruple the size of the village and build in the gap between Eastergate and Walberton and should be refused for the same reason. The actions of the lpa, the evidence it has produced and the potential designation of the site as a Strategic Allocation suggests that it has pre-determined this application and it appears hopeless to fight it.
- 9.2 In terms of drainage, health and education facilities, Fontwell cannot support a development of this scale. Housing development should be limited to a more sympathetic sustainable level. Fontwell is home to a number of vulnerable adults who are content with the village at its current scale. This development would introduce a significant number of teenagers to the area who may not understand or know how to relate to these groups.
- 9.3 *Mr. Truin (IP2)*. The Government's offer of Localism to local residents of Barnham and Eastergate to shape our communities and create a document that would form a key part of the development plan was taken up. This was done in consultation with residents and the plan was backed by an overwhelming vote. EPC had precisely defined where it found development acceptable and implicitly, where it was not.
- 9.4 Following the making of the plan, the BENP Plan Team went further. Having identified a specific site in Policy H1 it met with a prospective developer. A site layout that accommodated the developer's need and the requirements of the BENP was devised. Residents understand the locality; they live there. The bi-partite defence of the 2 NPs, by Barnham and Eastergate and Walberton, against this speculative development gave residents a chance to fight for the vision and Localism.
- 9.5 The application is unsustainable, primarily because of its location and unsupportive infrastructure. The appellants' evidence does not convince residents that it takes only 10-15 minutes to walk to Barnham Station from the site. Bing Maps confirms that journey at 42 minutes and Google Maps at 45 minutes along footpaths adjoining busy main roads where traffic travels at 60 mph. Most people will drive it as they will to supermarkets in Chichester, Littlehampton and Bognor. They will not be strolling to the shop in Barnham or the Surgery in Eastergate or walking to a primary school. The absence of pavements and well-lit roads on almost every route will make cars the only way to travel, contributing even more traffic onto our clogging local roads.
- 9.6 Members of the BENP team met with the applicants and were presented with a fait accompli. This is because WPC, who are without a made NP, had accepted developer incentives and signed up to a done deal that beggared Eastergate. Whilst various incentives were suggested that might influence

⁶⁷ APP/C3810/A/95/260308.

EPC's view of the application there was no agreement to follow Walberton's understandable but unfortunate lead.

- 9.7 The BENP team does not support the new IM. It is a bad plan for the residents of Eastergate Parish, both current and future, because it disproportionately absorbs many of the buildings displaced by the new Walberton open space and it does not fit in with the aspirations of the BENP. Similarly it is a bad plan for the new residents of Fontwell in Walberton Parish, because the LGS has been translated into an anti-local demarcation zone between the current settlement and their apparently unwelcome new fellow residents. There is no real attempt to build a community, just mitigation to avoid a worse option.
- 9.8 The IM agreed between the applicants and WPC is only for outline planning permission. Any amended site plan needs to be put out for public viewing and consultation. This is because WPC's newly acquired green space, the GTR building and the road accesses are fixed elements. The design is unable to deliver similar housing densities on both parishes unless a similar commitment to open space is incorporated in the Eastergate section. This is a material change and has a major negative effect on the scheme.
- 9.9 The open space may make a positive contribution to the character of the existing settlement at Fontwell, as perceived by its current residents, but it undermines the character of the new dwellings by their exclusion. The applicants contend that NPs are not able to have legal weight over potential, so called strategic developments in Eastergate Parish, if they would amount to more than the current largest ADC's Parish allocation of 300 dwellings. However, the BENP is actually precluding a development of up to say, 299 dwellings, on Eastergate land that in itself does not have the capacity to be a strategic site. This number assumes that WPC do accept at least some housing and densities are consistent with the wider area. That fits perfectly with the strategy of the BENP.
- 9.10 *Mr. Bell (IP 3).* The application constitutes pre-determination of potential strategic housing locations within the eALP and allows for a refusal on the grounds of prematurity. When the application was originally considered, the Fontwell site was recorded as having potential to be considered as a suitable location for strategic housing as part of a separate DPD after the eALP had been adopted. Now, it appears that the eALP will clearly identify Fontwell as a potential strategic location that will need equal comparative evaluation through the Sustainability Appraisal (SA) process to determine its suitability. This increases the risk of pre-determination of the outcome of that SA by allowing the application in isolation.
- 9.11 The circumstances here match the view expressed at paragraph 63 of the judgment in *Truro City Council v Cornwall City Council* 120131 EWHC 2525 (Admin): *"It is quite impossible to divorce the issue of prematurity from the local plan process: after all, the impugned decision is premature to what? The essence of a successful claim of prematurity is that the development proposed predetermines and pre-empt's a decision which ought to be taken in the Development Plan process by reason of its scale, location and/or nature or that there is a real risk that it might do so."*

- 9.12 The application is an attempt to gain approval for a large development, at a location with poor sustainability and a high risk of poor future settlement sustainability, without the proper scrutiny that would be applied, and then independently examined, as part of the eALP. The lpa has already been shown to be very weak regarding the soundness of the sustainability appraisal, within the eALP.
- 9.13 To apply the presumption in favour of sustainable development it must first be established that the proposal is sustainable. Here, this has not been properly established. The sustainability of Fontwell has been assessed within the Arun Settlement Sustainability Study (ASSS) (2007) and by the SA within the eALP. Both studies conclude that Fontwell was unsatisfactory for large scale development. Indeed consultation responses on the application included over 30 adverse comments about its sustainability.
- 9.14 There are many sustainability factors that do not have completely satisfactory solutions, e.g. cycleway access to Eastergate / Aldingbourne / Ormiston schools, access to shopping and leisure services by sustainable means, access to employment opportunities in Chichester and Arundel by sustainable means and the absence of a long term commitment to the special bus service and the consequences of the planned reduction in bus frequency to Chichester and Arundel. These factors lead to the substantial risk that most household journeys will be made by car. This factor was sufficient for an Inspector to confirm the lpa's refusal of the Woodgate application on sustainability grounds⁶⁸.
- 9.15 The ASSS confirms that Fontwell has poorer sustainability than Westergate/Woodgate. PPG⁶⁹ identifies what circumstances might it be justifiable to refuse planning permission on the grounds of prematurity. These are: *"Annex 1 of the Framework explains how weight may be given to policies in emerging plans. However, in the context of the Framework and in particular the presumption in favour of sustainable development arguments that an application is premature are unlikely to justify a refusal of planning permission other than where it is clear that the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, taking the policies in the Framework and any other material considerations into account. Such circumstances are likely, but not exclusively, to be limited to situations where both: a) the development proposed is so substantial, or its cumulative effect would be so significant, that to grant permission would undermine the plan-making process by predetermining decisions about the scale, location or phasing of new development that are central to an emerging Local Plan or Neighbourhood Planning; and b) the emerging plan is at an advanced stage but is not yet formally part of the development plan for the area. Refusal of planning permission on grounds of prematurity will seldom be justified where a draft Local Plan has yet to be submitted for examination, or in the case of a Neighbourhood Plan, before the end of the local planning authority publicity period. Where planning permission is refused on grounds of prematurity, the local planning authority will need to*

⁶⁸ APP/C3810/N11/2163208

⁶⁹ 014 Reference ID: 21b-014-20140306

indicate clearly how the grant of permission for the development concerned would prejudice the outcome of the plan-making process.” All the required grounds for a refusal of planning permission as set out above are satisfied in this case.

- 9.16 *Mrs. Wallsgrove.* Development of this scale would erode the gap between Fontwell and Eastergate. If houses are to be developed, the scale of the development should be reduced to be in sympathy with this small village.

Written Representations following the Call-In

- 9.17 Written representations were received from 14 individuals and organisations. These included a final response from Highways England and a CIL Justification Statement from West Sussex County Council (CD 49).
- 9.18 The comments/concerns reiterate those made at the time the application particularly in relation to the potential adverse effects to scheme would have on: highway safety and congestion on the local and strategic road network; flora and fauna, particularly protected species including the Barbastelle Bat; the character and appearance of the area by eroding the open gap between settlements; potential archaeological remains; water quality and flooding.
- 9.19 Concern is expressed regarding the sustainability of the site and the availability of public transport and educational and medical services to meet the demands of new residents. Several express their concern that allowing the application would undermine the aims and objectives of the BENP and the WNDP. Doubt is expressed over the Ipa's decision not to require an Environmental Statement as part of the planning application.
- 9.20 The Environmental Health Officer (EHO) reiterates concerns regarding the impact of noise from activities at Fontwell Racecourse, particularly events on the car park fronting Fontwell Avenue. The EHO recommends that the application is refused until potential noise impacts have been assessed and mitigation measures agreed.

Written Representations at the time of the Application

- 9.21 The Planning Officer's report to Development Control Committee recorded that 183 letters of objection from 123 properties and 4 letters of support had been received (CD 24 page 58). Concerns relate to:
- a lack of sustainability in terms of the site's location and the ability of future residents to access jobs and services;
 - an adverse impact additional traffic would have on safety and congestion on the strategic and local road network;
 - an adverse impact the proposal would have on ground water supplies and the potential for flooding;
 - an adverse effect on local flora and fauna;
 - an adverse effect on the rural setting of surrounding settlements and the South Downs National Park through the scale of the development and a loss of open, agricultural land;
 - concern that existing local infrastructure/services are under pressure and extra demand would exacerbate this;

- noise from the light industrial development would adversely affect existing and future residents; and
- future residents would be adversely affected by noise from events at Fontwell Racecourse.

9.22 Supporting representations identify GTR as a good neighbour and agreement in principle to the proposal subject to conditions regarding drainage, sustainability, landscaping/ecology and infrastructure.

Consultation Responses

9.23 EPC and Slindon Parish Councils objected citing traffic, environmental and infrastructure concerns. Other responses included:

- Natural England – referred to notifications by local residents regarding the value of the site's flora and fauna;
- Portsmouth Water – no objection in principle subject to imposition of planning conditions to prevent pollution of the aquifer;
- Southern Water – no objection subject to the imposition of planning conditions;
- Environment Agency – no objection subject to the imposition of planning conditions;
- Highways England – no objection subject to the imposition of planning conditions;
- National Trust – drew attention to potential value of site as a feeding route for breeding Barbastelle bats;
- West Sussex County Council (WSCC) - no objections subject to the imposition of planning conditions and infrastructure contributions;
- Sussex Wildlife Trust – noted results of ecological surveys;
- ADC Ecologist – general comment;
- ADC Economic Development – welcomes continued growth of local firm;
- ADC Leisure Services – financial contributions;
- ADC Engineers – comments regarding protection of ground water;
- ADC Archaeology – likely to be limited archaeological interest, suggests an evaluation condition;
- ADC Aboriculturalist – no objection subject to the imposition of planning conditions;
- ADC Environmental Health Officer - objects given the risk of disturbance from events at Fontwell Racecourse;
- ADC Housing – no objection – affordable housing schedule agreed
- Sussex Police – sought financial contribution towards the provision, maintenance and operation of Police infrastructure.

10. Conditions & S106 Unilateral Undertakings

(CD 19 contains the suggested conditions discussed at the inquiry.)

Conditions

- 10.1 SCs 1 and 2 relate to the timing for the submission of reserved matters and the implementation of the permission. SC1 requires reserved matters to be submitted within 2 years of the date of permission whereas the model condition specifies 3 years. SC 2 requires that the development is begun either before the expiration of 3 years from the date of permission or before the expiration of 2 years from the approval of the last of the reserved matters. The model condition requires that development is begun either before the expiration of 5 years from the date of permission or before the expiration of 2 years from the approval of the last of the reserved matters. The lpa seek a shorter period for implementation and the submission of reserved matter to reflect the shortage of housing land within the District.
- 10.2 In line with PPG⁷⁰ and to provide certainty, SC 3 lists the plans for which approval is sought now. SC 4 provides for the submission of a phasing plan and the identification of the curtilage of the proposed commercial area. SC 5 provides for the submission of details of external finishing materials before the start of each phase. SC 6 provides for the submission of a Design Code Masterplan. Earlier drafts of these conditions included a requirement for the submitted details to include such matters as: details of doors and windows; depth of reveals; sills and lintels; brick detailing/bonding and rain water goods. Following a query as to whether this requirement was unnecessarily prescriptive, the lpa revised the condition and suggested the inclusion of an “informative” that indicated that the submission of such details was an “expectation”.
- 10.3 SCs 7 and 8 provide for the submission of hard and soft landscape details, including details of trees/hedgerows to be retained for each phase and the details of protection measures for those trees/hedgerows to be retained. SCs 9, 10, 11, 12 and 13 relate to surface and foul water drainage and measures to protect existing ground water resources. SC 14 provides for the submission of an ecological enhancement scheme. SC 15 provides for the submission of a Construction and Traffic Management Plan to mitigate the impact of construction traffic and construction activity.
- 10.4 SC 16 is a suite of requirements relating to the proposed commercial area, identified as part of the Phasing Plan required by SC 4. To mitigate the impact of this part of the development the condition controls: the timing of commercial traffic movements; deliveries to and from the site; external storage; drainage; external lighting and provides for the mitigation of noise. SC 17 provides for the submission of a landscape management plan. SC 18 provides the provision and maintenance of the proposed public open space.

⁷⁰ ID 21a-022-20140306

SC 19 restricts the period when ground and vegetation clearance can take place so as to mitigate the impact on nesting birds.

- 10.5 SC 20 seeks to mitigate the impact of the development on energy use. SC 21 provides for a programme of archaeological investigations. SC 22 provides for the off-site highway improvements to the A27/A29 roundabout to be implemented before construction starts. SCs 23 and 24 provide for the submission of a travel plan and the submission of a Non-Motorised Users Audit. SC 25 provides for the submission of details and provision of an emergency vehicular access onto Arundel Road.
- 10.6 As part of the discussion on planning conditions attention was drawn to PPG on the drafting and ordering of conditions. Submissions were made that SCs 9, 11, 12, 14, 15, 21, 22 and 25⁷¹ do not comply with national guidance on conditions in terms of their enforceability and precision (IP 4). It is highlighted that an important element of enforceability is the ability to record whether a condition has been discharged. It is noted that applications for the discharge of pre-commencement conditions come early in the development process. However, it is suggested that if they are discharged without separately enumerated paragraphs it is impossible to record that the non-precommencement elements have not been discharged. On precision, the concern is that without separately enumerated paragraphs in conditions where the “when” element is not a single moment in time but 2 more widely separated moments it is impossible to precisely determine and record compliance for each element of the condition.

Section 106 Agreement

- 10.7 Copies of the S106 Agreement between the landowners, the Ipa, WSCC and WPC are contained at CD 37. The applicant, WSCC and the Ipa submitted CIL compliance/justification statements (CDs 49, 52 & 55).

Education

- 10.8 WSCC identify that local primary, secondary and sixth-form schools would be over capacity. As the exact housing mix of the scheme is unknown a formula has been inserted to ensure that the school infrastructure contribution can be calculated at a later stage. The primary school contribution would be used towards a half a form entry expansion at the Aldingbourne, Eastergate or Walberton and Binstead schools. The secondary and sixth-form education contributions would be used for the expansion of either the Ormiston or St Philip Howard RC secondary schools. WSCC confirms that no more than 5 planning obligations to provide for these specific schemes have been entered into.

Highways and Transportation

- 10.9 Off-site highway works include provision for the signalisation of the Fontwell Roundabout and a contribution of £5,000 per dwelling (minus the costs of the

⁷¹ The conditions contained in Annex C have been reordered and renumbered as 10 (9), 14 (11), 15 (12), 17 (14), 19 (15), 23 (21), 24 (22) & 27 (25). The number in brackets relates to the list in CD 19.

Fontwell roundabout signalisation) towards the implementation of the A29 improvement scheme.

10.10 The Agreement provides for the provision of:

- the residential access onto Fontwell Avenue and the commercial access onto Arundel Road;
- a bus service schedule to provide links to Barnham Station and local schools will be agreed with WSCC;
- the sum of £180,000 would be paid to WPC for the provision of a cycle path from the development to the existing cycle path at Walberton Green or for other improvements for cyclists.

WSCC has confirmed that no more than 5 planning obligations to provide for these specific schemes have been entered into.

Fire Service

10.11 The application site falls within the southern service division of the West Sussex Fire Service. New development places additional demands on the existing service. As the exact housing mix of the scheme is not known a formula has been inserted to ensure that the Fire Service infrastructure contribution can be calculated at a later stage. The contribution would be used towards the redevelopment or relocation of fire stations, vehicles and equipment in the southern service area and the installation of up to 7 fire hydrants on the application site.

Libraries

10.12 In general library provision is provided for by a main library in larger town centres. Bognor Regis is the nearest library to the application site. Based on a space standards promoted by the International Federation of Library Associations and Institutions the Bognor Regis library requires to be expanded to meet the extra demand. As the exact housing mix of the scheme is not known a formulae has been inserted to ensure that the library infrastructure contribution can be calculated at a later stage. The contribution would be used for the provision of library facilities within a community facility in the vicinity of the land in the Bognor or Littlehampton areas. WSCC has confirmed that no more than 5 planning obligations to provide for these specific schemes have been entered into.

Affordable Housing

10.13 Schedule 2 of the S106 Agreement provides for the AH and the transfer to a Registered Provider.

Public Open Space and Recreational Provision.

10.14 The Agreement provides for:

- a payment of £16,426 towards the maintenance of the 3G artificial turf pitches at Arun Leisure Centre;
- a communities building with an internal floor area of 5,000 sq. m and or community asset retail uses to be delivered as part of an Other Public Open Space Delivery Plan to be agreed with the lpa;

- a payment of £139,163 to be paid to ADC towards upgrading the Bramber Studio at Arun Leisure Centre or a reduced amount proportionate to the amount of Class D1/D2 floorspace provided as part of the development. This includes;
- a payment of £119,279 to ADC towards upgrading and improving wet side changing rooms at Arun Leisure Centre;
- the sum of £80,433 to be used for funding and providing a Multiple Use Games Area within the WPC area;
- a payment of £35,000 to WPC for the resurfacing of the Walberton Play Area;
- a payment of £33,617 to WPC towards the provision of a path around the perimeter of the Walberton Playing Field;
- a public open space delivery plan to be agreed with WPC, to provide and lay out the WPC open space and to transfer the open space to WPC including a commuted sum for maintenance .

Community Services

10.15 The payment of:

- £70,000 towards the provision mobile IT kit, speed awareness kits and towards the re-provision of Littlehampton Police Station. CD 55 Appendix A1.7 provides a detailed justification by Sussex Police for the principal of a contribution. Whilst the Sussex Police request was originally for £109,714 the sum subsequently agreed is £70,000 (LPA 3);
- £250,000 to be used towards the recruitment of one whole time equivalent GP and associate staff and redesign of the surgery layout to create additional consulting rooms primarily but not exclusively at Eastergate Croft Surgery. ADC's Infrastructure Delivery Plan January 2015, which the Ipa confirmed was not adopted and is to be updated makes reference to: *"...a need for secondary and community healthcare services throughout the Plan period but that it is unclear what exactly will be necessary although it will likely need to be funded through the NHS and CIL"*. The applicants indicate that the inclusion of a sum within the S106 Agreement is based on discussions with the Croft Surgery, which has plans for a surgery extension, and the Health Authority.

11. Inspector's Conclusions

The numbers in [] brackets refer to earlier paragraphs in this report or relevant documents.

11.1 The main considerations remain unchanged from those identified in the Pre-Inquiry Note [1.4]. These are:

- whether the proposal would accord with the BENP;
- whether the proposal would prejudice the preparation of the WNDP and/or whether it would accord with that plan;
- whether the proposal would accord with any other relevant adopted or emerging development plan policies and the weight to be attached to such policies;
- the need for housing and employment sites in Arun District and the supply of deliverable sites to meet those needs;
- the effect of the proposal on the character and appearance of the area, including any effects on the South Downs National Park;
- the effect of the traffic generated by the proposal on highway safety and traffic conditions;
- whether the proposal would maximise sustainable transport solutions;
- whether the proposal would provide satisfactory living conditions for future residents, having regard, amongst other matters, to the proximity of events at Fontwell Park;
- the effect of the proposal on biodiversity;
- whether the proposal would appropriately contribute to the provision of infrastructure requirements directly related to the proposed development;
- any significant social, economic or environmental impacts not covered above.

11.2 The first 3 considerations are dealt with last.

The need for housing and employment sites in Arun District and the supply of deliverable sites to meet those needs

11.3 The August 2016 SoCG records that the lpa does not have a 5-year HLS [CD 5 page 12]. Regarding economic development, the August 2016 SoCG notes that economic development is not a matter of contention between the parties. These positions remain unchanged.

11.4 The publication of the WMS on Neighbourhood Planning sets out a change to policy regarding the circumstances under which relevant policies for the supply of housing within NPs are deemed to be out-of-date where there is a lack of a HLS. The WMS says that relevant policies for the supply of housing in a made NP should not be deemed to be out-of-date under Framework paragraph 49 where, amongst other things, the lpa can demonstrate a 3-year supply of deliverable housing sites [INSP 1].

11.5 As of January 2017, EPC submits that the HLS stands at 3.01-years [7.39 & EPC 7]. The lpa, working to a base date of 31 March 2016, indicates that the HLS stands at 1.92-years [6.20, LPA 9, 10 & 11]. The appellants support the contention that a 3-year HLS does not exist [5.17–5.38].

- 11.6 Given the difference in base dates, it is not a simple matter of comparing the EPC and lpa HLS figures. In adopting a base date of March 2016, the lpa has produced something akin to an Annual Monitoring Report. In adopting a January 2017 base date and including housing data for the period March to January, EPC has produced what is effectively an Interim 5-Year HLS calculation. Whilst PPG guidance does not preclude updates of the AMR, it does indicate that the basis on which the update exercise is done should be clear, full and robust. Here, whilst EPC's interim position does include some planning permissions since March 2016 it is not clear to me that it is a full exercise comparable with the AMR approach in that it also includes an assessment of losses during the same period [6.30]. In these circumstances, I consider EPC's HLS position needs to be treated with caution.
- 11.7 Taking out the double-counting of units [5.32], sites not within the ADC area [5.31 & 6.34], discounting the permissions included since March 2016 and discounting the Yapton sites which have been and currently are the subject of appeals [5.29], would reduce the number of housing units by some 290 and reduce the HLS to around 2.8-years. Thus, even before considering whether it is appropriate to include HELAA sites located outside the BUAB within the assessment, the position is that the lpa cannot show a 3-year HLS. As a matter of principle and given the potential conflict with extant planning policy, I agree with the lpa and the applicants that sites outside the BUAB, in particular those sites covered by made NPs cannot at this stage be considered as deliverable within the terms of Framework and PPG advice, [5.27 & 6.31]. This would remove a substantial number of units from the potential supply reducing the HLS to below 2-years [5.28].
- 11.8 In light of the above, I consider that the lpa cannot show either a 5 or 3-year HLS as required by the Framework and the WMS. Accordingly, in undertaking the planning balance, the provisions of Framework paragraph 49 apply i.e. *"relevant policies for the supply of housing should not be considered up-to-date..."*
- The effect of the proposal on the character and appearance of the area, including any effects on the South Downs National Park*
- 11.9 The August 2015 SoCG, based on an IM that showed a significantly smaller amount of public open space in the southern part of the site [Plan 7], records that the effect on the landscape character and visual amenity is not a matter of contention between the parties [5.63].
- 11.10 The application was accompanied by a comprehensive and robust Landscape and Visual Appraisal (LVA) and the applicants' evidence fully addresses the changes to the IM. The site is not a valued landscape (Framework paragraph 109) and is not an international, national or locally designated landscape (Framework paragraph 113). The site is located on the fringe of the built-up area with residential development on its northern and southern boundaries, scattered development on the eastern edge and Fontwell Racecourse to the west. In landscape and visual amenity terms, I agree with the LVA conclusion that the site is of medium value.
- 11.11 During the construction period and establishment of the landscape structure, the scheme would have a moderate adverse effect on the landscape

character of the site and the wider local Landscape Character Type 16 - Fontwell-Eastergate Mosaic mainly through the loss of open land. Once the landscape structure of the development has established, the local and wider landscape impact would be neutral. During construction and establishment of the landscape structure there would, in terms of visual impact, be slight to substantial effects to short distance views. However, once landscaping is established the visual impact would be neutral. The site is divorced from the South Downs National Park by urban development. In this context, the landscape and visual impact of the development would not be significant and would be neutral [5.64-5.67; 6.35].

- 11.12 Whilst residents would experience a change to the character and appearance of the area, the landscape and visual impact of the application would not be materially adverse and would conserve the landscape and scenic beauty of the South Downs National Park.

The effect of the traffic generated by the proposal on highway safety and traffic conditions.

- 11.13 The application was accompanied by a robust Transport Assessment (TA), which concludes that there would be no unacceptable highway effects. The August 2016 SoCG records that it is common ground that following the delivery of identified mitigation measures traffic generated by the scheme would not result in a severe residual impact [6.34, CD 5 page 19]. I have no reason to disagree with these conclusions. WSCC as Highway Authority has no objection subject to the implementation of highway mitigation including signalisation of the A27/A29 roundabout and a financial contribution towards implementation of the A29 Improvement Scheme. Both mitigation schemes are included within the S106 Agreement [10.9]. Works to the A27/A29 roundabout is also the subject of a suggested planning condition that provides that no part of the development is to be occupied before completion of the approved roundabout improvement works [Annex C, SC No. 25; 5.72].

Whether the proposal would maximise sustainable transport solutions.

- 11.14 Whilst the overarching objective of the Framework is to maximise the use of sustainable transport solutions, it recognises that, "*different policies and measures will be required in different communities and opportunities to maximise sustainable transport solutions will vary from urban to rural areas*". Similarly Framework paragraph 32, 2nd bullet point recognises that account should be had to whether "*opportunities for sustainable transport modes have been taken up depending on the nature and location of the site.*"
- 11.15 I have no reason to disagree with the parties that Fontwell is a sustainable location for development [5.72 & 6.30]. Thus, it is a question of whether the proposal, given the nature and location of the site, has taken up the opportunities for sustainable transport modes and if so have they reduced the need for major transport infrastructure? This is a rural area where, in my view, it is a first principle that such sites will not minimise the need to travel and make maximum use of sustainable transport modes to the same extent as a town centre or edge-of-centre site would. In this context, the delivery of: a new bus service linking the site to both Barnham Station and the local

schools; a new cycle path from the site to the existing cycle path at Walberton Green or other cycle improvements and a new footpath around the perimeter of Walberton Playing Field would, given the nature of the development and its location, maximise sustainable transport solutions [CD 49, section 6.1-2 & CD 37]. These improvements are in addition to the linkages that would integrate the application site and its residents with Fontwell. The proposal does not generate a need for major transport infrastructure.

Whether the proposal would provide satisfactory living conditions for future residents, having regard, amongst other matters, to the proximity of events at Fontwell Park.

- 11.16 There are 2 matters to be addressed under this topic. These are (a) the effect of the proposed commercial uses and (b) the proximity of the site to Fontwell Racecourse. I deal first with the proposed commercial uses. Whilst the unit for GTR would be located in the north-east corner of the site, the location of the other commercial units have yet to be determined [Plan 15]. Given the proposal is in outline, the provision of adequate separation between the proposed unit for GTR, the other commercial units and nearby dwellings are matters that could be addressed as part of a reserved matters submission. The proposed conditions include several to ensure that the operation of the various commercial/retail units in terms of operating hours, visual impact and noise would be controlled to ensure that their effect on residents' living conditions were acceptably mitigated.
- 11.17 Turning to the impact of the operation of Fontwell Racecourse. On the evidence before me I have no reason to conclude that the racing activities associated with the course would have an adverse effect on prospective residents' living conditions [CD 24 page 78]. The Racecourse hosts other activities that are ancillary to its main function and which fall into 2 categories. The first category is those contained within the main buildings (weddings or conferences) where any noise would generally be contained within the building envelope and be a significant distance away from the application site. In this context these types of activities would not materially affect the living conditions of prospective residents. The second category is those activities that are temporary in nature or one-off events including car boot sales, fireworks displays or circuses. These are events common to many open spaces across the country in close proximity to existing housing and would not materially affect future residents.
- 11.18 The one-off event that has caused concern was a Monster Truck Rally. Whilst there is the potential for significant noise disturbance from such an event, given the external area is not floodlit it is not something that could take place late into the evening which would be the most sensitive time in respect of noise disturbance. PPG⁷² identifies the factors that influence whether or not noise should be treated as a concern from a planning perspective. This includes taking into account non-continuous sources of noise, the number of noise events, and the frequency and pattern of occurrence of the noise. Thus

⁷² Paragraph 006, Ref ID: 30-006-20141224

whilst there would be noise issues for prospective residents from one-off activities of this nature, given their limited duration it would not, on its own, be a reason to dismiss the application.

The effect of the proposal on biodiversity;

- 11.19 The applicants have carried appropriate and robust assessments of the potential impact of the development on the local ecology and biodiversity. The application would not affect the conservation status of any international, national and non-statutory designated site [5.74]. The habitats identified are of no more than site or local level ecological value [5.75]. The key habitat including the majority of the hedgerows, mature trees and areas of broadleaved woodland would mostly be retained; all TPO trees would be retained. Loss of habitats through the development would result in a minor negative effect to receptors of local level importance. However, the overall mitigation package comprising the creation and long term management of: species rich grassland, species rich neutral grassland, new hedgerows/areas of native species scrub planting, new native species trees, wetland habitats in drainage swales would provide minor positive effects to biodiversity.
- 11.20 In terms of fauna, the assessments do not identify populations of great crested newts, dormice, and badger or bat roosts [5.77]. The breeding bird survey assemblage identified is common and the majority of the species would adapt to residential situations. The proposed mitigation would provide minor positive effects to breeding birds.
- 11.21 In terms of bat activity, the surveys indicate that the majority activity was identified along hedgerows and the main foraging areas/commuting routes were along the eastern and western site boundaries [5.78]. Mitigation for the removal of short lengths of hedgerows would be provided and a sensitive lighting scheme could be used throughout the development. Particular concern was identified about the potential impact of the development on the foraging areas and commuting routes used by the Barbastelle Bat colonies at the Slindon/Goodwood Estates. Evidence from surveys in 2015 and 2016 indicate very limited Barbastelle Bat activity associated with the site. Moreover, studies of the Slindon/Goodwood Estates Barbastelle Bat colonies confirm that the site is not used as a foraging resource or commuting area. It is clear that the site does not provide a significant resource for local populations of or the Slindon/Goodwood colonies of the Barbastelle bat and any impact would be negligible [5.79].
- 11.22 The proposed scheme would retain the majority of primary habitats of ecological interest and where there would be loss, mitigation would ensure no material loss to biodiversity. The proposal would not have an unacceptable effect on local biodiversity [5.82 & 6.37].

Whether the proposal would appropriately contribute to the provision of infrastructure requirements directly related to the proposed development;

- 11.23 The S106 Agreement obligations have been reviewed against the requirements of Framework paragraph 204, CIL Regulations 122/123 and the submissions made by the applicants, the lpa and WSCC [CDs 49, 52 & 55]. All the obligations, bar the NHS contribution, are necessary to make the

development acceptable in planning terms, directly related to the development and fair and reasonably related in scale and kind to the development. Accordingly, the S106 Agreement is consistent with the guidance at Framework paragraph 204 and Regulations 122/123 of the CIL Regulations and where appropriate, I have attached weight to it in coming to my conclusion.

- 11.24 Very limited information has been provided in relation to the need for the NHS contribution or how it has been calculated. In these circumstances and having regard to context provided by the Infrastructure Delivery Plan 2015, which is the latest information provided, the justification provide for the NHS contribution has not been substantiated and as such fails to satisfy the guidance at Framework paragraph 204 and Regulations 122/123 of the CIL Regulations [10.15]. Accordingly, I have not attached weight to this part of the S106 Agreement in coming to my conclusion.
- 11.25 In light of the above, the proposal would appropriately contribute to the provision of infrastructure requirements directly related to it.

Whether the proposal would prejudice the preparation of the WNDP and/or whether it would accord with that plan.

Prejudice to Preparation

- 11.26 Following examination of the draft WNDP – October 2015 version and an objection by the lpa, WPC revised its NP to remove reference to the LGS designation at Fontwell [4.15, 4.16 & 8.3]. A Post-Examination version of the eNP was published after the close of the inquiry and the lpa confirms that this version of the eNP complies with the legal requirements and the conditions set out in the Localism Act 2011 and that the Post-Examination version of the WNDP could proceed to referendum in February 2017 [4.17 & WPC 7].
- 11.27 EPC made extensive submissions relating to The Town and Country Planning Act 1990 and the Neighbourhood Planning (General) Regulations 2012 in relation to the proposed changes by WPC to its NP and the finding by the lpa that the Post-Examination version of the plan complies with the necessary legal requirements. I have carefully noted the submissions made by EPC regarding the processes followed by WPC and the lpa regarding the preparation of the Post-Examination version of the WNDP and the intention to put that plan forward for a Referendum in February 2017. However, it is not part of my role or that of this inquiry to consider and conclude on legal issues surrounding the preparation of this plan. As far as I am aware, the decision of the lpa to permit the Post-Examination version of the WNDP to go forward to a referendum and the decision of the WPC to promote that plan to its parishioners has not been the subject of a legal challenge. Accordingly, given that a draft plan has been published and is proceeding to a Referendum, the application has not prejudiced its preparation.

Conflict with Relevant Policies

- 11.28 In light of the above, the following assessment and conclusion is based on the Post-Examination version of the WNDP [WPC 7]. The lpa maintains a Local List of Buildings or Structures of Character. Although the buildings on this

Local List do not have any additional statutory protections their inclusion and the reasons for identifying it are regarded as material considerations in the determination of a planning application. WNDP Policy VE 5 refers to the Local List and indicates that development proposals relating to Locally Listed Buildings will be expected to retain their local distinctiveness and removal of part or all of them will generally not be permitted.

