



Appeal Decision

Inquiry Held on 19-21 March 2019

Site visit made on 19 March 2019

by Zoe Raygen Dip URP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3rd May 2019

Appeal Ref: APP/C3430/W/18/3213147

Land off Stafford Road, Penkridge

- 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 Bloor Homes Ltd against the decision of South Staffordshire Council.
 - The application Ref 17/01022/OUT, dated 10 November 2017, was refused by notice dated 19 July 2018.
 - The development proposed is up to 200 dwellings (Use Class C3) together with an access roundabout on Stafford Road, public open space, landscaping and associated infrastructure.
-

Decision

1. The appeal is allowed and outline planning permission is granted for up to 200 dwellings (Use Class C3) together with an access roundabout on Stafford Road, public open space, landscaping and associated infrastructure at land off Stafford Road, Penkridge in accordance with the terms of the application, Ref 17/01022/OUT, dated 10 November 2017 subject to the conditions set out in the schedule to this decision notice.

Preliminary matters

2. The application was submitted in outline form, with only access to be considered at this stage. Matters relating to appearance, landscaping, layout and scale were reserved for future consideration. However, the illustrative Masterplan broadly identifies structural landscaping, open/play space, potential open water storage areas, retention of the public right of way (PROW) across the site, and primary and secondary vehicular routes.
3. At the inquiry two agreements under S106 of the Town and Country Planning Act 1990 were submitted. One is a bilateral agreement and contains obligations in respect of the provision of open space and a Sustainable Drainage Scheme (SuDS), a travel plan and the delivery of 40% of the dwellings as affordable houses. In addition, financial contributions towards education facilities, the maintenance of open space and SuDS have been included on a formulaic basis, together with a contribution of £6,430 towards the cost of monitoring the travel plan, (hereafter referred to as the S106 agreement).

4. The second agreement is in the form of a unilateral undertaking (the UU) to secure a financial contribution, on a formulaic basis, to be used towards the implementation of strategic access management and monitoring measures for the Cannock Chase Special Area of Conservation (SAC). In my view, both agreements are material considerations and are considered in more detail later in this decision.
5. A Statement of Common Ground (SOCG) dated 22 January 2019, together with a supplementary SOCG (SSOCG) dated 11 February 2019, dealing solely with housing land supply matters, were submitted prior to the inquiry. Within those documents the parties agree that, for the purposes of this appeal, the Council is not able to demonstrate a five year housing land supply and therefore paragraph 11(dii) of the National Planning Policy Framework (the Framework) is engaged on that basis, the content of which is also a requirement of National Policy 1 of the Local Plan for South Staffordshire Core Strategy Development Plan Document 2012 (CS). Furthermore, although the parties differ on the exact amount of the shortfall, both agree that it is significant.
6. The Campaign to Protect Rural England (CPRE) and local residents highlight that when the Site Allocations Document (SAD) was adopted in September 2018, the Inspector identified that the Council was able to demonstrate a healthy five year housing land supply position, even when assessed against an updated housing need figure contained within the Black Country and South Staffordshire Strategic Housing Market Assessment 2017 (SHMA). Therefore, they do not agree with the main parties' position in the SSOCG.
7. Nevertheless, it is agreed between the parties within the SOCG that housing supply and allocation policies within the CS and the SAD do not address the identified housing need for the District, as they are based on the now revoked West Midlands Regional Spatial Strategy (WMRSS) Phase 2 Panel Report. It is agreed that the figures in the WMRSS do not represent the most up to date Objectively Assessed Need (OAN). Furthermore, the Framework requires a standard method for calculating housing need as contained within the Planning Policy Guidance where strategic housing policies are more than five years old and have not been reviewed, as is the case here. Moreover, the Framework has introduced new tests which must be met if sites with outline planning permission or housing allocations are to be included in the five year supply of deliverable sites.
8. Using revised figures regarding OAN, as required by the Framework, and the new definition of deliverable sites, the Council's own assessment in October 2018, indicates it is unable to demonstrate a five year housing land supply. I have seen no substantive evidence to dispute that finding. Therefore, I am satisfied to adopt the position agreed in the SSOCG for the purposes of this decision.

Main Issues

9. The main issues are:
 - The weight to be given to the conflict with relevant development plan policies
 - The effect of the proposal on the character and appearance of the area
 - The effect of the proposal on the best and most versatile agricultural land

Reasons

Relevant development plan policies

10. Section 38(6) of the Planning and Compulsory Purchase Act 2004 provides that development proposals should be determined in accordance with the development plan unless material considerations indicate otherwise.
11. The adopted development plan for the area in which the appeal site is located includes the CS and the SAD. At the time of the adoption of the SAD it was found to accord with the CS which predates the Framework. Paragraph 213 of the Framework advises that existing policies should not be considered out of date simply because they were adopted prior to the revised Framework. Due weight should be given to them, according to their degree of consistency with the Framework.
12. Policy SAD 1 of the SAD highlights the need to undertake an early review of the Local Plan, and in starting that procedure the Council undertook an Issues and Options consultation at the end of 2018. Therefore, given the Council is at the very early stages of the process, I give it very limited weight in my decision.
13. It is agreed within the SOCG that the proposal accords with policies within the development plan except for Policy OC1 of the CS, and conflict with this Policy is alleged within the Council's one reason for refusal. The Council agreed at the Inquiry that it was, therefore, a Policy most important for determining the application.
14. Policy OC1 concerns development in the open countryside beyond the West Midlands Green Belt. The Policy seeks to protect the open countryside for its own sake but, through a series of criteria, outlines specific types of development which may be acceptable.
15. There is agreement between the parties that Policy OC1 is not fully consistent with the Framework. For the Council, the inconsistency arises from the apparent restrictive nature of Policy OC1 in protecting the totality of the countryside for its own sake, rather than recognising, different levels of protection for landscapes, and the countryside's intrinsic character and beauty in line with paragraph 170 a and b of the Framework, as recognised within the Courts¹.
16. The appellant further asserts that as the development plan is based on an out of date OAN and the Council is unable to demonstrate a five year housing land supply, then the settlement boundaries which determine site allocation and the extent of the open countryside to be protected are also out of date. Moreover, as the Council is unable to demonstrate a five year housing land supply then, in accordance with footnote 7 of paragraph 11 of the Framework, the Policy must be out of date.
17. The fact that Policy OC1 allows some development, albeit limited, displays that the Policy does not impose a blanket ban on new development within the open countryside. The Framework seeks to protect and enhance valued landscapes and distinguish between the hierarchy of international, national and locally designated sites, allocating land with the least environmental or amenity value where consistent with other policies in the Framework. While Policy OC1 does

