



Department for
Communities and
Local Government

Mrs Elizabeth Marjoram
Bird Wilford & Sale Solicitors
19-20 Church Gate
Loughborough
Leicestershire
LE11 1UD

Our Ref: APP/B3410/A/13/2197299
Your Ref: EHM/RHF

12 November 2013

Dear Madam,

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78
APPEAL BY BARWOOD STRATEGIC LAND II LLP AND MR& MRS SKIPPER
LAND AT RED HOUSE FARM, LOWER OUTWOODS ROAD, BURTON-UPON-TRENT,
STAFFORDSHIRE, DE13 0QX
APPLICATION REF: P/2012/01215**

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Inspector, Martin Whitehead LLB BSc(Hons) CEng MICE, who held a public local inquiry on 4 days between 21 and 28 August 2013 into your clients' appeal against the refusal of East Staffordshire Borough Council ("the Council") to grant outline planning permission for the erection of up to 250 dwellings, associated structural landscaping including woodland planting, public open space, access, drainage, associated infrastructure, earthworks and other ancillary and enabling works including the demolition of all buildings at land at Red House Farm, Lower Outwoods Road, Burton-upon-Trent, Staffordshire, DE13 0QX in accordance with application Ref: P/2012/01215.
2. On 20 May 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 a proposal over 150 units on a site of more than 5 ha 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.

Inspector's recommendation and summary of the decision

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

Jean Nowak, Decision Officer
Planning Casework Division
Department for Communities and Local Government
1/H1, Eland House
Bressenden Place
London, SW1E 5DU

Tel 0303 444 1626
Email pcc@communities.gsi.gov.uk

Procedural matters

4. The application for costs (IR1.4) made by your clients at the Inquiry is the subject of a decision letter being issued separately by the Secretary of State.

Policy considerations

5. In deciding this appeal, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise. In this case, the development plan comprises the saved East Staffordshire Local Plan 2006 (LP). However, as the Inspector notes (IR3.1), this was not adopted in accordance with the Planning and Compulsory Purchase Act 2004 and so can be given only limited weight.
6. Other material considerations which the Secretary of State has taken into account include the *National Planning Policy Framework* (The Framework); *Technical Guidance to the National Planning Policy 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.

Main issues

7. The Secretary of State agrees with the Inspector that the main issues in this case are those under which he structured his conclusions in section 9 of the IR and which are replicated below.

Policy and housing supply

8. For the reasons given at IR9.1-9.6, the Secretary of State agrees with the Inspector's conclusions at IR9.7. Hence, he agrees that, in accordance with paragraph 49 of the Framework, as the Council cannot demonstrate a 5 year supply of deliverable housing sites their relevant policies for the supply of housing are not to be considered up-to-date and a presumption in favour of sustainable development should apply.

Character and appearance

9. The Secretary of State agrees with the Inspector at IR 9.17 that, for the reasons given at IR9.8-9.16, the appeal scheme would have an adverse effect on the character and appearance of the area by introducing new development into the countryside. However, he also agrees that the quality of the landscape has been identified for enhancement; and that the proposal would recognise the intrinsic character and beauty of that part of the countryside and would mitigate the effect of the proposed buildings by the provision of areas of open space and new planting and landscaping. The Secretary of State also agrees with the Inspector that any adverse impact needs to be balanced against the benefits of the proposed development.

Benefits

10. The Secretary of State agrees with the Inspector (IR9.18) that the proposal would provide the benefits which he lists, and notes that these have not been contested by the Council.

Other matters

11. For the reasons given at IR9.19, the Secretary of State, like the Inspector, is satisfied that the measures that would be secured through the planning obligations and conditions would adequately address the residual transport and highway safety impacts to ensure that they would not be so severe as to be sufficient to refuse planning permission.
12. Similarly, the Secretary of State agrees with the Inspector (IR9.20) that the concerns expressed about drainage and flooding and about wildlife including great crested newts would be addressed by the proposed planning conditions.

Conditions and obligations

13. The Secretary of State has considered the Inspector's reasoning and conclusions on the proposed conditions (IR11.1-11.8), and he is satisfied that the conditions as proposed by the Inspector and set out at Annex A to this letter are reasonable, necessary and comply with Circular 11/95.
14. The Secretary of State has also considered the Inspector's reasoning and conclusions on the Planning Obligations as set out at IR10.1-10.5. He is satisfied that, with the exception of the obligation to provide an *additional* 15% contribution towards affordable housing (IR10.5), the provisions set out in the executed Unilateral Undertaking dated 23 August 2013 can be considered to be compliant with CIL Regulation 122 and paragraph 204 of the Framework. He therefore agrees with the Inspector that the Unilateral Undertaking should take effect with a planning obligation for 15% on-site affordable housing; but he gives no weight to any further contributions towards affordable housing.

Overall Conclusions

15. As the relevant LP policies are out of date, the Secretary of State gives significant weight to the fact that the Framework indicates that, in the absence of a 5 year housing land supply in an up-to-date, adopted development plan, planning permission should be granted for the proposal. He is satisfied that the appeal site is in a sustainable location for housing development, and that, as the adverse impacts of granting planning permission would not significantly and demonstrably outweigh the benefits when assessed against the Framework taken as a whole, he does not consider that there are any material considerations of sufficient weight to justify refusing planning permission.

Formal Decision

16. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendations. He hereby allows your clients' appeal and grants outline planning permission for the erection of up to 250 dwellings, associated structural landscaping including woodland planting, public open space, access,

drainage, associated infrastructure, earthworks and other ancillary and enabling works including the demolition of all buildings at land at Red House Farm, Lower Outwoods Road, Burton-upon-Trent, Staffordshire, DE13 0QX in accordance with application Ref: P/2012/01215.

17. An applicant for any consent, agreement or approval required by a condition of this permission for agreement of reserved matters has a statutory right of appeal to the Secretary of State if consent, agreement or approval is refused or granted conditionally or if the Local Planning Authority fail to give notice of their decision within the prescribed period.
18. This letter does not convey any approval or consent which may be required under any enactment, bye-law, order or regulation other than section 57 of the Town and Country Planning Act 1990.

Right to challenge the decision

19. 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.
20. A copy of this letter has been sent to the Council. A notification e-mail / letter has been sent to all other parties who asked to be informed of the decision.

Yours faithfully

JEAN NOWAK

Authorised by Secretary of State to sign in that behalf

CONDITIONS

- 1) Details of the access, appearance, landscaping, layout, and scale, (hereinafter called 'the reserved matters') shall be submitted to and approved in writing by the local planning authority before any development begins and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than three years from the date of this permission.
- 3) The development hereby permitted shall begin not later than two years from the date of approval of the last of the reserved matters to be approved.
- 4) The development hereby permitted shall be carried out in accordance with the principles of the Design and Access Statement and the following approved plans: INCLA_N131.101 1:1000 Illustrative Master Plan, INCLA_N131.102 1:2000 Land Ownership Plan and INCLA_N131.106 1:2500 Location Plan, subject to compliance with other conditions of this permission.
- 5) No development shall take place until details of any phasing of the development hereby permitted have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.
- 6) No phase of the development hereby permitted shall take place until samples and details of all external materials and finishes for that phase (including those for any walls, roofs, windows, doors, parapets and chimneys) have been submitted to and approved in writing by the local planning authority at reserved matters stage. The development shall be carried out in accordance with the approved materials and details.
- 7) No phase of the development hereby permitted shall take place until details of boundary treatments, including materials, finishes, heights and sections (where there are changes in topography) for that phase have been submitted to and approved in writing by the local planning authority. The boundary treatment shall be provided in accordance with the approved details prior to the first occupation/use of the part of the development to which it relates.
- 8) No phase of the development hereby permitted shall take place until a scheme for the disposal of foul and surface waters and an assessment of the hydrological and hydrogeological impacts for that phase of development has been submitted to and approved in writing by the local planning authority. The scheme shall include details of how surface water run-off shall not exceed run-off from an undeveloped site, Sustainable Urban Drainage systems for storm water management, compensatory flood storage on site, and details of how the scheme shall be managed and maintained after completion. The development shall be carried out in accordance with the approved details prior to the first occupation of any of the dwellings hereby permitted.
- 9) No phase of the development hereby permitted shall take place until details of an open space strategy in accordance with any approved phasing scheme has been submitted to and approved in writing by the local planning authority. The open space strategy shall include details of equipment for children's play areas;

woodland planting and a trail to the western boundary; a short term maintenance management plan for all areas of open space; all materials to be used in hard landscaping and all fencing and walling. The open space strategy shall be implemented in full in accordance with the approved phasing scheme and shall thereafter not be used for any purpose other than as stated.

- 10) No phase of the development hereby permitted shall take place until a 'Site Waste Management Plan' for that phase has been submitted to and approved in writing by the local planning authority. The Site Waste Management Plan shall include an implementation programme and shall be implemented as approved.
- 11) No phase of the development hereby permitted shall take place and no site works related to that phase shall be carried out until details of all slab levels and any regrading of the site have been submitted to and approved in writing by the local planning authority at reserved matters stage. The development shall be carried out in accordance with the approved details.
- 12) No phase of the development hereby permitted shall take place until a contaminated land assessment, to include the investigation of gas migration, and associated remedial strategy for that phase together with an implementation programme have been submitted to and approved in writing by the local planning authority. The contaminated land assessment shall include a desk study that shall detail the history of the site uses and a site investigation strategy based on the relevant information discovered by the desk study. The strategy shall be approved in writing by the local planning authority prior to investigations commencing on site. Any site investigation, including relevant soil, soil gas, surface and groundwater sampling, shall be carried out by a suitably qualified and accredited consultant/contractor in accordance with a Quality Assured sampling and analysis methodology. A site investigation report detailing all investigative works and sampling on site, together with the results of analysis, risk assessment to any receptors and a remediation strategy shall be submitted to and approved in writing by the local planning authority prior to any remediation works commencing on the site. Remediation works shall be carried out in accordance with the approved strategy and under a quality assurance scheme to demonstrate compliance with the approved methodology and best practice guidance. If during the works contamination is encountered which has not previously been identified then the additional contamination shall be fully assessed and a remediation scheme and implementation programme shall be submitted to and approved in writing by the local planning authority. Remediation works shall thereafter be carried out in accordance with the approved scheme. Upon completion of the works, a closure report shall be submitted to and approved in writing by the local planning authority. The closure report shall include details of the remediation works and quality assurance certificates to show that the works have been carried out in full in accordance with the approved methodology; details of any post-remedial sampling and analysis to show the site has reached the required clean-up criteria; and details of what waste materials have been removed from the site.
- 13) No phase of the development hereby permitted shall take place until a Landscape Management Plan, indicating a scheme for the long-term management of open space, green infrastructure and planting within the public realm and details of biodiversity management has been submitted to and approved in writing by the local planning authority. The open space, green infrastructure and planting shall

thereafter be managed in accordance with the approved Landscape Management Plan.

- 14) No phase of the development hereby permitted shall take place until a scheme for the protection of trees and hedges to be retained in the details of landscaping approved at reserved matters stage has been submitted to and approved in writing by the local planning authority. The scheme shall be carried out as approved.
- 15) No phase of the development hereby permitted shall take place, including any works of demolition, until a Construction Method Statement for that phase of the development has been submitted to and approved in writing by the local planning authority. The approved Statement shall be adhered to throughout the construction period for that phase of the development. The Statement shall provide for the control of construction noise; the parking of vehicles of site operatives and visitors; loading and unloading of plant and materials; wheel washing facilities; measures to control the emission of dust and dirt during construction; the times of working and deliveries during construction and an implementation programme.
- 16) No phase of the development hereby permitted shall take place until details of all road construction, street lighting and drainage, including longitudinal sections and an implementation programme, for that phase have been submitted to and approved in writing by the local planning authority. The development shall be carried in accordance with the approved details.
- 17) No phase of the development hereby permitted shall take place until a Noise Impact Assessment, together with details of any noise mitigation measures and an implementation programme, for that phase has been submitted to and approved in writing by the local planning authority. The mitigation measures shall be implemented in accordance with the approved details and retained for the life of the development.
- 18) No phase of the development hereby permitted shall take place until a detailed mitigation and monitoring strategy for great crested newts within the site has been submitted to and approved in writing by the local planning authority. The mitigation measures shall be implemented in accordance with the approved strategy and retained for the life of the development.
- 19) No phase of the development hereby permitted shall take place until details of a scheme to provide 3 grit bins on Reservoir Road and improve the skid resistance to a minimum PSV of 68 along the section of Reservoir Road where the gradient exceeds 1 in 12, as indicated on PJA Drawing No 844-03, have been submitted to and approved in writing by the local planning authority. The scheme shall be implemented in accordance with the approved details before the development is first occupied.
- 20) No phase of the development hereby permitted shall take place until details of a scheme to provide vehicular access to the development have been submitted to and approved in writing by the local planning authority at reserved matters stage. The scheme shall prevent vehicular access to the development from Lower Outwoods Road apart from by public service and emergency vehicles. The scheme shall be implemented in accordance with the approved details before the development is first occupied and retained for the life of the development.

