Planning Proof of Evidence

of Keith Fenwick

Red House Farm, Burton-on-Trent

Planning Appeal APP/B3410/A/13/2197299

On behalf of

Barwood Strategic Land II and Mr and Mrs G Skipper
REFERENCE BDS4072

PROOF OF EVIDENCE OF KEITH FENWICK

THE ERECTION OF UP TO 250 DWELLINGS, ASSOCIATED STRUCTURAL LANDSCAPING INCLUDING WOODLAND PLANTING, PUBLIC OPEN SPACE, ACCESS, DRAINAGE, ASSOCIATED INFRASTRUCTURE, EARTHWORKS AND OTHER ANCILLARY AND ENABLING WORKS INCLUDING THE DEMOLITION OF ALL EXISTING BUILDINGS

AT

REDHOUSE FARM, BURTON-ON-TRENT

ON BEHALF OF: BARWOOD STRATEGIC LAND II AND MRS AND MRS G SKIPPER

DATE: JULY 2013
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PREFACE

This evidence is prepared by Keith Fenwick BA (Hons) MRTPI. I have been a Member of the Royal Town Planning Institute since 1991. I hold a Bachelor of Arts degree in Town and Country Planning awarded by Bristol Polytechnic (latterly the University of the West of England). I am a Director at the Birmingham office of Alliance Planning, a position I have held since January 2009. Prior to this, I have worked for both a property development company and a number of planning consultancies. In total I have 24 years of experience as a practicing Town Planner.

In this matter I am instructed by Barwood Strategic Land II LLP and Mr and Mrs G Skipper (the Client). I was initially instructed by the Client in February 2012 to assist in the preparation and submission of a planning application for residential development of the site, and to promote the site through the Council’s emerging policy framework. Following refusal of planning permission in March 2013, I was instructed in April 2013 to act as expert witness on planning matters for this appeal.

I am familiar with the site and its surroundings, as well as the planning policies pertaining to it. The evidence I give is true, given in good faith and represents my professional opinion as to the merits of the appeal proposals.
1.0 INTRODUCTION

1.1 This proof of evidence is prepared in respect of an appeal against the decision of East Staffordshire Borough Council to refuse planning permission for the erection of up to 250 dwellings with associated landscaping and works, including demolition of all existing buildings on land at Red House Farm, Lower Outwoods Road, Burton upon Trent.

1.2 The planning application leading to the appeal was submitted on 25th September 2012, and was registered by the Authority as valid on 18th October 2012, it was submitted in Outline with all matters reserved. The Decision Notice refusing planning permission (Appendix 1) followed determination of the application at Planning Committee 18th March 2013. The appeal papers were submitted on 29th April 2013.

1.3 The appeal site lies some 2 km from Burton Town Centre, and is located adjacent to the western edge of Burton upon Trent. The site extends to some 13.4 hectares and is formed predominantly by land currently used for the production of turf. It also accommodates a small group of buildings occupied for Class B uses, as well as the domestic premises of Red House Farm itself.

1.4 Planning permission was refused for two reasons which, in full, stated;

“1. East Staffordshire Local Plan Policy NE1 states that outside development boundaries new development will not be permitted unless it is essential to the efficient working of the rural economy, development otherwise appropriate in the countryside or close to an existing settlement and providing facilities for the general public or local community which are reasonably accessible on foot or by public transport. Furthermore, Staffordshire Structure Plan Saved Policy H11 re-iterates these principles, stating that new housing outside development boundaries should be restricted to that which meets a need for affordable housing, or is required to enable an essential worker to live at or near their place of work. The 250 dwellings proposed by this development would occupy a site outside of any development boundary defined in the Local Plan and would not meet any of the above criteria to justify granting permission. The proposed dwellings would therefore constitute inappropriate development in this location, unnecessarily eroding the rural character of this area, contrary to Local Plan Saved Policies BE1, H2 and NE1, Staffordshire Structure Plan Saved Policy H11 and the National Planning Policy Framework (particularly Section 6)."
2. Staffordshire Structure Plan Saved Policy NC2 identifies that development should be informed by and be sympathetic to landscape character and quality and should contribute, as appropriate, to the regeneration, restoration, enhancement, maintenance or active conservation of the landscape likely to be affected. Proposals with landscape and visual implications will be assessed having regard to the extent to which they would cause unacceptable visual harm. Section 11 of the National Planning Policy Framework expands upon this policy, stating that the planning system should contribute to and enhance the natural and local environment by protecting and enhancing valued landscapes. This development will, due to its siting on an elevated plateau, have a significant landscape and visual impact, significantly altering views across the site from primary and secondary viewpoints and eroding the character of this rural edge. Thus, the development fails to comply with the requirements of Local Plan Saved Policy BE1, Staffordshire Structure Plan NC2, the Planning for Landscape Change Supplementary Planning Guidance and the National Planning Policy Framework.”

1.5 Since the application was determined at Planning Committee, the saved policies of the Staffordshire Structure Plan have been revoked, contemporaneously with the revocation of the West Midlands Regional Spatial Strategy on 20 May 2013. A formal copy of the revocation notice is attached at (Appendix 2)

1.6 The planning appeal raises two principal issues of significance between the appellant and the Local Planning Authority which includes:

1. Whether the Planning Authority is able to demonstrate a five-year land supply?
2. Whether the proposals at Red House Farm have an unacceptable impact upon the landscape, such that this outweighs the other planning benefits of the scheme?

1.7 The issue of the Council’s position on five-year land supply is less than clear. In discussions during the course of the application, in correspondence to PINS dated 9th April 2013 in respect of planning appeal reference APP/B3410/A/13/2189989/NWF and in correspondence on 10th April 2013, the Authority conceded that it does not have a five-year land supply, and that the housing target requirement figures for the Council area, are “in line with the original RSS figures” (Appendix 3).
1.8 Notwithstanding this admission in April 2013, however, it is noted that in the Council's Statement of Case relating to this appeal, and which was submitted on 14th June 2013, the Council's then stated position was that they were "recalculating its five-year land supply on the basis of a new evidence base".

1.9 In June 2013 the authority produced an updated paper on Housing Land Supply (Appendix 4) confirming that they had only a 4.60 year land supply. Since then in July 2013 permission has been granted for additional sites, which it is agreed will deliver 530 dwellings within 5 years i.e. approximately 0.8 years supply. Although the Council have not sought to advise the appellant of their formal current position at the time of this evidence being prepared, it is assumed that they will argue that they have a 5.4 year supply.

1.10 In any event, it is noted that none of the evidence demonstrating the absence of a five-year land supply submitted by St Modwen in respect of their appeal on Land South of Lichfield Road, Branston (APP/B3410/A/13/218/9989/NWF) was challenged by the Authority. That appeal was heard at an Inquiry on 14th – 17th and 21st-22nd May 2013. I attach as Appendix 5 the key conclusions St Modwens evidence reached on this matter.

1.11 With regard to landscaping matters, the Inspector will be asked to note that the Authority have not undertaken their own independent Landscape and Visual Impact Assessment (LVIA) of the appeal proposals in reaching their decision to refuse a planning permission, moreover the Council’s assessment of the submitted LVIA on behalf of my client, did not properly reflect the Landscape Institute’s guidance, and the conclusions drawn therefrom, cannot be sustained. Detailed evidence on landscape matters is being presented to this Inquiry by my colleague Dai Lewis of EDP.

1.12 Finally by way of introductory comment, the Inspector is asked to note that the appellant has sought to agree a Statement of Common Ground with the Planning Authority in accordance with the timetable advised by the Planning Inspectorate (which required agreement by the 14th June 2013). However, the appellant was advised on that day, that the Authority had requested an extension of time for the agreement of the Statement of Common Ground with the Inspectorate. At the time of preparation of this proof of evidence, and despite repeated attempts by the appellant, it has not been possible to establish whether there are material areas of common ground between the parties and this evidence is necessarily being produced on the assumption that there are not.
1.13 This proof of evidence, takes the following structure: In Section 2, a more detailed description of the site and surroundings, and the nature the appeal proposals, along with a description of the application process is established. Section 3 outlines relevant planning policy. Section 4 addresses the issues for the Inspector at this appeal, including the scheme merits, housing land supply, and landscape policy. Section 5 establishes the position in respect of the proposed Section 106 Agreement and Conditions. Section 6 summarises the evidence and concludes that the appeal proposals have merit; the Inspector is urged to allow the appeal.
2.0 SITE SURROUNDINGS AND APPEAL PROPOSALS

2.1 The appeal site is located at Red House Farm, Burton Upon Trent and falls within administrative boundaries of East Staffordshire Borough Council.

2.2 The Site comprises land and buildings associated with Red House Farm which extends to approximately 13.4 ha and is currently used principally for agricultural turf production and industrial activities, as well as a single residential dwelling.

2.3 There are a number of existing structures at the site that will be demolished as part of the development proposals which include a residential dwelling and industrial units. The industrial units are currently occupied by paint testing, engineering and a poultry processing businesses.

2.4 The Site itself is characterised by a level plateau location although it is noted that both approaches leading to the site via Lower Outwoods Road and Reservoir Road are at a gradient.

2.5 The principal access to the site is currently gained via Lower Outwoods Road with a further access point located off Reservoir Road, albeit this is currently gated.

2.6 The Site falls outside but immediately adjacent to the currently defined settlement boundary for Burton Upon Trent and is located between the neighbourhood areas of Shobnall and Outwoods. These residential areas fall adjacent to the site’s north eastern and southern boundaries with the nearest residential properties located at Reservoir Road and Lower Outwoods Road/ St George’s Road. To the east of the site lies a wider area of agricultural land which falls within a separate land ownership. To the south east of the site lies Outwoods Reservoir which due to its elevated nature screens the site’s southern boundary from a number of surrounding and long distant viewpoints. The site’s western boundary is screened by existing mature trees/ hedgerow which will be retained as part of the proposals and assist in screening the development from the open countryside which lies beyond this boundary. A stream also runs adjacent to the site’s western boundary.

2.7 A Public Right of Way runs from the north west to the south east of the site and extends down towards the Outwood Hills area. This will be enhanced as part of the development proposals through the introduction of new tree/hedgerow planting, providing a habitat for local wildlife. The Public Right of Way will also be widened in sections in order to improve access to the open countryside and walking routes which fall within the vicinity of the site.
2.8 Beyond this lie a number of existing services and facilities which meet the day to day needs of the Outwoods and Shobnall neighbourhood areas which includes Primary, Junior and Secondary Schools, hospital, sports complex, supermarket, dental surgery, Post Office, Public Houses, public transport connections and churches that are located within 2km of the site, thus providing a sustainable location for future housing.

2.9 Vehicular and pedestrian access to the existing properties is currently gained via Lower Outwoods Road which also serves a number of residential properties including those at St Margaret’s and St George’s Road.

2.10 Lower Outwoods Road comprises a 6m wide carriageway with footpaths on both sides and is characterised by terraced housing on the eastern side and large, more modern housing on the western side. Consequently, on-street parking occurs on the eastern side of the carriageway, adjacent to the terraced housing due to these properties having no off street parking facilities. Visitors to the nearby Queen’s Hospital also use Lower Outwoods Road to park their vehicles during the day, resulting in the road being congested.

2.11 In order to allow vehicle movements up and down Lower Outwoods Road, traffic regulation orders in the form of double yellow lines are in place along the western side of the road.

2.12 Lower Outwoods Road is also the main route for all traffic, including HGV’s associated with the existing Industrial (Use Class B2) businesses at Red House Farm.

2.13 Access to the site can also be obtained via Reservoir Road, albeit this access is currently gated and not in frequent use. Reservoir Road comprises a 7.5m wide carriageway and 2.5m wide footpath on the western side of the carriageway that continues up to the site entrance. Reservoir Road is on a gradient and rises from Shobnall Road (B5017) to the site at an average gradient of 1:10.

2.14 Reservoir Road meets with Shobnall Road (B5017) at a simple priority junction which similarly to Lower Outwoods Road, also experiences some congestion by way of on street parking associated with peak hours at the local Shobnall Primary School. Both of these issues have been reviewed and addressed as part of the appeal proposals.

2.15 The appeal site lies within close proximity of National Cycle Network (NCN) Route 54 where it has been recognised that there is potential to provide cycle connections to this route from the site, via an improved section of the existing public right of way.
In the wider context, the appeal site lies some 2km from Burton Town Centre which provides access to a range of convenience and comparison shopping goods and local employment opportunities. Beyond this lies the settlements of Swadlincote (5.8km), Derby (17km), Lichfield (20km) and Coalville (24km) which provide further day to day and higher order shopping needs.

The appeal site is located within close proximity to existing bus stops on both Shobnall Road and Lower Outwoods Road (Hospital). Shobnall Road is served by the no.10 bus while the Hospital is served by the no’s 3, 9 and 19 providing access to Burton town centre and the wider areas of Swadlincote, Ashby and Coalville.

Burton also benefits from having its own train station which is located approximately 1.5km away, providing connections to the wider national rail network.

In terms of the wider strategic highway network, the A38 provides direct access to Burton Upon Trent and the surrounding settlements. This route is considered to be the most significant transport route within close proximity of the site and provides links to Birmingham and Derby and the A50 which is an important route linking the M6 and M1.

**Appeal Proposals**

The Appeal Proposal comprises the development of land at Red House Farm, Burton Upon Trent for the erection of up to 250 dwellings with associated landscaping and infrastructure.

The full description of development is outlined below and seeks planning permission for:

“This outline planning application (all matters reserved) for the erection of up to 250 dwellings, associated structural landscaping including woodland planting, public open space, access, drainage, associated infrastructure, earthworks and other ancillary and enabling works including the demolition of all existing buildings”.

For the avoidance of doubt, the following are the Appeal drawings.

- INCLA_N131.101 Illustrative Masterplan
- INCLA_N131.102 Land ownership plan
- INCLA_N131.104 Parameter plan
- INCLA_N131.106 Site Location Plan
2.23 The scheme will deliver a range of 2, 3, 4 and 5 bedroom properties at the site which will include an element of affordable housing and widen opportunities to home ownership in this location. The indicative mix as set out in the planning statement which supported the planning application is set out below:

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<th>Market</th>
<th>Affordable</th>
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<tr>
<td>Total</td>
<td>70%</td>
<td>30%</td>
<td>100%</td>
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<tr>
<td>2 Bed*</td>
<td>25%</td>
<td>70%</td>
<td>39%</td>
</tr>
<tr>
<td>3 Bed</td>
<td>40%</td>
<td>15%</td>
<td>33%</td>
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<tr>
<td>4 Bed</td>
<td>30%</td>
<td>15%</td>
<td>26%</td>
</tr>
<tr>
<td>5 Bed**</td>
<td>5%</td>
<td>0%</td>
<td>4%</td>
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* 2 Bed units will take the form of houses, flats and bungalows

2.24 In terms of access, the proposed development will utilise the existing access off Reservoir Road, which joins up with the Shobnall Road (B5017). The existing access at Lower Outwoods Road will be closed to residential traffic and restricted to public service vehicle use only. This will be controlled through the introduction of a suitable design solution in this location in order to ensure the amenity of residents living at Lower Outwoods Road is protected and that the site does not become a through route for local traffic.

2.25 In addition to the above, it should be noted that the scheme will deliver a package of highway improvements both at the site and to the surrounding area through the delivery of a bus route through the site, traffic calming measures along Shobnall Road, parking improvements around the junction of Reservoir Road/ Shobnall Road junction and improved pedestrian/ cycle connections.

2.26 Overall, the scheme seeks to maximise the existing opportunities at the site through improvements to local pedestrian, cycle and bus routes.

2.27 The scheme will also deliver new informal and formal areas of open space at the site whilst seeking to preserve and enhance the site’s biodiversity. The proposal has also demonstrated that it will provide sufficient services for the development and will not increase the level of flood risk either at the site or to the surrounding area.

Application Process

2.28 The chronology of the application can be summarised as follows:
• Application submitted to ESBC – 25th September 2012
• Application registered by ESBC – 18th October 2012
• Target determination date (13 weeks) – 16th January 2013
• Planning Committee Date/ Application refused – 20th March 2013

2.29 In addition to the above, the Appellant has attended a number of pre-application and post submission meetings with Officers at East Staffordshire Borough Council and Staffordshire County Council along with a period of public consultation. Meetings have also been held with the NHS Trust and West Midlands Ambulance Service. A timeline of key meetings held is set out below.