- 11.29 The northern part of the application site includes the Old Smithy. Schedule 5B of the eWNDP recommends that the Old Smithy should be added to the Local List [WPC 7 page 47]. It is the sole responsibility of the Ipa, in consultation with stakeholders, to add or remove building to or from the Local List. Thus, if the WNDP is made, the recommendation does not have the effect of designating the building. Although the IM shows residential development over that part of the site, the application is in outline and a grant planning permission would not authorise the removal of the building [Plan 15]. If the building makes it on to the Local List, its demolition or retention would be a matter for the reserved matters application. There is no conflict with eWNDP Policy VE 5.
- 11.30 WNDP Policy HP 2 allocates the land to the east of the Old Police House, which also includes the Old Smithy, as a site for the development of a minimum of 6 dwellings and establishes the principle of residential development on this site, which is also included within the application site. Given that the eWNDP refers to a minimum of 6 dwellings, it does not, in my view, preclude the development of more than 6 dwellings. This is in contrast to other HP Policies i.e. HP 4, HP 5, HP 7 and HP 8 where the policy refers to a specific number of dwellings. There is no conflict with Policy H 2.
- 11.31 I deal first with the note attached to Policy HP 1 which sets out WPC's conditional support for the planning application. In my view, the note does not form part of the policy; rather it is a simple statement of WPC's position on the application. However, when read in conjunction with eWNDP paragraphs 2.4.2, 2.4.3 and 4.1 (2) it serves to give a steer how Policy HP 1 is to be applied. Similarly, Policy HP 1 has to be read in the context of the relative purposes of NPs in dealing with non-strategic plan making and LPs that deal with strategic/district wide plan making [Framework paragraphs 184 & 185: 5.4, 5.7, 5.8 & 6.20].
- 11.32 Notwithstanding my comments above, the steer that the supporting text in the WNDP gives regarding the application site is not, in my view, reflected in how Policy HP 1 is constructed or is read on its face. Policy HP 1 has changed materially since the Regulation 15 Submission (Autumn 2015) version of the plan was published [CD 8]. Whilst the policy has been modified to include reference to the eALP and relevant policies, I consider those references all relate to the subsequent 7 allocated sites, Policies HP 2 to HP 8. Separately, Policy HP 1 goes on to say that development proposals for new dwellings outside the Built-Up Areas will be resisted unless the plan has made specific provision for those proposals. The eWNDP shows a BUAB, which reflects the boundary shown in the eALP at Map 2 (WPC 7 and CD 9]. The application site is outside the BUAB of Fontwell and the Plan, which I take to mean the WNDP, albeit it makes various references to the application, does not make

specific provision for it. In this context, the application would conflict with the wording of Policy HP 1 [6.15].

Whether the proposal accords with the BENP [CD 7].

- 11.33 The BENP 2014-29 was made in July 2014 on the basis of saved policies in the ALP and draft policies in the 2013 version (summer) of the eALP [5.5].
- 11.34 Policy ES3–The Local Gap/Green Infrastructure Corridor relates to an area identified in the ALP between Barnham and Eastergate. The application site is not within this gap and this policy is not relevant to the consideration of the application [6.4]. EPC no longer relies on conflict with Policy ES4–Protection of Open Views [5.4 & 5.7 & 5.8].
- 11.35 The application is in outline with all matters other than access reserved. As such layout and design are for a reserved matters application. There is nothing in the evidence to suggest that, subject to careful consideration of layout, dwelling design and their finish at the reserved matters stage, the application, would result in a form of development that would conflict with BENP Policies ES5 5–Quality of Design and ES6–Contribution to Local Character.
- 11.36 That part of the application site identified or the light industrial unit for GTR falls within the WPC boundary. BENP Policy EE3–Support for New Commercial Uses indicates that new development for Class B1 uses including light industry will be supported where the impact on surrounding residential and community amenity is acceptable. Here, subject to the imposition of appropriate planning conditions, the development of this part of the application site would not have a materially adverse effect on development within the EPC area.
- 11.37 In terms of the relevant housing policies, BENP Policy H2–Windfall Sites permits “*small residential development on infill and redevelopment sites...*” In this case, the application site is identified under eALP Policy H SP1 which deals with strategic housing and Fontwell is one of the 6 areas listed under the heading “*Strategic housing shall be accommodated as follows:...*” [6.21 & CD 9 page 145]. Moreover, the application proposal could neither be defined as “*small residential development*” or could not be said to be an “*infill*” or a “*redevelopment*” site. Accordingly, I find no conflict with BENP Policy HP2.
- 11.38 The BENP and Policy H1–Specific Site Allocation have to be read in the context of the respective roles of NPs and LPs. These are that NPs deal with local, non-strategic needs and LPs deal with strategically assessed needs across the whole district [5.4 & 5.7 & 5.8]. Framework paragraph 184 is clear that NPs should not promote less development than set out in a LP or undermine its strategic objectives. NPs should align with the strategic needs and priorities of the wider local area and be in general conformity with the LP’s strategic objectives. The BENP was made in the context of the 2013 version of the eALP [6.6]. Then Policy SP11 identified the strategic housing allocations as urban extensions to Littlehampton and Bognor Regis; site specific allocations at Barnham/Eastergate and Angmering; broad allocations at Westbank, and parish allocations. The 2013 version of the eALP did not make reference to Fontwell under the heading of strategic allocations. It is in

this context that BENP Policy H1 and specifically paragraph 9.1.4 was written and has to be read.

- 11.39 Paragraph 9.1.4 states that the Policy H1 site allocation is “*...in addition to; ..any strategic allocation that might be made in the Local Plan for housing on the larger site to the south of Barnham and Eastergate*”. As the 2013 version of the ALP was an emerging plan and the allocation of land and the scale of the putative development at Barnham/Eastergate had not been examined or fixed it was appropriate that the BENP referred to it in the context of a strategic allocation “*...that might be made...*”. Similarly, if Fontwell had been identified in the 2013 version of the eALP and whether it was an allocation to come forward in the early years of the plan or in the later stage of the plan period it would, given the timescale of the BENP (2104 to 2029), be a relevant strategic allocation. Thus, by the same logic that the Policy H1 site allocation is to be read in the context of the Barnham/Eastergate strategic allocation it is, in my view, also to be read in referencing strategic allocations more generally and strategic allocations that come forward as part of the eALP process [5.5 & 6.6].
- 11.40 BENP Policy HP1 (the bold text) refers only to a site allocated to meet local need. In light of this and when viewed in the context of the respective roles of NPs and LPs and even though the NP was made prior to the latest version of the eALP, I consider the application cannot be held to be in conflict with Policy HP1. There is no other specific provision in the BENP that would, in my view, restrict development on the application site. Unlike the WNDP and the Yapton NP, the BENP does not refer to or delineate a BUAB or identify a Local Greenspace policy [5.10]. Moreover, given that it makes no reference to the BUAB referred to in the eALP, those boundaries cannot be used to suggest a policy conflict in relation to the BENP.
- 11.41 In coming to the above conclusion, I have had regard to the submissions made about the relevance of *Crane v SSCLG* [2015] EWHC 425 (Admin) [CD 28] and the SoS’s decision in the Yapton appeal [CD 26]. I consider the positions in those cases are materially different. Unlike in the case of *Crane*, the BENP had not considered all of the sites, albeit it was consideration pre-dated the Fontwell strategic proposal. Moreover, it would appear that this judgement did not take account of the relative roles of NPs and LPs in allocating development. Whilst the Yapton site falls within ADC, I consider there are material differences between that plan and the BENP. At Yapton, a BUAB has been defined and the plan makes specific provision for further local allocations should the LP require it. That is not the case with the BENP [5.15].
- 11.42 In light of the above I conclude that there would be no conflict with the relevant policies of the BENP and the plan as a whole.
- Whether the proposal would accord with any other relevant adopted or emerging development plan policies.*
- Arun Local Plan
- 11.43 There would be no conflict with Policy GEN 7 – The Form of New Development; Policy GEN 8 – Development and the Provision of

Infrastructure; Policy GEN28 – Trees and Woodlands; Policy GEN29 – Nature Conservation across the District and Policy DEV17 – Affordable Housing.

- 11.44 The majority of the application site is outside the BUAB for Fontwell identified by Policy GEN 2. Outside the BUAB, development will not be permitted unless it is consistent with other ALP policies. Policy GEN 3 - Protection of the Countryside states that except for several categories of development, none of which relate to the application proposal, development will not be permitted [4.2]. As the site lies outside the BUAB it is categorised as countryside and the scheme would conflict with ALP Policies GEN 2 and GEN 3.

Emerging Arun Local Plan

- 11.45 The eALP was published in October 2014, and examination of the eALP commenced in June 2015 but has been suspended. Whilst the lpa has been working on modifications to the eALP, as things stand, no revisions to the eALP were published at the time of the inquiry and I have not been advised of any proposed changes that are material to the inquiry.
- 11.46 Policy H SP1 proposes to accommodate strategic housing in 6 ways, one of which is described as a Site Specific Allocations Development Plan Document for Ford and Fontwell. The policy goes on to state that Ford and Fontwell have been identified as potential locations for housing growth in the later part of the plan period. The eALP acknowledges that both Ford and Fontwell lack some key services but growth may enable the creation of settlements that are more sustainable. The eALP notes that there is currently insufficient evidence to establish a quantum of housing growth in Ford and Fontwell, therefore Site Specific Development Plan Document(s) will be prepared to establish if sites can be allocated to improve the sustainability of these settlements. The Housing Trajectory section of the plan envisages that development at Fontwell would come forward after 2025.⁷³
- 11.47 On a straightforward reading of the eALP, I agree with EPC that the published version of the eALP offers little in support of the application [7.65]. The emerging plan does no more than commit the lpa to the preparation of a DPD to examine the potential for delivering housing in the Ford and Fontwell areas post 2025 [7.67]. Indeed, given the almost doubling of the OAN to 919 dpa and a HLS that currently stands at around 1.92 years the submissions that the eALP is “*hopelessly out-of-date*” and should be “*treated with caution*” are, in my view, an understatement [5.47].

Any significant social, economic or environmental impacts not covered above.

- 11.48 No other material issues relating to social, economic or environmental issues were raised at the inquiry.

Planning Balance and Overall Conclusions

- 11.49 Currently the best evidence demonstrates a pressing need to identify and bring forward deliverable sites for housing. The lpa cannot demonstrate a 5 or a 3-year supply of deliverable housing sites. In this context Framework

⁷³ CD 9 page.386.

paragraphs 49 and 14 are engaged. Framework paragraph 49 says that relevant policies for the supply of housing should not be considered up-to-date if the lpa cannot demonstrate a 5-year supply of housing. Framework paragraph 14 indicates that relevant development plan policies are out-of-date planning permission should be granted unless (a) any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against policies in the Framework as a whole or (b) specific policies in the Framework indicate development should be restricted. Given my conclusion that the application does not conflict with relevant policies of the BENP or the plan when taken as a whole, there are no policies in the Framework that indicate that this development should be restricted.

- 11.50 Notwithstanding the above, the application site is located outside the BUAB of Fontwell and as such conflicts with Policies GEN 2 and GEN 3 of the ALP. Similarly for the reasons I set out above, I consider the application, given its location outside the BUAB for Fontwell would conflict with eWNDP Policy HP 1. ALP Policies GEN 2 and GEN 3 and eWNDP Policy HP 1 are relevant policies for the supply of housing and as the lpa does not have a 5-year supply of deliverable housing sites and, in the case of the eWNDP, a 3-year supply of deliverable housing sites these policies are out-of-date.
- 11.51 The most recent and, in my view, reliable assessment of the HLS position is that provided by the lpa which stands at some 1.92 years. Given the significant shortfall, whilst Framework paragraphs 14 and 49 do not dis-apply the above policies or render them irrelevant, I consider that only limited weight can be attached to the conflict with ALP Policies GEN 2 and GEN 3 and eWNDP Policy HP 1. Given the significant shortfall in the HLS position and the fact that the spatial strategy of the eALP is likely to be subject to major change, to service an OAN that has almost doubled in the last 3 years, I consider the publication version of the eALP is similarly out-of-date and little weight should be attached to relevant policies within that emerging plan.
- 11.52 Given the eALP is in a state of flux, I consider part of this balancing equation must include an assessment of whether, if the application is allowed, this would materially pre-determine the spatial strategy of the eALP. I can understand, the concern expressed by the Examining Inspector in July 2015. However, it strikes me that the concern was predicated on the lpa bringing forward within the existing spatial strategy of the eALP the potential allocations at Ford/Fontwell and the more substantial increase in units allocated at Barnham and Westergate. In total these 3 allocations amount to some 4,300 units i.e. 3,000 at Barnham and Westergate and 1,300 at Ford/Fontwell [5.50 & APP 6 Appendix A]. However, what is before the inquiry is an application for up to 400 units and the question to answer is whether this number of units would result in unacceptable pre-determination.
- 11.53 PPG⁷⁴ gives advice on assessing prematurity. This indicates that: “*arguments that an application is premature are unlikely to justify a refusal of planning permissions other than where it is clear that the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits,*

⁷⁴ ID: 21b-014-20140306.

taking the policies in the Framework and any other material considerations into account. Such circumstances are likely, but not exclusively, to be limited to situations where both: (a) the development proposed is so substantial, or its cumulative effect would be so significant, that to grant permission would undermine the plan-making process by predetermining decisions about the scale, location or phasing of new development that are central to an emerging Local Plan or Neighbourhood Planning; (b) the emerging plan is at an advanced stage but is not yet formally part of the development plan for the area”.

- 11.54 Based on an OAN of 919 dpa, the lpa has a housing requirement over the plan period of some 18,000 units. The 400 units at Fontwell would amount to some 2% of the plan period requirement. There is evidence to suggest that the lpa has, since the Examining Inspector published his general concerns, been assessing the spatial options open to it but that in all the exercises carried out development at Fontwell of the scale envisaged by this application is an integral part of its emerging spatial strategy [(APP 6 Appendices A & B)]. Thus, in terms of what the plan requires to be provided and what this site could provide, the application does not, in my view, come anywhere close to the threshold of being significant or would result in closing off other options in terms of a spatial strategy pursued when a revised eALP is published.
- 11.55 In 2014, the publication version of the eALP was an emerging plan at an advanced stage. However, circumstances have changed materially since and currently there is no indication as to when a revised plan will be published, examined and potentially move to adoption. Accordingly, the eALP can no longer be considered as being at an advanced stage [5.93]. I acknowledge that allowing this application now would remove it from the options to be considered at the forthcoming examination of the spatial strategy. However, given the circumstances outlined above, I attach little weight to the potential for this application to undermine the plan making process.
- 11.56 This application would: make a substantial contribution to the need for housing and affordable housing in the district; make a valuable contribution to the local economy; boost the sustainability of Fontwell and give the local community a substantial area of public open space. These are benefits which I attach significant weight to in the planning balance [5.94 & 6.44].
- 11.57 In light of the above, I conclude that the harm that arises from (a) conflict with ALP Policies GEN 2 and GEN 3; (b) eWNDP Policy HP 1 and (c) removing this site from the spatial strategy options to be considered at the examination of a revised eALP are significantly and demonstrably outweighed by the benefits of this application. Accordingly, I conclude that planning permission should be granted.

Conditions & S106 Agreement

Planning Conditions

- 11.58 Should the SoS decide to grant planning permission, the list of conditions attached at Annex C reflects the suite of conditions agreed between the applicant and the lpa and discussed at the inquiry. These conditions should be imposed for the reasons set out in CD 19 and paragraphs 10.1 to 10.5

above. I have assessed the suggested conditions in light of advice contained in PPG and where necessary in the interests of precision and enforceability, reworded several of the conditions.

- 11.59 The lpa seeks shorter periods for the submission of reserved matters and implementation of the permission to reflect the pressing shortage of the housing land within the District. However, this is a large development and there are several conditions precedent relating to major highway and drainage works that require to be discharged. In these circumstances, I consider it would be inappropriate to diverge from the timescales set out in the model outline planning conditions. Given that Condition 7 requires the submission of a Design Code Masterplan, which would be the subject of pre-submissions discussions, it is unnecessary to include an informative relating to the lpa's expectations [11.3].
- 11.60 The submissions made by an interested person about the precision and enforceability of various conditions particularly where development works would be carried out over several phases has been carefully noted [10.6]. Each of the conditions referred to indicate when the details of the works required by the condition are to be submitted i.e. either before the start of each phase of development or before the commencement of development and when those works are intended to be implemented i.e. the occupation of dwellings or a programme of implementation agreed with the lpa. Moreover, SC 5 which requires the submission of an overall phasing scheme provides for a schedule identifying the order of commencement and completion of each phase. Having assessed each of the conditions referred to, I am confident that the lpa would have sufficient information, particularly on timings of development, to achieve the implementation of the required works. The mechanism of recording the discharge of pre-commencement conditions and monitoring of the implementation of the condition is a matter for the lpa. In submitting the conditions, the lpa did not identify any misgivings or concerns regarding its ability to monitor implementation.

S106 Agreement

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

Recommendation

- 11.62 I recommend that planning permission be granted subject to the planning conditions attached at Annex C

George Baird

Inspector

ANNEX A

PLANS SUBMITTED WITH THE APPLICATION

Plan 1	-	57631-101 Rev P1, Site Location Plan.*
Plan 2	-	57631-109 Rev P1, Site Survey Plan.
Plan 3	-	1186-02 Rev D, Proposed Access onto Arundel Road.
Plan 4	-	1186-03 Rev G, Proposed Access onto A29 Fontwell Avenue.
Plan 5	-	1186-05 Rev A, Proposed Roundabout Improvement.
Plan 6	-	6233-A-08 Rev A, Tree Retention Plan.

ILLUSTRATIVE PLANS

Plan 7	-	Figure 22 Illustrative Landscape Masterplan.
Plan 8	-	Figure 23 Illustrative Landscape Sections.
Plan 9	-	LHG57631-106 Rev P1, Land Use Parameter Plan.
Plan 10	-	LHG57631-107 Rev P1, Access & Movement Parameter Plan.
Plan 11	-	LHG57631-108 Rev P1, Building Heights Parameter Plan.
Plan 12	-	63926-01-101-D Rev F, Fontwell-Walberton Link Cycle Scheme, Eastergate to Dukes Road.

ANNEX B

REVISED PLANS SUBMITTED AT THE INQUIRY

Plan 13	-	57631-101 Rev P2, Site Location Plan.
Plan 14	-	6233-A-08 Rev C, Tree Retention Plan Detailed Access Junction.

ILLUSTRATIVE PLANS

Plan 15	-	Illustrative Landscape Masterplan Rev A.
Plan 16	-	Illustrative Landscape Sections Rev A.
Plan 17	-	LHG57631-106 Rev P4, Land Use Parameter Plan.
Plan 18	-	LHG57631-107 Rev P3, Access & Movement Parameter Plan.
Plan 19	-	LHG57631-108 Rev P3, Building Heights Parameter Plan.

* Superseded Plans.

ANNEX C

SUGGESTED PLANNING CONDITIONS

1. Details of the layout, scale, appearance, and landscaping (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 3 years from the date of this permission.
3. The development hereby approved shall be begun before the expiration of 5 years from the date of this permission, or before the expiration of 2 years from the date of the approval of the last of the reserved matters to be approved, whichever is the later.
4. The development hereby permitted shall be carried out in accordance with the approved plans:
57631-101 Rev P2 – Site Location Plan;
1186-02 Rev D - Access to Arundel Road;
1186-03 Rev G - Access to A29, Fontwell Avenue;
1186-05 Rev A – Proposed Roundabout Improvement;
6233-A-08 Rev C - Tree Retention Plan - Detailed Access Junction.
5. No development shall take place until a detailed scheme of phasing for the construction of the dwellings and associated highways and public areas has been submitted to and approved in writing by the local planning authority. The scheme shall include a schedule identifying the order of commencement and completion within each phase of construction. This scheme shall identify the curtilage of the main commercial area of the development as referred to in condition 20. Development shall be carried out in accordance with the approved details.
6. Prior to the commencement of construction works on each phase of the development a schedule of materials and finishes to be used for external walls and roofs of the proposed buildings shall be submitted to and approved in writing by the local planning authority. The development shall be carried put in accordance with the approved details.
7. Prior to the commencement of any residential development, a Design Code Masterplan shall be submitted to and approved in writing by the local planning authority. Development shall be carried put in accordance with the approved Design Code Masterplan.
8. The landscape details referred to in Condition 1 shall include a landscape management plan, including long-term design objectives, management responsibilities and maintenance schedules for all landscape areas other than

privately owned domestic gardens. The landscape management plan shall be implemented in accordance with the approved details.

9. No residential development shall take place until details of the laying out of and a timetable for the provision and future maintenance of Public Open Spaces has been submitted to and approved in writing by the local planning authority. The layout details submitted in compliance with Condition 1 shall define the boundaries of such areas, their proposed use, equipment, and their means of enclosure and all other structures to be installed. Development shall be carried out in accordance with the approved details.
10. Prior to the commencement of construction works on each phase of the development, details of hard and soft landscaping and details of existing trees and hedgerows to be retained, shall be submitted to, and approved in writing by the local planning authority. The approved landscaping details shall be carried out in the first planting and seeding season, following the occupation of the buildings or the completion of the development of that phase, whichever is the sooner, and any trees or plants which, within a period of 5 years from the completion of development, die, are removed or become seriously damaged or diseased, shall be replaced in the next planting season with others of similar size and species, unless the local planning authority gives written consent to any variation.
11.
 - (a) Prior to the commencement of development or other operations being undertaken on site a scheme for the protection of the retained trees produced in accordance with BS5837:2012 (Trees in relation to design, demolition and construction: Recommendations), which provides for the retention and protection of trees, shrubs and hedges to be retained on or adjacent to the site, including trees which are the subject of a Tree Preservation Order currently in force, shall be submitted to and approved in writing by the local planning authority. No development or other operations shall take place except in complete accordance with the approved protection scheme;
 - (b) No operations shall be undertaken on site in connection with the development hereby approved (including any tree felling, tree pruning, demolition works, soil moving, temporary access construction and/or widening or any operations involving the use of motorised vehicles or construction machinery) until the protection works required by the approved protection scheme are in place;
 - (c) No excavations for services, storage of materials or machinery, parking of vehicles, deposit or excavation of soil or rubble, lighting of fires or disposal of liquids shall take place within any area designated as being fenced off or otherwise protected in the approved protection scheme;
 - (d) Protective fencing shall be retained intact for the full duration of the development hereby approved and shall not be removed or repositioned without the prior written approval of the local planning authority.
12. Prior to the commencement of construction works on each phase of the development, full details of the proposed surface water drainage scheme shall be submitted to and approved in writing by the local planning authority. The design should follow the hierarchy of preference for different types of surface

water drainage disposal systems as set out in Approved Document H of the Building Regulations and the recommendations of the SUDS Manual produced by the Construction Industry Research and Information Association. Winter groundwater monitoring to establish highest annual ground water levels and Percolation testing to BRE Digest 365 standards, or similar approved standards, will be required to support the design of any Infiltration Drainage. No building shall be occupied until the complete surface water drainage system serving the property has been implemented in accordance with the agreed details and the implemented scheme shall be maintained in good working order in perpetuity.

13. No infiltration of surface water drainage into the ground is permitted other than with the express written consent of the local planning authority, which may be given for those parts of the site where it has been demonstrated that there is no resultant unacceptable risk to controlled waters. Development shall be carried out in accordance with the approval details.
14. Prior to the commencement of construction works on each phase of the development full details of the maintenance and management of the SUDs system shall be set out in a site-specific maintenance manual and submitted to, and approved in writing, by the local planning authority. The manual is to include details of financial management and arrangements for the replacement of major components at the end of the manufacturers recommended design life. Upon completed construction of the SUDs System, the owner or management company shall strictly adhere to and implement the recommendations contained within the manual.
15. Prior to the commencement of construction works on each phase of the development details of a proposed foul drainage system shall be submitted to and approved in writing by the local planning authority including details of its siting, design and subsequent management/maintenance, if appropriate. No dwelling shall be occupied until works for the disposal of sewage have been fully implemented in accordance with the approved details.
16. Piling or any other foundation designs using penetrative methods shall not be permitted other than with the express written consent of the local planning authority, which may be given for those parts of the site where it has been demonstrated that there is no resultant unacceptable risk to groundwater. Development shall be carried out in accordance with the approved details.
17. Prior to the commencement of construction works on each phase of the development or any preparatory works, a detailed ecological enhancement scheme based on the recommendations within the supporting ecological statement, which shall include the installation of bat boxes throughout the site, shall be submitted to and approved in writing by the local planning. All approved details shall then be implemented in full and in accordance with the agreed timings and details.
18. No demolition, ground clearance or vegetation clearance works shall take place within the bird nesting season (between 1 March and 31 August inclusive in any year). If such works cannot be undertaken outside of the nesting season,

a nesting bird check shall be required, which should be undertaken by a suitably qualified ecologist immediately prior to the works taking place. Subsequently if any active nest sites are identified, these nests should remain undisturbed until all the young have fledged naturally.

19. No development shall take place, including any works of demolition, until a Construction Management Plan (to include a Construction Traffic Management Plan) has been submitted to and approved in writing by the local planning authority. Thereafter the approved Construction Management Plan shall be implemented and adhered to throughout the entire construction period. The Construction Management Plan shall provide details as appropriate but not necessarily be restricted to the following matters:

- a). the anticipated number, frequency and types of vehicles used during construction;
- b). the parking of vehicles by site operatives and visitors;
- c). the loading and unloading of plant, materials and waste;
- d). the storage of plant and materials used in construction of the development;
- e). the erection and maintenance of security hoarding;
- f). the provision of wheel washing facilities and other works required to mitigate the impact of construction upon the public highway (including the provision of temporary Traffic Regulation Orders);
- g). details of public engagement both prior to and during construction works.

Construction of the development shall then be carried out in accordance with the agreed Construction Management Plan.

20. The following applies to the commercial area of the development as identified in the phasing plan submitted under condition 5 above:

- a.) No commercial vehicles (not including private vehicles solely in use for the private use of staff or visitors) shall be operated within the commercial area of the development except between the hours of: 07.00 and 19.00 hours on Mondays to Fridays inclusive; 07.00 and 13.00 hours on Saturday, not at any time on Sundays or Public Holidays;
- b.) deliveries and dispatches by commercial vehicles to and from the commercial area of the development shall only be made to or from the site between the hours of 07.00 - 19.00 hours Monday to Friday, 08.00 - 13.00 hours on Saturday and at no time on Sundays, Bank or other Public Holidays;
- c.) no raw materials, finished or unfinished products or parts, crates, packing materials or waste shall be stacked or stored on the commercial area of the development except within the buildings or storage areas approved by the local planning authority.
- d.) prior to construction of the commercial area of the development, details of the forecourt layout and drainage and the position and intensity of all lighting fittings for the commercial uses within this area shall be

submitted to and approved in writing by the local planning authority. When in operation all lighting shall be operated in accordance with the approved details. The approved drainage provision shall be implemented prior to the commercial area of the development coming into operation.

21. Prior to the commencement of development of the commercial area of the development, a scheme shall be submitted to and approved in writing by the local planning authority which specifies the provisions to be made for the control of noise emanating from the commercial area of the development. Prior to the commercial area of the development coming into operation, all agreed physical measures for the control of noise will be implemented. The use of the commercial area will be operated in accordance with any agreed continuing requirements for the control of noise from the site.
22. At least 10% of the energy supply of the development shall be secured from decentralised and renewable or low-carbon energy sources or equivalent fabric first standards that would secure a 10% reduction in energy use. Details and a timetable of how this is to be achieved, including details of physical works on site, shall be submitted to and approved in writing by the local planning authority as a part of the reserved matters submissions required by condition 2. The approved details shall be implemented in accordance with the approved timetable and retained as operational thereafter.
23. No development shall take place until details for the implementation of a programme of archaeological work in accordance with a written scheme of investigation has been submitted and approved in writing by the local planning authority. The development shall thereafter be carried out in accordance with the approved scheme.
24. No part of the development hereby permitted shall be occupied until the completion of the improvements to the A27/A29 Fontwell Roundabout shown on Drawing Number 1186-05 Rev A - Proposed Roundabout Improvements.
25. Prior to the commencement of construction works on each phase of the development a Travel Plan shall be submitted to and approved in writing by the local planning authority and implemented. The Travel Plan shall include arrangements for monitoring and effective enforcement.
26. Prior to the commencement of development a Non-Motorised Users Audit shall be undertaken for the construction stage of the development, and its findings shall be reflected in the Construction Management Plan required under condition 19. Prior to the commencement of each phase of the development Non-Motorised Users Audits shall be undertaken and their findings taken into account.
27. Prior to the commencement of development, details shall be submitted to and approved in writing by the local planning authority regarding the provision of an emergency access from the site onto Arundel Road. Prior to occupation of no more than 100 dwellings, the emergency access shall be provided in accordance with the approved details.

ANNEX D

APPEARANCES

FOR THE APPLICANTS

Christopher Katkowski QC and Matthew Fraser of Counsel, instructed by Fontwell Estates Ltd & Global Technologies Racing.

He called:

Charles Mills MRICS ARTPI
Daniel Watney LLP

Andrew Williams BA (Hons) DipLA DipUD CMLI
Define

Cullan Riley BSc (Hons) PhD MIEEM
Phil Jones Associates Limited

FOR THE LOCAL PLANNING AUTHORITY

Gwion Lewes of Counsel, instructed by Delwyn Jones Planning Solicitor and Deputy Monitoring Officer, Legal Services, Arun District Council

He called:

Jim Redwood BSc MSc DipTP MRTPI
Planning consultant

FOR EASTERGATE PARISH COUNCIL

Ashley Bowes of Counsel, instructed by the Clerk to Eastergate Parish Council

He called:

Luke Simpson BSc MSc MRTPI
Adams Hendry Consulting Limited

Maureen Chaffe
Process Matters2

FOR WALBERTON PARISH COUNCIL

Suzanne Clark
Chairman of Walberton Parish Council and Chairman the Walberton Neighbourhood Plan Steering Group.

INTERESTED PERSONS

Mr N Smith
Mrs S Wallsgrove
Mr I Truin
Mr Bell

ANNEX D

DOCUMENTS

INSPECTOR DOCUMENTS

- INSP 1 - Written Ministerial Statement – Neighbourhood Planning, 12 December 2016.
- INSP 2 - Inspector's request for an up-date on 5-year Housing Land Supply.
- INSP 3 - Inspector's request for comment on WMS Neighbourhood Planning.

DOCUMENTS SUBMITTED BY THE APPLICANT

- APP 1 - Opening Submissions.
- APP 2 - Closing Submissions.

Mr Mills - Planning

- APP 4 - Summary Proof of Evidence.
- APP 5 - Proof of Evidence.
- APP 6 - Appendices A to K.
- APP 7 - Rebuttal Proof of Evidence.
- APP 8 - Rebuttal Appendices A to D.

Mr Williams - Landscape

- APP 9 - Proof of Evidence & Appendices A1 to A3.
- APP 10 - Appendices B & C.
- APP 11 - Rebuttal Proof of Evidence & Appendices A & B.

Mr Riley – Transport

- APP 12 - Summary Proof of Evidence.
- APP 13 - Proof of Evidence & Appendices A to C.

Mr Goodman – Ecology & Nature Conservation (Written Statement)

- APP 14 - Summary Proof
- APP 15 - Proof of Evidence & Appendices A to J.

DOCUMENTS SUBMITTED BY THE APPLICANT AFTER THE CLOSE OF THE INQUIRY

- APP 16 - Comments on Walberton Neighbourhood Plan – Post-Examination Version.
- APP 17 - Response to EPC letter dated 18 November 2016 (EPC 6) re Comments on Walberton Neighbourhood Plan – Post-Examination Version.
- APP 18 - Response re WMS on Neighbourhood Planning 12 December 2016.

DOCUMENTS SUBMITTED BY THE LOCAL PLANNING AUTHORITY

- LPA 1 - Opening Submissions.
- LPA 2 - Closing Submissions.
- LPA 3 - Letter dated from Sussex Police 16/12/2015 re S106 contribution.
- LPA 4 - Mr Redwood – Summary Proof of Evidence.
- LPA 5 - Mr Redwood – Proof of Evidence.
- LPA 6 - Mr Redwood – Supplementary Proof of Evidence.

DOCUMENTS SUBMITTED BY THE LPA AFTER THE CLOSE OF THE INQUIRY

- LPA 7 - Comments on Walberton Neighbourhood Plan – Post-Examination Version.
- LPA 8 - Response to EPC letter dated 18 November 2016 (EPC 6) re Comments on Walberton Neighbourhood Plan – Post-Examination Version.
- LPA 9 - Report to the Local Plans Sub-Committee 6 December 2016 – Housing Land Supply.
- LPA 10 - Email dated 9 January Updating Housing land Supply position.
- LPA 11 - Final response regarding WMS on Neighbourhood Planning 12 December 2016.

DOCUMENTS SUBMITTED BY EASTERGATE PARISH COUNCIL

- EPC 1 - Opening Submissions.
- EPC 2 - Closing Submissions.
- EPC 3 - Mr Simpson – Proof of Evidence.
- EPC 4 - Mrs Chaffe – Proof of Evidence.
- EPC 5 - Mrs Chaffe – Appendix A.

DOCUMENTS SUBMITTED BY EASTERGATE PARISH COUNCIL AFTER THE CLOSE OF THE INQUIRY

- EPC 6 - Comments on Walberton Neighbourhood Plan – Post-Examination Version.
- EPC 7 - Response on the WMS on Neighbourhood Planning 12 December 2016.

DOCUMENTS SUBMITTED BY WALBERTON PARISH COUNCIL

- WPC 1 - Opening Statement.
- WPC 2 - Closing Statement.
- WPC 3 - Mrs Clark – Statement.
- WPC 4 - Mrs Clark – Proof of Evidence.
- WPC 5 - Mrs Clark – Appendix 1.

DOCUMENTS SUBMITTED BY WALBERTON PARISH COUNCIL AFTER THE CLOSE OF THE INQUIRY

- WPC 6 - Walberton Neighbourhood Development Plan 2015-2035 – Decision Statement, Revisions A – November 2016.
- WPC 7 - Walberton Neighbourhood Development Plan 2015-2035, Post Examination Version.
- WPC 8 - WPC response to EPC letter dated 18 November 2016 (EPC 6) re Comments on Walberton Neighbourhood Plan – Post-Examination Version.
- WPC 9 - WPC response to the WMS on Neighbourhood Planning 12 December 2016.

