



Department for  
Communities and  
Local Government

Our Ref: APP/B3410/A/13/2209697

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10 November 2016

Dear Madam

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78  
APPEAL BY BURTON AND SOUTH DERBYSHIRE COLLEGE  
LAND SOUTH OF FOREST SCHOOL STREET, ROLLESTON ON DOVE,  
STAFFORDSHIRE - APPLICATION REF: P/2012/00636**

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Inspector, Terry G Phillimore MA MCD MRTPI, who held a public inquiry between 4 and 6 March 2014 in relation to your client's appeal under Section 78 of the Town and Country Planning Act 1990 against the decision of East Staffordshire Borough Council ('the Council') to refuse the grant of outline planning permission for up to 100 residential units and associated open space, in accordance with application reference P/2012/00636, dated 24 May 2012.
2. The appeal was recovered for the Secretary of State's determination on 20 March 2014, in pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act 1990, because the appeal involves proposals which raise important or novel issues of development control, and/or legal difficulties.
3. The Secretary of State issued his decision in respect of the above appeal in his letter dated 15 December 2014. That decision letter was the subject of an application to the High Court and was subsequently quashed by order of the Court dated 1 May 2015. The appeal therefore falls to be re-determined by the Secretary of State.

**Inspector's recommendation and summary of the decision**

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

## **Procedural matters**

5. The original application for 120 dwellings was reduced to 100 dwellings. The Council based its decision on the revised proposal and the inquiry proceeded in the same way (IR3).
6. Rule 6(6) status for the inquiry was granted to the Rolleston on Dove Parish Council ('the Parish Council'), acting also on behalf of the Neighbourhood Development Plan Steering Group (IR5).

## **Matters arising after the close of the inquiry**

7. The Secretary of State received representations which were not considered at the Inquiry, and post-inquiry correspondence is listed at Annex A. This includes responses to a letter from the Secretary of State dated 14 July 2014 seeking views on a letter with enclosures, received by the department from SGH Martineau and dated 11 July 2014.
8. Following the quashing of his decision letter of 15 December 2014, the Secretary of State issued a letter dated 20 July 2015 under Rule 19 of the Town and Country Planning (Inquiries Procedure) (England) Rules 2000, to all the main interested parties, setting out a written statement of the matters with respect to which further representations were invited for the purposes of his re-determination of the appeal. These matters were:
  - a. Progress with the Rolleston on Dove Neighbourhood Plan and the relevance of any policies therein and/or site allocations to the facts of this application.
  - b. Progress with the emerging draft replacement East Staffordshire Local Plan and the relevance of any policies therein and/or site allocations to the facts of this application.
  - c. The implications for this application, if any, of the High Court decision on Woodcock Holdings v SSCLG [2015] EWHC 1173 (Admin).
  - d. Whether there is a demonstrable five year supply of deliverable housing sites.
  - e. Any other material change in circumstances, fact or policy, that may have arisen since his decision of 15 December 2014 was issued and which the parties consider to be material to the Secretary of State's further consideration of this application.Alternatively, interested parties could ask for the inquiry to be reopened.

9. The representations the Secretary of State received are listed at Annex B. These representations were circulated for comment on 18 August 2015. Further responses that were received are listed at Annex C and these were circulated on 1 September 2015. The Secretary of State also received correspondence from East Staffordshire Sports Council, dated 7 June 2015, and Andrew Griffiths MP, dated 31 July 2015. Copies of these letters and the representations listed at Annexes A–C may be obtained on written request to the address at the foot of the first page of this letter.
10. On 10 September 2015 the Secretary of State wrote to inform the main parties in this case that he had given careful consideration to all the representations before him, on the basis of which he was of the view that there were no substantive issues that required the inquiry to be re-opened.

## **Policy considerations**

11. In deciding this appeal, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004, which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise. In this case, the development plan now consists of the East Staffordshire Local Plan Core Strategy (LP) which was adopted by the Council on 15

October 2015 and has a plan period of 2012 to 2031. The 2006 Local Plan was revoked upon adoption of the new Local Plan.

12. The Secretary of State has also had regard to the Rolleston on Dove Neighbourhood Plan (NP) which was submitted in July 2013 and the report of the Independent Examiner of the NP published in October 2013. As identified by the Inspector at IR20-22, policies in the proposed NP of relevance to this appeal include H1 which provides for 85 net additional dwellings in the parish over the period 2012 to 2031. Policy OS1 defines a settlement boundary which excludes the appeal site. Policy OS2 identifies open spaces of community value which includes the appeal site and policy IN2 provides that the appeal site be returned to a sports ground. The Independent Examiner recommended that, subject to suggested modifications, the NP should proceed to referendum (IR23). In relation to policy H1, the Examiner recommended that 85 units does not represent a ceiling on development which may lead to additional housing land allocations. He also recommended deletion of policies OS1 and IN2 and deletion of the appeal site from the list of sites in policy OS2.
13. Having considered paragraph 216 of the Framework the Secretary of State has taken into account that the report of the Independent Examiner has been published, but that the Neighbourhood Plan has not yet proceeded to referendum. The Secretary of State notes that at the inquiry, the Parish Council made clear its intention that the recommended modifications would be incorporated into a revised version of the Neighbourhood Plan (IR224), but considers that it is likely that the Plan will also need to be reconsidered in the light of the adoption of the Local Plan, before proceeding to referendum. He therefore considers that the Neighbourhood Plan is at a moderately advanced stage. Subject to the suggested modifications, the Secretary of State considers that the relevant policies are consistent with the policies in the Framework. Overall, the Secretary of State considers that the policies in the Neighbourhood Plan, with the modifications recommended by the Examiner, carry significant weight.
14. Other material considerations which the Secretary of State has taken into account include the National Planning Policy Framework (the Framework), the Planning Practice Guidance (the Guidance) and the Written Ministerial Statements of 10 July 2014 and 9 July 2015.

## **Main issues**

### *The Development Plan and housing land supply*

15. Within the new LP, strategic policies direct the location of development in accordance with a settlement hierarchy which identifies Rolleston on Dove as one of four 'Tier 1 Strategic Villages' which are considered to be more sustainable locations for substantial development than smaller villages. Other relevant strategic policies distribute housing growth by making strategic allocations in the main towns and Tier 1 villages. This includes the appeal site which is allocated for 100 units. The Secretary of State considers that the proposal is in accordance with the relevant LP policies and therefore with the adopted development plan as a whole.
16. In terms of housing supply, the Inspector found a significant shortfall in the five-year supply and therefore concluded that the presumption in favour of sustainable development applied pursuant to paragraph 49 of the Framework (IR205-213). This is in contrast to the Inspector appointed to examine the Local Plan who determined that the Borough can demonstrate a 5 year housing land supply. In view of the latter Inspector's report being more recent than the appeal Inspector's report, and having taken into account the representations received in relation to this issue, the Secretary of State takes the view that the Council can now demonstrate a 5 year housing land supply.

17. The Secretary of State agrees with the Inspector at IR214 that the proposal would bring a number of benefits, including the contribution to affordable housing. He places substantial weight on the contribution that the development would make to boosting the supply of both market and affordable housing.

### **Conditions**

18. The Secretary of State agrees with the Inspector's assessment of the proposed planning conditions at IR236-240. He is satisfied that the conditions proposed by the Inspector and set out at pages 38-40 of the IR are reasonable and necessary and meet the tests of paragraph 206 of the Framework and comply with the Guidance.

### **Section 106 planning obligations**

19. The Secretary of State agrees with the Inspector's assessment at IR241-248 on the proposed planning obligations. He agrees with the Inspector that the obligations accord with Paragraph 204 of the Framework and the CIL Regulations 2010 as amended, and so should be taken into account in making the decision.

### **Planning balance and overall conclusion**

20. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise. In this case the Secretary of State considers that the appeal proposal accords fully with the recently adopted East Staffordshire Local Plan. The Secretary of State has gone on to consider whether any material considerations indicate that the appeal should be determined other than in accordance with the development plan.

21. The proposal would provide substantial benefits in terms of boosting the supply of housing, including affordable housing. The Secretary of State places substantial weight on the housing benefits.

22. With respect to the relevant policies in the Neighbourhood Plan, as recommended for modification, the Secretary of State considers that the proposal would not be in conflict with the relevant policies.

23. The Secretary of State considers that there are no material considerations in this case which indicate that the appeal should be determined other than in accordance with the development plan.

### **Formal decision**

24. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. He hereby allows your client's appeal and grants outline planning permission for up to 100 residential units and associated open space with all matters reserved in accordance with application reference P/2012/00636, dated 24 May 2012, subject to the conditions listed at Annex D to this letter.

25. This letter does not convey any approval or consent which may be required under any enactment, bye-law, order or regulation other than section 57 of the Town and Country Planning Act 1990.

### **Right to challenge the decision**

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

leave to bring a statutory review under section 288 of the Town and Country Planning Act 1990.

27. An applicant for any consent, agreement or approval required by a condition of this permission for agreement of reserved matters has a statutory right of appeal to the Secretary of State if consent, agreement or approval is refused or granted conditionally or if the Local Planning Authority fail to give notice of their decision within the prescribed period.
28. A copy of this letter has been sent to East Staffordshire Borough Council and Rolleston on Dove Parish Council. A notification letter has been sent to all other parties who asked to be informed of the decision.

Yours faithfully

*Maria Stasiak*

**Maria Stasiak**

Authorised by Secretary of State to sign in that behalf

Richborough Estates

**ANNEX A**  
**Post Inquiry correspondence**

<b>Correspondent</b>	<b>Date of correspondence</b>
SGH Martineau	24/03/2014
Barry J Edwards	29/05/2014
SGH Martineau	16/06/2014
Rolleston on Dove Parish Council	17/06/2014
SGH Martineau	20/06/2014
SGH Martineau	23/06/2014
SGH Martineau	23/06/2014
Barry J Edwards	24/06/2014
SGH Martineau	24/06/2014
Barry J Edwards	24/06/2014
Barry J Edwards	24/06/2014
SGH Martineau	24/06/2014
SGH Martineau	26/06/2014
SGH Martineau	26/06/2014
Tom Robinson	30/06/2014
SGH Martineau	03/07/2014
Barry J Edwards	04/07/2014
SGH Martineau	11/07/2014
East Staffordshire Borough Council	15/07/2014
Barry J Edwards	16/07/2014
SGH Martineau	18/07/2014
Rolleston on Dove Parish Council	24/07/2014
SGH Martineau	20/08/2014
East Staffordshire Borough Council	21/08/2014
SGH Martineau	22/08/2014
Rolleston on Dove Parish Council	25/08/2014
East Staffordshire Borough Council	28/08/2014
East Staffordshire Sports Council	07/06/2015
East Staffordshire Borough Council	09/07/2015
Andrew Griffiths MP	31/07/2015
East Staffordshire Borough Council	20/10/2015

**ANNEX B**  
**Representations received in response to Secretary of State's letter of 20 July 2015**

<b>Correspondent</b>	<b>Date of correspondence</b>
Rolleston on Dove Parish Council	6 August 2015
College Fields Action Group	7 August 2015
Barry J Edwards	7 August 2015
Delta Planning (appellant's agent)	12 August 2015
East Staffordshire Borough Council	18 August 2015

**ANNEX C**

**Further representations received following circulation on 18 August 2015**

<b>Correspondent</b>	<b>Date of correspondence</b>
Barry J Edwards	23 August 2015
Delta Planning (appellant's agent)	27 August 2015

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## **ANNEX D**

### **List of conditions**

- 1) Details of the access, 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 before the expiration of two 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 plan subject to compliance with other conditions of this permission: Drawing No. 08a – 1:1250 Site Block Plan – Dated as Received 13th August 2012.
- 5) No development shall take place until samples and details of all external materials and finishes for the properties (including eaves and verge detailing, windows, doors, and chimneys) have been submitted to and approved in writing by the Local Planning Authority and the development shall only be carried out using the agreed materials and finishes.
- 6) No development shall take place and no site works related to the development hereby permitted shall be carried out until details of all slab levels and any regrading proposed to the site have been submitted to and approved in writing by the Local Planning Authority and the development shall only be carried out in accordance with the approved details.
- 7) All planting, seeding or turfing comprised in the details of landscaping approved under the reserved matters application(s) shall be carried out in the first planting and seeding season following the completion of the development; and any trees or plants which within a period of 5 years from the completion of the development die, are removed, or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species unless the Local Planning Authority gives written consent to any variation.
- 8) No development shall take place until details of the equipment, fencing and surfacing finishes for the play area and a timetable for the implementation of these works have been submitted to and approved in writing by the Local Planning Authority. The play area shall thereafter be installed in accordance with the approved details and timetable for implementation.
- 9) No development shall take place until details of public and private boundary treatments have been submitted to and approved in writing by the Local Planning Authority. The boundary treatment shall be provided in accordance with the approved details prior to the first occupation/use of the part of the development to which it relates, and thereafter retained.
- 10) No development shall take place until a scheme for the disposal of foul and surface waters (which shall be limited to 24 l/s and include a sustainable drainage scheme and have regard to the flood risk assessment referred to in condition 11) has been submitted to and



approved in writing by the Local Planning Authority. The development shall be completed in accordance with the approved details prior to its first occupation.

11) The development hereby permitted shall be carried out in accordance with the submitted flood risk assessment undertaken by BWB Consultants dated October 2012 (Ref. BMW/2031/FRA Rev.B).

12) No development shall take place until a contaminated land assessment and associated remedial strategy, together with a timetable of works, have been submitted to and approved in writing by the Local Planning Authority (LPA) and the measures approved in that scheme shall be fully implemented in accordance with the timetable set out. The scheme shall include all of the following measures unless the LPA dispenses with any such requirement specifically in writing:

- a) The contaminated land assessment shall include a desk study to be submitted to the LPA for approval. The desk study shall detail the history of the site uses and propose a site investigation strategy based on the relevant information discovered by the desk study. The strategy shall be approved by the LPA prior to investigations commencing on site.
- b) The site investigation, including relevant soil, soil gas, surface and groundwater sampling, shall be carried out by a suitably qualified and accredited consultant/contractor in accordance with a Quality Assured sampling and analysis methodology.
- c) A site investigation report detailing all investigative works and sampling on site, together with the results of analysis, risk assessment to any receptors and a proposed remediation strategy shall be submitted to the LPA. The LPA shall approve such remedial works as required prior to any remediation commencing on site. The works shall be of such a nature as to render harmless the identified contamination given the proposed end-use of the site and surrounding environment including any controlled waters.
- d) Approved remediation works shall be carried out in full on site under a quality assurance scheme to demonstrate compliance with the proposed methodology and best practice guidance. If during the works contamination is encountered which has not previously been identified then the additional contamination shall be fully assessed and an appropriate remediation scheme agreed with the LPA.
- e) Upon completion of the works, this condition shall not be discharged until a closure report has been submitted to and approved by the LPA. The closure report shall include details of the proposed remediation works and quality assurance certificates to show that the works have been carried out in full in accordance with the approved methodology. Details of any post-remedial sampling and analysis to show the site has reached the required clean-up criteria shall be included in the closure report together with the necessary documentation detailing what waste materials have been removed from the site.

