



Appeal Decision

Inquiry held on 12 to 15 March and 9 to 12 April 2024

Site visits made on 11 March and 23 April 2024

by R Aston BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9 July 2024

Appeal Ref: APP/W3710/W/23/3330615

Weddington Road, Weddington, Nuneaton CV10 0TS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for outline planning permission
 - The appeal is made by Gladman Developments Ltd against Nuneaton and Bedworth Borough Council.
 - The application Ref: 039369, is dated 9 January 2023.
 - The development proposed is described as '*Outline planning application for the erection of up to 700 dwellings with public open space, retail unit (use class F2), landscaping, and sustainable drainage system (SuDS) and vehicular access point from Weddington Road. All matters reserved except for means of access*'.
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Decision

1. The appeal is dismissed and planning permission is refused.

Application for costs

2. An application for costs was made in writing by Nuneaton and Bedworth Borough Council against Gladman Developments Ltd. This application is the subject of a separate Decision.

Procedural and Preliminary Matters

3. The Council are currently involved in two other appeals for major unallocated residential development at the Long Shoot and land west of Higham Lane. None of the appeals are linked, separate inquiries have been held by different Inspectors and whilst no doubt some general principles and details are the same across the appeals no two sites are the same. Further, whilst there is some commonality in the evidence, there are also material differences in terms of highway and housing land supply evidence. Locational accessibility and character and appearance effects also appear to be capable of being materially different across the three sites. I have therefore determined this appeal on the basis of the evidence as put before me solely by the parties, interested persons and my own observations except where otherwise indicated.
4. The application was submitted in outline. The means of access is to be determined at this stage. Appearance, landscaping, layout and scale are reserved matters. The application was accompanied by illustrative drawings, including a Development Framework which I have taken into account, mindful

- of the request of both parties that any reserved matters should be conditioned to be in general conformity with the details shown on that plan¹.
5. The Council did not determine the application within the statutory period, resulting in the appellant exercising their right to appeal. The Council resolved that, had it been able to determine the application, planning permission would have been refused for the following reasons:
 - Conflict with the adopted spatial strategy.
 - Highways impacts (safety and capacity/operational effects).
 - Character and appearance.
 - Living conditions of future occupiers.
 - Air quality.
 - Biodiversity, including protected species and Biodiversity Net Gain.
 6. Heritage matters in terms of the setting of designated heritage assets also arise given the site's proximity to The Church of St. James, a Grade II listed building and Caldecote Conservation Area (CCA). Written submissions were made by North Warwickshire Borough Council² on behalf of the Council and by the appellant. The Council's objections in relation to loss of agricultural land were not a reason for refusal and were pursued at the Inquiry as a negative consideration falling to be addressed in the planning balance. In the period leading up to the Inquiry the Council confirmed that it no longer objected on the grounds of biodiversity, air quality or the living conditions of future occupiers.
 7. A Case Management Conference (CMC) was held on 20 December 2023 at which representatives of all main parties were in attendance. At the CMC, the administrative and procedural arrangements for the Inquiry were discussed. In addition, it was agreed how the evidence should be heard and discussions were held on what order the main parties would appear.
 8. The description of development in the banner heading above is taken from the application form. In December 2023 and following a late consultation response from the education authority, the appellant chose to amend the description of development to '*Outline planning application for the erection of up to 700 dwellings with land for primary school, public open space, retail unit (use class F2), landscaping, sustainable drainage system (SuDS) and vehicular access point from Weddington Road. All matters reserved except for means of access*'.
 9. A revised Development Framework Plan formed the basis on which that consultation was undertaken. Whilst in most cases an appeal should consider the proposal put to the Council, I am satisfied that the consultation was carried out correctly and that no party would be prejudiced by the change. I have also had regard to any further representations received.
 10. National Highways (NH) were represented at the Inquiry under Rule 6 of the Inquiries Procedure Rules in relation to the Strategic Road Network. In the week before the Inquiry NH submitted an amended proof of evidence deleting

¹ Proposed condition 2 of Document 1 received after the close of the Inquiry.

² NWBC email dated 20 December 2023.

references to an updated Transport Assessment (TA). At the CMC that TA along with further modelling work (VISSIM) was not admitted to the Inquiry given the appeal timetable but in any event was not evidence which the appellant sought to rely upon.

11. The Inquiry opening was postponed due to the late non availability of the Council's highway witness, a replacement witness was found who adopted that evidence but also issued their own detailed rebuttal statement. The Inquiry sat from 12 March to 15 March and 9 April to 12 April 2024. I visited the site and various locations in the locality before and during the Inquiry including travelling on the local and strategic highway network³ throughout the course of the Inquiry during both the peak and off-peak periods. By agreement with the parties, I made an unaccompanied site visit after the Inquiry closed, viewing the site from a number of agreed locations and viewpoints.
12. Discussions on a Section 106 Agreement (the Agreement) continued before and during the Inquiry. The Agreement was discussed at a Round Table Discussion (RTD) and I am satisfied that all parties had sufficient opportunities to give their views and that I have been fully informed about the provisions of this legal document. By the close some minor drafting amendments were still required along with further work on duplicated conditions. I therefore allowed a period following the Inquiry for the Agreement to be sealed and conditions re-drafted and it was submitted within the deadline imposed. The Agreement contains obligations relating to:
 - Affordable Housing (25%), mobility hub, electric vehicle sharing club, allotments, primary school land, SUDs provision, land for a local centre and biodiversity enhancement on site.
 - Management arrangements for on-site open space and sustainable drainage systems.
 - Financial contribution towards sustainable transport, road safety and PRow improvements.
 - Financial contribution towards education, healthcare, parks and open space maintenance, libraries, sports, and communities.
13. The Council and Warwickshire County Council (WCC) submitted a statement setting out the justification for the various obligations, including references to relevant planning policies and the rationale for calculating the financial contributions. There was general agreement that the obligations themselves would comply with the requirements of Regulation 122 of the Community Infrastructure Regulations 2010, I agree. The contribution relating to education remained in dispute and I return to this below.
14. A general Statement of Common/Uncommon Ground (SoCG) along with additional SoCG covering landscape and visual matters and housing land supply were submitted. Despite repeated requests the parties failed to agree a SoCG on highway matters. An RTD on the third main issue was held virtually on Tuesday 26 March and for the fifth issue, on 10 April.
15. A considerable amount of additional information was submitted by all of the parties to this appeal, including during the Inquiry. It is appreciated that the

³ This includes Weddington Walk, cycle and pedestrian walking infrastructure.

timings, quantum and complexity of the information provided has been challenging to follow, especially for local people. Nevertheless, the information was all made publicly accessible electronically during the course of the Inquiry and I sought to ensure that opportunities for views to be shared and, where appropriate, for any interested persons to ask relevant questions of the relevant witnesses.

Main Issues

16. Given the above the main issues in this appeal are:

- Whether the site is a suitable site for housing having regard to the adopted spatial strategy, with particular regard to the extent to which the proposal would contribute to the objectives of limiting the need to travel and offering a genuine choice of transport modes.
- The effect of the proposal on the safety, operation, and capacity of the local and strategic highway network.
- The effect of the proposal on the character and appearance of the site and surrounding area.
- The effect of the proposal on the setting of designated heritage assets.
- Whether the Council can demonstrate the required supply of deliverable housing sites.
- If conflict with the development plan, when taken as a whole is identified, whether such conflict is outweighed by other material considerations.

Reasons

Site Suitability

Planning policy context and background

17. The development plan is formed by the Nuneaton and Bedworth Borough Plan adopted in 2019 (the BP) which sets out in Policy DS1 an overarching presumption in favour of sustainable development. Policy DS2 seeks to direct development to the Borough's most sustainable location, Nuneaton which has the primary role for employment, housing, town centre, leisure and service provision. Policy DS3 requires that new unallocated development outside settlement boundaries, as shown on the proposals map, is limited to agriculture, forestry, leisure and other uses that can be demonstrated to require a location outside of settlement boundaries.

18. The site is neither allocated for development nor located within the settlement boundary and is considered to be in the countryside for planning purposes. As a proposal for market-led housing it does not fall into any of the exceptions, and there would be conflict with Policy DS3. The appellant acknowledges this⁴ albeit contends the policy it is out of date and that this should be given less weight. I return to this below.

⁴ Mr Tait in paragraph 4.5 PoE.

19. As part of the BP process, the Council committed to undertake a review of the adopted plan following the publication of the updated National Planning Policy Framework ('the Framework'). The site is being promoted by the appellant through that examination, but the review currently does not propose to allocate the site and does not propose any changes to the site's policy status, as designated. There also appears to be significant unresolved objections to the emerging approach, including from the appellant.
20. There was considerable time taken up by Policy DS8 concerning 'Monitoring of housing delivery'. The policy sets out a flexible approach the Council must take should housing not be being delivered in accordance with the trajectory. Introduced as a main modification Paragraph 194 of the examining Inspector's report is clear that where there is a need to deliver in the short term and there is not a deliverable supply, then the basic contingency may well⁵ be the release of additional sites. The reason for its inclusion is that priority for development opportunities be given elsewhere at the edge of settlement in accordance with the modified settlement hierarchy in Policy DS2.
21. The '*such action*' to be taken by the Council may include but is not limited to the Council working with developers and site promoters of strategic sites and in helping to unlock funding for infrastructure. In such cases it requires an '*initial priority*' to be given to '*sustainable sites*', including edge of settlement and town centre opportunities. However, there is no constraint on what an '*additional*' site should be considered as and no definition of '*sustainable*'. On my reading it allows for an assessment on a case by case basis ultimately requiring a tilted balance of adverse impacts and benefits, as set out in the Framework, to be struck but it is not clear if that balance is for the Council's initial selection of sites or in helping determine the overall acceptability of a proposal. I return to this in my conclusions below.
22. Circumstances have clearly moved on in the Borough since adoption. Examination hearings for the review are due to commence in the coming months and the appellant has identified some apparent precarity in the Council's housing land supply position which was significantly revised during the appeal. It should be of no surprise in this Borough that in such circumstances the approach in Policy DS8 is being used and tested by the submission of planning applications on unallocated sites outside of the settlement boundaries.
23. The BP made provision for growth for the plan period to 2031 by allocations such as HSG1. The allocation involved adjusting the settlement boundary to include that land. The BP also released Green Belt land in order to secure the most sound and sustainable pattern of development. Development is to be directed to other settlements rather than the rural area around Nuneaton as it was considered there were limitations on the amount of development within that area. This is reflected in large allocations at Bulkington and Bedworth, consistent with the approach in Policy DS2.
24. Various options for growth were considered and there is common ground an 'Option 3a' includes the appeal site and that the option had been included within the BP's accompanying Sustainability Appraisal (SA). In accommodating further growth, the land identified was considered by the examining Inspector

⁵ Paragraph 194 of the IR.

- to be well-related to existing housing and forming the next logical extension to the town at this location as evidenced through the SHLAA and SA in this area.
25. There were some concerns of a top heavy strategy and the ability of the Council to deliver strategic allocations HSG1 and HSG2. Further that development in this area would result in peripheral growth some distance from the town centre, the larger employment sites to the south of the town, the hospital and from the good transport links to Coventry. The MIRA employment site appears to be specialist employment, known of at the time and is not co-located in any of the areas where job opportunities are needed.
26. Granted that planned facilities and infrastructure had yet to be built but on my reading the Inspector concluded that *'additional peripheral development at this location would result in a disjointed and unsustainable pattern of development'*⁶. That Inspector also concluded that expanding north of Nuneaton yet even further would also result in a scale of development well beyond what the market has previously sustained, even in buoyant years.
27. There were sound reasons at the time why the BP should not allocate further development in this direction but an examining Inspector is testing the soundness of a strategy and the report is proposing modifications and setting out the reasons for them, in this case all under different national policy⁷ and guidance at that time. Ultimately it does not create a blanket restriction on development in this area but it does set out the reasons that underpin the adopted spatial strategy and that is clearly important in a case where the presumption in favour of sustainable development could be engaged.
28. The BP is also clear in its reasoned justification that *'patterns of growth should be focused on locations which are or can be made sustainable, and which make full use of public transport, walking and cycling'*. Consequently, issues of locational accessibility and the extent to which the proposal would contribute to the objectives of limiting the need to travel and offering a genuine choice of transport modes were agreed with the parties to be key considerations for me in determining the suitability of the site for major residential development.
29. All aspects of sustainability should be considered in planning decisions, local circumstances should be considered, and opportunities to maximise sustainable transport solutions will vary from urban to rural areas. National policy, to a degree, requires choice to be provided but actively managing patterns of growth, including locating significant development in locations which are or can be made sustainable through limiting the need to travel and offering a genuine choice of transport modes is fundamental. This is to reduce the effects of congestion and emissions, mitigate and adapt to climate change and ensure air quality and public health is improved.
30. The site is clearly beyond the distinct edge of the suburban periphery of Weddington. I accept a site on the edge of a settlement requires some compromises to be made but the proximity does not necessarily mean that it should be considered an accessible and suitable location for residential development.
31. Like the majority of local centres of this scale the services, amenities and the facilities proposed would only fulfil some limited day to day needs. Within a 30

⁶ Paragraph 40 of IR – CD5.5a.

⁷ 2012 Framework

minute walk from the centre of the site⁸ are two day nurseries, primary schooling, two secondary schools, a supermarket, post office, place of worship and a gymnasium. I also observed a butcher, café, hairstylist and wellbeing service further along the A444 toward the town centre, an approximate 20 to 25 minute walk perhaps slightly shorter or longer depending on where in the development the journey would originate from and who is undertaking the journey and for what purpose. It would not be an attractive proposition for those carrying shopping or other goods and from more distant areas of the appeal site.