DOCUMENTS SUBMITTED BY INTERESTED PERSONS

- IP 1 - Statement by Mr N Smith.
- IP 2 - Statement by Mr Truin.
- IP 3 - Statement by Mr Bell.
- IP 4 - Mr Bell - Submission on suggested conditions

CORE DOCUMENTS

- CD1 - Inspector's Pre-Inquiry note dated 13 April 2016
- CD2 - LPA Statement of Case
- CD3 - Applicants' Statement of Case
- CD4 - Rule 6 parties' Statement of Case

CD5	Statement of Common Ground & Addendum Statement of Common Ground
CD6	Arun District Local Plan (2003) Saved Policies
CD7	Barnham and Eastergate Neighbourhood Plan (2014)
CD8	Regulation 15 Version of the Walberton Neighbourhood Plan
CD9	Publication Version of the Local Plan -October 2014
CD10	Arun DC 5 Year Housing Land Supply Report 2016
CD11	Appeal Decision APP/C3810/A/14/2220943 Hook Lane, Westergate
CD12	Appeal Decision APP/C3810/A/14/2217385 Nyton Road, Westergate
CD13	Arun Open Space and Recreational Standards Supplementary Planning Guidance - October 2000
CD14	Arun Landscape Study 2006
CD15	SoS Decision, Earls Barton APP/H2835/A/14/221617
CD16	SoS Decision, Bryning-with-Warton APP/M2325/A/14/2217060
CD17	SoS Decision, West Haddon APP/Y2810/W/14/3000977
CD18	Local Green Space Designation report to LPSC 30 July 2015
CD19	Planning Conditions
CD20	(Intentionally blank)
CD21	Sustainability Appraisal Main Report
CD22	Arun Local Plan SCI October 2014
CD23	Letter from Arun LP examination inspector 2 February 2016
CD24	Report to ADC Development Control Committee 25 November 2015
CD25	Walberton Neighbourhood Plan Decision Notice dated 12 September 2016
CD26	SoS Decision, Land to the south of Ford Lane, East of North End Road, Yapton APP/C3810/A/14/2228260
CD27	Walberton Neighbourhood Plan Examiners report 19 August 2016
CD28	Court of Appeal - Crane v SSCLG [2015]
CD29	Court of Appeal - Woodcock Holdings Ltd v SSCLG [2015]
CD30	SoS Decision, Birchen Lane APP/D3830/W/15/3137838
CD31	Aldingbourne Neighbourhood Plan Examination Decision
CD32	DEFRA, Transport and Travel in Urban Areas, 2014
CD33	West Sussex County Council, Consultation Response 24 November 2015
CD34	ADC reg16 comments on Walberton Neighbourhood Plan
CD35	ADC statement for WNP public hearing - February 2016
CD36	ADC SHLAA Update 2012
CD37	S106 Agreement
CD38	Barnham and Eastergate Neighbourhood Plan Examiners Report
CD39	SoS Decision, Broughton Astley APP/F2415/A/12/2183653
CD40	(Intentionally blank)
CD41	Walberton Neighbourhood Development Plan 2015-2035 Consultation Statement
CD42	Court of Appeal- Suffolk Coastal DC v Hopkins Homes Limited [2016] C1/2015/0583 and C1/2015/0894
CD43	Planning Court - Forest of Dean DC v SSCLG & Gladman Developments Ltd [2016]
CD44	Secretary of State Decision, Land at Broyle Gate Farm, East Sussex APP/P1425/W/15/3133436
CD45	Walberton Neighbourhood Development Plan Public Hearing Statement Dandara Ltd 16 March 2016
CD46	Minutes of Local Plan Subcommittee 16 May 2013
CD47	Local Plan Sub Committee minutes 27 March 2014
CD48	Full Council meeting minute 30/4/14
CD49	WSCC S106 obligations statement
CD50	Arun Local Plan Examination. Note of Inspector's Conclusions after the Procedural Meeting 28 July 2015
CD51	Planning Court, Crownhall Estates Limited CO/1812/2015 & CO/2669/2015
CD52	CIL Justification Statement – Contributions to Walberton Parish Council

CD53	SoS Decision - London Road, Holmes Chapel APP/R0660/W/15/3100555
CD53	SoS Decision – Abbey Road, Sandbach APP/R0660/W/15/3128707
CD55	CIL Compliance Analysis – submitted by the lpa.
CD56	Note of meeting Walberton Parish Council & Arun District Council - Changes to Walberton Neighbourhood Plan



RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT

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

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

SECTION 1: PLANNING APPEALS AND CALLED-IN PLANNING APPLICATIONS

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

Challenges under Section 288 of the TCP Act

With the permission of the High Court under section 288 of the TCP Act, decisions on called-in applications under section 77 of the TCP Act (planning), appeals under section 78 (planning) may be challenged. Any person aggrieved by the decision may question the validity of the decision on the grounds that it is not within the powers of the Act or that any of the relevant requirements have not been complied with in relation to the decision. An application for leave under this section must be made within six weeks from the day after the date of the decision.

SECTION 2: ENFORCEMENT APPEALS

Challenges under Section 289 of the TCP Act

Decisions on recovered enforcement appeals under all grounds can be challenged under section 289 of the TCP Act. To challenge the enforcement decision, permission must first be obtained from the Court. If the Court does not consider that there is an arguable case, it may refuse permission. Application for leave to make a challenge must be received by the Administrative Court within 28 days of the decision, unless the Court extends this period.

SECTION 3: AWARDS OF COSTS

A challenge to the decision on an application for an award of costs which is connected with a decision under section 77 or 78 of the TCP Act can be made under section 288 of the TCP Act if permission of the High Court is granted.

SECTION 4: INSPECTION OF DOCUMENTS

Where an inquiry or hearing has been held any person who is entitled to be notified of the decision has a statutory right to view the documents, photographs and plans listed in the appendix to the Inspector's report of the inquiry or hearing within 6 weeks of the day after 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.



Neutral Citation Number: [2014] EWHC 1719 (Admin)

Case No: CO/831/2014

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

Birmingham Civil Justice Centre
Priory Courts
Birmingham

Date: 27/05/2014

Before :

MR JUSTICE FOSKETT

Between :

**The Queen (on the application of The Police and
Crime Commissioner for Leicestershire)**

Claimant

- and -

Blaby District Council

Defendant

-and-

- (1) Hallam Land Management Limited**
- (2) David Wilson Homes Limited**
- (3) Davidsons Developments Limited**
- (4) BDW Trading Limited**
- (5) Leicestershire County Council**
- (6) Martin Frank Spokes**
- (7) Richard Thomas Spokes**
- (8) Helen Joans Jones**
- (9) Frances Alison Mark Hicks**
- (10) The Trustees of the Will Trusts of Eric
Roderick Brook Drummond**

**Interested
Parties**

**Jenny Wigley and Thea Osmund-Smith (instructed by East Midlands Police Legal Services)
for the Claimant**

David Elvin QC (instructed by **Marrons Shakespeare LLP**) for the **Defendant**
Charles Banner (instructed by **King Wood & Mallesons SJ Berwin LLP**) for **Interested**
Parties 1-4 & 10
Alex Goodman (instructed by **Legal Services of Leicestershire County Council**) for
Interested Party (5)

Hearing date: 21 May 2014

Approved Judgment

Mr Justice Foskett:

Introduction

1. This case concerns a substantial development called the “New Lubbesthorpe” scheme to the south west of Leicester for which the Defendant, as local planning authority for the district, resolved on 1 November 2012 to grant planning permission subject to certain conditions and to the conclusion of a suitable agreement under section 106 of the Town and Country Planning Act 1990 (“the 1990 Act”) between certain parties.
2. The section 106 agreement was concluded on 13 January 2014 and outline planning permission was granted on 14 January 2014.
3. The Claimant’s Claim Form seeking judicial review of the grant of planning permission was issued on 24 February 2014. The focus of the proposed challenge is upon the effect and implications of the section 106 agreement so far as the Claimant is concerned. The section 106 agreement provides for its own termination if the planning permission is quashed (see paragraph 17.7 of the agreement).
4. On 21 March 2014 Hickinbottom J ordered that the application for permission to apply for judicial review be heard on 21 May 2014 on a “rolled-up” basis and gave various directions. On 16 April he gave the Claimant permission to amend his grounds. He was of the view that the resolution of the claim required expedition. The urgency arises because the funding of £5 million from the Department of Transport (derived from what are known as “Pinch Point monies” under the Department’s scheme to assist funding highways infrastructure) for the M1 motorway bridge required to implement the scheme may be at risk if not spent before 31 March 2015. Plans are already in place for the temporary closure of the M1 on Christmas Day 2014 to lower the main bridge span into place (see paragraphs 6 and 7 below).
5. The hearing did indeed take place on 21 May and all Counsel completed their submissions within the day.
6. Because of the urgency, this judgment has been prepared in a little over 24 hours after the conclusion of the hearing, is inevitably shorter than might otherwise have been the case and has not received the refinement it might have received if there had been longer to prepare it. Inevitably, I have had to focus on those aspects of the argument that, in my view, represent the strongest grounds for claiming the relief sought rather than dealing with all matters raised.

The nature of the development

7. The outline planning application submitted in February 2011 was for -

“... 4,250 dwellings, a mixed use district centre and two mixed use local centres featuring a supermarket, retail, commercial, employment, leisure, health, community and residential uses, non-residential institutions including a secondary school, primary schools and nurseries, an employment site of 21 hectares, open spaces, woodlands, new access points and associated facilities and infrastructure, and detailed proposals

for two new road bridges over the M1 motorway and M69 motorway, and two road access points from Beggars Lane and new accesses from Meridian Way, Chapel Green/Baines Lane and Leicester Lane.”

8. The site for the development is open and undeveloped land stretching over 394 hectares and is separated from Leicester by the M1 motorway. This explains the need for one of the two road bridges referred to in the outline application and to which reference was made in paragraph 4 above. The bridge is undoubtedly a key component in making this development possible.
9. According to the witness statement dated 13 March 2014 of Ms Lynne Stinson, a Project Manager within the Environment and Transport Department of the 5th Interested Party (Leicestershire County Council), the development will generate £159 million of investment in new infrastructure, buildings and new parks and other open spaces and approximately 1530 full-time equivalent jobs. It will, according to her statement, provide a significant proportion of the new housing identified in the Defendant’s Core Strategy (as amended) as needed in the district in the period to 2029.
10. Whether those claims are justified is not a matter for the court, but the fact that they are made in those terms indicates the scale of the proposed development. The aerial photographs demonstrate the substantial area of land involved and Miss Jenny Wigley, who appeared with Miss Thea Osmund-Smith for the Claimant, described the development as a “new town” which seems an appropriate description. It will take many years to complete if it proceeds. The identities of some of the Interested Parties will give an indication of the commercial interests at stake.

The concerns of the Claimant

11. It is obvious that a development of the nature described would place additional and increased burdens on local health, education and other services including the police force. The focus of this case is upon the effect upon the local police force. If it sought to shoulder those additional and increased burdens without the necessary equipment (including vehicles and radio transmitters/receivers for emergency communications) and premises, it would plainly not be in the public interest and would not be consistent with a policy that encourages “sustainable development”: see, for example, paragraphs 17 of 79 of the National Planning Policy Framework (‘NPPF’). It is that that leads to the Claimant’s interest in these matters.
12. Needless to say, the Claimant does not challenge the principle of the proposed development, nor is the potential amount of the provision of funding for police services by the developers in issue, but the concerns that have led to this application derive from what Miss Wigley submits is (i) an alleged inadequate provision of certain aspects of such funding at appropriate times during the course of the development and (ii) a lack of a clear commitment in the section 106 agreement (to which the Claimant is not a party) that anything will in fact be paid by the developers for premises required by the police in order to serve the community created by the development.

13. The need to provide funding for police resources had, of course, been identified during the discussions leading to the grant of planning permission and, as I have indicated, agreement was reached on the amount that would be required and met by the developers. However, the Claimant contends that there were procedural deficiencies in the final stages of that process that left the police out of the relevant negotiations and ought to lead to the planning permission being quashed or that the result, so far as the funding of police resources is concerned, was irrational and should, accordingly, be quashed on that basis also. The focus, as I have said, is on when certain features of the funding should, in effect, come on-stream during the development and whether there is a sufficiently clear commitment as to funding for police premises.
14. When the resolution for the grant of planning permission was passed on 1 November 2012, the resolution contained the following provision:
- “That planning application 11/0100/1/OX be referred to the Secretary of State as a departure under the Town and Country Planning (Consultation) (England) Direction 2009 as the application proposal is a departure to the Blaby District Local Plan (1999).
- That consequent upon the Secretary of State deciding not to intervene planning permission be granted subject to:
- The applicants entering into an agreement pursuant to Section 106 of the Town and Country Planning Act 1990 to secure the following:
- ...
- All CIL compliant capital infrastructures for Policing necessitated by the development and including officer equipment, communications, CCTV, vehicles and premises, the precise terms of this contribution to be settled by further negotiation.”
15. The reference to “CIL compliant capital infrastructures” related to the funding of police requirements through a planning obligation under section 106 of the 1990 Act, which in order to be “CIL compliant” must meet the tests specified in Regulation 122(2) of the Community Infrastructure Levy (‘CIL’) Regulations 2010. Those tests require that the sums are –
- “(a) necessary to make the development acceptable in planning terms;
- (b) directly related to the development; and
- (c) fairly and reasonably related in scale and kind to the development.”
16. The relevance of the CIL tests will be apparent in due course.

17. The parties to the section 106 agreement concluded on 13 January 2014 were the Defendant, the County Council (the highway and education authority for the area), the Second, Fourth and Sixth-Tenth Interested Parties (collectively known as “the owner”) and the First and Third Interested Parties (the beneficiaries of certain charges and options for the site). The agreement runs to over 170 pages including appendices and contains extremely detailed provisions concerning the way in which the development would proceed.
18. The provision that has given rise to the concerns of the Claimant is at paragraph 2 of Schedule 3 to the Agreement which reads as follows:

“2.1 The Owner shall pay to the District Council the Police Service Equipment Contribution no later than Occupation of 2,600 Dwellings and shall not Occupy more than 2,600 Dwellings until it has paid the Police Service Equipment Contribution to the District Council.

2.2 (Subject to the Owner and the District Council at that time agreeing or it having been determined in accordance with clause 23 that the contribution is necessary and if so its appropriate level having regard to the progress of the Development and the availability of Police Service facilities within the area and the appropriate relevant policy guidance at the time) the Owner shall pay the Police Service Premises Contribution to the District Council no later than the Occupation of 3,750 Dwellings and shall not Occupy more than 3,750 Dwellings until it has paid the Police Service Premises Contribution.”
19. The Police Service Equipment Contribution referred to in paragraph 2.1 is defined elsewhere in the agreement as “the sum of £536,834 towards police equipment” and the Police Service Premises Contribution referred to in paragraph 2.2 is defined as “a sum not to exceed £1,089,660 towards the acquisition of premises or extension to existing premises such sum to be ascertained in accordance with [paragraph 2.2] of the Third Schedule. Those sums are, of course, to be paid by the “owner” (in effect, the developers) to the Defendant which would then be responsible for paying them over to the Claimant. Reference to Clause 23 is to a provision entitled “Dispute Provisions” that provide for reference to an independent expert in the event of disputes arising under the agreement. That procedure would, of course, only be available to a party to the agreement which the Claimant was not. It should also be noted that the possibility of the police (or any other non-party) relying on the Contracts (Rights of Third Parties) Act 1999 was excluded by clause 17.2 of the agreement.
20. Whilst the figures referred to in relation to equipment and premises costs did reflect figures that had been discussed and agreed between the Claimant and the Defendant, the terms of paragraphs 2.1 and 2.2 as to the circumstances in which those sums would be paid had not been the subject of express agreement and, the Claimant would argue, resulted from an inadequate process of engagement by the Defendant with the issues affecting the services that the Claimant would be required to provide and led to provisions that are irrational.

21. So far as the Police Service Equipment Contribution is concerned, Miss Wigley contends that it is irrational that it should be paid only when 2,600 homes are occupied because the contribution sought and agreed was calculated on the basis of 4,250 homes being constructed (each of which would contribute rateably to costs of the additional demand on policing infrastructure) and yet 2,600 homes would have to be policed without any additional resources to do so before the payment was received. There would be several thousand residents *in situ* before the police received any contribution towards the equipment recognized as necessary to fulfill its tasks. In her Skeleton Argument she asserts that an analogous position in the education sphere would be asking hundreds of pupils generated by the development to wait a decade before providing them with somewhere to study.
22. In relation to the Police Service Premises Contribution, which is required to provide accommodation for the additional staff said to be required to deal with the policing issues of the development, the trigger provided in the agreement, subject to the terms set out in parentheses at the beginning of paragraph 2.2, is that it may be necessary to await the construction and occupation of 3,750 homes before any prospect of payment materializes. Miss Wigley submits that it cannot rationally be suggested that over £1 million towards additional police premises should be paid by the developers only when the final 500 homes in the development remain to be constructed. She says that an element of need for such services arises from the occupation of the first home, if not before, and she also raises the spectre of the real possibility that at that stage in the development no further homes will be built, the result being that the developers will avoid a liability to contribute to policing costs that will have been required from a much earlier stage and which the police, in order to fulfill their public role, will have to have met from other sources prior thereto. She also submits that the prefatory words in parentheses at the beginning of paragraph 2.2 mean (a) that the payment of any sum is contingent on agreement as to its necessity between the owner (as defined: see paragraph 17 above) and the Defendant and (b) that the level of any payment, even if agreed in principle, is uncertain and would be capped at the figure specified. In terms of the financing of premises pending receipt of such sum as may be paid under this provision, she says in view of the uncertainties that there would be no realistic prospect of borrowing against the commitment provided by the section 106 agreement.
23. She contrasts the provisions of the section 106 agreement relating to the police with the health care provision that affords an absolute commitment to pay the first of two sums agreed as necessary to expand an existing health centre on the occupation of no more than 150 houses and the second on the occupation of no more than 250 houses. Equally, funds for an onsite health centre are to be released on the occupation of 900 houses.
24. Those submissions are made by way of comment on the terms of paragraphs 2.1 and 2.2 as they stand. I will return to those submissions after dealing with the history that led to their formulation in those terms. That history is of importance to the way it is contended that public law grounds exist for the court to interfere in the way Miss Wigley submits is appropriate.

The background to the terms of the section 106 agreement affecting the police

25. It is first necessary to re-trace steps briefly to the resolution passed on 1 November 2012 (see paragraph 14 above).
26. As indicated above, this development proposal had been in gestation for a number of years before the resolution was passed. The police were involved in the negotiations prior thereto. The background from the perspectives of the parties involved is set out in the various witness statements and I need not deal with that background in detail. During the period of two years or so prior to November 2012 the view was taken by those representing the development interests in the site (and supported, at least to some extent, by the Defendant) that the sums sought by the police to be included as sums for which the developers should be liable were not CIL compliant (see paragraph 15 above). Sums in excess of £3 million were being sought. It seems that the view of the developers was that “an on-site police facility within the local community building would be more appropriate, relevant and beneficial to future residents” than what the police had in mind that stage. I need not go into details for present purposes, but that position obtained throughout 2012 and was reflected in the viability report prepared by DTZ on 20 September 2012 which was submitted as evidence to the Examination in Public session on 10 October 2012. It contained no allowance for contributions to police funding, but merely contained reference to the provision of community buildings on site to include a police presence.
27. In the run up to the planning committee meeting on 1 November 2012 there was something of an impasse, the Claimant maintaining the position that something over £3 million was required as the police contribution and the developers and the Defendant maintaining the position that this was excessive and not CIL compliant. Against that background the Claimant maintained an objection to any resolution in favour of the grant of planning permission. That impasse was resolved on the day of the meeting in a flurry of e-mails between the Claimant’s Finance Director and the Deputy Chief Executive of the Defendant in which the formula that became reflected in the resolution (the material parts of which are set out in paragraph 14 above) was agreed. The Deputy Chief Executive of the Defendant acknowledged that the intention behind the words was that “this is all up for negotiation in the future”.
28. That then is how matters were resolved at that stage. There was then a period during which it was necessary for the application to be considered by the Secretary of State. Discussions between the various parties were not actively renewed until the Secretary of State had indicated that he did not intend to call in the application. By the time that further discussions commenced in about March/April 2013, the potential of Pinch Point funding for the M1 bridge was “on the cards” and an application for such funding had been submitted to the Department of Transport.
29. On 10 April 2013 Mr Andrew Senior, the Lubbethorpe project manager for the Defendant, told Mr Michael Lambert, the Growth and Design Officer employed by the Claimant, that “viability work” was continuing and that it would “inform the section 106 negotiations especially levels of affordable housing.” He told him that the section 106 agreement was being negotiated and that the level of affordable housing had been changed from that originally contemplated. He referred to the bid for Pinch Point funding and said that, if successful, it would “free up the developers’ funds” and help to deliver, amongst other things, the early completion of the “east-west spine road”. It is clear that there remained differences about the police funding. By an e-mail of 22 August 2013, following a meeting a few days earlier, Mr Senior offered

some thoughts on how the Claimant might set out its case for a police contribution. It reflected on the approach to deciding on the level of policing necessary and how the appropriate infrastructure was identified, particularly how it would “relate directly” to the development (cf. CIL requirement (b)). He cited as an example the issue of a police car that would spend some time at the development site and some time elsewhere and raised the question of apportionment. It was plainly designed to be (and I am sure was taken as) a helpful contribution to the discussions.

30. The e-mail contained this paragraph to which Mr David Elvin QC, for the Defendant, drew attention as part of his response to the Claimant’s arguments:

“The final element would be how any contribution was to be phased, for smaller developments this would not be much of an issue, given that Lubbethorpe would potentially have a 20 year delivery time the phasing of contributions would need to be established. I would suggest this was done, as with other services, on the basis of thresholds which identify when any existing capacity is used to trigger the extra resources, clearly once a trigger is reached a range of infrastructure would be required. There would be a range of triggers across the period of the building.”

31. Mr Lambert responded to that in a lengthy e-mail of 4 September 2013. I need not quote it all, but Miss Wigley referred to the following paragraph:

“**Viability.** We need to be guided by you on this however we remain concerned that policing attracts fair and reasonable consideration on a par with other services if the development cannot afford the infrastructure it will need. We have heard about your successes in attracting growth funds for road infrastructure and welcome these. We need to see please how this will reduce pressure on other necessary infrastructures and so we again ask for an up to date overview of this particularly if decisions have to be made about what will be delivered in relation to policing and other necessary infrastructures.”

32. Mr Senior acknowledged receipt of the lengthy e-mail and commented that the approach was “sound” but emphasised that his comments should not be taken to imply the support of the Defendant for any particular bid. Mr Lambert shortly afterwards asked for Mr Senior’s “guidance on viability” given the external funding for the road that was then on offer. Mr Senior’s reply was that it had not to-date been the claim of the applicants that “overall the scheme is unviable”, but he drew attention to the fact that they had pointed out that there is “a cost of up front infrastructure to be delivered which affects cash flow especially in Phase 1.” He said that over the life of the scheme “the additional funding will improve the overall viability of the scheme” and suggested that the Claimant prepare its bid and the issue of viability could be addressed if it was raised in due course.

33. Mr Lambert had been working up a new bid which was sent to the Defendant by means of a letter under cover of an e-mail of 27 September. I need not try to summarise it save to say that the total sum sought was just over £1.79 million, a

substantial reduction from the original bid. Notwithstanding that, Mr Senior challenged a number of the items comprising the list constituting the bid as not being CIL compliant. One such element was the element for “additional premises” which, he argued, had not been “fully justified”, but may be “capable of being supported” as the development proceeds. He suggested a review formula that would include discussions between the developers, the Defendant and the Claimant.

34. Mr Lambert responded to that in detail by an e-mail of 15 October 2013. Again, I need not deal with that in detail, but the paragraph dealing with the proposed review clause should be noted:

“We accept the need for review clauses but this cannot be to the extent that there is no commitment or quantum at the outset when [planning permission] is issued and we cannot accept that the owner or the [the local planning authority] will be determining what we need. Neither are responsible for delivering policing. We are, and know what we need. You are supposed to be planning at outline not putting it off. Imagine the response if this was the review mechanism for schools or health or anything else i.e. wait till schools are overcrowded or people can’t access health to provide premises essential for delivery. That is not the approach of [the National Planning Policy Framework].”

35. A meeting took place on 23 October, attended *inter alia*, by Mr Rob Back, the Planning and Economic Development Group Manager of the Defendant. He wrote to Mr Lambert on 24 October in which he acknowledged that some of the items sought were now accepted as meeting the CIL tests, but still maintaining that some did not, or were not sufficiently evidenced for that purpose. The letter contained this paragraph towards its conclusion:

“You have also explained that the police would be happy to work with the developer to agree a phased contribution to the costs above in line with the rate of development on the site. This approach could be significant to assisting the developers cash flow and we will explore this with them in more detail. We would be grateful if you could confirm that this approach may be appropriate to all elements of the police infrastructure related to the site.”

36. Mr Lambert replied by letter of 28 October acknowledging that he appreciated that the Defendant was attempting to conclude the section 106 Agreement as soon as possible and that there was “a sense of urgency”. The paragraph dealing with the possible phasing of the police contribution reads as follows:

“There are two elements to phasing. First what we will need and when, and we have looked at this before for you. Indeed what I attach in relation to vehicles demonstrates this to an extent. As I said at our meeting we need to sit down and work through this. Second our willingness and goodwill to borrow against the Section 106 contract. The latter depends on the

contractual commitment, which we have asked for and haven't seen, and our goodwill. Our goodwill erodes the more our fully justified request is dismissed and changes offered without good reason."

37. There was a meeting on 31 October attended by Mr Back and others from the Defendant and Mr Lambert and the Finance Officer of the Claimant. Mr Back refers to it in his witness statement, but Mr Lambert does not. Mr Back says this about what was said:

"... we confirmed that the ... developers consortium was not claiming that the development was financially unviable and that the role of financial appraisal in relation to [the development] was limited to phasing and deliverability. In response it was explained by Mr Lambert that the police had the ability to borrow against a Section 106 obligation in order to enable the timely delivery of infrastructure."

38. The following day (1 November) Mr Senior sent an e-mail to Mr Lambert summarising the items that the Defendant considered should be included in the section 106 Agreement in relation to police funding. In fact a good deal of the bid previously made (see paragraph 33 above) was agreed, including the additional premises contribution in the sum previously claimed. There were some reductions in the bids for start up equipment, vehicles and Automatic Number Plate Recognition, but the list was as follows:

"Items for inclusion in the agreement

Start-up equipment	£71,388
Vehicles 3 off	£47,415
Additional radio transmitter	£350,000
Additional radio call capacity	£7,650
PND additions	£4,887
Additional call handling	£10,115
ANPR 4 off	£32,888
Mobile CCTV	£4,500
Hub equipment	£8,000
Total	£536,843

Trigger points for these items need to be agreed, usually based on number of occupations.”

39. That list was on a document attached to the e-mail and the balance of the document, which related to the premises element of the police contribution, read as follows:

“Extensions to existing premises to a maximum of £1,089,660

A review of the need for extensions to existing premises at the commencement of Phase 3 (or other agreed trigger point)

Agreed funds to be paid in the flowing stages

10% within 2 weeks of notice from the police confirming that are proceedings with extensions

10% within 2 weeks of agreed design stage

40% within 2 weeks of the issue of tender for the construction contract

40% within 3 months of commencement of construction.”

40. Mr Senior said that he had “included trigger points which you may wish to amend, but not for the equipment which I will need you to supply.”

41. Mr Lambert replied to this e-mail on 7 November 2013 stating the following at the outset:

“The main issue for us in this is the lack of developer commitment to premises I am afraid what is proposed virtually removes the covenant as far as our premises are concerned and having successfully made the case for this to your satisfaction, i.e. that what we seek will be necessary when this development is built, we can’t then move away from this and come back to the developer at future points to make the case afresh.”

42. The e-mail continued with various suggestions based upon the premise that the developers commit to funding part of what the police needed as a covenant in the section 106 agreement and the review mechanism to apply to the rest. The suggestion, on this basis, was that the Claimant would build to accommodate 14 staff to serve the development and would “aim to start the project at the 1200 trigger”.

43. This e-mail was forwarded by Mr Senior to Mr Paul Burton, a Director of the 1st Interested Party, on 11 November who replied in the following terms:

“We discussed on Friday the terms you believe to have some weight under the CIL requirements. We reached agreement on those contributions following our discussion about the payment timing and the review of the premises. It appears that this compromise to move matters forward is not being accepted by

Michael Lambert and there may still be a risk of him JR proceedings.

As you know, my view and the view of the other consortium members is that these requests are unreasonable and I find it amazing that the Lubbethorpe scheme will generate the need for 14 staff. I would like to discuss tomorrow the possibility of the Police continuing to argue their case, potentially to the courts and whether we can secure an agreement from them that if they accept your proposals that they will agree to not to take the point any further. If not, I am not sure there is much advantage to the consortium to accept terms that they wholeheartedly disagree with. Something to discuss tomorrow with the solicitors.”

44. That e-mail referred to a meeting that had been held on 8 November and one to be held the following day which Mr Burton attended with a good number of others, including Mr Senior and Mr Back of the Defendant, at which the outstanding issues concerning the section 106 agreement were discussed and resolved.
45. I think I should record what each of those who attended says about those meetings because it would appear that it was the combined effect of those meetings that constituted the “decision” about the section 106 agreement that underlies the Claimant’s challenge in these proceedings.
46. Mr Senior said this:

“41. On 8 November 2013 a meeting was held between the Council and the development consortium the outcome of which was summarised in an email from Paul Burton of the consortium on 11 November The discussion referred to in the e-mail considered two issues; first the cash flow of the scheme and the cost of the infrastructure to be provided in phase 1 and secondly how the police request which the Council felt should be given some weight could be supported. It was proposed all the items except premises could come forward at the end of phase 2. The premises could then be subject to a review as part of a viability review at the beginning of phase 3. This review would consider whether the provision of affordable housing could be increased towards the Council’s aspiration of 25% across the whole site, the Council having accepted a reduction in affordable housing percentage to help facilitate the development. If the need for [police] premises was agreed at the time of the review, this would be funded.

42. On 12 November 2013, a meeting was held between the Council and solicitors representing the County Council, and development consortium respectively. At that meeting it was agreed to incorporate the above proposals into the Section 106 Agreement. The discussion at the meeting took into account the issues of viability, compliance by the requests with the CIL

Regulations and the decision to accept the proposal resulted from a balanced judgement as to how to deliver as much of the police request as possible, albeit not within the time scales that they had requested, and at the same time deliver a viable development.”

47. Mr Back said this:

“14. On 12th November 2013 the Council organised a meeting with representatives of the Lubbesthorpe Consortium, Leicestershire County Council and legal representatives from each of the above. This meeting considered all elements of the ... S106 agreement including the proposed policing contribution. At the meeting Council officers explained that we accepted that some elements of the request made by [the police] were compliant with the relevant Community Infrastructure Regulations. At this time, the developer consortium did not agree with the Council’s position but Council officers were able to negotiate a favourable position for [the police] partly due to the need to achieve a completed agreement in order to realise the M1 bridge Pinch Point funding. The financial pressures on the early phases of the development and the overall priorities for Lubbesthorpe were discussed as a result of which it was agreed that the policing contributions would need to be triggered from the end of the second phase of the development. At the end of this meeting all parties agreed that further substantive changes to the agreement would be minimised in order to commence the complex process of completing the agreement with all parties.

15. In the context of the meeting described above it became clear that we ought to communicate the end of the negotiation process, particularly as it was clear that some service providers would not be receiving everything that they had requested, and/or that monies would be provided at a date other than that requested. On this basis I wrote to [the police] on 18th November to confirm that the position we had communicated at an earlier stage of the process (1st November 2013) was the Council’s final position on this matter I note with some surprise that [the police] claim not to have received this letter. Whilst this is unfortunate, I take some comfort in the fact that the letter only reiterated the Council’s already communicated position in any event.

16. It is entirely understood and appreciated that the ... S106 agreement is not a facsimile of the contribution request submitted on behalf of [the police]; it is worth emphasising that the Council was fully aware of this situation when the application was reported to the Development Control Committee for determination and remained the case at the point the agreement was completed. ... the Report to Committee ...

states “It will noted that the request for funding from the Police has only been agreed to in part”. This report and the associated recommendation and resolution should have clearly set the expectations of [the police] in this matter. As the detail of the [the police] request was examined over the course of the following months there were multiple communications ... between the Council and [the police] that made it abundantly clear that the Council did not accept the full extent of the [police] request. There could have been no expectation on the part of [the police] of any other conclusion.”

48. Mr Burton said this:

“26. The meeting on 12 November ... was called to finalise the outstanding issues in the s.106 agreement and it was critical to the delivery of the M1 bridge. The structure and timing of at least two highways contributions were discussed and resolved at this meeting Both contributions were pushed back in the programme of delivery works to secure a contribution. There has been no suggestion by the local highways authority that this was inappropriate

27. I recall at the November 12th meeting that there was specific discussion about the outstanding requests for contributions on the part of the Leicester City Council and the Claimant. These two issues, in my mind, were very similar in nature in that I did not see a clear link between the requests and the acceptability in planning terms of the Scheme.

28. In relation to the contributions sought by the Claimant, the key points of the discussion were the relevance of these contributions to the Scheme, their negative effect on the precarious cash-flow position of the project in the early phases and on the overall viability, and the now urgent need to bring s.106 negotiations to a conclusion so as to secure planning permission in the light of the funding position in relation to the M1 bridge There was debate as to the level and timing of the various contributions leading to the provisions that were ultimately documented in the s.106 agreement.

29. The outcome of this discussion was that significant contribution would be made to the Police (notwithstanding my significant reservations as to their CIL compliance) on the proviso that it did not add to the existing very heavy burden of the already agreed financial contributions and infrastructure obligations to be undertaken at the early stage of the development, so as not to risk the viability or deliverability of the scheme. This was entirely consistent with other decisions taken that day, on both highways and the bus station

30. I recall the Defendant's officers being comfortable with the eventual position reached on not just the Claimants' obligations but also the overall package of planning obligations that were discussed."
49. On 15 November 2013, Mr Lambert e-mailed Mr Senior saying that he had not heard from him and expressing concern about the "premises commitment and whether what we suggest will be included in the agreement." If it was to be included then he would, he said, "come back on vehicles and training and triggers", but if not he would need to take advice on the next steps. He emphasised that the issue was "fundamental" for the Claimant.
50. Mr Senior replied later that day saying that "[we] have not finished the final wording but there is provision for premises and I will get back to you early next week with the wording." Mr Lambert replied shortly afterwards and again stressing the importance of the premises element of the contribution being "triggered and paid for in Phase 1" of the development. He said he could provide the triggers for the other items "pretty quickly".
51. The reality, of course, is that the decisions had been made by then.
52. An odd feature of this case is that the letter written by Mr Back to the Claimant's Finance Director dated 18 November 2013 (to which he referred in his witness statement) explaining the position was never received by the Claimant. Everyone accepts that was so and so do I: indeed there are communications from Mr Lambert to Mr Senior and others thereafter that would, in the ordinary course, have referred to the letter had it been received. The letter does, however, reflect a relatively contemporaneous justification for the decision reached and it is worth quoting the substantive paragraphs:

"As you will be aware from our e-mail of 1 November, we set out the contributions which we support and when these will be triggered. Following negotiations with the applicant, it has been agreed that the £536,834 will be paid at the end of the second phase of development. The agreement will contain a commitment towards premises and a payment up to a maximum of £1,089,660 towards the premises that are agreed following a review of the needs of the police at the time.