• 23rd February 2012 – Presentation to the Lead and Deputies of East Staffordshire Borough Council.
• 11th June 2012 - Pre-application advice meeting with East Staffordshire Borough Council to discuss the principle of development.
• 19th – 20th July 2012 – Public Consultation
• 26th July 2012 – EIA Screening Letter submitted to East Staffordshire Borough Council
• 29th August 2012 – Pre-application advice meeting with East Staffordshire Borough Council.
• 23rd October 2012 - Meetings with Staffordshire County Council (Highways).
• 9th January 2013 – Meeting with East Staffordshire Borough Council to discuss planning applications progress and timescales associated with policy response and S106 Agreement.
3.0 PLANNING POLICY

3.1 The development plan relevant to the appeal proposals is formed by;


3.2 Also of significant materiality to this appeal are the policies contained within the National Planning Policy Framework (March 2012) (NPPF/the Framework).

3.3 At the time the application was submitted and determined, policies within both the West Midlands Regional Spatial Strategy and the Staffordshire and Stoke-on-Trent Structure Plan saved policies, remained current. However, following the revocation of the West Midlands Regional Spatial Strategy and the subsidiary revoking of the Structure Plan saved policies on 20 May 2013 (Appendix 2), these policies no longer have applicability. It has been agreed through correspondence with the Council that they no longer seek to rely upon these policies in support of the Reasons for Refusal, and it is accepted that this does not detract from the overall thrust and direction of the refusal reasons which the Council look to support through Local Plan saved policies and the NPPF in any event.

National Planning Policy Framework

3.4 The NPPF establishes that the purpose of planning is to contribute to the achievement of sustainable development (paragraph 6) and identifies three pillars to sustainable development: economic, social and environmental. These dimensions require the planning system to perform a number of roles:

- An economic role – contributing to building a strong, responsive and competitive economy, by ensuring that sufficient land of the right type is available in the right places and at the right time to support growth and innovation; and by identifying and coordinating development requirements, including the provision of infrastructure.

- A social role – supporting strong, vibrant and healthy communities, by providing the supply of housing required to meet the needs of the present and future generations; and by creating a high quality built environment, with accessible local services that reflect the community’s needs and support its health, social and cultural well being; and
• An environmental role – contributing to protecting and enhancing our natural, built and historic environment; and, as part of this, helping to improve biodiversity, use of natural resources prudently, minimise waste and pollution, and mitigate and adapt to climate change including moving a low carbon economy.

3.5 Framework para 8 makes it clear that these roles do not operate in isolation of each other, because they are mutually dependant. That is they need to be addressed together and as part of a balancing exercise, as there are many over lapping factors to their operation. This need to address the “planning balance”, is well illustrated in the recent “Award of Costs” letter against Stratford on Avon District Council (Appendix 6) (APP/J3720/A/12/2185727) where the Inspector concluded at para 10;

“At the time of the Regulatory Committee’s decision the Council failed to adequately explain why it had not followed its officer’s advice, and failed to demonstrate how it had assessed the planning balance. Even at appeal stage, for the reasons set out in the Appellant’s submission, evidence of the Council’s balancing exercise has been limited. Although the balance included judgements on character and appearance, this was only one part of the exercise, which involved more. The Council’s shortcomings in this respect are unreasonable.”

3.6 It is further reinforced by the costs decision in APP/E3715/A/12/2186128 (Appendix 7) para 16, where the Inspector concludes;

“To my mind the balance is an essential step and necessary for the authority to be able to justify the decision, particularly in the light of the officer assessment and recommendation and past identification of the suitability of the site in planning documents for housing development”.

3.7 At the heart of the NPPF is the presumption in favour of sustainable development, which should be seen as a golden thread running through both plan-making and decision-making (para 14) with LPA’s approving development proposals that accord with the development plan without delay.

3.8 It establishes 12 core principles, which in summary, confirm that planning should:

• Be plan led
• Enhance and improve places
• Drive and support sustainable economic development
- Seek and secure high quality design
- Respect the character of areas and protect the green belt
- Support transition to a low carbon economy
- Conserve and enhance the natural environment
- Encourage the use of brownfield land
- Promote mixed use developments
- Conserve heritage assets
- Maximise use of sustainable transport opportunities
- Meet social and cultural community needs.

3.9 Paragraph 17 of the NPPF confirms the Government’s commitment to promote sustainable economic growth in order to deliver new homes and thriving local places that the country needs. The NPPF also encourages the effective use of land.

3.10 In terms of housing the NPPF seeks to boost the delivery of new homes within England with a presumption in favour of sustainable development (para 14 et al). To deliver a wide choice of high quality homes, local planning authorities should plan for a mix of housing, identifying the size, type, tenure and range of housing that is required in a particular location, reflecting local demand (para 50).

3.11 LPA’s are also encouraged to plan for high quality homes, which widen opportunities for home ownership and create sustainable, inclusive and mixed communities.

3.12 In order to boost the supply of housing, local planning authorities should be able to demonstrate a deliverable five year housing supply with an additional 5% buffer to ensure choice and competition in the market of land. Where there has been a record of persistent under delivery of housing, local planning authorities should increase the buffer to 20% to provide a realistic prospect of achieving the planned supply and to ensure choice and competition in the market for land (para 47).

3.13 Housing applications should be considered in the context of the presumption in favour of sustainable development. Regard to relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a five-year supply of deliverable sites (para 49).
3.14 In determining planning applications, local authorities should have regard to the opportunities for use of sustainable transport and the provision of provide suitable access for all people (para 32).

3.15 The biodiversity of sites should also be conserved and enhanced in accordance with the principles set out in para 118 whereby:

- planning permission should be refused if significant harm from a development cannot be avoided, adequately mitigated or as a last resort, compensated for,

- the proposed development on land within or outside of Sites of Special Scientific Interest (SSSI) would have an impact upon a SSSI,

- the proposal’s primary objective is to preserve and enhance biodiversity should be permitted,

- opportunities to incorporate biodiversity in and around developments should be encouraged.

3.16 Para 113 confirms that authorities should set criteria based policies against which proposals for any development on or affecting landscape areas will be judged. Distinction should be made between the hierarchy of international, national and locally designated sites such that their protection is commensurate with their status and gives appropriate weight to their importance and contribution they make.

3.17 Para 187 is important in that it confirms that the approach of local planning authorities should be to look for solutions rather than problems, and decisions taken at every level should seek to approve applications for sustainable development where possible. This approach was reinforced by the Secretary of State (SoS) in his very recent decision, at Benton, Newcastle on 3rd July 2013 (APP/W4515/A/12/2186878) (Appendix 8) where the SoS concluded at para 17;

“The Secretary of State agrees with the Inspector that even if the assessment of an absence of a 5-year supply was incorrect, this would not preclude the favourable consideration of the proposal providing it represented sustainable development; and that this also needs to be seen in the context of avowed Government policy encapsulated in the Ministerial Statement that the housing market should deliver new homes to create a stimulus to the economy and address an immediate housing need”
3.18 Para 215 refers to the weight to be attached to existing local plan policies confirming that any such weight will be dependent on consistency with the Framework.

3.19 Para 218 confirms that local planning authorities may also continue to draw on evidence that informed the preparation of regional strategies to support local plan policies, supplemented as needed by up-to-date, robust local evidence.

Summary of National Guidance

3.20 In summary, the development proposals are consistent with the general thrust of the NPPF where the proposed development will see the delivery of new homes in a sustainable location, and where there is a presumption in place in favour of sustainable development.

East Staffordshire Local Plan 1996 - 2011

3.21 East Staffordshire Local Plan was formally adopted by the Council in 2006. The plan guides development throughout the Borough over the period of 1996-2011. It was never intended to guide development beyond 2011, and this is material in understanding the role of historically defined development boundaries when considering applications in a period for which there is no Development Plan Housing requirement context, and the NPPF para 47 is engaged.

3.22 In refusing planning permission the authority have made reference to 3 policies of the Local Plan; NE1, BE1 and H2.

3.23 Policy NE1 addresses development outside development boundaries and confirms that in such locations planning permission will not be granted for development unless it cannot reasonably be located within a development boundary and is either;

(a) essential to the efficient working of the rural economy; or

(b) development otherwise appropriate in the countryside; or

(c) development close to an existing settlement and providing facilities for the general public or local community which are reasonably accessible on foot, by bicycle or by public transport.

3.24 The policy then provides six additional criteria which should be complied with if one of these exceptions is being claimed. The criteria relate to amenity, environmental impact, design, landscaping, and capacity and adequacy of access.

3.25 Policy BE1 addresses design, it states;
“The Borough Council will approve applications for development which respond positively to the context of the area surrounding the site the application and in themselves exhibit a high quality of design which corresponds to or enhances surrounding development. Such considerations will apply equally to new development and development which involves the re-use of existing buildings. In considering whether design of development proposals is satisfactory, the Borough Council will have regard to the following factors;

(a) The layout of the development in terms of its circulation routes and arrangement of buildings and how they relate to such factors in the surrounding area.

(b) How elements of any open spaces, both hard and soft, in the proposed development relate to each other, the proposed buildings, the characteristics of the site and the surrounding landscapes character and appearance.

(c) The density and mix of the development in relation to its context and the uses to which the development will be put.

(d) The massing of the development in terms of the shape, volume and arrangement of the building or buildings in relation to the context of the development.

(e) How the height of the proposed development relates to the height of surrounding development and any visitors, views or skylines.

(f) What material will be used within the development and how the interrelate with each other, their immediate context in any traditional materials used in the area.

(g) The detailing in construction techniques to be used in the development and how they interrelate with each other, and relate to the immediate and overall context.

(h) Adverse impacts on the immediate and general environment in terms of emissions and other impacts and any use of techniques or mechanisms to reduce those impacts.

(i) The extent to which the design of the development to takes into account the safety of users and reduces the potential for crime to occur in accordance with S.17 of the Crime Disorder Act 1998.”

3.26 The policy is repeated in full here as was not clear from an examination of the Council’s Statement of Case, or the officer’s report to committee in respect of the application site, which of the criteria were deemed to have been breached. Specifically, the planning officer’s report to committee on the application (Appendix 9) addressed the issue of policy
BE1 at Section 8.3. Within that section at paragraph 8.3.10 and the following Section 8.4 it is confirmed that;

“...in principle, a scheme of the form proposed, would be considered acceptable. The Design and Access Statement, and in particular the development principles gives the Local Planning Authority an indication that a suitable development can be achieved on the site. It would therefore be recommended that should planning permission be granted, a condition ensuring compliance with the principles of the design and access statement be imposed...”

3.27 Section 8.4.4 also confirms that subject to further consideration of reserved matters the proposal satisfactorily accords with the sustainability requirements of the NPPF by providing acceptable living conditions for both new and existing residents.

3.28 However, by email correspondence dated 9th July 2013 the Council have now confirmed that the only elements of Policy BE1 with which the authority take issue is that related to putative harm to landscape character and appearance, as well as building heights. In this regard it is confirmed that the Council’s concern relates to subsection b) and e) of policy BE1. This is a matter addressed in more detail below, and further in the evidence of my colleague Dai Lewis.

3.29 Finally, with regard to the Reasons for Refusal the only other Development Plan policy reference by the authority is that of Policy H2 relating to large windfall sites.

3.30 This confirms that;

“The Borough Council will manage the release of housing sites by ensuring that urban sites on previously developed land are released for development before greenfield sites...”

3.31 The policy then establishes criteria for the release of brownfield sites before concluding;

“...greenfield sites will not be permitted unless it can be clearly demonstrated that the Structure Plan requirement cannot be met through use of sites on previously developed land.”

3.32 It is of note that Policy H1 which addressed the issue of housing provision against the Structure Plan requirement was not a saved policy of the Plan. That is, there is no element of the Local Plan as saved, which seeks to define the housing requirement for the Borough.

3.33 In developing the proposals at the site, regard was also given to other saved policies of the Local Plan which included;
3.34 The saved policies of the Local Plan were confirmed as such in a letter from the Government Office for the West Midlands to the Council’s Planning Policy Manager dated 9 July 2009 (Appendix 11). The following two references are noted from that letter;

“The exercise of extending saved policy is not an opportunity to delay DPD preparation. LPAs should make good progress with local development frameworks according to timetables in local development schemes. Policies have been extended in the expectation that they will be replaced promptly and by fewer policies in DPDs....

Following 19 July 2009 the saved policy should be read in context. Where policies were originally adopted sometime ago, it is likely that material considerations in particular the emergence of new national and regional policy and also new evidence will be afforded considerable weight in decisions. In particular, we would draw your attention to the importance of reflecting policy in Planning Policy Statement 3 Housing and Strategic Housing Land Availability Assessments in relevant decisions.”

3.35 It is noted here, that 4 years on from that letter, and 2 years after the relevant Local Plan policies were time expired, the Authority has not succeeded in making good progress with
their Development Plan. The Council have failed to replace promptly their DPD’s, and in a very real sense, this is failing those in housing need who form the statistics behind the Council’s housing survey data.

**Other Material Considerations**

**The Emerging Local Plan**

**Core Strategy: Draft Pre-publication Strategic Options (August 2011)**

3.36 Whilst this document has been superseded by the more recently published Preferred Options, July 2012, which is commented on further below, it is noted here that the Council promoted three options in the summer of 2011 for development at Burton. Those options were

- Option 1: concentrating growth on two sites in Burton and some growth in Uttoxeter and the strategic villages.
- Option 2: concentrating most growth in the Outwoods and Stretton areas of Burton and some development in Uttoxeter and the strategic villages.
- Option 3: more dispersed growth surrounding Burton and some development in Uttoxeter and the strategic villages.

3.37 The options were accompanied by option plans graphically illustrating the implications of these development options in terms of development within the Borough. Attached at Appendix 12, are Figures 8, 14 and 20 from the consultation document. It is of note that Options 2 and 3 proposed the allocation of land at Red House Farm with a capacity of some 100-200 dwellings.

3.38 The Council also identified their housing targets at this time in line with the RSS expectation of some 13,000 dwellings (2006 – 2013).

**East Staffordshire Local Plan Preferred Option – July 2012**

3.39 In July 2012, East Staffordshire Borough Council published their Preferred Option Local Plan, which sets out the Council’s vision for the Borough over the plan period 2013-2031.

3.40 The Preferred Option built upon previous consultation exercises including “Issues and Options” in 2007 and the “Strategic Options” in 2011 referred to above. It established options for delivering growth within the Borough including the strategic allocation of land for new housing and employment. There is recognition within the plan that some of this
growth will need to come forward on greenfield sites. The plan recognises priorities and issues identified by residents, and at Table 3.3 identifies one of the priorities as accommodating “a significant increase in the quantum of housing”.

3.41 The plan promoted five principal options for consideration which included

- Option 1: urban extensions
- Option 2: urban extensions plus villages
- Option 3: equal distribution
- Option 4: single urban focus
- Option 5: new settlement.

3.42 The plan concluded that the appropriate spatial strategy was one based around Option 2 - urban extensions plus villages, and then further sought to consider the implications of this through a series of strategic sub-options, subdivided into four groupings option 2(a), 2(b), 2(c) and 2(d). The implications of these were illustrated through a set of high level “cartoons” which indicated the broad effect of the Option in terms of strategic directions of growth. Even within this high level assessment, however, it is apparent from the illustrative nature of the supporting material that options 2(a), 2(b) and 2(c) all included for the potential allocation of land at Red House Farm. The only option that the Council considered which did not include a strategic direction of growth at Red House Farm was option 2(d), and it is option 2(d) that the Council ultimately identified as their preferred option.

3.43 The four Options are illustrated on the plans attached at Appendix 13.

3.44 It is not the purpose of this proof to rehearse arguments which may necessarily need to be run through the Core Strategy process. However, for completeness, and because it is material to the weight which I believe can be attached to the Preferred Options document, a copy of the representations submitted to the Preferred Option plan are attached at Appendix 14.

3.45 With regard to housing growth, the Preferred Option local plan moves away from the RSS target figures of 13,000 dwellings (2006-2026) i.e. 650 dwellings per annum, and alternatively promotes a target of 8,935 dwellings (2012–2031) (470 dwellings per annum).

3.46 The emerging Local Plan includes an overarching principle confirming how the Authority will apply the presumption in favour of sustainable development. It confirms that the Council
take a positive approach when considering development proposals reflecting the presumption in favour of sustainable development contained in the NPPF. It notes that the Council will always seek to work proactively with applicants to find solutions which result in the approval of development proposals wherever possible and to secure development that improves the economic, social and environmental conditions in the area. It confirms that applications in accordance with the policies of the Local Plan will be approved without delay unless material considerations indicate otherwise, and that where the development plan is absent, silent or relevant policies are out of date at the time of making the decision, the Council will grant permission unless material considerations indicate otherwise having regard to;

- any adverse impacts of granting planning permission which would significantly and demonstrably outweigh the benefits when assessed against the policies of the Framework taken as a whole, or
- specific policies in the Framework indicate the development should be restricted."

