



Appeal Decision

Hearing held on 14 January 2026

Site visit made on 15 January 2026

by N Bromley BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 February 2026

Appeal Ref: APP/B3410/W/25/3372774

Land adjacent to 374a Tutbury Road, Burton upon Trent, Staffordshire DE13 0AL

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant outline planning permission.
 - The appeal is made by Mr. R Kirkland, of Maplevale Developments Ltd against the decision of East Staffordshire Borough Council.
 - The application Ref is P/2024/00629.
 - The development proposed is outline application for the erection of up to 40 affordable dwellings (28 first homes and 12 affordable rented) including details of access.
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Decision

1. The appeal is allowed and planning permission is granted for an outline application for the erection of up to 40 affordable dwellings (28 first homes and 12 affordable rented) including details of access at Land adjacent to 374a Tutbury Road, Burton upon Trent, Staffordshire DE13 0AL in accordance with the terms of the application, Ref P/2024/00629, and the plans submitted with it, subject to the conditions in the schedule below.

Applications for costs

2. An application for costs was made by Mr. R Kirkland, of Maplevale Developments Ltd against the decision of East Staffordshire Borough Council. This application is the subject of a separate decision.

Procedural Matters

3. The application was submitted in outline, with all matters reserved except for access. Moreover, the only element of access being considered is the site's entry / exit point to the existing road network. I have dealt with the appeal on that basis, treating all submitted plans and drawings as illustrative unless related to access.
4. Before the Hearing the parties had agreed a final draft planning obligation in the form of a unilateral undertaking pursuant to Section 106 of the Town and Country Planning Act 1990 (as amended) (the S106). However, it was not signed in case changes needed to be made in light of the Hearing. At the Hearing minor changes were acknowledged by the appellant and a date for the submission of the signed S106 was agreed. A duly signed and dated S106 has now been submitted. I have had regard to the completed S106 that has been provided.

Main Issues

5. During the appeal the Council has confirmed that subject to suitable planning conditions and off-site highways mitigation, secured by the S106, the proposed development would have a safe means of access. As such, the Council identified that they would not be defending the second reason for refusal related to highway safety. Even so, having regard to the representations from Outwoods Parish Council (the Parish Council), local residents and interested parties, highway safety concerns remain.
6. Given the foregoing, the main issues are:
 - whether the proposed development would accord with local and national planning policies in respect of the delivery of affordable housing, specifically First Homes; and
 - the effect of the proposed development on highway safety.

Reasons

Affordable housing delivery

7. The appeal site comprises greenfield land, located adjacent to but outside the settlement boundary of Burton upon Trent, in the Outwoods Parish, within the open countryside. The proposed development is for 40 new affordable homes with a mix of 28 first homes and 12 affordable rent units.
8. Strategic Policy 2 (Policy SP2) and Strategic Policy 4 (Policy SP4) of the East Staffordshire Local Plan (the Local Plan) (October 2015) set out the Council's approach for the distribution and location of development. In particular, the policies seek to direct housing towards the most sustainable locations in accordance with the Council's settlement hierarchy. Outside of settlements, as is the case for the appeal site, Strategic Policy 8 (Policy SP8) of the Local Plan sets out that development will not be permitted unless it meets one of the stated categories of development and also, meets certain criteria if it falls within one of such categories of development. One such category is development under the Rural Exception Sites policy - Strategic Policy 18 (Policy SP18).
9. The proposed development and appeal site are being progressed as a First Homes exception site. First Homes are a type of affordable housing, introduced by the government in a Written Ministerial Statement¹ (the WMS). They are the government's preferred discounted market tenure and must meet a series of specific requirements, as set out in the WMS and the accompanying Planning Practice Guidance (the PPG)².
10. In order to encourage First Homes-led developments, the WMS and PPG identify that First Homes can be delivered via 'First Homes exception sites'. First Homes exception sites should be on land which is not already allocated for housing, be adjacent to an existing settlement, and comprise First Homes. Sites should also be proportionate in size to the settlement and not comprise protection given to areas or assets of importance in the Framework. They are expected to comply with any local design policies and standards also.