I am aware that these contributions and the associated triggers do not match those requested by your organisation however please be assured that we have sought to achieve the best result for Lubbethorpe and the wider community. The trigger points have been agreed with the applicants in the light of the full range of contributions that have been sought and the Council have sought to balance all of the infrastructure and funding requirements associated with this complex development.

We have previously explained the urgency and timescales involved with this matter and we have today agreed with the developer that no further changes to agreement will be sought.

To make further changes would potentially jeopardise the funding of the M1 bridge and would potentially impact the viability and deliverability of the whole development.”

53. Because this was not received, so far as the Claimant as concerned, there were no further communications from the Defendant on the section 106 agreement until it was sent in its concluded form under cover of an e-mail dated 29 January 2014.

The legal arguments

54. Before turning to the legal arguments, I should highlight a fact that Miss Wigley emphasises, namely, that there had never been any suggestion that the scheme was not viable, even before the £5 million of Department of Transport money became available. Mr Elvin and Mr Alex Goodman (for the 5th Interested Party) do not dispute that, but emphasise that it has always been the position of the development consortium that cash flow, particularly in the early stages of the development was a major issue.

55. I will address each of the Grounds advanced by Miss Wigley.

Ground 1

56. This is formulated as follows:

“The Council erred in failing to include provisions with the section 106 agreement to secure adequate and timely contributions towards policing so as to properly mitigate the adverse impact of the development. The Council also erred in failing to have regard to whether the section 106 agreement was adequate to achieve the necessary and required mitigation when it granted planning permission; the Agreement is fundamentally flawed and fails to achieve what is necessary to make the development acceptable in planning terms. No reasons have been given for the actions taken by the Council in respect of the Police contribution and why it has been dealt with differently to other contributions, and accordingly, the Council have acted irrationally.”

57. Miss Wigley says that the Defendant having agreed the principle of the police contribution, the legitimacy of the contributions vis-à-vis the CIL tests and the figures referred to in paragraphs 38 and 39 above, its task as planning authority, in accordance with the resolution of 1 November 2012, was to enter into a section 106 agreement “to secure” the provisions identified in the resolution which, of course, included the provisions concerning the police contribution. For the reasons summarised in paragraphs 20-24 above, she submits that, irrationally, this has not been achieved in relation to the premises contribution (because of the lack of commitment and the uncertainties) and neither has it been achieved in relation to the equipment contribution because rationally-derived trigger-points have not been identified. As to the latter (whilst it might also go to Ground 3), the submission is that the Defendant needed information from the police to enable it to define those trigger-points and failed to obtain it. She also submits, on the basis of what has been revealed

of the decision-making process leading to the section 106 agreement, that the necessary balancing exercise was neither rational nor fair.

58. Whilst she put the matter in a number of ways, the summary I have given above reflects the substance of this argument. She recognises the high threshold there is in this context for establishing such a ground of challenge: see, e.g., *R (Newsmith Stainless Ltd) v Secretary of State for the Environment* [2001] EWHC Admin 74, Sullivan J, as he then was, at [8].
59. Mr Elvin contends that the argument comes perilously close to a simple submission that the Defendant should have accepted the Claimant's approach and that no other rational course existed. That, he submits, is not sufficient and amounts to nothing more than a challenge to the planning merits of the considerations leading to the section 106 Agreement. He says that the evidence of those present at the meeting of 12 November 2013 demonstrates that those participating were aware of the Claimant's position, that it was taken into account along with the position of others and an assessment made of what was reasonable in the light of the cash flow issues that faced those endeavouring to put together the final, effective package of provisions to be incorporated in the section 106 Agreement. A planning judgment was reached that earlier trigger points for the financial contributions were not required to make the development acceptable and a material consideration was also not risking the timely delivery of the development itself.
60. Mr Goodman supports this approach and, in his Skeleton Argument, sought to characterise the argument that the decision was *Wednesbury* unreasonable and "hopelessly unarguable" and amounted to nothing more than "an impermissible quibble" about the merits of one relatively small factor within a very complex and far reaching decision."
61. I do not, with respect, agree that the challenge mounted by the Claimant in this case can be characterised as a quibble about a minor factor. Those who, in due course, purchase properties on this development, who bring up children there and who wish to go about their daily life in a safe environment, will want to know that the police service can operate efficiently and effectively in the area. That would plainly be the "consumer view" of the issue. The providers of the service (namely, the Claimant) have statutory responsibilities to carry out and, as the witness statement of the Chief Constable makes clear, that itself can be a difficult objective to achieve in these financially difficult times. Although the sums at stake for the police contributions will be small in comparison to the huge sums that will be required to complete the development, the sums are large from the point of view of the police.
62. I am inclined to the view that if a survey of local opinion was taken, concerns would be expressed if it were thought that the developers were not going to provide the police with a sufficient contribution to its funding requirements to meet the demands of policing the new area: lawlessness in one area can have effects in another nearby area. Miss Wigley, in my judgment, makes some entirely fair points about the actual terms of the section 106 Agreement so far as they affect the Claimant.
63. However, the issue is whether the strength of the argument to that effect surmounts the very high threshold for establishing irrationality in the sense required for the challenge to be successful. I am unable to accept that they do cross this threshold.

Whilst I can understand that the Claimant may feel that its approach has simply been rejected by the developers because it is inconvenient and that its persistence has been an irritant, the evidence does suggest that the Defendant has considered the matter properly and has reached a rational and sustainable conclusion even if it is not one with which everyone would agree.

Ground 2

64. This is formulated thus:

“In all circumstances, given the size and significance of the development, and the failure to secure appropriate mitigation of the impact of the development, it was incumbent upon the Officers to either return to matter to Committee for determination or articulate their reasons for accepting the Agreement in the terms they did. In the absence of any reasons, the inference is that the Council have acted irrationally.”

65. As articulated orally by Miss Wigley, this was effectively a restatement of the proposition that the planning committee had directed the officers to negotiate a section 106 agreement that secured CIL compliant police contributions (see paragraph 57 above) and that they had not done so. This should, she submits, have resulted in the matter being referred back to the planning committee. As she put it in the Skeleton Argument, having regard to the wording of the committee resolution and, in particular, the way in which the “premises contribution” was to be dealt with under the section 106 agreement, it was incumbent on the officers to report back to the members their inability to act in accordance with the resolution and to explain their proposed alternative course. She submits that it cannot be said with any certainty that the members would have been satisfied with the proposed course of action.
66. The well-known case of *R (Kides) v South Cambridgeshire District Council* [2002] EWCA Civ 1370 was referred to in this context as was the observation of the Court of Appeal in *R. (Dry) v West Oxfordshire DC* [2011] 1 P. & C.R. 16 at [16].
67. I do not really feel that this ground adds anything in real terms to the first ground (or indeed to Ground 3 that I will consider below). It does seem to me that Mr Elvin was right to submit that the resolution required the section 106 agreement to embrace “all CIL Compliant capital infrastructures for Policing”, that “the precise terms of this contribution [are] to be settled by further negotiation” and that this makes it clear that the committee envisaged that the further negotiations on this matter would be undertaken by the officers.
68. That, as it seems to me, is sufficient to dispose of this argument. In any event, in the particular circumstances of this case, whilst some questions might have been raised by members about the terms concerning the police contributions, it is fanciful to suggest that a scheme such as this would have foundered on such an issue. Given the new funding stream constituted by the Pinch Point funding, a resolution to defer the grant of permission pending further negotiations would, to my mind, have been so unlikely as to be a consideration that can safely be disregarded.

Ground 3

69. This is formulated thus:

“Furthermore, arising out of the correspondence, contact and agreement with the Council in this matter, the Police had a legitimate expectation that the Council would consult them on the level of and timing of the delivery of the contribution and that the outcome of those discussions would be represented in the Agreement.”

70. The foundation for this argument is the sequence of correspondence, meetings and other communications in the period running up to November 2013 to which I have referred above (see paragraphs 28-43 above).
71. There is, of course, a good deal of authority on the issue of legitimate expectation. I am quite prepared to accept for present purposes that a course of dealing between two parties in the kind of context with which this case is concerned can in some circumstances give rise to a legitimate expectation that some particular process will be followed by the public authority the subject of the challenged decision before the decision is taken. The course of dealing can be on such a basis that the necessarily “clear and unambiguous” representation upon which such an expectation is based may arise.
72. Did anything of that nature arise in this case? I do not think so. What one can see from the communications to which I have referred is a pattern of negotiation, in effect between the Claimant and the developers with the Defendant as the intermediary, where no unequivocal representation was made by the Defendant that could have led to an expectation that it would be consulted “on the level of and timing of the delivery of the contribution”. That having been said, however, there can be little doubt that the Defendant was aware of the Claimant’s view on the timing of the premises contribution which, in one sense, was the most significant part of what was required by way of infrastructure funding. The equipment contribution was discussed and the police could have given “chapter and verse” on that if they had chosen to do so prior to the final discussions between the Defendant and the developers. However, I do not see any basis for a specific obligation on the Defendant’s part to inquire about that.
73. There is no evidence to suggest that the way in which the Claimant’s position was handled during the prolonged negotiations towards the section 106 agreement was markedly different from that of the other parties who also engaged in the process whatever the ultimate outcome may have been. It seems to me that the accommodating approach of Mr Senior from August 2013 onwards was simply born of a desire to facilitate a smoothing of the passage towards a resolution of the impasse that otherwise existed and that it would be wrong to read it in any other way.
74. It seems to me that there was, at least initially, a difference of view about the approach to how the police contribution should be calculated (one apparently shared by others around the country at the time). That there was a revision of the approach during the negotiations is plain. That may have been aided by the decision in the Jelso Homes appeal to which Miss Wigley drew my attention. At all events, as it seems to me, there was nothing in what occurred during the various communications

that could reasonably have led the police to believe that it would be consulted on the specific terms of the section 106 agreement. As Mr Elvin submitted, the Claimant did make representations which the evidence suggests were considered. That, in my judgment, is as far as any legitimate expectation could take the Claimant.

Ground 4

75. This was added by a late amendment for which leave was granted by Hickinbottom J. As formulated it is as follows:

“The Council has breached Article 36 of the Town and Country Planning (Development Management Procedure) (England) Order 2010.”

76. The acronym ‘DMPO’ is applied to this order.
77. The contention is that that Article 36(3)(b) required the “travelling draft” of the section 106 agreement to be placed on the local planning register and that the Defendant’s failure to do so invalidates the planning permission.
78. Article 36(3) is as follows:

(3) Part 1 of the register shall contain in respect of each such application and any application for approval of reserved matters made in respect of an outline planning permission granted on such an application, made or sent to the local planning register authority and not finally disposed of—

(a) a copy (which may be photographic or in electronic form) of the application together with any accompanying plans and drawings;

(b) a copy (which may be photographic or in electronic form) of any planning obligation or section 278 agreement proposed or entered into in connection with the application;

(c) a copy (which may be photographic or in electronic form) of any other planning obligation or section 278 agreement entered into in respect of the land the subject of the application which the applicant considers relevant; and

(d) particulars of any modification to any planning obligation or section 278 agreement.

79. This follows Article 36(2) which provides that “each local planning register authority shall keep, in [two] parts, a register of every application for planning permission relating to their area”.
80. Whilst I have had very little opportunity to give this issue mature consideration, I find it difficult to find within Article 36(3)(b) an obligation that “travelling drafts” of a section 106 agreement should be placed on the register. Mr Goodman submitted that Article 36 is not intended to require that every iteration of a document “under

construction” by negotiation must be put on the planning register and I am inclined to agree that that is so.

81. At all events, Mr Elvin and Mr Goodman seem to me to have the complete answer to this allegation in this case, namely, that there is no evidence or even a claim that the Claimant checked the local planning register before the planning permission was granted and accordingly no prejudice could have arisen. If there was any failure to comply with Article 36(3)(b), it could have had no impact on the outcome of this case.
82. The evidential basis for the contention about the lack of material on the register is a witness statement of Rebecca Philips, a solicitor with the Derbyshire Constabulary, who made certain requests and enquiries of the Defendant’s planning office. However, there is a factual issue joined by virtue of Mr Senior’s second witness statement when he says that the various drafts of the section 106 agreements in question were available for inspection in hard form in the Council’s files on request. I cannot resolve any issues of fact on this application and, in any event for the reasons I have given, it is unnecessary to do so.

Conclusion

83. I have not been able to cover every nuance of the arguments advanced. However, I am of the view that the grounds of challenge to the grant of planning permission do not succeed.
84. I repeat that, looked at objectively, there are features of the way the police contribution in this case was dealt with in the section 106 agreement that are not very satisfactory and, as I have said, some legitimate criticisms seem to me to be open to the formulation of the trigger mechanism. I rather suspect that, irrespective of the outcome of this case, the issue of the timing of the police contributions will have to be re-visited before the development proceeds too far to ensure that those who are considering purchasing properties on the development will have the reassurance that it will be properly and efficiently policed. However, that does not amount to, or evidence the need for, a conclusion at this stage that what was agreed between the Defendant and the developers was irrational or that there was anything unfair about the way the Defendant dealt with the issue.
85. The case was dealt with as a “rolled up” hearing. Mr Elvin is quite right to say that a claimant in such a situation should not be given permission to apply for judicial review “just because everyone is present at the hearing”. A “rolled up” hearing is often directed when there is a need for expedition and that is plainly why Hickinbottom J directed such a hearing in this case. The other aspect to the position advanced by Mr Elvin is that merely because a claimant loses at a “rolled up” hearing does not mean that permission to apply for judicial review should not be granted.
86. If this case had not been as urgent as it is and a judge had applied his or her mind to the usual considerations at the permission stage, I believe the Claimant would probably have overcome the relatively low threshold of “arguability” on Grounds 1 and 3, but not on grounds 2 and 4. Accordingly, I grant permission on Grounds 1 and 3, although I dismiss the substantive claims, but I refuse permission to apply for judicial review on Grounds 2 and 4.

87. I would express my appreciation to all Counsel for their assistance, both in their oral submissions and in writing.

Permission to appeal

88. Because of the urgency and because of my non-availability in the next few weeks, it was agreed at the conclusion of the hearing that I should assume that any losing party would wish me to consider the issue of permission to appeal. It would be convenient for me to do so here.
89. This arises in relation to grounds 1 and 3 (because I have refused permission on grounds 2 and 4 and the normal route is a direct application to the Court of Appeal in relation to such grounds). Whilst I have treated grounds 1 and 3 as having crossed the arguability threshold for the purposes of permission to apply for judicial review, having heard the full argument I was satisfied that the grounds should not succeed. I am of the view that there is no realistic prospect of success on an appeal if pursued and, accordingly, I refuse permission to appeal.
90. Again, it was agreed by all parties that I should exercise my power effectively to foreshorten any period for seeking permission to appeal from the Court of Appeal. I will direct that any Appeal Notice seeking permission to appeal must be lodged within 7 days of the hand down of this judgment, that the notice must be served on all other parties and that an application in writing for an expedited consideration of the issue of permission to appeal must be made by the Claimant. It would, of course, be open to the other parties to make representations on this issue if so advised.
91. Arrangements will have been made for the final form of this judgment to be handed down on my behalf by a judge sitting in Birmingham during the week beginning 26 May and the 7-day period will commence on that day.



Department for
Communities and
Local Government

Mr J Bompas
Iceni Projects
Flitcroft House
114-116 Charing Cross Road
London WC2H 0JR

Our Ref: APP/G2435/A/14/2228806

15 February 2016

Dear Sir

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78
APPEAL BY MONEY HILL CONSORTIUM: MONEY HILL, LAND NORTH OF
WOOD STREET, ASHBY-DE-LA-ZOUCH**

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Inspector, John Braithwaite BSc (Arch) BArch(Hons) RIBA MRTPI, who held a public local inquiry on 8 and 10 September 2015 into your client's appeal against the decision of North West Leicestershire District Council (the Council) to refuse planning permission for 605 residential dwellings including a 60 unit extra care centre (C2), a new primary school (D1), a new health centre (D1), a new nursery school (D1), a new community hall (D1), new neighbourhood retail use (A1), new public open space and vehicular access from the A511 and Woodcock Way, in accordance with application Ref 13/00335/OUTM dated 22 April 2013, at Money Hill, land north of Wood Street, Ashby-de-la-Zouch.
2. The appeal was recovered for the Secretary of State's determination on 3 December 2014, in pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act 1990 because it involves a residential development of more than 150 units on a site of more than 5 hectares, which would significantly impact on the Government's objective to secure a better balance between housing demand and supply and create high quality, sustainable, mixed and inclusive communities.

Inspector's recommendation and summary of the decision

3. The Inspector, whose report is enclosed with this letter, recommended that the appeal be allowed. For the reasons given below, the Secretary of State agrees with the Inspector and has decided to allow the appeal and grant planning

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permission. All paragraph numbers, unless otherwise stated, refer to the Inspector's report (IR).

Procedural matters

4. For the reasons in IR9 and IR64-66, the Secretary of State agrees with the Inspector that the amended scheme is not materially different to the original and is not so changed that the interests of any party to the appeal are compromised (IR67). He also agrees with the Inspector's conclusions in IR67 on the implementation of the original scheme. Like the Inspector, the Secretary of State has considered the original and amended schemes on their merits (IR67).
5. The Secretary of State has had regard to correspondence submitted too late to be considered by the Inspector, as set out in Annex B to this letter. He has carefully considered these representations but, as they do not raise new matters that would affect his decision, he has not considered it necessary to circulate them to all parties. Furthermore, the Secretary of State wrote to the inquiry parties on 14 December 2015, inviting comment on: any implications the Ashby-de-la-Zouch Draft Neighbourhood Plan may have for the planning balance in the case; and on any material change in circumstances, fact or policy, which may have arisen since the close of the inquiry. The responses received were circulated for further comment on 11 January 2016. A list of the representations received is set out in Annex C to this letter. The Secretary of State has carefully considered these but is satisfied that they do not raise any new material considerations sufficient to affect the decision in this case. Copies of the representations listed in Annexes B and C can be made available on written request to the address at the foot of the first page of this letter.
6. In coming to his decision, the Secretary of State has taken into account the Environmental Statement (ES) and the ES Addendum prepared in accordance with the Town and Country Planning (Environmental Impact Assessment) Regulations 2011, as amended (IR5 and 9). The Secretary of State is satisfied that the ES and the ES Addendum comply with the above regulations and that sufficient information has been provided for him to assess the environmental impact of the proposals.

Policy considerations

7. In deciding the appeal, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise. In this case, the development plan comprises the saved policies of the North West Leicestershire Local Plan 1991 – 2006 (LP), which was adopted in August 2002.
8. Other material considerations which the Secretary of State has taken into account include: The National Planning Policy Framework (the Framework); the Planning Practice Guidance (the Guidance); and the Community Infrastructure Levy (CIL) Regulations.
9. The Secretary of State notes that the main parties agreed that no weight can be attached to the emerging North West Leicestershire Local Plan, for the reasons in IR12. The Secretary of State notes that the Council recently undertook a

public consultation on a draft Local Plan, but does not consider that the emerging Local Plan can be afforded any more than very limited weight at this stage. The Secretary of State also notes that consultation has now closed on the Ashby-de-la-Zouch Draft Neighbourhood Plan (NP) and, given the stage it has reached in its progress towards adoption, affords it very limited weight.

10. In accordance with section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the LB Act), the Secretary of State has paid special regard to the desirability of preserving those listed structures potentially affected by the scheme or their settings or any features of special architectural or historic interest which they may possess. The Secretary of State has also paid special attention to the desirability of preserving or enhancing the character or appearance conservation areas, as required by section 72(1) of the LB Act.

Main Issue

11. The Secretary of State agrees with the Inspector that the main issue in this case, taking all relevant matters into account, is whether the proposal would be sustainable development (IR68).

Development Plan

12. The Secretary of State notes that, for the reasons in IR14, the appeal proposal conflicts with LP policy S3; but that the LP's housing policies only made provision to meet the need for new homes in the district until 2006 and are consequently are out of date (IR14). He notes the Council's view that a new Local Plan will have to identify land outside the existing limits to development to meet the present and future need for housing, and that policy S3 is out of date (IR14). He agrees with the Council that, in the circumstances, no weight should be attached to the conflict with policy S3 (IR14).

Sustainable development

13. For the reasons in IR82-84, he agrees with the Inspector that the proposed development satisfies the economic, social and environmental roles of sustainable development; and that it would be sustainable development (IR85).

Housing need and supply

14. Paragraph 47 of the Framework requires local planning authorities to identify and update annually a supply of specific deliverable sites to provide five years of housing against their housing requirements. The Secretary of State notes that the appellant has not disputed the Council's contention that it has a five year supply of housing land (IR87). He agrees with the Inspector that local planning authorities must also plan for housing supply beyond the five year period and, as set out in paragraph 47 of the Framework, identify a supply of sites for 6-10 years and, where possible, 11-15 years (IR87). He agrees with the Inspector that there is also a current national imperative to boost the supply of housing and, in recognition of this, the Council rightly does not cite their five year housing land supply as a reason to withhold planning permission (IR87). The Secretary of State attaches significant weight to the fact that the proposed development would provide for 605 new homes of which up to 182 would be affordable.

Other matters

15. For the reasons in IR69-74, the Secretary of State agrees with the Inspector that the development, either in its original or amended form, would not compromise **highway safety** or result in any significant increase in **traffic congestion** (IR74). For the reasons in IR75, he also agrees that it would not have any significant effect on the **character of the area**. He also agrees that the development would not cause any demonstrable harm to the setting of **Ashby Conservation Area** or the setting of any **listed building** within it and therefore that paragraphs 133 and 134 of the Framework are not engaged (IR76). For the reasons in IR77-78, he agrees that the development would not place an unacceptable burden on **local infrastructure** (IR78); and, for the reasons in IR79-81, that, as well as easy access by cycle and walking to local services, residents of the development would have access to a mode of **transport** to the town centre other than the car (IR81).

Conditions and obligations

16. The Secretary of State has considered the schedules of conditions included within the IR; the Inspector's comments at IR160; paragraphs 203 and 206 of the Framework and the Guidance. He is satisfied that the proposed conditions are reasonable and necessary and meet the tests of paragraph 206 of the Framework.
17. The Secretary of State has also considered the executed and signed Unilateral Undertaking; the Inspector's comments on this at IR61-63; paragraphs 203-205 of the Framework, and the Guidance. He considers that that the provisions offered by the Unilateral Undertaking would accord with the tests set out at paragraph 204 of the Framework and agrees with the Inspector that they would also comply with Regulations 122 and 123 of the CIL Regulations.

Planning Balance and Conclusion

18. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise. For the reasons set out in IR14 and 86, the Secretary of State agrees with the Inspector that LP policy S3 is out of date. For the reasons set out in this letter, the Secretary of State also considers that the emerging North West Leicestershire Local Plan and the Ashby-de-la-Zouch Draft Neighbourhood Plan should be afforded very limited weight.
19. The Secretary of State agrees with the Inspector that, taking all relevant matters into account, the proposed development would not cause harm to any matters of acknowledged importance; and that it satisfies the economic, social and environmental roles set out in paragraph 7 of the Framework and would be sustainable development (IR85). The appellant has not disputed the Council's contention that they have a five year supply of housing land (IR87). However, the Secretary of State agrees with the Inspector that local planning authorities must also plan for housing supply beyond the five year period; that there is also a current national imperative to boost the supply of housing; and that, in recognition of this, the Council rightly does not cite their five year housing land supply as a reason to withhold planning permission (IR87). The Secretary of

State attaches significant weight to the fact that the proposed development would provide for 605 new homes of which up to 182 would be affordable.

20. Paragraph 49 of the Framework states that housing applications should be considered in the context of sustainable development, and paragraph 14 states that there is a presumption in favour of sustainable development and that, for decision taking, this means, where relevant policies in the development plan are out-of-date, granting planning permission for development unless any adverse effects of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole (IR88). The Secretary of State agrees with the Inspector that in this case there are no demonstrable adverse effects to take into account and the development would be sustainable development (IR88). He also agrees with the Inspector that, for this principal reason, determination of the appeal may be made other than in accordance with the development plan (IR88).

Formal Decision

21. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. He hereby grants planning permission for the amended scheme for 605 residential dwellings including a 60 unit extra care centre (C2), a new primary school (D1), a new health centre (D1), a new nursery school (D1), a new community hall (D1), new neighbourhood retail use (A1), new public open space and vehicular access from the A511 and Woodcock Way, on land at Money Hill, land north of Wood Street, Ashby-de-la-Zouch, subject to the conditions listed in the Annex A to this letter.
22. An applicant for any consent, agreement or approval required by a condition of this permission for agreement of reserved matters has a statutory right of appeal to the Secretary of State if consent, agreement or approval is refused or granted conditionally or if the Local Planning Authority fail to give notice of their decision within the prescribed period.
23. This letter does not convey any approval or consent which may be required under any enactment, bye-law, order or regulation other than section 57 of the Town and Country Planning Act 1990.

Right to challenge the decision

24. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged. This must be done by making an application to the High Court within six weeks from the date of this letter for leave to bring a statutory review under section 288 of the Town and Country Planning Act 1990.
25. A copy of this letter has been sent to the Council.

Yours faithfully

Philip Barber

Philip Barber

Authorised by the Secretary of State to sign in that behalf

Conditions

1. Save for the details of vehicular access into the site from Woodcock Way (if applicable) and the A511, details of the access, appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") for the relevant phase (as defined under Condition 5 below) shall be submitted to and approved in writing by the Local Planning Authority before any development begins in respect of the relevant phase.
2. Plans and particulars of the reserved matters referred to in condition 1 above, relating to the access save for the details of vehicular access into the site from Woodcock Way(if applicable) and the A511, appearance, landscaping, layout, and scale shall be submitted in writing to the Local Planning Authority and shall be carried out as approved.
3. Application for approval of the reserved matters for the relevant phase (as defined under condition 5 below) shall be made to the Local Planning Authority before the expiration of three years from the date of this permission and the development hereby permitted shall begin before the expiration of two years from the date of approval of the last of the reserved matters for that phase to be approved.
4. The proposed development shall be carried out strictly in accordance with the following plans:
 - Application Boundary Plan – Rev A 29.06.2015
 - Site Access plans (06 Rev F)
5. Notwithstanding conditions 1, 2 and 3 above, the first reserved matters application shall include a masterplan for the whole of the site setting out indicative details of site layout, areas of open space / children's play, landscaping, density parameters and scale, as well as details of any proposed phasing of development. The masterplan shall accord with the principles of the submitted Design and Access Statement. All subsequent reserved matters applications shall be in accordance with the approved masterplan unless any alteration to the masterplan is first agreed in writing by the Local Planning Authority. All development of the site shall thereafter be undertaken in accordance with the agreed phasing and timetable details (or any alternatives subsequently agreed in writing by the Local Planning Authority).
6. A total of no more than 605 dwellings shall be erected on the area shown as 'residential' (18.23 hectares) and 'health centre/residential' (0.52 hectares) as shown on Parameter Plan 1 – Land Use and Amount – Rev D 10.06.2015.
7. No development shall commence on the site (or, in the case of phased development, in respect of the relevant phase) until such time as precise details of all means of mitigation measures as set out in the Environmental Statement, including timetables for their provision in respect of the development (or, in the case of phased development, in respect of that phase), have been submitted to and

agreed in writing by the Local Planning Authority. The measures shall be implemented in accordance with the agreed details and timetables.

8. No development shall commence on the site until such time as a Design Code for the entirety of the developed area shown on Parameter Plan 1 – Land Use and Amount – Rev D 10.06.2015 has been submitted to and agreed in writing by the Local Planning Authority. The Design Code shall substantially accord with the principles and parameters described and illustrated in the Design and Access Statement, and demonstrate compliance with Building for Life 12 (or any subsequent replacement standard issued by the Design Council / CABI or any successor organisation). The development shall thereafter be carried out in accordance with the agreed Design Code.

9. Notwithstanding the submitted details, no construction work shall commence on site until such time as intrusive site investigation works in respect of potential risks to the proposed development arising from former coal mining operations together with precise details of any required mitigation and a timetable for its implementation have been submitted to and agreed in writing by the Local Planning Authority. Where the agreed details indicate that mitigation is required, the development shall be carried out strictly in accordance with the agreed mitigation and timetable.

10. The development hereby permitted shall not be carried out other than in strict accordance with the submitted Flood Risk Assessment (FRA) dated 14 March 2013, ref. 031052 (ES Appendix 14-1) and Drainage Strategy Revision 01, Dated 20 March 2013, ref. 031052 (ES Appendix 14 -2) and the following mitigation measures detailed within the FRA:

- Limiting the discharge rate for surface water run-off and provision of surface water attenuation storage on the site, so that it will not exceed the run-off from the undeveloped site and not increase the risk of flooding off-site - FRA sections 6.0 and 7.4, and Drainage Strategy sections 3.1, 5.1, 7.1 to 7.3.6;
- Management of Silt and the prevention of pollution of the watercourse during the construction phase - FRA section 7.3;
- Provision of safe access and egress within the site - FRA section 7.2;
- Finished floor levels - FRA section 7.1

Unless any alternative programme is first agreed in writing by the Local Planning Authority, none of the dwellings hereby permitted shall be occupied until such time as the mitigation measures have been fully implemented in accordance with the above details.

11. Notwithstanding the submitted details and other conditions, no development shall commence on the site until such time as a surface and foul water drainage scheme for the entire developed area shown on Parameter Plan 1 – Land Use and Amount – Rev D 10.06.2015 (or, in the case of phased development, for the relevant phase of the development), based on sustainable drainage principles and an assessment of the hydrological and hydrogeological context of the development, together with a timetable for its implementation in respect of the development (or, in the case of phased development, for that phase), has been submitted to and agreed

in writing by the Local Planning Authority. The scheme shall subsequently be implemented in accordance with the agreed details and timetable. The scheme shall include:

- Surface water drainage system/s to be designed in accordance with either the National SUDs Standards, or CIRIA C697 and C687, whichever are in force when the detailed design of the surface water drainage system is undertaken;
- Limiting the discharge rate and storing the surface water run-off generated by all rainfall events up to the 100 year plus 20% for commercial, 30% for residential (for climate change) critical rain storm so that it will not exceed the run-off from the undeveloped site and not increase the risk of flooding off-site;
- Provision of surface water run-off attenuation storage to accommodate the difference between the allowable discharge rate/s and all rainfall events up to the 100 year plus 20% for commercial, 30% for residential (for climate change) critical rain storm;
- Detailed design (plans, cross, long sections and calculations) in support of any surface water drainage scheme, including details on any attenuation system, and the outfall arrangements; and
- Details of how the on-site surface water drainage systems shall be maintained and managed after completion and for the lifetime of the development, to ensure long term operation to design parameters.

No development shall be carried out (or, in the case of phased development, no development in that phase shall be carried out), nor any part of the development shall be brought into use at any time unless in accordance with the agreed scheme and timetable.

12. The development hereby permitted shall not be commenced until such time as a scheme to detail each individual watercourse crossing (including pedestrian footbridge and vehicular crossings) demonstrating that no raising of ground levels, nor bridge soffit levels as set will result in elevated flood levels, and that there will be no loss of flood plain storage due to the provision of any new crossing of the Money Hill Brook, has been submitted to and agreed in writing by the Local Planning Authority in consultation with the Environment Agency and Lead Local Flood Authority (LLFA). The scheme shall include, but not be exclusive of:

- Limiting the number of crossings of the Money Hill Brook, and removal/upgrade of any existing crossings;
- Crossings to be provided as clear span bridges or arches in preference to any culverting (including the upgrading of existing crossings, where upgrading is required or proposed);
- Bridge soffits set a minimum of 600mm above the modelled 100 year plus 20% (for climate change) flood level applicable at the crossing site;
- Bridge abutments set back beyond the top of the natural bank of the watercourse;

- Where necessary, culverts designed in accordance with CIRIA C689 (including up sizing to provide a free water surface and natural bed), and to have a minimum width / length of culvert essential for access purposes;
- Provision of compensatory flood storage for all ground levels raised within the 100 year flood plain applicable at any crossing sites, including proposed location, volume (calculated in 200mm slices from the flood level) and detailed design (plans, cross, and long sections) of the compensation proposals;
- Compensatory flood storage provided before (or, as a minimum, at the ground works phase) of the vehicle bridge and any other crossing construction;
- Detailed designs (plans, cross, long sections and calculations) in support of any crossing;
- Details of how the scheme shall be maintained and managed after completion; and
- A timetable for the relevant works.

The scheme shall be fully implemented and subsequently maintained in accordance with the approved details including the timing / phasing arrangements embodied within the scheme.

13. No development shall commence until a construction working method statement to cover all watercourse works (including pedestrian and vehicular crossings and any other works within 8 metres of any watercourse) has been submitted to and agreed in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved scheme.

14. Notwithstanding the submitted details and other conditions, no development (save for demolition works) shall commence on the site (or, in the case of phased development, in respect of the relevant phase) until a further Risk Based Land Contamination Assessment has been submitted to and agreed in writing by the Local Planning Authority (or, in the case of phased development, in respect of that phase). The Risk Based Land Contamination Assessment shall identify all previous uses, potential contaminants associated with those uses, a conceptual model of the site indicating sources, pathways and receptors, and potentially unacceptable risks arising from contamination at the site and shall be carried out in accordance with:

- BS10175:2011+A1:2013 Investigation of Potentially Contaminated Sites Code of Practice;
- BS8485:2007 Code of Practice for the Characterisation and Remediation from Ground Gas in Affected Developments; and,
- CLR 11 Model Procedures for the Management of Land Contamination, published by the Environment Agency 2004.

15. If, pursuant to Condition 14 above, any unacceptable risks are identified in the Risk Based Land Contamination Assessment, a Remedial Scheme and a Verification Plan shall be submitted to and agreed in writing by the Local Planning Authority. The Remedial Scheme shall be prepared in accordance with the requirements of CLR 11

Model Procedures for the Management of Land Contamination, published by the Environment Agency 2004, and the Verification Plan (which shall identify any requirements for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action) shall be prepared in accordance with the requirements of Evidence Report on the Verification of Remediation of Land Contamination Report: SC030114/R1, published by the Environment Agency 2010, and CLR 11 Model Procedures for the Management of Land Contamination, published by the Environment Agency 2004. If, during the course of development, previously unidentified contamination is discovered, development shall cease on the affected part of the site and it shall be reported in writing to the Local Planning Authority within 10 working days. No work shall recommence on that part of the site until such time as a Risk Based Land Contamination Assessment for the discovered contamination (to include any required amendments to the Remedial Scheme and Verification Plan) has been submitted to and agreed in writing by the Local Planning Authority. Thereafter, the development shall be undertaken in accordance with the agreed details and thereafter be so maintained.

