



Appeal Decision

Inquiry held on 9-11 and December 2015 and 28-29 April 2016

Site visit made on 11 December 2015

by Mike Fox BA (Hons) DipTP MRTPI

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

Decision date: 06 June 2016

Appeal Ref: APP/J3720/W/15/3010653

Marriage Hill Nurseries, 45 Salford Road, Bidford-on-Avon, Alcester, Warwickshire, B50 4EY

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Persimmon Homes (South Midlands) Ltd against the decision of Stratford-on-Avon District Council.
 - The application Ref 14/03028/OUT, dated 31 October 2014, was refused by notice dated 18 March 2015.
 - The development proposed is the demolition of no. 45 Salford Road and existing nursery buildings, and construction of up to 75 dwellings with access, associated open space, landscaping, infrastructure and parking provision.
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Decision

1. The appeal is allowed and planning permission is granted for the demolition of no. 45 Salford Road and existing nursery buildings, and construction of up to 75 dwellings with access, associated open space, landscaping, infrastructure and parking provision at Marriage Hill Nurseries, 45 Salford Road, Bidford-on-Avon, Alcester, Warwickshire, B50 4EY in accordance with the terms of the application Ref 14/03028/OUT, dated 31 October 2014, and the plans submitted with it, subject to the conditions set out in the attached schedule.

Procedural Matters

2. All matters of detail except access have been reserved for future approval. In addition to plans showing site location and the proposed access arrangements, two master plans and a development parameters plan were submitted. These, together with the Design and Access Statement and a Landscape and Visual Impact Assessment (LVIA) and LVIA Addendum, give a likely indication of the character of the proposed development and its impact on the setting of the village of Bidford-on-Avon and the wider landscape.
3. A signed and dated Agreement and Unilateral Undertaking, both under Section 106 of the Town and Country Planning Act 1990, were submitted by the Appellant. I return to this matter later.
4. Three Statements of Common Ground (SCGs) were submitted prior to the opening of the Inquiry, and they identified the principal areas of agreement

and disagreement between the main parties at that time. A SCG¹ indicates that noise matters, originally included by the Council as a reason for refusal, are no longer an issue between the main parties. The five year housing land supply SCG² identified agreement that the Council could not demonstrate a five year housing land supply, as required by paragraph 47 of *the Framework*³.

5. The third, 'general' SCG⁴ deals with all other matters. It identifies the sole matter which was in dispute between the main parties at the start of the Inquiry. This is the impact of the development on the character of the site, the surrounding countryside and the setting of the village of Bidford-on-Avon.
6. The Council, however, on 22 December 2015, produced a new housing land supply calculation, stating that it considered it had a 5.2 years' housing land supply (HLS)⁵. Subsequently I invited further representations on this matter and reopened the Inquiry in order to test in detail these HLS calculations.
7. Since the Council's December HLS calculation, several further documents have been drawn to my attention:
 - (i) A further HLS statement from the Council, dated 29 February 2016, which calculates that it has 5.21 years' HLS⁶;
 - (ii) A letter from the Stratford-on-Avon Core Strategy Inspector (CSI) dated 4 March 2016⁷, stating that the Inspector is provisionally minded to find the Core Strategy sound, subject to a number of main modifications, and his Interim 5 year HLS calculation⁸, which he states to be 5.4 years from 31 March 2016;
 - (iii) An appeal decision, dated 14 March 2016 for a proposal for up to 100 dwellings at Tiddington⁹, which states that, based on the consideration of just two of the 11 contested sites at that Inquiry, the Council's HLS is reduced to some 4.7 years; and
 - (iv) A further appeal decision, dated 29 March 2016 for a proposal for up to 81 dwellings at Little Itchington¹⁰, which states that on the basis of considering 8 contested sites, the Council can only demonstrate 4.8 years' HLS and that "*the full picture is likely to bring the figure significantly lower*". I also note the decision in the North Wiltshire DC v The Secretary of State for the Environment (1992) case¹¹, in which

¹ Statement of Common Ground (SCG) – Noise, between Mike Brownstone of Resound Acoustics Ltd (on behalf of Stratford-on-Avon District Council) and Kieran Gayler of Sharps Acoustics Ltd (on behalf of Persimmon Homes (South Midlands) Ltd); dated 10 November 2015.

² SCG – 5 Year Housing Land Supply (HLS), between Philip Smith (on behalf of Stratford-on-Avon District Council) and Christopher May (on behalf of Persimmon Homes (South Midlands) Ltd); dated 5 November 2015.

³ DCLG: National Planning Policy Framework (*the Framework*); March 2012.

⁴ SCG – 5 Year Housing Land Supply (HLS), between Philip Smith (on behalf of Stratford-on-Avon District Council) and Christopher May (on behalf of Persimmon Homes (South Midlands) Ltd); dated 5 November 2015.

⁵ Stratford-on-Avon District Council: Information Sheet No: 054/2015: Interim Five Year Housing Land Supply (HLS) Calculation Summary – as of December 2015.

⁶ Stratford-on-Avon District Council: Information Sheet No: 006/2016: Five Year Housing Land Supply (HLS) Calculation Summary – as of 31 December 2015.

⁷ Appendix 1 to John Careford's Proof of Evidence.

⁸ Core Strategy Inspector's Interim Calculation of 5-year supply at 31 March 2016 (Appendix 3 to John Careford's Proof of Evidence).

⁹ Appeal decision APP/J3720/W/15/3017900: Proposal for up to 100 dwellings, etc, at land at Knight's Lane, Tiddington, Stratford-on-Avon; dismissed 14 March 2016 (Appendix 9 to John Careford's Proof of Evidence).

¹⁰ Appeal decision APP/J3720/W/15/3009042: Proposal for up to 81 dwellings, etc, at land south of Stockton Road, Long Itchington, Stratford-on-Avon; allowed 29 March 2016 (Appendix 10 to John Careford's Proof of Evidence).

¹¹ See Inquiry Document 43.

the court noted that like cases should be decided in a like manner so there is consistency between such appeals.

8. I regard all of these submissions as material and I will return to them below.
9. As a result of the above information, the two SCGs dealing with the 5 year HLS and general matters were resubmitted; the updated 5 year HLS SCG¹² states that the parties disagree on the appropriate 5 year reference period; over the weight that could be given to the CSI's calculation; and over the extent of the deliverable 5 year HLS in the District. Finally, the HLS SCG identifies 9 sites where 5 year delivery of housing land is in contention and it agrees that these should be considered in order to focus the Inquiry time to best effect. I stated at the outset of the resumed Inquiry that I regard this advice as helpful and consequently these 9 'contested' sites are a key consideration in this appeal.
10. The updated general SCG¹³ is largely identical to the initial SCG although clearly it departs from its predecessor in relation to 5 year HLS. It also states that no further submissions are to be made regarding landscape impacts, which were considered in full in part 1 of the Inquiry in December 2015. Both parties commendably kept to this agreement.
11. The Bidford-on-Avon Neighbourhood Plan (NP) underwent its pre-submission Draft Policy Consultation from 24 September to 6 November 2015. I note that the NP has not yet reached any further milestones and it is still, therefore, at a relatively early stage in its preparation. This means that I can only give it limited weight in relation to the appeal before me.
12. Following the submission of the Appellant's planning application, the Council confirmed in its environmental impact assessment screening opinion letter¹⁴ that although the proposal is a Schedule 2 development by reason of its nature and size, it is not likely to have 'significant' effects on the environment, taking into account the cumulative impact of neighbouring developments.
13. My attention was drawn to a large number of recent planning appeals both in the accompanying written evidence and also submitted to and discussed at the Inquiry. In the interests of conciseness I have been selective in those that I have specifically referred to, although I have taken all of them into account.
14. The Council's Decision Notice includes seven reasons for refusal. However, following further professional and legal advice, six of these reasons were withdrawn, although housing land supply is now advanced as a further material consideration by the Council. A number of the original reasons for refusal are cited by third parties, and I address them under 'other considerations'.

Main Issues

15. Having considered the evidence submitted by all the parties and from my site visits, I consider that the main issues are:
 - (i) Whether the Council can demonstrate a 5 year supply of deliverable housing land.

¹² Updated Statement of Common Ground (SCG): 5 year housing land supply (HLS); dated 14 April 2016.

¹³ Updated general SCG; dated 14 April 2016.

¹⁴ General SCG, paragraph 3.5.

- (ii) The effect of the proposed development on the character and appearance of the countryside, including the setting of the village of Bidford-on-Avon.

Reasons

The site and its context

16. The 3.13 ha appeal site is situated at the western entrance to the village of Bidford-on-Avon, immediately to the south of the B439 Salford Road. The site accommodates a substantial agricultural shed, several glasshouses and associated hardstanding, which are connected to its former horticultural business. The remainder of the site is open grassland and a detached house at 45 Salford Road.
17. The site drops gently from Salford Road, and the terrain continues to fall away southwards to the meadows alongside the River Avon, about 800m away. Housing, mostly ribbon development, faces the site from the north of Salford Road and also fronts the road immediately to the east of the site. The western site boundary is defined by Small Brook, a minor tributary of the Avon, beyond which the landform is contained by the gentle slope of Marriage Hill.

