



Department for
Communities and
Local Government

Ms Chloe Renner
Bidwells
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899 Silbury Boulevard
MILTON KEYNES
MK9 3XJ

Our Ref: APP/F2415/A/14/2213765 and
APP/F2415/A/14/2217568

20 March 2015

Dear Madam

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78
APPEAL BY DAVIDSONS DEVELOPMENTS LTD – LAND OFF DUNTON ROAD,
BROUGHTON ASTLEY, LEICESTERSHIRE
APPLICATION REFS: 13/00688/FUL AND 13/01539/FUL**

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Inspector, Mike Fox BA (Hons) DipTP MRTPI, who held a public local inquiry on 25 – 27 November 2014 into your client's appeals against the refusal of Harborough District Council ('the Council') to grant:

full planning permission for the erection of 28 dwellings with associated access, pedestrian links, parking, landscaping and drainage, in accordance with application ref: 13/00688/FUL, dated 3 May 2013 (**Appeal A**).

full planning permission for the erection of 24 dwellings with associated vehicular access, pedestrian links, garages, hardstanding, parking, landscaping and drainage (revised scheme of 13/00688/FUL), in accordance with application ref: 13/01539/FUL, dated 11 October 2013 (**Appeal B**).

2. On 6 March 2014 the appeals were recovered for the Secretary of State's determination, in pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act 1990, because the appeals involve proposals which raise important or novel issues of development control, and/or legal difficulties.

Inspector's recommendation and summary of the decision

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

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Procedural matters

4. The Secretary of State notes and adopts the conclusions at IR 1.4 as regards the EIA screening opinion and lack of need for an EIA in this case.

Policy considerations

5. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise. In this case, the development plan comprises the Harborough Core Strategy adopted in 2011, the Broughton Astley Neighbourhood Plan which was made by a decision notice of Harborough District Council dated 20 January 2014 and therefore became part of the development plan, and remaining saved policies of District Local Plan adopted in 2001. The Secretary of State agrees with the Inspector that key policies in the Core Strategy and in the Neighbourhood Plan in relation to these appeals are identified at IR3.3 and IR3.4 respectively.
6. Material considerations which the Secretary of State has taken into account include the National Planning Policy Framework, March 2012 (The Framework); the accompanying planning practice guidance; and the Community Infrastructure Levy (CIL) Regulations 2012 as amended.
7. The Secretary of State notes that the Council is currently preparing a new Local Plan, but as the Council has yet to consult on options and so any proposals are liable to change, he attributes little weight to the emerging Plan.

Main issues

Housing land supply, Harborough Core Strategy and the Broughton Astley Neighbourhood Plan

8. The Secretary of State agrees with the Inspector's analysis at IR12.1 - 12.8 and 12.27. The Council lacks a 5 year supply of available housing and he agrees that this is a material consideration to which considerable weight attaches in favour of the development. In the absence of a 5 year housing land supply for Harborough District the relevant housing policies of the Harborough Core Strategy (policies CS2 and CS16) and the Broughton Astley Neighbourhood Plan (policies H1 and P1), are out-of-date, and the presumption in favour of sustainable development comes into play.
9. It is therefore essential to apply the tests in paragraph 14 of the Framework in this case, i.e. whether the adverse impacts of allowing the appeal would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole (IR12.8).
10. The Secretary of State agrees with the Inspector's analysis at IR12.9 – 12.26. He agrees that the fact that the site is included in both in Neighbourhood Plan Policy H1 'Housing Allocations Policy' and within phase 3 of Policy P1 'Phasing of development', indicates that, in principle, the appeal site is suitable for residential development at some point in time (IR12.9).
11. The Secretary of State agrees that the key consideration in relation to the recently adopted Neighbourhood is whether there are sound planning reasons for delaying the appeal proposals until they conform to the phasing provision of the appeal site in the Neighbourhood Plan, which is set out in Policy P1 as being in the period 2020 – 2023. The Secretary of State understands why a community that has been involved in the preparation of its own Neighbourhood Plan, in the spirit of localism, can become

disenchanted with a scheme that threatens to breach the phasing sequence, contrary to Neighbourhood Plan Policy P1 (IR12.20).

12. However, as the Inspector notes, Policy P1 also states that the development and construction of sites which bring the most potential benefit in the shortest timescale to the community of Broughton Astley will be supported (IR12.12). Moreover, Policy P1 also states that the reserve site may be considered ahead of time if earlier phased housing does not happen for any reason. Although the Neighbourhood Plan has only just passed its first anniversary, for the reasons at IR12.21 – 12.22 the Secretary of State agrees with the Inspector that it is fair to assume that the pace of delivery in relation to the proposed developments on sites 1A and 2 will be constrained in relation to the quantum in the proposed phasing by a number of factors and that, by the end of phase 2 (April 2019), it is likely that about 270-300 dwellings will have been completed on Sites 1A and 2, i.e. significantly short of the 400 dwellings envisaged in the Neighbourhood Plan during this period. The appeal proposals already have signed and dated S 106 unilateral obligations, so there should be no delay in their implementation. Consequently the Secretary of State agrees with the Inspector that it is likely that either scheme on the appeal site could be completed within phase 1 of the Neighbourhood Plan, or by the start of phase 2 at the latest, and that this would make up some of the housing shortfall at both District and Neighbourhood Plan level (IR12.22).
13. Taking into account the reasons at IR12.19, the Secretary of State agrees with the Inspector there is no robust evidence to suggest that the appeal proposals would prevent the housing allocations on Neighbourhood Plan sites 1A and 2 from progressing and delivering their S 106 contributions (IR12.18).
14. For the above reasons, like the Inspector, the Secretary of State does not consider that the proposal would “scupper” the Broughton Astley Neighbourhood Plan or undermine its strategy (IR12.20). He agrees with the Inspector that the proposed development would not be contrary to the development plan and in particular, not to the Neighbourhood Plan, and that this is an important material consideration in favour of the proposed developments (IR12.26).
15. However the Secretary of State agrees with the Inspector that it is vital that the confidence of the local community in the planning system, and in particular in its own Neighbourhood Plan, should not be eroded (IR12.20). The Secretary of State notes that the housing allocations in Broughton Astley Neighbourhood Plan exceed the Core Strategy provision of 400 dwellings by a considerable margin, and that the appeal proposals would add yet more to the total. As the Council has stated, the Neighbourhood Plan does not shirk its task (IR12.15) Though every development proposal must be considered on its own merits, ahead of the review of this Plan the Secretary of State at present sees no justification for any further housing development at Broughton Astley outside of already allocated sites or in line with that Plan’s Policy H3 on windfall sites.

Impact on character and appearance of the countryside

16. For the reasons at IR12.28 – 12.31, the Secretary of State agrees with the Inspector that the harm to the character and appearance of the appeal site caused by the loss of countryside would be minimal, and would not conflict with the Neighbourhood Plan. He also agrees that any harm to the character and appearance of the area would be mitigated by the appeal site’s strong visual containment, and that any harm would be

somewhat lessened by the proposed provision of an area of landscaped open space within the Appeal B scheme (IR12.32).

Impact on living conditions

17. The Secretary of State notes and adopts the description of the differences between appeal A and appeal B set out at IR 5.1 to 5.3.
18. For the reasons given at IR12.33 - 12.36, the Secretary of State agrees that the proposal is contrary to Core Strategy policy CS11, which calls for the highest standards of design in new development to create attractive places for people to live, and contrary to the Council's supplementary planning guidance although its weight in this appeal is limited because it applies to two-storey houses. The Secretary of State also agrees with the Inspector that appeal proposal A would be contrary to one of the core planning principles in the Framework, at paragraph 17, which states that planning should always seek to secure high quality design and a good standard for all existing and future occupiers of land and buildings. Moreover, paragraph 64 of the Framework states that permission should be refused for development of poor design that fails to take the opportunities available to improving the character and quality of an area and the way it functions. For these reasons the Secretary of State agrees with the Inspector's conclusions in IR 12.37 that the adverse impact on residential amenity and incongruous relationship between the proposed bungalows and 9 Fretter Close would justify dismissal of Appeal A.
19. By contrast, Appeal B does not suffer from the same design limitations or adverse impact on residential amenity and does not run counter to the Framework or Core Strategy policy CS11 as the plots in this Appeal are adequately spaced out and there is no incongruity with 9 Fretter Close.

Affordable housing

20. The Secretary of State notes the assessment at IR12.38 and agrees with the Inspector that the affordable housing provided in both appeals, comprising about 30% of the overall total respectively of each scheme, would accord with Core Strategy Policy CS3. He also agrees that this would make a modest contribution towards meeting the District's need for affordable housing, and that some weight attaches to this consideration in support of both the appeals (IR12.39).

Other matters

21. For the reasons given, the Secretary of State agrees with the Inspector's assessment of the various matters considered at IR12.40 – 12.44.

Conditions

22. The Secretary of State notes the information at IR11.1 – 11.3 and agrees with the Inspector's reasoning and conclusions on conditions at IR12.52 – 12.54. He agrees with the Inspector that the conditions in Appendix C of the IR accord with the requirements of paragraph 206 in the Framework (IR12.52). However, for the reasons set out above, he does not consider that the conditions in Appendix C overcome his reasons for dismissing appeal A.

Section 106 Unilateral Undertakings

23. The Secretary of State agrees with the Inspector's assessment of the Section 106 Undertakings at IR10.1-10.2. He agrees that all of the contributions would be necessary to make the proposal acceptable in planning terms and would accord with

the CIL Regulations 2010 (IR10.2). However, for the reasons set out above, he does not consider that the provisions in the undertaking in regard to Appeal A are sufficient to overcome his reasons for dismissing Appeal A.

Overall balance and conclusion

24. The Secretary of State agrees with the Inspector's consideration of the planning balance at IR12.45 – 12.51.
25. The principle of residential development on the appeal site has been established in the Neighbourhood Plan, albeit that it is programmed for the latter part of the plan period (2020-2023). In the latter respect the proposal can be said to not be entirely consistent with the Neighbourhood Plan, and thus with the development plan as a whole. However, as would be expected, having the designation for development in mind, no policies in the Neighbourhood Plan seek to protect the appeal site from development; neither do they classify the site as a valued landscape, worthy of protection. The Secretary of State adopts the Inspector's conclusion that the key consideration is whether bringing the appeal site forward from phase 3 would undermine the Neighbourhood Plan, and/or whether its early release for housing is justified. The Secretary of State agrees with the Inspector's conclusion that, at a strategic level, bringing forward the completion of either the Appeal A or Appeal B scheme to bring a modest housing yield would be justified in light of the lack of a 5 year housing land supply in the District, bearing in mind the thrust of paragraph 47 of the Framework to boost significantly the supply of new housing. He also considers that the provision of 30% affordable housing is a material consideration in support of both of the proposed developments.
26. Early release of 24-28 dwellings on the appeal site would not undermine the Neighbourhood Plan. The implementation of the appeal proposal is very unlikely to delay progress on the implementation of the two housing allocations which are included in the early phases in the Plan. The realistic trajectory of these two earlier schemes points to some delivery by the end of phase 2, but not the 400 as proposed. Consequently the Secretary of State concludes, like the Inspector, that the proposal would not conflict with the development plan and in particular the Neighbourhood Plan.
27. Any harm to the character and appearance of the appeal site caused by the loss of the countryside would be minimal, and in any event mitigated by its strong visual self-containment.
28. Regarding the effect on the living conditions of existing or future residential occupiers, in relation to Appeal A only, the existing 2/3 storey building at 9 Fretter Close would adversely affect the privacy and outlook of the future occupiers of the proposed bungalows on plots 12-15. There would be an incongruous relationship between the existing and proposed properties, reflective of poor design, and there would be an adverse impact on residential amenity, contrary to Core Strategy policy CS11 and the Council's supplementary planning guidance and core principle 4 in the Framework.
29. Therefore, in Appeal A, the adverse impact on the living conditions of the proposed occupiers of plots 12-15 and inadequate design would be unacceptable, and significantly and demonstrably outweigh the benefits of the scheme when assessed against the policies in the Frameworks taken as a whole and for this reason alone Appeal A should be dismissed.

30. However, there would not be any unacceptable harm to the living conditions of any of the existing or future occupiers in the Appeal B proposal, nor would this scheme cause a loss of amenity to existing or future occupiers.

31. Like the Inspector, the Secretary of State concludes that the benefits of the Appeal B proposal would weigh overwhelmingly in favour of the proposed development.

Formal decision

32. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendations and hereby:

dismisses your client's appeal and **refuses** planning permission for the erection of 28 dwellings with associated access, pedestrian links, parking, landscaping and drainage, in accordance with application ref: 13/00688/FUL, dated 3 May 2013 (Appeal A).

allows your client's appeal and **grants** full planning permission for the erection of 24 dwellings with associated vehicular access, pedestrian links, garages, hardstanding, parking, landscaping and drainage (revised scheme of 13/00688/FUL), in accordance with application ref: 13/01539/FUL, dated 11 October 2013 (Appeal B), subject to the conditions in Annex A of this letter.

Right to challenge the decision

33. 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.

34. A copy of this letter has been sent to Harborough District Council. A notification e-mail or letter has been sent to all other parties who asked to be informed of the decision.

Yours faithfully

Julian Pitt

Julian Pitt

Authorised by Secretary of State to sign in that behalf

Annex A

Conditions imposed on full planning permission for the erection of 24 dwellings with associated vehicular access, pedestrian links, garages, hardstanding, parking, landscaping and drainage (revised scheme of 13/00688/FUL), in accordance with application ref: 13/01539/FUL, dated 11 October 2013 (Appeal B).

- 1) The development hereby permitted shall be begun before the expiration of three years from the date of this permission.
- 2) The development hereby permitted shall be carried out fully in accordance with the following approved plans:

Layout plan "Planning Layout ER/1053-01 Rev G"

Site Location Plan "A.42,640d"

Topographic Survey "20452_06_001 Rev A"

Proposed Pedestrian (Zebra) Crossing "20452_03_004"

Preliminary Drainage Strategy 20452_02_001 revision H

Preliminary Access Layout 20452_03_001 revision A

Context Landscape Masterplan 5158.CLM.02 revision A

Proposed Parking Improvements 20452_03_005

DG1, DG13, DG17, LCC1S, External Details

House Type Drawings: DH330V-2 (AS), DH330V-2 (OPP), DH400V-2 (OPP), DH403L-2 (OPP), DH403L-2 (AS), DH418V-2 (AS), DH418VS-2 (OPP), DH410G-2 (AS), DH410G-2 (OPP), SB21HE-2 (AS), SH32GE-2 (OPP), SH32GEG-2 (AS), SH320GEG-2 (AS/OPP) & SH320GI (OPP), DH313RD-2 (OPP), DH509V-2 (OPP), DH522G-2 (AS), DH522G-2 (OPP), DH507V-2 (OPP).

- 3) Notwithstanding the details submitted, no development shall commence on site until details of the existing and proposed ground levels and finished floor levels of the development have been submitted to and approved in writing by the Local Planning Authority. The development shall be implemented in accordance with the approved details.
- 4) [Number 4 not used]
- 5) Notwithstanding the details submitted, no development shall commence on site until a schedule indicating the materials to be used on all external elevations of the approved dwellings, including bricks, tiles, ridge tiles, sills, lintels and headers, windows, doors and other openings, fascias, soffits and bargeboards, and the bond that the bricks on the front elevations shall be laid in, has been submitted to and approved in writing by the Local Planning Authority. Thereafter, the development shall be implemented in accordance with the approved details and retained in perpetuity.
- 6) No development shall take place until a surface water drainage scheme for the site, based on sustainable drainage principles and an assessment of the hydrological and hydro geological context of the development, has been submitted to and approved in writing by the local planning authority. The drainage strategy shall demonstrate the surface water run-off generated up to and including the 100 year plus climate

change critical storm will not exceed the run-off from the undeveloped site following the corresponding rainfall event. The scheme shall also include:

- details of how the scheme shall be maintained and managed after completion;
- sustainable drainage techniques or SuDS incorporated into the design with two treatment trains;
- details to show that the outflow from the site is limited to the maximum allowable rate, that is, greenfield site run-off;
- detailed design details of the proposed balancing pond, including cross-sections and plans.