16. No part of the development hereby permitted shall be brought into use until such time as a Verification Investigation for the relevant part of the site has been undertaken in line with the agreed Verification Plan for any works outlined in the approved Remedial Scheme relevant to either the whole development or that part of the development and a report showing the findings of the Verification Investigation for the relevant part of the site has been submitted to and agreed in writing by the Local Planning Authority. The Verification Investigation Report shall:

- Contain a full description of the works undertaken in accordance with the agreed Remedial Scheme and Verification Plan;
- Contain results of any additional monitoring or testing carried out between the submission of the Remedial Scheme and the completion of remediation works;
- Contain Movement Permits for all materials taken to and from the site and/or a copy of the completed site waste management plan if one was required;
- Contain Test Certificates of imported material to show that it is suitable for its proposed use;
- Demonstrate the effectiveness of the approved Remedial Scheme; and
- Include a statement signed by the developer, or the approved agent, confirming that all the works specified in the approved Remedial Scheme have been completed.

17. There shall be no infiltration of surface water drainage into the ground at any time other than in accordance with details first submitted to and agreed in writing by the Local Planning Authority. Development shall be undertaken strictly in accordance with the submitted Outline Construction Environmental Management Plan (Revision 01, March 2013, ref. 031052).

18. Notwithstanding the submitted details and other conditions, no development shall commence in any phase until such time as a timetable for the undertaking of updated surveys in respect of badgers in the relevant phase (and including the

specification of maximum periods between undertaking of surveys and commencement of work on the relevant phase) has been submitted to and agreed in writing by the Local Planning Authority. No development shall thereafter be undertaken at any time in that phase unless the relevant surveys have been undertaken in accordance with the approved details and the results (including mitigation measures and a timetable for such mitigation where appropriate) have been submitted to and agreed in writing by the Local Planning Authority, and the development shall thereafter be undertaken strictly in accordance with the agreed mitigation measures and timetable.

19. No hedgerows, trees or shrubs shall be removed during the months of March to August inclusive unless first agreed in writing by the Local Planning Authority. Should nesting birds be found during construction work, all construction work within 5 metres of the nest (which could constitute a disturbance) shall cease immediately, and shall not resume until such time as the young have left the nest.

20. Notwithstanding the submitted details and other conditions, the first reserved matters application in respect of the development (or, in the case of phased development, the first reserved matters application in respect of the relevant phase) shall be accompanied by full details of all measures proposed in respect of the enhancement and / or management of the ecology and biodiversity of the development (or in respect of phased development, that phase), including proposals in respect of future maintenance and a timetable for the implementation of the relevant measures. The development shall thereafter be undertaken and occupied in accordance with the agreed measures and timetable.

21. Notwithstanding the submitted details, all reserved matters applications for the erection of non-residential development shall include full details of the proposed buildings' anticipated level of achievement in respect of criteria / sub-categories contained within the Building Research Establishment's Environmental Assessment Method (BREEAM). No building shall be brought into use until such time as an assessment of the building has been carried out by a registered BREEAM assessor and a BREEAM Certificate has been issued for the relevant building certifying that the relevant BREEAM Level has been achieved.

22. Notwithstanding the provisions of the Town and Country Planning (Use Classes) Order 1987 (as amended) (or any order revoking or re-enacting that Order), the total gross floorspace of uses falling within Class A1 of that Order shall not exceed 560 square metres at any time, nor shall the total gross floorspace of any single retail unit exceed 460 square metres at any time, unless planning permission has first been granted by the Local Planning Authority.

23. The first reserved matters application submitted pursuant to this permission (or, in the case of phased development, the first reserved matters application in respect of the relevant phase) shall include a detailed Archaeological Mitigation Strategy for the respective area(s). The Strategy shall be based upon the results of a programme of exploratory archaeological fieldwalking and trial trenching undertaken within the relevant area(s) in accordance with a Written Scheme of Investigation (WSI) first submitted to and agreed in writing by the Local Planning Authority. Both the WSI and final Strategy shall include an assessment of significance and research questions, and:

- The programme and methodology of site investigation, recording and post-investigation assessment (including the initial fieldwalking and trial trenching, assessment of results and preparation of an appropriate mitigation scheme);
- The programme for post-investigation assessment;
- Provision to be made for analysis of the site investigation and recording;
- Provision to be made for publication and dissemination of the analysis and records of the site investigation;
- Provision to be made for archive deposition of the analysis and records of the site investigation;
- Nomination of a competent person or persons / organisation to undertake the works set out within the Written Scheme of Investigation; and
- A detailed timetable for the implementation of all such works / measures.

No development shall take place at any time within the relevant area other than in accordance with the agreed Written Scheme of Investigation, Strategy and timetable for that area.

24. Notwithstanding the submitted details and other conditions, no development shall commence on the site until such time as a scheme of structural landscaping to the A511 (indicating species, densities, sizes and numbers of proposed planting both within and outside of the application site, as appropriate, together with all existing trees and hedgerows on the land including details of those to be retained, and those to be felled / removed), together with a timetable for its implementation, has been submitted to and agreed in writing by the Local Planning Authority. No development shall be occupied at any time unless all measures specified in the agreed scheme required to be implemented by the relevant stage / phase have been undertaken in full in accordance with the agreed details.

25. Notwithstanding the submitted details and other conditions, no development shall commence (or, in respect of a phased development, no development shall commence in the relevant phase) until such time as details specifying which of the proposed tree protection measures shown on drawing no. SJA TPP 12139-02a within the development (or, in respect of a phase development, that phase) are proposed to be implemented in respect of the construction of the proposed accesses / roads (together with a timetable for their implementation) have been submitted to and agreed in writing by the Local Planning Authority. No development (or, in respect of a phased development, no development in the relevant phase) shall be undertaken at any time unless all of the agreed protection measures relating to the relevant stage / phase are in place. Within the fenced off areas there shall be no alteration to ground levels, no compaction of the soil, no stacking or storing of any materials and any service trenches shall be dug and back-filled by hand.

26. Save for any works associated with the formation of the access as shown on drawing no. 06 Rev F, no part of the development shall be occupied until such time as the A511 site access junction as shown on drawing no. 06 Rev F has been provided in full and is available for use by vehicular traffic.

27. No development shall commence on the site until such time as a scheme for the provision of a new or diverted bus service serving the development, and providing a connection between the site and Ashby de la Zouch town centre, has been submitted to and agreed in writing by the Local Planning Authority. The submitted scheme shall include hours of operation, service frequencies, routeing and provision of necessary on and off site infrastructure (including pole and flag, bus shelter, raised kerbs and information display cases). The scheme shall include any works / measures required for the initial implementation of the scheme, together with a phased programme for the implementation of any measures required by the scheme as the development progresses. No more than 131 dwellings constructed pursuant to this Planning Permission shall be occupied until such time as the whole of the approved scheme is fully operational.

28. No development shall commence on the site until such time as a construction management plan, including wheel cleansing facilities and vehicle parking facilities, site compound(s), materials' storage areas and a timetable for their provision, has been submitted to and agreed in writing by the Local Planning Authority. The development shall thereafter be carried out in accordance with the approved details and timetable.

29. No more than 30 dwellings shall be accessed off Woodcock Way.

Annex B

Correspondence submitted after the close of the inquiry or too late to be considered by the Inspector

Correspondent	Date
Paul Andrew	17 November 2015
Ashby de la Zouch Civic Society	26 November 2015
the late Lorna Titley	2 December 2015
Iceni Projects	27 January 2016

Annex C

Representations received in response to reference back to parties

Correspondent	Date
North West Leicestershire District Council	17 December 2015
David Price	2 January 2016
Iceni Projects	5 & 18 January 2016
the late Lorna Titley	7 & 18 January 2016
Ashby de la Zouch Town Council	7 & 18 January 2016
Nottingham Road and Wood Street Action Group (NORAG)	7 January 2016
Ashby de la Zouch Civic Society	7 & 17 January 2016
Paul Andrew	7 & 20 January 2016

Report to the Secretary of State for Communities and Local Government

by John Braithwaite BSc(Arch) BArch(Hons) RIBA MRTPI

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

Date: 21 October 2015

TOWN AND COUNTRY PLANNING ACT 1990

NORTH WEST LEICESTERSHIRE DISTRICT COUNCIL

APPLICATION

by

MONEY HILL CONSORTIUM

Inquiry held on 8 and 10 September 2015

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

File Ref: APP/G2435/A/14/2228806

File Ref: APP/ G2435/ A/ 14/ 2228806

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

- The appeal was recovered for decision by the Secretary of State by a direction, made under section 79 of the Town and Country Planning Act 1990, on 3 December 2014.
- The application was made by Money Hill Consortium to North West Leicestershire District Council.
- The application Ref 13/00335/OUTM is dated 22 April 2013.
- The development proposed is 605 residential dwellings including a 60 unit extra care centre (C2), a new primary school (D1), a new health centre (D1), a new nursery school (D1), a new community hall (D1), new neighbourhood retail use (A1), new public open space and vehicular access from the A511 and Woodcock Way.
- The reason given for the direction is that the appeal involves a residential development of more than 150 units on a site of more than 5 hectares, which would significantly impact on the Government's objective to secure a better balance between housing demand and supply and create high quality, sustainable, mixed and inclusive communities.

Summary of Recommendation: The appeal be allowed.

Procedural Matters

1. The application was made in outline form with all matters except for part access reserved for future consideration.
2. The application was refused for four reasons, as set out in a Statement of Common Ground (ID4), but at a Planning Committee Meeting on 6 January 2015 North West Leicestershire District Council (NWLDC) resolved not to pursue the first three reasons for refusal. The fourth reason relates to housing and affordable housing supply.
3. The application was opposed by Leicestershire County Council (LCC) and by Leicestershire Police (LP). Prior to the Inquiry LCC and LP were granted Rule 6(6) status under the provisions of the Inquiries Procedure Rules. Their concerns related to mitigation of the effects of the development and to the provisions of the Unilateral Undertaking, made pursuant to Section 106 of the Town and Country Planning Act 1990, that has been put forward by the Appellant. A final draft of the Section 106 Undertaking was submitted at the Inquiry and a signed and dated version was submitted after the close of the Inquiry.
4. Though they have maintained the fourth reason for refusal of the application NWLDC did not present any evidence at the Inquiry. Instead, they made a position statement. This is reported below.
5. The proposed development is EIA development for the purposes of the Town and Country Planning (Environmental Impact Assessment) Regulations 2011. The planning application was thus accompanied by an Environmental Statement (ES). The ES has been found to meet the requirements of the EIA Regulations.

The Site and Surroundings

6. The appeal site is 43.6 hectares of undulating open farmland, which rises roughly from the south to the north, to the north-west of Ashby-de-la-Zouch. The site is bounded to the west, south and south-east by existing town development, to the north by further farmland, and to the north-east by the A511 trunk road.

The Proposed Development as made to the Council

7. The principal element of the proposed development is the construction of 605 dwellings, of which 60 units would be within an extra care centre, on 20.18 hectares at a density of 29.9 dwellings per hectare. The development would also include a primary school, a health centre, a community hall, neighbourhood retail use, public open space (9.88 hectares) and flood attenuation areas (3.87 hectares). The principal access into the site would be via a new roundabout junction on the A511 and a secondary access would be via Woodcock Way that has a junction with Nottingham Road, the main road into the town from the east.

The Proposed Development as amended prior to the Inquiry

8. After the application was submitted to the Council the Money Hill Consortium 'lost control' of part of the application site. This part of the site is known as the 'Verney field'. The Woodcock Way access into the site is into the Verney field and the field has been the subject of a planning application (Ref. no. 15/00354/OUT) for up to 70 dwellings, which was refused by NWLDC and is the subject of an appeal (Ref. No. APP/G2435/A/14/3019451).

9. The amended development is the same as that generally described in paragraph 7 but would not include any development on the Verney field. Consequently, the area for residential development would reduce to 18.75 hectares, with a consequent increase in housing density to 32.2 dwellings per hectare, public open space would reduce to 8.77 hectares, and flood attenuation areas would reduce to 3.46 hectares. The amended scheme has been the subject of assessment under the provisions of the Town and Country Planning (Environmental Impact Assessment) Regulations 2011 (EIA) and an ES Addendum is included with the Inquiry Documents (ID23).

10. The Appellant maintains that the amendments to the original scheme are minor and has requested, under the principle established in *Bernard Wheatcroft Ltd v Secretary of State for the Environment (1982) 43 P & CR 233 (Wheatcroft)*, that the appeal be determined on the basis of the amended scheme. This matter is reported and concluded on below. ID5 is the plans that accompanied the application and ID6 is the plans for the amended development.

Planning Policy

Local planning policy

11. The development plan, for the purposes of Section 38(6) of the Planning and Compulsory Purchase Act 2004, comprises saved policies of the North West Leicestershire Local Plan 1991 – 2006 (LP), which was adopted on 22 August 2002. LP policy S3 states that development will be permitted on land outside the limits to development, identified on proposals maps as countryside, but only if it is for one of five given purposes. General housing is not one of the five purposes.

Emerging local planning policy

12. A draft Core Strategy was passing through the statutory process towards adoption but was withdrawn in October 2013. A revised draft CS has been prepared but it is not expected to pass through the statutory process to adoption before December 2016. The main parties agreed, as set out in the Statement of Common Ground (ID4), that no weight can be attached to the emerging CS.

The Case for North West Leicestershire District City Council (NWLDC)

The material points of the case made by NWLDC are:

13. The Appellant proposes to deliver a balanced development of up to 605 new homes (of which 30 per cent would be affordable homes), new primary and nursery schools, a health centre, a community hall, a shop and open space on a green field site adjoining the north eastern edge of Ashby de la Zouch.

Planning policy framework

14. The development plan comprises saved LP policies. LP policy S3 restricts the development of new homes outside the limits to development that are shown on proposals maps. The appeal site lies outside the limits to development around Ashby de la Zouch. It therefore conflicts with policy S3. However, the LP's housing policies only made provision to meet the need for new homes in the district until 2006. Consequently they are out of date. Policy S3 is a counterpart to those policies in the sense that it restricts the development of new homes in the countryside in order to direct them to sites allocated for that purpose. Since it is inevitable that a new Local Plan will have to identify land outside the existing limits to development to meet the present and future need for housing policy S3 is also out of date. In the circumstances, no weight ought to be attached to the conflict with policy S3. Instead, the merits of the proposal should be assessed by reference to the National Planning Policy Framework (NPPF).

15. The NPPF places great weight on boosting significantly the supply of market and affordable housing. Where, as in this case, policies for the supply of housing contained in a local plan are out of date, the presumption in favour of sustainable development applies. That means planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies of the NPPF as a whole. The factual question of whether development would actually cause harm is to be approached positively. Local planning authorities should look for solutions rather than problems and decision makers at every level should try to approve applications for sustainable development where possible.

Application of the NPPF to the appeal proposals

16. In May 2014 the Planning Committee refused to grant planning permission for the scheme because Councillors were not persuaded it constituted sustainable development. The notice of decision cited four reasons for refusal. In summary, they were:-

- a. The scheme did not make adequate arrangements for pedestrian access to the town centre. That was thought likely to cause new residents to place too much reliance on the private car, resulting in an unsustainable form of development;
- b. Woodcock Way was thought to be unsuitable for providing vehicular access to up to 30 dwellings;
- c. Highways England had issued a "holding objection" because they were concerned the scheme might prejudice the safe and efficient operation of the A42 Trunk Road;

d. The Appellants had not made adequate provision for affordable housing; the Council's Affordable Housing Supplementary Planning Document requires 30 per cent of the new homes to be affordable whereas the Appellant's offer was unclear and appeared to be likely to yield rather a significantly lower contribution.

17. The decision to refuse planning permission was not taken lightly. The Council knows it must build many more new homes for people to live in. It is also acutely aware of the need to build more affordable houses: the Leicester and Leicestershire Strategic Housing Market Assessment identifies a need to deliver around 209 such homes in the District each year. The Council also recognised that the appeal site had previously been identified for residential development in the first draft Core Strategy. Although that document has been withdrawn, that previous notation makes it very difficult to argue plausibly that in principle the development of houses at Money Hill is unsustainable. Instead the reasons for refusal highlighted concerns about the detail of what was proposed rather than the general suitability of Money Hill to accept significant housing development.

18. Matters did not rest there. The appeal process requires all parties to support their case with evidence which demonstrates clearly why planning permission ought to be refused. They are also required to act reasonably. As the Council set about gathering and testing its evidence, and through the preparation of the Statement of Common Ground, Officers were persuaded that it would be difficult to continue reasonably to contest the first three reasons for refusal. Specifically, it became apparent that:-

- a. A satisfactory bus service could be provided to and from the town centre. Further, there is potential to create convenient, safe and attractive routes for pedestrians and cyclists to and from shops, community facilities and jobs in the centre of Ashby (and elsewhere in the town);
- b. Woodcock Way is capable of serving 30 houses safely;
- c. The development would not prejudice the safe and free flow of traffic on the A42 trunk road.

19. Officers drew comfort for their conclusions from information supplied to them by the local highway authority, Leicestershire County Council, and by Highways England. Neither maintained an objection to the scheme (Highways England withdrew their holding objection on 22 December 2014). Adopting the "solution driven approach" that is advocated by the NPPF, Officers decided to report the matter back to Councillors with a recommendation that the first three reasons for refusal should be withdrawn. The Planning Committee accepted this recommendation on 15 January 2015. That change of stance has since been vindicated by the absence of any objection to the Appellant's highways proposals by either the local highway authority or Highways England. It is also relevant to note the Appellant's amended proposal deletes access from Woodcock Way.

20. Thus for the purpose of applying the presumption in favour of sustainable development the Council accepts that the scheme would not cause any harm to the safe and free flow of vehicular, cycle or pedestrian traffic. It is also satisfied that the appeal site is well located and will be properly serviced by sustainable forms of transport so that residents of the new homes will be able to travel to and from the town centre without necessarily having to resort to using their cars.

Affordable housing

21. When the appeal proposals were considered by the Planning Committee the Appellant did not appear to be committed to providing a policy compliant contribution of 30 per cent affordable housing. That was unacceptable. Ashby de la Zouch is an attractive, historic market town. House prices held up well during the recession and the housing market remains healthy. The site is not constrained by problems that might impose exceptional costs on development and undermine its viability. In principle, therefore, a full policy compliant contribution of 30 per cent affordable housing ought to be made. Indeed an Affordable Housing Viability Study published in 2009 indicated the potential to deliver up to 35 per cent affordable housing on sites in the town. The Council cannot afford to be relaxed about achieving affordable housing targets. As has been noted, there is an acute need for affordable housing throughout the district. In that context sites which cannot satisfy this important social need but which consume the countryside might properly be regarded as failing to deliver sustainable development.

22. Happily, this difference between the parties has been resolved. The Unilateral Undertaking that has been submitted by the Appellant contains an obligation to provide 30 per cent affordable housing subject to an independent assessment of the viability of that level of contribution. The Council is satisfied that the terms of the undertaking are robust and equitable. They also give effect to the NPPF's injunction that development should be deliverable.

The planning balance

23. Every household in the district should be able to obtain a decent home that they can afford. This is quite simply a top priority. The delivery of 605 new homes (of which up to 182 would be affordable) in a sustainable location close to shops, community facilities and employment would make a really substantial contribution towards meeting that priority. That should be accorded considerable weight. In the absence of an up-to-date LP the fact that a recent appeal proved the Council possesses a 5 year supply of deliverable land for housing does not diminish the weight to be attached to the Appellant's offer to build more new homes; a 5 year supply is the minimum amount of land that must be shown to be available. It is not a cap on development.

24. English Heritage has not objected to the scheme and the Council is satisfied that the development would not harm the setting of any listed building. The Appellant has addressed flooding and water quality issues to the satisfaction of the Environment Agency and Severn Trent Water. The County Ecologist and Natural England are satisfied the scheme would not adversely affect the River Mease Special Area of Conservation (SAC) or other ecological interests.

25. On the other side of the balance it is recognised that the scheme would result in the loss of countryside and good quality agricultural land. The countryside is not protected by any special designation. However, it is plainly valued by local people. Its loss is therefore a matter of regret. The Council also recognises local people are concerned about traffic congestion in the town. However, a balance has to be struck between meeting the need for new housing and causing some harm to the environment. In this case the need for new homes is decisive and it is not considered that the harm associated with this provision would be so great as to justify dismissing the appeal.

26. Other potentially adverse impacts of the scheme would be offset by the discharge of planning obligations contained in the undertaking which make contributions towards the cost of new schools and school places, open space, library, healthcare, police and community infrastructure. The Council supports each of these contributions. Other harm that might be caused by the scheme can be overcome by conditions that have been agreed between the parties.

The Case for Leicestershire County Council (LCC)

The material points of the case made by LCC are:

27. Financial contributions are sought towards primary, secondary and upper school education, library facilities, and sustainable transport. The latter element includes a bus pass contribution, a travel pack contribution and a bus stop improvement and information display case contribution. The contributions are necessary because the new housing proposed would place additional demand on education and library resources and on the achievement of sustainable transport options for the intended residents of the development. The contributions are fairly and reasonably related in scale and kind to the development and are directly related to that development. The contributions therefore satisfy Regulation 122 of the Community Infrastructure Levy Regulations 2010.

28. The primary school contribution is directly related to the development because a new primary school would be constructed on the site. If circumstances dictate that this does not occur if the development is implemented then the contribution would be used to extend the primary school at the Holywell Spring Farm development in Ashby. This would be the first such contribution. The secondary school contribution would be the second such contribution towards an increase in capacity at Ivanhoe College and the upper school contribution would be the fifth such contribution towards addressing pupil capacity issues at Ashby College. The library contribution would be the fifth such contribution towards the reconfiguration of the existing library in Ashby and the sustainable transport contribution would be used to mitigate matters arising from the development itself. The financial contributions sought thus satisfy Regulation 123 of the Community Infrastructure Levy Regulations 2010.

The Case for Leicestershire Police (LP)

The material points of the case made by LP are:

29. A contribution of £219,029 is sought towards Police infrastructure that would mitigate the impact of the proposed development. This figure has been arrived at following a close and careful analysis of the current levels of policing demand and deployment in Ashby, so that the impact of the development could be properly assessed and a contribution sought that accurately reflects the precise need that would arise from the development of 605 new homes on the appeal site.

30. LP has not sought any contribution to some aspects of policing, such as firearms and forensics, but only for those aspects where there is no additional capacity. The contribution is thus fairly and reasonably related in scale and kind to the development and is directly related to that development. The contribution is necessary because the new housing that would be created would place additional

demand on Police resources in Ashby. The contribution therefore satisfies Regulation 122 of the Community Infrastructure Levy Regulations 2010.

31. LP confirms that no element of the contribution would be pooled with any other contribution to fund an infrastructure project. Indeed, the undertaking provides that the contribution would only be payable on receipt of written confirmation from LP that each component of the contribution would be spent on a project with no more than four other contributions. There is certainty therefore that the contribution satisfies Regulation 123 of the Community Infrastructure Levy Regulations 2010.

The Case for Money Hill Consortium

The material points of the case made by Money Hill Consortium are:

The proposed amendments to the application

32. The principle governing whether a planning application may be amended on appeal, as set out in *Wheatcroft*, is aimed at preventing unfairness where the development is “*so changed*” by the amendment “*that to grant it would be to deprive those who should have been consulted on the changed development of the opportunity of such consultation*”.

33. This breaks down into two sub-issues. First, does the amendment involve a significant change to what has been applied for? Secondly, if it does, would there be a ‘consultation deficit’: i.e. have interested parties been deprived of the opportunity to comment on the amended scheme? If the answer to both these questions is ‘Yes’, then allowing the amendment would be unfair and unlawful. If the answer to either of those questions is ‘no’ then there is no unfairness and the amendment is permissible.

34. In the present case the answer to both questions is ‘No’.

35. Firstly, the amendments involve minor, rather than significant, changes. No changes are proposed to the description of the development for which planning permission is sought. No alterations are proposed to the application red line, the amendments are confined to changes to the layout shown in the parameter plans to show that the Verney Land is not an integral part of the development, and the development can be delivered without the Verney Land (a scenario which has also been tested for EIA purposes in the ES Addendum). Given that layout is a reserved matter and the small size of the amendments proportionately to the scale of the overall application, these changes can properly be described as minor.

36. Secondly, there is no ‘consultation deficit’. The proposed amendments have been subject to extensive consultation and publicity comprising the following:-

- a. The publication of a notice in the local press;
- b. The display of a site notice;
- c. Direct mailing to the extensive range of statutory consultees and local residents in the list provided by Mr Churchill in Examination in Chief (ID2);
- d. Depositing copies of the amended material for public inspection at the Council’s offices and at the offices of the Appellant’s planning consultants.

37. This consultation and publicity has thus at least matched that which would have been undertaken pursuant to the Town and Country Planning (Development Management Procedure) (England) Order 2015 (the DMPO) if the amendments had been pursued as a new planning application. In fact, it has exceeded the statutory requirements under the DMPO in that local residents, including not just those originally consulted by the Local Planning Authority but all those who objected to the original application, have been directly mailed with the amended plans (which is not a requirement of the DMPO).

38. Not only have members of the public been provided with an opportunity to comment on the amendments, very many of them have taken up that opportunity through the submission of written representations and through appearing at the Inquiry. Councillor Ball confirmed in cross-examination that the Town Council were aware of the amendments and that they had a meeting prior to the commencement of the inquiry at which they could have discussed the amendments; that they did not do so is a matter for them. What matters is they were given a reasonable chance to do so.

39. The observations submitted by email on 4 September by Ms Eri Wong of the Transport Department at the LCC do not alter the above analysis. Two points are made in the email:

1. The first relates to emergency access, but Ms Wong concludes in relation to that point that LCC is “prepared to take a flexible approach” in that regard and to defer to the views of the emergency services. The police, the NHS and the Fire and Rescue Service were all directly mailed with the proposed amendments and none have objected. Mr Cross for LCC confirmed on the first day of the Inquiry that “LCC does not take a point” in relation to emergency access. Mr Burbridge explained in examination-in-chief that there were multiple options for emergency access and that he was satisfied in his expert judgment that the development was capable of providing acceptable emergency access arrangements. His evidence was not challenged.

2. The second point in Ms Wong’s email is, in essence, that (i) the amendments change the access arrangements for the appeal scheme in that the sole access for which permission would be granted is off the A511 and (ii) LCC has not had time to ascertain the implications of that change for the commercial viability of the proposed bus service. Ms Wong has not attended the inquiry and her observations have therefore not been able to be tested in cross-examination. That limits the weight to be given to what she says. Moreover, LCC has been given the same consultation period on the amendments that it would have had under the DMPO for a new application. In any event, Ms Wong’s point is without merit for the following reasons:

a. The premise is incorrect: whilst the amendments clarify that the development of the Verney field is not an integral or necessary part of the appeal scheme, the access arrangements which would be within the scope of the permission (if granted) remain the same. In other words, if permission is granted, the Appellant will still be permitted, but will not be required, to bring forward access via Woodcock Way.

b. In any event, the premise does not justify the conclusion. The proposed conditions include a Grampian condition requiring prior approval of the details of the bus service including, in particular, its routing. If LCC considers upon reflection that the routing which is ultimately proposed pursuant to that condition means that the service would not be commercially viable, they will be able to make representations to that effect and if the Council agrees then the condition will not be discharged. The proposed amendments to the appeal scheme will therefore not deprive LCC of making such points as they see fit on this issue.

c. The critical question in considering whether dealing with the bus service by way of a Grampian condition is acceptable is whether there is some, as opposed to no, prospect of that condition being discharged within the lifetime of the permission. No one, including LCC, has suggested there is zero prospect of the condition being discharged. LCC did not object to the viability of the bus service when it was envisaged that the route would enter the site via the A511 and exit via Woodcock Way. As Mr Burbridge has explained, by reference to the email from Mr Jenkins (ID12), an expert in bus public transport matters, the additional journey time that would be involved if the route both entered and exited via the A511 is minimal and would not have any material effect on viability. It should also be noted that the 'Enhanced Connectivity Contribution' of £400k in the Section 106 package is drafted in terms that would cover seed-funding of the bus service, should that be considered necessary following the assessment by LCC of sustainable transport connectivity which itself is to be funded by the Section 106 obligations.

40. In the light of the foregoing points, the case for allowing the amendments to be made is compelling.

Submissions on the merits of the amended scheme

41. The principle of development has never been in dispute between the Council and the Appellant. Indeed the Council has even resisted development elsewhere on the basis that it conflicts with the preferred direction for future growth which is at Money Hill. None of the four reasons for refusal originally imposed by Members went to the principle of development.

42. As the Statement of Common Ground records (see in particular at 4.1), and as the Council has reiterated at this Inquiry, it is now common ground between the Council and the Appellants that the appeal should be allowed. Reasons for refusal 1-3 have been withdrawn. Reason for refusal 4, which relates to affordable housing, is agreed to be capable of being dealt with by a planning obligation and is therefore not put forward as a basis for dismissing the appeal.

43. Such a Statement of Common Ground between the Appellant and the Local Planning Authority ought not to be rejected without very sound reasons. The Inquiry procedure relies upon such Statements as narrowing the issues. There are no planning issues now between the Appellant and the Council. This unusual position reflects the long-standing hard work that has gone into the preparation and promotion of this scheme.

44. There are no sound reasons here for departing from the agreed position of the Local Planning Authority and the Appellant. The case for granting permission is compelling. The central points are as follows (without prejudice to the generality of the case put forward by the Appellant in its evidence and in the documentation accompanying the application).

45. First, whilst the appeal scheme is in limited breach of the ageing Local Plan which covered the period 1991-2006 (in particular saved policy S3), it is common ground that the Local Plan is out of date for the purposes of NPPF paragraph 14 (regardless of whether the Council can demonstrate a five year housing land supply) because the District's housing needs cannot be met by reliance solely on allocations contained within the Local Plan. Policy S3 can therefore be given limited weight.

46. Secondly, the consequence of the Local Plan being out of date is that, applying NPPF paragraph 14, the presumption in favour of sustainable development means that permission should be granted unless the adverse impacts of doing so significantly and demonstrably outweigh the benefits.

47. Thirdly, the benefits of the appeal scheme are substantial in number and in significance. They include:

- a. The delivery of a substantial amount of housing which would provide a telling contribution to boosting significantly the supply of housing in the District, in line with the objective set out in NPPF paragraph 47;
- b. The provision, as part of that housing contribution, of a significant amount of affordable housing (30% subject to viability), in a desirable location where market housing prices are robust;
- c. The provision of 60 units of extra care housing, which would promote the NPPF paragraph 50 objective of planning for a mix of housing based upon the needs of different groups in the community;
- d. The delivery of a range of substantial improvements to local infrastructure as set out in the Section 106 unilateral undertaking;
- e. Direct economic benefits associated with the new development, including over 125 full time jobs;
- f. The additional lifeblood that the development's population would generate to help sustain and enhance local facilities;
- g. Environmental benefits including new planting, a contribution towards the reduction of phosphate affecting the River Mease SAC, the long-term retention of existing trees and hedgerows, and the promotion of sustainable transport opportunities; and
- h. The delivery of all these benefits in a sustainable location.

48. Fourthly, such adverse impacts as there are do not come remotely close to significantly and demonstrably outweighing the benefits of granting permission. The converse is true: the benefits both outnumber and outweigh the adverse impacts. In particular:

- a. The development would not have any significant adverse impacts from a highways and transportation perspective. In this regard, as Mr Burbridge explained in examination-in-chief, regard has been had out of an abundance of caution to the cumulative impact of the appeal scheme together with the proposed but as-yet-unpermitted development on the Verney field – the combined effect of both schemes is acceptable regardless of whether the Verney field scheme were to take its access from Woodcock Way or from the A511;
- b. Whilst any greenfield development of this scale is bound to have some landscape and visual impact, that impact in the present case is limited due to the site being relatively visually contained;
- c. No unmitigable adverse impacts on ecology are alleged;
- d. The Council was satisfied that the development would not result in an undue loss of residential amenity by local residents and it is notable that those local residents who spoke at the inquiry did not focus on this issue;
- e. Whilst the development will result in the loss of some agricultural land, this was not considered by the Council to be an overriding consideration nor is it an uncommon feature of greenfield development which, in this District at least, has a necessary role to play in the delivery of market and affordable housing requirements; and
- f. In relation to heritage assets, our primary submission is that the development would not cause any harm. The English Heritage letter dated 31 May 2013 does not appear to take any great issue with this analysis; at its highest, it could be said to identify only a sliver of less-than-substantial-harm to the setting of Ashby Castle against the context that the view from the Castle to Money Hill *“does not appear to be an axis with particular special significance over and beyond being part of the landscape that was visible around town from the tower (in contrast say to views towards the medieval parkland..)”*. It is notable that Mr Tandy on behalf of the Ashby Civic Society did not, at the Inquiry, allege that the development would have any heritage impact. Whilst harm to heritage assets must be given considerable importance and weight, that weight must be tempered by the limited degree of the harm (if any) and it is clearly outweighed by the benefits of the proposed development.

49. Fifthly, for similar reasons to those already given above, the appeal scheme represents sustainable development; it makes significant contributions to each dimension of sustainable development referred to in NPPF paragraph 7.

50. Sixthly, the support that the NPPF provides for the development, and the benefits of the scheme that trigger that support, are material considerations that justify a decision other than in accordance with the development plan for the purposes of Section 38(6) of the Planning and Compulsory Purchase Act 2004.

51. It is inevitable that when a greenfield scheme of this size is proposed there will be a degree of resistance among local residents concerned about the effect that this will have. This case is no exception. However, whilst local residents who have made written and/or oral observations at the Inquiry, the truth is that they

have not provided any sound planning grounds to justify the dismissal of this appeal. Their principal concern relates to the impact of the development on the local highway network. Mr Burbridge has explained in oral evidence, consistently with the transport assessment work in the written documentation before the inquiry, that the development can be accommodated safely and satisfactorily in highway terms. In particular, most peak hour traffic would be heading away from Ashby to destinations further afield and would therefore not contribute to congestion within the town, whereas a range of options for accessing the town centre by sustainable means (on foot, cycling and by bus) would exist and would be developed further as the details of the development are worked up at the reserved matters stage. Mr Burbridge also explained that the assumptions in the traffic modelling were conservative and clearly had sufficient headroom to accommodate the various other developments consented in the locality. His evidence was not contradicted by any technical evidence before the inquiry, and LCC in its local highway authority role do not take issue with his conclusion that the development can be acceptably accommodated on the highway network. There is simply no evidential basis for dismissing the appeal on highways grounds.

