



Department for  
Communities and  
Local Government

Our Ref: APP/B3410/W/15/3134848

Gladman Developments Ltd  
Gladman House  
Alexandria Way  
Congleton  
Cheshire  
CW12 1LB

18 November 2016

Dear Sir/Madam

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78  
APPEAL MADE BY GLADMAN DEVELOPMENTS LIMITED  
LAND OFF CRAYTHORNE ROAD, STRETTON, STAFFORDSHIRE  
APPLICATION REF: P/2014/00818**

1. I am directed by the Secretary of State to say that consideration has been given to the report of Karen L Ridge LLB (Hons) MTPL, who held a public local inquiry on 26-28 April and 4, 5, 10, 16 and 23 May 2016 into your client's appeal against the decision of East Staffordshire Borough Council to refuse planning permission for your client's application for outline planning permission for a mixed use development scheme comprising of up to 385 dwellings, provision of 1.69 hectares of land for a single form entry primary school and associated infrastructure, including details of access and all other matters reserved, in accordance with application ref: P/2014/00818, dated 25 June 2014.
2. On 28 October 2015, this appeal was recovered for the Secretary of State's determination, in pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act 1990, because the appeal involves a proposal for residential development of over 150 units on a site over 5 hectares, which would significantly impact on the Government's objective to secure a better balance between housing demand and supply and create high quality, sustainable, mixed and inclusive communities.

**Inspector's recommendation and summary of the decision**

3. The Inspector recommended that the appeal should be dismissed.
4. For the reasons given below, the Secretary of State agrees with the Inspector's conclusions, except where stated, and agrees with her recommendation. He has decided to dismiss the appeal and refuse outline planning permission. A copy of the Inspector's report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

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## **Matters arising since the close of the inquiry**

5. On 31 October 2016, the Council wrote to the Secretary of State regarding the Red House Farm court hearing (East Staffordshire BC v SSCLG & Barwood Strategic Land II LLP & Others, referred to at IR12.23), which took place in the High Court on 28 October 2016. Judgment has not yet been handed down on that case, but the Secretary of State does not consider that it is necessary to delay issuing the current decision on that basis.

## **Policy and statutory considerations**

6. In reaching his decision, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise.
7. In this case the development plan consists of the East Staffordshire Local Plan 2012-2031 (ESLP) which was adopted on 15 October 2015. It includes the Stretton Neighbourhood Plan (SNP) which was made on 1 February 2016. The Secretary of State considers that the development plan policies of most relevance to this case are those set out at IR4.2-4.4.
8. Other material considerations which the Secretary of State has taken into account include the National Planning Policy Framework ('the Framework') and associated planning guidance ('the Guidance').

## **Main issues**

9. The Secretary of State agrees with the Inspector that the main issues are those set out at IR10.2.

### *Conformity with the development plan*

10. For the reasons set out at IR10.4-10.19, the Secretary of State agrees with the Inspector at IR10.19 that the proposal is contrary to ESLP policies SP8, SP2, SP4 and one element of SP1, and is also contrary to SNP policy S1. He further agrees that policies SP8, SP2, SP4 and S1 are key strategic policies sitting at the heart of each of the development plans and are tasked with directing development to appropriate locations. Having regard to the nature and scale of the proposal and the strategic nature of the development plan policies breached, he agrees with the Inspector at IR10.20 that the proposal is not in accordance with the development plan as a whole.

### *The five-year housing land supply*

11. The Secretary of State has carefully considered whether the Council can demonstrate a five-year housing land supply. He notes that for the reasons given at IR10.23-10.25, parties are agreed that there is a five-year requirement of 3,574 houses when the 20% buffer is added, with any under-delivery still to be factored in (IR10.25).
12. For the reasons set out at IR10.27-10.35, he agrees with the Inspector at IR10.34 that the method used by the Council to count completions is sufficiently precise and robust and that the Council have provided a clear explanation as to how the figures are arrived at. He notes that the method used by the Council was the same method as that used in calculating completions before the Local Plan Inspector, and agrees with the Inspector at IR10.35 that there is no reasonable basis for changing the method of counting

completions at this point in time. He therefore agrees with the Inspector at IR10.36 in preferring the Council's figures on completions over those of the Appellant. He agrees that the Council's housing requirement figure is 4,235 in terms of the five-year housing land supply, equating to an annual requirement of 847 dwellings (IR10.36 and 10.84).

13. The Secretary of State agrees with the Inspector's analysis of the five-year housing land supply as set out at IR10.37-10.83. On 10 November 2016 the Secretary of State granted permission for the development on College Fields, Rolleston (IR10.82-10.83). He further agrees with the Inspector's conclusion at IR10.85 that there is a current housing land supply of some 5.5 years. Like the Inspector, the matters raised at IR10.86-10.89 do not change his view that the Council has a five-year housing land supply.

#### *The loss of best and most versatile (BMV) agricultural land*

14. Having considered paragraph 112 of the Framework, the Secretary of State considers that the loss of 23 hectares of BMV land constitutes a significant development, but that at present the development of this land is not demonstrated to be necessary (IR11.4-11.10). He agrees with the Inspector at IR11.10 that the development is contrary to ESLP policy SP1. The Secretary of State considers that moderate weight should be attached to the harm caused by the loss of BMV land in the circumstances of this case.

#### *Educational provision*

15. For the reasons given at IR11.16-11.27, the Secretary of State agrees with the Inspector at IR11.27 that the adjusted forecast need figure of 11.5 form entry (FE) is to be preferred. He has taken into account the Inspector's analysis at IR11.28-11.30 of the amount of provision already made or planned. He notes that the planning permission granted at Red House Farm has been challenged, and hence there is some uncertainty about the contribution towards the 1FE school proposed at Henhurst Ridge which would create a 2FE school. He therefore concludes that the planned and additional provision to be made in the plan period may be somewhat lower than the figure of 9.78FE which the Inspector cites in IR11.30. He agrees with the Inspector's conclusion at IR11.31 that during the plan period there is likely to be a need for additional primary school provision over and above that which is currently programmed, and that any additional provision which emanates from the appeal proposal, over and above the 0.5FE necessary to meet the requirements of the development itself, would go some way to meeting the deficit in numerical terms.
16. The Inspector's assessment of the location of the school is set out at IR11.32-11.36. The Secretary of State has taken into account the Inspector's view at IR11.34 that other sites could have been discounted which, had different parameters been applied, might be suitable for future provision, and which may also be on land that is not BMV land. Nonetheless, for the reasons given in IR11.32 and IR11.35, he agrees with the Inspector at IR11.36 that irrespective of any comparative exercise, the school site would be in a relatively accessible location on a site which is located in an area of growth between two strategic allocations. The Secretary of State has considered the likelihood of delivery of the school (IR11.37-11.40). He agrees with the Inspector at IR11.40 that following any transfer, planning permission would need to be obtained, and that it is only possible to acknowledge that there does not appear to be any unsurmountable objections, in planning terms, to the delivery of a 1FE primary school. He further agrees that there is no guarantee that an extension of a 1FE primary school to a 2FE school would be acceptable in planning terms (IR11.38).

17. Overall, for the reasons given at IR11.41-11.47, he agrees with the Inspector that a limited amount of weight should be accorded to this benefit. He has taken into account that the planned and additional provision to be made in the plan period may be somewhat lower than 9.78FE, but this does not change his conclusion that this benefit merits limited weight.

#### *Other matters*

18. The Secretary of State considers that the provision of market and affordable housing carries substantial weight in the planning balance, but agrees with the Inspector that this should be viewed in the context of the Inspector's finding that the Council can demonstrate a five-year supply of housing land (IR12.11). He agrees with the Inspector at IR12.12-12.13 that the proposal would result in construction jobs and other economic benefits over the lifetime of the development, and considers that this carries moderate weight in favour of the development.

19. The Secretary of State has taken into account the evidence which was put forward on highways matters and the Inspector's assessment at IR11.48-11.69. He agrees with the Inspector's assessment and agrees with his conclusions at IR11.70 that the designed access to the site is acceptable, and that the impacts of the development on the highways network could be satisfactorily addressed by the off-site highway works proposed and by the financial contribution towards the Burton Transport Strategy.

20. For the reasons given at IR11.71-11.82, the Secretary of State agrees with the Inspector that the assessment of minor adverse to negligible impact on the landscape is a reasonable one (IR11.75), and that there would be moderate harm to the visual amenity of pedestrian receptors along Craythorne Road (IR11.83). Overall he agrees with the Inspector at IR11.83 that having regard to the extent of the walking route involved and its proximity to the village and the likelihood of its use by villagers, limited weight should be attached to the harm to the landscape and visual amenity.

21. For the reasons set out in IR11.84-11.87, the Secretary of State agrees with the Inspector at IR11.87 that subject to the suggested conditions, an appropriate design solution could be achieved, which would not prejudice the school site coming forward and would not increase the risk of flooding off-site. For the reasons set out in IR11.88-11.90, he considers that the proposal does not raise material issues in respect of local services, coalescence of Rolleston and Stretton or community engagement. Like the Inspector he is satisfied that the effects of development would not prejudice ecological interests subject to the two suggested conditions (IR11.89).

22. For the reasons set out at IR12.9, the Secretary of State considers that securing access to the Bulwaulk, the provision of green infrastructure on the site and sustainable urban drainage do not carry weight in favour of the proposal.

#### **Planning conditions**

23. The Secretary of State has given consideration to the Inspector's analysis at IR9.1-9.6, the recommended conditions set out at the end of the IR and the reasons for them, and to national policy in paragraph 206 of the Framework and the relevant Guidance. He is satisfied that the conditions recommended by the Inspector comply with the policy test set out at paragraph 206 of the Framework. However, he does not consider that the imposition of these conditions would overcome his reasons for dismissing this appeal.

## **Planning obligations**

24. The Secretary of State has had regard to the Inspector's analysis at IR1.6-1.10 and IR9.7-9.23, the executed unilateral undertaking dated 10 June 2016, paragraphs 203-205 of the Framework, the Guidance and the Community Infrastructure Levy Regulations 2010, as amended. For the reasons given in IR9.7-9.13, he agrees with the Inspector's conclusion that the unilateral undertaking complies with Regulation 122 of the CIL Regulations and the tests at paragraph 204 of the Framework, is necessary to make the development acceptable in planning terms, is directly related to the development, and is fairly and reasonably related in scale and kind to the development. For the reasons set out at IR9.15-9.23 he agrees with the Inspector's recommendation at IR9.23 that the unilateral undertaking should be taken into account with clause 5.6 intact, and has proceeded on this basis.
25. The Secretary of State has taken into account the number of planning obligations which have been entered into on or after 6 April 2010 which provide for the funding or provision of a project or type of infrastructure for which an obligation has been proposed in relation to the appeal. For the reasons given by the Inspector at IR9.14, the Secretary of State concludes that the obligations are compliant with Regulations 123(3), as amended.
26. The Secretary of State has considered whether it is necessary for him to refer back to parties in respect of Regulation 123 prior to determining this appeal. However, the Secretary of State does not consider that the unilateral undertaking overcomes his reasons for deciding that the appeal should be dismissed, as set out in this decision letter. Accordingly, he does not consider it necessary for him to do so.

## **Planning balance and overall conclusion**

27. For the reasons given above, the Secretary of State considers that the appeal scheme is not in accordance with ESNP policies SP8, SP2, SP4 and one element of SP1, as well as being contrary to SNP policy S1. Having regard to the strategic nature of the development plan policies breached, he considers that it is not in accordance with the development plan overall. He has gone on to consider whether there are material considerations which indicate that the proposal should be determined other than in accordance with the development plan.
28. The Secretary of State has carefully considered the proposal against the relevant policies in the Framework taken as a whole. He considers that the provision of market and affordable housing carries substantial weight, but considers that this should be viewed in the context of the Inspector's finding that the Council can demonstrate a five-year supply of housing land. He considers that the economic benefits of the proposal carry moderate weight in favour of the development. He considers that the educational provision carries limited weight in favour of the development.
29. He considers that the loss of BMV land carries moderate weight against the proposal, and the harm to the landscape and visual amenity carries limited weight against the proposal.
30. Overall he considers that the material considerations do not indicate that the proposal should be determined other than in accordance with the development plan. The

Secretary of State therefore concludes that the appeal should be dismissed and outline planning permission refused.

### **Formal decision**

31. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. He hereby dismisses your client's appeal and refuses outline planning permission for a mixed use development scheme comprising of up to 385 dwellings, provision of 1.69 hectares of land for a single form entry primary school and associated infrastructure, including details of access and all other matters reserved, in accordance with application ref: P/2014/00818, dated 25 June 2014.

### **Right to challenge the decision**

32. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged. This must be done by making an application to the High Court within 6 weeks from the day after the date of this letter for leave to bring a statutory review under section 288 of the Town and Country Planning Act 1990.

33. A copy of this letter has been sent to East Staffordshire Borough Council and Save our Stretton, and notification has been sent to others who asked to be informed of the decision.

Yours faithfully

*Maria Stasiak*

Authorised by Secretary of State to sign in that behalf

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# Report to the Secretary of State for Communities and Local Government

by Karen L Ridge LLB (Hons) MTPL

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

Date: 16 August 2016

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Town and Country Planning Act 1990

Appeal by Gladman Developments Limited

East Staffordshire Borough Council

Inquiry held on 26-28 April & 5, 5, 10, 16 & 23 May 2016

Land off Craythorne Road, Stretton, Staffordshire

File reference: APP/B3410/W/15/3134848

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**File Ref: APP/B3410/W/15/3134848**

**Land off Craythorne Road, Stretton, Staffordshire**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
- The appeal is made by Gladman Developments Limited against the decision of East Staffordshire Borough Council.
- The application Ref. P/2014/00818, dated 25 June 2014, was refused by notice dated 23 July 2015.
- The development proposed is an '*Outline application for a mixed use development scheme comprising of up to 385 dwellings, provision of 1.69 hectares of land for a single form entry primary school and associated infrastructure, including details of access and all other matters reserved*'.

