



Department for
Communities and
Local Government

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Our Refs: APP/W3710/A/13/2192451 &
APP/W3710/A/13/2195969

Your Ref: M8/0416

14 November 2013

Dear Sir

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78
APPEALS BY THE RONALD WILSON TRUST
SITE AT HAWKESBURY GOLF COURSE, BLACKHORSE ROAD, EXHALL,
COVENTRY
APPLICATION REFS: 031405 & 031950**

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Inspector, Jessica Graham BA(Hons) PgDipL, who held a public local inquiry on 16 – 18 July 2013 into your client's appeals against the refusal of Nuneaton & Bedworth Borough Council ("the Council") to grant outline planning permission for:

Appeal A: a canal marina off Coventry Canal for up to 150 berths; 40 allotments; community centre; up to 50 affordable dwellings; up to 150 dwellings; public open space including retention and creation of foot and cycle paths; and creation of natural area of play and associated landscaping, in accordance with application ref: 031405, dated 23 March 2012; and

Appeal B: a canal marina off Coventry Canal for up to 150 berths; 40 allotments; community centre; up to 169 dwellings; public open space including retention and creation of foot and cycle paths; and creation of natural area of play and associated landscaping, in accordance with application ref: 031950, dated 31 January 2013.

2. On 26 March 2013 both appeals were recovered for the Secretary of State's determination, in pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act 1990, because they involve proposals for significant development in the Green Belt and proposals for residential development of over 150 units or on sites of over 5 hectares, which would significantly impact on the Government's objective to secure a better balance between housing demand and supply and create high quality, sustainable, mixed and inclusive communities.

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Inspector's recommendation and summary of the decision

3. The Inspector recommended that the appeals be allowed. For the reasons given below, the Secretary of State disagrees with the Inspector's conclusions and recommendations, dismisses both appeals and refuses planning permission. A copy of the Inspector's report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

Procedural matters

4. At the inquiry, an application for costs was made by the appellant against the Council. That application is subject to a separate decision issued today.

Policy considerations

5. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that proposals be determined in accordance with the development plan (DP) unless material considerations indicate otherwise. In this case, the development plan consists solely of the saved policies of the Nuneaton and Bedworth Borough Local Plan adopted in June 2006 (IR4.1).
6. Material considerations which the Secretary of State has taken into account include *the National Planning Policy Framework* (the Framework, March 2012); Circular 11/1995: *Use of Conditions in Planning Permission*; and the *Community Infrastructure Levy (CIL) Regulations 2010* as amended. The Secretary of State has also had regard to the fact that on 28 August 2013 Government opened a new national planning practice guidance web-based resource. However, given that the guidance has not yet been finalised he has attributed it limited weight.
7. Other material considerations include the preferred options consultation draft Local Plan (the 'Borough Plan'), which was published by the Council in July 2013 shortly before the inquiry. However, as it has yet to be submitted for examination and so is subject to change, it has been afforded little weight.
8. The Secretary of State has also taken into account the Coventry Joint Green Belt Review of 2009 and the Landscape Character Assessment studies undertaken on behalf of the Council in 2011-2012 (IR11.56-57).

Main issues

9. The Secretary of State agrees with the Inspector that the main issue in both appeals is whether the substantial weight that must be attached to the harm caused by inappropriate development in the Green Belt, together with any other harm, is clearly outweighed by other considerations, such that very special circumstances exist that would justify granting planning permission (IR11.2).

Inappropriate development in the Green Belt

10. The Proposals Map in the Nuneaton and Bedworth Borough Local Plan 2006 identifies the site of the appeals as within the Green Belt, which is the subject of saved policy ENV1.

11. Both the Council and the appellant agree that neither the proposed housing nor the proposed community facilities building would fall within any of the specified classes of exception to inappropriate development in the Green Belt at paragraphs 89 – 90 of the Framework. The Secretary of State agrees with the Inspector that these elements of the proposal constitute inappropriate development (IR11.4).
12. With regard to the small facilities building proposed to serve the marina, the Inspector notes that the Statement of Common Ground states that it would be limited to facilities necessary to serve the marina. The Secretary of State agrees with the Inspector for the reasons that she gives (IR11.5) that the proposed marina building would be capable of inclusion within the second class of exception listed at paragraph 89 of the NPPF, as an appropriate facility for outdoor recreation that would preserve the openness of the Green Belt, and so would not constitute “inappropriate” development.
13. Turning to the marina, for the reasons given by the Inspector at 11.6 -11.11, the Secretary of State agrees with her that the marina would be an inappropriate form of development in the Green Belt and would not preserve its openness (IR11.12).
14. The Secretary of State agrees with the Inspector’s conclusion that that the proposed housing, community facilities building and marina would constitute inappropriate development which would, by definition, be harmful to the Green Belt. He agrees that that harm carries substantial weight (IR11.13).

Other types of harm

Harm to the Green Belt

15. The Secretary of State agrees with the Inspector’s conclusion (IR11.14) that the presence of 200 dwellings (Appeal A) would reduce openness to a greater extent, and consequently be more harmful, than the presence of 169 dwellings (Appeal B). Although the Secretary of State acknowledges that the proposed marina facilities building could be accommodated in a manner that would preserve the openness of the Green Belt, he also agrees with the Inspector that the presence of narrowboats within the marina basin would adversely affect the openness of the site (IR11.14).
16. For the reasons set out in IR11.15, the Secretary of State agrees with the Inspector that a small reduction in the number of boats moored up on the adjacent canal would not have any real ‘balancing’ effect on the reduction in openness that would result from the stationing of up to 150 boats in a marina basin on the appeal site.
17. The Secretary of State agrees with the Inspector that the proposed development would not result in the merging of neighbouring towns, would have no adverse impact on the setting or special character of any historic town, and would not compromise urban regeneration (IR11.16). However, he also agrees that since the proposals would result in additional built development, they would conflict with the purposes of checking sprawl, and safeguarding the countryside from encroachment (IR11.16).
18. The Secretary of State agrees with the Inspector that substantial weight attaches to that harm which would be caused through the reduction in openness, and the increase in the built-up part of Hawkesbury Village at the expense of the countryside. He also agrees that the potential overall harm in these respects is greater in Appeal A, because that scheme proposes a greater quantity of housing (IR11.18).

Other potentially harmful impacts: the highway network

19. For the reasons given by the Inspector at IR 11.19 -11.32, the Secretary of State agrees that the evidence demonstrates the additional traffic likely to be generated by the proposed development could be adequately accommodated within the existing transport network, without any significant adverse impact on the safety of pedestrians and other road users. In this respect, he agrees with the Inspector's conclusion that there would be no harm to weigh against permitting the proposed development (IR11.33).

Other potentially harmful impacts: accessibility of facilities and services

20. The Inspector notes in his report (IR11.34) that the Council's reason for refusing the Appeal B development involving up to 169 houses (but not the Appeal A development involving up to 200 houses) included the concern that the housing would not be well integrated with local shops, schools and medical facilities, and therefore would not be "sustainable". For the reasons given by the Inspector at 11.35 – 11.39, the Secretary of State agrees with the Inspector that harm of some weight would result from the associated increase in reliance on journeys made by private car. He also agrees that, whilst the Council does not allege any conflict in this respect with any specific adopted Development Plan policy, there would be conflict with the general thrust of national policies which seek to promote travel by more sustainable modes of transport (IR11.40).

Other considerations

Public open space

21. The Secretary of State acknowledges that the development proposals include restoring and improving the landscape of the northern part of the site, some 70% of the total area, to create some 18.33ha of informal parkland, which would function as public open space, accessible to all as a recreational resource. He has also had regard to the fact that ownership would be transferred to the Council, and that there would be payment to cover maintenance and upkeep for then extra 20 years (IR11.42). The Secretary of State notes that some members of the public already use this area for recreational purposes, albeit on an informal basis, but he agrees with the Inspector that there is no evidence to suggest the landowner would be unable to fence off access to all the area except along public rights of way if it chose (IR11.43). However, whilst the Secretary of State recognises that the proposed landscaping and dedication of a large area of green space to provide publicly accessible parkland would be an important benefit, he considers it is not an exceptional aspect of these appeals. The Secretary of State does not agree with the Inspector that the open space proposals should be accorded very substantial weight; rather, he places significant but less than substantial weight on the open space proposals in both appeals.

Footpaths and cycle ways

22. The Secretary of State accepts that in addition to upgrading the existing footpaths across the site and funding improvements to the underpass that links the appeal site to the Bayton Road Industrial Estate, the proposed development would involve the provision of a new cycle path (IR11.44). The Secretary of State recognises that these proposed access improvements would enhance the 'green infrastructure' linking the appeal site to Hawkesbury Village and Bedworth, and also to other publicly accessible

open spaces and recreational routes within the wider area. He has taken into account the benefit it would bring to existing residents as well as to potential occupiers of the proposed housing and to visitors to the proposed marina. However, he is not persuaded that considerable weight should be given to this benefit and instead gives it no more than some weight.

Visual amenity

23. For the reasons given at IR11.45-46, the Secretary of State agrees with the Inspector that the overall impact of the proposals would not harm the visual amenity of the area, but neither would it result in sufficient enhancement to weigh in favour of the proposed development (IR11.46).

Ecology

24. The Secretary of State agrees with the Inspector's analysis at IR11.47-48, including the conclusion that notwithstanding the loss of part of the appeal site to built development, the overall improvement in biodiversity habitat would be a benefit. Like the Inspector, he recognises that the full extent of that benefit would depend on the nature and extent of measures that have not yet been detailed. He therefore agrees with the Inspector that this consideration carries some weight in favour of the proposed development.

Marina

25. The Secretary of State notes that the appellant and the Council agree that there is a clear need for new inland waterway marinas; that the appeal site is particularly well suited for marina development, due to its location on a canal junction, the long free pounds allowing for uncongested cruising, and its proximity to sizeable population centres; and that there is no sequentially preferable site available in the Borough that could accommodate the appeal proposals outside the Green Belt (IR11.50). However, the sequential assessment of alternative sites only considered those within the Nuneaton and Bedworth Borough, and the Secretary of State agrees with the Inspector that it is possible that potential marina sites on the other side of the border have similar benefits to the appeal site in terms of proximity to Hawkesbury Junction, with its adjoining long free pounds and population centres (IR11.51).
26. Furthermore, the coming forward of a planning application for the development of a marina on a nearby site off Alderman's Green Road, which is also within the Green Belt, shows that there is at least one possible alternative location for a marina (IR 11.52). The Secretary of State agrees with the Inspector's conclusion that this somewhat lessens the substantial weight that would have otherwise been given to meeting the acknowledged need for a marina near Hawkesbury Junction. Overall, the Secretary of State agrees with the Inspector's conclusion (IR11.53) that the benefits of providing a marina on this appeal site, in terms of meeting unmet need, promoting tourism, improving recreational boating facilities and contributing to local economic activity, carry considerable weight.

Open-market housing

27. The Inspector notes in her report (IR11.54) that there is not a sufficient supply of land to meet the Borough's housing need for the next 5 years, as required by paragraph 47 of the Framework. The Council believes it has a supply of about 3 years, whereas the appellant contends that properly calculated, the actual figure is closer to a 1.4 year

supply. In any event, both consider that the absence of a 5 year supply is a material consideration which carries significant weight. The Secretary of State agrees with the Inspector and gives significant weight to the lack of a 5 year supply.

Affordable housing

28. For the reason given at IR11.55 the Secretary of State agrees with the Inspector that significant weight should be attached to the fact that the proposed development would go some way toward addressing this shortfall by delivering either 50 (Appeal A) or 42 (Appeal B) affordable dwellings. The Secretary of State also agrees with the Inspector that the benefit offered by Appeal A would be greater, in that it would provide a higher proportion of "social rented" housing, of the type most needed by the Council (IR 11.55).

Use of the Green Belt for housing

29. The Secretary of State notes the findings of the Coventry Joint Green Belt Review 2009 and the Landscape Character Assessment undertaken in 2011-2012 (IR11.56). For the reasons given at IR11.57 he agrees with the Inspector some weight should be attached to the undisputed evidence that, in landscape terms, the appeal site has been identified as a strong potential candidate for necessary future housing in the Green Belt.

Allotments and community building

30. The Secretary of State agrees with the Inspector (IR11.58) that the proposed provision of allotments would help to address an acknowledged need for allotments in this location. He also recognises that there is an acknowledged need for a community building in this location, which would help to accommodate a variety of local groups and uses. However, although he agrees with the Inspector that the provision of these local facilities is a benefit, he is not persuaded that considerable weight should be given to these benefits and instead gives them no more than some weight.

The overall balance

31. The Secretary of State has carefully considered the Inspector's conclusions at IR 11.73 – 11.78 and the balance of considerations in this case. He agrees that there would be substantial harm to the Green Belt through inappropriateness and other harm - particularly reduction in openness, the failure of the proposals to comply with the Green Belt's purposes of checking unrestricted sprawl, and safeguarding the countryside from encroachment. He has therefore gone on to consider whether there are other considerations which clearly outweigh the potential harm to the Green Belt which provide the very special circumstances needed to approve development in the Green Belt.
32. The Secretary of State agrees with the Inspector that harm of some weight would result from an increase in reliance on journeys made by private car. He also agrees with the Inspector regarding the degree of positive weight to ascribe to provision of a marina at this location, the agreed absence of a 5 year housing land supply, the provision of affordable housing, the ecological benefits and the conclusions of recent studies. However, for the reasons given above the Secretary of State places less weight than the Inspector on the new open space, foot and cycle paths, and the provision of allotments and a community building. Whilst the Secretary of State considers that the decisions are very finely balanced, in both cases he considers that

the benefits would not clearly outweigh the harm to the Green Belt and other identified harm.

Conditions

33. The Secretary of State has considered the inspector's reasoning and conclusions on conditions as set out at IR 11.79 – 11.86. He is satisfied that the conditions recommended by the Inspector at Appendices C and D to the IR are reasonable and necessary and meet the tests of Circular 11/95. However, he does not consider that these overcome his reasons for refusing both appeals.

Section 106 agreements and undertakings

34. The Secretary of State has considered the Inspector's assessment at IR11.59 of the provisions in the Section 106 agreements and undertakings for each of the appeals in relation to affordable housing, allotments, a community facilities building, Sustrans cycle path, footpath improvements, and the landscaped public open space with habitat enhancement and play areas. He agrees that these planning obligations meet the requirements of Regulation 122 of the Community Infrastructure Regulations 2010 as being necessary, fair and reasonable, and directly related to the proposed development. The Secretary of State has also considered the Inspector's reasoning and conclusions on the Education Contribution provided by the Unilateral Undertakings, as set out at IR 11.60 – 11.70. He agrees with the Inspector's conclusion (IR11.71) that the Education Contribution provides the funding calculated as necessary and meets the relevant requirements set out in Regulation 122 and the policy in the Framework. However, for the reasons set out above, he does not consider that the planning obligations are sufficient to overcome his concerns with the appeal proposals that he has identified in this decision letter.

Overall Conclusions

35. Green Belt considerations apart, the Secretary of State sees considerable merit in both the appeal proposals. Whilst he considers that the decisions on both appeal proposals are very finely balanced, he considers that in both cases the benefits do not clearly outweigh the harm to the Green Belt and other harm, as set out at paragraphs 31-32 above, and therefore that there are no very special circumstances that would justify the inappropriate development in the Green Belt. He therefore concludes that there are no material considerations of sufficient weight which require him to determine the application other than in accordance with the development plan.

Formal Decision

36. Accordingly, for the reasons given above, the Secretary of State disagrees with the Inspector's recommendation. He hereby dismisses both your client's appeals and refuses outline planning permission for :-

Appeal A: a canal marina off Coventry Canal for up to 150 berths; 40 allotments; community centre; up to 50 affordable dwellings; up to 150 dwellings; public open space including retention and creation of foot and cycle paths; and creation of natural area of play and associated landscaping, in accordance with application ref: 031405, dated 23 March 2012; and

Appeal B: a canal marina off Coventry Canal for up to 150 berths; 40 allotments; community centre; up to 169 dwellings; public open space including retention and

creation of foot and cycle paths; and creation of natural area of play and associated landscaping, in accordance with application ref: 031950, dated 31 January 2013.

Right to challenge the decision

37. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged by making an application to the High Court within six weeks from the date of this letter.
38. A copy of this letter has been sent to Nuneaton and Bedworth Borough Council. A notification e-mail or letter has been sent to all other parties who asked to be informed of the decision.