¹ *Telford and Wrekin v Secretary of State CLG and Gladman* [2016] EWHC 3073 (Admin)

- not seek to differentiate between different landscapes within the countryside, the Framework also recognises the intrinsic character and beauty of the countryside. Therefore, the underlying objective of the Policy has some consistency with the Framework. Consequently, any conflict with it still attracts some weight in this respect.
18. Although the Council stated that settlement boundaries are not defined by housing requirements, paragraph 6.14 of the CS states that detailed boundaries of the Green Belt and villages will be reviewed as necessary in the SAD. Paragraph 10.3 of the SAD refers to changing settlement boundaries to reflect planning permissions that have been approved by the Council on Safeguarded Land in the 1996 Local Plan. Furthermore, paragraph 10.4 states that "Given the commitment in the SAD to identify land to meet development and growth needs, the following areas will be removed from Green Belt or Open Countryside, or alterations made to settlement boundaries". Policy SAD6 of the SAD then goes on to set out details of the locations of where the Green Belt, Open Countryside, or Development Boundaries will be amended to accommodate new development. It seems to me therefore, that settlement boundaries exist not only to protect the open countryside, but also to assist with housing allocations.
19. It is agreed between the parties within the SOCG that housing supply and allocation policies within the CS and the SAD are out of date for reasons I have already covered. Therefore, as the settlement boundaries reflect an out of date housing requirement, and the Council is unable to demonstrate a five year housing land supply, then the weight to be given to protecting the countryside outside those settlement boundaries should be reduced, a concept supported in the Supreme Court².
20. The Council suggested that Policy OC1 is not an environmental policy such as those referred to in the judgement, and also pointed out that the judgement relates to the previous 2012 Framework. I appreciate the importance of Policy OC1 to the Council, it lies at the heart of its development plan, seeking to protect the limited amount of countryside that is not afforded Green Belt designation. However, in my view, given its status as a countryside protection policy then it can reasonably be viewed as an environmental policy. Furthermore, although the judgement predates the latest iteration of the Framework, the objective of the Framework to boost significantly the supply of housing, and the general principle to which the judgement relates remain.
21. Therefore, I accept that Policy OC1 has some consistency with the Framework's requirement to recognise the intrinsic beauty and character of the countryside. However, there is inconsistency created with the Policy requirement to protect the countryside for its own sake. This, together with the role of settlement boundaries I have identified in housing allocations, given the reliance of the Plan on an outdated housing requirement, together with the Council's lack of five year housing land supply, which it is agreed is significant, means I give the agreed conflict with Policy OC1 limited weight.
22. The parties disagree as to whether Policy OC1 is out of date by virtue of footnote 7 to paragraph 11 of the Framework. Whatever my finding on this

² *Suffolk Coastal DC v Hopkins Homes Ltd & SSCLG and Richborough Estates Partnership LLP & SSCLG v Cheshire East Borough Council* [2017] UKSC 37 (Suffolk Coastal judgement)

matter, as pointed out by the Council the Suffolk Coastal judgement and others³ make it clear that even if a Policy is out of date, weight can still be given to conflict with that Policy by the decision maker. Irrespective of my finding on this matter therefore, I have already determined that the agreed conflict with Policy OC1 should attract limited weight.

23. As it has already been established that paragraph 11(dii) of the Framework is engaged due to the Council being unable to demonstrate a five year housing land supply, my findings as to whether Policy OC1 is out of date are also not critical in this respect.

Character and appearance

24. The appeal site is subject to a number of different Landscape Character Assessments from a National through to Local Level⁴. At the Inquiry it was agreed, at a round table discussion, that there are some consistent themes between the classifications which are characteristic of the local and wider area within which the appeal site is located. These are, gently undulating, large scale open rolling landscape, well defined irregular field boundaries with mature hedgerows and some trees, dispersed settlement pattern, low lying built form, with the exception of churches, and mixed arable and pastoral farmland.
25. The appeal site itself displays many of these characteristics. Located on the edge of Penkridge it consists of a number of small fields of rough grassland, mainly enclosed by mature hedgerows and trees. It therefore contributes positively to the appearance of the open countryside and the rural approach and setting to Penkridge. To the north, east and west the appeal site is surrounded by open countryside, albeit the railway line and A449 are immediately adjacent to the west and east boundaries respectively.
26. To the south about half of the site immediately adjoins the side and rear gardens of mainly two storey housing. Between the existing housing and the remainder of the site is a separate parcel of land which, the Inquiry was informed, is the subject of two current planning applications for housing.
27. A Public Right of Way (PROW) dissects the site from east to west and continues to the west of the site via a bridge over the railway line. There are other PROW and a bridleway to the north of the appeal site. To the east is the elevated Cannock Chase Area of Outstanding Natural Beauty (AONB).
28. There is no suggestion from either party that this is a valued landscape as considered under paragraph 170a of the Framework. However, the Framework's recognition of the intrinsic character and beauty of the countryside, in my view, recognises that impacts on "ordinary" countryside may cross the threshold of unacceptability.
29. The appellant's Landscape and Visual Impact Assessment 2017 (LVIA) states that the overall sensitivity of the landscape character of the area to the type of change proposed on the site is low-medium. Whereas the Council consider this to be an understated view, and that the appeal site has characteristics which make it unusual and sensitive to development. I have also taken into account

³ Gladman DC v Daventry DC and SSCLG [2016] EWCA Civ 1146

⁴ Natural England's National Character Area (NCA):61 'Shropshire, Cheshire and Staffordshire Plain' & 67 'Cannock Chase and Cank Wood',
Planning for Landscape Change: Supplementary Planning Guidance 2001 Regional Character Areas: -'Staffordshire Plain' & 'Cannock Chase and Cank Wood' & 'Ancient Clay Farmland' Landscape Character type