**Summary of Recommendation: The appeal be dismissed**

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**Background and Procedural Matters**

- 1.1 The Inquiry sat on 26, 27, 28 April 2016 and 4, 5, 10, 16 and 23 May 2016 with an accompanied inspection of the site and its surroundings taking place on 23 May 2016. Unaccompanied inspections of various other sites took place whilst the Inquiry was in progress.
- 1.2 The description of development set out above differs from that on the application form. It is taken from the refusal notice and was agreed between the parties. The agreed description is '*Outline application for a mixed use development comprising of up to 385 dwellings, provision of 1.69 ha of land for a single form entry primary school and associated infrastructure including details of access with all other matters reserved*'<sup>1</sup>.
- 1.3 This appeal was recovered on 28 October 2015 under section 79 and paragraph 3 of Schedule 6 of The Town and Country Planning Act 1990 by the Secretary of State because the appeal involves a proposal for residential development of over 150 units on a site over 5 hectares, which would significantly impact on the Government's objective to secure a better balance between housing demand and supply and create high quality, sustainable, mixed and inclusive communities<sup>2</sup>.
- 1.4 A local group known as 'Save our Stretton' (SOS) appeared at the Inquiry as a Rule 6 party. This group is made up of local residents who wished to object to the proposal.
- 1.5 A Planning Statement of Common Ground (SCG) was agreed between the Council and the Appellant. A series of position statements<sup>3</sup> were agreed between the Appellant and other statutory consultees. These included a Highways position statement with Highways England, a Highways position statement with Staffordshire County Council (SCC), as Highways Authority, and two education position statements with Staffordshire County Council, as local education authority. SOS were not involved in discussions with regard to any of the statements and are not a party to any of them.

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<sup>1</sup> This is the description used on the Council's decision notice (CD5.1) and it differs from the description on the application form.

<sup>2</sup> Recovery letter dated 28 October 2015.

<sup>3</sup> Whilst these are styled as statements of common ground they are not made between the main parties to the appeal and therefore it was agreed that they are more properly described as position statements.

- 1.6 A draft Unilateral Undertaking (the UU) made pursuant to section 106 of the Town and Country Planning Act 1990 (as amended) was placed before the Inquiry. Discussions in relation to the mechanics of the UU were ongoing throughout the Inquiry. At the end of the Inquiry the Appellant requested and was granted a further period to make certain agreed amendments to the UU and to have it executed. The executed UU has been received<sup>4</sup> and shall be considered in this report.
- 1.7 The UU makes promises in relation to the delivery of affordable housing, the payment of primary and secondary education contributions, a transport strategy contribution, a refuse contribution and the transfer of 1.6 hectares of land for a school site, as well as securing a Travel Plan and open space provision.
- 1.8 The Appellant does not dispute the necessity for the contributions but there remains one outstanding dispute about the drafting of the UU in terms of the release of individual plot owners from the covenants. I shall return to this later.
- 1.9 On the 11 May 2016 the Court of Appeal issued judgment<sup>5</sup> on the Secretary of State's appeal against a previous High Court judgment. This earlier judgment related to a challenge to the Secretary of State's Written Ministerial Statement of 28 November 2014 and his subsequent alterations to the Planning Practice Guidance (PPG) on planning obligations for affordable housing and social infrastructure contributions on some sites.
- 1.10 The Court of Appeal upheld the Secretary of State's appeal on all grounds and on 19 May 2016 new paragraphs<sup>6</sup> were added to the PPG reiterating the specific circumstances where the aforementioned contributions should not be sought. This change came about before the final day of the Inquiry but after oral evidence had been heard. It does not directly affect any of the issues in this case and touches on a peripheral finding in one very minor respect. It may affect the deliverability of one small site<sup>7</sup> of 10 units used to make up the 5 year housing land supply (5 YHLS). Given the nature and scale of the dispute between the main parties and the very minor contribution of this site I did not consider it necessary to refer back to the parties for comments but I shall refer to the change in my deliberations.

## **The Site and Surroundings**

- 2.1 The site location plan is at CD1.2. The revised Design and Access Statement (CD2.2) and the Landscape and Visual Impact Assessment (LVIA) (CD1.5) each provide some sense of the context in which the site is located.
- 2.2 The appeal site extends to 23.36 hectares and lies adjacent to housing on Craythorne Road in the village of Stretton which sits within the Trent River Valley. The surrounding landscape beyond Stretton is predominantly agricultural with Rolleston on Dove situated to the north and Burton upon Trent located to the south.

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<sup>4</sup> GDL28- certified copy UU dated 10 June 2016

<sup>5</sup> SSCLG v West Berkshire District Council and Reading Borough Council [2016] EWCA Civ 441

<sup>6</sup> Paragraph: 031 Reference ID: 23b-031-20160519

<sup>7</sup> Demontfort Way

- 2.3 The site is mostly agricultural land divided into three fields by existing vegetation. It comprises mostly grade 2 best and most versatile land.<sup>8</sup> A small area of the site, in the south-western corner, previously formed part of the former Craythorne Golf course. The site is well contained with Craythorne Road to the east and north, existing residential properties to the south and mature hedgerows to the west.

### **The Proposal and Planning History**

- 3.1 The appeal relates to an outline application with all matters, other than access, reserved for future consideration. The outline planning application which led to this appeal was originally described as '*residential development of the site to provide up to 425 dwellings and associated infrastructure*'.<sup>9</sup> Following negotiations between the parties the application was revised to include a parcel of land to be designated for an educational use which was to be transferred to the County Council for the purposes of provision of a primary school. The number of dwellings was adjusted to 'up to 385 dwellings'. It is this revised application which was refused planning permission by the Council on 23 July 2015<sup>10</sup>. I am satisfied that the revised application was subject to proper consultation procedures.
- 3.2 The application was supported by a Development Framework Plan, Design and Access Statement, Landscape and Visual Impact Assessment, Transport Assessment and Travel Plan, Ecological Appraisal, Arboricultural Assessment, Flood Risk Assessment, Noise Assessment, Archaeological Assessment, Foul Drainage Analysis and an Air Quality Assessment<sup>11</sup>.
- 3.3 During the Inquiry there were discussions between the Council, the Appellant and the Inspector as to the nature of the planning permission sought. It was agreed by the Council and Appellant that the application was a mixed use development incorporating a residential use and the change of use of a parcel of land for educational purposes. It was further agreed that any permission resulting from this appeal would not result in an outline planning permission for a primary school building which would have to be the subject of a further application.
- 3.4 The revised proposal is represented by details on the site location plan drawing 2012-016-005 (dated 29.11.13)<sup>12</sup> and the site access arrangements plan<sup>13</sup> 1324/30 revision C dated March 2014. The current proposal involves up to 385 dwellings of which 33% would be affordable homes with a proportion of the affordable homes to be provided off-site through a financial contribution. The proposal also includes highways and associated infrastructure works, with agreed off-site highway works intended to mitigate the effects of the development. In addition, 6.36 hectares of public open space would be provided on the site. A network of attenuation basins

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<sup>8</sup> Agricultural Land Quality Report of Land Research Associates [CD8.1] and proof of evidence of Mr Kernon

<sup>9</sup> Core document CD 1.1

<sup>10</sup> Notice of refusal Core document CD 5.1

<sup>11</sup> Core documents CD 1.3 through to CD 1.15

<sup>12</sup> Core document CD 1.2

<sup>13</sup> Core document CD 8.4.6

to control surface water drainage of the site would deliver what the parties agree is a 'betterment' scheme, as well as associated ecological benefits<sup>14</sup>.

- 3.5 Vehicular access to the site would be from two points off Craythorne Road referred to as the southern and northern access points and depicted on the site access arrangements plan. A proposed internal new road through the appeal site is intended to be the main vehicular linkage between the southern end of Craythorne Road and its northern end. This would effectively mean that the existing length of Craythorne Road, adjacent to the eastern site boundary, would become access only for use by the existing residents on Craythorne Road.
- 3.6 The planning history of the site is limited. In relation to that portion of the site which formerly comprised the golf course, there were several planning permissions granted in the 1970s and 1980s in relation to the extension and development of additional sports facilities at the golf club. In relation to the wider site there was an application for residential development on 21 hectares of land in 1989 which was refused.

## Planning Policy

- 4.1 The development plan, for the purposes of section 38(6) of the Planning and Compulsory Purchase Act 2004, includes The East Staffordshire Local Plan<sup>15</sup> 2012-2031 (ESLP) which was adopted on 15 October 2015. It also includes the Stretton Neighbourhood Plan<sup>16</sup> (SNP) which was made on 1 February 2016. Both plans are recently adopted or made and post-date the National Planning Policy Framework (the Framework).
- 4.2 The ESLP strategic policies which are most relevant<sup>17</sup> are as follows:
- ESLP policy SP1: confirms the approach to applying the presumption in favour of sustainable development and contains 15 principles against which development proposals will be assessed.
  - ESLP policy SP2: sets out a settlement hierarchy and confirms that development will be directed towards the most sustainable locations in accordance with the hierarchy. Burton upon Trent is defined as a main town at the top of the hierarchy.
  - ESLP policy SP3: concerns the provision of homes and jobs throughout the plan period and indicates an average housing rate provision of 466 dwellings per annum for the first 6 years of the plan and 682 dwellings per annum for 13 years thereafter.
  - ESLP policy SP4: elucidates upon the distribution of housing growth 2012-2031 and contains figures representing the development requirement in various locations.

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<sup>14</sup> Planning Statement of Common Ground.

<sup>15</sup> Core document CD 7.1

<sup>16</sup> Core document CD 7.4

<sup>17</sup> As agreed by the parties in the Planning Statement of Common Ground (SCG). Please note that whilst the SCG refers to ESLP policies NP1 and IMR2 the parties confirmed at the opening of the Inquiry that these policies have been revoked.

- ESLP policy SP6: sets out provisions to manage the release of housing and employment land.
- ESLP policy SP8: gives advice regarding development outside settlement boundaries and confirms that generally such development will not be permitted unless it falls within one of the 9 listed categories.
- ESLP policy SP10: contains expectations with regard to the delivery of education infrastructure.
- ESLP policy SP16: is concerned with meeting housing needs in terms of providing appropriate dwellings or a mix of dwellings.
- ESLP policy SP17: is an affordable housing policy setting out aspirations of up to 40% affordable housing on schemes of 4 or more dwellings or sites more than 0.14 hectares, subject to viability considerations.
- ESLP policy SP20: sets out the town and local centres hierarchy.
- ESLP policy SP23: is a green infrastructure policy which seeks to safeguard green infrastructure corridors and encourage development to contribute towards these corridors.
- ESLP policy SP24: emphasises the importance of high quality design.
- ESLP policy SP32: concerns the provision and protection of outdoor open space and sport facilities and sets out expectations in terms of contributions from developers.
- ESLP policy SP35: sets out a commitment to accessibility and sustainable transport.
- ESLP policy DP1: is a detailed design policy which contains the factors the Council will take into account when assessing the design of proposals.

4.3 The Stretton Neighbourhood Plan<sup>18</sup> (SNP) has been examined twice. The first examination resulted in the identification of some issues with the Plan. The second examination resulted in a recommendation that, subject to some modifications, the plan was legally compliant. Following a referendum the Council resolved that the plan was 'made'.

4.4 The most relevant SNP policies are as follows:

- SNP policy S1: provides that new development, which preserves and enhances the openness of the countryside, will only be permitted for certain specified uses.
- SNP policy S2: seeks to protect landscape character.

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<sup>18</sup> Core document CD 7.4

- SNP policy S3: promotes the protection and enhancement of local wildlife.
  - SNP policy S6: specifies that, wherever feasible, development proposals will be expected to incorporate sustainable drainage systems.
  - SNP policy S7: seeks to protect archaeological interests in Stretton.
  - SNP policy S11: protects existing outdoor sports, recreation facilities and open space.
  - SNP policy S14: promotes the development of new high speed broadband infrastructure to serve the Parish.
- 4.5 Relevant national policy is to be found in the National Planning Policy Framework (the Framework) as well as national Planning Policy Guidance (PPG).
- 4.6 The Council rely on ESLP policies S1 and SP8 and policy S1 of the SNP and national guidance within the Framework in support of their continued opposition to the proposal.
- 4.7 Save our Stretton support the Council's case but also raise objections with regard to the effect of the proposal on highway safety as well as raising concerns about landscape character, ecology and flooding and the effects upon infrastructure.

### **Matters Agreed Between the Council and Appellants<sup>19</sup>**

- 5.1 It is agreed between the two main parties that housing supply policies in Neighbourhood Plans are not exempt from the effects of paragraphs 49 and 14 of the Framework<sup>20</sup>.

#### *Sustainable development*

- 5.2 ESLP policy SP2 directs development to the most sustainable locations in accordance with the settlement hierarchy. For the purposes of this hierarchy it is agreed that the settlement of Stretton forms part of the Burton upon Trent area. It is further agreed that the appeal site lies outside the development boundary of Stretton, as depicted on the proposals map and it is therefore in open countryside.
- 5.3 The site lies outside, but adjacent to, the existing built up area of Stretton. The parties agree that the site is well linked by sustainable modes of transport and/or by foot to the existing services within Stretton. The site is considered sustainable in terms of accessibility to key services and facilities by new residents.
- 5.4 It is further agreed that the proposal would generate economic benefits in terms of construction and housing growth and it would accord with the

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<sup>19</sup> Taken from the Planning Statement of Common Ground. I have set out the key matters which are agreed, it is not an exhaustive list given that there are a series of other agreements about less contentious matters.