Yours faithfully

Julian Pitt

Authorised by Secretary of State to sign in that behalf

Richborough Estates



Report to the Secretary of State for Communities and Local Government

by Jessica Graham BA(Hons) PgDipL

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

Date 12 September 2013

TOWN AND COUNTRY PLANNING ACT 1990

NUNEATON & BEDWORTH BOROUGH COUNCIL

TWO APPEALS MADE BY

THE RONALD WILSON TRUST

Inquiry opened on 16 July 2013

Hawkesbury Golf Course, Blackhorse Road, Exhall, Coventry, West Midlands

File Ref: APP/W3710/A/13/2192451 & 2195969

APPEAL A File Ref: APP/W3710/A/13/2192451

Hawkesbury Golf Course, Blackhorse Road, Exhall, Coventry, West Midlands

- 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 The Ronald Wilson Trust against the decision of Nuneaton & Bedworth Borough Council.
- The application Ref 031405, dated 23 March 2012, was refused by notice dated 21 November 2012.
- The development proposed is a canal marina off Coventry Canal for up to 150 berths; 40 allotments; community centre; up to 50 affordable dwellings; up to 150 dwellings; public open space including retention and creation of foot and cycle paths; and creation of natural area of play and associated landscaping.

Summary of recommendation: that the appeal be allowed.

APPEAL B File Ref: APP/W3710/A/13/2195969

Hawkesbury Golf Course, Blackhorse Road, Exhall, Coventry, West Midlands

- 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 The Ronald Wilson Trust against the decision of Nuneaton & Bedworth Borough Council.
- The application Ref 031950, dated 31 January 2013, was refused by notice dated 28 March 2013.
- The development proposed is a canal marina off Coventry Canal for up to 150 berths; 40 allotments; community centre; up to 169 dwellings; public open space including retention and creation of foot and cycle paths; and creation of natural area of play and associated landscaping.

Summary of recommendation: that the appeal be allowed.

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1. Procedural matters

References in round brackets are to documents (listed in Appendix B), while references in square brackets are to paragraphs within this report.

- 1.1 The address of the site was given on the planning application forms as “land off Sephton Drive”, but I consider the alternative description “Hawkesbury Golf Club”, used in the Council’s Refusal Notice and the subsequent appeal form, to be more helpful for purposes of identification and have adopted that instead.
- 1.2 Each of the applications now the subject of these two appeals were submitted in outline, with details of access provided, but details of scale, layout, appearance and landscaping reserved for future determination. My consideration of both appeals proceeds on that basis.
- 1.3 By letter dated 26 March 2013, the SoS directed that he would determine these appeals himself. The reason given for that direction was that the appeals “involve proposals for significant development in the Green Belt and proposals for residential development of over 150 units or on sites of over 5 hectares, which would significantly impact on the Government’s objective to secure a better balance between housing demand and supply and create high quality, sustainable, mixed and inclusive communities”.
- 1.4 The Hawkesbury Village Forum sought, and was granted, Rule 6 status under the Inquiry Procedure Rules, and was duly represented at the inquiry.
- 1.5 The inquiry sat on 16, 17 and 18 July 2013. I made unaccompanied visits to the area on 15 and 16 July, and an unaccompanied site visit on 18 July.
- 1.6 Draft S.106 Agreements (INQ 5, INQ 28) for both appeal proposals were submitted at the inquiry, but it was not possible for all parties to sign these deeds before the inquiry closed. I therefore agreed a post-inquiry submission date of 1 August 2013 for submission of the executed S.106 Agreements. By letter dated 1 August 2013 (PINQ 1), the appellant explained that it had been unable to obtain the signature of the County Council, and so presented the planning obligations in the form of a S.106 Agreement (PINQ 2, PINQ 4) and S.106 Unilateral Undertaking (PINQ 3, PINQ 5) for each appeal proposal. I consider the content and operation of these below [9.1, 11.59 – 11.71].
- 1.7 Before the inquiry closed, the appellant applied for an award of costs against the Council. That application is the subject of a separate report.

2. The site and surroundings

- 2.1 The appeal site comprises some 29 ha of land within the Green Belt, located on the southern boundary of the Nuneaton and Bedworth Borough, adjacent to Hawkesbury Village. Originally marshland (INQ 3, 3.9) or farmland (INQ 3, 6.1), it was subsequently worked for coal and used for the tipping of waste. Latterly, the site’s colliery spoil and waste heaps were re-profiled and remediated prior to the opening of Hawkesbury Golf Course in the 1990s. That business closed in 2006 due to financial difficulties (INQ 3, 3.9).
- 2.2 The site is bordered by Coventry Canal to the east, beyond which lies open countryside, and the railway line to the west, beyond which lies the Bayton Road Industrial Estate. To the south is existing housing, while the northern

boundary adjoins the Miners Welfare Park. The site is undulating and open, except for a few small clumps of shrubs and trees (INQ 3, 3.14). It is traversed by public footpaths, which provide links with Hawkesbury Village to the south; the Industrial Estate and Bedworth town centre to the west; and Coventry Canal and Coventry Way to the north and south (INQ 3, 3.13).

- 2.3 A planning application for development of the site, submitted in 2005, proposed a 120 berth marina, 72 bed hotel complex with function room, conference room, fitness centre and bar, new ablution block and modifications to Hawkesbury Golf Club. The (then) Secretary of State called in the application to determine it herself, and refused the application by letter dated 19 January 2007 ("the 2007 decision") (APP 15.1).
- 2.4 Further details of the site's landscape and character, and its planning history, can be found at sections 3 and 4 of the SoCG agreed between the Council and the appellant (INQ 3).

3. The proposals

- 3.1 The development proposed in both Appeal A and Appeal B is the construction of a canal marina of up to 150 berths; 40 allotments; a community facilities building; public open space; the retention and upgrading of existing public footpaths, and the creation of new public footpaths and cycle ways; creation of landscaping and biodiversity enhancement areas; creation of a sculpted natural area of play; and associated landscaping.
- 3.2 The difference between the two schemes is that Appeal A would include up to 200 dwellings (with 25% provided as affordable dwellings), while Appeal B would include up to 169 dwellings (with 25% provided as affordable dwellings).
- 3.3 The SoCG records the Council's agreement that there is a clear need for new inland waterways marinas (INQ 3, 8.11); that the appeal site is particularly well-suited for marina development (INQ 3, 8.12); that its Green Belt location would render it inappropriate for the marina to include ancillary facilities such as a boatyard, chandlery or restaurant that would otherwise improve the viability of its operation (INQ 3, 2.4); that the proposed housing in each scheme would be necessary to enable the delivery of the marina and the other community benefits (INQ 3, 2.6); that the reduction from 200 dwellings in Appeal A to 169 dwellings in Appeal B was achieved by changing the type and tenure of the open-market and affordable dwellings (INQ 3, 2.8); and that for each proposal, the marina and other elements of the scheme would not come forward without provision of the number of dwellings specified (INQ 3, 2.10).

4. Planning policy and guidance

The Development Plan

- 4.1 The West Midlands Regional Strategy and the Warwickshire Structure Plan have both been revoked with effect from 20 May 2013. The statutory Development Plan for the area therefore consists solely of the Nuneaton and Bedworth Borough Local Plan ("LP"), adopted in June 2006. In June 2009 the SoS issued a saving direction which prevented most of the LP policies from expiring in accordance with the Planning and Compulsory Purchase Act (PCPA) 2004. Thus, while the period that the saved policies were originally intended

to cover has now expired, they will remain an extant component of the Development Plan until they are replaced by the adoption of a new Local Plan.

- 4.2 LP Policy Env1 concerns the Green Belt (INQ 9, p51). It states that development in the Green Belt will not normally be permitted, unless it is for agriculture and forestry; essential facilities for outdoor sport and outdoor recreation, for cemeteries and for other uses of land which preserve the openness of the Green Belt, and which do not conflict with the purposes of including land in it; limited extension, alteration or replacement of existing dwellings; and limited infilling or redevelopment of major existing developed sites identified in adopted local plans.
- 4.3 The Council does not allege that either of the proposals conflicts with any of the saved LP policies.

The emerging Local Plan

- 4.4 The Council is in the process of producing a new Local Plan (initially a 'Core Strategy', now known as 'the Borough Plan') to cover the period from adoption to 2026. The Council considered the draft Borough Plan 'Preferred Options' on 22 May 2013, and approved publication of the report for consultation during July and August 2013. The Council currently expects to adopt its new Local Plan by late 2014 or early 2015 (INQ 3, 5.51).

National planning guidance

- 4.5 The National Planning Policy Framework (NPPF), published by the government in March 2012, provides the national policy guidance for this appeal. Also of relevance is Circular 11/95 *The Use Of Conditions In Planning Permissions*.

5. The case for the Council

The following paragraphs summarise the Council's case, which is set out more fully in its closing submissions (INQ 33).

- 5.1 The Council's grounds of objection in respect of both appeals are that the development would be over-intensive in an area which lacks adequate highway infrastructure, and would be detrimental to highway and pedestrian safety ("the Highway Objection"). In respect of Appeal B the Council maintains an additional ground of objection, namely that the development would not be well integrated with community facilities and services and therefore would not be sustainable, contrary to paragraph 70 of the NPPF ("the Sustainability Objection") (LPA 1, 6.1).

The Highway Objection

- 5.2 Paragraph 32 of the NPPF provides that all development which would generate significant amounts of movement should be supported by a Transport Statement or Assessment which takes account of opportunities for sustainable transport modes; safe and suitable access to the site for all people; and the availability of cost-effective improvements to the transport network which will limit the significant impacts of the development. The Council's main areas of concern in respect of transport relate to three areas of existing or potential traffic congestion (LPA 1, 6.6).

(1) The level crossing on Blackhorse Road

- 5.3 A unique feature of the appeal site is its proximity to a level crossing over the Nuneaton to Coventry railway line. This is a busy commuter line with up to 5 trains, both passenger and freight, passing each hour at peak times (LPA 1, 6.8). Although Mr Fitter's evidence for the appellant was that the mean barrier downtime is 2-3 minutes (EIC, Day 2) rather than the Council's calculated 4 minutes (LPA 1, 6.8), the fact remains that there are a significant number of crossing downtimes per hour, for a significant number of minutes each time, causing queuing and delays on the road.
- 5.4 Furthermore, improvements proposed under the Nuneaton-Coventry Rail Upgrade project (known as NUCKLE), including the construction of 2 new stations, will increase rail traffic (LPA 1, 6.9). Inevitably this will increase the number of barrier downtimes per hour. The Council's concern is that this is likely to give the crossing a certain notoriety, tempting road users to try to "beat the barrier" in order to avoid having to stop and wait for it to rise again (LPA 1, 6.10).
- 5.5 The level crossing is well-used by pedestrians of all ages. Of special concern to the Council are parents with young children, and unaccompanied children on their way to school. Network Rail itself has expressed concern about the safety of the crossing in the light of the NUCKLE project, and has suggested mitigation in the form of either a bridge, or a £60,000 contribution to signalling and CCTV cameras at the crossing (LPA 1, 6.11). The appellant considers this to be a Network Rail problem and not one caused by the development, and so has declined to offer mitigation. The Council however considers that it is not merely a 'Network Rail problem'. The inevitable increase in traffic that would result from permitting the development proposed in either Appeal A or Appeal B would increase queuing times, and exacerbate this existing cause of delay (LPA 1, 6.9).
- 5.6 Mr Fitter admitted that his evidence that either proposal would only yield an extra 2 cars per queue for the crossing was surprising (XX, day 2). The Council contends that even if such a conservative estimate is correct it is still enough, when coupled with the implications of the NUCKLE project, to make this area of concern extremely significant. It is the Council's view that no cost-effective measures could limit the significant impact of the development on the level crossing, and that the development would therefore be contrary to paragraph 32 of the NPPF.

(2) The junction of Blackhorse Road and Coventry Road

- 5.7 The Council's concern is that this junction is already at capacity, as the key point of access to and from Hawkesbury village, and that permitting either development proposal would put further pressure on it.
- 5.8 The configuration of the junction, and its surrounding features, makes it impossible to widen the junction or make any significant physical alterations (LPA 1, 6.12). The only possible way to mitigate the impact of the increase in traffic generated by the proposed extra 200 or 169 dwellings, therefore, is to install CCTV and to revalidate the signalling to link it with neighbouring junctions. Mr Fitter's evidence was that the appellant accepts the need for both these measures, and indeed the revalidation of the signalling has already

taken place (APP 3, 5.13). However, the Council retains the concern that the junction has 'no room to grow', and despite the mitigation measures, the impact of the proposed development on this junction is likely to exacerbate transport infrastructure problems.

(3) The canal bridge

- 5.9 This lies to the south-east of the appeal site, and is one of the points of access. The bridge is hump-backed and has a weight limit of 17t (LPA 1 6.13, amendment accepted). The Council is concerned that heavy vehicles, unable to access the site from the canal bridge, would add to the congestion at other points of access. Mr Fitter's evidence for the appellant was that heavy vehicles would only need access to the appeal site during the construction phase of the development [XX, day 2]. Even if that were found to be the case, the transport network to and from the appeal site is not such that it could easily bear further concentration of traffic at limited points of access.
- 5.10 The Council is also concerned to note that no mitigation is proposed in respect of the junctions to the south of the appeal site, namely those of Longford Road with Oakmoor Road, and Jackers Road with Aldermans Green Road. The Council considers that signalisation of these junctions would be appropriate (LPA 1, 6.14).

The Sustainability Objection

- 5.11 Paragraph 70 of the NPPF sets out how sustainable development can be achieved by ensuring integration of any new development with existing or proposed local facilities and services.
- 5.12 The Council has considerable concerns over the proposals' compliance with this requirement, which were not allayed by the appellant's evidence. Among other things, that evidence sets out the walking distance to local facilities and compares them with the IHT guidance on preferred maximum distances (APP 3, Table 4.1). It is notable that even those distances that 'pass' are toward the upper end of the desired range of preferred distance.
- 5.13 Depending where on the appeal site one starts from, the bus stop on Blackhorse Road may or may not 'pass' the IHT test. Even from the centre of the site the bus stop is at the IHT maximum desired walking distance; once there, the service is not a good one. Frequency is hourly, with no buses after 7pm, and none at all on Sundays and Bank Holidays (LPA 1, 6.17). This is not a good starting point for sustainable development.
- 5.14 The nearest primary and secondary schools are both outside the catchment area of the development so there is no guarantee of children obtaining a place at them. Schools within the catchment area are well towards the north of the appeal site and, depending on walking pace, could take up to 45 minutes to reach on foot. In order to maintain sustainability pupils should be encouraged where possible to walk to school, but such distances would discourage this from the outset.
- 5.15 The appellant contended that the walking times estimated by other parties were too long. But paragraph 70 of the NPPF specifically refers to the community as a whole, and this will include parents with young children, bags and buggies; grandparents accompanying children to school; and the more

and less able. Schools that are over 2km away, however long that may take different people to walk, are too far for them to contribute to sustainable development.

- 5.16 This applies all the more to the nearest Nursery / Day Care Centre, which resoundingly fails the IHT test (APP 3, Table 4.1). Whilst there is a convenience store and pub located on the Blackhorse Road within easy walking distance of the appeal site, other similar facilities such as a small supermarket, Post Office and hairdresser are further afield, and towards the IHT maximum distances. For anything more than a 'top-up shop' residents would need to go into Bedworth, which is 3.5km from the appeal site and would inevitably require a car journey. The same goes for the Leisure Centre just outside Bedworth, and the church on Coventry Road. All such journeys, likely to be frequent, would add to the congestion on the local road network.
- 5.17 Health and welfare services such as doctors, dentists and Community Centres all fail the IHT test as being beyond the preferred maximum distances (APP 3, Table 4.1). The appellant's evidence was that these services would be used infrequently (APP 3, 4.19), but this does not take into account the proportion of residents who have young children or are elderly, and may well make frequent use of those services. Lastly, it was agreed that no railway stations, even when the new Bermuda station is built as part of the NUCKLE project, will be within walking distance of the appeal site (Mr Fitter, XX day 2). Even travel by train, therefore, will first involve a car journey.
- 5.18 The Council therefore maintains its serious concern as to the sustainability of the development proposals, and the degradation of the residential environment likely to be caused if the appeals are approved.

