
Appeal Decision

Inquiry held on 6-8 December 2016

Site visit made on 8 December 2016

by Paul Singleton BSc (Hons) MA MRTPI

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

Decision date: 8 February 2017

Appeal Ref: APP/P4415/W/16/3149298

Land at Blue Man's Way, Catcliffe, Rotherham S60 5UR

- 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 Network Space against the decision of Rotherham Metropolitan Borough Council.
 - The application Ref RB2014/1342, dated 1 October 2014, was refused by notice dated 22 February 2016.
 - The development proposed is outline application for the erection of up to 64 dwelling houses with details of access.
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Decision

1. The appeal is allowed and planning permission is granted in outline with details of access for the erection of up to 64 dwelling houses at land at Blue Man's Way, Catcliffe, Rotherham S60 5UR in accordance with the terms of the application, Ref RB2014/1342, dated 1 October 2014, subject to the conditions in the schedule attached to this decision.

Procedural Matters

2. The planning application was submitted by Langtree Group plc. That company subsequently changed its name to Network Space and the appeal has been accepted with the revised company name listed as the appellant.
 3. The application was submitted with all matters other than details of access reserved for subsequent approval and I have considered the appeal on this basis. The number of dwellings proposed was reduced from 'up to 72' to 'up to 64' prior to the application being determined by the Council and I have adopted the amended description of development as used in the decision notice and appeal form that reflects this change.
 4. Following the refusal of planning permission the Council made a Tree Preservation Order (TPO) in relation to the major part of the appeal site which was confirmed on the 23 June 2016. The TPO covers the whole of the appeal site, other than a small area of land at the eastern end, which would form part of the proposed access road, and is a 'woodland' TPO which gives protection to all of the trees within the designated area.
 5. A Statement of Common Ground (SoCG) has been agreed between the Council and the appellant and I have taken this into account in my determination of the appeal.
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6. Although there is some difference of view as to the exact level of supply the SoCG confirms that the Council is unable to demonstrate a 5 year forward housing land supply (HLS) as required by paragraph 47 of the National Planning Policy Framework (Framework). The second part of paragraph 49 of the Framework is accordingly engaged and relevant development policies for the supply of housing should not be regarded as being up to date.
7. A unilateral undertaking (UU) (Document 32) prepared in accordance with Section 106 of the Town and Country Planning Act 1990 has been submitted by the appellant. The UU includes obligations in respect of the future management and maintenance of the green space proposed to be retained within the development scheme and the payment of financial contributions towards the provision of additional primary school places, measures to encourage and increase the use of non-car modes of transport, and the making of a Traffic Regulation Order to introduce a 20 MPH speed limit on the estate roads within the proposed development.

Main Issues

8. The main issues in the appeal are:
 - (a) The effect on the Council's approved spatial strategy and settlement hierarchy;
 - (b) The effect on the site's value as urban green space and part of a green infrastructure corridor and the adequacy of the proposed mitigation measures; and
 - (c) The effect on protected trees.

Reasons

The development plan

9. The development plan for the area comprises the Rotherham Local Plan Core Strategy 2013-2028 (Core Strategy), adopted in September 2014, and the saved policies of the Rotherham Unitary Development Plan (UDP), adopted in June 1999. The Council is preparing the Rotherham Sites and Policies Local Plan (SPLP) (2015). The publication version of the SPLP was submitted to the Secretary of State in March 2016 and the independent examination of the draft plan is currently in progress. The Council anticipates the publication of the examining Inspector's report in the spring of 2017 with adoption of the plan following in mid-2017 at the earliest.
10. There was a considerable debate at the inquiry as to how the key development plan policies should be interpreted and applied to the appeal proposal and over which, if any, policies should be regarded as being 'relevant policies for the supply of housing' for the purposes of paragraph 49 of the Framework. I have considered the evidence and submissions made and set out my findings on these matters within my discussion of the main issues below.

Effect on spatial strategy and settlement hierarchy

11. Core Strategy Policy CS 1 is intended to be a strategic policy rather than a development management tool. This is apparent from its location with Chapter 5 of the Core Strategy which is introduced by the statement, at paragraph 5.0.1, that '*this chapter sets out the strategic policies designed to achieve the Plan's objectives*' and by the policy's heading of '*Delivering Rotherham's Spatial*

Strategy'. Parts 2, 3 and 4 of Policy CS 1 are specific respectively to a strategic allocation, proposed new community and broad area of growth designated in the plan and only part 1 is relevant to the appeal proposal.

12. A central part of the spatial strategy set out in Policy CS 1 is that development should be directed to Principal Settlements and Local Service Centres in order to meet the needs of the settlement and its immediate area and to help create a balanced, sustainable community. In pursuance of that strategy, the policy states that, where development cannot be accommodated in a sustainable way to meet the needs of the settlement, consideration will be given to identifying sites in other appropriate settlements within the same tier or within or on the edge of a higher order settlement before searching for sites in settlements in a lower order in the hierarchy.
13. This statement sets out the approach that the Council proposes to take, when allocating sites for development, in seeking to strike an appropriate balance between meeting the needs of each settlement and ensuring that the level of development proposed is appropriate to the size of the settlement and to the capacity of the services and facilities within it. This interpretation is supported by the explanatory text at paragraph 5.2 of the Core Strategy. This states that, in determining allocations in the SPLP, consideration will be given to the capacity within each of the settlement groupings and that, if there is insufficient capacity within a settlement grouping, identification of appropriate and suitable sites will be undertaken within settlements in the same tier before searching for sites in lower order settlements.
14. Hence, insofar as the policy does introduce a 'hierarchical search requirement' as asserted by the Council, this applies to the Council's own plan making process and is triggered only if sufficient suitable sites cannot be identified to meet the development needs of any particular settlement grouping. There is nothing in the wording of the policy that places an obligation on a developer seeking planning permission on a windfall site to undertake a search of potential alternative sites in higher order settlements. Neither is there any evidence that the Council has required other applicants to undertake such a search.
15. The columns in the table within Policy CS 1 relating to housing are headed '*Indicative Housing Provision*'. The word '*indicative*' clearly applies both to the absolute numbers and to the percentages relating to the broad distribution of housing across the borough and the footnote states that the figures in the table are not ceilings. The statement within that footnote that '*windfalls on small sites will provide additional flexibility*' confirms that the figures are not to be treated as maximums and demonstrates that this part of the policy is primarily intended to provide a framework for identifying site allocations to be taken forward in the SPLP.
16. Paragraph 15 of the Core Strategy Examining Inspector's report (Document 27) shows that the statements in the footnote were introduced in order to provide clarity as to the status of the indicative figures. Paragraph 38 of that report notes that some of the percentages in the tables may have to be refined in the light of the preparation of the SPLP and consultation upon it and that '*it should be confirmed that the figures in Policy CS 1 for housing, employment and retail provision are indicative*'. This is also evidenced by the statement, at paragraph 5.2.6 of the Core Strategy, that '*the percentages and figures given are*