<sup>20</sup> In accordance with the judgment in *Woodcock Holdings Limited v Secretary of State* [2015]EWHC/117 (Admin) at CD 11.1

social role of sustainability in terms of the provision of market and affordable housing.

*Housing land supply*

- 5.5 The housing requirement for East Staffordshire over the plan period is agreed to be 11,648 dwellings.
- 5.6 The Council and Appellant agree that the calculation of the 5 YHLS should be carried out using the same methodology as that accepted by the Inspector conducting the recent examination into the ESLP (the Local Plan Inspector).
- 5.7 It is further agreed that, in principle, affordable housing policies have been met by a combination of the provision of on-site affordable housing (13% of the houses in the total scheme) and a commuted sum to provide off-site provision equivalent to the remaining 20% of the total scheme housing. Both parties agree that the provision of affordable housing should attract substantial weight in support of the proposal in the overall planning balance.

*Education*

- 5.8 It is agreed that there is an existing shortfall in primary school places in the Burton upon Trent area, irrespective of the development. The parties agree that a new 0.5 FE primary school would be necessary to meet the needs generated by the appeal proposal and that a financial contribution towards secondary school provision would also be required.

**Matters in Dispute between the Council and Appellant**

- 5.9 Whether or not the Council can demonstrate a five year supply of deliverable housing sites.
- 5.10 Whether the proposal benefits from the presumption in favour of sustainable development in line with paragraphs 14 and 49 of the Framework.
- 5.11 Whether the planning balance exercise, as required by paragraph 14 of the Framework, has been carried out correctly and whether appropriate weight has been given to the benefits and dis-benefits of the scheme.

**Education Matters Agreed Between the Appellant and SCC**

- 5.12 There are two position statements<sup>21</sup> made between the Appellant and SCC as the local education authority. The Council (ESBC) is not a party to these agreements and it does not follow that the Council necessarily agrees with all of the contents in the position statements. There are key disputes on education matters which I shall come to.
- 5.13 The Appellant and SCC have reached agreement on the following matters. The appeal proposal is projected to generate an additional 81 primary aged pupils. The existing schools are projected to be full and it has been agreed that they could not accommodate the additional demand from the appeal scheme. Although it was recognised that a 0.5 FE school would mitigate the impact of up to 385 houses, it was agreed between the Appellant and SCC

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<sup>21</sup> Education Statement of Common Ground dated March 2016 and Addendum Education Statement of Common Ground dated April 2016.

that this would '*not be an efficient use of land in an urban area where there is a greater shortage of places. A 0.5 FE is not cost effective and does not offer the best education opportunities for children.*'<sup>22</sup>

- 5.14 The first position statement sets out in detail the various studies which were commissioned to look at current and future school capacity. A series of findings are recorded in the position statement at 2.4. I shall examine this matter in more detail later on.
- 5.15 The two reports concluded that the demand for secondary places would begin to exceed supply from 2015 and this trend will continue to rise to a deficit equivalent to the need for two additional secondary schools by 2030/31. Half of this demand can be met by the expansion of existing schools, leaving a requirement for one additional secondary school which it is indicated should be to the west of Burton upon Trent. A new secondary school is currently subject to a planning application at Branston Road.
- 5.16 The second position statement was prepared in response to the education evidence submitted on behalf of the Council by Mrs Anna Miller. The second position statement seeks to correct what the SCC (as local education authority) and the Appellant believe are misapprehensions on Mrs Miller's part in terms of her interpretation of the various education reports. Again I shall examine these matters in more detail later.
- 5.17 The provision of 1.69 hectares of land for a development of a single FE primary school and a financial contribution towards primary school provision was agreed between the Appellant and SCC. It was further agreed that there is potential to increase school capacity in the future to 2FE which could accommodate 420 primary school aged children.
- 5.18 It was agreed that there is an outstanding unmet need for new primary school places in East Staffordshire. This need is an existing issue and is not created as a result of the proposed appeal scheme, although this scheme would result in additional need over and above this baseline position. It was agreed that the provision of a new primary school is urgently required now within the wider Burton upon Trent area.
- 5.19 It was further agreed that the appeal site has been identified as one of five sites within the wider Burton area which is considered suitable to make primary school provision. Both parties agree that the 1.69 hectare site is large enough to accommodate a 2 FE primary school if the Education Authority decides it is appropriate to develop a school of this size.
- 5.20 It was agreed that a primary education contribution of £634,560 and the provision of a 1.69 hectare site would be provided by the Appellant to mitigate the effects of 385 houses on the site. It was further agreed that a development up to 385 dwellings would necessitate a financial contribution towards additional secondary and post-16 places in the order of £1,395,625<sup>23</sup>.

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<sup>22</sup> 1.2.4 Education SCG.

<sup>23</sup> Calculated as a payment of £3,625 per dwelling, Education position statement paragraph 4.1.2

## **Highways Matters Agreed Between the Appellant and SCC**

- 5.21 The first highways statement is between the Appellant and SCC in its capacity as Highways Authority. It sets out the highways/transportation agreements reached regarding the local highways network following a Transport Assessment<sup>24</sup> (TA) which was submitted with the planning application. The Borough Council (ESBC) is not party to the highways position statements, after having raised objections initially on the advice of SCC. Following further modelling and clarifications the Council, like SCC, has now expressed itself satisfied. However, SOS maintains its objection in relation to highways matters and I shall return to this matter.
- 5.22 The position statement records that the TA is representative of the existing arrangements for the local highway network, pedestrian and cycle facilities and public transport provision. The study junctions which were the subject of the TA were also agreed.
- 5.23 The site access arrangements, including modifications to Craythorne Road, were agreed and were subject to an independent Stage 1 Road Safety Audit which was also agreed. A scheme to provide passing bays to the north of the site on Craythorne Road was further agreed.
- 5.24 It is also agreed that the Appellant would make a contribution of £830 per dwelling<sup>25</sup> towards the Burton Transport Strategy<sup>26</sup> which is aimed at securing improvements along the main routes through Stretton. This contribution would be ring-fenced for use in Stretton and secured through the UU. The contribution fully mitigates the traffic impact of the development on the local highway network in the eyes of SCC.
- 5.25 In addition the Appellant submitted a Travel Plan<sup>27</sup> proposal setting out objectives in terms of traffic reduction, widening travel choice and improving accessibility of the site by sustainable modes of transport. This is also agreed with SCC.

## **Highways Matters Agreed Between the Appellant and Highways England**

- 5.26 A second position statement was made between the Appellant and Highways England relating to the strategic highway network which is the responsibility of Highways England. Again the Borough Council were not involved in this statement but do not make any objections to it. SOS maintains its highway objections and do not accept the conclusions in the position statement.
- 5.27 Highways England expressed itself satisfied with the effect of the proposal in terms of two study junctions which form part of the strategic highway network. The modelling in terms of assessment periods, assessment year, base traffic flows, distribution and levels of generated traffic and committed development were all agreed.
- 5.28 Of the two junctions modelled, it was agreed that mitigation works were necessary at the Claymills Lane/A5121 Derby Road/A38 northbound on/off

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<sup>24</sup> Reference 1324/2/C at CD 1.6

<sup>25</sup> Totalling £319,550 for 385 dwellings.

<sup>26</sup> Inquiry document 3P.7.

<sup>27</sup> TP report reference 1324/3/A, CD 1.7.

slip road junction. A mitigation scheme<sup>28</sup> appended to the position statement was also agreed. This scheme was the subject of a Stage 1 Road Safety Audit, the findings of which were also agreed to be satisfactory in that the issues raised could be dealt with at design stage.

5.29 It is envisaged that the off-site highway works will be secured via a s278 Highways Act Agreement as required by a Grampian condition<sup>29</sup>.

### **The Case for the Appellant**

- 6.1 This summary contains all material points in relation to the Appellant's case. It is taken from the submissions made and evidence given on behalf of the Appellant and from other documents submitted to the Inquiry.
- 6.2 The main issues and reasons for refusal will be addressed as follows:
- whether the proposal is in an acceptable location having particular regard to development plan policies, the presumption in favour of sustainable development, the 5 YHLS and the loss of BMV agricultural land,
  - the education benefits,
  - the additional concerns raised by Save Our Stretton,
  - the planning obligations,
  - the planning balance.
- 6.3 The ESLP incorporates the Planning Inspectorate's model policy at Principle 1 which embodies the Framework's Presumption in Favour of Sustainable Development. The inclusion of this model policy reflects the statutory obligation upon decision-makers to exercise their functions with the objective of contributing to the achievement of sustainable development. Moreover, Principle 1 of the ESLP is explained as reflecting the Government's view that paragraphs 18-219 of the Framework constitute what sustainable development means in practice for the planning system.
- 6.4 ESLP SP1 expresses the LP approach to sustainable development and indicates that the Council will assess whether a development proposal is as sustainable as possible against 15 identified criteria. None of the reasons for refusal allege that the appeal scheme conflicts with either ESLP Principle 1 or SP1. ESLP SP2 (Settlement Hierarchy) states that development will be directed towards the most sustainable locations in accordance with the settlement hierarchy. It is a matter of agreement between the Appellant and the Council that, for the purpose of the settlement hierarchy and decision-making, Stretton forms part of the Burton upon Trent area, albeit that the site is outside the settlement boundary.
- 6.5 ESLP SP3 identifies a minimum housing requirement of 11,648 dwellings to be delivered over the plan period. Of particular significance is that the

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<sup>28</sup> Drawing no 1324/40/A at appendix 3 to the position statement.

<sup>29</sup> Agreed condition 12.

housing trajectory for the local plan had to be split in order for it to be considered sound by the Local Plan Inspector. He recognised that it was “crucial to the soundness of the Plan” that a 5YHLS can be demonstrated at all times<sup>30</sup>. The only means by which the Council were able to demonstrate this at the time of the Examination was via a stepped trajectory and the Local Plan Inspector accepted this approach as being “pragmatic”<sup>31</sup>. Consequently the Council’s minimum annual housing requirement is 466 dwellings for the years 2012-2018 and 682 for the remainder of the plan period. It is also significant to record that at the time of the Examination the Council was only just able to demonstrate a 5YHLS (5.2 years) on the basis of this stepped trajectory<sup>32</sup>.

- 6.6 ESPLP SP4 (Distribution of Housing Growth 2012-2031) allocates specific sites to meet minimum housing requirement for the Borough over the plan period. It also identifies a further minimum delivery requirement of 1,359 dwellings to be met through non-allocated (i.e. windfall) provision within the settlement boundaries or in accordance with made neighbourhood plans. This non-allocated development requirement assigned to Burton is stated as being delivered within settlement boundaries or in accordance with made neighbourhood plans. However, the explanatory text to this policy recognises that “*The majority of sites contributing to the development requirement will be brownfield. Greenfield may be acceptable in accordance with Strategic Policy 1 and Detailed Policy 3.*”<sup>33</sup>
- 6.7 ESPLP SP8 sets out what types of development will be permitted outside settlement boundaries. This includes the provision of facilities for the use of the general public or local community; close to an existing settlement which is reasonably accessible on foot, by bicycle or by public transport; or infrastructure development where an overriding need for development to be located in the countryside can be demonstrated. Paragraph 3.68 of the explanatory text indicates that the definition of infrastructure can include education facilities. Whilst the residential element of the appeal proposal conflicts with this policy, a school would not. Consequently, there is some support from this policy to the provision of the land for a school.
- 6.8 The SNP was made on 1 February 2016. The appeal proposals conflict with SNP policy S1 (Development in the Countryside) because the site is located within the countryside identified on Map 3 as “identified areas”. The SNP replicates the settlement boundaries as found in the ESPLP and consequently serves exactly the same restrictive purpose. The appeal proposals do not conflict with SNP policy S2 (Protecting Landscape Character). The site is not the subject of any landscape designation and policy S2 is not restrictive of development per se but addresses design issues.
- 6.9 The development plan is the starting point for the determination of this appeal and consideration should be given to whether or not the development proposal accords with the development plan when assessed

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<sup>30</sup> CD 7.2 paras 83-90.

<sup>31</sup> CD 7.2 para 111.

<sup>32</sup> CD7.3 para 105.

<sup>33</sup> CD 7.1, para 3.37.

as a whole. As with all development plan documents there may be some points in the plan supportive of the proposal and others pointing in the opposite direction. The need for this holistic approach when assessing the proposals against the development plan is expressly recognised in Principle 1 and SP1 of the ESLP, the explanatory text of which emphasizes the importance of reading the Framework and its practical principles of sustainable development as a whole<sup>34</sup>.

- 6.10 The Appellant has expressly recognised that the appeal proposals conflict with ESLP policy SP8 because the proposal (excluding the provision of the land for a school) is for residential development in the open countryside. This conflict is because of its location outside the settlement boundary for Burton upon Trent as identified in both the ESLP and the SNP. It is also recognised that the site is not identified in ESLP SP4 or the SNP as an allocation for housing. In view of the presumption in favour of sustainable development and irrespective of the 5YHLS issue, conflict with some development plan policies is not the end of the matter.

*Presumption in favour of sustainable development*

- 6.11 The ESLP and SNP presumption in favour of sustainable development is necessarily consistent with national policy as embodied in the Framework. Paragraph 49 of the Framework is engaged in this appeal. This requires residential schemes to be considered in the context of the presumption. It also indicates that relevant policies for the supply of housing should not be considered up-to-date if the Council cannot demonstrate a 5YHLS of deliverable sites.
- 6.12 Assessment of the policies to be considered relevant to the supply of housing and the presumption in favour of sustainable development has been considered in three recent court cases<sup>35</sup>. None of these cases dislodge the statutory presumption in section 38(6) but they do make clear that the presumption in favour of sustainable development and the Framework are material considerations of considerable weight in their own right, albeit that ultimately the weighting to be applied is for the decision-maker.
- 6.13 Consequently, all applications for residential development should be considered in the context of sustainable development, regardless of the 5YHLS and/or whether relevant policies can be considered up to date. In other words conflict with some development plan policies (even in a recently adopted plan) is not necessarily of itself sufficient to refuse planning permission without further consideration as to whether the proposal represents sustainable development. Moreover, this approach is effectively endorsed in Principle 1 and SP1 of the ESLP in any event. This is the approach taken in many other recent appeals<sup>36</sup>.