32. There would be some employment opportunities from the proposed extension to the MIRA Technology Park which is an adopted allocation of the North Warwickshire Local Plan 2021 (E4 - Land to the south of Horiba MIRA Technology Park & Enterprise Zone) for 42 hectares of employment land under Policy BP39⁹. However, nothing before me indicates that other than potentially a small number of future residents would re-locate specifically or end up working at the site, given its specialist nature. Although some residents will work from home, I have no substantive evidence that it would be up to a third, as contended by the appellant.

Trip generation

33. A development of this scale would result in a great deal of additional traffic. Total trips are estimated to be 420 vehicle trips per peak period per day. Despite the Council not agreeing to the trip rate at the Inquiry a rate of 0.6 two way trips per dwelling per peak appears to have been used by WCC in all assessments of residential development in the STA¹⁰ and subsequent assessments. It was not apparent to me that the Council's witness considered such a rate to be incorrect and it does not appear to be a matter WCC raised through the assessment process. It seems reasonable to me and could be reduced subject to modal shift.
34. Trips would reduce commensurately with a restriction to 660 homes but car ownership rates are high and there would also be delivery and servicing vehicles which have seen an increase in use in recent years. On the basis of TRICS data approximately 79% of trips would be by the car in peak periods.
35. There would be trip implications associated with the primary school, but the on-site primary school should be able to accommodate nearly all of the need generated by the appeal site. For other school age children there is considerable complexity in the provision of school places and the realities of where children would go to school. Given the unknown realities of where children would end up going to school, it is challenging to be conclusive as to additional impacts from vehicular journeys, which may also have an onward location. The parties agreed this change would not worsen highway effects but nevertheless, there would be some additional trips to consider from staff members, drop offs and servicing and such trips would add to vehicular emissions.

⁸ AS Rebuttal Appendix R2.

⁹ North Warwickshire Borough Council ref: PAP/2022/0423.

¹⁰ Strategic Transport Assessment.

Walking and Cycling

36. There are a variety of sources, of varying ages and findings, which give advice and guidance on acceptable walking distances, but all are a guide. Land use patterns that are most conducive to walking are in my experience typically where there are a range of facilities within a 10 minute walk or 800m¹¹. Consistent with this is recent research in Department for Transport Circular 1/2022 which found walking times between housing and key amenities that regularly exceeded 30 minutes reinforce car dependency.
37. Reference to walkable neighbourhoods is also made in the National Design Guide (NDG). Given that more recent guidance refers to a single measure, 800m or 10 minutes, the use of desirable, acceptable and preferred maximum distances is not appropriate and what is required is a balanced judgement having regard to a number of factors that might influence a person's decision to walk or cycle.
38. The main local employment opportunities and the town's hospital are located to the south of the town and beyond reasonable walking distance. Accessibility to some industrial estates without a car such as Bermuda Park, to the south of Nuneaton is acknowledged in the BP as being '*difficult*', I agree. On foot the appellant's assessment is that the town centre is 25 to 35 minutes' walk although this is optimistic for a significant number of people. Under 15 minutes on an enhanced PRow networks for regular and experienced cyclists seems reasonable to reach the town centre. Ultimately a number of service and amenities would be beyond a 20 minute walk, including the facilities of HSG1, for most people and more within 30 to 35 minutes.
39. The propensity to walk will not only be influenced by distance but by the quality of the experience and here primary routes for pedestrians and cyclists would be the Weddington Walk (WW) and the A444 with associated other PRow. For the A444, speeds are low, visibility is good and there are footways available, walking may be expected to occur to a limited extent but it would not be convenient for a significant number of future residents.
40. There is currently a mix of on-road cycle lanes along the A444, however the route does not meet the latest design standards, changes have been agreed and funding withdrawn so there is no certainty the improvements identified would be delivered but even if the schemes did not go ahead the deficiencies would not prevent its use by competent and experienced cyclists. Proposed changes to the A444 associated with the MIRA development will result in a reduction in vehicular traffic along part of Weddington Road up to the Redgate junction but general traffic will also increase over time.
41. My observations of WW and other PRow in the area were of unlit recreational leisure routes with little natural surveillance and therefore with obvious safety concerns for many residents. In places I observed issues with footpath width and cyclists having to dismount to cross watercourses. Improvements include a financial contribution towards enhancing these within a 1.5 mile radius of the development. A sum of money towards the resurfacing of the pathway alongside the River Anker and the provision of a new controlled crossing connecting the Weddington Walk across the A444 is also within the Agreement.

¹¹ Manual for Streets.

42. Such contributions would assist in part but even so, my observations were that these unlit routes are still unlikely to be attractive other than for experienced and enthusiastic cyclists or walkers. Overall, and perhaps symptomatic of this location beyond the edge of the settlement, the use of this network would only be suitable as an option by some residents during certain times of the year, during the day and in good weather. Such a journey would also not appeal to all, including the young, elderly and infirm.

Public Transport

43. The financial contribution in the Agreement is targeted to securing a service with a minimum frequency of every 30 minutes between the development and Nuneaton town centre. This is intended to operate Mondays to Saturdays between 0630 hours and 1930 hours and every 60 minutes on Sundays between 0900 hours and 1700 hours and funded for 5 years.
44. The Council confirmed¹² that if the MIRA extension site and the appeal site are both granted planning permission, then the bus route would take the form of an extension of the Nuneaton service up to the MIRA south site with the MIRA south site contributing, inter alia, to the additional resource required. Along with the possibility of the merging of bus resources from one or more of the number of developments in this area, this adds complexities and uncertainty to the clarity of the overall future bus service provision in this area of Nuneaton.
45. A number of options would be available but the Agreement only specifies a contribution and does not specify the bus route/service that will be enhanced or re-routed. This is no doubt to allow flexibility to ensure the optimum bus service solution is provided at that time, taking into account other committed developments at that point.
46. What happens after the 5 year period is unknown, this matter turns on likelihoods. An increase in patronage could no doubt assist in securing its longer term provision but there are no measures included such as ticket incentives or discounts for future occupiers. Co-ordination of service patterns may occur but that I should have confidence it will continue beyond the five year period is not borne out in the evidence before me, particularly because there is no formal agreement at this stage other than to secure the funding.
47. Whatever may be decided the proposal could secure an option for travel to and from Nuneaton town centre during the day for those who do not wish to, or who may be unable to, walk or cycle. Not all dwellings would be within an appropriate distance to a bus stop and the timings of the service would still restrict its use for many residents who may require access early in the morning or later in the evening to access the wider employment opportunities further afield and the somewhat convoluted public transport options to get there.

The Travel Plan and other proposals

48. The likely use of sustainable modes is closely related to the location of the development. If the chosen location results in high car dependency, this will be difficult to change retrospectively. On the Council's evidence some 63 trips would need to change to achieve a 15% modal shift required by Policy HS2 of the BP. I accept that there are cases where a travel plan is left to a condition,

¹² ID10.

but it is entirely unclear to me as to the extent to which such a condition¹³ would significantly influence modal shift away from the private car.

49. The proposal already contains measures to promote and facilitate sustainable transport and I have set out my findings on those above so the draft condition reads as very generic and not particularly specific to this proposal. Elements of shifting modes of transport, such as walking and cycling, are also clearly less applicable to the Strategic Road Network. Of the example given of comparator sites, put simply Norwich is not Nuneaton. It has a larger population is in a different administrative and geographical location and that travel plan is not before me. Whilst some general comparison and principles can no doubt be drawn; I do not consider it is directly comparable to the appeal site before me and is of limited significance.
50. Even in accepting the various challenges in communication that often arise in such cases, and even though an outline proposal, this is still an issue that requires greater attention and detail than an outline residential plan¹⁴ that does little more than set out a general intent. Perhaps having been guided by evidence from recently constructed residential developments that could support the contention such a shift had a realistic prospect of success. In this appeal I regard the approach as a significant flaw in the appellant's case and the contention that their focus is on encouraging fewer peak time vehicle trips through actively promoting walking, cycling and public transport usage and meeting local policy objectives rings somewhat hollow.
51. Electric vehicle charging points, sharing clubs and the mobility hub would be secured, but again these are typical initiatives the operational effectiveness of which is also unclear as the details are limited. Whilst electric vehicle usage is increasing the combination of the relatively high cost of electric vehicles and the lack of wider infrastructure means such vehicles are still not attractive other than on a limited individual basis.

Conclusion on first issue

52. Offering a genuine choice of transport modes should not be taken to mean that a site meets this simply because it is theoretically possible for some people, however few, to undertake the journey in question using a particular sustainable mode of travel. It is necessary to consider the convenience and practicality of travel choices that people will have available because the objective of the policy is to reduce reliance on the private car, congestion and emissions and to improve air quality and public health. This will be difficult to achieve unless the choice in question is one that a reasonable number of people, genuinely and realistically, are likely and able to make.
53. To a degree the applicant has identified some opportunities to promote sustainable transport modes but that does not make it an accessible location and this proposal does not go far enough. A percentage of modal shift could be achieved by a condition but at this outline stage and on the evidence before me I cannot be confident it would be policy compliant. I acknowledge the findings of the Council's officer report in refusing the previous 2019 proposal in terms of this matter, but I have formed a view on the evidence before me and having held a Public Inquiry.

¹³ Condition 11 of suggested conditions.

¹⁴ ITA section 7.

54. Suburban extensions beyond a settlement boundary do require compromise because not every site will be perfect. However, in this location a significant number of future occupants would realistically need to rely on private vehicles in order to access day to day facilities, employment opportunities and services, including in the town centre and further afield. Many would also choose to do so out of personal choice and convenience.
55. This is not a location which is, or is likely to be, adequately served by sufficient and suitable alternatives to the private car for the scale of development proposed and for its lifetime. The proposal would not therefore be located where it would contribute to a cumulative reduction in harmful greenhouse gas emissions, an increasingly important consideration, by maximising sustainable transport solutions and reducing reliance on private vehicles.
56. For these reasons, the appeal site should not be regarded as a suitable site for housing in terms of the adopted spatial strategy, with particular regard to the extent to which the proposal would contribute to the objectives of limiting the need to travel and offering a genuine choice of transport modes. The proposal would conflict with Policies DS2 and DS3 of the BP insofar as these set out the spatial strategy including that new unallocated development outside the settlement boundaries, as shown on the proposals map, is limited to agriculture, forestry, leisure and other uses that can be demonstrated to require a location outside of the settlement boundaries. I return to these conflicts and Policy DS8 below.
57. The proposal would also conflict with Policy HS2 (criteria 1, 4 and 5) of the BP insofar as it requires where a development is likely to have transport implications, planning applications are required to clearly demonstrate how the development ensures adequate accessibility in relation to all principal modes of transport and that the development identifies suitable demand management measures that target a 15% modal shift to non-car based uses by including provisions which promote more sustainable transport options.

Highways

The evidence before the Inquiry

58. National Highways as the Rule 6 Party is responsible for the Strategic Road Network (SRN) and WCC is responsible for the Local Road Network (LRN). The Council's objection can be summarised as the submitted analysis does not provide sufficient information to conclude anything other than development impacts representing a 'potentially' severe impact on highway safety and operation¹⁵. I deal with the SRN separately.
59. At the Inquiry the Council made numerous and often very detailed and complex technical points on the microsimulation modelling. Taking a proportionate approach, I am not required to comment on every technical point or dispute raised in respect of every delay, assumption, data set, road or junction. However, I have taken all these matters into account for the purposes of reaching a conclusion on the impacts for the purposes of my decision.
60. There is also much before me on the tangled web of matters, meetings and responses, or lack of, that should or could have resulted in some of these issues being clarified and resolved between the parties. Whilst these meetings

¹⁵ Paragraph 1.10 of A. Law's summary PoE.

engendered some degree of collaboration the process was clearly not without delays and challenges on all sides. This is highlighted by a failure reach agreement on a number of model assumptions and there was no SoCG on this issue.

61. To support the proposal a Transport Assessment Scoping Report (CD 10.20) an Interim Transport Assessment (CD 1.7), a Paramics Modelling Review (PMR) (CD 6.5) and the Strategic Transport Assessment were used along with other technical guidance. These were supported by analysis of the data by an experienced highways expert and proofs of evidence.
62. Importantly in this appeal an updated Transport Assessment (TA) dated December 2023 was not accepted at the CMC due to the constraints of the original appeal timetable and appears to have been delayed because of further issues in agreeing the data to be used, including Mobile Network Data from 2021. Perhaps there are matters that could have been clearer if circumstances and the appeal timetable had allowed but the Council objected to its admission and then focused on objecting to its omission. In any event, the appellant's case was never reliant on its findings, or that of any additional modelling work being undertaken earlier this year. The appellant acknowledges trip generation and that the likely impacts require assessment but concludes that although there would be effects, their approach in assessing is proportionate and demonstrates the impacts would be in no way be severe.
63. In this context the parties have placed significant focus on the Framework, but the starting point is the development plan. Policy HS2 does not repeat the Framework, but I do not find the approach for this issue to be inconsistent as it still requires, amongst other things, that proposals demonstrate how highway matters are clearly addressed including whether the proposal would meet acceptable levels of impact on existing highway networks and the mitigation measures required to meet this level.
64. The Framework requires decision makers, in assessing an application for development, to ensure that significant impacts of development on the capacity and congestion of the highway network can be cost effectively mitigated to an acceptable degree. There should only be a refusal on that basis if the residual cumulative impacts (which includes taking account of any mitigation that is proposed by the developer) on the road network would be severe.
65. Neither the BP nor national policy itself purports to specify what technical information will need to be obtained in order to reach a conclusion and a protocol sets out expectations. Microsimulation modelling for significant developments is not a requirement of the BP. Despite the NBWA being found to be robust by the examining Inspector for the purposes of the examination, five years has passed and in no way should such a finding prevent consideration of other analysis, evidence and opinions. This is a matter for judgement and consistent with the case law put before me in the *Hawkhurst* judgement, the extent of technical information will differ depending on whether a full transport assessment or a 'lighter touch' transport statement is considered sufficient and proportionate.
66. The appellant analysed the outputs of the NBWA model in further detail (using the information contained in the NBWA Paramics Modelling Report) and identified locations where the impact of residual traffic from development may be expected to occur in the '2031 Reference Case' and the '2031 Local Plan'

scenarios, respectively. These locations of interest are based on analysis of queue lengths¹⁶ but focus on locations where an increase in queue lengths in the future year scenarios in 2031 were detected. Warwickshire County Council specifically raised concerns at junctions 1, 6, 10, 12, 29, 40, 43, 44 and 69 but at the Inquiry junctions 13, 72 and 73 were also focused upon. I return to these junctions below.