¹ Issued 24 May 2021 and came into effect 28 June 2021

² Paragraph: 001 Reference ID: 70-001-20210524

11. It is common ground between the main parties that Outwoods and Rolleston on Dove, where the appeal site is located, is a suitable site for First Homes exception sites, as identified in the Council's Housing Choice Supplementary Planning Document, March 2023 (the SPD). The main parties also accept that the appeal site is adjacent to the settlement, on unallocated land, is proportionate in size to the settlement and does not comprise protections given to areas or assets of importance in the National Planning Policy Framework (the Framework), and the development could comply with any local design policies and standards. Accordingly, and despite the suggestion from interested parties that affordable homes should be built on brownfield sites and near to employment, the proposal is a suitable location for a First Homes exception site.
12. The Council's development plan was adopted before the publication of the WMS, and it does not contain any specific First Homes policies. However, Policy SP18 of the Local Plan sets out the Council's approach to residential development on exception sites. It states that where the Council is satisfied in the light of evidence that there is a need for new affordable housing which will not otherwise be met, permission may be granted for a small development on a suitable site outside a settlement boundary provided that, amongst other things, evidence of need is provided in accordance with the SPD; and the development will specifically meet the assessed need.
13. The SPD was adopted after the WMS and refers to First Homes. The SPD sets out that for any application submitted which includes First Homes outside the settlement boundaries of main towns and strategic villages, a site-specific housing needs survey, undertaken at the expense of the applicant, is required.
14. In terms of First Homes exception sites, the SPD advises that they should follow the principles for Entry Level exception sites. In this regard the SPD identifies that applicants who make an application should demonstrate that the need for such homes is not being met, and that they should refer to the Strategic Housing Market Area Assessment (the SHMA) which sets out the affordable housing need for the Borough.
15. The Council accept that there is no national guidance on how to gather evidence for First Homes exception sites, with the focus on demonstrating proportionality of scale, rather than evidence of need. Indeed, there is no compelling evidence presented by either party which demonstrates that First Homes are already being successfully delivered in the area. In these circumstances the proposal for 28 First Homes would make a notable contribution to the supply and delivery of this type of affordable housing, as supported by the WMS. As such, the proposal which is predominantly for First Homes would support the government's objective of enabling as many people as possible to enjoy the benefits of home ownership, which is a key priority.
16. The WMS also allows a small proportion of other affordable homes on First Homes exception sites where there is a significant identified local need. The PPG³ advises that applicants will be expected to provide evidence of this need in the form of a Local Housing Needs Assessment, local authority Housing Register, or other sufficiently rigorous local evidence.

³ Paragraph: 029 Reference ID: 70-029-20210524

17. The appellant has submitted a Housing Need Assessment (the HNA) for Rolleston-on-Dove and Outwoods (the Primary Parishes) and the adjacent parishes of Anslow, Horninglow and Eton, Stretton and Tutbury, dated February 2024. The HNA does not include the results of an up to date housing needs survey (HNS), as required by the SPD but it refers to the SHMA and it is a robust document and includes rigorous local evidence. Indeed, although an HNS, which includes an appropriately designed questionnaire being delivered to all dwellings in the survey area, undertaken within the last three years, is not included as part of the HNA, the methodology and findings of the HNA were accepted by the Council's Housing Strategy Officer.
18. The HNA concludes that despite recent large scale housing developments that have been permitted in Outwoods, there is an unmet need of 112 affordable housing dwellings in the Primary Parishes. This equates to 11 dwellings per annum in the plan period. This is significantly more than that suggested by the Council, who identify a need of 1 dwelling per annum in the Primary Parishes, based on the East Staffordshire Local Housing Needs Assessment (LHNA) update document. However, the Council accept that their calculation has limitations and the parish distributions are based on 2011 Census data.
19. Even If I were to accept that there is not an unmet need for 112 dwellings in the Primary Parishes over the plan period, 12 affordable rent units would be delivered on the site in a situation where the Council's overall waiting list is believed to be at circa 9000 households. In fact, the evidence suggests that the number of households on the waiting list has increased significantly in recent years, which suggests that the level of need may be even greater than that evidenced in the HNA. To my mind this is a clear indicator that the affordable housing need in the plan area is not being met.
20. While the Council suggest that there is a pipeline of 607 affordable housing units which are expected to be delivered over the remainder of the plan period to 2031, the weight I attach to the Council's evidence is somewhat reduced due to the acceptance of its limitations, and the acknowledgement that not all of that pipeline is located in the Burton Upon Trent, or Rolleston-on-Dove or Outwoods area. As such, I consider the HNA to be more credible.
21. Furthermore, although not a published document, the Council highlight that the LHNA update, identifies that there is an overall Affordable Need of 153 units per year in East Staffordshire, up from 119 per annum calculated in the May 2024 LHNA.
22. In the above circumstances, I am satisfied that there is a need for affordable housing both within the Primary Parishes and across the East Staffordshire area overall, as is agreed in the Statement of Common Ground. On this basis, and without any substantive evidence to the contrary, a significant identified local need for affordable housing has been demonstrated.
23. As a First Homes exception site, the proposal would ensure that there are an adequate supply and variety of housing options available, boosting the delivery of First Homes within the area, making home ownership a reality for families, a key priority of the government. It would also deliver affordable rent units and contribute to helping reduce the number of households on the local authority housing register, as well as increasing the supply of new housing. Consequently, in

accordance with the WMS, the proposed development should be supported, subject to the affordable housing being suitably secured in perpetuity.