- 21) Prior to the first occupation of the dwelling to which it relates, accesses, parking and turning areas for that dwelling shall be provided in a bound material in accordance with details that shall first have been submitted to and approved in writing by the local planning authority at reserved matters stage. The bound material shall have a high degree of porosity to reduce the amount of surface run-off. The accesses, parking and turning areas shall thereafter be made available at all times for these purposes.
- 22) The development hereby permitted shall only be carried out in accordance with the recommendations of the Flood Risk Assessment by M-EC Report Ref: 20200/PH/09-12/3251, dated September 2012, or any subsequent Flood Risk Assessment that has first been submitted to and approved in writing by the local planning authority.
- 23) All planting, seeding or turfing comprised in the details of landscaping approved at reserved matters stage shall be carried out in accordance with a programme of works that shall have been submitted to and approved in writing by the local planning authority. Any trees or plants which within a period of 5 years from the completion of the development die, are removed, or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species unless the local planning authority gives written consent to any variation.
- 24) The reserved matters shall include a Transport Master Plan that shall be submitted to and approved in writing by the local planning authority. The Transport Master Plan shall include details of a movement framework; connections to the surrounding areas for all modes of transport; public transport route strategy, including a timetable for implementation and the infrastructure; street layout, including measures to restrain the speed of vehicles to 20mph; and a parking strategy, including the provision of secure cycle parking facilities for each dwelling. Development shall be carried out in accordance with the approved Transport Master Plan.

Report to the Secretary of State for Communities and Local Government

by Martin Whitehead LLB BSc(Hons) CEng MICE

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

Date: 15 October 2013

Town and Country Planning Act 1990

Appeal by

Barwood Strategic Land II LLP and Mr and Mrs G Skipper

**Land at Red House Farm, Lower Outwoods Road, Burton-
upon-Trent, Staffordshire DE13 0QX**

Inquiry opened on 21 August 2013

Land at Red House Farm, Lower Outwoods Road, Burton-upon-Trent, Staffordshire DE13 0QX

File Ref: APP/B3410/A/13/2197299

File Ref: APP/B3410/A/13/2197299

Land at Red House Farm, Lower Outwoods Road, Burton-upon-Trent, Staffordshire DE13 0QX

- 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 Barwood Strategic Land II LLP and Mr and Mrs G Skipper against the decision of East Staffordshire Borough Council.
- The application Ref P/2012/01215, dated 25 September 2012, was refused by notice dated 20 March 2013.
- The development proposed is erection of up to 250 dwellings, associated structural landscaping including woodland planting, public open space, access, drainage, associated infrastructure, earthworks and other ancillary and enabling works including the demolition of all existing buildings.

Summary of Recommendation: That the appeal is allowed and that outline planning permission be granted.

Contents

1	Procedural Matters	Page 2
2	The Site and Surroundings	Page 3
3	Planning Policy	Page 3
4	The Proposal	Page 4
5	The Case for Barwood Strategic Land II LLP and Mr and Mrs G Skipper	Page 4
6	The Case for East Staffordshire Borough Council	Page 11
7	The Case for the Rule 6 Party: Janet Hodson, JVH Town Planning	Page 16
8	The Cases for Other Interested Parties	Page 17
9	Inspector's Conclusions	Page 21
10	Planning Obligations	Page 25
11	Conditions	Page 26
12	Recommendation	Page 27
Appendix A	Appearances	Page 28
Appendix B	Documents	Page 29
Appendix C	Plans	Page 32
Appendix D	Abbreviations	Page 33
Appendix E	Recommended Conditions	Page 34

1 Procedural Matters

- 1.1 The Inquiry opened on 21 August 2013 and sat for 4 days on 21, 22, 23 and 28 August and was closed on 28 August 2013.
- 1.2 On the afternoon of 23 August 2013, I made an accompanied visit to the site and the surrounding area.
- 1.3 The application was submitted in outline form with all matters of detail reserved for subsequent approval. The application documents and plans are listed in Appendices B¹ and C² respectively.
- 1.4 At the Inquiry an application for a full award of costs was made by the appellants against East Staffordshire Borough Council. This application is the subject of a separate Report.
- 1.5 A unilateral undertaking, dated 23 August 2013³, has been executed under section 106 of the above Act. It makes provision for contributions towards waste, education, affordable housing, open space, landscaping and sustainable drainage, highway and traffic calming works, and a Travel Plan. Areas of open space, landscaping and sustainable drainage have been identified on the Illustrative Masterplan Drawing Number INCLA_N131.101⁴. The appellants have contested the Council's position regarding affordable housing provision and have consequently left a range of options in the unilateral undertaking. The obligations are the subject of further consideration in this Report.
- 1.6 As the appeal involves a proposal for residential development of over 150 units and is on a site of over 5 hectares, it was recovered for the Secretary of State's (SofS's) own determination by letter dated 20 May 2013. On 25 July 2013 Janet Hodson, JVH Town Planning Consultants Ltd applied for Rule 6 status in order to ask questions regarding the Council's housing land supply, on the basis of the adjournment of Appeal Ref APP/B3410/A/13/2193657 regarding development on land at Forest Road, in which she is the agent for that appellant. She was granted Rule 6 status in a letter dated 29 July 2013 and was legally represented at the Inquiry.
- 1.7 A Statement of Common Ground⁵ (SOCG) has been prepared by the appellants and agreed by East Staffordshire Borough Council (the Council). The statement records the description of the site, including agreed dimensions, and the area, planning history of the site, the development plan and any draft development plan, relevant guidance and other matters agreed. The matters of disagreement that it records include affordable housing provision, whether the Council has a 5 year housing land supply, the weight to be attributed to the saved policies of the East Staffordshire Local Plan 2006 (ESLP), whether the current development boundaries should be observed, and whether the landscape and visual impact of the proposal requires the appeal to be dismissed.

¹ Documents SD5d to SD5s and SD7

² Plans SD4, SD5a and SD5b

³ Document INQA13

⁴ Plan SD5a

⁵ Document SOCG

2 The Site and Surroundings

- 2.1 The appeal site is about 13.4 hectares and includes a group of large warehouse and office buildings, agricultural land, much of which is being used for turf growing, and a single dwelling. It is on a level plateau and includes some of the slope up to it that has tree and hedgerow planting. Access to the land is from Lower Outwoods Road and Reservoir Road up relatively steep gradients. These roads have residential properties fronting them and residential streets off them.
- 2.2 The site is located to the west of Burton-upon-Trent town centre, outside the limits of development shown on the Proposals Map but adjacent to the settlement boundary, lying between the neighbourhood areas of Shobnall, Horninglow, Branston and Outwoods. Outwoods reservoir is to the south east of the site and there is open countryside with some National Forest planting to the west. A public footpath runs from a 'Pleasure Ground' adjacent to the A38 trunk road up a steep incline past the reservoir and along the north east boundary of the site, heading in a north westerly direction over stiles in hedgerows and across open fields.

3 Planning Policy

- 3.1 The West Midlands Regional Spatial Strategy (RSS), together with the saved policies of the Staffordshire and Stoke on Trent Structure Plan 1996-2011 (SSSP), were revoked on 20 May 2013. Consequently, at the time of the Inquiry, the Development Plan comprised the saved policies of the ESLP⁶. The ESLP was not adopted in accordance with the Planning and Compulsory Purchase Act 2004.
- 3.2 ESLP Policy H2 seeks to manage the release of housing sites by ensuring that urban sites on previously developed land are released for development before greenfield sites. ESLP Policy NE1 establishes criteria for considering new development outside settlement boundaries shown on the Inset Plans. ESLP Policy BE1 seeks to ensure that new development responds positively to the context of the surrounding area and is a high quality design. Amongst the factors that shall be considered are (b) how elements of open spaces in the development relate to each other, the proposed buildings, the characteristics of the site and the landscape's character and appearance; and (e) how the height of the development relates to the height of the surrounding development and any vistas, views or skylines.
- 3.3 Supplementary Planning Guidance (SPG): *Planning for Landscape Change*⁷ identifies the appeal site as being of 'Settled Plateau Farmland Slopes' Landscape Character Type within the 'Needwood Claylands Regional Character Area 68'⁸. The SPG consists of 3 volumes and indicates that it is guidance to the SSSP.
- 3.4 The National Planning Policy Framework (Framework) was published on 27 March 2012 and sets out the Government's policies and its aim to achieve

⁶ Document SD6

⁷ Document SD8

⁸ Document SD8 Volume 3 appendix 1 Maps 2 and 3

sustainable development. Paragraph 7 gives the three dimensions to sustainable development: economic, social and environmental and paragraph 8 states that these roles should not be taken in isolation because they are mutually dependent. Paragraph 14 establishes the importance of a presumption in favour of sustainable development. With regard to the implementation, Annex 1 paragraph 215 requires due weight to be given to relevant policies in existing plans according to their degree of consistency with the Framework, following 12 months from the day of its publication.

4 The Proposal

- 4.1 The appeal proposal is an outline submission, with all matters reserved, for the erection of up to 250 dwellings, including affordable housing. The development would also include landscaping, woodland planting, public open space and land for an attenuation pond as part of a Sustainable Urban Drainage System (SUDS).
- 4.2 The Illustrative Masterplan⁹ identifies a layout for the scheme that shows the proposed dwellings occupying about 9.6 hectares on the east side of the site and the open space, landscaping, woodland planting and attenuation pond occupying the west side of the site. The main access would be from Reservoir Road, making use of an existing gated access, with access onto Lower Outwoods Road being only available for ambulances and buses through the introduction of control measures. This would provide a through route for these vehicles.

5 The Case for Barwood Strategic Land II LLP and Mr and Mrs G Skipper

I have reported the case on the basis of the closing submissions¹⁰ with additional references to the evidence submitted prior to and during the Inquiry. The material points are:

- 5.1 At the close of this Inquiry the Council's case is now that it formally accepts that it has no 5 year housing land supply; its landscape consultant requested that on the site visit the Inspector should concentrate on the green corridor from Burton to the appeal site and to consider the view from just one of the viewpoints identified in the Landscape and Visual Impact Assessment (LVIA)¹¹ and agreed in the SOCG; paragraph 14 of the Framework is in play in this case by reason of the fact that the ESLP was only ever intended to make housing provision until 2011 and boundaries drawn pursuant to Policy NE1 reflected those past needs up to 2011 (and not housing needs in 2013); paragraph 14 of the Framework also applies by reason of the absence of a 5 year housing land supply; paragraph 14 of the Framework requires that the benefits of development must be weighed against the disadvantages; and the balance required by paragraph 14 had not been undertaken in the Committee Report and the Council witnesses' evidence.
- 5.2 The Council's case is therefore one which completely fails to address the issues that the Framework requires that it should and is therefore fundamentally

⁹ Plan SD5a

¹⁰ Document INQA14

¹¹ Document INQA2

flawed on the basis of the above admissions at the Inquiry. The balancing exercise that will need to be undertaken before reaching a conclusion should be done against the background of a Council which has failed to carry out its responsibilities to maintain a 5 year housing land supply and to consider this appeal application in accordance with the presumption in favour of the grant of planning permission where the housing land supply policies are out-of-date, where there is no 5 year housing land supply and the development boundary policy identified in the reasons for refusal is agreed to be out-of-date.