3.47 In developing the application proposals, now the subject of this appeal, reference was made to the following policies contained within the emerging preferred option local plan.

- Policy OP1 – Presumption in Favour of Sustainable Development
- Policy SP1 – Delivering the Spatial Strategy
- Policy SP3 – High Quality Design
- Policy SP5 – Accessibility and Sustainable Transport
- Policy SP6 – Green Infrastructure
- Policy SP7 – Open Space, Sports and Recreation Areas
- Policy SP8 – New Housing Development
- Policy SP9 – Affordable Housing
- Policy SP13 – Community Facilities and the Local Economy
- Policy SP17 – National Forest
- Policy SP18 – Climate Change, Water Management and Flooding
- Policy SP19 – Renewable and Low Carbon Energy Generation
3.48 In terms of progressing with the preparation of their Local Plan, it is currently anticipated by the Council that the Plan will be submitted to the Secretary of State in April/ May 2014 and adopted in December 2014.

**Other material considerations**

**Budget and Growth Review (March 2011)**

3.49 The Budget and Growth Review was published by Government in March 2011 (Appendix 15) and sets out proposals for planning reform, to ensure planning supports economic growth and sustainable development that is needed to re-build the economy as the country emerges from recession.

3.50 One of the key principles of the Budget and Growth Review is a presumption in favour of sustainable development, whereby

3.51 ‘The default answer to development and growth is ‘yes’ rather than ‘no’, except where this would clearly compromise the key sustainable development principles of national planning policy.’ The Review goes on to state that ‘the presumption will give developers, communities and investors greater certainty about the types of applications that are likely to be approved, and will help to speed up the planning process and encourage growth.’
Written Ministerial Statement (March 2011)

3.52 The Minister for Decentralisation, Greg Clark, issued a Written Ministerial Statement on 23rd March 2011 (Appendix 16) highlighting the Chancellor of the Exchequer’s call to action on growth to help rebuild Britain’s economy, which states:

3.53 ‘The Government’s top priority in reforming the planning system is to promote sustainable economic growth and jobs. Government’s clear expectation is that the answer to development and growth should wherever possible be ‘yes’, except where this would comprise the key sustainable development principles set out in national planning policy.’

3.54 It goes on further, stating;

‘When deciding whether to grant planning permission, local planning authorities should support enterprise and facilitate housing, economic and other forms of sustainable development. Where relevant and consistent with their statutory obligations, they should therefore:

(i) Consider fully the importance of national planning policies aimed at fostering economic growth and employment, given the need to ensure a return to robust growth after the recent recession;

(ii) Take into account the need to maintain a flexible and responsive supply of land for key sectors, including housing;

(iii) Consider the range of likely economic, environmental and social benefits of proposals; including long term or indirect benefits such as increased consumer choice, more viable communities and more robust local economies (which may, where relevant, include matters such as job creation and business productivity);

(iv) Be sensitive to the fact that local economies are subject to change and so take a positive approach to development where new economic data suggest that prior assessments of needs are no longer up-to-date;

(v) Ensure that they do not impose unnecessary burdens on development.

In determining planning application, local planning authorities are obliged to have regard to all relevant considerations...’
The Secretary of State published a written statement on 6 September 2012 entitled “Housing and Growth”. (Appendix 17). The statement confirmed that the government’s number one priority is to get the economy growing and that house building has a key role to play in achieving this. Furthermore, the government consider that the need for new homes is acute, and supply remains constrained.

Other Material Considerations


Although the planning application seeks outline planning approval, the proposed development has had regard to the guidance contained within this SPD along with the saved policies of the Local Plan. An indicative layout has been prepared by the scheme’s architects which demonstrates that up to 250 dwellings could be delivered at the site.

As part of the design process the project team’s architects have undertaken a full context appraisal which is included within the supporting Design and Access Statement.

Open Space SPD (2010)

Where a proposed development is of sufficient size, the expectation is that open space will be provided on-site. This is particularly important with amenity open space.

The quantity of new open space to be provided as part of development proposals will be dependent upon the scheme’s location and the need for open space within that area. The development falls within the Burton Area and the local open space requirement is set at 1.23 ha per 1,000 population.

Development proposals are required to deliver the following on and off site:

- equipped children’s play,
3.63 The Council’s Housing Choice SPD was adopted in December 2010 and sets out the requirements for new housing development and their need to meet the housing requirements of the Borough.

3.64 The aims of this SPD are to:

- Deliver pathways of choice to meet the needs and aspirations of all residents
- Ensure the development of mixed communities which means that areas contain a mix of housing types, sizes and tenures to accommodate households of different ages, compositions and incomes
- Clarify application of the Council’s current planning policy on housing choices
- Provide clear, consistent and comprehensive advice for developers at pre-application and submission stage to enable them to take account of the need for affordable housing within the Borough and to negotiate the appropriate provision
- Encourage delivery of aspirational housing
- Provide suitable, high quality affordable housing in the right location
- Assist in the implementation of the Council’s Housing Strategy and the East Staffordshire Sustainable Community Strategy
- Meet national and local planning policy requirements

3.65 The Housing Choice SPD also sets out the requirements for the provision of affordable housing in accordance with Policy H12 of the East Staffordshire Local Plan which requires development proposals of more than 25 dwellings to provide an element of affordable Housing up to a maximum provision of 30%.

3.66 Having reviewed the SPD, the site is considered to fall within the ‘urban extension site’ category which applies to “...large greenfield sites adjacent to the development boundaries...”
of Burton and Uttoxeter”. Sites falling within this category will be required to make an affordable housing contribution of 15%.

3.67 The SPD also sets out the required mix of affordable housing where in Burton the affordable housing needed is stated to be the following mix of social rented housing:

- 2 bedroom accessible home 10%
- 2 bedroom house 60%
- 3 bedroom house 10%
- 4 bedroom house 15%
- 5+ bedroom house 5%

100%

3.68 The SPD confirms that the Council intends to address part of the housing need in the Borough by such measures as:

- Improving existing housing
- Bringing empty housing back into use
- Purchasing existing homes; and
- The building of new affordable housing.

3.69 To help implement the above, the SPD confirms that the Council will seek to secure funding from developers and as such is prepared to accept a commuted sum in lieu of more than 15% on-site affordable housing.

Parking Standards SPD

3.70 In 2004 the Council adopted its Parking Standards Supplementary Planning Guidance (SPD) which outlines the proposed parking standards for residential development.

3.71 The SPD confirms that developments should not over provide parking on site in order to encourage the use of sustainable modes of transport. The SPD also confirms also confirms that a Transport Assessment and Travel Plan will be required to support the application.

Greenfield Land Release for New Communities (Appendix 18)

3.72 East Staffordshire is a designated Growth Point. The RSS panel recommended 13,000 new homes between 2006 and 2026. ESBC recognised that there may be a requirement for the
release of greenfield sites prior to the adoption of the Core Strategy. This paper sets out the criteria the Council proposed to use to guide its early release of such sites. It envisaged a capacity limit of about 50 dwellings for sites that will be released in this manner, it also placed requirements for such releases that they were necessary in terms of five-year land supply, made suitable provision of affordable housing, must not otherwise prejudice the delivery of the Core Strategy, and must also meet other development control criteria such as adequacy of access, suitable mix of housing, provision of social infrastructure, be sensitive to the landscape and nature conservation, and be of a suitable layout and design.

**East Staffordshire Regeneration and Growth Plan, Delivery Plan 2012-2015.**

3.73 Under the previous Government, Burton on Trent secured Growth Point status, and it received financial benefits for acting as a hub for future economic and residential growth. This plan set out how that growth would be achieved.

3.74 Page 7 of the Growth Plan states

“...The Coalition Government has decided not to continue with the Growth Point initiative, but it positively encourages the Growth Point areas to continue with their ambitious growth and development plans.

Since the publication of the original Growth Point Delivery Plan the national and regional framework for housing and planning policy has altered significantly.

The Government’s Localism Bill will enable local authorities, communities and residents to determine its own housing and economic policy. This provides the Borough with a significant opportunity to set its own course and define the most appropriate approach to realising future growth and prosperity of the Borough.

The current uncertain economic climate underpins the future direction of this plan. There is a need to continue with the ambitious growth plans that were laid out in the first version of the Growth Point Delivery Plan to stimulate new jobs and investment for the Borough. There is also a need to build on these plans and to identify new opportunities for growth and sustainable development outside of the urban core of Burton upon Trent” (my emphasis)

3.75 In terms of housing growth the plan states at page 9 “...The West Midlands Regional Spatial Strategy preferred option required an additional 12,900 new homes to be built in East Staffordshire, principally in the Burton upon Trent area. This was higher than the need for local people. However, the Councils desire to see an expansion in employment opportunities
meant that a higher level of housing supply was required to provide new homes for the people moving into the area.

*With the forthcoming abolition of Regional Guidance the Borough Council remains of the view that this figure is still applicable, subject to review...*”
4.0 **SCHEME BENEFITS**

4.1 There are a series of benefits which would accrue in the event of planning permission being granted. These are discussed in turn below but in summary include:

- Provision of much needed Housing
- Promoting Healthy Communities
- Public Transport
- School Safety
- New Homes Bonus
- Local Economic Benefits

**Provision of Housing**

4.2 At the time of preparing this proof of evidence there was an acknowledged shortfall by the Council ([Appendix 3](#)) in terms of their housing land supply as evidenced by their submissions to Barton Willmore in advance of the appeal relating to Land South of Lichfield Road (APP/B3410/8/13/2189989/NWF). This was reinforced by the June 2013 Housing Paper ([Appendix 4](#)). Even if the Council retract from that position prior to this Inquiry, it is my evidence that the Council’s housing land supply is indeed deficient and cannot demonstrate a five year land supply.

4.3 As such, there is a material benefit in the site coming forward in providing much need market housing within the Borough. The grant of planning permission will aid in the overall objectives of the NPPF to boost significantly the supply of housing, and will also assist in meeting the priorities and issues identified by residents of the Borough in accommodating a significant increase in the quantum of housing ([Local Plan Preferred Option Table 3.3, Appendix 19](#)), and assist in meeting the wider objectives of Burton on Trent as an identified Growth Point (see paras 3.71-3.73 above). The Framework does not impose a ceiling on the provision of sustainable development.

4.4 Burton’s identification as a growth point has evolved from its identification within the RSS as a Major Urban Area (MUA). Burton is the largest settlement in the Borough and one with the most regeneration needs. The RSS therefore confirmed that 80% of growth should be directed to Burton and 20% to rest of the Borough of East Staffordshire.
4.5 Moreover, the Appellant is offering to provide 15% affordable housing on site in accordance with saved local plan policy H12, emerging local plan policy SP9, and the Council’s housing choice SPD (December 2010). There is also a requirement for an additional 15% off site contribution. I address this in my Section 9 below. This is against an identified net annual housing need of 840 dwellings, of which an annual requirement 169 new affordable homes is identified as necessary.

4.6 I attached as Appendix 20, my assessment of the Council’s current ability to meet this social housing need in the next 5 years, I have examined all sites in excess of 25 units which are caught by the Council’s Affordable Housing requirement policies. I have reviewed committee reports, and S106 agreements to establish actual provision in the pipeline. Where information was not available, I have presumed a policy compliant level of provision. Against the Council’s potential provision of affordable housing within the next 5 years, I calculate that they have only secured 1.8 years supply of affordable housing, based against the Council’s own identified requirement of 169 affordable dw/yr (see para 7.10)

4.7 Delivery of some 38 units on the appeal site would therefore constitute a material planning benefit of granting permission, to which I believe significant weight should be attached in assessing the planning balance.

Promoting Healthy Communities

4.8 Attached as Appendix 21 are letters from both the Burton Hospitals NHS Foundation Trust and the West Midlands Ambulance Service NHS Foundation Trust.

4.9 The planning application proposes a direct link between Reservoir Road and Lower Outreach Road which would be available for use by both buses and emergency vehicles. At present, access to the hospital from the Shobnall Road area and the villages beyond is convoluted and involves access through central Burton. There is a plan attached at Appendix 22 (as part of the Transport Consultants summary submission) which identifies the current access route. Whilst this convoluted route is an inconvenience for those working or arriving for scheduled appointments via public transport, for those accessing the site via emergency vehicle this can add materially to their journey time.

4.10 The correspondence, which was submitted in conjunction with the planning application, confirmed support for the appeal proposal from the Chief Executive of the Burton Hospitals NHS Foundation Trust, Helen Ashley, in noting that; “…the new link will provide a more direct
connection to the hospital and will reduce the travel time from that currently experienced on roads surrounding the hospital.

4.11 On the basis of the above and on behalf of the Trust I can confirm support for the highways link which will be delivered as part of your planning application. The link will provide a number of tangible benefits to the staff and visitors to the Trust.”


“This proposal clearly delivers significant benefits for ambulances wishing to access the hospital complex located at the bottom of Lower Outwoods Road. The new link will provide a more direct connection to the hospital and will reduce pressure on constrained parts of the existing highway network at Shobnall Street and Dallow Street. The new access proposals would also definitely improve both access and egress to and from the villages around the north of Burton, which would be beneficial to the patient’s experience. Furthermore in the event of existing routes to the hospital being blocked or congested, the proposed link will provide an alternative route for ambulances to access the hospital.

Following our meeting, I have taken the opportunity to discuss the proposals with Mr Lee Washington, General Manager WMAS Staffordshire, who has agreed to support the outline development proposals of the new road and views this as an initiative that would assist to improve the issues currently experienced by the West Midlands Ambulance Service and other emergency providers.

On the basis of the above and on behalf of the Trust I can confirm support for the highways link which will be delivered as part of your planning application. This link will provide a number of tangible benefits to the ambulance service and will help improve the patient experience.”

4.13 Paragraph 69 and 70 of the NPPF confirm the importance of the planning system to facilitating social interaction and the creation of healthy and inclusive communities. Specifically, Framework para 70 confirms that to deliver the services the community needs, planning policies and decisions should plan positively for the provision of services to enhance the sustainability of communities and residential environments, and to ensure that established services are able to develop and modernise in a way that is sustainable, and retained for the benefit of the community, and to ensure an integrated approach to considering the location of housing and community facilities and services.
4.14 The benefits associated to servicing and functioning of the Queens Hospital at Burton are significant as established in the correspondence undertaken with senior executives within both organisations. These are material benefits which add materially and positively to the planning balance of the application proposals and I consider they should carry significant weight.

Public Transport

4.15 The scheme will also deliver improvements to the local public transport links via the introduction of a public service link. This facility will provide access for local buses and emergency service vehicles, which has received support from a local bus operator and the NHS and will increase access to Queen’s Hospital by public transport. The introduction of a new public service link at the site will also benefit users of public transport to this general location of Burton and will result in the reduction in local journey times. It is also hoped that the introduction of this link will also encourage the use of sustainable modes of transport by the local community.

4.16 The Appellant has confirmed that they will fund a 30-minute headway service through the site which will deliver a service Monday to Friday, 7am – 7pm which will be secured through the S106 Agreement.

School Safety

4.17 The appeal proposals seek to address the concerns of the local community towards the development proposals and its proximity to Shobnall Road Primary School through highway improvements to Reservoir Road/ Shobnall Road. This will include the rationalisation of parking at this location to improve the traffic flow around the junction of Reservoir Road/ Shobnall Road as is illustrated in Appendix H of the supporting Transport Assessment, which accompanied the planning application.

New Homes Bonus

4.18 Section 143 of the Localism Act confirms that “local finance considerations" are material considerations for the determination of planning applications. Using the template New Homes Bonus calculator provided on the DCLG website, the NHB payment to East Staffordshire Council would be £1.56 million over six years. This is of course a factor in addition to any Section 106 monies. The County Council would receive additionally £390,644.
Local Economic Benefits

4.19 The appeal proposals provide the right type of land in the right place to enable economic development. House building provides a boost to economic growth, as advised in the Housing Growth Written Statement (2012). Such a boost to the local economy of Burton Upon Trent and the surrounding area would be delivered by the proposal’s provision of employment during the construction phases. When completed the development will provide economic benefit through expenditure from new residents into the local economy, as well as returns in the form of Council Tax revenues to the Borough Council.