- the Council's Landscape Sensitivity Study 2017 (LSS) update which was prepared to assist the Council in making decisions on which sites should come forward into the SAD. The appeal site is within an area considered as PK1 for housing, and the report concludes that the site has a high to medium landscape sensitivity to housing development.
30. The scheme would result in the construction of a large housing development of up to 200 dwellings that would extend Penkridge to the north into the open countryside. This would cause a significant change to the appearance of the appeal site through the change of use and would result in the direct loss of open countryside that makes a pleasant contribution to the northern part of Penkridge, to its detriment. The open fields would be replaced with a substantial level of built development and associated infrastructure.
 31. However, the appeal site is on the edge of the settlement and would be generally viewed against a backdrop of existing housing. While it does comprise attractive, gently undulating farmland with a number of mature hedgerows and trees, I observed that this is not to a degree that is particularly unusual within the surrounding landscape. Furthermore, the masterplan largely preserves the existing field pattern through the retention of much of the hedgerow. The hedgerow to be removed would be about 297 metres in length mainly along the A449, to facilitate the proposed access. However, this would be replaced with new hedgerow of about 333.5 metres in length along the new boundary to the revised road layout. Therefore, while the LSS states that a small development could be accommodated within the southernmost part of the study area by using the existing hedge line as the new northern development boundary, for the reasons above, I am not persuaded that there would be a significant difference to extending that development to the remainder of the appeal site.
 32. I saw that the current housing at the edge of development of Penkridge, when viewed from the north is clearly visible. Although views are tempered by planting in gardens and filtered by existing hedgerows and trees on the appeal site, the built form is apparent from the public footpaths and roads approaching Penkridge.
 33. The masterplan allows for over 40% of the site to be open space. Development to the new northern boundary would be set back behind the existing hedgerow. The east and west boundaries would be reinforced with new planting, which would soften the appearance of the estate within the countryside creating a similar edge to the built development as currently exists.
 34. As a result, I would concur with the findings of the LVIA, that during construction and at the completion stage it is likely that there would be a moderate adverse effect on the landscape character. However, the replacement of the hedgerow on the eastern boundary and other planting would, over time, ensure that the effect would reduce to slight adverse. Furthermore, I am mindful that the South Staffordshire Design Guide 2018 states that, when considering developments that abut the countryside in the area of the Staffordshire Plan Character area, where Penkridge is located, particular attention should be paid to the design of the development boundaries. Planting such as tree groups, grass margins or hedges is likely to be appropriate.

35. The LVIA states that the appeal site does not have wide visibility within the surrounding area, and this was apparent at my site visit. The retention of the historic field patterns and hedgerows, together with the siting of the appeal site close to existing development, would ensure that the effect on the wider landscape character would be minimal.
36. Turning to visual impacts of the proposal. The highest level of change is likely to be experienced by the users of the PROW traversing the site. While walking the PROW I noted that although it is apparent that you are in the open countryside, it is equally evident that the settlement of Penkrigde is close by. I accept that there would be adverse visual impacts for users of the PROW as views of the open countryside would largely be replaced with views of housing. Furthermore, the elevated nature of the footbridge means that the panoramic view of the surrounding countryside would be interrupted by the proposed houses. However, the footpath would be set within a fairly substantial area of open space and, as I observed when walking the path, users would already be aware of the proximity of Penkrigde. Furthermore, the length of path that would be affected is not significant, and on both sides would emerge into open countryside.
37. I noticed when walking the footpath from the west that it was not until very close to the railway bridge, that marks the footpath entrance to the appeal site, would houses become readily apparent. The roofs of existing houses on the edge of Penkrigde were clearly visible over existing planting, and it is likely that this would be replicated by the new development, which would be set some distance in from the railway line. As a result, it is likely that impacts would be only very localised. Furthermore, the proposed planting mitigation and level of open space would, over time, limit the adverse impacts for walkers.
38. I also noted that when walking west to east along the PROW views towards the AONB are apparent. These are particularly visible when walking through the hedge just over half way across the appeal site when the panoramic view opens out towards the AONB with little interruption. Nevertheless, the extent of open space could be laid out so that views towards the AONB are retained. In any case, the distance between the PROW and the AONB, and the extent of elevation of the AONB, means that there would only be minimal loss of the entirety of the view for a very short time on the PROW. Therefore, any loss of view would be localised and not materially harmful.
39. Users of PROW 32 and 33 to the north of the appeal site currently have a view towards Penkrigde, which is dominated by open countryside with limited views of roof tops, and the church within the settlement. I am satisfied that, given the distance between the PROW and the appeal site, together with the proposed mitigation, this view would not be materially altered.
40. I saw when driving along the A449 in both directions that the appeal site is mainly located behind a substantial hedge. There are some gaps in the hedge, but these are minimal. The removal of the hedge, together with the construction of a new roundabout access, and the realignment of the road, would therefore create a high degree of change. The removal of the hedgerow would, in my opinion, have a highly adverse impact, given the considerable contribution they make to the character and appearance of the area.
41. However, the proposal to plant a considerable distance of hedgerow, in excess of that to be removed, as outlined in the Hedgerow Mitigation Plan 236_002A

would, in the long term, mean that the adverse impact would be reduced. Furthermore, housing would be set back within the site and the views of the housing along the road would retain a green approach into Penkridge.

42. I saw that views of the appeal site from Levedale Road, to the west, are limited. It is likely that glimpses of the proposed dwellings would be restricted to the roofs above the proposed landscaping, similar to those of the existing housing on the western edge of Penkridge. Accordingly, the proposal would not be materially visually harmful.
43. Therefore, there would be adverse impacts but, taking into account the proposed mitigation, these are largely contained, and limited to the immediate local area of the appeal site. The Council suggested that the mitigation consists of planting trees around a housing estate, in what is effectively a large open rolling landscape. However, this stance does not take into account the appeal site's location adjacent to existing housing as a backdrop to the development. Furthermore, advantage would be made of the generous existing planting on the site, together with the retention of the field pattern, would limit the effect on local character and appearance. Moreover, I have seen no substantive evidence to suggest that the principles of the landscape mitigation would not achieve its aim of filtering views of the development. Much will depend on the layout of the dwellings and their appearance, together with the specific detail of the landscaping scheme, all of which would be reserved for future consideration by the Council.
44. While I appreciate that the masterplan is illustrative only, it provides one way of approaching the development that I have found would cause limited harm to the character and appearance of the area. The actual layout would be for the Council to approve under any reserved matters application. However, it was agreed at the Inquiry, that a condition requiring broad accordance with the principles of the masterplan, to which I have referred to in my assessment, would be necessary.
45. The Council's reason for refusal also refers to the proposal's alleged conflict with Strategic Objective 2 of the CS. This seeks to retain and reinforce the current pattern of villages across South Staffordshire and, in particular, protect and retain the important strategic gaps between existing settlements in order to prevent the coalescence of settlements. The Council referenced the importance of maintaining the perception of a gap between Stafford and Penkridge. It considers that the gap has already been diluted given that the southern reaches of Stafford meet with development near to Junction 13 of the M6. Furthermore, there is no real separation between Junction 13 of the M6 and Dunstan. Moreover, the area between Dunstan and Penkridge is diluted with areas of development such as Dunstan Business Park, and Lower Drayton Farm.
46. However, having driven between Stafford and the appeal site, and walked some distance along the A449, it is readily apparent that there is a substantial area of open countryside between Dunstan and Penkridge. While there may be some isolated development within that gap, it does not materially dilute the dominance of the open countryside. Consequently, I am satisfied that the appeal scheme would not protrude significantly into that gap to cause coalescence either actual or perceived. In addition, due to the rolling nature of the landscape in this area, there is very limited visibility between the main

