
Appeal Decision

Inquiry held on 28 June to 1 July 2016

Site visit made on 1 July 2016

by John Woolcock BNatRes(Hons) MURP DipLaw MRTPI

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

Decision date: 14 September 2016

Appeal Ref: APP/P3420/W/15/3138033

Hampton's Scrapyard and Adjacent Field, Keele Road, Newcastle-under-Lyme, Staffordshire ST5 5AA

- 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 Mr JM and NW Hampton against the decision of Newcastle-under-Lyme Borough Council (NuLBC).
 - The application No:14/00948/OUT, dated 11 December 2014, was refused by notice dated 3 June 2015.
 - The development proposed is residential development (maximum 138 dwellings), with details of access.
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Decision

1. The appeal is allowed and outline planning permission granted for residential development (maximum 138 dwellings), with details of access, at Hampton's Scrapyard and Adjacent Field, Keele Road, Newcastle-under-Lyme, Staffordshire ST5 5AA in accordance with the terms of the application No:14/00948/OUT, dated 11 December 2014, subject to the conditions set out in the Schedule of Conditions attached to this decision.

Preliminary matters

2. The appeal application is in outline but with access to be determined as part of the application. I have had regard to the details shown on the Site Masterplan Layout and Landscape Bund – Plans and Sections, along with the details indicated on other drawings, as illustrative material not forming part of the application.
3. NuLBC refused the application for five reasons. However, it is not now pursuing Reason No.2 concerning the proposed development restricting or constraining the activities permitted to be carried out at the adjoining waste management facility, or Reason No.5 dealing with an obligation for an appropriate contribution towards off-site open space.¹
4. The site comprises an operational scrapyard (1.76 ha) and an open agricultural field (3.24 ha). It is located about 1.4 km west of Newcastle-under-Lyme town centre, and adjoins the A525. However, access to the site is from a road that also serves a residential area known as Milliners Green, which lies to the north-

¹ Statement of Common Ground (SoCG1) dated 31 May 2016.

east of the appeal site.² On the opposite side of Keele Road is residential development at Hampton Court, comprising eight detached dwellings and a school playing field. There is a permanent caravan site to the north-west of the site. Several trees within the appeal site are the subject of Tree Preservation Orders. Walleys Quarry, a non-hazardous landfill site (referred to in this decision as 'the landfill'), lies to the north, beyond which is a garden centre and residential dwellings off Silverdale Road.

5. An application for development, similar to the appeal application, but including a landscape bund, and with different supporting information, was submitted in December 2015 and refused in March 2016.³ This application was accompanied by a viability appraisal.
6. A planning agreement, dated 8 July 2016, would provide for a travel plan and on-site public open space. The agreement also includes provision for affordable housing and, if necessary, for a contribution towards primary education of £319,899, but these obligations are subject to a determination about the viability of the proposed development, which is considered in more detail later in this decision.⁴
7. The appellants' intention is to consolidate their operation, currently carried out on three sites, one of which is the appeal site, at a new site located at Holditch House. The planning permission for this development at Holditch House has been implemented, but not completed. An obligation with Staffordshire County Council (SCC) provides that the scrapyard at the appeal site would not operate from a date falling 12 months after waste/recycling was first brought to the Holditch House development.
8. The Inquiry sat for four days. Viability was considered at the Inquiry in a round table discussion held on 28 June 2016. The valuation experts agreed on a number of matters that are set out in a separate Statement of Common Ground.⁵ I requested an agreed table setting out residual land values for different scenarios, based on the disputed matters remaining between the experts.⁶ I also requested information from the regulators of the landfill site, the Environment Agency (EA) and SCC.⁷ The parties were given the opportunity to comment on this information. I closed the Inquiry in writing on 4 August 2016.

² Milliners Green was granted planning permission in 2000 and reserved matters approval given on appeal in 2002. However, a further reserved matters application for 280 dwellings on this land was permitted on appeal in 2005.

³ Application No:15/01085/OUT.

⁴ The planning agreement provides for either 20% or 25% affordable housing, which for 138 dwellings would be, respectively, either 28 units or 35 units.

⁵ SoCG2 at ID3.

⁶ ID19.

⁷ ID23.1, ID23.2, ID24.1 and ID25.1.

Main issues

9. The main issues in this appeal are:

- (a) Whether the occupiers of the proposed development would be likely to experience unacceptable living conditions because of odour emissions from the adjoining use.
- (b) The effects of the development on education and affordable housing provision in the area, having regard to the contributions proposed, and to the viability of the proposed development.