24. The S106 would secure 28 of the proposed dwellings as First Homes and it is modelled on the 'First Homes: Model Section 106 Agreement' guidance⁴. It would also secure 12 of the proposed dwellings as affordable rent. The S106 would be effective in securing affordable housing that would meet the tests under Regulation 122 of The Community Infrastructure Levy (CIL) Regulations 2010, and paragraph 58 of the Framework.
25. I am mindful that recent planning applications for housing developments⁵ nearby are already set to deliver a large amount of new housing, including affordable housing in the Outwood's parish. Nevertheless, the appeal site is located in a sustainable location with regard to access to services and facilities, and the proposal would deliver 100% affordable housing.
26. Overall, the proposal would comply with Policy SP18 of the Local Plan, and the WMS policy for First Homes. It would thereby not be contrary to Policies SP2, SP4 and SP8 of the Local Plan. The delivery of affordable housing would also accord with the aims of the Framework. Accordingly, despite concerns by interested parties, the proposal would not set a harmful precedent locally.
27. For the above reasons, I conclude that the proposed development accords with local and national planning policies in respect of the delivery of affordable housing, specifically First Homes.

Highways

28. Tutbury Road is a busy road, with a 40mph speed limit which changes to 50mph along part of the site frontage. The stretch of road has an edge of settlement character with agricultural land on both sides and occasional residential dwellings that front the road. There are footways and street lighting along the road, leading to the settlement.
29. Undoubtedly the proposal would generate additional traffic on the road and the wider highway network. However, there is no substantiated evidence that Tutbury Road is already badly congested, and even with other development proposed nearby, it has been demonstrated that the increase would be modest.
30. While the Parish Council and interested parties, including neighbours, highlight safety concerns along the road, there is limited evidence before me to demonstrate that to be the case. Indeed, the Highways Authority has not raised any concerns. Furthermore, secured as a traffic regulation order (the TRO), the 30mph speed limit that exists within the settlement would be extended up to the 50mph speed limit point, as part of the development, thus removing the existing 40mph transition section. As a consequence, vehicle speeds along the road, outside the appeal site would be reduced.
31. Acceptable visibility splays are also proposed and in combination with the TRO the access arrangements would be suitable for the characteristics of the road, and the proposed development would not lead to an unacceptable impact on highway

⁴ PPG Paragraph: 003 Reference ID: 70-003-20211223

⁵ Planning application references: P/2017/01295 and P/2021/00868

safety. It has also been successfully demonstrated that the residual cumulative impacts on the road network would not be severe.

32. Additionally, located on the edge of the settlement with a continuous footpath along the site frontage, and with bus services operating along the road, future occupants would have access to a range of services and facilities nearby and not all trips would require the use of the car. As such, the site would, to a high degree, prioritise sustainable transport modes.
33. Consequently, for the above reasons, I conclude that the proposed development would not be harmful to highway safety. The proposed development would accord with Policy SP35 of the Local Plan and the aims of the Framework, which together and amongst other things, seek to ensure that development achieves a safe and suitable access to the site, and encourages the use of sustainable modes of transport.

Other Considerations

34. CIL Regulations 2010 and the Framework set a number of tests for planning obligations: they must be necessary to make the development acceptable in planning terms, be directly related to the development, and be fairly and reasonably related in scale and kind to the development.
35. In addition to obligations to secure the provision of affordable housing, the S106 includes obligations related to the TRO, the provision, management and maintenance of estate roads, and a travel plan monitoring fee. Also, obligations related to the management of on-site open space, as well as financial contributions towards the provision of secondary education places, new healthcare provision, National Forest planting, and a BNG net gain monitoring fee are also secured by the S106.
36. The completed S106 omits a financial contribution of £3,800 towards refuse containers for the development. The implications of this are that alternative arrangements for waste containers would be required. There is no clear evidence before me that its omission would render the development unacceptable in planning terms.
37. On the evidence before me, the provisions within the planning obligation are necessary to make the development acceptable in planning terms. They would mitigate the impact of a development of this scale, particularly on existing infrastructure locally. They are directly related to the development and fairly and reasonably related in scale and kind to the development. As such, I am satisfied that each of these obligations fall within the provisions of Regulation 122(2) of the CIL Regulations 2010 and the Framework.