13) No development shall take place until a scheme of measures for the protection of hedgerows and trees to be retained during the course of development has been submitted to and approved in writing by the Local Planning Authority. The approved measures shall be

adhered to throughout the course of the development and the said hedgerows and trees retained thereafter.

14) No development shall take place until a scheme of biodiversity protection and enhancement which shall include roosting and nesting facilities for bats and birds, grassland enhancement, protection of common amphibians during construction, and a timetable for implementation has been submitted to and approved in writing by the Local Planning Authority. The biodiversity protection and enhancement measures shall thereafter be completed in accordance with the approved timetable.

15) No development shall take place until a written scheme of investigation securing the implementation of a programme of archaeological work has been submitted to and approved in writing by the Local Planning Authority. The programme of work shall be implemented in accordance with the approved details.

16) No development shall take place until a Construction Management Plan (broadly in accordance with the previously submitted details) including details of routeing and timing of delivery/construction vehicles, wheel washing facilities, measures to remove any mud or deleterious material deposited on the highway, parking facilities for site operatives, personnel and visitors, arrangements for the loading and unloading of vehicles, areas proposed for the storage of materials on site, details of dust suppression during construction, measures to mitigate the impact on sensitive receptors of construction noise and vibration, and a timetable for implementation shall be submitted to and approved in writing by the Local Planning Authority. The development shall thereafter only be carried out in accordance with the approved details.

17) No development shall take place until details of all road construction, including means of surfacing access roads, street lighting, drainage including longitudinal sections, and details of the emergency link to Fairfield Avenue have been submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be completed in accordance with the approved details.

18) No development shall take place until details of the off-site highway works to provide a raised junction at the entrance of the development on Forest School Street and a timetable for implementation of the works in relation to the development have been submitted to and approved in writing by the Local Planning Authority. The development shall thereafter only take place in accordance with the approved timetable.

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# Report to the Secretary of State for Communities and Local Government

by Terry G Phillimore MA MCD MRTPI

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

Date: 9 May 2014

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TOWN AND COUNTRY PLANNING ACT 1990

EAST STAFFORDSHIRE BOROUGH COUNCIL

APPEAL MADE BY

BURTON AND SOUTH DERBYSHIRE COLLEGE

Richborough Estates

Inquiry held on 4-6 March 2014; site visit made on 7 March 2014

Land south of Forest School Street, Rolleston on Dove, Staffordshire

File Ref: APP/B3410/A/13/2209697

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Richborough Estates

**File Ref: APP/B3410/A/13/2209697**

**Land south of Forest School Street, Rolleston on Dove, Staffordshire**

- 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 Burton and South Derbyshire College against the decision of East Staffordshire Borough Council.
- The application Ref P/2012/00636, dated 24 May 2012, was refused by notice dated 27 November 2013.
- The development proposed is up to 100 residential units and associated open space.

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

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**PROCEDURAL MATTERS**

1. Determination of the appeal was recovered by the Secretary of State following the close of the inquiry by way of a direction dated 20 March 2014. The reason given for the recovery is that the appeal involves proposals which raise important or novel issues of development control, and/or legal difficulties.
2. At the inquiry an application for costs was made by the appellant against the Council. This application is the subject of a separate Report.
3. The application when originally submitted proposed up to 120 residential units and associated open space. This was subsequently reduced to a maximum of 100 units on 13 August 2012<sup>1</sup>, with confirmation given by the parties at the inquiry that it is an outline proposal with all matters of detail reserved. The Council reached its decision based on this revised proposal<sup>2</sup> and the inquiry proceeded in the same way. There is no suggestion of any prejudice arising from the appeal being determined on this basis.
4. At the inquiry an agreement containing planning obligations pursuant to section 106 of the Act was submitted, with a completed version dated 6 March 2014 received after the close of the inquiry.<sup>3</sup>
5. Rule 6(6) status for the inquiry was granted to the Rolleston on Dove Parish Council, acting also on behalf of the Neighbourhood Development Plan Steering Group.
6. During the course of the inquiry the Government published the live version of the web-based Planning Practice Guidance. The parties were able to make submissions taking account of the advice contained within this. After the close of the inquiry, at the request of the appellant, an opportunity was provided for each main party to draw attention to particular sections of the Guidance which were considered to be especially relevant, and each did so.<sup>4</sup>
7. The application was refused by the Council for the following reason:

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<sup>1</sup> Document APP1 (iv)

<sup>2</sup> ESBC2 Appendix H

<sup>3</sup> INQ19

<sup>4</sup> APP22, ESBC6, ROD7

*"Refuse on the basis of prematurity in the light of further information brought before the Committee and that the Neighbourhood Plan at its current stage takes precedence."<sup>5</sup>*

## **THE SITE AND SURROUNDINGS**

8. The site is located on the edge of the village of Rolleston on Dove, a settlement with a population of some 3,267<sup>6</sup> which is located to the north of the town of Burton upon Trent. With an area of 5.9ha, the site abuts residential development on Forest School Street, Twentylands, Fairfield Avenue and Walford Road. It comprises an open green space, with a gated access from the end of Forest School Street. There is an existing play area to the west, and a public footpath runs along the south edge.
9. The site was previously an area of playing fields associated with the former Burton and South Derbyshire College campus in Rolleston on Dove. The campus buildings have been redeveloped for housing, forming the estate development immediately to the north-west comprising Forest School Street and other adjoining roads. The site lies outside the development boundary of Rolleston on Dove as shown in the adopted East Staffordshire Local Plan.<sup>7</sup>

## **THE PROPOSAL**

10. The illustrative drawings indicate a residential development across the site with a single point of access through Forest School Street and a secondary emergency/pedestrian access to the east linking with Fairfield Avenue. An area of open space is shown on the west side joining with the existing play area. This is also shown to accommodate a drainage pond and balancing area.<sup>8</sup>

## **PLANNING POLICY**

### **Development Plan**

11. The Development Plan comprises the East Staffordshire Local Plan<sup>9</sup>, which was adopted in July 2006, as saved by Direction issued in 2009<sup>10</sup>. The Local Plan covers the period 1996 to 2011.
12. Under policy NE1, permission will not be granted for development outside development boundaries unless it cannot reasonably be located within them and is either (a) essential to the efficient working of the rural economy; or (b) development otherwise appropriate in the countryside; or (c) development close to an existing settlement and providing facilities for the general public or local community which are reasonably accessible on foot, by bicycle or by public transport. Other criteria against which proposals will be judged are also set out.
13. Policy IMR2 sets out that the Council will seek to enter legal agreements with developers to secure provisions to overcome any adverse social, economic or environmental impact arising from development.

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<sup>5</sup> ESBC2 Appendix H

<sup>6</sup> ROD2 Neighbourhood Plan (NP) para 2.4

<sup>7</sup> ESBC2 Appendix F section 1.0

<sup>8</sup> ESBC2 Appendix F section 2.0

<sup>9</sup> ESBC3 Appendix T para 15; extracts attached to Questionnaire

<sup>10</sup> INQ16

14. Policy L1 deals with loss of sports pitches and ancillary facilities. If there would be a reduction in supply where a current or predicted future demand exists for the facilities, this will be refused unless suitable replacement is made.
15. Under policy H12 the inclusion of affordable housing will be negotiated on sites with a capacity of 25 or more dwellings.

### **Emerging Local Plan**

16. The Borough's replacement Pre-Submission Local Plan<sup>11</sup> was published on 18 October 2013, with the consultation period ending on 29 November.<sup>12</sup>
17. Strategic policy 2 directs the location of development in accordance with a settlement hierarchy which identifies Rolleston on Dove as one of four Tier 1 Strategic Villages. Strategic policy 3 provides for 11,648 dwellings over the plan period. Strategic policy 4 distributes housing growth by providing for strategic allocations in the Main Towns and Tier 1 Villages. These include the appeal site, described as "*College Fields Site*", which is shown for 100 units. In addition, windfall/development allowances are assigned which include 25 units at Rolleston on Dove.
18. The submission of the emerging Local Plan is timetabled for April 2014.<sup>13</sup>

### **Emerging Neighbourhood Plan**

19. Also in preparation is a Neighbourhood Plan for Rolleston on Dove. The Submission Version is dated July 2013.<sup>14</sup>
20. In this version, Policy H1 provides for 85 net additional dwellings in the parish over the period 2012 to 2031. It states that along with sites already in the planning process, these will be delivered on allocated sites identified in policy H4 and through small-scale development on windfall sites.
21. Policy OS1 defines a settlement boundary which excludes the appeal site. It provides that development outside the boundary will not be permitted except on sites which have permission or are allocated in the Neighbourhood Plan itself.
22. Policy OS2 identifies a number of open spaces of community value, including the appeal site ("*The College Playing Fields*"), where development will be strongly resisted. Policy IN2 provides that "*College Field [be] returned to an operational sports ground*".
23. The report of the Independent Examiner of the Neighbourhood Plan was published in October 2013.<sup>15</sup> The Examiner recommended that the Plan should, subject to his suggested modifications, proceed to referendum. Among the recommended changes are:
  - a modification of policy H1 to refer to 85 units being an assessed housing requirement that will be met over the plan period, with the addition that it

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<sup>11</sup> ROD2 Local Plan

<sup>12</sup> ESBC1 para 3

<sup>13</sup> ESBC4 Appendix T para 17

<sup>14</sup> ROD2 NP

<sup>15</sup> ROD2 Examiner's Report

does not represent a ceiling on development and will be reviewed at 5 year intervals through the plan period which may lead to additional housing land allocations;

- deletion of policy OS1 (and supporting paragraph 6.3 and figure 6.1);
- deletion of the College Playing Fields from the list of sites in Policy OS2;
- deletion of policy IN2, although keeping the projects in the general text as representing proposals that the community is seeking to achieve.

24. The Council is yet to take a decision on whether the Neighbourhood Plan should proceed to a referendum.<sup>16</sup>

### **AGREED MATTERS**

25. A Statement of Common Ground has been agreed between the appellant and the Council.<sup>17</sup> This identifies a large number of areas of agreement, reflecting the limited scope of objection set out in the Council's reason for refusal. The agreed areas include with respect to the acceptability of the proposal in terms highways and other infrastructure impact, contributions and other planning obligations, and aspects of housing land supply.

26. The summaries of cases of the main parties now set out are based on the closing submissions<sup>18</sup>, as supplemented orally, and the written and oral evidence, with references given to relevant sources.

### **THE CASE FOR BURTON AND SOUTH DERBYSHIRE COLLEGE**

#### **Development plan**

27. The starting point for the determination of the appeal is the Development Plan. That comprises only the saved policies of the adopted East Staffordshire Local Plan.<sup>19</sup> The Plan was not adopted until 2006 towards the end of its period of currency, which related only to the period until 2011. It provided for no new allocations as the Structure Plan target had been met.

28. The adopted Local Plan has very little relevance now in 2014. The settlement boundaries in policy NE1 were plainly drawn to relate only to the period to 2011. Little weight should be given to a breach of that policy, which was the conclusion of the Inspector in the recent Red House Farm appeal in Burton upon Trent.<sup>20</sup>

29. It is because of this that the Council's reason for refusal of the current appeal application does not refer to any breach of policy in the adopted Local Plan.<sup>21</sup>

#### **The NPPF**

30. In the absence of any up-to-date Development Plan, the decision in this case should be made against the guidance of the National Planning Policy

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<sup>16</sup> ESBC1 para 17

<sup>17</sup> ESBC3 Appendix T

<sup>18</sup> APP20, ESBC5, ROD6

<sup>19</sup> Extracts attached to Questionnaire

<sup>20</sup> APP14 Appendix 1 Paragraph 9.1

<sup>21</sup> ESBC2 Appendix H



Framework (NPPF). In the context of a housing appeal, a useful starting point is paragraph 49. This states that applications should be “*considered in the context of the presumption in favour of sustainable development.*” It also requires consideration of whether the Council can demonstrate a five-year supply of housing land.

### ***Five-year housing land supply***

31. There is agreement that the Council does not have a five-year supply of housing land.<sup>22</sup> The evidence of the appellant’s expert is that the Council has a supply of 2.57 years.<sup>23</sup> At about half of the level of supply that it should have, that is a very serious shortfall.
32. There are five key stages to calculating the five-year supply:
- The Annual Requirement
  - Buffer
  - Identification of a shortfall
  - Sedgefield vs Liverpool
  - Supply

### *The Annual Requirement*

33. Calculating the annual housing requirement could previously be done simply by looking at the number in the Structure Plan or more latterly the Regional Spatial Strategy (RSS), or if these were not up-to-date at the figure in the emerging equivalents assuming these were well advanced. Even after the RSS was abolished, the draft RSS in the West Midlands had continued to be used by the Secretary of State as a proxy on the basis that it had been independently tested.
34. The position has changed following the Judgment in the Court of Appeal in the case of *City of St Albans v Hunston Properties*.<sup>24</sup> This made clear that, in a section 78 appeal, RSS figures should not be relied upon to meet the wording of paragraph 47 of the NPPF. Instead, both parties should submit evidence on what is full, objectively assessed need.
35. The appellant has done this but the Council has not. The Council offers no evidence other than to continue to rely on the draft RSS housing requirement figure.<sup>25</sup>
36. The evidence provided by the appellant’s expert<sup>26</sup> is uncontested. The Council is wrong to claim that the evidence is irrelevant.<sup>27</sup> The appellant’s expert has looked at the full objectively assessed need in detail, explaining each of the steps taken in line with the advice in paragraphs 158 and 159 of the NPPF. He has set out a range of figures. A demographic-only led approach produces results of 570

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<sup>22</sup> ESBC5 Appendix T para 16

<sup>23</sup> APP13 p5 Table 1

<sup>24</sup> ESBC3 Appendix R

<sup>25</sup> ESBC3 Appendix M

<sup>26</sup> APP17

<sup>27</sup> Council’s opening submissions

to 659 new dwellings a year for the period 2012 to 2031.<sup>28</sup> He has also looked at the figures in terms of economic scenarios based on the Council's Strategy, set out in its Regeneration and Growth Plan, as required by paragraph 158 of the NPPF. This suggests that growth of 790 jobs a year will be achieved. Looking at the housing requirement based on catering for employment growth of 800 jobs a year gives rise to a requirement for nearly one thousand new homes (992) a year.<sup>29</sup> The housing requirement with just half this level of job growth (400 new jobs a year) is 730 dwellings a year.<sup>30</sup>

37. This more modest requirement has been relied upon in the appellant's evidence to examine the five-year supply position.<sup>31</sup> That is,  $730 \times 5 = 3,650$ .