Planning policy

10. The development plan for the area includes the Newcastle-under-Lyme and Stoke-on-Trent Core Spatial Strategy 2006-2026, which was adopted in 2009 (CS), along with saved policies of the Newcastle-under-Lyme Local Plan 2011, which was adopted in 2003 (LP). It also includes the Staffordshire and Stoke-on-Trent Joint Waste Local Plan 2010-2026 (WLP), and saved policies of the Staffordshire and Stoke-on-Trent Minerals Local Plan 1994-2006 (MLP). The appeal site lies within the defined settlement boundary, but is unallocated in the CS. It comprises part previously-developed land and part open land adjacent to the urban area. The emerging Stoke-on-Trent and Newcastle-under-Lyme Joint Local Plan is in the first stage of preparation and so can be given very little weight.
11. The most recent Five Year Housing Land Supply Statement (October 2015 mid-year update) states that NuLBC can demonstrate a range between 3.97 to 1.90 years housing land supply. The appellants consider that there is only a 1.87 year supply. The difference was not considered by the parties to be significant enough to warrant the submission of detailed housing land supply evidence at the Inquiry. Paragraph 49 of the *National Planning Policy Framework* (hereinafter the *Framework*) provides that housing applications should be considered in the context of the presumption in favour of sustainable development, and that relevant policies for the supply of housing should not be considered to be up-to-date if the local planning authority cannot demonstrate a five-year supply of deliverable housing sites. Therefore, for decision-taking, paragraph 14 of the *Framework* provides that the presumption in favour of sustainable development means that 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 (Limb 1), or specific *Framework* policies indicate that the development should be restricted (Limb 2). I return to this later. I have also had regard to the *Planning Practice Guidance* (hereinafter the *Guidance*).

Reasons

Odour

12. Walleys Quarry was granted Interim Development Order permission in November 1997 for mineral workings and the deposit of waste materials, subject to conditions. Condition 24 restricted materials to be tipped to non-special industrial, construction, commercial, and demolition and mineral waste. Condition 25 stated that no domestic waste shall be imported onto the site.

These conditions were reviewed in 2016.⁸ Revised Condition 2 provides for the landfilling of non-hazardous waste and stable non-reactive hazardous wastes until 31 December 2026 and thereafter with only inert waste, such that the site is restored no later than 21 February 2042. Condition 9 states that no municipal waste shall be imported into the site.

13. The landfill is the subject of an Environmental Permit (EP).⁹ The EP provides for deposition of waste falling within the Municipal Waste "20 series" waste codes. The EA states that a significant number of commercial and industrial wastes taken at the landfill are malodorous/offensive, including mixed municipal waste from fast food restaurants, retail premises, hotels and industrial premises. SCC notes that commercial waste collected from business premises by a private-sector waste contractor might differ little from household waste collected from domestic premises, possibly by the same operator on contract to the local authority.¹⁰ But SCC advised that there is no conflict between the planning and EP conditions because this category of waste is defined by its origin rather than its composition. The landfill is being tipped in a spiral filling operation with temporary capping, such that tipping of fresh waste will take place, at different times, at different distances from existing dwellings and the appeal site. The highest finished level of the landfill would be 146 m AOD, and so tipping could occur above the surrounding ground levels.¹¹
14. The EP Odour Management Plan identifies three potential sources of odour from the landfill site, which relate to (1) the tipping of fresh waste, (2) the generation of landfill gas, and (3) leachate management. Other works which could result in significant odour on a temporary basis include drilling of landfill gas wells, works on landfill gas and leachate infrastructure, and activities requiring excavation into previously deposited waste.¹² However, it is likely that potential odour from tipping fresh waste, (1) above, would be significantly reduced after 1 January 2027, when the extant permission would only permit inert waste to be tipped.
15. The landfill has been the subject of complaints in the past from existing nearby residents because of odour emissions. A significant number of complaints in 2013 and 2014 gave rise to a nuisance action by local residents. The basis on which this historic litigation was concluded is confidential to the parties to the litigation and is not in the public domain.¹³ However, the Inquiry was advised that infrastructure was subsequently improved to collect landfill gas and to deal with leachate, and independent biannual odour reviews have since been conducted. It was agreed at the Inquiry that more recent complaints related to intermittent events or circumstances, including odour complaints at a time when leachate levels were in excess of those permitted by the EP, and when additional gas wells were being installed. Such intermittent events have resulted in periodic spikes in the number of complaints, but measures have been taken to deal with the causes of the odour emission. This indicates to me that controls can be effective.

⁸ CD24.

⁹ CD23.

¹⁰ ID24.1 and ID25.1.

¹¹ According to the current working plan at ID16. The existing scrapyards are about 128 m to 130 m AOD.

¹² ID24.2.

¹³ ID17.