The surface water drainage system must deal with the surface water run-off from the site up to the critical 1% Annual Probability of Flooding (or 1 in a 100-year flood) event, including an allowance for climate change (i.e. for the lifetime of the development). Drainage calculations must be included to demonstrate this (e.g. MicroDrainage or similar sewer modelling package calculations which include the necessary attenuation volume).

The development shall be implemented fully in accordance with the approved details, before the development is completed, and shall be maintained as such thereafter.

- 7) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking or re-enacting that order with or without modification) no additional windows, dormer windows or other openings shall be formed in the highway facing elevations of the development hereby permitted, including the roof(s), without the grant of further specific planning permission from the Local Planning Authority, unless the opening to be formed matches exactly the fenestration pattern, sills, headers, of the original development.
- 8) Before the development hereby permitted is first occupied the bathroom windows in the south-east facing elevations of plots 1-7 and 11 shall be glazed with obscure glass (at least Level 3) only and the windows shall be permanently maintained with obscure glazing at all times thereafter.
- 9) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking and re-enacting that Order with or without modification), no extensions or other form of enlargement, nor erection of outbuildings or hardstandings or walls, fences or other means of enclosure, but excluding development permitted under Schedule 2 Part 40 and Classes G and H of Schedule 2 Part 1, shall take place in respect of Plots 1, 2, 3, 4, 5, 6, 7, 8 and/or 11.
- 10) Any shared private drives serving no more than a total of 5 dwellings shall be a minimum of 4.25 metres wide for at least the first 5 metres behind the highway boundary and have a drop crossing of a minimum size as shown in Figure DG20 of the 6CsDG at its junction with the adopted road carriageway. The access drive shall be provided before any dwelling hereby permitted is first occupied and shall thereafter be permanently so maintained.

- 11) Before first use of the development hereby permitted, 1.0 metre by 1.0 metre pedestrian visibility splays shall be provided on the highway boundary on both sides of the access to each dwelling, with nothing within those splays higher than 0.6 metres above the level of the adjacent footway/verge/highway, in accordance with the standards contained in the current County Council design guide and shall be so maintained in perpetuity.
- 12) Before first occupation of the development hereby permitted, visibility splays of 2.4 metres by 46.5m in a north-westerly direction and 2.4 metres by 48.9m in a south-easterly direction shall be provided at the junction of the access with Dunton Road. These shall be in accordance with the standards contained in the current County Council design guide and shall thereafter be permanently so maintained. Nothing shall be allowed to grow above a height of 0.6 metres above ground level within the visibility splays.
- 13) No walls, planting or fences shall be erected or allowed to grow inside or adjacent to the highway boundary exceeding 0.9 metres in height above the level of the adjacent carriageway.
- 14) Any shared private drive serving more than 5 but no more than 25 dwellings shall be a minimum of 4.8 metres wide for at least the first 5 metres behind the highway boundary and have a drop crossing of a minimum size as shown in Figure DG20 of the 6CsDG at its junction with the adopted road carriageway. The access drive shall be provided before any dwelling hereby permitted is first occupied and shall thereafter be permanently so maintained.
- 15) Prior to the first occupation of any dwelling, a zebra crossing shall be provided on Dunton Road in accordance with the details contained in the submitted Dwg No:- 20452_03_004.
- 16) No gates, barriers, bollards, chains or other such obstructions shall be permitted within 5 metres of the highway boundary, unless opening inwards.
- 17) No part of the development as approved shall be brought into use until details of a Residential Travel Plan have been submitted to and approved in writing by the Local Planning Authority. The Plan shall address the travel implications of the use of the whole site as if the development approved were to have been fully completed and occupied.

The Plan shall specify facilities and measures with measurable output and outcome targets designed to:

- Reduce single occupancy vehicle use, reduce vehicular travel at peak traffic times and reduce vehicle emissions for journeys made to and from the developed site;
- Increase the choice and use of alternative transport modes for any journeys likely to be made to and from the developed site and, in particular, to secure increases in the proportion of travel by car sharing, public transport use, cycling and walking modes and the use of IT substitutes for real travel;

- Manage the demand by all users of the developed site for vehicle parking within and in the vicinity of the developed site.

The Plan shall also specify:

- The on-site Plan implementation and management responsibilities, including the identification of a Travel Plan Co-ordinator;
- The arrangements for regular travel behaviour and impact monitoring surveys and Plan reviews covering a period extending to at least one year after the last unit of development is occupied;
- The timescales or phasing programmes for delivery of the Plan's proposals and for the achievement of the specified output and outcome targets; and
- Additional facilities and measures to be implemented if monitoring shows that the Plan's targets are not likely to be met, together with clear trigger dates, events or threshold levels for invoking these measures.

The Plan, once agreed, shall be implemented in accordance with the approved details, and thereafter, the implementation of the proposals and the achievement of targets of the Plan shall be subject to regular monitoring and review reports to the LPA and, if invoked, to the implementation of the specified additional measures.

- 18) Any garage doors shall be set back from the Highway boundary a minimum distance of 5 metres in the case of sliding or roller/shutter doors, 5.6 metres in the case of up-and over doors, or 6 metres in the case of doors opening outwards. Once provided, the development shall be so maintained thereafter and in perpetuity.
- 19) Before the first occupation of any dwelling, car parking provision shall be made, in the case of a market dwelling, within the curtilage of that dwelling on the basis of 2 spaces for a dwelling with up to three bedrooms and 3 spaces for a dwelling with four or more bedrooms, and, in the case of an Affordable Dwelling, in accordance with the approved layout plan "*Planning Layout ER/1053-01 Rev G*". The parking spaces so provided, which shall include garage spaces if required to ensure the provision as stated above, shall not be obstructed and shall thereafter permanently remain available for car parking.
- 20) No development shall commence on site (including any works of demolition), until a Construction Method Statement, which shall include the following:
 - (a) the parking of vehicles of site operatives and visitors;
 - (b) loading and unloading of plant and materials;
 - (c) storage of plant and materials used in constructing the development;
 - (d) the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;
 - (e) wheel washing facilities;
 - (f) measures to control the emission of dust and dirt during construction;
 - (g) a scheme for recycling/disposing of waste resulting from demolition and construction works;
 - (h) measures for the protection of the natural environment; and
 - (i) measures to control the hours of use and piling technique to be employed;

has been submitted to, and approved in writing by, the Local Planning Authority. The approved statement shall be adhered to throughout the construction period.

- 21) Notwithstanding any details shown on the submitted plans, no development shall take place until full details of both hard and soft landscape works have been submitted to and approved in writing by the Local Planning Authority. These details shall include: any existing trees, shrubs and hedges to be retained and measures for protection during the course of development; new tree and shrub planting; surface treatments to all footpaths and cycleways; fencing and boundary treatments, and all externally visible materials thereof; the proposed balancing pond; proposed finished levels or contours; and the position of services and/or drainage runs. All hard landscaping works shall be carried out fully in accordance with the approved details approved prior to the first occupation of the development. All soft landscaping shall be carried out in accordance with the approved details in the first planting season following the first occupation of the development. Any trees or shrubs which within a period of 5 years from the completion of the planting 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.
- 22) All on site working associated with the implementation of this planning permission, including demolition and deliveries to and from the site, but not including internal works on dwellings, shall only be carried out between the hours of 8 a.m. and 6 p.m. Monday to Friday, 8 a.m. and 1 p.m. Saturday and not at all on Sunday, Public and Bank Holidays.
- 23) No development (except any demolition granted by this planning permission) shall commence on site until a further Risk Based Land Contamination Assessment (as recommended in section 6 of the GRM Development solutions Phase 1 site appraisal Reference P5989 dated December 2012) has been submitted to and approved in writing by the Local Planning Authority, in order to ensure that the land is fit for use as the development proposes. The Risk Based Land Contamination Assessment shall be carried out in accordance with:
 - BS10175 Year 2011+A1:2013 Investigation Of Potentially Contaminated Sites Code of Practice;
 - BS8576:2013 Guidance on Investigations for Ground Gas – Permanent Gases and Volatile Organic Compounds (VOCs)
 - BS8485 Year 2007 Code of Practice for the Characterisation and Remediation from Ground Gas in Affected Developments; and
 - CLR 11 Model Procedures for the Management of Land Contamination, published by The Environment Agency 2004.

Should any unacceptable risks be identified in the Risk Based Land Contamination Assessment, a Remedial Scheme and a Verification Plan must be prepared and submitted to and agreed in writing by the Local Planning Authority. The Remedial Scheme shall be prepared in accordance with the requirements of:

- CLR 11 Model Procedures for the Management of Land Contamination, published by The Environment Agency 2004.

The Verification Plan shall be prepared in accordance with the requirements of:

- Evidence Report on the Verification of Remediation of Land Contamination Report: SC030114/R1, published by the Environment Agency 2010;
- CLR 11 Model Procedures for the Management of Land Contamination, published by The Environment Agency 2004.

If, during the course of development, previously unidentified contamination is discovered, development must cease on that part of the site and it must be reported in writing to the Local Planning Authority within 10 working days. Prior to the recommencement of development on that part of the site, a Risk Based Land Contamination Assessment for the discovered contamination (to include any required amendments to the Remedial Scheme and Verification Plan) must be submitted to and approved in writing by the Local Planning Authority. Thereafter, the development shall be implemented in accordance with the approved details and retained as such in perpetuity, unless otherwise agreed in writing by the Local Planning Authority.

- 24) Prior to occupation of any part of the completed development, a Verification Investigation shall be undertaken in line with the agreed Verification Plan for any works outlined in the Remedial Scheme relevant to either the whole development or that part of the development. Prior to occupation of any part of the completed development, a report showing the findings of the Verification Investigation shall be submitted to and approved in writing by the Local Planning Authority. The Verification Investigation Report shall:
- Contain a full description of the works undertaken in accordance with the agreed Remedial Scheme and Verification Plan;
 - Contain results of any additional monitoring or testing carried out between the submission of the Remedial Scheme and the completion of remediation works;
 - Contain Movement Permits for all materials taken to and from the site and/or a copy of the completed site waste management plan if one was required;
 - Contain Test Certificates of imported material to show that it is suitable for its proposed use;
 - Demonstrate the effectiveness of the approved Remedial Scheme; and
 - Include a statement signed by the developer, or the approved agent, confirming that all the works specified in the Remedial Scheme have been completed.
- 25) No development shall commence until a landscape management plan, including long term design objectives, management responsibilities and maintenance schedules for all landscape areas, including the protection of the quality and integrity of the existing railway embankment which runs along the north-west boundary of the site, other than small, privately owned, domestic gardens, has been submitted to and approved in writing by the Local Planning Authority. Thereafter the development shall be implemented in accordance with the approved details and shall be retained as such in perpetuity.
- 26) No development, including any demolition, shall commence until a programme of archaeological works commencing with an initial phase of trial trenching, has been

detailed within a Written Scheme of Investigation, submitted to and approved in writing by the Local Planning Authority. The scheme shall include an assessment of significance and research questions; and:

- The programme and methodology of site investigation and recording (including the initial trial trenching, assessment of results and preparation of an appropriate mitigation scheme);
 - The programme for post-investigation assessment;
 - Provision to be made for analysis of the site investigation and recording;
 - Provision to be made for publication and dissemination of the analysis and records of the site investigation;
 - Provision to be made for archive deposition of the analysis and records of the site investigation;
 - Nomination of a competent person or persons/organisation to undertake the works set out within the Written Scheme of Investigation;
 - No development, including demolition, shall take place other than in accordance with the details approved pursuant to this Condition.
- 27) The development shall not be occupied until the archaeological site investigation and post investigation assessment has been completed in accordance with the programme set out in the Written Scheme of Investigation approved under Condition 26 and the provision made for analysis, publication and dissemination of results and archive deposition has been secured.
- 28) No development shall commence until a scheme for biodiversity measures within the boundaries of the site has been submitted to and approved in writing by the Local Planning Authority. Thereafter the development shall be implemented in accordance with the approved details and shall be retained as such in perpetuity.

Report to the Secretary of State for Communities and Local Government

by Mike Fox BA (Hons) DipTP MRTPI

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

Date: 2 February 2015

TOWN AND COUNTRY PLANNING ACT 1990

HARBOROUGH DISTRICT COUNCIL

APPEAL MADE BY

DAVIDSONS DEVELOPMENTS LTD

Richborough Estates

Inquiry held on 25 – 27 November 2014

Land off Dunton Road, Broughton Astley, Leicestershire, LE9 6NA

File Refs: APP/F2415/A/14/2213765 and APP/F2415/A/14/2217568

Appeal A: File Ref: /F2415/A/14/2213765

Land off Dunton Road, Broughton Astley, Leicestershire, LE9 6NA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Davidsons Developments Ltd against the decision of Harborough District Council.
- The application Ref 13/00688/FUL, dated 3 May 2013, was refused by notice dated 14 August 2013.
- The development proposed is the erection of 28 dwellings with associated access, pedestrian links, parking, landscaping and drainage.

Summary of Recommendation: That the appeal be dismissed

Appeal B: File Ref: APP/F2415/A/14/2217568

Land off Dunton Road, Broughton Astley, Leicestershire, LE9 6NA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Davidsons Developments Ltd against the decision of Harborough District Council.
- The application Ref 13/01539/FUL, dated 11 October 2013, was refused by notice dated 8 January 2014.
- The development proposed is the erection of 24 dwellings with associated vehicular access, pedestrian links, garages, hardstanding, parking, landscaping and drainage (revised scheme of 13/00688/FUL).

Summary of Recommendation: That the appeal be allowed

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Richborough Estates

GLOSSARY

BANP	Broughton Astley Neighbourhood Plan
CS	Core Strategy (Harborough District Core Strategy)
DPD	Development Plan Document
dpa	dwellings per annum
dph	dwellings per hectare (ha)
EIA	Environmental Impact Assessment
EIC	Inquiry Evidence in Chief
HLS	Housing land supply
LCA	Landscape Character Area
LVA	Landscape and Visual Assessment
NP	Neighbourhood Plan
OAHN	Objectively assessed housing need
PPG	Planning Practice Guidance
SCG	Statement of Common Ground
SHMA	Strategic Housing Market Assessment
SPG	Supplementary Planning Guidance
XX	Inquiry Cross Examination

Richborough Estates

1. Procedural Matters

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

- 1.1 The Inquiry sat on 25, 26 and 27 November 2014. I made an unaccompanied visit to the appeal site and surrounding area on 24 November 2014 and a formal, accompanied site visit on 26 November.
- 1.2 By letter dated 6 March 2014, the Secretary of State has indicated that he would determine the appeals. The reason for this direction is that the appeals involve proposals which raise important or novel issues of development control and/or legal difficulties.
- 1.3 The two appeals which are the subject of this report relate to the same site. The principal difference between them is that Appeal A is for 28 dwellings whilst Appeal B is for 24 dwellings.
- 1.4 The Council has provided an Environmental Impact Assessment (EIA) screening opinion which indicates that an EIA is not required as the proposal is not EIA development. There are no suggestions otherwise and no reasons to disagree with the Council's opinion.
- 1.5 At the Inquiry, based on my reading of the two Decision Notices, the Statement of Common Ground (SCG) (CD 2) and statements submitted by the main parties and in other representations, I have identified the following main considerations on which the Secretary of State needs to be informed for the purpose of his consideration of these appeals:
 - (i) Whether or not the proposed development would conflict with the development plan and in particular the Broughton Astley Neighbourhood Plan (BANP);*
 - (ii) The implications of the lack of a five year supply of readily available housing land in Harborough District;*
 - (iii) The effect of the proposed development on the character and appearance of the countryside;*
 - (iv) The effect of the proposed development on the living conditions of existing residential occupiers and future occupiers of the proposed development – this is in relation to Appeal A only;*
 - (v) Provision of affordable housing; and*
 - (vi) The planning balance, where the main parties and I summarise the main issues set out above and come to final conclusions in relation to the two appeals.*

- 1.6 A signed and dated SCG¹ which covers both appeals was submitted in advance of the Inquiry. It identifies the matters that are in dispute between the main parties, which are summarised as relating principally to:
- (i) the separation distances between properties to ensure acceptable living conditions for both the proposed and existing properties;
 - (ii) the extent to which the proposals comply with the Development Plan, in particular the Broughton Astley Neighbourhood Plan (BANP);
 - (iii) the extent to which the proposals would harm the character and appearance of the countryside;
 - (iv) the extent to which biodiversity would be affected; and
 - (v) whether the proposals would result in improvements to the surface water drainage in the area.
- 1.7 Final signed and dated copies of the S 106 Unilateral Undertakings for both appeal proposals were submitted at the Inquiry (INQ 1 and INQ 2). I consider their content and operation below [10.1-10.2].