Other Matters

38. I have given careful consideration to the significant number of concerns raised in relation to the proposal that have not been referred to in the Council's reasons for refusal, including those by the Parish Council and the occupiers of neighbouring properties.
39. At 1.59 hectares, the Council has not raised concerns with the loss of agricultural land, and there is no substantiated evidence that has been presented that leads me to any different view in this respect. Similarly, as the site lies within Flood Zone

- 1, which represents the lowest risk of flooding, no objections are raised to flooding and drainage matters. In any event, conditions to secure a surface water drainage strategy, as well as drainage plans for the disposal of foul water flows, would ensure that the drainage design of the scheme is acceptable and includes details in accordance with the latest guidance.
40. Based on the indicative proposed site layout plan a sufficient distance between existing dwellings that front Tutbury Road, and the proposed dwellings could be achieved to ensure that acceptable levels of privacy are maintained. For similar reasons, the final layout could ensure that no significant loss of light or overbearing impact is caused to current occupiers.
41. The site includes features of ecological value such as trees and hedgerows, as well as protected species. The planning application was supported by an Ecological Impact Assessment (the ecology survey), as well as a further update document. The update document confirms that the impact assessment and recommendations of the ecology survey remain valid. Although, additional monitoring surveys for birds and protected species are required. These can be secured by suitably worded planning conditions. Statutory BNG would also be achieved. Indeed, the Council's Ecologist raises no concerns.
42. Objections are also raised, particularly by the Parish Council, in respect of the effect of the proposed development on local infrastructure, including community facilities, health care facilities and schools. Particularly in respect of other planning permissions granted nearby. Concerns about the effect on the character and appearance of the landscape, and the implications on climate change have also been raised. These factors are not in dispute between the main parties and were addressed in the Council's planning committee report, with the Council concluding that there would be no material harm in these regards. I have been provided with no substantiated evidence which would prompt me to disagree with the Council's conclusions in these respects subject to planning obligations and conditions.
43. While some concerns were expressed at the Hearing about the appellants motives for the proposed development, I have determined the appeal on its planning merits only.

Conditions

44. I have considered the suggested conditions taking into account the discussions at the Hearing, the policies in the Framework and the advice given in the Planning Practice Guidance. Conditions requiring submission of the reserved matters and adherence to the approved plans (reflecting the outline nature of the proposal) are necessary for certainty.
45. In order to ensure the development proceeds in a satisfactory manner, and to provide certainty, a condition limiting the number of dwellings permitted would be reasonable and necessary. Due to the nature of the dwellings proposed, a condition to ensure that a proportion of the houses are accessible and adaptable, in accordance with requirement M4(2) of the Building Regulations, is also reasonable and necessary.
46. To protect highway safety, conditions would be necessary to secure the proposed access, the closing off of the existing access onto Tutbury Road and the completion of certain on-site highway works to provide safe access arrangements

within the development, including estate roads, parking, turning and servicing areas. The construction of the access to base course level prior to construction works would also be necessary to minimise highway safety implications when works commence on site. Likewise, and to protect the residential amenity of neighbouring occupiers, the prior approval and implementation of a construction management plan is reasonable and necessary. To promote sustainable transport, a condition to secure the implementation of a Travel Plan would be necessary.

47. A series of conditions to provide on-site landscape biodiversity net gain, a 30-year Habitat Monitoring and Management Plan, compliance with the ecological impact assessments and the provision of ecological enhancements, are necessary to protect, conserve and enhance wildlife, protected species and provide policy compliant bio-diversity net gain.
48. To protect the character and appearance of the area and neighbouring living conditions, conditions to provide control over proposed land levels and finished floor levels of the dwellings as part of the reserved matters would be necessary.
49. So as to provide acceptable living conditions for prospective residents of the proposed development, a condition would be necessary to secure the prior approval and implementation of noise mitigation measures, identified as being needed, due to the proximity of the development to Tutbury Road. Similarly, the prior approval of external lighting within the development is necessary.
50. A condition which secures the reporting of unexpected ground contamination is required to prevent risk to the environment and to protect the living conditions of future occupants of the development. Conditions to secure the installation and management of sustainable drainage and foul water drainage as part of the development would be necessary in the interests of flood prevention, to provide appropriate / adequate facilities and to protect the environment.
51. Conditions were also suggested concerning the submission of boundary treatments, delivery of landscaping and open space, and tree protection measures. However, the main parties accepted at the Hearing that they are matters that would be secured at the reserved matters stage. As such, at this stage, the suggested conditions are not reasonable or necessary.