4.20 The appeal site is adjacent to the existing urban edge of Burton upon Trent, it is close to facilities within the town centre, and has previously been promoted through earlier consultation versions of the emerging core strategy as a possible appropriate location for development.

4.21 The appeal proposals will provide for an important Public Service Vehicle link through the site to provide access for emergency vehicles and bus routes. This completes a gap in the current road network locally and will provide material benefit to those accessing the hospital not just for regular appointments by public transport, but more significantly for emergency access.

4.22 Development at the appeal site would have a significant role in boosting the local economy.
5.0 HOUSING LAND SUPPLY

5.1 The principle of the acceptability of the appeal proposals is in part tied to whether or not the Council can demonstrate it has a five-year land supply. If it does not have a five-year land supply as I contend in this evidence, then the presumption in favour of sustainable development contained at para 49 of the Framework is clearly triggered and the application should be assessed accordingly. Although as explained further in my evidence below, even if the absence of a 5 year supply were not accepted to be demonstrated, the presumption in favour should still apply.

5.2 For decision taking Framework para 14 confirms that the presumption in favour of sustainable development means where relevant policies are out of date granting planning permission unless:

- “...any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole; or
- specific policies in this Framework indicate developed should be restricted.”

5.3 The “specific policies” referenced in the second bullet point are identified within a footnote to para 14 which confirms that this is intended to relate to; “For example, those policies relating to sites protected under the Birds and Habitats Directive and/or designated as Sites of Special Scientific Interest; land designated as Green Belt, Local Green Space, an Area of Outstanding Natural Beauty, Heritage Coast or within a National Park (or the Broads Authority); designated heritage assets; and locations of risk at flooding or coastal erosion.”

5.4 Whilst this list is not exhaustive, it is confirmed that the appeal site is not caught by any of these exceptions and therefore, the principal test in the absence of a five-year land supply, in identifying whether the development constitutes sustainable development, is an understanding as to whether any of the adverse impacts of granting planning permission would “...significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.” This is the “planning balance” referenced in the Shipston on Stour Decision et al (Appendix 6, para 10).

Can the Council Demonstrate a Target Figure?

5.5 The onus within the National Planning Policy Framework established in bullet points 1 and 2 para 47, is for the Council to identify the housing requirement for their Borough. Bullet one confirms that the Council should; “use their evidence base to ensure that their Local Plan
meets the full objectively assess needs for market and affordable housing..." (my emphasis). The second bullet point confirms that Council should “identify and update annually a supply of deliverable sites sufficient to provide five years’ worth of housing against their housing requirements...” (my emphasis).

5.6 In the circumstances pertaining to East Staffordshire Borough Council, therefore, where the requirement contained within the Regional Spatial Strategy and Structure Plan have both been revoked, where the guidance confirming housing requirements within the adopted Local Plan was not a saved policy and in any event is time expired, and in the absence of any housing target or requirement having been contained within a plan which has been submitted to the Secretary of State for approval, it is my contention that prima facie the Council cannot comply with the requirement to demonstrate a five-year land supply, as they do not have a target figure which can carry any material weight to support an assessment.

5.7 Whilst I continue below to consider various options open to the Authority, it is my belief that the onus within the Framework is very clearly upon the Local Planning Authority to define its requirement. This authority have not sought to do so, and therefore as a point of principle they cannot demonstrate a five-year land supply as they cannot identify a target figure to which weight can be attached. In this circumstance, the provisions of para 49 of the Framework, and presumption in favour of sustainable development must be triggered.

What is the Council’s position on Housing Land Supply?

5.8 In June 2013, the Council issued a paper entitled “Note of 5 Year Land Supply Methodology” (Appendix 4). This superseded a paper of the same title dated January 2013 (Appendix 23), although it was only released in March 2013. The January 2013 paper indicated the Council’s target was 470 dw/yr based on advice from consultants GVA Grimley. However, by June 2013 this figure had been revised substantially upwards to 613 dw/yr, again as advised by GVA, but at the point of drafting this evidence the Council has not explained or evidenced why or how the change in target has arisen. The Inspector is asked to note that neither figure has been tested through Examination, neither is the latest figure of 613 dw/yr contained in a pre-submission or submission Local Plan. Given the clearly changing position, I do not believe weight should be attached to either figure, therefore the RSS Phase II revision target of 650 dw/yr should be preferred.

5.9 During the course of the determination of the planning application, the Appellant was led to believe at point of initial submission that the Council’s position was one where they did
believe they had a five-year land supply, officers indicated that this position may change during the course of determination of the application leading up to December 2012. In 2013 it was subsequently indicated that authority may after all be able to demonstrate a five-year land supply. Indeed the ever changing position of the Authority in respect of both the potential “target” figure, and their position on whether they do or do not have a 5 year housing land supply as well as the current target is illustrated in Table 1 attached at Appendix 24 shown as a timeline of how the situation has changed.

5.10 At the time of the determination of the planning application and in Planning Committee on 18 March 2013 the report of the Head of Regulatory Services indicated “the Borough has a deliverable five-year supply of housing” (Committee Report para 9.1, Appendix 9) yet in correspondence with the Planning Inspectorate dated 9 April 2013, and Barton Willmore on 10 April 2013 (Appendix 3), less than a month later, the Council indicated that it did not have a five-year supply.

5.11 In the Council’s Statement of Case in respect of this appeal, 14th June 2013, their position in respect of five-year land supply was uncertain. They stated at para 5.3 and 6.1 (ESBC Statement of Case) that “the Council is recalculating its five-year land supply figures”. The Council’s Statement of Case, understandably, did not predetermine the outcome of that exercise, and did not make any commitment to whether it could or could not demonstrate such supply, noting only at para 5.1 that the Council could demonstrate a five-year land supply “at the time of determination.” Although this too has subsequently been proven wrong, as the Council now acknowledge they were applying the wrong target.

5.12 The Council’s current position is understood to be that the June 2013 paper takes precedent. It states that there is not a 5 Year Housing Land Supply, and includes a target figure of 613 dw/yr. There is no explanation as to where or how this new target figure is itself derived; it is untested, unexamined and unsupported. The Inspector is invited to attach no weight to it.

What is the Appropriate Housing Target Figure?

5.13 As noted above it is my opinion that the Council are not able to demonstrate a five-year land supply as prima facie they cannot demonstrate a housing requirement figure contained within a currently adopted Development Plan Document, or even a Development Plan Document which might attach some weight following submission to the Secretary of State for examination.
5.14 In the absence of any Development Plan Document guidance, therefore, the only tested housing requirement figure which has been subject to examination and reporting, and one which up until 2011 was accepted by the Planning Authority as the appropriate housing figure, is that supported through the West Midlands Regional Spatial Strategy Phase II, and which was contained within the Panel Report. This remains the most up-to-date, examined housing figure for the District, albeit that it was based on 2006 household projections and not adopted. It is also the historic target figure which the Council’s AMR’s recognised as the appropriate target, following the ‘non-saving’ of the Structure Plan housing policy H1 in 2007. This was explicitly reflected at page 3 of the 2009 AMR, covering the period 1st April 2008 – 31st March 2009, which states; “The Council has had to manage the transition from an average annual requirement under the Structure Plan of 433 a year to a very high annual requirement under the RSS of 650 units a year.” Moreover, there can be no doubt that the Council recognise that this is the appropriate historic target that there performance should be judged against, as they themselves have acknowledged in their own June 2013 Housing Paper (Appendix 4), where the Housing Land Supply table, confirms that they have measured shortfall against the 650 dw target since 2006. The 650 dw figure therefore represents the most recent “objectively assessed” level of housing requirement for East Staffordshire Borough Council. Para 218 of the Framework establishes that it may remain appropriate to continue to draw on the RSS evidence base to support the Local Plan policies.

5.15 The RSS Panel Report recommended 650 dwellings per annum should be delivered across the Plan period, the figure was also close to becoming adopted within the Regional Spatial Strategy Phase II Revision at the point when the Secretary of State announced the potential revocation of RSS and it was not therefore progressed. However, a series of recent planning appeal decisions have since recognised the role of objectively assessed housing evidence through Regional Spatial Strategy as being the most appropriate reference point. For example in Winchcombe, May 2013 (APP/G1630/A/12/2183317 – Appendix 25) the Inspector deals perfunctorily with the issue at para 7 noting; “...the most up to date and robust housing requirement is provided by the draft R[Regional Spatial Strategy]...”

5.16 In Honeybourne, August 2012 (APP/H1840/A/12/2171339 – Appendix 26) the Inspector concluded with regard to the weight to be attached to the WMRSS Phase II figure that; “The Phase 2 Revision Draft... would normally be of substantial weight. In a number of appeal the emerging RSS has been given substantial weight, particularly because it has undergone an EIP and the housing figures are more up to date and have been properly examined...The
figures contained within the Panel Report remain the most recent objectively assessed figures available...”

Para 33 goes on to state, “In my view the target should be guided by the WMRSS Panel Report...”

5.17 In January 2013 the Council produced a note on five-year land supply methodology (Appendix 23), which sought to rely on the target figure contained within the Preferred Option Local Plan with an annualised dwelling requirement of 470 dw/yr. This figure was derived from work undertaken by GVA Grimley in July 2012. As noted above, the same consultants have now concluded 11 months later, the target should be 613 dw/yr (Appendix 4).

5.18 It is noted, however, that neither of these target figures have been the subject of any examination nor testing, the former is the subject of duly made representations, neither figure contained within a Plan which has been submitted to the Secretary of State for examination and the most recent figure not even a pre-submission draft. Moreover in their correspondence to Barton Willmore on 10 April 2013 the Council’s Planning Officer Aida McManus noted “Based on the refresh information supplied thus far from GVA I can confirm that the Council is not in a position to demonstrate five-year land supply and we do not expect this position to change. The housing figures required are more in line with the original RSS figures.” (my emphasis)

5.19 It seems to me, therefore, that whatever reliance the Council is making on these figures or made in good faith at the time of the production of the Preferred Option Local Plan, and determination of my client’s application that position has been the subject of change, and is not one in the absence of having been thoroughly tested through examination to which any material weight should be attached given that there is clearly doubt and uncertainty reflected in the changing nature of advice to the Council.

5.20 The only figure in front of the Inspector to which material weight can be attached, is that contained within the RSS Phase II Panel Report conclusion, relating to a requirement of 650 dw/yr. This, as noted by the Council in April 2013 is a figure in line with the advice then being received by their advising consultant GVA Grimley, and is similar to the figure now being promulgated (Appendix 4).

5.21 Notwithstanding my firm views on this matter, however, for the purpose of this appeal Inquiry, and to give the Inspector an indication as to the sensitivity of the matter, I have
undertaken an assessment of housing land supply based both on the West Midlands Regional Spatial Strategy figure (650 dw/yr), which is the figure I would invite the Inspector to rely upon, but I have also assessed against the untested and unexamined figure of 613dw/yr, so that the Inspector can consider housing land supply in the round of differing target figures.

HOUSING LAND SUPPLY – COMPONENT ELEMENTS

5.22 There are number of component elements which go towards the calculation of housing land supply. Critical ones for consideration in respect of this appeal are that relating to the application of the appropriate buffer (i.e. are ESBC an NPPF para 47, 5% or 20% authority), the appropriate use of windfall figures, an understanding of the deliverability of current consented sites to the five-year land supply, and how on should treat historic shortfalls?

What is the Appropriate Buffer?

5.23 Para 47 of the Framework notes that authorities should identify sites “…sufficient to provide five years’ worth of housing against the housing requirements with an additional buffer of 5% to ensure choice and competition in the market for land. Where there has been a record of persistent under delivery of housing, local planning authorities should increase the buffer to 20% (moved forward from later in the plan period) to provide a realistic prospect of achieving the plan supply and to ensure choice and competition in the market land.” (my emphasis)

5.24 The Council’s approach is to apply a 5% buffer to their housing figure, however in my opinion the authority ought more properly to be applying a 20% figure to reflect the record of persistent under delivery against target.

5.25 In reaching this conclusion I draw principally on the evidence of the Council’s historic Annual Monitoring Reports to identify levels of housing delivered against target provision, although it is noted that there remain some considerable discrepancies between the figures contained within the Annual Monitoring Report figures, and those now provided by the Council in their latest June 2013 updated assessments, when compared with those actually reported during the given years. This itself calls into question the reliability and veracity of the raw data.

5.26 Indeed, my client through their legal representative has sought an explanation from the Council of how their review of completions in 2006/2007 for example was recorded contemporaneously at the time as only being some 218 dwellings net additional dwellings
Barwood Strategic Land II and Mr and Mrs G Skipper
Red House Farm, Burton-on-Trent

(Recorded in the Council’s December 2007 AMR, Appendix 27), yet in 2009 was updated to
550 dwellings (2009 AMR, Appendix 28) based upon “some assumptions” about when units
were completed and following a data cleanse, and now is recorded in June 2013 as 615
dwellings following a further “data cleanse”. I would invite the Inspector to place little
weight on the reliability of these figures which appear to be constantly varied by the
authority over the years. I cannot understand how the authority are able to conclude with
accuracy in 2013, that an additional 65 units were completed in 2006/2007. This, combined
with the 2009 amendment of some 332 dwellings, must call into question the wider veracity
of the Council’s data collection ability.

5.27 Established in Table 1 below, is a chart setting out the annual completions identified by the
Borough through their Annual Monitoring Reports 2006-2011. Table 2 shows the completion
figures now claimed by the Council in June 2013. In the years that overlap (2006/7 to
2010/11) it is noted that the Council now claim 1,066 more completions than they claimed in
contemporaneous AMR’s.

5.28 Notwithstanding my significant reservations about the reliability of the completion figures
now claimed in June 2013 (Appendix 4), I have in Table 3, looked at both the AMR
completions and the June 2013 completion figures against the RSS Phase II requirements.
This is the correct target, for the reasons noted at para 5.14 above, indeed the Council have
acknowledged in their historic AMR and June 2013 Paper, that they also use the 650 dw
target figure to assess historic shortfalls.

5.29 It is clear that on whichever basis completions are taken (i.e. contemporaneous AMR or June
2013 data cleanse) the Council have consistently failed to meet the RSS target figure. On the
data available, against contemporaneous AMR data, for the given years post 2006/2007, the
shortfall averaged some 308 dw/yr. Against the 2013 data cleanse, the shortfall averaged
140 dw/yr. Within this figure, only in one single year did the authority exceed the RSS target,
but as the 2009 AMR makes clear, this figure itself was only based on “some assumptions”
following a review in 2009 which acknowledged the “lack of information” to support the
data. I do not consider that any credible reliance can be placed on that year’s completions
figure, which has been twice amended since the contemporaneous AMR data was published.

5.30 Indeed, even during 2013 the Council sought to further amend their completions data, albeit
now downwards. The Inspector will note that the January 2013 Housing paper (Appendix
and the June 2013 Housing paper (Appendix 4) show differing completion rates for the years between April 2009 and March 2012. These differences are illustrated Table 4.

5.31 Whilst the discrepancies are not significant in absolute numerical terms, it is again a reflection of the Council’s inability to capture reliable data, and leave uncertainty as to which data can be relied upon.

5.32 Moreover, I consider the critical period for review of shortfall is the last 5 years. This was approach of the Inspector at Ashby-de-la-Zouch (APP/G3435/A/13/219/2131 – Appendix 30) where at para 20 he states “Persistent under deliver’ is not further defined in the Framework or elsewhere but, since the Framework requires the assessment of future housing delivery to look forward 5 years, looking back 5 years to assess the record of past delivery seems to me a reasonable approach...”. Over the past 5 years, even the Council’s “new” completions data, there was an average shortfall of 207 dw/yr i.e. the Council were only achieving about two thirds of their target figure.