Conclusion

- 5.19 The Council has justifiable, national policy-based concerns which led it reasonably to refuse the proposals and which, being unalloyed by the evidence, it upholds on these appeals.

6. The case for the Hawkesbury Village Forum

The following paragraphs summarise the HVF's case, which is set out more fully in its closing submissions (INQ 32)

- 6.1 The HVF appreciated the opportunity afforded by the inquiry to hear from professionals on the issues of the plans, the marina, the schools provision, the traffic analysis and the landscape review. However, what it heard further strengthened its concerns about access to amenities, the protection and preservation of the Green Belt, and the unique limitations of the road network.
- 6.2 The appellant's evidence is that the northern part of the appeal site is visually more amenable, while the southern part, described as 'post industrial' because it contains the remnants of the previous golf course, is more appropriate for redevelopment as it shares its aspect with industrial development and urban housing (APP 1). The HVF feels the difference between the northern and southern parts of the appeal site has been overstated. In reality, industrial units, pylons and the railway can be seen from most points on the appeal site, and even through to Beyton Lake the oil terminal to the west is visible and audible. Views to the east remain consistently rural, from the most southerly

to the most northerly points of the appeal site. The current post-industrial features consist only of hard-standing from the former driving range, which is less than 1.5% of the total area of the appeal site (INQ 17).

- 6.3 Mr Lee, who gave evidence for the appellant, said of Beyton Lake "It is quite attractive, and established. You can sit and take in the view" (EIC, day 1). The HVF agrees but would extend this to the whole of the appeal site, with views dependent on the direction in which the observer faces. If the industrial units, pylons and railway remain visible throughout the site, and a pleasing view can consistently be experienced at any point on the site, then the only difference between the aspects is that of the existing housing edge on the southern part of the site. Ultimately, the suggestion that this should constitute grounds for justifiable development in the Green Belt is disagreeable; it indicates that development could be bolted on to any urban edge, and that can only be described as sprawl.
- 6.4 No indication has been given, even by example, of the measures the appellant proposes to undertake in order to ensure that biodiversity will be introduced to the northern part of the appeal site, so as to result in an overall net gain. The appellant gave evidence that there would be a careful mowing management system to re-seed the land (Mr Lee, EIC day 1), but made no commitment to how badger setts, bats and the like would be relocated and provided for. The HVF therefore feels that the extent of the harm caused by the housing development would outweigh the extent of the net advantages of measures indicated for the northern part of the site.
- 6.5 Local residents are generally not directly opposed to the proposal for a marina on the appeal site. However, the HVF would contest the supposition that the need for a marina in this part of the canal is so great, and the market demand so high, that it warrants the damage that would be caused to the Green Belt by the economically necessary residential development. The extent of the harm caused by the proposed housing would outweigh the net advantages of the proposed marina. There are plans, currently in consultation phase, for a marina at Aldermans Green Road (HVF 1, INQ 20) and the appellant's evidence was that two marinas in such close proximity would be counter-productive (Mr Froome, EIC, day 2). Whilst there is doubt as to the economic viability of that proposal, that is unlikely to affect the decision to approve or reject it. Far more likely indicators for approval are local support (INQ 30), the local need for a marina and the regeneration of an undesirable site. On that basis, there is a good chance the Aldermans Green Road marina may be given approval.
- 6.6 The HVF does not completely refute the appellant's traffic analysis, since much corroborates its own counts and figures (HVF 1). It is however still doubtful about the lowly figure of an extra two cars per queue at the level crossing (APP 3, 5.15), and acutely aware that without the opportunity to learn the ins and outs of the various traffic modelling systems used by the appellant, it cannot be sure those models are absolutely appropriate for the unique road infrastructure of Hawkesbury Village.
- 6.7 The HVF maintains that its members' daily experience of the road network is challenging, and the two non-continuous routes of access, and the only level crossing in the Borough, are 'hot-spots' for residents (HVF 1). There appears to be no solution to this problematic road infrastructure, and the option of

creating a third route of access, which would improve residents' day-to-day life and use of the village, has not it seems been deemed as valuable as a marina, which would cater for tourists instead of residents. The impact of the NUCKLE project is assured. By 2015 the railway line will have an additional 2 passings an hour (HVF 1), meaning the barriers will be down for between four and seven times an hour. This would mean a range of four train crossings an hour being between 10 and 13.5 minutes of barrier-down time in any given hour, and seven train crossings would be a range of 17.5 to 23.5 minutes of barrier-down time in any given hour.

- 6.8 Access to amenities remains an unresolved issue, and falls into two parts. Firstly, the lack of any additional 'daily use' amenities included in the proposed development. A marina, community centre and allotments are very nice amenities to have in a local community, but would do nothing to keep residents within the village and limit their need to travel elsewhere. The marina would not educate children; the community centre could not advise residents on their ailments; and the allotments would take a considerable length of time to contribute to local grocery provision. The amenities Hawkesbury Village needs on a daily basis are further away, and often require travel by car to reach them.
- 6.9 Secondly, the means by which existing amenities would be accessed is a concern. The new walking routes suggested by the appellant are not entirely appropriate. The degree to which a significant number of residents would feel safe using the isolated and unlit Sustrans route, or the underpass into Bayton Road Industrial Estate, is questionable. There is no direct evidence or figures of the likely uptake of these routes, nor any evidence that formalising the public rights of way access will attract users to the routes.
- 6.10 The HVF considers that the parents of children obliged to attend Nicolas Chamberlain School, having been unable to access the increasingly popular Ash Green School, would be unlikely to send their child to walk to school along an unlit Sustrans route; the most likely outcome would be a commitment to driving their children to school. There are only four Primary Schools within 2 miles of the appeal site and most of these are currently at, or close to, capacity (HVF 1). The suggested solution is that these children would need to take advantage of surplus places at schools further afield at the time (Mr Nicholson, EIC, day 2). There is little weight that can be attached to forecasting school places due to the transient nature of communities, and the rise and fall of school popularity in the interim (APP 9).
- 6.11 In summary, the HVF feels that Hawkesbury Village has already experienced significant growth in recent times, and that to continue the advancement of housing from the existing line into the Green Belt would constitute sprawl and be unsustainable. There is no convincing evidence of the overall net gain of advantages that would be provided by the development, to the community or to the Green Belt, such as would justify approval. The restricted access to amenities, and the likely routes that residents would take to these, would further contribute to the amount of traffic on the road network. Coupled with the restrictions of the non-continuous flow of traffic routes, and a level crossing that will experience more frequent barrier-down time in the near future, make for problematic experiences for the residents already living in

Hawkesbury Village. To add another 200 or 169 dwellings into this mix would, in the opinion of the HVF, be irresponsible.

- 6.12 The balance of these factors remains the HVF's concern, and it respectfully asks that on this basis, the Council's decisions to reject these plans be upheld.

7. The case for the appellant

The following paragraphs summarise the appellant's case, which is set out more fully in its closing submissions (INQ 34).

- 7.1 The starting point for consideration of both appeals is the Development Plan. Remarkably, the Council's reasons for refusal do not allege any breach of Development Plan policy whatsoever.
- 7.2 The appeal site lies within the Green Belt, and the proposals include "inappropriate" development in terms of national Green Belt policy and Local Plan Policy ENV1 (INQ 3, 8.2, 5.31). The Council does not object to the proposals on the basis that the site lies within the Green Belt. The SoS will doubtless wish to determine whether "very special circumstances" exist in accordance with paragraph 88 of the NPPF, that would justify granting planning permission for the proposed development. The appellant contends that very special circumstances do exist in this case.

Very Special Circumstances: law, policy, and the balancing exercise

- 7.3 The definitive exposition of the law on establishing "very special circumstances" is to be found in South Bucks DC v Porter [2004] UKHL 33. The conclusion was that the exercise is fact-sensitive, and the decision maker needs to explain why very special circumstances have been found to exist. At paragraph 42 of the judgment Lord Brown stated *...the test to be satisfied under the policy guidance in PPG2 – whether there exist very special circumstances which clearly outweigh the environmental harm resulting – of itself provides the Green Belt with its necessary protection*. This serves to emphasize that the balancing exercise, correctly carried out, itself provides the necessary protection for Green Belt land.
- 7.4 This appeal is not run solely on the basis of the agreed deficit in the Council's five year supply of housing land (INQ 3, 8.22), and in any event paragraph 14 of the NPPF excludes from the presumption in favour of development sites where "specific policies...indicate development should be restricted", such as Green Belt land. Rather, there is a long concatenation of unusual circumstances, specific to this proposal and this location, which satisfy the requirement for very special circumstances.
- 7.5 Paragraph 88 of the NPPF retains effectively the same test for "very special circumstances" as existed under PPG 2. The first step in the balancing exercise is to identify the harm to the Green Belt associated with the proposal. Once that harm is identified it must then be weighed against the other considerations to discover whether or not they clearly outweigh this harm. If they do, "very special circumstances" will have been demonstrated.
- 7.6 The starting point is that inappropriate development in the Green Belt is itself harmful, as explained at paragraph 87 of the NPPF. This is accepted by the appellant.

- 7.7 Next the impact of the development on “openness”, as an essential characteristic of the Green Belt (per paragraph 79 of the NPPF) must be assessed. The new housing and the community building would have an effect on openness. The marina itself would not affect openness and therefore, as an engineering operation (per paragraph 90 of the NPPF), would be appropriate development. The marina building would clearly be an “appropriate facility for outdoor sport” within the meaning of paragraph 89 of the NPPF; as an “appropriate” building, its (minimal) effect on openness does not need to be taken into account.
- 7.8 The car parking associated with the boats would also be an “appropriate facility” within the meaning of paragraph 89 of the NPPF and its use by cars would not affect openness, because cars are likely only to be there on a transitory basis, unlike the boats. Were the SoS to decide otherwise, car parks associated with Green Belt cricket pitches, polo grounds etc would represent inappropriate development. That cannot be the intended effect of Green Belt policy, which encourages use of the Green Belt for sport, which in turn is likely to result in the need to travel by car to remote sport destinations in the Green Belt.
- 7.9 Based on the findings of the SoS in the 2007 decision concerning a proposed marina on this appeal site (APP 15.1), the view may well be taken that the stationing of boats in the marina is inappropriate and affects openness. However, paragraph 81 of the NPPF encourages the use of the Green Belt for sporting and recreational purposes, advising that *...local planning authorities should plan positively to enhance the beneficial use of the Green Belt, such as looking...to provide opportunities for outdoor sport and recreation*”. In his report on the 2007 case, the Inspector found that while a need for marinas had been identified by British Waterways, nothing had been submitted to show that need had to be met in the Green Belt (APP 15.1, IR 10.47). The SoS reached the same conclusion (APP 15.1, DL 28).
- 7.10 The case is now fundamentally different in that respect because, as recorded in the SoCG, it is agreed that an assessment having been carried out as to the suitability, availability and achievability of sites to accommodate the proposed marina and enabling dwellings, there is no sequentially preferable site available in the Borough (INQ 3, 2.11). No-one has suggested that a non-Green Belt site is available for a marina, with or without the enabling development. In addition, it is agreed that there is a clear need for a marina (INQ 3, 8.11), and that the appeal site is particularly well-suited for marina development due to (1) its location on a canal junction providing a choice of cruising routes, (2) the long free pounds allowing for uncongested cruising, and (3) proximity to the sizeable population centres of the West Midlands (INQ 3, 8.12).
- 7.11 It follows that there is now evidence not only of need, but that the need cannot be satisfied in the Borough in a non-Green Belt location. This is one vitally important distinction between the current proposals and the 2007 scheme. The other is that there is no need for the proposed housing to pass the sequential test, unlike the hotel element of the 2007 scheme, which failed to pass the sequential test.
- 7.12 Finally on the issue of openness, the boats that would use the marina are likely already to be in the Green Belt. The Inspector will have noted during her site

visit that many boats currently moor along the canal side in the vicinity of the appeal site. These are all affecting "openness" already, so the impact of boats in the proposed marina should not be counted against a blank canvas.

- 7.13 The next stage in the process is that paragraph 81 of the NPPF requires consideration of the use of the Green Belt, and protection of its visual amenity. In these respects there are advantages associated with the proposed development in terms of provision of opportunities for outdoor recreation including canal boating and provision of the new park. The opportunity exists to enhance the landscape (INQ 3, 6.9-6.10) and the ecological interest of the site. About 70% of the appeal site would remain free of built development (INQ 17), and the appellant's supplementary note on ecological enhancement (INQ 18) demonstrates that genuine ecological enhancement would be facilitated through the legal agreement and conditions.
- 7.14 The work carried out for the Borough by The Environment Partnership (TEP) (APP 1, section 5) is highly relevant to the issue of visual amenity in two respects. Firstly, it confirms the suitability of the whole of the appeal site to accommodate housing development. More important than that, the report has been carried out on a district-wide basis and so, unlike the position at the time of the 2007 decision, there is a comparative basis for saying this site is appropriate. In fact the site scored highest in the Nuneaton/Bedworth area, as the appellant's evidence shows (APP 2.2, Figure 4). This is an important aspect of the "very special circumstances" in this case.
- 7.15 In the Hawkwell decision (APP 15.6), the Inspector tested the effect of the development there proposed against the five purposes of the Green Belt, identified in paragraph 80 of the NPPF. That approach is supported by the appellant, whose case in respect of each can be summarised as follows.
- 7.16 (1) *To check the unrestricted sprawl of large built-up areas.* There will be additional built development, but the appeal site is land which has already been developed, and restored, with limited success. The restoration has included works associated with a now abandoned and deteriorating golf course. The absence of a five-year supply of housing land is relevant here (INQ 3, 8.22), especially when the evidence base for the emerging Local Plan is pointing to the suitability of this site for development, and the fact that the release of Green Belt is inevitable (APP 1 s.3, s.5; INQ 3, 8.1).
- 7.17 The Joint Green Belt Review by local authorities represents an important change since the 2007 decision. At that time, the SoS decided that the hotel then proposed would encroach into the buffer between Bedworth and Bulkington, where the Green Belt was at its narrowest and most vulnerable, and that loss of that buffer should be avoided (APP 15.1). Since then, the local authorities participating in the joint review have looked at the Green Belt between their boundaries and decided that it is appropriate to consider this location for release of the Green Belt for housing (APP 3, section 3). That is a district-wide exercise which the 2007 inquiry did not address. Furthermore it represents a local decision, based on all necessary information. As yet this has not resulted in a housing allocation because the Local Plan process has far to run, but it does form part of the evidence base.
- 7.18 The task in 2013 is to find sufficient housing for the district, which will inevitably be at the cost of Green Belt release (INQ 3, 8.1). That was not the

position in 2007, when the SoS was looking at a site-specific proposal for a hotel and marina, which had not involved a district-wide comparison of the sensitivity of the land in terms of Green Belt policy. The Tetbury appeal decision demonstrates that the probability of breach of a “specific policy” in order to meet housing need is an important consideration (APP 15.11, IR 14.52 and DL para 20). The inevitability of the loss of Green Belt land to accommodate housing, and the selection of the appeal site in the joint GB Review process, forms part of the “very special circumstances” in this case.

- 7.19 (2) *To prevent neighbouring towns merging into one another.* The proposed development would not merge one town with another. This was clearly the view reached by the Joint Green Belt Review, or it would not have selected the general location as being suitable for consideration for future development.
- 7.20 (3) *To assist in safeguarding the countryside from encroachment.* The housing development will result in encroachment. However, the emerging Local Plan accepts that strategic development in the Green Belt is inevitable (INQ 3, 8.1) so this harm must be assessed with that in mind. The Council will need to justify its reduction in housing targets from the Phase 2 RSS Panel recommendation (APP 14, 6.68). If the Inspector conducting the EiP of the Local Plan (or the Council itself) decides that more housing is needed, then further Green Belt land is likely to be necessary. Again, the Joint Green Belt Review process and the TEP work are important aspects of the case to counterbalance the encroachment associated with the inappropriate development.
- 7.21 (4) *To preserve the setting and special character of historic towns.* Not relevant in this case.
- 7.22 (5) *To assist in urban regeneration, by encouraging the recycling of derelict land.* There is insufficient urban land available to make adequate housing provision in the emerging Local Plan, so there is no basis for saying that a grant of planning permission on this site will prevent urban regeneration elsewhere.
- 7.23 Against such harm as is found must be set the advantages associated with the scheme. The SoCG records the Council's acceptance that the recreation, biodiversity and green infrastructure advantages, together with open-market and affordable housing, result in a package which represents “very special circumstances” (INQ 3, 6.15). The appellant considers the fact that the Council acknowledges “very special circumstances” have been established is, itself, part of the “very special circumstances” in this case. The Council does not regard Green Belt policy as a reason for refusal, doubtless because the Local Plan process has demonstrated to it that the sacrifice of Green Belt land to accommodate necessary housing is inevitable.