indicative and the precise amount of development to be delivered will be determined through the Sites and Policies document having regard to a range of factors.'

17. On the Council's evidence, the existing commitments within the Catcliffe, Treeton and Orgreave Local Service Centre (LSC) would provide some 160 dwellings compared to the indicative figure of 170 shown in the table in Policy CS 1 (HS paragraph 6.10). If the appeal is allowed the proposal would contribute up to 64 additional dwellings, thereby taking the overall number above the 170 figure, and may possibly result in a situation where the LSC would accommodate more than 1% of all new dwellings in the borough over the Core Strategy plan period. However, the figures in the table are indicative and Policy CS1 anticipates additional provision from windfall sites.
18. An exceedance of the indicative housing figure by such a margin cannot, of itself, be concluded likely to cause significant harm since the Council proposes an even larger exceedance through the proposed allocation of a site in Treeton (site H57) for 75 dwellings, with 70 units to be developed within the plan period. Had the Council genuinely considered such a level of exceedance to represent an unacceptable breach of its spatial strategy it would not have promoted the release of that Green Belt site and would not be continuing to defend that allocation against duly made objections at the SPLP examination. I find it difficult to envisage how exceptional circumstances, as required by Paragraph 83 of the Framework, could be demonstrated to justify the release of a Green Belt site where the level of new housing proposed would, on the Council's own assessment, harm the approved settlement strategy.
19. The Council asserts that the fact that planning permissions have been granted on allocated sites is irrelevant since the grant of such permissions reflects a plan-led system. That may be true but the largest site (89 dwellings) within the LSC with planning permission (land to the east of the Morrison's store) is allocated for retail use in the UDP. In granting that permission the Council treated that site as a windfall site and the application as a departure from the UDP (page 35 of officer's report at CDG1). The officer's report confirms that the site had been considered in the draft SPLP for possible housing use but that had been rejected in favour of an employment allocation. The report includes no discussion of what effect a grant of permission would have on the level of housing development in the LSC and no consideration of any potential conflict with Policy CS 1.
20. Ms Sleight asserts that the appeal proposal would overwhelm the settlement but no evidence has been produced to substantiate that claim. Additional demand for primary school places would adequately be mitigated by the education contribution within the UU and the Council's Community Infrastructure Levy (CIL) Compliance Note (Document 33) confirms that the proposed contribution would be in accordance with the standard payment per dwelling and would meet the requirements of Core Strategy Policy CS 29. The site immediately adjoins the Morrison's superstore and has good access to other shops and services nearby and to bus services to and from Rotherham town centre. It enjoys ready accessibility to the nearest primary and secondary schools and is within walking or cycling distance of a major employment development at the Advance Manufacturing Park which could provide a range of potential job opportunities for future residents of the proposed development. There is no

evidence that local health services would be placed under undue pressure as a result of the proposed development.

21. In light of the above considerations I find that the proposal would not cause any harm to the Council's approved spatial strategy or settlement hierarchy and that no conflict with Core Strategy Policy CS 1 would arise.

Urban green space and green infrastructure corridor

22. The appeal site is designated in the UDP as urban green space. Saved UDP Policy ENV5.1 states that development which would result in the loss of such space will only be permitted if certain criteria are satisfied.
23. On an objective reading of the language used, compliance with Policy ENV5.1 is achieved if clauses (i), (iii) and (iv) are satisfied or, in the alternative, if clauses (ii), (iii) and (iv) are satisfied. I see no basis for the Council's suggested different interpretation of the policy or for its contention that a proposal must positively conform to Policy CR.2.2 in order to meet the requirements set out in clause (iii). If, as in this case, the land in question does not fall within any of the categories to which Policy CR.2.2 expressly relates that policy is not applicable to the proposal and no conflict arises; clause (iii) of Policy ENV5.1 is therefore satisfied.
24. I find that the reference, in clause (iv) of Policy ENV5.1, to 'the Plan' can sensibly only be interpreted as meaning the UDP since this is the definition given in the glossary. I do not accept that the reference can logically be understood to embrace other development plan documents which were neither being prepared nor contemplated at the time of the UDP's adoption.
25. As there is no assertion that the proposal would conflict with any other UDP policies or proposals the key consideration is whether or not the proposal would enhance the local urban green space provision. The use of the word 'enhance' manifestly implies that the policy can be satisfied through a qualitative improvement in provision and I do not accept that Policy ENV5.1 requires that there should be no overall reduction in the area of green space in the locality.
26. I am satisfied that, with the exception of the 6 that were separately assessed in the arboricultural survey, the remainder of the 'trees' on the site fall below the 75 millimetre (mm) diameter minimum set out in BS5837:2012 guidance with regard to such surveys and are, therefore, appropriately described as 'scrub'. I saw on my site visit that this scrub vegetation is extremely dense and largely impenetrable across much of the land, restricting any views into or out of the site. The vegetation is of limited height (around 6-7 metres (m) at maximum), given that this growth has taken place over a number of years, and mostly comprises thorn and willow with only a very small number of silver birch.
27. Due to the local topography the site is largely hidden from public view and has minimal visibility to drivers and passengers of vehicles on Sheffield Parkway (A630). Views from the Morrison's site are screened by the landscaping on the embankment to the car park and by the density of the vegetation within the appeal site itself. Only 4 houses within the Blue Man's Way estate have windows facing the site and, although some of these have living accommodation at first floor level, the site is visible only to a very small number of local residents. As accepted by Mr Heczko in his TPO report