Relevant policy

18. The starting point for this appeal is the relevant development plan; Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires determination to be made in accordance with the development plan unless material considerations indicate otherwise. At the national level, *the Framework*, as paragraph 196 states, is a material consideration in planning decisions, as is any relevant advice in the Government's Planning Practice Guidance (PPG).
19. The development plan for Stratford-on-Avon comprises the saved policies in the adopted Local Plan (LP)¹⁵. The plan period has now elapsed, which has implications for the weight that can be attached to these policies, depending on their consistency with *the Framework* (paragraph 215). I agree with the main parties, as set out in the general SCG, that LP policies PR.1 covering landscape and settlement character, and DEV.1 dealing with layout and design, are broadly consistent with *the Framework*.
20. The Examination into the District's emerging Core Strategy (eCS)¹⁶ is ongoing, with public consultation into the proposed main modifications ending on 12 May 2016. The CSI indicated that it remains in prospect that his Report could be published in June 2016, with the possibility of reconvening Hearings in order to discuss any particular matters. It is clear from the CSI's letter of 14 March 2016¹⁷, that it is possible that his Report could be later than June 2016. I can therefore only give limited weight to eCS policies CS5 (landscape) and CS9 (design and distinctiveness), which the main parties have drawn to my attention.
21. The overall thrust of strategic planning policy for the distribution of new housing within the District is clearly set out in the CSI's Interim Conclusions

¹⁵ Stratford-on-Avon Local Plan Review 1996-2011 (LP); adopted July 2006.

¹⁶ Stratford-on-Avon District Council: *Core Strategy; submitted September 2014* (eCS); dated June 2015 [Inquiry Document 8].

¹⁷ Appendix 1 to John Careford's Proof of Evidence.

- (IIC)¹⁸, issued in March 2015. The general SCG notes that in the light of the IIC, the Council's housing requirement has risen from 10,800 in the submitted eCS to 14,480 homes for the period 2011 to 2031¹⁹. This figure has increased again to 14,600 dwellings over the plan period, based on the CSI's published main modifications which have been published for public consultation.
22. The CSI's letter of 14 March 2016 states that he is provisionally minded to find the eCS sound; and that the Council's 5 year HLS as of 31 March 2016 is 5.4 years. It is clear, however, that a 'final' housing requirements figure cannot yet be pronounced until the Inspector has considered all the relevant representations following the close of the main modifications consultation.
23. The IIC states that there is no obvious reason why the existing development pattern (centred firstly on Stratford-on-Avon and then on the eight Main Rural Centres (MRCs), including Bidford-on-Avon) should be called into question; and that the MRCs are sustainable locations, with scope to increase the amount of development they take. The IIC also states that the Council's Strategic Housing Land Availability Assessment (SHLAA) confirms that there are several potential sites in the MRCs which are not subject to footnote 9 of *the Framework*, i.e. their growth is not constrained by national policy designations, such as Green Belt or locations at risk from flooding.
24. As some of the District is within the Green Belt, this further increases the development expectations on the remaining parts, including Bidford-on-Avon. The IIC suggests that because Bidford is regarded as a sustainable option within the context of a significant growth in the District's objectively assessed housing need (OAN), the principle of expanding this settlement is likely to be secured in the development plan.
25. Although several representations consider that Bidford-on-Avon has already taken its 'fair share' of new development, the IIC's view is that scope exists in settlements such as Bidford to accommodate additional development on sustainable sites.
26. Policy ENV7 in the draft NP refers to retaining important landmarks, skylines and views. There is no explanation, however, of what the relevant key views to this appeal site are, or which of them might be lost as a result of the proposed development.

Issue 1 - Whether the Council can demonstrate a 5 year supply of deliverable housing land.

27. The main parties argue for different parameters to be adopted in relation to the calculation of the 5 year HLS target for Stratford-on-Avon, including the most realistic assumptions governing the rate of housing delivery. I need to address these parameters and then assess the 9 sites in contention before concluding whether or not the District has a 5 year HLS.

The different parameters relating to the Council's 5 year HLS

28. The Council argues that the CSI's letter of 4 March 2016 should be accepted as the basis for considering that the Council has a 5 year HLS, on the grounds

¹⁸ Inspector's Interim Conclusions on the Stratford-on-Avon Core Strategy; 18 March 2015 [Appendix 6 to Proof of Evidence of Christopher May].

¹⁹ General SCG, paragraph 5.10.

that this figure is the most up-to-date, and also bearing in mind the CSI's comment: "*Although an Inspector dealing with a Section 78 appeal might well take a precautionary approach because they might not have the complete picture, the examining Inspector has complete a picture of this district as anyone*".²⁰

29. The Council also relies on paragraph 33 of the PPG²¹ to underline the supremacy of the CSI's conclusions in respect of the 5 year HLS calculations. However, the eCS Examination is not yet complete. The Council may be right when it states that there is only the slimmest of possibilities that the Inspector's interim calculation may change. The CSI, however, has made it clear that he will take account of duly made representations prior to finalising his report – as indeed he must – and it is clear that the possibility of further change exists. This limits the weight I can attach to the CSI's interim calculation, especially as I have not been party to the eCS Examination. As the Little Itchington appeal Inspector notes, the CSI's calculation: "*is still an interim position and I am required to make my assessment on the evidence given in relation to this appeal*"²². This situation has not changed.
30. For the above reasons I agree with the Little Itchington Inspector that the appropriate approach to take in relation to this appeal is to assess whether the Council can demonstrate a 5 year HLS based on the evidence before me, rather than on the CSI's latest view based on the eCS Examination, on which I have not heard the evidence. This is also the approach taken in the other recent appeal at Tiddington which I have referred to above. Both of these recent appeal decisions concluded that the Council's HLS was below 5 years. Even if I had been minded to follow the CSI's interim conclusion at March 2016, of 5.4 years' HLS, this would be, to use his word, 'tight', leaving little margin for error.
31. There is also a difference between the parties over the appropriate period for the calculation of the 5 year HLS. The Council, in its initial HLS paper following the close of part 1 of this Inquiry, used the period January 2016 to December 2020; this period was also adopted in its subsequent HLS paper dated 29 February 2016. The Appellant, unsurprisingly, has used the same period. However, the Council has subsequently changed its calculation period to align with the CSI's interim conclusions, which is based on a time period starting on 31 March 2016. I can see no compelling justification to change to the period used in the CSI's interim conclusions, which, for the reasons I have given, cannot be afforded full weight at the present time.
32. I therefore agree with the Appellant that the appropriate 5 year HLS for this appeal should be based on a requirement of 6,107 dwellings over the period 1 January 2016-31 December 2020 (which includes the entire 20% buffer within the first 5 years), giving an annual requirement of 1,221 dwellings. In line with the CSI's views, which are accepted by both parties, all C2 uses (residential institutions) are to be removed from the Council's HLS²³; a 5% non-completion rate is to be used (which is also based on the Council's own monitoring); and a

²⁰ CSI's letter of 4 March 2016; end of Footnote 1.

²¹ PPG: ID 3-033-20140306: *Updating evidence on the supply of specific deliverable sites sufficient to provide five years' worth of housing against housing requirements.*

²² Appeal decision APP/J3720/W/15/3009042, Long Itchington: paragraph 20.

²³ Core Strategy Inspector's Interim Calculations of 5-year supply at 31 March 2016; Footnote 5.

rate of delivery of 40 dwellings per annum (dpa) per site outlet is to be assumed, based on the revised HLS SCG.

Housing land supply – the contested sites

33. The starting point for predicting the future supply of housing is that it is not an exact science. It involves best estimates at a point in time.
34. The revised HLS SCG identifies 9 'contested' sites where the expected housing delivery over the next 5 years differs between the Council and the Appellant. The differences in the delivery rates estimated by the two main parties in relation to these sites are set out with explanations by both the Appellant²⁴ and the Council²⁵; finally, both parties have submitted further notes to clarify their positions in respect of the District's 5 year HLS²⁶. The difference between the two proofs of evidence totals 909 dwellings. This is the difference between the Council's 5 year HLS calculation of 6,287 dwellings (5.15 years' supply) and the Appellant's calculation of 5,242 dwellings (4.29 years' supply).
35. A significant amount of Inquiry time was spent discussing these 'contested' sites, and I summarise the key considerations and my views below:
36. Site 1 - Land west of Shottery: This urban extension to the west of the town of Stratford-on-Avon has outline planning permission. I agree with the Council's view, confirmed at the eCS Examination by the developers, that there are likely to be at least two market outlets and not one as cited in the Tiddington appeal decision. Both scheme developers have now submitted reserved matters applications.
37. I acknowledge the Council's commitment to secure development of this site and I note that schemes on other sites in or near the town have achieved delivery rates in excess of 40 dpa per outlet. Nevertheless, significant hurdles could slow down progress on scheme delivery, which the Appellant describes as "*fraught with difficulties*". These include the need to resolve contractual arrangements for land transfer for the West of Shottery Relief Road and unresolved arrangements for land transfer from the Shakespeare Birthplace Trust, which has indicated that it has non-negotiable conditions. Both these land transfers are critical to the implementation of the scheme. There is also a risk associated with the requirement that the new road must be open in its entirety within two years from the start of the scheme, and I agree with the Appellant that it is unlikely that any house builder would take the risk of commencing development until this issue was formally resolved.
38. There are also objections from the highway authority in relation to one of the reserved matters applications and from the town council, neither of which I understand has been withdrawn, whilst many of the planning conditions have yet to be discharged. All of these considerations point against a smooth and rapid implementation of the scheme. I therefore agree with the Appellant that the Council's projected delivery figure of 395 dwellings is optimistic, and that it is more realistic to assume no completions before 2017/18, with a reduced yield of 40 dpa per outlet in accordance with the HLS SCG. This this would

²⁴ Further Proof of Evidence of Christopher May; April 2016; see table 2 for yields from contested sites, and tables 3 and 4, in which the 5 year requirement + 20% buffer was corrected during the Inquiry to 6,107 dwellings.