Open-market housing

- 7.24 There is no five-year supply of housing land (INQ 3, 8.22). The Council believes it has a supply of about 3 years (APP 14, 6.65), but the appellant's evidence shows it to be more like 1.4 years (APP 14, 6.66 – 6.96). This is a severe shortfall. The pragmatic position reached on this aspect of the case is that the Council and appellant agree the absence of a five-year supply to be a material consideration to which “significant weight” should be attached (Ms Moreton, XX day 1).

7.25 If the appellant's calculation of the actual housing supply is correct, the land supply will be non-existent by the time the emerging Local Plan is adopted in 2015. The emerging Local Plan acknowledges the need to release 3 strategic sites in the Green Belt (INQ 3, 8.1), but this necessary provision of housing through Green Belt release will not be available until 2015. The only solution to this housing crisis would be to release land before the Local Plan's adoption. Again this is completely different from the position at the time of the 2007 decision, when housing land supply was not an issue. It is now. The urgency of the need for housing, the inevitability of Green Belt release in the emerging local Plan and the delay in its adoption are all important parts of the "very special circumstances".

Affordable housing

7.26 There are 2,052 households registered with the Council as being in "considerable" housing need (INQ 3, 8.18). This is a serious deficit, to which considerable weight should be attached.

The benefits

7.27 Important though these factors are, this case is not based solely on the inadequacy of the supplies of open-market and affordable housing but on a wider, site-specific basis.

- The proposal is enabling marina development which would otherwise be unviable (INQ 3, 2.3-2.10) and for which the Council agrees there is a clear need (INQ 3, 8.11). The marina will foster tourism, recreation and economic activity during and after construction.
- There is no sequentially preferable location for the marina and homes (INQ 3, 2.11).
- The undeveloped land in the northern part of the appeal site would be made available for large, publicly available areas of open space and allotments covering an area of 18.33ha (INQ 3, 2.12) maintained at the appellant's cost for 20 years.
- A new community facilities building would be provided, which would benefit both new and existing residents, and serve to integrate the new development with Hawkesbury Village (INQ 3, 8.17).
- Habitat creation and enhancement (APP 14, 6.97).
- Landscape improvement (APP 14, 6.98).
- Green Infrastructure Hub in the form of extension of the Sustrans link (INQ 3, 8.15).

7.28 When these benefits (more fully set out in the appellant's evidence) are set against the Green Belt harm, they are agreed by the Council to outweigh the harm; hence there is no Green Belt reason for refusal. The SoS is invited to reach the same conclusion.

7.29 It is necessary then to consider the reasons for refusal that the Council relied upon in refusing planning permission.

Highway issues

- 7.30 There are relevant Development Plan policies which could have been relied upon if there was a genuine highway issue in this case, but none has been identified. The Council's reason for refusal refers to paragraph 32 of the NPPF, which makes it clear that it is only when cumulative impacts are "severe" that permission should be refused. This is a high test for the Council to pass. It sought expert advice to substantiate this reason for refusal and, not surprisingly, failed to find any expert which would support its case (Ms Moreton, XX day 1). The evidence given by Ms Moreton was no more than a second hand account of what the Council appears to believe. She made it perfectly clear that she does not believe planning permission should be refused by reason of the access provisions to the site or its sustainability as a location.
- 7.31 The criticisms made by WSP Consultants on behalf of the HVF suffer from all the flaws identified in Mr Fitter's rebuttal statement (APP 5, Section 2). In particular, WSP did not bother to look at the 3,500 pages of documents which would have addressed many of their queries.
- 7.32 The reasons for refusal on grounds of accessibility can be boiled down to three complaints.
- (1) The level crossing on Blackhorse Road
- 7.33 It is important to acknowledge the present state of affairs. Hawkesbury Village has around 700 households which are in proximity of the crossing and are likely to use it. There is no adverse accident record. Network Rail has decided, as part of the NUCKLE project, to increase the rail traffic along this line which will result in more, and longer, down-time for the crossing barriers. This is regarded as safe and acceptable, whether or not the currently proposed development goes ahead (APP 3, 5.15). The question therefore is whether 200 (per Appeal A) or 169 (per Appeal B) additional homes would create an unsafe or unsatisfactory position.
- 7.34 There is no evidence that the additional houses would make matters unsafe. The Network Rail claim for CCTV is alleged to be justified by the changes arising from the NUCKLE project, not the development proposals (LPA 1, 6.11). It follows that this claim is not CIL compliant, and indeed it is not supported by the Council. In terms of delay created by additional rail and road traffic, no-one has disputed the appellant's assessment of two additional cars in the peak hour (APP 3, 5.15). This is not a "severe" problem in the terms of paragraph 32 of the NPPF. Delays associated with traffic lights are an everyday peak hour event for motorists, as are long queues associated with junctions, roundabouts etc. The barrier-down times at the crossing will undoubtedly be a nuisance, but no more than that. It is exactly the type of delay that is commonplace on the peak hour network. All that is unusual is that the delay is caused by a train.
- 7.35 WCC as Highway Authority do not object to the proposal on the basis of the level crossing, and it is easy to understand why. There is no substance in this objection.

(2) The junction of Blackhorse Road and Coventry Road

7.36 The Council's cross examination focused on the absence of any land to carry out improvements at this junction. It chose to ignore that no land is needed (Mr Fitter, EIC day 2).

7.37 Mr Fitter's uncontradicted evidence for the appellant is that

- The S-Paramics Model accurately plots commuter movements (APP 3, 5.10);
- the model identified a potential solution in altering traffic light timings;
- the timings were adjusted, and subsequent on-site investigation corroborated the effectiveness of this process (APP 3, 3.4);
- the CCTV proposed will enable on-the-spot adjustment to timings in future (APP 3, 5.30); and
- these measures have improved the performance of the junction, not just mitigated the effect the proposed development would have (APP 5, 2.35).

7.38 In these circumstances, there is nothing at all in the criticism. WCC does not support this reason for refusal.

(3) The canal bridge

7.39 Only the heaviest vehicles are banned. Cars, vans and even waste removal vehicles are permitted to use the bridge. During the construction period heavy vehicles would be potential users of the bridge, but there is a more obvious route, by way of the Blackhorse Road and Coventry Road junction, that could be used instead. The planning system is entitled to expect that other control regimes will work and that HGVs associated with construction will obey weight restriction signs.

7.40 WCC does not support this reason for refusal.

7.41 In conclusion, there is nothing unsatisfactory about the access to the appeal site whatsoever, as the Council itself accepted at its October 2012 Committee Meeting (INQ 11/ INQ 16).

Sustainability

7.42 It is a source of some confusion to the appellant that while the Council does not regard a development of 200 homes at the site (per Appeal A) to be in an unsustainable location, it alleges that 169 dwellings at the same location (per Appeal B) would be unsustainable. The best the Council could do, when this was drawn to its attention, was to say the problem was overlooked at the earlier Committee. The Council's approach has been the opposite of that encouraged by paragraphs 187 and 189 of the NPPF. When the appellant attempted to compromise and reduce the amount of housing, they were met with an additional reason for refusal by way of response.

7.43 The Council's (and the HVF's) case on sustainability has relied upon the distance of the site from adjacent facilities, with any exceedance of an IHT recommended maximum distance treated as a forensic triumph. The correct

approach would rather be to ask whether the distance is so excessive as to amount to a "severe" problem in terms of paragraph 32 of the NPPF.

- 7.44 The appellant's evidence shows the distances are not excessive in terms of walkability (APP 3, Table 4.1). Even if the view were to be taken that use of the car for some, or all, were likely, the position is that such journeys would be short, as paragraph 37 of the NPPF requires. The accessibility of the site to adjacent facilities is perfectly acceptable, and apparently acceptable to existing residents of Hawkesbury Village. It is strange that HVF should seek to prevent other households coming to an area on the basis of its accessibility when its members have chosen to live at that very location.
- 7.45 The site is closer to the town centre than any of the 4 sites in the emerging Local Plan, as Cllr Copland agreed (XX, day 2). The objection to this site on grounds of sustainability is simply perverse. The criticisms also fail to acknowledge the improvements to the footpath network that this scheme will bring, through the badly-needed upgrade of the railway underpass, and the new Sustrans extension (INQ 3, 8.15). These are important benefits to pedestrian and cycle traffic.
- 7.46 The truth is that this is a thoroughly sustainable location. Even if there had been any merit in the access and sustainability concerns, paragraphs 7 and 8 of the NPPF, and the wider concept of sustainability encompassing the economic, social and environmental roles, would have required the Council to set these "problems" against the obvious advantages of the scheme. They have signally failed to do this, which is unreasonable. The Council's approach has been to look at those impacts alone and reject the proposed development because of them. This is a contradiction of the advice in the NPPF, and fundamentally conflicts with the NPPF's commitment to growth and housing delivery.

Other issues

- 7.47 There is an application for another marina on a site nearby, which is also located in the Green Belt (INQ 20). Expert evidence provided on behalf of the appellant is that even if the current appeal proposal were refused, the marina industry would not develop a site which is located underneath power lines, and which needs to use a lock to disgorge its contents (Mr Froome, EIC day 2]. It cannot be said that the other proposal is guaranteed to get planning permission, nor should it in a competition with this obviously superior location. In the unlikely event that both are permitted, the industry will decide which will be developed and the appeal proposal is far and away the better prospect; Mr Froome's evidence was that there is no prospect of both being built.
- 7.48 WCC requested a financial contribution toward educational facilities, but any such claim must pass the CIL tests. Mr Nicholson's evidence for the appellant demonstrated that WCC cannot substantiate its claim based on the DfE approved approach (APP 7). WCC has been provided with full details of Mr Nicholson's workings, which are transparent and based on all relevant sources of information, but has chosen not to challenge his conclusions or to appear at the inquiry. On the evidence that the inquiry has heard on this issue, and in the absence of contrary evidence or argument, it is clear that WCC's claim has not been substantiated and does not pass the CIL tests.

Conclusions

- 7.49 Much has changed since the SoS refused the 2007 scheme. The proposed development is different. There is no longer a hotel proposed, which failed the sequential test in 2007. There is now a pressing need for open-market and affordable housing, which this proposal can deliver earlier than can the emerging Local Plan. There have been two district-wide studies which have identified the site as a preferred candidate to accommodate necessary housing. It is now clear that housing development will inevitably encroach on to Green Belt in this district, which was not known in 2007.
- 7.50 The site has a history steeped in the relationship of boats and canals to move coal. That use for the canal no longer exists but the canal system has found a new use, with its future firmly based on leisure activity. Coal-carrying barges used to moor at the appeal site, and there would be a happy historic symmetry in using it for leisure-related canal activity.
- 7.51 It is of very great significance in terms of "very special circumstances" that the site scores highest in Nuneaton/Bedworth in the TEP appraisal of its ability to accommodate residential development. In fact the proposals would result in only a part of the site being developed, with the rest being put to uses appropriate in the Green Belt, such as the park and allotments. These proposed uses, promoted together with the environmental enhancement, are encouraged by paragraph 81 of the NPPF. The economic growth associated with the development would also accord with the NPPF, as would the provision of badly-needed housing.
- 7.52 Opportunities like this do not present themselves often. In terms of Green Belt policy this amounts to an exceptional set of circumstances, where the need for housing and marina provision can be met at a location which is suitable in terms of the district-wide Green Belt review, and in terms of effect on the landscape. The site represents an opportunity to do something different and special, of lasting value to its future residents and to those who would benefit from its recreational opportunities. The scheme for 200 dwellings would represent the best use of land, given that the need for housing is so acute.

8. Written representations

- 8.1 In response to the development proposal that is now the subject of Appeal A, letters of objection were received by the Council at the application stage, and a further letter of objection was received by the Planning Inspectorate at the appeal stage (collected in folder TP A). In response to the development proposal that is now the subject of Appeal B, letters of objection and support were received by the Council at the application stage, and a further letter of objection was received by the Planning Inspectorate at the appeal stage (collected in folder TP B).
- 8.2 Many of these written representations set out similar concerns to those subsequently articulated at the inquiry, as outlined above. Other matters raised were the likelihood of increased pressure for on-street parking; the lack of facilities for visiting boaters; risks posed by the fact that the appeal site includes areas of contaminated land; doubts that the marina would encourage employment or tourism; and concerns about the capacity of existing

infrastructure and services, such as doctors and dentists, to accommodate an increase in population.

9. S.106 Agreements and Undertakings

9.1 The development proposals under Appeal A and Appeal B are the subject of respective S.106 Agreements made between the Land Owners and the Council (PINQ 2, PINQ 4), and S.106 Undertakings given by the Land Owners to the County Council (as highway authority and education authority) (PINQ 3, PINQ 5). The principal terms of the S.106 Agreements are as follows:

- provision of 25% of the dwellings as affordable homes (50 in Appeal A, 42 in Appeal B);
- provision of 40 allotments;
- provision of a single-storey community facilities building comprising hall, kitchen, toilets and ten parking spaces;
- creation of a Sustrans cycle path; and
- creation of public open space with landscaping, habitat enhancement areas, retention and creation of footpaths, a children's play area, and a maintenance contribution.

The principal terms of the S.106 Unilateral Undertakings are as follows:

- payment of £60,000 to fund the installation of CCTV at the junction of Blackhorse Road and Coventry Road or the junction of Bayton Road and Coventry Road;
- payment of £10,000 to fund an upgrade of the footpath between the site and Bayton Road Industrial Estate;
- payment to fund the provision of a "sustainability welcome pack" for occupiers of the proposed dwellings (£50 per pack, multiplied by the number of dwellings comprised in each proposed development)
- if deemed necessary by the SoS, payment towards extending, improving or altering local primary and secondary school provision, including provision for special educational needs (a total of £987,923 in each case).

10. Conditions

10.1 The appellant and the Council agreed lists of 34 conditions which they regarded as reasonable and necessary should the SoS be minded to grant planning permission for either of the development proposals (INQ 23, INQ 24). For ease of reference, it is worth pointing out that both lists adopt the same numbering scheme, and in fact the only difference between them concerns identification of the plans relevant to each appeal.

10.2 The suggested conditions relate to the submission of reserved matters (1 & 2); the commencement of development (3); compliance with the approved plans (4); phasing (5 & 34); details and samples of materials (6); coal mining legacy, and other contamination issues (7,10,11,12 & 13); drainage, surface water and sewage disposal, and measures related to flood risk (8,9 & 14);

planting (15); details of the foot and cycle paths (16 & 27); boundary treatments (17); provision of fire hydrants (18); details of the marina facilities building (19); lighting (20); layout of the open space (21); submission of a Construction Management Plan, Ecological Management Plan and Ecological Construction Management Plan (28, 22 & 23); identification and eradication of Japanese Knotweed (24); compliance with the recommendations of the Tree Bat Survey and Reptile Survey (25 & 26); provision of "sustainable welcome packs" (29); archaeological work (30); details of sound insulation for the proposed dwellings (31); levels and finished floor levels (32); and a requirement not to use the marina for permanent residential moorings (33).

- 10.3 As a result of discussion at the inquiry, the parties agreed that conditions relating to details and samples of materials, planting, boundary treatments, location of fire hydrants, details of the marina facilities building, lighting, details of internal access routes, floor levels and sound insulation and ventilation for the proposed dwellings would all be unnecessary, since they could be better addressed at Reserved Matters stage. It was also agreed that a condition requiring the provision of "Sustainable Welcome Packs" prior to occupation of the dwellings would no longer be necessary, since the S.106 Undertakings include provision for a financial contribution to fund WCC's provision of these packs [9.1].