Conclusion

52. For the reasons given above the appeal should be allowed.

N Bromley

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Odette Chalaby	Barrister, Landmark Chambers
Christopher Timothy BSc (Hons) Dip TP MRTPI	Director, Maplevale Planning
Matthew Hunt BSc (Hons)	Director, Cotesbury Ltd
Simon Tucker BSc (Hons) MCIHT	Director, DTA Transportation Ltd

FOR THE COUNCIL:

Piers Riley-Smith	Counsel, Kings Chambers
Aqeel Adnan	Planning Solicitor
Naomi Perry	Planning Manager
Clare Saint	Senior Planning Consultant, LWMTS
Simon Drummond-Hay MRICS ACIH	Director, HDH Planning & Development Ltd
Mark Aldridge Bsc (Hons)	Housing research consultant, HDH Planning & Development Ltd
Cllr Arshad Afsar	Chair of East Staffordshire Borough Council Planning Committee

INTERESTED PARTIES:

Mr David John Galley	Outwoods Parish Councillor
Mr John Anderson	Outwoods Parish Councillor
Mr Tony Price	Trent and Dove Housing
Mr Stephen Bayliss	Local resident
Mrs Nicola Bayliss	Local resident
Mr Nigel Hunt	Local resident

DOCUMENTS SUBMITTED AT THE HEARING

DOC1 ESBC Local Housing Need Assessment 2024 – Review and Notes

POST-HEARING DOCUMENTS

PHD1 Unilateral Undertaking dated 20 January 2026, submitted by the appellant.

Schedule of Conditions

- 1) Details of the appearance, landscaping, layout, and scale (hereinafter called "the Reserved Matters") shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.
- 2) Application for approval of the Reserved Matters shall be made to the local planning authority not later than 3 years from the date of this permission.
- 3) The development hereby permitted shall take place not later than 2 years from the date of approval of the last of the Reserved Matters to be approved.
- 4) Unless otherwise amended under the conditions below, the development shall be carried out in accordance with the following approved plans, numbered and titled: 22458 Access Plan; 1428/05 Rev G Location Plan; 19222-J Topographical Survey; Y21028-202 Rev P9 Illustrative Drainage Strategy; and 1428/14 rev B Tree Constraints Plan.
- 5) Prior to the commencement of the development hereby permitted a Construction Transport Management Plan (the CTMP) shall be submitted to and approved in writing by the Local Planning Authority. The CTMP shall include:
 - a) A site compound with associated temporary buildings;
 - b) The parking of vehicles of site operatives and visitors;
 - c) Loading and unloading of plant and materials;
 - d) Storage of plant and materials used in constructing the development;
 - e) Wheel wash facilities including means of dealing with water runoff;
 - f) Mechanical road sweeper for existing carriageway.

The approved CTMP shall be adhered to throughout the construction period.

- 6) The development hereby permitted shall not commence until a 30-year Habitat Monitoring and Management Plan (HMMP), prepared in accordance with an approved Biodiversity Gain Plan, has been submitted to and approved in writing by the local planning authority. The approved HMMP shall be strictly adhered to and implemented in full during the first planting season following the first use of the development hereby approved and shall contain the following:
 - a) Description and evaluation of the features to be managed;
 - b) Ecological trends and constraints on site that may influence management;
 - c) Aims, objectives and targets for management - links with local and national species and habitat action plans;
 - d) Description of the management operations necessary to achieve aims and objectives;
 - e) Prescriptions for management actions;
 - f) Preparation of a works schedule, including annual works schedule;
 - g) Details of the monitoring needed to measure the effectiveness of management;
 - h) Details of the timetable for each element of the monitoring programme;
 - i) Details of the persons responsible for the implementation and monitoring;

- j) Mechanisms of adaptive management to account for necessary changes in work schedule to achieve the required targets; and
 - k) Reporting on year 1, 2, 5, 10, 20 and 30, with biodiversity reconciliation calculations at each stage.
- 7) a) Where the Phase 1 Site Appraisal completed by Patrick Parsons (Ref: B20265/DTS/Rev2) has identified potential contamination, no development including any construction works, remediation or site demolition shall commence until details of intrusive site investigations, including all technical data, as a Phase 2 Report has been submitted to and approved in writing by the local planning authority. The intrusive site investigations shall be carried out to establish the full extent, depth and cross-section, nature and composition of the contamination. Chemical analysis, identified as being appropriate by the desktop study, should be carried out in accordance with current guidance using UKAS/MCERTS accredited methods.
- b) In those cases where the Phase 2 report has confirmed the presence of contamination, a Remediation Method Statement (RMS) shall be submitted to and approved in writing by the local planning authority prior to works commencing. The RMS shall detail the exact manner in which mitigation works are to be carried out. The RMS should also include details of validation testing that will be carried out once works have been completed.
- c) If during remediation works, any contamination is identified that has not been considered within the RMS, then additional remediation proposals for this material shall be submitted to the local planning authority for written approval. Any approved proposals should, thereafter, form part of the RMS; and
- d) The development shall not be occupied until a validation report has been submitted to and approved in writing by the local planning authority. A Validation Report is required to confirm that all remedial works have been completed and validated in accordance with the agreed RMS.
- 8) With or before the submission of Reserved Matters a surface water drainage design shall be submitted to and approved in writing by the local planning authority, in consultation with the Lead Local Flood Authority, and shall include the following specific details:
- a) Surface water drainage system(s) designed in accordance with the Non-statutory technical standards for sustainable drainage systems;
 - b) Evidence of compliance with the principles of the drainage hierarchy, as described in Part H of the Building Regulations. This shall include detailed infiltration testing carried out to Building Research Establishment (BRE) and Digest 365 standards shall be undertaken to establish if an infiltration solution is feasible on site, the possibility of surface water sewer requestions for connection into the Rolleston Brook and if discharge is proposed to an existing sewer, then evidence shall be provided regarding permission to connect;
 - c) A maximum discharge rate from site of 3.0l/s to 1 in 100yr + climate change standards;