#### *The Buffer*

38. The Council accepts it has a persistent record of under delivery.<sup>32</sup> That means that a 20% buffer should be applied on top of the five-year requirement<sup>33</sup>, giving  $730 \times 5 = 3,650 \times 20\% = 4,380$ .

39. This is more significant than simple maths, since it is the record of persistent under delivery that has led to the housing crisis which the country now faces and which is making life a misery for millions, especially younger people, as the Planning Minister identified in October 2013.<sup>34</sup>

#### *Shortfall*

40. The shortfall is 1,380 houses when measured against the RSS requirement using the July 2013 completion data.<sup>35</sup> The RSS is the relevant source of the housing requirement during the period of under-delivery.

#### *Sedgefield v Liverpool*

41. There is agreement on the use of the Sedgefield method by which the historic accumulated shortfall of 1,380 dwellings is added to the five-year requirement.<sup>36</sup> This approach was followed by the Inspector and the Secretary of State in the recent Red House Farm appeal.<sup>37</sup>  $730 \times 5 = 3,650 \times 20\% = 4,380 + 1,380 = 5,760$ .
42. The target that the Council needs to meet to demonstrate that it has a five-year supply of housing is therefore 5,760 dwellings.<sup>38</sup>

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<sup>28</sup> APP17 para 10.6

<sup>29</sup> APP17 para 10.9

<sup>30</sup> APP17 para 10.9

<sup>31</sup> APP13

<sup>32</sup> ESBC Appendix T para 16

<sup>33</sup> APP12 section 2

<sup>34</sup> INQ12 p20

<sup>35</sup> APP13 para 1.3

<sup>36</sup> ESBC5 Appendix T para 16; APP13 section 4

<sup>37</sup> APP14 Appendix 1 Report para 9.5

<sup>38</sup> APP13 p18 Table 1

### *Supply*

43. The appellant's expert calculates that the supply is 2,959 dwellings taking account of sites with and without planning permission that are deliverable, and applying a lapse rate of 10% (except to sites under construction).<sup>39</sup> The Council does not have the robust evidence required to rely on a windfall allowance.<sup>40</sup>
44. The appellant's figure is based on an assessment of realistic delivery. This evidence has not been contested in any way.
45. Some very large sites have now been granted permission in the Borough. That is very much the problem. They are such large sites, granted only in outline, that they will take many years to delivery housing. For example, the evidence in the St Modwen Branston appeal was that only 180 houses from the permitted 660 would be delivered in the relevant five year period.<sup>41</sup> At Lawns Farm (Branston Locks), given that there is no signed section 106 and significant highway matters to resolve, the assumption that there will be no delivery from the very large 2,500 dwellings site is reasonable.<sup>42</sup>
46. The Council should have had a new Local Plan in place by now. The Secretary of State's saving letter to the Council in 2009 made it very clear that it should be progressing a replacement development plan.<sup>43</sup> Over the last five years that has simply not happened, and the emerging Local Plan has still not even been submitted to the Secretary of State. Progress has been so slow that the emerging Plan has been robbed of most of its purpose by all the appeals that have been allowed to make up the severe shortfall in five-year supply.

### *The Council's position on the five-year supply*

47. The Council's position on the state of its housing land supply is set out in its latest statement.<sup>44</sup> This claims to be able to demonstrate a supply of 3.9 years. However, the Council offered no witness who was able to answer questions on this matter.<sup>45</sup>
48. It appears that the Council has reverted back from the requirement figure in the emerging Local Plan of 613 dwellings a year to the draft RSS figure of 650. The Council accepts that there is a shortfall, the application of the Sedgefield approach and the application of a 20% buffer.<sup>46</sup>
49. The Council offers no evidence on the issue of supply.
50. In many respect, the size of the shortfall may not actually matter. Five years is the minimum and anything below that is a serious matter. All parties agree in this case that the shortfall is something to which significant weight must be

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<sup>39</sup> APP13 p18 Table 1

<sup>40</sup> APP13 section 5

<sup>41</sup> APP13 paras 5.57-5.59

<sup>42</sup> APP13 paras 5.56-5.60

<sup>43</sup> INQ16

<sup>44</sup> ESBC3 Appendix M

<sup>45</sup> Councillor Blencowe made clear he was not able to answer questions on housing land supply

<sup>46</sup> ESBC3 Appendix T para 16

given. The importance of how much weight it is given is revealed in various recent appeal decisions.<sup>47</sup>

### **The benefits of the scheme**

51. There is no dispute that the appeal development has the ability to deliver all of the proposed houses within the next five years. It could therefore make a valuable contribution to addressing the shortfall in the five-year supply. This is the major benefit of the scheme and meets the social objective of sustainable development in paragraph 7 of the NPPF.
52. The proposal would also deliver affordable housing. The Council has agreed to reduce the amount to 15% on the basis that the sale of the land with permission would generate more money to be spent on the upgrading of the College's main building in Burton upon Trent.<sup>48</sup> Although the percentage is less, the proposal would still deliver the equivalent of 15 affordable homes. That is a matter to which significant weight should be attached, which is also agreed by all parties.
53. The proposal would also bring new people into the village to support local shops, services and facilities. The village is acknowledged to be a sustainable community.<sup>49</sup>
54. The development would bring more families, including more young families, into the village, and this is to be welcomed as the village is facing an increasingly aging population.<sup>50</sup>
55. The proposal would deliver economic benefits in the form of the construction jobs created through the building of the new homes. This is a matter to which the Government attaches considerable importance and meets the economic objective of sustainable development.
56. This is an important package of benefits. It was not properly considered by the Councillors, with the Council's witness making it clear that in his view members did "*not make a decision on the basis of the development's merits.*"<sup>51</sup>

### **The Council's case: premature to the Neighbourhood Plan**

57. The Council's case is to argue that the appeal proposal is so substantial that to grant permission would undermine the plan-making process by pre-determining decisions about the scale, location or phasing of new development that are central to the emerging Rolleston on Dove Neighbourhood Plan (NP).
58. Procedurally it is difficult to see how the NP can be made before the adoption of the present emerging Local Plan. The latter is the plan which sets out the strategic development needs for the Borough over the same time period as the NP. The adopted Local Plan plainly does not do that.
59. Consideration of that issue is probably not necessary in this case. The application was refused based on an allegation that it would be premature to the

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<sup>47</sup> APP14 & APP15

<sup>48</sup> INQ18 paras 3-16; INQ13

<sup>49</sup> Cross-examination of Cllr Blencowe

<sup>50</sup> Cross-examination of Mr Anderson

<sup>51</sup> Cross-examination of Councillor Blencowe

Rolleston on Dove NP to allow it.<sup>52</sup> For a case of prematurity to be made out, the Council needs to establish prejudice. Given the wording of the reason for refusal, that must be prejudice to the NP, albeit it refers rather cryptically to "*further information*", the meaning of which is not at all clear.

60. There would be very little prejudice to the NP as it stood at the time of the refusal. This is because the Council had by then received the Examiner's report on the NP.<sup>53</sup> The report<sup>54</sup> made clear that:
- 85 dwellings for the period 2012 to 2031 was not to be seen as a ceiling;
  - the attempt to restrict the settlement boundary to its present position (save for two small allocations of 11 units) was unjustified in light of the presumption in the NPPF;
  - the NP did not address strategic sites;
  - the attempt to designate the appeal site as a local green space was unjustified.
61. These conclusions led the Parish Council's witness to conclude that to a significant degree the appeal proposal is not in conflict with the NP as proposed to be amended in light of the Examiner's recommendations.<sup>55</sup> That is very clearly the case. As such the proposal should not have been refused because granting permission will not prejudice the NP.
62. The appellant accepts that the appeal proposal would have prejudiced the NP as it was drafted in the pre-submission version.<sup>56</sup> That is not the case with the version that is to be progressed. It is difficult to see why the Council argues that there is no real difference in prejudice between the two versions. In the first version the appeal site was allocated as an open green space, with the other being radically different in this respect.
63. Reference was made by the Parish Council to conflict with policy H1 of the NP which concerns the level of housing.<sup>57</sup> This is curious since the policy as to be revised would have no ceiling. To the extent that the reference to the figure of 85 in the policy might be viewed as an attempt to limit the extent of development, it is important to understand the provenance of that figure. It seems to be based on either:
- A poll of people's views about how much development they were willing to accept;<sup>58</sup>
  - An assessment of need based on a miscalculation of 22.9% of the quantum proposed in the emerging Local Plan for strategic villages (615 dwellings)

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<sup>52</sup> ESBC2 Appendix H

<sup>53</sup> ESBC2 Appendix F paragraph 10.2.10

<sup>54</sup> ROD2 Examiner's report

<sup>55</sup> Cross-examination of Mr Bowden

<sup>56</sup> Cross-examination of Mr Diffey

<sup>57</sup> Cross-examination of Mr Bowden; Inspector's questions

<sup>58</sup> INQ8 p1

applied on a population pro rata basis, increased by reference to the 2008 household and 2010 population projections;<sup>59</sup>

- A mid-point between the amount proposed for Tier 2 and Tier 1 Strategic Villages.<sup>60</sup>
64. None of the methods are based on an assessment of full, objectively assessed need. The figure has no evidential value in terms of the needs which the NP must address.
65. The Parish Council through its advocate made it clear that the Appendix 5 document<sup>61</sup> did not form part of the evidence that was included in the submission version of the NP. It is therefore not known what the Examiner was relying on.
66. That is perhaps the major shortcoming of a NP proceeding without the benefit of an up-to-date Local Plan. Whether or not it is lawful for a NP to be adopted before an up-to-date Local Plan, the fact remains that a NP which progresses without the benefit of an identified housing need derived from the Local Plan is operating "*in a policy vacuum*", as described by the Parish Council's witness.<sup>62</sup>
67. It would be open to a parish council to obtain its own accurate evidence of full objectively assessed need. How realistic that would be given budget constraints is a moot point. A more logical approach would be for a parish council to wait until a Local Plan has been adopted or at least had reached the latter stages of the process when it could be given significant weight. That would assist with the relevant quantum of development.
68. In the absence of either approach, there is no real basis upon which a NP can legitimately claim to address housing need for the area.
69. The appellant's expert has identified housing needs for Rolleston on Dove parish.<sup>63</sup> The requirement would be at least 300 dwellings from a pro rata distribution of the Local Plan allocation and around 441 based on a pro rata distribution of his assessment of the Borough's full objectively assessed need.<sup>64</sup> His calculations on a pro rata basis use the level of population in the parish relative to the Borough as a whole.
70. This approach was the subject of criticism but it is difficult to see how it could be done otherwise in this case. The key point is that full and objectively assessed need is not a figure based on constraints or the application of policy. It should be free from such judgments. The Judgment in the Hunston case is very clear on that issue.<sup>65</sup> Therefore until the Local Plan is adopted (subject of course to the duty to cooperate), it is not appropriate to seek to reduce the Borough wide figure below the full objectively assessed need or seek to impose a settlement hierarchy which is a policy constraint on development in rural areas.

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<sup>59</sup> INQ8 pp2-3; APP17 para 9.8

<sup>60</sup> ROD2 NP pp83-84

<sup>61</sup> INQ8

<sup>62</sup> Cross-examination of Mr Bowden

<sup>63</sup> APP17 section 9

<sup>64</sup> APP17 paras 10.12-10.13

<sup>65</sup> APP17 Appendix 2 para 2.29

71. The point of this evidence is not to try and change the content of the NP but to demonstrate that the full objectively assessed need for Rolleston on Dove is over 400 houses. Until such time as the Local Plan has been adopted, the policy constraint which seeks to reduce the level of development to a figure below this does not have effect. That is the policy constraint of the settlement hierarchy which seeks to place most development in Burton upon Trent and limit it in the rural areas.<sup>66</sup> Until such time as the emerging Local Plan is adopted, that is not relevant and the proposed settlement hierarchy has little weight.
72. There is in fact no need to argue for need being at a level of 400 dwellings since the figure of 85 dwellings is not a constraint. The Parish Council suggests the NP would need to be revised in five years time, following the advice of the Examiner.<sup>67</sup> There appears to be little policy justification for this approach. It raises a question on the point of a plan which is said to address the period up until 2031 if it is reviewed in five years time. On that basis it would only be necessary to have plans which address need from 2012 to 2017. There is no mechanism for ensuring any such review takes place and without Government funding it is not clear how it would be funded.
73. The reason for refusal does not identify any complaints about the scale of the development being inappropriate to the size of the settlement. That point was progressed by the Parish Council and others. However, the historical development of the village demonstrates that developments of this size and larger have in fact been part of its evolution.<sup>68</sup>
74. It is not argued by anyone that the development would harm the separation between Rolleston on Dove and Burton upon Trent.
75. The County Council as local highway authority raised no objection to the proposal subject to conditions.<sup>69</sup> In response to evidence submitted in support of local objections on access grounds, the Borough Council at application stage commissioned an independent review of the anticipated highways implications. This included an estimate of potential trip generation, surveys of parking on adjacent roads, and assessment of carriageway features and capacity of the access roads. Although the proposed and existing dwellings would be served off a single point of access, there is no guidance to limit this, and comparable developments with more units have previously been approved. The access would be suitable in this case, and subject to conditions and the use of a temporary Traffic Regulation Order if necessary during construction, the independent review supports that the proposal is acceptable in highways terms.<sup>70</sup>
76. The village has strong sustainability credentials.<sup>71</sup> It has a wide range of services with others shared with the neighbouring village of Tutbury (GP practice) and obviously with near-by Burton upon Trent (secondary school). For a rural village it has a very good bus service which runs from very early until very late 7 days a week. It also has a primary school, shops, post office, pubs and community

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<sup>66</sup> ESBC2 Appendix C

<sup>67</sup> ROD2 Examiner's Report p18

<sup>68</sup> ROD2 NP p7

<sup>69</sup> APP19 Appendix 1

<sup>70</sup> APP19

<sup>71</sup> APP18 paras 7.1-7.2; ESBC2 Appendix B; APP1xii) pp4-7

buildings such as the Rolleston on Dove Club and the scout hut. Planning positively is all about trying to encourage growth to protect and improve the services and facilities. The NP gives the impression that it has been designed to do the exact opposite.