2. The Site and Surroundings

- 2.1 The 1.04 ha appeal site is predominantly flat and broadly rectangular in shape. It comprises a stretch of pasture to the south-east of the main settlement of Broughton Astley. It forms part of Station Farm, and a track runs through the site from the B581, Dunton Road, to the south-west, to the farmhouse, which is situated in open countryside to the north-east of the appeal site. The site is contained by a thick border of mature trees and hedges which marks the course of a former railway line running to the north-west, and residential development to the south-east, with further housing on the opposite side of Dunton Road to the south-west.
- 2.2 Fuller details of the site's location, landscape and character can be found at section 3 of the SCG (CD 2), section 2 of the Design and Access Statement (CD 4) and in section 2 of the Proof of Evidence of Nathanael Stock on behalf of the Council (LPA 1).

3. Planning Policy and Guidance

The Development Plan

- 3.1 The East Midlands Regional Plan was formally revoked on 12 April 2013, i.e. before either of the two appeals was determined by the Council, and is therefore no longer a material consideration.
- 3.2 The statutory development plan for the area now comprises the Harborough District Core Strategy 2006-2028 (CS), which was adopted in November 2011, and the Broughton Astley Neighbourhood Plan 2013-2028 (BANP) which was formally made by the Council on 20 January 2014, following a 89% 'yes' vote in a referendum which was held on 16 January 2014. The Harborough District

¹ Statement of Common Ground (SCG) between Bidwells for Davidsons Homes Ltd and Harborough District Council, dated July 2104 (CD2).

Local Plan, which was adopted in March 2001, also has a number of policies which were saved by the Government Office for the East Midlands in 2007.

- 3.3 Key policies in the CS in relation to the appeals are policy CS2 which provides for at least 400 new houses in Broughton Astley over the plan period; and policy CS16, which makes provision for the settlement to develop its role as a Key Centre and sets parameters for new development around its edges.
- 3.4 There are four relevant policies in the BANP. Policy H1 designates the appeal site as a reserve site for up to 28 dwellings to be phased in 2020-2023, with the two other allocated housing sites, 1A and 2, phased to deliver 400 dwellings by 2019 and a further 100 dwellings by 2022, in relation to the CS policy requirement for at least an additional 400 new homes by 2028. Policy P1 provides the phasing parameters for housing and other developments. Policy SD1 sets out the principles of sustainable development for the village. A policy entitled 'Reserve Site 1' allocates the appeal site as a reserve site for a maximum of 28 residential properties with associated formal and informal public open space within the extent of the development.

National planning policy

- 3.6 The National Planning Policy Framework (*the Framework*), published by the Government in March 2012, sets out the Government's planning policies which are relevant to these appeals. *The Framework* is augmented by the national Planning Practice Guidance (PPG)² which also replaces cancelled Circular 11/95 *Use of Conditions in Planning Permission*.

4. Planning History

- 4.1 No previous planning applications directly relating to the appeal site have been brought to my attention, either in the written presentations or at the Inquiry.

5. The Proposals

- 5.1 Both appeal proposals are for residential development. The principal differences are that scheme A is for 28 dwellings, whilst scheme B is reduced to 24 dwellings. The changes in the layout in scheme B increase the distance between some of the proposed properties along the south-east boundary and some of the existing houses in Fretter Close to the south-east, together with some reorientation and reduction in the number of proposed dwellings facing Fretter Close, and the deletion of the bungalows at the south-east corner of the site. Up to eight dwellings would be affordable in the Appeal A scheme, and seven in the Appeal B scheme.
- 5.2 There are other changes between the two schemes. The Appeal A scheme includes a balancing lagoon at the western end of the site, adjacent to the junction of the proposed access road with Dunton Road. The Appeal B scheme, however, repositions the balancing lagoon to a more central location and reduces its size, although it links it to public open space which is not included in scheme A. There is also increased landscaping in scheme B, including a more substantial tree and hedge screen to enclose the site from the open countryside to the north-east. The access road, which keeps to the same

² DCLG: National Planning Practice Guidance (PPG); first issued 15 January 2014.

alignment in both schemes, would also continue to provide access to Station Farm to the north-east.

- 5.3 Both schemes include a surface water drainage strategy on an attenuation basis via a lagoon. The existing sewer along Dunton Road would be capable of accommodating the anticipated flow from a development of up to 30 dwellings.

6. The Case for the Council

- 6.1 The following paragraphs summarise the Council's case, which is set out more fully in the proof of evidence of Mr Stock (LPA 1) and in its closing submissions (INQ 16). The Council's principal contention is that the appeal proposals do not accord with the BANP and are thus contrary to *the Framework* and the Localism Act.

First main consideration: whether or not the proposed development would conflict with the development plan and in particular the Broughton Astley Neighbourhood Plan (BANP)

- 6.2 *The Framework* (paragraph 184) states that "Neighbourhood planning provides a powerful set of tools for local people to ensure they get the right types of development for their community". The BANP, which was formally made by the Council on 20 January 2014, and is therefore part of the development plan, forms a very relevant material consideration for the determination of these appeals. Significant weight should be given to the BANP once it had been found sound by the Examiner in October 2013 and full weight once it had passed successfully through the Referendum on 16 January 2014, receiving a 'yes' vote.
- 6.3 BANP policy H1 allocates two sites for housing development (Site 1A to the North of Broughton Way and Site 2 to the South of Coventry Road) totalling 500 dwellings, whilst the appeal site is selected as a 'reserve site'. (Site 1B, to the south of Broughton Way, is allocated for a centrally located community and leisure facility.) Paragraph 11 of *the Framework* confirms that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise, thus confirming a requirement of planning law.
- 6.4 The BANP only envisages the appeal site coming forward if one of the two allocated sites 1A or 2 should not be delivered within the plan period. The two allocated sites are available now, and Council resolutions to grant planning consent have been taken in relation to both sites. The proposed development on the appeal site would therefore be contrary to BANP policy H1. Inherent in the policy is the expectation that the site is not likely to be required in the life of the BANP.
- 6.5 The policy also states that the site may then be required, but it is not definitely the case that the appeal site would be given the go-ahead for development. There is therefore nothing inevitable about the residential use of the appeal site, and there is no room for ambiguity whatsoever. In the phasing policy P1, the table simply states, as a matter of arithmetic, what housing provision would be in the event that the reserve site were to come forward.
- 6.6 The Appellant has not provided any cogent evidence that there would be significant slippage in the delivery of sites 1A and 2 to indicate that the sites

would not be delivered on time. At this early stage, there is simply no evidence to trigger the reserve site before the BANP reaches its first anniversary.

- 6.7 It is important to note that CS policy CS2 requires Broughton Astley to provide 400 houses over the plan period; sites 1A and 2 provide 500 additional homes, i.e. 25% more than the policy CS2 requirement, thus making a generous contribution to meeting the District-wide housing supply shortfall.
- 6.8 Local people have gone to the trouble, time and expense of engaging with the BANP, including going through an Examination and holding a referendum. If the appeals were to be allowed, public confidence in the neighbourhood plan (NP) process would be undermined, since the sequential approach to development which is at the heart of the BANP would be circumvented. The effect would be to re-write the BANP by elevating the reserve site to a status equal to sites 1A and 2. The merits of phasing development within the village have already been settled and determined by the BANP.
- 6.9 There is no reason why the Secretary of State should adopt a radically different approach to the appeal decisions at Crowfoot Way³ and at Winslow (INO6). In the Crowfoot Way decision (paragraph 19), the Secretary of State concluded that "*very substantial negative weight*" should be accorded to the conflict with the BANP, whilst at Winslow, it was concluded (paragraph 16) that "*the present appeal proposal would undermine the spatial strategy upon which the Winslow NP is based.*" Doubtless the Secretary of State aspires to consistency in decision making.
- 6.10 Moreover, the appeal proposals only broadly accord with the site-specific policy which covers the BANP Reserve Site 1. Neither scheme includes an equipped playground or any other formal open space as required by the policy and proposal A results in a relatively cramped form of development and impacts negatively on the privacy of existing residents.

Second main consideration: the implications of the lack of a five year supply of readily available housing land in Harborough District

- 6.11 The Council accepts that it does not currently have a five year supply of deliverable housing sites in accordance with paragraph 47 of *the Framework*. Following the Secretary of State's dismissal of the Crowfoot Way appeal (APP 2.7), in the same village as the appeal proposals, the Council published its housing land supply (HLS) position on 31 March 2014 (LPA 1.7), when it stated that it had 4.64 years' HLS (taking into account the need for a 20% buffer in accordance with national planning policy), i.e. 245 houses short. Since then, the Council has granted planning permissions for a further 173 dwellings, although notwithstanding its commitment to approve appropriate development in the District, it acknowledges that it cannot currently demonstrate a robust five years' HLS.
- 6.12 The Council therefore accepts that, as it cannot currently demonstrate a five year supply of deliverable housing, paragraph 49 of *the Framework* applies,

³ Appeal decision Ref. APP/F2415/A/12/2183653; Secretary of State dismissed outline planning permission for the erection of 111 dwellings and other uses at land south of Hallbrook Primary School, Crowfoot Way, Broughton Astley, Leicestershire; 17 April 2014 (APP 2.7).

i.e. the Council's housing supply policies are out-of-date. As such, paragraph 14 is engaged, which states that, unless the harms identified significantly and demonstrably outweigh the benefits of the proposal, then the presumption in favour of sustainable development applies and planning permission should be granted. The Council accepts that this consideration should be given some weight.

Third main consideration: the effect of the proposed development on the character and appearance of the countryside

- 6.13 The Council accepts that judging the effects of the appeals on the character and appearance of the area is quintessentially a matter of judgment for the decision maker. Mr Stock's evidence states that the appeal site forms a 'green tongue' of undeveloped, agricultural land towards the centre of the village, which abuts the main thoroughfare (Dunton Road). The site contributes to the setting of the village, and whilst not endowed with any exceptional features of landscape value, it plays an important role of providing a 'green lung' of open, agricultural land into the urban area.
- 6.14 The appeal site lies outside the defined limits to the development of Broughton Astley. It would introduce residential development into the open countryside. The landscape study⁴ commissioned by the Council identifies the appeal site as part of parcel 20, which forms part of the 'Upper Soar – Broughton Astley Open Farmland' Landscape Character Area (LCA), and may be considered to be the part of parcel 20 which is most open to public and private views. This feature has become even more important following the expansion of the settlement in recent years. The building of over 20 houses is therefore viewed by the Council as harming an important, locally valued landscape, contrary to CS policy CS17 (c).
- 6.15 Although the LCA concludes that parcel 20 has a high capacity to accommodate residential development, subject to various mitigation measures, it also notes that the appeal site could be retained to form open space provision and a gateway between old and new developments. It is the Council's view that the appeal proposals would detract from the intrinsic beauty of the countryside and result in significant harm to the character and appearance of the site and its surroundings and would therefore conflict with CS policies CS2 and CS17.

Fourth main consideration: the effect of the proposed development on the living conditions of existing residential occupiers and future occupiers of the proposed development – Appeal A only

- 6.16 The Council's adopted Supplementary Planning Guidance (SPG) (CD4) sets out clear guidance on set-back distances between dwellings in order to protect the living conditions of existing and future occupiers, and it should be accorded full weight.
- 6.17 In the Appeal A proposal, the proximity of four properties in the south-east corner (plots 12-15) are considered to be sufficiently close to the existing

⁴ Lutterworth and Broughton Astley Landscape Character Assessment and Landscape Capacity Study, by the Landscape Partnership; 2011 (APP 1.7).

property at 9 Fretter Close to result in undue overlooking of the future occupiers of these properties. In addition, 9 Fretter Close would be an imposing and overbearing form of development, which would also have a very significant adverse effect on the living conditions of the future occupiers of these four properties. This relationship would be exacerbated by the fact that the property at no.9 could reasonably be read as a three-storey dwelling, whilst plots 12-15 would be bungalows.

- 6.18 Such an inadequate arrangement offends one of the core planning principles of *the Framework* (paragraph 17[4]), which requires that planning should always seek to ensure high quality design and a good standard of living conditions for all existing and future occupants. No convincing explanation is given by the Appellant as to why the failure to achieve the separation distances set out in the SPG is acceptable.
- 6.19 Paragraph 64 of *the Framework* is also relevant to Appeal A. It states: "*Permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions*".
- 6.20 The proposed design is plainly deficient and is contrary to CS policy CS11. Given that *the Framework* (paragraph 56) states that: "*the Government attaches great importance to the design of the built environment*", the design's shortcomings should not be tolerated.
- 6.21 The impacts on the living conditions of both existing neighbouring residents and future occupiers in relation to Appeal A would be avoidable through a redesign of the layout, as evidenced by the Appeal B proposal. Delivery of housing should never be at the expense of the living conditions of existing or future residents, and for the above reasons, the Appeal A scheme would be contrary to *the Framework* and CS policy CS11.
- 6.22 Other considerations of a secondary concern to the Council include close relationships between the property on plot 1 and the existing property at 1 Dunton Road in both appeals, necessitating a condition to secure obscure glazing of a secondary (first floor) window to protect the privacy of the existing residential occupiers. A similar relationship would also be caused by the proximity of plots 2 to 7 to the boundaries of the neighbours' rear gardens in Fretter Close in both appeals, with several examples of impact on privacy and a cumulative imposing and overbearing impact on the outlook of the existing residential occupiers. The shallow garden depths would preclude the possibility of tree planting to lessen these impacts. Finally, the Council is of the view that the property at plot 8, however, would not adversely affect neighbouring privacy subject to obscure glazing of side-facing windows.

Fifth main consideration: provision of affordable housing

- 6.23 The Council accepts that the delivery of 30% affordable housing would help off-set the District's current shortage of such housing, in accordance with CS policy CS3. But this consideration should not outweigh the adverse impact on the character and appearance of the locality and, additionally in the case of Appeal A, the living conditions of existing and future occupiers. Moreover, the proposal, with a bias towards 3 bed houses, does not reflect the Council's preferred mix based on its estimates of need for primarily 1 and 2 bed units.

Sixth main consideration: the planning balance

6.24 The appeal proposals would fail to accord with policy H1 of the BANP, and would undermine both its phasing strategy and the BANP itself. This consideration should be given great weight. The proposals would also have an adverse effect on the character and appearance of the countryside, contrary to CS policies CS2 and CS17. In the case of Appeal A, the proposal would have an adverse effect on the living conditions of future residential occupiers, contrary to *the Framework* and CS policy CS11 (c). These identified policy conflicts and adverse effects would significantly and demonstrably outweigh the benefits of either appeal proposal, contrary to the development plan and the requirements of paragraph 14 of *the Framework*.