Table 1: AMR Recorded Net Completions – East Staffordshire Borough Council

<table>
<thead>
<tr>
<th>Year</th>
<th>ESBC Completions</th>
</tr>
</thead>
<tbody>
<tr>
<td>2002/2003</td>
<td>214</td>
</tr>
<tr>
<td>2003/2004</td>
<td>225</td>
</tr>
<tr>
<td>2004/2005</td>
<td>256</td>
</tr>
<tr>
<td>2005/2006</td>
<td>643</td>
</tr>
<tr>
<td>2006/2007</td>
<td>218</td>
</tr>
<tr>
<td>2007/2008</td>
<td>482</td>
</tr>
<tr>
<td>2008/2009</td>
<td>429</td>
</tr>
<tr>
<td>2009/2010</td>
<td>268</td>
</tr>
<tr>
<td>2010/2011</td>
<td>313</td>
</tr>
</tbody>
</table>

Table 2: June 2013 Completions Data (ESBC)

<table>
<thead>
<tr>
<th>Year</th>
<th>ESBC Completions</th>
</tr>
</thead>
<tbody>
<tr>
<td>2006/2007</td>
<td>615</td>
</tr>
<tr>
<td>2007/2008</td>
<td>739</td>
</tr>
</tbody>
</table>
### Table 3: RSS Phase II Requirements

<table>
<thead>
<tr>
<th>Year</th>
<th>Requirement</th>
<th>AMR recorded (net) completions</th>
<th>June 2013 completions</th>
<th>AMR Shortfall</th>
<th>June 2013 Shortfall</th>
</tr>
</thead>
<tbody>
<tr>
<td>2006/2007</td>
<td>650</td>
<td>218</td>
<td>615</td>
<td>-432</td>
<td>-35</td>
</tr>
<tr>
<td>2007/2008</td>
<td>650</td>
<td>482</td>
<td>739</td>
<td>-168</td>
<td>+89</td>
</tr>
<tr>
<td>2008/2009</td>
<td>650</td>
<td>429</td>
<td>588</td>
<td>-221</td>
<td>-62</td>
</tr>
<tr>
<td>2009/2010</td>
<td>650</td>
<td>268</td>
<td>415</td>
<td>-382</td>
<td>-235</td>
</tr>
<tr>
<td>2010/2011</td>
<td>650</td>
<td>313</td>
<td>419</td>
<td>-337</td>
<td>-231</td>
</tr>
<tr>
<td>2011/2012</td>
<td>650</td>
<td>524</td>
<td></td>
<td>-126</td>
<td></td>
</tr>
<tr>
<td>2012/2013</td>
<td>650</td>
<td>270</td>
<td></td>
<td>-380</td>
<td></td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td></td>
<td></td>
<td><strong>-980</strong></td>
<td></td>
</tr>
</tbody>
</table>

### Table 4: January 2013 reported, and June 2013 reported ESBC completion figures for years 4/2009 to 3/2012

<table>
<thead>
<tr>
<th>Year</th>
<th>January 2013</th>
<th>June 2013</th>
</tr>
</thead>
<tbody>
<tr>
<td>2009/10</td>
<td>445</td>
<td>415</td>
</tr>
<tr>
<td>2010/11</td>
<td>455</td>
<td>419</td>
</tr>
<tr>
<td>2011/12</td>
<td>518</td>
<td>524</td>
</tr>
</tbody>
</table>
5.33 On this basis, I consider that the test to be met before one can reasonably apply the 20% buffer i.e. a demonstration of a “record of persistent under delivery”, has been met and that the 20% buffer is the appropriate figure to apply. Indeed, given the Council’s own acknowledgement of the shortfall, and their persistent mis-reading of data it is hard to understand how they could conclude otherwise.

**Windfall**

5.34 Para 48 acknowledges that planning authorities may make an allowance for windfall sites in their five years supply “if they have compelling evidence that such sites have consistently become available.”

5.35 In March 2013 the Council produced a paper entitled “Note on Methodology Used in Determining Historic Housing Windfall Rate.” ([Appendix 29](#))

5.36 As the paper itself acknowledges (para 2), and in reflecting advice the Authority had received from Counsel;

5.37 “The Council faces the particular complication that in view of the absence of allocations in the 2006 Local Plan, all housing developments since has been classified as windfall. If all these developments are included in the calculation of a windfall allowance I am sure that it would be open to challenge.”

5.38 In essence, therefore, the Authority has sought to provide a methodology whereby sites identified in historic urban capacity studies, more recently in the SHLAA, or in the 1999 Local Plan, have not been counted as windfall sites, but consents granted on sites not so identified, have been assessed as windfall. The Authority identify an annual average of windfall consents using their methodology of some 143 dwellings per annum, but they acknowledge that there are other intervening factors which would suggest this figure is not sustainable. The Authority has, therefore, sought to apply an allowance of 90 dwellings per annum as a contribution from windfall sites into their housing land supply, albeit that they do not produce the raw data to confirm that this figure has excluded residential garden sites as required by Framework para 8.

5.39 In my opinion, the methodology adopted by the Council has some merit in trying to provide a coherent and logical analysis of historic windfall delivery although would benefit from greater transparency. Examination of historic SHLAA and Urban Capacity Studies as well as
Local Plan allocations is an appropriate approach, and further discounting to reflect factors such as the collapse of the “apartment market”, which delivered many high density schemes is also recognised as sensible.

5.40 Whilst, therefore, the figure of 90 dwellings per annum is generally supported, I would however argue that it would be inappropriate to allocate that figure for the first two years of the five-year period, as given the lead in time for projects, any dwellings being developed within this period of time will most likely already be the subject of a planning permissions, and these are likely to be accounted for already in the overall supply figures (see below).

5.41 Within this context, rather than an allowance of 450 dwellings coming forward as windfall sites during the five-year period, I support a figure of 270 dwellings based upon the Council’s 90 dwellings per annum figure, but excluding the first two years of the five-year period. I have in my assessment of Housing Land Supply sensitivity tested both figures. I also think that discounting the first 2 years of 90 dw/yr is a sensible approach when completions in 2012/13 were only 270 dwellings, and 90 dw/yr would represent a windfall provision of a third of that year’s supply, which would not be reflective of the plan led system promoted through the Framework going forward.

Supply

5.42 The Council have identified in their June 2013 paper Note on Five-Year Land Supply Methodology: June 2013 (Appendix 4), an existing supply of planning permissions totalling some 1,470 dwellings. They seek to apply to this a lapse rate of 10%.

5.43 I adopt a slightly different approach to the assessment of sites with planning permission and under construction.

5.44 Firstly, is the issue of the lapse rate. The application of a lapse rate of 10% is generally recognised as an appropriate figure to apply to allow for planning permissions which are not implemented. Whilst I would support the use of this figure, I would note that the Council have sought to apply it to the totality of units both with planning permission and those under construction. I believe it is appropriate not to apply any discount for sites under construction as clearly there is already a commitment to their delivery and it would be inappropriate to discount them. In my analysis of housing land supply, I differentiate between those sites with planning permission, and those under construction and only apply a lapse discount rate to those with planning permission. This actually has the net effect of adding 23 units to the supply site.
5.45 On the subject of those sites with planning permission, I am aware of the unchallenged evidence of Barton Willmore at the Inquiry into Land South of Lichfield Road (APP/B3410/A/13/218/9989/NWF), and the detailed analysis undertaken within the evidence of Mr Mark Sitch relating to how many of those existing planning permissions are actually deliverable within the terms defined by the NPPF para 47 (and its footnotes). In his evidence, he submitted that whilst there may indeed be valid planning permissions consenting some 1,488 dwellings, a substantive number of these 476 units were not deliverable within the terms defined by the Framework.

5.46 I have sought to review all of those sites over 5 units discounted by Barton Willmore in their evidence to establish whether or not I concur with their opinion, and to establish whether there has been any change of circumstances since the presentation of that evidence which would warrant the re-inclusion of sites previously dismissed/discounted. My assessment of those discounted sites is attached at Appendix 31. I would note that of the 246 sites with planning permission identified by the Council, Barton Willmore sought to discount 103 sites in total with a total capacity of 496 units, my more conservative analysis suggests that discount should now be 159 units.

5.47 In undertaking this review I have only looked at sites with a capacity of 5 or more units. Barton Willmore discount 496 units in their unchallenged assessment. I have undertaken a more precautionary approach and discounted only 159 units. For the purpose of “sensitivity” testing however, I run the Council’s total planning permission/ under construction figure in my analysis as well.

**Liverpool v Sedgefield**

5.48 One of the critical elements of establishing the target figure in a housing land assessment is an understanding of how to deal with the shortfall in housing land supply arising from previous years.

5.49 This is a matter which has been examined at numerous appeals in the recent past. There are two conflicting methodologies which seek to address these, and for shorthand purposes, they have become known as the “Liverpool” approach and the “Sedgefield” approach.

5.50 The issue is whether any shortfall in provision should be met within the immediately following five-year period, or whether it is appropriate to apportion that shortfall over the balance of the plan period.
5.51 The approach adopted by the Borough Council is one where they look to address the need to meet that shortfall over the totality of the remaining plan period (i.e. 18 years). This produces, in their latest calculations June 2013 (Appendix 4), an additional annual requirement to go towards the five-year land supply of some 52 dwellings per annum. This approach to distributing the shortfall is commonly referred to as the “Liverpool” approach.

5.52 The Liverpool approach has, however, subsequently failed to find favour with Planning Inspectors and the Secretary of State on sites throughout England. The commonly preferred approach is that referred to as “Sedgefield”, where the shortfall is distributed over the immediately following five years. By way of example an appeal at Honeybourne APP/H1840/A/12/2171339, August 201 (Appendix 26) considered this issue and referenced a number of other decisions in so doing. The Inspector noted at para 36;

“The Council considers that the residual method for assessing housing needs should be preferred over that of the Sedgefield approach. It is common ground that the NPPF is silent on the matter. However, the Council was unaware of any post NPPF decision which followed the residual approach. Recent pre-NPPF decisions by the SoS expressly approve the Sedgefield approach at Andover and Moreton in Marsh. In my view, it is inconsistent with Planning for Growth and the NPPF paragraph 47 to meet any housing shortfall by spreading it over the whole plan period. Clearly it is better to meet the shortfall sooner rather than later. However, if the buffers are brought forward into the first 5 years as in the NPPF, so also should the shortfall. I cannot agree with the Council’s use of the residual method. In my view the Sedgefield approach should be used for the reasons outlined.”

5.53 A more recent decision at Ashby-de-la-Zouch APP/G2435/A/13/219131, May 2013 (Appendix 30) in North West Leicestershire confirmed;

“The Framework is silent on this matter and there is no firm guidance elsewhere but having regard to the decisions referred to above, and to the Ministerial Statement Planning for Growth, I take the view that “to boost significantly” implies a substantial and immediate effect, above and beyond the normal provision. For that reason I consider the Sedgefield method of recovering the shortfall to be the most effective way of meeting the Framework objective.

5.54 To adopt the Liverpool approach would, in my opinion, fundamentally fail to address the key driver of NPPF para 47 which is “to boost significantly the supply of housing”. Such a boost
cannot be achieved if that requirement is deferred over an entire plan period, rather than be addressed in the short term.

5.55 Moreover, the need which has driven that requirement is an immediate need. It presumably exists at today’s date (having been deferred in the preceding years), and has not been addressed. Therefore, an approach which seeks to defer and delay addressing that immediate need further, is one which perpetuates and extends unnecessarily the wait for those who are in need of new housing now. The problem is exacerbated when by the Council’s own admission, they have no emerging plan to which any material weight can be attached (Upper Outwoods Farm, Committee Report para 11.2.5, Appendix 3, July 2013) and have no means of demonstrating how else they will address the need.

5.56 Moreover, the only recent appeal decisions of which I am aware, where an Inspector has favoured the Liverpool approach over Sedgefield, are a decision related to Groby in North West Leicestershire and one in Hinckley and Bosworth. In the Groby case, the matter is the subject of a S288 challenge in the High Court, the Grounds being specific to the issue of the Inspector’s putative failure to understand the housing land supply calculations, I attach the grounds of appeal at Appendix 33. The Hinckley and Bosworth decision I am advised is also due to be the subject of S288 challenge. Here the Inspector sought to justify the Liverpool approach based on his view of what the market might deliver. This is not, in my opinion a relevant consideration. Market performance on delivery forms no part of the advice in the National Planning Policy Framework about boosting significantly the supply of housing.

5.57 Other than these two decisions, which are both before the High Court, I am unaware of any other of the numerous decisions of an Inspector or Secretary of State post NPPF that has concluded that the Liverpool approach should be preferred over Sedgefield.

Completions Trajectories

5.58 Within the Council’s assessment of housing five-year land supply they have made varying assumptions as to the potential delivery rates on the identified sites. Without reference here to whether those sites should or should not be included within the assessment, I would note that the assumptions are generally considered robust, save for that related to the site known as Branston Locks (Lawns Farm), which as I address below, should not in my opinion be counted as part of the Council’s supply in any event.

5.59 This site lies outside of the current defined development boundaries, and is the subject of an undetermined planning application (P/2012/01467). There are considerable infrastructure
requirements associated with the sites delivery including physical off-site junction improvements to the Branston Interchange, A38 slip roads, off-site traffic management measures to villages to the west as well as the delivery of a new local centre and school in order to accommodate the mixed use development.

5.60 Information I have obtained from House Builders’ annual reports confirms that on average house builders are capable of completing 25 dwellings per annum per site. For example, Taylor Wimpey (2012) results indicate 25.58 sales/outlet/annum, Barratt Developments PLC (February 2103) report 28.8 sales/outlet/annum, Bellway 25.1 sales/outlet/annum (2012) and CALA 22.5 sales/outlet/annum (2012).

5.61 Whilst the Council note that the developer has confirmed the presumed delivery rate stated, I would note that the developer involved is not themselves a national house builder, and there is an assumption within the projected completion figures that there will be upwards of five separate house building companies developing on-site simultaneously, each delivering the maximum output potential and sales achievable, if the assumptions on delivery now proposed are to be achieved.

5.62 Previously, in January 2013 (Appendix 23) the authority had a working assumption of some 240 dwellings being delivered on the Lawns Farm site, they did not contest the evidence of Barton Willmore at the Land South of Branston Road Inquiry that the figure ought more appropriately to be about 180 dwellings. The Council in now promoting 310 dwellings completion in the five-year period have, in my opinion overstated the site’s potential. I consider that if, contrary to my opinion, the Inspector concludes this site should be included, a delivery rate, given the constraints and infrastructure necessary to enable the development to occur, more akin to the assumptions of Barton Willmore at 180 dwellings per annum (20 in year three, 80 per year for years four – five with two developers on site) is a more realistic assumption. However, I fundamentally do not accept that the Lawns Farm site should form part of the SYLS as it is not deliverable in the terms of the footnote to para 47 of the NPPF. My approach follows that of the Inspector at Chapel-en-le-Frith APP/H1033/A/11/2159038, August 2012, Appendix 34. She states at para 10; “The inclusion of the phrase until permission expires strongly implies that a site which no longer has – or, significantly, has not yet received planning permission for housing is not to be considered deliverable in the terms of the Framework”. (my emphasis)
5.63 In my assessment therefore I exclude it entirely from my Tables (see Tables 7 and 8), but for the purpose of sensitivity testing I have included it in my “ESBC View” table of supply sites (Table 5 and 6) at their 310 delivery rate.

**Deliverable Sites**

_Council identified sites (June 2013 Housing Land Supply Table)_

_Sites with Resolution to Approve_

5.64 I accept the assumptions underlying the Council’s assessment of deliverability from its “Sites with Resolution to Approve” at some 475 dwellings as identified in their June 2013 five-year land supply assessment (Appendix 4).

_Pipeline sites_

5.65 Notwithstanding my comments above about the underlying assumptions for delivery at Lawns Farm in the ESBC view, I consider that this site should not form part of the pipeline sites’ supply figures. It indicates an element of pre-determination on the part of planning officers in respect of the sites’ future planning potential. The site is currently contained as an option within the Council’s Preferred Options Local Plan only, a plan which they state should carry only limited weight (Appendix 31, para 11.2.5). Whilst there is a live planning application there is no current indication of a planning committee date, and as was experienced through planning committee in January 2013, this authority have a track record of officer recommendations for approval on significant development sites such as Land South of Branston Road, being overturned by Members at committee. The site has no development plan status of any material weight, it lies outside the development boundaries of Burton on Trent, there are significant infrastructure requirements related to the provision of new access onto the A38, and in my opinion this site should not form part of any assessment of housing land supply.

5.66 My approach is consistent with the Chapel-en-le-Frith Inspector which I have referenced above (Appendix 34, para 10). Contrary to the Council’s assessment of pipeline sites delivering 620 units, therefore, I believe that actually only 310 units should be accounted for. However in order to provide a most robust assessment, I have included an allowance of 310 units for Lawns Farm in my “ESBC view tables”, notwithstanding that it fails to meet the tests for deliverability identified at footnote 11 to para 47 of the Framework, which requires
that to be considered deliverable, sites should be available “now”. In my assessment I exclude its provision entirely.