areas of built form along this section of the A449. Moreover, there is no specific development plan policy seeking to protect identified important strategic gaps.

47. For the reasons above, I conclude that the proposal would cause some harm to the character and appearance of the area. It would therefore be contrary to the requirements of Policy OC1 of the CS which seeks to protect the countryside for its own sake, particularly for, amongst other things, its landscapes.
48. Notwithstanding the above, the identified harm must be considered in the context of my findings that any harm would be localised, and mostly reduced by the proposed mitigation measures. Therefore, I afford the identified limited harm to the character and appearance of the area, along with the associated development plan conflict, a limited level of weight against the scheme in the balancing exercise.
49. I heard evidence from the appellant that as it has been agreed in the SOCG that the only Policy conflict relates to Policy OC1 and as there is only limited harm deriving from that conflict then in effect the proposal is in accordance with the development plan as a whole and planning permission should be granted. However, paragraph 11 (c) of the Framework states that decisions should apply a presumption in favour of sustainable development. For decision taking this means approving development proposals that accord with an up-to-date development plan without delay. Given that the Council is unable to demonstrate a five year housing land supply and that both the CS and SAD are not based on an up to date OAN then at least the housing supply policies are considered to be not up to date. In addition, even though I have attributed it limited weight, I have found clear conflict with the development plan. Therefore, even if I were to accept the appellant's argument in this respect, I am not persuaded that paragraph 11 (c) applies in this instance.

Best and most versatile agricultural land (BMV)

50. Although not a specific reason for refusal, Policy OC1 refers to protecting the countryside for its own sake particularly for, amongst other things, its agriculture. The Framework identifies the best and most versatile agricultural land as land in Grades 1, 2 and 3a of the Agricultural Land Classification.
51. There is a swathe of land across the part of the site which would be developed that is Grade 2 agricultural land⁵. It amounts to about 4.2 ha of Grade 2 land, with parts of the remainder of the appeal site forming about 4.1 ha of Grade 3a land. The Council considers that the loss of the Grade 2 agricultural land, in particular, would have a significant detrimental impact which should be weighed in the planning balance.
52. The Council's evidence demonstrates that Grade 2 land is in shorter supply than Grade 3a land in the surrounding area⁶. However, this evidence relies on information, which the Council accepts itself in its evidence, represents a generalised pattern of land classification grades. As the Council's Committee Report for the planning application confirms, the Agricultural Land Classification for the appeal site is Grade 3, and it is only with more detailed assessment that the specific grade of the soil is to be found.

⁵ Appendix 1 Rebuttal Proof of Evidence M J Reeve

⁶ Appendix 11 Mr Lofton Proof of Evidence

53. The Framework makes little distinction between the grades within the overall BMV classification, other than at Footnote 53 where it states that “where significant development of agricultural land is demonstrated to be necessary, areas of poorer quality should be preferred to those of higher quality”.
54. I appreciate that there is no definition of significant, in this context, within the Framework. However, given the amount of land classified as Grade 2 on the appeal site then the harm caused by its loss would be limited. This is reinforced by the likelihood that a significant proportion would be reused within the landscaped areas, open space and gardens within the development, resulting in the soil profile retaining the same functions as prior to development.
55. While therefore, there is some conflict with Policy OC1 and the Framework with regard to the loss of BMV, there would be limited resultant harm.

Other matters

56. I was advised at the Inquiry that access to the field to the west of the appeal site was currently taken through the appeal site, and there were concerns as to how continued access would be enabled. This though is a matter between individual land owners, and not for me to consider within the confines of this appeal.
57. The Statement of Community Involvement 2017 states that 134 respondents (57.7%) agreed there is a need to develop new homes in Stafford. It is not clear if the reference to Stafford has been made in error, given that the graphs at 4.3 of the SCI state that 134 respondents agree that there is a need for new homes in the area, and are interested in a new home on the appeal site. However, whether the reference made should be to Stafford or Penkridge, I have made my decision based on the planning merits of the case.
58. The appeal is accompanied by an Ecological Assessment 2017 (EA) that concludes that the proposed development is unlikely to be harmful to protected species. Some trees are identified as having developed features suitable to support roosting bats. Currently, the trees are not proposed to be removed, but if in the future this changes a condition could be imposed to ensure a further bat survey is undertaken prior to their removal. Furthermore, a condition would require a further assessment of protected species given the length of time that has passed since the original EA was undertaken. I am satisfied therefore, that the ecology of the site would not be materially harmed, subject to the imposition of suitably worded conditions.
59. The issue of hedgehogs, which local residents believe to be on the site, was raised at the Inquiry. Although not a protected species, I am satisfied that the wording of a condition relating to a construction management plan would ensure that due regard is had to their presence, prior to any clearance work being undertaken.
60. The appeal site is within 5.5 km of the SAC. The Council’s document Cannock Chase SAC Guidance to Mitigate the Impact of New Residential Development 2016 (GMINRD) refers to an evidence base which demonstrates that recreation associated with new housing development within 15km of the SAC, would have a significant adverse effect on its integrity, unless mitigation and avoidance

measures are put in place, with a significantly higher proportion of visitors coming from within 8km of the SAC.