7. The Case for the Appellant

7.1 The following paragraphs summarise the Appellant's case, which is set out more fully in the proofs of evidence of Mr Bainbridge (APP 2) and Mr Wright (APP 1) and in its closing submissions (INQ 17). The Appellant contends that the proposals accord with the BANP and with national housing and planning policy. Its secondary arguments are that the lack of a 5 year HLS means that there is a presumption in favour of sustainable development to justify the proposed housing development, and that there are no adverse impacts of the proposed development which would significantly and demonstrably outweigh the benefits when assessed against *the Framework*.

First main consideration: whether or not the proposed development would conflict with the development plan and in particular the Broughton Astley Neighbourhood Plan (BANP)

7.2 The Act and *the Framework* indicate that the development plan is the starting point for decision making. Both the Appellant and the Council have quite properly addressed the proposals against the development plan as it now is; the statutory framework requires the Secretary of State to do the same. Mr Stock in xx averred that the most significant policies in the development plan are those dealing with the site itself, and the Appellant agrees with this view.

7.3 The development plan policies that apply to the appeal site are:

(A) In the Broughton Astley Neighbourhood Plan (BANP):

- (i) The appeal site is "allocated for development" on the Proposals Map, and is described as an allocated site at paragraph 3.13.
- (ii) Policy H1 – the appeal site is allocated as the reserve site for housing.
- (iii) Policy P1 – the appeal site is expected to come forward in 2020-2023.
- (iv) Policy BANP Reserve Site 1 – the appeal site is "allocated as a reserve site for a maximum of 28 residential properties".

(B) In the Harborough District Core Strategy (CS):

- (i) Policy CS16 Broughton Astley – new housing development will be provided at locations set out in an Allocations DPD.

- (ii) Policy CS17 – development in the countryside beyond the limits of settlements will be strictly controlled.
- (iii) Policy CS2 expects a high standard of design, and Mr Stock did not criticise the appeal proposal on this count.

7.4 In relation to CS policy CS11 'Promoting Design and Built Heritage', good quality design is promoted in the scheme. The proposed development also accords with several other CS policies (CS5; CS9; CS10; and CS11), none of which are the subject of disagreement between the main parties. However, the Council's officer report to its Executive Meeting on 29 October 2012 (APP 2.6) pointed out that a number of policies in the CS were found to be contrary to *the Framework*, including the following comments:

- Policy CS2: Delivering New Housing: The policy should take into account objectively assessed housing needs for market and affordable housing and ensure sufficient flexibility to adapt to rapid change. Not building on the GL Hearn report evidence leaves the Council open to attack at appeal.

7.5 Mr Stock agreed in xx that, subject to the timing of its release, the BANP supports the principle of residential development of 24 or 28 dwellings on the appeal site, and that in relation to CS policy CS16, the allocation of new housing at Broughton Astley has now been established in the BANP. As a site allocated in the BANP, the appeal site is no longer beyond the settlement limits for the purposes of policy CS17. This means that there is no CS policy 'in principle' objection to the development of the appeal site for housing; this matter of principle has been deferred to the BANP, as confirmed by Mr Stock in xx.

7.6 The BANP also addresses the type of development which is required at Broughton Astley; policy H1 sets out the need for monitoring to ensure delivery does not fall behind its planned rate; that this monitoring should occur annually, and if housing on sites 1A and 2 does not take place as planned, development on the reserve site may be considered; and a mix of housing, including for families and older people (including bungalows), is encouraged.

7.7 There are other policies in the BANP which support development which bring benefit in the shortest timescale (P1 (i)), and trigger a review if delivery in accordance with the BANP does not happen (P1 (ii)). The Council's view, expressed at the Inquiry, that the BANP provides that the appeal site should only come forward if one or other of sites 1A or 2 are not delivered, is an incorrect interpretation of the BANP.

7.8 BANP policy SD1 emphasises the presumption in favour of sustainable development (paragraph 14 of *the Framework*), which means that it accepts the principle of the positive approach to housing development in the absence of a 5 year HLS in the District, which was agreed by Mr Stock in xx. Therefore, where there is a lack of a 5 year HLS, the paragraph 14 presumption should apply. However, at the first annual meeting of the Parish Council following the making of the BANP, in April 2014, Cllr Porter, when asked by the Appellant, had no recollection of monitoring being discussed.

- 7.9 There is plainly a dispute between the Council and the Appellant as to how the BANP is to be interpreted in relation to the circumstances in which release of the appeal site for housing would be appropriate. A Court of Appeal Judgment in January 2013⁵ (INQ 7) sets out the correct approach to the interpretation of policy, and in particular states that it is not permissible to (i) conduct 'forensic archaeology' by examining earlier drafts of the document; or (ii) look at its provenance by looking at extrinsic material as an aid to construction; also (iii) subjective views as to what a policy is intended to mean are irrelevant; and (iv) as a public document, the public are entitled to rely on the document by reading what it says by objective interpretation. Therefore what third parties at the Inquiry stated as to what the BANP was really intended to mean is legally irrelevant.
- 7.10 Because the BANP rightly places great emphasis on delivery, it would not be in accordance with the Plan to wait until 2017 before deciding to take action to rectify the position if there is a sound case now that demonstrates that action will be necessary.
- 7.11 The position on site 1A is that the developers were granted outline planning permission for up to 310 dwellings on 17 November 2014, and phasing has yet to be agreed; reserved matters approval must be applied for by November 2020. Highway works must also be completed before first occupation. A realistic time line is for a start on site by September 2015. First completions are expected in March 2016, with delivery of 200 units by March to September 2021 (i.e. at a rate of 36-40 dpa), and not by March 2019, as BANP policies P1 and H1 require.
- 7.12 The position on site 2 is that the final draft of the S106 Agreement has not yet been signed, with grant of full planning permission for 199 houses expected, leading to a start on site in spring 2015. First completions are expected in September 2015, with the site fully developed by about September 2019/March 2020 i.e. at a rate of 36-40 dpa, again later than policy P1 anticipates. It is therefore clear that about 54-60 completions will be delivered by 31 March 2017, and not 100, as policy P1 requires.
- 7.13 The combined delivery is likely to be about 260 houses by March 2019, and not 400, as required by policy P1. The release of the appeal site would therefore be in accordance with the BANP.
- 7.14 The Appellant's primary case is therefore that the release of the appeal site now is consistent with the development plan, and in particular with the BANP.

Second main consideration: the implications of the lack of a five year supply of readily available housing land in Harborough District

- 7.15 The Appellant's secondary case is that there are material considerations that indicate that the appeal site should be released for development.
- 7.16 In relation to the relevant CS policies, policy CS1 'Spatial Strategy for Harborough' seeks to enable the development of at least 7,700 dwellings across the District between 2006 and 2028. Policy CS2 'Delivering New

⁵ Court of Appeal Decision *190 R. (on the application of TW Logistics Lt) v Tendring DC; 24 January 2013 (INQ 7)

Housing' states that 400 dwellings are required for Broughton Astley, at a density of 30 dph. 263 more dwellings are needed, over and above completions and commitments to achieve the policy target. The level of 30% affordable housing complies with policy CS3 'Delivering Housing Choice and Affordability'.

- 7.17 It is common ground that the Council cannot demonstrate a 5 year supply of deliverable sites for housing. The Council's latest figures show a 4.64 year housing land supply (HLS). This means that the CS policies CS2, CS16 and BANP policy H1 are not considered up-to-date as they seek to restrict development within the countryside and refer to limits of development. Paragraph 49 of *the Framework* therefore applies. Also, the Harborough District Local Plan (2001) has reached the end of its useful life and no longer fulfils its intended purpose, given the original housing allocations have largely been delivered or are clearly undeliverable given the delay in their coming forward. Moreover, it has been superseded by the BANP in relation to matters such as limits to development and provision of major development within Broughton Astley.
- 7.18 Two recent appeal decisions within the District, at Crowfoot Way, Broughton Astley (APP 2.7) and at land north of Waterfield Place, Market Harborough (APP 2.14) have both concluded that the Council was unable to provide a deliverable 5 year HLS, based on the CS requirement of 350 dpa. This figure is likely to rise with the findings of a recent study⁶, published by the Council, which suggests that provision of 440 dpa over the period 2011-2031 would provide a positive framework for strategic planning. This report is to be used to inform the housing requirement within the emerging Local Plan (eLP).
- 7.19 The delivery of housing over the period 2001/02 – 2013/14 shows that when considered against adopted targets (the Structure Plan, then the Regional Spatial Strategy and then OAHN), in 9 out of the 13 years during this period, the delivery fell below these targets, including the four most recent years. There is therefore no disagreement between the main parties that a 20% buffer needs to be added to the housing figures, based on this historic undersupply. In its latest housing land availability report, produced on 31 March 2014 (APP 2.9), the Council accepts that it has 4.64 years HLS, based on its calculation of OAHN. (If the housing requirement figure rises to 500 dpa⁷, then the HLS is reduced to 4.17 years.) These calculations follow the Sedgfield method, which addresses the shortfall in the first 5 years, and this view has been endorsed in recent appeals.

Third main consideration: the impact of the proposed development on the character and appearance of the countryside

- 7.20 The key points made by Mr Wright⁸ were that the appeal site is in a well contained location, and the proposed building heights and footprints are compatible with those of adjoining areas. Furthermore, the site does not

⁶ GL Hearn Ltd: Harborough Housing Requirements Study; March 2013 [Appendix 6 to Bidwells' Planning Statement].

⁷ Proof of Evidence of Mr David Bainbridge, table 7 (APP 2).

⁸ Proof of Evidence of Mr Ben Wright (APP 1).

contain any exceptional features and it does not have the same tranquil nature that exists beyond the line of the built-up fringes of the village.

- 7.21 The Appellant's Landscape and Visual Assessment (LVA)⁹, referring to the Council's landscape study¹⁰, states that the appeal site is within a land parcel (referred to as parcel 20), which *"is considered to have a high capacity to accommodate development. Given the residential context of the parcel, residential development is felt appropriate for this location."* It concludes, with the help of photographs taken from within the site and from surrounding viewpoints, that the site is highly contained and lies within a village fringe character where views of the site are localised, and not generally available from the wider landscape.
- 7.22 The LVA states that the proposals are compatible with the immediate adjoining areas and can be integrated in this location without detriment to the localised or wider landscape character. It also states that the proposals incorporate a number of mitigation measures and as such accord with the conclusions of the Council's LCA and are considered to be appropriate infill development.
- 7.23 The proposed development is sensitively designed to integrate in a well-contained location without detriment to the localised character and visual environment; building heights around 2-2.5 storeys ensure that the development of both the appeal proposals is compatible with adjoining areas¹¹. The careful layout and design of both schemes reflect the surrounding character, scale and spatial relationship and will not compromise the wider residential or visual amenities. In the light of the strong urban influence on the site and its proximity to existing residential development, the greenfield qualities of the appeal site are somewhat diminished. Although outside the development limits of the village, it is closely related to the existing settlement, and is visually and physically detached from the wider, open countryside with the highest capacity for development within parcel 20. For these reasons the appeals site is considered to be of low/ medium landscape sensitivity.
- 7.24 In conclusion, the proposals will give rise to limited change which would not be readily perceived from the adjacent countryside. The proposed developments are in keeping with the scale and character of the settlement. They therefore accord with CS policies CS2 and CS17, and will form an appropriate and consistent urban edge on a site that has been acknowledged to have the capacity for residential development and will not appear as an encroachment into the countryside. There will therefore be no significant adverse impact in terms of landscape character. Moreover, the impact on the immediate area is appropriate within the urban fringe setting. The retention of existing key hedgerows and trees will ensure that the current degree of separation and containment of the site is maintained.

⁹ Aspect Landscape Planning: Proposed Development-land off Dunton Road, Broughton Astley, Leicestershire: Landscape and Visual Assessment (LVA); October 2013 (APP 4).

¹⁰ The Landscape Partnership: Lutterworth and Broughton Astley Landscape Character Assessment (LCA) and Landscape Capacity Study, prepared for Harborough District Council; December 2011 (APP 1.7)

¹¹ Proof of Evidence of David Bainbridge (APP 2.4), paragraph 4.55, page 21).

Fourth main consideration: impact on the living conditions of existing residential occupiers and future occupiers of the proposed development – Appeal A only

- 7.25 The Appellant considers that the proposal would be natural infill development, with a similar footprint, layout, scale and proximity to that of the existing adjoining residential development within the vicinity. The spatial relationship which currently exists within the adjoining area is appropriate, and the proposal can be accommodated successfully in terms of scale, proximity and spatial relationship. The retention of the existing hedgerow and fence along the south-eastern boundary also affords an appropriate degree of separation between plots 12-15 and the existing property at 9 Fetter Close, further ensuring the compatibility of the proposal within the context of the existing residential development.
- 7.26 It is accepted that some of the separation distances are slightly below the minimum distances as set out in the Council's SPG, although the SPG makes it clear that the standards apply to two-storey dwellings only¹², whereas plots 12-15 in Appeal A are for bungalows.
- 7.27 In conclusion, the proposal is broadly compliant with the SPG's guidelines and the proposed layout and scale accords with CS policy CS2 (b).

Fifth main consideration: provision of affordable housing

- 7.28 The Council's housing requirements study (APP 2.15) identified a need, based on the Strategic Housing Market Assessment (SHMA), for 255 affordable homes pa in Harborough District. Since 2010/11, the average delivery of housing (i.e. both market and affordable housing) in the District has only been 290 dpa. There is therefore a pressing need for affordable housing against a backdrop of significant under provision, which weighs in favour of the proposals.

Sixth main consideration: the planning balance

- 7.29 In respect of Appeal B, the Appellant submits that there is no conflict with the development plan and the BANP in particular, and that there is no other harm (loss of countryside, change of character and appearance of the site, perceived conflict with the BANP) that suggests that the appeal should be dismissed; or in the alternative, if there is conflict with the BANP, then the adverse impacts (loss of countryside, adverse change of character and appearance of the site and the risk of a loss of confidence in the NP process) do not significantly and demonstrably outweigh the benefits of granting planning permission.
- 7.30 In respect of Appeal A, the Appellant submits that the starting point is the conclusion reached in respect of Appeal B. In the event that Appeal B is allowed, then the Secretary of State should further weigh in the balance any additional harm arising from the alleged poor design leading to harm to residential amenity (living conditions). If it is found that there is not real, substantial harm to residential living conditions as a result of poor design, then the Appellant submits that Appeal A should be allowed as well.

¹² Harborough District Council SPG Note 2 – *Residential Development – Major Housing Sites*, paragraph 2.6 (CD 4).

7.31 In summary, there are no significant and demonstrable adverse impacts to outweigh the benefits associated with the proposed development. The appeal site is not designated for its landscape quality, wildlife or strategic importance, or in relation to constraints such as flood risk, so that footnote 9 of *the Framework* does not apply, i.e. there are no national policies which indicate that development should be restricted. In the absence of a 5 year HLS, the presumption in favour of sustainable development therefore applies, as set out in paragraph 14 of *the Framework*. The provision of 30% affordable housing is an important material consideration which weighs in favour of both proposals. There are no compelling material considerations, including *the Framework*, which would justify the dismissal of the appeal proposals.

8. The Cases for Interested Parties

8.1 Oral representations made in addition to those of the main parties are summarised below. Copies of the speaking notes for Cllr Colin Porter and Mrs Christine Lord, on behalf of Broughton Astley Parish Council, are attached (INQ 3 and INQ 11 respectively).

Cllr Colin Porter

8.2 The Government's Localism Act gave a greater say for local people with their own Neighbourhood Plan (NP). After many years of effort and money, we finally had a referendum for the NP in January 2014. The parishioners voted for this plan by 89% to become the first in Leicestershire. We have been inundated with aggressive builders/agents, whose sole agenda was to scupper the BANP against the wishes of the villagers of Broughton Astley. We now have a development plan in place from 2006 to 2028 for above the 400 new homes required, so as not to make the BANP out of date (then changed to 500) with many other provisions, including health care, leisure facilities and employment land.