Five Year Housing Land Supply

- 5.3 With regard to the available housing land supply, the Council's June 2013 calculation uses the housing requirement figure of 11,648 dwellings to be delivered between 2012 and 2031 at 613 dwellings per year. The housing supply consists of 1470 dwellings from sites with planning permissions, reduced by a 10% lapse rate, 1435 dwellings on deliverable sites and 450 dwellings from windfalls. This gives a housing supply figure of 4.60 years¹².
- 5.4 It is the Council's own case that its Annual Monitoring Report (AMR) figures are not accurate. The Table below¹³ shows that the AMRs have been amended frequently.

Period Covered	Council's Figures ¹⁴	AMR 2007	AMR 2008	AMR 2009	AMR 2010	AMR 2011
2006/07	615	218	218	550	550	550
2007/08	739		482	618	618	627
2008/09	588			429	429	465
2009/10	415				207	255
2010/11	419					313
2011/12	524					
2012/13	270					

- 5.5 There has been no definitive audit trail produced by the Council to the Inquiry to demonstrate that the latest figures are correct and reliable. There is no audit trail based on relevant documents and verified by site visits to show that the latest iteration of the figures is correct. The latest figures are therefore the Council's latest estimate but must have a strong health warning attached to them.
- 5.6 The Council's annual target figure of 613 has not been objectively assessed or tested. Another untested annual figure of 470 has recently been promoted by the Council. The RSS Panel Report's figure of 650 is the appropriate yardstick as the Honeybourne¹⁵ and Winchcombe¹⁶ appeal decisions make clear. The Council¹⁷ was unable to give one example of the SofS relying on a figure set in an emerging Local Plan.

¹² Document EA5 appendix 4

¹³ Document INQA1 page 2 Table in paragraph 3

¹⁴ Document EC4 page 16 Table in paragraph 5.14

¹⁵ Document EA5 appendix 26 paragraph 20

¹⁶ Document EA5 appendix 25 paragraph 7

¹⁷ Oral evidence given by Anna Miller

- 5.7 With regard to whether a 20% buffer should be applied for persistent under-delivery, even if the 613 target figure is used, the Council has not reached its target figure in any one of the last 5 years¹⁸. The Moira Road¹⁹ appeal decision demonstrates the wisdom of looking back a 5 year period. The moratorium does not justify this level of underperformance over the last 5 year period where it was no longer in place. This is clearly a 20% authority.
- 5.8 In considering whether past shortfalls should be addressed in the next 5 years (Sedgefield approach) or over the next 18 years to the end of the plan period (Liverpool approach), the development plan process has not established that the shortfall should be dealt with in any particular way. Therefore, appeal decisions should provide a useful pointer and those decisions made that follow the Liverpool approach are under challenge. The Sedgefield approach is favoured because that is consistent with the Government's commitment to boost housing growth and boost the economy. The Council should be required to set about clearing its backlog now.
- 5.9 In terms of housing supply, the case on the smaller supply sites, delivery from them and windfalls is set out fully in the evidence²⁰. The Council has failed to produce 'compelling evidence' to support its inclusion of windfall sites in its supply, as required by paragraph 48 of the Framework²¹. The 310 dwellings on the Lawns Farm site²², 120 dwellings on the JCB Pinfold site²³ and 120 dwellings on the Pirelli site²⁴ should not be included as being deliverable. However, the big issues relate to the correct target figure, whether this is a 5% or 20% authority and how to deal with shortfalls.
- 5.10 Not only does the Council not have a 5 year housing land supply but, correctly calculated, its supply is more like 2.37 years²⁵. The Council cannot afford to await adoption of its emerging Local Plan, which will not be tested until next year and the Council agrees can be given little weight. If additional housing land is found to be required in the local plan process, the areas which were considered in 3 out of the 4 preferred options²⁶ included the appeal site location. Release of the appeal site now is essential if the Council is to make inroads into its unsatisfactory 5 year supply position. Should the SofS grant planning permission, the schedule of expected completion for the development and rates of delivery would ensure that all the proposed houses would be delivered in 5 years²⁷.

¹⁸ Document EA5 Tables on pages 43-44

¹⁹ Document EA5 appendix 30 paragraph 20

²⁰ Documents EA5 and EA7

²¹ Document EA7 paragraphs 2 and 3

²² Document EA5 paragraph 5.65, page 51

²³ Document EA7 paragraph 4

²⁴ Document EA7 paragraph 5

²⁵ Document EA7 page 2

²⁶ Document EA5 appendix 13

²⁷ Oral evidence given by Mr Fenwick at the Inquiry

Landscape

- 5.11 With regard to landscape impact, of all the development sites shown on the appellants' housing location plan²⁸, only the appeal site and Forest Road have been subjected to landscape analysis by Mr McKenna, on behalf of the Council. If the Council had wanted a fair assessment of the sites it should have examined all of them. Factors which prompt Mr McKenna to object to the appeal project, including development of Burton westwards into the open countryside, apply also to Outwoods Farm (Hallam) and Lawns Farm. In the case of development on land South of Branston (St. Modwen) the expansion of Burton involves substantial extension of the town to the south. These developments are all regarded by the Council as having acceptable landscape effects even though their encroachment into the countryside would be very much more expansive than the current appeal proposal.
- 5.12 Mr McKenna's engagement and his company's request to know whether the Council favoured the appeal site calls into question the 'independent expert assessment'. The February 2013 Review²⁹ does not suggest (as Mr McKenna does in his July 2013 assessment) that the site has 'high sensitivity'. The other criticism in the February 2013 Review is that insufficient weight is given to visual receptors. However, the site is not even visible from some of the viewpoints, as Mr McKenna subsequently confirmed³⁰.
- 5.13 Mr McKenna's July 2013 assessment upgrades the site to 'High Landscape Sensitivity'. No one else has assessed the landscape as being of this standard. This is hard to square with the sensitivity that would be ascribed to an AONB or with the SPG³¹ which regards the area as a candidate for 'enhancement'.
- 5.14 Mr McKenna³² accepted that the specific locations he identified in his proof of evidence as being of concern (the canal etc) had no view of the site. Even where there is visibility, the Guidelines for Landscape and Visual Impact Assessment 3rd Edition (GLVIA3)³³ makes clear it is necessary to judge the susceptibility of the receptor to change and judge the value attached to that view. In that context, the view along the 'green corridor' has already got visibility of built development travelling west and this is more apparent on the journey east. There would be change but that is inevitable with any peripheral development and wider planning considerations dictate that peripheral development of towns is likely to be the most sustainable form of additional housing provision³⁴. This is the approach taken in the emerging Local Plan which allocates (insufficient) urban extensions. The reasons given for rejecting the appeal site in the Preferred Options document³⁵ do not include a landscape reason.

²⁸ Plan INQA

²⁹ Document EC2 appendix 1

³⁰ Oral evidence of Mr McKenna given in cross examination at the Inquiry

³¹ Document SD8

³² Oral evidence of Mr McKenna given in cross examination at the Inquiry

³³ Document INQA4 page 99

³⁴ Agreed by Mr McKenna and Anna Miller under cross examination at the Inquiry

³⁵ Document INQA9 pages 68 and 69

- 5.15 The land is an unremarkable bit of countryside on the edge of Burton. Mr McKenna stated how surprised he was to see what little visibility there was of the site when he carried out his site visit³⁶. The local Councillor³⁷ did not say one word about landscape when voicing local people's concerns until it was drawn to his attention. The Council has complained about the development joining up Horninglow and Shobnall³⁸, but this formed no part of its case at the Rule 6 stage. Similarly, the Council has put a case forward based on loss of hedgerows³⁹ which also has not been raised in its statement of case.
- 5.16 In conclusion, the landscape impacts of this development are remarkably limited and local in terms of their impact. There exists the opportunity to soften the edge of development through careful landscaping treatment and a large area of the site to the west would be devoted to a public open space area accompanied by woodland planting. Any resulting harm to the landscape must be balanced against the benefit associated with the development.

The Balance

- 5.17 The scheme's benefits would include the provision of much needed market housing and affordable housing, with some 38 units on site, against the Council's own identified requirement of 169 affordable dwellings per year⁴⁰. It would also help to promote healthy communities by providing a direct link between Reservoir Road and Lower Outwoods Road which would be available for use by both buses and emergency vehicles to and from the hospital complex at the bottom of Lower Outwoods Road⁴¹. This is supported by the Burton Hospitals NHS Foundation Trust and the West Midlands Ambulance Service NHS Foundation Trust⁴².
- 5.18 Additional benefits would be from improvements to public transport by a new route through the site serving the hospital which at the moment is a 'turn around' destination. The appellant would fund a 30 minute headway service from the hours of 0700 to 1900 Mondays to Fridays, secured through a planning obligation⁴³. The proposal would address local concerns about its effect on safety at Shobnall Road Primary School through highway improvements to Reservoir Road/Shobnall Road, including the rationalisation of parking⁴⁴. The Council would receive a New Homes Bonus of about £1.56 million, the house building would provide a boost to economic growth by employment during construction and, when completed, the new residents of the development would provide economic benefits through expenditure into the local economy and Council tax revenues⁴⁵.

³⁶ Oral evidence of Mr McKenna given at the Inquiry

³⁷ Oral evidence of William Ganley given at the Inquiry

³⁸ Oral evidence given by the Council's witnesses at the Inquiry

³⁹ Cross examination of Dai Lewis

⁴⁰ Document EA5 paragraphs 4.2 to 4.7, pages 31 and 32

⁴¹ Document EA5 paragraphs 4.8 to 4.14, pages 32 to 34

⁴² Document EA5 appendix 21

⁴³ Document EA5 paragraphs 4.15 to 4.16, page 34

⁴⁴ Document EA5 paragraph 4.17, page 34 and appendix 22 page 12 and Transport

Assessment Document SD5q appendix H

⁴⁵ Document EA5 paragraphs 4.18 and 4.19, pages 34 and 35

- 5.19 If the above benefits had been weighed against landscape impacts, as they should have been, the benefits far outweigh the disadvantages and planning permission should have been granted.

Highway Issues

- 5.20 Criticism has been made of Staffordshire County Council (SCC) as Highway Authority. There is no evidence that by not objecting to the scheme it has acted inappropriately or wrong headedly⁴⁶. Phil Jones Associates have produced a Transport Assessment⁴⁷ and a Highways Appeal Statement⁴⁸ which address the highway and transportation issues⁴⁹. Reservoir Road is indeed steep but this does not represent an insuperable barrier to its present residents and the through route for the bus would ensure better road surface treatment in winter⁵⁰. There is no evidence that any 'severe' transportation problems within the meaning of paragraph 32 of the Framework exist.

Other Issues

- 5.21 With regard to drainage, the Environment Agency has raised no objection and a full Flood Risk Assessment was submitted with the application. Severn Trent has not raised any objection regarding foul or surface water drainage, subject to the imposition of a planning condition⁵¹.

Planning Obligations and Affordable Housing

- 5.22 The only issue with the planning obligations in the S106 unilateral undertaking is whether the Council's claim for greater than 15% of affordable housing is justified. The Council agree that Appendix 1 to the Supplementary Planning Document (SPD)⁵² should determine what percentage of affordable housing should be provided. The unilateral undertaking covers both the Council's case (22.5%) and the appellants' case (15%). The SPD Appendix 1⁵³ has only three categories of site: Urban Brownfield- 10%, Urban Extension- 15% and Rural Sites- 30% and states that '*...these are the affordable housing contributions currently being sought*'. Both urban brownfield sites and urban extension sites are defined: '*Urban brownfield sites means brownfield sites within the development boundaries of Burton and Uttoxeter*' and '*Urban extension sites means large greenfield sites adjacent to the development boundaries of Burton and Uttoxeter*'. There is no definition of a rural site. The definition section simply says: '*The Affordable Housing Viability Study indicates that viability on other sites is likely to be the same as on rural sites*'.
- 5.23 The reference to 'other sites' in the context of the Affordable Housing Viability Study (AHVS) does not include the appeal site for the following two reasons:

⁴⁶ Oral evidence given by Philip Jones at the Inquiry

⁴⁷ Document SD5q

⁴⁸ Document EA5 appendix 22

⁴⁹ Document EA5 paragraphs 8.5 to 8.7

⁵⁰ Oral evidence given by Philip Jones at the Inquiry

⁵¹ Document EA5 paragraphs 8.4, 8.10(f) and (g)

⁵² Document EA5 appendix 39: Housing Choice Supplementary Planning Document Appendix 1 page 17

⁵³ Document EA5 appendix 39: Housing Choice Supplementary Planning Document Appendix 1 page 17

- (i) The AHVS forms part of the evidence base which led to formulation of the policy. The theoretical urban extension it looked at was a site of 2,000 dwellings, which is larger than the Outwoods Farm development (950) and the South of Branston Development (650). On a sensible pragmatic basis, all large urban extension sites should be treated the same way ie 15% affordable housing without the need for site owners to disprove that they could 'afford' more. At both of the latter sites the Council has accepted 15% affordable housing. There is no justification by reference to the AHVS for 30% to be applied to the appeal site as a starting point.
- (ii) The appeal site is obviously an 'urban extension site' which is 'large'. For the purposes of the Preferred Option document 'Strategic Sites' are defined as '100 units and over'⁵⁴. This means that 15% is the appropriate amount. This assessment of the site as a large greenfield site is also consistent with the approach taken by the Council in 'Greenfield Land Release' where 50 units was regarded as likely to be the largest size unit of greenfield release⁵⁵.