77. It is therefore difficult to understand how the appeal proposal would prejudice the NP in the form now intended. Were the appeal allowed it would not prevent the two proposed allocations coming forward.<sup>72</sup> They are so small that collectively the appeal site and the allocations would not be of an inappropriate scale for the village. Even taking account of the full 85 units proposed, the combined total with the appeal site would be 185 homes for the period to 2031 (the plan period), which is broadly 90 homes for each of the two decades covered. The 2011 census identified 1,433 households in Rolleston on Dove<sup>73</sup>, so that an increase of 185 up to 2031 is an increase of just 13% (12.9%).
78. Development of the appeal site would also not prevent the open space strategy of the plan because the site is no longer proposed to be a local green space in the NP.<sup>74</sup> It would also not hinder implementation of the policies on infrastructure provision, or the policies on design, including the controversial issue of residential storey heights.<sup>75</sup> Indeed the NP if made would help bring into effect people's aspirations in this regard.
79. The NP could have taken a more positive attitude towards new development and given more encouragement to the development of new facilities including retail and health. That it has not done so is to be regretted. The Council sought front runner funding for NPs on the explicit basis that it was a growth area.<sup>76</sup> Growth is a feature totally absent from the NP.

### ***The Planning Practice Guidance***

80. The Government has now issued new Planning Practice Guidance.<sup>77</sup> As regards the Guidance on determining a planning application and specifically when it might be justified to refuse on grounds of prematurity, it is not argued by the appellant that prematurity cannot be raised as an issue. The NP has passed the publicity period. However, the Guidance is explicit that prematurity is unlikely to justify refusal of permission other than when it is clear that the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, taking the policies of the NPPF and other material considerations into account.
81. That is obviously the same test as the presumption in favour of sustainable development. Given the above it is difficult to see how the perceived harm to the settlement could be said to outweigh the benefits, especially taking account of the instruction to boost significantly the supply of housing in paragraph 47 of the NPPF and the shortfall identified in this case.
82. The NP has reached an advanced stage following the receipt of the Examiner's report.

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<sup>72</sup> ROD2 NP pp21-24

<sup>73</sup> ROD2 NP para 2.16

<sup>74</sup> ROD2 NP pp27-28

<sup>75</sup> ROD2 NP pp27-28

<sup>76</sup> INQ5, INQ6

<sup>77</sup> INQ11



83. However, the proposal is not so substantial or significant as to pre-determine the decisions about the scale of development in the NP. That may have been the case when the dwelling limit was 85, but as now proposed to be amended the NP is open ended about how much development should be accommodated.<sup>78</sup> To the extent that there is a focus on 85, that figure is plainly unjustified at this stage, at least until the Local Plan identifies a lower figure than the full objectively assessed need. The fact that the site is not to become a local green space also removed the key element of prejudice that might have arisen.<sup>79</sup>
84. Even if the appellant's argument is not agreed with on the basis of the 85 figure, and it is concluded that there would be prejudice to NP, there is then the question of weighing the conflict with other material considerations, which are the benefits of the scheme. Factors to also take into account are the provenance of the 85 figure, the appellant's evidence on need, and whether the NP does both positively plan for growth and boost significantly the supply of housing.
85. There is also very useful new guidance under the heading "*What is Neighbourhood Planning?*" This makes clear that if a NP is to progress before an up-to-date Local Plan it should be done in a spirit of collaboration and minimising conflicts. That has plainly not happened here.<sup>80</sup> The reasoning and evidence of the emerging Local Plan may also be relevant, and in this case that includes the fact that the appeal site is a draft housing allocation in the emerging Local Plan.<sup>81</sup> The absence of this collaboration must diminish the weight to be given to the NP, certainly in the context of this decision. The Examiner has skilfully found a way of saving the NP, rather than finding it has failed the basic conditions.
86. The Council's reason for refusal did not contend that allowing the development would be premature to the emerging Local Plan. The size of the proposal at 100 units is very small against the total Plan target, and many other developments have been approved in advance of the Plan.<sup>82</sup>

## Conclusion

87. Overall, the presumption in favour of sustainable development applies. The benefits of the proposal are considerable and the harm is very limited. More importantly, the conflict and prejudice to the NP (following the Examiner's report) appears illusory.
88. It is therefore invited that the appeal be allowed.

## THE CASE FOR EAST STAFFORDSHIRE BOROUGH COUNCIL

### Areas of agreement

89. The Statement of Common Ground states that: "*It is agreed between the LPA and the Appellant that the main matters requiring consideration are identified in the Council's report to Committee and that most (as noted below) have been*

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<sup>78</sup> ROD2 Examiner's Report p18

<sup>79</sup> ROD2 NP pp27-28

<sup>80</sup> APP18 paras 5.1-5.5; ESBC2 Appendix F paras 10.2.9-10.2.23

<sup>81</sup> APP18 para 3.9

<sup>82</sup> Oral addition

*agreed and will not form a ground of debate between the parties at the Public Inquiry.*"<sup>83</sup>

90. The appellant accepts that report as being both accurate and comprehensive, providing the members with the appropriate material and guidance to enable them to decide the application.<sup>84</sup>
91. The Council does not have in place an up-to-date adopted Local Plan.
92. The Statement of Common Ground further states: "*The LPA and Appellant agree that the Borough Council cannot demonstrate a 5-year land supply. It is agreed that the Council is a 20% authority and the Sedgfield method should be used to address any identified shortfall.*"<sup>85</sup>
93. It necessarily follows from the above that part 2 of paragraph 14 of the NPPF applies such that there is a presumption in favour of sustainable development in this case. This means granting permission unless "*any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.*"
94. It is agreed that the development of the appeal site would be sustainable.
95. It is also agreed that all highway issues have been resolved.<sup>86</sup>

### **Housing land supply**

96. In view of the accepted housing land shortfall, its precise extent is immaterial. In that context the appellant's detailed evidence<sup>87</sup> as regards the Borough's housing land requirement and supply is irrelevant to the decision. According to the appellant's expert: "*If below five years, it matters not what the degree of shortfall is - a shortfall is a shortfall is a shortfall.*"<sup>88</sup> The Council therefore did not cross-examine the appellant's witnesses on this matter, and as regards the inquiry that evidence is neither challenged nor conceded.
97. However, two points are made.
98. Firstly, the appellant's reliance on a pro-rata requirement figure for Rolleston on Dove is in principle wrong.<sup>89</sup> At the district level the requirement to identify an objectively assessed level of need is absolute, and a local plan must meet it, however the requisite supply is geographically distributed. At the more local level policy rules, and it is both unwarranted and unrealistic to think that the emerging Local Plan will impose a pro rata share of development on Rolleston on Dove.

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<sup>83</sup> ESBC3 Appendix T para 1

<sup>84</sup> Cross-examination of Mr Diffey

<sup>85</sup> ESBC3 Appendix T para 16

<sup>86</sup> ESBC3 Appendix T para 4

<sup>87</sup> APP13-APP17

<sup>88</sup> Cross-examination of Mr Fenwick

<sup>89</sup> APP17 section 9

99. Secondly, 450 units (90 per annum) of the difference between the appellant's assessment and that of the Council is accounted for by the fact that the appellant's calculation assumes zero development on windfall sites.<sup>90</sup>

### **Prematurity**

100. Following publication of the Examiner's Report on the Neighbourhood Plan (NP)<sup>91</sup>, it was inevitable that the Council's Planning Committee would have to grapple with the issue of prematurity. This was recognised in the updated Committee Report of 26 November 2013, which carefully advised the Committee on the principles to be applied.<sup>92</sup> In the reason for refusal<sup>93</sup>, the "*further information*" referred to is that in the November report as compared with an earlier report of 21 October 2013<sup>94</sup>.

101. The sole reason for refusal was prematurity, and the question of whether that reason is justified is (as far as the Council is concerned) the only issue in the appeal. That issue will now be considered afresh, but information about the proceedings before the Committee remain important for the following reasons:

- The principle of the approach advised in the report remains correct and relevant, not least in identifying Government advice and advice indicating the appropriate test.
- The report and transcript<sup>95</sup> together give the fullest possible picture of the information before the Committee, including the oral representations, and the discussion within Committee.
- The views and reactions of all concerned about the impact of granting or withholding permission, as expressed and recorded, is material to the decision, as it was to that of the Committee.

102. The essential factors relevant to the decision have not materially changed since last November, but the following are now available:

- Information showing that the problem which confronted the Committee has been recognised as of widespread occurrence.<sup>96</sup>
- First hand evidence from the appellant explaining the importance of the application to the College.<sup>97</sup>
- Evidence given on behalf of the Parish Council, and from three other witnesses deeply involved in the NP, expressing the consequences for the NP if the appeal succeeds.<sup>98</sup>
- Fuller discussion of the issue than was possible or realistic in Committee.

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<sup>90</sup> ESBC3 Appendix M; APP13 section 5

<sup>91</sup> ROD2 Examiner's Report

<sup>92</sup> ESBC2 Appendix F

<sup>93</sup> ESBC2 Appendix H

<sup>94</sup> ESBC2 Appendix E; ESBC1 para 19

<sup>95</sup> ESBC2 Appendix K

<sup>96</sup> ESBC3 Appendix O

<sup>97</sup> APP16

<sup>98</sup> ROD3, INQ3, INQ4

103. The Council's evidence has been given by the Chair of the Committee.<sup>99</sup> The scope of his evidence was necessarily modest, because the best evidence of the proceedings at Committee is the transcript, read with the Committee report, and he was not giving evidence as an expert. Deprived of an expert witness, Counsel for the appellant to a large extent appeared to cross-examine the Council's witness as if he were an expert, and indeed as if he personified the Council and could be quizzed on that basis.<sup>100</sup> In addition, a layman's lack of familiarity with terms of art familiar to practitioners was evident at times. For example, when he expressed the view that the presumption in favour of granting permission did not apply, he evidently meant that, because of prematurity, it did not prevail. That passage of evidence did not yield anything very relevant to the decision.
104. The problem, as it typically presents itself, arises where a NP has run ahead of the adoption of an up-to-date local plan. The logic of the legislation would suggest that a NP can and should align itself with the saved policies of the adopted local plan, even if that is out-of-date. Conversely, good planning indicates that the NP should take as its parameters those established by and through the process leading to adoption of a new local plan. However, in that event the promoters of a NP should be able to participate effectively in the local plan process, if necessary as objectors, before the commitment of development contrary to important aspects of the emerging NP. At present there appears to be no relevant case law, but that approach is supported by the new Planning Practice Guidance.<sup>101</sup>
105. In the current case the situation was and remains that the emerging Local Plan<sup>102</sup> is a material consideration, albeit that it can attract only limited weight. The weight is limited precisely because the Plan is or will be subject to objections and its final form cannot be assumed. This includes in relation to the contested issues as regards the quantum of housing required at Rolleston on Dove, including its status as a Tier 1 Strategic Village, and the allocation of the appeal site.<sup>103</sup>
106. In this case, to the limited extent that the emerging Local Plan has weight, it operates in favour of the appellant due to the allocation of the appeal site for housing development.
107. However, as advised in the Committee report, the Rolleston on Dove NP is also a material consideration, and attracts some weight. The appellant's extreme contention<sup>104</sup> that it carries no weight at all, and that in effect the conflict between the emerging Local Plan and the emerging NP can simply be ignored, should be rejected as untenable. The NP has reached and passed the point at which it requires consideration in the context of prematurity.<sup>105</sup>
108. To deny it any weight would involve condemning the NP to a limbo in which it falls out of sight between two stools. On the one hand, and despite the

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<sup>99</sup> ESBC4

<sup>100</sup> Cross-examination of Councillor Blencowe

<sup>101</sup> INQ11

<sup>102</sup> ESBC2 Appendix C

<sup>103</sup> ESBC1 para 24

<sup>104</sup> Cross-examination of Mr Diffey

<sup>105</sup> ESBC2 Appendix F para 10.2.19

Examiner's approach, its claim to an independent existence based on consistency with the adopted Local Plan is to be disregarded (a position which the Council in fact takes). On the other, it is deemed appropriate that the right of the Parish Council and others to contest a proposed allocation in the emerging Local Plan is to be rendered nugatory by an immediate commitment to development which conflicts fundamentally with policies at the heart of the emerging NP.

109. The appellant's planning witness distinguished the position as between the submitted NP, against which he accepted there would be a substantial and adverse cumulative effect from the proposal, and the modified NP, against which he said the conflict would be resolved.<sup>106</sup> The latter assertion is unrealistic since, even if the assumed modifications are made, there would still be substantial conflict between the NP and the emerging Local Plan, which was the position advised in the Committee report.<sup>107</sup> This can be tested by seeing whether it would be realistic to take the NP forward to referendum were the appeal to be allowed. If it were allowed, there would be a need for further modification to incorporate a commitment that would then be 85 plus 100 dwelling units. That would be very different to the current version, and the difference cannot be reconciled. Furthermore, the Parish Council says that in those circumstances it would abandon the NP.<sup>108</sup>
110. In its current form, the emerging Local Plan relies expressly on the status of Rolleston on Dove as a Tier 1 Strategic Village to justify the level of development proposed there, including a strategic allocation on the appeal site.<sup>109</sup> That status is contested by the Parish Council and others.<sup>110</sup>
111. There are therefore two alternatives to be faced. If permission is granted at this stage, before the cart and horse can be put in the right order by properly establishing the parameters governing the NP through the Local Plan process, both plans would be pre-empted by that commitment. If permission is withheld, there would be a delay, but no pre-emption.
112. As set out in the Committee report<sup>111</sup>, the now cancelled The Planning System: General Principles (2005) and the new Planning Practice Guidance<sup>112</sup> each refer to decisions about the scale, location or phasing of new development. Both scale and location are relevant in this case.
113. The Guidance echoes the terms used in paragraph 14 of the NPPF in the reference to the adverse impacts of granting permission significantly and demonstrably outweighing the benefits.
114. In the subsequent text, consideration a) is satisfied, in that the grant of permission would undermine the plan-making process by predetermining decisions about the scale and location of new housing development central to both the emerging Local Plan but also, and especially, the emerging NP.