Mrs Christine Lord (for Broughton Astley Parish Council)

8.3 Broughton Astley has grown significantly with no additional facilities, and the BANP was seen as a way of redressing the balance and providing the facilities the village needs. After public consultation, the BANP proposed two housing sites, with a reserve site included (the appeal site), only to come on stream if the two main sites did not deliver within the appropriate phasing. On 16 January 2014, the residents of Broughton Astley voted overwhelmingly to accept the BANP. The S 106 Agreement, signed in November 2014 in relation to Site 1A was complex, but well worth doing, and the length of time since resolution to grant in February 2014 was justified. This site now has outline planning permission. A similar S 106 Agreement is being negotiated in relation to site 2, and these two sites will deliver 509 new homes for the village, which is significantly greater than the 400 dwellings minimum in the Core Strategy.

8.4 These appeals are in direct conflict with the BANP; the reserve site will not ensure the provision of the new amenities which are included in the S 106 Agreement for Site 1A. The appeal proposals are contrary to BANP policy P1 (phasing of development) and policy SD1, as it fails to demonstrate economic, social and environmental improvements for Broughton Astley.

- 8.5 In response to questions, Mrs Lord stated that she considered the housing delivery was still on track in relation to the phasing timetable; that the annual monitoring review and major reviews in 2018 and 2023 would ensure housing delivery was not falling behind the BANP provision; that if the other two sites in the BANP do not deliver within the phasing parameters, the appeal site may be developed; and that delivery of the appeal site now was premature.
- 8.6 When questioned about the harm that might result from bringing the reserve site forward from its phasing in the BANP, Mrs Lord stated that there was a concern that it might undermine the other housing policies in the BANP, which might in turn affect the delivery of the facilities which are included in the S 106 Agreement signed with the developers of Site 1A. She also considered that the 24 or 28 dwellings proposed on the reserve site would not be sufficient to ensure these facilities were delivered at the appropriate time. She accepted the point, however, that if the delivery of the Sites 1A or 2 schemes were delayed, that would also delay the implementation of the community facilities via the S 106 Agreement, such as the GP Surgery.
- 8.7 There was also a concern that the appeal proposal was a 'stalking horse' for a larger scheme of 175 dwellings which was put forward during the preparation of the BANP, before being reduced to the reserve site for a maximum of 28 dwellings in the BANP.

9. Written Representations

- 9.1 A number of written representations were received by the Council at the applications stage (collected in folder WR1), and several further representations were received by the Planning Inspectorate at the appeal stage (collected in folder WR2).
- 9.2 Many of these written representations set out similar concerns to those subsequently articulated by those who spoke at the Inquiry, as outlined above. Other matters raised were that the proposed development failed to provide new employment opportunities for the community of Broughton Astley; pressure for school places and the medical facilities in the village; highway congestion and safety on Dunton Road; poor drainage and consequent flood risk; and wildlife impact.

10. Section 106 Unilateral Undertakings

- 10.1 The proposed developments are both subject to similar S 106 Unilateral Undertakings given by the land owner to Harborough District Council and Leicestershire County Council, the principal differences being the layout plans and adjustments in the amount of the contributions, depending on the number of dwellings proposed. The principal terms of the S 106 Unilateral Undertakings are as follows:
- Health contribution, towards a replacement Orchard Road GP surgery in Broughton Astley: Appeal A - £22,170.72; Appeal B - £19,236.36.
 - Off-site Open Space Contribution: Appeal A - £68,622.88; Appeal B - £57,702.23 (including provision of sports facilities in Broughton Astley; provision or enhancement of Burial grounds in Broughton Astley; and provision or enhancement of semi natural green space in Broughton Astley).

- Open Space Maintenance Contribution: Appeal A - £61,027.49; Appeal B - £53,045.45.
 - Transport Contribution: Appeals A and B - £20,482.00 (including provision of two new bus shelters and other improvements to the bus stops; provision of information display cases; and equipment of a real time information system).
 - Affordable housing units: Appeal A – 8 dwellings; Appeal B – 7 dwellings.
- 10.2 The above provisions are all directly linked to the appeal proposals and they are required to comply with CS policy CS16 (f). They are proportionate to the scale of the proposed development and they are capable of being implemented. Moreover, there was no disagreement between the main parties that all of the above provisions were appropriate in relation to the appeal proposals. I am satisfied, on the basis of the evidence provided, that the planning obligations contained within the Undertakings meet the statutory tests set out in Regulation 122 of the CIL Regulations 2010 and so can be taken into account in determining whether planning permission should be granted.

11. Conditions

- 11.1 The Appellant and the Council helpfully agreed 28 conditions which they would regard as reasonable and necessary should the Secretary of State be minded to grant planning permission for the proposed development (PINQ1).
- 11.2 The suggested conditions relate to the timescale for the commencement of development (1); compliance with the approved plans (2A/B); details of floor and ground levels (3); details of storage of refuse and materials for recycling (4); elevation details (5); surface water drainage (6); measures to protect the visual amenity and character of the development (7); measures to protect the living conditions of existing occupiers and the occupiers of the proposed development (8A/B, 9A/B and 22); measures to enhance highway safety (10-16 and 18); details of a residential travel plan (17); off-street car parking provision (19); construction method statement (20) hard and soft landscaping (21 and 25); remediation of contamination (23 and 24); archaeological investigation (26 and 27); and a scheme for biodiversity measures (28).
- 11.3 The main parties agreed at the Inquiry that condition (25) should be amended to include reference to a scheme to protect the quality and integrity of the existing railway embankment which runs along the north-west boundary of the side.

12. Inspector's Conclusions

First main consideration: whether or not the proposed development would conflict with the development plan and in particular the Broughton Astley Neighbourhood Plan (BANP)

- 12.1 Paragraph 196 of *the Framework* states that planning law requires that applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise. This is clearly the common starting point for all the parties.

The relevant parts of the development plan

- 12.2 The relevant parts of the development plan in relation to both appeals are the saved parts of the Harborough District Local Plan (2001), the Harborough District Core Strategy (CS) and the Broughton Astley Neighbourhood Plan (BANP) [3.2-3.5]. There is also an emerging new Local Plan (eLP), which according to the Council, will ensure full compliance with *the Framework* and replace both the existing adopted Local Plan and the Core Strategy. Mr Stock accepted in answer to one of my questions that the eLP public consultation period was some way off and agreed with the Appellant that very little weight could be attached to this Plan. However, he considered that the emerging draft indicates that the eLP will work with what has been established in the NP.
- 12.3 The 2001 Local Plan, which was designed to cover the period to 2006, contains some saved policies. I consider that its strategy relating to open countryside and settlement boundaries is out of date in that these parts of the Plan were predicated on its response to the need for housing and other development up to 2006 and not beyond. I accordingly give the 2001 Local Plan little weight in relation to these appeals.

The Harborough District Core Strategy (CS) 2006-2028

- 12.4 The CS, although more recent than the 2001 Local Plan, also predates *the Framework*, as it was adopted in November 2011. This has a number of serious implications, which are clearly explained in the Officer Report to the Council's Executive Meeting on 29 October 2012¹³ [7.4]. Firstly, the report points out that *the Framework* shifted the emphasis of the planning system from controlling development to managing and enabling development. The report also asserts that there are several policies in the Core Strategy which are not fully compliant with *the Framework*. Moreover, *the Framework* states that from March 2013, much less significance is placed on local planning policies if they are not fully compliant with *the Framework*.
- 12.5 The report highlights CS policy CS2, where there is an alleged degree of conflict with *the Framework*. It is clear from the report that this policy needs to refer to the objectively assessed housing need (OAHN) figures, which in Harborough District's case are those based on the sub-regional housing requirements study by GL Hearn¹⁴. This study, which has not been robustly challenged in any evidence at the Inquiry, recommends that, based on current demographic evidence, and making allowances for economic growth, provision of 440 homes per annum in the District over 2011-2031 would provide a positive, realistic and defensible framework for strategic planning.
- 12.6 On the other hand, CS policy CS2 is based on the now revoked Regional Spatial Strategy for the East Midlands, and sets a housing requirement of 350 dpa over the period 2006-2028, i.e. significantly below the OAHN as calculated in the GL Hearn Study.

¹³ Report to the Executive Meeting of Harborough District Council, Paper No.2, 29 October 2012: Preparation of new Local Plan for Harborough District (APP 2.6)

¹⁴ GL Hearn Ltd: Harborough Housing Requirements Study; March 2013 [Appendix 6 to Bidwells' Planning Statement].

- 12.7 In a recent called-in appeal in relation to proposed housing development at Crowfoot Way, also in Broughton Astley [6.9], the Secretary of State agreed with the Inspector that the relevant development plan policies for the supply of housing are out of date; this of course particularly applies to CS policy CS2, which specifically establishes the housing requirements of the District for the plan period.
- 12.8 The Council has also accepted that it lacks a 5 year supply of available housing, with the latest figure in its evidence being 4.64 years¹⁵. This is a material consideration to which I attach considerable weight. In the absence of a 5 year HLS for Harborough District, the presumption in favour of sustainable development, as set out in paragraph 49 of *the Framework*, comes into play, and it is therefore necessary to apply the tests in paragraph 14. The relevant policies of the CS are out-of-date and thus can be given little weight. I therefore have to apply the planning balance, i.e. whether the adverse impacts of allowing the appeal would significantly and demonstrably outweigh the benefits when assessed against the policies in *the Framework* taken as a whole.

The Broughton Astley Neighbourhood Plan (BANP)

- 12.9 I deal with the relationship between the appeal proposals and the BANP at some length, bearing in mind the importance attached to Neighbourhood Plans (NPs) in *the Framework* (paragraphs 183-185) and the provisions of the Localism Act. The appeal site is allocated on the BANP Proposals Map¹⁶ as the reserve site for housing, for a maximum of 28 residential properties. The site is coloured purple on the proposals map, which is notated in the key as 'Land Allocated for Development', i.e. it has exactly the same notation as the housing allocations on sites 1A and 2. This, together with the inclusion of the appeal site both in policy H1 'Housing Allocations Policy' and within phase 3 of policy P1 'Phasing of development', indicates that, in principle, the appeal site is suitable for residential development in the BANP at some point in time and is therefore not in question.
- 12.10 At the Inquiry, the Council attempted to introduce a measure of doubt into the suitability of the reserve site for residential development. The BANP, however, is silent on whether the appeal site plays an important role as a green wedge or is intrinsically worth protecting on landscape grounds or as an important extension of the countryside, or to use Mr Stock's phrase in xx, as a 'green tongue' of great value to the community [6.13].
- 12.11 The appeal site is not included within the environment section of the BANP, which identifies a number of important open spaces in the village, including a proposed area of separation in relation to the Sutton in the Elms community at the opposite end of the settlement from the appeal site. The BANP also identifies the disused railway line which runs adjacent to the appeal site as a local green space, but not the appeal site. Whatever concerns there may have been from the local community over the environmental attractiveness of the appeal site, they did not make their way into the BANP.

¹⁵ Proof of Evidence of Nathaniel Stock, paragraph 5.12 (LPA 1.7).

¹⁶ Proof of Evidence of David Bainbridge, (APP 2.4), plan 2.3, page 13.

- 12.12 I therefore consider that the key consideration in relation to the BANP, which I fully recognise has been only recently adopted, having found (i) it to lie within an area where there is agreement that a 5 year housing land supply does not exist and (ii) its policy for the supply of housing not to be up-to-date when read against paragraph 49 of *the Framework*, is whether there are sound planning reasons for delaying the appeal proposals until they conform to the phasing provision of the appeal site in the BANP, which is set out in policy P1 as being in the period 2020 – 2023. Policy P1, however, also states that the development and construction of sites which bring the most potential benefit in the shortest timescale (my underlining) to the community of Broughton Astley will be supported [7.7].
- 12.13 Bringing forward the appeal site as soon as possible would appear to be in line with the ethos of policy 1 of the BANP. Moreover, there is nothing in the BANP which explains why the phasing is required, apart from the use of the phrase “a logical sequence”. Phasing is not linked, for example, to the timing of any infrastructure requirements or to any other criteria to give it meaning in planning terms. No other explanation was forthcoming during the Inquiry.
- 12.14 The local community’s concerns over the proposals were linked to the following considerations: (1) The local community has already taken more than its fair share of the District’s housing requirements, so why should it take any more? (2) Bringing one or other of the appeal proposals on-stream in advance of its phasing (2020-2023) might have an adverse influence on the delivery of its ‘rival’ sites (sites 1A and 2), and interrupt the flow of S 106 contributions towards important community facilities for the village, such as the GP surgery; and (3) The proposed development would be viewed by the local community as undermining the BANP, resulting in demoralisation and a loss of community interest, where the opportunities of localism had been embraced with so much enthusiasm in the village.
- 12.15 I will address these points in turn. In relation to point (1), it is true that the housing allocations in Broughton Astley in the BANP exceed the CS provision of 400 dwellings by a considerable margin (25%) [6.7], and the appeal proposals would add yet another 4.8-5.5% to the total. As the Council, in its closing submission, states, “*the NP does not shirk its task*” (INQ16).
- 12.16 Where a District does not have a 5 year HLS, however, *the Framework* does not state that the shortfall should be provided for on a pro-rata basis across a District, and there are several sustainable reasons why such an even spread would be inappropriate, such as access to facilities and public transport, convenient transport links, and the protection of important landscapes. Clearly, the more sustainable a settlement is or can be made so in relation to these considerations, the more appropriate it is for such a settlement to contribute to meeting the overall housing needs of the District.
- 12.17 Even with the implementation of the housing schemes on sites 1A and 2, as well as on the appeal site, these together would still not satisfy the 5 year housing need for the District identified in the GL Hearn Study. The appeal proposals would therefore assist in a modest way in addressing the Council’s housing supply shortfall, so in this situation, the existence of the other housing schemes in Broughton Astley does not in itself represent a basis on which to

refuse permission given the wider housing land shortfall, provided that the development itself can be said to be sustainable.

- 12.18 In relation to point (2), I heard no robust evidence to suggest that the proposals would prevent the housing allocations on sites 1A and 2 from progressing and delivering their S 106 contributions, although to date only the scheme on site 1A for 310 dwellings has planning permission.
- 12.19 Mr Bainbridge, in his EIC, stated that delayed development on the other allocations as a result of the appeal proposals was unlikely for several reasons; firstly, there was no objection from the other builders involved in the developments on sites 1A and 2; secondly, no concerns about having to slow down the rate of housing completions on sites 1A and 2 were raised by the respective builders; and thirdly, Mr Bainbridge stated at the Inquiry his view, which was not challenged, that all the relevant house builders are Leicestershire based and speak to each other on a regular basis, and the appeal proposals have not caused any disagreement among them. I therefore consider that the proposals would be unlikely to delay the programmes for development on the phase 1 and 2 sites in the BANP, but would, on the contrary, enhance delivery of community infrastructure through additional developer contributions secured through the unilateral undertaking.
- 12.20 The views of local representatives in relation to point (3) are important and it is easy to see why a community that has been involved in the preparation of its own NP, in the spirit of localism, can become disenchanted with a scheme that threatens to breach the phasing sequence, contrary to policy P1. It is vital that the confidence of the local community in the planning system, and in particular in its own NP, should not be eroded. However, I do not believe that the proposal would “scupper” the BANP or undermine its strategy.
- 12.21 Policy P1 also states that the reserve site may be considered ahead of time if earlier phased housing does not happen for any reason. I note that, after around 11 months, one of the S106 Obligations, relating to the allocated housing site 2 has still not been signed, whilst the Agreement for site 1A has only just been signed. At the time of writing, only one planning permission exists in the village for new housing. In view of this and the statement by the Appellant that development is anticipated to commence shortly after the discharge of conditions and acquisition of land¹⁷, is a further consideration in favour of the appeal proposals, within the context of the urgency in *the Framework* (paragraph 49) to boost the supply of housing, especially in areas, such as Harborough, where there is agreement that the area lacks a 5 year HLS.
- 12.22 Although the BANP has yet to reach its first anniversary, I consider that it is fair to assume that the pace of delivery in relation to the proposed developments on sites 1A and 2 will be constrained in relation to the quantum in the proposed phasing by a number of factors which are set out in some detail by the Appellant [7.11-7.14]. The Appellant has demonstrated that, by the end of phase 2 (April 2019), it is likely that about 270-300 dwellings will have been completed on Sites 1A and 2, i.e. significantly short of the 400 dwellings envisaged in the BANP during this period. The appeal proposals

¹⁷ Proof of Evidence of David Bainbridge (APP 2.4), paragraph 7.5, page 32.

already have signed and dated S 106 unilateral obligations, so there should be no delay in their implementation. It is therefore likely that either scheme on the appeal site could be completed within phase 1 of the BANP, or by the start of phase 2 at the latest, and this would make up some of the shortfall at both District and BANP level.

