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Our Ref: APP/F2415/A/12/2183653

17 April 2014

Dear Madam

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78  
APPEAL BY MR I. P. CRANE – SITE AT LAND SOUTH OF HALLBROOK PRIMARY  
SCHOOL, CROWFOOT WAY, BROUGHTON ASTLEY, LEICESTERSHIRE  
APPLICATION REF: 12/04597/OUT**

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Inspector, Stephen Roscoe BEng MSc CEng MICE, who held a public local inquiry on 8, 9 and 23 May 2013 into your client's appeal against the refusal of Harborough District Council ('the Council') to grant outline planning permission for the erection of 111 dwellings, a sports hall, a neighbourhood centre, sports pitches and associated parking, open space, access and landscaping, in accordance with application ref: 12/00494/OUT, dated 29 March 2012.
2. On 19 August 2013 the appeal was 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 it involves proposals which raise important or novel issues of development control, and/or legal difficulties.

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

3. The Inspector recommended that the appeal be allowed and planning permission granted subject to conditions. For the reasons given below, the Secretary of State disagrees with the Inspector's recommendation, dismisses the appeal 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. For the reasons set out at IR5-8 the Secretary of State agrees with the Inspector that there is no need to amend the description of the proposal as set out on the Council's refusal notice.

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

5. The Secretary of State notes that the Inspector took into account post inquiry representations on the emerging Broughton Astley Neighbourhood Plan up to and including the examination version and the Examiners report (IR11-13). In addition to documents IPC8, 9 and 10 referenced in the IR, the Inspector took into account a letter from the Council dated 14 November 2013. In reaching his decision on this case the Secretary of State has also given careful consideration to all these representations. The Neighbourhood Plan passed referendum in January and was made in February 2014. It therefore now forms part of the development plan for the Broughton Astley area.
6. On 21 January 2014 the Secretary of State wrote to the main parties who appeared at the inquiry to submit evidence and views on the housing land supply position in Harborough District in the light of the Council's September 2013 Update. He received responses from the Council dated 10 February, and from the appellant and the Parish Council both dated 12 February. These responses received were recirculated for further comment under cover of an email dated 12 February and a further response was received from the appellant dated 20 February. The Secretary of State has taken account of all these responses in his consideration of the appeal before him.
7. On 12 March 2014 the Secretary of State wrote to the council and the appellant again, this time to seek views on whether the planning guidance published on 6 March 2014 (or the consequent withdrawal of any previous planning guidance) had relevance to their respective cases. He received responses from the Council dated 17 March and from the appellant dated 27 March. These responses received were recirculated for further comment under cover of an email dated 31 March and a further response was received from the appellant dated 7 April. The Secretary of State has also taken account of these responses in his consideration of the appeal.
8. As the responses to the Secretary of State's letters of 21 January and 12 March were circulated to the main inquiry parties he does not consider it necessary to summarise the responses here or attach them to this letter. Copies of the correspondence can be obtained upon request to the address at the bottom of the first page of this letter.

## **Policy considerations**

9. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise. In this case, the development plan comprises the Harborough Core Strategy adopted in 2011, the Broughton Astley Neighbourhood Plan which was made by a decision notice of Harborough District Council dated 20 January 2014 and therefore became part of the development plan, and remaining saved policies of District Local Plan adopted in 2001.
10. Material considerations which the Secretary of State has taken into account include the National Planning Policy Framework, March 2012 (The Framework); the planning guidance referred to at paragraph 7 above; and the Community Infrastructure Levy (CIL) Regulations 2012 as amended.
11. The Secretary of State notes that the Council is currently preparing a new Local Plan, but as the Council has not yet approved a pre-submission draft and any proposals are liable to change, he attributes little weight to the emerging Plan.

## **Main issues**

### Housing land supply

12. For the reasons given at IR15-25 the Secretary of State agrees with the Inspector's conclusion that the Council does not have a 5 year housing land supply (IR26). In reaching this conclusion the Secretary of State has given careful consideration to responses to his letters of 21 January and 12 March 2014. He agrees with the view expressed in the appellant's representations that the need figure of 440 dwellings per annum in the 2013 Harborough Housing Requirements Study represents the most up-to-date evidence available and renders the regional strategy-based housing requirements in the Core Strategy out-of-date.
13. The Secretary of State agrees with the appellant and the Council that allocated sites 1A and 2 in Policy H1 of the Broughton Astley Neighbourhood Plan, for which there are Council resolutions to grant planning permission for about 500 dwellings, are not part of the housing land supply calculation as at September 2013 which is the most recent base date at which supply can be calculated. For this reason and the reasons at IR46 the Secretary of State agrees with the Inspector that the Neighbourhood Plan is capable of meeting some but not all of the District Council's housing land shortfall.
14. Having regard to Framework paragraph 49, the Secretary of State agrees with the Inspector that the relevant development plan policies for the supply of housing are out of date (IR26). This includes the relevant policies in the Broughton Astley Neighbourhood Plan, notably Policy H1, even though that Plan was made very recently. The Secretary of State considers that the presumption at paragraph 14 of the Framework applies to this appeal.

### The effect on the character and appearance of the area

15. For the reasons given at IR27-35, the Secretary of State agrees with the Inspector that the proposal would have a moderate/minor harmful effect on the character and appearance of the surrounding area, in conflict with Core Strategy Policies CS17 and CS11. He agrees, however, that this harm and conflict would be restricted to areas immediately surrounding the site and therefore attracts limited weight.

### Accessibility of the site

16. For the reasons at IR37-40 the Secretary of State agrees with the Inspector that the proposal would be sufficiently accessible in terms of sustainable development and that it would thus accord with the National Planning Policy Framework in this regard (IR42). However the Secretary of State considers that the Inspector's observation at IR41 has been overtaken by events. As the Council has now resolved to grant planning permission for the Broughton Astley Neighbourhood Plan's allocated sites 1A and 2, the Secretary of State considers that these sites are now at a broadly similar stage to the appeal site in terms of progression towards housing delivery. He agrees with the Inspector's view that there is no evidence that the appeal proposal would prevent development on the allocated sites from progressing and delivering the community infrastructure associated with them (IR50). However, the Secretary of State considers that the allocated sites are significantly better located than the appeal site in terms of walking distance to facilities at the village centre.

## Neighbourhood Plan

17. Policy H1 in the Broughton Astley Neighbourhood Plan states that sites were allocated for development as a result of the public consultation and options appraisal process. These processes are fully documented in the Plan's published evidence base, referenced at appeal inquiry document HDC4. The documentation makes clear why some of the sites considered were allocated and why others were not allocated, including the appeal site which was considered to be relatively remote from the village centre. The Plan also includes Policy H3 which supports windfall development on small sites, but the Secretary of State considers that the appeal proposal for 111 dwellings is too large to accord with the scope of that policy. Accordingly, he considers that the proposal conflicts with the neighbourhood plan and therefore the development plan as a whole.
18. Policy SD.1 of the Neighbourhood Plan reflects the presumption in favour of sustainable development in the Framework. In this appeal case he considers that the key issue in applying the presumption is whether any adverse impacts of the proposal would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole including its policies on neighbourhood planning as well as policy on housing supply.
19. The appeal proposal would assist in addressing the housing land supply shortfall (IR50) and the Secretary of State places substantial weight on this benefit. However, though he has had careful regard to the points the Inspector makes at IR43-49, he has also given consideration to the policies on neighbourhood planning at paragraphs 183-185 and 198 of the Framework. Paragraph 198 is clear that, where a planning application conflicts with a neighbourhood plan that has been brought into force, planning permission should not normally be granted. In line with paragraph 184 of the Framework, the Broughton Astley Neighbourhood Plan does not undermine the strategic policies in the Local Plan (i.e. the 2011 Harborough Core Strategy) nor provide for less development than is set out in that Plan. Paragraph 185 of the Framework states that, outside the strategic elements of the Local Plan, neighbourhood plans will be able to shape and direct sustainable development. The Secretary of State regards this purpose as more than a statement of aspiration. He considers that neighbourhood plans, once made part of the development plan, should be upheld as an effective means to shape and direct development in the neighbourhood planning area in question, for example to ensure that the best located sites are developed. Consequently, in view of Framework paragraphs 198 and 185 the Secretary of State places very substantial negative weight on the conflict between the appeal proposal and the Neighbourhood Plan.