5.24 The Council has received the AHVS and translated that into policy in Appendix 1 of the SPD⁵⁶. It has not drawn a distinction in policy between categories of large urban extensions. There is no policy justification for using 30% as the starting point for debate on affordable housing in this case where the appeal site is very obviously a large urban extension within the meaning of policy. Neither Land south of Branston nor Outwoods Farm were obliged to demonstrate a viability justification for less than 30%. Whether they could afford more was a question never put to them and it would be irrelevant in terms of policy if it had been. If the SofS regards the appeal site as a 'large urban extension' then 15% would be the appropriate amount of affordable housing⁵⁷. On any sensible analysis the site is a large urban extension and the Community Infrastructure Levy (CIL) Regulation 122 compliant figure is 15%.

Overall Conclusions

- 5.25 The proposal enjoys the presumption in favour of sustainable development. There are inevitable landscape changes associated with it but greenfield development has been recognised as essential to accommodate necessary housing development by the Council. In terms of the environmental role of sustainable development, it is agreed in the SOCG that the proposal would result in net gains for biodiversity⁵⁸.
- 5.26 The Inspector is requested to recommend grant of planning permission and the SofS is requested to follow that recommendation.

⁵⁴ Document INQA9 paragraph 5.124, pages 71 and 72 and orally accepted by Mr Payne at the Inquiry

⁵⁵ Document EA5 appendix 18 paragraph (5) page 6

⁵⁶ Document EA5 appendix 39: Housing Choice Supplementary Planning Document Appendix 1 page 17

⁵⁷ Orally agreed by Mr Payne at the Inquiry

⁵⁸ Document SOCG paragraph 6, 5th point

6 The Case for East Staffordshire Borough Council

I have reported the case on the basis of the closing submissions⁵⁹ with additional references to the evidence submitted prior to and during the Inquiry. The material points are:

Housing Supply and Policy

- 6.1 The Preferred Option plan, published in 2012, consolidated the work of the 2011 Strategic Options consultation and an evidence based framework within which a Preferred Option spatial strategy was determined. The basis of the spatial strategy was housing evidence prepared by GVA which set out the Council's objectively assessed need. The Local Plan also revised the plan period to 2012-2031 to align with published housing and population information. Housing need was identified as 8935 dwellings over the plan period which equates to 470 dwellings per year⁶⁰. At the time the appeal application was refused, the Council used this housing requirement to demonstrate a 5 year supply at 6.02 years⁶¹.
- 6.2 The Council published in July 2013 evidence supporting a new housing land requirement⁶² in which it was increased to 11,648 houses over the plan period. This equates to an annual housing requirement of 613 units⁶³. It is acknowledged that this housing requirement figure has not been tested through examination but independent verification has been undertaken to arrive at the set of assumptions that underpin the housing modelling.
- 6.3 The spatial strategy in the pre-submission plan will comprise a mix of both brownfield and greenfield sites to meet the housing requirement of 613 dwellings per year. The appeal site will not form part of the new spatial strategy and there are other more sustainable sites to meet the housing requirement⁶⁴.
- 6.4 The Council's methodology includes a 5% buffer, as it does not consider that it has a record of persistent under-delivery to justify a 20% buffer. Its recent housing deficit is caused by a dearth of completions on account of the recession rather than a lack of planning permissions. This approach is supported by the Local Government Association guidance⁶⁵. Technically the only adopted target that has been in place since 2006 is that set in the now revoked Regional Plan of 433 dwellings per year for East Staffordshire. The revised target of 12,900 houses was included in the preferred option Phase 2 RSS revision and endorsed through the publication of the Panel Report in September 2009, which recommended 13,000 (650 dwellings per year). No work has been undertaken on the RSS Phase 2 Review since the announcement in 2010 of the intention to revoke regional strategies. Against the uncertainty of the housing target and a severe economic downturn, the

⁵⁹ Document INQC13

⁶⁰ Document EC4 paragraph 4.13

⁶¹ Document EC4 paragraph 5.4

⁶² Document EC4 appendix 5

⁶³ Document EC4 paragraph 5.3

⁶⁴ Document EC4 paragraph 4.17

⁶⁵ Document INQR1 page 15 second paragraph

Council has continued to supply housing at a significant rate and for the most part ahead of the RSS target of 433 dwellings per year⁶⁶.

- 6.5 The Council has spread the under delivery since 2006 over the plan period (Liverpool approach) to cross economic cycles. There is no guidance as to how to deal with under delivery. The level of growth coming forward in the emerging Local Plan will deliver the Council's housing requirement supplemented by windfall development which historically has come forward unabated. Previous under delivery has also been a consequence of a moratorium⁶⁷.
- 6.6 The housing supply includes a windfall supply figure of 90 dwellings per year. Mr Fenwick has agreed that the Council's methodology was sound and that the provision was correct but should not be applied in years 1 and 2 of the period⁶⁸. He changed his position and stated in his Addendum Proof⁶⁹ that the Council's windfall allowance was unconvincing.
- 6.7 Of the deliverable sites that the Council has included in its housing supply, the JCB Pinfold Road site (120 dwellings) gained planning permission following the signing of a S106 agreement and planning permission for the Pirelli site (120 dwellings) is awaiting a signature from SCC on a S106 agreement. The supply also includes a contribution of 310 dwellings from the Lawns Farm site, which is due for determination at the September Committee with an officer recommendation for approval⁷⁰. The delivery rates for this development are based on those confirmed by the potential developer⁷¹. The Council's assessment is not over optimistic and has been vindicated by events.
- 6.8 In identifying that it has a 5 year housing supply the Council has used its July 2013 calculation, which adjusted its June 2013 calculation to include an additional supply of dwellings on deliverable sites to give a housing supply figure of 5.35 years⁷². At the Inquiry, the Council has accepted that its July 2013 calculation does not comply with the recognised procedure for calculating the 5 year housing supply given in paragraph 47 of the Framework, which requires local planning authorities to identify and update annually a supply of specific deliverable sites⁷³. It has issued a statement that confirms this and that it cannot demonstrate a 5 year housing land supply⁷⁴.
- 6.9 At the Inquiry the Council has accepted that ESLP Policy NE1 is out-of-date, since it is based upon old data, and it cannot demonstrate a 5 year housing land supply. As a consequence, it follows that saved policies of the ESLP are out-of-date. In these circumstances, to dismiss the appeal, the SofS must be satisfied that the proposal is likely to cause significant and demonstrable harm to the landscape which outweighs the undoubted benefits of the scheme.

⁶⁶ Document EC4 paragraphs 5.9 to 5.19

⁶⁷ Document EC4 paragraphs 5.20 to 5.22, page 18

⁶⁸ Document EA5 paragraphs 5.39 and 5.40

⁶⁹ Document EA7 paragraphs 1 and 2

⁷⁰ Oral evidence given by ANNA Miller at the Inquiry

⁷¹ Document EC4 paragraph 5.29 and oral evidence given by Anna Miller at Inquiry

⁷² Document EC4 appendix 7

⁷³ Oral evidence given by Anna Miller in cross examination by the Rule 6 Party at the Inquiry

⁷⁴ Document INQC4

Landscape and Visual Amenity

- 6.10 The Council's Planning for Landscape Change SPG⁷⁵ gives the relevant Landscape Character Type that includes the appeal site as 'Settled Plateau Farmland Slopes'. It observes that the 'deterioration of landscape quality is greatest at the immediate urban fringe'. The appeal site can be seen to occupy such a sensitive location. Further, the SPG states '*this landscape character type is locally sensitive to the impacts of development and land use change*'⁷⁶. Therefore, the appeal site occupies a particularly sensitive portion of the wider Landscape Character Type area.
- 6.11 The site enjoys high sensitivity on account of the following specific characteristics.
- (i) The area comprising the appeal site provides a piece of open countryside in close proximity to the western side of Burton. It functions as a green corridor which connects Burton with its rural hinterland⁷⁷. Heading westward out of the town and having crossed the canal, one enters a green space out into the countryside⁷⁸.
 - (ii) The site has high amenity value due to its close proximity to the town centre and the fact that easy public access is enjoyed by not only a formal public right of way, which is well used, but also a number of informal footpaths. The sensitivity of the users of the public right of way along the perimeter of the appeal site should be characterised as 'high', as it is used by members of the public for recreation (to walk the dog etc)⁷⁹ and for people who live in the town to walk out from it and enjoy the countryside on their doorstep. Therefore, the attention or interest of people who use this public right of way is likely to be focused on the landscape and on particular views, which is the test applied in GLVIA3 to determine the visual receptors most susceptible to change⁸⁰.
 - (iii) The topography means that it is inevitably more visually prominent and clearly visible from Burton.
- 6.12 The Council's Planning for Landscape Change SPG confirms that the site enjoys moderate landscape quality on account of the fact that it requires landscape enhancement⁸¹. It continues to have a rural appearance and members of the public who use the public footpaths continue to perceive it as a well-mown meadow⁸². Further, about 83% of the perimeter of the appeal site comprises green fields⁸³. The use of GLVIA2 rather than GLVIA3 by Mr McKenna in his

⁷⁵ Document SD8

⁷⁶ Document SD8 Volume 3 page 134 second paragraph

⁷⁷ Oral evidence given by Dai Lewis in cross examination at the Inquiry

⁷⁸ Oral evidence given by Mr McKenna in cross examination at the Inquiry

⁷⁹ Document EC2 appendix 2 paragraph 3.5 page 8

⁸⁰ Document INQA4 paragraph 6.33, page 113

⁸¹ Document SD8 Volume 2 Map 1, page 4

⁸² Oral evidence given by Mr McKenna at the Inquiry

⁸³ Oral evidence given by Mr McKenna at the Inquiry

appraisal makes no difference to the findings⁸⁴. The appraisal ascribes a high sensitivity to the landscape and the magnitude of change as medium⁸⁵.

6.13 The proposal would cause major to moderate significant adverse harm⁸⁶ for the following reasons.

- (i) Coalescence would take place between Horninglow and Reservoir Road. Currently, there is an important well-used and valuable green corridor. This would be replaced by housing which would have the effect of joining the 2 existing urban forms. It would extend Horninglow southward into the countryside and reduce the identity of the 2 areas⁸⁷.
- (ii) The proposed built development would enclose the escarpment woodlands and the green fields to the east⁸⁸. This would have the effect of divorcing the north west quadrant of Burton from its rural hinterland.
- (iii) The integrity of the landscape would be harmed. The Landscape Character Type notes that a characteristic landscape feature is an '*irregular hedged field pattern*'. This important landscape feature would be lost by the proposed development of up to 250 houses, even if the hedgerow in question would be largely maintained⁸⁹.
- (iv) Views of Burton would end in the roof lines of housing rather than fields and woodland because of the site's location on a plateau⁹⁰.
- (v) The proposed development would effectively push the urban edge of Burton from the A38 to Red House Farm, the escarpment woodlands becoming part of the urban area rather than the start of the countryside⁹¹.