- 12.23 The Council drew to my attention two recently recovered appeals, both of which involved NPs [6.9]. The first appeal, at Crowfoot Way, Broughton Astley (LPA 1.9), relates to the same NP as the appeals before me. The Crowfoot Way appeal site is not allocated in the BANP, and it is also physically separated from the existing urban settlement boundary. Furthermore, its location, to the south of the settlement, is generally further away from the main facilities than any of the allocated housing sites, with the main exception of a nearby primary school. Furthermore, its size, at 110 dwellings, was considered too large to be classified as windfall development. The Secretary of State placed very substantial negative weight on the conflict between the appeal proposal and the BANP.
- 12.24 In the second appeal, at Winslow¹⁸ (INQ 6), I note that the proposal conflicted with policy 2 in the Winslow NP, which designates a settlement boundary for the purposes of directing future housing, and with policy 3, which states that proposals for housing development outside the boundary will not be supported unless they require a countryside location and maintain the intrinsic character and beauty of the landscape. The Secretary of State concluded that the conflict between the appeal proposal and the Winslow NP as a whole was significant.
- 12.25 In contrast to these two appeals, there is nothing in either the BANP Examiner's Report¹⁹ or in the Plan itself, to suggest that there might be an 'in principle' argument against developing the appeal site for housing, either in relation to impact on the character and appearance of the countryside, or in the loss of a gap between residential areas. In fact, the Examiner's Report refers to representations seeking to increase the number of houses to be allocated on the site. Both the Crowfoot Lane and Winslow appeals related to land outside the boundaries of their respective settlements, and were on land which was not included as housing allocations. I therefore consider that neither of these appeal decisions has direct relevance to the appeals before me.
- 12.26 I therefore conclude, in relation to the first main consideration, for all the reasons stated above, that the proposed development would not be contrary to the development plan and in particular, not to the BANP. This is, in my view, an important material consideration in favour of the proposed developments. Clearly, policies can only be interpreted to mean what they say and not what the authors may have intended that they say.

¹⁸ Appeal decision Ref. APP/J04055/A/13/2205858; Secretary of State dismissed outline planning permission for up to 211 residential units and other uses at land south of Verney Road, Winslow, Buckinghamshire; 20 November 2014.

¹⁹ Broughton Astley Neighbourhood Plan 2013-2028 Examination Version: A Report to Harborough District Council by Independent Examiner, Nigel McGurk; October 2013.

Second main consideration: the implications of the lack of a five year supply of readily available housing land in Harborough District

12.27 I have largely covered my response to the second main consideration within the first main consideration above. The Appellant has presented robust evidence to show the lack of housing provision in the District over the last few years and the importance of meeting its needs in the near future [7.15-7.19]. Clearly, the failure to secure a 5 year HLS, which the Council accepts [6.11], is an important material consideration in favour of the proposed development, especially in view of the emphasis in paragraph 47 of *the Framework* to boost significantly the supply of housing.

Third main consideration: the impact of the proposed development on the character and appearance of the countryside

12.28 Both main parties agree that the appeal site is currently within the countryside, although I consider it to be a narrow finger of countryside, notwithstanding its BANP designation, and comprises part of the Upper Soar-Broughton Astley Open Farmland Landscape Character Area (LCA). There is also agreement that the site is not endowed with any exceptional features [6.13 and 7.20], and this is confirmed by the landscape evidence and my own observations. Although the Council argued that the site played an important role of providing a 'green tongue' of open, agricultural land into the village [6.13], reference to this is absent in the BANP. This absence is despite the fact that the BANP includes the designation of a number of Local Green Spaces, including the disused railway line adjacent to the appeal site. The site has the appearance of an urban corridor between the thick vegetation marking the route of the former railway to the north-west and the recently developed housing at Fretter Close to the south-east.

12.29 The urbanity of the site is compounded by the main road to the south-west (Dunton Road) with housing on the opposite side of the road (including housing in Speedwell Drive) looking towards the site. Also at the Dunton Road end, the narrow width of the site provides little visual relief for passing traffic, whilst the proposed retention of most of the existing vegetation, except for the gap for access, would also limit the impact of the proposals in this direction. The only open aspect from the site is to the north-east where there is open countryside, although even in this direction, the existing hedgerows on the boundary provide a degree of containment.

12.30 The above features all contribute to the enclosed nature of the site, which would largely contain the proposals from outside views. Any impact on the wider, open countryside to the north-east would be minimal, whilst lack of reference in the BANP to its value as either a landscape or an amenity, leads me to conclude that the site does not merit protection as a valued landscape within the terms of paragraph 109 of *the Framework*. I also consider, for the above reasons, that the appeal proposals would not be contrary to CS policy CS12, which states that Broughton Astley is capable of accommodating development around its edges where topography allows the new development to connect with the existing settlement edge without exposure to open views or impact on the wider Upper Soar Character Area.

12.31 Although the Council cites CS policy CS17 in its reason for refusal in relation to Appeal B, this policy focuses on development in relation to areas beyond (my

underlining) Market Harborough, Lutterworth, Broughton Astley and Leicester PUA, where it identifies criteria for development in relation to a group of smaller, rural settlements and the countryside outside these rural settlements, i.e. not related to the area around Broughton Astley. As such I give little weight to this policy insofar as it affects the appeal site.

12.32 I therefore conclude, in relation to the third main consideration, that the harm to the character and appearance of the appeal site caused by the loss of countryside would be minimal, and would not conflict with the BANP, and in particular policy H1. In any event, any harm to the character and appearance of the area would be mitigated by its strong visual containment. I also consider that any harm would be somewhat lessened by the proposed provision of an area of landscaped open space within the Appeal B scheme.

Fourth main consideration: impact on the living conditions of existing residential occupiers and future occupiers of the proposed development – Appeal A only

12.33 The proposal for 28 dwellings generally accords with BANP policy H1, and the overall density does not appear to be significantly higher than the Fretter Close residential area immediately to the south-east. Mr Stock cited a number of deficiencies in relation to distances between proposed properties along the south-east boundary of the scheme and the nearest existing dwellings in the Fretter Close development in his EIC. He considered, however, that none of these were sufficiently harmful to justify refusal of planning permission, apart from the relationship of the four bungalows in the south-east corner (plots 12-15) with the existing large 2/3 storey building at 9 Fretter Close, which has windows on both its first and second floors which would overlook these bungalows.

12.34 The Council's reasons for refusal only refer to this specific relationship, the other issues being 'secondary' [6.21]. I agree with both the main parties that none of the other distances between properties would unduly harm the living conditions of either existing residents or future occupiers of the proposed development by reason of loss of privacy or outlook. However, the juxtaposition of the two pairs of bungalows at plots 12-15 with the existing building at 9 Fretter Close has justifiably led to concerns from the Council about the impact on the privacy and outlook of the future occupiers of these bungalows. Moreover, I do not consider that the Appellant's reference to the existing hedge and fencing [7.25] would overcome this concern.

12.35 In response to uncertainty over the separation distances, the main parties jointly presented an annotated layout plan of the Appeal A scheme at the Inquiry. This indicated the agreed distances between the north-west and north-east (principal) elevations of 9 Fretter Close and the mid-points of the south-east (principal) elevations of the proposed bungalows on plots 12-15 (INQ10).

12.36 Some of these relationships between the proposed and existing dwellings would involve principal to principal windows at separation distances significantly below the 21m guideline in the Council's adopted SPG guidance (CD4), and whilst the standard is to be applied to two story dwellings only, it is my view that the impact of second floor windows onto the proposed new bungalows would harm the living conditions of the future occupiers of the bungalows, both in relation to the habitable rooms facing to the south-east and

in their gardens. I agree with the Council that no convincing explanation has been given as to why a significantly shorter distance would be appropriate in relation to the living conditions of plots 12-15 [6.17]. I also consider that the impact of 9 Fretter Close would be overbearing to future occupiers of plots 12-15.

12.37 In conclusion on the fourth main consideration, I consider that proposal A would be contrary to one of the core planning principles in *the Framework*, at paragraph 17[5], which states that planning should always seek to secure high quality design and a good standard for all existing and future occupiers of land and buildings of amenity (living conditions). I also consider that the proposal is contrary to CS policy CS11, which calls for the highest standards of design in new development to create attractive places for people to live and the SPG, although its weight in this appeal is limited because it applies to two-storey houses. Finally, *the Framework* (paragraph 64) states that permission should be refused for development of poor design that fails to take the opportunities available to improving the character and quality of an area and the way it functions. The incongruous relationship between the proposed bungalows and 9 Fretter Close would in my view, justify dismissal of Appeal A.

Fifth main consideration: provision of affordable housing

12.38 The Appellant argues [7.25] that the need for affordable housing in Harborough is underlined in both the SHMA, which identified a need for 255 affordable homes a year in the District, and also by the recent completion rates, which show that since 2010/11, the average delivery of housing (i.e. general market plus affordable homes) has only been 290 dpa.²⁰ This evidence, was based on Council statistics, was not challenged, either in written evidence or at the Inquiry.

12.39 In response to the above statistics, the proposals would deliver either 8 affordable homes (Appeal A) or 7 (Appeal B). These totals, comprising about 30% of the overall total respectively of each scheme, in accordance with CS policy CS3, would make a modest contribution towards meeting the District's need for affordable housing, and I have attached some weight to this consideration in support of the appeals.

Other matters

12.40 The local residents raised a number of other concerns in addition to the main considerations above. Clearly a number of these concerns are also important considerations. Increased pressure on school places, whilst raised initially by the county council, was not followed up by any suggested provision in a Unilateral Obligation and was not cited as a reason for refusal. There was every opportunity for robust evidence to have been submitted for consideration either at the Inquiry or in a proof of evidence, and in its absence I can only give it little weight.

12.41 Regarding the concerns that the proposed developments would place increased pressure on local health services, the BANP proposes new health care facilities on site 1B (policy W1), to be implemented in phase 2 (2017-2019). The

²⁰ Proof of Evidence of David Bainbridge, Table 5, page 27 (APP 2).

proposals before me would not, in my view lessen the likelihood of implementation, whilst the unilateral undertaking accompanying these proposals would increase the level of contributions towards such a project.

- 12.42 Although concerns were expressed by local residents over the impact of the proposed developments on highway congestion and safety, the highway authority (Leicestershire County Council) has not objected to the schemes, subject to appropriate conditions. I see no reason to take a different view.
- 12.43 Several residents raised concerns over the adequacy of the existing drainage capacity of the site. The appeal site, however, is in an area of low flood risk, and the Environment Agency has not objected to the proposals. Subject to the necessary drainage condition, this is not a consideration which is fatal to either scheme. The highways and drainage impacts of the proposed developments are also covered in some detail in the Proof of Evidence of Alexander Bennett (APP 2.13) which conclusively demonstrates that these considerations are not sound reasons for dismissing these appeals. In particular, he explains how the Appellant's drainage strategy represents a 51% betterment over existing greenfield run-of rates, and that both applications received no objections from the Environment Agency or Severn Trent Water subject to suitable conditions²¹.
- 12.44 There were a number of concerns raised regarding impact on wildlife. However, the Council, having assessed the comments of the County Council ecology officer, considered that the proposals would not cause harm to protected species or to the dismantled railway wildlife corridor, subject to the imposition of suitable conditions, and that the proposals would not be contrary to CS policy CS8 of paragraph 117 of *the Framework*. I see no reason to come to a different view, subject to a condition to address these concerns. Finally, the BANP makes provision for employment use on part of Site 1A.

Sixth main consideration: the planning balance

- 12.45 I have found that the principle of residential development on the appeal site has been established in the BANP, albeit that it is programmed for the latter part of the plan period (2020-2023). In the latter respect the proposal can be said to not be entirely consistent with the NP (and thus with the development plan). As would be expected, having the designation for development in mind, no policies in the BANP seek to protect the appeal site from development; neither do they classify the site as a valued landscape, worthy of protection. In my view, the key consideration is whether bringing the appeal site forward from phase 3 would undermine the BANP, and/or whether its early release for housing is justified.
- 12.46 At a strategic level, bringing forward the completion of either the Appeal A or Appeal B scheme to bring a modest housing yield would be justified in the light of the lack of a 5 year HLS in the District, bearing in mind the thrust of paragraph 47 of *the Framework* to boost significantly the supply of new housing, especially at a time when the Government has made it clear that there is a national housing crisis.

²¹ Proof of Evidence of Alexander Bennett, paragraphs 5.10 and 5.13, page 12 (APP2.13).

- 12.47 Although contrary to many local perceptions, the evidence has convinced me that an early release of 24-28 dwellings would not “undermine” the BANP, as some of the third parties alleged. Firstly, I consider that the implementation of the appeal proposal is very unlikely to delay progress on the implementation of the two housing allocations which are included in the early phases in the BANP; and secondly, the realistic trajectory of these two earlier schemes, for the reasons which have already set out by the Appellant, points to some delivery by the end of phase 2, but not the 400 as proposed.
- 12.48 I consider that any harm to the character and appearance of the appeal site caused by the loss of the countryside would be minimal, and in any event mitigated by its strong visual self-containment. Moreover, the BANP does not contain any policies to protect the appeal site for landscape or any other reason.
- 12.49 Regarding the effect on the living conditions of existing or future residential occupiers, in relation to Appeal A only, I consider that the existing 2/3 storey building at 9 Fretter Close would adversely affect the privacy and outlook of the future occupiers of the proposed bungalows on plots 12-15. In my view, this would be an incongruous relationship between the existing and proposed properties, contrary to core principle 4 in *the Framework* (paragraph 17) and the Council’s SPG. I do not consider that there would be any unacceptable harm to the living conditions of any of the existing or future occupiers in the Appeal B proposal.
- 12.50 The provision of 30% affordable housing is also, in my view, a material consideration in support of the proposed developments, especially in view of low affordable housing delivery in the recent past.
- 12.51 In the context of all the above main issues and the other considerations which have been raised in representations, I conclude that the benefits of the Appeal B proposal would weigh overwhelmingly in favour of the proposed development. In Appeal A, the adverse impact on the living conditions of the proposed occupiers of plots 12-15 would, in my view, be unacceptable, and for this reason alone, I recommend that Appeal A is dismissed.