61. The proposal for up to 200 houses would result in a significant number of new residents close to the SAC. Therefore, based on the evidence before me it is likely that, in the absence of mitigation measures, the proposal would have a significant adverse effect on the integrity of the SAC. Accordingly, therefore, I have carried out an Appropriate Assessment, including consultation with Natural England.
62. The Council has concluded in its planning application report regarding the appeal proposal that, in accordance with the GMINRD, the mitigation provided in the form of funding for an agreed set of mitigation projects, secured by the UU, is sufficient to avoid adverse effects on the integrity of Cannock Chase SAC. My consultation with Natural England confirms that it agrees with this approach. The GMINRD includes a number of Strategic Access Management Measures (SAMM) which have been prepared by Natural England in association with the Cannock Chase SAC Partnership which will prevent harm to the SAC from new housing development and have been costed and agreed. I have seen no substantive evidence to dispute the contents of the GMINRD and therefore see no reason to disagree with the findings of the Council and NE. Therefore, I conclude that, with the UU in place, the proposal would not adversely affect the integrity of the SAC.
63. From the evidence before me, I am satisfied that the mitigation measures for which the contribution is sought within the UU would amount to the funding of maintenance, management or operation of infrastructure. Therefore, the contribution would not be caught by the pooling restriction within the Community Infrastructure Levy Regulations 2010 (CIL). Consequently, the proposal would be in accordance with the requirements of Policy EQ2 of the CS which states that development will only be permitted where it can be demonstrated that it will not be likely to lead directly or indirectly to an adverse effect upon the integrity of the Cannock Chase Special Area of Conservation.
64. The appellant's Flood Risk Assessment (FRA) concludes that the proposed development is at low risk of flooding from tidal, fluvial, overland flow, drainage flooding, groundwater flooding and flooding from artificial sources. Under normal circumstances the site is at low risk of flooding as having a less than 1 in 1000 annual probability of river or sea flooding in any year. The proposed drainage strategy, including the clearance of an existing water course across the site, would ensure that the proposed development would not result in any increase of flood risk to the appeal site or the surrounding properties. Both Severn Trent Water and the Lead Local Flood Authority were consulted on the planning application, and neither raised objection to the proposal subject to the imposition of conditions. Therefore, in the absence of any substantive evidence to the contrary, I see no reason to disagree with the findings of the FRA or the expert consultees.
65. Residents raised concerns about the increased traffic caused by the proposals in terms of highway safety. A particular issue seems to be when, for whatever reason, the M6 is closed, traffic is diverted via the A449 and a big increase in traffic movements is experienced through Penkridge. This development, together with the increase in traffic already generated by new large housing sites already under construction, means that local residents fear that levels of

congestion would get worse. Furthermore, demands for local health and education facilities would increase on what are already stretched services, with extremely lengthy times taken to see a GP.

66. The appeal site is located on the edge of Penkridge which is designated as a Main Service Village (MSV) within the CS. The settlement hierarchy within Policy CP1 of the CS directs new development primarily to the MSVs, which are considered to have a wide range of facilities suitable for day to day requirements of residents. The Council has recently carried out an audit of services⁷ within its settlements. The audit concludes that Penkridge is a Tier 1 settlement which is defined as those that typically have food stores, a wider range of services and facilities than other villages, a range of education establishments, access to a train station and good access to employment and wider facilities outside the village via public transport.
67. Although the appeal site is on the edge of Penkridge, it is still relatively close to facilities on and around Stone Cross, which includes a wide range of services including a Sainsbury's local supermarket, which would adequately provide for the day to day needs of residents. These facilities are within a reasonable walking distance of the appeal site, which would be aided by the installation of a footway to allow pedestrian access into Penkridge. This would be secured by way of a condition should the appeal be allowed. Some of the services and facilities, such as the school, are a further distance away, but not significantly so.
68. The Council is of the opinion that the development of the adjoining site to the south would add further impediment to pedestrians accessing facilities. However, it was confirmed at the Inquiry that the site does not yet have planning permission. Therefore, I have based my decision on the site as existing, which constitutes no impediment to pedestrian access to Penkridge. Even if developed, I have seen nothing to suggest it could not be laid out without impediment to the route into Penkridge.
69. Furthermore, bus stops would be introduced closer to the appeal site than those that currently exist. Therefore, larger settlements such as Stafford would be more readily accessible by bus.
70. I was presented with evidence⁸ that advises that people should not have to walk more than 800m to a railway station, which is likely to be the case for most of the future occupiers of the appeal site. Nevertheless, the railway station would be no further away from the appeal site than it is from existing housing in the south east of Penkridge.
71. Therefore, in my view, the location of the appeal site, and its relationship to the services and facilities, including bus stops and the railway allows a genuine choice of transport modes for the proposed residents. As a result, the appeal site gives a good level of accessibility to services and facilities.
72. Bearing this in mind, together with an analysis of the likely traffic generation caused by the development, the submitted Transport Assessment 2017 (TA)

⁷ Rural Services and Facilities Audit 2018

⁸ Institute of Highways & Transportation (1999) Guidelines for Planning for Public Transport in Developments, London: Institution of Highways & Transportation.

Chartered Institute of Highways & Transportation (2015) Planning for Walking, London: Chartered Institution of Highways & Transportation. Both taken from https://www.wyg.com/uploads/files/news/WYG_how-far-do-people-walk.pdf

concludes that the increased level of traffic generated by the development could be accommodated within the existing highway network without causing material harm. The TA also takes into account committed growth elsewhere on other development sites. Furthermore, the introduction of a roundabout to facilitate access into the appeal site is viewed as a benefit of the proposal by slowing traffic down on the approach road to Penkrige and creating a gateway feature. Having taken account of the TA, the Highway Authority raises no objections to this proposal.

73. I have seen no substantive evidence which would lead me to disagree with the findings of the TA, or the comments of the Highway Authority. While the level of traffic may increase when the M6 is shut, this would likely be an exceptional circumstance, and not a day to day occurrence.
74. The appellant engaged with the local GP practice and was advised that the existing health infrastructure was sufficient and had capacity to meet needs generated by the development. The problem that the practise was experiencing was attracting a sufficient number of GPs.
75. The appeal site is not within an air quality management area. Furthermore, I have found it is located within a relatively accessible location meaning that there would be potential for less reliance on the car. The Council has not objected to the development on air quality grounds. The development is adjacent to houses, and its impact on air quality is likely to be broadly similar to that arising from existing residential buildings in the surrounding area. I am therefore not persuaded on the evidence before me, that the proposal would be materially harmful to air quality.
76. The evidence before me shows that there is an immediate and sustained need for first and middle school places in the vicinity of the appeal site, and it is accepted that the proposed development would increase demand for places. The S106 agreement includes obligations which make provision for contributions towards first and middle schools, to increase capacity at local schools based on a standard formula. On this basis, I am satisfied that the proposal would not be materially harmful to the education facilities in the surrounding area.