16. I have had regard to the submissions about the appropriate benchmark level here for modelling odour emissions, and note that waste from a biological landfill site is defined as "most offensive odours" in the EA guidance note. However, there are inherent uncertainties in the assessment of odour impacts from this landfill site, such as identifying emission rates. Modelling was made more difficult in this case because the operators of the landfill were apparently uncooperative. I am not convinced that the modelling undertaken here undermines the appellants' view that odour emission amounts to a risk of a minor degree of future harm.
17. I have also had regard to the evidence from the olfactory surveys, also known as sniff testing, undertaken in the vicinity of the landfill. These are a 'snapshot' and apply to a specific time and place. As such, this evidence may not be very helpful in assessing odour impacts that are acknowledged to be intermittent, and would be likely to be very specific in terms of when and where they occurred, depending upon the activities then taking place at the landfill. I give little weight to the appellants' submissions about the sale of residential properties in the vicinity of the landfill, as such decisions are dependent upon many and varied factors. It is not possible to determine how the issue of odour emissions from the landfill might have featured amongst the many factors involved. However, the context in which this landfill is located is relevant, and I turn to this next.
18. The active infilling area of the landfill will be about 60 m to the north of existing occupiers of the permanent caravan site, about 115 m to the west of the nearest existing dwellings to the east, and about 170 m south of the dwellings in the vicinity of Silverdale Road. There are office and commercial premises about 70 m to the west, along with a garden centre 60 m to the north. The appeal site lies between 115 m and 300 m to the south and south-east of the active infilling area.¹⁴ The landfill gas plant is currently about 195 m from residential dwellings to the east of the site, and the same distance from the occupiers of the permanent caravan site located to the west. The appeal site extends from about 95 m to 275 m from the landfill gas plant.¹⁵ The nearest residential occupiers to the leachate treatment facility are currently located about 230 m to the south-east of the facility. The appeal site lies about 400 m from the leachate treatment plant.¹⁶ The proximity of existing sensitive receptors to potential sources of odour is a relevant factor in the administration of the EP, which includes an Odour Management Plan. This has important implications for assessing the likely odour impact on any future residential occupiers of the appeal site, especially as the *Framework* provides that it should be assumed that the pollution control regime will operate effectively.
19. The EP Odour Management Plan includes an Odour Action Plan (OAP). This would be implemented if an odour complaint was received that was shown to be attributable to the landfill, a significant number of complaints that could not be substantiated were received, significant landfill odour was detected at the site boundary or off-site during routine odour surveys, or if the gas collection/treatment system was significantly damaged or failed. Upon identification of the likely odour source, the OAP specifies that appropriate corrective and preventative measures would be identified, including reviewing

¹⁴ ID26.1.

¹⁵ ID26.4.

¹⁶ ID26.3.

acceptance of specific waste types that were malodorous, measures to deal with inadequate gas control, along with additional seals and suction at problematic wells and monitoring points.¹⁷ Such measures might be required, at times, to safeguard the living conditions of existing nearby residents. It seems to me that they would also be likely to effectively safeguard the residential amenity of any future occupiers of the appeal site. I give more weight to this consideration than to the evidence submitted about the modelling of odour emissions, the past complaint record, and the sniff testing results. I find that the occupiers of the proposed development would not be likely to have an unacceptable quality of life by reason of odour emissions from the adjoining landfill, and that the proposal would be appropriate for its location.

20. I have also considered whether the proposed development would have an adverse effect on the activities carried out on the adjoining waste management facility, or restoration of the former quarry. It does not seem to me that the appeal scheme would be likely to result in any onerous odour management measures for the landfill operator that would not be required in any event to safeguard existing residents in the locality. Furthermore, restoration to agriculture, conservation grassland and woodland, along with aftercare, is required in the Scheme of Conditions recently imposed in the periodic review.¹⁸ I find no reason to dismiss the appeal because of any likely adverse impact on the landfill operation or its restoration, and no conflict with WLP aims to protect waste infrastructure so that it is not unnecessarily constrained by non-waste related development in the vicinity.
21. Given the extant planning and pollution controls for the operation of the landfill, along with the proximity of existing sensitive receptors, I do not consider that the occupiers of the proposed development would be likely to experience unacceptable living conditions because of odour emissions from the adjoining use. I find no conflict with paragraph 120 of the *Framework*, which provides that to prevent unacceptable risks from pollution, planning decisions should ensure that new development is appropriate for its location, taking into account the effects on general amenity and the potential sensitivity of the area or proposed development to adverse effects from pollution.

Viability – affordable housing and education contribution

22. The site falls within the catchments of Friarswood Primary/Hassell Community Primary School/St Giles and St George's Church of England, and the Newcastle Community High School - The Science College. No contribution is sought by SCC for secondary education because capacity exists within the High School. However, a contribution is sought for 29 primary school places in accordance with SCC's adopted policy.
23. CS Policy CSP6 states, amongst other things, that new residential development within the urban area capable of accommodating 15 or more dwellings will be required to contribute towards affordable housing at a rate equivalent to a target of 25% of the total dwellings to be provided.

¹⁷ ID24.2 section 3.

¹⁸ CD24.