Conditions

- 12.52 If the Secretary of State were minded to grant planning permission for either of the proposed developments, I consider that the conditions agreed between the Appellant and the Council [11.1-11.3] would be necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects, and as such accord with the requirements in *the Framework*, paragraph 206. The suggested conditions are set out at Appendix C.
- 12.53 Condition (1) is to accord with the provisions of Section 91 of the Town and Country Planning Act 1990, as amended by the Planning and Compulsory Purchase Act 2004. Condition (2 A/B) is in the interests of good planning and for the avoidance of doubt. Condition (3) is to safeguard the character and appearance of the surrounding locality and the living conditions of existing neighbouring residents and future occupiers of the proposed development. Conditions (4) and (5) are in the interests of visual amenity. Condition (6) is to prevent flooding. Condition (7) is to safeguard the character and appearance

of the development. Conditions (8 A/B), (9 A/B), (20) and (22) are to safeguard the living conditions of existing residential occupiers and future occupiers of the development.

12.54 Conditions (10-16 and 18) are in the interests of pedestrian and vehicular safety. Condition (17) is to promote the use of more sustainable transport choices to and from the site. Condition (19 A/B) is to ensure adequate off-street parking provision. Conditions (21) and (25) are to safeguard the character and appearance of the area. Conditions (23) and (24) are to prevent unacceptable risks from pollution or land instability. Conditions (26) and (27) are to ensure satisfactory archaeological investigation. Condition (28) is in the interests of the ecology and green infrastructure of the area.

13. Inspector's Recommendations

13.1 For the reasons set out above, and subject to the conditions listed at Appendix C, I recommend that Appeal A is dismissed, and Appeal B is allowed.

Mike Fox

INSPECTOR

Richborough Estates

APPENDIX A: APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Mr Jack Smyth	Instructed by Head of Legal Services, Harborough District Council
He called	
Mr Nathanael Stock	Planning Officer, Harborough District Council

FOR THE APPELLANT:

Mr Hugh Richards, of Counsel	Instructed by Mr Bainbridge of Bidwells
He called	
Mr Ben Wright	Company Director, Aspect Leisure Planning Ltd
Mr David Bainbridge	Partner, Bidwells

INTERESTED PERSONS:

Cllr Colin Porter	Broughton Astley Parish Councillor
Mrs Christine Lord	Broughton Astley Parish Manager and Clerk to the Council
Mr Raj Patel	Housing Manager, Harborough District Council

Richborough Estates

APPENDIX B: DOCUMENTS

THE COUNCIL'S DOCUMENTS

- LPA 1 Proof of Evidence of Mr Nathaniel Stock
- LPA 1.1 Appendix NS1 to Mr Stock's Proof of Evidence: *Site Plans*
- LPA 1.2 Appendix NS2 to Mr Stock's Proof of Evidence: *Aerial photos*
- LPA 1.3 Appendix NS3 to Mr Stock's Proof of Evidence: *Report to Planning Committee for 13/00688/FUL (Regarding Appeal A)*
- LPA 1.4 Appendix NS4 to Mr Stock's Proof of Evidence: *Report to Planning Committee for 13/01539/FUL (Regarding Appeal B)*
- LPA 1.5 Appendix NS5 to Mr Stock's Proof of Evidence: *Suggested Conditions*
- LPA 1.6 Appendix NS6 to Mr Stock's Proof of Evidence: *Broughton Astley Neighbourhood Plan – Final Decision Statement*
- LPA 1.7 Appendix NS7 to Mr Stock's Proof of Evidence: *Harborough District Council 5 Year Housing Land Supply, 31 March 2014*
- LPA 1.8 Appendix NS8 to Mr Stock's Proof of Evidence: *Appeal decision- Land to the north of Waterfield Place, Market Harborough, Leicestershire, LE16 7ER – Appeal Ref. APP/F2415/A/14/2211933*
- LPA 1.9 Appendix NS9 to Mr Stock's Proof of Evidence: *Appeal decision- Land south of Hallbrook Primary School, Crowfoot Way, Broughton Astley, Leicestershire – Appeal Ref. APP/F2415/A/12/2183653*
- LPA 1.10 Appendix NS10 to Mr Stock's Proof of Evidence: *Neighbourhood Watch #5: Two more neighbourhood plans adopted, Planning Magazine; 19 July 2013*
- LPA 1.11 Appendix NS11 to Mr Stock's Proof of Evidence: *Fourth neighbourhood plan passed by examiner, Planning Magazine; 30 August 2013*
- LPA 1.12 Appendix NS12 to Mr Stock's Proof of Evidence: *Planning Obligations Developer Guidance Note; September 2009*
- LPA 1.13 Appendix NS13 to Mr Stock's Proof of Evidence: *Provision for Open Space, Sport and Recreation; 2009*
- LPA 1.14 Appendix NS14 to Mr Stock's Proof of Evidence: *Assessment of Local Community Provision and Developer Contribution; 2010*

THE APPELLANT'S DOCUMENTS

- APP 1 Proof of Evidence of Mr Ben Wright
- APP 1.1 Appendix BW1 to Mr Wright's Proof of Evidence: *Decision Notice Ref. 13/00688/FUL; dated 14 August 2013 (Original Application) (Regarding Appeal A)*
- APP 1.2 Appendix BW2 to Mr Wright's Proof of Evidence: *Decision Notice 13/01539/FUL, dated 8 January 2014 (Revised Application) (Regarding Appeal B)*
- APP 1.3 Appendix BW3 to Mr Wright's Proof of Evidence: *Context Landscape Masterplan for Original Application (28 dwellings)*
- APP 1.4 Appendix BW4 to Mr Wright's Proof of Evidence: *Context*

- Landscape Masterplan (Revision A) for Revised Application (24 dwellings)
- APP 1.5 Appendix BW5 to Mr Wright's Proof of Evidence: Extract from National Character Area 94: Leicestershire Vales
- APP 1.6 Appendix BW6 to Mr Wright's Proof of Evidence: Extract from Harborough District Council Landscape Character Assessment (September 2007) – Fig 2.15 Broughton Astley Focus Area Traffic Light Plan
- APP 1.7 Appendix BW7 to Mr Wright's Proof of Evidence: Extract from Lutterworth and Broughton Astley Landscape Character Assessment and Landscape Capacity Study (December 2011)
- APP 1.8 Appendix BW8 to Mr Wright's Proof of Evidence: Aspect Landscape and Visual Aspect Assessment Methodology
- APP 1.9 Appendix BW9 to Mr Wright's Proof of Evidence: Visual Assessment
- APP 1.10 Appendix BW10 to Mr Wright's Proof of Evidence: Burgess Farm, Worsley Appeal decision (APP/U4230/A/11/2157433)
- APP 1.11 Appendix BW11 to Mr Wright's Proof of Evidence: Homelands Farm and Deans Farm, Bishops Cleave Appeal decision (APP/U4230/A/11/2157433)
- APP 2 Proof of Evidence of David Bainbridge
- APP 2.1 Appendix 1 to Mr Bainbridge's proof: *Site Location Plan*
- APP 2.2 Appendix 2 to Mr Bainbridge's proof: Saved policies of the Harborough District Local Plan
- APP 2.3 Appendix 3 to Mr Bainbridge's proof: Harborough District Local Development Framework Core Strategy 2006-2028
- APP 2.4 Appendix 4 to Mr Bainbridge's proof: *The Big Plan for Broughton Astley, Broughton Astley Neighbourhood Plan 2013- 2028*
- APP 2.5 Appendix 5 to Mr Bainbridge's proof: Neighbourhood Plan Delivery and Monitoring Group and Associated Project Group's Terms of Reference
- APP 2.6 Appendix 6 to Mr Bainbridge's proof: Executive Meeting held on 29 October 2012
- APP 2.7 Appendix 7 to Mr Bainbridge's proof: Crowfoot Way, Broughton Astley – appeal decision
- APP 2.8 Appendix 8 to Mr Bainbridge's proof: Tesco v Dundee City Council - Judgment
- APP 2.9 Appendix 9 to Mr Bainbridge's proof: Harborough District Council – 5 Year Housing Land Assessment: 31 March 2014
- APP 2.10 Appendix 10 to Mr Bainbridge's proof: Ullesthorpe - Appeal Decision
- APP 2.11 Appendix 11 to Mr Bainbridge's proof: Plan Detailing Distances
- APP 2.12 Appendix 12 to Mr Bainbridge's proof: Floor Plans and Elevations for Number 7, 8, and 9 Fretter Close (NB Plans not to scale)
- APP 2.13 Appendix 13 to Mr Bainbridge's proof: Statement by Alexander Bennett
- APP 2.14 Appendix 14 to Mr Bainbridge's proof: Waterfield Place Appeal Decision
- APP 2.15 Appendix 15 to Mr Bainbridge's proof: Harborough Housing Requirements Study
- APP 2.16 Appendix 16 to Mr Bainbridge's proof: Moreton in the Marsh Appeal Decision

- APP 2.17 Appendix 17 to Mr Bainbridge's proof: Andover Appeal Decision
- APP 2.18 Appendix 18 to Mr Bainbridge's proof: Honeybourne Appeal Decision
- APP 3 Planning Statement
- APP 4 Aspect Landscape Planning: Proposed Development Land off Dunton Road, Broughton Astley, Leicestershire – Landscape and Visual Assessment; October 2013.

THIRD PARTY REPRESENTATIONS

- Folder TP1 Representations received by the Council in response to the planning applications
- Folder TP2 Representations received by the Council in response to the appeals

CORE DOCUMENTS PRESENTED TO THE INQUIRY

- CD1 National Planning Policy Framework (*the Framework*); March 2012.
- CD2 Statement of Common Ground (SCG) between Bidwells for Davidsons Homes and Harborough Borough Council; July 2014.
- CD3 Harborough District Council: Supplementary Planning Guidance (SPG) Note 1 Design Principles; March 2003.
- CD4 Harborough District Council: Supplementary Planning Guidance (SPG) Note 2 – Major Housing Sites; March 2003.
- CD4 Appellant's Design and Access Statement; April 2013.

OTHER DOCUMENTS SUBMITTED AT THE INQUIRY

- INQ 1 S 106 Unilateral Undertaking from the landowner to Harborough District Council and Leicestershire County Council relating to Appeal A; dated 20 November 2014 – submitted by the Appellant.
- INQ 2 S 106 Unilateral Undertaking from the landowner to Harborough District Council and Leicestershire County Council relating to Appeal B; dated 20 November 2014 – submitted by the Appellant.
- INQ 3 Written submission from Cllr Colin Porter, Broughton Astley Parish Council.
- INQ 4 Drawing No. 20452_03_001 Rev A; dated 11 Jan 2013, entitled *Preliminary Access Layout* - submitted by the Appellant.
- INQ 5 Planning Permission Ref. 13/01142/OUT, for mixed use development including up to 310 residential units and other uses, at land east and west of Broughton Way, Broughton Astley, Leicestershire; 17 November 2014 – submitted by the Council.
- INQ 6 Appeal Decision Ref. APP/J0405/A/13/205858, for an outline application for up to 211 residential units, associated

infrastructure and defined access with all other matters reserved, at land to south of Verney Road, Winslow, Buckinghamshire; Secretary of State's decision dated 20 November 2014 – submitted by the Council.

- INQ 7 Court of Appeal Decision *190 R. (on the application of TW Logistics Lt) v Tendring DC; 24 January 2013 –submitted by the Appellant.
- INQ 8 Opening Statement on behalf of the Appellant.
- INQ 9 Record of Attendance – Day 1.
- INQ 10 Layout Plan of Appeal A, with agreed distances (by the Council and the Appellant) between plots 12-15 and the existing dwelling at 9 Fretter Close; dated 25 November 2014.
- INQ 11 Statement from Broughton Astley Parish Council (Mrs Christine Lord); 25 November 2014.
- INQ 12 Plan showing the site boundary of land (10.253 ha) in the ownership of the Appellant at Broughton Astley, including the appeal site – submitted by Appellant.
- INQ 13 Comments from Mr David Bainbridge on the Council's suggested conditions; 26 November 2014.
- INQ 14 Draft S 106 Agreement between Jelson Ltd, the Council and Leicestershire County Council, in relation to BANP Site 1 – submitted by the Council.
- INQ 15 Record of Attendance – Day 2.
- INQ 16 Closing Submissions on behalf of the Council.
- INQ 17 Closing Submissions on behalf of the Appellant.
- INQ 18 Record of Attendance – Day 3.
- INQ 19 Appeal Decision Ref. APP/F2415/A/12/183653, for an outline application for the development of 111 dwellings, including a new community hall, sports pitches and associated parking, open space, access and landscaping, at land to south of Hallbrook Primary School, Crowfoot Way, Broughton Astley, Leicestershire; Secretary of State's decision dated 17 April 2014 – submitted by the Council.

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

- PINQ 1 List of conditions agreed between the Council and the Appellant.

APPENDIX C: SUGGESTED CONDITIONS

- 1) The development hereby permitted shall be begun before the expiration of three years from the date of this permission.
- 2A) *(In the case of appeal proposal A)*
The development hereby permitted shall be carried out in accordance with the following approved plans:
Layout plan "Planning Layout ER/1053-01 Rev C"
Site Location Plan "A.42,640d"
Topographic Survey "20452_06_001 Rev A"
Proposed Pedestrian (Zebra) Crossing "20452_03_004"
Preliminary Drainage Strategy 20452_02_001 revision F
Preliminary Access Layout 20452_03_001 revision A
Context Landscape Masterplan 5158.CLM.02
Proposed Parking Improvements 20452_03_005
House Type Drawings: DH308AE/ARE-2, DH313CD-2 (OPP), DH330V-2 (AS), DH339G-2 (OPP), DH400G-2 (AS), DH400V-2 (OPP), DH402MR-2 (OPP), DH410G-2 (OPP), DH410G-2 (AS), DH412GC-2 (AS), DH418G-2 (AS), DH418V-2 (AS), DH509V-2 (OPP), DH522G-2 (OPP), SB21D-2 (AS), SB21D-2 (OPP), SH10CE-2 (AS/OPP), DG1, DG13, DG17, LCC1S, LCC13S, External Details
- 2B) *(In the case of appeal proposal B)*
The development hereby permitted shall be carried out fully in accordance with the following approved plans:
Layout plan "Planning Layout ER/1053-01 Rev G"
Site Location Plan "A.42,640d"
Topographic Survey "20452_06_001 Rev A"
Proposed Pedestrian (Zebra) Crossing "20452_03_004"
Preliminary Drainage Strategy 20452_02_001 revision H
Preliminary Access Layout 20452_03_001 revision A
Context Landscape Masterplan 5158.CLM.02 revision A
Proposed Parking Improvements 20452_03_005
DG1, DG13, DG17, LCC1S, External Details
House Type Drawings: DH330V-2 (AS), DH330V-2 (OPP), DH400V-2 (OPP), DH403L-2 (OPP), DH403L-2 (AS), DH418V-2 (AS), DH418VS-2 (OPP), DH410G-2 (AS), DH410G-2 (OPP), SB21HE-2 (AS), SH32GE-2 (OPP), SH32GEG-2 (AS), SH320GEG-2 (AS/OPP) & SH320GI (OPP), DH313RD-2 (OPP), DH509V-2 (OPP), DH522G-2 (AS), DH522G-2 (OPP), DH507V-2 (OPP).
- 3) Notwithstanding the details submitted, no development shall commence on site until details of the existing and proposed ground levels and finished floor levels of the development have been submitted to and approved in writing by the Local Planning Authority. The development shall be implemented in accordance with the approved details.
- 4) *(In the case of appeal proposal A only)*
No development shall commence on site until details (that is, location and appearance) of the provision for the storage of refuse and materials for recycling for Plots 16 – 19 shall be submitted to and approved in writing by the Local Planning Authority before development commences on site. Thereafter the development shall be implemented in accordance with the approved details and

shall be retained as such in perpetuity.

5) Notwithstanding the details submitted, no development shall commence on site until a schedule indicating the materials to be used on all external elevations of the approved dwellings, including bricks, tiles, ridge tiles, sills, lintels and headers, windows, doors and other openings, fascias, soffits and bargeboards, and the bond that the bricks on the front elevations shall be laid in, has been submitted to and approved in writing by the Local Planning Authority. Thereafter, the development shall be implemented in accordance with the approved details and retained in perpetuity.