*Sites currently in the plan but not yet live applications and their status*

5.67 These are sites which are contained within the Preferred Options Local Plan, which as addressed in preceding sections of this proof has no material weight which can be attached to it, a point also acknowledged by the Planning Authority. As the housing land supply table confirms, there are no live applications in respect of any of the sites, and they have yet to be assessed for their appropriateness through the Development Plan process. It is considered that they should not be assessed as deliverable sites as they do not comply with the test of deliverability as set out in the footnote to para 47 in that they are not “available now”. In the absence of their having been tested through a Development Plan process, or for that matter to even be contained within a Plan submitted to the Secretary of State for approval, there can be no certainty that these sites will be delivered within the next five years. For this reason, I do not include in my assessment the 340 dwellings attributed to deliverability on these sites, which the Council have assessed as appropriate. However, I have sensitivity tested their inclusion for completeness in the “ESBC view” Tables 5 and 6.

*Other pre-application discussions*

5.68 The Council also seek to include 90 dwellings on a site for which there is no Development Plan status, and no live planning application, simply on the basis that they have had a discussion with a landowner. In my opinion this cannot comply with the test of the NPPF for deliverability and the site should be discounted. Again I have sensitivity tested its inclusion for completeness.

*July 2013 Planning Committee Sites*

5.69 In July 2013, the Council resolved to approve three major applications for residential development. All three of these applications had previously been refused at planning committee in March 2013 for identical proposals. These are resubmissions which the Council invited in recognition that they could not demonstrate a five-year land supply on their own assessment. It is noted that although my client’s application was refused at the same March 2013 they were not invited to resubmit.

5.70 **Land at Upper Outwoods Farm**, is proposed for 950 dwellings. At paragraph 11.9.2 of the report to committee (Appendix 32), it is stated that the delivery period is likely to be
approximately 8 years. Given that the application is an outline, and Reserved Matters submissions will need to be made and approved, as well as initial infrastructure put in place to enable development to occur, I think it most unlikely that any completions could be achieved within the next 18 months. The assumption underlying the planning committee report, therefore, is that 950 dwellings would be constructed in little more than 6.5 years, which would be a notional completion rate of some 150 dwellings per year.

5.71 For the reasons identified in respect of the Council’s assumptions underlying Lawns Farm (at para 5.54 above) I consider this a wholly unrealistic assumption. For the matter of five-year land supply, therefore, I consider that at most Upper Outwoods Farm would be capable of delivering is some 250 dwellings over this period. Indeed this figure has now been agreed in discussion with Officers, and I have invited its inclusion in the Statement of Common Ground.

5.72 **Land South of Lichfield Road Branston:** This is the same site which was considered at appeal earlier this year under reference APP/B3410/A/13/2189989. In their appeal submissions St Modwen identified that they considered they would be delivering 180 dwellings during the first five years of the plan period, and that is the assumption which I have adopted for the purpose of my assessment of five-year land supply.

5.73 **Land North of Guinevere Avenue, Stretton:** This application approved in outline some 100 dwellings. It is assumed that all of these are deliverable within the five-year land supply calculations, a matter agreed with officers.

5.74 These 3 consents, it is agreed with the Council in correspondence, add a total of 530 dwellings to the five Year Land Supply.
Table 5

**5YLS – ESBC Target Compliant (ESBC Supply Figures)**

**Housing Requirement**

613 dwgs/ per year = 3,065

**Under Delivery**

- Agreed Figure 943 dwellings
- 943/5 (Sedgefield approach) over 650 = 189/yr extra
- Requirement = 802/pa

New five year housing requirement Incorporating under delivery is = 4,010

**NPPF:** 20% buffer is calculated as 20% of 3,065 (i.e. 613)

- The new five year requirement becomes 4,010 + 613 = 6,623
  i.e. 925 dw/yr.

**Housing Supply**

**HOUSING SUPPLY**

- Housing Pipeline (sites with planning permission) (ESBC Figure) = 1,470
- Lapse Rate 10% = 1,323
- Deliverable Sites (includes Lawns Farm @310) = 1,435
- Add July 2013 Committee Sites (Agreed Rates) = 530
  (Land south of Branston 180, Guinevere 100, Hallam 250)

**WINDFALLS**

Windfalls (ESBC 5yr x 90 dwellings) = 450

**TOTAL** = 3,738

(3738/925pa) = 4.0 years
Table 6

**SYLS – RSS Target Compliant (ESBC Supply Figures)**

**Housing Requirement**

- 650 dwellings/year = 3,250

**Under Delivery**

- Agreed Figure 943 dwellings
- 943/5 (Sedgefield approach) = 189 extra over 650
- Requirement = 839/ year

New five year housing requirement incorporating under delivery is = 4,195

**NPPF:** 20% buffer is calculated as 20% of 3,250 (i.e. 650)

- The new five year requirement becomes 4,195 + 650 = 4,845
  i.e. 969 pa

**Housing Supply**

**HOUSING SUPPLY**

- Housing pipeline (sites with planning permission) (ESBC figure) = 1,470
- Lapse Rate 10% = 1,323
- Deliverable Sites (Includes Lawns Farm @310) = 1,435
- Add July 2013 committee sites (ESBC Agreed Rates) = 530

**WINDFALLS**

Windfalls (5yr x 90 Dwellings) = 450

**TOTAL** = 3,738

3738/969pa = 3.9 years
Table 7

**SYLS – ESBC Target Compliant (Alliance Planning Supply Figures)**

**Housing Requirement**

- 613 dwellings/year = 3,065

**Under Delivery**

- Agreed Figure = 943 dwellings
- 943/5 (Sedgefield approach) = 189/yr extra over 613
- Requirement = 802/ year

New five year housing requirement incorporating under delivery is = 4,010

**NPPF:** 20% buffer is calculated as 20% of 3,250 (i.e. 650)

- The new five year requirement becomes 4,010 + 613 = 4,623
  
  i.e. 925 pa

**Housing Supply**

**HOUSING SUPPLY**

- Housing Pipeline (Sites with Planning Permission) = 1,088
- Lapse Rate 10% = 979
- Under Construction = 223
- Deliverable Sites (excludes Lawns Farm) = 785
- Add July 2013 completion sites (Agreed rates) = 530

**WINDFALLS**

Windfalls (AP 3yr x 90 dwellings) = 270

**TOTAL** = 2,787 dwellings

(2,787/925) = **3.0 years**
Table 8

**5YLS – RSS Compliant (Alliance Planning Supply Figures)**

**Housing Requirement**

- 650 dwellings/year = 3,250

**Under Delivery**

- Agreed Figure = 943 dwellings
- 943/5 (Sedgefield approach) = 189/yr extra over 650
- Requirement = 839/yr

New five year housing requirement incorporating under delivery is = 4,195

**NPPF:** 20% buffer is calculated as 20% of 3,250 (i.e. 650)

- The new five year requirement becomes 4,195 + 650 = 4,845 i.e. 969 pa

**Housing Supply (Alliance Planning View)**

**HOUSING SUPPLY**

- Housing Pipeline (Sites with Planning permission) = 1,088
- Lapse Rate 10% = 979
- Under Construction = 223
- Deliverable Sites (excludes Lawns Farm) = 785
- Add July 2013 completion sites (Agreed rates) = 530

**WINDFALLS**

Windfalls = 270

**TOTAL** = 2,787 dwellings

2,787/969 = **2.9 years**
From the above assessment, it can be seen that based on the RSS target figure of 650 dwellings, I conclude that the Council’s housing land supply is only 2.9 years, even if the Council’s preferred annualised target of 613 dwellings per annum is used, there remains a housing land supply of only 3.0 years. It is my evidence, therefore, that the Council cannot demonstrate a five-year land supply of residential deliverable sites, and therefore in the context of this appeal, para 49 is triggered and the presumption in favour of sustainable development prevails.

However, I have sensitivity tested the land supply tables by accepting many of the assumptions the Council adopt on land supply matters. Even when I have included those assumptions (which fundamentally I do not accept), land supply is still only calculated as 3.9 or 4.0 years (against RSS and ESBC targets respectively), when the appropriate 20% Buffer and Sedgefield approach to shortfalls are applied.

Even if the Inspector finds that I am not correct in my assessment of five-year land supply, I would note that there is no Development Plan policy currently in force, or in a state which carries any material weight with regard to housing requirements or strategic housing location. Therefore I would invite the Inspector to assess the proposals on their individual merits against the permissive policies of the NPPF in any event which provides no ceiling to sustainable development. Such an approach is entirely consistent with the Secretary of State decision in Benton (Appendix 8) where he considered at para 17 of his Decision that; “The Secretary of State agrees with the Inspector that even if the assessment of an absence of a 5-year supply was incorrect, this would not preclude the favourable consideration of the proposals providing it represented sustainable development; and that this also needs to be seen in the context of avowed Government policy encapsulated in the Ministerial Statement that the housing market should deliver new homes to create a stimulus to the economy and address an immediate need for housing.”

The appeal site could contribute towards the clearly stated aim of the NPPF to boost significantly the supply of housing, to further the “avowed” objectives identified by Government in the March 2011 Ministerial Statement, and the Housing and Growth Statement of September 2012. In this context, it is noted that during the emerging Local Plan process, of the 7 options consulted on to date by the Council, development at the Red House Farm site was explicitly proposed within five of those options. This Site must have been recognised by the Authority as an appropriate and sustainable location for development when it did that. Indeed, were that not the case, then it would have been
wholly false for the Authority to have consulted on the proposals as a realistic option, as implied by the footnote 11 to Framework para 47.

5.79 Moreover, Burton on Trent has Growth Point status, the objectives of which are “…to continue with their ambitious growth and development plans” (Appendix 35). The appeal proposals will make provision for some 38 affordable units on site, to meet a pressing need for identified social housing within the Borough, and as is confirmed below there is no technical objection raised to the site’s development. The only putative harm is that related to landscape impact, this concern is clearly refuted in the evidence of my colleague Dai Lewis who confirms that any harm such as there is, is minimal and as my evidence confirms is substantially outweighed by the “planning balance”. I would therefore invite the Inspector to grant planning permission for this site, even if he were minded to find with the Council on the matter of five-year land supply.
6.0 TECHNICAL SITE ASSESSMENT

6.1 As confirmed in the Planning Officer’s report to committee in respect of the application now forming part of this appeal (Appendix 9), there is an absence of any technical objection to the appeal proposals.

6.2 Using the referencing within that planning committee report the following are noted.

6.3 On the issue of design and impact on the character and appearance of the area it is noted that “…the illustrative layout and submitted Design and Access statement have been informed by the East Staffordshire Design Guide, the physical characteristics of the site and the context of the adjoining built development. Therefore, in principle, a scheme of the form proposed, would be considered acceptable…” (Para 8.3.10).

6.4 On the issue of impact on residential amenity Section 8.4 of the committee report notes;

“8.4.1... the indicative layout shows that sufficient distance between existing and proposed property can be established to ensure no significant overlooking or loss of light issues will arise.

8.4.2 The indicative layout shows that 250 dwellings can be constructed on the site without compromising the reasonable amenities of the future occupiers of the dwellings ....

8.4.3... The submitted noise assessment indicates that subject to appropriate mitigation all of the dwellings proposed could experience good sleeping and resting conditions ...

8.4.4 Subject to further consideration of reserved matters it is considered that the proposal satisfactorily accords with the sustainability requirements of the NPPF by providing acceptable living conditions for both new and existing residents.”

6.5 On the issue of highway considerations it is concluded in Section 8.5 of the report that

“The County Highway Authority in relation to the local road impact has confirmed that the utilisation of an access from Reservoir Road is acceptable. ....

Subject to the imposition of the necessary conditions recommended by the Highway Authority, the completion of the necessary off-site highway works and the payment of the necessary contributions, it is considered that while there will inevitably be an impact on the local highway network, and concerns regarding the gradient of Reservoir Road remain, this impact will not result in significantly increased danger to users of local roads.
... In this instance the submitted Transport Assessment and the response of the Highway Authority confirm that the proposal will not significantly harm the local highway network. Consequently, there are no highway safety grounds on which to refuse the development. ...

...The application site is considered to be in a reasonably sustainable location, within walking distance are some local amenities, whilst the provision of the residential Travel Plan will seek to ensure that future occupiers are aware, and make full use, of sustainable means of transport ...

It is therefore considered that, subject to conditions and a S106 Agreement in respect of the monitoring of the Travel Plan, the proposal would not prejudice the safe and efficient use of the highway network. The proposal therefore satisfactorily complies with the aforementioned policies and the sustainability requirements of the NPPF."

6.6 With regard to the issue of flood risk, Section 8.6 of the report confirms;

“Subject to the conditions recommended by the Environment Agency and Severn Trent Water Ltd in respect of drainage, it is considered that the scheme accords with the relevant policies and sustainability requirements of the NPPF."

6.7 In respect of contamination, there is a request for submission of a full contaminated land report to address that part of the site subject to processing turkey meat. This can be secured appropriately through condition.

6.8 On the matter of Ecology, Section 8.8 of the report concludes;

“The recommendations made within the ecology report, in relation to the management of the open spaces and the need for further survey work in respect of protected species are considered reasonable. Subject to compliance with these conditions, the development should result in a net gain for bio-diversity in the area and not impact adversely on any European protected species. The proposal therefore satisfactorily meets the sustainability requirements of the NPPF in respect of ecology”.

6.9 With regard to the provision of Play Equipment Section 8.11 confirms that the level of provision is in accordance with guidance and exact details in terms of equipment to be provided would be resolved through any reserved matters application.
6.10 As evidenced through the limited scope of the Council’s Reasons for Refusal in objecting to the application proposal, there are no technical impediments or constraints to the deliverability of this site which has previously been promoted as a sustainable location for development through the Council’s emerging Local Plan Options papers.

6.11 In the absence of a five-year land supply, the sole outstanding objection raised by the Council is that of alleged harm to the landscape character of Burton to its visual detriment (Planning Officer’s report to committee Para 8.3.10, Appendix 9)

Landscape

6.12 My colleague Dai Lewis of EDP presents detailed technical evidence on the issue of landscape visual impact assessment. In terms of planning policy, however, I make the following observations.

6.13 Through two separate consultation exercises in respect of the emerging Core Strategy/Local Plan, the draft Pre-Publication Strategic Options Stage in August 2011 and in Preferred Option Stage in July 2012, land at Red House Farm was included as a potential development site. As illustrated on the plans attached to Appendix 12 and 13, Options two and three of three options in August 2011, and three out of the four Strategic Options considered for the high-level spatial option of urban extensions plus villages, all included the potential development of Red House Farm.

6.14 The Council’s position now taken, that as a matter of principle the site is undevelopable due to its landscape impact, prima facie conflicts with the work they have undertaken through, in particular, the Local Plan Preferred Option stage. If it is the Council’s contention that Red House Farm as a matter of principle could not be developed due to its landscape impact, then there must be a serious question mark over the validity of the consultation exercise which the Council have undertaken in respect of the Local Plan, if the reality of that exercise was that there was only a single option which could ever be found acceptable due to the in principle objection of the remaining options all including Red House Farm.

6.15 For the purpose of planning policy, it is important that any putative harm to the landscape is in any event, considered in the context of a the planning balancing exercise (NPPF para 14) which includes weighing the substantial shortfall in housing land supply, and the contribution that the proposed development would make to reducing that shortfall, as well as all of the other material scheme benefits highlighted at Section 4 of my evidence and other environmental benefits identified by Mr Lewis.
Indeed, this was illustrated in a Secretary of State’s decision letter APP/U4230/A/11/2157433, July 2012, Appendix 36 in respect of land at Burgess Farm, Worsley, in which the Secretary of State differed from his Inspector’s recommendation of dismissal. In granting planning permission the Secretary of State said;

“... However, he (the Secretary of State) disagrees with the Inspector’s reasons at IR204 that the site should be protected from development. The Secretary of State acknowledges that the development of the site would result in the permanent loss of an area of open countryside enjoyed by local people; encroachment into the wildlife corridor; a significant intrusion into the setting of Walkden; and that it would seriously degrade the character and appearance of the area and amenities of neighbouring residents. The Secretary of State accepts that there is a clear conflict with UDP policies for the site, which support its retention as undeveloped land. He recognises that one of the core planning principles in the Framework is to contribute to the conservation and enhancement of the natural environment. However he considers that the loss of this land needs to be weighed against the substantial shortfall in housing land and the contribution that the proposed development could make to reducing the shortfall in a sustainable location.” (my emphasis).