- (CDA12) local views are limited by the dense vegetation and the site does not provide for any wider visual amenity.
28. Having regard to these considerations, and to the presence of other areas of better woodland nearby, I find that the site has minimal landscape or visual amenity value in its current state and condition. There is little dispute between the appellant's expert advisors and the Council's ecologist that the site is currently of low ecological and nature conservation value and that this low value is consistent with the absence of any active management of the land for these purposes.
29. Although there are 2 public rights of way (PROW) along the northern and southern boundaries I saw that these are impassable over most of their length. Some other paths follow 'desire lines' through the site with one of these providing a link from the Blue Man's Way estate to the edge of the Morrison's store car park. However, use of these routes is unauthorised and, as there is no right of public access for recreational use, the site cannot be said to have any current recreational value.
30. The existing paths are unsurfaced and amount to little more than muddy tracks through the dense vegetation. No views are available to either side of the paths and anyone using these would not be visible from outside of the site. My observations on the site visit support the conclusions of the appellant's landscape appraisal that the enclosed, unmanaged character of the site is unwelcoming and that the lack of natural surveillance would reduce the feelings of safety for anyone using these paths. I consider that these factors would be likely to discourage very many people from using these existing routes. No evidence has been submitted as to the current level of use but conditions on the ground do not suggest that these informal paths are heavily used.
31. Mr Peter and Mr Howarth supported the Council's concerns about the loss of the existing woodland and similar concerns were raised in Mr Cameron's written objection. However, the representations submitted suggest a very limited level of local concern about the loss of the vegetation or of the site as an area of urban green space, with such concerns having been raised in only a very small number of the objections to the application. Many of those who objected on traffic grounds stated that they did not object to the principle of the development and the MP's representation confirmed her understanding that her constituents were not opposed to the proposal in principle. The Parish Council made no objection in principle and raised no concerns about the effect on the trees or green space.
32. One objector was concerned that the pedestrian route from the residential estate to Morrison's should not be lost and suggested that other pedestrian routes should be improved. I note also that the Rotherham Local Access Forum neither objected to the application nor raised concerns that the development would adversely affect the ability of people to use the public rights of way or their enjoyment in doing so. Rather, the Forum saw the development as an opportunity to secure enhancements to Public Footpath No 2, including better surfacing and lighting, such as those which the appeal proposals would deliver.
33. The appeal proposal would result in only 40% of the site area being retained as green space but would lead to a substantial improvement in the value and usability of that retained land as urban green space. In combination with the long term management and maintenance that would be secured through the

UU the planned interventions would enable the development of mature broadleaved woodland of substantially greater landscape value and visual amenity than the existing scrub vegetation. This would provide a more inviting and much safer space for the occupiers of the proposed homes and other local residents to use for informal recreation.

34. The Council sought to characterise the proposals recommended in the appellant's Preliminary Ecological Appraisal as mitigation works. However, other than the new hedgerow proposed as compensation for any sections of hedge that might need to be removed and the timing of works to trees and hedges outside of the bird breeding season, that report did not identify any potential loss or damage requiring mitigation. Hence, the proposed intervention works and future management of the woodland, the wildflower meadow and other planting proposed, and the ecological enhancements proposed in section 5 of the Ecological Appraisal would all constitute works of enhancement rather than mitigation. Together, these works would provide for a considerable enhancement of the site's biodiversity value.
35. Although he described the existing vegetation as 'pioneer woodland' Mr Heczko accepted that, without managed intervention, it would take hundreds of years for this to develop into mature broadleaved woodland. He also stated that it would not achieve a high amenity value without such intervention. The Council's ecologist also agrees that management is a vital component in securing long term enhancement of the site's ecological value and biodiversity. It is possible that some small scale improvement in the site's amenity value may be achieved over a long period without any managed intervention. However, in view of the site's location adjacent to existing and proposed housing, securing an urban green space of high amenity and wildlife value which is both inviting and safe for local people to use is a much more appropriate aspiration than leaving the site in its current unmanaged state with no public access. Without intervention and long term management of the type that the appeal proposals would deliver that outcome is unlikely to be achieved.
36. The site forms part of an existing green infrastructure corridor along the route of the A630. This varies considerably in width and, even following completion of the proposed development, a continuous green corridor would remain alongside this route and the section adjoining the site would still be one of the widest sections of that corridor. Mr Grimshaw's figures (IG2) show that the Council's proposal to take land on the opposite side of the A630 out of the Green Belt and allocate it for employment development is likely to have a more significant impact on the width of the green corridor in this locality. The development guidelines for that proposed allocation (Site E36) do not record that site's contribution to the green corridor or identify this either as an issue or a constraint on the site's development.
37. I accept that the scrub vegetation on the appeal site is likely to contribute to carbon capture in an area with high volumes of traffic passing close to residential property. However, it is clear that the site does not serve as a visual or noise buffer between the A630 and the Blue Man's Way estate since the shortest distances between highway and the nearest dwellings are not across the appeal site (IG2 Figure 3).