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<sup>106</sup> Cross-examination of Mr Diffey

<sup>107</sup> ESBC2 Appendix F para 10.2.22

<sup>108</sup> ROD3

<sup>109</sup> ESBC2 Appendix C

<sup>110</sup> ESBC1 para 6

<sup>111</sup> ESBC2 Appendix F paras 10.2.18-19

<sup>112</sup> INQ11

115. Consideration b) refers to "*the emerging plan is at an advanced stage but is not yet formally part of the development plan for the area.*" The Rolleston on Dove NP is at an advanced stage. In any event, the present delay can scarcely be held against it, in so far as it is required to await progress on the Local Plan.
116. Ultimately there has to be a judgment on whether in this case the adverse impacts significantly and demonstrably outweigh the benefits.
117. The benefits are not contested. In present circumstances a development of 100 houses on a sustainable site which is capable of completion within five years is undoubtedly a benefit of substantial weight. There would in addition be a 15% affordable housing contribution.
118. In contrast, the appellant does not even recognise, let alone weigh, the harm that would result from the grant of permission. That harm was recognised by the Committee.
119. The credibility of the neighbourhood plan system in East Staffordshire and possibly further afield is at stake. If neighbourhood plans are to respect the requirements of emerging local plans, it is contrary to the public interest to permit development which conflicts with important elements of any such plan before its promoters and supporters have been able to pursue relevant objections to the local plan to determination.
120. In this instance the Parish Council steering group indicates that if this appeal succeeds the NP will not proceed. The reasons have been cogently and indeed passionately explained by several witnesses<sup>113</sup>, and to an impartial observer ought to be recognised as not only bona fide, but logical. Such a reaction is both understandable and realistic.
121. The Council has no present intention that the submitted version of the Local Plan will differ from the pre-submission version in identifying Rolleston on Dove as a Tier 1 Strategic Village and including the appeal site as an allocation for housing development. However, it cannot be assumed this will be the case, because the version of the plan for submission will need to be approved by a resolution of the full Council. If the decision on this appeal is made before the Local Plan is submitted for examination, it will be taken into account at that stage.<sup>114</sup>
122. The Council has not yet decided whether the NP should proceed to referendum, with or without modifications, and has not adopted a timescale within which that decision will be taken.<sup>115</sup>
123. To pre-empt both the Local Plan and the NP by permitting the development at this stage would send out the message that, at a time when developers are scrambling to secure planning permissions before a new local plan is adopted and a five-year land supply is secured, emerging neighbourhood plans will be ignored. That is seriously contrary to the public interest.

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<sup>113</sup> Mr Anderson, Mr Edwards, Mr Bowden

<sup>114</sup> ESBC1 para 7

<sup>115</sup> ESBC1 para 17

124. In circumstances such as this there is always the temptation to blame the local authority whose local plan is not yet up-to-date or whose land supply is below five years. That temptation should be resisted, because what is important is the public interest, a point well made by the Court of Appeal in the Hunston case.<sup>116</sup>
125. The case of Larkfleet Ltd v SSLG [2012] provides relevant and useful guidance on prematurity.<sup>117</sup>
126. Ultimately the outcome of the appeal depends on the weight attached to the consequences of prematurity set against the presumption and the factors in favour of development. The weight to be given to prematurity "*will depend crucially on the individual circumstances of each case*", as noted in the Larkfleet judgment<sup>118</sup>. In this case, the adverse consequences of pre-empting the outcome of both the Local Plan and the Neighbourhood Plan are so severe that prematurity is a factor of decisive weight which should require the rejection of the appeal.

## THE CASE FOR ROLLESTON ON DOVE PARISH COUNCIL

### The appeal

127. The Parish Council supports the Council's refusal of the appeal application, but has its own particular case for opposing the grant of permission.<sup>119</sup>
128. The Neighbourhood Plan (NP) does not have to be in conformity with the emerging Local Plan, but rather the adopted Local Plan. Furthermore, the emerging Local Plan is flawed in its allocation system of strategic villages.<sup>120</sup>
129. The Rolleston on Dove NP is at an advanced stage and has involved a significant amount of work by a large number of volunteers in the community.<sup>121</sup> As required by the NPPF, it is positive about growth.
130. If the appeal is granted and 100 houses are permitted to be constructed on the site, this would undermine and render redundant the housing policies of the NP and pre-determine the status of Rolleston on Dove as a Tier 1 Strategic Village.
131. The Parish Council and NP Steering Group are of the opinion that, in those circumstances, there would be little choice but to abandon the NP.

### Prematurity

132. The sole reason for refusal was prematurity.<sup>122</sup> The Parish Council does not seek to raise issues beyond this, except that post the Localism Act it is also necessary to give weight to the extent of community involvement in the development of the NP and the frustrated legitimate expectations should this have to be abandoned in the event that the appeal is allowed.

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<sup>116</sup> ESBC Appendix R paragraph 31

<sup>117</sup> ESBC Appendix P paragraphs 54-60

<sup>118</sup> ESBC Appendix P paragraph 60

<sup>119</sup> ROD1

<sup>120</sup> ROD3 section 3

<sup>121</sup> INQ3, INQ4

<sup>122</sup> ESBC2 Appendix H

133. It is an agreed position between the Council and the appellant that the Council does not have a five-year housing land supply.<sup>123</sup> That is not something the Parish Council seeks to dispute.
134. Further, it is accepted that paragraph 14 of the NPPF, the presumption in favour of sustainable development, is engaged.<sup>124</sup> However, it is contended that that the adverse impacts associated with prematurity do significantly and demonstrably outweigh the benefits of this proposal.
135. The Government's new Planning Practice Guidance deals explicitly with the matter of prematurity and neighbourhood plans.<sup>125</sup>
136. It sets down a number of criteria which if satisfied could allow prematurity to be used as a reason for refusal. Prematurity is unlikely to justify refusal except where "*it is clear that the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, taking the policies in the Framework and any other material considerations into account*".
137. This is an almost identical standard to that under paragraph 14 of the NPPF.<sup>126</sup> From this it follows that if the Council's reason for refusal is to be upheld it must be demonstrated that the adverse impacts of prematurity do significantly and demonstrably outweigh the benefits of the proposal.
138. The Practice Guidance goes on to clarify the likely circumstances where prematurity is likely to warrant refusal of a proposal:
- "the development proposed is so substantial, or its cumulative effect would be so significant, that to grant planning permission would undermine the plan-making process by predetermining decisions about the scale, location or phasing of new development that are central to an emerging Local Plan or Neighbourhood Planning."*
139. It goes on to state that refusal on grounds of prematurity will seldom be permitted "*in the case of a neighbourhood plan, before the end of the local planning authority publicity period.*"
140. Before turning to whether or not the consequences associated with the approval of this appeal are sufficient to satisfy the requirements above regarding prematurity it is necessary to deal with the status to be afforded to the NP.
141. It is accepted by all parties that the adopted Local Plan is not up-to-date. It is also accepted by all parties that the emerging Local Plan can be afforded limited weight. Notwithstanding this, the appellant's planning witness asserted that, in relation to its persistent strategic housing allocation of the appeal site, the emerging Local Plan attracts greater weight.<sup>127</sup> That is attempting to have things both ways.

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<sup>123</sup> ESBC3 Appendix T para16

<sup>124</sup> Cross-examination Mr Bowden

<sup>125</sup> INQ11

<sup>126</sup> Accepted in cross-examination by Mr Bowden

<sup>127</sup> Cross-examination of Mr Diffey



142. The current situation amounts to a policy vacuum in which the only substantive guidance comes from the NPPF.<sup>128</sup> Were the NP to be made, this would be of great utility in providing plan-led development guidance in the area of Rolleston on Dove.
143. With modifications the NP could proceed to adoption. This illustrates the usefulness of the NP as a whole, and its importance when there is no Local Plan.
144. The appellant asserts that the NP can be afforded little weight because it was assessed against the adopted Local Plan, which is out-of-date, rather than the emerging Local Plan. However, the NP was validly assessed against the Local Plan, which is what it was required to be assessed against.<sup>129</sup> The Parish Council's witness accepted that, beyond a ministerial comment, he could not direct attention to any guidance or authority that would support this viewpoint. However, there is nothing to show that a NP is required to be assessed against an up-to-date Local Plan or the emerging Local Plan. He is involved in the development of around 20 neighbourhood plans across the country, many of which are proceeding against the backdrop of there not being an up-to-date Local Plan.<sup>130</sup> The new Planning Practice Guidance suggests that this interpretation is correct.
145. A NP that has been assessed against an out-of-date local plan can carry the same weight as one that is up-to-date. The logic is that a NP can only be assessed against what is in place and there is no authority to suggest that a NP cannot be made where there is not an up-to-date local plan.
146. Furthermore, the Rolleston on Dove NP has not simply been assessed against the adopted Local Plan but also against the NPPF and national guidance. This is illustrated in the Examiner's report both in general terms and with each specific policy also assessed against national guidance.<sup>131</sup> Indeed it is a legal requirement for neighbourhood plans to have regard to national policies and advice contained in guidance issued by the Secretary of State, and contribute to the achievement of sustainable development. Following this assessment the Examiner ultimately concluded that the NP does meet all the statutory requirements.<sup>132</sup>
147. The appellant argues that the weight to be given to the NP is undermined because there has not been collaboration with the Borough Council.<sup>133</sup> However, reaching agreement is not a requirement, although was attempted.
148. It is also important to note that the NP does not simply conform with the adopted Local Plan, it in fact goes beyond this. Most notably with regard to housing, the adopted Local Plan does not provide for any housing growth in Rolleston on Dove. By contrast the NP, in line with the NPPF's requirement to be positive about growth, provides for 85 houses over the plan period.

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<sup>128</sup> Cross-examination of Mr Bowden

<sup>129</sup> Cross-examination of Mr Bowden

<sup>130</sup> Cross-examination of Mr Bowden; INQ7

<sup>131</sup> ROD2 Examiner's Report pp 8-10

<sup>132</sup> ROD2 Examiner's Report p30

<sup>133</sup> Cross-examination of Mr Diffey

149. In terms of the Guidance on prematurity, it is clear that the NP has passed the local planning authority publicity period. It is at an advanced stage having been through the examination process, and the Parish Council has indicated its willingness to accept the modifications suggested. The only steps that therefore remain before it can be made are for the Council to issue its report and for the NP to go to referendum. Accordingly, under the Guidance, the NP is at a sufficiently advanced stage to engage the possibility of refusal on grounds of prematurity.<sup>134</sup>
150. Turning to the impact that approval of the scheme would have, this would be to undermine the principle of policy H1. That policy provides for 85 houses to be developed in Rolleston on Dove over the plan period, subject to the modification made by the Examiner providing for a five yearly review. The appeal scheme is for 100 houses. Under policy H1 the housing growth is allocated across a number of sites rather than on one large site, as is proposed in the appeal development. This is inappropriate development given the scale of the village.
151. There is therefore clear conflict with policy H1. Although there have previously been estate developments in the village, it is necessary to look at the situation as it exists now.<sup>135</sup>
152. It is self-evident that the appeal scheme proposes more housing development than the NP permits and that it proposes it on a site that is not allocated for development. The appellant argues that 100 houses represents a very small percentage of the overall housing requirement of the Borough. That may well be the case, but is irrelevant. The Practice Guidance suggests that it is possible to have prematurity with regard to a neighbourhood plan. Such plans deal only with a very small area and the impacts of a proposal have to be considered in that context. The appellant's planning witness accepted that the impact is to be assessed locally.<sup>136</sup>
153. Therefore, it is the scale of the development in the context of Rolleston on Dove that is significant. The proposal undermines policy H1, pre-determining the scale and location of development in the village.
154. Policy H1 would further be undermined as it does not include reference to this allocation. Even were the policy modified as recommended, there would still be no reference to this site. The policy would become redundant and irrelevant, and this outcome would be pre-determined.
155. There would also be pre-determination on the status of the village as a Tier 1 settlement in the emerging Local Plan.<sup>137</sup> There are flaws in that allocation, and it is yet to be properly assessed.<sup>138</sup> The village would appear to fall properly between Tier 1 and Tier 2. In that respect the proposal is again in conflict with the NP. Weight should also be attached to the community's involvement in preparation of the NP.

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<sup>134</sup> Accepted in cross-examination by Mr Diffey

<sup>135</sup> Cross-examination of Mr Andersen

<sup>136</sup> Cross-examination of Mr Diffey

<sup>137</sup> ESBC2 Appendix C

<sup>138</sup> ROD3 section 3

## Benefits of the scheme

156. It is accepted that the proposal is sustainable development, and no issue is taken with the benefits. It is noted that affordable housing is only at 15% and the Parish room and changing facilities would not be deliverable.<sup>139</sup>

## Conclusion

157. In the overall balance, the adverse impacts in terms of prematurity and community involvement significantly and demonstrably outweigh the benefits. Allowing the appeal would remove the ability of a significant remaining objection to a strategic site being determined, and take away a community's right to be involved in this.

## THE CASES FOR OTHER PARTIES WHO GAVE EVIDENCE AT THE INQUIRY

### Frank Bather

158. Mr Bather represents East Staffordshire Sports Council.

159. The loss of the land from sports ground use is a loss to the community. In contrast to other sports grounds it remained dry. It provided extensive facilities and was well used by groups in the area.<sup>140</sup>

160. Subsequently this changed and children were banned for the site, and it fell into a poor state.

161. Sport is vital to education and the community, which has been let down by the changed position of the Sports Council in accepting a commuted payment.<sup>141</sup>

### Simon Anderson<sup>142</sup>

162. Mr Anderson is a local resident and parish councillor.

163. Extensive representations were made by local people on the planning application and as part of the consultation on the Neighbourhood Plan and the emerging local plan. Residents in Rolleston on Dove are clearly sensitive to local issues but also recognise the wider planning process in the Borough.