There is no evidence from the officer’s report to planning committee, that the planning balance exercise was undertaken in the determination of my client’s appeal. Such an exercise should have been undertaken and if it were, I would contend that the merits of addressing the shortfall in housing land supply which has subsequently been acknowledged by the Planning Authority as having existed at the time the application was determined, would have overridden any concerns which the Authority had in respect of landscape impact.
7.0 POLICY ANALYSIS

7.1 It is my evidence to this Inquiry that para 49 of the Framework and the ‘presumption in favour of sustainable development’ is engaged, I reach this conclusion on three separate grounds.

i) The Local Planning Authority have failed to identify a strategic housing target in any Development Plan Document. In the absence of a housing target, the onus of which the Framework very clearly places on the Authority to provide, it is not possible to assess whether a target has been met.

ii) In the absence of any Development Plan led target, the only tested and objectively assessed housing target figure which has been the subject of examination or scrutiny, is that contained within the Regional Spatial Strategy Phase II Panel Report, which was supported by the Borough Council at the time of the panel's examination, of 650 dw/yr. No weight can be attached to the emerging Core Strategy target or more recent June 2013 targets, given that there has been no opportunity for these to have been independently assessed and they have changed materially during the course of this year. Against the RSS target the Council cannot demonstrate a five year land supply.

iii) There is no Development Plan Document of any material weight whatsoever guiding the quantum or strategic direction of development proposals within East Staffordshire Borough Council. The RSS and Structure Plan have been revoked, the policies of the East Staffordshire Local Plan are demonstrably out of date. In the absence of any local or sub national guidance, the only policy to which material weight can be advanced is that contained within the Framework.

7.2 In the light of the above three grounds, I would invite the Inspector to accept that it must be concluded that para 49 of the Framework is engaged.

7.3 To reiterate para 49, it states; “Housing applications should be considered in the context of the presumption in favour of sustainable development.” It is, I believe, common ground that para 49 does not provide an open door to all development proposals just because it is engaged, however it does provide for the presumption in favour of approval to apply where development is “sustainable”.

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7.4 NPPF para 7 assists in providing a context for understanding, for the purpose of interpretation of the Framework, what is meant by “sustainable development”. It identifies the three dimensions of sustainable development, being an economic role, a social role, and an environmental role, para 8 confirms that they are mutually dependant, and therefore need to be considered “in the round” as part of the planning balance.

7.5 The appeal proposals address these dimensions in the following ways;

**An economic role**

7.6 The appeal proposals provide the right type of land in the right place to enable economic development. The Housing and Growth statement *(Appendix 17)* confirms that the Government see house building as having a key role to play in getting the economy moving. The appeal site is adjacent to the existing urban edge of Burton upon Trent, it is close to facilities within the town centre, and has previously been promoted through earlier consultation versions of the emerging Local Plan as a possible appropriate location for development.

7.7 The appeal proposals will provide for an important Public Service Vehicle link through the site to provide access for emergency vehicles and bus routes. This completes a gap in the current road network locally and will provide material benefit to those accessing the hospital not just for regular appointments by public transport, but more significantly for emergency access. This benefit is confirmed by the West Midlands Ambulance Service as improving “both access and egress to and from the villages around the north of Burton, which would be beneficial to the patient’s experience… this link will provide a number of tangible benefits to the ambulance service…” *(Appendix 21)*

7.8 The appeal will also provide the potential for construction employment on site over a period of some five years to the benefit of the local economy and when completed the development will provide economic benefit through expenditure from new residents into the local economy, as well as returns in the form of Council Tax revenues to the Borough Council. There is also currently available through the coalition Government, the offer of New Homes Bonus totalling some £1.95m for both the Borough and County Councils.

7.9 Development at the appeal site would perform an important economic role.
A social role

7.10 The appeal proposals will provide for much needed market and affordable housing. Not only will this address the Government’s objectives in terms of boosting the economy, but it also performs an important social function in meeting the housing needs of the locality which the authority have signally failed to plan for in a positive way through the Development Plan process. The Council’s December 2010 SHMA Conclusions identifies an annual requirement for new affordable housing of some 169 dwellings, the appeal proposals will contribute 38 dwellings to that recognised need. Appendix 20 confirms that at present the authority can only demonstrate potential delivery through S106 agreements of some 225 affordable houses, adding to this 15% of the July 2013 permissions that are deliverable within 5 years (530 dwellings x 15% = 80 dwellings) represents some 305 affordable dwellings deliverable in the next 5 years, against a target requirement of 845 dwellings (169 x 5yr), i.e. 1.8 years’ worth of affordable housing need. The contribution this site can make is a material and significant advantage to its delivery.

7.11 The appeal proposals will also deliver a social benefit in terms of enhancing service provision through public transport, creating a more coherent public transport network locally, and reducing unnecessary journey time and bus routing through already busy town centre roads. As noted above it will also enhance community access to the Queen’s Hospital, a point recognised by the Chief Executive of the Burton Hospitals NHS Foundation Trust, by reducing “the travel time from that currently experienced on the roads surrounding the hospital”, and in so doing providing “a number of tangible benefits to the staff and visitors to the Trust.” (Appendix 31)

7.12 Through the proposed Section 106 Agreement, the appeal proposals will make a significant contribution to education facilities locally with a planned contribution of some £1.36m. Open space will be provided on site, including a Local Equipped Area of Play, supporting vibrant and healthy communities by providing opportunity for outdoor recreation, especially for children. There will also be enhanced offsite footpath connections to the Shobnall Sports Complex to the east of the site, and from there linkage to the wider footpath network toward Burton Town Centre.

7.13 The appeal proposals will also make a contribution to and physical improvements to, the local highway network, including improvements to car parking and road safety adjacent to the Shobnall Road Primary School.
An environmental role

7.14 The appeal proposals will provide an environmental role through the introduction of high quality design to provide a distinctive and high quality residential development. As recognised in the planning officer’s report to committee, “a scheme of the form proposed, would be considered acceptable.” (Appendix 9, para 8.3.10)

7.15 The appeal proposals will enhance green infrastructure on-site recognising the potential for improvements to the biodiversity of fields currently dominated by the ecologically limiting use for cultivation of turf. Again, recognised in the Council’s assessment of the planning application, the development would improve biodiversity within this area, a point also referenced in Mr Lewis’ planning balance exercise.

7.16 The appeal proposals provide for safe pedestrian connections to both the Shobnall and the Outwoods area of the town.

7.17 The appeal proposals also seek to make contributions towards the National Forest with 30% of the development site set aside for National Forest planting, in accordance with Local Plan policy NE14.

7.18 Whilst my colleague’s evidence challenges the conclusions of the Local Authority that the site would cause significant landscape and visual impact, even if he were wrong on this, any such impact ought properly to balanced against the need for new housing, and the other significant and tangible benefits which arise from sustainable development as proposed (Framework para 14).

7.19 I consider that the appeal proposals provide for a development sustainably located and performing a sustainable function as identified above, and therefore the presumption in favour contained at para 49 of the Framework is fully engaged.

7.20 Para 14 of the Framework confirms that this should mean, for decision taking purposes, that permission is granted. The only exception would be if any adverse impact would significantly and demonstrably outweigh the benefits. As noted above no such impacts are in my opinion in existence, but even if there were a significant landscape impact, it would need to be demonstrated that it had outweighed the benefits of delivery of the proposal, such benefits existing irrespective of the five year land supply position. Those significant and demonstrated adverse impacts do not exist, there are no other technical objections or specific policies of the Framework which the Council claims are impacted upon, and
therefore development should be granted permission. The absence of a Council having undertaken an appropriate planning balancing exercise, was a material factor in the award of costs for unreasonable behaviour in respect of both the Shipston on Stour and Wolston appeal decisions (Appendix 6 and 7), and is a significant omission on the part of this Council’s assessment of my client’s proposal.

Reasons for Refusal No. 1

7.21 Reason for Refusal 1 references East Staffordshire Local Plan Policy NE1 which addresses development, “outside development boundaries”.

7.22 The application of development boundaries in a Plan which made provision for housing only up to period of 2011 can not carry any material weight for the purpose of this Inquiry. Those development boundaries relate to a previous strategic policy context which has now been superseded by time. The policies of the Framework must provide the overriding policy context. Indeed, the Council themselves have recognised this through their resolution to grant of planning permission for 950 dwellings on land at Upper Outwoods Farm (P/2013/00429 – July 2013) which also falls outside development boundary. In recommending that application for approval officers noted;

“There are a number of saved Local Plan policies relevant to the determination of this application including NE1, H1 and H2, which seek to protect rural areas from inappropriate development and locate new housing within the defined development boundaries. Whilst weight can be given to the adopted Local Plan this is outweighed by the provisions of the NPPF given the Council’s five year land supply position, which is currently calculated at 4.60 years.” (Appendix 32, Officer’s report to committee, para 11.2.3 – 8 July 2013).

7.23 That application, like my client’s appeal, was noted as not forming part of the Preferred Option Local Plan, lies outside existing development boundaries, and with the Council confirming that weight to be attached to the emerging policy was in any event “limited” (Committee report para 11.2.5).

7.24 Moreover, the Council also look to identify land at Lawns Farm (P/2012/01467) as part of their five year housing land supply calculation, albeit that this site too sits outside any currently recognised development plan boundary.

7.25 Indeed it is a notable conflict in the Council’s position that they seek to attach material weight to the Lawns Farm emerging Local Plan policy proposal and include it as a supply side
site for the purposes of five year land calculations, yet in their report to Committee on 8 July regarding the land at Outwoods Farm, they comment that this is an emerging plan to which only ‘limited weight’ can be given. Indeed my approach in this matter is consistent with the Winchcombe Inspector’s decision (Appendix 25, para 10), who reached the same conclusion as I do, that development plan boundaries cannot endure in the context of the Framework presumptions, where the housing supply policies are not up to date, as they clearly aren’t here.

7.26 It is concluded that notwithstanding the reference in the Reason for Refusal to weight being attached to a development boundary, both my evidence, and subsequent actions of the Borough Council, have confirmed that the development boundaries in an outdated Local Plan should not carry material weight.

7.27 Reference is also made within the Reason for Refusal to Staffordshire Structure Plan policies on development boundaries. I have sought to agree through the Statement of Common Ground that the Structure Plan policies, having now been revoked, have no continuing materiality to this appeal. Whilst the Council have yet to confirm this, I consider the point is simply made by the Revocation Order (Appendix 2).

7.28 Finally, in respect of Reason for Refusal 1 it is noted that references is made to Local Plan saved policies BE1, H2 and NE1.

7.29 I have addressed the issue of NE1 with regard to development boundaries above. It has been agreed through correspondence with the Council that the reference to policy BE1 refers solely to subsections (b) and (e) and the putative impact on surrounding landscape character and appearance. This is addressed in the evidence of my colleague Dai Lewis, and it is considered that the landscape character harm alleged is not significant. Even if it were, this would have to be weighed in the balance, in accordance with the requirements of para 14 of the NPPF, against the substantive other benefits of the scheme. This is an exercise which Council did not undertake in the determination of my client’s application. I am of the view that the benefits are significant and material in terms of the appeal proposals, and substantially outweigh any landscape harm alleged by the Council.

7.30 Finally, Policy H2 of the Local Plan addresses a hierarchy for the release of large windfall sites, noting that greenfield sites will not be permitted unless it can clearly be demonstrated that Structure Plan requirement cannot be met through use of sites on previously developed land.
7.31 Structure Plan policy no longer applies, but in any event, the Council through their actions in the grant of planning permission at Lower Outwoods Farm, and their continued inclusion of land at Lawns Farm within their five year land supply, recognise that there is, and continues to be, a requirement for greenfield land release within the Borough. No weight can be attached to this policy which is in a plan acknowledged to be out of date.

**Reason for Refusal 2**

7.32 Reason for Refusal No. 2 makes reference to Structure Plan policy NC2, Section 11 of the NPPF and Local Plan policy BE1.

7.33 As noted above, the policies of Staffordshire Structure Plan have been revoked and are not considered material to the appeal. My colleague Dai Lewis has addressed the merits of the appeal proposal in the context of Section 11 of the NPPF and it is concluded that the appeal proposals are, when properly assessed, compatible with the Framework policies in this regard. Policy BE1 subsection (b) and (e) of the Local Plan has been addressed above in the context of its materiality and weight to this appeal proposal.

7.34 The Inspector will note that I have made reference to a significant number of other “development management” type policies contained within both the Local Plan (para 3.33 above), and emerging plan (para 3.47 above), as well as of the material policy considerations including the Council’s Design Guide SPD 2008, Open Space SPD 2010, Housing Choice SDP 2010, Parking Standard SPD 2004. Suffice to say here, that in the absence of any other technical objection or Reason of Refusal identified by the Borough Council, it is concluded that the appeal proposals are compliant with the requirements of all of those policies as relevant or material to the appeal case.
8.0 THIRD PARTY COMMENTS

Third Party Objections to Application

8.1 A number of third party representations were made in respect of the original planning application, the vast majority of which were submitted based upon two standard template letters of representation.

8.2 The issues raised by third parties have been dealt with predominantly through my principal evidence, however there are two matters which are not raised within the Reasons for Refusal, but which are repeatedly raised through third party submissions.

8.3 The first of these relates to concerns of drainage, and particularly foul sewage.

8.4 The Inspector will note that by letter dated 1st November 2012 Severn Trent Water, being the statutory water authority with responsibility for the disposal of surface water and foul sewage, raised no objection to the application proposals subject to the imposition of an appropriate condition.

8.5 The second principal issue raised by third party objectors is that relating to highways. A full Transport Assessment and Travel Plan was submitted with the planning application and was subject to detailed discussions with Staffordshire County Council acting as Highway Authority. In their consultation response dated 25th January 2013 the County Council recommended that “there are no objections on highway grounds to the proposed development subject to the following conditions being included on any approval”. Their representation then went on to list the conditions they would wish to see imposed upon grant of any planning permission, and the financial contributions they sought.

8.6 The Highways Agency were also consulted as this was perceived as a development with potential to impact upon the A38 Trunk Road. By consultation response dated 19th February 2013, the Highways Agency confirmed that they raised no objection.

8.7 However, given the substantial volume of third party representations in respect of the appeal proposals on the alleged grounds of highway impact, and notwithstanding the submitted Transport Assessment and letters of no objection from the competent authorities, I have sought a summary statement of the highway issues relating to the appeal proposals from the appellant’s transport consultants Phil Jones Associates for ease of reference. This is appended to my proof as Appendix 22, it identifies the local road network surrounding the appeal site, the proposed off site highway improvements that will flow from
the proposed development, demonstrates how the site is accessible by sustainable modes of transport including pedestrian and bus access, and also indicates how the existing Arriva bus route number 3 could be extended to form a circular route which would provide benefit to both existing and proposed residents, occupiers of existing businesses and the Queen’s Hospital. Moreover, the route specifically offers benefit to the bus operator themselves in that it avoids the need to double back over an existing “cul-de-sac” route, thereby providing greater efficiency in service. It is also confirmed that the principle of the extended bus service route has been confirmed as acceptable by the bus operator Arriva.

Third Party Objections to Appeal

8.8 The Planning Inspectorate have forwarded 7 third party letter of objection to the appeal. 5 of these are on a ‘pro-forma’ letter, and raise issues of; local plan status, landscape impact, and access. These comments are all addressed in my principal evidence, or that of Mr Lewis.

8.9 A letter from Mr Gary Hill, raises issues of access, foul drainage and surface water drainage. Again, these are addressed elsewhere in my evidence. The Highway Authority have raised no objection, there is a full FRA submitted with the application covering drainage, and neither the statutory water authority nor the EA raise any objection to the proposals.