24. The planning agreement provides for three different outcomes depending upon my finding about the viability of the scheme. These outcomes are as follows.
- (1) 20% affordable housing with no education contribution,
 - (2) 20% affordable housing with the education contribution,
 - (3) 25% affordable housing with the education contribution.¹⁹
25. The appellants have indicated a willingness to proceed with the development on the basis of a scheme that provided for 20% affordable housing and a residual land value of £743,000.²⁰ This would be less than any of the estimates for the market value of the site that were submitted to the Inquiry.²¹ The experts also disagree about the sale value to be attributed to the social rented component of the affordable housing, and developer's profit. The latter has two elements in dispute, concerning the apportionment between open market and affordable housing units, and the allowance to be adopted. However, the experts helpfully set out in a table of four scenarios the effects of these different submissions on the residual land value.²² It was made clear at the Inquiry that for the purposes of determining this appeal any outcome of the disputed matters that resulted in a residual land value in excess of £743,000 would be considered to be a viable scheme.
26. I deal first with the disputed affordable housing revenue. The planning agreement provides for social rented units, which NuLBC considers should be assessed at 43% of the open market value (OMV), whereas the appellants have used 35% of OMV in assessing viability. NuLBC's evidence about this was unconvincing, and did not make clear how the distinction between affordable rent values and social rent values had applied to its analysis. I prefer the appellants' submissions on this point, which are supported by evidence from a local provider.²³
27. On this basis, none of the outcomes in the four scenarios at ID19 would provide for a viable scheme with 25% affordable housing and the education contribution. Scenario 2 based on developer profits of 17.5% for open market units and 6% for affordable units, as argued for by NuLBC, would provide a residual land value of £742,000 for outcome (3), just below that considered necessary by the appellants to achieve a viable scheme. However, for this partially brownfield site, with significant costs associated with land contamination and previous mining, the agreed abnormal costs would exceed £1m. For such brownfield sites the *Guidance* advocates a flexible approach in seeking levels of planning obligations to ensure that the combined total impact does not make a site unviable. It adds that if demonstrated to be unviable, a flexible approach should be taken, particularly regarding affordable housing. I am satisfied that the evidence before me is sufficient to demonstrate that the proposed development would be likely to be unviable with 25% affordable housing and the education contribution. The planning agreement provides for 20% affordable housing irrespective of my findings about viability, and so I turn next to consider whether the scheme would be viable or not with the

¹⁹ The agreement makes no provision for an outcome with 25% affordable housing with no education contribution.

²⁰ Mr Coulter's Rebuttal paragraph 5.5.

²¹ The valuations agreed an allowance of £600,000 for the agricultural land, but the experts disagreed about the value of the scrapyard. Based on differing assumptions valuations for the site ranged from a market value of £890,000 to £1,599,500.

²² ID19.

²³ The Aspire Group advised by email dated 22 June 2016 that when appraising rented accommodation the usual output to work at its agreed payback would be 30-35% OMV.

- education contribution, having regard to the evidence about developer's profit.
28. I understand that house builders prefer an overall figure for percentage profit for commercial reasons. However, in assessing the viability of a scheme for the purposes of applying the planning system in the public interest, I consider that it is appropriate to consider an apportionment between open market and affordable housing units. This would better reflect the reality of the reduced risk involved for affordable housing, which should be properly reflected in profit expectations. It would also accord with references in the *Framework* and *Guidance* to competitive returns, and with RICS *Practice Standards*.²⁴
29. In this case, the parties also dispute what allowance should be adopted for this apportionment. Scenario 2, with 17.5% profit on open market units and 6% on affordable units would, with 20% affordable housing and the education contribution, provide a residual land value of £1,021,000. On a similar basis, but with 20% profit on open market units, the residual land value would be £691,000 (Scenario 3). So applying a developer's profit for open market units of 20% would result in a shortfall of £52,000 from a viable scheme, whereas applying a 17.5% profit would yield a surplus of £278,000 above that required for a viable proposal in this case. The tipping point for viability here lies somewhere between the 17.5% and 20% for developer's profit on open market units. However, the agreed figures indicate that viability here would be likely to be achievable with developer's profit for open units just below 20%. This indicates to me that requiring the education contribution, in the particular circumstances which apply here, would be unlikely to render the scheme unviable.
30. The appellants argued that following 'Brexit' it is material that the economic future of the UK, and for NuLBC, is substantially less certain now than it was before 23 June 2016. In particular, they submit that the depression of the share price for national house builders is an indicator as to the future economic activity that is likely to result from residential development. The current uncertainty is a material consideration, and the appellants have indicated that if permitted and constructed this scheme would take four years for the full return on capital to be made. But much could happen in that time to either impair or enhance the viability of the scheme. Deciding what weight should be given to the current uncertainty would be a highly speculative exercise, and the evidence before me provides no realistic basis for doing so. I do not, therefore, consider that it is a consideration that should be given much weight in determining this appeal on its planning merits. The current uncertainty related to 'Brexit' does not alter my views on the likely viability of the scheme.
31. I have found that a viable scheme here could only provide for 20% affordable housing. The under-provision of up to seven affordable units compared to a policy compliant scheme is a negative aspect of the proposal. The planning agreement would provide the necessary contribution to ensure that the proposed development would not have an adverse effect on education provision in the area, and so in this regard would comply with CS Policy CSP10 and LP Policy IM1.

²⁴ ID4.

Other matters

32. I have taken into account all the other matters raised in the evidence, including the objections raised by Thistleberry Residents' Association. The scheme would introduce dwellings in an open area on the edge of the town, but would replace a commercial enterprise that by its nature and activity has an adverse effect on this approach to Newcastle-under-Lyme. I find, overall, that the proposal would have a neutral impact on the character and appearance of the area.
33. There is local concern that a bund would not be adequate to safeguard future residents from noise from the landfill. I am satisfied that there is scope here to design, construct and retain a suitable noise bund that would provide an appropriate standard of residential amenity for this area with respect to noise and disturbance. Appropriate drainage is also a matter that could be addressed by the imposition of suitable planning conditions. So too, could any land contamination, landfill gas migration, along with any legacy from previous mining. There is no evidence that the proposal would conflict with the provisions of the MLP. None of the other considerations raised at the Inquiry or in the written representations weigh significantly against the proposal. I have taken into account all other matters raised in evidence, but have found nothing to outweigh the main considerations that lead to my conclusions.