²⁵ Appendix 12 – Site Delivery Summaries – to John Careford's Proof of Evidence.

²⁶ Inquiry Documents 44 and 45.

- deliver 80 dpa from 2017/18 onwards, or a total of 300 dwellings, reduced to 285 units assuming 5% non-completion.
39. Site 2 - Meon Vale, Marston Phase 4: The Council's delivery assumption is based on two outlets. This, however, has been undermined by a recent letter from Persimmon Homes which confirms that there has been a change of company policy, so that dual branding of sites in the District is no longer considered economic²⁷. I also note the implications of condition 28 of the outline permission, which requires certain off-site mitigation measures at the junction of Shipston Road and Trinity Way to be undertaken prior to the occupation of the 650th dwelling (out of a scheme total of 1,050) with no timetable for these works to be undertaken. I accept that this could slow down the rate of development until a timetable for these improvements is in place.
40. Based on a single outlet, I agree that the Council's projected delivery of 149 dwellings, based on a detailed trajectory submitted at the Inquiry²⁸, is optimistic, and that the Appellant's estimated delivery of 130 dwellings is more realistic, reduced to 123 units assuming 5% non-completion. This is in addition to a supply of up to 85 C2 units, which are not included in the HLS calculations.
41. Site 3 - Ettington Road, Wellesbourne: There is agreement, in the light of the letter from Persimmon Homes regarding dual branding of sites, that the Council's projected delivery would be reduced from 180 to 120 dwellings. This equates to a supply of 114 units when the 5% non-completion rate is applied.
42. Sites 4 and 5 - Allimore Lane, Alcester: Both sites have outline planning permission. The Council assumes a combined delivery rate of 333 dwellings, which are allocated for housing in the eCS. There is firm developer interest, no site constraints, and alone of the sites in contention, the two Alcester sites need to be understood in the context of the Green Belt, in an area of high market demand where there is little potential supply. Given this combination of factors, the Council makes a strong case for assuming delivery rates for these sites in excess of 40dpa.
43. However, there is a single house builder for each site and I note that a current fees issue is holding up the processing of the reserved matters applications. I therefore consider that it is realistic to reduce the Council's anticipated delivery rate to 40dpa per site, with the northern site coming on-stream in 2017/18, one year ahead of the southern site. This would yield a combined total of 240 dwellings, reduced to 228 units assuming 5% non-completion.
44. Site 6 - Harbury Cement Works: The Council resolved to grant planning permission for this site in April 2016, subject to a Section 106 Agreement. Although several pre-commencement conditions have yet to be discharged, including the need to have regard to nature conservation issues of local importance, the Council's trajectory allows two years for these aspects to be resolved satisfactorily, with a total delivery of 85 dwellings indicated in the Council's Note of Clarification²⁹, reduced to 81 units assuming 5% non-completion. Given that a preferred house builder has been selected, the Council's provisional estimate is reasonable.

²⁷ Letter from Persimmon Homes to Pegasus Group on site delivery rates-dual branding of sites (in Stratford-on-Avon); dated 18 April 2016 [Inquiry Document 33].

²⁸ Meon Vale Phasing Trajectory [Inquiry Document 32].

²⁹ Inquiry Document 44.

45. Site 7 - Arden Heath Farm: This site with outline planning permission is located on the edge of the town of Stratford-on-Avon, where the housing market is particularly buoyant and strong delivery rates are likely. The Council's assumed delivery start of 2017/18 allows reasonable time for reserved matters to be processed and its delivery estimate of 162 dwellings, reduced to 154 units when the 5% non-completion rate is applied, is reasonable.
46. Site 8 - Campden Road, Shipston-on-Stour: There has been some progress in scheme implementation on this site, and it appears to have moved forward since it was considered in the Long Itchington appeal. There are four planning permissions, two on either side of Campden Road. Development on the south side, for 95 dwellings, is subject to a Section 106 Agreement to secure a new medical centre for Shipston which has not yet been signed and dated. However, the parties agree that the Council's original estimate needs to be reduced to take account of the fact that the outline planning permission to the north of Campden Road provides for 130 C2 units with the remaining 54 dwellings being the realistic figure for this site. This is reduced to 51 units when the 5% non-completion rate is applied.
47. Site 9 - Long Marston Airfield Phase 1: This is the first phase, totalling 400 dwellings, of a new settlement of 3,500 dwellings which is allocated in the eCS and considered in some detail at the eCS Examination, with an interim endorsement from the CSI. The Appellant considers that there would only be one site developer, due in part to the 'panhandle' configuration of phase 1, which includes the main entrance for the entire new settlement.
48. The lead developer, however, has written to express that it is likely to use a partner for phase 1, in addition to affordable housing³⁰. This is confirmed by a letter from Peter Clarke, a local, experienced chartered surveyor, who expresses confidence that there will be multiple outlets on the site³¹. The letter states, on the basis of three outlets, that the scheme could sustain delivery rates of around 200 dpa. These two written submissions amount to new evidence which my colleagues writing the Tiddington and Long Itchington appeal decisions did not have and I consider they are material to this appeal.
49. In the light of this evidence, I consider it is reasonable to expect involvement of two developers on the site, with completions starting in 2017/18 at 20 dpa per outlet and then increasing to 40 dpa per outlet in subsequent years. On this basis, a delivery of some 260 dwellings, reduced to 247 units when the 5% non-completion rate is applied, would be a realistic estimate based on site capacity and the views of the lead developer and agent.

Issue 1 - Conclusion

50. On the basis of the above evidence, it is my view that the total from the 9 'contested' sites which would have a realistic prospect of being deliverable within 5 years, would amount to some 1,283 dwellings. This amounts to 563 dwellings below the Council's calculations at the start of the resumed Inquiry³², equivalent to 0.46 of a year, or 427 dwellings below the Council's total based on its Clarification Note, representing about 0.35 of a year. These calculations would be sufficient to reduce the HLS for Stratford-on-Avon to either 4.7 or 4.8

³⁰ E-mail from Cala Homes to John Careford; 4 April 2016 (Appendix 12 to John Crawford's Proof of Evidence).

³¹ Letter from Peter Clarke to Cala Homes; 15 January 2016 (Appendix 11 to John Crawford's Proof of Evidence).

³² Appendix 18 of John Careford's Proof of Evidence.

years³³, which reflects the conclusions of the Long Itchington and Tiddington appeal decisions.

51. On this basis I consider that the Council has not robustly demonstrated that it has a supply of 5 years' housing on specific, deliverable sites. In such cases, paragraph 14 of *the Framework* states that the relevant local plan policies should not be considered up-to-date. I will return to this matter when I consider the planning balance under Issue 3 below. The need to secure more housing in the Borough is highlighted by the IIC, which as I have explained above, increases the Council's OAN significantly.
52. I therefore conclude that the Council's shortfall in relation to the 5 year HLS for the District is a substantial material consideration in support of the appeal.

Issue 2 - The effect of the proposed development on the character and appearance of the area.

53. There is a fundamental disagreement between the main parties concerning the location of the appeal site in relation to both its visual impact on the surrounding landscape and on the setting of the village of Bidford-on-Avon.
54. The Council's concern, that the proposed development would harm both the character and appearance of the countryside and the setting of the village, is based on several reasons: firstly, on its view that the appeal site is in the open countryside, set apart from the village, so that it cannot be read as part of the character of the village; secondly, that the proposed development would be out of character with the settlement pattern in the western edge of the village, which would harm its setting from this direction; thirdly, that the site would have a harmful impact on the character and appearance of the surrounding area, which is considered to be a valued landscape within the meaning of paragraph 109 of *the Framework*; and fourthly, that the proposed landscaping, especially on the south side of the development, would be ineffective in mitigating the harm that would result from the proposed development.

(a) Whether the appeal site is isolated from or is part of the village

55. The appeal site lies beyond the western limit of the existing houses in the village on the south side of Salford Road, outside the current village envelope. The Council points to a recent appeal decision which it states supports its view in relation to a similar site at Farndon Road, Woodford Halse³⁴. There are, however, significant differences; the Woodford Halse decision refers to Farndon Road turning a corner just to the north of the appeal site, and "*as a consequence, this section of the road does not relate strongly in visual terms to the main built-up part of the village*" (paragraph 5).
56. A second difference is that unlike the Woodford Halse site, which is described as farmland, the appeal site here is neither farmland nor a completely open field. Several existing structures are connected with the former horticultural use, including a long shed, about 8.3m in height, glasshouses and areas of hardstanding. Therefore, a significant part of the site cannot be described as open or greenfield land. The site also faces a row of houses to the north of Salford Road.

³³ Based on Tables 2, 3 and 4 in Christopher May's Further Proof of Evidence.