## Other Considerations

20. The Secretary of State agrees with the Inspectors assessment of highway safety (IR53), the proposed shop units (IR54) and badger sett (IR55), and agrees that these matters provide no reasons to dismiss the appeal.

## **Conditions**

21. The Secretary of State agrees with the Inspector's reasoning and conclusions on conditions at IR57-61. He agrees with the Inspector that conditions 1 - 28 as set out in Annex A of the IR meet the tests of paragraph 206 in the Framework. However, for the reasons set out above, he does not consider that these conditions overcome his reasons for dismissing the appeal.

## **Section 106 Agreement**

22. The Secretary of State agrees with the Inspector's assessment of the Section 106 agreement dated 23 May 2013 at IR62-76. He agrees that all of the contributions would be necessary to make the proposal acceptable in planning terms and would accord with the CIL Regulations 2010 and the tests in paragraph 204 of the Framework (IR77). However, for the reasons set out above, he does not consider that the undertakings in the agreement are sufficient to overcome his reasons for dismissing the appeal.

## **Overall balance and conclusion**

23. The Secretary of State considers that the lack of a 5 year housing land supply and the contribution that the appeal proposal would make to increasing supply weighs substantively in favour of the appeal.

24. He considers that the harm and conflict with the Harborough Core Strategy in relation to landscape character and the appearance of the area are nowhere near sufficient to outweigh the benefits of the proposal in terms of housing supply.

25. However, in view of the Framework policy that neighbourhood plans will be able to shape and direct sustainable development, he places very substantial negative weight on the conflict with the Neighbourhood Plan even though this is currently out of date in terms of housing land supply ahead of its review in 2018.

26. The Secretary of State considers that the adverse impacts of the appeal proposal, especially in terms of the conflict with the Broughton Astley Neighbourhood Plan, would significantly and demonstrably outweigh the benefits in terms of increasing housing supply. He therefore concludes that there are no material circumstances that indicate the proposal should be determined other than in accordance with the development plan.

## **Formal decision**

27. Accordingly, for the reasons given above, the Secretary of State disagrees with the Inspector's recommendation and hereby dismisses your client's appeal and refuses outline planning permission for the erection of 111 dwellings, a sports hall, a neighbourhood centre, sports pitches and associated parking, open space, access and landscaping, in accordance with application ref: 12/00494/OUT.

## **Right to challenge the decision**

28. 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.

29. A copy of this letter has been sent to Harborough District 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

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

by Stephen Roscoe BEng MSc CEng MICE

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

Date 21 November 2013

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TOWN AND COUNTRY PLANNING ACT 1990

APPEAL BY MR IP CRANE

HARBOROUGH DISTRICT COUNCIL

Richborough Estates

Inquiry held on 8, 9 and 23 May 2013

Site Visit made on 10 May 2013

Land South of Hallbrook Primary School, Crowfoot Way, Broughton Astley, Leicestershire

File Ref: APP/F2415/A/12/2183653

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Richborough Estates

## GLOSSARY

EIA	Environmental Impact Assessment
GLH	GL Hearn
eLP	emerging Local Plan
dpa	dwellings per annum
RS	Regional Spatial Strategy for the East Midlands
RX	Inquiry Re-examination
CS	Core Strategy
JGC	Justin Gardner Consulting
SHMA	Strategic Housing Market Assessment
XX	Inquiry Cross Examination
XC	Inquiry Examination in Chief

Richborough Estates



**Appeal Ref: APP/F2415/A/12/2183653**

**Land South of Hallbrook Primary School, Crowfoot Way, Broughton Astley, Leicestershire**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
- The appeal is made by Mr IP Crane against the decision of Harborough District Council.
- The application Ref 12/00494/OUT, dated 29 March 2012, was refused by notice dated 22 August 2012.
- The proposal is a development of 111 dwellings including a new community hall, sports pitches and associated parking, open space, access and landscaping.

**Summary of Recommendation: The appeal be allowed.**

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Document references are shown in square brackets.

**Preamble**

1. This report includes my appraisal, conclusions and recommendations. Details of those who took part in the Inquiry and comprehensive lists of the documents in relation to the Inquiry are at the end of the report. Recommended conditions are attached as appendices.

**Procedural Matters**

2. The above application was submitted in outline, with all matters reserved for future consideration. At the Inquiry, the appellant confirmed that the plans of the proposal submitted with the application were illustrative, and the Council confirmed that they had been considered on this basis. There is no reason to disagree that they have been provided for illustrative purposes only, and the appeal has been considered on this basis.
3. Prior to the opening of the Inquiry, Jelson Homes Ltd were granted Rule 6(6) status and submitted an Inquiry statement, as recorded in the Inquiry documents. No representatives of Jelson Homes identified themselves as wishing to give evidence at the opening of the Inquiry, and the statement was therefore taken as a written representation. No party objected to this course of action.
4. Leicestershire County Council and the Police and Crime Commissioner for Leicestershire were also granted Rule 6(6) status prior to the opening of the Inquiry. The County Council submitted a statement and the Commissioner submitted a witness proof of evidence to the Inquiry, as recorded in the Inquiry documents. Neither party however wished to call their witnesses to give evidence in support of, or to be cross examined on, their statement and proof, but they were called to take part in the conditions and Section 106 sessions of the Inquiry. The statements were therefore taken as written representations, and no party objected to this course of action.
5. The planning application which is the subject of this appeal was submitted as recorded above. The Council's refusal notice however describes the proposal as *the erection of 111 dwellings, a sports hall, a neighbourhood centre, sports pitches and associated parking, open space, access and landscaping (outline application – all matters reserved)*. The appeal proposal includes the provision of a sports hall which would be leased to the Council on its completion.

6. The Council has concerns in respect of the accessibility of the hall on the appeal site in relation to the settlement of Broughton Astley. Pre-Inquiry correspondence from the appellant identifies that the provision of the hall would be subject to the approval of the Council. It also identifies that, if such an agreement is not forthcoming, a financial contribution towards a sports facility would be provided to the Council in lieu of the hall.
7. The appellant has suggested that, following the expression of concerns from the Council and third parties regarding the sports hall element of the appeal proposal, the reference to the hall in the description should be deleted. The Council confirmed in the Inquiry however that, whilst the sports hall was identified on the indicative plans submitted with the planning application, there is nothing in the proposal itself to require the sports hall to be constructed.
8. The appellant has also carried out a public consultation exercise, including communication with Broughton Astley Parish Council, in relation to the omission of the hall. This has not resulted in any response that would lead to a reasoned objection to the omission on the basis of prejudice. Furthermore, should the hall not be provided, the development would remain substantially as applied for at outline stage.
9. In view of all of the above points, there is nothing to suggest that the deletion of the sports hall from the description would have any effect on the appeal proposal. There is therefore no need to amend the description of the proposal, as set out on the Council's refusal notice, and the appeal has been considered on this basis. All parties at the Inquiry were content with this course of action.
10. The Council has provided an Environmental Impact Assessment (EIA) screening opinion which indicates that an EIA is not required as the proposal is not EIA development. There are no suggestions otherwise and no reason to disagree with the Council's opinion.
11. Following closure of the Inquiry, Broughton Astley Parish Council submitted an examination version of the Broughton Astley Neighbourhood Plan [IP3]. A submission was also received from GVA, on behalf of Jelson Homes Ltd [JH1]. On the basis that these submissions referred to the emerging neighbourhood plan and are material to any recommendation of this report, responses were invited from the main and Rule 6(6) parties, and finally the appellant was given the opportunity to comment on these responses [HDC19, IPC8, JH2 & IPC9].
12. The final comments from the appellant on the responses from the other parties however introduced new evidence in relation to the emerging Neighbourhood Plan and other appeals relating to five-year housing land supply [JH3]. The identified appeals though have little relevance to the post Inquiry submissions and responses, and are therefore not material to this report, and the parties have subsequently been given an opportunity to comment on the Neighbourhood Plan following examination [HDC22, IPC10 & PCCL5]. The introduction of this new evidence has therefore not prejudiced any party.
13. In summary therefore, this report takes into account the emerging Neighbourhood Plan up to and including the examination version and the Examiners report, which have been submitted as Inquiry documents [IP3 & JH4].