67. One of the appellant's conclusions was that the 2016 NBWA model overestimates traffic levels and this overestimation is carried forward into the 2031 future year scenarios, meaning that the effects of residual traffic from development are less pronounced and in no circumstances are considered severe.

Traffic survey data

68. The appellant gathered a set of traffic data at junctions likely to be affected by traffic from this development in 2022. This exercise was repeated in 2023 to seek to provide a fair representation of traffic conditions in 2022 and 2023 at the locations surveyed. A comparison of these observed data sets was carried out with the traffic flow data contained in both the 2016 NBWA Base model and the 2025 Interim Reference Case Scenario which were supplied by WCC.
69. The NBWA model is not available to a third party for adjustment and recalibration and revalidation is a significant undertaking that has not even been completed to assess the effects of the BP review. Setting aside whether or not opportunities were available for validation WCC considers that little weight can be afforded to this traffic data as Department for Transport (DfT) guidance does not recommend traffic models are derived for the years 2020 to 2022 as the ongoing effects of the pandemic mean traffic volumes cannot be considered 'sufficiently stable'. The guidance acknowledges that 2023 to 2026 is a period 'approaching stability' and although the appellant is partially reliant upon 2022 traffic data this is guidance and all projects would have had the same issue due to the COVID-19 Pandemic.
70. The potential limitations of 2022 data were acknowledged in the Model Scoping Report October 2022 and there are some similarities with WCC data drawn from the same year¹⁷. The data from 2022 was not used in the comparison of observed versus modelled flows presented by the appellant. This is perhaps more about using the best available evidence and the 2022 data provides a starting point for assessment and is designed to be an independent assessment of traffic conditions at that point. The 2023 data provides higher traffic flows but this is not a case of one set of data invalidating another, even without sensitivity testing it still provides a useful marker on the level of change and therefore stability between 2022 and 2023.
71. WCC have not prepared any update to the model, nor any further validation data to allow a third party to carry out further scenario testing. The data within the NBWA could well be more dependable than the snapshot of surveys suggests but I do not agree high level forecasts of queuing or delay at junctions on the highway network, provided by a single highway traffic only based model can ever give the full picture or be 100% accurate.

¹⁶ Table 4.5 of Mr A Sheach's PoE.

¹⁷ E.g., 2022 traffic data at Table A3.1 shows a difference of 1.6% between two survey points.

Changes post appeal submission

72. The Paramics modelling was undertaken in March 2023, since that time additional development (including Padge Hall Farm) has been consented. In addition to the two sites promoted by the appellant, a further development has been submitted for planning and an appeal made (Land off Higham Lane). The appellant's traffic modelling does not consider all of these developments within their sensitivity tests but they were not consented schemes at that point. It also appears that the model was not updated by WCC as the final application had yet to be approved. Sensitivity testing was therefore not possible despite any awareness of the proposal by the appellant.
73. The appellant's assessment also assumes delivery of schemes along the A47 (specifically the junctions with Higham Lane and Eastboro Way). I heard at the Inquiry there had been delays due to funding and will need to be re-designed. However, I see no substantive evidence that suggests they would not be delivered to support the BP review and the model includes the two A47 schemes in both the reference and plan scenarios. I have considered the assumptions relating to education above.
74. Turning to the issue of 'reassignment' as a result of the increase in traffic, the appellant relies on the NBWA model for assessments of residual impact which models the effects across the local area network¹⁸. The model does operate under dynamic assignment but it is plausible that some existing traffic would divert away from areas of the network in response to issues such as congestion but the extent to which that would be likely to occur was unclear in the evidence of the parties.

Site access onto the A444

75. I had understood safe access to the site was common ground until the Inquiry opened. All consented development is reflected and data presented in the review and the Council's point appears to overlook the design and safety audit process. Even with some possible issues with the June 2022 survey I do not consider that the access would be unsafe or that it would not be able to support the traffic flows, mindful that the A444 will also reduce part of that route to buses only in the near future.

Conclusion on evidence

76. The potential for traffic flows to be overstated or understated in any traffic model analysis is a risk. Such models are an estimate of network conditions (current and future) and so one cannot expect them to precisely reflect what is going on. Indeed, the inherent daily variation in traffic flows alone means models should not be seen as entirely precise indicators of future conditions. Highways modelling and assessment by its very nature is subject to a number of competing variables and factors which affect both inputs and outputs.
77. There are clearly different approaches to the effects, and merits in the arguments of both parties. Whilst there are some omissions, I do not share the view that I could not possibly begin to determine the likely impacts for the purposes of this decision. Having regard to the totality of the evidence before me and what I observed and heard at the Inquiry, being mindful of procedural

¹⁸ Mr Edwards in XX.

rulings requested and given, I consider a lawful decision on the highway effects of this proposal can be made.

The LRN - Would the residual cumulative impacts be severe?

78. Severe cumulative impacts on the road network relate to its operational performance and levels of congestion, not road safety. What is or is not 'severe' cannot be properly assessed by mere measurement alone and was agreed by all to be a 'high' bar. Adding traffic to an already congested network, even if that is already congested, is no reason to refuse permission and it is the residual effects of the development that have to be severe.
79. On the appellant's analysis residual traffic from development represents 0.9% of total traffic on the network in both morning and evening peak periods respectively in the local plan scenario and consequently, this is 1% of total network traffic. In the '2031 Local Plan Assessment' scenario, overall modelled delay on the wider network is forecast to increase by six seconds per vehicle in the AM peak period and by 20 seconds per vehicle in the PM peak period, as a result of the Weddington Road development. The model forecasts minimal additional delay across the network with this 'with Development' the scenario, suggesting that infrastructure proposed in support of the 2031 Local Plan reduces any impact of development forecast by the model.
80. In using the grading of queue lengths from the NBWA's Advice Note 003, there would be six junctions classified with a 'severe' or 'very severe'¹⁹ impact ranging from increases in queue lengths of 10 to 20 vehicles to over 20. Six junctions could see queuing in the AM peak and 17 in the PM peak period defined as such²⁰. However, these are for initial assessment purposes and as confirmed by the Council is 'high level'²¹. The grading system is again a useful starting point but it in no way is the only method of identifying impacts on the network. It is not a classification that in my view automatically equates to the 'severe' high bar threshold for the purposes of the Framework and other judgment need to be made, mindful of local circumstances²².
81. I do not consider it is necessary to go through each and every junction in detail and certain junctions were focused on as examples at the Inquiry. Junctions 12, 13 and 73 would see increases of 14, 26 and 37 vehicles in the AM 0800 to 0900 period. There would also be 17 junctions that would see an increase of between 10 and 31 vehicles. In the PM peak 17 junctions would see increases in queues of between 10 and 31 vehicles and associated delays in journey times. Junction 10, a five arm priority roundabout on the A444 to the south of the site serving residential developments on Lower Farm Way, Adderley Avenue and Watitune Avenue. Journey times are expected to increase by 31 seconds in the reference case and 77 seconds in the PM peak period in the 2031 Local Plan scenario.
82. The appellant refers to as rolling queues which quickly dissipate as any additional vehicle modelled effectively joins the 'supply' of vehicles waiting to be discharged through the junction. Such maximum queue lengths would probably not occur for only hourly periods between 0800 and 0900 hours and

¹⁹ Classification in NBWA of 'Severe' – increase in max. queue length of 25-50. 'Very Severe' – over 50.

²⁰ PMR Table 4 impacts: 2031 Assessment Year.

²¹ Paragraph 2.3 of Mr Law's PoE.

²² As confirmed by Mr Edwards in XX.

queues may well extend beyond that, in several instances, at a number of junctions.

83. Some routes, notably route two (Manchetter junction down the B4114) and five (A5 to town centre) would experience journey time increases from approximately two to three minutes and on routes 14 (Bucks Hill/Greenmore) and 16 (B4112 Heath End Road) approximately 8 to 13 minute delays on a 20 to 25 minute journey.
84. The impact of residual traffic attributable to development at Weddington Road on overall network performance in terms of journeys made and therefore anticipated levels of urban congestion is fairly small. In the identified locations the model outputs, even when taken as they are and setting aside issues of the overstatement do not forecast severe impacts arising from residual traffic from the development in either of the future year scenarios.
85. The proposal would result in additional queueing at certain times and in certain locations, including some associated and inevitable deterioration in operational performance with varying degrees of congestion likely at a number of junctions. Taken in its ordinary meaning the term severe means 'very great' or 'intense' and in this case the identified impacts of the scheme on traffic flow and volume and junction capacity of the LRN should not be categorised in that way.

The SRN - would the residual cumulative impacts be severe?

86. Two strategic junctions are relevant here, namely the Longshoot and Dodwells junctions on the A5 linking with the A47 corridor. The Junctions effectively form a staggered junction crossing the A5 in a north-south direction. The Longshoot is a traffic signalised T-Junction whilst the Dodwells Circulatory is a signalised roundabout. The junctions are some 550 metres apart.
87. The junctions are operated using MOVA (Microprocessor Optimised Vehicle Actuation) software used to manage traffic signals and apply a reduction in traffic delay. Operating together with their signals connected via the MOVA system enables them to react to traffic on the network and thereby optimising traffic flows.
88. The approach set out in the Modelling Protocol uses the NBWA and the Pan-Regional Transport Model (PRTM) to understand the wider, strategic impacts of the development, particularly the re-routing impacts. Once agreed, traffic flow information is used for assessment within the National Highways VISSIM model which forms part of the A5 Longshoot to Dodwells modelling protocol. The protocol is the only such modelling protocol in the West Midlands Region.

A5 - The Long Shoot

89. I observed the junction is close to or at its capacity, modelling is not required to show that. Whilst the protocol has not been followed, there was agreement that the proposal would add 60 vehicles to the queue in the peak hour, or one additional vehicle per minute. In the 2031 Reference Case assessment the maximum queue increase is in the AM peak hour at eight vehicles on the A5 southeast bound. There is a nominal queue increase of one vehicle forecast in the PM peak hour on The Long Shoot northeast bound arm. For a network that has approximately 3,000 traffic movements per hour in the peak periods the

addition of this small number of vehicles would be relatively minor in numerical percentage terms but that is not the determining factor.

90. My own observations were of queues forming which did create a 'blocking back' effect where a small number of vehicles are sometimes unable to clear the junctions during the respective green light traffic phases. For such a small number in substantial flow the appellant's assessment is proportionate and reasonable. However, it is the effect of the additional vehicles that is important and that as plainly put to me, is a matter of judgment.
91. Slightly over three minutes delays would occur eastbound during the AM peak hour, with the junction causing over two minutes of delay between 0730 and 1000 hours, whilst westbound over seven minutes delay occurs at the worst time with five minutes of delay between 0715 and 0915 hours. In the PM peak, the position is similar with over two minutes delay eastbound between 1600 and 1815 hours and five minutes delay westbound between 1600 and 1830 hours. These increases reflect a reduction in traffic speeds as a result of queuing at the junctions.
92. The appellant's evidence highlights a remedy to prevent blocking back of traffic is possible using MOVA by extending the inter green time at the stop line where vehicles are emerging either late in the cycle, on amber or passing through on red. This would have the effect of allowing the 'destination stream' to move down the link, creating a gap to accept incoming traffic from an opposing movement.
93. There may well be omissions, uncertainties and perhaps even errors in terms of some of the analysis of the impacts but consideration is a fact specific exercise and whilst I have not based my view solely on a percentage increase in vehicles, I do not consider that the impacts on the junction should be regarded as severe.

A5 - Dodwells

94. The NBWA forecasts for 2031 that one vehicle per minute would come from the appeal site in the peak hours. The A5 corridor from Dodwells to The Long Shoot junction operates close to capacity and my observations of that junction are that traffic is in a moving queue in both the morning and evening peak periods. I observed that heavy vehicles tend to govern the speed of traffic which forms rolling queues through this section, driving in low gears to minimise stopping at signals and stop lines as much as possible. I observed this slow and controlled driving behaviour on a number of occasions passing through this junction.
95. The 2031 Reference Case model forecasts suggests that an additional 14 vehicles join the existing queue on the Watling Street northbound arm in the morning peak. In the 2031 Local Plan scenario, this addition to the northbound queue is not forecast to occur, perhaps resolved with the delivery of network infrastructure changes as part of the BP review. Even in disregarding that view there is an impact from this residual traffic but I do not consider any traffic generated by the proposal would result in severe impacts.

Would highway safety impacts be unacceptable?

96. At the CMC I was clear that I considered the highways issue was the effect of the proposal on the safety, operation, and capacity of the LRN and SRN. Safety

impacts clearly are, and always have been, a relevant consideration for me in this appeal but the coverage of this matter by the parties was much less clear.