6.14 The appeal site has been considered by previous Inspectors over the years. The suitability of the land including the appeal site for residential development has been consistently rejected on account of the unacceptable impact it would have on the landscape. In a 1987 decision letter, the SofS held '*the northern site presently forms an extremely prominent and attractive sloping hillside, enclosing the valley. Any development on this slope and on the high plateau would, in my opinion, be very conspicuous from the valley and would create an obtrusive skyline development. These elements would in my view significantly diminish the open, attractive quality of this western approach to Burton-upon-Trent*'⁹². The high plateau referred to in this decision includes the current appeal site. Part of the site was assessed in 2004 during the examination of the ESLP. The suitability of the site for residential development was tested at the Inquiry into the 1995 Borough Wide Local Plan where the Inspector concluded that it was not suitable for an allocation due to its elevated position

⁸⁴ Oral evidence given by Mr McKenna at the Inquiry

⁸⁵ Document EC2 paragraphs 5.8 and 5.9

⁸⁶ Document EC2 paragraph 5.9

⁸⁷ Oral evidence given by Mr McKenna at the Inquiry

⁸⁸ Document EC2 appendix 2 paragraph 3.3 page 8

⁸⁹ Cross examination of Dai Lewis

⁹⁰ Document EC2 appendix 2 paragraph 3.4 page 8

⁹¹ Document EC2 appendix 2 paragraph 3.5 page 9

⁹² Document EC4 appendix 1 paragraph 2, pages 1 and 2

and the fact that it makes 'a visual contribution' by integrating with the open countryside to the west⁹³.

- 6.15 The first time that the appellants' witnesses became aware of the above important planning history of the site was when they had sight of the Council's evidence. This must call into question the completeness of their understanding of the planning history of the site. The appellants' case that no material harm is likely to be caused to the landscape post mitigation represents an underestimate. The Council's assessment of harm is likely to be far more accurate.
- 6.16 Local Plan Policy BE1 would be offended⁹⁴. In accordance with paragraph 215 of the Framework, due weight should be given to relevant policies in the development plan according to their degree of consistency with the Framework. Therefore, full weight should be afforded to this Policy given that there is no material conflict with the Framework. Further, the appeal proposal would contravene one of the Government's core planning principles given in the 5th bullet point of paragraph 17 of the Framework that planning should recognise the '*intrinsic character and beauty of the countryside*'.
- 6.17 The users of public rights of way and the occupants of dwellings in the immediate vicinity of the appeal site should be characterised as highly sensitive receptors. The adverse change of outlook would not be so harmful so as to constitute harm to residential amenity, but the harm to visual amenity weighs against the appeal in the final planning balance.

Other Matters

- 6.18 The appeal site was included in the Council's sustainability appraisal⁹⁵, as all sites in the Council's SHLAA⁹⁶ were included. This assessment did not accord with PPS12⁹⁷ given that it was not accompanied by a full sustainability assessment or a habitats assessment. As a result, this part of the evidence base would not have met the test of soundness at a Local Plan examination⁹⁸. Therefore, it would be unwise to attach much weight to it now. It has been superseded by subsequent work. The later Preferred Options paper identified Option '2d'⁹⁹, which excludes the appeal site. Accordingly, it can be seen that, following a fuller evaluation, other sites on the periphery of Burton were found by the Council to have been more sustainable than the appeal site.

Affordable Housing

- 6.19 In respect of the unilateral undertaking, the higher 22.5% affordable housing requirement is compliant with CIL Regulation 122. The 22.5% affordable housing requirement accords with the Council's SPD¹⁰⁰. The SPD states in

⁹³ Document EC4 appendix 3 paragraphs 10.83 and 10.84

⁹⁴ Oral evidence of Mr Fenwick in cross examination at the Inquiry

⁹⁵ Document EA5 appendix 12

⁹⁶ Strategic Housing Land Availability Assessment

⁹⁷ Planning Policy Statement 12: Local Spatial Planning which has been superseded by the Framework

⁹⁸ Oral evidence given by Anna Miller at the Inquiry

⁹⁹ Document EA5 appendix 13

¹⁰⁰ Document EA5 appendix 39

paragraph 4.12 that the need for affordable housing is 30% of the dwellings. The appeal scheme is not an urban extension site on which 15% of dwellings are sought to be affordable in accordance with Appendix 1 of the SPD, as the scheme modelled by the viability assessment was for 2,000 dwellings, and it was the size and resulting complexity of such a scheme which introduced additional costs that reduced viability. The scheme should be treated as an 'other site' in Appendix 1 and start with 30% affordable housing. The contribution sought has been reduced in recognition of the scale of other obligations and the proposed density of the scheme¹⁰¹.

- 6.20 If it is concluded that the SPD's 15% affordable housing requirement is more consistent with the site, the scheme remains viable when applying the higher 22.5% figure. In these circumstances, the 22.5% figure remains compliant with CIL Regulation 122. In light of the Government's intention to boost significantly the supply of affordable housing given in paragraph 47 of the Framework, there are very good public policy reasons to select the higher figure.

Conclusions

- 6.21 There are a number of important benefits of the appeal proposal. However, the significant and demonstrable harm caused to the landscape and visual amenity outweighs these undoubted and significant benefits. The appeal proposal is unacceptable for the reasons given. The proposed development contravenes the thrust of the development plan and an important core principle of the Framework. Therefore, the SofS is invited to dismiss the appeal.

7 The Case for the Rule 6 Party: Janet Hodson, JVH Town Planning

I have reported the case on the basis of the proof of evidence of Janet Hodson¹⁰² with additional references to the evidence presented at the Inquiry. The material points are:

Five Year Housing Land Supply

- 7.1 The housing requirement for the Council should be the RSS requirement of 650 dwellings per year over the period of 2006 to 2026. These figures were examined and tested at an examination by the Panel and are the only tested figures available. The figure of 613 dwellings per year that the Council has used from a new report by GVA in June 2013 for a new plan period of 2012 to 2031 is completely untested and has not as yet been the subject of any consultation.
- 7.2 With regard to the Council's existing planning permissions, the detailed investigations that JVH has carried out on larger sites of over 10 dwellings concludes that the supply from this source comprises some 860 dwellings¹⁰³ compared to the Council's 1,323 dwellings, allowing for a 10% lapse rate. This element of the Council's land supply is flawed in that it is reliant upon sites which will not deliver homes in the 5 year period.

¹⁰¹ Document INQC2

¹⁰² Document ER1

¹⁰³ Document ER1 appendix 2

- 7.3 In terms of other deliverable sites, JVH has investigated the Council's 17 sites that it has considered in its July 2013 calculation to deliver 1,965 dwellings in the 5 year period and has considered that the likely delivery is some 594 dwellings in that period¹⁰⁴. The Council's approach to the delivery of these sites is not robust and the number of dwellings that will actually be delivered is far short of the number used, particularly as it has included 3 sites that were resolved to be approved at its 8 July Planning Committee, one of which (Land South of Branston¹⁰⁵) had been the subject of an Inquiry and another (Outwoods Farm¹⁰⁶) may be the subject of a Judicial Review.
- 7.4 The Council should not have taken account of 90 dwellings per year from windfall sites in its 5 year housing land supply, as the assumptions made by the Council do not pass the test in paragraph 48 of the Framework. This is due to a skew in the historic windfall rate as a result of a moratorium from 2005, the future larger sites being identified in the SHLAA and therefore becoming allocations, and the unreliability of past completion rates.
- 7.5 The Council should have applied a 20% buffer for persistent under-delivery, as in the last 5 years the Council has not met on the AMR figures either the 650 or 613 dwellings per year targets¹⁰⁷.
- 7.6 Based on the deliverable planning permissions and other deliverable sites, the Council has a 1.75 year supply of housing land or, based on deliverable planning permissions and new permissions recently granted, it has a 1.51 year supply.
- 7.7 The Council has accepted at the Inquiry that its July 2013 calculations of its housing land supply that counts sites consented on 8 July 2013 is not correct in accordance with the Framework and that its June 2013 calculations have carried out this exercise correctly. On this basis, the Council has stated that it cannot demonstrate a 5 year housing land supply in accordance with the Framework¹⁰⁸.

8 The Cases for Other Interested Parties

Oral representations were made at the Inquiry by one party (Councillor W Ganley) in addition to those of the main parties. These are summarised below and are supported by a written statement¹⁰⁹. The material points are:

Councillor W Ganley

- 8.1 As Councillor for Shobnall Ward in which the development is proposed he is reflecting the concerns of the residents within that Ward.
- 8.2 The only access to and from the site would be via Reservoir Road, which has a very steep gradient and a school at its narrow junction with Shobnall Road.

¹⁰⁴ Document ER1 appendix 3

¹⁰⁵ Oral evidence given in cross examination of Anna Miller at the Inquiry

¹⁰⁶ Oral evidence given in cross examination of Anna Miller at the Inquiry

¹⁰⁷ Document ER1 appendix 4

¹⁰⁸ Oral evidence given in cross examination of Anna Miller at the Inquiry and Document INQC4

¹⁰⁹ Document INQO1

Also, the entrance and egress for the Lawns Farm development with 2,500 houses proposed would be almost directly opposite this junction. There are safety concerns regarding the use of the steep hill, on which winter gritters have had problems, and the additional traffic that would be generated on the road past a nursery and a school, which is very busy when parents drop off and pick up their children.

Written representations

Written representations were made at the appeal stage by 7 parties¹¹⁰ in addition to those of the main parties. The material points were given in the representations made by Red House Farm Action Group which are summarised below:

Red House Farm Action Group (RHFAG)¹¹¹

- 8.3 RHFAG represent local residents who came together in 2012 to object to the proposed development. It has canvassed residents in Reservoir Road, Shobnall Road, Highcroft Drive and adjacent roads, produced a letter which was signed by nearly 750 local residents and kept all of the petitioners up to date with developments. It has the following concerns about the proposal.
- 8.4 The site is outside the published Preferred Options document and so the proposed development will not have been included in the financial and demographic planning for education, health and social services.
- 8.5 There have been no significant changes to alter previous decisions made against development on the site, including decisions in appeals to the SofS. A 5 year supply of housing land has been identified and the proposed development would exceed the requirements.
- 8.6 The development would not meet sustainability criteria, including improving health and safety, improving wellbeing and respecting the environment. It would not contribute to protecting the Borough's assets for future generations, as the long term environmental impact would not be effectively mitigated. It would also not fulfil the requirements of the Framework, and in particular it would not address the cause and potential impact of climate change and not contribute to improved social and economic environmental objectives.
- 8.7 With regard to landscape, RHFAG are in agreement with the Council's Landscape Report's comment on its sensitivity. The development would have a significant landscape and visual impact and would erode the character of the rural edge, as it would be sited on an elevated plateau, as indicated in the Report. The Report also indicates that the site is agricultural greenfield land, as it is growing grass for selling as turf, and the buildings on it are agricultural and not industrial. It recognises that no amount of landscaping would hide the development and that there would be a detrimental aspect to the wider setting. Development of the appeal site could lead to development on a much larger site, as indicated in a public presentation given by the developers, with greater detrimental effect on Burton-upon-Trent's rural edge.

¹¹⁰ Documents EO1 to EO7

¹¹¹ Document EO1

- 8.8 In terms of highways and traffic, the anticipated increase in traffic on Reservoir Road is a concern to users of the Oaks Wood public footpath and local residents. There would be about a 500% increase in housing accessed from Reservoir Road which would be likely to lead to over a 500% increase in traffic. This would produce a significant increase in noise, pollution and disturbance and a decrease in safety. The proposed anti-skid treatment on the steep hill would be unlikely to be effective and would greatly increase noise. Gritting lorries have found it impossible to traverse it and vehicles have been abandoned during periods of snow and ice. The increase in traffic would make it a more dangerous manoeuvre to access the driveways of properties on the steep incline up Reservoir Road and large service vehicles could impede this access.
- 8.9 Lower Outwoods Road's steepness, narrowness and the amount of on-street parking and the gradients on Reservoir Road make it impractical to sustain the proposed circular bus route. The proposed operator of the service, Arriva, has confirmed that it would require it to be financially supported, which the appellants would only be likely to continue for a limited time. The steepness of the hills would mean that walking and cycling would not be the preferred mode of transport. Therefore, the development cannot be described as sustainable and would encourage the use of private vehicles.
- 8.10 The appellants' traffic reports were carried out during the school holidays and therefore are not representative of the true traffic movements. During school times traffic can experience lengthy delays at the Reservoir Road/B5017 Shobnall Road junction, due to the drop off and pick up of children attending Shobnall Primary School and the nursery school at the corner of this junction. The proposed double yellow lines would not alleviate this problem, but would add to concerns for the safety of school and nursery children. The survey of traffic on the B5017 does not consider on-street parking and not enough consideration has been given to the suitability of Reservoir Road or the B5017 to cater for the proposed increase in traffic movements.
- 8.11 There has not been a robust strategic traffic management plan for the appeal development and other proposed development in the Burton area. There are 3 other major developments under consideration for Shobnall, Outwoods and Henhurst Hill locations which would be dependent upon the B5017. Allowing the proposed development would have a substantial impact on localised traffic movements and increase the risk of accidents, injury and loss of life.
- 8.12 In relation to flooding and drainage, the Environment Agency (EA) has highlighted locations in the vicinity of Shobnall Brook at the junction of Reservoir Road and Shobnall Road as being in a flood risk area. Any additional water flow from the proposed development would exacerbate the drainage problems that have been encountered at times of heavy rain. Additional use of the existing sewerage would exacerbate the problems that have been encountered through leakage.