## Conclusions

Document references are shown in square brackets.

### *Main Considerations*

14. The main considerations in this case are:

- i) whether a satisfactory level of housing land supply is available within the Council's area;
- ii) the effect of the proposal on the character and appearance of the surrounding area; and
- iii) whether the proposal would be sufficiently accessible in terms of sustainable development.

### *Housing Land Supply*

15. The Council commissioned a report<sup>1</sup> by GL Hearn (GLH), dated March 2013, to provide an initial assessment, on current evidence, of housing land supply to inform the Council's emerging Local Plan (eLP) [HDC10]. The report, which included the use of data from the 2011 census, found that a reasonable basis for strategic planning purposes would be for the provision of around 440 dwellings per annum (dpa) in the Council's area over the 2011 to 2031 plan period [HDC10 para 8.16]. The Council acknowledged in the Inquiry that this figure is an important piece of evidence in terms of its housing land supply position and that, at 440dpa, the Council currently has a housing land supply of 4.1 years [HDC/SP/1 para 2.4 & SP RX].
16. The Regional Spatial Strategy for the East Midlands (RS) has recently been revoked. The RS relied on 2003 population projection evidence, amongst other things, that found the Council's housing requirement to be 350dpa over the 2006 to 2026 plan period. This figure results in a current housing land supply position of 5.54 years [HDC/SP/1 para 2.4].
17. The evidence from the 2013 GLH report is however far more up to date than that used for the RS, which does not now reflect actual need. Indeed, a report to the Council's Executive Meeting of 14 January 2013 stated that the findings of the 2013 GLH report will support the determination of planning applications and form evidence at planning Inquiries [IPC/RP/3 App 16 para 3.1]. A report to the Council's Local Planning Executive Advisory Panel<sup>2</sup>, dated 21 May 2013, also advised that, in terms of evidence collection, the March 2013 GLH report work was complete [IPC6 para 5 & pg 2]. Furthermore, the Council's 3 December 2012 review of Core Strategy<sup>3</sup> (CS) compatibility with the National Planning Policy Framework had previously concluded that not building on the 2013 GLH report evidence would leave the Council vulnerable and open to attack at appeal [HDC/RH/1 para 5.13 & SP XX]. The locally derived 2013 GLH report is therefore the more robust and reliable of the two sources of evidence, represents a full and objective assessment of current housing land supply needs and is the best available and most recent evidence on this matter. This is the case, notwithstanding that the RS based housing requirement figure was likely to have been subject to a greater level of multi-authority testing.

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<sup>1</sup> Harborough Housing Requirements Study: GL Hearn: March 2013

<sup>2</sup> Harborough District Council: Local Planning Executive Advisory Panel: New Local Plan – Project Highlight Report: 21 May 2013

<sup>3</sup> Harborough District Local Development Framework: Core Strategy 2006-2028: 14 November 2011

18. The housing land allocations in the Council's CS are based on the evidence used for the revoked RS, and this approach was supported in the local plan Inspector's report at the time [HDC/SP/1 para 2.4]. There was however an emerging line of thought, from an earlier GLH & Justin Gardner Consulting (JGC) report<sup>4</sup> of 2011, which suggested that the requirement was between 448 and 477dpa [HDC10 para 2.14]. This was thought not to be sufficiently robust by the local plan Inspector [JH/RT/1 para 5.5].
19. The circumstances surrounding the housing land supply situation have however changed since 2011 through the passage of time, the March 2013 GLH report and the publication of the Framework. The aim of the Framework is to seek to ensure that local planning authorities maintain a five-year housing land supply, plus a 5% buffer, at all times by reducing housing development controls where this supply is not available.
20. The publication of the Council commissioned GL Hearn 2013 report has therefore fatally undermined the Council's position at the Inquiry that it has a five-year supply. Indeed, the potential undermining of this position, on the basis of the GL Hearn & JGC 2011 report, was identified in the Council's committee report concerning the appeal proposal and, more generally, in a Council report to its Executive Meeting of 29 October 2012 [IPC/RP/2 App 2 pg 52 & App 9]. Furthermore, the Council's refusal reasons did not refer to the housing policies that the Framework suggests would be out of date if a five-year supply was not available. In view of all of the above points, there is therefore convincing evidence that the Council cannot demonstrate a five-year supply of housing land as required by the Framework, notwithstanding the requirement for an additional 5% buffer.
21. The Council acknowledges that even new policies can be found to be out of date under the Framework [HDC18 para 6]. Moreover, in the testing of housing land supply, it is the robustness of the evidence that is key, not the policy situation (which indeed can then be found to be out of date). The recent adoption of the CS therefore does not outweigh the advice in the Framework that housing supply policies are now out of date.
22. The 2013 GLH report is one of the building blocks for the eLP and, in this regard, it includes advice that further work in relation to housing land supply is required [HDC10 para 1.5]. It has been suggested that, before the housing requirement can be changed from 350dpa, an updated Strategic Housing Market Assessment (SHMA) should be carried out [S Pointer XC]. This would however require cross boundary co-operation between neighbouring planning authorities, and there is no evidence that this would be achievable in the short term.
23. It has also been suggested that further collaborative working, consultation, detailed consideration and testing at examination would be necessary before the housing requirement could be changed [S Pointer XX]. There is no doubt that this work would be necessary in the preparation of the eLP. The five-year housing land supply test is however different to eLP preparation. This is because the test is an up to date and ongoing monitoring activity, one of the reasons for which is to identify any need for a review of the plan in terms of housing land supply. It is not the same as plan preparation, which is more

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<sup>4</sup> Leicester & Leicestershire Housing Requirements Study: Final Report: GL Hearn & Justin Gardner Consulting: September 2011

formal and wide ranging, and a longer term SHMA is therefore not essential to update the 350dpa requirement on a case by case basis.

24. Moreover, the Framework test is simply to demonstrate a five-year supply of deliverable housing sites. There is no restriction as to what requirement figure should be used, and the aim of the policy is to keep housing supply matters up to date. The baseline for monitoring cannot therefore be frozen between plans where a potential shortfall has been identified and there is new and robust baseline evidence. To do so would conflict with the aim of the Framework for an up to date assessment. The need for further eLP preparatory work thus does not reduce the provenance of the findings of the 2013 GLH report or the weight that it can be given. The 2013 GLH report is therefore again a robust basis for five-year housing land supply monitoring assessment.
25. The 440dpa requirement would support employment growth of about 7 to 8% over the eLP period [HDC10 para 8.4]. This is moderately above the average for the housing market area and is in line with the past economic performance of the Council's area. It would therefore provide modest scope to accommodate increased inward migration. There is however nothing to suggest that the removal of the element of inward migration from the requirement would increase the housing land supply to more than five years. Furthermore, the possibility of outward migration has not been suggested and is therefore unlikely. The 2013 GLH figure thus remains as the most robust evidence of the likely housing requirement for the district.
26. I therefore conclude that the Council does not have a satisfactory level of housing land supply. I further conclude that policies, and elements of policies where relevant, relating to housing supply are out of date in accordance with the National Planning Policy Framework.