- d) Detailed design (plans, network details and calculations) in support of any surface water drainage scheme, including details on any attenuation system, and the outfall arrangements. Calculations shall demonstrate the performance of the designed system for a range of return periods and storm durations inclusive of the 1 in 1 year, 1 in 2 year, 1 in 30 year, 1 in 100 year and 1 in 100 year plus climate change return periods;
- e) Provision of surface water run-off attenuation storage in accordance with the requirements specified in 'Science Report SC030219 Rainfall Runoff Management for Developments';
- f) Multi-benefit SuDS shall be provided on site in line with the August 2022 Guidance on Flood and Coastal Change;
- g) The use of rain garden features to provide bio-treatment of surface water runoff and enhance amenity values;
- h) Provision of supporting information to demonstrate that sufficient water quality measures have been incorporated into the design. This shall be in accordance with the CIRIA SuDS Manual Simple Index Approach and SuDS treatment design criteria;
- i) Finished Floor Levels and openings (e.g. air bricks) are to be set at least 150mm above surrounding ground levels and ground levels shall be designed to direct surface water away from dwellings;
- j) Plans illustrating flooded areas and flow paths in the event of exceedance of the drainage system; and
- k) Provision of an acceptable management and maintenance plan for surface water drainage to ensure that surface water drainage systems shall be maintained and managed for the lifetime of the development.

The surface water drainage design shall be fully implemented and subsequently maintained, in accordance with the timing arrangements embodied within the surface water drainage design, or within any other period as may subsequently be agreed in writing by the local planning authority.

- 9) With or before the submission of Reserved Matters, drainage plans for the disposal of foul water flows shall be submitted to and approved in writing by the local planning authority. The approved drainage plans shall be implemented before the development is first brought into use/first occupied.
- 10) With or before the submission of Reserved Matters, the access details from Tutbury Road (including details of visibility splays) shall be submitted to and approved in writing by the local planning authority. Thereafter, the construction of the access shall be completed to at least base course level prior to construction works commencing and adequately drained to ensure no surface water runs onto the highway. Prior to the occupation of the final dwelling on the site the access onto Tutbury Road shall be fully implemented to adoptable standards and thereafter retained in accordance with the approved details.
- 11) With or before the submission of Reserved Matters, a scheme (including timetable of implementation) for the means of the closing off of the existing access onto Tutbury Road shall be submitted to and approved in writing by the local planning authority. The works shall be undertaken in accordance with the approved details and timetable of implementation.

- 12) Accompanying the Reserved Matters, the details of the estate road layout, including visibility splays at all junctions and bends, an AutoTRACK analysis of the path of refuse vehicles around the site, electric vehicle charging facilities and details of proposed pedestrian and cycle routes and facilities shall be submitted to the local planning authority. The development shall be carried out in accordance with the approved details and retained as such thereafter.
- 13) Accompanying the Reserved Matters, details of the provision of adequate parking, turning and servicing areas within the relevant phase including details of all surfacing materials along with details of all cycling parking/storage facilities shall be submitted to the local planning authority. The development shall be carried out in accordance with the approved details.
- 14) Accompanying the Reserved Matters, details showing the existing and proposed land levels of the site, including site sections and contours, and the finished floor levels, ridge and eaves heights of all proposed buildings with reference to the finished floor levels, ridge and eaves heights of neighbouring buildings, shall be submitted to the local planning authority. The development shall be carried out in accordance with the approved details.
- 15) Accompanying the Reserved Matters a detailed scheme for the provision of noise mitigation measures to the dwellings shall be submitted to the local planning authority. The mitigation measures shall include the glazing and ventilation insulation specifications identified in the Noise Risk Assessment & Acoustic Design Statement, reference 21243A-1 (R2), for the properties in the different areas of the site. The approved mitigation measures shall be installed to the relevant dwelling(s) prior to their first occupation and thereafter be retained for the lifetime of the development.
- 16) Accompanying the Reserved Matters a scheme to provide for at least ten per cent (10%) of dwellings on that phase to be constructed in accordance with Building Regulation 2010 Standard M4 (2) shall be submitted to the local planning authority. The development shall be completed to the Building Regulation 2010 Standard M4 (2) before the first occupation of the relevant dwelling unit(s) concerned.
- 17) Prior to the first occupation of any dwelling a Travel Plan shall first be submitted to and approved in writing by the local planning authority. The Travel Plan shall include a monitoring methodology and a survey methodology for assessing the travel mode choices of residents, an initial series of targets for modal shifts for residents and a secondary series of targets should the initial targets not be achieved. These secondary targets could include contributions to improving infrastructure to support sustainable travel modes as well as or instead of other measures to drive change.