Planning balance

34. The provision of up to 138 dwellings would be a considerable benefit given the current housing land supply position. It would bring with it commensurate economic benefits. The proposal would provide up to seven affordable units less than that required, and so would therefore be contrary to CS Policy CSP6. The resultant harm is a dis-benefit to be weighed in the balance. However, NuLBC accepts that the supply of up to 28 affordable units, albeit considered seriously deficient in policy terms, should nonetheless be considered a benefit. It seems to me that such a policy breach would not necessarily rule out a finding that the planning balance could fall in favour of the proposal, notwithstanding that it would not make its full policy contribution to affordable housing, particularly as the *Framework* is an important material consideration here.
35. The only significant potential harm is from odour from the landfill affecting the residential amenity of future occupiers. But odour emitting activities would be controlled under the EP, and the tipping of non-inert fresh waste is time limited. The evidence does not indicate that likely odour pollution is a weighty consideration in this case.
36. I do not give much weight to the benefits of consolidating the appellants' business on the Holditch House site, as there is no conclusive evidence that allowing this appeal would secure the completion of the Holditch House development. Even if it did do so, this would be more of a private benefit for the business than a public benefit that could be given significant weight in the planning balance that applies here.
37. The benefits of the additional housing in this case would be substantial. In my judgement, these benefits would be sufficient to outweigh any likely harm from odour emissions from the adjoining landfill.

Conditions and planning agreement

38. The parties agreed suggested conditions that would be accepted if the appeal were to be allowed.²⁵ I have considered the need for these and their wording in the light of the advice contained in the *Guidance*.
39. The standard outline planning conditions should apply with details of the appearance, landscaping, layout, and scale, as the reserved matters (Conditions 1-3). Otherwise than as set out in this decision and conditions, it is necessary that the development for a maximum of 138 dwellings shall be carried out in accordance with the approved plans, for the avoidance of doubt and in the interests of proper planning (Condition 4).
40. A scheme of investigations for the mine entry and fissures, along with any remediation works, would need to be approved and implemented to minimise the risk to the proposed development arising from the coal mining legacy on the site (Condition 5). An arboricultural impact assessment and method statement would be necessary to safeguard retained trees (Condition 6). Investigations, risk assessments and remediation measures for any land contamination would need to be approved and implemented in the interests of the health and amenity of future residents (Conditions 7-11).
41. A construction management plan/method statement would be necessary for amenity and highway safety reasons (Condition 12). A noise assessment would be required and design measures would need to include an acoustic barrier/bund adjacent to the landfill to safeguard the living conditions of future residents (Condition 13). For similar reasons a drainage scheme would need to be approved and implemented (Condition 14). A travel plan would be required in the interests of sustainability and to reduce dependency on the motor car (Condition 15).
42. An assessment of the risk to the development from the generation and migration of landfill gas, mine gas and ground gas, along with gas protection measures, would need to be approved and implemented for safety reasons (Conditions 16 and 17). A restriction on permitted development would, exceptionally, be necessary to ensure that any landfill gas mitigation measures secured by Condition 16 would not be compromised (Condition 18). Given the local topography, details of the existing contours/land levels of the site and adjacent land, and proposed finished floor levels of all buildings within the development and finished contours of the site, would need to be approved and the levels implemented and thereafter retained, in the interests of residential amenity (Condition 19).
43. For the purposes of clause 6.2 of the planning agreement, I find that the development would not be rendered financially unviable if contributions for affordable housing being 20% of the dwellings, and the education contribution, were to be provided. The provisions of the planning agreement comply with relevant statutory and policy requirements for obligations.

²⁵ ID20.

Conclusions

44. I am required to decide this appeal having regard to the development plan, and to make my determination in accordance with it, unless material considerations indicate otherwise. NuLBC acknowledges that in strategic policy terms the location of the development is not objectionable, and accepts that the proposal is in broad accordance with the development plan, which currently does not contain policies dealing with the effects on future occupiers of a development. However, NuLBC considers that the development would offend against important elements of the development plan by failing to provide the amount of affordable housing sought by CS Policy CSP6, and disagrees with the appellants regarding a contribution towards education.
45. The proposal would conflict with the development plan. However, I have found that the scheme could provide for the required financial contribution towards education, but would not be viable with a policy compliant affordable housing contribution. In these circumstances, I consider that the conflict with the provisions of the development plan is not a consideration that weighs heavily against the proposal. I turn next to consider the *Framework*.
46. I do not consider, for the reasons set out above, that the proposal would conflict with paragraph 120 of the *Framework* concerning pollution and amenity. Paragraph 14 applies here because of the housing land supply shortfall. However, any harm by reason of likely odour pollution would fall far short of significantly and demonstrably outweighing the substantial housing benefits of the proposal. The planning balance here does not indicate that the appeal should be refused by reason of Limb 1 of paragraph 14. NuLBC also relies on Limb 2. I see no reason why potential pollution and amenity considerations could not be capable of being of such substance that development should be restricted. However, the likely harm from pollution in this case falls far below this threshold. Limb 2 does not provide a basis for withholding outline planning permission. I find that the proposal would be sustainable development to which the presumption in the *Framework* should apply. This is a consideration that warrants a decision other than in accordance with the development plan.
47. For the reasons given above and having regard to all other matters raised, I conclude that the appeal should be allowed.