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11. Inspector's conclusions

- 11.1 Paragraph 87 of the NPPF explains that "inappropriate" development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Paragraph 88 goes on to explain that substantial weight should be given to any harm to the Green Belt, and that very special circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations.
- 11.2 With that in mind I consider that the main issue, for both these appeals, is whether the substantial weight that must be attached to the harm caused by inappropriate development in the Green Belt, together with any other harm, is clearly outweighed by other considerations, such that very special circumstances exist that would justify granting planning permission.
- 11.3 I therefore propose to proceed by firstly identifying the extent of any inappropriate development in the Green Belt, then determining whether there is any other harm, and then assessing the implications of the various other considerations. My findings at each of these stages will inform a final balancing exercise, to ascertain whether, for each proposal, the extent of the overall harm would be clearly outweighed by other considerations.

(1) Inappropriate development in the Green Belt

- 11.4 Paragraphs 89-91 of the NPPF set out the specific types of development that are considered "inappropriate" in the Green Belt. This includes new buildings, subject to 6 classes of exception. It is common ground that neither the proposed housing nor the proposed community facilities building would fall within any of the specified classes of exception, and so these elements of the proposals would constitute inappropriate development (INQ 3, 8.2).
- 11.5 A small facilities building is also proposed, to serve the marina. The SoCG records the agreement of the Council and the appellant that it would not be appropriate for this to include associated uses such as a restaurant or chandlery [3.3]; rather, it would be limited to facilities necessary to serve the marina, chiefly the provision of WCs and showers. Illustrative plans submitted by the appellant demonstrate how a single-storey building could be set into the level of the land so as to minimise its physical presence, and the effectiveness of the final design at preserving openness could be assessed by the Council at Reserved Matters stage. On that basis, I find that the proposed marina building would be capable of inclusion within the second class of exception listed at paragraph 89 of the NPPF, as an appropriate facility for outdoor recreation that would preserve the openness of the Green Belt, and so would not constitute "inappropriate" development.
- 11.6 As to the marina itself, the SoCG records the view of the Council and the appellant that it would not constitute "inappropriate development" in the Green Belt (INQ 3, 8.2). However, this is directly at odds with the finding of the Inspector who considered the proposal for a marina on this site in 2007. He took the view that since narrow boats are substantial man-made objects, 120 of them, some up to 70ft long, would have an adverse impact on the openness of the Green Belt. He also considered that while the proposed marina would

not accommodate permanent residential moorings, owners of narrowboats generally moor their vessels in one place for large parts of the year (APP 15.1, IR 10.7). The (then) SoS agreed that the mooring of up to 120 vessels would have an adverse effect on the Green Belt and, as the vessels would be in one place for large parts of the year, the impact would not be a transient use of open land (APP 15.1, DL 13). The Inspector went on to conclude, and the SoS agreed, that the proposed marina would constitute inappropriate development in the Green Belt (APP 15.1, IR 10.8, DL 13).

- 11.7 I consider that to be a fair and accurate appraisal of the effect a marina would have on the openness of the Green Belt, which is equally relevant to the current proposals. The appellant drew my attention to two other appeal decisions concerning marina development in the Green Belt, and observed a consensus that it is the change of use to provide boat moorings that would compromise 'openness', rather than the engineering operation of constructing the marina (APP 1, 10.3.4).
- 11.8 That seems to me a somewhat academic distinction. Nevertheless, it is fair to note that if such a distinction were applied to the current proposal, the formation of the marina could reasonably be said to fall within the terms of paragraph 90 of the NPPF, which provides that engineering operations will not be inappropriate in the Green Belt if they preserve its openness. The proposed marina would not be fenced off, and would be set at broadly the same level as the adjacent Coventry canal, with only very modest embankments and minimal areas of hardstanding. In these terms, the creation of an open body of water of some 1.58ha (APP 1, 10.3.1) would not result in any significant loss of the existing 'openness' of the area.
- 11.9 However, the fundamental purpose of a marina is not to provide an open body of water, but to accommodate moored boats: that is the development here proposed. The view shared by the Inspector who reported on the 2007 proposal, the SoS who determined it, and the Inspectors who decided more recent cases concerning marinas in the West Midlands Green Belt (APP 1, 10.3.4) is that the collective presence of the moored boats would adversely affect openness. I cannot see how any alternative conclusion could realistically be reached. In my judgment, the currently proposed presence of up to 150 narrowboats, which are man-made structures of considerable bulk, would clearly reduce, rather than preserve, 'openness'.
- 11.10 I also note that while PPG 2 (which provided the national policy context for all of the earlier appeal decisions referred to above) specified that neither engineering operations nor material changes in the use of land would be inappropriate development if they maintained openness, the situation has changed with the publication of the NPPF. Paragraph 90 specifies "certain other forms of development" which, in addition to the six classes of excepted buildings at paragraph 89, will not be inappropriate in the Green Belt provided they preserve its openness. The five specified forms of development include engineering operations, but not material changes in the use of land. It seems to me that on a strict interpretation, this means any material change in the use of land in the Green Belt will constitute inappropriate development.
- 11.11 I put this to the appellant's planning witness, who did not disagree with that interpretation (Mr Adams, day 2). In closing submissions the appellant pointed

out that the NPPF encourages the use of the Green Belt for sporting and recreational purposes [7.9] and that the current proposal differs significantly from the 2007 scheme, because there is now evidence of a need for a marina which cannot be satisfied within the Borough in a non-Green Belt location, and also because (unlike the hotel element of the 2007 scheme) there is no need for the proposed housing to pass a sequential test [7.10]. Those are fair points, but they are not particularly relevant to determining whether or not the proposed development would be “inappropriate” in Green Belt terms.

- 11.12 In my judgment, the marina would involve a material change of use of the land which, assessed against the criteria of the NPPF, would render it an inappropriate form of development in the Green Belt. Assessed against LP Policy Env1 [4.2], which reflects the (now superseded) guidance in PPG 2 but itself remains extant by virtue of the saving direction [4.1], the proposed marina would still be an unacceptable form of development because its use would not preserve the openness of the Green Belt.
- 11.13 In conclusion, I find that the proposed housing, community facilities building and marina would constitute inappropriate development which would, by definition, be harmful to the Green Belt. That harm carries substantial weight.

(2) Other types of harm

Harm to the Green Belt

- 11.14 Paragraph 79 of the NPPF explains that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. As the appellant accepts, the proposed housing, and the community facilities building, would have an effect on openness [7.7]. Clearly, the presence of 200 dwellings (per Appeal A) would reduce openness to a greater extent, and consequently be more harmful, than the presence of 169 dwellings (per Appeal B). For the reasons set out above, I consider that the proposed marina facilities building could be accommodated in a manner that would preserve the openness of the Green Belt [11.5] but that the presence of narrowboats within the marina basin would adversely affect the openness of the site [11.6].
- 11.15 The appellant pointed out that the boats that would use the marina are likely already to be in the Green Belt [7.12], and I saw at my site visit that a number of boats were indeed moored along the canalside in the vicinity of the appeal site; some at visitors' moorings, and others at private moorings on a gated stretch of the canal bank. I am told that a 30m length of the canal adjacent to the marina entrance would be kept clear of moored boats, to ensure adequate manoeuvrability into and out of the marina (APP 1, 10.3.17). I am also told the appellant's understanding is that the Canal and Rivers Trust will typically reduce permanent canal moorings by 10% where a new marina is constructed and opened, but I have not been provided with any substantive evidence as to the numbers of boats, currently using existing private and visitor moorings, that might be expected to relocate to berths within the proposed marina. I am not convinced, therefore, that a small reduction in the number of boats moored up on the adjacent canal would have any real 'balancing' effect on the reduction in openness that would result from the stationing of up to 150 boats in a marina basin on the appeal site [7.12].

- 11.16 Where development is proposed within the Green Belt, it is instructive to consider the impact it would have upon the five purposes of the Green Belt, identified by paragraph 80 of the NPPF [7.15]. There would be no conflict with three of those purposes, since the proposed development would not result in the merging of neighbouring towns, would have no adverse impact on the setting or special character of any historic town, and would not compromise urban regeneration [7.19, 7.21, 7.22]. However, since the proposals would result in additional built development, they would conflict with the purposes of checking sprawl, and safeguarding the countryside from encroachment [7.16-7.18, 7.20].
- 11.17 I appreciate that various mitigating factors exist, in terms of beneficial impacts on the Green Belt associated with the part of the appeal site that would not be built on, as well as contextual considerations such as the availability of other land [7.17, 7.18]. However, in the interests of clarity and to help prevent any double-counting in the overall balancing exercise I shall return to those in the course of assessing “other considerations” below.
- 11.18 At this current stage of assessing harm to the Green Belt, I consider that substantial weight attaches to that which would be caused through the reduction in openness, and the increase in the built-up part of Hawkesbury Village at the expense of the countryside. The potential overall harm in these respects is greater in Appeal A, because that scheme proposes a greater quantity of housing.

Other potentially harmful impacts: the highway network

- 11.19 The Council, HVF, and a large number of the local residents who lodged written objections to the proposed development, are concerned that the proposals would have a harmful impact on the existing road network [5.2 – 5.10, 6.6 – 6.7].
- 11.20 Hawkesbury Village is served by two access roads in and out; one crosses the Grange Road canal bridge, which has a weight limit of 17t and carries single-file traffic on a lights-managed system, and the other is via the lights-managed junction of Blackhorse Road and Coventry Road. This second route also involves a level crossing over the Nuneaton to Bedworth railway line [6.7].
- 11.21 The evidence shows that a considerable amount of work was carried out, prior to the submission of the first planning application (now the subject of Appeal A) to assess the impact that the proposals would have on the transport network. Pre-application discussions were held between the appellant’s transport advisers, WCC as local highway authority, and the Highways Agency to agree the scope of the transport work required, and the predicted vehicle trip rates associated with the proposed development (INQ 4, 3.1). Those vehicle trips were then used by WCC’s consultants to model the impact the proposed development would have on the Blackhorse Road/Coventry Road and Bayton Road/Coventry Road signal junctions, using the S-Paramics micro-simulation transport model.
- 11.22 WCC’s detailed consultation response to the Council explains that it was aware of the land constraints at the junctions, and recognised that there would be little that could be done to alter their physical arrangement should the impact of the proposed development prove unacceptable (INQ 4, App C). As a consequence, WCC (rightly, in my view) considered it appropriate to pursue an

unusually thorough appraisal of the predicted effects (INQ 4, App C). This included requesting a more detailed analysis of the potential impact on the junctions, using the industry standard LINSIG software, and validation of the base model on site.

- 11.23 Having satisfied itself that the model was fit for purpose, WCC remained concerned that the timing of the pedestrian phase within the traffic signal cycle might lead to increased vehicle queuing. The appellant's transport adviser calculated that a reduction in the signals' cycle time would allow the junction to operate with additional reserve capacity. WCC implemented the change in timing, and carried out on-site observations to test its effect. They were sufficiently impressed by the improvements achieved to implement the change permanently in June 2012 [7.37].
- 11.24 The agreed model was then used to compare the traffic situation at the junctions in 2016 and 2026 with, and without, the proposed development. Nationally accepted growth factors were applied to reflect the general increase in traffic, and the calculations included traffic likely to be generated by development of other sites with extant planning permission. The modelling also took account of the future increase in frequency of passenger and freight trains that will result from the rail improvements proposed by the NUCKLE project, by including provision for barrier down-time of 6 times per hour in 2016 and 8 times per hour in 2026, for 4 minutes at a time (INQ 4, App C). I consider that appropriately robust.
- 11.25 WCC concluded that the minor increases in queuing that would arise as a result of the proposed development would not have a detrimental effect on highway safety, and the increase in traffic could be acceptably accommodated on the existing road network [7.34]. That finding was subject to the proviso that funding be provided by the appellant for the installation of a CCTV camera at the Blackhorse Road or Bayton Road signals, to enable adjustments to the signal cycle time by remote control, and also for improvements to the underpass and footpath between the site and the Bayton Road Industrial Road [9.1].
- 11.26 WCC considered the concerns that had been raised by local residents about the speed at which traffic currently travels through the village, the inadequate width of some of the footways, and the lack of appropriate signage for HGV routing. It concluded that the proposed development could be prevented from worsening these existing problems by imposing a condition requiring the appellant to deliver a traffic management scheme incorporating relevant measures, to be agreed in advance (INQ 4, App C). That seems to me an entirely appropriate approach.
- 11.27 Against this background, it is not clear to me why the Council chose to reject the painstaking considerations and clear findings of WCC, its statutory consultee on highway matters. It has not obtained any alternative professional transport evidence. Its concern that harm might arise from road users attempting to "beat the barrier" at the level crossing [5.4] does not appear to be based on any evidence that there is an existing problem which would worsen as a result of the development proposals, or any evidence that such problems have been observed at other level crossings subject to similar levels of queuing. The Council's reference to Network Rail's suggestion that a

'mitigating' financial contribution be sought from the appellant [5.5] is surprising, since the Council has not itself, at any stage of the application or appeal process, considered such a contribution necessary.

- 11.28 The Council has not provided any evidence to support its contention that the junction of Blackhorse Road and Coventry Road is "already at capacity", a view which conflicts with the findings of its professional advisers [5.7]. It is clear that WCC were aware of the constraints imposed by the configuration of the junction. Indeed, they sought additional modelling as a specific consequence of their concern about the difficulty of any physical alterations to its layout [11.22]. The Council's concern that the junction has 'no room to grow' [5.8] is not supported by any evidence that it would need to as a result of the development proposed, and in any event, the appellant has explained that alterations to the signal phasing could achieve additional capacity were it considered necessary [7.36].
- 11.29 There is no evidence to suggest that the proposed development would generate such an increase in traffic movements of HGVs, large enough to be precluded from using the canal bridge, that this would compromise the functionality of the Blackhorse Road/Coventry Road access, even during the limited construction period [5.9]. Nor has the Council produced any evidence as to why it considers, in the absence of any such advice from the Highway Authority, that junctions to the south of the appeal site should be signalised [5.10].
- 11.30 The position taken by the HVF and local residents is more readily understandable, since it is based on their detailed local knowledge of the existing traffic situation in Hawkesbury Village, and their concern about the impact that additional pressure on the highway network would have on their daily lives [6.7]. I was very favourably impressed by the intellectual rigour of the representatives of HVF, and have no doubt that given sufficient time and resource, they would be more than capable of conducting a fair analysis of the modelling systems used in the Transport Assessment agreed between the appellant and WCC [6.6].
- 11.31 That would, however, be a replication of the work already undertaken by the WCC. As the local highway authority, the WCC has a remit to advise local Councils, when consulted, as to the effect that development proposals would have on the highway network. I am satisfied, on the basis of the evidence that has been provided, that the professional advice provided by the WCC in this case was based on a well-versed understanding of the modelling software used by the appellant (indeed, some of the modelling work was carried out by WCC itself), and backed up by a request for on-site observations, in which WCC also took part. I have had regard to the points made by WSP [HVF 2.2] and the rebuttals made by the appellant (APP 5), and find that overall the Transport Assessment is as robust as it reasonably could be.
- 11.32 Local residents expressed concern that the presence of the new houses might increase existing pressure for on-street parking spaces (8.2). Since the current proposals seek outline planning permission, further details of the parking arrangements for the new dwellings (such as the number of garage spaces, and any on-site parking courts) would need to be provided at Reserved

Matters stage. The Council would have the ability, should those details prove unacceptable, to refuse permission on that basis.

11.33 In conclusion, I consider that the evidence demonstrates the additional traffic likely to be generated by the proposed development could be adequately accommodated within the existing transport network, without any significant adverse impact on the safety of pedestrians and other road users. In this respect, there would be no harm to weigh against permitting the proposed development.

Other potentially harmful impacts: accessibility of facilities and services

11.34 The Council's reason for refusing the Appeal B development involving up to 169 houses (but not the Appeal A development involving up to 200 houses) included the concern that the housing would not be well integrated with local shops, schools and medical facilities, and therefore would not be "sustainable" [5.1].

11.35 At the inquiry the three main parties were helpfully able to agree, between them, a table setting out the walking distances from the centre of the residential part of the proposed development, along illuminated public highway, to a range of local services and facilities (INO 22). When compared against the guidance set out in the IHT publication *Guidelines for Providing for Journeys on Foot* (2000), it is apparent that the nearest convenience store, post office, catchment-area primary school, public house, café and employment opportunities fall within the preferred maximum walking distance; the nearest nursery, leisure centre, dental practice and GP surgery do not [5.14–5.17, 6.9–6.10, 7.43–7.44].