#### *Character and Appearance*

27. Considering firstly landscape character, the appeal site is situated within open countryside, beyond the settlement boundary of Broughton Astley. It is however connected to the boundary by an area of land with residential planning permission which is outside but adjoins the boundary. The character of the proposed development is likely to be very similar to that of the Broughton Astley settlement itself, and it therefore would reflect, and not have a harmful effect on, the character of the settlement. The proposal would however change the character of the site from improved grassland to residential development, and this would change the character of the open countryside areas immediately around it [HDC/RH/1 para 6.16 & IPC/KJ/2 App A para 8.1.1]. The proposal therefore would have a moderate adverse significance of effect on the landscape character of its immediate surroundings [HDC/RH/1 para 6.16]. It thus would not be sensitive to its immediate countryside landscape setting and would conflict with CS Policy CS17 in this regard. This harm would be of moderate importance.
28. The wider area around the appeal site is not the subject of any landscape designation or protection, but is described as being within the Upper Soar Landscape Character Area [HDC/RH/1 para 6.15 & IPC/KJ/2 App A para 2.5.3]. It has no unique character in comparison to other areas in the locality. Furthermore, should the proposal proceed, the separation that would remain between local settlements would be sufficient to retain the wider character of the area. Moreover, there is no evidence that any green corridors of

importance to landscape character would be compromised, as suggested by the Council and Leire Parish Council [HDC/RH/1 para 6.11]. The proposal therefore would have a minor adverse significance of effect on the landscape character of the wider area [IPC/KJ/2 App A para 8.1.1].

29. Turning now to visual impact, the appeal site is not readily visible from Broughton Astley, and the proposed extension and some elongation of the settlement would not materially affect its visual form. In views from the east, along nearby footpaths on Clump Hill (that, from their wear and the positioning of seats and bins, appear to be well used), vegetation along the former railway line partially screens the site. Furthermore, development in Broughton Astley is very prominent in these views, and the proposed development would only be a limited addition to it. As a consequence of these factors, the proposal would have a minor adverse significance of impact on these views, as set out in the appellant's Landscape and Visual Impact Assessment (LVIA) [IPC/KJ/2 App A paras 8.7.16, 8.7.21 & 8.8.47].
30. In nearby views generally from the south and west however, much of the appeal site is at a higher level than, and readily visible from, viewpoints along nearby lesser used footpaths within agricultural fields. In these views, between breaks in field boundary vegetation, the proposed development would have a moderate adverse significance of impact, as opposed to the minor significance of impact set out in the LVIA. It thus would not visually respect local context as required by CS Policy CS11 [IPC/KJ/2 App A paras 8.7.11, 8.8.31 & 8.8.47].
31. From the wider area, the proposed development would generally be screened from the north by Broughton Astley and from the east by Clump Hill. From the south, at distance, the proposal would be seen against a backdrop of skyline roofs of the permitted residential development and those of Broughton Astley to the north of the appeal site [IPC/KJ/2 App A paras 8.7.6, 8.8.10, 8.8.15 & 8.8.47]. The recently permitted development to the north of the site would include a tree screen boundary between it and the open countryside of the appeal site. This would however be of a limited depth, and this would restrict its ability to screen the permitted housing. The appeal site is though of a size that would give the opportunity for upper areas of the site to remain undeveloped, thus reducing the visibility of the proposed development. From the west, the backdrop would be the vegetation along the former railway line to the east of the site, which appears as a darker band in the landscape. This would reduce any prominence of the proposed development. The proposal therefore would result in a negligible magnitude of change to views from the wider area, and the effect would then not be of any significance or affect the setting of Broughton Astley in the wider area.
32. These findings in relation to the wider area are supported by the conclusions of the December 2011 Landscape Partnership report<sup>5</sup> which was commissioned by the Council [HDC3]. This identifies the site as one of two which are favoured for development in landscape terms out of 22 considered adjacent to and around Broughton Astley [HDC3 para 0.16]. The report concludes that the site has a high capacity to accommodate development, due primarily to its good relationship with the existing urban built form, limited coalescence, scope to mitigate the effect of development and only moderate openness to public view [HDC3 App C-10 & HDC9].

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<sup>5</sup> Lutterworth and Broughton Astley Landscape Character Assessment and Landscape Capacity Assessment: December 2011

33. The Council had previously commissioned a September 2007 Atkins report<sup>6</sup> which considered the landscape character of the district as a whole [HDC2]. This considered the site to be unsuitable for development in landscape terms, as were 8 out of the 16 considered around Broughton Astley, where only one was considered appropriate and 7 were said to have some potential [HDC2 pg 91]. The unsuitability of the site was based on views from the wider countryside to the west and the south. This assessment conflicts with that of the 2011 report.
34. The 2007 report however describes the more visible Clump Hill as having potential for development in relation to the local landscape [HDC2 pg 91]. This also conflicts with the more understandable findings of the 2011 report, where Clump Hill is the only land parcel considered which has a low capacity to accommodate development. Furthermore, the emerging Broughton Astley Neighbourhood Plan identifies Clump Hill as an important green space to be protected.
35. The wider 2007 report used a desk study and site survey approach, but there is no evidence that the appeal and Clump Hill sites were surveyed [HDC2 pg 10]. The more detailed 2011 Broughton Astley report however includes the scored results for surveys of each site [HDC3 para 3.5]. The 2011 report therefore carries more weight than the 2007 report in this case, and the conclusions of the 2007 report do not add weight in support of dismissing the appeal.
36. I therefore conclude that the proposal would have a moderate/minor harmful effect on the character and appearance of the surrounding area in conflict with CS Policies CS17 and CS11. This harm and conflict would however be restricted to areas immediately surrounding the site and therefore attracts limited weight.

#### *Accessibility*

37. Although the appeal site is situated at the edge of the settlement of Broughton Astley, the two main parties agree that it is accessible by cycle and generally complies with guidelines in relation to recommended travel distances [IPC3 paras 11.2 & 11.4]. The settlement is well served, including bus services to key destinations with the nearest stop some 765m from the furthest indicatively proposed dwelling [IPC3 para 11.9]. Indeed, the County Council's 6C Design Guide suggests that, in rural areas, public transport should be within 800m to be accessible [IPC/RP/1 para 9.13]. The fact that there is an established bus route also improves the likelihood of increased frequencies of services if demand grows.
38. The centre of the village would be some 2km from the proposed development as the crow flies, with actual walking distances being greater [IPC3 para 11.7]. The Institution of Highway Engineers<sup>7</sup> suggests that 2km is the preferred maximum walking distance [IPC/RP/1 para 9.12]. Walking distances to the centre of the village are therefore greater than the preferred maximum.
39. Hallbrook Primary School, a Post Office, local shops, hairdressers, a food take-away, a garden centre and a public house are however all situated within 800m of the site boundary [IPC/RP/1 para 9.17]. As these facilities are

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<sup>6</sup> Harborough District Landscape Character Assessment: September 2007

<sup>7</sup> Providing for Journeys on Foot: Institution of Highway Engineers: 2000

within an 800m range, the Manual for Streets<sup>8</sup> suggests that the proposed development could be considered to be a walkable neighbourhood [IPC/RP/1 para 9.11].

40. The settlement is also a focus for development and an acknowledged housing growth point [IPC/RP/2 App 2 pg 52]. This would generally reduce the need for future residents of the proposed development to travel outside of the settlement. The proposal therefore would help to minimise journey lengths for shopping, leisure, education and other activities in accordance with the Framework. The location of the proposed sports fields at the edge of the settlement would not be unusual, indeed the football club used for the Inquiry venue and a nearby leisure facility are similarly situated.
41. Other potential sites for housing development around the edge of the settlement may well be better located in terms of walking distances to facilities. There is no evidence however that they are at a similar stage to the appeal site in terms of progression towards housing delivery. Their existence therefore does not weigh against the proposal to any material degree.
42. I therefore conclude that the proposal would be sufficiently accessible in terms of sustainable development and that it would thus accord with the National Planning Policy Framework in this regard.