The development shall be carried out in accordance with the approved Travel Plan, and shall be monitored and managed, which shall include an agreed surveying system to identify travel choices of residents, changes in those travel choices and submission of annual reports from the Travel Plan Coordinator to the local planning authority for at least five years from the occupation of the final part of the development or until the targets in the Travel Plan are met.

- 18) Prior to the first occupation of any dwelling a scheme of on-site landscape biodiversity net gain shall be completed, the exact details, specification and implementation of which shall first be submitted to and approved in writing by the local planning authority. The scheme shall be carried out in accordance with the approved details and thereafter retained in the approved form.
- 19) Prior to the first occupation of any dwellings, the details of ecological enhancement measures, these being 5 no. house sparrow terraces on or integrated into the brickwork of new dwellings, as appropriate and 10 no. integrated bat tubes or bat boxes within the new dwellings, located on south or west elevations, shall be submitted to and approved in writing by the local planning authority. The approved ecological enhancement measures shall be installed prior to the first occupation of the relevant dwellings and thereafter be retained and made available at all times for their designated purposes.
- 20) All site works during the construction phase must comply with the recommendations set out in sections 5.2.2 and 5.3 of the Ecological Impact Assessment (Ecolocation, May 2021) and the additional recommendations set out on page 11 of the Ecological Impact Assessment Update (Croft Ecology, April 2024).
- 21) Any external lighting to serve the development hereby approved shall be provided only in accordance with an external lighting scheme which shall have been first submitted to and approved in writing by the local planning authority.
- 22) This permission provides that a total of no more than 40 no. dwellings shall be erected on the site.

End of Conditions



Costs Decision

Hearing held on 14 January 2026

Site visit made on 15 January 2026

by N Bromley BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 February 2026

Costs application in relation to Appeal Ref: APP/B3410/W/25/3372774

Land adjacent to 374a Tutbury Road, Burton upon Trent, Staffordshire DE13 0AL

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr. R Kirkland, of Maplevale Developments Ltd for a full award of costs against East Staffordshire Borough Council.
 - The appeal was against the refusal of planning permission for an outline application for the erection of up to 40 affordable dwellings (28 first homes and 12 affordable rented) including details of access.
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Decision

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

Reasons

2. Parties in planning appeals normally meet their own expenses. However, the Planning Practice Guidance (PPG) advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
3. The PPG also sets out that a local planning authority is at risk of an award of costs for preventing or delaying development which should clearly be permitted, having regard to: its accordance with the development plan, national policy and any other material considerations; failure to produce evidence to substantiate each reason for refusal; and vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis.
4. In addition, the PPG identifies the type of behaviour that may give rise to a procedural award against a local planning authority, which includes a lack of co-operation with the other party or parties; not agreeing a statement of common ground in a timely manner; withdrawal of any reason for refusal; and introducing fresh and substantial evidence at a late stage necessitating an adjournment, or extra expense for preparatory work that would not otherwise have arisen.
5. The appellant has set out that the Council's Planning Committee Members (PCM) refused the scheme with no technical or environmental objections, and against the advice and recommendation of its Head of Service, and the first reason for refusal does not allege any conflict with the development plan, nor any harm arising. The claimant also suggests that, unreasonably, the Council has carried out no planning balance. The appellant also claims that the Council has been uncooperative in reviewing and providing comment on the draft Statement of Common Ground

(SoCG) and the section 106 agreement (S106). There are therefore both substantive and procedural points of claim. I deal with these matters in turn below.