164. Neighbourhood planning has been the enabler for passion and determination to make a difference within the community. It has involved a very diverse cross section of the community. This has been a credit to Localism, and local people should be proud of what has been achieved. Local people have given thousands of hours to the NP.

165. Allowing this development would in one single action destroy the NP and the faith of people both locally and nationally in the democratic bottom upward planning process. This would be brushed to one side simply because large corporate and government bodies do not have everything in place.

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<sup>139</sup> ROD3 section 4

<sup>140</sup> INQ2 photograph

<sup>141</sup> INQ2 article

<sup>142</sup> INQ3

166. The NP can stand on its own. With the Examiner's recommendations it provides a unique approach to housing numbers over the plan period, allowing through a five year review for the community to introduce additional housing.
167. Rolleston on Dove is one of the early successes in the neighbourhood planning process. Destroying the NP would send a massive signal that the effort can so easily be wasted by developers and land owners who wish to take advantage of the many weaknesses in the planning process.
168. Homes would be built in a location that people do not want, and are unlikely to be of a style and type appreciated by local people. They should be allowed to decide where homes are built.
169. The site is not in the centre of the village, but a considerable distance from many of the limited capacity services. The site is not able to receive a bus service. There is no health facility in the village.
170. Sustainability should be based on the capacity and capability of services to grow with need and not simply on whether something exists.
171. It is questioned how construction vehicles would access the site with the difficulty of negotiating the adjoining estate roads. It is not acceptable to have car parking a long way from homes. Construction impact is a major concern for many.
- Barry Edwards**<sup>143</sup>
172. Mr Edwards is chairman of the Rolleston on Dove Neighbourhood Plan Steering Group.
173. The residents of Rolleston on Dove grasped the opportunity offered by neighbourhood plans to shape the area in which they live. The steering group was formed at a public meeting in October 2011 of more than 200 residents.
174. It was accepted that there would have to be some development in the village, but the NP was seen as a mechanism to have a meaningful say in what was built and where.
175. Many thousands of hours have been freely given to produce the NP, which truly reflects the aspirations of the local community. It has not been an easy process. Advice was sought from various sources. Every effort was made to comply with the NPPF, but it was not possible to produce evidence of 'need'. The Borough Council was consulted but gave no clear guidance. It was decided to include the number of new houses considered acceptable by most respondents to a questionnaire, which was up to 85.
176. The Parish Council and others challenge the methodology used by the Borough Council to determine Rolleston on Dove as a Tier 1 Strategic Village. Given the impact that an incorrect determination could have, it is disappointing that there is no mechanism other than judicial review to have this independently checked before the Local Plan is examined. If the appeal is granted and then Rolleston on Dove is downgraded to Tier 2, it would be stuck with a development that is far larger than required and in a position that the community objects to. The

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<sup>143</sup> INQ4

application was therefore correctly refused on grounds of prematurity due to the significant undermining it could have on the NP.

177. The Examiner's recommendation to remove the development boundary has been agreed. The appeal site is outside the existing boundary.
178. The Borough Council has always had a target date of 22 May 2014 for the referendum to coincide with the EU elections.
179. The implications of the decision on the appeal will be of national importance, being seen as determining the future of neighbourhood planning. If allowed, the steering group would be recommended to abandon the NP as it would not deliver what the community has said very clearly they want, which is no large scale developments. It would also be unlikely to pass a referendum ballot.
180. Neighbourhood plans should not be brushed aside to fit in with the ambitions of developers. The whole principle is to give the community a say. Local plans should not allocate development sites in areas where neighbourhood plans are being produced, but the quantum should be agreed and the location of development determined by the community through the neighbourhood plan.
181. The Borough Council was correct to refuse the development on grounds of prematurity.

## WRITTEN REPRESENTATIONS

### Representations Made at Appeal Stage<sup>144</sup>

182. There are **7 individual written representations** on the appeal. These raise objections on grounds of prematurity to the Neighbourhood Plan, loss of open space/playing fields, access, effect on village services, flooding and other infrastructure impact. There is also a written representation from the **Rolleston on Dove Neighbourhood Plan Steering Group**, with the grounds of objection raised covered in the above case of the Parish Council.
183. **Andrew Griffiths MP** has written in opposition to the proposal. He is the local Member of Parliament for Burton and Uttoxeter. He states that the proposal is in direct conflict with the clearly expressed wishes of the local community, as evidenced by the Neighbourhood Plan, and refers to the work put into the Plan. He adds that granting the appeal would be in direct contrast to the very principle of localism that underpins neighbourhood plans, and that this is a significant test case for the guidance on prematurity.

### Representations Made at Application Stage

184. The representations received by the Council as a result of its consultation on the planning application were attached to its appeal questionnaire and summarised in the Committee report of 25 November 2013<sup>145</sup>. The report records that in total **325 single representations of objection plus a further 331 standard letters of objection** were received. The report sets out an analysis of the matters raised in the objections. They generally are on grounds

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<sup>144</sup> INSP1

<sup>145</sup> ESBC2 Appendix F Sections 4.0 & 5.0

repeated by the Parish Council and third parties at appeal stage. The report records that **3 letters of support** were received.

185. The report also sets out the responses from **consultative bodies** to the application. These were all of no objection, with suggested conditions as appropriate, other than objections raised by Staffordshire Playing Fields Association, Rolleston on Dove Parish Council and Tutbury Parish Council. The Sports Council initially objected on grounds of the loss of playing fields, but removed the objection subject to the payment of a contribution towards the provision of changing rooms at Craythorne Fields.

## **CONDITIONS**

186. A set of suggested planning conditions agreed between the appellant and the Council in the event of the appeal being allowed was put forward at the inquiry.<sup>146</sup> These were discussed, and a number of changes were agreed in response to my comments, as follows:

- The addition of a reference to sustainable drainage to condition 9 on disposal of foul and surface waters, together with a cross reference to condition 21 on compliance with the submitted flood risk assessment.
- Addition of an implementation clause to condition 11 on hedgerow and tree protection.
- Condition 14 on construction noise to be added to the requirements of condition 15 on a construction management plan.
- Condition 18 on a travel plan to be deleted as this is more precisely dealt with by a planning obligation.
- Condition 19 on details of energy saving measures to be deleted as insufficiently precise and dealt with adequately by building regulations.

## **PLANNING OBLIGATIONS**

187. The submitted legal agreement<sup>147</sup> is between Burton and South Derbyshire College, East Staffordshire Borough Council, and Staffordshire County Council. The planning obligations contained in its Schedules are as follows.

188. Schedule 1 sets out a number of general obligations relating to giving notice of commencement and occupation.

189. Schedule 2 deals with education. This provides for payment of a sum of £535,062 index linked towards educational facilities.

190. Schedule 3 is unused.

191. Schedule 4 provides for implementation of a scheme of landscaping and public open space within the site, including requirements on timing and future maintenance.

192. Schedule 5 sets out requirements on a Travel Plan, including implementation and monitoring, with payment of £6,200 index linked to cover the cost of this.

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<sup>146</sup> INQ9

<sup>147</sup> INQ19

193. Schedule 6 provides for payment of £50,000 index linked towards the provision of and maintenance of community facilities, which may include play equipment or a contribution towards a parish room in the vicinity.
194. Schedule 7 deals with a contribution of £65 per dwelling for waste collection containers.
195. Schedule 8 on highway provisions requires payment of £3,000 index linked for a temporary traffic regulation order should this be required during construction works.
196. Schedule 9 provides for an affordable housing scheme. This comprises a contribution of £58,400 index linked multiplied by 8% of the number of units, plus 7% of dwellings on site, giving a total equivalent of 15% provision. Clauses cover restrictions on timing, construction and occupation of the units.
197. Schedule 10 requires payment of £150,000 index linked towards the construction of changing facilities at Craythorne Road sports field, which adjoins the site.
198. The Council and the appellant have provided a joint statement covering the obligations in Schedules 4, 6, 7, 9 and 10. This addresses the tests in Regulation 122 of the Community Infrastructure Levy Regulations 2010 and explains in each case why it is considered that the obligations meet these, dealing with needs that would arise from the development. Copies of local guidance documents covering the relevant matters, dealing with the basis of the contributions that are sought from developments and how these will be spent, are provided.
199. On affordable housing, it is explained that provision at 15%, and therefore less than the 30% normally sought, is acceptable on the basis that the proceeds will be used by the appellant to invest in improving College facilities in Burton upon Trent. This spending restriction is not the subject of an obligation, having been removed from the agreement on the basis of not being necessary<sup>148</sup>, but the Council is satisfied that the proceeds would be used in this way.<sup>149</sup>
200. Separate justification is provided by the County Council as education authority for the education contribution. Against the background of local and national policy this explains why a need for new facilities would arise and how this would be met by way of the contribution, to be divided between additional primary school, secondary school and post-16 aged places.
201. The County Council as highway authority has also provided justification for the Travel Plan and traffic order obligations, again with references to local and national policy and the expected impact of the development.

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<sup>148</sup> INQ14, INQ18

<sup>149</sup> INQ18

## CONCLUSIONS

202. The numbers in square brackets in this section are references to previous paragraphs in the Report which are particularly relied upon in reaching the conclusions.

### Main Considerations

203. Having regard to the Council's reason for refusal of the application, the relevant policy context and the evidence to the inquiry, the main considerations that need to be addressed are as follows:

- i) whether withholding permission on grounds of prematurity in terms of prejudice to the emerging development plan is justified having regard to the housing land supply position in the Borough and the presumption in favour of sustainable development;
- ii) the planning conditions and planning obligations that are required in the event of permission being granted and the likely effectiveness of these with respect to mitigation of impacts on infrastructure and the environment.

#### i) Prematurity

##### *The Development Plan and the housing land supply position*

204. The site lies outside the settlement boundary of Rolleston on Dove contained in the saved East Staffordshire Local Plan 2006. The proposal for a residential development on the site does not meet the specifications of acceptable types of development outside development boundaries listed in policy NE1 of the Local Plan. The proposal therefore does not accord with the development plan. [9,12,28]

205. The National Planning Policy Framework sets out an aim in paragraph 47 to boost significantly the supply of housing. As part of this, it requires local planning authorities to identify and update annually a supply of specific deliverable sites sufficient to provide five years worth of housing against their housing requirements, with an additional buffer of 5% (moved forward from later in the plan period) to ensure choice and competition in the market for land. The Framework indicates that the buffer should be increased to 20% where there has been a record of persistent under delivery of housing.

206. According to paragraph 49 of the Framework, housing applications should be considered in the context of the presumption in favour of sustainable development, which is contained in paragraph 14. It requires that relevant policies for the supply of housing should not be considered up-to-date if the local authority cannot demonstrate a five-year supply of deliverable housing sites.

207. The statement of common ground between the Council and the appellant records agreement that the Borough cannot demonstrate a five-year housing land supply. It is also agreed that the Council is a 20% authority and that the 'Sedgefield method' should be used to address any identified shortfall, whereby the accumulated shortfall is added to the five-year requirement rather than spread out over a longer period. The evidence on the shortfall that has arisen in the Borough supports this approach. [31,32,92,133]



208. The Council's most recent calculation of its five-year housing land position using this approach is that there is a supply of 3.9 years. The appellant quantifies it as 2.57 years. The Council's calculation uses a figure of 650 dwellings per year as the requirement for the Borough. This is derived from the draft review of the West Midlands Regional Spatial Strategy. The appellant has carried out a separate assessment of the Borough's housing requirement for the period 2012 to 2031, which produces a range of figures. A demographic-only led approach gives a requirement of between 570 and 659 dwellings. An approach catering for employment growth, using the Council's expectation of this being nearly 800 jobs a year, leads to an annual requirement of 992 dwellings. Based on half this level of jobs growth the requirement is 730 dwellings. This latter figure has been used in the appellant's calculation of land supply. The appellant's detailed assessment of the dwelling requirement has not been contested. [31,33-42,47,96]

209. There are some differences between the parties in terms of the extent of the supply of sites, but in the context of the degree of common ground on the five-year shortfall these were not explored at the inquiry. There is also agreement that, in view of this common ground, it is not necessary to reach a conclusion on the precise size of the shortfall. There is sufficient evidence to indicate that, as measured against the full, objectively assessed housing needs for the Borough (as required by paragraph 47 of the Framework), there is a substantial shortfall in the five-year supply. This is a matter to which significant weight should be given in the decision. [43-50,96]

210. The adopted Local Plan related to the period up to 2011, and its settlement boundaries were drawn only to address development needs to that date. All parties agree that, having regard to this and the absence of a five-year housing land supply, the Local Plan is not up-to-date. It can be noted that the Council does not rely in any way on a conflict with policy NE1. [11,28-29,91,141,144]

### ***Sustainable development***

211. The village of Rolleston on Dove, with a population of some 3,276, lies to the north of Burton upon Trent, which is the main urban centre in the Borough. It has a primary school, shops, post office, some community facilities and a 7-day a week bus service. Other facilities are shared with neighbouring settlements or available relatively nearby including in Burton upon Trent. [8,76]

212. The site, which has not been used for playing fields for a number of years, is abutted on two sides by existing housing development. It lies closer to the centre of the settlement than the existing housing to the east. Visually the site is well contained, and its development would result in no harmful reduction in separation between settlements. No site specific objection to the proposal has been raised by the Council. The addition of 100 units in a single development would not be inconsistent with previous estate-type expansions of the village. Having regard to the economic, social and environmental dimensions of sustainable development referred to in paragraph 7 of the Framework, and all of its policies in paragraphs 18 to 219 taken as a whole, the proposal can be regarded as sustainable development. This description was agreed by all main parties at the inquiry. The presumption in favour of sustainable development set out in the Framework therefore applies. [8-9,30,73,74,87,93-94,134,151,156]

213. Paragraph 14 of the Framework sets out how the presumption should be applied in decision-taking. According to this, where the development plan is absent, silent or relevant policies out-of-date, as in this case, permission should be granted unless the 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 specific policies in the Framework indicate development should be restricted. None of the latter are applicable to this proposal.
214. There is no dispute that all of the dwellings within the proposed development could be delivered within five years. Given the housing land supply position in the Borough, and the importance attached in the Framework to boosting the supply of housing, this potential housing gain represents a very important benefit. In addition, there would be a contribution to affordable housing equivalent to 15% of the units. The appellant reasonably contends that the incoming population would help support local services, and that construction jobs during the course of the development would contribute to economic growth. The proposal would therefore bring forward a number of benefits that carry substantial weight. [51-56,117,156]

### ***Prematurity***

215. The sole objection raised by the Council, supported by Rolleston on Dove Parish Council and others, is one of prematurity. [7,57,101,127,132]
216. Advice on the circumstances in which it might be justifiable to refuse planning permission on grounds of prematurity is given in the new Planning Practice Guidance. This states that, in the context of the Framework and in particular the presumption in favour of sustainable development, arguments that an application is premature are unlikely to justify a refusal of planning permission other than where it is clear that the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, taking the benefits and any other material considerations into account. It is noted that this is the same test as applies more generally to decisions on sustainable development under the Framework. [80-81,112-113,135-136]
217. The Guidance adds that such circumstances are likely, but not exclusively, to be limited to situations where two criteria are met. Firstly, that the development is so substantial, or its cumulative effect would be so significant, that to grant permission would undermine the plan-making process by predetermining decisions about the scale, location or phasing of new development that are central to an emerging Local Plan or Neighbourhood Planning. Secondly, that the emerging plan is at an advanced stage but is not yet formally part of the development plan for the area. It adds that refusal will seldom be justified in the case of a Neighbourhood Plan before the end of the local authority publicity period; and that where permission is refused on ground of prematurity, the local planning authority will need to indicate clearly how the grant of permission would prejudice the outcome of the plan-making process.