8.10 Finally, there is a letter submitted on behalf of the Red House Farm Action Group, which raise a number of issues. In summary I would note;

   a) There has been no previous determined appeal for residential development on this site. Whilst a previous appeal was submitted, it was subsequently withdrawn. The officer’s report to committee erroneously indicates that this was dismissed.

   b) I have set out in detail in my principal evidence, the sustainability merits of the appeal scheme, against the 3 pillars identified by the Framework.

   c) Landscape matters are addressed fully by Mr Lewis, and address the concerns raised.

   d) This application/appeal is free-standing to be addressed on its individual merits. It does not establish a precedent for any additional land releases on land around it.

   e) The appellant has submitted a full TA and Travel Plan with the application. It was scoped and agreed in terms of its approach in pre-application correspondence with the County Highways department, and indeed the application registration process at ESBC requires a letter to be submitted by the County Highway department confirming that the TA has been prepared in accordance with an agreed technical scoping. The TA was tested at
length post submission, and found to be acceptable, demonstrating the technical acceptability of the appeal proposals. I have attached at Appendix 22 to this evidence a supplemental Highway Statement summarising the Highway’s position, and which responds to the issues raised.

f) The Environment Agency have raised no objection to the proposals. A full FRA was submitted with the application. The Council take no issue on Flooding.

g) Severn Trent water raise no objection to the proposals regarding foul or surface water drainage.

h) The Council do not have a 5 year supply of housing land, as my evidence demonstrates. Even were they to have one though, the benefits arising from development would still, when viewed in terms of the planning balance, weigh heavily in favour of the grant of permission.

i) This site is not isolated. It sits adjoining the edge of Burton, between two existing residential areas. There is an acknowledgement by the Council that it is well related to local services in this respect. (Appendix 9, para 9.1)
9.0 CONDITIONS AND PLANNING GAIN S106

Planning Conditions

9.1 It is noted that in the Borough Council’s Statement of Case submitted to the Inspector in respect of this appeal at Section 10.1 they have provided a summary of the conditions which they would invite the inspector to attach in the event of planning permission being forthcoming.

9.2 At this stage, the list is in summary only, and the Authority have confirmed they will provide the full wording prior to the Inquiry.

9.3 The appellant can confirm that with the exception of a condition under the sub-heading sustainability (bullet point 9) which makes reference to “takeaway uses” which are not actually proposed in this development, then all other heads of terms for the conditions are considered acceptable. The appellant would reserve the right to comment further on these once the full wording of the conditions has been provided.

Planning Gain Section 106

9.4 The Appellants had made good progress with a draft s106 agreement at the time the appeal was submitted and a full draft agreement was provided by the applicant in December 2012. It was decided, in order to narrow the issues at Inquiry and to save time and costs for all parties, that the Appellants would agree to enter a s106 agreement to be approved and signed by all parties, rather than a unilateral undertaking.

9.5 A revised draft s106 agreement for the appeal was provided by the Appellants to the Council on 25 June 2013 for their comments. Concerns about affordable housing were raised at that stage. (Appendix 37)

9.6 The s106 agreement provided in support of this appeal addresses all requirements of the Council and the County Council to mitigate the impacts of the appeal proposal.

9.7 The content of the s106 agreement in brief is as follows:

a. Waste contribution £66 per dwelling

b. Education contributions
   i. £584,643 for 53 primary school places
   ii. £631,636 for 27 secondary school places
   iii. £144,216 to provide 6 sixth form places
9.8 Throughout the course of the application and the appeal the Appellants have sought clarity on the s106 requests. It is the Council and the County Council’s responsibility to satisfy the Secretary of State that all requests have been lawfully made with regard to Regulation 122 of the Community Infrastructure Levy Regulations 2010 (“CIL Reg 122”).

9.9 Clause 10 of the s106 agreement allows the Secretary of State the discretion if he thinks that any item does not satisfy CIL Reg 122, to confirm this in his decision letter. If the Secretary of State does this, then that part of the s106 package will be deemed severed from the agreement without affecting the validity of the remaining s106 obligations.

9.10 The Appellants have concerns about the lawfulness of the Council’s affordable housing requirement at the date of writing this proof and have raised this concern with the Council (Appendix 38). It may be that the Council will be able to provide a late justification which satisfies the Secretary of State but if the Secretary of State shares the Appellants’ concerns the Appellants respectfully request that the Secretary of State should invoke the discretion at clause 10 of the s106 agreement and confirm in his decision letter that only 15% onsite provision of affordable housing is required.

9.11 The Council’s housing choice SPD from December 2010 (Appendix 39) states that the Council will seek 15% of dwellings as affordable housing on ‘urban extension sites’ which are defined as “large greenfield sites adjacent to the development boundaries of Burton… the Council is prepared to accept a commuted sum in lieu of more than 15% on-site affordable housing and
hence the Council will accept... urban extension sites: 15% of dwellings on site...other sites: 15% of dwelling on-site plus a commuted sum in lieu of 15% of dwellings...However where an applicant has demonstrated to the satisfaction of the Council that this contribution is unviable on their site then the level of contribution which is viable will be sought instead”

9.12 It is the Appellants’ concern that the Council’s policy is poorly worded, that the policy is open to varying interpretations and that is demonstrated by the fact that the Council has applied the policy inconsistently.

9.13 Firstly it seems to the Appellants that the appeal site should be treated as an ‘urban extension site’ as defined in the SPD because it is a ‘large greenfield site adjacent to the development boundaries of Burton’. The size of site which qualifies as an ‘urban extension site’ is not specified in the SPD but it seems that the appeal site for 250 dwellings, partly by virtue of its size, has been judged worthy of recovery by the Secretary of State for his own determination. The appeal site shares these characteristics of being a large greenfield site adjacent to the development boundary with the Hallam and St Modwen sites which were also recently recovered for the determination of the Secretary of State (St Modwen at Burton-on-Trent APP/B3410/A/13/2189989/NWF, Hallam at Burton-on-Trent APP/B3410/A/13/2192783/NWF). Both the Hallam and St Modwen sites received a resolution to grant planning permission after submission of an appeal and they both agreed with the Council the provision of 15% affordable housing on site and £zero offsite affordable housing contributions for the first phase. By contrast the Council are requiring that the appeal site should provide 15% affordable dwellings on site and over £1m financial contribution for offsite affordable housing for this single phase scheme which would come forward in the same locality and economic context and same 5 year window as the first phase of the Hallam and St Modwen sites.

9.14 It is notable that the Hallam and St Modwen sites did not submit viability appraisals but the Council verbally explained to the appellants that it reduced the amount of offsite financial sum payable on those sites to £zero on viability grounds. The justification for this appears to be that the Council has an established view as to the cap which should be imposed on the overall value of the s106 package before development becomes unviable. If the total of all the other s106 obligations required to mitigate that scheme meet or exceed that cap, that site will not be required to provide the offsite affordable housing sum. There are several responses to that explanation; firstly that is not the approach set out in their own SPD which requires the applicant (not the Council) to demonstrate non viability, secondly it is
unreasonable and inconsistent to apply this approach to the Hallam and St Modwens site at phase 1 and not the single phase appeal site, thirdly this method seems flawed because it prioritises every other type of s106 request over and above the provision of affordable housing, fourthly given that the Appellants have evidenced their commitment to provide 30% affordable housing overall by signing the s106 agreement in relation to the provision of affordable housing, the appeal scheme has the ability to perform 50% better than the Hallam and St Modwens sites at phase 1 and nowhere has this been acknowledged by the Council in considering the sites which were the subject of simultaneous reports to committee.

9.15 The Appellants have set out in detail for the Council (see Appendix 38) why they doubt that the requested offsite affordable housing sum of over £1m is lawful with reference to the tests of CIL Reg 122. The Council has replied (see Appendix 40) but at the time of writing this proof it has not been adequately justified by the Council:

9.16 Is the £1m+ or the extra 15% affordable housing onsite necessary? It is not clear that this is what the SPD policy requires. The Council has not stated whether it deems the appeal site to be an ‘urban extension site’ or a ‘rural site’ in accordance with the SPD. It is also not clear how, where and when the money would be spent. The Council acknowledges that no projects have been identified yet. If this is not known it cannot truly be said to be necessary to mitigate the impact of the appeal proposal

9.17 Is the £1m+ related to the development? This test is difficult to meet for an offsite contribution and the Council seeks the removal of wording which would ensure that only people with a local connection benefit from the affordable housing upgraded or provided with these monies. This means the money might not even be spent in Burton

9.18 Is the £1m+ or an extra 15% affordable housing onsite fair and reasonable in scale and kind? The Council has shared the methodology for reaching this sum but it seems deeply flawed e.g. it applies a discount for early payment but with no related obligation to commit the sums for any specific purpose or within any specific period. It would harm scheme viability for any scheme to have to pay over £1m upon commencement of development. The Hallam and St Modwens sites have provided only 15% affordable housing onsite and have not had to pay any offsite contributions in phase 1. There does not seem to be any difference between those sites and this site, they are all greenfield urban extensions adjacent to the development boundaries of Burton being brought forward in the same locality and economic
context and same 5 year delivery window (at phase 1) and none of them have submitted viability appraisals. It is inevitable that the Appellants question the fairness of the Council’s approach.

9.19 In the absence of a clear justification from the Council, the Appellants are only able to respond to the affordable housing requirements as stated by the Council and they have done so and responsibly pursued their concerns about CIL Reg 122 compliance. If the Secretary of State finds this appropriate the Appellants have shown willing to provide 30% affordable housing overall as part of the appeal scheme via onsite provision and offsite contributions.
10.0 SUMMARY PROOF OF EVIDENCE AND CONCLUSIONS

10.1 This proof of evidence is prepared in respect of an appeal against the decision of East Staffordshire Borough Council to refuse permission for the erection of up to 250 dwellings with associated landscaping and works, including demolition of all existing buildings on land at Red House Farm, Lower Outwoods Road, Burton upon Trent.

10.2 The planning appeal raises two principal issues of significance between the appellant and the Local Planning Authority which includes:

1. Whether the Planning Authority is able to demonstrate a five-year land supply?

2. Whether the proposals at Red House Farm have an unacceptable impact upon the landscape, such that this outweighs the other planning benefits of the scheme?

10.3 Evidence on Landscape and Visual impact matters is presented by my colleague Mr Lewis.

10.4 The Site comprises land and buildings which extends to approximately 13.4 ha and are currently used for agricultural turf production and industrial activities. The Site falls outside but immediately adjacent to the currently defined settlement boundary for Burton upon Trent (paras 2.1 – 2.19). Burton secured Growth Point status under the previous Government, and it continues to seek to deliver on those ‘ambitious growth and development plans’. (paras 3.71 – 3.73)

10.5 Since the application was determined, Regional Spatial Strategy (RSS) and Structure Plan (SP) have been revoked such that their policies no longer have applicability. The Development Plan is formed by the East Staffordshire Local Plan 1996 – 2011 (ESLP); I invite the Inspector to attach limited weight to its time expired policies. The NPPF carries significant weight to the determination of the appeal.

10.6 Framework paras 47 and 49, seek to boost significantly the supply of housing, and provide a ‘presumption in favour of sustainable development’ if a local planning authority cannot demonstrate a five year supply of housing land (SYLS). Para 6 identifies the three pillars of sustainability; economic, social, environmental, whilst para 8 introduces the concept of the ‘planning balance’, such that even if some specific harm is caused by a proposal, this needs to be weighed in the balance against the benefits arising from the grant of permission. (paras 3.4 – 3.20)
10.7 The ESLP end date was 2011. It was prepared against the policies of the now revoked SP. ESLP policies relied upon by the LPA in refusing permission relate to; settlement boundaries, landscape protection, and a ‘brownfield first’ provision.

10.8 During the preparation of the emerging Local Plan, the appeal site has appeared in 5 of the consulted upon options as a potential location for development, albeit not an option currently pursued. The Council’s LDS indicates that the emerging Plan is not due to be submitted until May 2014, with adoption in December 2014. I consider no material weight can be attached to it. (paras 3.36 – 3.48)

10.9 The Budget and Growth Review (2011), Written Ministerial Statement (2011) and Housing and Growth Statement (2013), are all material considerations, setting out the Government’s avowed intention of encouraging housing growth as a driver of the national economy. (paras 3.49 – 3.55)

10.10 There are a series of benefits which would accrue in the event of planning permission being granted;

- Provision of market and affordable housing
- Promoting Healthy Communities
- Public Transport
- School Safety
- New Homes Bonus
- Local Economic Benefits

10.11 Significant amongst these benefits are the creation of a route through the site for emergency vehicles seeking quicker and more convenient access to the Queen’s Hospital, and to the improvement of local bus services, by creating a circular route where currently they operate inefficiently to a cul-de-sac. The benefits to the Hospital and Ambulance service have been recognised in letters of support from both, confirming that ‘tangible benefits’ to users of both services if the scheme is consented (paras 4.8 – 4.16). Other benefits include local highway improvements to serve the Shobnall Road Primary School, provision of some £1.56m through New Homes Bonus, and economic benefits from construction employment to expenditure and revenues from future residents. (paras 4.17 – 4.22)
Housing Land Supply

10.12 I consider the Council can not demonstrate a SYLS. In summary, I differ from the Council’s approach on this issue as follows;

1) The Council have no target in an adopted plan, no emerging plan to which weight can be attached, and both SP and RSS have been revoked. Without a definable target to which weight can be attached and an assessment made, they can not comply with the requirement, Framework para 49 is engaged. (paras 5.5-5.7)

2) The Council acknowledge that the historic target for provision back to 2006 is the RSS figure of 650dw/yr. They now suggest a target figure going forward of 613dw/yr. This figure is neither tested nor examined, and I consider can have no weight attached to it. The only figure to which weight could be attached is the 650dw/yr RSS target which has been examined and tested, and which has been accepted by Inspectors elsewhere. (Honeybourne: paras 5.13-5.21)

3) The Council have a history of poor record keeping of completions leading to their making ‘some assumptions’ about when houses were built. Even by their June 2013 dataset, there is only 1 year from the last 7 when target provision was achieved. There is an agreed historic shortfall against target of 943dw. The appropriate buffer is 20%, not 5% as argued by the Council. (paras 5.23-5.33)

4) The Council seek to address the shortfall of 943 dwellings over the whole of the remainder of the emerging plan period. The need however arises now, the imperative to significantly boost the supply of housing exists now, nearly all post Framework appeal decision (save 2 both under S288 challenge) support meeting that need now, as part of SYLS. (paras 5.47-56)

5) On Windfall, I accept the Council’s approach to identifying an annual requirement, but it should only be applied from Year 3 onwards. Sites in years 1 and 2 will have permission and already form part of the supply. (paras 5.34-5.40)

6) I agree the Council’s approach of a 10% lapse rate, I have however discounted 159 dwellings from their list of consented sites as undeliverable. (paras 5.41-5.46)
7) The 310 dwellings at Lawns Farm should not be included in supply. The site has no Development Plan status. Whilst an application has been made, it has not yet been determined. I discount 90 dwellings which the Council include because they have had ‘pre-application discussions’, but no applications or allocations have been made. I also discount 340 dwellings which are within the emerging plan, are untested, and which have no applications made. (paras 5.64-5.67)

10.13 Based on my analysis the Council have only a 2.9 year supply of Housing. By way of sensitivity assessment, even accepting all the Council’s supply side sites and using their 613dw/yr target, but with the proper application of a 20% buffer and using the Sedgefield approach, they can only demonstrate a 4 Year Supply.

Other Material Considerations

10.14 There are no technical objections raised to the proposals (section 6). The County Highway department raise no objection. The Council’s only allegation of harm is to Landscape Character and Visual Impact. This issue is addressed in Mr Lewis’ evidence, which indicates any impact as there is, is minimal.

10.15 The appeal proposals perform the function of sustainable development in meeting an economic, social and environmental role. The benefits of consent are significant and material and weigh heavily in favour of the ‘planning balance’ exercise. (paras 7.6-7.20)

10.16 Existing defined development boundaries (Policy BE1) cannot carry weight, when the boundaries were prepared to define a settlement against growth provisions only up to 2011. The ‘brownfield’ first provisions (H2) have been set to one side by the Council in their grant of significant greenfield sites elsewhere, justified by the need to meet 5YLS considerations. The appeal site is no different. Landscape Character is addressed elsewhere, but the material harm alleged is not demonstrated, and even if it were would need to be assessed as part of the ‘planning balance’. SP policies have been revoked and are no longer material. (paras 7.21-7.33)

10.17 The agreed S106 package covers a range of measures and the provision of 15% affordable housing on site. There is an additional provision in the S106 requested by the Council, for a further 15% on site provision or a sum equivalent to a 15% off site provision. The Inspector will be asked to confirm in his report if he considers this additional request CIL Reg 122 compliant. The S106 includes a provision for it to be struck out if found not compliant. (paras 9.4-9.19)
Conclusions

10.18 The Council cannot demonstrate a 5YLS, and para 49 of the Framework is therefore engaged. The proposals represent sustainable development, to which there are material and significant benefits arising in the grant of permission. Development Plan policy is time expired and no material weight can be attached. Emerging policy has not reached the stage at which material weight can be attached. The only alleged harm is to landscape and visual impact and an erosion of rural edge character. The evidence of Mr Lewis addresses this and concludes any such harm arising is minimal.

10.19 In terms of the ‘planning balance’ I consider that the benefits of granting permission significantly outweigh any alleged harm, and I invite the Inspector to agree with me, and to recommend that the appeal be allowed.