#### *Other Matters*

43. The emerging Broughton Astley Neighbourhood Plan received Government Front Runner funding last year. Two versions were submitted prior to and during the Inquiry: a Draft for Pre-Submission Consultation and Publicity between 7 February and 25 March 2013; and a Third Draft dated 2 May 2013 [HDC11]. A third version, identified as the Examination Version, was submitted following closure of the Inquiry [IP3]. This third version has been approved by the Parish Council's Neighbourhood Plan Steering Group. It was then submitted to the District Council in order to undergo a 6 week public consultation period which began on 1 July 2013 and examination, which included a Public Hearing held on 19 September 2013. The Examiner's report has been published and recommends that, subject to some modifications not relevant to this appeal, the plan should proceed to a referendum [JH4].
44. The emerging plan though has yet to be the subject of such a referendum. Therefore, whilst the plan may be attracting increasing weight as it emerges, this is not the end of the process. It is however the case that all submitted versions of the plan identify alternative sites to the appeal site for housing development, and the appeal proposal has attracted much local opposition, including a petition.
45. The housing development sites shown in the Examination Version of the Neighbourhood Plan are said to be capable of accommodating 528 dwellings between 2013 and 2023 [IP3 para 3.2]. All of these sites are situated outside the limits to development for Broughton Astley identified by the Council [HDC1]. These 528 dwellings would be in addition to the 120 that have been completed since the start of the CS period in 2006, at a historical rate of some 17dpa. The combined total of 648 dwellings (528 + 120) is significantly greater than the CS requirement of 400 dwellings in Broughton Astley over the CS period to 2028 [IP3 para 1.3].

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<sup>8</sup> Manual for Streets: 2007



46. There is no convincing evidence however that the additional 248 dwellings (648 – 400) as a consequence of the emerging Neighbourhood Plan could be delivered in five years to assist with the District Council's shortfall over and above its CS requirement. Even if this was possible, at say 50dpa (despite the emerging plan covering a period to 2023, questionable five-year deliverability and a historical delivery of some 17dpa), this would not satisfy the Council's housing land shortfall of some 90dpa (440 - 350dpa) identified in the 2013 GLH report. Furthermore, although the Council has, following the Examiner's report, suggested that an additional refusal reason, relating to the emerging plan, would now be applicable to the proposal, there is no evidence that the emerging plan takes into account the 2013 GLH report [HDC4 & HDC22]. The emerging plan therefore appears to be capable of meeting some, but not all, of the Council's housing land shortfall, as it goes further than the requirement in the CS.
47. In proposing site allocations for housing development, the emerging Neighbourhood Plan (which would become part of the Development Plan on adoption) effectively seeks to regulate housing land supply. The emerging plan states that it must accord with higher level planning policy. Here, where the spatial housing aspects of the CS are out of date, the relevant higher level policy is the Framework, against which the appeal proposal has been considered. The emerging plan also acknowledges that, where relevant policies are absent or out of date, the default response to a proposal for development should be yes unless the adverse impacts would significantly and demonstrably outweigh the benefits [IP3 para 3.11]. The emerging plan is however not yet made or effectively adopted. Whilst it is a material consideration in this appeal, all of the above points serve to reduce the weight that can be given to its housing land supply elements.
48. In this case therefore, in view of the stage at which the emerging Neighbourhood Plan has reached and all of the other points above, the housing land supply elements of the emerging plan only attract moderate weight.
49. It has been suggested that it would be unfair that Broughton Astley should be allowed to grow still further to satisfy the district's housing land supply need. The Framework however does not say that the return to a five-year housing land supply should be spread on a pro-rata basis within a Council's area; it simply says that housing supply policies should not be considered to be up to date during any return to a five year supply. The effect of this is that the need to address any shortfall can be considered to have greater weight than the spreading of development throughout the Council's area. This is, of course, subject to the assessment of any harm that could result from particular proposals.
50. It has also been suggested that the recently submitted planning applications Refs. 13/01142/OUT and 13/00898/FUL, for a total of 500 houses in Broughton Astley, add weight in favour of dismissing the appeal [JH1]. Whilst the proposals under these applications appear to accord with the emerging Neighbourhood Plan, there is no evidence that the appeal proposal would prevent these application schemes from progressing and delivering the community infrastructure associated with them. Indeed, the completion of these schemes and the appeal proposal would not satisfy the housing need identified in the 2013 GLH report as previously set out. The appeal proposal would therefore still assist in addressing the housing land supply shortfall in the

district, and these applications do not add weight in favour of dismissing the appeal.

51. It has been suggested that the weight to be given to the emerging Neighbourhood Plan should be greater than the limited weight that the Secretary of State gave to the emerging Neighbourhood Plan in appeal Ref. APP/A0665/A/11/2167430 [HDC19]. This has been said to be due to the emerging Broughton Astley plan being more advanced towards adoption. Whilst this may be the case, the weight in this instance however is still not more than could be described as moderate, due to the points set out above.
52. To allow the appeal would undoubtedly have some demoralising effect in terms of the perceived value of neighbourhood planning in Broughton Astley. It would not however render the neighbourhood planning process pointless, as has been suggested, but would simply restrict the housing land supply aspects of the neighbourhood plan in this particular case. This adverse effect would therefore carry limited weight.
53. The proposal would result in an increase in traffic levels on the residential roads to the north of the site. The junctions on these roads however currently operate well within capacity, and the increase would not cause their performance in this regard to change. Furthermore, the County Council's evidence, as Highway Authority, is that there are no recorded personal injury accidents on these roads in the last five years. The authority is also of the view that the transport assessment, which includes parking and servicing, provided with the planning application for the proposal is robust. The Highway Authority has not raised any objection to the proposal, and there is no cogent evidence that it would have an adverse effect on highway safety. In terms of detailed parking arrangements, these would be the subject of the reserved matters application in relation to layout. There would therefore be no reason to dismiss the appeal on highway safety grounds.
54. There is no evidence that proposed shop units in the neighbourhood centre would not be compatible with the nearby house types or that they would necessarily be isolated. Indeed, these matters would again be the subject of a reserved matters application in relation to layout and would be no reason to dismiss the appeal.
55. The appeal site currently accommodates an active badger sett. The Leicestershire Badger Group has objected to the proposal on the basis that it would enclose the sett and result in the loss of 90% of the foraging currently available for badgers using this sett. The proposal includes the provision of artificial replacement setts. These could be located within the current territory of the badgers using the existing sett. They could provide full access to existing foraging grounds and watering areas and minimise future conflict between the badgers and occupiers of the appeal site and their pets. Natural England and the Natural Environment Team of the County Council have also not objected to the proposal subject to the imposition of certain conditions. The presence of the sett on the appeal site would therefore be no reason to dismiss the appeal.
56. The adverse impact on the character and appearance of the surrounding area and the conflict with the emerging Neighbourhood Plan would therefore not significantly and demonstrably outweigh the benefits of the proposal when assessed against the Framework.

### *Conditions*

57. Conditions would be required in respect of contaminated land, flood plain development restrictions, drainage, crime prevention measures and refuse and recycling storage to protect the living conditions of future occupiers. Conditions in relation to bat surveys, a badger mitigation strategy and surveys, tree retention and protection and ecological management of the former railway line would be necessary in the interests of biodiversity. In the interests of highway safety, conditions would be necessary in relation to highway cleanliness, construction access and public footpath improvements.
58. Conditions would be necessary in relation to acoustic fencing and a Construction Method Statement to protect the living conditions of nearby occupiers. Conditions in respect of archaeological work and energy efficiency would be required to protect the historic environment and in the interests of sustainable development respectively. A condition would be required in respect of development levels to safeguard the character and appearance of the surrounding area. It would however be necessary to amend the conditions suggested by the Council in the interests of precision and enforceability.
59. The Council has suggested that the development should begin either before the expiration of three years from the date of any permission, or before the expiration of two years from the date of approval of the last of the reserved matters to be approved, whichever is the later. These suggestions would be in addition to a requirement for applications for the approval of all of the reserved matters being made before the expiration of three years from the date of any permission. The suggestion to require development to be begun before the expiration of three years from the date of any permission would therefore be superfluous in the context of the other requirements and therefore unnecessary.
60. The access and layout of the proposed development are reserved matters, and the Council's suggested condition in respect of highway design would therefore not be necessary at this time. It was agreed by all parties in the Inquiry that construction traffic routing would need to be controlled by the approval of construction accesses. Landscaping in conjunction with the proposed development is a reserved matter, and the Council's suggested condition in this regard would therefore also not be necessary at this time. Appearance is a reserved matter, and the Council's suggested conditions in relation to external materials and external lighting would again not be necessary at this time.
61. The appellant has suggested a condition to effectively remove the provision of the sports hall from the proposal. The sports hall is not a confirmed element of the proposal, and the appellant would be under no obligation to provide it. A condition in this regard would therefore be unnecessary.