³⁴ Appeal decision APP/Y2810/A/14/2216520 proposal for 55 dwellings, etc, at Farndon Road, Woodford Halse, Northamptonshire; dismissed 12 September 2014 (Inquiry Document 4)

57. The views of the appeal site from driving or walking along Salford Road from the west, or from walking or riding along the bridleway on Marriage Hill, from the north-west, is of a partially built site, with no discernable perception of any gap between the site and the rest of the village.
58. The urban backdrop to the north and east of the appeal site was especially clear in December 2015 when I made my site visits. The highway information signage, announcing entry into the village, is located to the west of the existing site entrance. This, together with the street lights, pavements and housing to the north of Salford Road, opposite the appeal site, all reinforce my view that the appeal site reads as part of the village and not as an unrelated field.
59. Moreover, both the two main physical features to the west of the appeal site – the gradual slope of Marriage Hill and Small Brook, with its well wooded course – run in a north-south alignment and give the settlement a well defined, natural edge and also provide a degree of enclosure to the appeal site.
60. Although I accept that the integration of the appeal site within the village would not be as clear in summer when the trees along the northern boundary of the site would be in full leaf, these trees and hedgerow along Salford Road would effectively close off most views into the site from the north-west and west, and therefore satisfactorily mitigate the impact of the proposed development on the setting of the village.
61. Taking account of the above considerations, it is my view that the appeal site reads as part of the village, as would the proposed development. I therefore disagree with the Council's opinion that the appeal site is in open countryside, set apart from and with no relationship to the village.
- (b) Whether the proposed development would be out of character with the existing settlement and in particular whether it would harm the setting to the village at its western entrance.*
62. Although the horticultural sheds and glasshouses are established features in the Avon Valley, they are unprepossessing and do little to enhance the quality of the western setting of the village. Their demolition and replacement by housing would impact on the partial openness of the site, with higher site coverage than is the case now. However, given the identification of the site with the village and my view that the site reads as part of the village, together with the compatibility of the proposed use with nearby housing, I do not consider that the proposed change from horticulture to housing would be harmful in principle to the setting of the village.
63. Although the proposal would extend further back from Salford Road than the existing ribbon development, this would not appear incongruous from either the road or other public viewpoints and therefore would not be a contributory factor in adversely affecting the setting of the village.
64. The Council also refers to the proposal as a "*dense residential estate development*". However, a net residential density on the 70% part of the site which is proposed for housing, gardens and garages would average around 34-35 dwellings per ha. Although this would be higher than its neighbours, it is not excessive and enables adequate parking, gardens and privacy. Also, the illustrative layout plan shows that the gaps between the dwellings fronting Salford Road need not be incompatible with the existing dwellings on the

opposite side of the road. Furthermore, the strengthened hedge and tree line would effectively mitigate its impact on the street scene. In any event, the Council is able to control the details of the layout and landscaping at the reserved matters stage.

65. Taking all of these matters into account, I consider that the proposed development would not be out of character with the existing settlement and would not harm the setting to the village at its western entrance.

(c) The quality of the surrounding landscape

66. Neither the appeal site nor the surrounding countryside is subject to any national or local landscape designation; neither does this area fall within any candidate areas for special local landscape designation in the eCS. Lack of such designations, however, does not necessarily mean the area is without sufficient landscape merit to justify resisting the proposed development. This view is supported by the Landscape Institute³⁵, and reinforced in a recent letter from the Minister of State for Housing and Planning³⁶, which states that: "*outside of these designated areas, the impact of development on the landscape can be an important material consideration*".
67. Paragraph 109 of *the Framework* requires the planning system to protect and enhance 'valued landscapes' and it is therefore necessary to determine whether the landscape on and around the appeal site can be termed a valued landscape within the meaning of paragraph 109.
68. Several landscape studies were referred to in written evidence and at the Inquiry, and they establish the context for assessing the value of the appeal site and its visual hinterland. Firstly, the *National Character Area Profile*³⁷ identifies the area as lying within National Character Area 106, which is known as the Severn and Avon Vales. It describes this area as a "*low lying agricultural vale landscape*". A second study, *Warwickshire Landscapes Guidelines*³⁸, describes the Avon Valley as a flat, open, intensively farmed landscape, with market gardening on fertile river terrace soils, characterised by features such as broad flat gravel terraces, well-wooded streamlines, glasshouses and other horticultural buildings and small, nucleated villages. The appeal site sits well within this context.
69. The third study, *Landscape Sensitivity Assessment*, prepared by White Consultants (the White Study)³⁹, was commissioned by the Council as part of its evidence base in the preparation of its eCS. It looks at the sensitivity of the landscape and its potential for satisfactorily accommodating new development in and around villages in the District. The White Study originally responded to the Council's seeking 8,000 dwellings over the plan period 2008-2028; this has now risen to 14,600 dwellings following the CSI's concerns over the District's OAN (and this may not be the final figure). Furthermore, the CSI focused the search for sites from the Green Belt to MRCs such as Bidford-on-Avon.

³⁵ See paragraph 5.26 of Inquiry Document 3.

³⁶ Letter from Brandon Lewis MP, Minister of State for Housing and Planning; 27 March 2015 [Appendix BK8 to Proof of Evidence of Bettina Kirkham].

³⁷ Natural England: *Natural Character Area Profile*; 2012 [Appendix BK2 to Proof of Evidence of Bettina Kirkham].

³⁸ Countryside Commission: *Warwickshire Landscapes Guidelines*; 1993 [Appendix BK3 to Proof of Evidence of Bettina Kirkham].

³⁹ White Consultants: *Landscape Sensitivity Assessment* (the White Study); July 2011 [Proof of Evidence of Bettina Kirkham, Appendix BK5].

70. The parties disagree over the role of the White Study and the weight I should give to its findings. The Council states that the Study should not be elevated beyond a starting point, that it is 'very broad', and that its site analysis is limited, all of which should reduce the weight given to it. However, its treatment of the sites around Bidford-on-Avon is sufficiently detailed to enable proper consideration of the suitability of sites for development. The Study was also carried out on a District wide basis, looking at the periphery of all the main settlements which have been targeted by the Council for possible development in the eCS. This secures a consistent approach across the District in assessing the suitability of peripheral sites for development. For the above reasons I attach substantial weight to the Study's findings.
71. The White Study assesses the development potential of 15 sites on the periphery of Bidford-on-Avon⁴⁰ based on their landscape sensitivity. Two sites are assessed as being of medium/low sensitivity to housing development; five sites, including the appeal site, are identified as being of medium sensitivity; three sites are identified as high/medium sensitivity; and the final two sites are considered to be of high sensitivity. Three of the medium sensitivity sites, including the appeal site, are clustered at the western end of the village.
72. Site B01 of the White Study, to the north of Salford Road, is a site recently granted planning permission for housing, known as the Welbeck site. The Study states that housing development there could be accommodated as well as noting that the site is enclosed by Marriage Hill and the Small Brook corridor which "*provide a clear long term boundary to potential development*". In my view, similar considerations apply to the appeal site.
73. The second of the western cluster of medium sensitivity sites, site B14, is located immediately to the east of the appeal site. It extends significantly further south than the appeal site, down to the banks of the River Avon. The Study suggests that the majority of the site is unsuitable for development, but in the longer term there may be an opportunity for housing (up to two storeys) in the fields adjacent to the B439, west of the allotments, but only as far southwards as the adjacent nursery site. It states that further south, the area is part of the green river corridor and should be kept clear.
74. This leads me to the final medium sensitivity site, B15, which is the appeal site. The Study states that it is contained by landform and that housing development no higher than two storeys would not be inappropriate in the longer term provided the southern boundary was planted to screen potential views from the River Avon and the long distance footpath.
75. The Study's conclusions in relation to the appeal site are supported by a plan of the landscape and settlement context⁴¹. This shows the appeal site and the northern half of the adjacent B14 site on a landform which is classified as 'terrace farmlands'. This classification is widely used for development, including the site of a recent appeal decision for housing in a broadly similar location within the Avon Valley⁴². The southern part of site B14 lies on the 'river meadows', which the Study does not recommend for development at any

⁴⁰ Proof of Evidence of Bettina Kirkham, Appendix BK4.

⁴¹ Appendix BK11, Figure BK1, to Proof of Evidence of Bettina Kirkham

⁴² Appeal Ref. APP/J3720/W/15/3129437, for residential development up to 14 dwellings at Welford-on-Avon; allowed 26 November 2015 [Inquiry Document 16].