97. Whether or not a proposal will be inherently unsafe is a matter of judgement for the decision maker taking account of the evidence. This may include the recommendations of the highway authority, information about traffic flows and speeds, any record of crashes in the vicinity, representations by local people and observations on the ground. Increased congestion does not automatically correlate to increased highway safety risks.
98. The Council refer in closings to 'obvious' safety concerns²³ but the only logical and reasonable conclusion I can draw is that motorists, if caught in a longer queue, are more inclined to become frustrated and make unsafe manoeuvres such as jumping the lights to squeeze through or to seek to move into gaps that are not necessarily there.
99. An example at Higham Lane close to the town centre and Etone College was focused upon at the Inquiry. Queuing here could lead to more pedestrians taking a chance and crossing between slowly moving or stationary vehicles approaching the roundabout, a behaviour which I observed at the approach to the Higham Lane roundabout with the A47. In the context of likely vehicular speeds and the presence of established pedestrian crossings in the vicinity, the risk of conflict from such limited behaviour would be low.
100. A further example was Eastboro Way where the length of northbound queues at this junction could stretch back from Junction 12 past Junction 73 to the south. Having travelled through that junction a number of times there may well be additional inconvenience but even with some higher flows I did not see any obvious conflict for right turning drivers that leads me to conclude there would be unacceptable safety impacts.
101. These are risks that are always present at highway junctions and no doubt such incidents occur for a variety of reasons and not just delays in journey times. There are no accident records before me at all to corroborate this type of behaviour and that is has resulted, or indeed would result, in highway safety conflict that would be unacceptable.
102. On both the LRN and SRN there would be some increased driver delays and no doubt in some locations and in some circumstances, frustration potentially leading to some attempts at unsafe manoeuvres. Whilst this could reasonably result in some potential for an increase in conflict between pedestrians and vehicles such occurrences would not be to an extent that should be regarded as unacceptable in safety terms.

Conclusion on second issue

103. The BP is the starting point and on my reading Policy HS2 (6) could be relevant, all other parts are more concerned with strategic accessibility and sustainable transport. No specific mitigation is proposed but that is because the appellant concluded the proposal will meet acceptable levels of impact. For the purposes of this appeal insofar as this issue is concerned the impacts should not be regarded as unacceptable for the purposes of criterion (6).

²³ Paragraph 151 of NBBC closing submissions.

104. In Framework terms I consider that the impacts would not meet the high 'severe' threshold or would be unacceptable and are not therefore reasons to refuse planning permission or prevent development. Nonetheless, the appellant acknowledges that any identified adverse impacts that do not meet these thresholds are still relevant to the necessary planning balance²⁴.
105. I do not have the benefit of hindsight but I am mindful that the degree of impacts could also change, for example, if further evidence becomes available from the impending BP review, if network infrastructure improvement schemes do not materialise as planned or if I have underestimated or misinterpreted the significance of some of the omissions in the evidence as put to me by the Council. For the purposes of this decision, I regard a categorisation of some of the impacts identified by the appellant as no more than 'Minor' to be low and should be more reasonably categorised as mainly 'Minor' but with some being more 'Moderate' perhaps greater. However, in this particular case I do not regard the impacts as being severe or unacceptable in safety terms.

Character and Appearance

The appeal site and its surroundings

106. The 47.5ha appeal site is located to the south of Weddington Road beyond the suburban edge of the town and comprises agricultural land across three field parcels. The southeastern boundary of the site is formed by a disused railway line, now the elevated WW. Weddington Lane bounds the site to the north and provides a route into Weddington and continues on to the centre of Nuneaton. The surrounding landscape is predominantly agricultural land or open countryside with sporadic rural and other development.
107. To the immediate south of the site is an agricultural field through which the River Anker runs, beyond this field is located the Tamworth to Rugby railway line and Coventry Canal (CC). The site is bordered to the east by 'Church Fields', a recently completed residential development located on the eastern side of WW, beyond which is the existing suburb of Weddington.

The landscape hierarchy

108. A requirement of Policy NE5 of the BP is for developers to show they have considered development opportunities in areas of least landscape value prior to development being permitted in higher value landscapes. I acknowledge the finding of an Inspector in the Woodlands Lane, Bedworth appeal²⁵ but paragraph 174 of the Framework does not require a form of sequential test whereas Policy NE5 sets an expectation that each and every applicant, where such land is involved, must undertake an exercise of unquantified reasonable alternatives.
109. For a relatively densely populated Borough, small in area and constrained by Green Belt land this is a policy that appears to seek to protect the environment and land as a natural resource, looking first to examples with the least environmental or amenity value. Some areas in landscape terms are less able to adapt to accommodating development than others and the approach was found sound by the examining Inspector. Parcel 2A (Hartshill Ridge to the

²⁴ Paragraphs 29 and 132 of the appellant's closing submissions.

²⁵ APP/W3710/W/23/3323587.

southwest) for example is in a lower landscape value area and perhaps could have been assessed more robustly.

110. Land known as Judkins Quarry may come forward for some development, but I have no substantive details that show the remaining part of the site would be suitable for further development, being a former quarry pit. The appellant's point about inconsistency in approach from the Council in determining allocations in similar areas does not go any further given the policy refers to 'outside of the strategic sites'. There is ultimately limited evidence to show that the appellant has considered any development opportunities on land located in areas of least landscape value first. The requirements were not therefore met but perhaps not surprising given the appellant's long involvement with proposals to develop the appeal site and views on consistency with national policy.

The site and landscape

111. The site is not covered by any landscape designations. Different landscapes are valued by different people for different reasons, and a landscape does not have to be designated to be afforded protection from inappropriate development. Although character assessments are the starting point, other factors such as recreational value, perceptual and cultural associations and function, in addition to more recognised factors such as quality and condition are important.
112. The appeal site lies within Natural England's National Character Area (NCA) 72 'Mease/Sense Lowlands'. At a more local level the appeal site is located within the 'Anker Valley Estate Farmlands' Landscape Character Type²⁶. This is assessed as having a 'Moderate' quality and condition in the 2023 Landscape Character Assessment (LCA), although a later assessment that also covered a much larger area. With reference to Policy NE5 the appeal site sits within development 'parcel 2A' from the Land Use Designations Study 2012 (LUDS). The overall management prescription for the character area in the BP is to enhance.
113. It is agreed that the submitted Landscape and Visual Assessment (LVA) is sufficiently robust and despite some areas of difference and is in accordance with relevant guidance²⁷. The viewpoints used are a fair and representative range for the purposes of the appraisal. Both parties agree that there are no fixed rules with regard to the level of effects and it was clear at the round table discussion that much is a matter of judgement.
114. I observed a distinct and strong separation between residential development to the east of WW and within the settlement and agrarian countryside to the west. In combination with the area to the south of the WW around the River Anker and north of the A444 the appeal site and its surroundings allows for a recognition of this part of the open countryside as being distinctly different to the residential suburban development in this part of the town. This would still be the case with the MIRA development which is separated from the appeal site by a strong physical boundary in the A444 and because it does not seek to develop the triangular shaped wedge of land between it and the WW close to Shearing Crescent.

²⁶ The Nuneaton and Bedworth Landscape Character Assessment 2023.

²⁷ GLIVIA 3.

115. In terms of landscape quality and condition, the site is utilised productively for arable farming and appeared in good management. Along with its immediate surroundings I saw no obvious signs of degradation or dereliction, hedgerows are well maintained, and mature field and hedgerow trees are generally of a good quality and structure. Other development is visible in the landscape such as Mount Judd, telecoms masts, the railway line and typical rural and farm buildings, but overall, I observed a fairly strong and intact landscape which at a more local level displays many of the qualities identified. I consider the condition should be regarded as 'Good' and not 'Fair'.
116. Value can apply to a landscape area as a whole, or to the individual elements, features and aesthetic or perceptual dimensions which contribute to the character of the landscape. There is a degree of visual enclosure, but views internally and externally are over open and intact agrarian land, divided by hedgerows. The site positively contributes to the ability to experience the area, both through its intrinsic character and quality and because the site and the wider area can be appreciated in views towards and across the appeal site.
117. The recently designated CCA lies a short distance to the west and its setting of agrarian fields is an important part of the character in this part of the Borough. Public rights of way criss cross the site and the along with the WW are clearly well-used recreational routes which pervades into the landscape to the west of the settlement. The WW also provides views over the arable landscape from its elevated position and is a town defining feature.
118. The appeal site is not an isolated parcel of farmland and the site makes a key contribution to that local value through the PRoW present. Notwithstanding the presence of other development, I found a tranquil quality and the site has a degree of rarity as open farmland on the built up edge of Nuneaton to the north along with cultural heritage assets in proximity. Such land is becoming increasingly rare as development parcels to the east of WW have been largely built out and employment allocations to the north have been granted planning permission by neighbouring authorities. Land to the west is much more rural and with the elevated and landscaped WW this helps retains a soft edge appearance which would be adversely altered if development became more prominent in the landscape beyond it.
119. This is more than a simple arable landscape as the appellant contends, it allows for a spatial and visual buffer beyond the suburban edge of Nuneaton. It is also reasonable that such tranquillity will increase by the removal of vehicular routes to the north of Weddington. Overall, I share the Council's assessment it should be regarded as more 'Medium-High' rather than 'Medium' value.
120. Turning to the ability of the landscape receptor to accommodate the change landscape features are intact and in good condition. As one of the few remaining tracts of open agricultural land to the west of the settlement and immediately adjacent but distinctly separate to it there is some limited capacity in my view to accept the type of change/development proposed. The LUDS also concluded that the parcel is considered to have '*very limited landscape capacity for development*'. My observations were that it is more susceptible to change than the appellant suggests and it has a more 'Medium-High' susceptibility to accommodate such change.

Landscape effects

121. It was clear at the RTD that the essence of the dispute between the parties was that the Council consider the in principle loss of such parcels of the landscape to permanent residential development and the associated loss of key landscape elements to be 'Moderate/Substantial Adverse'. The appellant, in accepting some adverse effects, considers that the total package of mitigation measures would include a number of elements that are features of this landscape and would therefore overall, result in an enhancement.
122. I agree with the parties that given the small scale of the site in the context of the overall NCA, the effects on the NCA would be negligible. However, at the local level the elevated and well landscaped WW borders the site. A strong visual and physical feature the suburban edge would be adversely affected if development became more prominent in the landscape beyond the WW. I agree with the LCA 2023 that natural boundaries to further expansion (of Nuneaton) would be the A5 and the WW.
123. An engineered solution to address the site's topography is possible but the development would likely result in a concentration of development to the east and west of the site, forming distinct and separate areas of housing, with Green Infrastructure (GI) running in-between and accommodating the primary school land, local centre and play/open space areas.
124. There is nothing substantive before me to suggest that, were the appeal to succeed, the number of dwellings could not be achieved, and the detailed design of the development would be for a subsequent reserved matters application. Nonetheless, in the likely form this would take given the reliance placed on the revised framework plan the site's character would be permanently altered by the introduction of islands of up to 2.5 storey houses, commercial and school buildings together with associated formal estate roads, parking areas, amenity spaces, street lighting and gardens.
125. In terms of mitigation and enhancement the proposal would provide 26.9 hectares of GI to include habitat improvements; ponds; meadows; scrub planting, woodland planting; hedge planting and several play and recreation features. Mitigation will help limit the inevitable adverse landscape impacts of the scheme and provide facilities and spaces that otherwise would have not been publicly available including the public open space and landscaped corridors. Landscaping is a reserved matter but the revised framework plan highlights that considerable planting would be required to the edges of the built up areas. No doubt specimen trees could be conditioned but their success depends on a number of factors, some of which cannot be guaranteed.
126. Nonetheless, the development would still change the existing network of linear hedges around medium sized fields with a range of natural and ornamental vegetation features. Whilst diversity of vegetation will provide some potential for new habitat opportunities it would still be at the expense of the existing field structure, open agrarian landscape character and legibility of the valued and well used network of PRoW. Further, the GI is also to enhance the potential of the site in ecological terms but in this case at the expense of its character.
127. With a restriction to 660 dwellings and an associated density of approximately 34-36 dwellings per hectare the likely locations of developable

land given the extent and location of the GI, would result in the formation of a new and much harder edge to the settlement intruding into the agrarian landscape. The quantum of development and its suburban form would be in stark contrast to the limited and sporadic development of rural character to the west of the WW, weakening its function as a town defining feature. It would not retain and enhance the rural village edge. The access would be a further hard engineering feature in the landscape beyond the already extended settlement. Overall, the proposal would appear something of an intrusion into this part of the landscape.

128. Further, to facilitate the access and in order to accommodate the required visibility splays 8 English Oak trees (six Category B trees (T1, T2, T4, T38, T39, T40), one Category C (T3) and one Category U (T37)), as well as one English Oak group (G1 – Category C) would require removal. I observed the trees are fully established with generally good vigour and capable of achieving full height potential with the crowns still spreading.
129. The trees provide significant public amenity value in combination with their rural location and backdrop of open farmland on the approach into the town. Their removal would be a negative element of the proposal. Replacement and other planting along the site frontage could assist in providing some mitigation for the loss but the type of landscaping required to soften the effects would take a considerable time to become established and be subject to a number of factors to be successful.
130. For these reasons, the proposal would result in significant landscape change through an irreversible, uncharacteristic and adverse change to the appeal site, its surroundings and the landscape within which it sits. Rather than the 'Moderate-Adverse' reducing to 'Minor-Moderate' effects in future as contended by the appellant, and whilst no overall 'effect' was given by the Council, the effects would be more in a range of 'Substantial-Moderate' and wholly adverse.