6) No development shall take place until a surface water drainage scheme for the site, based on sustainable drainage principles and an assessment of the hydrological and hydro geological context of the development, has been submitted to and approved in writing by the local planning authority. The drainage strategy shall demonstrate the surface water run-off generated up to and including the 100 year plus climate change critical storm will not exceed the run-off from the undeveloped site following the corresponding rainfall event.

The scheme shall also include:

- details of how the scheme shall be maintained and managed after completion;
- sustainable drainage techniques or SuDS incorporated into the design with two treatment trains;
- details to show that the outflow from the site is limited to the maximum allowable rate, that is, greenfield site run-off;
- detailed design details of the proposed balancing pond, including cross-sections and plans.

The surface water drainage system must deal with the surface water run-off from the site up to the critical 1% Annual Probability of Flooding (or 1 in a 100-year flood) event, including an allowance for climate change (i.e. for the lifetime of the development). Drainage calculations must be included to demonstrate this (e.g. MicroDrainage or similar sewer modelling package calculations which include the necessary attenuation volume).

The development shall be implemented fully in accordance with the approved details, before the development is completed, and shall be maintained as such thereafter.

7) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking or re-enacting that order with or without modification) no additional windows, dormer windows or other openings shall be formed in the highway-facing elevations of the development hereby permitted, including the roof(s), without the grant of further specific planning permission from the Local Planning Authority, unless the opening to be formed matches exactly the fenestration pattern, sills, headers, of the original development.

8A) *(In the case of appeal proposal A)*

Before the development hereby permitted is first occupied the bathroom windows in the south-east facing elevations of plots 1-8 and 12-15 shall be glazed with obscure glass (at least Level 3) only and the windows shall be permanently maintained with obscure glazing at all times thereafter.

8B) *(In the case of appeal proposal B)*

Before the development hereby permitted is first occupied the bathroom windows in the south-east facing elevations of plots 1-7 and 11 shall be glazed with obscure glass (at least Level 3) only and the windows shall be permanently maintained with obscure glazing at all times thereafter.

9A) *(In the case of appeal proposal A)*

Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking and re-enacting that Order with or without modification), no extensions or other form of enlargement, nor erection of outbuildings or hardstandings or walls, fences or other means of enclosure, but excluding development permitted under Schedule 2 Part 40 and Classes G and H of Schedule 2 Part 1, shall take place in respect of Plots 1, 2, 3, 4, 5, 6, 7, 8, 12, 13, 14 and/or 15.

9B) *(In the case of appeal proposal B)*

Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking and re-enacting that Order with or without modification), no extensions or other form of enlargement, nor erection of outbuildings or hardstandings or walls, fences or other means of enclosure, but excluding development permitted under Schedule 2 Part 40 and Classes G and H of Schedule 2 Part 1, shall take place in respect of Plots 1, 2, 3, 4, 5, 6, 7, 8 and/or 11.

10) Any shared private drives serving no more than a total of 5 dwellings shall be a minimum of 4.25 metres wide for at least the first 5 metres behind the highway boundary and have a drop crossing of a minimum size as shown in Figure DG20 of the 6CsDG at its junction with the adopted road carriageway. The access drive shall be provided before any dwelling hereby permitted is first occupied and shall thereafter be permanently so maintained.

11) Before first use of the development hereby permitted, 1.0 metre by 1.0 metre pedestrian visibility splays shall be provided on the highway boundary on both sides of the access to each dwelling, with nothing within those splays higher than 0.6 metres above the level of the adjacent footway/verge/highway, in accordance with the standards contained in the current County Council design guide and shall be so maintained in perpetuity.

12) Before first occupation of the development hereby permitted, visibility splays of 2.4 metres by 46.5m in a north-westerly direction and 2.4 metres by 48.9m in a south-easterly direction shall be provided at the junction of the access with Dunton Road. These shall be in accordance with the standards contained in the current County Council design guide and shall thereafter be permanently so maintained. Nothing shall be allowed to grow above a height of 0.6 metres above ground level within the visibility splays.

13) No walls, planting or fences shall be erected or allowed to grow inside or adjacent to the highway boundary exceeding 0.9 metres boundary exceeding 0.9 metres in height above the level of the adjacent carriageway.

- 14) Any shared private drive serving more than 5 but no more than 25 dwellings shall be a minimum of 4.8 metres wide for at least the first 5 metres behind the highway boundary and have a drop crossing of a minimum size as shown in Figure DG20 of the 6CsDG at its junction with the adopted road carriageway. The access drive shall be provided before any dwelling hereby permitted is first occupied and shall thereafter be permanently so maintained.
- 15) Prior to the first occupation of any dwelling, a zebra crossing shall be provided on Dunton Road in accordance with the details contained in the submitted Dwg No:- 20452_03_004.
- 16) No gates, barriers, bollards, chains or other such obstructions shall be permitted within 5 metres of the highway boundary, unless opening inwards.
- 17) No part of the development as approved shall be brought into use until details of a Residential Travel Plan have been submitted to and approved in writing by the Local Planning Authority. The Plan shall address the travel implications of the use of the whole site as if the development approved were to have been fully completed and occupied.

The Plan shall specify facilities and measures with measurable output and outcome targets designed to:

- Reduce single occupancy vehicle use, reduce vehicular travel at peak traffic times and reduce vehicle emissions for journeys made for all purposes to and from the developed site;
- Increase the choice and use of alternative transport modes for any journeys likely to be made to and from the developed site and, in particular, to secure increases in the proportion of travel by car sharing, public transport use, cycling and walking modes and the use of IT substitutes for real travel;
- Manage the demand by all users of the developed site for vehicle parking within and in the vicinity of the developed site.

The Plan shall also specify:

- The on-site Plan implementation and management responsibilities, including the identification of a Travel Plan Co-ordinator;
- The arrangements for regular travel behaviour and impact monitoring surveys and Plan reviews covering a period extending to at least one year after the last unit of development is occupied;
- The timescales or phasing programmes for delivery of the Plan's proposals and for the achievement of the specified output and outcome targets; and
- Additional facilities and measures to be implemented if monitoring shows that the Plan's targets are not likely to be met, together with clear trigger dates, events or threshold levels for invoking these measures.

The Plan, once agreed, shall be implemented in accordance with the approved details, and thereafter, the implementation of the proposals and the achievement of targets of the Plan shall be subject to regular monitoring and review reports to the LPA and, if invoked, to the implementation of the specified additional measures.

- 18) Any garage doors shall be set back from the Highway boundary a minimum distance of 5 metres in the case of sliding or roller/shutter doors, 5.6 metres in

the case of up-and over doors, or 6 metres in the case of doors opening outwards. Once provided, the development shall be so maintained thereafter and in perpetuity.

19A) (*In the case of appeal proposal A*)

Before the first occupation of any dwelling, car parking provision shall be made, in the case of a market dwelling, within the curtilage of that dwelling on the basis of 2 spaces for a dwelling with up to three bedrooms and 3 spaces for a dwelling with four or more bedrooms, and, in the case of an Affordable Dwelling, in accordance with the approved layout plan "*Planning Layout ER/1053-01 Rev C*". The parking spaces so provided, which shall include garage spaces if required to ensure the provision as stated above, shall not be obstructed and shall thereafter permanently remain available for car parking.

19B) (*In the case of appeal proposal B*)

Before the first occupation of any dwelling, car parking provision shall be made, in the case of a market dwelling, within the curtilage of that dwelling on the basis of 2 spaces for a dwelling with up to three bedrooms and 3 spaces for a dwelling with four or more bedrooms, and, in the case of an Affordable Dwelling, in accordance with the approved layout plan "*Planning Layout ER/1053-01 Rev G*". The parking spaces so provided, which shall include garage spaces if required to ensure the provision as stated above, shall not be obstructed and shall thereafter permanently remain available for car parking.

20) No development shall commence on site (including any works of demolition), until a Construction Method Statement, which shall include the following:

- (a) the parking of vehicles of site operatives and visitors;
 - (b) loading and unloading of plant and materials;
 - (c) storage of plant and materials used in constructing the development;
 - (d) the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;
 - (e) wheel washing facilities;
 - (f) measures to control the emission of dust and dirt during construction;
 - (g) a scheme for recycling/disposing of waste resulting from demolition and construction works;
 - (h) measures for the protection of the natural environment; and
 - (i) measures to control the hours of use and piling technique to be employed;
- has been submitted to, and approved in writing by, the Local Planning Authority. The approved statement shall be adhered to throughout the construction period.

21) Notwithstanding any details shown on the submitted plans, no development shall take place until full details of both hard and soft landscape works have been submitted to and approved in writing by the Local Planning Authority. These details shall include: any existing trees, shrubs and hedges to be retained and measures for protection during the course of development; new tree and shrub planting; surface treatments to all footpaths and cycleways; fencing and boundary treatments, and all externally visible materials thereof; the proposed balancing pond; proposed finished levels or contours; and the position of services and/or drainage runs. All hard landscaping works shall be carried out fully in accordance with the approved details approved prior to the first occupation of the development. All soft landscaping shall be carried out in

accordance with the approved details in the first planting season following the first occupation of the development. Any trees or shrubs which within a period of 5 years from the completion of the planting 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.

- 22) All on site working associated with the implementation of this planning permission, including demolition and deliveries to and from the site, but not including internal works on dwellings, shall only be carried out between the hours of 8 a.m. and 6 p.m. Monday to Friday, 8 a.m. and 1 p.m. Saturday and not at all on Sunday, Public and Bank Holidays.
- 23) No development (except any demolition granted by this planning permission) shall commence on site until a further Risk Based Land Contamination Assessment (as recommended in section 6 of the GRM Development solutions Phase 1 site appraisal Reference P5989 dated December 2012) has been submitted to and approved in writing by the Local Planning Authority, in order to ensure that the land is fit for use as the development proposes. The Risk Based Land Contamination Assessment shall be carried out in accordance with:
- BS10175 Year 2011+A1:2013 Investigation Of Potentially Contaminated Sites Code of Practice;
 - BS8576:2013 Guidance on Investigations for Ground Gas – Permanent Gases and Volatile Organic Compounds (VOCs)
 - BS8485 Year 2007 Code of Practice for the Characterisation and Remediation from Ground Gas in Affected Developments; and
 - CLR 11 Model Procedures for the Management of Land Contamination, published by The Environment Agency 2004.

Should any unacceptable risks be identified in the Risk Based Land Contamination Assessment, a Remedial Scheme and a Verification Plan must be prepared and submitted to and agreed in writing by the Local Planning Authority. The Remedial Scheme shall be prepared in accordance with the requirements of:

- CLR 11 Model Procedures for the Management of Land Contamination, published by The Environment Agency 2004.

The Verification Plan shall be prepared in accordance with the requirements of:

- Evidence Report on the Verification of Remediation of Land Contamination Report: SC030114/R1, published by the Environment Agency 2010;
- CLR 11 Model Procedures for the Management of Land Contamination, published by The Environment Agency 2004.

If, during the course of development, previously unidentified contamination is discovered, development must cease on that part of the site and it must be reported in writing to the Local Planning Authority within 10 working days. Prior to the recommencement of development on that part of the site, a Risk Based Land Contamination Assessment for the discovered contamination (to include any required amendments to the Remedial Scheme and Verification Plan) must be submitted to and approved in writing by the Local Planning Authority. Thereafter, the development shall be implemented in accordance with the approved details and retained as such in perpetuity, unless

otherwise agreed in writing by the Local Planning Authority.

- 24) Prior to occupation of any part of the completed development, a Verification Investigation shall be undertaken in line with the agreed Verification Plan for any works outlined in the Remedial Scheme relevant to either the whole development or that part of the development. Prior to occupation of any part of the completed development, a report showing the findings of the Verification Investigation shall be submitted to and approved in writing by the Local Planning Authority. The Verification Investigation Report shall:
- Contain a full description of the works undertaken in accordance with the agreed Remedial Scheme and Verification Plan;
 - Contain results of any additional monitoring or testing carried out between the submission of the Remedial Scheme and the completion of remediation works;
 - Contain Movement Permits for all materials taken to and from the site and/or a copy of the completed site waste management plan if one was required;
 - Contain Test Certificates of imported material to show that it is suitable for its proposed use;
 - Demonstrate the effectiveness of the approved Remedial Scheme; and
 - Include a statement signed by the developer, or the approved agent, confirming that all the works specified in the Remedial Scheme have been completed.
- 25) No development shall commence until a landscape management plan, including long term design objectives, management responsibilities and maintenance schedules for all landscape areas, including the protection of the quality and integrity of the existing railway embankment which runs along the north-west boundary of the site, other than small, privately owned, domestic gardens, has been submitted to and approved in writing by the Local Planning Authority. Thereafter the development shall be implemented in accordance with the approved details and shall be retained as such in perpetuity.
- 26) No development, including any demolition, shall commence until a programme of archaeological works commencing with an initial phase of trial trenching, has been detailed within a Written Scheme of Investigation, submitted to and approved in writing by the Local Planning Authority. The scheme shall include an assessment of significance and research questions; and:
- The programme and methodology of site investigation and recording (including the initial trial trenching, assessment of results and preparation of an appropriate mitigation scheme)
 - The programme for post-investigation assessment
 - Provision to be made for analysis of the site investigation and recording
 - Provision to be made for publication and dissemination of the analysis and records of the site investigation
 - Provision to be made for archive deposition of the analysis and records of the site investigation
 - Nomination of a competent person or persons/organisation to undertake the works set out within the Written Scheme of Investigation.
- No development, including demolition, shall take place other than in accordance with the details approved pursuant to this Condition.

- 27) The development shall not be occupied until the archaeological site investigation and post investigation assessment has been completed in accordance with the programme set out in the Written Scheme of Investigation approved under Condition 26 and the provision made for analysis, publication and dissemination of results and archive deposition has been secured.
- 28) No development shall commence until a scheme for biodiversity measures within the boundaries of the site has been submitted to and approved in writing by the Local Planning Authority. Thereafter the development shall be implemented in accordance with the approved details and shall be retained as such in perpetuity.

Richborough Estates



Department for Communities and Local Government

RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT

These notes are provided for guidance only and apply only to challenges under the legislation specified. If you require further advice on making any High Court challenge, or making an application for Judicial review, you should consult a solicitor or other advisor or contact the Crown Office at the Royal Courts of Justice, Queens Bench Division, Strand, London, WC2 2LL (0207 947 6000).

The attached decision is final unless it is successfully challenged in the Courts. The Secretary of State cannot amend or interpret the decision. It may be redetermined by the Secretary of State only if the decision is quashed by the Courts. However, if it is redetermined, it does not necessarily follow that the original decision will be reversed.

SECTION 1: PLANNING APPEALS AND CALLED-IN PLANNING APPLICATIONS;

The decision may be challenged by making an application to the High Court under Section 288 of the Town and Country Planning Act 1990 (the TCP Act).

Challenges under Section 288 of the TCP Act

Decisions on called-in applications under section 77 of the TCP Act (planning), appeals under section 78 (planning) may be challenged under this section. Any person aggrieved by the decision may question the validity of the decision on the grounds that it is not within the powers of the Act or that any of the relevant requirements have not been complied with in relation to the decision. An application under this section must be made within six weeks from the date of the decision.

SECTION 2: AWARDS OF COSTS

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

SECTION 3: INSPECTION OF DOCUMENTS

Where an inquiry or hearing has been held any person who is entitled to be notified of the decision has a statutory right to view the documents, photographs and plans listed in the appendix to the report of the Inspector's report of the inquiry or hearing within 6 weeks of the date of the decision. If you are such a person and you wish to view the documents you should get in touch with the office at the address from which the decision was issued, as shown on the letterhead on the decision letter, quoting the reference number and stating the day and time you wish to visit. At least 3 days notice should be given, if possible.