38. In light of the above considerations I find that the appeal proposal would result in a significant enhancement of local urban green space provision and that, as there would be no conflict with clauses (iii) and (iv), the proposal complies with Policy ENV5.1.
39. Policy CS 19 is another of the strategic policies within chapter 5 of the Core Strategy. I consider that the policy's objective with regard to the realisation of a '*net gain*' in green infrastructure is intended to apply at a borough wide level and over the plan period as a whole. Nothing in the wording of the policy or its supporting text suggests that Policy CS 19 places an obligation on the appellant to demonstrate that the proposal would result in a net gain in the total quantum of green infrastructure.
40. The policy provides support for proposals that make an overall contribution to the green infrastructure network having regard to the principles set out in clauses (a) to (h). These are principles rather than detailed criteria that must all be satisfied. Paragraph 5.6.1, which explains that 'green infrastructure' is the network of multi-functional spaces and other assets that support the natural and ecological processes integral to the health and quality of life of sustainable communities, provides the context within which these principles should be considered.
41. As the appellant argues, the words '*mitigation*' and '*compensation*' appear together within clause (b) and should be read within the holistic approach that a strategic policy requires. I do not accept the Council's contention that this clause requires that the development of part of an existing green space must be compensated for by the provision of an equivalent or larger area of new green space elsewhere.
42. For the reasons already set out the appeal proposal would result in a substantial enhancement of the 40% of the site area that would be retained as green space. That significant enhancement would, in my judgement, provide more than adequate compensation for the loss to built development of approximately 1.3 hectares of poor quality scrub with minimal visual amenity, landscape, ecological and recreational value. The proposal would support the principles set out in clause (c) of the policy by enabling investment that would increase the functionality of the retained land as a component of green infrastructure and would substantially enhance, rather than merely safeguard, its function as a recreational and wildlife resource.
43. In the absence of the appeal proposal it is highly unlikely that the interventions and long term management necessary to secure those enhancements could be achieved by any other means. Accordingly, the development of part of the site for housing can be concluded to be unavoidable in accordance with the principle set out under clause (b). Notwithstanding that 'loss' of existing green space the proposal would make a positive overall contribution to the green infrastructure network and would comply with Policy CS 19.
44. The site is allocated as 'Greenspace' in the submission draft SPLP. However, as Mr Rolinson's evidence demonstrates, it was proposed as an employment allocation in the earlier versions of the draft plan. The site was not included in the 'accessible green spaces' assessed in the Green Spaces Strategy of 2010 (IG paragraph 2.61 and appendix in IG3) and I have seen no up-to-date evidence base to support the recent change in its proposed allocation on the basis of a local deficiency in green space or the site's specific value as green

space. In these circumstances, and in light of the objections made to the proposed allocation, very little weight can be given to the draft allocation or to the draft SPLP policies relating to that allocation.

Effect on protected trees

45. As a woodland order, the TPO gives protection to all trees within the site. The Court of Appeal in the Distinctive Properties case (Document 5) has clarified that, under the Town and Country Planning Act 1990 (1990 Act), a tree is to be regarded as such at all stages of its life, subject to the exclusion of a mere seed. The effect of the TPO is that no trees can be cut down, topped, lopped, or uprooted without the written consent of the local planning authority unless the proposed works fall within the exceptions set out in Regulation 14 of the Town and Country Planning (Tree Preservation) Regulations 2012 (Regulations). Regulation 14 (a) (vii) indicates that works necessary to implement a detailed planning permission fall within the scope of the exceptions but that works necessary for the implementation of an outline permission do not.
46. No application for felling or other works to the protected trees has been made to the local planning authority and no such works form part of the appeal. The Council submits that, in those circumstances the effect of Regulation 14 (a) (vii) is to disbar me from granting permission for the appeal proposal in 'bare outline' because this would establish the principle of built development which is incompatible with the presence of protected trees across the majority of the site. It also argues that a grant of outline permission would bind the Council's hands in respect of the determination of a future reserved matters application for the layout of the proposed dwellings. I do not accept either proposition.
47. Regulation 14 (a) (vii) provides for the continued protection of TPO trees following the grant of an outline permission so that decisions as to how many and which trees need to be removed can be made at the reserved matters stage when more information is available on the detailed design requirements. Such an approach is sensible to ensure that trees are not lost unnecessarily and that appropriate design modifications are considered in order to minimise the loss of trees which are agreed to be of greatest value. However, nothing in the Regulations or the relevant sections of the 1990 Act indicates that outline permission should not be granted on land which is the subject of a TPO.
48. Having regard to section 197 of the 1990 Act all existing trees on a potential development site are a material consideration irrespective of whether or not they are protected by means of a TPO. Because expediency is commonly a factor in a local planning authority's decision to make a TPO the presence of such an Order, particularly when it relates to a woodland group rather than to individual trees, is not of itself an indicator that all of the trees within the order are of a high quality. As Mr Popplewell sets out in his evidence, it is the amenity value of the trees rather than the presence of the TPO that should inform the assessment of the likely effect of the development proposals.
49. The standard tool for undertaking an objective assessment of the condition and value of trees is by means of an arboricultural survey carried out in accordance with BS5837:2012. The survey undertaken by Wardell Armstrong was carried out in accordance with that guidance. Wardell Armstrong found only 6 individual trees that should be separately classified and that the rest of the trees on the site comprised dense scrub of low amenity value. Those findings

have been independently endorsed by Mr Popplewell and supported by Mr Grimshaw in his evaluation of the site's landscape and visual amenity value. Although Mr Heczko takes a different view he does not claim to have undertaken his own BS5837:2012 survey of the trees.