### ***Emerging Local Plan***

218. Prematurity to the emerging Local Plan has been referred to in the Council's case, although this was not cited in its reason for refusal of the application. The Pre-Submission version of the Plan published in October 2013 identifies Rolleston

on Dove as one of four Tier 1 Strategic Villages in the settlement hierarchy of policy 2. Under policy 4 which distributes housing growth, the appeal site is shown as a strategic allocation for 100 units. Allowing the appeal would in effect amount to a decision on this proposed allocation in advance of the Local Plan being finalised, and prejudice the outcome in that respect. [7,16-18,86,105,108,110-111,114]

219. However, the emerging Local Plan is currently at a relatively early stage. There are outstanding objections including to the Tier 1 designation of Rolleston on Dove, questioning the methodology and accuracy of this, and to the allocation of the appeal site. [16-18,105,121,155]
220. In these circumstances there is agreement that the emerging Local Plan carries only limited weight. Although the proposal therefore draws little weight from its consistency with the current version, correspondingly little weight can be given to the objections that are being pursued through the plan preparation process. [71,104-106,141]
221. Furthermore, the agreement by the main parties that the appeal proposal represents sustainable development does not depend on acceptance of the methodology or detail of the Strategic Village designation. In addition, the scale of the development is very limited by comparison with the total housing target of 11,648 dwellings over the plan period in the current version. In these circumstances the proposal would not to a significant degree undermine the plan-making process by predetermining decisions about the scale, location or phasing of new development that are central to the emerging Local Plan. [17,86]

#### *Emerging Neighbourhood Plan*

222. The Council's reason for refusal refers specifically to the Rolleston on Dove Neighbourhood Plan (NP). The submission version of the NP was issued in July 2013. It contains a number of policies relevant to the appeal proposal. Firstly, policy H1 provides for 85 net additional dwellings in the parish over the period 2012 to 2031. It states that, along with sites already in the planning process, these will be delivered on allocated sites identified in policy H4 and through small-scale development on windfall sites. Secondly, a settlement boundary defined in policy OS1 excludes the appeal site, and under the policy development outside the boundary will not be permitted except on sites which have permission or are allocated in the NP itself. Thirdly, Policy OS2 identifies a number of open spaces of community value, including the appeal site ("*The College Playing Fields*"), where development will be strongly resisted, and policy IN2 provides that "*College Field [be] returned to an operational sports ground*". [7,19-22]
223. The NP has been subject to examination, with the Examiner's Report issued in October 2013. He made a number of recommendations for modifications, including with respect to the above policies. In relation to policy H1, this was to modify the policy so that it refers to 85 units being an assessed housing requirement that will be met over the plan period; and with the addition that it does not represent a ceiling on development and will be reviewed at five year intervals through the plan period which may lead to additional housing land allocations. He also recommended deletion of policies OS1 and IN2 (while keeping the projects in the text of the plan as representing proposals that the community is seeking to achieve), and of the appeal site from the list of sites in policy OS2. [23,60]

224. The Examiner concluded that, subject to these modifications, the NP meets the statutory requirements for a neighbourhood plan, and on this basis he recommended that the NP should proceed to referendum. At the inquiry the Parish Council made clear its intention that the recommended modifications would be incorporated into a revised version of the NP. There is at present no commitment by the Borough Council for the NP to proceed to a referendum or a timetable for this. [24,62,77,109,143,149]
225. There is agreement that the NP has reached the end of the publicity period, and that it can be considered to be at an advanced stage, therefore meeting the criterion of the Guidance on prematurity in this respect. [80,82,115,149]
226. The NP has been prepared to be in conformity with the adopted Local Plan and in advance of the replacement of this by the emerging Local Plan. Points have been made regarding the legitimacy and desirability of this, and on the degree of collaboration with the Borough Council in its preparation. Central to this matter is that the putative strategic allocation of the appeal site in the emerging Local Plan is not included within the NP. However, with the suggested modifications, the Examiner found that the NP meets the statutory requirements, which include having regard to national policies and advice. As matters stood at the inquiry and based on the submissions, and taking account of the Planning Practice Guidance which envisages scope for a neighbourhood plan to come forward before an up-to-date local plan is in place, there is no basis for me to reach a different view on this. [23,58,66,85,104,108,144-147]
227. Without the modifications recommended by the Examiner, there is no doubt that the appeal proposal is in substantial conflict with the NP, having regard to the restrictive nature of the relevant policies in the submission version referred to above. [20-22,62,83,109]
228. With the intended modifications the position is less clear cut. The main area of concern raised by the Parish Council relates to the scale of the proposal relative to the existing size of the settlement. It can be noted that the adopted Local Plan requires no residential provision within the parish, and therefore policy H1 indicates towards a more growth-based agenda than this. The quantification of 85 units as an assessed housing requirement in the policy, even with this specified as not being a ceiling, provides an indication of the order of growth that is anticipated by the NP. This is particularly so as the policy includes reference to windfalls in addition to identified and permitted sites. In the context of the modified NP the proposal can be regarded as being of a substantial nature, which would result in a relatively large-scale development that is not in a location explicitly provided for by the plan or at this stage required to be incorporated as a strategic requirement. [83-84,112-114,148-155]
229. Nevertheless, the reference to 85 units in policy H1 as modified would expressly not be a maximum limit, and therefore there would be no breach of the policy in that respect. There would also be no policy precluding the residential development of the appeal site. On this basis the Parish Council's witness at the inquiry accepted that the proposal to a significant degree would not be in conflict with the NP as proposed to be amended. [23,60-63,83-84]
230. The Council argues that the NP would require further modification before proceeding were the appeal allowed. However, no consequential adverse effects of granting permission on other aspects of the modified NP have been identified,

albeit that there would remain an aspiration for playing field use of the site within the supporting text. The allocated sites referred to in policy H1 could still be brought forward. The combined total of the appeal proposal and the 85 units would represent an increase of around 13% of the existing number of households in the parish over the plan period to 2031. This would be a relatively limited addition regardless of arguments about whether the figure of 85 appropriately reflects an objective assessment of housing needs of the parish. These factors limit the degree of prejudice to the NP (as to be modified) were the appeal to be allowed. [63-72,77-78,98,109]

231. A further important consideration is the contention that, in the event of the appeal being allowed, the NP would be abandoned. Preparation of the plan has evidently involved a great deal of work and commitment by the local community, which has been pursued with enthusiasm and vigour in response to the value accorded by the Government to neighbourhood planning. In the event of the appeal proposal being permitted there would remain substantial matters of local policy that the NP would address. However, given the firm indication given by the Parish Council that the NP would not be taken forward, this is a consequence to be taken seriously. It can legitimately be regarded as a potential prejudicial effect on the outcome of the plan-making process. The position taken appears to relate to what would be a frustrated expectation of the role that a neighbourhood plan can play when coming forward in advance of an updated Local Plan. Countering the weight to be given to this point is the limited degree of conflict between the proposal and the modified NP as set out above and the presumption in favour of sustainable development. [78,102,109-114,119-120,132,155,157,163-166,173-175,183]
232. Overall, taking the degree of conflict into account, it is considered that the effect of granting permission would fall short of undermining the neighbourhood plan-making process in this case.
233. The potential wider effect on neighbourhood planning generally in the Borough and possibly further afield by way of adverse publicity and disillusionment with the process has been raised. While broadly this could be considered to be an aspect of prejudice to plan-making, it appears to be distinct from the effect on a specific plan that the Planning Practice Guidance addresses. [119,123,167,179-180,183]
234. Drawing a balance between the benefits of the proposal and the harmful effects relating to prematurity is a matter of judgement, which I deal with below in the overall conclusion. [84,125-126,157]

## ii) Conditions and Obligations

### **Conditions**

235. Conditions to be imposed on a grant of permission were discussed and agreed by the main parties at the inquiry. A set of conditions, incorporating the agreed amendments and minor improvements to wording, which are recommended in the event of the appeal being allowed is included in an Annex. I set out below a justification for the conditions, including where relevant the infrastructure needs that they are intended to address. [186]
236. Requirements appropriate to an outline permission are needed. The time periods reflect the housing land supply case in support of the development.

237. Irrespective of the final details, requirements relating to certain detailed design matters, site/slab levels and landscape implementation are needed to ensure that the development respects the site and surroundings. For the same reason, details of the play area and boundary treatment should also be approved.
238. Provision for drainage, flood protection and to deal with potential contamination should be made, having regard to the assessments submitted with the application. These indicate that, subject to satisfactory details, there would be no adverse impacts in these respects.
239. Protection of existing vegetation and provision for biodiversity are needed to safeguard and enhance these interests. Provision for investigation of identified potential archaeological interest is also required.
240. The scale of the development and relationship to existing residential properties warrant a requirement for a construction management plan. The proposed access to the site including for construction would be along existing residential roads. There are local objections to this, but the local highway authority accepts that the access arrangements would be adequate, with this conclusion supported by an independent expert review carried out for the Borough Council. Subject to conditions on construction management and approval of details of highway provision (together with an obligation on a temporary road traffic order, considered below), the technical evidence indicates that the proposal is satisfactory in access terms. [25,75,95,171].

### ***Obligations***

241. The Framework sets out policy tests for the seeking of planning obligations, and there are similar statutory tests contained in Regulation 122 of the Community Infrastructure Levy Regulations (2010) which must be met for obligations to be given weight. Policy IMR2 of the Local Plan and the contents of local guidance documents on development requirements are also relevant. [13,198]
242. The obligations for payments with respect to education and waste facilities would deal with needs that would arise from residents of the new residential development, and are properly quantified with appropriate justification. [189,194,198,200]
243. The open space and landscaping obligations would assist in ensuring that these aspects of the development are acceptable including with respect to future maintenance. [191]
244. Whilst the sports pitches previously on the site were attached to the former College, there appears to have been wider community use of these in the past. The Sports Council originally objected to the application on grounds of loss of these, with this subsequently overcome by way of a negotiated contribution towards changing facilities on the adjoining sports field. This appears to be reasonable, and having regard to policy L1 of the Local Plan can also be considered necessary. [9,14,159-161,185,198]
245. With respect to the contribution towards community facilities, while the possibility of using this for play equipment or towards a parish room is cited, there is some uncertainty in how this would be spent. However, given the scale of the development, it can be expected that this would increase pressure on local

community facilities. The provision to help meet these needs can, on balance, be considered as sufficient justification for this obligation. [156,193,198]

246. On affordable housing, the contribution equivalent to 15% of units is an outcome of negotiation and reflects that the appellant intends using money raised from sale of the land for upgrading of College facilities within Burton upon Trent. The Council is satisfied that the money would be spent in this way, and there is no basis on which to doubt this. The obligation is reasonable and necessary in meeting the terms of policy H12 of the Local Plan on negotiating an appropriate element of affordable housing. [15,52,102]
247. A travel plan is warranted in the interests of sustainable development. Provision for a temporary traffic order is needed to assist in mitigating the impact of the construction works. [75,171,201]
248. The obligations in the agreement meet the tests of being necessary, directly related to the development and fairly and reasonably related to it, and therefore can be given weight in support of the proposal. Together with the conditions, they would deal satisfactorily with the impact of the development on infrastructure and the environment.

### **Overall Conclusion**

249. The proposal is in conflict with the development plan, but this is not up-to-date having regard to the housing land supply position in the Borough. There is a shortfall in the five-year supply that carries significant weight, and the proposal is agreed to be sustainable development. The proposal would provide substantial benefits of a contribution towards meeting the five-year requirement and affordable housing. These factors outweigh the conflict with the development plan.
250. The only objection raised by Borough Council, supported by the Parish Council and others, is prematurity. The emerging replacement Local Plan is at an early stage. Although allowing the appeal would predetermine the outcome with respect to the strategic allocation of the appeal site, the effect of this would not be sufficient to undermine the plan-making process. With respect to the Neighbourhood Plan, as recommended for modification, and therefore in the form in which it can be expected to proceed, the proposal is not in accordance with the scale and location of development anticipated, but to a significant degree would not be in conflict with its policies. While the Plan has reached an advanced stage, and despite the indication given that it would not proceed in the event of the appeal being allowed, the effect of granting permission would fall short of undermining the neighbourhood plan-making process.
251. Conditions and obligations could deal satisfactorily with infrastructure and environmental impacts.
252. Having regard to the context of the Framework and in particular the presumption in favour of sustainable development, I consider that the adverse impacts of granting permission would not significantly and demonstrably outweigh the benefits. Withholding permission on grounds of prematurity is therefore not justified.

**RECOMMENDATION**

253. That the appeal be allowed and planning permission be granted subject to the conditions set out in the attached Annex.