John Woolcock
Inspector

SCHEDULE OF CONDITIONS (1-19)

- 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 not exceed 138 dwellings and shall be carried out in accordance with the following approved plans:
Site Location Plan Drawing No.JMH3-1-001.
Site Access Arrangement Preliminary Design Drawing No.144-01/GA-01.
- 5) Prior to the submission of the reserved matters a scheme of investigations for the mine entry and fissures on the site shall be undertaken in accordance with details that shall have been approved beforehand. Any reserved matters application shall be supported by a report outlining the findings arising from these site investigations; a scheme of treatment for the mine entry including a timetable for the implementation of the scheme; and a layout plan which identifies appropriate zones of influence for the mine entry and fissures and shall define suitable 'no-build' zones. Any approved remediation works shall be implemented in accordance with the approved details and timetable.
- 6) Any application for the approval of reserved matters shall include an Arboricultural Impact Assessment (to BS 5837:2012) and an Arboricultural Method Statement, Root Protection Areas (RPAs) of retained trees shown on the proposed layout (to BS 5837:2012), details of all special engineering within the RPAs and other relevant 'no dig' construction details, details of proposed boundary treatment, and full landscaping proposals including detail of hedgerow replacement behind the new sightlines.

- 7) Development should not commence until a further investigation and risk assessment has been completed in accordance with a scheme to be approved in writing by the local planning authority to assess the nature and extent of any contamination on the site. The investigation and risk assessment shall be undertaken by competent persons and a written report of the findings shall be submitted to and approved in writing by the local planning authority prior to the commencement of the development. The report of the findings shall include:
- (i) A survey of the extent, scale and nature of any contamination.
 - (ii) An assessment of the potential risks to:
 - Human health.
 - Property (existing or proposed) including buildings, crops, livestock, pets, woodland, service lines and pipes.
 - Adjoining land.
 - Ground and surface waters.
 - Ecological systems.
 - Archaeological sites and ancient monuments.
 - (iii) An appraisal of remedial options, and proposal of the preferred option(s).

This must be conducted in accordance with DEFRA and the Environment Agency's *Model Procedures for the Management of Land Contamination, CLR 11*.

- 8) Development shall not commence until a detailed remediation scheme to bring the site to a condition suitable for the intended use by removing unacceptable risks to human health, buildings and other property and the natural and historical environment, has been submitted to and approved in writing of 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.
- 9) The approved remediation scheme must be carried out in accordance with its terms prior to the commencement of development other than that required to carry out remediation, unless otherwise approved in writing by the local planning authority. The local planning authority must be given two weeks written notification of commencement of the remediation scheme works. Following completion of measures identified in the approved remediation scheme, a verification report that demonstrates the effectiveness of the remediation carried out must be produced, and is subject to the approval in writing of the local planning authority.
- 10) 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 immediately to the local planning authority. An investigation and risk assessment must be undertaken in accordance with the requirements of Condition 7, and where remediation is necessary a remediation scheme must be prepared in accordance with the requirements of Condition 8, which is subject to the approval in writing of the local planning authority.

- 11) No top soil is to be imported to the site until it has been tested for contamination and assessed for its suitability for the proposed development, a suitable methodology for testing this material shall be submitted to and approved in writing by the local planning authority prior to the soils being imported onto the site. The methodology should include the sampling frequency, testing schedules, criteria against which the analytical results will be assessed (as determined by the risk assessment) and source material information. The analysis shall then be carried out and validity evidence submitted to and approved in writing by the local planning authority.
- 12) Prior to the commencement of any works, a Construction Management Plan/Method Statement shall be submitted to and approved in writing by the local planning authority. This shall include details relating to:
 - i. A site compound with associated temporary buildings.
 - ii. Routing of construction traffic to and from the site.
 - iii. The removal of demolition materials from the site.
 - iv. The parking of vehicles of site operatives and visitors.
 - v. The loading, unloading and storage of plant and materials used in constructing the development.
 - vi. The proposed hours of operation, including vehicle movements to and from the site, during the construction and demolition phases.
 - vii. Details of dust mitigation measures to be employed during any demolition works including arrangements to monitor dust emissions from the development site.
 - viii. The control of noise and vibration emissions from construction activities including groundworks and the formation of infrastructure including arrangements to monitor noise emissions from the development site during the construction phase.
 - ix. The control of dust including arrangements to monitor dust emissions from the development site during the construction phase.
 - x. Details of measures to prevent the deposition of extraneous matter (mud, debris, etc.) on the public highway, which shall be installed and thereafter retained and used whenever demolition or construction operations are carried out.

Development shall be carried out in compliance with the approved Construction Management Plan/Method Statement, unless otherwise approved in writing by the local planning authority.