50. My own observations are that, with the exception of the 6 trees separately identified in the survey, all the trees are of relatively consistent species mix, age, spacing and condition. Based on these observations I accept Mr Popplewell's evidence that there is no meaningful variation in the quality of the trees across the site, that the scrub has no particular arboricultural merit and that all scrub areas have similar future prospects. In particular, although some more recent regeneration has taken place following the clearance of a strip along the southern edge of the woodland, there is no significant distinction, in terms of the amenity value or quality of the trees, between that part of the site proposed for development and that which would be retained as green space.
51. In these circumstances I consider that I have sufficient information before me to conclude that the removal of substantial blocks of trees within the area proposed for built development would not result in unacceptable harm to the amenity value of the site and that the development of up to 64 dwellings at the density envisaged is acceptable in principle. Since no significant distinction, in terms of the amenity value and quality of the trees, can be drawn between the two parts of the site I also consider it appropriate that any outline permission should be tied by means of a condition to the Parameters Plan. Together with the obligations in the UU, this would help to ensure that the interventions necessary to secure the establishment of a more mixed and sustainable woodland on the retained land are secured.
52. A grant of outline permission on this basis would do no more than establish the principle of a development of up to 64 dwellings and would not tie the Council's hands with regard to a future reserved matters application for detailed layout. The draft conditions agreed by the parties include a requirement that the reserved matters application be accompanied by a detailed arboricultural impact assessment and method statement. That assessment may identify other trees worthy of retention and may result in a reserved matters approval for less than 64 dwellings. However, based on the evidence before me, I have no reason to conclude that a significant reduction in the number of units currently envisaged is likely.
53. Approval of the means of access as part of the appeal proposal would constitute a detailed consent for that element of the scheme. The land affected by those works is very small and has limited tree coverage compared to the rest of the site. The loss of trees in this area would be minimal and would have no material effect on the amenity value of the scrub or its future potential of the scrub to development into mature woodland.
54. I do not find that the proposal would give rise to any conflict with saved UDP policies ENV3.3 and ENV3.4. Policy ENV3.4 is a general statement of intent with regard to the promotion and enhancement of tree coverage and does not set out any policy tests in relation to development proposals. As the Regulations provide for the continued protection of the trees on the site until either consent for felling or a detailed planning permission which necessitates the removal of trees is granted the proposal does not conflict with Policy ENV3.3. with regard to the protection of trees.

55. I therefore find that the proposal would not have an unacceptable effect on the amenity value of the woodland area protected under the TPO and that no material harm would result from a grant of outline permission with all matters other than access reserved for subsequent approval.

Conclusions on the main issues

56. Having regard to all of the above considerations I find that the appeal proposal would cause no harm to the Council's approved spatial strategy and settlement hierarchy. I find that the proposal would secure a significant enhancement in the value of the 'retained land' as urban green space and would make a positive overall contribution to the green infrastructure corridor along the A630 route. I also find that the proposal would not have an unacceptable effect on the protected trees within the site. For these reasons I conclude that the proposal complies with Core Strategy Policies CS 1 and CS 19 and with saved UDP Policy ENV5.1.
57. Although I have considered the arguments put forward by the appellant I do not consider that any of these policies is so inconsistent with the policies in the Framework such that they should be given less than full weight having regard to the advice at paragraph 19. As I have found no conflict with any other relevant policies I conclude that the proposal complies with the development plan as a whole.

Other Considerations

58. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that applications and appeals be determined in accordance with the development plan unless material considerations indicate otherwise.
59. Although the Council has questioned some of the benefits claimed by the appellant it does not allege that any other harm would be caused by the development. I note the concerns raised by objectors with regard to the use of Blue Man's Way as the access to the development. However, I have no evidence that would lead me to set aside the conclusions of the Council's highways officer that this would provide a safe and satisfactory access subject to the traffic calming works at the site access and the proposal to introduce a 20 MPH speed limit on the estate roads. I am also satisfied that the concerns of local residents with regard to flood risk have been properly considered and that the proposed drainage strategy would provide for an acceptable form of development in this regard.
60. One objector has raised concerns with regard to Article 8 of the European Convention on Human Rights. On this matter I agree with the appellant's submissions that the right to respect for the private and family life of the objector and his home would not be breached by the development of privately owned land near to his home. In any event, even if the right under Article 8 were to be engaged in some way, the grant of planning permission pursuant to an appeal which has been considered at a Public Inquiry would represent a justifiable interference with that right, having regard to the second part of the article.
61. On this basis I find that there are no material considerations which would indicate a decision other than in accordance with the development plan. Having regard to the statement set out in the first bullet under the 'decision

making' heading of Paragraph 14 of the Framework the proposal constitutes sustainable development and should be approved without delay.

62. The parties agree that the Council is unable to demonstrate 5 year HLS and, in accordance with paragraph 49 of the Framework, relevant policies for the supply of housing should not be considered up to date. I find that Core Strategy Policy CS 1 is a 'relevant policy' having regard to the Court of Appeal judgment in Hopkins Homes (Document 14) since it is a policy which relates specifically to the provision and distribution of new housing in the local planning authority's area. I consider that Policy ENV5.1 should also be regarded as a relevant policy because it restricts the locations where new housing may be developed and it bears upon the principle of the site in question being developed for housing. However, I find that no conflict arises with those policies.
63. There is a difference of view between the parties as to the extent of the shortfall in housing supply. However, in light of my finding that the proposal is compliant with the development plan as a whole, it is not necessary for me to reach a judgement on that matter.