Visual effects

131. The 'theoretical visual envelope' (TVE) within the LVA is reasonable, extending west to a low local ridge and south towards the canal and constrained to the east by the embankment of the WW. The site is visible however from further afield, particularly from higher ground to the south/southeast. In reviewing the visual effects, I have had firmly in mind the parameters plan; the illustrative layout based on the GI approach; and the appellant's anticipation of the effects of mitigation.
132. Those walking along the network of PRoW, the CC towpath, those on watercraft using the CC and drivers along the A444 would experience the effects. Vehicle drivers would be mostly in transit and would be concentrating on the road so are less sensitive. The walkers would however be more aware of their surroundings and would have uninterrupted and clear views of the proposal.
133. There is some general agreement as to susceptibility to change albeit in a range of mostly 'High' or 'High-Medium' but also 'Medium'. There is also significant agreement on adverse effects. The main differences lie in whether after completion and mitigation, the effects remain mostly 'Major' to 'Major -

Moderate' adverse as the Council contends or reduce to being more 'Moderate' to 'Minor' effects after mitigation, as contended by the appellant.

134. I visited the site from a number of agreed viewpoint locations (VPL). The WW (VPL7) is a visual, physical and defensible boundary that is clearly visible in views from the A444 and the southwest. From the elevated WW I observed that although landscaped with mature trees and vegetation along its length, there are sections where views of the open farmland across the appeal site were clearly available through gaps in the vegetation. This would be particular so when vegetation and trees are not in leaf. Affording clear views over the site and PRoW network it has a 'High' susceptibility to change and I consider even with mitigation effects would be 'Major-Moderate' adverse.
135. VPL 3 and 4 are Weddington Lane, includes vehicular traffic and the lay by on Weddington Road. The section of the A444 would lose all association with the open countryside due to an evident suburban intrusion of houses and loss of mature Oak trees. The central GI area would be relatively narrow here and this part of Weddington Lane, views of open agrarian fields and hedges would be replaced with islands of 2.5 storey residential development. Views of the WW natural boundary and open countryside would also be permanently eroded. The access would be a significant suburban highways intervention into the landscape and will have associated signage and lighting.
136. VPL 1, 2, 7 and 8 are all internal views from within the appeal site and 6 and 9 are on the periphery of the site boundary and TVE. Compared to existing views the GI would provide some sense of openness, but on entering the site from the underpass of the WW or from the CCA to the west, receptors would be visually confronted by built form, including the primary school site and associated activity, all against a backdrop of housing. Views of medium sized fields and hedgerows would only be partly retained to the south and through the corridor toward the centre but from within that space they would be hard to appreciate and the GI would introduce a more parkland style of open space. From these VPLs there would be a high degree of visual change and for a considerable period of time and even with mitigation the effects would be 'Major' adverse.
137. VPLs 11, 12 and 13 are from the Bridleway N23 and to the south of Canal Farm. Intervisibility from the tow path and CC is limited and with intended mitigation effects would still be more 'Major' adverse from VPL 11 and 12 which are elevated afford views across the site. The elevated position of VPL 14 and 15 on the approach to the marina means whilst views would be distant, include some distant rooftops and are just outside the TVE, open fields would be replaced by prominent housing in the landscape extending far beyond the natural boundary formed by the WW. The eye would be unacceptable drawn to the proposal from this area and even with mitigation the effects which would be much greater than 'Minor' and more 'Major' adverse.
138. From VPL 5 and 10 further to the west and in proximity to Caldecote the intervening topography would limit views until one moves through the landscape from Caldecote to PRoW N183/N184 and VPLs 6 and 9.
139. Overall, the proposal will result in a large and immediately apparent change in a number of views, being a dominant and new incongruous feature in the landscape. The effects would be greater in the early years of the development and would begin to soften over time as landscaping matured. Nonetheless, the

contribution the undeveloped nature of the site makes is significant and would be permanently lost. I have doubts that the GI approach and mitigation proposed would ever truly limit the impacts in line with the appellants assessment.

140. A harmful visual intrusion of suburban residential development into the countryside the proposal would be completely at odds with the open agrarian appearance and visual interests of its surroundings. Even in accepting some inevitability of impact with a housing scheme in such a location, in no way does that take away from the visual impacts of the proposal being very marked and beyond those portrayed by the appellant.

Cumulative effects

141. The GLVIA3 guidance also references cumulative landscape and visual effects, i.e., related to incremental changes caused by other past, present or reasonably foreseeable actions together with the project. The development should be considered cumulatively with the employment extension allocation for the MIRA Technology Park, BP housing allocation HSG1 and a planning application/appeal for land west of Higham Lane.
142. Some degree of delivery in this LCA and beyond has already taken place that has already affected the landscape. The MIRA development is a significant scheme and whilst it does not adjoin the boundary of the WW north of the A444 it is close to it but a significant buffer would be retained around the watercourse and east of PRoW AE189. The MIRA scheme also includes a significant landscaped buffer fronting the A444. Traffic impacts would also reduce due to the restrictions to vehicles on the A444. Nonetheless, this is a scheme that the approving authority stated would cause '*significant adverse visual and landscape*' impacts²⁸. There would be little intervisibility with the HSG1 allocation and Higham Lane given their containment by the well landscaped and elevated WW.
143. The LVA does not distinguish between the two types of effect and considers them briefly in combination with an assessment that they will be 'relatively negligible'. The grant of planning permission for the MIRA extension exacerbates these factors and makes the remaining landscape which still displays some of the identified qualities more sensitive to change and an eroding resource. I have also found the value and sensitivity in landscape terms to differ from the appellant.
144. Visually, effects would be perceived travelling along Weddington Lane and from the WW where both developments will be observed together at certain points and during certain times of the year. Weddington Lane affords important rural views on the approach in and out of Nuneaton, albeit one shortly to be restricted to buses only, and from the railway line and the CC. The WW is a very well-used and therefore highly sensitive landscape and visual receptor. The MIRA development would be a significant amount of built form and in combination with the proposal and its access the 'village edge' approach to Weddington and Nuneaton would be harmfully altered and extended. Lighting during the night from both developments would clearly also be evident in a previously dark landscape exacerbating the effects.

²⁸ North Warwickshire Council and ID10.

Conclusion on third issue

145. I acknowledge that in refusing planning permission for the 775 dwelling scheme in 2019, an objection was not raised on landscape grounds. Consistency is important but I have also made my own assessment on the evidence and judgments put before me along with my own observations which do not accord with the appellant's contention that there would be little more than the inevitable landscape effects of greenfield development.
146. Having undertaken various visits to the site itself, the landscape and PRow I have no doubt that a development of the scale proposed would result in a considerable and harmful change to the character and appearance of the site and area in this part of the Borough. The proposal would be a dramatic and artificial intrusion and the landscape and visual harm would have a significant and very harmful adverse impact on the character and appearance of the site and surrounding area for a considerable period of time. It would not result in an enhancement.
147. Though the conflict in terms of the approach to the landscape hierarchy in this case is limited the proposal would also conflict with Policy NE5 of the BP insofar as major development proposals respond positively to the landscape setting, must demonstrate they are in balance with the setting of the local landscape, respecting its key characteristics and distinctiveness having taken account of the LUDS and landscape guidelines.
148. The Framework recognises the intrinsic character and beauty of the countryside in general as a consideration in planning decisions. Notably, paragraph 135 of the Framework establishes that planning decisions should ensure that developments will add to the overall quality of the area; are sympathetic to local character and history including the surrounding built environment and landscape setting. Although the site is not protected by a specific designation paragraph 180 of the Framework applies. It explains that decisions should contribute to and enhance the natural local environment but in this case the development would fail to recognise the intrinsic character and beauty of the countryside and would conflict with paragraph 180 b).

The Setting of Designated Heritage Assets

149. There are two designated assets that need to be considered in this appeal, the CCA and the Grade II listed Church of St. James. The archaeological potential of the site could be protected by a programme of archaeological investigation and post investigation assessment, which could be secured by a planning condition.
150. In considering whether to grant planning permission for development that affects a listed building or its setting, special regard should be paid to the desirability of preserving that building, or its setting. As the proposals do not concern land or buildings in a conservation area (CA) the statutory requirements under s72(1) of the Planning (Listed Buildings and Conservation Areas) Act (the Act) are of no relevance. Although no statutory protection for the setting of a CA is present in the Act, the Framework requires consideration of any harm to, or loss of, the significance of a designated heritage asset, including from development within its setting.

151. The Framework defines the setting of a heritage asset as the surroundings in which it is experienced. The extent is not fixed and may change as the asset and its surroundings evolve. Elements of a setting may make a positive or negative contribution to the significance of an asset, may affect the ability to appreciate that significance or may be neutral. Further, Historic England guidance in 'The Setting of Heritage Assets', indicates that setting embraces all of the surroundings from which an asset can be experienced or that can be experienced from or within the asset. Setting does not have a fixed boundary and cannot be defined, in perpetuity, as a spatially bounded area or as lying within a set distance of a heritage asset.

Church of St. James

152. This Grade II listed building lies approximately 225 metres to the southeast of the appeal site. Those areas which make the relatively greatest contribution to the significance of the asset through setting comprise the associated graveyard, the settlement which the asset serves, and the remaining adjacent open and clearly intervisible land to the south.

153. I observed a perception of the site as being undeveloped in views from the churchyard, beyond public open space which incorporates the basketball court, and beyond the former line of the railway flanked by vegetation. The undeveloped nature of the site is also apparent in dynamic views moving north through the landscape, and there are distant views back to the roof of the tower from the site.

154. The physical fabric of the asset will remain. However, the change of character of the site, with the slight perception of this in views from the churchyard and perception of this in dynamic views, along with the potential blocking of some distant views to the church would cause an adverse change to its setting. In Framework terms I agree with the appellant that this would result in less than substantial harm.

Caldecote Conservation Area

155. The CCA lies approximately 370 metres to the northwest of the site, separated from it by agricultural land. It was designated on 6 December 2023. Caldecote is of at least medieval origin, being mentioned in Domesday and with a known medieval manor. The significance of the CCA arises from the historic use of the landscape for Caldecote Hall, including farmland and parkland.

156. The area where the development is proposed appears to be on the periphery of the ownership of the Hall and the site will form a backdrop to the CCA. The site is not visible in key views identified in the Conservation Area Appraisal but that appraisal does refer to a *'strong visual, and, to an extent, functional relationship between the proposed conservation area and its setting of arable and pasture fields'*²⁹ which adds emphasis to the quality and values of this landscape. The contribution the site makes to the setting has been identified by the appellant as minor, reducing if MIRA were to go ahead but still important. That decision would also have been taken before the recent designation.

157. Due to the separation distance and intervening features described above, it would not affect the character and appearance of the CCA itself. The effect on significance would be from the reduction in the sense of separation, including

²⁹ Caldecote Area Character Appraisal LUC 2022.

as perceived in dynamic views and views from paths leading from the edge of the CCA and The Grange. Although not identified as key views some views back to the southern edge of the CCA would be blocked. The introduction of the proposal would erode Caldecote's setting of arable and pasture fields and therefore its significance. Again, I agree with the appellant's assessment that in Framework terms the harm to the significance of the CCA, by development in its setting would be less than substantial.

Conclusion on fourth issue

158. For these reasons, the proposal would conflict with Policy BE4 of the BP being development affecting the setting of two designated heritage assets and the requirement to make a positive contribution to character, appearance and significance. Part 2 of the policy and paragraph 208 of the Framework require any harm to significance to be weighed against the public benefits. In completing this balancing exercise great weight should be given to the conservation of heritage assets as required by paragraph 205 of the Framework. Case law has established this does not require an obligation for apportioning varying weight to differing degrees of less than substantial harm³⁰ and I return to this in the planning balance below.

Housing Land Supply

159. The parties agree on the base date of 1 April 2023 so the 5 year period is to 31 March 2028, that the supply should be measured against the adopted housing requirement of 812 dwellings per annum with a base requirement of 4060 dwellings. The parties also agree on a shortfall in housing delivery against the adopted requirement of 1603 dwellings since the start of the plan period in 2011. The shortfall is spread over the remainder of the plan period and the 20% buffer applies.

160. The Council significantly altered its position on the supply during the course of the appeal, removing seven sites identified in the SHLAA³¹, five allocations and two other disputed sites from the supply, a total of 1083 dwellings compared to the published position in January 2024. This left 10 sites in dispute and all but one is an allocated site. The updated positions of the parties³² are that the Council can demonstrate a supply of 4,941 dwellings but the appellant concludes a supply of 3,332 dwellings, a difference of 1,609 dwellings. Consequently, the appellant calculates that a supply of 2.74 years can be demonstrated, the Council 4.06 years.

161. The ability of these sites to deliver housing within the five year period falls to be considered in the light of the definition of deliverable contained in the Glossary of the Framework, together with advice in Planning Practice Guidance (PPG). The definition is clear that sites for housing should be available now, offer a suitable location for development now, and be achievable with a realistic prospect of being delivered in five years. The consideration of housing land supply should not be expected to provide certainty that sites will be brought forward, but it should give a realistic assessment of deliverability

162. Where a site has outline permission for major development, has been allocated in a plan, has a grant of permission in principle, or is identified on a

³⁰ *Shimbles v City of Bradford MBC* [2018] EWHC 195 (Admin).

³¹ Strategic Housing Land Availability Assessment.

³² Updated HLS SoCG 10 April 2024

Brownfield Register, it should only be considered deliverable where there is clear evidence that housing completions will begin on site within five years. These are referred to as 'b' sites in the Framework.

163. The revised PPG refers to the use of the 'latest available evidence' and so there is no barrier in principle to consider information about sites after any base date for assessment. Flexibility was therefore given to both parties to update the SoCG and provide any necessary updates. The Council sought to submit further significant evidence for the RTD which I was told had been accepted by the Inspector in the Long Shoot Inquiry. I make no comment on that because plainly that is a matter for that Inspector. The appellant objected to this evidence but at the RTD the Council decided not to submit it and I therefore did not have to rule on its admission.