### *Section 106 Agreement*

62. The appellant, the Council and the County Council have entered into a Section 106 agreement in connection with the proposed development [IPC4]. The agreement principally contains obligations on the part of the appellant in relation to community facilities, open space, affordable housing and contributions to the County Council towards education, travel packs, bus passes and waste.

63. The community facilities include the provision of a four-court sports hall, which would be leased back to the Council, or a contribution towards the provision of alternative sports facilities. One of the tests of the Framework to be applied to an agreement such as this is the weight to be given to the agreement in terms of its ability to address a matter which could lead to a refusal of planning permission.
64. In this regard, the Council is of the opinion that the provision of a sports hall on the site would not be necessary to make the proposal acceptable in planning terms [RH XX]. There is no evidence to the contrary, no reason therefore to disagree with this position and this element of the agreement fails the Framework test.
65. The provision of a sports hall on the site is therefore not a matter to be decided in this case, even though it is an element of the agreement which states that the hall should be provided if any appeal decision states that it should be. This element of the agreement attracts little weight in this case, as it does not address any matter that could lead to dismissal of the appeal.
66. Turning now to the contribution towards the provision of alternative sports facilities, the Council is of the opinion that these would be necessary to make the proposal acceptable in planning terms. The proposal would result in increased pressure of use on the existing facilities in the village. It would therefore have a harmful effect on the standard of service provided by the existing facilities, and increase the need for a four-court sports hall which has already been identified in an October 2010 Roger Tym and Partners report<sup>9</sup> [HDC16].
67. Although a specific scheme for a hall has not yet been identified, alternatives have come forward which would be supported by the contribution in the agreement. In particular, a site has been allocated in the May 2013 Neighbourhood Plan [IP3]. The contribution would therefore relate to local infrastructure, and would accord with CS Policy CS12.
68. The obligations in relation to community facilities also include contributions towards primary health care, policing and cemeteries. The contribution towards primary health care has been requested by the Leicester City, Leicestershire County and Rutland National Health Service. The proposed development would lie within the catchment for the Broughton Astley Orchard Road General Practitioner Practice.
69. The practice is already operating at full capacity, and there is an identified deficit of services at the practice. The building in which it operates is also in need of some re-development to respond to workload, improve standards and increase capacity. The proposal would make the current situation worse, and the contribution would facilitate an increase in capacity at the practice. The contribution would therefore relate to local infrastructure, and would accord with CS Policy CS12 and the Local Infrastructure Schedule in the CS [HDC13].
70. The contribution towards policing has been requested by the Police and Crime Commissioner for Leicestershire [PCCL/ML/1]. The proposal would increase the workload of the Leicestershire Constabulary in terms of additional calls,

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<sup>9</sup> Harborough District Council: Assessment of Local Community Provision and Developer Contribution: Roger Tym and Partners: October 2010

non-emergency follow ups and additional vehicle miles amongst other things. The contribution would enable the force to respond to this increased workload. It would therefore accord with CS Policy CS12 and the Local Infrastructure Schedule in the CS [HDC13].

71. The proposal would increase pressure on cemetery facilities in the local area. The contribution would allow the capacity at the facilities to be increased, and it would therefore accord with CS Policy CS12 and the Local Infrastructure Schedule in the CS [HDC13].
72. The proposal would include: parks and gardens; semi-natural green space; locally equipped areas of play; and sports facilities space with formal space, associated parking and changing facilities. These elements of the proposal would create a high quality living environment in terms of public spaces as sought by the Framework, and the areas provided would accord with the Council's 2009 Provision Assessment report<sup>10</sup> [HDC17]. The agreement would regulate the provision of these areas and their transfer to the Council on receipt of contributions towards their future maintenance. The provision of these areas and the contributions would accord therefore with CS Policy CS8.
73. 30% of the proposed dwellings would be provided as affordable housing, the types of which have been agreed between the appellant and the Council's Housing Strategy and Infrastructure Manager. The provision of this housing would accord with CS Policy CS3. It would also be necessary to make the proposal acceptable in planning terms and be directly, fairly and reasonably related in scale and kind to it in accordance with the Framework.
74. The proposed development would lie within the catchment area for Hallbrook Primary School. This is predicted to be at capacity, as are the next nearest primary schools at Old Mill and Orchard. The proposal would result in increased pressure on primary education services in this area. The contribution would assist in the remodelling, enhancement and improvement of facilities at Hallbrook Primary School. It would therefore accord with CS Policy CS12, the Local Infrastructure Schedule in the CS and the Council's Developer Guidance Note<sup>11</sup> [HDC7].
75. The proposed development would be likely to result in the increased use of the civic amenity site at Whetstone, and increased use would require the provision of an additional container. The contribution would enable this to be provided in accordance with CS Policy CS12, the Local Infrastructure Schedule in the CS and the Council's Developer Guidance Note [HDC7 & 13].
76. Occupiers of the proposed development would be encouraged to use sustainable modes of transport, in accordance with the Framework. This would be facilitated by the provision of a travel pack for each dwelling and two bus passes on application for each dwelling. The contribution towards these measures would therefore accord with CS Policy CS12 and the Local Infrastructure Schedule in the CS [HDC13].
77. All of the above contributions would therefore be necessary to make the proposal acceptable in planning terms and be directly and reasonably related to it in scale and kind. They would therefore also accord with Regulation 122 of the Community Infrastructure Levy Regulations 2010 as amended.

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<sup>10</sup> Harborough District Council: Provision for Open Space, Sport & Recreation: March 2009

<sup>11</sup> Harborough District Council: Planning Obligations: Developer Guidance Note: June 2009

## Summary of Conclusions and Planning Balance

78. In reaching my conclusions, I have taken into account the various Development Plan and national policies. The Council's unsatisfactory level of housing land supply renders the related CS policies out of date, and the appeal should therefore be considered in the context of the presumption in favour of sustainable development.
79. In this regard, I have found that the proposal would make an important contribution to the housing land supply position in the Council's area, and this factor attracts significant weight. The proposal would also include sports pitches and a neighbourhood centre for this part of the village, and these matters attract some weight as benefits that would result from the proposal. The proposed improvements along the former railway line in relation to public access, where there are some ecological concerns, and ecology itself, where there is little evidence of benefit, attract limited weight.
80. The proposal would have a moderately harmful effect in respect of the character and appearance of areas immediately surrounding the site. This though attracts limited weight against the proposal due to the absence of material harm to the surrounding area generally. The conflict between the proposal and the emerging Neighbourhood Plan attracts moderate weight due to the points already identified. These adverse impacts however would not significantly and demonstrably outweigh the benefit to the housing land supply position. I have also taken into account all other matters raised, but none carry sufficient weight to alter my conclusion.
81. I further conclude that the proposal would thus accord with the relevant up to date policies of the Development Plan and the Government's policies as set out in the National Planning Policy Framework as a whole.
82. Should the Secretary of State agree with my recommendation, a list of conditions which would be appropriate and would satisfy the tests of Circular 11/95 is attached at Appendix A.

## Recommendation

83. I therefore recommend that the appeal, in relation to Land South of Hallbrook Primary School, Crowfoot Way, Broughton Astley, Leicestershire, be allowed subject to the conditions listed at Appendix A.