Conditions

64. As details of the appearance, landscaping, layout and scale of the development are reserved a condition is needed that requires the submission of these reserved matters for the approval of the local planning authority. Conditions are needed to tie the outline planning permission to the approved plans and to confirm the extent of works approved as part of the means of access and to require that these works be constructed in accordance with the approved details in the interests of highway safety. A condition requiring that the reserved matters applications should accord with the approved parameters plan is needed to ensure an appropriate balance between the area to be developed and the area to be retained as green space and that the detailed proposals follow the key principles set out in the planning application and appeal.
65. There is a requirement under development plan policy that the scheme should provide an element of affordable housing and a condition is therefore needed to require that detailed proposals for this provision should be submitted and approved as part of the reserved matters application(s). In order to ensure that the reserved matters applications are informed by an up-to-date and more detailed assessment of the existing vegetation on the site a condition is needed which requires that these be accompanied by a detailed arboricultural survey and method statement including protection measures for trees to be retained as part of the development
66. Conditions have been attached which set out the minimum requirements in relation to the landscaping reserved matters and landscape management details which are required in order to ensure a satisfactory standard of development and that key objectives with regard to the enhancement and use of the proposed areas of open space are secured. To ensure an appropriate standard of development conditions are also needed in relation to the requirements for replacement planting should parts of the landscaping scheme fail and for the continued protection of retained trees within the site for the first five years after the commencement of the development.

67. As full details were not submitted as part of the application or appeal, conditions requiring the submission of detailed surface and foul water drainage schemes are needed to ensure that the site is developed in a safe manner and without increasing the risk of flooding elsewhere. A condition is needed to require the submission of details of, and a programme for, the provision of a pedestrian route through the site to link the existing residential estate at Blue Man's Way to the Morrison's car park in order to ensure that the detailed proposals provide the enhanced pedestrian linkages that were set out in the application. In the interests of highway safety a condition has been attached requiring that the detailed plans submitted as part of the reserved matters demonstrate adequate off street parking.
68. A condition is needed to require the submission of a construction method statement in order to minimise the effects of the construction works on the operation of the highway network and on the living conditions of the occupiers of nearby residential properties. As no detailed site investigation has been carried out, a condition is also needed that requires an intrusive site investigation and risk assessment in the interests of the safety of construction workers and future occupiers of the proposed dwellings. Also because these details were not submitted with the outline application, a condition is needed requiring the submission and approval of all road sections and constructional details of the proposed estate roads. All three of these conditions need to be discharged prior to commencement of the development in order to ensure an acceptable standard of development and that all construction activity is carried out in a safe and acceptable manner and to minimise the risk of abortive works.
69. In order to secure the ecological enhancements proposed in the Ecological Compensation and Enhancement Plan a condition is needed that requires that these works be carried out prior to the occupation of the proposed dwellings. Conditions are needed in relation to the provision of appropriate sound attenuation measures to ensure a satisfactory residential environment within the proposed dwellings and garden areas.

Planning Obligations

70. Paragraph 204 of the Framework and Regulation 122 of the Community Infrastructure Regulations require that planning obligations should only be sought, and that weight be attached to their provisions, where they are: necessary to make the development acceptable in planning terms; directly related to the development proposed; and are fairly and reasonably related in scale and kind to the development.
71. Having regard to the evidence submitted and the CIL Compliance Statement provided by the Council (Document 33) I am satisfied that the proposed obligations with regard to educational contributions are required to ensure that there is adequate capacity in local schools for the number of children that would be likely to be accommodated by the proposed development. I am also satisfied that the travel plan contributions are necessary in order to increase awareness among future residents of the development of non-car modes of transport and to encourage their use of such options and that the proposed 20 MPH speed limit, which would be implemented by means of the TRO funded by the developer's contributions, is necessary in the interests of the safe use of the proposed estate roads.

72. For these reasons I find that the obligations comprised within the UU satisfy the tests set out in Regulation 122 and comply with paragraph 204 of the Framework. I have therefore afforded weight to them in reaching my decision.

Conclusions

73. For the reasons set out above and having regard to all matters raised I conclude that the appeal should be allowed.

Paul Singleton

INSPECTOR

Richborough Estates

Schedule of conditions for Appeal Ref APP/P4415/W/16/3149298

- 1) Details of the appearance, landscaping, layout, and scale of the development hereby permitted (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than 3 years from the date of this permission.
- 3) The development hereby permitted shall take place not later than 2 years from the date of approval of the last of the reserved matters to be approved.
- 4) The development hereby permitted shall be carried out in accordance with the following approved plans:
 - 013168_P104 Rev A – Red Line Plan
 - 013168_P100 Rev D – Parameters Plan
 - IPD_12_251_103 Rev D – Means of Access Plan
- 5) The 'means of access' approved under this permission relates to the works shown on drawing number IPD-12-251-103 Rev D and does not include the details of internal estate roads within the site. The works must be carried out in accordance with the approved plans and be completed prior to the occupation of any dwellings approved as part of this permission.
- 6) Any reserved matters application shall be in general accordance with drawing number 013168 - P100 Rev D – Parameters Plan.
- 7) The reserved matters submitted in accordance with this permission shall include details of a scheme providing affordable housing as part of the development, to be submitted for the written approval of the local planning authority. The affordable housing shall be provided in accordance with the approved details and shall meet the definition of affordable housing in Annex 2 of the National Planning Policy Framework (March 2012) and shall be in accordance with the Council's Interim Planning Statement for Affordable Housing.