Sites with outline planning permission

Site 59/OL – Discovery Academy Beaumont Road (Council 58; appellant 0)

164. Outline permission with access has been approved for the erection of up to 46 houses, 12 flats and one two and three storey extra care facility of up to 65 units. A Section 73 application is currently pending and an amendment to a S106 is required. The Council indicated a decision notice was to be issued Spring 2024 and with bidding for the site closing in April this year. The Council now anticipate a reserved matters application in June and then demolition from then until December 2024. The application was made in March 2023 and has still not been determined and ultimately no development partner appointed, April 2023 is the base date. Whilst there are complex challenges with cross party and organisation working an oral update of discussions is not clear evidence.

165. This is not a site where there is clear evidence of firm progress being made towards the submission of an application, nor is there any avoidance of site assessment work. It is unclear how a reserved matters application is to be made in June 2024 as no developer is on board. The information from the Council does not explain what the application for reserved matters would look like, when it will be made or when applications to discharge the pre-commencement conditions set out in the outline planning permission are to be made. Further decisions on funding are also required in the Summer. To conclude that even with slippage all 58 units could be delivered by 2028 is not borne out in the evidence before me. It should not be considered deliverable at the base date and 58 dwellings should be removed from the supply.

Strategic Allocations

40/OL/1584 – HSG1 – Calendar Farm (Council 658; appellant 543)

166. There is a difference of 115 here on a site part of a larger BP allocation known as HSG1, allocated for approximately 4419 dwellings. The dispute between the parties is summed up by the evidence relating to a remaining 115 dwellings on the site referred to as the 'Jelson' site. A reserved matters application for 190 dwellings was refused by the Council in October 2023. Despite verbal updates that a pre-application had been submitted³³, it is still questionable whether that will address the 7 reasons for refusal without proper

³³ Ms Duncan at the HLS RTD.

and due consideration and given some of those reasons are not necessarily minor development management matters.

167. I was told that Jelson have indicated they are seeking a transition from a nearby site also located within HSG1 and anticipate 115 units being completed by 2027/28. Further, the spine road and drainage infrastructure are in place, so a lot of initial pre-commencement work has already been carried out. Nothing from Jelson is before me, despite there being sufficient time to be put before the Inquiry, especially as I was told a reserved matters application would be submitted during mid-April. There is also no evidence of build out rates or site assessment work. The Council make a number of assumptions and assertions and the extent of delay is unclear so for the purposes of this decision I agree with the appellant that 115 should be removed from the supply.

HSG1 – Remaining land at Top Farm (Council 560; appellant 0)

168. The site has outline permission for 1700 and reserved matters have been submitted for phases 1a, 1b and 1c. It is part of the HSG1 allocation for 4419 dwellings with 625 originally included in the supply, amended by the Council to 560. There is less than 4 years of the period remaining in which to deliver the Council's number.
169. Reserved matters are still pending approval and other than 51 units no reserved matters for residential development have been submitted. There are also objections on highways and flooding and there are no substantive details about how those are to be addressed. Expectations of 50 units in 2024/25 therefore seems optimistic. For example, whilst every effort is no doubt being made to ensure that progress is made on the construction of the link road as soon as possible, that is the only evidence before me. There is a significant amount of work required before any dwellings are delivered on the site.
170. Despite an update that the developer has indicated a build rate this is based on other sites in the West Midlands area, and I have no information it is directly comparable. There is no clear evidence that to achieve approval and deliver in accordance with the Council's figures. On the evidence before me, these 560 should not count toward the supply.

Site HSG3 – Gipsy Lane (Council 345; appellant 159³⁴)

171. Outline planning permission was approved for 575 units on 4 July 2022 and reserved matters have been approved for 78 dwellings. A reserved matters decision is also expected for 418. A Concept Plan has been adopted for the allocation but there is an outstanding highways objection currently and there is a meeting scheduled to discuss these matters, but no further details are provided. I was told a meeting had taken place and that if the objection is removed this would be a delegated decision but no further evidence was provided so 159 should be included in the supply, removing 186.

Site HSG5 – Hospital Lane (Council 280; appellant 0)

172. The site has outline permission for 455 units granted in August 2023. A reserved matters pre-application request relating to 455 dwellings was submitted in January 2024. It was anticipated an application would be

³⁴ The appellant changed their position from 206 to 159 at the RTD.

submitted in the second quarter of 2024 with commencement in early 2025 with a build out rate of 100 dwellings per annum after 2025.

173. The Council's position was revised from 325 dwellings to 280. There is no evidence of site assessment work and despite an assertion of a record in the borough the build out rate is subject to 'market conditions' and the SoCG with Richborough Estates is heavily caveated to this effect. The evidence does not demonstrate firm progress is being made towards the reserved matters, it fails therefore to meet the definition of deliverable and these units should not be included in the supply.

Site HSG8 – West of Bulkington (Vistry) (Council 149; appellant 0)

174. A full planning application for 149 units has been pending determination since May 2022. I was verbally updated at the RTD that the S106 was with the developer for signing. The appellant fairly confirmed that if the S106 is signed and the decision notice issued imminently then this site may be included in the supply. However, this did not happen, it has been 'imminent' for some time and it is still unclear whether that is now completed.
175. Conditions would need to be discharged, the extent of which are not before me, and 25 completions are expected in 2024/25. The email from the developer refers to being on track to complete within the next 5 years, it is unclear whether this is from the base date or from January 2024. At the time of the Inquiry the site does not benefit from planning permission, pending determination for 1.5 years it is simply unknown when it will be approved. I consider 149 should be removed from the supply.

Site HSG8 – West of Bulkington (Elford) (Council 42; appellant 0)

176. This is a dispute over 42 dwellings for a site that has outline approval for 42 units and reserved matters anticipated in 2024. The site did not have permission at the base date. I was verbally updated a developer had been appointed but ultimately do not know who that is, a pre application request has been made but again I do not have the details. There is also no clear evidence of build out rates or site assessment work to support the reserved matters application, what form it will take or when it is going to be determined. Despite market bids closing in February 2024, the purchaser of the site is ultimately unknown and so are their intentions. Clear evidence has not been provided and 42 should be removed.

Site HSG8 – West of Bulkington (Rosconn) (Council 80; appellant 0)

177. Outline planning permission for 95 units was granted on 27 March 2024. The developer, Bellway considers 80 dwellings could be delivered in 5 years and have a history of delivering 35 per annum but no timescales have been agreed or set out in evidence and reserved matters timescales are unknown. I was told at the RTD Bellway homes were 'gearing up' but there is no clear evidence of submission of reserved matters or the discharge of conditions and what will happen with this site is not clear. Clear evidence has not been provided and 80 should be removed.

Site EMP2 – Phoenix Way/Wilsons Lane (Council 73; appellant 0)

178. The site has outline planning permission for 73 dwellings and up to 55,750 sqm of employment/commercial floorspace. A reserved matters

application for the residential has not been made. The Council's evidence for the inclusion of 73 dwellings comprises email correspondence with the planning agent dated 30 November 2023. The agent may well be committed to taking the site forward, but I heard at the RTD no details of the developer are available even though they were appointed in February/March. A pre-application is likely, but no timescales are known even though a 'kick start' was to take place in March. The email refers to 2024/25 being optimistic given a rights of way diversion and the cross boundary nature of the reserved matters so submission in 2024 seems very optimistic.

179. There is no firm progress with the site assessment work to support a reserved matters application, information as to who is going to submit the reserved matters application, what it will be for or when it is going to be determined. None of the timescales have been confirmed in a written agreement with the developer and it is still unknown who the developer will be. There is no clear evidence of deliverability and 73 should be removed from the supply.

HSG12 – Hawkesbury Golf Course (Council 380; appellant 279)

180. This site relates has a capacity of 380 units, part of the site has full permission for 204 units which is currently under construction with 35 units delivered prior to the base date. The site also has outline permission for 176 units, 110 of which have reserved matters approval. The difference here is 66 dwellings and the council contend the developer will build out the 66 units which form Phase 2. A telephone conversation has been held about scheduling a meeting once the discharge of conditions has been submitted for phase 1. Those timescales are however unknown. There is no clear evidence to suggest progress is being made towards the submission of reserved matters and a failure to provide the clear evidence required for the inclusion of the remaining 66 dwellings.

Conclusion on fifth issue

181. My decision is not a binding precedent which means that such arguments around housing land supply calculations could feasibly result in different conclusions in other cases, including in the other current appeals where different evidence was put before those Inspectors. I also do not suggest this is a 100% accurate representation because it is a fluid situation and some further progress is likely to materialise, for example if the Agreement for HSG8 was indeed signed or the highways meeting for HSG3 did finally take place. It is also likely that in this context my finding will soon become largely academic given the likely evidence to now come forward in the future and the impending review of the BP.
182. Nonetheless, the quality of the evidence with regard to the sites removed by the Council appeared to me to be somewhat similar to the sites that remained in dispute. There is a common theme of a failure to demonstrate and evidence a case. This includes how or when earlier issues and delays with sites would be resolved within the timescales set out, including sites where statutory consultees have outstanding objections, unclear and unjustified evidence of lead in times and build rates, heavily caveated evidence from developers as to delivery intentions, and a number of assumptions and promises that important issues of delivery were soon be resolved but haven't quite been. Although the

Council is somewhat reliant on information provided by others, expectation that events will occur is not sufficient.

183. For completeness, the Council also drew my attention to 10 non-strategic allocations, comprising of 396 units which were not allocated. All of these sites were envisaged as coming forward in the next five years and some already benefit from planning permission, for example, Land at Bedworth Rugby Club for 122 dwellings. I also heard much regarding Land at Judkins Quarry but the assumptions about this site are uncertain and there is little before me to suggest what the application for 400 units submitted in January 2024 is for, let alone any timescales or substantive details. Town centre development sites appear to be coming forward for development but the details of those are also limited.

184. Even if I had given greater benefit to the Council's evidence or included these, it would only result in perhaps a few hundred units added back in, resulting in a supply slightly beyond 3 years. However, for the purposes of this decision and on the evidence before me I find the current position at the time of my decision to be more in line with the appellant's assessment of 2.74 years.

Should a four or five year supply be demonstrated?

185. A dispute as to whether a four or five year housing land supply needs to be demonstrated became apparent on opening and submissions were made in writing. Given my findings in relation to the supply the Council fall short of both demonstrating a four or five year supply. Despite the view to the contrary from the Council's Planning witness³⁵ consideration of the extent of the shortfall, along with various other factors go to matters of weight in the relevant planning balance.

186. The supply needs to be against the five year requirement plus an appropriate buffer, whether considered against the four or five year supply. At the time of the Inquiry the BP was close to reaching the five year period whereby the requirements in the Framework change and at the time of this decision it is now over five years³⁶. Paragraph 76 of the Framework sets out that certain Councils are not required to demonstrate a supply at all subjects to two criteria. Consequently, and notwithstanding Footnote 40 which refers to transitional provisions in Footnote 79, paragraph 76 is no longer applicable.

187. Paragraph 77 deals with all other circumstances confirms a supply should be delivered and refers to paragraph 226 which deals with situations where a four year supply could be applicable. Here, there is an emerging local plan submitted for examination, including both a policies map and proposed allocations towards meeting housing needs.

188. I have carefully considered the implications of the plan now being beyond the five year period. The Council are, and have been, actively reviewing the supply position, there is significant common ground and no argument has been put before me that the requirement should now be based on Local Housing Need (LHN). I ultimately have limited evidence before me but it would appear that the LHN would be lower than the requirement set out in the BP so could have a material positive effect on the supply situation but there are also

³⁵ Miss K Duncan in XX.

³⁶ 11 June 2024.

significant unresolved objections for the examining Inspector's to consider. In this particular appeal I have therefore used the requirement as set out in common ground and in strategic policies. Consequently, a four year supply of deliverable sites should be demonstrated.

Other Considerations

Loss of agricultural land

189. Following the submission of the appeal the appellant produced a Soil and Agricultural Land Quality Survey which confirms that the appeal site comprises approximately 32 hectares of 3b land. The balance is in part 6 hectares of Grade 3a and just under 9 hectares of Grade 2 extending to 14.8 hectares of this 47.6 hectare site. Best and most versatile agricultural land is both finite and non-renewable it plays an important role in contributing to the nation's food supply. Food security is an increasingly important issue and the economic benefits of best and most versatile agricultural land are recognised in the Framework. Any allotment provision would be a very small proportion of the overall good quality agricultural land that would be lost.
190. In this case the loss would fail to recognise economic and other benefits, and this would be contrary to paragraph 180 b) of the Framework. Having regard to the scale of Grade 2 land that would be lost, balancing it against other economic and flooding considerations and mindful that Natural England did not object in such terms, this loss weighs moderately against the proposal.

Prematurity

191. Emerging in rebuttal evidence this was not a putative reason for refusal, with the Council's review of the BP being submitted for examination in January 2024. Whether a draft plan has reached a sufficiently advanced stage is simply treated by the PPG as an entry point for considering prematurity as a possible reason for refusal. The essence of a successful claim of prematurity is that the development proposed predetermines and pre-empts a decision which ought to be taken in the Development Plan process by reason of its scale, location and/or nature or that there is a real risk that it might do so.
192. However, the review hearings have not commenced. Accepting that the Council anticipate hearings in July 2024 details of any communications with the examining Inspectors on this matter is scant. Hearings could also commence and then be delayed indefinitely due to an important matter that arises such as the Duty to Co-Operate, for example.
193. The Framework does not set a moratorium on new development simply because an emerging plan has been submitted for examination. Nothing has been tested yet and there remain significant unresolved objections³⁷ including to the growth strategy and non-allocation of the appeal site. These are matters for those undertaking the review to address.
194. Whilst the underlying principle is that the examination may have commenced, I do not consider that in this appeal it should be regarded as being at an advanced stage, or put another way, far on or ahead in progress. Consequently, I find there is no need to go onto consider paragraph 49 a) as the requirements are clear that both parts a) and b) must be satisfied.