Substantive

6. The PCM are not bound by the advice of their officers and are entirely within their rights to exercise judgement and maintain objections where they have a legitimate basis from the evidence and information available to them. However, where this occurs it should show reasonable planning grounds for taking a contrary decision and produce sound, substantive and defensible evidence on appeal to support the decision in all respects. Planning law is clear that decisions should be made in accordance with the development plan unless material considerations indicate otherwise.
7. The Council's first reason for refusal does not include any development plan policies. Instead, it lists conflict with the Written Ministerial Statement, 24 May 2021 (WMS) and the Council's Housing Choice Supplementary Planning Document, March 2023 (SPD).
8. The WMS and SPD are both material considerations, and the reason for refusal is clear and precise in that it identifies that a need, which is not already being met, has not been demonstrated. Primarily because a recent Housing Needs Survey (HNS) had not been undertaken. On that basis, I am satisfied that the PCM had legitimate concerns about whether the proposed development had suitably demonstrated a need for First Homes.
9. The Council's Statement of Case (SoC) does little to substantiate the reason for refusal. Particularly in respect of how the proposal conflicts with the WMS. However, evidence was presented within the SoC, and the Council's housing consultants provided a critique of the Housing Needs Assessment (HNA). Counter evidence to that provided within the HNA was also presented by the Council as part of that critique. This led to further detailed comments from the applicants prior to the Hearing.
10. The SoCG provided further clarity on the Council's position, and conflict with the WMS. The Council elaborated on their case at the Hearing and identified the relevant development plan policies that the proposal was in conflict with, in particular Policy SP18 of the East Staffordshire Local Plan. Why that policy did not form part of the reason for refusal is not immediately clear, and why the Council's case was not made more clear within their SoC is equally unclear. Nevertheless, the Council presented evidence to defend its reason for refusal at the Hearing. Whilst their evidence had limitations, overall I am satisfied that the Council's first reason for refusal was not unreasonable or unwarranted.
11. The Council can demonstrate a five-year supply of housing. In these circumstances, the proposal does not benefit from the presumption in favour of sustainable development, as set out at paragraph 11 of the National Planning Policy Framework. There is no substantive evidence to suggest that the PCM did not undertake a planning balance when reaching its decision on the planning application. Indeed, the Council accept that significant weight should be placed on the proposal's ability to deliver affordable housing and increase the supply of low-cost home ownership in the Borough. As such, while not explicitly set out, it can be assumed that the PCM exercised their judgement on the evidence before them

when reaching its decision and concluded that the adverse impacts of the development outweighed the benefits.

12. For the reasons given above, I do not consider that the Council's first reason for refusal was unreasonable or unwarranted or that the Council has prevented or delayed development which should clearly have been permitted, having regard to the development plan, national policy and other material considerations. As such, the applicant has not been put to unnecessary or wasted expense as a result of the actions of the Council in respect of reason for refusal one.
13. With regards to the second reason for refusal, it is complete, precise, specific and relevant to the application. The Parish Council and other interested parties made representations at the planning committee and notwithstanding the advice of its officer's the PCM went against that advice. I have otherwise limited information of the exact circumstances of its decision, but on reflection and presumably following further advice from its officers, the Council notified the applicant that it was withdrawing that reason for refusal. This was before the appeal was lodged.
14. Inevitably, due to the strong objections from the Parish Council and interested parties, which were highlighted at the Hearing, highway safety matters remained an issue, despite the Council withdrawing the highway safety reason for refusal. In these circumstances I am satisfied that the behaviour of the Council has not put the applicant to unnecessary or wasted expense in respect of reason for refusal two.

Procedural

15. It does appear on the face of it that the Council were not proactive in reviewing and providing comment on the draft SoCG and the S106. In particular, the final SoCG was not received until 6 January 2026, two weeks after my initial deadline. Nevertheless, correspondence was received from the Council during that time and some, albeit limited explanation was given.
16. Delays are unfortunate and while I understand the applicant's frustration in this regard, in the circumstances, and on the basis that both documents were received a week before the Hearing, I am minded to give the Council the benefit of the doubt.
17. Likewise, although the Local Housing Needs Assessment ('LHNA') dated May 2024, was not received in accordance with the appeal timetable, the Council had already made reference to it in their SoC. As it was not a published document, the Council felt it appropriate to submit the document prior to the Hearing.
18. As suggested by the applicant, the document has already been superseded by later revisions. As a consequence, although it is not clear why the May 2024 version of the LHNA was submitted, as opposed to more recent versions, it was received prior to the Hearing. Again, although the timing was frustrating, there was ample time for the document to be reviewed by the applicant. Therefore, I am not persuaded that the applicant has been put to unnecessary or wasted expense by receiving the document when it did.
19. There is no other substantive evidence which suggests that the Council were uncooperative prior to the appeal being submitted. Indeed, the Council engaged with the applicant withdrawing the second reason for refusal prior to the appeal being lodged.

Conclusion

20. For the reasons set out above, I therefore find that unreasonable behaviour resulting in unnecessary and wasted expense, as described in the PPG, has not been demonstrated. The application for an award of costs therefore must fail.

N Bromley

INSPECTOR

Richborough