Legal Agreement

77. Policy CP5 of the CS states that new development must be supported by the required infrastructure at the appropriate stage. Policy EQ13 of the CS states that contributions will be sought from developers, where necessary, to ensure the achievement of sustainable development including the provision of additional infrastructure and community facilities and the improvement and enhancement of existing facilities, whenever there is a need generated by the new development.
78. Staffordshire County Council has confirmed that there are less than five legal agreements for each education project for which a contribution is sought within the S106 agreement. Therefore, I am satisfied that this Section 106 Agreement is not affected by the pooling limit restrictions in respect of CIL Regulation 123(3).
79. The requirement for a travel plan is in accordance with paragraph 111 of the Framework. The contribution of £6,430 towards the monitoring of the travel

plan has been derived from a stepped/sliding scale used by Staffordshire County Council to calculate the likely staff cost involved with the monitoring based on average and estimated costs. This seems a reasonable approach and would ensure that alternative forms of transport other than the car are encouraged.

80. The S106 agreement secures the provision of 40% affordable housing on the site in accordance with Policy H2 of the CS. Together with Policy H4 of the CS, Policy H2 also sets a target of 50% social rent and 50% intermediate tenure for affordable housing. The S106 includes an obligation to secure this. Further obligations in the S106 require the laying out and management of public open space on the site in accordance with Policy SAD7 of the SAD, together with the provision and management of a SuDS in accordance with Policy EQ7 of the CS, and Policy SAD9 of the SAD. Policy SAD7 also details the level of financial contribution that would be required to maintain the proposed open space, and the sum secured within the S106 agreement is in accordance with that Policy requirement.
81. Therefore, based on the evidence before me, these obligations are necessary, and meet the statutory tests contained in Regulation 122 and 123 of the CIL, and the requirements of paragraph 56 of the Framework.

Planning Balance and Conclusion

82. There is no dispute between the parties that the appeal site is outside the defined urban settlement boundary and does not fall within any of the categories of development that may be permitted by Policy OC1 of the CS. However, I have already found that conflict with the Policy attracts limited weight.
83. I have also found that the loss of BMV would cause limited harm, which should receive limited weight in the planning balance.
84. There is some environmental benefit in terms of the provision of public open space, including children's play space on the site which may attract residents from Penkridge. Improved surface water management and biodiversity enhancement are also moderate environmental improvements.
85. There is agreement between the parties within the SSOCG that the contribution that the appeal scheme would make towards addressing the housing shortfall is significant, and is a factor that should attract significant weight in the determination of the appeal. I see no reason to disagree with this view. I appreciate the Council has started to review its development plan, but it is still at an early stage and the Framework seeks to significantly boost the supply of housing. A scheme of up to 200 houses, in an accessible location where there is an agreed shortfall would go a significant way to achieving that aim. Furthermore, the appellant has agreed to a mix of market housing that would meet the requirements of Policy H1 of the CS and the housing need identified in the SHMA. Moreover, 10% of the dwellings would be delivered as bungalows which is supported by the requirement of Policy H1, for new housing developments to make a contribution to meeting the needs of the district's rapidly ageing population. The mix could be secured by means of a planning condition.

86. The Birmingham Development Plan 2011-2031 (BDP) adopted in 2017 commits Birmingham City Council to work with the 13 other planning authorities within the Greater Birmingham Housing Market Area (GBHMA) to address the housing shortfall within emerging local plans. There is a shortfall of 37,900 houses to be delivered from the BDP. More recently the GBHMA Growth Study (GBHMAGS) published in 2018 was jointly commissioned by the Housing Market Authorities to further consider strategic development options to meet housing need across the housing market area.
87. While the unmet housing need from other authorities is a material consideration, the GBHMAGS is not a policy document and the appropriate place to consider the allocation of unmet housing need is through individual local plan examinations, and therefore attracts very limited weight in this appeal. In addition, the suggestion in the GBHMAGS that the area north of Penkridge, including the appeal site should be an urban extension is given very limited weight in my decision, particularly as urban extensions are defined within the study as ranging from 1500 -1700 homes, plus services and small scale employment, which differs significantly from the 200 houses before me now.
88. The scheme would deliver 40% of the housing as affordable units. The extent of the undersupply of affordable houses by the district is not agreed between the parties. Nevertheless, the Council consider that the proposed provision would be a significant benefit of the scheme. While the appellant allocates the benefit substantial weight, both parties agreed that if they were to take the other parties measure of benefit, it would not alter the outcome of their respective planning balance exercises.
89. The lower figure of a requirement of 92 affordable houses per annum is taken from the SHMA. This figure is based on the assumption that those in need of affordable housing could afford to pay 35% of gross household income towards rental costs. Even if I were to use this figure, there is still an overall undersupply of affordable housing that has been delivered in the district. Furthermore, I note that according to the appellant, there are 621 households on the Housing Register and the average house price to average income ratio in the District stands at 8.2. These figures are not disputed by the Council. Therefore, in my view, the delivery of 80 affordable units in an accessible location, in accordance with the Council's preferred tenure split, secured by a S106 agreement within the appeal scheme is a significant benefit which should attract significant weight.
90. The Council consider that the economic benefits associated with construction jobs, increased local council tax and new homes bonus could not be attributed weight more specifically than any other housing scheme as they are generic benefits applying to any scheme anywhere. Furthermore, the Council consider that the benefits associated with an increased number of residents to support local facilities and services are only "gently positive", as there is no evidence that local schools and shops are in danger of not surviving.
91. The appellant disagrees and two appeal decisions were brought to my attention⁹. In the first decision the Inspector considered that the economic benefits of the proposal should carry significant weight in the proposal's favour. However, these benefits would not be unique to this development, but would

⁹ APP/W0340/A/14/2226342 & APP/W0340/A/14/2228089

flow from any new housing development, with the actual monetary benefit depending on the number of dwellings provided. Furthermore, he found that the site could not reasonably be said to be of the right type or in the right place for development at this time. On balance, therefore he considered the proposal to be neutral in terms of its economic role. In the later decision the Inspector disagrees with that approach and considers that whilst it may be that similar economic and social benefits could be achieved from other sites including the preferred option sites, he did not consider that that was relevant to the assessment of whether the particular proposal before him represented sustainable development in its own right.