Submissions on the merits of the original scheme

52. The above analysis applies equally to the appeal scheme in its unamended form. In particular, whilst the layout shown on the original parameter plans indicates some development on the Verney field, which is currently outside the Appellant's control:-

- a. Given that layout is a reserved matter, there is no legal obstacle to reserved matters coming forward with a layout that redistributes the development away from the Verney Land. The ES Addendum has tested that scenario and so the possibility of such an outcome has been adequately subject to EIA and shown to be acceptable. Further EIA can also be required at reserved matters stage if the Council considers it necessary;
- b. In any event, there is no requirement in planning law that the applicant for planning permission must have an interest in, let alone control over, all or even part of the land in respect of which permission is sought. Whilst the likely timing of a development's delivery is capable in principle of affecting the weight to be given to the claimed housing supply benefits, this is not a point that can be taken here even if there was no scope for reserved matters redistributing the development away from the Verney field. That is because the land ownership issue would only affect a relatively small portion of the development.

Conclusion

53. The proposed amendments to the appeal scheme should be allowed. They do not involve significant changes and in any event there is no 'consultation deficit' and therefore no unfairness in allowing them to be adopted.

54. The appeal scheme (amended or not) represents sustainable and beneficial development. Although it is in limited breach of the out-of-date LP, there are compelling material considerations that justify the grant of permission other than in accordance with the development plan.

Representations made by interested parties

The material points of the cases made by those who appeared at the Inquiry and who submitted written representations are:

55. Ashby is a medieval market town of about 5000 dwellings where the town centre is protected by a conservation area. The first CS proposed an increase in the population of Ashby by the construction of 750 houses, solely at Money Hill, but since it was withdrawn the town has become a magnet for housing developers because development at other towns in the District, such as Coalville, is constrained. The 605 dwellings proposed at Money Hill would be only the first part of a development of 1800 new dwellings which would constitute, in itself and setting aside other developments, an increase of 36% in the size of the town. If a single development of such a scale is to be built then it must be done with proper consideration of the road network, schools, healthcare, drainage, sewerage, car parking and recreational facilities, which are all currently overstretched.

56. The principal concern is with regard to traffic problems on Nottingham Road/Wood Street, the main road leading into the town from the east. This road links the town to major edge-of town retailers and to the outside world via the A42 at junction 13. Its carriageways and footways are narrow and there have been many accidents over the years including a fatality. At the time of the 2002 LP examination it was recognised that the road had reached saturation point (17,600 vehicles per day) and that to allow more traffic would endanger highway and pedestrian safety. The opening of the A511 Ashby bypass provided massive relief and Nottingham Road is now used by 15,500 vehicles per day though queues in both directions are normal. The 1350 new dwellings already permitted will take traffic back beyond saturation point.

57. The A511 Ashby bypass, particularly its junctions with Nottingham Road and the A42, suffers severe congestion and would not cope with the 605 proposed dwellings on top of the 1350 already permitted. The Highways Agency has removed their holding objection on the impact on junction 13 of the A42 on the basis that a plan is funded and in place to upgrade this junction. No such plan is in place and no developer funding for any upgrade is committed. The Highway Authority are aware of these circumstances but have refused to object to the proposed development.

58. The late changes to the proposed development have raised unresolved issues. The only vehicular access into the town would require a two mile journey, a safe pedestrian access into the town is not certain, the bus route has been significantly modified and has not been tested for viability, and the single access to 605 dwellings and other uses from the A511 has not been tested and is contrary to the maximum of 400 dwellings permissible under Highway Authority policy. No viable traffic mitigation is proposed to ensure the sustainability of the proposed scheme and to avoid the gridlock that is projected.

59. Other concerns are with the impact of the development on the water environment and in particular the River Mease SAC, the impact of the development on the vibrancy of the town centre, and the insufficient capacity of the town's middle and senior schools to cope with the increase in pupil numbers. The Council can now demonstrate a five year housing land supply and LP policy S3 can therefore be considered up to date.

Conditions and Section 106 Unilateral Undertaking

60. The Council and the Appellants have agreed a list of conditions for both the original and amended schemes (ID13 and ID14). These were discussed at the Inquiry as were conditions suggested by the Ashby Civic Society; which have either been addressed in the agreed conditions, are covered by provisions of the Section 106 undertaking, or do not relate to matters that need to be addressed by imposition of conditions. The agreed conditions have been amended where necessary in the interests of clarity and precision and to delete phrases that would allow the possibility of un-consulted alterations to previously agreed details. The conditions meet the tests for conditions set out in the National Planning Practice Guidance and are set out in schedules attached to this report. The reasons for the conditions are set out in the schedules.

61. A final draft Section 106 Unilateral Undertaking was submitted at the close of the Inquiry and a signed and dated version was submitted after the close of the Inquiry. The undertaking makes provision for the payment of contributions that would include the construction of a new on-site primary school or the expansion of an existing school, a sum of £1,081,508 for the provision of a new design centre at Ivanhoe College, a sum of £1,110,487 for the provision of a specialist teaching area at Ashby School, a sum of £201,878 to enhance healthcare facilities, a sum of £18,260 to enhance library facilities, a sum of £201,029 to support Police operations in the town, and a sum of £105,651 to upgrade and enhance public rights of way in the vicinity of the site.

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

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

Conclusions

Numbers in square brackets at the end of each paragraph refer to earlier paragraphs in this Report.

The amended scheme

64. The amended scheme, setting aside the application for 70 dwellings on the Verney field, is not appreciably different to the original scheme. Housing density would be slightly higher and there would be slightly less public open space but there is no reason to suppose that a detailed scheme put forward at reserved matters stage would be unacceptable. Flood attenuation areas would also be slightly reduced but there is no evidence to suggest that there would be any increased risk of flooding or any adverse consequences for the water environment. Furthermore, the amended scheme has been assessed against the EIA Regulations and this assessment has not raised any issues. The appeal site is the same in both schemes and the amendments can properly be described as minor. [35, 58]

65. There is the possibility, if this appeal is allowed and the appeal for the proposed development on the Verney field is successful, that the appeal land would be developed for 675 dwellings rather than 605. If all other factors are acceptable then this would constitute the efficient use of land and would result in an increased contribution to housing and affordable housing supply. The appeal for the Verney field development will be determined on its own merits as will the appeal that is the subject of this report. [48]

66. The Appellant has undertaken a consultation exercise for the amended scheme and all parties who made representations on the original scheme were consulted. The consultation period ended before the close of the Inquiry and all representations made have been taken into account. The consultation process undertaken by the Appellant was responsibly made and is afforded significant weight. [36-38, 58]

67. The amended scheme is not materially different to the original scheme and is not so changed that the interests of any party to the appeal are compromised. The original scheme, if allowed, could be implemented if the appeal for the Verney field is dismissed but, equally, if that appeal is allowed the original scheme could be implemented on the basis of amendments made to it at reserved matters stage. The original and amended schemes will thus be considered on their merits.

The main issue

68. The main issue is whether the proposed development, taking all relevant matters into account, would be sustainable development

Traffic congestion and highway safety

69. The limit in Highway Authority guidance on the number of dwellings that can be accessed from a single access point is only a recommendation and neither the Authority nor any of the emergency services have commented on this aspect of the development. Residents of the town, if the appeal scheme is built out, envisage traffic congestion in the town returning to the level that existed before the A511 Ashby by-pass was brought into use. But there is no evidence to indicate that this would occur. Residents of the proposed dwellings, travelling by car to go to and return from work in locations outside Ashby, would not drive through the town; the A511, which would be the sole access into the site in the

amended scheme and the principal access into the site in the original scheme, provides access to other towns in all directions. [51, 56, 58]

70. It is also not likely that such residents would detour through the town to drop children at schools in the town because this would add significantly to their journey time and it would probably be quicker, given the proximity of the site to the town centre and schools, for these children to walk or cycle to school. In this regard the site is recognised to be in a sustainable location relative to the town centre and local infrastructure, and improvements to footpath links to the town centre and schools could be part of a detailed scheme at reserved matters stage.

71. In the original scheme no more than 30 dwellings would be accessed via Woodcock Way, which has a junction with Nottingham Road to the east of the town centre. Car journeys to and from work, resulting from such a limited number of dwellings and given that these journeys would almost certainly not pass through the town, would be inconsequential.

72. Whilst negotiations with a bus operator for a bus service to link the proposed development to the town are ongoing, based on negotiations to date and the size of the development which would be likely to provide sufficient passengers to sustain a service, there is every reason to suppose that a bus service would be initiated and maintained into the future. This service would provide another alternative mode of transport to the motor car for access by children to schools and would benefit all residents of the proposed development. [39, 58]

73. Just as school age children would be able to walk or cycle to school residents who work in the town would be able to do likewise. Some residents of the proposed development, possibly those who are infirm or who intend to make significant purchases in the town, might travel by car into the town centre. But it is unlikely that they would do so during the rush hour periods. Furthermore, there are two major supermarkets and other large retail outlets at the east end of the town and these could be accessed by car from the proposed development without the need to drive through the town. The proposed development is not likely to result in any significant or even discernible increase in traffic congestion in Ashby.

74. Nottingham Road/Wood Street does have bends but it is not unusually narrow or otherwise difficult to travel along in any type of vehicle. Pavements are narrow in places but not, in any location, so narrow that pedestrians are at any danger from passing vehicles. Footpath links from the site to the town centre, in any event, do not require use of the pavements to Nottingham Road/Wood Street. School children from the proposed development might need to cross Nottingham Road to Ashby School but no concern has been expressed for their safety in doing so. The Highway Authority, furthermore, has raised no concerns regarding the safety of highway users on Nottingham Road/Wood Street and there is no evidence to indicate that the development would prejudice the safe and free flow of traffic on the A511 or the A42 trunk road. The proposed development, either in its original or amended form, would not compromise highway safety or result in any significant increase in traffic congestion. [56]

The character of the area

75. There are very few comments about the effect of the proposed development on the character of the area in representations made either at application or appeal stage. This may be because it has long been envisaged that Money Hill,

given its sustainable location, would be developed for housing. Some residents have commented that they value the site and that the development would harm the character of the area. But, other than a footpath that extends along the south boundary of the site and veers through it slightly in two locations, there is no public access through the site. The site therefore has no recreational value and it can be valued only for the outlook that is available over it. The loss of this outlook for some residents and the loss of a part of the countryside surrounding the town, a part which is separated from further countryside by the A511, would be regrettable but the proposed development would not have any significant effect on the character of the area. [48]

The historic heritage of the area

76. Part of the south boundary of the site abuts the Ashby-de-la-Zouch Conservation Area (ACA). Within the ACA are many listed buildings including Ashby Castle, which is on the south side of the town centre and which is a Grade I listed building. From the top of the ruined keep of the castle there is a view across Money Hill, as well as views in other directions. The proposed development would replace a section of countryside in this view but it would be seen in the context of existing development to the west and south-east. English Heritage has not raised any substantive concerns with regard to heritage assets and Mr Tandy, at the Inquiry and appearing on behalf of Ashby Civic Society, did not either. The proposed development would not cause any demonstrable harm to the setting of Ashby Conservation Area or to the setting of any listed building within it. Paragraphs 133 and 134 of the NPPF are not therefore engaged. [48]

Local infrastructure

77. Ashby is not a large town and the proposed development is within easy walking and especially cycling distance of all existing services and facilities. It is a thriving town and the additional population resulting from the development would help to sustain these existing services and facilities. Section 106 undertakings would result in financial contributions for many elements of local infrastructure. These contributions would include the construction of a new on-site primary school or the expansion of an existing school, a sum of £1,081,508 for the provision of a new design centre at Ivanhoe College, a sum of £1,110,487 for the provision of a specialist teaching area at Ashby School, a sum of £201,878 to enhance healthcare facilities, a sum of £18,260 to enhance library facilities, a sum of £201,029 to support Police operations in the town, and a sum of £105,651 to upgrade and enhance public rights of way in the vicinity of the site. [26, 47, 59]

78. The proposed development includes a community hall, a neighbourhood retail use, and public open space that would be accessible to new and existing residents of the town. Taking these factors into account and the various aforementioned provisions of the Section 106 Unilateral Undertaking, the proposed development would not place an unacceptable burden upon local infrastructure.

Transport options

79. Negotiations with a local bus operator on the original scheme envisaged the provision of a bus service that entered the site from the A511 and exited the site via Woodcock Way. LCC raised no concerns with the viability of such a service. A bus service for the amended scheme would enter and exit the site via the A511 but the route would not be significantly longer than that for the original scheme

and there is no reason to suppose that it would be any less viable. The provision of a bus service is not included in the Section 106 undertaking because there is no detailed agreement with a bus operator in place. However, a recommended condition would require this matter to be addressed before development is commenced and there is, given the negotiations that have already taken place and on the evidence available, a real prospect that a bus service for either scheme would be provided, as agreed by the local planning authority, and before 131 dwellings have been constructed in accordance with the condition. [39, 58]

80. The Section 106 undertaking includes the payment of an enhanced connectivity contribution of up to £400,000 to assess existing public transport, cycle and pedestrian connectivity and permeability in the town, and to implement measures to improve cycle and pedestrian connectivity between the site and the town centre. The undertaking also includes the payment of £650 per dwelling for the purpose of providing each dwelling with two six month bus passes and the payment of £11,674 to upgrade two bus stops on Nottingham Road. The undertaking is drafted so that part of the connectivity contribution would go towards 'seed funding' the bus service thus ensuring its initial viability before the development is completed and, as is likely, the service becomes viable. [39]

81. There is a real prospect that the aforementioned condition would result in a bus service being provided and there is also a real prospect that, given the size of the development, the bus service would become viable. As well as easy access by cycle and walking to local services, residents of the proposed development would have access to a mode of transport to the town centre other than by motor car.

Paragraph 7 of the NPPF

82. Paragraph 7 of the NPPF states that there are three dimensions to sustainable development: economic, social and environmental. In terms of the economic role, the development would result in the creation of construction jobs, new and existing employment opportunities in the town would have a greater pool of potential employees to draw from, and the new residents of the town would contribute to the vitality of the town's shops and facilities. The proposed development satisfies the economic role of sustainable development. [47]

83. In terms of its social role the most important factor is the provision, through the Section 106 undertaking, of 30% affordable housing and a 60 unit extra care facility. There is a significant shortfall in the provision of affordable housing in the District and the provision of extra care units is nationally less than it should be. Furthermore, there is no reason to suppose that the development would not be of high quality and all parts of the development would be within easy walking and cycling distance of shops, facilities and services in the town. The proposed development satisfies the social role of sustainable development. [21, 47]

84. There is no evidence to indicate that ecology or biodiversity interests would be harmed and the development would not threaten the environment of the River Mease SAC. The site is subdivided by hedgerows and it has other biodiversity credentials. But the proposed development would have significant areas of open space and all residential gardens, to a lesser or greater extent, include features and opportunities for the enhancement of biodiversity. The proposed development would result in the loss of agricultural land but, on balance, the proposed development satisfies the environmental role of sustainable development. [48, 59]

Conclusion

85. The proposed development, having taken all relevant matters into account, would not cause harm to any matters of acknowledged importance. The proposed development, furthermore, satisfies the economic, social and environmental roles set out in paragraph 7 of the NPPF and would be sustainable development.

86. Planning applications must, with regard to Section 38(6) of the Planning and Compulsory Purchase Act 2004, be determined in accordance with the development plan unless material considerations indicate otherwise. The NPPF postdates the LP. Paragraph 215 of the NPPF states that due weight should be given to relevant policies in existing plans according to their degree of consistency with the framework and paragraph 216 states that the weight to be given to policies in emerging plans should accord to the stage of preparation of the plan. With regard to paragraphs 215 and 216, LP policy S3 is out-of-date and the emerging CS is afforded no weight.

87. Paragraph 47 of the NPPF requires local planning authorities to identify and update annually a supply of specific deliverable sites to provide five years of housing against their housing requirements. The Appellant has not disputed the Council's contention that they have a five year supply of housing land. But local planning authorities must also plan for housing supply beyond the five year period and, as set out in paragraph 47, identify a supply of sites for 6-10 years and, where possible, 11-15 years. There is also a current national imperative to boost the supply of housing and, in recognition of this, the Council rightly does not cite their five year housing land supply as a reason to withhold planning permission.

88. Paragraph 49 of the NPPF states that housing applications should be considered in the context of sustainable development, and paragraph 14 states that there is a presumption in favour of sustainable development and that, for decision taking, this means, where relevant policies in the development plan are out-of-date, granting planning permission for development unless any adverse effects of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the NPPF taken as a whole. There are no demonstrable adverse effects to take into account and the development would be sustainable development. Determination of the appeal, for this principal reason, may be made other than in accordance with the development plan.

Recommendations

89. I recommend that planning permission be granted for the amended scheme subject to conditions set out in a schedule appended to this report, or, if this recommendation is not accepted, for the original scheme also subject to conditions set out in a schedule appended to this report.

90. I recommend that planning permission be granted for 605 residential dwellings including a 60 unit extra care centre (C2), a new primary school (D1), a new health centre (D1), a new nursery school (D1), a new community hall (D1), new neighbourhood retail use (A1), new public open space and vehicular access from the A511 and Woodcock Way on land at Money Hill, Land north of Wood Street, Ashby-de-la-Zouch.

John Braithwaite

Inspector

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Mr T Leader	Of Counsel instructed by Ms A Lowe, Solicitor to NWLDC
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He was assisted by

Mr A Murphy BA(Hons) MSc MRTPI	Director of Stansgate Planning
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FOR THE APPELLANT:

Mr C Banner	Of Counsel instructed by Iceni Projects Limited
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He called

Mr D Churchill MRTPI	Director of Iceni Projects Limited
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Mr C Burbidge BSc(Hons) MSc MCIHT MCILT MRTPI	Director of Iceni Projects Limited
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FOR LEICESTERSHIRE COUNTY COUNCIL (LCC):

Mr A Cross	Solicitor
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He was assisted by

Mr A Tyrer BA(Hons) MRTPI	Development Contributions Officer at Leicestershire County Council
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FOR LEICESTERSHIRE POLICE (LP):

Ms J Wigley	Of Counsel
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She was assisted by

Mr M Lambert	Growth and Design Officer at Leicestershire Police
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INTERESTED PERSONS:

Mr M Ball	Ashby Town Council
Ms L Titley	Local resident
Mr T Gregory	Local resident
Mr C Tandy	Vice President of Ashby-de-la-Zouch Civic Society
Mr D Price	Local resident

INQUIRY DOCUMENTS LIST

- 1 NWLDC's letter of notification of the Inquiry and list of those notified.
- 2 List of those notified on the amended scheme.
- 3 Appellant's Opening Statement.
- 4 Statement of Common Ground.
- 5 Plans of the original scheme.
- 6 Plans of the amended scheme.
- 7 Statement by Mr M Ball on behalf of Ashby Town Council.
- 8 Statement by Mr C Tandy on behalf of Ashby-de-la-Zouch Civic Society.
- 9 Statement by Mr T Gregory.
- 10 Letter from Macpherson Coaches to Icen Projects Ltd dated 25 July 2014.
- 11 Letter from Macpherson Coaches to Icen Projects Ltd dated 25 July 2013.
- 12 E-mail from Mr D Jenkins to Icen Projects Ltd dated 5 September 2015.
- 13 Suggested conditions for the original application.
- 14 Suggested conditions for the amended application.
- 15 Notes on conditions for the original and amended applications.
- 16 Suggested conditions for the original application by Ashby-de-la-Zouch Civic Society.
- 17 Suggested conditions for the amended application by Ashby-de-la-Zouch Civic Society.
- 18 Submission by Ashby-de-la-Zouch Civic Society.
- 19 Extract from The Definitive Map of Rights of Way.
- 20 Final draft of Section 106 Unilateral Undertaking.
- 21 Closing Statement by the Local Planning Authority.
- 22 Appellant's Closing Submissions.
- 23 Environmental Statement Addendum.

SCHEDULE 1 – RECOMMENDED CONDITIONS FOR ORIGINAL APPLICATION

1. Save for the details of vehicular access into the site from Woodcock Way and the A511, details of the access, appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") for the relevant phase (as defined under Condition 5 below) shall be submitted to and approved in writing by the Local Planning Authority before any development begins in for the relevant phase.

Reason: To comply with the requirements of Section 92 of the Town and Country Planning Act 1990 as amended.

2. Plans and particulars of the reserved matters referred to in condition 1 above, relating to the access save for the details of vehicular access into the site from Woodcock Way and the A511, appearance, landscaping, layout, and scale shall be submitted in writing to the Local Planning Authority and shall be carried out as approved.

Reason: To comply with the requirements of Section 92 of the Town and Country Planning Act 1990 as amended.

3. Application for approval of the reserved matters for the relevant phase (as defined under condition 5 below) shall be made to the Local Planning Authority before the expiration of three years from the date of this permission and the development hereby permitted shall begin before the expiration of two years from the date of approval of the last of the reserved matters for that phase to be approved.

Reason: To comply with the requirements of Section 92 of the Town and Country Planning Act 1990 as amended.

4. The proposed development shall be carried out strictly in accordance with the following plans:

- Site location plan (020 Rev J 21.03.2013)
- Parameters plans (021 Rev K 2.07.2013, 023 Rev J 21.03.2013, 024 Rev J, 21.03.2013 and 025 Rev J 21.03.2013)
- Site Access plans (06 Rev F)

Reason: In the interests of certainty.

5. Notwithstanding conditions 1, 2 and 3 above, the first reserved matters application shall include a masterplan for the whole of the site setting out indicative details of site layout, areas of open space / children's play, landscaping, density parameters and scale, as well as details of any proposed phasing of development. The masterplan shall accord with the principles of the submitted Design and Access Statement. All subsequent reserved matters applications shall be in accordance with the approved masterplan unless any alteration to the masterplan is first agreed in writing by the Local Planning Authority. All development of the site shall thereafter be undertaken in accordance with the agreed phasing and timetable details.

Reason: To ensure that the development of the site (including where undertaken in a phased manner) takes place in a consistent and comprehensive manner, and to ensure that the proposed development delivers the proposed residential and non-residential development at the appropriate time.

6. A total of no more than 605 dwellings shall be erected pursuant to the planning permission hereby granted.

Reason: To define the scope of the permission.

7. No development shall commence on the site (or, in the case of phased development, in respect of the relevant phase) until such time as precise details of all means of mitigation measures as set out in the Environmental Statement, including timetables for their provision in respect of the development (or, in the case of phased development, in respect of that phase), have been submitted to and agreed in writing by the Local Planning Authority. The measures shall be implemented in accordance with the agreed details and timetables.

Reason: To ensure the development and associated impacts take the form envisaged in the Environmental Statement.

8. No development shall commence on the site until such time as a Design Code for the entirety of the developed area has been submitted to and agreed in writing by the Local Planning Authority. The Design Code shall substantially accord with the principles and parameters described and illustrated in the Design and Access Statement, and demonstrate compliance with Building for Life 12 (or any subsequent replacement standard issued by the Design Council / CABE or any successor organisation). The development shall thereafter be carried out in accordance with the agreed Design Code.

Reason: To ensure an appropriate form of design, and to comply with Policies E4 and H7 of the North West Leicestershire Local Plan.

9. Notwithstanding the submitted details, no construction work shall commence on site until such time as site investigation works in respect of potential risks to the proposed development arising from former coal mining operations, together with precise details of any required mitigation and a timetable for its implementation, have been submitted to and agreed in writing by the Local Planning Authority. Where the agreed details indicate that mitigation is required, the development shall be carried out strictly in accordance with the agreed mitigation and timetable.

Reason: To ensure the safe development of the site.

10. The development hereby permitted shall not be carried out other than in strict accordance with the submitted Flood Risk Assessment (FRA) dated 14 March 2013, ref. 031052 (ES Appendix 14-1) and Drainage Strategy Revision 01, dated 20 March 2013, ref. 031052 (ES Appendix 14 -2) and the following mitigation measures detailed within the FRA:

- Limiting the discharge rate for surface water run-off and provision of surface water attenuation storage on the site, so that it will not exceed the run-off from the undeveloped site and not increase the risk of flooding off-site (FRA sections 6.0 and 7.4 and Drainage Strategy sections 3.1, 5.1, 7.1 to 7.3.6);
- Management of silt and the prevention of pollution of the watercourse during the construction phase (FRA section 7.3);
- Provision of safe access and egress within the site (FRA section 7.2);
- Finished floor levels (FRA section 7.1).

Unless any alternative programme is agreed in writing by the Local Planning Authority, none of the dwellings hereby permitted shall be occupied until such time as the mitigation measures have been fully implemented in accordance with the above details.

Reason: To prevent flooding by ensuring the satisfactory storage / disposal of surface water from the site and to reduce the risk of flooding to the proposed development.

11. Notwithstanding the submitted details and other conditions, no development shall commence on the site until such time as a surface and foul water drainage scheme for the entire developed area (or, in the case of phased development, for the relevant phase of the development), based on sustainable drainage principles and an assessment of the hydrological and hydrogeological context of the development, together with a timetable for its implementation in respect of the development (or, in the case of phased development, for that phase), has been submitted to and agreed in writing by the Local Planning Authority. The scheme shall subsequently be implemented in accordance with the agreed details and timetable. The scheme shall include:

- Surface water drainage system/s to be designed in accordance with either the National SUDs Standards, or CIRIA C697 and C687, whichever are in force when the detailed design of the surface water drainage system is undertaken;
- Limiting the discharge rate and storing the surface water run-off generated by all rainfall events up to the 100 year plus 20% for commercial and 30% for residential (for climate change) critical rain storm so that it will not exceed the run-off from the undeveloped site and not increase the risk of flooding off-site;
- Provision of surface water run-off attenuation storage to accommodate the difference between the allowable discharge rate/s and all rainfall events up to the 100 year plus 20% for commercial, 30% for residential (for climate change) critical rain storm;
- Detailed design (plans, cross, long sections and calculations) in support of any surface water drainage scheme, including details on any attenuation system, and the outfall arrangements; and
- Details of how the on-site surface water drainage systems shall be maintained and managed after completion and for the lifetime of the development, to ensure long term operation to design parameters.

No development shall be carried out (or, in the case of phased development, no development in that phase shall be carried out), nor any part of the development shall be brought into use at any time unless in accordance with the agreed scheme and timetable.

Reason: To prevent the increased risk of flooding, to improve and protect water quality, to improve habitat and amenity, and to ensure the development is provided with a satisfactory means of drainage.

12. The development hereby permitted shall not be commenced until such time as a scheme to detail each individual watercourse crossing (including pedestrian footbridge and vehicular crossings) demonstrating that no raising of ground levels, nor bridge soffit levels as set will result in elevated flood levels, and that there will

be no loss of flood plain storage due to the provision of any new crossing of the Money Hill Brook, has been submitted to and agreed in writing by the Local Planning Authority in consultation with the Environment Agency and Lead Local Flood Authority (LLFA). The scheme shall include, but not be exclusive of:

- Limiting the number of crossings of the Money Hill Brook, and removal/upgrade of any existing crossings;
- Crossings to be provided as clear span bridges or arches in preference to any culverting (including the upgrading of existing crossings, where upgrading is required or proposed);
- Bridge soffits set a minimum of 600mm above the modelled 100 year plus 20% (for climate change) flood level applicable at the crossing site;
- Bridge abutments set back beyond the top of the natural bank of the watercourse;
- Where necessary, culverts designed in accordance with CIRIA C689 (including up sizing to provide a free water surface and natural bed), and to have a minimum width / length of culvert essential for access purposes;
- Provision of compensatory flood storage for all ground levels raised within the 100 year flood plain applicable at any crossing sites, including proposed location, volume (calculated in 200mm slices from the flood level) and detailed design (plans, cross, and long sections) of the compensation proposals;
- Compensatory flood storage provided before (or, as a minimum, at the ground works phase) of the vehicle bridge and any other crossing construction;
- Detailed designs (plans, cross, long sections and calculations) in support of any crossing;
- Details of how the scheme shall be maintained and managed after completion; and
- A timetable for the relevant works.

The scheme shall be fully implemented and subsequently maintained in accordance with the approved details including the timing / phasing arrangements embodied within the scheme.

Reason: To avoid adverse impact on flood storage, to reduce the risk of flooding to the proposed development and future occupants, to reduce the risk of flooding to adjacent land and properties, to improve and protect water quality, to improve habitat and amenity, and to ensure future maintenance of the surface water drainage system.

13. No development shall commence until a construction working method statement to cover all watercourse works (including pedestrian and vehicular crossings and any other works within 8 metres of any watercourse) has been submitted to and agreed in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved scheme.

Reason: To protect local watercourses from the risk of pollution.

14. Notwithstanding the submitted details and other conditions no development (save for demolition works) shall commence on the site (or, in the case of phased development, in respect of the relevant phase) until a further Risk Based Land

Contamination Assessment has been submitted to and agreed in writing by the Local Planning Authority (or, in the case of phased development, in respect of that phase). The Risk Based Land Contamination Assessment shall identify all previous uses, potential contaminants associated with those uses, a conceptual model of the site indicating sources, pathways and receptors, and potentially unacceptable risks arising from contamination at the site and shall be carried out in accordance with:

- BS10175:2011 + A1:2013 Investigation of Potentially Contaminated Sites Code of Practice;
- BS8485:2007 Code of Practice for the Characterisation and Remediation from Ground Gas in Affected Developments; and,
- CLR 11 Model Procedures for the Management of Land Contamination, published by the Environment Agency 2004.

Reason: To ensure that the land is fit for purpose, to ensure protection of controlled waters and to accord with the aims and objectives in respect of pollution as set out in the National Planning Policy Framework.

15. If, pursuant to Condition 14 above, any unacceptable risks are identified in the Risk Based Land Contamination Assessment, a Remedial Scheme and a Verification Plan shall be submitted to and agreed in writing by the Local Planning Authority. The Remedial Scheme shall be prepared in accordance with the requirements of CLR 11 Model Procedures for the Management of Land Contamination, published by the Environment Agency 2004, and the Verification Plan (which shall identify any requirements for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action) shall be prepared in accordance with the requirements of Evidence Report on the Verification of Remediation of Land Contamination Report: SC030114/R1, published by the Environment Agency 2010, and CLR 11 Model Procedures for the Management of Land Contamination, published by the Environment Agency 2004. If, during the course of development, previously unidentified contamination is discovered, development shall cease on the affected part of the site and it shall be reported in writing to the Local Planning Authority within 10 working days. No work shall recommence on that part of the site until such time as a Risk Based Land Contamination Assessment for the discovered contamination (to include any required amendments to the Remedial Scheme and Verification Plan) has been submitted to and agreed in writing by the Local Planning Authority. Thereafter, the development shall be undertaken in accordance with the agreed details and thereafter be so maintained.

Reason: In order to make appropriate provision for natural habitat within the approved development and to ensure that all species are protected having regard to the Wildlife and Countryside Act 1981 as amended and The Conservation of Habitats and Species Regulations 2010.

16. No part of the development hereby permitted shall be brought into use until such time as a Verification Investigation for the relevant part of the site has been undertaken in line with the agreed Verification Plan for any works outlined in the approved Remedial Scheme relevant to either the whole development or that part of the development and a report showing the findings of the Verification Investigation for the relevant part of the site has been submitted to and agreed in writing by the Local Planning Authority. The Verification Investigation Report shall:

- Contain a full description of the works undertaken in accordance with the agreed Remedial Scheme and Verification Plan;
- Contain results of any additional monitoring or testing carried out between the submission of the Remedial Scheme and the completion of remediation works;
- Contain Movement Permits for all materials taken to and from the site and/or a copy of the completed site waste management plan if one was required;
- Contain Test Certificates of imported material to show that it is suitable for its proposed use;
- Demonstrate the effectiveness of the approved Remedial Scheme; and
- Include a statement signed by the developer, or the approved agent, confirming that all the works specified in the approved Remedial Scheme have been completed.

Reason: To ensure that the land is fit for purpose, to ensure protection of controlled waters and to accord with the aims and objectives in respect of pollution as set out in the National Planning Policy Framework.

17. There shall be no infiltration of surface water drainage into the ground at any time other than in accordance with details first submitted to and agreed in writing by the Local Planning Authority. Development shall be undertaken strictly in accordance with the submitted Outline Construction Environmental Management Plan (Revision 01, March 2013, ref. 031052).

Reason: To protect controlled water receptors.

18. Notwithstanding the submitted details and other conditions, no development shall commence in any phase until such time as a timetable for the undertaking of updated surveys in respect of badgers in the relevant phase (and including the specification of maximum periods between undertaking of surveys and commencement of work on the relevant phase) has been submitted to and agreed in writing by the Local Planning Authority. No development shall thereafter be undertaken at any time in that phase unless the relevant surveys have been undertaken in accordance with the approved details and the results (including mitigation measures and a timetable for such mitigation where appropriate) have been submitted to and agreed in writing by the Local Planning Authority, and the development shall thereafter be undertaken strictly in accordance with the agreed mitigation measures and timetable.

Reason: In the interests of nature conservation.

19. No hedgerows, trees or shrubs shall be removed during the months of March to August inclusive unless first agreed in writing by the Local Planning Authority. Should nesting birds be found during construction work, all construction work within 5 metres of the nest (which could constitute a disturbance) shall cease immediately, and shall not resume until such time as the young have left the nest.

Reason: In the interests of nature conservation.

20. Notwithstanding the submitted details and other conditions, the first reserved matters application in respect of the development (or, in the case of

phased development, the first reserved matters application in respect of the relevant phase) shall be accompanied by full details of all measures proposed in respect of the enhancement and / or management of the ecology and biodiversity of the development (or in respect of phased development, that phase), including proposals in respect of future maintenance and a timetable for the implementation of the relevant measures. The development shall thereafter be undertaken and occupied in accordance with the agreed measures and timetable.

Reason: In the interests of nature conservation.

21. Notwithstanding the submitted details, all reserved matters applications for the erection of non-residential development shall include full details of the proposed buildings' anticipated level of achievement in respect of criteria / sub-categories contained within the Building Research Establishment's Environmental Assessment Method (BREEAM). No building shall be brought into use until such time as an assessment of the building has been carried out by a registered BREEAM assessor and a BREEAM Certificate has been issued for the relevant building certifying that the relevant BREEAM Level has been achieved.

Reason: To ensure the environmental integrity of the scheme is secured.

22. Notwithstanding the provisions of the Town and Country Planning (Use Classes) Order 1987 (as amended) (or any order revoking or re-enacting that Order), the total gross floorspace of uses falling within Class A1 of that Order shall not exceed 560 square metres at any time, nor shall the total gross floorspace of any single retail unit exceed 460 square metres at any time, unless planning permission has first been granted by the Local Planning Authority.

Reason: To ensure the development takes the form envisaged by the Local Planning Authority, for the avoidance of doubt, and to ensure satisfactory control over the impact of the development on nearby centres.