*Stephen Roscoe*

INSPECTOR

## APPEARANCES

### FOR THE LOCAL PLANNING AUTHORITY:

Ms T Osmund-Smith of Counsel      Instructed by Harborough District Council

She called:

Ms R Hair BA MA MRTPI      Area Planning Officer (Team Leader),  
Harborough District Council

Mr S Pointer BA BTP  
MRTPI      Service Manager, Strategic Planning,  
Harborough District Council

### FOR THE APPELLANT:

Mr T Hill QC      Instructed by Messrs Birketts LLP,  
Thirty Station Road, Cambridge CB1 2RE

He called:

Mrs K Jones BSc (Hons)  
MLA PGDipLA CMLI      Managing Director and Principal Landscape  
Architect, Applied Landscape Design Limited

Miss R Padfield BA MA  
MRICS      Associate, Sworders Rural Chartered Surveyors

### FOR LEICESTERSHIRE COUNTY COUNCIL:

Miss N Candlin QC      Instructed by Leicestershire County Council

She called:

Mr A Tyrer BA(Hons)      Developer Contributions Officer,  
Leicestershire County Council

### FOR THE POLICE AND CRIME COMMISSIONER FOR LEICESTERSHIRE:

Ms V Hutton of Counsel      Instructed by The Office of the Police and Crime  
Commissioner for Leicestershire

She called:

Mr M Lambert MRTPI      The Office of the Police and Crime Commissioner  
for Leicestershire

INTERESTED PERSONS:

Mr S Oliver	Local Resident
Cllr C Grafton-Reed	Chairman, Broughton Astley Parish Council

**DOCUMENTS**

Harborough District Council

HDC/RH/1 Ms R Hair: Proof of Evidence  
HDC/RH/2 Ms R Hair: Appendices to Proof of Evidence  
HDC/SP/1 Mr S Pointer: Proof of Evidence  
HDC/SP/2 Mr S Pointer: Appendices to Proof of Evidence

*Documents Submitted During the Inquiry*

HDC1 Harborough District Local Plan: April 2001: Proposals Map Inset 5: Broughton Astley

HDC2 Harborough District Landscape Character Assessment: Atkins: September 2007

HDC3 Lutterworth and Broughton Astley Landscape Character Assessment and Landscape Capacity Study: The Landscape Partnership: December 2011

HDC4 Big Plan for Broughton Astley: Evidence Base: Contents

HDC5 Harborough District Council: Supply of Deliverable Housing Sites: 30 September 2012

HDC6 Harborough Core Strategy Policy CS15: Leicester Principal Urban Area

HDC7 District of Harborough: Planning Obligations: Developer Guidance Note: Final Draft: June 2009

HDC8 Harborough Core Strategy: Contents

HDC9 Lutterworth and Broughton Astley Landscape Character Assessment and Landscape Capacity Study: The Landscape Partnership: December 2011: Drawing B11042/06

HDC10 Harborough Housing Requirements Study: GL Hearn: March 2013

HDC11 Broughton Astley Neighbourhood Plan 2013 – 2028: Third Draft: 2 May 2013

HDC12 Appeal Decisions APP/K2420/A/12/2181080 and APP/K2420/A/12/2188915

HDC13 Harborough Core Strategy: Appendix 2: Local Infrastructure Schedule

HDC14 Harborough Core Strategy Policy CS8



- HDC15 Harborough Core Strategy Policy CS3
- HDC16 Harborough District Council: Assessment of Local Community Provision and Developer Contribution: October 2010
- HDC17 Harborough District Council: Provision for Open Space, Sport & Recreation: March 2009
- HDC18 Closing Statement

*Documents Submitted following the Inquiry*

- HDC19 Email dated 3 September 2013 from Ms R Hair to the Planning Inspectorate
- HDC20 Email dated 17 September 2013 from Ms R Hair to the Planning Inspectorate
- HDC21 Email dated 7 October 2013 from Ms R Hair to the Planning Inspectorate
- HDC22 Letter dated 14 November 2013 from Harborough District Council to the Planning Inspectorate

Appellant

- IPC/KJ/1 Mrs K Jones: Proof of Evidence
- IPC/KJ/2 Mrs K Jones: Appendices to Proof of Evidence
- IPC/RP/1 Miss R Padfield: Proof of Evidence
- IPC/RP/2 Miss R Padfield: Appendices to Proof of Evidence
- IPC/RP/3 Miss R Padfield: Summary Proof of Evidence

*Documents Submitted During the Inquiry*

- IPC1 District Council Planning Committee Reports 13/00049/FUL, 13/00165/OUT and 13/00164/OUT
- IPC2 Bundle Relating to the Removal of the Sports Hall from the Description of Development
- IPC3 Statement of Common Ground between the Appellant and the District Council
- IPC4 Planning Obligation by way of Agreement under Section 106 of the Town and Country Planning Act 1990 between Ivan Peter Crane, Harborough District Council and Leicestershire County Council Dated 23 May 2013
- IPC5 Appeal Decision APP/D3830/A/12/2184075
- IPC6 Report to Local Planning Executive Advisory Panel: 21 May 2013: New Local Plan – Project Highlight Report: Stephen Pointer
- IPC7 Closing Submissions

*Documents Submitted following the Inquiry*

- IPC8 Letter dated 4 September 2013 from Birketts LLP to the Planning Inspectorate
- IPC9 Letter dated 20 September 2013 from Sworders to the Planning Inspectorate
- IPC10 Letter dated 15 November 2013 from Sworders to the Planning Inspectorate

Leicestershire County Council

- LCC/AT/1 Mr A Tyrer: Statement to Inquiry

*Documents Submitted During the Inquiry*

- LCC1 Colour Appendices of Mr A Tyrer
- LCC2 Supplemental Statement from Mr A Tyrer

The Police and Crime Commissioner for Leicestershire

- PCCL/ML/1 Mr M Lambert: Proof of Evidence

*Documents Submitted During the Inquiry*

- PCCL1 Colour Appendices of Mr M Lambert
- PCCL2 Appeal Decisions APP/F2415/A/12/2179844 and APP/X2410/A/12/2187470
- PCCL3 Secretary of State for Communities and Local Government Report APP/X2410/A/12/2173673
- PCCL4 Closing Submissions

*Documents Submitted following the Inquiry*

- PCCL5 Email dated 11 November 2013 from Mr M Lambert to the Planning Inspectorate

Jelson Homes Ltd

- JH/RT/1 Mr R Thorley: Inquiry Statement

*Documents Submitted following the Inquiry*

- JH1 Letter dated 7 August 2013 from GVA to the Planning Inspectorate
- JH2 Letter dated 4 September 2013 from GVA to the Planning Inspectorate
- JH3 Email dated 24 September 2013 from GVA to the Planning Inspectorate
- JH4 Email dated 7 October 2013 from GVA to the Planning Inspectorate

Interested Persons

*Documents Submitted during the Inquiry*

IP1 Statement from Cllr M Graves: Broughton Astley Ward District and Parish Councillor

IP2 Statement and Petition from Mr S Oliver

*Documents Submitted following the Inquiry*

IP3 Letter dated 9 July 2013 from Broughton Astley Parish Council to the Planning Inspectorate enclosing the Broughton Astley Neighbourhood Plan Examination Version

IP4 Letter dated 4 September 2013 from the Rt Hon Andrew Robathan MP to the Secretary of State