- location, partly due to proximity to the river and also in relation to recreation areas and the long distance footpath (Shakespeare's Avon Way).
76. Taking account of the above considerations, it is my view that the White Study provides strong 'in principle' grounds for supporting the proposed development, whilst its findings are not refuted by any comparable studies. Regarding the Study's recommendation that the appeal site was only appropriate for longer term development, there are no infrastructure arguments which would justify delaying development, whilst the lack of a 5 year HLS would amount to a strong consideration in support of developing the site in the short term.
77. The Council refers to the appeal site as being part of the wider picturesque Avon Valley. It considers this is a valued landscape, which should be protected and enhanced, as paragraph 109 of *the Framework* states. There is, however, no national policy definition as to what constitutes a 'valued landscape'.
78. A recent High Court Judgment⁴³ to which my attention was drawn at the Inquiry, states that there must be some "*demonstrably physical attribute*" for a landscape to be considered as valued in the sense of paragraph 109 of *the Framework*. This description is amplified by professional guidance from the Landscape Institute in its document GLVIA3⁴⁴, which sets out the principles and approach for identifying and assessing the landscape and visual impacts of development proposals. Table 5.1 of GLVIA3 identifies several criteria that can help in the identification of valued landscapes. Whilst this is not statutory, I find it is helpful, especially in the absence of any equivalent guidance in either *the Framework* or PPG.
79. I have had the opportunity to view the appeal site from a number of public viewpoints. Whilst the Avon Valley is a pleasant and largely open landscape, its scenic qualities are unremarkable. Its gentle topography, scattered trees and hedgerows have the appearance of a normal working landscape. Within the visual proximity of the appeal site, there are no demonstrably physical attributes such as a pronounced hill or scarp, or a distinctive coppice or woodland, either on the appeal site or in its surroundings.
80. Taking the GLVIA3 criteria, I consider that the scenic quality of the site and the surrounding landscape is ordinary; it has no rarity; no conservation interests of national or local importance were pointed out to me; and it is not characterised by its wildness or tranquillity. This leaves three remaining criteria from the list in Table 5.1. Firstly, the landscape is representative of significantly large swathes of countryside comprising gentle river valleys, pastureland and market gardening, but in my view, no more so than many other similar areas in Warwickshire and parts of neighbouring counties. No evidence has demonstrated that the surrounding landscape is a particularly important example of this type of scenery.
81. Secondly, the recreational value of the footpaths and bridleways is a common feature in this part of the Avon Valley. Thirdly, the Shakespeare Avon Way, a long distance footpath from Naseby to Tewksbury, clearly has a literary association, but it links many places with no Shakespearean connection and is in reality a collection of recently joined-up sections of footpaths following the

⁴³ Judgment of Ousley J in *Stroud District Council v Secretary of State* [2015] EWHC 488 (Admin); February 2015.

⁴⁴ Landscape Institute and the Institute of Environmental Management and Assessment: *Guidelines for Landscape and Visual Impact Assessment* Third Edition (GLVIA3); April 2013.

course of the River Avon, running through a variety of landscapes as well as urban areas. As the Appellant points out, we should not be beguiled by the title. It is my view that none of the above considerations transform an unremarkable into a valued landscape which would generally approximate to the criteria suggested by either the High Court Judgment referred to above or the GLVIA3 criteria.

82. Taking all the above considerations into account, I consider that the surrounding countryside, whilst pleasantly rural and clearly appreciated and valued by local people and visitors to the area, does not equate to the term 'valued landscape' within the meaning of paragraph 109 of *the Framework*.

(d) The impact of the proposed development on the character and appearance of the surrounding landscape and whether the proposed mitigation of the site would be effective

83. A visual envelope⁴⁵ has been prepared by the Council. It shows that most of the visual impact from the proposed development would be to the south, and in particular from footpaths along the River Avon and from Marcliff Hill.
84. The main parties disagree over the prominence of the appeal site and whether the site is enclosed or largely open. There is general agreement that the site is enclosed to the west by Marriage Hill, and to the east by the existing urban area of the village. The dwellings to the north of Salford Road provide partial enclosure. This leaves the most sensitive edge of the site to the south. The White Study recognises this in its recommendation that the southern boundary should be planted to screen potential views of the proposed development from the River Avon and long distance footpath.
85. On the matter of the site's prominence, I consider that, where viewed from the north and north-west, the proposed development would read as part of the settlement for the reasons I have already stated.
86. The major impact on the openness and rural character of the landscape would be from the south, especially from sections of the Shakespeare Avon Way. The existing agricultural building and glasshouses can be clearly seen from this long distance footpath and from other viewpoints within the visual envelope, such as Marcliff Hill, almost due south of the appeal site. Whilst such structures are typical features in the Avon Valley, and as such are not unusual, nevertheless in my view they stand out in contrast to the pleasant pastoral landscape and do nothing to enhance the views from locations used by the public.
87. The proposed development would not exceed two-storeys, in accordance with the recommendations of the White Study, and this can be imposed by condition. The roofs of the dwellings would be slightly below the 8.3m height of the agricultural building, but slightly higher than the glasshouses. The proposed development would occupy a higher site coverage than at present, but the light reflection from the glasshouses would be replaced by the more recessive colours of the roofs, and the overall visual impact of the proposal would not in my view be significantly greater than at present.
88. The Council's landscape witness accepted, in cross examination, that there was some potential for development on the site, although she would not be drawn as to what an appropriate, reduced number of houses would be. When asked

⁴⁵ Figure BK2, in Appendices to Proof of Evidence of Bettina Kirkham.

for any further thoughts on what she meant by “some development” being acceptable, she stated that two-storey dwellings were appropriate, with the extent of development “more limited” (than the appeal scheme) in relation to the existing settlement pattern, and allowing clear views through the development, which I take to mean to and from the Avon Valley.

89. The submitted photomontage shows that in the first few years there would be clear visibility of the scheme from the Shakespeare Avon Way at its closest point to the appeal site. However, by year 7, the evidence shows that the proposed tree and hedge planting (again in accordance with the White Study recommendations) would mitigate any impact to a satisfactory level⁴⁶. By year 15, the effect on the landscape from public viewpoints would be minimal.
90. Taking all these factors together, I consider that a combination of the roof heights and control of external materials, e.g. incorporating recessive colours, and screen planting along the southern boundary of the site, would effectively mitigate the impact of the proposed development on the landscape from viewpoints to the south-west, south and south-east.

Issue 2 - Conclusion

91. I find that firstly, the appeal site does not read as an isolated location in the open countryside, but rather as part of the village of Bidford-on-Avon. Secondly, the proposed development would not be out of character with or harm the setting of the western edge of the village. Thirdly, whilst the landscape context is pleasant and valued by local people and visitors, it is nevertheless undesignated at national or local plan level, and does not qualify as a valued landscape within the meaning of paragraph 109 of *the Framework*. Finally, in relation to how effectively development could be accommodated, the site is partly enclosed, and the potential impact of development to the south would be effectively mitigated by the proposed building height, external materials and southern boundary screen planting.
92. Given the Council’s landscape witness’ view that there was some potential for development on the site, the scope is narrowed from whether development should be permitted at all, to the question of how much development would be appropriate for the site. My view is that the broad extent of the proposed development follows the principles set out in the White Study, as does the peripheral planting to the south of the site and the height restriction to two storeys, which can be controlled by condition. As such, the proposal would not result in any material harm to the character and appearance of the village, its setting or the wider rural landscape and it would accord with national planning policy and LP policies PR.1 and DEV.1 and eCS policies CS5 and CS9.

Conditions

93. I have considered the list of conditions suggested by the Council and the Appellant in the light of the discussion session at the Inquiry and paragraph 206 of *the Framework*. This has resulted in a few changes to the suggested wording of some of the conditions and one change to bring the order into line with the convention for outline applications. As the proposal is in outline, with all matters reserved except for access, I have excluded the colour masterplan,

⁴⁶ Appendix 5 of Proof of Evidence of Jeremy Peachey; Figure 3.3.3 Proposed view at year 7.

the illustrative landscape masterplan and the development parameters plan from the list of submitted plans and drawings set out in condition (4).

94. Conditions (1)-(3) are standard in relation to outline applications and comply with Section 92 of the Town and Country Planning Act 1990 (as amended by Section 51 of the Planning and Compulsory Purchase Act 2004). Conditions (5) and (6) are to ensure the satisfactory development of the site. Conditions (7) and (8) are for highway safety. Condition (9) is to protect the living conditions of existing residential occupiers, the amenity of the area and for pedestrian and highway safety. Condition (10) is to protect the wellbeing of the trees and safeguard the character and appearance of the area. Condition (11) is to protect the living conditions of existing residential occupiers, safeguard the character and appearance of the area and minimise impacts on protected species.
95. Conditions (12) and (13) are to prevent increased flood risk, both of the site and surroundings. Condition (14) is to protect the living conditions of both neighbouring residents and future occupiers of the proposed development. Conditions (15) and (24) are in the interests of nature conservation with particular regard to protected species. Conditions (16)-(21) are to secure public safety, protect the living conditions of both neighbouring residents and future occupiers of the proposed development, and are in the interests of nature conservation with particular regard to protected species. Condition (22) is in the interests of water conservation. Conditions (23) and (24) are to protect the living conditions of future occupiers of the proposed development.

Legal Agreements

Section 106 Agreement

96. The Section 106 Agreement⁴⁷ provides: (i) 35% AH (75% social rented and 25% intermediate units); (ii) £2,337.40 per dwelling towards pre-school and primary education; (iii) highways provisions, comprising £6,000 towards a Traffic Regulation Order to extend the 30 mph speed limit along Salford Road, £75 per dwelling (up to a ceiling of £5,625) to promote sustainable travel, and up to £20,000 towards a Vehicle Activated Sign to implement the proposed 30 mph limit; (iv) £21.89 per dwelling for improving library facilities for Bidford-on-Avon; (v) £181.33 per dwelling for open space provision, specifically towards installing outdoor gym equipment on the Big Meadow in Bidford-on-Avon; (vi) £64.47 per dwelling towards improvements to public rights of way within 1.5 miles radius of the site; (vii) open space maintenance-commuted sum to be agreed; (viii) £800 to the Council for monitoring and supervising compliance with the obligations contained within the Deed; and (ix) £550 to the County Council for reviewing and negotiating the Deed and monitoring compliance with the obligations contained within the Deed.
97. The Council does not have an approved Community Infrastructure Levy (CIL) in place and is therefore reliant on Section 106 contributions. The Council's detailed evidence on the relationship of the Section 106 Agreement to the tests under CIL Regulations 122⁴⁸ and 123⁴⁹ together with an extensive set of

⁴⁷ S 106 Agreement signed by the Appellant, Stratford-on-Avon District Council and Warwickshire County Council; dated 9 December 2015 [Inquiry Document 2].