92. While I note the disagreement between the two decisions, I have allocated weight to the economic benefits based on the evidence before me, with regard to the specific circumstances of this appeal site which is in a different area of the country and subject to different local policy considerations.
93. There would be some economic benefits of the scheme which would be in the form of construction jobs, but these would be short term only. In the longer term, new households would introduce expenditure into the local economy. Therefore, while the economic benefits may be generic, and services may not be at risk in Penkridge, in my view, the development would still give rise to these benefits, although on that basis I only give them limited weight.
94. There would be additional benefits from further council tax income and a new homes bonus. However, no schemes upon which the bonus would be spent have been identified. In accordance with advice in the Planning Practice Guidance (PPG)¹⁰ it would not be appropriate to make a decision based on the potential for the proposal to raise money for the Council in the absence of evidence to demonstrate how that money would be used to make this particular development acceptable in planning terms.
95. All in all therefore, the harm that would be a consequence of the limited adverse impacts I have identified would not significantly and demonstrably outweigh the significant benefits referred to above when assessed against the policies in the Framework when taken as a whole. Consequently, the proposal would benefit from the presumption in favour of sustainable development as defined in the Framework, and material considerations indicate that planning permission should be granted for development that is not in accordance with the development plan.
96. For this reason, and having regard to all other matters raised, I conclude, on balance, that the appeal should be allowed.

Conditions

97. Following a round table discussion at the Inquiry regarding the suggested conditions contained within the SOCG, with agreement, an amended list of agreed conditions was submitted by the parties after the Inquiry. I have had regard to the amended list and considered them against the tests in the Framework and the advice in the PPG. I have made such amendments as necessary to comply with those documents.
98. As well as standard conditions relating to outline permissions and the submission of reserved matters, a condition requiring that the proposal is in

¹⁰ ID 21b-011-20140612

broad compliance with the principles of the masterplan is necessary and reasonable to give certainty. A further condition regarding landscaping is necessary to clarify the measures to be included within the scheme and its implementation. A condition requiring measures to be submitted to protect the existing trees and hedgerows on the site prior to the commencement of works is necessary in the interests of the character and appearance of the site, and to avoid damage to the existing landscaping.

99. A Construction Environmental Management Plan is required prior to work commencing on site to protect the living conditions of existing residents, existing hedgerows and highway safety. It is necessary to require the submission of details of lighting prior to work commencing on site to ensure that habitats of birds and bats are protected.
100. A condition regarding foul and surface water drainage is required to reduce the risk of surface water flooding to the development and properties downstream for the lifetime of the development, and secure appropriate disposal of foul water.
101. Conditions 10 and 11 are necessary to protect highway safety. Details of other highway works are required to ensure that measures are in place to encourage alternative methods of transport to the car. A condition regarding levels is necessary to protect the character and appearance of the area. The details of ground levels need to be submitted prior to the commencement of construction to ensure accurate details of existing conditions are recorded.
102. A pre-commencement condition regarding archaeology is needed to protect and record heritage assets. Conditions 15, 16 and 17 are necessary to afford protection and necessary mitigation measures for protected species. I have separated the requirement for tree protection measures, from the ecological mitigation plan condition in the interests of clarity. A condition securing the housing mix for the scheme is necessary to ensure that the scheme complies with Policy H1 of the CS and provide for an identified housing need in the SHMA.

Zoe Raygen

INSPECTOR

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY

Mr I Ponter of Counsel

Instructed by Miss Dhillon,
South Staffordshire Council

He called:

Mr H Lufton BA (Hons) DipTP MRTPI

Consultant, Hugh Lufton &
Associates on behalf of South
Staffordshire Council

FOR THE APPELLANT

Mr C Young QC

Instructed by Mr M Rose

Director, Define

He called

Mr A Williams Ba (Hons) DipLA DipUD CMLI

Director, Define

Mr J Stacey BA (Hons) Dip TP MRTPI

Director, Tetlow King Planning

Mr M Rose BA (Hons) MA DipUD MRTPI

Director, Define

Mr M Reeve BSc FIPPS MBIAC

Consultant, Land Research
Associates Ltd

INTERESTED PERSONS

Councillor Kelly

Parish Councillor

Councillor Bates

District Councillor

Councillor Ford

Parish & District Councillor

Mr Healey

Local Resident

Mr Wright

Local Resident

Ms Taylor

Local Resident

Mr P Windmill

Campaign to Protect Rural
England

DOCUMENTS SUBMITTED AT THE INQUIRY

- 1 Inquiry consultation letter
- 2 Core Documents List as at 19 February 2019
- 3 Opening statement on behalf of the appellant, Bloor Homes Ltd
- 4 Opening Submissions on behalf of the Local Planning authority
- 5 Statement by Councillor Bates

- 6 Statement by Ms Taylor local resident
- 7 Evidence regarding walking distance to railway from Ms Taylor
- 8 Agreed proposed conditions 21 March 2019
- 9 Unilateral Undertaking dated 19 March 2019
- 10 Section 106 Agreement dated 19 March 2019
- 11 Closing submissions on behalf of the Local Planning authority
- 12 Closing submissions on behalf of the appellant, Bloor Homes Ltd

DOCUMENTS SUBMITTED AFTER THE INQUIRY

- A Agreed list of conditions received 28 March 2019
- B Cannock Chase Special Area of Conservation Guidance to Mitigate the Impact of New Residential Development
- C Email from Staffordshire County Council dated 28 March 2019 regarding travel plan monitoring contribution

SCHEDULE OF CONDITIONS

CONDITIONS

- 1) Details of the appearance, landscaping, layout and scale (hereinafter called the reserved matters) shall be submitted to and approved in writing by the local planning authority before any development begins and the development shall be carried out as approved.
- 2) An application for approval of reserved matters must be made no later than the expiration of 3 years from the date of this decision.
- 3) The development hereby permitted shall take place not later than 2 years from the date of approval of the last of the reserved matters to be approved.
- 4) Any reserved matters application must be in general accordance with the Sketch Masterplan DE236 SK01 Rev D.