23. The first reserved matters application submitted pursuant to this permission (or, in the case of phased development, the first reserved matters application in respect of the relevant phase) shall include a detailed Archaeological Mitigation Strategy for the respective area(s). The Strategy shall be based upon the results of a programme of exploratory archaeological fieldwalking and trial trenching undertaken within the relevant area(s) in accordance with a Written Scheme of Investigation (WSI) first submitted to and agreed in writing by the Local Planning Authority. Both the WSI and final Strategy shall include an assessment of significance and research questions, and:

- The programme and methodology of site investigation, recording and post-investigation assessment (including the initial fieldwalking and trial trenching, assessment of results and preparation of an appropriate mitigation scheme);
- The programme for post-investigation assessment;
- Provision to be made for analysis of the site investigation and recording;
- Provision to be made for publication and dissemination of the analysis and records of the site investigation;
- Provision to be made for archive deposition of the analysis and records of the site investigation;

- Nomination of a competent person or persons / organisation to undertake the works set out within the Written Scheme of Investigation; and
- A detailed timetable for the implementation of all such works / measures.

No development shall take place at any time within the relevant area other than in accordance with the agreed Written Scheme of Investigation, Strategy and timetable for that area.

Reason: To ensure satisfactory archaeological investigation and recording.

24. Notwithstanding the submitted details and other conditions, no development shall commence on the site until such time as a scheme of structural landscaping to the A511 (indicating species, densities, sizes and numbers of proposed planting both within and outside of the application site, as appropriate, together with all existing trees and hedgerows on the land including details of those to be retained, and those to be felled / removed), together with a timetable for its implementation, has been submitted to and agreed in writing by the Local Planning Authority. No development shall be occupied at any time unless all measures specified in the agreed scheme required to be implemented by the relevant stage / phase have been undertaken in full in accordance with the agreed details.

Reason: In the interests of amenity and to ensure that the development is appropriate in its National Forest setting.

25. Notwithstanding the submitted details and other conditions, no development shall commence (or, in respect of a phased development, no development shall commence in the relevant phase) until such time as details specifying which of the proposed tree protection measures shown on drawing no. SJA TPP 12139-02a within the development (or, in respect of a phase development, that phase) are proposed to be implemented in respect of the construction of the proposed accesses / roads (together with a timetable for their implementation) have been submitted to and agreed in writing by the Local Planning Authority. No development (or, in respect of a phased development, no development in the relevant phase) shall be undertaken at any time unless all of the agreed protection measures relating to the relevant stage / phase are in place. Within the fenced off areas there shall be no alteration to ground levels, no compaction of the soil, no stacking or storing of any materials and any service trenches shall be dug and back-filled by hand.

Reason: To ensure that existing trees are adequately protected during construction in the interests of the visual amenities of the area.

26. Save for any works associated with the formation of the access as shown on drawing no. 06 Rev F, no part of the development shall be occupied until such time as the A511 site access junction as shown on drawing no. 06 Rev F has been provided in full and is available for use by vehicular traffic.

Reason: To provide vehicular access to the site, including for construction traffic, and in the interests of highway safety.

27. No development shall commence on the site until such time as a scheme for the provision of a new or diverted bus service serving the development, and providing a connection between the site and Ashby de la Zouch town centre, has been submitted to and agreed in writing by the Local Planning Authority. The submitted scheme shall include hours of operation, service frequencies, routeing and provision of necessary on and off site infrastructure (including pole and flag, bus shelter, raised kerbs and information display cases). The scheme shall include any works / measures required for the initial implementation of the scheme, together with a phased programme for the implementation of any measures required by the scheme as the development progresses. No more than 131 dwellings constructed pursuant to the planning permission shall be occupied until such time as the whole of the approved scheme is fully operational.

Reason: To ensure adequate steps are taken to provide a choice in mode of travel to and from the site.

28. No development shall commence on the site until such time as a construction management plan, including wheel cleansing facilities and vehicle parking facilities, site compound(s), materials' storage areas and a timetable for their provision, has been submitted to and agreed in writing by the Local Planning Authority. The development shall thereafter be carried out in accordance with the approved details and timetable.

Reason: In the interests of highway safety and to prevent unacceptable on-street parking.

29. No more than 30 dwellings shall be accessed off Woodcock Way.

Reason: To limit access to the site off Woodcock Way.

SCHEDULE 2 – RECOMMENDED CONDITIONS FOR AMENDED APPLICATION

1. Save for the details of vehicular access into the site from Woodcock Way (if applicable) and the A511, details of the access, appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") for the relevant phase (as defined under Condition 5 below) shall be submitted to and approved in writing by the Local Planning Authority before any development begins in respect of the relevant phase.

Reason: To comply with the requirements of Section 92 of the Town and Country Planning Act 1990 as amended.

2. Plans and particulars of the reserved matters referred to in condition 1 above, relating to the access save for the details of vehicular access into the site from Woodcock Way(if applicable) and the A511, appearance, landscaping, layout, and scale shall be submitted in writing to the Local Planning Authority and shall be carried out as approved.

Reason: To comply with the requirements of Section 92 of the Town and Country Planning Act 1990 as amended.

3. Application for approval of the reserved matters for the relevant phase (as defined under condition 5 below) shall be made to the Local Planning Authority before the expiration of three years from the date of this permission and the development hereby permitted shall begin before the expiration of two years from the date of approval of the last of the reserved matters for that phase to be approved.

Reason: To comply with the requirements of Section 92 of the Town and Country Planning Act 1990 as amended.

4. The proposed development shall be carried out strictly in accordance with the following plans:

- Application Boundary Plan – Rev A 29.06.2015
- Site Access plans (06 Rev F)

Reason: In the interests of certainty.

5. Notwithstanding conditions 1, 2 and 3 above, the first reserved matters application shall include a masterplan for the whole of the site setting out indicative details of site layout, areas of open space / children's play, landscaping, density parameters and scale, as well as details of any proposed phasing of development. The masterplan shall accord with the principles of the submitted Design and Access Statement. All subsequent reserved matters applications shall be in accordance with the approved masterplan unless any alteration to the masterplan is first agreed in writing by the Local Planning Authority. All development of the site shall thereafter be undertaken in accordance with the agreed phasing and timetable details (or any alternatives subsequently agreed in writing by the Local Planning Authority).

Reason: To ensure that the development of the site (including where undertaken in a phased manner) takes place in a consistent and comprehensive manner, and to ensure that the proposed development delivers the proposed residential and non-residential development at the appropriate time.

6. A total of no more than 605 dwellings shall be erected on the area shown as 'residential' (18.23 hectares) and 'health centre/residential' (0.52 hectares) as shown on Parameter Plan 1 – Land Use and Amount – Rev D 10.06.2015.

Reason: To define the scope of the permission.

7. No development shall commence on the site (or, in the case of phased development, in respect of the relevant phase) until such time as precise details of all means of mitigation measures as set out in the Environmental Statement, including timetables for their provision in respect of the development (or, in the case of phased development, in respect of that phase), have been submitted to and agreed in writing by the Local Planning Authority. The measures shall be implemented in accordance with the agreed details and timetables.

Reason: To ensure the development and associated impacts take the form envisaged in the Environmental Statement.

8. No development shall commence on the site until such time as a Design Code for the entirety of the developed area shown on Parameter Plan 1 – Land Use and Amount – Rev D 10.06.2015 has been submitted to and agreed in writing by the Local Planning Authority. The Design Code shall substantially accord with the principles and parameters described and illustrated in the Design and Access Statement, and demonstrate compliance with Building for Life 12 (or any subsequent replacement standard issued by the Design Council / CABI or any successor organisation). The development shall thereafter be carried out in accordance with the agreed Design Code.

Reason: To ensure an appropriate form of design, and to comply with Policies E4 and H7 of the North West Leicestershire Local Plan.

9. Notwithstanding the submitted details, no construction work shall commence on site until such time as intrusive site investigation works in respect of potential risks to the proposed development arising from former coal mining operations together with precise details of any required mitigation and a timetable for its implementation have been submitted to and agreed in writing by the Local Planning Authority. Where the agreed details indicate that mitigation is required, the development shall be carried out strictly in accordance with the agreed mitigation and timetable.

Reason: To ensure the safe development of the site.

10. The development hereby permitted shall not be carried out other than in strict accordance with the submitted Flood Risk Assessment (FRA) dated 14 March 2013, ref. 031052 (ES Appendix 14-1) and Drainage Strategy Revision 01, Dated 20 March 2013, ref. 031052 (ES Appendix 14 -2) and the following mitigation measures detailed within the FRA:

- Limiting the discharge rate for surface water run-off and provision of surface water attenuation storage on the site, so that it will not exceed the run-off from the undeveloped site and not increase the risk of flooding off-site - FRA sections 6.0 and 7.4, and Drainage Strategy sections 3.1, 5.1, 7.1 to 7.3.6;
- Management of Silt and the prevention of pollution of the watercourse during the construction phase - FRA section 7.3;

- Provision of safe access and egress within the site - FRA section 7.2;
- Finished floor levels - FRA section 7.1

Unless any alternative programme is first agreed in writing by the Local Planning Authority, none of the dwellings hereby permitted shall be occupied until such time as the mitigation measures have been fully implemented in accordance with the above details.

Reason: To prevent flooding by ensuring the satisfactory storage / disposal of surface water from the site and to reduce the risk of flooding to the proposed development.

11. Notwithstanding the submitted details and other conditions, no development shall commence on the site until such time as a surface and foul water drainage scheme for the entire developed area shown on Parameter Plan 1 – Land Use and Amount – Rev D 10.06.2015 (or, in the case of phased development, for the relevant phase of the development), based on sustainable drainage principles and an assessment of the hydrological and hydrogeological context of the development, together with a timetable for its implementation in respect of the development (or, in the case of phased development, for that phase), has been submitted to and agreed in writing by the Local Planning Authority. The scheme shall subsequently be implemented in accordance with the agreed details and timetable. The scheme shall include:

- Surface water drainage system/s to be designed in accordance with either the National SUDs Standards, or CIRIA C697 and C687, whichever are in force when the detailed design of the surface water drainage system is undertaken;
- Limiting the discharge rate and storing the surface water run-off generated by all rainfall events up to the 100 year plus 20% for commercial, 30% for residential (for climate change) critical rain storm so that it will not exceed the run-off from the undeveloped site and not increase the risk of flooding off-site;
- Provision of surface water run-off attenuation storage to accommodate the difference between the allowable discharge rate/s and all rainfall events up to the 100 year plus 20% for commercial, 30% for residential (for climate change) critical rain storm;
- Detailed design (plans, cross, long sections and calculations) in support of any surface water drainage scheme, including details on any attenuation system, and the outfall arrangements; and
- Details of how the on-site surface water drainage systems shall be maintained and managed after completion and for the lifetime of the development, to ensure long term operation to design parameters.

No development shall be carried out (or, in the case of phased development, no development in that phase shall be carried out), nor any part of the development shall be brought into use at any time unless in accordance with the agreed scheme and timetable.

Reason: To prevent the increased risk of flooding, to improve and protect water quality, to improve habitat and amenity, and to ensure the development is provided with a satisfactory means of drainage.

12. The development hereby permitted shall not be commenced until such time as a scheme to detail each individual watercourse crossing (including pedestrian footbridge and vehicular crossings) demonstrating that no raising of ground levels, nor bridge soffit levels as set will result in elevated flood levels, and that there will be no loss of flood plain storage due to the provision of any new crossing of the Money Hill Brook, has been submitted to and agreed in writing by the Local Planning Authority in consultation with the Environment Agency and Lead Local Flood Authority (LLFA). The scheme shall include, but not be exclusive of:

- Limiting the number of crossings of the Money Hill Brook, and removal/upgrade of any existing crossings;
- Crossings to be provided as clear span bridges or arches in preference to any culverting (including the upgrading of existing crossings, where upgrading is required or proposed);
- Bridge soffits set a minimum of 600mm above the modelled 100 year plus 20% (for climate change) flood level applicable at the crossing site;
- Bridge abutments set back beyond the top of the natural bank of the watercourse;
- Where necessary, culverts designed in accordance with CIRIA C689 (including up sizing to provide a free water surface and natural bed), and to have a minimum width / length of culvert essential for access purposes;
- Provision of compensatory flood storage for all ground levels raised within the 100 year flood plain applicable at any crossing sites, including proposed location, volume (calculated in 200mm slices from the flood level) and detailed design (plans, cross, and long sections) of the compensation proposals;
- Compensatory flood storage provided before (or, as a minimum, at the ground works phase) of the vehicle bridge and any other crossing construction;
- Detailed designs (plans, cross, long sections and calculations) in support of any crossing;
- Details of how the scheme shall be maintained and managed after completion; and
- A timetable for the relevant works.

The scheme shall be fully implemented and subsequently maintained in accordance with the approved details including the timing / phasing arrangements embodied within the scheme.

Reason: To avoid adverse impact on flood storage, to reduce the risk of flooding to the proposed development and future occupants, to reduce the risk of flooding to adjacent land and properties, to improve and protect water quality, to improve habitat and amenity, and to ensure future maintenance of the surface water drainage system.

13. No development shall commence until a construction working method statement to cover all watercourse works (including pedestrian and vehicular crossings and any other works within 8 metres of any watercourse) has been submitted to and agreed in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved scheme.

Reason: To protect local watercourses from the risk of pollution.

14. Notwithstanding the submitted details and other conditions, no development (save for demolition works) shall commence on the site (or, in the case of phased development, in respect of the relevant phase) until a further Risk Based Land Contamination Assessment has been submitted to and agreed in writing by the Local Planning Authority (or, in the case of phased development, in respect of that phase). The Risk Based Land Contamination Assessment shall identify all previous uses, potential contaminants associated with those uses, a conceptual model of the site indicating sources, pathways and receptors, and potentially unacceptable risks arising from contamination at the site and shall be carried out in accordance with:

- BS10175:2011+A1:2013 Investigation of Potentially Contaminated Sites Code of Practice;
- BS8485:2007 Code of Practice for the Characterisation and Remediation from Ground Gas in Affected Developments; and,
- CLR 11 Model Procedures for the Management of Land Contamination, published by the Environment Agency 2004.

Reason: To ensure that the land is fit for purpose, to ensure protection of controlled waters and to accord with the aims and objectives in respect of pollution as set out in the National Planning Policy Framework.

15. If, pursuant to Condition 14 above, any unacceptable risks are identified in the Risk Based Land Contamination Assessment, a Remedial Scheme and a Verification Plan shall be submitted to and agreed in writing by the Local Planning Authority. The Remedial Scheme shall be prepared in accordance with the requirements of CLR 11 Model Procedures for the Management of Land Contamination, published by the Environment Agency 2004, and the Verification Plan (which shall identify any requirements for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action) shall be prepared in accordance with the requirements of Evidence Report on the Verification of Remediation of Land Contamination Report: SC030114/R1, published by the Environment Agency 2010, and CLR 11 Model Procedures for the Management of Land Contamination, published by the Environment Agency 2004. If, during the course of development, previously unidentified contamination is discovered, development shall cease on the affected part of the site and it shall be reported in writing to the Local Planning Authority within 10 working days. No work shall recommence on that part of the site until such time as a Risk Based Land Contamination Assessment for the discovered contamination (to include any required amendments to the Remedial Scheme and Verification Plan) has been submitted to and agreed in writing by the Local Planning Authority. Thereafter, the development shall be undertaken in accordance with the agreed details and thereafter be so maintained.

Reason: In order to make appropriate provision for natural habitat within the approved development and to ensure that all species are protected having regard to the Wildlife and Countryside Act 1981 as amended and The Conservation of Habitats and Species Regulations 2010.

16. No part of the development hereby permitted shall be brought into use until such time as a Verification Investigation for the relevant part of the site has been undertaken in line with the agreed Verification Plan for any works outlined in the

approved Remedial Scheme relevant to either the whole development or that part of the development and a report showing the findings of the Verification Investigation for the relevant part of the site has been submitted to and agreed in writing by the Local Planning Authority. The Verification Investigation Report shall:

- Contain a full description of the works undertaken in accordance with the agreed Remedial Scheme and Verification Plan;
- Contain results of any additional monitoring or testing carried out between the submission of the Remedial Scheme and the completion of remediation works;
- Contain Movement Permits for all materials taken to and from the site and/or a copy of the completed site waste management plan if one was required;
- Contain Test Certificates of imported material to show that it is suitable for its proposed use;
- Demonstrate the effectiveness of the approved Remedial Scheme; and
- Include a statement signed by the developer, or the approved agent, confirming that all the works specified in the approved Remedial Scheme have been completed.

Reason: To ensure that the land is fit for purpose, to ensure protection of controlled waters and to accord with the aims and objectives in respect of pollution as set out in the National Planning Policy Framework.

17. There shall be no infiltration of surface water drainage into the ground at any time other than in accordance with details first submitted to and agreed in writing by the Local Planning Authority. Development shall be undertaken strictly in accordance with the submitted Outline Construction Environmental Management Plan (Revision 01, March 2013, ref. 031052).

Reason: To protect controlled water receptors.

18. Notwithstanding the submitted details and other conditions, no development shall commence in any phase until such time as a timetable for the undertaking of updated surveys in respect of badgers in the relevant phase (and including the specification of maximum periods between undertaking of surveys and commencement of work on the relevant phase) has been submitted to and agreed in writing by the Local Planning Authority. No development shall thereafter be undertaken at any time in that phase unless the relevant surveys have been undertaken in accordance with the approved details and the results (including mitigation measures and a timetable for such mitigation where appropriate) have been submitted to and agreed in writing by the Local Planning Authority, and the development shall thereafter be undertaken strictly in accordance with the agreed mitigation measures and timetable.

Reason: In the interests of nature conservation.

19. No hedgerows, trees or shrubs shall be removed during the months of March to August inclusive unless first agreed in writing by the Local Planning Authority. Should nesting birds be found during construction work, all construction

work within 5 metres of the nest (which could constitute a disturbance) shall cease immediately, and shall not resume until such time as the young have left the nest.

Reason: In the interests of nature conservation.

20. Notwithstanding the submitted details and other conditions, the first reserved matters application in respect of the development (or, in the case of phased development, the first reserved matters application in respect of the relevant phase) shall be accompanied by full details of all measures proposed in respect of the enhancement and / or management of the ecology and biodiversity of the development (or in respect of phased development, that phase), including proposals in respect of future maintenance and a timetable for the implementation of the relevant measures. The development shall thereafter be undertaken and occupied in accordance with the agreed measures and timetable.

Reason: In the interests of nature conservation.

21. Notwithstanding the submitted details, all reserved matters applications for the erection of non-residential development shall include full details of the proposed buildings' anticipated level of achievement in respect of criteria / sub-categories contained within the Building Research Establishment's Environmental Assessment Method (BREEAM). No building shall be brought into use until such time as an assessment of the building has been carried out by a registered BREEAM assessor and a BREEAM Certificate has been issued for the relevant building certifying that the relevant BREEAM Level has been achieved.

Reason: To ensure the environmental integrity of the scheme is secured.

22. Notwithstanding the provisions of the Town and Country Planning (Use Classes) Order 1987 (as amended) (or any order revoking or re-enacting that Order), the total gross floorspace of uses falling within Class A1 of that Order shall not exceed 560 square metres at any time, nor shall the total gross floorspace of any single retail unit exceed 460 square metres at any time, unless planning permission has first been granted by the Local Planning Authority.

Reason: To ensure the development takes the form envisaged by the Local Planning Authority, for the avoidance of doubt, and to ensure satisfactory control over the impact of the development on nearby centres.

23. The first reserved matters application submitted pursuant to this permission (or, in the case of phased development, the first reserved matters application in respect of the relevant phase) shall include a detailed Archaeological Mitigation Strategy for the respective area(s). The Strategy shall be based upon the results of a programme of exploratory archaeological fieldwalking and trial trenching undertaken within the relevant area(s) in accordance with a Written Scheme of Investigation (WSI) first submitted to and agreed in writing by the Local Planning Authority. Both the WSI and final Strategy shall include an assessment of significance and research questions, and:

- The programme and methodology of site investigation, recording and post-investigation assessment (including the initial fieldwalking and trial trenching, assessment of results and preparation of an appropriate mitigation scheme);

- The programme for post-investigation assessment;
- Provision to be made for analysis of the site investigation and recording;
- Provision to be made for publication and dissemination of the analysis and records of the site investigation;
- Provision to be made for archive deposition of the analysis and records of the site investigation;
- Nomination of a competent person or persons / organisation to undertake the works set out within the Written Scheme of Investigation; and
- A detailed timetable for the implementation of all such works / measures.

No development shall take place at any time within the relevant area other than in accordance with the agreed Written Scheme of Investigation, Strategy and timetable for that area.

Reason: To ensure satisfactory archaeological investigation and recording.

24. Notwithstanding the submitted details and other conditions, no development shall commence on the site until such time as a scheme of structural landscaping to the A511 (indicating species, densities, sizes and numbers of proposed planting both within and outside of the application site, as appropriate, together with all existing trees and hedgerows on the land including details of those to be retained, and those to be felled / removed), together with a timetable for its implementation, has been submitted to and agreed in writing by the Local Planning Authority. No development shall be occupied at any time unless all measures specified in the agreed scheme required to be implemented by the relevant stage / phase have been undertaken in full in accordance with the agreed details.

Reason: In the interests of amenity and to ensure that the development is appropriate in its National Forest setting.

25. Notwithstanding the submitted details and other conditions, no development shall commence (or, in respect of a phased development, no development shall commence in the relevant phase) until such time as details specifying which of the proposed tree protection measures shown on drawing no. SJA TPP 12139-02a within the development (or, in respect of a phase development, that phase) are proposed to be implemented in respect of the construction of the proposed accesses / roads (together with a timetable for their implementation) have been submitted to and agreed in writing by the Local Planning Authority. No development (or, in respect of a phased development, no development in the relevant phase) shall be undertaken at any time unless all of the agreed protection measures relating to the relevant stage / phase are in place. Within the fenced off areas there shall be no alteration to ground levels, no compaction of the soil, no stacking or storing of any materials and any service trenches shall be dug and back-filled by hand.

Reason: To ensure that existing trees are adequately protected during construction in the interests of the visual amenities of the area.

26. Save for any works associated with the formation of the access as shown on drawing no. 06 Rev F, no part of the development shall be occupied until such time as the A511 site access junction as shown on drawing no. 06 Rev F has been provided in full and is available for use by vehicular traffic.

Reason: To provide vehicular access to the site, including for construction traffic, and in the interests of highway safety.

27. No development shall commence on the site until such time as a scheme for the provision of a new or diverted bus service serving the development, and providing a connection between the site and Ashby de la Zouch town centre, has been submitted to and agreed in writing by the Local Planning Authority. The submitted scheme shall include hours of operation, service frequencies, routing and provision of necessary on and off site infrastructure (including pole and flag, bus shelter, raised kerbs and information display cases). The scheme shall include any works / measures required for the initial implementation of the scheme, together with a phased programme for the implementation of any measures required by the scheme as the development progresses. No more than 131 dwellings constructed pursuant to this Planning Permission shall be occupied until such time as the whole of the approved scheme is fully operational.

Reason: To ensure adequate steps are taken to provide a choice in mode of travel to and from the site.

28. No development shall commence on the site until such time as a construction management plan, including wheel cleansing facilities and vehicle parking facilities, site compound(s), materials' storage areas and a timetable for their provision, has been submitted to and agreed in writing by the Local Planning Authority. The development shall thereafter be carried out in accordance with the approved details and timetable.

Reason: In the interests of highway safety and to prevent unacceptable on-street parking.

29. No more than 30 dwellings shall be accessed off Woodcock Way.

Reason: To limit access to the site off Woodcock Way.



RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT

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

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

SECTION 1: PLANNING APPEALS AND CALLED-IN PLANNING APPLICATIONS

The decision may be challenged by making an application for permission to the High Court under section 288 of the Town and Country Planning Act 1990 (the TCP Act). This new requirement for permission to bring a challenge applies to decisions made on or after 26 October 2015.

Challenges under Section 288 of the TCP Act

With the permission of the High Court under section 288 of the TCP Act, decisions on called-in applications under section 77 of the TCP Act (planning), appeals under section 78 (planning) may be challenged. Any person aggrieved by the decision may question the validity of the decision on the grounds that it is not within the powers of the Act or that any of the relevant requirements have not been complied with in relation to the decision. An application for leave under this section must be made within six weeks from the date of the decision.

SECTION 2: ENFORCEMENT APPEALS

Challenges under Section 289 of the TCP Act

Decisions on recovered enforcement appeals under all grounds can be challenged under section 289 of the TCP Act. To challenge the enforcement decision, permission must first be obtained from the Court. If the Court does not consider that there is an arguable case, it may refuse permission. Application for leave to make a challenge must be received by the Administrative Court within 28 days of the decision, unless the Court extends this period.

SECTION 3: AWARDS OF COSTS

A challenge to the decision on an application for an award of costs which is connected with a decision under section 77 or 78 of the TCP Act can be made under section 288 of the TCP Act if permission of the High Court is granted.

SECTION 4: INSPECTION OF DOCUMENTS

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

EXAMPLES OF APPEAL DECISIONS SUPPORTING THE POLICE

Appeal Ref: APP/C3810/V/16/3143095

Secretary of State Decision - 13 July 2017

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

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

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

42. *Having had regard to the Inspector's analysis at IR10.8-10.15 and IR11.61, the planning obligation dated 2 December 2016, paragraphs 203-205 of the Framework, the Guidance and the Community Infrastructure Levy Regulations 2010, as amended, the Secretary of State agrees with the Inspector's conclusion for the reasons given in IR11.61 that all the obligations, bar the NHS contribution which has not been substantiated and fails the CIL tests, comply with Regulation 122 of the CIL Regulations and the tests at paragraph 204 of the Framework and is necessary to make the development acceptable in planning terms, is directly related to the development, and is fairly and reasonably related in scale and kind to the development.*
43. *The Secretary of State has taken into account the number of planning obligations which have been entered into on or after 6 April 2010 which provide for the funding or provision of a project or type of infrastructure for which an obligation has been proposed in relation to the application (IR10.8-10.15 and IR11.61). The Secretary of State concludes that the obligations are compliant with Regulations 123(3), as amended.*
- 1.4 *The local planning authority (lpa) considered the application on the 25 November 2015 and resolved to grant planning permission subject to conditions and a S106 Agreement (CD 24). The applicants submit an engrossed S106 Agreement dealing with the provision of financial contributions relating to education; libraries; the fire service; highways and transport; police infrastructure; primary healthcare facilities; leisure facilities and the provision of affordable housing and public open space (CD 37). The applicants, the lpa and West Sussex County Council (WSCC) submitted notes on CIL R122 compliance (CDs 49, 55 & 52).*
- 9.23 *...Other responses included... Sussex Police – sought financial contribution towards the provision, maintenance and operation of Police infrastructure.*
- 10.15 *The payment of:*
- *£70,000 towards the provision of mobile IT kit, speed awareness kits and towards the re-provision of Littlehampton Police Station. CD 55 Appendix A1.7 provides a detailed justification by Sussex Police for the principal of the contribution. Whilst the Sussex Police request was originally for £109,714 the sum subsequently agreed is £70,000 (LPA 3);*

EXAMPLES OF APPEAL DECISIONS SUPPORTING THE POLICE

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

EXAMPLES OF APPEAL DECISIONS SUPPORTING THE POLICE

Appeal Ref: APP/E3715/W/16/3147448

Secretary of State Decision - 10 July 2017

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

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

Application: R13/2102 - Rugby Borough Council

30. *Having had regard to the Inspector's analysis at IR158-166, the planning obligation dated 17 February 2017, paragraphs 203-205 of the Framework, the Guidance and the Community Infrastructure Levy Regulations 2010 as amended, the Secretary of State agrees with the Inspector's conclusion for the reasons given in IR166 that the obligation complies with Regulation 122 of the CIL Regulations and the tests at paragraph 204 of the Framework and is necessary to make the development acceptable in planning terms, is directly related to the development, and is fairly and reasonably related in scale and kind to the development.*
156. *Warwickshire Police (WP) requested a sum of £185,278 towards police infrastructure that would mitigate the impact of the proposed development. This contribution has not been disputed and should be secured in a S106 planning obligation. It reflects the precise need that would arise from the development of up to 860 new homes on the appeal site based on WP's experience policing development in the area. The contribution would be used to mitigate the impact on infrastructure where there is no spare capacity and would accord with Core Strategy Policy CS10. Appendix 3 of the Core Strategy includes police as one of the critical infrastructure requirements to ensure delivery and mitigation, which are expected to be included in a S106 Agreement.*
157. *WP objects to the development proceeding without the necessary contributions as the resulting development could not be adequately policed, contrary to Core Strategy Policy CS13 and policies within the Framework. There is extensive evidence in WP's written representations which cover how the contribution request was calculated and compliance with Community Infrastructure Levy Regulations (CIL) Regulation 122 and 123(3). Each element of the contribution would be spent on an individual 'project' to meet the needs of the development alone, without the need for any pooling of contributions.*
160. *The Council, WCC and WP have provided documents to demonstrate CIL compliance. I have not received any evidence to demonstrate that the planning obligations would contravene any of the above Regulations.*
165. *...The obligations to secure a Police contribution would ensure that the money would be spent on police equipment, premises and vehicles that would be necessary to police the new development.*
166. *Based on the above, I have found that the planning obligations in the S106 Agreement meet the tests in CIL Regulation 122 and 123(3) and paragraph 204 of the Framework. I have therefore taken them into account in my conclusions and recommendations.*

EXAMPLES OF APPEAL DECISIONS SUPPORTING THE POLICE

Appeal Ref: APP/C3240/W/16/3144445

Appeal Decision - 21 March 2017

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

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

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

157. *The planning obligation concluded after the close of the inquiry provides for... a contribution towards police premises, recruiting and equipping new officers and staff to serve the development and vehicles.*
163. *The current development plan is silent on police contributions although it is matter addressed in the emerging Telford and Wrekin Local Plan and the related Infrastructure Delivery Plan. The premises contribution is not controversial.*
164. *The legitimacy of contributions towards training new officers and the provision of equipment and vehicles is less clear cut in so far as it would, in effect, amount to a tariff payment with no exclusivity for the proposed development. Nonetheless, the sums sought are fully quantified against the policing requirement, which existing resources cannot meet, for the proposed development.*
165. *There is no doubt that the proposed development would generate a need for policing and that need would require additional resources which have been calculated on a pro-rata dwelling basis. The Framework identifies a need for safe and accessible environments where crime and disorder, and the fear of crime, do not undermine quality of life or community cohesion. In addition, an extensive array of appeal decisions supports the principle of police contributions. Overall, the balance of the evidence before me points to the obligation (based on the underlying pro-rata calculation) being necessary and proportionate mitigation for the development.*

EXAMPLES OF APPEAL DECISIONS SUPPORTING THE POLICE

Appeal Ref: APP/K2420/W/15/3004910

Appeal Decision - 04 May 2016

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

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

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

44. *Leicestershire Police (LP) has demonstrated adequately that the sums requested would be spent on a variety of essential equipment and services, the need for which would arise directly from the new households occupying the proposed development. It would be necessary, therefore, in order to provide on-site and off-site infrastructure and facilities to serve the development commensurate with its scale and nature consistent with LP Policy IMP1. The planning contribution would also enable the proposed development to comply with the Framework's core planning principle of supporting local strategies to improve health, social and cultural wellbeing and delivering sufficient community facilities and services to meet local needs.*
45. *In respect of compliance with CIL Regulation 123(3) the proposed spending has been apportioned to individual projects and procurement, such as property adaptation and a contribution towards a vehicle, in order to ensure no need for the pooling of contributions. In addition a clause of the undertaking which, in requiring written confirmation prior to payment that it would only be spent where there were no more than four other contributions, would provide a legal mechanism for ensuring full compliance with Reg. 123(3).*
46. *Evidence was submitted in the form of two maps with types of criminal incidents plotted on them. The first of these shows that there were several burglaries and thefts in the housing area adjacent to the appeal site during the year up to July 2014. The second map covers a larger area, this time in Blaby, and indicates a steady rate of incidents, mainly forms of stealing, in all types of residential area. I have no reason to believe that levels of crime differ significantly between Hinckley/Burbage and Blaby.*
47. *I consider this to be a no less realistic and robust method of demonstrating the criminal incidents likely to arise in a specific area than the analysis of population data which is normally used to calculate the future demand for school places. The evidence gives credence to the additional calls and demands on the police service predicted by LP.*
51. *My overall conclusion on planning contributions is that those requested by LP and by LCC for the civic amenity site would be necessary to make the development acceptable in planning terms and would meet the other tests set out in the Framework. In those respects the submitted planning obligation carries significant weight. The contribution sought for Burbage library would not.*

EXAMPLES OF APPEAL DECISIONS SUPPORTING THE POLICE

Appeal Ref: APP/G2435/A/14/2228806

Secretary of State Decision - 15 February 2016

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

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

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

17. *The Secretary of State has also considered the executed and signed Unilateral Undertaking; the Inspector's comments on this at IR61-63; paragraphs 203 and 205 of the Framework, and the Guidance. He considers that that the provisions offered by the Unilateral Undertaking would accord with the tests set out at paragraph 204 of the Framework and agrees with the Inspector that they would also comply with Regulations 122 and 123 of the CIL Regulations.*
63. *The contribution of £219,029 towards Police infrastructure is not related to requirements of development plan policies. The figure has been arrived at following a close and careful analysis of the current levels of policing demand and deployment in Ashby. The proposed development, in terms of population increase, would have a quantifiable and demonstrable effect on the ability of the Police to carry out their statutory duties in the town. LP has not sought any contribution to some aspects of policing, such as firearms and forensics, but only for those aspects where there is no additional capacity. The contribution is thus fairly and reasonably related in scale and kind to the development and is directly related to that development. The contribution is necessary because the new housing that would be created would place a demonstrable additional demand on Police resources in Ashby. The financial contribution to Police operations thus satisfies Regulation 122 of the Community Infrastructure Levy Regulations 2010 and a provision of the Undertaking would ensure that the contribution also satisfies Regulation 123 of the Community Infrastructure Levy Regulations 2010.*

EXAMPLES OF APPEAL DECISIONS SUPPORTING THE POLICE

Appeal Ref: APP/X2410/W/15/3007980

Appeal Decision - 08 February 2016

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

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

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

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

Appeal Ref: APP/T3725/A/14/2221613

Secretary of State Decision - 14 January 2016

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

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

Application: W/14/0300 - Warwick District Council

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

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

- 11.5 *Warwickshire Police and West Mercia Police: They requested a S106 contribution to provide police infrastructure necessary to enable the direct delivery of policing services to the site. No objections were received from either the Council or the appellant and so it was assumed that HE request met the relevant statutory tests. It was a surprise, therefore, to see on the Statement of CIL compliance, that the request was considered not to be compliant, notwithstanding that the Obligation did include the requested provision. The correspondence sets out why, in their view, the contribution is CIL compliant and is supported by four Appendices.*
- 13.18 *Police: the obligation secures the provision of a building for use as a police office, of at least 200 square metres gross internal floor area (together with service connections and external parking) to be located within the local centre that forms part of the development scheme. In addition, a contribution of £187,991 is secured, payable to the Council to fund the provision, fitting out and equipping of the police office.*
- 14.154 *Police: As set out in the CIL Compliance Schedule, the appellant is not satisfied that the arrangement is CIL compliant, with the Council being of the view that insufficient evidence was available to come to an informed view on the matter. However, no evidence was before the Inquiry to support those concerns.*

EXAMPLES OF APPEAL DECISIONS SUPPORTING THE POLICE

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

EXAMPLES OF APPEAL DECISIONS SUPPORTING THE POLICE

Appeal Ref: APP/T3725/A/14/2229398

Secretary of State Decision - 14 January 2016

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

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

Application: W/14/0681 - Warwick District Council

33. *Having examined the completed and signed S106 Planning Agreement and considered the commentary and views at IR349 - 356 and the Inspector's assessment at IR462 - 467, the Secretary of State concludes that the obligations in the Agreement accord with Paragraph 204 of the Framework and meet the tests in the CIL Regulations 2010 as amended.*
353. *The Council has submitted a summary table of S106 contributions (Document AD13) to demonstrate that the Regulation 123 limit of a maximum of 5 contributions to infrastructure would not be exceeded. The Council has also submitted a CIL Regulations Compliance Statement (Document AD14) which sets out the justification for each obligation, matters of agreement and matters of dispute. Appendix D explains that the monitoring fee is necessary as the large scale housing site with multiple contributions requires additional monitoring work. It sets out how the sum has been calculated including the activities to be carried out and the hourly rate of the officer.*
354. *Mr T Jones represents Warks and West Mercia Police Authority. He appeared at the Inquiry in a round table session to further provide evidence in support of the need for the financial contribution for police services that is included in the submitted S106 planning obligation agreement. There is supporting written evidence at OIP7, OIP22, and OIP23. The contribution is sought to support police services for the local area to accommodate the rising need generated by this new development. Appeal decisions by the Secretary of State have been submitted in support of such contributions APP/X2410/A/12/2173673 (Document OIP22) and APP/X2410/A/13/2196928/APP/X2410/A/13/ 2196929 (Document OIP23). In each case the Secretary of State agreed with the Inspector that the contributions were compliant with Regulation 122 of the CIL Regulations. The Inspector's Report for the first case noted that contributions had previously been supported in some appeals and not in others.*
462. *The S106 planning obligation agreement between the LPA and the Appellant and landowners covers all the matters referred to as reasons for refusal [349-352]]. However the Appellant has queried whether all of the obligations satisfy the requirements of the Community Infrastructure Levy Regulations 2010 (as amended) and the Obligation Agreement itself provides that if the 'Planning Inspector or Secretary of State in the Decision Letter' concludes that any of the planning obligations or the monitoring fee or any part of the obligation are incompatible with Regulations 122 or 123 of the Community Infrastructure Levy Regulations 2010 (as amended) then that shall cease to have effect. In particular the Appellant queries the legality of the monitoring fee and*

EXAMPLES OF APPEAL DECISIONS SUPPORTING THE POLICE

the contributions to police and health services. The LPA has provided a CIL compliance statement [353].