11.36 Foxford Secondary School is within the preferred maximum walking distance, but this lies within the Coventry catchment area; Ash Green secondary, which is Hawkesbury Village's 'official' catchment area secondary school [HVF 1], is some 1.52km beyond the preferred maximum walking distance. The nearest bus stops, at 400m or 420m from the appeal site depending on the route required, are either just at the edge or just beyond the preferred maximum walking distance of 400m.

11.37 It is important to bear in mind that attempting to predict the circumstances in which individuals may or may not walk to local facilities cannot be an exact science, as it depends to a large degree on individual choices and lifestyles. Some people walk faster and farther than others, and some have health issues which prevent them from walking at all. A walking route may be attractive in summer, but off-putting in winter: for example, a path that has views over countryside and a canal, but is unlit and involves an underpass [6.9]. Nevertheless, the IHT guidance serves the useful function of providing some general indication of the distance beyond which the majority of people might be considered more likely to drive rather than walk.

11.38 In this particular case, I consider that since the proposed residential development would be beyond the IHT maximum preferred walking distance from some of the local services and facilities that would be needed by future occupiers, those occupiers would be likely to rely on the use of a private vehicle to visit them.

- 11.39 I appreciate that a number of improvements to the existing footpath and cycle network are proposed as part of the development, such as may potentially increase the likelihood of their use by existing residents of Hawkesbury Village, as well as future occupiers of the proposed development. I return to the benefits of this below, but note that these improvements were taken into account in the appellant's assessment of accessibility.
- 11.40 For the present purposes of considering whether harm would be caused by the distance of the proposed new housing from certain facilities and services, I find that harm of some weight would result from the associated increase in reliance on journeys made by private car. The Council does not allege any conflict in this respect with any specific adopted Development Plan policy, but there would be conflict with the general thrust of national policies which seek to promote travel by more sustainable modes of transport.

(3) Other considerations

- 11.41 Paragraph 81 of the NPPF requires local planning authorities to "...plan positively to enhance the beneficial use of the Green Belt, such as looking for opportunities to provide access; to provide opportunities for outdoor sport and recreation; to retain and enhance landscapes, visual amenity and biodiversity; or to improve damaged and derelict land."

Public open space

- 11.42 The built-up part of the proposed development would all be located in the southern part of the appeal site. The northern part of the site, some 70% of its total area, is currently in private ownership but crossed by three public rights of way. The development proposals include restoring and improving the landscape of this area to create some 18.33ha of informal parkland, including a sculpted natural play area, which would be transferred into the ownership of the Council, together with payment of the sum calculated by the Council as necessary to cover its maintenance and upkeep for the next 20 years [9.1]. This area would function as public open space, accessible to all as a recreational resource.
- 11.43 I appreciate there is evidence that some members of the public do already use this area for recreational purposes [HVF 1], but it is important to bear in mind that that is on an informal basis; there is no evidence before me to suggest that the landowner would be unable to fence off access to all but the existing public rights of way, if it so chose. I consider the proposed landscaping and dedication of this large area of green space to provide publicly accessible parkland, for the enjoyment of all, a somewhat unusual and very valuable opportunity to improve access to the Green Belt, and greatly increase opportunities for outdoor recreation [7.27]. This is a benefit to which I attach very substantial weight.

Footpaths and cycle ways

- 11.44 In addition to upgrading the existing footpaths across the site and funding improvements to the underpass that links the appeal site to the Bayton Road Industrial Estate, the proposed development would involve the provision of a new cycle path. This would provide a substantial part of the currently missing section of Sustrans Route 52, helping to link up Hawkesbury Junction to the

south of the site, and Coalpit Fields Road to the north of the site (INQ 3, 8.15). The S.106 Agreement makes provision for the cycle path to be provided, to an approved specification, before any of the proposed dwellings are occupied [9.1]. The appeal site is located within easy walking distance of a number of other recreational routes, such as the Coventry Canal Greenway, and the Centenary Way and Coventry Way long-distance footpaths, and the proposed use of its northern sector for public open access would also improve access to these. The proposed access improvements would enhance the “green infrastructure” linking the appeal site to Hawkesbury Village and Bedworth, and also to other publicly accessible open spaces and recreational routes within the wider area. This would benefit existing residents as well as potential occupiers of the proposed housing and visitors to the proposed marina, and carries considerable weight.

Visual amenity

- 11.45 In terms of the retention and enhancement of Green Belt landscape and visual amenity, as referred to in paragraph 81 of the NPPF, I accept that there would be improvements to the northern part of the site [7.13]. However, the proposed construction of built development on the southern part of the site also needs to be taken into account. I appreciate that the applications were made in outline, such that the layout, design and appearance of the proposed housing has yet to be determined, and I acknowledge that it would be constructed in a location that would be visually contained, and integrate well with existing residential development. Nevertheless, its construction would result in the loss of what is currently a green and open part of the landscape around Hawkesbury Village.
- 11.46 The marina would also alter the existing landscape, but despite the harmful reduction in openness identified above [11.6-11.9], I consider its presence would not have any significant adverse impact on the visual amenity of the area. The narrow boats that would make use of it are an existing and attractive feature of the area, and this proposed use would be wholly in keeping with the close historic relationship between the appeal site and the adjoining canal [7.50]. Taken as a whole, I consider that while the overall impact of the proposals would not harm the visual amenity of the area, neither would it result in sufficient enhancement to weigh in favour of the proposed development.

Ecology

- 11.47 The appellant contends that a further benefit of the proposed development is that it would result in the creation of, and improvements to, habitats for biodiversity (APP 14, 6.98-6.100). I appreciate that the recommendations and mitigation strategies set out in the various specialist surveys and reports would ensure that the ecology of the appeal site would not suffer any adverse impact as a result of the proposed development. But, as I explained at the inquiry, this would simply mitigate the otherwise adverse effects that the development would have on certain species and their existing habitats, rather than achieve a clear overall improvement in ecological terms, such as could be claimed to weigh in favour of permitting the proposed development.
- 11.48 In response to this, the appellant provided a note on net biodiversity gain (INQ 18), which included reference to the scope for restoration and expansion of

the network of wetland habitat on the northern part of the appeal site, and the ability of that part of the appeal site to form a link, via the adjacent canal, to other sites of biodiversity value. Given that there is clear potential for enhancement of the northern part of the appeal site, further details of which could be provided and assessed at Reserved Matters stage and in the context of the proposed Ecological Management Plan, I accept that it would be possible to secure a net overall gain by imposing an appropriately worded condition, as agreed at the inquiry [11.81]. On that basis, I find that notwithstanding the loss of part of the appeal site to built development, the overall improvement in biodiversity habitat would be a benefit. The full extent of that benefit would depend on the nature and extent of measures that have not yet been detailed, but for current purposes, it is a consideration that carries some weight in favour of the proposed development.

Marina

- 11.49 Local residents expressed concern that the limited facilities and services of Hawkesbury Village would be unlikely to benefit much from visitors to the proposed marina, which would provide little in the way of long-term job opportunities [8.2]. That is a fair point, but it is also fair to note that the marina would foster tourism, recreation and economic activity in the local area both during and after construction [7.27].
- 11.50 It is common ground, between the appellant and the Council, that there is a clear need for new inland waterway marinas; that the appeal site is particularly well suited for marina development, due to its location on a canal junction, the long free pounds allowing for uncongested cruising, and its proximity to sizeable population centres; and that there is no sequentially preferable site available in the Borough that could accommodate the appeal proposals outside the Green Belt [3.3].
- 11.51 However, this position is largely informed by the view expressed by the Canal and River Trust and Inland Waterways Association, in April 2012, that there is a pressing need for improved services at Hawkesbury Junction and an existing lack of marina facilities between the north of Nuneaton and Brinklow (INQ 3, 8.9-8.11). The appeal site lies close to the boundary with Coventry, but the sequential assessment of alternative sites only considered those within the Nuneaton and Bedworth Borough. It may be that potential marina sites on the other side of the border have similar benefits to the appeal site in terms of proximity to Hawkesbury Junction, with its adjoining long free pounds and population centres.
- 11.52 Indeed, a planning application has been submitted for the development of a marina on a nearby site off Alderman's Green Road, which is also within the Green Belt [7.47]. Whilst I have no reason to doubt the evidence, given by the appellant's professional Marine and Leisure Property expert, that the current appeal site is a far superior location for a marina, that other application is not for me or the SoS to determine. Moreover, there will of course be other considerations involved in assessing the merits of that application, such as the views of local residents and the benefits of remediating a site formerly occupied by a power station [6.5]. I am not a party to the full balance of those considerations, and in the context of considering the current appeals, nor should I be; the development proposals that are currently before me must be

assessed on the basis of their own merits, rather than by comparison with other proposals which may or may not come forward. Nevertheless, the fact that there appears to be at least one possible alternative location somewhat lessens the substantial weight I would otherwise attach to meeting the acknowledged need for a marina near Hawkesbury Junction.

11.53 Overall, I find that the benefits of providing a marina on this appeal site, in terms of meeting unmet need, promoting tourism, improving recreational boating facilities and contributing to local economic activity, carry considerable weight.

Open-market housing

11.54 There is not a sufficient supply of land to meet the Borough's housing need for the next 5 years, as required by paragraph 47 of the NPPF (INQ 3, 8.22). The Council believes it has a supply of about 3 years, whereas the appellant contends that properly calculated, the actual figure is closer to a 1.4 year supply [7.24]. In any event, both consider that the absence of a 5 year supply is a material consideration which carries significant weight. I agree.

Affordable housing

11.55 Since there are 6,532 households registered with the Council as in need of affordable housing, 2,052 of them in "considerable" need, I also attach significant weight to the fact that the proposed development would go some way toward addressing this shortfall by delivering either 50 (per Appeal A) or 42 (per Appeal B) affordable dwellings [7.26]. The benefit offered by Appeal A would be greater, in that it would provide a higher proportion of "social rented" housing, of the type most needed by the Council (Mr Adams, EIC, day 3).

Use of the Green Belt for housing

11.56 The appellant drew my attention to the Coventry Joint Green Belt Review of 2009 and the Landscape Character Assessment studies undertaken for the Council by TEP in 2011-2012, both of which were aimed at informing the Council's decision-making on future land allocation within the Local Plan process [7.14, 7.17]. The Green Belt Review concluded that the land parcel containing the current appeal site was the 'least constrained' of the 22 Green Belt land parcels originally reviewed around the periphery of Nuneaton and Bedworth, and advised that there may be potential for urban expansion in the area. The TEP studies concluded that the capacity of the current appeal site to accommodate change without detrimental effects to the character of its landscape is high, and recommended that it be taken forward for housing (APP 1, s3, s5).

11.57 I note that these findings have not, to date, resulted in a proposed housing allocation on the appeal site within the emerging Local Plan [7.17]. However, in the context of the current significant District-wide housing shortfall, and the Council's view that it is inevitable that development will have to take place in the Green Belt in order to meet the Borough's housing needs (INQ 3, 8.1), I attach some weight to this undisputed evidence that in landscape terms, the appeal site has been identified as a strong potential candidate for necessary future housing in the Green Belt.

Allotments and community building

11.58 The proposed allotments would be provided “ready to grow”, with dedicated parking and services for allotment users, and would be made available to existing as well as future residents. This would help to address an acknowledged need for allotments in this location (INQ 3, 8.16). There is also an acknowledged need for a community building in this location (INQ 3, 8.17), which would help to accommodate a variety of local groups and uses. The provision of these local facilities is a benefit to which I attach considerable weight.

The S.106 Agreements and Undertakings [1.6, 9.1]

11.59 The provision of affordable housing, allotments, a community facilities building, Sustrans cycle path, footpath improvements, and the landscaped public open space with habitat enhancement and play areas, are all integral components of the proposed development and necessary to secure the proposed benefits of the scheme. The CCTV funding is necessary in terms of highway safety, and funding for “sustainability welcome packs” would assist with national policy aims of promoting travel by sustainable modes of transport. The submitted S.106 deeds would secure the timely provision of each of these elements of the proposals, and I am satisfied that these planning obligations meet the requirements of Regulation 122 of the Community Infrastructure Regulations 2010 as being necessary, fair and reasonable, and directly related to the proposed development.

The Education Contribution

11.60 The Unilateral Undertakings also make provision for the payment of an Education Contribution, provided the SoS determines such contribution to be necessary. That proviso is included because the appellant contends that an Education Contribution is not necessary, and would not pass the tests of CIL Regulation 122 [7.48]. Unfortunately, WCC did not submit any evidence to the inquiry in support of its requested Education contribution, and did not attend. In attempting to follow its argument I am therefore largely reliant on copies of e-mails, and sets of forecast data, appended to the appellant’s evidence [APP 7 – APP 11.7].

11.61 As I understand it, WCC requested a contribution toward the provision of local primary school places on the basis that the proposed construction of 169 new houses (per Appeal B) would generate a need for 37 new primary school places (APP 8.1), and that by September 2015, primary schools within the catchment area would be at capacity (APP 11.5). The appellant contends that by September 2014, there would be an overall surplus of 223 places at primary schools within 2 miles of the proposed development, such that the required additional places could be easily accommodated (APP 7, 4.2.3).

11.62 I am told that the identification of primary schools within 2 miles of the proposed development (the maximum reasonable travel distance for children under the age of 8, as defined by the DfE) (APP 7, 4.2.3) was calculated using the DfE’s own postcode-based software (Mr Nicholson, EIC, day 2). However, I share the HVF’s concern that calculating distance by reference to postcodes does not give a reliable indication of the actual travelling distance from the proposed new development to the schools in question. In the absence of any clear evidence that the other schools listed by the appellant (APP 7, 4.2.3) would

involve a journey of less than 2 miles, I consider it more appropriate to rely on WCC's assessment that the appeal site falls within the catchment area of Exhall Cedars Infant School and St Giles Junior School.

- 11.63 Even if the SoS were to allow one or both of the current appeals for outline planning permission in very short order, it would still be necessary for the appellant to obtain approval for Reserved Matters applications, and comply with a number of conditions, before development of the proposed new dwellings could commence. That being the case, I consider it highly unlikely that the dwellings would be occupied by September 2014, and WCC's approach of using the forecast availability of school spaces in September 2015 is therefore more appropriate than the appellant's approach of using the forecast for September 2014. Based on the latest primary pupil forecasts provided by WCC (APP 11.5), there would be no overall spare capacity at Exhall Cedars and St Giles.
- 11.64 I note the appellant's concern that the May 2013 figures for the actual roll numbers suggests the WCC forecasts for September 2012 involved a significant over-estimate (APP 9). However, as is generally acknowledged, such forecasts can never be exact, since they will be influenced by unpredictable factors such as population movements and the outcome of Ofsted inspections (APP 9) [6.10]. WCC contends that the forecasting model it uses had an accuracy rate of 99.1% in 2012 (APP 9), and I therefore see no compelling reason to make the downward adjustments proposed by the appellant (APP 11.5).
- 11.65 WCC has also requested a contribution toward the provision of local secondary education, on the basis that the proposed construction of 169 new houses (per Appeal B) would generate a need for 26 new secondary school places, and that no spaces would be available at Ash Green Secondary School [APP 8.1]. It is not clear to me, from the evidence provided, how WCC has reached the latter part of this conclusion. Its table of calculations (APP 8.1) indicates that Ash Green School has a capacity of 850 and a "forecast" of 861, but the forecast for September 2015, taken from WCC's own latest set of data (APP 11.6) is 808, which would result in 42 spare places.
- 11.66 Further, there is no dispute that another WCC secondary school, the Nicholas Chamberlaine Technology College, lies within a 3 mile travelling distance (the maximum reasonable for children under 16, as defined by the DfE) (APP 7, 4.3.3) from the proposed development. The latest WCC data forecasts that it would have 170 unfilled spaces in September 2014 (APP 11.6).
- 11.67 Finally, WCC has also requested contributions toward SEN provision at both primary and secondary level (APP 8.1, INQ 26). The appellant drew my attention to the view of a colleague Planning Inspector that a developer would not be in a position to investigate the number of SEN pupils who might be in households locating to the development without invading the privacy of such families (INQ 29). But equally, "investigating" the number of non-SEN pupils that potential occupiers of the proposed new housing had (or might be intending to have) in their households would be a gross invasion of privacy, and wholly inappropriate. That is why it is necessary to make forecasts about the number of school-age children likely to be residing at any proposed development, based on the best available evidence. It is self-evident that a percentage of all

children are likely to have special educational needs. WCC has not explained how it has calculated the percentage applied in its calculations (APP 8.1), but in the absence of any alternative suggestions, I see no reason either to doubt that figure, or to disregard it completely. WCC's evidence that there would be no spare SEN capacity (APP 8.1) was not disputed.