Written representations were made at the application stage which reflect the above mentioned points¹¹². An additional relevant point is summarised below.

- 8.13 The appeal site provides a habitat for a large number of animals, particularly protected bats and great crested newts, which would be destroyed by the development.

Richborough Estates

¹¹² Document SD2

9 Inspector's Conclusions

The numbers in square brackets [] refer back to earlier paragraph numbers which are relevant to my conclusions.

Policy and Housing Supply

- 9.1 The Council has referred to saved policies in the ESLP and policies in the SSSP in its reasons for refusal. The policies in the SSSP have since been revoked and the Council accepted at the Inquiry that ESLP Policy NE1, which has been referred to in its first reason for refusal, is out-of-date. I find that this policy is out-of-date, as the settlement boundaries on the Inset Plan are those for the plan period up to 2011 which no longer reflects the current housing needs. **[3.1, 3.2, 3.4, 5.1, 6.9]**
- 9.2 The Council also agreed at the Inquiry that it cannot demonstrate a 5 year housing land supply in accordance with the Framework. It has based this acceptance on its July 2013 housing calculations not being in accordance with paragraph 47 of the Framework, due to the inclusion of sites consented in July 2013. However, the following other aspects of its calculations have been questioned by the appellants and Rule 6 Party. **[5.1, 5.3, 6.8, 6.9, 7.7]**
- 9.3 The Council's latest 5 year housing supply calculations use an annual target figure of 613 dwellings, based on the results of an independent consultant's report, which it suggests has been independently verified. It acknowledges that this figure has not been tested through examination. The report would be used as part of the evidence base for the emerging Local Plan. However, conscious of the recent judgment in *Hunston v Secretary of State for Communities and Local Government*, it has not yet been sufficiently progressed through consultation and examination to replace the RSS Panel Report requirement of 650 dwellings per year, which is the most up-to-date figure that has been examined and tested. Therefore, I find that the Council has provided insufficient justification for currently using any other housing target than 650 dwellings per year. **[5.6, 6.1, 6.2, 6.3, 6.4, 7.1]**
- 9.4 With regard to the level of the buffer that should be applied to the housing requirements in accordance with paragraph 47 of the Framework, the Council has applied a 5% buffer. Its delivery over the past 5 years has been consistently below the 650 dwellings per year in the Panel Report. However, that report was published in September 2009 and so this target should not apply to figures prior to that date. From 2006, the Regional Plan set a target of 433 dwellings per year. The housing delivery given in the Council's AMR for 2009/10 and 2010/11 are below this lower figure. Therefore, given the Council's acceptance of the inaccuracies in its AMRs over the past years, I find that it has not provided sufficient evidence to show that it has not had a record of persistent under-delivery. The Council's claim that the economic downturn has affected its housing delivery over recent years is not given as a reason in the Framework for not applying a 20% buffer in this case. **[5.4, 5.7, 6.4, 7.5]**
- 9.5 In terms of the past shortfall in housing supply, the Council has spread the under-delivery since 2006 over the remaining 18 years of the plan period between 2012 and 2031 (Liverpool approach). I find very little support for this approach, given that the Framework seeks in paragraph 47 to boost

significantly the supply of housing. Whilst there is limited guidance on how to deal with under delivery, a more effective way of significantly boosting the supply of housing would be to spread the shortfall over the next 5 year period (Sedgefield approach). The need exists now and the Council's approach could result in some of this need being met up to 18 years into the future. In this respect the Council has failed to justify the approach that it has taken to address the shortfall. **[5.8, 6.5]**

- 9.6 The evidence indicates that there is some uncertainty about the housing delivery from sites included in the Council's 5 year housing supply and the figure included for windfall sites. The Council has failed to demonstrate that it has compelling evidence that 90 dwellings per year will consistently become available from windfall sites and will continue to provide a reliable source of supply, as required in paragraph 48 of the Framework. Based on the above, I find that the Council's supply of deliverable housing is likely to be significantly below its figure of 4.60 years, calculated in June 2013. The figures given by the appellants of 2.37 years and by the Rule 6 Party of 1.51 or 1.75 years are likely to be an under estimate, given the recent planning permissions that have been granted. However, the supply of deliverable housing sites is more likely to be in the region of 3 years, based on a 650 dwellings per year target, taking account of a 20% buffer for persistent under-delivery and spreading the past shortfall over the 5 year period. **[5.3, 5.9, 5.10, 6.6, 6.7, 7.2, 7.3, 7.4, 7.6]**
- 9.7 As the Council cannot demonstrate a 5 year supply of deliverable housing sites, relevant policies for the supply of housing are not to be considered up-to-date, including ESLP Policy H2, in accordance with paragraph 49 of the Framework. A presumption in favour of sustainable development should apply to the proposed development in accordance with paragraph 14 of the Framework. In the context of the relevant policies being out-of-date, the test in this appeal is therefore whether any adverse impacts would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole, as no specific policies in the Framework would indicate development should be prevented here. **[3.1, 3.4, 5.1, 5.2, 6.9, 8.5]**

Character and Appearance

- 9.8 The Council's second reason for refusal is based on the effect of the proposal on the character and appearance of the area. I am satisfied that ESLP Policy BE1 referred to in this reason is consistent with the Framework and therefore significant weight should be attached to it. With regard to the SPG that has been referred to, although it indicates that the Landscape Character Type of the area that includes the appeal site is locally sensitive to the impacts of development, it also notes that it is an area for enhancement. **[3.2, 3.3, 3.4, 5.13, 6.10, 6.12]**
- 9.9 The current use of much of the site is for turf growing and the commercial activities in the warehouse and other buildings give it a less rural character than the surrounding fields. The proposed housing would replace the existing commercial buildings and dwelling that are sited near to the highest point of the plateau. The wooded part of the site on the western slope to the plateau would be retained as part of the proposal, which would include the use of this area of land for open space, additional woodland planting and sustainable

drainage. As such, the proposal would not result in the loss of countryside that has any more than a moderate landscape quality. **[2.1, 4.1, 4.2, 5.13, 5.16, 6.12, 8.7]**

- 9.10 In terms of the visual impact of the proposed development, at my site visit, I observed the appeal site from some of the most sensitive vantage points. Although it is located on a plateau, the main public views of the site are from Reservoir Road to the south, Lower Outwoods Road and parts of Denton Road to the north, and the public footpath to the north east. The mounding around the reservoir hides the site from views from Oaks Wood, the A38 and the edge of Burton, including the canal, to the south east. Other views of the site from the surrounding roads, villages and countryside are more distant and are screened by existing hedges and trees. **[2.2, 6.11]**
- 9.11 Views of the proposed development from the areas around Lower Outwoods Road, Denton Road and Reservoir Road would be in the context of the existing built development. The proposal would result in additional built development alongside the public footpath that provides access into the countryside from Burton. However, landscaping would be able to be provided along the boundaries of the site, secured by planning conditions, to ensure that the proposed buildings would not be significantly more intrusive when viewed from this footpath than the existing built development along roads off Lower Outwoods Road and the existing buildings on the site. **[5.14, 6.11]**
- 9.12 Buildings in Lower Outwoods Road and the roads off it, within Horninglow, together with buildings in Reservoir Road, within Shobnall, are already visible near to the top of the plateau. The joining of these two areas of built development by developing the appeal site, which is land adjacent to a reservoir that is used for commercial purposes and includes large buildings, would represent a natural extension to the existing boundaries of built development in these areas. The escarpment woodland and green fields to the east would remain as such and are already separated from the surrounding countryside by the reservoir. **[2.2, 5.15, 6.13]**
- 9.13 With regard to the integrity of the landscape, I observed that there are few hedgerows of any particular merit on the appeal site, other than on its boundaries. As the boundary planting would be most likely to be retained, together with that on the westerly part of the site, I am satisfied that the integrity of the landscape would not be significantly harmed due to the Council's suggested '*loss of an irregular hedged field pattern*'. Views of Burton from the adjacent countryside to the west would not be significantly harmed by the development, as they would be screened due to the existing and proposed planting and they already include views of existing buildings on the site and on nearby roads. **[2.2, 5.15, 6.13]**
- 9.14 I have considered the findings of the Review of the appellants' LVIA carried out for the Council in February 2013, and the Landscape Appraisal carried out for the Council in July 2013, which used GLVIA2. I do not agree that the landscape would fall into the high classification of landscape sensitivity, as its character is assessed as being for enhancement and there are limited views of it from public vantage points or receptors. Also, GLVIA3 indicates that to judge the sensitivity of the visual receptor, it is necessary to judge the susceptibility of the receptor to change and the value attached to the view,

which already includes built development. Therefore, although I accept that the proposal would have a medium magnitude of impact, due to the resulting increase in built development in a rural setting, I find that, at worst, it would have a moderate adverse visual impact. [5.14, 6.11, 6.12, 8.7]

- 9.15 The Council has referred to previous decisions by Inspectors with regard to the suitability of development on the appeal site. These decisions were made a significant time ago and the circumstances have changed since then, particularly with regard to the housing need and current shortfall. Furthermore, the 1987 appeal involves a significantly larger site than the current appeal. Therefore, no direct comparisons can be made. There is no substantive evidence to show that the proposal would lead to development on a much larger site, as suggested by some of the objectors. Furthermore, each case should be determined on its own individual planning merits in the light of prevailing policies and guidance. [6.1, 6.14, 6.15, 8.5, 8.7]
- 9.16 With regard to future housing land allocations, although the appeal site has not been included in the Preferred Option 2d, it has been included in 3 of the 4 options that were considered. Also, other development has recently been approved on sites to the west of Burton at Outwoods Farm (Hallam) and Lawns Farm, indicating that the principle of the extension of the settlement boundaries in this direction has been accepted by the Council. Therefore, taking account of the identified housing supply, the proposal would represent an acceptable development when compared to this other development and is needed to address the significant shortfall in housing. [5.10, 5.11, 6.18, 8.4]
- 9.17 In conclusion on this main issue, the proposal would inevitably have an adverse effect on the character and appearance of the area, as it would introduce new built development into the countryside. As such, it would fail to accord with ESLP Policy BE1. However, given that the quality of the landscape is one that has been identified for enhancement, I am satisfied that the proposal would recognise the intrinsic character and beauty of that part of the countryside, as required in paragraph 17 of the Framework, by the provision of areas of open space and new woodland planting and landscaping to mitigate the effect of the proposed buildings. Furthermore, any adverse impact needs to be balanced against the benefits of the proposed development. [4.1, 4.2, 5.16, 6.16, 6.17]

Benefits

- 9.18 The benefits of the proposal that the appellants have suggested have not been contested by the Council. These include the provision of up to 250 new dwellings, including some 38 affordable homes, on the site that would help to address the shortfall in the Borough. Other benefits would be the additional access that it would provide for emergency vehicles and a bus service and the net gains for biodiversity. The benefits would be both social and economic. [5.17, 5.18, 5.25, 6.21]

Other Matters

- 9.19 The main other concern expressed at the Inquiry was regarding highway safety on Reservoir Road and at its junction with Shobnall Road, where there is a school and nursery. In this respect, SCC as the Highway Authority has not objected, subject to planning conditions. Whilst there has been criticism of the

stance taken by SCC, insufficient substantive evidence has been provided to demonstrate that the findings and conclusions of the Transport Assessment and Highways Appeal Statement by Phil Jones Associates are incorrect. I am therefore satisfied that measures that would be secured through the planning obligations and conditions would adequately address the cumulative residual transport and highway safety impacts to ensure that they would not be so severe as to be sufficient to refuse planning permission. **[5.20, 8.2, 8.8, 8.9, 8.10, 8.11]**

- 9.20 The concerns about drainage and flooding would be addressed by planning conditions, based on the Flood Risk Assessment, as would those about the wildlife, including great crested newts. There are no objections from the EA, Severn Trent or Natural England with respect to any of these issues. **[5.21, 8.12, 8.13]**

Overall Conclusions

- 9.21 For the reasons given above, I find that the adverse impacts of the proposal, including the harm to the character and appearance of the area and non-compliance with ESLP Policy BE1, would not significantly and demonstrably outweigh its benefits, when assessed against the policies in the Framework. Therefore, having regard to all matters raised, I conclude that the appeal should be allowed.