Landscaping

- 5) The landscaping scheme submitted under Condition 1 shall include a timetable for implementation, planting to compensate for hedgerow loss (in general accordance with Hedgerow Mitigation Plan 236_002 Rev A), measures to achieve biodiversity benefits as set out in section 5.0 of the Ecological Appraisal and section 5.6 of the Design and Access Statement, details of planting associated with the Sustainable Urban Drainage works, and long-term management arrangements.
- 6) Before the development commences, details of a site specific tree and hedgerow protection method statement and plan shall be submitted to and agreed in writing by the local planning authority. The development shall be implemented in strict accordance with the tree and hedgerow protection method statement and plan.

Lighting

- 7) No development shall commence until a lighting scheme has been submitted to and approved in writing by the Local Planning Authority. The submitted details shall seek to reduce the amount of light projecting on to hedgerows and trees that are identified as important habitats for bats and nesting birds. The agreed lighting scheme shall be implemented in full concurrently with the approved development.

Drainage

- 8) No development shall commence until drainage plans for the disposal of foul and surface water flows have been submitted to and approved in writing by the Local Planning Authority. Thereafter the agreed scheme shall be implemented in full in accordance with the approved details before the development is first brought into use. For the avoidance of doubt, the detailed surface water drainage design must be in accordance with the overall strategy and key design parameters set out in the Flood Risk Assessment (Project No: 16124, Rev B, 16 April 2018).

The design must demonstrate:

- i) Surface water drainage system(s) designed in accordance with national and local standards, including the Non-statutory technical standards for sustainable drainage systems (DEFRA, March 2015).
- ii) SuDS design to provide adequate water quality treatment, which can be demonstrated using the Simple Index Approach (CIRIA SuDS Manual 2015).
- iii) Limiting the discharge rate generated by all rainfall events up to the 100 year plus climate change critical rain storm to 43.0l/s to ensure that there will be no increase in flood risk downstream.
- iv) Detailed design (plans, network details and calculations) in support of any surface water drainage scheme, including details on any attenuation system, and the outfall arrangements. Calculations should demonstrate the performance of the designed system for a range of return periods and storm durations inclusive of the 1 in 1 year, 1 in 30 year, 1 in 100 year and 1 in 100 year plus climate change return periods.
- v) Plans illustrating flooded areas and flow paths in the event of exceedance of the drainage system. Site layout and levels should provide safe exceedance routes and adequate access for maintenance.
- vi) Provision of an acceptable management and maintenance plan for surface water drainage to ensure continued performance of the system for the lifetime of the development. This should include a schedule of required maintenance activities and frequencies and contact details for the organisation responsible for carrying out these duties.

Construction Management Plan

- 9) Prior to the commencement of any construction, including demolition, a Construction Environmental Management Plan (CEMP) shall be submitted to, and approved in writing by, the Local Planning Authority. The approved management plan shall include details relating to construction access, hours of construction, routing of HGVs, delivery times and the

location of the contractor's compounds, cabins, material storage areas and contractors parking and a scheme for the management and suppression of dust from construction activities including the provision of a vehicle wheel wash. It shall also include a method of clearance and restoration of the site. All site operations shall then be undertaken strictly in accordance with the approved CEMP for the duration of the construction programme.

Highways

- 10) No occupation of any dwelling shall take place until such time as its associated driveway has been surfaced in a bound material and sustainably drained, in accordance with details to be submitted to and approved in writing by the Local Planning Authority.
- 11) No dwelling shall be occupied until the vehicular access road onto Stafford Road has been fully constructed in accordance with approved plans drawing T16045 SK13 Rev A and T16045 SK14 Rev A.
- 12) No dwelling shall be occupied until highway works including new southbound and northbound bus stops, a new pedestrian footway along the western side of Stafford Road and the relocation of the 30mph speed limit to the north along the A449, have been fully constructed in accordance with a scheme submitted to and approved in writing by the Local Planning Authority. Any relocation of the speed limit shall replicate the current reductions, which are stepped from 60mph to 40mph to 30mph.

Archaeology

- 13) Prior to the commencement of the development hereby permitted, a written scheme of archaeological investigation ('the Scheme') shall be submitted to and approved in writing by the Local Planning Authority. The Scheme shall provide details of the programme of archaeological works to be carried out within the site, including post excavation reporting and appropriate publication. The Scheme shall thereafter be implemented in full in accordance with the approved details.

Levels

- 14) Before development commences details of the existing and proposed ground levels of the site (and finished floor levels of the buildings) shall be submitted to and approved in writing by the Local Planning Authority. All finished floor levels must be set no lower than 83.830m AOD, which is 150mm above the crest level for the existing road. The development shall be carried out to the approved levels.

Ecology

- 15) No development shall take place within the bird breeding season March-September inclusive unless preceded no more than 48 hours before by a breeding bird survey by a suitably qualified and experienced ornithologist or ecologist that demonstrates that no bird breeding (including ground nesting birds) will be affected or that works can be carried out while protecting breeding sites. The survey report should be submitted to the Local Planning Authority within two weeks of commencement of any works taking place.

- 16) Any felling or works to tree T1 (as identified in the Ecological Appraisal) should be carried out between November and February or be preceded by a resurvey for bat use.
- 17) Before the development commences, an ecological mitigation scheme shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall be informed by re- surveys for protected species (including badgers, bats, great crested newts and breeding birds). The development shall be completed in accordance with approved details.

Housing mix

- 18) The details pursuant to this outline planning permission shall comprise the following housing mix:

Market housing mix:

- i) 35% 2 bed houses
- ii) 40% 3 bed houses
- iii) 25% 4 bed houses
- iv) 10% of the total market housing to be provided as bungalows.

Affordable housing mix:

Social Rent:

- v) 22.5% 1 bed apartments
- vi) 10% 2 bed bungalows
- vii) 37.5% 2 bed houses
- viii) 25% 3 bed houses
- ix) 5% 4 bed houses

Intermediate Housing (i.e. shared ownership):

- x) 5% 2 bed bungalows
- xi) 55% 2 bed houses
- xii) 40% 3 bed houses

*******END OF SCHEDULE*******