- 13) Prior to the commencement of the development details of the design measures, supported by an appropriate noise assessment, which achieves the noise levels indicated in the table below for design purposes only shall be submitted to the local planning authority for approval in writing. Such design measures shall include details of an acoustic barrier/bund adjacent to the adjoining landfill operations in general accordance with the details provided on Drawing No.KEE1309_P001 titled Landscape Bund – Plan and Sections. Thereafter, the approved details shall be implemented in full prior to the development becoming occupied and shall be permanently maintained in full accordance with the approved details.

Internal noise levels (To be achieved in all habitable areas attributable to external noise sources. Where windows need to be kept shut, adequate sound attenuated ventilation provision in accordance with the current building regulations must also be demonstrated)	35 dB $L_{Aeq,16hr}$ between 07:00 and 23:00 in bedrooms and living rooms 40 dB $L_{Aeq,16hr}$ between 07:00 and 23:00 in dining rooms 30 dB $L_{Aeq,8hr}$ between 23:00 and 07:00 in bedrooms 42 dB L_{Amax} between 23:00 and 07:00 in bedrooms
External Noise levels (To be achieved in garden areas, balconies, terraces)	55 dB $L_{Aeq,1hr}$ between 07.00 and 23.00

- 14) The development hereby permitted shall not commence until details of a satisfactory surface water drainage design has been submitted to and approved in writing by the local planning authority. No development shall take place until such time as:
- (i) Confirmation of impermeable areas, attenuation volumes and discharge rates, based on the methodology in Waterco Flood Risk Assessment (reference w1462-150402-FRA dated April 2015).
 - (ii) Confirmation of who will be responsible for maintaining any attenuation pond and provision of an adequate maintenance strip adjacent to the watercourse over the lifetime of the development in accordance with an approved maintenance schedule.

The scheme shall be fully implemented and subsequently maintained, in accordance with the timing/phasing arrangements embodied within the scheme, or within any other period as may subsequently be approved in writing by the local planning authority.

- 15) No part of the development hereby permitted shall be occupied until a Travel Plan has been submitted to and approved in writing by the local planning authority. The Travel Plan shall set out proposals (including a timetable) to promote travel by sustainable modes. The Travel Plan shall be implemented in accordance with the timetable set out in that plan unless otherwise approved in writing by the local planning authority. Reports demonstrating progress in promoting sustainable transport measures shall be submitted annually on each anniversary of the date of this decision to the local planning authority for approval in writing for a period of five years from the first occupation of the development hereby permitted.

- 16) Prior to the commencement of development, the developer shall undertake an appropriate assessment of the risk to the development from the generation and migration of landfill gas, mine gas and ground gas. A detailed quantitative assessment of the potential future risks posed to the development by the generation and migration of landfill gas from the adjacent landfill should also be undertaken. Should unacceptable risks be identified then appropriate gas protection measures shall be incorporated into the design of the development. The assessment of risk and proposed gas protection measures should be undertaken in line with the requirements of BS 8485:2015. A report on the assessment of risks from landfill gas, mine gas and ground gas, together with comprehensive details and justification of any proposed gas protection measures, and details of how those measures will be verified, should be submitted to and approved in writing by the local planning authority.
- 17) The approved gas protection measures must be installed in accordance with the approved gas risk assessment prior to the occupation of the development and shall thereafter be maintained in efficient and effective working order. The local planning authority must be given two weeks written notification of commencement of the remediation scheme works. Following installation of the approved gas protection measures, a verification report that demonstrates the successful installation of those measures shall be submitted to and approved in writing by the local planning authority.
- 18) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any order revoking or re-enacting that order with or without modification) no development referred to in Schedule 2 Part 1 Class A of that order shall be carried out.
- 19) Applications for approval of reserved matters shall include details of the existing contours/land levels of the site and adjacent land, along with the proposed finished floor levels of all buildings within the development and finished contours of the site. The approved levels shall be implemented and thereafter retained.

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Andrew Fraser-Urquhart QC

Instructed by Newcastle-under-Lyme Borough Solicitor.

He called

Jeffrey Solomon BSc(Hons)
MRICS

Principal Surveyor, DVS Property Specialists.

Dr Mark Broomfield BA PhD

Specialist Consultant Ricardo Energy & Environment.

Andrew Marsden PGDip

County Commissioner for Access to Learning.

Elaine Moulton BA(Hons) Bachelor
of Planning MRTPI

Development Management Team Manager.

FOR THE APPELLANTS:

Richard Kimblin QC

Instructed by Carl Copestake, Knights.

He called

Michael Coulter BSc(Hons) MSc
MCIOB

Director Grasscroft Property Solutions.

Stephen Peirson BSc(Hons) CEng
CEnv MIAgrE

Principal Odour Consultant ADAS UK Ltd.

Carl Copestake BA(Hons) DipUPP
MRTPI

Partner Knights Professional Services Ltd.

INTERESTED PERSONS:

Cllr Derrick Huckfield

Local resident and Councillor.