⁴⁸ Council's Statement addressing the tests on obligations arising under Regulation 122 of the CIL Regulations [Inquiry Document 5].

Appendices⁵⁰, is comprehensive, detailed and well reasoned. In terms of Regulation 122, I consider that the provisions relating to affordable housing provision, highways safety improvements and promotion of sustainable travel, education facilities, open space provision and local rights of way improvements, meet the above criteria; they are all necessary, directly related to the proposal, and they are fairly and reasonably related in scale and kind. The Council's documentation outlines specific schemes and timescales for expenditure.

98. AH is not 'infrastructure' as defined in Section 216 of the Planning Act 2008 and therefore does not fall under the pooling limit of Regulation 123. The same argument applies to the travel packs to promote sustainable travel. Several other provisions are either the only contribution towards the infrastructure projects identified or there are less than five Section 106 Obligations in total contributing and therefore they do not exceed the Section 106 pooling limit.
99. Regarding libraries, whilst I note the cultural and community arguments advanced by the Council, there is no justification in terms of schemes or capital projects which would be likely to meet the needs of the proposed development. In my view, a levy or standard charge of £21.89 per dwelling cannot be used to justify the demand for library provision as requested by the Council. Finally, neither the Council nor the County Council has provided information to justify developer contributions towards monitoring and ensuring compliance with the Section 106 Agreement in excess of their general duties to ensure compliance with planning controls.
100. For the above reasons, I conclude that the provisions in the Section 106 Agreement relating to AH, highways/pedestrian safety and promotion of sustainable travel, education facilities, open space provision and local rights of way improvements meet the relevant criteria in *the Framework* and CIL Regulations. However, I am not persuaded that the case for library contributions or for monitoring have been properly justified in relation to the above-mentioned criteria.
101. Finally, I note that provision is made for the transfer of the proposed open space from the owner to Bidford-on-Avon Parish Council (PC), and that if the PC declines or does not respond to the owner's offer within 20 working days of the service of the offer, then the owner can elect to retain and maintain the whole or part of the open space through a management company or transfer the whole or part of the open space to the management company. This provision is considered to be justified in relation to the above mentioned tests.

Unilateral Undertaking

102. The Appellant also submitted a Unilateral Undertaking⁵¹ for a healthcare contribution of £808.70 per dwelling. Paragraph 17 [12] of *the Framework* states that decision-taking should take account of and support strategies to improve health facilities. This policy stance is supported in the PPG, which states that the views of NHS England should be sought regarding the impact of new development which would have a cumulatively significant effect on the

⁴⁹ Council's Statement addressing the tests on obligations sought re: Pooling of contributions arising under Regulation 123 of the CIL Regulations [Inquiry Document 6].

⁵⁰ Appendices to Council's Statement addressing the tests on obligations arising under Regulation 122 of the CIL Regulations [Inquiry Document 7].

⁵¹ Unilateral Undertaking, signed by the Appellant to Stratford-on-Avon District Council; dated 8 December 2015 [Inquiry Document 1].

demand for healthcare services⁵². The relevance of health care to planning is therefore not in dispute.

103. In response to the question of why health care provision should be funded by the proposed development when NHS expenditure is planned to serve a given population, it was explained at the Inquiry that the budget is based on the previous years' activity, with no retrospective funding to cover year one, whilst it is not possible for financial provision to be made for planned future growth. This seems to be an extremely unsatisfactory way to plan to meet the health needs of future population, but I was assured that this is the way the NHS funding system operates.
104. It was also explained that financial penalties are incurred by the South Warwickshire NHS Trust if key targets for patient care are not met. The shortfall in health care which would arise if no additional funding were to be made available is likely to result in a significant adverse effect on health care provision which would be related to the proposed development. It follows that if any shortfall is attributable to the proposed development, the calculated sum to make up this shortfall – and there was no dispute with the figures produced by the NHS Trust at the Inquiry⁵³ – would be directly related to the proposed development and compliant with the CIL tests. The staggered payment, which would not be made until the occupation of no more than 50% of the proposed dwellings, seems to be a proportionate response in accordance with the CIL Regulations.
105. Two appeal decisions were brought to my attention which allowed payments to the NHS⁵⁴, and one which did not⁵⁵. I am not aware how clearly the issues were presented to the Inquiry where the Inspector did not allow payments to the NHS Trust. The clear explanation that was explained at the Inquiry by the representatives of the NHS Trust demonstrated that the payments were compliant with both Regulations 122 and 123. Moreover, although the Appellant has declared himself 'agnostic' on the issue of contribution, no one challenged the Trust's evidence.
106. For the above reasons I conclude that the provision in the Unilateral Undertaking relating to health care meets the tests in the CIL Regulations and paragraph 204 of the *Framework*.

Other Considerations

107. Many residents and the Parish Council wrote letters objecting to the proposal. In addition to the issues addressed above, several other arguments were made in opposition to the scheme.

Noise

108. Noise concerns relate to the activities of the nearby Riverside Shooting Club, which has the benefit of 28 days' permitted development rights per year.

⁵² PPG, Ref ID 53-004-20140306 *How should health and well-being and health infrastructure be considered in planning decision making?*

⁵³ South Warwickshire HNS Foundation Trust: Statement for S 106 Developer Contributions – Appeal ref: 3010653 and Addendum, attached to e-mail from Ms Mel Duffy; 12 November 2015.

⁵⁴ Appeal Refs APP/T3725/A/14/2221858 for 65 dwellings etc at Leamington Spa; allowed 10 March 2015, and QAPP/J3720/W/15/3004380 up to 270 dwellings at Heath Farm, Stratford on Avon; allowed 3 December 2015

⁵⁵ Appeal Ref APP/J3720/A/14/2221748 for 143 dwellings and 72 Extra care apartments at Shipston-on-Stour; allowed 8 June 2015.

However, since the Council included noise disturbance from the club as a reason for refusal, the Appellant has reached an agreement with the club whereby the club will close its activities prior to the occupation of the first residential dwelling if the appeal were to be allowed. A suitably worded negative condition to permanently secure this arrangement has the agreement of the main parties.

109. On the basis of this agreement, the Council agrees with the Appellant that noise is no longer a reason for dismissing the appeal. I find no reason to come to a different conclusion.

Traffic impact and highway safety

110. Concern is expressed by Bidford-on-Avon PC and others that the proposed development, together with the committed scheme to the north of Salford Road (the Welbeck scheme) would significantly increase vehicular traffic in the village, where there have been five recorded accidents on Salford Road resulting in personal injury over the last three years.

111. Paragraph 32 [3] of *the Framework* states that development should only be prevented or refused on transport grounds where the residual cumulative impacts of the development are severe. The Appellant's TA⁵⁶ states that the proposed access and the nearby Salford Road/The Pleck/Victoria Road junction would operate satisfactorily when the development is fully operational, even allowing for traffic flows attributable to the Welbeck scheme and background traffic growth. The TA also indicates that all the accidents over the last three years have been slight and that none of them occurred within the vicinity of the proposed site access junctions. This evidence is not robustly challenged.

112. I therefore agree with the Appellant, the highway authority and the Council that the proposed development would not result in any severe adverse impacts to the operation of the highway network in the vicinity of the proposed development, and that traffic impact and highway safety are not grounds for dismissing the appeal.

Other concerns

113. Flood risk is not regarded as an issue by the Council or the relevant agencies, and I see no reason to take a different view. Archaeological considerations can be addressed at the reserved matters stage. Loss of views from private land is not a material planning consideration.

Overall Conclusions and the Planning Balance

114. I have found that the Council has not demonstrated a 5 year HLS for the District and, in accordance with paragraph 49 of the Framework, the relevant LP policies for the supply of housing should not therefore be considered up-to-date. This triggers the need to consider the balance between the benefits of the development and its adverse impacts.

115. The parameters for assessing the planning balance are set out in paragraph 14 of the Framework, which states that the presumption in favour of sustainable development is "a golden thread" at the heart of both plan-making and decision-taking. It states that where relevant policies in a development

⁵⁶ RPS: Marriage Hill Nursery Transport Assessment (TA); 30 October 2014.