10 Planning Obligations

The numbers in square brackets [] refer back to earlier paragraph numbers which are relevant to my conclusions on the planning obligations.

- 10.1 I have examined the planning obligations in the unilateral undertaking that has been submitted by the appellants to determine whether they meet the tests in CIL Regulation 122. These are that the obligation is necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonable related in scale and kind to the development.
- 10.2 The appellants have accepted the level of contributions required by the Council and SCC, except for the affordable housing. I have based my examination on the evidence submitted by the Council and SCC in support of the planning obligations¹¹³. **[5.22]**
- 10.3 The waste contribution would be used for the provision of recycling containers for use by occupants of the new dwellings, which is supported by the Council's Waste Storage and Collection Guidance for New Developments. The education provisions would be towards additional primary, secondary and sixth form places, which SCC has demonstrated would be needed as a result of the proposed development due to there being insufficient places available in the catchment area. The open space, landscaping and sustainable drainage contributions would be required for the future upkeep and maintenance of those areas that would be provided as part of the development. The contributions towards highway and traffic calming works and the monitoring and review of the Travel Plans would be necessary to address the highway and

¹¹³ Documents INQC6, INQC7, INQC8, INQC9, INQC10, INQC11, INQC12 and ES1

traffic impact of the development and to encourage the use of sustainable transport to reduce the impact of the development on transport and the highway network.

- 10.4 With regard to affordable housing, both parties agree that Appendix 1 to the SPD is the relevant document to determine the level of contributions towards affordable housing. In terms of the definitions of the different sites, the most relevant one to the appeal site is an 'Urban Extension', as it consists of a large greenfield site adjacent to the development boundaries of Burton. Although the Council's Officer has argued that the site should be classified as one of the 'other sites' in Appendix 1, as the development would be viable at a higher affordable housing provision than 15%, there is no guidance or Policy that gives this as a criterion for assessing the affordable housing contributions. As such, I am satisfied that a 15% affordable housing contribution would be the appropriate level for the appeal proposal, particularly as the Council has been unable to provide any policy support, or other valid planning grounds, for its requested 22.5% provision. [5.22, 5.23, 5.24, 6.19, 6.20]
- 10.5 Based on the above, I am satisfied that all the planning obligations in the unilateral undertaking, with the exception of the obligation to provide an *additional* 15% contribution towards affordable housing, would meet the tests in CIL Regulation 122 and paragraph 204 of the Framework. Therefore, should the SofS be minded to grant planning permission, I recommend that the unilateral undertaking¹¹⁴ should take effect but with a planning obligation for 15% on-site affordable housing and no further contributions towards affordable housing.

11 Conditions

- 11.1 Should the SofS be minded to grant planning permission, I recommend that the conditions set out in Appendix E of this report be imposed. They are based on the conditions suggested by the Council should the appeal be allowed that have been discussed and subsequently amended at the Inquiry¹¹⁵.
- 11.2 Conditions regarding reserved matters approval and the standard timescales, together with conditions referring to the plans and Design and Access Statement¹¹⁶ details and any phasing of the development are necessary for the avoidance of doubt and in the interests of proper planning. Conditions regarding materials, landscaping, the retention of trees and landscape management are necessary in the interests of visual amenity. Conditions regarding boundary treatment and ground and floor slab levels are necessary to safeguard visual and residential amenity.
- 11.4 Conditions regarding drainage and the implementation of measures recommended in a Flood Risk Assessment¹¹⁷ are necessary to prevent an increase in the risk of flooding and would help to address the concerns about flooding and drainage expressed by local residents. A condition requiring an

¹¹⁴ Document INQA13

¹¹⁵ Document INQC15

¹¹⁶ Document SD7

¹¹⁷ Document SD5j

open space strategy is in the interests of providing an acceptable level of amenities for future residents of the proposed development.

- 11.5 A condition requiring a Site Waste Management Plan is necessary to facilitate the sustainable management of waste in accordance with Section 11 of the Framework. A condition regarding the identification and treatment of contamination, including gas migration, is necessary for health and safety reasons, given the previous uses of the area and the site. A condition to ensure the implementation of a Construction Management Plan, including the suppression of dust and times of working and deliveries during construction, is necessary in the interests of highway safety and the living conditions of local residents.
- 11.6 Conditions regarding the road construction, including lighting and drainage, skid resistance and gritting facilities on Reservoir Road, and vehicular access, including restrictions on the use of Lower Outwoods Road, are necessary in the interests of the safe and efficient use of the highway network. A condition requiring a Noise Impact Assessment and the implementation of any mitigation measures is necessary to ensure that future residents have acceptable living conditions, based on the findings of the Noise Assessment¹¹⁸. A condition to secure measures for great crested newts is necessary to safeguard protected wildlife species, given the findings of the Ecological Appraisal¹¹⁹.
- 11.7 A condition regarding the provision of accesses, turning and parking areas, including the type of materials to be used, is necessary for highway safety, drainage and residential amenity reasons. A condition requiring a Transport Master Plan is necessary to promote highway safety, reduce vehicular traffic and promote sustainable transport.
- 11.8 I am satisfied that all the above mentioned conditions are reasonable and necessary. I have combined some of the suggested conditions and worded them to reflect the advice in Circular 11/95: *The Use of Conditions in Planning Permissions*.

12 Recommendation

- 12.1 I recommend that the appeal be allowed, and planning permission be granted subject to the conditions set out in Appendix E. If the SofS is minded to agree, I also recommend that the S106 unilateral undertaking take effect as indicated at paragraph 10.5 above.

M J Whitehead

INSPECTOR

¹¹⁸ Document SD5m

¹¹⁹ Document SD5g

APPENDIX A: APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Jack Smyth	Of Counsel, instructed by Sherrie Grant, Solicitor for East Staffordshire Borough Council.
He called	
David McKenna MA	Senior Studio Associate Landscape Architect, IBI
BEng(Hons) CMLI	Taylor Young
Anna Miller MSc	Interim Planning Manager, East Staffordshire
BSc(Hons) DipTP MRTPI	Borough Council
Mike Brown BSc(Hons)	Planner, East Staffordshire Borough Council
Steve Payne DipTP	Housing Strategy Manager, East Staffordshire
	Borough Council

FOR THE APPELLANT:

Jeremy Cahill	QC, instructed by Mrs Lizzie Marjoram of Bird, Wilford & Sale
He called	
Philip Jones MICE CIHT	Principal, Phil Jones Associates
Dai Lewis BSc(Hons)	EDP
PGDipLA CMLI	
Keith Fenwick BA(Hons)	Director, Alliance Planning
MRTPI	

FOR THE RULE 6 PARTY:

Ian Dove	QC, instructed by Janet Hodson, JVH Town Planning
----------	---

OBJECTOR:

William Ganley	Ward Councillor, Shobnall Ward
----------------	--------------------------------

APPENDIX B: DOCUMENTS

Supporting Documents

- SD1 Copy of the original planning application including site ownership certificate and agricultural holdings certificate.
- SD2 Copies of correspondence in response to the application
- SD3 Copy of the decision notice
- SD5d Arboricultural Assessment
- SD5e Archaeology Report
- SD5f Coal Authority Report
- SD5g Ecological Appraisal
- SD5h Energy Statement
- SD5i Environmental Risk Assessment
- SD5j Flood Risk Assessment
- SD5k Landscape And Visual Impact Assessment
- SD5l Legal Correspondence and Registered Title
- SD5m Noise Report
- SD5n Planning Statement
- SD5o Services Report
- SD5p Statement Of Community Involvement
- SD5q Transport Assessment
- SD5r Travel Plan
- SD5s Waste Audit
- SD6 Extract from East Staffordshire Local Plan July 2006
- SD7 Design and Access Statement
- SD8 Supplementary Planning Guidance: Planning for Landscape Change Volumes 1, 2 and 3
- SD9 Relevant correspondence between the appellant and the Council and email correspondence post submission submitting letters of support for the planning application

Evidence submitted prior to the Inquiry opening

East Staffordshire Borough Council

- EC1 Statement of Case on Behalf of East Staffordshire Borough Council
- EC2 Proof of Evidence by David McKenna and Appendices 1 and 2
- EC3 Proof of Evidence by Mike Brown and Appendices 1 to 3
- EC4 Proof of Evidence by Anna Miller and Appendices 1 to 17

Appellants

- EA1 Statement of Case of the Appellants
- EA2 Proof of Evidence of Dai Lewis Volume I: Main Text
- EA3 Proof of Evidence of Dai Lewis Volume II: Landscape Plans/Appendices
- EA4 Proof of Evidence of Dai Lewis Volume III: Summary of Evidence
- EA5 Planning Proof of Evidence of Keith Fenwick and Appendices 1 to 40
- EA6 Summary Planning Proof of Evidence of Keith Fenwick
- EA7 Addendum to Proof of Evidence of Keith Fenwick
- EA8 Draft copy of Section 106 unilateral undertaking

Rule 6 Party: Janet Hodson, JVH Town Planning

- ER1 Proof of Evidence of Janet Hodson

ER2 Appendices 1 to 5 to Proof of Evidence of Janet Hodson

Objectors

- EO1 Letter from Red House Farm Action Group
- EO2 Letter from 70 Forest Road
- EO3 Letter from 14 St Margarets
- EO4 Letter from 18 St Margarets
- EO5 Letter from 10 St Margarets
- EO6 Letter from 8 St Margarets
- EO7 Letter from 16 St Margarets

Other Parties

- ES1 Statement of Case, Evidence and Appendices from Staffordshire County Council as the Local Education Authority

Statement of Common Ground

- SOCG Statement of Common Ground between the Appellants and Local Planning Authority

Documents submitted at the Inquiry

General

- INQ1 Attendance Sheets for days 1 to 4

Appellants

- INQA1 Opening Statement on behalf of the Appellants
- INQA2 Landscape and Visual Impact Assessment (LVIA) – Final, submitted on Day 1
- INQA3 Copy of Landscape Institute Clarification Note relating to GLVIA3, submitted on Day 1
- INQA4 Extracts from GLVIA3, submitted on Day 1
- INQA5 Copy of planning permission for 'Hallam Land', submitted on Day 1
- INQA6 Letter, dated 21 December 2007, regarding the West Midlands Regional Spatial Strategy: Phase Two Revision Draft, submitted on Day 1
- INQA7 Extract from West Midlands Regional Spatial Strategy Panel Report giving Table 1 - Housing Proposals 2006 – 2026, submitted on Day 1
- INQA8 Extracts from West Midlands Regional Spatial Strategy Phase Two Revision Report of the Panel, submitted on Day 1
- INQA9 Extracts from East Staffordshire Local Plan Preferred Option July 2012, submitted on Day 2
- INQA10 Committee Report for development on land north of Guinevere Avenue, Stretton, submitted on Day 3
- INQA11 Committee Report for development on land at Upper Outwoods Farm (Hallam land), submitted on Day 3
- INQA12 Committee Report for development on land south of Lichfield Road (St Modwen land), submitted on Day 3
- INQA13 Signed and dated Section 106 unilateral undertaking, submitted on Day 3
- INQA14 Closing submissions on behalf of the appellants, submitted on Day 4
- INQA15 Full Costs Application by the Appellants, submitted on Day 4