³⁷ Mr Tait in XX.

Other Matters

195. By the close of the Inquiry the principle of providing an education contribution was agreed but the amount of contribution was still in dispute. The education authority did not attend the associated RTD. This appeal is to be dismissed on other more substantive issues and whilst an obligation has been submitted, it is not necessary to look at this dispute in detail, given that the proposal is unacceptable for these other prevailing reasons. Given the nature of the dispute a conclusion either way on this contribution would not affect my decision to dismiss the appeal and refuse planning permission.
196. Other appeal decisions and judgements have been put before me to inform and support the respective cases of the main parties. I have had regard to them so far as necessary, whilst also noting that the facts and matters in this case turn on materially different considerations, either by location, housing supply or the main issues and evidence presented. It is an accepted premise that each case is to be determined on its own merits and circumstances and it is a matter for the decision maker to undertake the necessary planning balance. As such, I do not consider they are directly comparable and I attach limited weight to those presented.

Planning Balance - Heritage

197. The Framework is a significant material consideration and the presumption in favour of sustainable development in Paragraph 11 d) ii is engaged by virtue of my findings on housing land supply and Footnote 8 of the Framework. Because less than substantial harm has been identified to the significance of designated heritage assets an unweighted balancing exercise is required first, in accordance with paragraph 208 of the Framework. Public benefits may include anything that delivers economic, social or environmental objectives.
198. I have given considerable importance and weight to the harm I have identified to the significance of designated heritage assets, in terms of their setting. However, the public benefit arising from the significant contribution of the scheme to market and affordable housing along with the other lesser public benefits would be sufficient to outweigh that harm although not as emphatically as the appellant suggests.
199. The application of policies in the Framework that protect areas or assets of particular importance do not provide a clear reason for refusing the development proposed. This is not a case where the presumption in favour of sustainable development is disapplied by virtue of paragraph 11 d) i. The presumption in favour of sustainable development in accordance with 11 d) ii) still applies and requires the granting of permission unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole.

The benefits

200. For the avoidance of doubt and in the interests of clarity, having had some discussions on recent caselaw on this matter³⁸ at the Inquiry in ascribing weight to the benefits and adverse impacts I have used the following scale: limited, moderate, significant.

³⁸ *Winifred Helen Ward v SSLHC and Basildon District Council* [2024] EWHC 676 (Admin).

Market housing

201. Considering the undisputed wider issues of general affordability within the Borough these units would allow more households, including families and those in need, to get onto the housing ladder or rent a property. Case law has established the greater the shortfall the greater the weight³⁹ should be given. Other factors are also relevant such as how long the shortfall is likely to persist and the steps being taken to address it. Deliverability and the contribution to the supply is a further factor to be considered in assessing the weight as larger schemes are unlikely to render their entire quantum within the same time-period. Ultimately, a number of elements feed into the planning judgement.
202. I heard that the Council has re-organised and put in place a number of measures to improve service delivery. Those changes were not in place at the base date, but a number of general staffing and resource issues have apparently been addressed and new posts created to improve efficiency⁴⁰ in dealing with housing developments in the Borough. The Council painted a very positive picture of actively working and progressing towards the delivery of the allocated sites in question and permissions have been granted, perhaps galvanised by these current appeals.
203. This proposal would be for a significant amount of housing but it is also not guaranteed when it would begin to contribute. The proposal would help in addressing some short-medium term needs but a developer would need to be found, applications for reserved matters prepared, assessed and approved, conditions discharged and groundworks undertaken. As put to me by the appellant's housing witness at the RTD when commenting on the Council's assumptions, *'homes can be built but still need to be sold'*⁴¹.
204. The calibration of the weight to be attached to this benefit is not an exact science and there is no prescribed methodology. In balancing all of these factors together the contribution to market housing in this context that the proposal would make attracts significant weight in favour.

Affordable housing

205. The Agreement would secure 25% of the total housing provision as affordable housing in accordance with the BP. This could result in 165 units based on the upper limit of the number applied and is secured in the Agreement. A net affordable housing need of 195 dwellings per annum (dpa) between 2015 and 2031 was not contested by the Council. There have been 1,702 affordable completions since the start of the plan period (equivalent to 142 dpa). The latest HEDNA⁴² 2022 identifies a total affordable housing need of 391 dpa and the need for affordable homes does appear to be increasing. The number of households on the housing register has also seen a significant 183% increase of 2,263 households since 2020.
206. The weight to be given is countered by the sustainability/accessibility factors of the appeal site for affordable homeowners but the contribution would help address a growing affordable housing need and is a benefit to which I give significant weight.

³⁹ *Langton Homes Ltd v Secretary of State for Communities and Local Government* [2014] EWHC 487 (Admin).

⁴⁰ Mrs M Bailey Assistant Director of Planning at the RTD and 1.11 of LPA's Planning Rebuttal.

⁴¹ Mr Pyecroft in discussions at the HLS RTD.

⁴² The Council's Housing and Economic Development Needs Assessment.

Economic benefits

207. The proposal would bring economic benefits, including through spending and employment in the construction phase and from new residents once the dwellings were occupied. The retail unit is essentially mitigation to serve future occupiers with some limited economic benefits. The details within the submitted Economic Statement are estimates, bearing in mind the outline nature of the appeal scheme. Whilst they are welcome, they cannot be precisely quantified at this stage. I consider that the economic benefits of the appeal development would have a moderate positive impact and can be attributed moderate weight.
208. The development would generate Council Tax and New Homes Bonus receipts. As the former is essentially a means for the Council to cover its costs arising from an increased local population, and/or to mitigate development impacts upon local infrastructure, it attracts little weight. There is no evidence of a connection between the New Homes Bonus payments and the development to enable it to be considered in accordance with the advice in the PPG. It therefore carries no weight.

Open space, play areas and flooding

209. Provision of such open space on the site would meet the relevant BP and associated Supplementary Planning Document policies and other guidance. The open space would no doubt be used by some existing residents, providing a small benefit but there is already an extensive, attractive and established PRoW network that is clearly very well used and valued, and which would be permanently harmed. In my view the purpose of play areas, spaces and allotments is also to ensure a satisfactory standard of residential development in terms of expected amenities and subject to scale of development. As a wider benefit such provision weighs a limited amount in favour.
210. Consequential benefits in terms of reducing some surface water flooding in the area around the River Anker flooding could result also weigh a limited amount in favour.

Ecology

211. The planning application was submitted with an Ecological Appraisal and the Council's initial objection was withdrawn subject to the imposition of appropriate planning conditions and the covenants in the Agreement. The proposed scheme will lead to the delivery of a total net gain in biodiversity of 10.98 for habitats and 1.42 for linear features. The proposal could also incorporate native species and new habitats, adding to the area's network of green infrastructure and a long term management regime is provided for in the Agreement. These provisions would represent a moderate positive benefit overall.

Accessibility and other benefits

212. The contributions towards upgrading the PRoW network would result in a public benefit although because I have no details of the likely uptake in their use that would occur or even details of the scheme and implementation programme. The improvements are partly mitigation but would improve PRoW and weighs a limited amount in favour. Financial contributions for such services

as Libraries are mainly mitigation but there would also be some limited associated public benefits as a result.

The adverse impacts

213. Insufficiently connected to services and amenities for its scale and where alternative modes of travel available and proposed would not be sufficient in deterring the use of the private car, the proposal would result in a spatially and visually harmful intrusion of a strategic amount of housing into open agrarian countryside beyond the settlement boundary.
214. In this appeal the evidence demonstrates to me that the adopted strategy had stalled and has been slower than anticipated in achieving what was intended or expected in terms of housing delivery. Although sites outside settlement boundaries are currently falling to be considered on a case by case basis, allowed by the flexible approach in Policy DS8, this appeal site should not be regarded as a 'sustainable' site. The policies in dispute offering protection to the countryside and seeking sustainable forms of development are still consistent with the aims of the Framework in seeking to direct development to the Borough's most sustainable location and protect natural resources including landscapes and the environment.
215. I disagree that any objection in character and appearance terms should automatically fall away entirely in these circumstances. Settlement boundaries are under pressure from such development and may well end up being breached but my observations were that the appeal site is not some left over remnant field with adjacent major developments or allocations that are under construction or been granted permission. It is an integral and highly valued part of a strong agrarian and recreational rural landscape. The landscape will be subject to further change as a result of MIRA but in extending beyond the natural boundary and town defining feature formed by the WW, I have found 'Substantial-Moderate' and adverse landscape effects and a range of 'Major' to 'Moderate' (and below) adverse visual effects along with cumulative landscape and visual harm.
216. Notwithstanding the heritage balance already undertaken there would be less than substantial harm to the significance of designated heritage assets in terms of their setting, matters which are of considerable importance and weight. The loss of agricultural land weighs moderately against the proposal. Although not directly a reason to prevent or refuse in Framework terms, there would still be a range of 'Minor' to 'Moderate', potentially greater highway impacts although my decision does not hinge on this issue. The evidence does not indicate to me the proposal should be refused or objected to on the grounds of prematurity.
217. Overall, this market led approach to short-medium term needs would, in this location cause significant environmental and social harm. Even in the context of the identified supply position the harms and resultant conflicts with Policies DS2, DS3, HS2, BE4 and NE5 of the BP and the Framework weigh significantly against this proposal.

The Framework paragraph 11 d) ii balance

218. There are clearly notable benefits weighing in favour of the proposal but the adverse impacts that I have identified would significantly and demonstrably

outweigh the benefits when assessed against the policies in the Framework, when taken as a whole. The proposal would not therefore be the sustainable development for which Paragraph 11 d) ii. of the Framework indicates a presumption in favour.

219. For the avoidance of doubt even if I had agreed with the appellant that a five year supply should be demonstrated and adopted the appellant's best case on the highway impacts⁴³, even with that greater shortfall of housing supply against a five year requirement I consider the adverse impacts of this proposal to be so significant and harmful that the outcome of this balancing exercise would be the same.

Conclusion

220. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise.
221. Returning to Policy DS8 and DS1, DS8 refers to the '*such action*' to be taken '*may include (but are not limited to)*' the bullet points set out and given the flexibility in approach it requires I do not read it as requiring '*edge of settlement*' to be sites within the settlement boundary only. Moreover, I have concluded that the site would not be a suitable site in terms of the first main issue and I have also found significant harm and conflicts in terms of the third main issue and other lesser harms and conflicts. Accordingly, for the purposes of Policy DS8 I do not consider that the appeal site should be regarded as a '*sustainable*' site. Given my conclusions above the proposal also fails the test of the presumption in favour of sustainable development and would not accord with DS1 or DS8 as a result.
222. Drawing my conclusions together, whilst there would be compliance with parts of the BP, overall, there would be significant conflicts with the development plan and the proposal would conflict with the plan, when read as a whole. In this case, I do not consider that there are material considerations, including the Framework, that indicate a decision should be made other than in accordance with the development plan.
223. Having considered all other matters raised, I therefore conclude that the appeal should be dismissed, and planning permission refused.

R Aston

INSPECTOR

⁴³ i.e., a range of no more than 'Minor' or lesser impacts.

DOCUMENTS SUBMITTED AT THE INQUIRY

Document Number	Document name	Submitted by
Document 1	Appearances for the Appellant	Appellant
Document 2	Appearances for LPA	Council
Document 3	AS PoE hard copy plans	Appellant
Document 4	Appellant opening	Appellant
Document 5	Council opening	Council
Document 6	R6 opening	Rule 6
Document 7	LVA hard copy	Appellant
Document 8	Issues and Options	Council
Document 9	Landscape Character Areas Map	Council
Document 10	MIRA details	Both
Document 11	Draft conditions	Both
Document 12	Education statement	Council
Document 13	HLS Scott Schedule	Both
Document 14	Bus statement	Council
Document 15	Position on education and bus services	Appellant
Document 16	HLS SoCG Addendum	Both
Document 17	Note on housing land supply	Appellant
Document 18	Response to Note on HLS	Council
Document 19	S106 track changed version	Council
Document 20	Planning obligations summary	Council
Document 21	Updated HLS SoCG	Both
Document 22	CIL statement	Council
Document 23	NBBC costs application	Council
Document 24	<i>Hawkhurst</i> judgment	Council
Document 25	<i>Ward</i> judgment	Council
Document 26	Re-consultation period notification letter	Council
Document 27	Appellant's costs response	Appellant
Document 28	Council closing submissions	Council
Document 29	Rule 6 closing submissions	Rule 6
Document 30	Appellant closing submissions	Appellant
Document 31	Council's costs response	Council

DOCUMENTS SUBMITTED AFTER THE INQUIRY

Document 1	Final draft conditions schedule by email of 15 April 2024	Council
Document 2	Completed S106 agreement	Appellant
Document 3	Appellant's closing submissions e-version	Appellant
Document 4	Rule 6 closing submissions e-version	Rule 6
Document 5	NBBC closing submissions e-version	Council
Document 6	Email from Council and then appellant concerning further legal submissions on highways matters and case law.	Council and Appellant

Costs Decision

Inquiry Held on 12 to 15 March and 9 to 12 April 2024

Site visit made on 11 March and 23 April 2024

by R Aston BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9 July 2024

Costs application in relation to Appeal Ref: APP/W3710/W/23/3330615
Weddington Road, Weddington, Nuneaton CV10 0TS

- The application is made under the Town and Country Planning Act 1990, sections 78, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Nuneaton & Bedworth Borough Council for a full award of costs against Gladman Developments Ltd.
 - The inquiry was in connection with an appeal against the failure of the Council to issue a notice of their decision within the prescribed period on an application for development described as *'Outline planning application for the erection of up to 700 dwellings with public open space, retail unit (use class F2), landscaping, and sustainable drainage system (SuDS) and vehicular access point from Weddington Road. All matters reserved except for means of access'*.
-

Decision

1. The application for an award of costs is refused.

The submissions for Nuneaton and Bedworth Borough Council

2. The Council makes an application for a full award of costs pursuant to Part 16 of the NPPG. There is of course a right to appeal; but, as the PPG makes clear, that must not be exercised unreasonably. The Council contends that the Appellant has acted unreasonably in bringing this appeal in that the appeal had no reasonable prospect of succeeding. This relates especially to the highways case and the inadequacies of the documentation submitted. This, in itself, has resulted in the unnecessary and wasted expense of the entire appeal.
3. The Appellant has unreasonably disregarded the Local Plan Inspector's report in respect of further residential development to the north of Nuneaton in the plan period; and has unreasonably disregarded the requirement of Policy NE5 (sequential approach), despite being aware of the Local Plan and having had an agreement/interest in developing the site for 5 years. These points simply add to the submission that the appeal had no reasonable prospect of success.
4. The application then lists a-q the main examples of the inadequacies of the highways documentation/evidence presented by the appellant. These include simplistic isolated junction modelling, use of TEMPRO, modelling uncertainty, no use of NBWA outputs at all, no reflection in the modelling work of Padge Hall farm, lack of consideration of reassignment, impacts on highway safety not considered from increased queues and journey times. Trip rates not being agreed, no evidence of how a 15% modal shift would be achieved, lack of

transport assessment, no information to enable determination of severity. Reliance on limited 2023 data, no Travel plan is submitted when an important contention is modal shift. No information of the mobility hub.