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<sup>34</sup> CD 7.1 para 3.2.

<sup>35</sup> *Suffolk Coastal District Council v Hopkins Homes Ltd & SSCLG*; and *Richborough Estates v Cheshire East BC & SSCLG* [2016] EWCA Civ 168.

*Wychavon v SSCLG & Crown Developments* [2016] EWHC 592 [GDL 11].

*Cheshire East v SSCLG & Renew Land Developments Ltd* [2016] EWHC 571 (Admin).

<sup>36</sup> Long Copse Lane, Westbourne appeal (APP/L3815/W/15/3003656) [CD 10.12],

- 6.14 Of particular significance is that exactly the same approach was taken by the Inspector in the very recent *Red House Farm* appeal<sup>37</sup> which is a material consideration of significant weight. It is directly comparable in a number of respects. In that case the Inspector concluded that the proposal would be contrary to Strategic policies 2, 4 and 8 because the site was “*next to, but outside, the settlement boundary for Burton upon Trent*” but the Framework was a material consideration and the appeal scheme needed to be considered in the context of the presumption in favour of sustainable development. This approach is commended as wholly appropriate in the instant appeal.

*The 5 year housing land supply*

- 6.15 Simply because the ESLP was adopted last October does not negate or otherwise excuse the Council from demonstrating a 5YHLS. It is not about adoption but delivery. There has now been a year of delivery since the HLS evidence was considered by the LP Inspector. The Appellant has concerns over the Council's claimed completions because it does not appear to be the product of any robust methodology and the figures are significantly different from the national returns to DCLG.
- 6.16 There are two fundamental differences between the Council and Appellant in terms of the calculation of a 5YHLS. The first relates to the method of counting completions and the second relates to the deliverability of identified sites.
- 6.17 Completions: The Council's claimed completions data is not precise, not robust and neither does it promote transparency and democratic accountability. These figures are a fundamental component of calculating the 5YHLS because they purport to demonstrate past delivery against the requirement trajectory.
- 6.18 These concerns are underlined by the past performance of the Council. The Council's own figures following the publication of its 31 March 2016 HLS Statement<sup>38</sup> demonstrate that it has failed to meet its annual trajectory every year since the start of the plan period despite the reduced target of 466 dwellings per annum (dpa) for these four years. The suggestion from the Council that the ‘direction of travel’ is positive represents an example of unjustifiable optimism ignoring past experience.
- 6.19 Deliverability of sites: independent of the Appellant's concerns over the completions figure the Council's claimed supply does not withstand scrutiny. The deliverability of the sites making up the claimed supply has been assessed in accordance with the approach to footnote 11 of paragraph 47 of the Framework and the relevant guidance in the PPG. The assessment of housing land supply is a matter of planning judgment concerned with “deliverability”, which is an assessment of the likelihood that housing will be delivered in the five year period having regard to a number of factors.

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<sup>37</sup> (APP/B3410/W/16/3142808) [GDL 16].

<sup>38</sup> See Table at para 3.5 of Melissa Kurihara Rebuttal PoE.

6.20 On the Appellant's evidence the best case is that there is a 3.9 year HLS if the Appellant's counting methodology is accepted. Using the Council's 'counting' methodology the supply would be 4.2 years. The difference between the Council and Appellant in terms of the deliverability of sites in the identified supply is 1,286 units. Even if the Council's counting methodology is applied, if half of the 1,286 units in dispute are found not to be deliverable then there is no 5 YHLS.

6.21 The Appellant has produced tables setting out its case in relation to the sites in dispute with regard to deliverability. These tables are to be found on pages 12 to 21 of the Appellant's Closing Submissions document. The sites will be examined in more detail later in this report.

*Best and most versatile agricultural land*

6.22 In line with ESLP Principle 1 and SP1 the appeal proposal also needs to be assessed against the presumption in favour of sustainable development applying the 15 listed criteria. The appeal proposal is consistent with all of those 15 listed criteria, save one, which seeks to safeguard the long term capability of best and most versatile (BMV) agricultural land.

6.23 In the context of ESLP policy SP8 (Development Outside Settlement Boundaries) the provision of facilities and infrastructure will be judged against a number of criteria of which the need to maintain land of high agricultural value for food production is but one of eight. However, the loss of BMV land is material to a consideration of whether the proposal amounts to sustainable development since it is also a factor identified in paragraph 112 of the Framework. It is important to note that paragraph 112 is within Chapter 11 of the Framework (Conserving and enhancing the natural environment). BMV is not expressed as being a 'showstopper' but something that needs to be taken into account and policies SP1 and SP8 reflect this.

6.24 Through the allocations at Guinevere Avenue, Upper Outwood Farm and Branston Locks<sup>39</sup>, the Council has already effectively acknowledged that the need for sustainably located housing focussed on Burton necessarily impacts upon the existence of BMV land. The ESLP sustainability appraisal concluded that focussing development on Burton and Uttoxeter represented the most sustainable use of land<sup>40</sup>.

6.25 Furthermore the SHLAA does not identify the existence of BMV land as a constraint upon development of the appeal site<sup>41</sup>. This is unsurprising in view of the urban locked nature of the site and the fact that it is in multiple ownership. This inconsistency in the Council's approach to BMV is further evident from the applications at Lawns Farm and Glenville Farm<sup>42</sup>.

6.26 The impact upon BMV agricultural land is a matter of fact. The weight to be attached to this impact will necessarily be a matter of judgment. However, the weight to be afforded to this factor in the overall planning balance

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<sup>39</sup> Compare LRA Appendix (attached to PoE of TK) with ESLP Inset map (JVH App.4).

<sup>40</sup> CD 12.12, paras 7.106 and p.124.

<sup>41</sup> CD 9.2.

<sup>42</sup> See committee reports at ESBC 14 and ESBC 15

should be influenced by the approach that the Council has historically taken to BMV both in the context of this application and in its strategic policy of focussing residential development on Burton upon Trent.

### *Education*

- 6.27 The appeal proposals include financial contributions of £1,648.20 per dwelling for primary education purposes, £3,625 per dwelling for secondary education purposes and 1.69 hectares of land to be transferred to SCC on the commencement of development. The Primary School land provision followed consultations with SCC as the Local Education Authority. For the avoidance of any doubt the contribution made by the appeal scheme is considered by the Local Education Authority to be a benefit.<sup>43</sup> The provision is over and above that required to mitigate the impacts of the appeal proposal in isolation.
- 6.28 Furthermore, in terms of location, the Local Education Authority described it as "ideal". The Appellant contends that this is unsurprising in view of the AMEC assessment of the location as having "*the greatest potential to provide a primary school between two strategic allocations and would appreciably improve the coverage in this area of the town.*"<sup>44</sup> In its capacity as the statutory education authority SCC has provided two joint Position Statements in which they confirm the need for education infrastructure.
- 6.29 Need: The Cambridge Education Report<sup>45</sup> produced on behalf of both SCC and ESBC was published only a week after the Council's 'Infrastructure Delivery Plan' ('IDP'), the latter being a high level desk based study that was not specific to education. It is clear that the authors of the Cambridge Education Report had included the schools in Table 1 of the evidence of Mrs Miller as part of the baseline.<sup>46</sup> Their conclusion is a need for 9.0 FE primary schools in the longer term, which equates to a total of 11.4 FE when a 5% surplus is factored in.
- 6.30 The IDP<sup>47</sup> was a desk based study commissioned by the Council. There appears to be no indication that the Council queried the difference between the plan period requirements for infrastructure. Irrespective of those matters the Council agrees on the need for primary school infrastructure<sup>48</sup>.
- 6.31 The provision of land for education purposes contributes beneficially to the planning balance. Paragraph 72 of the Framework indicates that the Government "attaches great importance" to ensuring sufficient schools are available and it is submitted that this is a consideration which attracts great weight<sup>49</sup>.

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<sup>43</sup> Paragraph 1.2.4 SCC Education Position Statement

<sup>44</sup> CD 12.2 (Appendix C – Land to the rear of Bitham Lane and Craythorne Road).

<sup>45</sup> CD 12.1

<sup>46</sup> CD 12.1, p.19

<sup>47</sup> Anna Miller appendix B

<sup>48</sup> Planning Statement of Common Ground paragraph 6.7.1

<sup>49</sup> See letter from Brandon Lewis at [GDL 13]. Also [CD 10.15] (*Bideford SoS & IR – APP/W1145/A/2228355 & 8356*).

*The concerns of 'Save our Stretton'*

- 6.32 The principal concerns of SOS relate to the highway impacts of the proposed scheme. It is important to note that the Appellant's highways expert commenced initial discussions about the appeal scheme with SCC and Highways England in November 2012, when the Transport Assessment scoping report (TA) was issued. Both SCC and Highways England requested that the Burton SATURN model was used to assess the traffic impact of the development. The culmination of this process was that the TA parameters and methodology were agreed.
- 6.33 Despite the concerns raised by SOS both SCC and Highways England critically reviewed all of the information within the TA report including:
- TA study network
  - Accident data
  - Traffic count data
  - Trip generation rates
  - Traffic distributions
  - The modelling software (eg SATURN and PICADY<sup>50</sup>)
  - Traffic Impact (requirement for detailed modelling)
  - Modelling input parameters
  - Modelling results
- 6.34 The Appellant's highways expert, Mr Jackson, gave evidence to the Inquiry and confirmed that during the pre-determination process both SCC and Highways England requested additional information and clarification. Their respective objections were only removed once they were satisfied that any effects of the proposals could be satisfactorily addressed.
- 6.35 The concerns over the site access arrangements, as raised by SOS, are not shared by SCC. The Highways position statement with SCC confirms the acceptability of the proposals<sup>51</sup>. Concern was raised by SOS over the southern access (SJ1A) which creates a small cul-de-sac with a turning head and the possible impacts arising from the school. Mr Jackson considers it unlikely that this will provide a major drop-off area for parents<sup>52</sup>. Nevertheless, the highway authority may seek to introduce waiting restrictions in this location if it is considered that parents may use this to park their vehicles during drop-off and pick up times, albeit that they are content with the proposed design.
- 6.36 The TA includes PICADY modelling of the southern and northern accesses (Tables 5 & 6 of TA report 1324/2/C<sup>53</sup>). The PICADY results predict that both junctions will operate with very high levels of spare capacity in the AM & PM peak hours and this is agreed with SCC. Modelling of the small cul-de-sac has not been undertaken as it only serves two properties and will clearly not have capacity issues.

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<sup>50</sup> Which models priority controlled junctions.

<sup>51</sup> Drawing 1324/30 Rev C

<sup>52</sup> Confirmed in Examination in Chief and Cross-Examination

<sup>53</sup> CD 1.6

- 6.37 Whilst SOS has questioned the sustainability credentials of the site in a wider context the accessibility credentials of the site are unimpeachable. This is manifestly clear from the TA, the Travel Plan, the evidence of Mr Jackson and the Planning SCG. In addition to the road improvements to Craythorne Road and Bitham Lane, there is a good range of amenities within walking distance of the appeal site. Stretton and Burton are within cycling distance and there are existing bus stops on Bitham Lane and the railway station is within 3.5km of the site.
- 6.38 The other traffic impacts over which SOS have raised concerns are being addressed to the satisfaction of both SCC and Highways England. Following the work undertaken as part of the TA and TAS reports it is agreed with SCC that the Appellant will make a financial contribution of £319,550 towards the Burton Transport Strategy which would fully mitigate the traffic impact of the appeal scheme. This contribution would be targeted at the Stretton ward and includes:
- Personalised Travel Planning across the ward
  - Increased bus services serving the ward
  - Public transport information marketing across the ward
  - Improving walking and cycling connections in the ward
  - A contribution towards the traffic management along Bitham Lane, Bridge Street, Church Road and Claymills Road.
- 6.39 The computer modelling identified a need for a mitigation scheme at the A38/A5121/Claymills Road junction (SJ5). A scheme was worked up and has been agreed with Highways England which mitigates the appeal development traffic impact on the strategic highway network<sup>54</sup>.
- 6.40 Although SOS has raised objections to the impact on the character and appearance of the area, it is noted that the site is not subject to any landscape designation. SOS did question the approach taken by the authors of the LVIA<sup>55</sup> and these concerns are misplaced. The LVIA did identify users of the public rights of way<sup>56</sup> as potential receptors and these could include walkers along Craythorne Road. However, there is no footpath along the length of Craythorne Road and the sensitivity of those users to the view across the site would necessarily be tempered by the consequential need for caution regarding traffic. The LVIA concluded that the overall landscape and visual effects at year 15 would be minor adverse-negligible<sup>57</sup> and the Council agrees with this opinion<sup>58</sup>.

#### *The Planning Obligations*

- 6.41 The UU is to be amended with an appropriate trigger clause to address the concerns of SCC in respect the release of individual homeowners from the planning obligations and the recycling of grant/proceeds from affordable housing. Subject to these revisions and resubmission of the UU all parties agree that the proposed obligations meet the tests of the Community

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<sup>54</sup> Position statement with Highways England

<sup>55</sup> CD1.5

<sup>56</sup> CD 1.5, p.7

<sup>57</sup> CD 1.5, p.26 (para 9.9).