East Staffordshire Borough Council

- INQC1 Opening Submissions on behalf of the Council, submitted on Day 1

- INQC2 Note explaining the Council's affordable housing requirement, submitted on Day 1
- INQC3 GVA Report: East Staffordshire SHMA The Future Housing Market, submitted on Day 2
- INQC4 Statement by East Staffordshire Borough Council, dated 22 August 2013 accepting that it cannot demonstrate a 5 year housing land supply, submitted on Day 2
- INQC5 Suggested conditions with comments from the appellant, submitted on Day 2
- INQC6 Information to support the obligations: Waste and Public Open Space, submitted on Day 2
- INQC7 Copy of evidence of Andrew Marsden, County Commissioner for Access for Learning, Staffordshire County Council, submitted on Day 2
- INQC8 Explanatory Note Relating to the Highway Sum in Schedule 7- Highway Contribution in the Unilateral Undertaking Section 106 Agreement, submitted on Day 2
- INQC9 Signed agreed statement regarding the Obligations and Conditions with attached suggested list of conditions, submitted on Day 3
- INQC10 Copy of East Staffordshire Borough Council Waste Storage and Collection Guidance for New Developments, submitted on Day 3
- INQC11 Copy of East Staffordshire Borough Council Open Space Supplementary Planning Document, submitted on Day 3
- INQC12 Full evidence and appendices of Andrew Marsden, County Commissioner for Access for Learning, Staffordshire County Council, submitted on Day 3
- INQC13 Closing submissions on behalf of the Council, submitted on Day 4
- INQC14 Response to the Costs Application on behalf of the Council, submitted on Day 4
- INQC15 Amended conditions with comments from the appellants, submitted following the close of the Inquiry

Rule 6 Party: Janet Hodson, JVH Town Planning

- INQR1 Local Government Association PAS Document: Ten key principles for owning your housing number- finding your objectively assessed needs, submitted on Day 1
- INQR2 Statement of Grounds for High Court challenge to Barwell Appeal Decision, submitted on Day 1
- INQR3 Copy of Appeal Decision Ref APP/Y3425/A/12/2172968, Stafford, submitted on Day 1
- INQR4 Extract from Friends of Outwoods Web site, submitted on Day 1
- INQR5 Copy of Committee Report for The Dove Way development, submitted on Day 2
- INQR6 Copy of planning permission for development at the JCB site, submitted on Day 2

Objector

- INQO1 Statement of Councillor W Ganley, referred to at the Inquiry, submitted on Day 3

APPENDIX C: PLANS

Supporting Plans

SD4 Site Plan Drawing Number INCLA_131.106: Location Plan
SD5a Drawing Number INCLA_N131.101: Illustrative Masterplan
SD5b Drawing Number INCLA_N131.102: Land Ownership Plan
SD5c Drawing Number INCLA_N131.104: Parameter Plan

Plans Submitted at the Inquiry

INQA Plan of Burton-upon-Trent: Applications for Housing, submitted by the
 appellants on Day 1
INQB Plan of suggested walking route and viewpoints, submitted by the
 appellants on Day 1
INQC Plan of 1987 Appeal site and current appeal site, submitted by the
 appellants on Day 1
INQD Amended plan of suggested walking route and viewpoints, submitted by the
 appellants on Day 3

APPENDIX D: ABBREVIATIONS

AHVS	Affordable Housing Viability Study
AMR	Annual Monitoring Report
AONB	Area of Outstanding Natural Beauty
CIL	Community Infrastructure Levy (Regulations)
(The) Council	East Staffordshire Borough Council
EA	Environment Agency
ESLP	East Staffordshire Local Plan 2006
(The) Framework	(The) National Planning Policy Framework
GLVIA2	Guidelines for Landscape and Visual Impact Assessment 2nd Edition
GLVIA3	Guidance for Landscape and Visual Impact Assessment 3rd Edition
LVIA	Landscape and Visual Impact Assessment
NHS	National Health Service
PPS12	Planning Policy Statement 12: Local Spatial Planning
RHFAG	Red House Farm Action Group
RSS	Regional Spatial Strategy
SCC	Staffordshire County Council
SHLAA	Strategic Housing Land Availability Assessment
SOCG	Statement of Common Ground
SofS	Secretary of State
SPD	Supplementary Planning Document
SPG	Supplementary Planning Guidance
SSSP	Staffordshire and Stoke-on-Trent Structure Plan 1996-2011
SUDS	Sustainable Urban Drainage System
S106	Section 106 of the Town and Country Planning Act 1990

APPENDIX E: RECOMMENDED CONDITIONS

- 1) Details of the access, appearance, landscaping, layout, and scale, (hereinafter called 'the reserved matters') shall be submitted to and approved in writing by the local planning authority before any development begins and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than three years from the date of this permission.
- 3) The development hereby permitted shall begin not later than two years from the date of approval of the last of the reserved matters to be approved.
- 4) The development hereby permitted shall be carried out in accordance with the principles of the Design and Access Statement and the following approved plans: INCLA_N131.101 1:1000 Illustrative Master Plan, INCLA_N131.102 1:2000 Land Ownership Plan and INCLA_N131.106 1:2500 Location Plan, subject to compliance with other conditions of this permission.
- 5) No development shall take place until details of any phasing of the development hereby permitted have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.
- 6) No phase of the development hereby permitted shall take place until samples and details of all external materials and finishes for that phase (including those for any walls, roofs, windows, doors, parapets and chimneys) have been submitted to and approved in writing by the local planning authority at reserved matters stage. The development shall be carried in accordance with the approved materials and details.
- 7) No phase of the development hereby permitted shall take place until details of boundary treatments, including materials, finishes, heights and sections (where there are changes in topography) for that phase have been submitted to and approved in writing by the local planning authority. The boundary treatment shall be provided in accordance with the approved details prior to the first occupation/use of the part of the development to which it relates.
- 8) No phase of the development hereby permitted shall take place until a scheme for the disposal of foul and surface waters and an assessment of the hydrological and hydrogeological impacts for that phase of development has been submitted to and approved in writing by the local planning authority. The scheme shall include details of how surface water run-off shall not exceed run-off from an undeveloped site, Sustainable Urban Drainage systems for storm water management, compensatory flood storage on site, and details of how the scheme shall be managed and maintained after completion. The development shall be carried out in accordance with the approved details prior to the first occupation of any of the dwellings hereby permitted.
- 9) No phase of the development hereby permitted shall take place until details of an open space strategy in accordance with any approved phasing scheme has been submitted to and approved in writing by the local planning authority. The open space strategy shall include details of equipment for children's play areas; woodland planting and a trail to the western boundary; a short term maintenance management plan for all areas of open space; all materials to be used in hard landscaping and all fencing and walling. The open space strategy

shall be implemented in full in accordance with the approved phasing scheme and shall thereafter not be used for any purpose other than as stated.

- 10) No phase of the development hereby permitted shall take place until a 'Site Waste Management Plan' for that phase has been submitted to and approved in writing by the local planning authority. The Site Waste Management Plan shall include an implementation programme and shall be implemented as approved.
- 11) No phase of the development hereby permitted shall take place and no site works related to that phase shall be carried out until details of all slab levels and any regrading of the site have been submitted to and approved in writing by the local planning authority at reserved matters stage. The development shall be carried out in accordance with the approved details.
- 12) No phase of the development hereby permitted shall take place until a contaminated land assessment, to include the investigation of gas migration, and associated remedial strategy for that phase together with an implementation programme have been submitted to and approved in writing by the local planning authority. The contaminated land assessment shall include a desk study that shall detail the history of the site uses and a site investigation strategy based on the relevant information discovered by the desk study. The strategy shall be approved in writing by the local planning authority prior to investigations commencing on site. Any site investigation, including relevant soil, soil gas, surface and groundwater sampling, shall be carried out by a suitably qualified and accredited consultant/contractor in accordance with a Quality Assured sampling and analysis methodology. A site investigation report detailing all investigative works and sampling on site, together with the results of analysis, risk assessment to any receptors and a remediation strategy shall be submitted to and approved in writing by the local planning authority prior to any remediation works commencing on the site. Remediation works shall be carried out in accordance with the approved strategy and under a quality assurance scheme to demonstrate compliance with the approved methodology and best practice guidance. If during the works contamination is encountered which has not previously been identified then the additional contamination shall be fully assessed and a remediation scheme and implementation programme shall be submitted to and approved in writing by the local planning authority. Remediation works shall thereafter be carried out in accordance with the approved scheme. Upon completion of the works, a closure report shall be submitted to and approved in writing by the local planning authority. The closure report shall include details of the remediation works and quality assurance certificates to show that the works have been carried out in full in accordance with the approved methodology; details of any post-remedial sampling and analysis to show the site has reached the required clean-up criteria; and details of what waste materials have been removed from the site.
- 13) No phase of the development hereby permitted shall take place until a Landscape Management Plan, indicating a scheme for the long-term management of open space, green infrastructure and planting within the public realm and details of biodiversity management has been submitted to and approved in writing by the local planning authority. The open space, green infrastructure and planting shall thereafter be managed in accordance with the approved Landscape Management Plan.

- 14) No phase of the development hereby permitted shall take place until a scheme for the protection of trees and hedges to be retained in the details of landscaping approved at reserved matters stage has been submitted to and approved in writing by the local planning authority. The scheme shall be carried out as approved.
- 15) No phase of the development hereby permitted shall take place, including any works of demolition, until a Construction Method Statement for that phase of the development has been submitted to and approved in writing by the local planning authority. The approved Statement shall be adhered to throughout the construction period for that phase of the development. The Statement shall provide for the control of construction noise; the parking of vehicles of site operatives and visitors; loading and unloading of plant and materials; wheel washing facilities; measures to control the emission of dust and dirt during construction; the times of working and deliveries during construction and an implementation programme.
- 16) No phase of the development hereby permitted shall take place until details of all road construction, street lighting and drainage, including longitudinal sections and an implementation programme, for that phase have been submitted to and approved in writing by the local planning authority. The development shall be carried in accordance with the approved details.
- 17) No phase of the development hereby permitted shall take place until a Noise Impact Assessment, together with details of any noise mitigation measures and an implementation programme, for that phase has been submitted to and approved in writing by the local planning authority. The mitigation measures shall be implemented in accordance with the approved details and retained for the life of the development.
- 18) No phase of the development hereby permitted shall take place until a detailed mitigation and monitoring strategy for great crested newts within the site has been submitted to and approved in writing by the local planning authority. The mitigation measures shall be implemented in accordance with the approved strategy and retained for the life of the development.
- 19) No phase of the development hereby permitted shall take place until details of a scheme to provide 3 grit bins on Reservoir Road and improve the skid resistance to a minimum PSV of 68 along the section of Reservoir Road where the gradient exceeds 1 in 12, as indicated on PJA Drawing No 844-03, have been submitted to and approved in writing by the local planning authority. The scheme shall be implemented in accordance with the approved details before the development is first occupied.
- 20) No phase of the development hereby permitted shall take place until details of a scheme to provide vehicular access to the development have been submitted to and approved in writing by the local planning authority at reserved matters stage. The scheme shall prevent vehicular access to the development from Lower Outwoods Road apart from by public service and emergency vehicles. The scheme shall be implemented in accordance with the approved details before the development is first occupied and retained for the life of the development.
- 21) Prior to the first occupation of the dwelling to which it relates, accesses, parking and turning areas for that dwelling shall be provided in a bound material in accordance with details that shall first have been submitted to and

approved in writing by the local planning authority at reserved matters stage. The bound material shall have a high degree of porosity to reduce the amount of surface run-off. The accesses, parking and turning areas shall thereafter be made available at all times for these purposes.

- 22) The development hereby permitted shall only be carried out in accordance with the recommendations of the Flood Risk Assessment by M-EC Report Ref: 20200/PH/09-12/3251, dated September 2012, or any subsequent Flood Risk Assessment that has first been submitted to and approved in writing by the local planning authority.
- 23) All planting, seeding or turfing comprised in the details of landscaping approved at reserved matters stage shall be carried out in accordance with a programme of works that shall have been submitted to and approved in writing by the local planning authority. Any trees or plants which within a period of 5 years from the completion of the development die, are removed, or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species unless the local planning authority gives written consent to any variation.
- 24) The reserved matters shall include a Transport Master Plan that shall be submitted to and approved in writing by the local planning authority. The Transport Master Plan shall include details of a movement framework; connections to the surrounding areas for all modes of transport; public transport route strategy, including a timetable for implementation and the infrastructure; street layout, including measures to restrain the speed of vehicles to 20mph; and a parking strategy, including the provision of secure cycle parking facilities for each dwelling. Development shall be carried out in accordance with the approved Transport Master Plan.



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.