The scheme must include:

 - i) the numbers, type, tenure and location on the site of the affordable housing provision to be made;
 - ii) the timing of the construction of the affordable housing and its phasing in relation to the occupancy of the market housing;
 - iii) the arrangements for the transfer of the affordable housing to an affordable housing provider or payment of a commuted sum equivalent to a percentage (the level of which is to be agreed in writing by the local planning authority) of the open market value of the affordable housing units if it is proven that the developer is unable to sell the units to a Registered Provider of affordable housing;

- iv) the arrangements to ensure that (subject to appropriate terms and conditions) such provision is affordable for both first and subsequent occupiers of the affordable housing; and the occupancy criteria to be used for determining the identity of occupiers of the affordable housing and the means by which such occupancy criteria shall be enforced.
- 8) Details for reserved matters approval must include a detailed tree survey and a detailed Arboricultural Impact Assessment and Arboricultural Method Statement in accordance with BS 5837 Trees in Relation to Design, Demolition and Construction. The submitted details shall include a detailed Tree Protection Plan and a tree survey schedule.
- 9) The detailed plans to be submitted in accordance with this outline permission shall include a detailed landscape scheme. The landscape scheme shall be prepared to a minimum scale of 1:200 and shall clearly identify through supplementary drawings:
 - i) The extent of the area to be retained as public open space and details of the proposed enhancements to it.
 - ii) The extent of existing planting, including those trees or areas of vegetation that are to be retained, and those that it is proposed to remove.
 - iii) The extent of any changes to existing ground levels, where these are proposed.
 - iv) Any constraints in the form of existing or proposed site services, or visibility requirements.
 - v) Areas of structural and ornamental planting that are to be carried out.
 - vi) The positions, design, materials and type of any boundary treatment to be erected (including boundaries between residential properties).
 - vii) A planting plan and schedule detailing the proposed species, siting, quality and size specification, and planting distances.
 - viii) A written specification for ground preparation and soft landscape works.
 - ix) The programme for implementation.

The scheme shall thereafter be implemented in accordance with the approved landscape scheme and approved programme.
- 10) The landscaping details to be submitted in accordance with this outline permission shall include a detailed landscape management plan, including proposals for public accessibility, long term design objectives, management responsibilities and maintenance schedules for all landscape areas, other than small, privately owned domestic gardens.
- 11) Any plants or trees which within a period of 5 years from completion of planting fail to thrive, die, are removed or damaged, or that fail to thrive shall be replaced. Assessment of requirements for replacement planting shall be carried out on an annual basis in September of each year and any defective work or materials discovered shall be rectified before 31st December of that year.
- 12) Up until 5 years after the commencement of development, no tree or hedge shall be cut down, uprooted or destroyed nor shall any tree or

hedge be pruned other than in accordance with the approved plans and particulars, without the written approval of the local planning authority. Any pruning works approved shall be carried out in accordance with British Standard 3998 (Tree Work). If any tree or hedge is removed, uprooted or destroyed or dies, within this period another tree or hedge shall be planted in the immediate area and that tree or hedge shall be of such size and species, and shall be planted at such time, as may be specified in writing by the local planning authority.

- 13) The detailed plans to be submitted under reserved matters must include details of a surface water drainage scheme for the site, based on sustainable drainage principles and an assessment of the hydrological and hydro geological context of the development. The scheme shall include construction details and shall subsequently be implemented in accordance with the approved details before the development is brought into use, unless otherwise agreed in writing with the Local Planning Authority. The scheme to be submitted shall demonstrate:
 - i) The utilisation of holding sustainable drainage techniques (e.g. soakaways etc.);
 - ii) The limitation of surface water run-off to equivalent greenfield rates (i.e. maximum of 5 litres/second/Ha);
 - iii) The ability to accommodate surface water run-off on-site up to the critical 1 in 100 year event plus an appropriate allowance for climate change, based upon the submission of drainage calculations;
 - iv) responsibility for the future maintenance of drainage features including an appropriate Maintenance Plan.
 - v) Flood Route drawing showing the direction of surface water overland flows through the site and nearby existing development.
- 14) The detailed plans to be submitted in accordance with this outline permission shall include details of the proposed means of disposal of foul drainage, including details of any off-site work. The works shall be carried out in accordance with the approved details and shall be completed prior the occupation of any of the dwellings hereby permitted.
- 15) The detailed plans to be submitted in accordance with this outline permission shall include details of a pedestrian link between the application site boundary with the existing residential estate at Blue Man's Way and the Morrison's supermarket car park and a programme of works to implement the link within the application site boundary only. The works shall be carried out in accordance with the approved details and shall be completed prior the occupation of any of the dwellings hereby permitted.
- 16) The detailed plans to be submitted in accordance with this outline permission shall demonstrate that all future dwellings shall have curtilage car parking based on the Council's current car parking standards for new residential development.
- 17) Prior to the commencement of development, a Construction Management Plan shall be submitted to and approved in writing by the Local Planning Authority. The Construction Management Plan shall include:
 - i) details of the proposed access to the site for all vehicles associated with the development on the application site;

- ii) traffic management measures during the construction work;
- iii) the location of the site compound and staff parking;
- iv) measures to deal with dust;
- v) measures to deal with mud in the highway;
- vi) details of proposed hours of construction and for the making of deliveries to and collection of materials or waste from the site;

The approved measures shall be implemented throughout the construction period.

18) Prior to commencement of development:

- (i) An intrusive investigation and subsequent risk assessment must be undertaken by competent persons in accordance with 'Section 8: Conclusions and Recommendations, page 21 of the Wardell Armstrong Phase I Environmental Assessment Report' and a written report of the findings must be produced. The written report is subject to the approval in writing of the local planning authority. The report must be conducted in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11' and Contaminated Land Science Reports (SR2 – 4).
- (ii) If significant contamination is identified at (i) a Remediation Method Statement shall be submitted to and approved by the local planning authority 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, the site must not qualify as contaminated land under Part 2A of the Environment Protection Act 1990 in relation to the intended use of the land after remediation.
- (iii) The 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. The local planning authority must be given two weeks written notification of commencement of the remediation scheme works.
- (iv) Following completion of any required remedial works a Verification Report should be forwarded to the local planning authority for review and comment. The verification report shall include details of the remediation works and quality assurance certificates to show that the works have been carried out in full accordance with the approved methodology. It shall also include details of any post-remedial sampling and analysis to show the site has reached the required clean-up criteria shall be included in the verification report together with the necessary documentation detailing what waste materials have been removed from the site. The site shall not be brought into use until such time as all verification data has been approved in writing by the local planning authority.
- (v) If subsoils or topsoils are to be imported to site for remedial works or garden/soft landscaping areas, these soils will need to be tested at a rate and frequency to be agreed in writing with the local planning authority to ensure they are free from contamination. The results of the testing shall be provided to the local planning authority in the form of a verification

report confirming that soils of sufficient quality and quantity have been placed.