<sup>58</sup> Planning Statement of Common Ground, section 6.8.

Infrastructure Levy Regulations 2010 (as amended) (the CIL regulations). The planning obligations also confirm delivery of significant benefits of the proposal including the provision of much needed affordable housing and the land for the school.

### ***Conclusions and Planning Balance***

- 6.42 The Framework establishes that the purpose of planning is to contribute to the achievement of sustainable development and identifies three pillars to sustainable development: economic, social and environmental. In the context of the appeal proposal no economic harm whatsoever has been alleged. On the contrary, the application was accompanied by a Socio-Economic report which clearly demonstrates the significant economic benefits that would be generated<sup>59</sup>. Neither the Council nor SOS sought to question the socio-economic benefits of the scheme.
- 6.43 The Socio-Economic report also demonstrates that the population of East Staffordshire has risen by some 17% since 1991 and further growth is predicted. There is a significant affordability problem within East Staffordshire and particularly within Burton (both in terms of the ratio of house prices to earnings and the supply of affordable housing) and this scheme would go some way to remedying this situation.<sup>60</sup> Financial contributions would also be secured towards education, open space and sports provision to assist in the ongoing provision of infrastructure in the locality<sup>61</sup>.
- 6.44 The scheme would provide significant social benefits in terms of market and affordable housing, access to what is presently private land, and the provision of land for a new primary school and land to facilitate an extension to a 2FE school in the future. The facilitation of this essential infrastructure would be a benefit of great weight particularly because the prospects of the Branston Depot site delivering a primary school are now remote<sup>62</sup>.
- 6.45 In terms of an environmental role; no material harm has been identified in the context of impact upon landscape character and the character and appearance of the area. The loss of BMV agricultural land is a factor but the benefits of the proposal outweigh the loss of this resource. Those environmental benefits include the public access to, and preservation of, the Bulbault – a feature that appears to be particularly valued by the community; the provision of significant green infrastructure; the retention and enhancement of identified biodiversity habitats; and the proposed sustainable urban drainage scheme. The scheme demonstrates significant environmental credentials.
- 6.46 The adoption of the ESLP in October does not render unsustainable those unallocated sites where there may be some conflict with the development plan. The contention that this site is unsustainable when assessed against

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<sup>59</sup> CD 2.4

<sup>60</sup> See Conclusions at paragraphs 4.1.1-4.1.3

<sup>61</sup> CD 4.1, paragraph 12.3

<sup>62</sup> JVH site no.11. Also, see summary of social benefits as explained in the Case Officer's Report at paragraph 12.2 [CD 4.1].

the development plan or the Framework is not a contention in the reasons for refusal, nor does it appear in the Council's Statement of Case and it is simply wrong. The Case Officer's report explicitly endorses the considerable sustainability credentials of the site as does the Planning Statement of Common Ground. Moreover, such an approach would run counter to the requirement to consider the Framework as a whole.

- 6.47 There is no technical impediment to the delivery of this site. The application was accompanied by a full range of technical reports. The delivery record<sup>63</sup> of the Appellant is also a consideration that weighs in favour of the scheme because it demonstrates that the scheme can make a significant contribution to the Council's 5YHLS, including the provision of much needed affordable housing.
- 6.48 The Appellant contends that the Council are unable to demonstrate a 5YHLS and consequently paragraph 14 of the Framework is engaged. For decision-making this means, where relevant policies in the development plan are out-of-date, granting planning permission for development unless any adverse effects of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. The only harm identified (as opposed to the need to consider the loss of BMV land) appears to be the fact of the recent adoption of the ESLP. The absence of the 5YHLS and the signal failure of the Council to deliver in accordance with its adopted trajectory since the beginning of the plan period demonstrate that the development plan is not delivering. This scheme would make a significant contribution to addressing this serious deficit.
- 6.49 Even if there is a 5 YHLS and relevant policies are not out of date, the sustainability credentials of the scheme in the context of the presumption in favour of sustainable development and the need to boost significantly the supply of housing would justify a departure from development plan policy, as in the Red House Farm II decision<sup>64</sup>. The scheme is manifestly an excellent example of sustainable development within the meaning of the Framework.
- 6.50 For all of the above reasons the Appellant submits that the appeal should be allowed.

### **The Case for the Council**

- 7.1 This summary contains the material points of the Council's case. It is taken from the submissions made and evidence given on behalf of the Council and from other documents submitted to the Inquiry.
- 7.2 Section 38(6) requires decisions on whether to grant planning permission to be made in accordance with the development plan unless material considerations indicate otherwise. There is no doubt that the development proposed is plainly not in accordance with the plan. Therefore, so far as

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<sup>63</sup> See JVH PoE, paragraph 8.1.28 and JVH App.10.

<sup>64</sup> GDL 15 & 16.

the plan is concerned, permission should be refused. The only real question therefore is whether there are proper grounds for setting aside the decision-making framework provided by the development plan in favour of other material considerations.

- 7.3 The Appellant contends that there are two such reasons, both of which they claim find support in national policy. Firstly, it is contended that the plan is “out-of-date” because there is insufficient housing land to provide a 5 YHLS against the plan’s requirements. Accordingly, it is argued the “tilted balance”<sup>65</sup> in the second bullet point in paragraph 14 of the Framework is engaged (unless specific policies in the Framework indicate that development should be restricted).
- 7.4 Further or alternatively, it is argued that the benefits of the proposal, including the offer of land for a primary school, mean that it is sustainable development to which the presumption in favour of sustainable development in the Framework applies, regardless of whether there is a 5 YHLS.
- 7.5 Each of these arguments run up against obvious and significant problems posed by the fact that both parts of the development plan – the Local Plan and the Neighbourhood Plan – are, on any view, extremely up-to-date (in the ordinary sense of that word and in the sense of having been found to be consistent with the Framework when subject to independent examination before they were respectively adopted and made).
- 7.6 The Local Plan Inspector, in finding the Local Plan to be sound in the form in which it has been adopted, expressly considered whether there was a 5 YHLS and concluded that there was. As the PPG makes clear, the Local Plan Inspector was uniquely well-placed to make such a judgment in light of evidence and representations from a wide range of stakeholders which cannot be replicated in individual appeals<sup>66</sup>. Accordingly the Government clearly envisages that such an Inspector’s conclusions on the 5 YHLS are not to be set aside lightly and invites attempts to do so, soon after a plan’s examination, to be met with a healthy scepticism.
- 7.7 It is clear that the Framework envisages that plans adopted prior to its publication may be out-of-date in other relevant senses and thus not provide an adequate basis for decision-making. However, there is no basis for the suggestion that decisions should be made contrary to plans which have been adopted or made post-the Framework since, of necessity, such plans must have been found to be consistent with the Framework and its policies on sustainable development in order to proceed to adoption or to be ‘made’.

*Conformity with the development plan*

- 7.8 It is common ground that the appeal proposals conflict with ESLP policy SP8 because the appeal site is located outside settlement boundaries. SP8 makes clear that in such cases development “will not be permitted” unless

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<sup>65</sup> See e.g. *Cheshire East BC v SSCLG & Renew Land Developments Ltd* [2016] EWHC 571 at 41 and *Exeter CC v SSCLG* [2015] EWHC 1663 (Admin) at 15.

<sup>66</sup> PPG, Paragraph: 033 Reference ID: 3-033-20150327.

it falls within one of a number of exceptions – which, again, it is agreed do not apply here. It follows that, whether or not the development for which consent is sought is regarded as constituting a mixed-use scheme (i.e. residential with an educational element), the primary component of the proposal and the proposal as a whole cannot comply with SP8. The scheme cannot be disaggregated to assess compliance with policy SP8<sup>67</sup>.

- 7.9 On behalf of the Appellant, Mrs Hodson ultimately accepted<sup>68</sup> that the only buildings for which outline permission is being sought as part of this scheme are the 395 dwellings, not a school. The scheme is therefore, at best, only preparing the ground for a future application for permission for a school. It is highly questionable whether merely providing the land can be regarded as “infrastructure development” within the terms of the relevant exception in SP8.
- 7.10 Even if it was concluded that the scheme does include an element of “infrastructure development” and should be assessed in a split manner for compliance with policy SP8, even the “education” component would still fail to comply with the policy because an “overriding need for the development to be located in the countryside” has not been demonstrated.
- 7.11 Likewise, it is clear that the proposals are also contrary to ESLP policies SP2 and SP4. SP2 provides that “new development should be concentrated within the settlement boundary of the Main Towns”. It does not mean that some development is permissible outside the boundaries of those settlements, rather it is making a statement about the relative proportions of development to be shared between the different categories of settlement in the hierarchy. This is evident from both the terms of the policy itself and the explanatory text.
- 7.12 SP4 similarly only provides for development requirements to be met within the settlement boundaries of Main Towns or, alternatively, in accordance with made Neighbourhood Plans. Since the proposals here do not fall within either category, they cannot be in accordance with the policy. Mrs Hodson’s argument that development, of greenfield sites outside these categories, is permissible under SP4 is clearly wrong<sup>69</sup>. The policy itself is clear and the explanatory text to which she refers does not, and could not, say any different<sup>70</sup>.
- 7.13 The proposals are also contrary to ESLP SP1 insofar as they involve the development of a large area of ‘BMV’ agricultural land which has not been shown to be necessary and in respect of which it has not been shown that other, lower quality land is not available. Mrs Hodson and the Appellant accept that the proposal is contrary to policy S1 of the SNP. Given the extent of conflict with these policies, and their importance to the objectives

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<sup>67</sup> See, by analogy, *Kenmal Manor Memorial Gardens Ltd v FSS* [2006] 1 P&CR 10 per Keene LJ at 34: “At this stage of the analysis, it was not appropriate to try dividing the development proposal up into segments, into those parts which would be appropriate and those which would be inappropriate”.

<sup>68</sup> During cross-examination by Mr Hunter

<sup>69</sup> The Council’s analysis on this point accords with that of the Inspector in the recent Lower Outwoods Road/Red House Farm (no. 2) appeal decision

<sup>70</sup> *Cherkley Campaign Ltd v Mole Valley DC* [2014] EWCA Civ 567.

of both of the constituent plans, the appeal proposal is in significant conflict with the development plan overall.

7.14 The Framework provides that a decision contrary to the development plan may be justified if:

- Relevant policies for the supply of housing are not up-to-date because there is no 5 YHLS (§49)
- The adverse impacts of granting permission are not significantly and demonstrably outweighed by the benefits when assessed against the policies of the Framework as a whole (§14); and
- Specific policies in the Framework do not indicate that development should be restricted (§14).

7.15 None of the above apply here.

*Five Year Housing Land Supply*

7.16 There is clearly more than sufficient deliverable land to satisfy the ESLP's housing requirements over the next 5 years. The starting point for consideration of this issue must be the Local Plan Inspector's finding that there was a 5YHLS of housing land. The PPG clearly implies that significant weight should be given to such a finding, particular when such a short time has elapsed since his report, and warns of the relative disadvantages of trying to carry out a similar assessment in the context of a s.78 appeal.

7.17 The areas of dispute are twofold: the appropriateness or otherwise of the method used by the Council to count completions and the deliverability of specific sites relied on by the Council as part of the supply. All other areas are agreed.

7.18 Completions/Backlog: if the Council's housing requirement (4,235) is calculated using the Council's method, then – even on the basis of the Appellant's supply calculations (3,569) - there is a 4.21 supply. If the Appellant's method and supply calculations are both accepted then the supply is 3.9 years. The calculation of completions is material to the question of a 5 YHLS.

7.19 If the Appellant was right about the deliverability of half of the disputed units but wrong about the other half, then (using the Council's completions figure) there would be no shortfall against the required supply.

7.20 The method that the LPA has employed in calculating completions in its latest housing supply statement is the same that it used previously, including before the Local Plan Inspector. It was not subject to any criticism by either the Inspector or any of the other participants in the Local Plan process, which – it may be noted – included the Appellant and a range of major housing developers.

7.21 The Council's approach to this calculation is not unique and is similar to that taken by other authorities<sup>71</sup> and neither the Council's nor the

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<sup>71</sup> Mrs Kurihara in Examination in Chief.

Appellant's housing supply witness was aware of any criticisms of this approach. There is nothing in planning policy or guidance which either precludes the use of such an approach or recommends an alternative based exclusively on DCLG building control returns. Furthermore there is no definition of 'completion' in national planning policy or guidance.

- 7.22 Mrs Hodson confirmed that she had no objection to the Council counting dwellings that were visibly inhabited. However, that is inconsistent with her assertion that a certificate is necessary. An inhabited dwelling, as much as one that is not inhabited, may also lack a certificate. However, its condition will be the same immediately prior to habitation as it is post-habitation. Therefore a dwelling which is to be regarded as complete post-habitation will (usually at least) have been equally immediately complete beforehand. Mrs Hodson did not produce anything to substantiate her claim that buildings without a completion certificate would not be able to be occupied.
- 7.23 The Council's approach is more likely to produce a more accurate figure than simply relying on the DCLG tables which are intended to provide broad estimates of house-building activity. They are dependent on up-to-date data and the lack of data for the last quarter requires extrapolations to be made. The Council's figure of 4,235 is soundly based and is to be preferred.