- plan are absent, silent or out-of-date, planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole; or where specific policies in the Framework indicate development should be restricted.
116. Footnote 9 of the Framework sets out examples of the types of specific policies referred to in paragraph 14 which indicate that development should be restricted. None of these policies apply to the appeal site. Therefore the balance focuses on whether the benefits of the proposed development would be significantly and demonstrably outweighed by any adverse impacts.
117. Looking at the three strands of sustainable development in paragraph 7 of the Framework, the scheme would provide clear social and economic benefits. It would provide up to 75 homes, in a sustainable location within a MRC, which is identified in the eCS as an appropriate location for new development. The proposal would be a sizeable contribution towards meeting the Council's 5 year HLS. There are other social and economic benefits. The provision of 35% affordable housing (AH) approximating to 26 dwellings is a key benefit, given the documented shortage of AH provision in recent years in relation to need, as is the combination of proposed market and affordable dwellings in the scheme.
118. Other social and economic benefits include support for the local economy from future residents, such as patronage of shops and other facilities; and the extension of the 30 mph speed limit, new gateway features for reducing speed, a new signalised pedestrian crossing and other footway improvements close to the site. There would also be short-term employment through the construction of the new houses and associated works, such as access/highway works, drainage and landscaping, tree and hedge planting.
119. The loss of low value agricultural land is given little weight by the main parties, and any expansion of MRCs such as Bidford-on-Avon would necessitate building on agricultural land. The loss of the existing horticultural business is limited, as there is no shortage of such businesses in the area, and the business on the site is currently not operational. The loss of the economic contribution made by the Riverside Shooting Club is also likely to be limited, as its current use is restricted to 28 days a year.
120. On the basis of the above considerations, I consider that the significant economic and social benefits manifestly outweigh a few minor adverse impacts.
121. Turning to the environmental strand of sustainable development, there would be benefits, such as the provision of new areas for wildlife and biodiversity through the proposed green infrastructure and sustainable drainage schemes (SuDS). There would, however, be the loss of a partially open site, which has no national or local landscape designation, to housing. Any minor visual impact, however, could be satisfactorily mitigated by the proposed landscaping along the southern boundary and the on-site green infrastructure provision, so on balance there would be no overall harm to the character and appearance of the area. This reflects the Council's landscape witness' acceptance that some form of development was appropriate on the site.
122. Taken as a whole, there would be significant economic and social benefits and no net environmental harm following the proposed mitigation measures.

123. Weighing all of the above factors, I conclude that the limited adverse impacts would fall a long way short of “significantly and demonstrably” outweighing the substantial benefits of the proposed development, and the planning balance falls decisively in favour of granting planning permission. For these reasons I conclude that the proposal would amount to sustainable development in the terms of paragraph 14 of the Framework. The proposal would also accord with the housing strategy of the eCS and as well as LP policies PR.1 and DEV.1. Therefore, planning permission should be granted in compliance with the national planning policy presumption in favour of sustainable development and to significantly boost housing supply.
124. For the reasons given above, and having regard to all other matters raised, and subject to the conditions and taking account of the legal agreements discussed above, I conclude that the appeal should be allowed.

Mike Fox

INSPECTOR

Richborough Estates

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Mr Hugh Flanagan	Of Counsel
He called	
Ms Bettina Kirkham	Director, Kirkham Landscape Planning
Mr Philip Smith	Director, Aitchison Raffety, Chartered Town Planning Consultants
Ms Isabella Tafur	Of Counsel
She called	
Mr John Careford	Policy Planner, Stratford-on-Avon District Council

FOR THE APPELLANT:

Mr Peter Goatley	Of Counsel
He called	
Mr Jeremy Peachey	Landscape Design Director, Pegasus Landscape Design
Mr Christopher May	Director, Pegasus Planning

INTERESTED PERSONS:

Cllr Mark Cargill	Stratford-on-Avon District Council
Mr Joe Harvey	Bidford-on-Avon Parish Council

FOR SOUTH WARWICKSHIRE NHS FOUNDATION TRUST (S 106 Unilateral Undertaking only)

Ms Annabel Graham Paul	Of Counsel
Ms Mel Duffy	South Warwickshire NHS Foundation Trust

DOCUMENTS

Part 1: 9-11 December 2015

1. Unilateral Undertaking under Section 106 of the Town and Country Planning Act 1990 from Derek Enos Harman and Persimmon Homes to Stratford-on-Avon District Council; dated 8 December 2015.
2. Section 106 Agreement between Derek Enos Harman, Persimmon Homes Ltd, Stratford-on-Avon District Council and Warwickshire County Council; dated 9 December 2015.
3. Extract from the GLVIA Guidelines, 3rd Edition; dated March 2013.
4. Woodford Halse Appeal Decision APP/Y2810/A/14/2216520; dated 12 September 2014.

5. Council's Statement addressing the tests on obligations arising under Regulation 122 of the Community Infrastructure Levy Regulations; dated 8 December 2015.
6. Council's Statement on Compliance of Planning Obligations Sought re: Pooling of contributions arising under Regulation 123 of the Community Infrastructure Levy Regulations (2010); dated 4 December 2015.
7. Appendices to Council's Statement addressing the tests on obligations arising under Regulation 122 of the Community Infrastructure Levy Regulations; dated 8 December 2015.
8. Policy Extract from submitted Stratford-on Avon District Council Core Strategy; dated June 2015.
9. Outline Opening Submissions on behalf of the Appellant; dated 9 December 2015.
10. Opening Statement on behalf of Stratford-on-Avon District Council; dated 9 December 2015.
11. Drawing Ref JNY8324-02 Rev B Proposed Site Access; dated 29/09/2014.
12. Drawing Ref Bir.4571_13B Fig4 Illustrative Landscape Masterplan; dated 15 January 2015.
13. Drawing Ref Bir.4571_14 Development Parameters Plan; dated 04 March 2015.
14. Hook Norton Secretary of State Appeal Decision APP/C3105/A/14/2226552; dated 7 December 2015.
15. Statement by Cllr Mark Cargill, Ward Member for Bidford West and Salford Priors; handed in on 9 December 2015.
16. Welford-on-Avon Appeal Decision APP/J3720/W/15/3129437; dated 19 September 2015.
17. Record of Attendance for Day 1; 9 December 2015.
18. Council's letters of notification and circulation list; dated 29 May 2015 and 11 November 2015.
19. Bidford-on-Avon Parish Neighbourhood Plan Pre-Submission Draft; September 2015.
20. Statement on behalf of Bidford-on-Avon Parish Council; handed in on 9 December 2015.
21. Stockton Appeal Decision APP/J3720/A/14/2219604; dated 17 June 2015.
22. Suggested Conditions; handed in on 9 December 2015.
23. Suggested negative condition relating to Riverside Shooting Club; dated 9 December 2015.
24. Plan 1: Existing Shooting Grounds; dated 10 December 2015.
25. Record of Attendance for Day 2; 10 December 2015.
26. Record of Attendance for Day 3; 11 December 2015.

27. Final agreed suggested conditions; handed in on 11 December 2015.
28. Closing Submissions on behalf of Stratford-on-Avon District Council; dated 11 December 2015.
29. Outline Closing Submissions on behalf of the Appellant; dated 11 December 2015.
30. High Court Decision [2015] EWHC 488 (Admin) before Mr Justice Ousley between Stroud District Council v Secretary of State for Communities and Local Government and Gladman Developments Ltd; dated Friday 6 February 2015.

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31. Opening Submissions for the Resumed Inquiry on behalf of Stratford-on-Avon District Council; dated 28 April 2016.
32. Meon Vale Housing Phasing Table: 2013/14-2020/21.
33. Letter from Persimmon Homes to Pegasus Group on site delivery rates-dual branding of sites (in Stratford-on-Avon); dated 18 April 2016.
34. Map showing Contested Development Sites; handed in on 28 April 2016.
35. Public Site Notice Letter (and site photographs).
36. Notification Letter; dated 4 April 2016.
37. Record of Attendance for Day 4; 28 April 2016.
38. Stratford-on-Avon Housing Trajectory 2011/12 – 2030/31; dated 31 December 2015.
39. Record of Attendance for Day 5; 29 April 2016.
40. Closing Submissions for the Resumed Inquiry on behalf of Stratford-on-Avon District Council; dated 29 April 2016.
41. Further Closing Submissions on behalf of the Appellant in respect of 5 Year Housing Land Supply; dated 29 April 2016.
42. Adjustment to Core Strategy Inspector's 5YHLSC to take account in the number of sales outlets at East and West of Ettington Road, Wellesbourne; dated 29 April 2016.
43. Court of Appeal Decision [Purchas and Mann LJ and Sir Michael Kerr]: North Wiltshire District Council v Secretary of State for the Environment and Climate Change; dated 12 April 1992.

Documents received after the close of the Inquiry

44. Council's Note of Clarification in respect of its position on 5YHLSC (4 May 2016).
45. Appellant's Response to the Council's Note of Clarification; May 2016.