- 11.68 Drawing all of this together, I conclude that the residential element of the development proposals would place an increased demand on existing local educational facilities. While there would be sufficient secondary school places available to accommodate this increased demand, there would be a shortfall in primary school places and SEN provision. To address this, financial contributions to fund additional primary school places, and primary and secondary SEN provision, would be necessary.
- 11.69 Correspondence between WCC and the appellant (INQ 26) indicates that WCC takes the view that these contributions should be calculated by reference to the total number of houses in the scheme, an approach with which I concur, as I explained at the inquiry. The appellant has however elected not to take that approach, and the Undertakings submitted in respect of both Appeal A and Appeal B make provision (should the SoS consider it necessary) for the payment in both cases of an identical Education Contribution of £987,923, being the aggregate of the primary, secondary, and SEN contributions calculated by the WCC as necessary if 169 houses were constructed (APP 8.1).
- 11.70 If Appeal A (involving 200 houses) were allowed, the appellant has calculated that there would be a need for 31 additional secondary school places and 44 primary school places (APP 7, 4.2.6, 4.3.6), as opposed to the 26 secondary and 37 primary that would be necessary if Appeal B were allowed (APP 7, 4.2.5, 4.3.5). Since the evidence indicates that the relevant secondary schools would still have sufficient spare capacity to accommodate 31 additional pupils, it would remain the case that no financial contribution toward secondary education would be required (APP 11.6). However, the additional requirement for primary school places, and the proportionate increase in the need for primary and secondary SEN provision, would mean that there would be a shortfall in the funds provided for these elements in the S.106 Undertaking provided for Appeal A. But since the terms of both S.106 Undertakings commit the owners to paying the total aggregated Education Contribution, rather than its individual components, this shortfall could be compensated for by the reallocation of part of the secondary school contribution, an otherwise unnecessary component of the overall sum.
- 11.71 I therefore conclude that in each appeal, an Education Contribution is necessary in order to address the adverse impact that the proposals would otherwise have on the functioning of local education facilities. In both cases, the total sum paid would exceed that calculated as reasonably and fairly related to the proposed development: in the case of Appeal A, by the sum of the unnecessary contribution toward secondary education, and in the case of Appeal B, by the sum of the secondary education contribution minus that proportion of it necessary to make up the shortfall in the other component contributions. In my judgment, this should not lead to a finding that the Education Contribution as a whole does not comply with the requirements of CIL Regulation 122, as otherwise, by operation of the terms of the S.106 Undertakings, no part of that contribution would be paid. Rather, I consider it

reasonable to conclude that the Education Contribution meets the CIL tests in terms of providing the funding calculated as necessary; the overpayment should simply be disregarded as unnecessary, and no weight placed upon it in determining the outcome of the appeals.

- 11.72 Some concerns were expressed about whether other local facilities, such as doctors and dentists, would have the capacity to accommodate residents from the proposed development [8.2]. However, neither the Council nor the WCC has considered it necessary to request financial contributions in respect of these or any other services, and I have not seen any substantive evidence that any would be necessary.

The overall balance

- 11.73 I have found that substantial weight should attach to the harm that would be caused by inappropriate development in the Green Belt [11.13], the resulting reduction in openness [11.14-11.15], and the failure of the proposals to comply with the Green Belt's purposes of checking unrestricted sprawl, and safeguarding the countryside from encroachment [11.16 and 11.18]. I have also found that occupiers of the proposed housing would be reliant to some extent on the use of private vehicles, due to the distance of the appeal site from some local facilities and services, and some weight should be attached to this adverse impact [11.40].
- 11.74 On the opposite side of the balance, I have found that the provision of a large, landscaped area of public open space on what was previously private land would greatly enhance the beneficial use of the Green Belt, and carries very substantial weight in favour of the proposed development [11.43]. Improved access and improved opportunities for recreation and outdoor sport are benefits of considerable weight [11.44], as are the benefits of providing a marina in this location [11.53], and a community building and allotments [11.58]. In view of the Borough's acknowledged shortfall of housing land, I attach significant weight to the proposed delivery of both open-market housing [11.54] and affordable housing [11.55]; in that context, as well as in the context of considering this proposal's failure to check sprawl and prevent encroachment into the countryside, I attach some weight to the evidence that the Council considers it inevitable some development will take place on Green Belt land, and that in landscape terms, the appeal site would be a strong potential candidate for such development [11.57]. The opportunity to enhance and improve existing habits so as to achieve a net biodiversity gain on the appeal site is also a benefit of some weight [11.48].
- 11.75 I have found that the proposals would not have any significant adverse impact on the highway network [11.33] or on visual amenity [11.46], and that the S.106 Agreements and Undertakings make adequate provision to mitigate the harm that would otherwise be caused by the increased demand the development would place on local infrastructure and services [11.59, 11.71]. These are not therefore considerations which add any further weight to either side of the planning balance.
- 11.76 The sole point of difference between Appeal A and Appeal B is that Appeal A would involve the construction of 200 houses, and Appeal B, 169. I have noted that the greater number of houses in Appeal A would be more harmful in terms of resulting in a greater reduction in openness of the Green Belt [11.14],

but more beneficial in terms of providing a greater proportion of the type of affordable housing required by the Council [11.55].

11.77 I conclude that on balance, the benefits of both proposals would in each case clearly outweigh the harm. This would result, in both cases, in the “very special circumstances” necessary to justify granting planning permission for development in the Green Belt.

11.78 As a consequence, I consider that both appeals should be allowed.

Conditions

11.79 If the SoS were minded to grant planning permission for either or both of the development proposals, I consider that most of the conditions agreed between the Appellant and the Council would be necessary and reasonable [10.1 – 10.3]. I have amalgamated and amended some of those conditions, in accordance with discussions at the inquiry, to ensure they accord with the tests and guidance set out in Circular 11/95: *The Use of Conditions in Planning Permissions*. My suggested conditions for Appeal A and Appeal B, which are identical apart from the list of approved plans, are set out at Appendices C and D respectively.

11.80 In addition to the standard conditions governing timescales for submission of Reserved Matters, commencement of development and compliance with the approved plans, I have attached a condition requiring the Council’s prior approval of a Phasing Plan. The S.106 Agreements would operate to secure the timely provision of the public open space, affordable housing, cycle path, community centre and allotments, at trigger points related to occupation of a specified number of dwellings, but includes no such provision for the delivery of the marina. The marina is agreed to be one of the key benefits of the overall proposals, and so (as agreed at the inquiry) it is necessary to ensure that this element of the scheme will also be delivered. I have therefore included, within the Phasing Plan condition, a requirement to agree a timetable linking the construction of the marina with the occupation of the housing.

11.81 The layout of the open space and the specification of the foot and cycle paths would ordinarily be addressed at Reserved Matters stage, but given the importance of ensuring that these elements of the proposed development are delivered to a sufficiently high standard, in order to secure the proposed benefits to the public, I share the parties’ view that conditions requiring the details to be finalised before development commences are necessary.

11.82 Since an overall improvement to the site, in terms of biodiversity habitat, is another of the benefits that have weighed in favour of the proposed development I have amended the condition concerning the Ecological Management Plan (EMP) to reflect this. In addition to setting out how the mitigation strategies and enhancement measures recommended in the various specialist ecological reports will be implemented and maintained, the EMP must demonstrate that a net gain for biodiversity will be achieved.

11.83 In order to protect the biodiversity of the site throughout the construction period, a condition requiring adherence to an agreed Ecological Construction Management Plan is needed; the living conditions of residents of existing dwellings also need to be protected during construction works, and so a

condition requiring adherence to a Construction Method Statement is necessary.

- 11.84 The possibility of archaeological remains on the site, and the known existence of Japanese Knotweed, make it necessary to impose conditions requiring investigation of the former and removal of the latter. In addition, the historic use of the site for coal mining means that a condition requiring further investigation and any necessary remedial work is needed, and since there is a distinct possibility that other contaminants may be present, there is a need for a separate condition requiring an appropriate remediation strategy.
- 11.85 In the interests of concision I have amalgamated and condensed the various suggested conditions governing drainage of the site, requiring the Council's prior approval of further details, and the development's compliance with the measures set out in the Flood Risk Assessment approved by the Environment Agency. The occupation of berths within the marina on a permanent residential basis would have further adverse impacts in terms of the impact on the openness of the Green Belt, and so I agree with the parties that a condition preventing such occupation is necessary.
- 11.86 Lastly, while not included on the list of suggested conditions agreed between the appellant and the Council, I consider that in order to prevent any adverse impact on highway safety along Blackhorse Road, it is necessary to attach WCC's suggested condition requiring the implementation of an agreed traffic management scheme [11.26].

12. Inspector's recommendation

- 12.1 I recommend that both appeals be approved, subject to the recommended conditions, and that the SoS include in his decision letter express reference to the Education Contribution being necessary.

Jessica Graham

INSPECTOR

Appendix A: APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY

Ms N Candlin, of Counsel Instructed by the solicitor to the Council

She called:

Ms K Moreton PgDipTP MRTPI Development Control Manager, Nuneaton &
Bedworth Borough Council

FOR THE APPELLANT

Mr J Cahill, Queen’s Counsel Instructed by Tetlow King Planning

He called:

Mr M Lee CMLI MLD MAUD BSc Senior Associate, Liz Lake Associates
(Hons) Hort.

Mr R Fitter Eng MICE FIHE MIHEDCP Director, Entran Ltd
Mr O Nicholson BA (Hons) Strategy Director, EPDS Consultants Ltd

Mr I Froome BSc MRICS Partner, Vail Williams LLP

Mr J Adams BA (Hons) TP MRTPI Director, Tetlow King Planning

(the evidence of Mr C Cave, a Partner at Vail Williams LLP, was taken as read)

FOR THE HAWKESBURY VILLAGE FORUM:

Ms O Maher Member of the Hawkesbury Village Forum

She gave evidence
herself, and also called:

Ms J Flower Member of the Hawkesbury Village Forum
Mr B Copeland Councillor and Mayor of Nuneaton & Bedworth

Appendix B: DOCUMENTS

THE COUNCIL'S DOCUMENTS

LPA 1 Proof of Evidence of Ms Moreton

HAWKESBURY VILLAGE FORUM'S DOCUMENTS

HVF 1 Proof of case dated 18 June 2013
HVF 2 Appendices to proof of case, comprising:
HVF 2.1 Signatures of households objecting to the proposed development
HVF 2.2 Written evidence of WSP
HVF 2.3 Witness statement of Mr Copland

THE APPELLANT'S DOCUMENTS

APP 1 Proof of evidence of Mr Lee
APP 2 Appendices to Mr Lee's proof of evidence, comprising:
APP 2.1 Collection of Figures from Coventry Joint Green Belt Review (A3)
APP 2.2 Collection of Figures from TEP Reports (A3)
APP 2.3 Collection of Figures prepared by Liz Lake Associates (A3)
APP 2.4 Nuneaton & Bedworth Urban Fringes Landscape Character Information
APP 2.5 Liz Lake Associates Methodology for Landscape and Visual Assessment Definitions
APP 2.6 Appeal decision ref: APP/Q4625/A/10/2128036
APP 2.7 Appeal decision ref: APP/Q4625/A/10/2126516
APP 2.8 Appeal decision ref: APP/M9565/V/11/2154021

APP 3 Proof of evidence of Mr Fitter
APP 4 Appendices to Mr Fitter's proof of evidence, comprising:
APP 4.1 Decision notice 031405
APP 4.2 Decision notice 031950
APP 4.3 WCC consultation response 4 July 2012
APP 4.4 WCC consultation response 6 March 2013
APP 4.5 DMRB V5/S2/P4 TA 91/05 "Provision for Non-Motorised Users"
APP 4.6 Extract from IHT publication "Guidelines for Providing for Journeys on Foot"
APP 4.7 Pedestrian and cycle isochrones
APP 4.8 Level Crossing Video Survey results
APP 4.9 Personal Injury Accident Data
APP 5 Rebuttal statement by Mr Fitter
APP 6 Appendix to Mr Fitter's rebuttal statement: non-residential TRICS data

APP 7 Proof of evidence of Mr Nicholson
APP 8 Appendices to Mr Nicholson's proof of evidence, comprising:
APP 8.1 Blackhorse Road (WCC calculation methodology)
APP 8.2 WCC Adjusted Output A – updated forecasts v7 (extracts for Exhall area)

- APP 9 Addendum to Mr Nicholson's proof of evidence (pupil forecast update 4 July 2013)
- APP 10 Education Covering Note by Mr Nicholson (12 July 2013)
- APP 11 Appendices to Mr Nicholson's Covering Note, comprising:
 - APP 11.1 Pupil NOR for Exhall area primary schools
 - APP 11.2 FOI-5558 (Primary & secondary schools – area of child residence)
 - APP 11.3 President Kennedy Secondary School census data (January 2012)
 - APP 11.4 Coventry Secondary Schools 2013 (extract)
 - APP 11.5 Primary pupil forecasts 2012 (with EPDS notes 10 July 2013)
 - APP 11.6 Secondary pupil forecasts 2012 (with EPDS notes 10 July 2013)
 - APP 11.7 Appeal decision ref: APP/Y3425/A/04/1156382

- APP 12 Proof of evidence of Mr Froome
- APP 13 Appendices to Mr Froome's proof of evidence, comprising:
 - APP 13.1 Marina valuation projections
 - APP 13.2 Marina development appraisal

- APP 14 Proof of evidence of Mr Adams
- APP 15 Appendices to Mr Adam's proof of evidence, comprising:
 - APP 15.1 Site plan and appeal decision ref: APP/W3710/V/06/1198451
 - APP 15.2 Government Office's letter 18 June 2009
 - APP 15.3 Local Development Scheme, 2010
 - APP 15.4 Annual Monitoring Report, October 2012
 - APP 15.5 Cabinet Report, 22 May 2013
 - APP 15.6 Appeal decision ref: APP/B1550/A/12/2170837
 - APP 15.7 Health Centre / GP capacity
 - APP 15.8 Dentist capacity
 - APP 15.9 Appeal decision ref: APP/Q4625/A/11/2157515
 - APP 15.10 Proposals map showing Preferred Options for Strategic Housing Sites
 - APP 15.11 Appeal decision ref: APP/F1610/A/11/2165778
 - APP 15.12 Economic benefits of housing
 - APP 15.13 Minutes of Cabinet Meeting, 5 September 2012
 - APP 15.14 NBBC Housing land supply statement, October 2012
 - APP 15.15 Appeal decision ref: APP/Y3425/A/12/2172968
 - APP 15.16 Appeal decision ref: APP/H1033/A/11/2159038
 - APP 15.17 Appeal decision ref: APP/H1840/A/12/2171339
 - APP 15.18 Appeal decision ref: APP/C1760/A/10/2140962
 - APP 15.19 Appeal decision ref: APP/F1610/A/10/2130320
 - APP 15.20 Appeal decision ref: APP/U4230/A/11/2157433

- APP 16 Proof of evidence of Mr C Cave
- APP 17 Appendices to Mr Cave's proof of evidence, comprising:
 - APP 17.1 Professional profiles of Mr Cave and Mr Froome
 - APP 17.2 Accounts and valuation projections for inland marina development
 - APP 17.3 Vail Williams viability appraisal – 200 residential units
 - APP 17.4 Vail Williams viability appraisal – 169 residential units

THIRD PARTY REPRESENTATIONS

- Folder TP1 Representations received by the Council and the Planning Inspectorate in response to the proposal now the subject of Appeal A
- Folder TP2 Representations received by the Council and the Planning Inspectorate in response to the proposal now the subject of Appeal B