*Deliverability of the 5 YHLS*

- 7.24 A set of tables appended to the Council's closing submissions summarises the differences between the parties in relation to a series of housing sites where deliverability is in dispute. These will be examined in detail later.
- 7.25 In addition the Council makes a number of general observations on the Appellant's approach to the deliverability of sites. Notwithstanding the advice in the Framework and the PPG the Appellant has applied a more stringent approach, referring to 'no certainty' of a site coming forward. Mrs Hodson also treated 'doubts' about sites with permission or allocated sites as a reason not to include them, contrary to the Framework and PPG advice that there should be 'clear evidence' that they will not be implemented within 5 years.
- 7.26 Mrs Hodson also invited a departure from the conclusions on deliverability reached by the Local Plan Inspector even where there had been little change in material circumstances since the Examination. Mrs Hodson also gave weight selectively to information directly from owners, developers and agents. The Council also expresses concern that responses provided to it regarding the deliverability of individual sites appear to have been inadvertently influenced by contact with Mrs Hodson's consultancy.
- 7.27 It is submitted that the Council's assessment of the available supply is particularly robust and reliable for the following reasons:
- It does not rely on windfalls which the LP Inspector described as "commendably cautious". Furthermore, the Appellant itself submitted to the LP inspector that several hundred houses could

be expected as windfalls. Accordingly, even if there was a shortfall of that order, it would be likely to be covered by windfalls.

- The Council has in fact improved the quality/quantity of the information on which its assessment is based in the latest supply statement by carrying out a specific assessment of every site of 10 or more units which were not previously assessed.
- Wherever developers/owners have indicated that sites are deliverable (or will deliver at a lower rate than the Council anticipated), it has discounted the sites.

7.28 It is clear that the ESLP is now delivering a higher rate of supply, with completions having risen sharply very close to the relevant annual target and a healthy current supply of deliverable land safely in excess of the five years required (5.72 years). Therefore the ESLP policies are up-to-date for the purposes of paragraph 49 of the Framework. It is accepted<sup>72</sup> that they are not inconsistent with the Framework and therefore they are not out-of-date for any other reason.

7.29 Even if the second bullet point in paragraph 14 of the Framework were engaged, permission would still fall to be refused on grounds that:

- Specific policies in the Framework indicate that development should be restricted – namely, those in relation to BMV land and Neighbourhood Plans<sup>73</sup>;
- The adverse impacts of the development significantly and demonstrably outweigh the benefits. There is extensive conflict with the development plan which gives rise by itself to significant harm. There is also significant harm by way of the loss of BMV. Furthermore, there will also be harm to the landscape and views. The fact that this was not regarded as a reason for refusal in its own right does not mean that it will give rise to no harm. In fact, the Appellant's own LVIA identified a number of adverse impacts from the development but contended that their effect would reduce over time as the development is assimilated<sup>74</sup>.

#### *Best and Most Versatile Agricultural Land*

7.30 Significant development of BMV agricultural land is clearly regarded by the Framework as having adverse economic and environmental consequences. Therefore, before such development is allowed, the Framework<sup>75</sup> requires two things: firstly that such development be demonstrated as "necessary" and secondly, where that is the case, it requires planning authorities to seek to direct development to lower quality land wherever possible.

7.31 The Appellant has not demonstrated that significant development of BMV is necessary in order to accommodate development needs because there is an adequate five-year supply and no other reason for developing

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<sup>72</sup> Mrs Hodson in Cross Examination

<sup>73</sup> §§112 and 198 Framework.

<sup>74</sup> CD1.5 – see esp. tables in Appendices A and B.

<sup>75</sup> §112

agricultural land has been suggested. Furthermore, even if it was found that a 5 YHLS did not exist, the Appellant has not produced any evidence to show that lower quality land is not available.

- 7.32 The Appellant's agricultural evidence<sup>76</sup> in fact suggests that land of Grade 2 quality (as on much of the appeal site) is not likely to be typical of land in the wider area. Furthermore, that in the most plausible directions for further additional growth around Burton there appear to be significant areas which do not contain BMV land at all (or at least in lower proportions to the appeal site which is all BMV). Mrs Hodson accepted that no assessment had been carried out to assess the availability and suitability of any potential sites in these areas of lower quality land to accommodate the kind of development proposed here. Consequently, as Mr. Kernon concluded, the proposals are inevitably contrary to the Framework. Furthermore, the proportion of grade 2 land, and BMV generally, is substantially lower in this area than in the country at large<sup>77</sup> – a factor which can only add weight to the objections to its loss.
- 7.33 The Council contend that the loss of BMV land is not just an adverse impact to be weighed in the balance for the purposes of the second bullet point in §14 of the Framework. Rather it is a specific policy indicating that development should be restricted and thus the second bullet point disapplied. The question of what constitutes a specific policy has been considered in the High Court by Mr Justice Coulson<sup>78</sup> who concluded that specific policies are ones which "indicate that development should be restricted" where they limit development and "cut across" the balancing exercise that would otherwise fall to be applied under the second bullet point in §14<sup>79</sup>.
- 7.34 The second sentence in Framework §112 is no less a "specific policy" than §114. It plainly does seek to restrict development on BMV and does so by indicating an approach which "cuts across" the balance that would otherwise be required under the second bullet point of §14 because it requires the necessity for such development to be demonstrated, and also requires Councils to encourage the use of lower quality land, as opposed to simply requiring the harm that would arise from such development to be weighed against the presumption or 'tilted balance' in §14. The contrast with the first sentence in §112 (which applies even if significant development of agricultural land is not proposed) is marked: where significant development of agricultural land is not proposed decision-makers are only instructed to take the benefits of BMV into account, whereas where significant development is proposed on such land, LPAs are directed to take a more rigorous approach.

*The presumption in favour of sustainable development*

- 7.35 The Council do not accept that the Framework requires planning permission to be granted contrary to a development plan which is not out-of-date or inconsistent with the Framework, in circumstances where a 5

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<sup>76</sup> LRA map.

<sup>77</sup> Inquiry document ESBC 5

<sup>78</sup> *Forest of Dean DC v Gladman* [2016] EWHC 421 (Admin)

<sup>79</sup> §28 *ibid*

YHLS can be demonstrated, simply on the basis that the development in question is considered to be 'sustainable'.

- 7.36 The common factor in each of the circumstances which may justify a decision being made contrary to the plan in Framework §14 is that they represent "shortcomings" in the plan. In those circumstances, it is legitimate, consistently with s.38(6), for national policy to set out an alternative basis for decision making<sup>80</sup>.
- 7.37 To read the Framework as providing for decisions to be made on an alternative basis to the plan, even where the plan has no such shortcomings and has been found to be up-to-date and consistent with national policy, would substantially undermine the presumptive priority afforded to the plan by statute. It would also be contrary to a planning system remaining plan led and the central importance which the Framework places on having an up-to-date plan.
- 7.38 The Framework also explains why there should generally be little or no room for arguing that a proposal which is contrary to such an up-to-date development plan constitutes "sustainable development" of the sort that it seeks to encourage. This is because the plan itself (a) is to be regarded as central to the delivery of sustainable development, (b) must be consistent with the Framework's policies on sustainable development (including the presumption), and (c) should specifically reflect a vision of what will and will not constitute sustainable development in the area covered by the plan.
- 7.39 The Framework<sup>81</sup> explains that sustainable development is to be ascertained by §§18-217 read as a whole. It is impossible therefore to see how the Framework generally, or the presumption in favour of sustainable development specifically, can be relied on to justify a decision being made contrary to an up-to-date plan (particularly where it is contrary to a made Neighbourhood Plan) save where the plan is not to be treated as up-to-date because a 5 YHLS exists.
- 7.40 The form of development proposed here was fully foreseen and considered during the LP process. Indeed, the fact that the appeal site was included within the SHLAA<sup>82</sup> and was promoted as an alternative site shows by itself that the plan was consciously adopted knowing that it would not only preclude development proposals of this kind but of this site in particular.
- 7.41 In *Cheshire East BC v SSCLG and Renew Land Developments Ltd*<sup>83</sup> Mr. Justice Jay held that an "extrinsic" assessment of whether a development is sustainable cannot be performed outside the parameters of paragraph 14 because it would be "unworkable". Instead, he held that paragraph 14 itself defines (or "teaches" how to decide) whether a proposal constitutes sustainable development. It follows from this to ask whether something which does not pass the paragraph 14 test constitutes sustainable

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<sup>80</sup> As per Lindblom J. in *Bloor Homes East Midlands Ltd v SSCLG* [2014] EWHC 754

<sup>81</sup> §6 and see comments on local plans at §150, §151, §182 and §198 in respect of Neighbourhood Plans.

<sup>82</sup> CD 9.2

<sup>83</sup> [2016] EWHC 571 at 26 and see §§18, 19, 26, 27, 28

development is nonsensical. By definition, if it fails paragraph 14 then it is not sustainable development.

- 7.42 However, it is acknowledged that the reasoning in *Renew* does not appear to be consistent with that of Mr. Justice Coulson in *Wychavon v SSCLG*<sup>84</sup> where he accepted that the presumption in favour of sustainable development could be engaged even if a development did not fall to be permitted under paragraph 14. Furthermore, it also needs to be noted that Mr. Justice Jay himself acknowledged that his reasoning and conclusion on paragraph 14 was certainly inconsistent with that of Lang J in *William Davis* and also potentially inconsistent with that of Patterson J in *Dartford BC*.
- 7.43 It is notable that the *Wychavon* case is silent about the correct approach to determining sustainability when a proposal is contrary to an up-to-date plan adopted post Framework. In that case the development plan in force dated from 2006 and thus pre-dated the Framework. Conflict with such a plan may not necessarily determine that the development was not sustainable. By contrast, conflict with a plan adopted post the Framework should indicate a lack of sustainability.
- 7.44 The Council's approach is consistent with the *Wychavon* judgment and the *Ashflats* appeal decision<sup>85</sup> and the *Hambrook* appeal decision. The *Ashflats* decision was upheld by the High Court<sup>86</sup> and the conclusions of the Inspector in the *Hambrook* decision were fully accepted by the Secretary of State in his decision letter<sup>87</sup>.
- 7.45 The Appellant relies upon the recent appeal decision in *Lower Outwoods Road/Red House Farm (No.2)*. In that decision the Inspector considered whether the development was sustainable simply by way of a freestanding balancing of factors under each dimension of sustainability and does not appear to have factored into his assessment that the proposal was contrary to the recently adopted and up-to-date ESLP. This approach is objectionable. The Appellant's witness<sup>88</sup> accepted that conformity or conflict with a development plan adopted post-Framework must be regarded as at least being relevant to whether a proposal constitutes sustainable development.

#### *Primary Education*

- 7.46 The UU contains obligations requiring an area of 1.69 ha to be offered to SCC for a new primary school, together with the payment of financial contributions towards it. The Appellant claims that these obligations serve two purposes, firstly, as meeting the need for additional primary school places generated by the development itself (equivalent to 0.5FE) and, secondly, as providing additional "much-needed" primary capacity for the wider area. Clearly, the first purpose cannot be regarded as a benefit of

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<sup>84</sup> [2016] EWHC 592 Admin18

<sup>85</sup> CD 10.17, see §§108-117.

<sup>86</sup> *Milwood Land (Stafford) Ltd v SSCLG* [2015] EWHC 1836 (Admin)

<sup>87</sup> See *Hambrook* DL18-21

<sup>88</sup> Mrs Hodson during cross-examination

the development. Rather, it is merely part of what is required to mitigate the development's impact.

7.47 Furthermore, whether the additional capacity that the Appellant's refer to can be regarded as securing a wider benefit and, if so, what weight should be given it, depends on a number of factors. In particular:

- whether a need has been demonstrated for an additional primary school (or schools) in Burton, having regard to existing and planned primary provision in the area;
- whether, if there is a need, it has been shown that it cannot be accommodated in more suitable locations (e.g. within the settlement boundary, not on BMV land);
- whether the school would be well-located in relation to identified needs;
- the extent to which there is any assurance that a school will be delivered if the appeal is allowed; and
- the likely capacity of the school.

7.48 It is not argued that the scheme constitutes enabling development. Therefore even if the provision of land for a school is regarded as a benefit – it cannot be regarded as overriding any such policy conflict.

*Need for additional primary schools*

7.49 There are three different forecasts before the Inquiry as to need for primary school places in Burton over the plan period. None of them, however, provide evidence to demonstrate that there is a need, much less an overriding need, for a school on this site.

7.50 The Cambridge report forecast that, without any additional provision over its baseline, there would be a deficit in primary places in Burton of -2.5 FE in 2016 rising to -9 FE by 2030<sup>89</sup>. The Arup Infrastructure Delivery Plan ('the IDP') which was prepared at the same time as the Cambridge report and in light of it, forecast the deficit at 2030 to be higher at -10.5FE, albeit proceeding from a different baseline from the Cambridge study<sup>90</sup>.

7.51 Whilst the AMEC site search report purported to be based on the evidence of need in the Cambridge report and the IDP, in fact it presents different figures for the deficit (a range of -9.6 to -11.6 FE by 2030) or, allowing for windfalls, around -12.5 FE. Those figures differ, however, again from the aggregate of 6.5 FE and 4.3 FE to 10.8 FE referred to in the bullet points on p.2.

7.52 The Arup IDP assesses existing, planned and anticipated supply and concludes that the deficit it forecasts will be met<sup>91</sup>. It is to be noted that the IDP was relied on by the Local Plan Inspector when assessing the soundness of the plan.