5. The Appellant has sought to contend that the Council cannot demonstrate that there would be severe impacts and/or unacceptable highway safety impacts, despite having submitted inadequate information (and this only on 14th December 2023) and having indicated that a full TA and IJM modelling would address WCC's concerns (neither of which were presented).

The response by Gladman Developments Ltd

6. The costs application is audacious, incomplete and an utter waste of time. A costs application is not a place to re-run the merits of your case – that is for closing submissions. The application is made on the premise that the Council is bound to win this appeal and that the appellant is bound to lose. Having regard to the evidential situation which the Council faces, it is as audacious as it is arrogant for the Council to base its costs application on such a premise.
7. The application is incomplete. It fails to say anything about the nature of the costs regime and fails to put it in the proper context. If the Council is going to try to deter appellants from using the right of appeal, as it is attempting to do, then it is incumbent on the Council to put the relevant dicta of the Secretary of State before the Inspector
8. Secondly, the Council has failed to say anything about great tracts of the evidence submitted and examined at length which support the Appellant's case. They will no doubt submit in Closing that this evidence is wrong or insufficient, but the Appellant has advanced a positive case which has every prospect of success.
9. The costs application is an utter waste of time because there are plainly matters at issue for the Inspector to consider and weigh in a planning balance. In Closing, the Appellant will set out the reasons why the appeal should be allowed. If permission is granted, then that is a complete answer to the costs application. It will then be clear that the appeal was both reasonable and necessary. The premise of the application then crumbles and falls away. Even if the Appeal were dismissed, that would not mean the Appellant was unreasonable in bringing the appeal.
10. The costs application is predominantly about the highways case. To succeed in this costs application, the Council has to: (1) persuade the Inspector that the impacts of the proposal would be severe (a high bar) and therefore that the highways impacts alone amount to a clear reason to refuse planning permission, but importantly also; (2) make a finding that there was no prospect that any decision maker could have come to any other conclusion.
11. The Council has no assessment of its own. Its entire case is reliant on criticism. It has no modelling work to compete with that which the Appellant relies upon. The Council's case, as presented to the Inquiry, was not to the effect that the impacts would be severe. Rather, its case was that it did not know. It wanted more or different information. That is where the debate has centred. It is therefore already difficult to see how the Council gets to the point of showing that residual impacts would be severe.

12. Mr Sheach's cogent written, illustrated, and tabulated material is balanced, clear and coherent. His oral evidence is likewise. It is untenable and unreasonable to argue that such a case is bound to fail, which is the premise of this costs application. It is a truly audacious submission to make. It is audacious to complain bitterly and at length about how long one is going to have to call evidence and cross-examine and to require two whole hours to make closing submission in respect of a case which is simultaneously said to have no prospects.
13. The point being made is that the Examining Inspector's report was not addressed in the way which the Council wishes in the Appellant's evidence. This is simply a point for the Council to make submissions on if so, advised in response to the Appellant's case and the way they have justified the proposals. It is not costs point at all.

The final response on behalf of the Council

14. The Council's final comments can be summarised as:

- It is hardly arrogant or audacious or contrived for the council to be concerned about public expenditure, having heard evidence and still of the opinion that the appeal had no reasonable prospect of success.
- The Council has properly reserved their position since the CMC. The application does not seek to re-run closings. The appellant knows the case it has to meet.
- We do not suggest the Inspector should look at the example without considering all of the evidence.
- The application was not incomplete. The relevant tests have been identified.
- There is no need to refer to three examples where there may be a lack of prospective success where the three examples given do not directly apply to the present circumstances and the examples are expressly stated not to be exhaustive.
- The fact that time has been taken to go through the highways documentation does not imply at all the appellant's case must therefore be strong. Rather, it is required expose flaws, that is the proper purpose of the public inquiry.
- It is noted only severity is referred to and not unacceptable impact on highway safety.
- Para 12 does not address the point that the county council is unable to say there would be impacts because relevant information has not been provided. It does not address the arguments set out in paragraph 53 and FF of the closing as to the proper interpretation of the frameworks highways policies. With respect, para 12 as written underlines the unreasonableness of the appellant's approach.
- The Inspector expressed surprise the local plan Inspector's report had not been referred to during the cross examination of Mr Tate and it is accurate to say that the report was in effect disregarded and did not recognise it as an omission.

- The previous application was determined before the LP was adopted on 11 June 2019; 4 years elapsed before the current application was made.
- This is not a tactical application, perhaps the response is technical. The point about glass houses is not relevant if the appeal had no reasonable prospects of succeeding on highways grounds any lack of a housing land supply need not affect the outcome at all.
- Makes reference to new points raised in respect of modelling protocols, the timing of the Richborough Estates and Padge Hall Farm applications with both being accompanied by a Transport Assessment, lack of reference to reassignment in commentary on junctions 12, 13, 72 and 73 and securing a 15% modal shift.
- Hawkhurst case, no disagreement between the parties, can refuse if inadequate.

Reasons

15. National Planning Practice Guidance (the PPG) advises that irrespective of the outcome of the appeal costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary expense in the appeal process. The main question I must answer in this application is whether the appellant acted unreasonably because the appeal had no reasonable prospect of success.
16. Dealing with the content of the application first, all costs applications must be made formally before an Inquiry closes, and at a relevant point. Such an application was eventually indicated, made and the parties were afforded adequate time to deal with it. I note the appellant's concern regarding the content of the application but references were included and I am satisfied a costs application has been set out sufficiently for me to deal with it.
17. In terms of highway matters there is a plethora of guidance and advice but no development plan or other policy requirement to submit the evidence in the form the Council wanted. It is entirely reasonable for an appellant to undertake their own work, assessments, surveys and then present that evidence with the application and then at appeal. If the Council continues to maintain its objection, then it can act and defend its position accordingly, as it did.
18. Overly detailed analysis and criticism of the omission of some perceived important technical data or statistical difference is entirely common in such cases, highways modelling and assessment by its very nature is subject to a number of competing variables and factors which affect both inputs and outputs. This appeal was against non-determination for an application submitted in January 2023 and I note a common theme in the evidence regarding what I consider to be unfortunate but entirely common place delays in communications between the parties in agreeing data, responding on technical points and so on with challenges and delays on both sides in agreeing certain matters.
19. Against this background and despite the postponement of the Inquiry, the appeal timetable did not allow for the submission of further evidence in the form of a revised December 2023 Transport Assessment and additional traffic modelling work. The Council and Rule 6 Party objected to those submissions and then at the Inquiry focused heavily on their omission. To my mind it would

- hardly be fair to criticise the appellant as being unreasonable when my procedural ruling in the planning appeal was to not accept the evidence.
20. In any event it was entirely clear from the Case Management Conference that the appellant's case was not dependant on any of this work as their own analysis and assessment had not indicated the proposal would result in severe or unacceptable impacts. The appellant had properly made clear and reserved their position on this issue. Whilst I appreciate that the Council disagrees with the appellant's approach and consideration of the matters, interpretation of objective highways evidence also requires associated planning judgements to be made and all with a degree of inherent subjectivity.
21. Even if my interpretation of the impacts were found to be incorrect, for example if I have misunderstood the evidence or if circumstances change, in considering their approach that insufficient information had been submitted, the Council should have also been aware that I could reasonably take a different view. I did and broadly agreed with the appellant's assessment of the impacts in the associated appeal decision, albeit with some caveats. There is nothing that leads me to a conclusion of unreasonable behaviour in the appellant's approach to this issue.
22. Whilst not necessarily a costs point, a local plan examination is testing the soundness of a proposed strategy and the Inspector's report itself is proposing modifications and setting out the reasons for them, in this case all under different national policy¹ and guidance at that time. Here, the development plan has a strategy that was found sound subject to main modifications, including a new policy (DS8) which requires further action to be taken by the Council where needs are not being addressed.
23. The policy requires a number of judgments to be made on a case by case basis and does not exclude other action being considered and taken. Ultimately, whether it is for site selection or assessment of a development proposal, a balancing exercise reflecting the presumption in favour of sustainable development within paragraph 11 d) ii of the Framework is also required.
24. In a case where that presumption may be engaged and policies argued as being 'out of date', it is not sufficient to contend there may be 'black letter' harm to the strategy but then find it is of limited or little weight just because a supply cannot be demonstrated. It is more nuanced than that in my view and the consideration of adverse impacts requires an understanding of the approach and reasons underpinning that adopted strategy to then allow for consideration of the weight to be given to any identified harms and associated conflicts with the development plan. The examining Inspector's report is clearly a consideration and a helpful starting point but a number of site specific and bespoke judgments have to be made. In no way does the report provide a blanket restriction on further development north of Nuneaton otherwise Policy DS8 would not have been recommended as a main modification.
25. The Council had also confirmed a shortfall against the requirement of 1603 but in the weeks before the Inquiry 1083 dwellings were removed from the deliverable supply compared to the published position in January 2024. The appellant's evidence appeared to me to lead to a clear change in evidence relating to a potentially important material consideration and my subsequent

¹ 2012 National Planning Policy Framework.

approach to the determination of the appeal. The Council's revised land supply position was clearly precarious and open to challenge requiring only 78 dwellings to be removed from the supply to fall below the four year period from the stated position of 4.06 years and engage the presumption in favour of sustainable development. I agree with the appellant that this does not sit well with a costs claim that the Council's case is so strong the appeal was always bound to fail. Nor does the fact that the Council started with no less than seven putative reasons for refusal.

26. I found in the associated appeal decision that the development plan strategy had stalled. This was acknowledged at the housing land supply round table discussion by the Council's Assistant Director of Planning who outlined that the service had needed improvement and the Council had taken various actions to do so, in particular to assist in the delivery of the strategic plan allocations. Such changes did not occur overnight and consequently the Council should have been acutely aware of the situation they find themselves in regarding proposals for major housing developments on sites outside of settlement boundaries and not allocated in the plan or the upcoming review. That is what the combination of factors I have identified, including the shortfall, triggering of Policy DS8 and an identified (or contended) lack of a 4/5 year housing land supply allows for. Recently in this Borough it has been inevitable that applications for such greenfield sites would be pursued and the policy approach tested.
27. This is also the second proposal in five years to develop the appeal site from the same appellant, an experienced appellant who has clearly invested a lot of time and resources in the pursuit of its development or allocation. Mr Tait for the appellant gave his views in the associated planning appeal on the various planning merits and ultimately concluded that this was a suitable site for a number of reasons. It was not an unreasonable position to take and neither were the approaches of the appellant's other professional witnesses including Mr Sheach on highway matters, who simply offered an alternative and cogent alternative approach.
28. As correctly identified by the appellant for this type of proposal what is required in such cases is an exercise of balancing competing, complex and often uncertain social, economic, and environmental benefits and impacts, to be weighed in whatever balance is required. Whilst I have not agreed with some of the appellant's conclusions and refused planning permission, a positive case was presented on its merits.
29. Against this backdrop it was not only the lack of reference to the Inspector's report by the appellant that I was surprised by, because in such circumstances I had not anticipated or expected that any party would consider making such an application. Nonetheless it was, but none of the examples given in the PPG² that outline the types of behaviour which could lead to a substantive award against an appellant are relevant here. Even though I have refused planning permission, in no way do I agree with the claim by the Council that this was a proposal that had no reasonable chance of succeeding. The fundamental disputes between the parties could only have been resolved at appeal.

² Paragraph: 053 Ref: 16-053-20140306.

30. I note the appellant's final request in their response to this application. However, I see no need for me to admonish the Council for making the application suffice to state that I do consider it to be ill-judged and without merit or any substantive or determinative evidence of unreasonable behaviour by the appellant.
31. For these reasons, neither in substantive or procedural terms has unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, been demonstrated. Therefore, the application for an award of full or partial costs is refused.

Richard Aston

INSPECTOR

Richborough