DOCUMENTS SUBMITTED AT THE INQUIRY

- INQ 1 List of appearances on behalf of the appellant
- INQ 2 Copy of the Council's letter dated 28 June 2013 notifying interested parties of arrangements for the inquiry
- INQ 3 Signed copy of the Statement of Common Ground agreed between the Council and the appellant
- INQ 4 Signed copy of the Statement of Common Ground agreed between the appellant and Warwickshire County Council (as Highway Authority)
- INQ 5 Two S.106 Agreements (one for each appeal), in draft
- INQ 6 Copy of appeal decision ref: APP/G2435/A/13/2192131, submitted by the appellant
- INQ 7 Copy of the judgment in *South Bucks District Council and another (Respondents) v Porter (FC) (Appellant)* [2004] UKHL 33, submitted by the appellant
- INQ 8 Copy of the November 2012 Report to the Planning Applications Committee concerning Appeal A
- INQ 9 The Nuneaton & Bedworth Local Plan 2006
- INQ 10 The emerging Nuneaton & Bedworth Borough Plan (Preferred Options Draft)
- INQ 11 Committee Report for 10 October 2012
- INQ 12 Committee Report for 19 November 2012
- INQ 13 Committee Report for 19 December 2012
- INQ 14 Committee Report for 27 March 2013
- INQ 15 Committee Report for 16 April 2013
- INQ 16 Minutes of Committee Meeting on 10 October 2012
- INQ 17 Note on site areas and percentages, prepared by Mr Lee on 17 July 2013
- INQ 18 Note on biodiversity gain, prepared by Mr Lee on 17 July 2013
- INQ 19 Plan showing suggested site visit route for the Inspector, agreed by all parties
- INQ 20 Plan showing the marina proposed at the former power station site, Aldermans Green Road.
- INQ 21 PPG 2: Green Belts (now superseded by the NPPF)
- INQ 22 Note of walking distances from the appeal site, agreed by all parties
- INQ 23 Suggested conditions: Appeal A, agreed by the Council and appellant
- INQ 24 Suggested conditions: Appeal B, agreed by the Council and appellant
- INQ 25 Schedule of plans for Appeal A and Appeal B
- INQ 26 Copy of e-mail correspondence between WCC and Mr Adams, concerning SEN contributions, dated 17 July 2013
- INQ 27 Copy of plans to be attached to the S.106 Agreements
- INQ 28 Two revised draft S.106 Agreements (one each for Appeals A and B)

- INQ 29 Statement of the appellant's position on WCC's request for SEN contributions, prepared by Mr Nicholson on 18 July 2013
- INQ 30 Copy of e-mail correspondence between a Senior Planning Officer of Coventry City Council and the HVF, concerning local support for a proposed marina on the former power station site at Aldermans Green Road, dated 18 July 2013
- INQ 31 Copy of the opening statement made by HVF
- INQ 32 Copy of the closing statement made by the HVF
- INQ 33 Copy of closing submissions made on behalf of the Council
- INQ 34 Copy of closing submissions made on behalf of the appellant
- INQ 35 Copy of costs application made on behalf of the appellant

DOCUMENTS SUBMITTED AFTER THE INQUIRY CLOSED, IN ACCORDANCE WITH THE TIMETABLE AGREED AT THE INQUIRY

- PINQ 1 Letter from appellant dated 1 August 2013
- PINQ 2 S.106 Agreement in respect of Appeal A
- PINQ 3 S.106 Unilateral Undertaking in respect of Appeal A
- PINQ 4 S.106 Agreement in respect of Appeal B
- PINQ 5 S.106 Unilateral Undertaking in respect of Appeal B

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Appendix C: SUGGESTED CONDITIONS – APPEAL A

- 1) Details of the appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development begins and the development shall be carried out as approved.
- 2) Prior to the submission of any applications for approval of reserved matters, a Phasing Plan shall be submitted to and approved in writing by the local planning authority. The Phasing Plan shall provide details of the sequence and timing of development across the entire site, including the provision of all accesses, roads, footpaths and cycle ways; the marina and associated facilities; the dwellings; the allotments; the community centre; the equipped play area; the public open space; and the enhancement of landscape and biodiversity habitats. The Phasing Plan shall include a timetable linking the construction of the approved marina to the construction and occupation of the approved dwellings, to the effect that the marina shall be made available for use before a specified number of dwellings are made available for occupation. The development, and the release of dwellings for occupation, shall be carried out in accordance with the approved Phasing Plan.
- 3) Application for approval of the reserved matters shall be made to the local planning authority not later than three years from the date of this permission.
- 4) 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.
- 5) The development hereby permitted shall be carried out in accordance with the following approved plans, in so far as those plans relate to matters not reserved for future determination:

PL 111105 LP.01	Location Plan
PL 110313 CMP-01 Rev B	Conceptual Masterplan
PL 111105 LUL-01 Rev D	Land Uses Layout
PL 111115 CPL-01	Constraints Plan Layout
PL 111105 SS.01 Rev C	Site Sections
PL 111105 SS.02 Rev A	Site Sections Boundaries
P2022	Site Survey

- 6) No development shall take place, including any site clearance, until a Construction Method Statement has been submitted to, and approved in writing by, the local planning authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:
 - i) the routing and parking of vehicles of site operatives and visitors
 - ii) hours of work

- iii) loading and unloading of plant and materials
 - iv) storage of plant and materials used in constructing the development
 - v) the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate
 - vi) wheel washing facilities
 - vii) measures to control the emission of dust and dirt during construction
 - viii) a scheme for recycling/disposing of waste resulting from demolition and construction works
- 7) No development shall take place, including any site clearance, until an Ecological Construction Management Plan (ECMP) has been submitted to and approved in writing by the local planning authority. The approved ECMP shall be adhered to throughout the construction period. The Statement shall include details of any pre-construction checks required; the species safeguards to be employed; appropriate working practices and timings of construction works; and the extent of buffer zones and stand-offs for sensitive ecological features. The ECMP shall also include details of a suitably qualified Ecological Clerk of Works to oversee implementation of the ECMP and address any contingency measures where appropriate.
- 8) No development shall take place until a programme of archaeological work has been implemented in accordance with a written scheme of investigation which has been submitted to and approved in writing by the Council.
- 9) No development shall take place until the location of all Japanese Knotweed on all land to be transferred as open space has been detailed on a scaled plan, and a scheme for its eradication, including a timetable, has been submitted to and approved in writing by the local planning authority. All of the Japanese Knotweed shall be removed before the land is transferred as open space.
- 10) No development shall take place until a site investigation to determine the extent of any coal mining legacy issues has been carried out and the results submitted to the local planning authority, along with any necessary remedial measures. No building operations shall commence until either (a) the local planning authority has agreed in writing that no remedial measures are required, or (b) details of remedial measures have been approved in writing by the Council, in which case the development shall not be carried out other than in accordance with the approved details.
- 11) No development shall take place until a contaminated land assessment, and associated remedial strategy, has been submitted to and approved in writing by the local planning authority. The approved remediation works shall be completed in accordance with a quality assurance scheme agreed as part of the contaminated land assessment. If, during development, contamination is encountered which has not been previously identified, the additional contamination shall be fully assessed and a specific contaminated land assessment and associated remedial strategy shall be submitted to and agreed in writing by the local planning authority before the additional remedial works are carried out. The agreed strategy shall be implemented in full prior to completion of the development hereby approved. On completion of the agreed remediation works, a closure report and

- certificate of compliance shall be submitted to and agreed in writing by the local planning authority.
- 12) No development shall take place until details of the layout of the open space, including the equipped play area, public open space, landscaping and biodiversity enhancement areas, boundary details, surfacing, drainage, litter bins, knee rail, benches and signage has been submitted to and approved in writing by the local planning authority. Development shall only be carried out in accordance with the approved details.
 - 13) No development shall take place until full details of the precise alignment and specification of the dedicated foot and cycle paths have been submitted to and approved in writing by the local planning authority. Development shall only be carried out in accordance with the approved details.
 - 14) No development shall take place until an Ecological Management Plan (EMP) has been submitted to and approved in writing by the local planning authority. The EMP shall set out how the measures and recommendations detailed in the Great Crested Newt Mitigation Strategy (RT-MME-112139-01), Reptile Mitigation Strategy (RT-MME-112172-01), Tree Bat Survey (RT-MME-111454-03) and Reptile Survey Transects Plan (C111454-02-01) will be implemented and maintained. The EMP shall also include details of habitat enhancement for water voles; the proposed wildflower meadow creation; details of planting to provide additional foraging areas for bats; details of replacement roosting and nesting habitats for bats and breeding birds; a timetable for the implementation of all of the ecological mitigation and enhancement measures; and a scheme securing their future maintenance and retention. The EMP must demonstrate how, measured across the appeal site as a whole, the measures it contains will achieve a net gain for the biodiversity of the site, rather than simply neutralising the impact of the development.
 - 15) No development shall take place until details for the disposal of both surface water and foul sewage have been submitted to and approved in writing by the local planning authority. Development shall only be carried out in accordance with those approved details, and in accordance with the measures detailed in the approved Flood Risk Assessment (ref: 12011 dated 7 February 2012).
 - 16) The marina hereby approved shall not be used for permanent residential moorings.
 - 17) Prior to occupation of any of the open-market dwellings hereby permitted, a traffic management scheme for Blackhorse Road shall be submitted to and approved in writing by the local planning authority. The scheme shall be implemented in accordance with the approved details prior to occupation of more than 50 of the open-market dwellings hereby permitted.

Appendix D: SUGGESTED CONDITIONS – APPEAL B

- 1) Details of the appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development begins and the development shall be carried out as approved.
- 2) Prior to the submission of any applications for approval of reserved matters, a Phasing Plan shall be submitted to and approved in writing by the local planning authority. The Phasing Plan shall provide details of the sequence and timing of development across the entire site, including the provision of all accesses, roads, footpaths and cycle ways; the marina and associated facilities; the dwellings; the allotments; the community centre; the equipped play area; the public open space; and the enhancement of landscape and biodiversity habitats. The Phasing Plan shall include a timetable linking the construction of the approved marina to the construction and occupation of the approved dwellings, to the effect that the marina shall be made available for use before a specified number of dwellings are made available for occupation. The development, and the release of dwellings for occupation, shall be carried out in accordance with the approved Phasing Plan.
- 3) Application for approval of the reserved matters shall be made to the local planning authority not later than three years from the date of this permission.
- 4) 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.
- 5) The development hereby permitted shall be carried out in accordance with the following approved plans, in so far as those plans relate to matters not reserved for future determination:

PL 111105 LP.01	Location Plan
PL 110313 CMP-01 Rev B	Conceptual Masterplan
PL 111105 LUL-01 Rev E	Land Uses Layout
PL 111115 CPL-01	Constraints Plan Layout
PL 111105 SS.01 Rev C	Site Sections
PL 111105 SS.02 Rev A	Site Sections Boundaries
P2022	Site Survey

- 6) No development shall take place, including any site clearance, until a Construction Method Statement has been submitted to, and approved in writing by, the local planning authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:
 - ix) the routing and parking of vehicles of site operatives and visitors
 - x) hours of work

- xi) loading and unloading of plant and materials
 - xii) storage of plant and materials used in constructing the development
 - xiii) the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate
 - xiv) wheel washing facilities
 - xv) measures to control the emission of dust and dirt during construction
 - xvi) a scheme for recycling/disposing of waste resulting from demolition and construction works
- 7) No development shall take place, including any site clearance, until an Ecological Construction Management Plan (ECMP) has been submitted to and approved in writing by the local planning authority. The approved ECMP shall be adhered to throughout the construction period. The Statement shall include details of any pre-construction checks required; the species safeguards to be employed; appropriate working practices and timings of construction works; and the extent of buffer zones and stand-offs for sensitive ecological features. The ECMP shall also include details of a suitably qualified Ecological Clerk of Works to oversee implementation of the ECMP and address any contingency measures where appropriate.
- 8) No development shall take place until a programme of archaeological work has been implemented in accordance with a written scheme of investigation which has been submitted to and approved in writing by the Council.
- 9) No development shall take place until the location of all Japanese Knotweed on all land to be transferred as open space has been detailed on a scaled plan, and a scheme for its eradication, including a timetable, has been submitted to and approved in writing by the local planning authority. All of the Japanese Knotweed shall be removed before the land is transferred as open space.
- 10) No development shall take place until a site investigation to determine the extent of any coal mining legacy issues has been carried out and the results submitted to the local planning authority, along with any necessary remedial measures. No building operations shall commence until either (a) the local planning authority has agreed in writing that no remedial measures are required, or (b) details of remedial measures have been approved in writing by the Council, in which case the development shall not be carried out other than in accordance with the approved details.
- 11) No development shall take place until a contaminated land assessment, and associated remedial strategy, has been submitted to and approved in writing by the local planning authority. The approved remediation works shall be completed in accordance with a quality assurance scheme agreed as part of the contaminated land assessment. If, during development, contamination is encountered which has not been previously identified, the additional contamination shall be fully assessed and a specific contaminated land assessment and associated remedial strategy shall be submitted to and agreed in writing by the local planning authority before the additional remedial works are carried out. The agreed strategy shall be implemented in full prior to completion of the development hereby approved. On completion of the agreed remediation works, a closure report and

certificate of compliance shall be submitted to and agreed in writing by the local planning authority.

- 12) No development shall take place until details of the layout of the open space, including the equipped play area, public open space, landscaping and biodiversity enhancement areas, boundary details, surfacing, drainage, litter bins, knee rail, benches and signage has been submitted to and approved in writing by the local planning authority. Development shall only be carried out in accordance with the approved details.
- 13) No development shall take place until full details of the precise alignment and specification of the dedicated foot and cycle paths have been submitted to and approved in writing by the local planning authority. Development shall only be carried out in accordance with the approved details.
- 14) No development shall take place until an Ecological Management Plan (EMP) has been submitted to and approved in writing by the local planning authority. The EMP shall set out how the measures and recommendations detailed in the Great Crested Newt Mitigation Strategy (RT-MME-112139-01), Reptile Mitigation Strategy (RT-MME-112172-01), Tree Bat Survey (RT-MME-111454-03) and Reptile Survey Transects Plan (C111454-02-01) will be implemented and maintained. The EMP shall also include details of habitat enhancement for water voles; the proposed wildflower meadow creation; details of planting to provide additional foraging areas for bats; details of replacement roosting and nesting habitats for bats and breeding birds; a timetable for the implementation of all of the ecological mitigation and enhancement measures; and a scheme securing their future maintenance and retention. The EMP must demonstrate how, measured across the appeal site as a whole, the measures it contains will achieve a net gain for the biodiversity of the site, rather than simply neutralising the impact of the development.
- 15) No development shall take place until details for the disposal of both surface water and foul sewage have been submitted to and approved in writing by the local planning authority. Development shall only be carried out in accordance with those approved details, and in accordance with the measures detailed in the approved Flood Risk Assessment (ref: 12011 dated 7 February 2012).
- 16) The marina hereby approved shall not be used for permanent residential moorings.
- 17) Prior to occupation of any of the open-market dwellings hereby permitted, a traffic management scheme for Blackhorse Road shall be submitted to and approved in writing by the local planning authority. The scheme shall be implemented in accordance with the approved details prior to occupation of more than 50 of the open-market dwellings hereby permitted.

Appendix E: GLOSSARY OF ACRONYMS AND ABBREVIATIONS

CIL	Community Infrastructure Levy
DCLG	Department of Communities and Local Government
DfE	Department for Education
EIC	Evidence in Chief
ha	Hectare
IHT	Institution of Highways and Transportation
LP	Local Plan
NPPF	National Planning Policy Framework
NUCKLE	The Nuneaton, Coventry, Kenilworth and Leamington Rail Upgrade project
PCPA	Planning and Compulsory Purchase Act
PPG	Planning Policy Guidance
S.106	Section 106 of the Town and Country Planning Act 1990
SoCG	Statement of Common Ground
SoS	Secretary of State for Communities and Local Government
TEP	The Environment Partnership
WCC	Warwickshire County Council
XX	Cross Examination

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Department for Communities and Local Government

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 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

Decisions on called-in applications under section 77 of the TCP Act (planning), appeals under section 78 (planning) may be challenged under this section. 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 under this section must be made within six weeks from the date of the decision.

SECTION 2: AWARDS OF COSTS

There is no statutory provision for challenging the decision on an application for an award of costs. The procedure is to make an application for Judicial Review.

SECTION 3: 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 report of the Inspector's report of the inquiry or hearing within 6 weeks of the date of the decision. If you are such a person and you wish to view the documents you should get in touch with the office at the address from which the decision was issued, as shown on the letterhead on the decision letter, quoting the reference number and stating the day and time you wish to visit. At least 3 days notice should be given, if possible.