PLANS

Site Location Plan Drawing No.JMH3-1-001

Site Access Arrangement Drawing No.144-01/GA-01

DOCUMENTS SUBMITTED AT THE INQUIRY

Document	1.1	Opening statement by appellants
Document	1.2	<i>Forest of Dean DC and SSCLG</i> [2016] EWHC 421 (Admin)
Document	2	Opening statement of Newcastle-under-Lyme Borough Council
Document	3	Statement of Common Ground dated 27 June 2016 (SoCG2)
Document	4	Extract from <i>Valuation of land for affordable housing</i> RICS Practice Standards UK
Document	5.1	Email dated 27 June 2016 at 13.02 from Simon Carter to Jeffrey Solomon with plan attached
Document	5.2	Email dated 27 June 2016 at 13.00 from Simon Carter to Jeffrey Solomon with plan attached
Document	6	Appeal decisions
	6.1	<i>Former Holsworthy Showground</i> Appeal Ref:APP/W1145/Q/13/2204429
	6.2	<i>Sedgeberrow</i> Appeal Ref:APP/H1840/S/15/3006384
	6.3	<i>Hempshill Hall</i> Appeal Ref:APP/J3015/S/15/3019494
	6.4	<i>The Dolphin</i> Appeal Ref:APP/Z6950/A/15/3119189
	6.5	<i>Shinfield</i> Appeal Ref:APP/X0360/A/12/2179141
Document	7	Section 106 Agreement dated 8 July 2016
Document	8	Summary proof of evidence of Dr Mark Broomfield
Document	9.1	Supplementary Statement 1 of Dr Mark Broomfield
Document	9.2	Supplementary Statement 2 of Dr Mark Broomfield
Document	9.3	Supplementary Statement 3 of Dr Mark Broomfield
Document	10	Development under construction involving 10 or more dwellings
Document	11	Mrs Moulton's notes of 29 March Committee Meeting
Document	12.1	Minutes of Walleys Landfill site liaison meeting 21 May 2015
Document	12.2	Minutes of Walleys Landfill site liaison meeting 22 March 2016
Document	12.3	Minutes of Walleys Landfill site liaison meeting 7 June 2016
Document	13	Summary Proof of Evidence by Elaine Moulton
Document	14	Extract from <i>Planning Practice Guidance</i> Waste
Document	15	Extract from Walleys Quarry ROMP Non Technical Summary, November 2012
Document	16	Walleys Quarry Landfill Site Pre-Settlement Restoration Contours, Drawing No.1707.REST.01
Document	17	Letter from Tarmac to Cllr Huckfield dated 9 February 2016
Document	18	Location of Sources in Ricardo odour modelling study
Document	19	Agreed values for Market Value and Residual Value for disputed assumptions
Document	20	Draft conditions
Document	21	Closing submissions of Newcastle-under-Lyme Borough Council
Document	22	Closing statement on behalf of the appellants
Document	23.1	PINS letter to Staffordshire County Council dated 1 July 2016
Document	23.2	PINS letter to Environment Agency dated 1 July 2016
Document	24.1	Letter from Environment Agency to PINS dated 13 July 2016
Document	24.2	Odour Management Plan for Walleys Landfill EP BR96771T
Document	25.1	Letter from Staffordshire County Council dated 14 July 2016
Document	25.2	Site Monitoring Report Walleys Landfill 7 January 2016
Document	26.1	Aerial photograph showing agreed approximate distances from active infilling area
Document	26.2	Aerial photograph showing location of leachate treatment plant and landfill gas plant

Document	26.3	Aerial photograph showing agreed approximate distances from leachate treatment facility
Document	26.4	Aerial photograph showing agreed approximate distances from landfill gas plant
Document	27	Comments from Newcastle-under-Lyme Borough Council dated 21 July 2016
Document	28	Comments from appellants dated 22 July 2016

CORE DOCUMENTS

- CD1 Decision Notice 14/00948/OUT
- CD2 Layout plans
- CD3 Existing site owned by appellants
- CD4 Decision notice and delegated report N.12/03/2018/W
- CD5 *Cheshire East BC v Renew Land Development Ltd* C0/5040/2015
- CD6 Committee report 14/00948/OUT
- CD7 *Baldwins Gate* appeal decision
- CD8 SHMA July 2015
- CD9 Walley Liaison Committee Reports
- CD10 Tarmac Press Notice
- CD11 Decision notice and committee report 15/01085/OUT
- CD12 Letter from LPA dated 31 March 2016
- CD13 Five year housing land supply statement October 2015 mid-year update
- CD14 Planning committee report on five year housing supply January 2016
- CD15 Hilson Moran biannual odour review No.2 April 2016
- CD16 Decision notices, delegated reports and plans for planning applications at Spice Avenue, Church Lane and Cherry Hill
- CD17 Expressions of interest from Taylor Wimpey March 2016
- CD18 Staffordshire County Council Planning Obligations Policy, Newcastle-under-Lyme Borough Council Developer Contributions SDP, and Staffordshire County Council Consultee responses on planning applications 14/00948/OUT and 15/01085/OUT
- CD19 Newcastle-under-Lyme and Stoke-on-Trent Joint Core Strategy
- CD20 Newcastle-under-Lyme saved Local Plan
- CD21 *National Planning Policy Framework*
- CD22 *National Planning Practice Guidance*
- CD23 Environmental Permit EPR/BR96771T
- CD24 Decision Notice N.12/09/216 MW Schedule of Conditions for periodic review