- 19) Before the development is commenced road sections, constructional and drainage details shall be submitted to and approved in writing by the local planning authority, and the approved works shall be implemented prior to the occupation of any of the dwellings hereby permitted.
- 20) Prior to occupation of the relevant dwellings the ecological enhancement measures identified in the Wardell Armstrong Ecological Compensation and Enhancement Plan dated 27 November 2015 shall be implemented with longer term management completed following occupation.
- 21) No dwelling shall be occupied unless it has been constructed in accordance with a scheme submitted to and approved in writing by the local planning authority so as to ensure that the building envelope provides sound attenuation against external noise sources and achieve an internal noise level of no greater than:
 - 35dB LAeq 1hour indoors between 0700 and 2300 hours (applicable to noise sensitive rooms i.e. living rooms)
 - 30dB LAeq 15 minutes indoors between 2300 and 0700 hours (to protect bedrooms)
 - LAFMax indoors shall not exceed 45dB between 2300 and 0700 hours (to protect bedrooms)

All indoor levels shall be taken with windows open or with alternatively provided acoustic ventilation over and above "background" ventilation. This may be provided by ventilation which complies with the performance specification given in Schedule 6 of Schedule 1 of the Noise Insulation Regulations 1975.
- 22) No dwelling shall be occupied unless it has been constructed in accordance with a scheme submitted to and approved in writing by the local planning authority so as to ensure that the rear gardens achieve an external noise level of 55dB LAeq, 1hr between 10:00 and 15:00 hours, measured at a height of 1.5m above ground level in free-field conditions.

End of Schedule of Conditions

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Christiaan Zwart	of Counsel, instructed by Sumera Shabir, RMBC Planning Solicitor
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He called:

Andrew West BSc MA MRTPI	Planning Officer
Helen Sleight BA MA MRTPI	Senior Planning Policy Officer
Christopher Heczko Dip Arb	Tree Services Manager

FOR THE APPELLANT:

Andrew Piatt	Gateley PLC
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He called:

Ian Grimshaw BA MA MSc CMLI MRTPI	Director - The Environment Partnership Ltd
Tom Popplewell BSc	Principal Arboricultural Assistant - The Environment Partnership Ltd
David Rolinson BA MRTPI	Chairman (Planning) - Spawforths

INTERESTED PERSONS:

James Peter	Local resident
Nicolas Howarth	Local resident

PLANS SUBMITTED AT THE INQUIRY:

Drawing No 013168_P104 Rev A - Amended Red Line Plan

Drawing No 013168_P100 Rev D - Parameters Plan (scale plan)

DOCUMENTS SUBMITTED AT THE INQUIRY:

1. Letter dated 17 September 2007 from Government Office for Yorkshire and The Humber re Savings Direction
2. Certified Copy of Tree Preservation Order No 3 dated 15 March 2016
3. Town and Country Planning (Tree Preservation) Regulations 2012

4. Palm Developments Ltd v SoSCLG [2009] EWHC 220 (Admin)
5. Distinctive Properties (Ascott) Ltd v SoSCLG [2015] EWCA Civ 1250
6. R (on the application of Kides) v South Cambridgeshire DC [2011] EWHC Admin. 839
7. R v Warwickshire County Council ex Parte Powergen PLC Court of Appeal July 1997
8. Tesco Stores Limited v Dundee City Council (Scotland) [2012] UKSC 13
9. Anita Colman and SoSCLG and North Devon District Council and RWE NPower Renewables Limited [2013] EWHC 1138 (Admin)
10. R on the application of Wynn-Williams v SoSCLG [2014] EWHC 3374 (Admin)
11. Solihull Metropolitan Borough Council and (1) Gallagher Estates Limited and (2) Lioncourt Homes [2014] EWCA Civ 1610
12. Phides Estates (Overseas) Limited and SoSCLG and Shepway District Council and David Plumstead [2015] EWHC 827 (Admin)
13. Ivan Crane and SoSCLG and Harborough District Council [2015] EWHC 425 (Admin)
14. SoSCLG v Hopkins Homes Ltd [2016] EWCA Civ 168
15. Oadby and Wigston Borough Council and (1) SoSCLG and (2) Bloor Homes Ltd [2016] EWCA Civ 1040
16. Gladman Developments Limited and Daventry District Council and SoSCLG [2016] EWCA Civ 1146
17. Shropshire Council and (1) SoSCLG and (2) BDW Trading Limited [2016] EWHC 2733 (Admin)
18. East Staffordshire Borough Council and SoSCLG (1) and Barwood Strategic Land (2) [2016] EWHC 2973 (Admin)
19. R (on the application of Morge) v Hampshire County Council [2010] EWCA Civ 608
20. Cheshire East Borough Council and SoSCLG and Renew Land Developments Ltd [2016] EWHC 571 (Admin)
21. Written Statement of James and Gillian Peter
22. Signed Statement of Common Ground
23. Email (dated 6 December 2016) and Plan from Strata Homes Ltd re land required for site access

24. Written Statement of Tom Popplewell
25. Written Statement of Christopher Heczko
26. Helen Sleight written note re 5 year land supply position and Green Belt sites dated 7 December 2016
27. Examining Inspector's Report on the Rotherham Core Strategy (dated 30 June 2014)
28. Council's Opening Statement
29. Council's Closing Submissions
30. Appellant's Opening Statement
31. Appellant's Closing Submissions

Richborough Estates