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<sup>89</sup> CD12.1, appendix C

<sup>90</sup> Anna Miller appendix B, table 19, p.56 and XIC of Anna Miller

<sup>91</sup> Ibid, §10.5.1 and 10.6.2

- 7.53 By contrast, since part 2 of the Cambridge report did not proceed, it contains no assessment of whether the anticipated supply of places would or would not meet its forecast deficit. However, the analysis of existing and planned provision in Mrs. Miller's evidence demonstrates that the deficit forecast in both the IDP and the Cambridge report would be met.
- 7.54 However, as Mrs. Miller explains, the total amount of new provision already made or planned amounts to 15.78 FE (or 3,297 places), judged against the IDP baseline deficit of -10.5 F, or 10.28 FE judged against the Cambridge baseline deficit of -9FE.<sup>92</sup>
- 7.55 Furthermore, although the AMEC report proceeded on the basis that two further 2FE schools would be required over and above existing and planned provision in area 1 (centre and the north of town) and 0.3 FE new provision would be required in area 2 (Branston), giving a total residual shortfall of -4.3 FE<sup>93</sup>, it is clear that this need will be either substantially by sites which were not taken into account as part of its baseline<sup>94</sup>.
- 7.56 Accordingly, even taking the AMEC report at face value, the shortfall would be at most only -0.3 FE which is not a pressing need. It could be met in any event in other ways over the plan period by either expansion or the provision of an additional school elsewhere. It is unclear generally how the figures in the AMEC report have been derived from the Cambridge report and the IDP (which they claim to be). By contrast, the AMEC's figures were calculated on the assumption that the Cambridge report did not take into account windfalls (for which an additional allowance of 1 FE was made). This, however, is contradicted by what is said in the Cambridge report itself.
- 7.57 The projections become forecasts when proposed new housing is taken into account and the new housing figures are built into the forecast model<sup>95</sup>. Once the figures are corrected for this, AMEC's shortfall of -4.3 FE requiring additional provision by 2030, reduces to -3.3 FE, which is less than the sum of the capacity of the three new additional sites referred to above (i.e. 4 FE), meaning that there is demonstrably no shortfall on the basis of any of the three reports.

#### *Alternatives*

- 7.58 If it is concluded that a significant and pressing need for additional primary provision has been demonstrated, it is still necessary to ask whether a more suitable (less unacceptable) site or sites may be available, given the location of the appeal site outside the settlement boundary and on grade 2 and 3a BMV agricultural land. The extent of the shortfall, even on the basis of the AMEC report, would at most be -0.3 FE. However, the Appellant accepts that no proper assessment of alternatives has been undertaken<sup>96</sup> given its assumption that the site was acceptable.

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<sup>92</sup> A list of the extra provision relied upon is cited at §84 of the Council's Closing Submissions Inquiry document ESBC.16

<sup>93</sup> CD12.2, §1.2.1

<sup>94</sup> A list of the sites is contained at §86 Council's Closing Submissions.

<sup>95</sup> Cambridge report CD12.1, p.35

<sup>96</sup> Mrs Hodson in cross-examination on the basis that the site was suitable in its own right.

- 7.59 The scheme is clearly not acceptable in terms of the Local Plan and the Neighbourhood Plan, given its location outside the settlement boundary. Equally, the provision of a school on the site – although not something for which permission is sought as part of this application – could only be acceptable in terms of policy SP8 if an overriding need for it to be located in the countryside is demonstrated. Likewise, the use of grade 2 and 3a BMV land is only acceptable<sup>97</sup> if it is shown that lower quality land is not available. All of these matters therefore point to the need for an assessment of potential alternative sites.
- 7.60 Whilst the AMEC report did not find any potential sites for schools within the urban area:
- the sites were not assessed in comparison to the appeal site and at least some of those identified would not appear to be subject to the same objection in terms of agricultural land classification;
  - the search criteria applied involved treating 2ha as the “absolute minimum” required for a 2FE school<sup>98</sup>. SCC’s evidence to the inquiry, however, indicates only 1.64ha is in fact required for a 2FE school. No justification been given for the more demanding size criterion applied in the report. Equally, nor is there any explanation as to why sites large enough for a 1FE school were not considered at all – which, according to SCC, would only require 0.9ha. Accordingly, additional potentially suitable sites falling within these parameters, including within the urban area, may well have been omitted;
  - the assumptions in the report relating to the alleged limited capacity for expanding existing schools have not been explained or justified in the report or elsewhere<sup>99</sup>.

*Relationship with identified needs*

- 7.61 The AMEC report also acknowledged that the area including the appeal site is located “some distance from the main areas of planned growth and the LEA’s identified areas of need”<sup>100</sup> – which suggests that the location may not be suitable, or at least the most suitable, in terms of policy SP10 of the Local Plan. This requires demonstration that a proposed school is accessible for the need which it is intended to meet. In addition SP8 requires a demonstration of an “overriding need” for a school in this location. This concern is consistent with the fact that SCC advised that “the need for a school in this location [was] driven in the main by the housing proposal”<sup>101</sup>.

*Assurance regarding school provision*

- 7.62 There is nothing to ensure that a school will be delivered on the site even if the appeal is allowed. In particular, there is nothing within the UU which

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<sup>97</sup> In accordance with Framework §112

<sup>98</sup> CD12.2, §2.3.1

<sup>99</sup> Ibid, §1.2.1

<sup>100</sup> Ibid, §4.5.1

<sup>101</sup> CD3.4, p.2

requires it to be delivered or which would prevent the housing on site from being constructed and occupied if a school were not – for any reason – to come forward.

- 7.63 There are also a number of potential impediments to the delivery of the school – including the need to obtain planning permission for it and the need for a sponsor willing to establish and run the school to be identified and approved by the Secretary of State. Nothing, apparently, has been done in either respect thus far. In particular, a grant of permission cannot be assumed to be inevitable, or even likely, given the conflict arising from the site’s location outside the settlement boundary and the lack of evidence to show that the criteria for a school to be permitted in those circumstances are met.

*Capacity of the school*

- 7.64 The Appellant has referred to the potential for a 2FE school to be accommodated on the site. However, it is clear that even if the issues described above are overcome, the school would in the first instance be 1FE. Furthermore, although there might be sufficient land to expand the school to 2FE in future, this is clearly not the intention at present and a number of issues would in any event arise, which have yet to be considered, much less resolved – e.g. there has been no assessment of the highways implications of a 2FE school and, as already noted, there is an absence of evidence to demonstrate how a school in this location would be suitable in terms of its relationship with the LEA’s areas of need.
- 7.65 Accordingly, the scale of the suggested “wider benefit” could at most be assessed as equivalent (potentially) to 0.5FE. Furthermore, since the maximum extent of the shortfall even on the face of the AMEC report, is - 0.3 FE, the benefit (if it can be regarded as one) provided by the appeal incorporating provision for a primary school is extremely small. In conclusion, no weight – or at best, very limited weight – should be given to the alleged benefit of the development in terms of enabling (potentially) a primary school to be provided on site.
- 7.66 For all the reasons set out above, the Council respectfully invites the Secretary of State to dismiss the appeal.

**The Case for Save our Stretton (SOS)**

- 8.1 This summary contains all material points in relation to the case of Save our Stretton. It is taken from the submissions made and evidence given on behalf of SOS and from other documents submitted to the Inquiry.
- 8.2 Some 1906 people voted yes for the Stretton Neighbourhood Plan (SNP)<sup>102</sup>. The SNP plan demonstrates that Stretton wants to take an active part in developing a plan for the future of the parish. It is a plan that conforms with the ESLP and will build 436 houses in Stretton. The appeal development is in conflict with the made SNP.

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<sup>102</sup> CD 7.4

- 8.3 We have heard a lot of evidence that demonstrates that East Staffordshire has a 5 YHLS. SOS think ESBC are being a little too pessimistic in their calculations considering the significant windfall numbers that they have achieved.
- 8.4 SOS is gratified that everyone agrees that the appeal site comprises over 20 hectares of BMV land<sup>103</sup>. As such this is a significant amount that has weight in the planning balance. There is no detailed evidence provided to dispute this is grade 2 land and we have seen that there is only a very small percentage of Grade 2 land in the East Staffordshire area<sup>104</sup>. This represents a scarce resource that we should protect and keep for future generations.
- 8.5 A key concern for SOS has been the limited consultation<sup>105</sup> which has failed to find all the harm and was not used to improve the application or to ensure the harm has been mitigated. There are important points raised in the Community involvement process on flooding, schools, agricultural land, landscape and ecology. These are items which, if followed up, could have helped assess the harm properly and given the Appellant the choice to bring forward effective mitigations.
- 8.6 SOS has looked at the proposal in a detailed manner because that is where we see the problems. This level of scrutiny is necessary for the current Stretton residents and for the future Stretton residents if this appeal is allowed.

*Education Provision*

- 8.7 The two key areas which we think clearly demonstrate this application is unsustainable are in education and traffic. There is an email SCC which confirms that building houses without a school on this site it is unsustainable<sup>106</sup>. This demonstrates that you cannot measure sustainability by distance to amenities but you need to consider the capacity of those amenities and more than that, SCC said that you cannot just take offsite funds if there is not a detailed plan<sup>107</sup>.
- 8.8 It was confirmed that the County Council made a positive decision not to complete a traffic survey for a 2 FE Primary School. So there is no evidence this school could be extended and so this possibility should have no weight. We have heard about the need for Primary School places in the area, but that did not prevent the County Council bringing forward its own 500 house application at Glenville Farm<sup>108</sup> without a school. That is clearly a site where the County Council could put a school if it needed one.
- 8.9 If it is so much of a problem SOS questions why SCC is not the discussing alternative options with ESBC and why SCC seem happy to wait until they know the result of this appeal. If it is so much of a problem, why is there no confirmed timeline for the Primary school to be built and no conditions

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<sup>103</sup> CD 8.1

<sup>104</sup> ESBC5 and CD 12.14

<sup>105</sup> See Statement of Community Involvement at CD 1.16

<sup>106</sup> SCC consultation response to previous application for 425 houses at CD 12.8 p 232-234

<sup>107</sup> Ibid 3<sup>rd</sup> paragraph of page 2

<sup>108</sup> ESBC.15

- linking house-building a school becoming available. There are no detailed plans for a school. We just have some land safeguarded. There has been no assessment of car parking issues and no confirmation that when flood ditch and drainage mitigation measures are put in place, there would be enough space for this school.
- 8.10 As SCC have said they need 1.65 hectares for a school site, assuming the site is perfect, with no difficulties and is fully useable. This is not known for sure. All of this points to a lot of uncertainty.
- 8.11 It was thought that 50% of the houses would be built before the school is available. There is no evidence to explain where the children from the first houses would go to school in the interim. There is nothing from the SCC in its Position Statement to address this. In fact we now are not even sure that a school would be in existence after 50% of the houses are built, as we know there is no condition to that effect.
- 8.12 If a development of houses, without a school, is unsustainable, how can it be sustainable to build 50% of the houses, before a school is available. We are told that if the primary school was built, it would be located between strategic sites; one of these is the Council's own site at Glenville Farm. It is located between strategic sites as a crow flies. However, as we have seen on the walking isotherm, Glenville Farm is mostly over two kilometres from the appeal site. Therefore a school on the appeal site would not be well located and the distance between any school and the Glenville Farm development would lead to even more school traffic.
- 8.13 SOS has specifically asked about the provision of school places for special needs children and has had no answer at all on that topic. No provision is proposed so that aspect of the proposal is unsustainable. SOS has said many times that De Ferrers School is full. Recently there were 524 applications for 350 places starting this September and that does not include future demand from the 950 house Beam Hill site located near the school.
- 8.14 There is a serious lack of secondary provision in East Staffordshire and SCC's potential solution is 5 miles from Stretton. That school is dependent on the Secretary of State to give approval which must come quickly or the opening date is at risk. We are told that De Ferrers Academy will take the children but there is no plan and no timescales. The engagement has been with SCC and not with the De Ferrers Academy. This is important as the De Ferrers Academy determines its own catchment policy.
- 8.15 There was an excellent opportunity for the Appellant to engage with the Academy Principal after his response to the community involvement process and his offer to meet the Appellant. They chose not to follow that up, so we have no confirmation from De Ferrers that they would take any additional pupils arising from the appeal proposal.
- 8.16 There are no concrete plans at all, so accepting a financial contribution, in lieu of actual provision, is not sustainable. It was not considered sustainable previously when the Appellant proposed monies for off-site provision for a Primary School. SOS contends that with all of the

uncertainty surrounding this matter, we should not add even more houses to make the education provision problem worse.

*Highway Safety*

- 8.17 SOS has stressed throughout the Inquiry the levels of concern from Stretton residents on traffic and road safety. The concern is that the old road structure would struggle to cope with the additional traffic from the proposed houses in addition to the 436 being built in Stretton.
- 8.18 SOS is pleased that the traffic surveys it produced<sup>109</sup> were accepted by Mr Jackson as valid<sup>110</sup>. We contend that the SATURN software model can be flawed, if that data entered into the system is flawed then it can lead to false or erroneous conclusions: 'Garbage in leading to garbage out'. This has already been seen when this application's initial traffic model needed to be corrected. It was a modelling error, not the fault of the Appellant which demonstrates that without correct data errors occur.
- 8.19 The traffic surveys provided by the SOS group cast doubt on the data fed into the SATURN model, which can cause errors in the output. Mr Jackson said that the model has routing algorithms and updated junction information amongst other things that can explain the difference with our surveys. However this assumes that the initial flows in the system are correct and that local routing logic is applied correctly. SOS question this, as the data from our traffic surveys on Rolleston Road shows traffic flow is heavily influenced by school traffic. So why would congestion in Stretton stop people dropping their children off at school?
- 8.20 On the approach to the A38, SOS has explained that travelling up Derby Road, where there is a right of way, is a less stressful, simpler journey than alternatives. We see no reason why people currently using this route would divert to more difficult routes.
- 8.21 SOS has not tried to ambush this inquiry with this concern. We had a meeting with SCC in June 2014 and later so did the parish council. Our statement of case raised the concern, as has the evidence of Mr Lamb which included all the traffic survey data. This has provided plenty of time for people to investigate. There is nothing in the agreed Position Statement between the Appellant and SCC to indicate that the SOS concerns have been investigated and are invalid.
- 8.22 If the data is incorrect, the full impact will have been understated and the proposed mitigation would not address the harm and may lead to severe problems. The A38 improvement will be compromised if extra traffic proceeds down the Derby Road onto the A38. It would increase the queuing time on the approach from Claymills Road which in turn could potentially cause traffic to back up to the Church Road junction and cause major congestion outside the school.