Richborough Estates

## APPENDIX A

### LIST OF RECOMMENDED PLANNING CONDITIONS

- 1) Details of the access, appearance, landscaping, layout and scale (hereinafter called "the reserved matters") shall be submitted to, and approved in writing by, the local planning authority before any development begins, and the development shall be carried out as approved.
- 2) 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.
- 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) Where the layout details to be submitted for reserved matters include built development within 10m of existing trees and hedges, an ecological survey for bats shall be submitted with the reserved matters for layout.
- 5) No development shall take place until a Risk Based Land Contamination Assessment has been submitted to, and approved in writing by, the local planning authority. The assessment shall seek to ensure that the site is fit for use as the development proposes and shall be carried out in accordance with:
  - i) the recommendations of the Phase 1 risk assessment;
  - ii) BS10175: 2011 Investigation of Potentially Contaminated Sites Code of Practice;
  - iii) BS8485: 2007 Code of Practice for the Characterisation and Remediation from Ground Gas in Affected Developments; and
  - iv) CLR 11: Model Procedures for the Management of Land Contamination: Environment Agency: 2004.
- 6) Should any unacceptable risks be identified in the Risk Based Land Contamination Assessment, no development shall take place until a Remediation Scheme and Verification Plan has been submitted to, and approved in writing by, the local planning authority. The scheme and plan shall be prepared in accordance with CLR 11: Model Procedures for the Management of Land Contamination: Environment Agency: 2004. The plan shall also be prepared in accordance with SC030114/R1: Evidence Report on the Verification of Remediation of Land Contamination: Environment Agency: 2010 and shall include a Verification Investigation.
- 7) No part of the development shall be occupied until a report showing the findings of the Verification Investigation for that part of the development has been submitted to, and approved in writing by, the local planning authority. The report shall:
  - i) contain a description of the works undertaken in accordance with the approved Remediation Scheme and Verification Plan;
  - ii) contain the results of any additional monitoring or testing carried out between the submission of the Remediation Scheme for approval and the completion of remediation works;

- iii) contain movement permits for all materials taken to or from the site and a copy of the completed site waste management plan if one was required;
  - iv) contain test certificates for imported material to show its suitability for the proposed use;
  - v) demonstrate the effectiveness of the approved Remediation Scheme; and
  - vi) include a statement signed by the developer or an agent, approved in writing by the local planning authority, confirming that all the works specified in the Remediation Scheme have been completed.
- 8) If, during the course of development, previously unidentified contamination is discovered on part of the site, development shall cease on that part of the site and the contamination shall be reported in writing to the local planning authority within 10 working days of its discovery. Development on that part of the site shall not recommence until a Risk Based Land Contamination Assessment for the discovered contamination and an updated Remediation Scheme and Verification Plan have been submitted to, and approved in writing by, the local planning authority. Thereafter, development shall be carried out in accordance with the approved details.
- 9) No development shall take place until details of measures to keep the highway free of debris (including mud, water and stones) from vehicles accessing the site have been submitted to, and approved in writing by, the local planning authority. The approved measures shall be implemented throughout the construction period.
- 10) No development shall take place until details of the locations of the construction accesses to the site have been submitted to, and approved in writing by, the local planning authority. Only the approved accesses shall be used during the construction period.
- 11) No development shall take place until a scheme of improvements to Public Footpath W55 has been submitted to, and approved in writing by, the local planning authority. The scheme shall include the repair of the former railway bridge and improvements to the surface of the footpath. None of the dwellings hereby permitted shall be occupied until the approved scheme has been completed.
- 12) No development shall take place until a hydrological and hydraulic analysis of the watercourse alongside the south boundary of the site has been submitted to, and approved in writing by, the local planning authority. The analysis shall include the identification of the 1 in 100 year floodplain of the watercourse and shall incorporate the possible impact of climate change on flood risk. No residential plot or other form of built development shall be located within the 1 in 100 year floodplain of the watercourse.
- 13) No development shall take place until details and a programme for the installation of foul and surface water drainage for the site, including a sustainable drainage scheme, have been submitted to, and approved in writing by, the local planning authority. The scheme shall seek to ensure that flood risk is not increased and that water quality is not reduced as a result of the development hereby permitted. Development shall be carried

- out in accordance with the approved details, programme and scheme, and the approved drainage shall thereafter be retained.
- 14) No development shall take place until a 2m high acoustic boundary fence has been erected along the rear boundaries of the rear gardens of Nos 24 to 30 Geveze Way in accordance with details previously submitted to, and approved in writing by, the local planning authority.
- 15) No development shall take place until details of the existing and proposed ground and finished floor levels have been submitted to, and approved in writing by, the local planning authority. Development shall be carried out in accordance with the approved details.
- 16) No development shall take place until details of crime prevention and security measures to be incorporated into the development hereby permitted have been submitted to, and approved in writing by, the local planning authority. The approved measures in relation to any part of the development shall be installed prior to its occupation and thereafter retained.
- 17) No development shall take place until a further badger mitigation strategy has been submitted to, and approved in writing by, the local planning authority. The strategy shall be based on that outlined in the July 2012 and August 2012 reports by Wildlife Consultants Ltd. and shall be informed by a further badger survey of the proposed locations for the artificial setts. Development shall be carried out in accordance with the approved further strategy.
- 18) If the development hereby permitted does not commence within two years of the date of this permission, no development shall take place until a further badger mitigation strategy has been submitted to, and approved in writing by, the local planning authority. The strategy shall be based on that outlined in the July 2012 and August 2012 reports by Wildlife Consultants Ltd. and shall be informed by a further badger survey of the entire site. Development shall be carried out in accordance with the approved further strategy.
- 19) No development shall take place 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 parking of the vehicles of site operatives and visitors;
  - ii) the loading and unloading of plant and materials;
  - iii) the storage of plant and materials used in constructing the development;
  - iv) the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;
  - v) measures to control the emission of dust and dirt during construction;
  - vi) a scheme for recycling or disposing of waste resulting from construction works; and
  - vii) the hours of construction work on the site.

- 20) The existing trees and hedges on the site shall be retained, in no way disturbed and securely fenced off. No development shall take place until details of the protective fencing to be used and its position around the trees and hedges have been submitted to, and approved in writing by, the local planning authority. The fencing shall comply with BS 5837:2012 'Trees in relation to design, demolition and construction' and BS3998:2010 'Tree work. Recommendations'. The fencing shall be retained throughout the construction period.
- 21) No development shall take place until an ecological management plan and programme for the former railway line have been submitted to, and approved in writing by, the local planning authority. Development shall be carried out in accordance with the approved plan and programme.
- 22) No development shall take place until a scheme of archaeological work and the results from an initial phase of trial trenching have been submitted to, and approved in writing by, the local planning authority. The archaeological work shall be carried out in accordance with the approved scheme. The scheme shall include:
- i) a methodology and programme for site investigation and recording, including the assessment of results and the preparation of an appropriate mitigation scheme;
  - ii) a programme for post-investigation assessment, including an assessment of significance;
  - iii) the analysis of the site investigation and recording;
  - iv) the publication and dissemination of the analysis and records of the site investigation;
  - v) the archive deposition of the analysis and records of the site investigation; and
  - vi) the nomination of a competent person, persons or organisation to undertake the scheme.
- 23) The development shall not be occupied until: the site investigation and post-investigation assessment have been completed in accordance with the approved scheme; provision has been secured for the analysis of the site investigation and recording; and provision has been secured for the publication, dissemination and archive deposition of the analysis and records of the site investigation.
- 24) No development shall take place on any part of the site until details of measures to improve energy efficiency and reduce energy demand and details of sustainable materials and construction methods for that part of the site have been submitted to, and approved in writing by, the local planning authority. Development shall be carried out in accordance with the approved details.
- 25) The finished floor levels of all dwellings hereby permitted shall be at least 600mm above the 1 in 100 year flood level of the watercourse alongside the south boundary of the site, as identified in the approved analysis.
- 26) Ground levels shall not be raised within the 1 in 100 year floodplain identified in the approved analysis of the watercourse alongside the south boundary of the site.

- 27) Any walls or fences within the 1 in 100 year floodplain identified in the approved analysis of the watercourse alongside the south boundary of the site shall be constructed in accordance with details previously submitted to, and approved in writing by, the local planning authority.
- 28) Any dwelling hereby permitted shall not be occupied until facilities for the storage of refuse and materials for recycling for that particular dwelling have been provided in accordance with details previously submitted to, and approved in writing by, the local planning authority. The approved facilities shall thereafter be retained.

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Richborough Estates





## 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.