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

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Appeal Ref: APP/G2435/W/15/3005052

Appeal Decision - 05 January 2016

Land South of Greenhill Road, Coalville, Leicestershire

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

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

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

EXAMPLES OF APPEAL DECISIONS SUPPORTING THE POLICE

Appeal Ref: APP/Q3115/A/14/2222595

Appeal Decision - 02 June 2015

Land North of Littleworth Road, Benson

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

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

51. *The necessity, relevance and proportionality of these and the other elements of the planning agreement are set out in three documents submitted to the Inquiry. They (include)... a letter from Simon Dackombe Strategic Planner, Thames Valley Police. With one exception they provide convincing (and undisputed) evidence that the obligations comply with regulation 122 of the CIL Regulations.*
52. *The exception is that part of the contribution sought for policing which relates to the training of officers and staff. Whereas all the other specified items of expenditure relate to capital items which would ensure for the benefit of the development, staff training would provide qualifications to the staff concerned and would benefit them but these would be lost if they were to leave the employ of the police and so are not an item related to the development. I therefore take no account of this particular item in coming to a decision on the appeal. This does not, however, invalidate the signed agreement.*

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Appeal Ref: APP/A2470/A/14/2222210

Appeal Decision - 26 May 2015

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

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

Application: 2013/0956/OUT - Rutland County Council

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

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Appeal Ref: APP/A2470/A/14/2227672

Appeal Decision - 19 May 2015

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

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

Application: 2013/1042/FUL - Rutland County Council

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

EXAMPLES OF APPEAL DECISIONS SUPPORTING THE POLICE

Appeal Ref: APP/L2440/A/14/2216085

Appeal Decision - 10 February 2015

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

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

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

82. *A completed planning obligation, in the form of an agreement made under Section 106 of the Town and Country, was submitted at the inquiry (Document OW15). I have considered the submitted planning obligation against the tests set out at paragraph 204 of NPPF.*
83. *In general terms, the agreement establishes a commitment to provide 30% affordable dwellings, support for sustainable transport, the provision of open space for public use, and financial contributions for education, the county council library service and police infrastructure. The terms of the offered agreement were discussed, and whether the contributions put forward were directly related to the development being proposed. Nothing was said at the inquiry to indicate that what is being offered is unreasonable, disproportionate, or likely to be covered by other sources of financial support or revenue.*
84. *I am satisfied that, in the light of the matters discussed at the inquiry, and taking into account the written submissions relating particularly to the police contribution (document LP1), all the offered contributions and undertakings are necessary to make the development acceptable in planning terms, are directly related to the development and reasonably related in scale and kind to the development.*

EXAMPLES OF APPEAL DECISIONS SUPPORTING THE POLICE

Appeal Ref: APP/Y2430/A/14/2224790

Appeal Decision - 06 January 2015

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

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

Application: 14/00078 - Melton Borough Council

28. *In the completed Agreement there are covenants relating to affordable housing, police service requirements, open space and maintenance, bus stop and bus shelter provision, bus travel, a travel plan co-ordinator and travel packs, off-site traffic signal works, civic amenity, leisure facilities, library facilities, Melton Country Park facilities, and training opportunities. Support for infrastructure requirements is provided in saved LP Policy OS3 and within the County Council's SPG11. In addition, at the Hearing Mr Tyrer, the County Council's Developer Contributions Officer, and Mr Lambert, the Growth and Design Officer for Leicestershire Police, provided detailed information and justification of the infrastructure requirements and how financial contributions would be spent.*
30. *I am satisfied that the proposed planning obligations are necessary, directly related, and fairly and reasonably related in scale and kind to the proposed development, in accordance with Regulation 122 of the Community Infrastructure Levy Regulations 2010.*

Appeal Ref: APP/M2460/A/14/2213689

Appeal Decision - 04 December 2014

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

The development proposed is described as 'residential development'.

Application: 2013/0862/04 - Leicestershire County Council

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

Appeal Ref: APP/K2420/A/13/2208318

Secretary of State Decision - 18 November 2014

Land surrounding Sketchley House, Watling Street, Burbage, Leicestershire

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

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

- 22 *The Secretary of State has considered the terms of the planning obligation submitted at the inquiry and considered by the Inspector at IR11.54-11.57; and he agrees with him at IR11.57 that these contributions meet the Framework test and comply with CIL regulations.*
- 8.1 *Policing is a service that is always available and responds to demand on an ‘equal access’ basis; the level and efficiency of that response depends on the facilities available. Calls and deployments are monitored and give an indication of the level of services delivered to the 45,400 households in the Borough or the 6393 houses in Burbage. In 2011 there were 83,315 calls from the Borough, 9,386 of which required emergency attendance and 5,314 entailing some ‘follow up’. In Burbage there were 11,664 calls, 314 emergencies and 744 attendances; last year there were 419 recorded incidents. Those incidents largely entail burglary, car related crime and theft and there are geographical concentrations at the commercial units around Hinckley Island and the town centre. Some 372 incidents of anti-social behaviour are recorded in Burbage and regular patrolling and local community contact maintained by the Neighbourhood Policing team, located at Hinckley Local Policing Unit.*
- 8.2 *The integrated nature of policing means that many different operational units are involved in responding to recorded incidents. Staff at the Local Police Unit, the hub at Braunston, the Basic Command Unit at Loughborough, the Force HQ at Enderby, tactical support, road safety, communications and regional crime can all be involved. Some 270 staff are employed to deliver policing in the Borough and about 80% of their time is devoted to such activities. The minimum number of staff is deployed to meet existing levels of demand, which means that there is little additional capacity to extend staffing to cover additional development. The aim is to deploy additional staffing and additional infrastructure to cover the demand from new development at the same level as the policing delivered to existing households. Hence, additional development would generate a requirement for additional staff and additional personal equipment (workstations, radios, protective clothing, uniforms and bespoke training), police vehicles of varying types and functions, radio cover (additional base stations and investment in hardware, signal strengthening and re direction), national database availability and interrogation, control room telephony, CCTV technologies, mobile units, ‘beat drop in hubs’, premises and the like. Yet, the prognosis is that ‘It is sensible to assume that most of the capital requirements incurred by growth will not be covered by existing mainstream central and local funding’. Hence, the necessity to seek developer contributions to ensure that existing levels of service can be maintained as growth continues.*

- 8.3 *The proposed development is expected to increase the overnight population of this settlement by at least 307 people and a net addition of 133 new houses must bring additional policing demands. Extrapolating from existing empirical data indicates that the scheme would generate annual additions of some 239 calls and responses, 28 emergency events, 16 non-emergency events, 9 additional recorded crimes and 8 recorded anti-social behaviour incidents. In turn those events would require additional vehicle use, more radio calls, greater use of the PND systems to process and store crime records and intelligence, further deployment of mobile CCTV technologies and additional access for beat staff in a local Hub, not to mention consequences for support and HQ staff.*
- 8.4 *The Framework supports the provision of the facilities and services needed in a community. This is one of the 'core principles' and SPDs are indicated to be an appropriate means to assist applicants in understanding the obligations that proposals might generate. The Framework advocates the creation of healthy and inclusive environments where crime and disorder and the fear of crime do not undermine the quality of life. Policy IMP1 of the Local Plan reflects that advice and provides an over-arching justification for the contributions sought. And, the Leicestershire County Council Statement of Requirements sets out the provisions that should be made towards the need for additional policing that might be due to new development.*
- 8.5 *The contribution requested amounts to £44,711 to mitigate the additional impacts estimated to accrue directly from the proposed development. These contributions are required to upgrade the capacity of existing infrastructure, which would not otherwise be sufficient to meet the likely demand from the scheme. It is anticipated that staff salaries and day to day routine additional costs would be met by rate revenues. A programme to procure the additional facilities required would be agreed as a clause in a legal agreement. The contributions sought would be directly related in scale and kind to the development, so that the completion of some infrastructures would require funding from elsewhere. But, the contribution would be used wholly to meet the direct impacts of this development and wholly in delivering the policing to it. On the basis of advice, the level of contributions sought are not based on a formula but derived solely from the direct impact of the scheme on policing. This has elicited support at appeal. A detailed explanation of the methods used to calculate each element of the total contribution is offered together with the justification for it derived from the advice in the Framework. It is shown that the contributions sought are directly related to the development, fairly and reasonably related in scale and kind to the scheme and necessary to make the development acceptable in planning terms. There would thus be CIL compliant.*
- 11.57 *The Contributions towards... additional policing... are directly related to the development, proportionate to the scheme and necessary to make the proposal acceptable in planning terms. Hence, I consider that the contributions sought can be considered to be CIL compliant.*

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Appeal Ref: APP/F2415/A/14/2217536

Appeal Decision - 21 August 2014

Land off Fairway Meadows, Ullesthorpe, Leicestershire

The development proposed is new housing development (61 dwellings).

Application: 13/01228/OUT - Harborough District Council

31. *Returning to the unilateral undertaking, I have already mentioned obligations relating to measures to promote more sustainable modes of transport, which are necessary to make the development acceptable. The undertaking also includes provision for contributions towards library facilities and police services and, given the justifications provided, I find that these are also necessary to make the development acceptable.*
32. *Taking account also of the information provided to explain how the various contributions are calculated and how they would be used, I find that all the obligations would be directly related to the development and fairly and reasonably related to it in scale and kind. The tests in Regulation 122 of the Community Infrastructure Levy Regulations 2010 and in the Framework are therefore satisfied and thus I have had regard to all the obligations.*

EXAMPLES OF APPEAL DECISIONS SUPPORTING THE POLICE

Appeal Refs: APP/K2420/A/13/2202658 and APP/K2420/A/13/2210904

Appeal Decision - 18 August 2014

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

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

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

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

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

34. *The contribution to Leicestershire Police has been justified based on crime statistics within the area and demands that would arise from the development. It would fund equipment and infrastructure to support additional personnel within the beat area, not the staffing itself. In terms of civic amenity contributions, the nearest household waste and recycling disposal site is at Barwell. Figures were provided indicating that the site is at or above capacity at peak periods such as Bank Holiday weekends. The contributions would assist in the acquisition of an additional storage container to cater for the waste from this and other new housing developments in the area.*
35. *The Council considers that the police and civic amenity contributions do not meet the tests within Regulation 122 of the Community Infrastructure Regulations (CIL) but does not provide much evidence to support its position. In contrast Leicestershire Police and the County Council have provided significant justification for the contributions, including reference to a number of recent appeal decisions where such contributions have been supported by Inspectors and the Secretary of State.*
36. *The contributions would accord with Policies IMP1, REC2 and REC3 of the LP and the Council's Play and Open Space Guide SPD. In addition the contributions to the County Council are supported by the Statement of Requirements for Developer Contributions in Leicestershire.*
37. *The obligations within the S106 agreements are necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind to the development. Therefore, they meet the tests within CIL Regulation 122 and should be taken into account in the decision. I consider that the conditions set out in Paragraph 2.9 of the agreement are satisfied and that the obligations should become effective.*

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Appeal Refs: APP/H1840/A/13/2199085 and APP/H1840/A/13/2199426

Secretary of State Decision - 02 July 2014

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

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

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

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

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

- 19 *The Secretary of State has also considered the S106 Planning Agreement in respect of Appeal A submitted by the main parties at the inquiry (IR8.88) and, like the Inspector, he is satisfied that the provisions can be considered to be compliant with CIL Regulation 122 and paragraph 204 of the Framework and that full weight in support of the appeal proposal can therefore be given to the obligations.*
- 1.15 *With regard to **Appeal A** the planning application was submitted in outline form with all matters reserved except for access. A schedule of the application documents and plans on which the SoS is requested to determine the proposal is at BDL 13. The reader should note that the most helpful plan in this schedule is the Indicative Masterplan. The proposed development is described as including the following components...*
- *A police post*
- 6.25 *...With other development already underway there is over a 12% increase in the town's population which amounts to a massive effect on local services such as doctors, dentists, schools and the police...*
- 8.88 *A S106 obligation (BDL5) was submitted at the inquiry and is agreed by the main parties... From all the evidence that is before me I consider that the provisions of the S106 Agreement complies with paragraph 204 of the NPPF and meets the 3 tests of Regulation 122 of the CIL Regulations 2010. I accord the S106 Agreement significant weight and I have had regard to it as a material consideration in my conclusions...*

EXAMPLES OF APPEAL DECISIONS SUPPORTING THE POLICE

Appeal Ref: APP/F2415/A/12/2183653

Secretary of State Decision - 17 April 2014

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

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

Application: 12/00494/OUT - Harborough District Council

22. *The Secretary of State agrees with the Inspector's assessment of the Section 106 agreement dated 23 May 2013 at IR62-76. He agrees that all of the contributions would be necessary to make the proposal acceptable in planning terms and would accord with the CIL Regulations 2010 and the tests in paragraph 204 of the Framework (IR77).*
70. *The contribution towards policing has been requested by the Police and Crime Commissioner for Leicestershire [PCCL/ML/1]. The proposal would increase the workload of the Leicestershire Constabulary in terms of additional calls, non-emergency follow ups and additional vehicle miles amongst other things. The contribution would enable the force to respond to this increased workload. It would therefore accord with CS Policy CS12 and the Local Infrastructure Schedule in the CS [HDC13].*
77. *All of the above contributions would therefore be necessary to make the proposal acceptable in planning terms and be directly and reasonably related to it in scale and kind. They would therefore also accord with Regulation 122 of the Community Infrastructure Levy Regulations 2010 as amended.*

EXAMPLES OF APPEAL DECISIONS SUPPORTING THE POLICE

Appeal Refs: APP/X2410/A/13/2196928 and APP/X2410/A/13/2196929

Secretary of State Decision - 08 April 2014

Land off Mountsorrel Lane, Rothley, Leicestershire

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

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

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

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

- 16 *The Secretary of State has also considered the Planning Obligations as described by the Inspector at IR8.42-8.47. He agrees with the Inspector (IR8.42) that all the provisions included in the executed Section 106 Agreement dated 13 December 2013 are necessary and comply with the Framework and Regulation 122 of the CIL Regulations. He also agrees with the Inspector (IR8.43-8.46) that the completed s106 Unilateral Undertaking, dated 13 December 2013, between the Appellant, the Council and the Police and Crime Commissioner for Leicestershire (APP10) meets the tests of Regulation 122 and the Framework and should be regarded as a material consideration.*
- 5.1 *The sum of £106,978 is sought by The Police and Crime Commissioner for Leicestershire (LP) towards Police infrastructure that would mitigate the impact of the proposed development. That figure has been arrived at following a close and careful analysis of the current levels of policing demand and deployment in Charnwood, so that the impact of the development could be properly assessed and a contribution sought that accurately reflects the precise need that would arise from the development of 250 new homes on the appeal site. LP3 page 17 contains an itemised breakdown of the anticipated expenditure on Police services/items dedicated towards the appeal development.*
- 5.2 *It is noted that the Landowner in this matter does not accept that any part of the Police Contribution meets the CIL tests as recited in the Unilateral Undertaking at clause 1.2.10. However, there appears to be no criticism by the Appellant of the approach taken by LP to the contribution requested, and no evidence has been produced to undermine the conclusions LP arrive at as to the nature and level of contribution required to mitigate the impact of the proposed development on LP resources.*
- 5.3 *The sum requested equates to approximately £427.91 per dwelling. That sum can only be arrived at by working backwards - it is not a roof tax applied to all proposed residential developments in the force area because that would not reflect the individual circumstances and needs of each development. For example, in the Land south of Moira Road appeal APP/G2435/A/13/2192131, the contribution per dwelling amounted to approximately £300*

EXAMPLES OF APPEAL DECISIONS SUPPORTING THE POLICE

whereas in the Land at Melton Road appeal APP/X2410/A/12/2173673, the contribution worked out to be £590.85 per dwelling. In both instances, the requests were found to be CIL compliant.

- 5.4 *Mr Lambert explains through the documentation submitted in respect of the initial application and for this appeal why the Police seek contributions, including the planning policy justification at both national and district level, and the difficulties associated with funding new infrastructure items in response to growth in residential development which places additional demand on police resources. The Inspector considering the Land at Melton Road Appeal at paragraph 291 accepted that "the introduction of additional population and property to an area must have an impact on policing, in the same way as it must on education and library services for example," and went on to conclude:*

"Moreover, it also seems to me that the twelfth core planning principle of the Framework, that planning should... "take account of and support local strategies to improve health, social and cultural wellbeing for all, and deliver sufficient community and cultural facilities and services to meet local needs", can only be served if policing is adequate to the additional burdens imposed on it in the same way as any other local public service. The logic of this is inescapable. Section 8 of the Framework concerns the promotion of healthy communities and planning decisions, according to paragraph 69, should aim to achieve places which promote, inter alia, "safe and accessible environments where crime and disorder, and the fear of crime, do not undermine quality of life or community cohesion."

- 5.5 *Those conclusions were endorsed in the SoS's decision letter at paragraph 20.*
- 5.6 *Mr Lambert also explains why current revenue sources e.g. Council tax receipts, are insufficient to respond to growth in residential development, and are unable to fund much needed infrastructure to mitigate the additional demand placed on police resources by that growth. That position was examined and verified by external consultants employed by Local Councils in the Leicestershire Growth Impact Assessment of 2009; the Executive Summary is reproduced at Mr Lambert's Appendix 4.*
- 5.7 *There is no spare capacity in the existing infrastructure to accommodate new growth and any additional demand, in circumstances where additional infrastructure is not provided, would impact on the ability of police to provide a safe and appropriate level of service and to respond to the needs of the local community in an effective way. That outcome would be contrary to policy and without the contribution the development would be unacceptable in planning terms. It is right, as the Inspector accepted in the Melton Road decision (paragraph 292), that adequate policing is fundamental to the concept of sustainable communities. It is therefore necessary for the developer to provide a contribution so that adequate infrastructure and effective policing can be delivered; that is provided for through the Unilateral Undertaking APP10.*
- 5.8 *Mr Lambert has addressed each and every item of infrastructure required in his evidence and has sought to justify each request by reference to the 3 tests of Regulation 122 of the 2010 Regulations and also paragraph 204 of the NPPF. Those tests provide the framework in which LP work to assess the appropriate level of contribution necessary to mitigate the impact of residential development - a process which is under constant review to keep requests up-to-date and accurate as demonstrated by the recent letter dated 14 November 2013 amending*

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the total sum sought in respect of Police vehicles downwards to reflect the fact that an average of 10% of the original value of a vehicle will be redeemed upon disposal.

- 5.9 *Furthermore, LP confirms that the contribution can be, and would be spent on infrastructure to serve the appeal development because the sum requested is not required to meet with a funding deficit elsewhere or to service existing development. The contribution sought is therefore directly related to the development.*
- 5.10 *In conclusion, the request for a contribution towards additional Police infrastructure to mitigate the impact of the appeal proposal is a necessary, carefully considered and lawful request. The request is directly related to the development and to mitigating the impacts it would generate based on an examination of present demand levels and existing deployment in the District.*
- 5.11 *The request is wholly related to the scale and kind to the appeal development and the Inspector, and SoS are respectfully asked to conclude the same.*
- 5.12 *The Appellant does not accept that any part of the LP requested contribution meets the tests of Regulation 122 of the CIL Regulations 2010. The LPA has indicated that it is neutral in relation to the request.*
- 8.42 *APP9 is a signed and completed s106 Planning Obligation Agreement, dated 13 December 2013, between the Appellant, the LPA and LCC. The Agreement covers the following matters...*
- 8.43 *The Appellant has also submitted two s106 Unilateral Undertakings in respect of financial contributions requested by the Police and Crime Commissioner for Leicestershire Police... The Appellant is not satisfied that these contributions are CIL compliant. The LPA has indicated that it is a neutral in relation to both requests.*
- 8.44 *APP10 is a signed and completed s106 Unilateral Undertaking, dated 13 December 2013, between the Appellant, the LPA and the LP. The sum of £106,978 is sought by LP towards Police infrastructure to mitigate the impact of the development. Schedule 1 of the Undertaking provides details of the contribution and how it would be used to deliver adequate infrastructure and effective policing. Document LP2, prepared by LP, provides a statement of compliance with the CIL Regulations 2010.*
- 8.45 *In my view the sum of £106,978 has been arrived at following a close and careful analysis of the current levels of policing demand and deployment in Charnwood, so that the impact of the development could be properly assessed and a contribution sought that accurately reflects the precise need that would arise from the development of 250 new homes on the appeal site. The LP has confirmed that the contribution would be spent on infrastructure to serve the appeal development and is not required to meet a funding deficit elsewhere or to service existing development.*
- 8.46 *I consider that the contribution is necessary to make the development acceptable, it is directly related to the development and to mitigating the impacts that it would generate and it is fairly and reasonably related in scale and kind to the development. The Undertaking therefore meets the 3 tests of Regulation 122 of the CIL Regulation 2010 and the criteria in paragraph 204 of the NPPF. I accord the Undertaking significant weight and I have had regard to it as a material consideration in my conclusions.*

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Appeal Ref: APP/T2405/A/13/2200867

Appeal Decision - 02 January 2014

Land at Seine Lane/Forest Road, Enderby, Leicestershire

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

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

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

EXAMPLES OF APPEAL DECISIONS SUPPORTING THE POLICE

Appeal Refs: APP/T2405/A/13/2193758 and APP/T2405/A/13/2193761

Appeal Decision - 01 August 2013

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

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

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

Land off Countesthorpe Road and Springwell Lane, Whetstone, Leicestershire

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

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

28. *The appellant has submitted an engrossed Section 106 Agreement for Appeal A after the close of the hearing. The planning obligations would secure 25% affordable housing, contributions towards public transport, cycling, a travel pack, highway improvements, healthcare, libraries, police and the maintenance of the public open space that would form part of the scheme. I have considered the evidence provided in writing and at the hearing in support of the contributions to satisfy myself that the obligations meet the tests in Community Infrastructure Levy (CIL) Regulation 122. These tests are that the obligation is necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonable related in scale and kind to the development.*
33. *Leicestershire Police (LP) has supported the need for contributions towards policing services and facilities in its statement and at the hearing. The required contributions are significantly less than those considered by the previous Inspector, and LP have suggested that it has used a different method of calculation, based on the impact of the development itself. Therefore, I am satisfied that the sum provided for in the obligation is necessary to make the development acceptable in planning terms, having regard to the requirements in paragraph 58 of the Framework to create safe and accessible environments where crime and disorder, and the fear of crime, do not undermine quality of life or community cohesion.*
35. *Having regard to the above, I conclude on the Section 106 Agreement that all the planning obligations meet the tests in CIL Regulation 122 and paragraph 204 of the Framework. Without the obligations, the proposal would fail to accord with the relevant development plan policies and would have unacceptable impacts on local facilities and services and affordable housing in the District.*

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Appeal Ref: APP/G2435/A/13/2192131

Appeal Decision - 30 May 2013

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

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

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

36. *...The additional population would also bring additional policing requirements, which would need to be addressed.*
37. *The s106 Agreement would effectively bind the appellant to providing 18 affordable dwellings as part of the development. It would also require the appellant to make, and the District Council and County Council to disburse, contributions of...*
- *£24,903 towards the capital costs of policing the development*
39. *Evidence submitted to the inquiry showed that, without these contributions, the development would not be acceptable in planning terms because of its harmful impact on local infrastructure. These measures are therefore necessary to mitigate that impact. The need for additional facilities arises directly from the development of the site so the contributions are directly related to it. The extent of additional provision in each case has been carefully considered and is proportionate, appropriate and no more than is necessary to meet the additional demands, so the provisions of the Agreement are fairly and reasonably related in scale and kind to the development. The provisions of the Agreement therefore comply with 203 of the Framework and meet the tests of Regulation 122 of the CIL Regulations 2010. I therefore consider that the harmful impact of the proposal on local infrastructure would be satisfactorily overcome by the binding planning obligations.*

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Appeal Ref: APP/X2410/A/12/2173673

Secretary of State Decision - 14 May 2013

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

The development proposed is residential development (300 dwellings).

Application: P/10/1518/2 - Charnwood Borough Council

20. *With regard to the Planning Obligation (IR4, IR216-218, and IR283-301), the Secretary of State is satisfied that the provisions set out in the signed and sealed Planning Agreement dated 14 October 2012, as varied by the Deed of Variation dated 15 January 2013 (to make its provisions conditional upon their items being determined by the Secretary of State to meet the statutory tests) can be considered to be compliant with CIL Regulation 122...*
288. *The 'Police Authority Contribution' is for £177,255. The manner in which the authority would seek to spend it is set out in the Third Schedule to the Planning Obligation. By letter to the Planning Inspectorate of 6 August 2012, the Leicestershire Constabulary explained in some detail its approach to the use of S106 monies for police infrastructure throughout the county, supported by a number of appeal decisions in which it was concluded that the contributions in each case passed the relevant tests and could therefore be accorded weight. The letter appends (Appendix 2) a useful note from the Association of Chief Police Officers which draws the distinction between capital expenditure on equipment and premises, the basic infrastructure of policing, and revenue expenditure which might reasonably be expected to be supported by the increased number of households. A January 2012 policy statement from the Leicestershire Police Authority 'Policing Contributions from Development Schemes' is also included. This sets out its approach to the increased pressure on policing from additional housing development. The document includes at Section 7 the principles whereby financial contributions will be deployed, including provision for repayment if the police authority fails to spend the contributions, linkage to the development in question and use for additional needs arising from it and a "clear audit trail demonstrating that financial contributions have been used in a manner that meets the tests" (in the subsequently cancelled Circular 05/2005 Planning Obligations.)*
289. *Those tests are essentially the same as those of the extant CIL Regulations and hence there is a clear recognition by the Leicestershire Police Authority that development is not simply a source of additional finance to be spent in an unspecified or unrelated way. Moreover, the appellant in this case has "signed up" to the Policing Contribution, albeit under, it seems, protest. The evidence of Mr Thorley addresses this matter at Section 12 and his Appendix 10 is a paper on the topic that refers to a number of appeal decisions where a contribution to policing has not been supported, for example the appeal in Sapcote (Ref APP/T2405/A/11/2164413) in which the Inspector comments, in paragraph 41 of his decision, that... "it has not been shown, in the light of the statutory tests, that the contribution would be directly linked to the impacts arising from the appeal proposal."*
290. *Equally, the material submitted by the Police Authority under cover of its letter of 6 August 2012 includes a number of appeal decisions pointing in the opposite direction, for example the appeal in Bottesford (Ref APP/Y2430/A/11/2161786) where the Inspector comments, in paragraph 68, that "there was also specific justification of the individual elements within this global sum directly*

EXAMPLES OF APPEAL DECISIONS SUPPORTING THE POLICE

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.*

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

Appeal Decision - 15 April 2013

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

The development proposed is “erection of 60 dwellings following demolition of nursery buildings and formation of site access (revised scheme)”.

Application: P/12/1709/2 - Charnwood Borough Council

3. *Likewise, the main parties agree that the provision of some 18 dwellings as affordable housing (30% of 60, in accordance with the Council’s policy), together with various financial contributions towards local infrastructure - including payments to the Council, Leicestershire County Council and Leicestershire Police - would be met by the terms of a unilateral planning obligation [Doc 4], submitted at the hearing.*
35. *At the hearing the appellants tabled a signed and executed S106 unilateral planning obligation containing various clauses including: (in schedule 1) those relating to the provision of 18 units of affordable housing; (in schedule 2) the payment of monies to the Council comprising a health facilities contribution (approx. £14,000), a police contribution (approx. £25,000), and an open space contribution (approx. £42,000); and (in schedule 3) payments to Leicestershire County Council towards education (approx. £110,000) and transport (approx. £17,000); together with miscellaneous matters.*
36. *There was some discussion at the hearing as to the justification for some of the financial contributions sought. However, having regard to all the evidence to the hearing, and the criteria in para. 204 of the Framework, I am satisfied that all these provisions for infrastructure payments are necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind to the development. They also meet the 3 statutory tests set out in regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended).*

Appeal Ref: APP/F2415/A/12/2179844

Appeal Decision - 14 February 2013

Land north of Bill Crane Way, Lutterworth, Leicestershire.

The application sought outline planning permission for residential development with associated infrastructure, public open space and provision of vehicular and pedestrian access without complying with a condition attached to planning permission Ref 11/00117/OUT, dated 23 January 2012.

Application: P/12/00613/VAC - Harborough District Council

26. *The UU covenants in favour of the Council contributions in respect of the provision and maintenance of open space as part of the development and towards allotments, cemetery provision, policing services, medical facilities, recycling, community facilities and the provision of 30% of the units of affordable housing. The UU also covenants in favour of the Leicestershire County Council financial contributions towards education, public transport measures including bus stops, travel packs and bus passes, and library provision.*
27. *Whilst the Council and the County Council confirmed that the terms of the submitted UU were acceptable, the appellant questioned whether the contribution in respect of policing was compliant with the tests set out in the CIL Regulations. The appellant suggests that there is no evidence that the proposed development would result in a need for increased police resources. It is also argued that there should be no automatic assumption that the development should bear the cost of the provision of additional policing since the anticipated growth of such costs in this area could have been budgeted for and the new residents will generate Council Tax revenue.*
28. *However, it is recognised by both the County Council and the Council's guidance that a contribution towards policing could be triggered if there is a need arising from the development. The guidance therefore establishes the principle of a contribution although there needs to be clear evidence that the level of contribution would be justified having regard to the tests set out in the CIL Regulations.*
29. *The written evidence submitted by Leicestershire Police detailed the impact the proposed development would have on policing, forecasting the number of potential incidents and the anticipated effect this would have on staffing, accommodation, vehicles and equipment. In view of the requirement of national planning policy to create safe and accessible environments where crime and disorder, and the fear of crime, do not undermine quality of life, it is considered that, on the evidence before me, a contribution towards policing is necessary to make the development acceptable in planning terms.*
30. *Whilst the additional staff, accommodation, vehicles and equipment detailed by the Police could not be regarded as being for the exclusive use of the development, they would be necessary to provide for the effective policing of and to attend incidents on the site. In addition the number of staff and level of resources required to police the development has been based on the number of incidents estimated to be generated by the site. In respect of policing services the UU makes provision for the payment of £426 per dwelling and this is the figure sought by Leicestershire*

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Police. The level and range of the mitigation would therefore appear to be directly related to the development and also to be fairly and reasonably related in scale and kind to it.

- 31. I have had regard to the fact that the s106 Agreement, dated 18 January 2012, in respect of the existing outline planning permission makes provision for a contribution of £606 per dwelling for policing. The appellant has indicated that this agreement was concluded under time pressure and the police have had a change in policy since, under which only major developments would be targeted for contributions. However, the report also states that contributions would be pursued where a significant impact on policing is foreseen and can be quantified. It would appear that the most relevant implication of the change in policy is that the contribution required by the police in respect of this appeal was reduced following quantification of the anticipated effect of the development. This affirms my view that the UU before me meets the CIL tests.*
- 32. Reference has been made to a number of appeal decisions where it has been concluded that the police contributions failed to meet the tests and others where a contrary conclusion has been reached. However, I am not aware of the scope of the evidence provided in these cases and a comparison with the appeal cannot therefore be made.*
- 33. On the basis of the evidence before me, therefore, I am satisfied that the contribution towards policing set out in the UU is necessary, directly related to the development and fairly and reasonably related to it in scale and kind – as required by the tests set out in the CIL Regulations. I conclude the same with regard to the elements of the UU which are not in dispute and I have taken the UU into consideration in reaching my decision.*