ABBREVIATIONS USED IN THIS DECISION

5YHLSC	5 year housing land supply calculation
AH	Affordable Housing
CIL	Community Infrastructure Levy
dph	dwellings per hectare
dpa	dwellings per annum
eCS	emerging Core Strategy
EWHC	England Wales High Court
FRA	Flood Risk Assessment
GLVIA3	<i>Guidelines for Landscape and Visual Impact Assessment: Third Edition</i>
HLS	Housing Land Supply
IIC	Inspector's Interim Conclusions (Stratford on Avon Core Strategy Examination)
LP	Local Plan
LVIA	Landscape Visual Impact Assessment
MRC	Main Rural Centre
NP	Neighbourhood Plan
OAN	Objective Assessment of Housing Need
OS	Ordnance Survey
PC	Parish Council
PPG	Government Planning Practice Guidance
RPA	Root Protection Area
SCG	Statement of Common Ground
SHLAA	Strategic Housing Land Availability Assessment
SuDS	Sustainable urban drainage system
TA	Transport Assessment
<i>The Framework</i>	The National Planning Policy Framework (also known as NPPF)

SCHEDULE OF CONDITIONS

- 1) Details of the appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development begins and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than three years from the date of this permission.
- 3) The development hereby permitted shall begin not later than two years from the date of approval of the last of the reserved matters to be approved.
- 4) The development hereby permitted shall be carried out in accordance with the following approved plans and drawings:
 - Site Location Plan – Drawing AAH5229 – 1 Rev A
 - Proposed Access Arrangements – Drawing JNY 8324-02B
 - Topographical Survey Drawings – Drawings 14/082-01; 14/082_02; 14/082_03; 14/082_04; 14/082_05 and Marriage Hill Nursery 2d-Layout 1.
- 5) The maximum number of dwellings to be erected on the site shall be 75 and no dwelling shall exceed two storeys.
- 6) As part of the reserved matters submission, a plan showing the existing site levels and proposed site levels associated with the development shall be submitted to and approved in writing by the local planning authority and the development shall be implemented in accordance with the agreed levels details.
- 7) The highway access points to the site shall be laid out in accordance with the details as shown on the Proposed Site Access Works (Drawing JNY 8324-02B).
- 8) Prior to the occupation of any of the dwellings hereby approved, the signalised pedestrian crossing on Salford Road shall be constructed and laid out in accordance with Drawing JNY 8324-02B.
- 9) No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by, the local planning authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:
 - a) the parking of vehicles of site operatives and visitors;
 - b) loading and unloading of plant and material;
 - c) storage of plant and materials used in constructing the development;
 - d) the erection and maintenance of security hoarding;
 - e) wheel washing facilities;
 - f) measures to control the emission of dust and dirt during construction;

- g) a scheme for recycling/disposing of waste resulting from demolition and construction works;
 - h) details of siting and design of any site electricity generators;
 - i) hours of construction;
 - j) hours of HGV and construction traffic movements to and from the site (taking into account peak AM and PM movements of schoolchildren/parents at the nearby school); and
 - k) HGV and construction traffic routing plan
- 10) No demolition, site clearance or building operations of any type shall commence or equipment, machinery or materials brought onto site or the development commence until a scheme for the protection of all existing trees and hedges within that phase of development has been submitted and approved in writing by the local planning authority. The tree protection measures scheme shall include:
- a) The submission of a Tree Protection Plan, which identifies on an OS base plan all the trees within or adjacent to the site which are to be retained, together with appropriate working methods, including an Arboricultural Method Statement in accordance with the recommendation of BS5837:2012 *Trees in relation to design, demolition and construction*.
 - b) The scheme must include details of the erection of stout, protective fencing in accordance with BS5837:2012, Clause 6.2.
 - c) Fencing shall be shown on the Tree Protection Plan and installed to the extent of the tree Root Protection Area (RPA) as defined in BS5837:2012 and as agreed in writing by the local planning authority.
 - d) No equipment, machinery or structure shall be attached to or supported by a retained tree.
 - e) No mixing of cement or use of other contaminating materials or substances shall take place within, or close to, a RPA or that seepage or displacement could cause them to enter a RPA.
 - f) No fires shall be lit within 10 metres of the nearest point of the canopy of any retained tree within or adjacent to the site.
 - g) A phasing plan for the provision and removal of the tree/hedge protection works to take account of the commencement and completion phases of different parts of the site.

The approved tree/hedge protection measures shall be implemented prior to commencement of development in accordance with the approved phasing plan and thereafter kept in place until the approved phasing plan allows for the tree/hedge protection measures to be removed.

- 11) Prior to the commencement of the development, details of all proposed external street lighting, including details of lamps, luminaires, their positions, heights and intensity of illumination, within that phase of development shall be submitted to and approved in writing by the local planning authority. The development shall be implemented in accordance with the approved details.

- 12) The development hereby permitted shall not commence until a drainage scheme for the disposal of surface water and foul sewage have been submitted to and approved in writing by the local planning authority. The approved drainage scheme shall include sustainable drainage and shall as a minimum provide:
- a) Information about the design storm period and intensity, the method employed to delay and control the surface water discharged from the site and the measures to prevent pollution of the receiving groundwater;
 - b) A timetable for its implementation; and
 - c) A management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public authority or statutory undertaker and any other arrangements to secure the operation of the scheme throughout its lifetime.
- 13) The development hereby permitted shall be implemented in accordance with the submitted Flood Risk Assessment (FRA) submitted by RPS reference AAC 5175 dated 31 October 2014 and the FRA Addendum dated 21 January 2015.
- 14) The development hereby committed shall not commence until a scheme for appropriate Noise Attenuation of all residential dwellings and their gardens of properties on Salford Road has been submitted to and approved in writing by the local planning authority. The approved scheme shall thereafter be implemented for each of the dwellings affected prior to the first occupation of that dwelling.
- 15) Prior to the commencement of the development hereby permitted (including site clearance and any ground works), an ecological enhancement/management strategy shall be submitted to and approved in writing by the local planning authority. This is to include details of measures to be implemented for ecological enhancement, habitat management, measures for the monitoring of outcomes/means of reviewing the strategy and the body or organisation responsible for implementation of the strategy. The agreed strategy shall thereafter be implemented as approved, unless otherwise agreed in writing by the local planning authority.
- 16) Ground contamination – Site characterisation: No development hereby permitted shall take place until an assessment of the nature and extent of contamination within that phase of development has been deposited with the local planning authority. This assessment must be undertaken by a suitably qualified and experienced person, be in accord with BS10175 and include the following:
- (i) a survey of the extent, scale and nature of contamination;
 - (ii) an assessment of the potential risks to:
 - human health,
 - property (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes,

- adjoining land,
 - groundwater and surface water,
 - ecological systems,
 - archaeological sites and ancient monuments; and
- (iii) an appraisal of remedial options, and proposed preferred option(s).
- 17) Ground contamination – Submission of Remediation Scheme: No development hereby permitted shall take place until a detailed remediation scheme to bring the site within that phase of development to a condition suitable for the intended use by removing unacceptable risks to human health, buildings and other property and the natural and historic environment has been deposited with the local planning authority. The scheme must include all works to be undertaken, proposed remediation objectives and remediation criteria, timetable of works and site management procedures. The scheme must ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation.
- 18) Ground contamination – Implementation of Deposited Remediation Scheme: The dwellings hereby permitted shall not be occupied until the remediation scheme required by condition 17 for the development has been implemented in accordance with the deposited timetable of works.
- 19) Ground contamination – Validation: Within 6 months of the completion of the measures identified in the deposited remediation scheme and before the dwellings hereby permitted can be occupied, a validation Report that demonstrates the effectiveness of the remediation carried out for that phase of the development must be submitted to and approved by the local planning authority.
- 20) Ground contamination – Reporting of Unexpected Contamination: In the event that contamination is found at any time when carrying out the development hereby permitted that was not previously identified, it must be reported in writing within 7 days to the local planning authority and development must cease on that part of the site. An assessment must be undertaken in accordance with the requirements of condition 16, and where remediation is necessary, a remediation scheme, together with a timetable for its implementation, must be deposited with the local planning authority in accordance with the requirements of condition 17. The measures in the deposited remediation scheme must then be implemented in accordance with the associated timetable. Following completion of the measures identified in the remediation scheme a Validation Report must be submitted to and approved in writing by the local planning authority in accordance with condition 9.
- 21) Ground contamination – Long term monitoring and maintenance: No development hereby permitted shall take place nor shall any of the dwellings be occupied within a phase of the development until a monitoring and maintenance scheme to include monitoring the long term effectiveness of the proposed remediation over a period of 5 years (or any other period agreed in writing with the local planning authority), and the provision of reports on the same for that phase of the development

- has been deposited with the local planning authority. Periodic reports that demonstrate the effectiveness of the deposited monitoring and maintenance scheme must be submitted to the local planning authority, at a frequency to be agreed in writing with the local planning authority before the redeveloped site can be occupied or continue in occupation.
- 22) No house in the development hereby permitted that has a downpipe shall be occupied until it has been provided with a minimum 190 litre capacity water butt fitted with a child-proof lid and connected to the downpipe.
- 23) No dwelling hereby permitted shall be occupied until 3 bins for the purposes of refuse, recycling and garden waste, in accordance with the Council's bin specification, have been provided by the developer for that dwelling.
- 24) Should more than two years elapse from the time of the initial ecological surveys until development commences, then prior to any clearance or development works a further check list of the site for badgers is to be carried out by a suitably qualified ecologist. Where appropriate, a detailed set of mitigation measures shall be submitted to and approved in writing by the local planning authority. Such approved mitigation measures shall thereafter be implemented in full, within the agreed timeframe, unless agreed in writing by the local planning authority.
- 25) No dwelling hereby permitted shall be occupied until evidence has been submitted to and agreed in writing by the local planning authority, demonstrating that the use of the land highlighted blue on the attached Plan (Plan 1-Existing Shooting Grounds, dated 10.12.15) known as Riverside Shooting Club for clay pigeon and skeet shooting activities that operates under permitted development rights for a maximum of 28 days per calendar year has permanently ceased and all the structures associated with the use have been removed.