*T G Phillimore*

INSPECTOR

Richborough Estates



## **ANNEX: RECOMMENDED CONDITIONS**

- 1) Details of the access, 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 before the expiration of two 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 plan subject to compliance with other conditions of this permission: Drawing No. 08a – 1: 1250 Site Block Plan – Dated as Received 13th August 2012.
- 5) No development shall take place until samples and details of all external materials and finishes for the properties (including eaves and verge detailing, windows, doors, and chimneys) have been submitted to and approved in writing by the Local Planning Authority and the development shall only be carried out using the agreed materials and finishes.
- 6) No development shall take place and no site works related to the development hereby permitted shall be carried out until details of all slab levels and any regrading proposed to the site have been submitted to and approved in writing by the Local Planning Authority and the development shall only be carried out in accordance with the approved details.
- 7) All planting, seeding or turfing comprised in the details of landscaping approved under the reserved matters application(s) shall be carried out in the first planting and seeding season following the completion of the development; and any trees or plants which within a period of 5 years from the completion of the development die, are removed, or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species unless the Local Planning Authority gives written consent to any variation.
- 8) No development shall take place until details of the equipment, fencing and surfacing finishes for the play area and a timetable for the implementation of these works have been submitted to and approved in writing by the Local Planning Authority. The play area shall thereafter be installed in accordance with the approved details and timetable for implementation.
- 9) No development shall take place until details of public and private boundary treatments have been submitted to and approved in writing by the Local Planning Authority. The boundary treatment shall be provided in accordance with the approved details prior to the first occupation/use of the part of the development to which it relates, and thereafter retained.
- 10) No development shall take place until a scheme for the disposal of foul and surface waters (which shall be limited to 24 l/s and include a sustainable drainage scheme and have regard to the flood risk assessment referred to in condition 11) has been submitted to and approved in writing by the Local

Planning Authority. The development shall be completed in accordance with the approved details prior to its first occupation.

- 11) The development hereby permitted shall be carried out in accordance with the submitted flood risk assessment undertaken by BWB Consultants dated October 2012 (Ref. BMW/2031/FRA Rev.B).
- 12) No development shall take place until a contaminated land assessment and associated remedial strategy, together with a timetable of works, have been submitted to and approved in writing by the Local Planning Authority (LPA) and the measures approved in that scheme shall be fully implemented in accordance with the timetable set out. The scheme shall include all of the following measures unless the LPA dispenses with any such requirement specifically in writing:
  - a) The contaminated land assessment shall include a desk study to be submitted to the LPA for approval. The desk study shall detail the history of the site uses and propose a site investigation strategy based on the relevant information discovered by the desk study. The strategy shall be approved by the LPA prior to investigations commencing on site.
  - b) The site investigation, including relevant soil, soil gas, surface and groundwater sampling, shall be carried out by a suitably qualified and accredited consultant/contractor in accordance with a Quality Assured sampling and analysis methodology.
  - c) A site investigation report detailing all investigative works and sampling on site, together with the results of analysis, risk assessment to any receptors and a proposed remediation strategy shall be submitted to the LPA. The LPA shall approve such remedial works as required prior to any remediation commencing on site. The works shall be of such a nature as to render harmless the identified contamination given the proposed end-use of the site and surrounding environment including any controlled waters.
  - d) Approved remediation works shall be carried out in full on site under a quality assurance scheme to demonstrate compliance with the proposed methodology and best practice guidance. If during the works contamination is encountered which has not previously been identified then the additional contamination shall be fully assessed and an appropriate remediation scheme agreed with the LPA.
  - e) Upon completion of the works, this condition shall not be discharged until a closure report has been submitted to and approved by the LPA. The closure report shall include details of the proposed remediation works and quality assurance certificates to show that the works have been carried out in full in accordance with the approved methodology. Details of any post-remedial sampling and analysis to show the site has reached the required clean-up criteria shall be included in the closure report together with the necessary documentation detailing what waste materials have been removed from the site.
- 13) No development shall take place until a scheme of measures for the protection of hedgerows and trees to be retained during the course of development has been submitted to and approved in writing by the Local Planning Authority. The approved measures shall be adhered to throughout the

course of the development and the said hedgerows and trees retained thereafter.

- 14) No development shall take place until a scheme of biodiversity protection and enhancement which shall include roosting and nesting facilities for bats and birds, grassland enhancement, protection of common amphibians during construction, and a timetable for implementation has been submitted to and approved in writing by the Local Planning Authority. The biodiversity protection and enhancement measures shall thereafter be completed in accordance with the approved timetable.
- 15) No development shall take place until a written scheme of investigation securing the implementation of a programme of archaeological work has been submitted to and approved in writing by the Local Planning Authority. The programme of work shall be implemented in accordance with the approved details.
- 16) No development shall take place until a Construction Management Plan (broadly in accordance with the previously submitted details) including details of routeing and timing of delivery/construction vehicles, wheel washing facilities, measures to remove any mud or deleterious material deposited on the highway, parking facilities for site operatives, personnel and visitors, arrangements for the loading and unloading of vehicles, areas proposed for the storage of materials on site, details of dust suppression during construction, measures to mitigate the impact on sensitive receptors of construction noise and vibration, and a timetable for implementation shall be submitted to and approved in writing by the Local Planning Authority. The development shall thereafter only be carried out in accordance with the approved details.
- 17) No development shall take place until details of all road construction, including means of surfacing access roads, street lighting, drainage including longitudinal sections, and details of the emergency link to Fairfield Avenue have been submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be completed in accordance with the approved details.
- 18) No development shall take place until details of the off-site highway works to provide a raised junction at the entrance of the development on Forest School Street and a timetable for implementation of the works in relation to the development have been submitted to and approved in writing by the Local Planning Authority. The development shall thereafter only take place in accordance with the approved timetable.

## APPEARANCES

### FOR THE LOCAL PLANNING AUTHORITY:

Graham Machin of Counsel                      Instructed by the Solicitor to East  
Staffordshire Borough Council

He called:

Councillor Martin Blencowe      Member of East Staffordshire Borough Council  
and Chair of Planning Committee

### FOR THE APPELLANT:

Christopher Young of Counsel                  Instructed by David Brammer, SGH Martineau  
LLP

He called:

Roland Bolton BSc(Hons)                      Senior Director, DLP Consulting Group  
MRTPI

Keith Fenwick BA(Hons)                      Director, Alliance Planning  
MRTPI

Peter Todd BSc(Hons)                          Principal Transport Planner, SCP  
PGDip(TEP) MCIHT

Karen Procter                                      Vice Principal, Finance and Estates, Burton and  
South Derbyshire College

Peter Diffey BA(Hons)                          Director, Peter Diffey and Associates Ltd  
MRTPI

### FOR ROLLESTON ON DOVE PARISH COUNCIL

Freddie Humphreys of Counsel                  Instructed by Chris Bowden

He called:

Chris Bowden BA(Hons)                          Director, Navigus Planning Limited  
MPhil MRTPI

### INTERESTED PERSONS:

Frank Bather                                      East Staffordshire Sports Council  
Simon Anderson                                  Local resident and Parish Councillor  
Barry Edwards                                      Chairman of the Rolleston on Dove  
Neighbourhood Plan Steering Group

## DOCUMENTS

### Appellant's Appeal Documentation

- APP1      Initial submission details
- i) Planning application forms dated 24 May 2012
  - ii) Council acknowledgement letter dated 8 June 2012

- iii) Letter to Council dated 10 August 2012
  - iv) Revised covering report dated 13 August 2012, including:
    - a) Sustainability Appraisal
    - b) Design and Access Statement together with a Development Brief/Code
    - c) Details of pre-submission consultations
    - d) General information relating to the section 106 agreement
    - e) Details of site income, expenditure and proposed college investment
    - v) 1:1250 Ordnance Survey location plan – 996BC/08A
    - vi) Site Survey Plan – 996B: 07
    - vii) Indicative layout plan: 996BC/11
    - viii) Revised sketch feasibility layout: "Indicative layout schematic": 996/BC/09
    - ix) Indicative layout: Housing mix: 996/BC/10 (see file pocket)
    - x) Flood Risk assessment [revised report dated 19 October 2012].
    - xi) Phase 1 Geo-Environmental Assessment [This document not enclosed by appellant].
    - xii) Transport Assessment
    - xiii) Travel Plan
    - xiv) Extended phase 1 habitat survey 14 February report and 17 October revision
    - xv) Draft Section 106 agreement
- APP2 Sport England/sports issues/public open space
- i) Letter to Council dated 20 June 2012 relating to East Staffordshire Sports Council objections
  - ii) Letter from Sport England to the Council dated 29 June 2012
  - iii) Letter to Council dated 2 July relating to Sport England objections
  - iv) Letter from Sport England to the Council dated 9 July in response to 2 July letter
  - v) Letter to Council dated 10 July relating to Sport England requirements
  - vi) E-mails dated 28 August identifying agreed changes to Section 106 agreement (education payment and public open space payment)
  - vii) E-mail dated 3 January relating to Sport England response
  - viii) Letter to Council dated 9 January 2013 with reference to Sport England comments and appeal precedent
  - ix) Letter to Council dated 6 February 2013 identifying contributions (Sport England and affordable housing) and viability of site
  - x) Letter dated 4 March 2013 agreeing to a sports contribution
  - xi) Letter dated 12t March dealing with sports issues, affordable housing, policy and economic development
  - xii) E-mail to Council dated 17 April 2013 identifying that sports facilities at Rolleston were transferred sometime after 2001
- APP3 Ecology/wildlife issues
- i) Letter from Staffordshire Wildlife Trust to Council dated 20 August raising objections to the proposals
  - ii) Letter to Council dated 20 August relating to objections from the Staffordshire Wildlife Trust
  - iii) E-mails up to 23 August between Ecolocation and the Staffordshire Wildlife Trust identifying issues requiring attention
- APP4 Highway issues
- i) Letter to Council dated 13 September 2012 identifying agreed matters following discussions with Highway Authority and Council
  - ii) Report by JMP dated 12 March 2013 – Transport Assessment Addendum

- iii) Construction management plan submitted to the Council and Highway Authority; e-mail dated 30 May 2013
- iv) "Form X" from Highway Authority dated 13 June 2013 raising no objections to the application subject to conditions
- APP5 Flood risk/drainage
  - i) Letter from Environment Agency to Council dated 14 November 2012 withdrawing objections and recommending conditions
  - ii) E-mail dated 7 February to Council identifying resolved drainage issues together with letter and e-mails from BWB to Council relating to flood risk and identifying that all drainage issues can be resolved and dealt with by condition
- APP6 Third Party objection correspondence
  - i) Letter to Council dated 21 June 2012 commenting on objections raised by third parties
- APP7 Police Liaison correspondence
  - i) E-mail to Council dated 10 July 2012 agreeing amendments to meet Police Architectural Liaison Officer comments
- APP8 Affordable housing
  - Letter to Council dated 5 October 2012 relating to the need for affordable housing
  - Letter to Council dated 13 November 2012 relating to viability of affordable housing
- APP9 Section 106 general correspondence
  - i) Letter to Council dated 25 April 2013 identifying the agreed matters for incorporation in the Section 106 agreement
- APP10 Planning Committee
  - Speech given by Peter Diffey to Planning Committee on 25 November 2013
  - Planning applications Committee agenda and report to Committee
- APP11 [Unused]

#### **Appellant's Inquiry Evidence and Submissions**

- APP12 Mr Fenwick's proof
- APP13 Mr Fenwick's Addendum proof
- APP14 Mr Fenwick's Appendices File 1
- APP15 Mr Fenwick's Appendices File 2
- APP16 Ms Proctor's proof and Appendices
- APP17 Mr Bolton's proof and Appendices
- APP18 Mr Diffey's proof and Appendices
- APP19 Mr Todd's proof and Appendices
- APP20 Closing submissions for appellant
- APP21 Costs application for appellant
- APP22 References to Planning Practice Guidance

#### **Council's Appeal Documents**

- ESBC1 Statement of case
- ESBC2 Appendices A-L
- ESBC3 Appendices M-T

#### **Council's Inquiry Evidence and Submissions**

- ESBC4 Councillor Blencowe's proof
- ESBC5 Closing submissions for East Staffordshire Borough Council

ESBC6 References to Planning Practice Guidance

**Rolleston on Dove Parish Council Appeal Documents**

- ROD1 Statement of case
- ROD2 Appendices to statement of case

**Rolleston on Dove Parish Council Inquiry Evidence and Submissions**

- ROD3 Mr Bowden's proof
- ROD4 Mr Bowden's summary
- ROD5 Mr Bowden's Appendices
- ROD6 Closing submissions for Rolleston on Dove Parish Council
- ROD7 References to Planning Practice Guidance

**Other Inquiry Documents**

- INQ1 Draft section 106
- INQ2 Mr Bather's photo and article
- INQ3 Mr Anderson's statement and photographs
- INQ4 Mr Edwards's statement
- INQ5 East Staffordshire letter dated 4 November 2011
- INQ6 Rolleston on Dove Parish Council letter dated 13 October 2011
- INQ7 Navigus Planning list of neighbourhood plan commissions
- INQ8 Extract from Appendix 5 to Rolleston on Dove Neighbourhood Plan (pre submission June 2013)
- INQ9 Agreed conditions
- INQ10 Appeal decision ref APP/B3410/A/13/2193657 (Forrest Road, Branston)
- INQ11 Planning Practice Guidance extracts (x2)
- INQ12 Westminster Hall debate on Planning and Housing Supply, 24 October 2013
- INQ13 Letter from Burton and South Derbyshire College dated 6 March 2014
- INQ14 Deleted covenant from section 106 (schedule 3)
- INQ15 Saved policy H12 on affordable housing from East Staffordshire Local Plan 2006
- INQ16 Government Office for the West Midlands letter dated 9 July 2009 re: saving direction on East Staffordshire Local Plan
- INQ17 Letter from East Staffordshire Borough Council dated 12 February 2014
- INQ18 Joint statement in support of the planning obligations
- INQ19 Completed section 106 agreement dated 6 March 2014

**Inspector's Documents**

- INSP1 Folder of appeal written representations



## **RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT**

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

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

### **SECTION 1: PLANNING APPEALS AND CALLED-IN PLANNING APPLICATIONS**

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

#### **Challenges under Section 288 of the TCP Act**

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

### **SECTION 2: ENFORCEMENT APPEALS**

#### **Challenges under Section 289 of the TCP Act**

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

### **SECTION 3: AWARDS OF COSTS**

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

### **SECTION 4: INSPECTION OF DOCUMENTS**

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