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<sup>109</sup> Contained within the written statement of Mr Lamb.

<sup>110</sup> In cross-examination Mr Jackson accepted that the traffic survey data of SOS was a reasonable representation of the existing traffic situation.

- 8.23 SOS contends that it is not known that the proposed A38 improvement scheme is fit for purpose. The potential improvement at the Church Road cross roads were presented by the Appellant to SCC but we have no confirmation from SCC that the proposal would be accepted.
- 8.24 Converting the current Church Road junction into a signal controlled one on its own was not a good enough solution, as it would leave little capacity. The option to make The Green two-way would revert to the approach used in the 1980s when Stretton was much smaller and The Green was changed to one-way for safety reasons. As there has not been a road safety audit on this proposal we do not know if this is a safe solution. This junction is already an example where driver frustration leads to near misses and we have seen another Inspector's view<sup>111</sup> that such a situation could cause more safety problems with additional traffic.
- 8.25 With no clear view as to which traffic improvements will happen in Stretton we cannot be sure that traffic problem will be mitigated. Therefore we cannot be satisfied that the concerns on road safety raised by the Heads of Fountains School and William Shrewsbury School will be resolved.
- 8.26 SOS raised concerns about Craythorne Road north and how children from Rolleston would get to a school on the appeal site and how children from the development would be safe walking to the adventure playground in Rolleston. This was a concern echoed by Rolleston Parish Council.
- 8.27 Craythorne Road North to Rolleston has no speed limit, no pavement, no lights and has flooded and it is a serious safety concern. The purported solution of assuming that parents should drive their children to the school for safety reasons is not sustainable. The proposed use of a few passing places has not been subject to a road safety audit so as to say this is satisfactory mitigation.
- 8.28 Making this road wider, adding street lights and a pavement, resolving the flooding issues and applying a speed limit would solve this problem but it is not proposed. SOS really believe this is a serious safety issue and the harm needs to be properly mitigated.
- 8.29 Road safety concerns were raised after the recent accidents in Stretton and on the A38 and during this Inquiry we had another accident at the junction of Craythorne Road and Bitham Lane. The A38 concerns were discussed and it was confirmed that Highways England are carrying out a safety review. SOS also mentioned the concerns of the local MP, Andrew Griffiths, that this is not the right time to approve more houses until these issues are resolved.

#### *Landscape Issues*

- 8.30 On landscape matters there is no detailed explanation why several views have been said to have a low sensitivity for pedestrians, even though they are regularly used for leisure walking.

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<sup>111</sup> SOS evidence p12, point 3.17

- 8.31 The Appellant's Landscape and Visual Impact Assessment (LVIA)<sup>112</sup> confirms that there is a need for the judgments to be reasonable and based on clear and transparent methods so that the reasoning applied can be traced and examined by others. SOS contends that there is not a clear and transparent method for the conclusions as to Moderate Adverse assessments on the views from Craythorne Road.
- 8.32 June Kirkland gave evidence to the Inquiry on behalf of SOS<sup>113</sup>. She explained about the Bulwaulk and how it has been an important part of Stretton history. It is not disputed that people have been using the Bulwaulk for 60 years. An application for a right of way to be designated has been submitted to SCC. The panoramic views from the Bulwaulk were not considered and we do not believe the landscape harm has suitably been assessed.

*Other Matters*

- 8.33 On ecology we know that the ecology report<sup>114</sup> does not consider the Bulwaulk and again that the concerns raised by people in the community involvement were not considered. We do not believe the harm has suitably been assessed.
- 8.34 On flooding SOS has seen the OPUS report which repeatedly claimed that no evidence of flooding was provided. However, many people commented on that in the community involvement process. There are several photographs<sup>115</sup> of flooding from Bitham Lane, Craythorne Road, Stretton Allotments and from recent rainfall.
- 8.35 The initial assessment proposed a sustainable urban drainage system in the lowest point of the site as the solution but that is now the location of the proposed school. The location of the school would potentially create more risks to the people living in Bitham Lane and Craythorne Road who have raised flooding concerns. It is not known if the resolution of any potential flooding issues would require a large reduction in school land to provide ditch mitigations. This in turn could impact on the land available for a school site and might mean that the School could not meet the minimum space requirements.
- 8.36 The proposed access points from Craythorne Road into the site have not been discussed with the local residents. This is a failing as the residents may have specific local knowledge that may impact the design. SOS has highlighted concerns about flooding issues down Craythore Road and we know the latest OPUS flooding assessment did not have the revised access proposals with the updated details of the road changes. In addition the positions of existing trees may impact the solution and again these concerns are not resolved.
- 8.37 In relation to other concerns on lack of parking places in the village and the pressure on the medical centres, SOS points out that no responses on

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<sup>112</sup> CD 1.5, paragraph 2.24.

<sup>113</sup> Mrs Kirkland has submitted a proof of evidence

<sup>114</sup> CD 1.8

<sup>115</sup> Inquiry document SOS 3

the concerns raised in the community involvement. SOS also mentioned concerns about the design of development and the need to maintain the character of Craythorne Road. This is another concern not addressed.

- 8.38 SOS has identified many issues and we have not seen them resolved at this Inquiry. The harm has not been properly assessed and the mitigations are not sufficient. SOS maintains that the development proposed is unsustainable and is in conflict with the ESLP and the SNP. For all of the above reasons it is requested that the Secretary of State be recommended to dismiss the appeal.

### **Other Third Party Oral Submissions**

#### *Rolleston Parish Council*

- 8.39 The Chairman of Rolleston Parish Council made oral representations to the Inquiry. The Rolleston Parish boundary is a short distance from the appeal site and the Parish Council has objected in writing to the proposal. The site is not included in either the ESLP or the SNP as a site for development and it is outside the settlement boundary. Development on the site would result in the loss of good quality agricultural land which is grade 2 and has produced strong crop yields.
- 8.40 The development would bring increased traffic from the appeal site, a large proportion of which would travel to Rolleston on Dove along Craythorne Road. There have been several incidents along this stretch of road, including one fatality. The scheme would also result in increased traffic travelling towards the A38 through the Bitham Lane/Church Road junction and in the other direction through the Bitham Lane/Rolleston Road intersection to Tutbury and the A50. This latter junction is an accident blackspot. Increased traffic flows could jeopardise the rural riding school in the vicinity making it hazardous for riders along the country lanes.
- 8.41 The Parish Council is also concerned about coalescence between Stretton and Rolleston on Dove and resists any reduction in the green gap between the two especially given that the Council has sufficient housing land supply. Finally the Parish Council contends that there is a distinct lack of secondary school provision which would result in a significant number of Rolleston on Dove children being displaced from De Ferrers Academy and bussed to Branston. The Parish Council requests that the appeal be dismissed.

#### *Campaign to Protect Rural England (CPRE)*

- 8.42 Mr Windmill from the Staffordshire branch of CPRE attended the Inquiry to make representations. He submitted two written statements<sup>116</sup> of his objections on planning and policy grounds and elaborated on them in his oral evidence. CPRE object to the proposal on the basis that the site is unallocated in the ESLP which was adopted in 2015 and which would have undergone an extensive examination process. The Council has demonstrated a 5 YHLS using criteria in the Framework and has met all

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<sup>116</sup> Inquiry documents 3P.2 and 3P.3

legal and procedural requirements in terms of its local plan. The local plan Inspector made it clear that the site should not be allocated.

- 8.43 CPRE objects in principle to the development of a greenfield site in the absence of any evidence of need. There are not sufficient material considerations to overcome the ESLP policy objections.
- 8.44 In terms of housing CPRE contends that this appeal should not be an opportunity to re-examine matters which have already been subject to scrutiny by the Local Plan Inspector. ESBC have not made an allowance for new windfall sites which are an important contributor to the housing land supply chain. Greenfield windfall sites are not required to meet targets in this instance.
- 8.45 In terms of completions/delivery rates it is the position of CPRE that developers sometimes hold back sites or delay development for their own purposes. Homes must be delivered through a plan led system otherwise there would be a free for all approach. CPRE requests that the appeal be dismissed.

### **Written Representations**

- 8.46 There have been many other written representations objecting to the proposal at both application stage and at appeal stage. Over 1117 letters were received by the Council following two rounds of consultation. Many of the letters of objection repeat the concerns set out above by others and support the Council's case.
- 8.47 In particular Rolleston Parish Council and Stretton Parish Council have written to object on the basis of the site's location outside the settlement boundary, highway objections and the lack of educational infrastructure. The risk of coalescence between Stretton and Rolleston is raised. Other concerns relate to the effect upon local services and amenities and the loss of green space and lack of open space and inadequate bus service provision.

### **Planning Conditions**

- 9.1 A schedule of agreed conditions was submitted by the Council and Appellant<sup>117</sup> and was the subject of two discussion sessions at the Inquiry. Following the first discussions an amended schedule<sup>118</sup> was submitted. I am satisfied that all of the conditions set out in Annex B hereto are reasonable and necessary and I would recommend their imposition in the event that the Secretary of State is minded to allow the appeal.
- 9.2 Using the same numeration as that in the suggested conditions schedule I shall comment upon the conditions. Some conditions have been amended or amalgamated for clarity, precision, elimination of duplication and having taken account of advice in the Planning Practice Guidance. I have also re-ordered the conditions.

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<sup>117</sup> ESBC.3

<sup>118</sup> ESBC.13

- 9.3 A masterplan to deal with phasing and the location of key areas of development, including the location of the 1.69 hectares of safeguarded land is necessary to ensure the proper planning of the site (1). Time limits for submission of reserved matters and commencement of development need to be imposed. To encourage development to come forward in a timely manner it was agreed that a shorter time limit should be imposed in relation to the first phase of development (2, 3 and 7). It is necessary to secure development in accordance with the submitted plans and, in the event that access is acceptable, in accordance with the access plans. (4 and 5)
- 9.4 It is important to limit the development to no more than 385 dwellings (6) and to control the details which come forward as part of the reserved matters application (8, 9). A noise impact assessment is also required in relation to each phase to ensure satisfactory living conditions (10) and parking areas and garages need to be secured in the interests of highway safety (11, 14 and 15). A series of off-site highway improvement works would be necessary as a result of the development and these are secured via a Grampian style condition (12). Further design details are required in relation to the access provision (13).
- 9.5 Conditions would be needed to control activities and operations during the construction phase and the hours of construction as well as dust control measures (16, 17 and unnumbered final condition). A condition requiring site investigation in relation to contamination is required so that any contamination may be satisfactorily remediated (18). A condition requiring the investigation of archaeological matters is necessary to protect those interests (19). Protection measures in relation to trees, habitats, protected species and nesting birds are also required (20, 21, 22 and 23).
- 9.6 The development would need to be carried out in accordance with the measures set out in the Flood Risk Assessment as well as securing a drainage strategy and to control the rate of development with regard to foul drainage (24 and 25). The finished levels on the site need to be controlled as does landscaping and the provision of open space (26, 27, 28 and 29). Finally it is important to secure the implementation of a travel plan to encourage sustainable modes of transport (30).

### **Planning Obligations**

- 9.7 The executed unilateral undertaking (UU)<sup>119</sup> made in accordance with section 106 of the Town and Country Planning Act 1990 secures the provision of affordable housing on-site, as well as a financial contribution to affordable housing off-site. It also secures the payment of financial sums in relation to both secondary and primary school provision, as well as the provision of 1.6 hectares of land for a school site.
- 9.8 The UU further provides for a financial sum to be paid into the Transport Strategy Contribution towards improvements set out in the Burton Integrated Transport Strategy with specific projects earmarked in Stretton. It also secures the provision of a Travel Plan and open space and a play

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<sup>119</sup> GDL.28

area on the appeal site as well as a general contribution to refuse operations. The Appellant raises no objections to any of the contributions sought.

- 9.9 Document ESBC.4 sets out the Council's justification for each of the contributions sought in accordance with the policy tests set out in the Framework and the statutory test in regulations 122 of the Community Infrastructure Levy (CIL) Regulations 2010.
- 9.10 The provision of affordable housing is in line with the adopted ESLP requirements in policy SP17 and the Council's Housing Choices Supplementary Planning Document. The position regarding educational infrastructure was explored in full at the Inquiry. The education contributions are necessary to make the development acceptable in planning terms and are directly related to it and reasonably related in scale and kind. The offer to provide a 1.69 hectare site for transfer to the County Council will depend upon my findings in relation to the dispute regarding any future deficit.
- 9.11 The highways contributions are agreed between the relevant highways authorities and are specifically designed to mitigate the effects of the development on the local highway network. They are necessary and reasonable and appropriate in scale and kind. Similarly the provision of a Travel Plan is designed to make the development acceptable and to encourage the use of more sustainable modes of travel in accordance with local and national policy objectives.
- 9.12 Open space, play areas and landscaping are required to meet the needs of residents on the site and are proportionate to the scale of development proposed. The requirements are in accordance with ESLP policy SP32 and the Council's Open Space Supplementary Planning Document. The contribution towards refuse contribution is designed to fund recycling facilities by contributing toward a recycling bin for each property.
- 9.13 Overall I am satisfied that the obligations in the UU (with the exception of the school site which I shall return to) meet the tests in CIL regulation 122 and I would recommend that they be taken into account in assessing the appeal.
- 9.14 The Council also gave evidence to the Inquiry as to the number of pooled contributions in relation to highways and education. The highways contributions in the UU are specifically for the Stretton ward and there have been no other contributions made towards highways improvements in this ward. There have been no other relevant financial contributions towards primary school places in the area in which the appeal site is located. There have been two other relevant contributions to the de Ferrers Academy which is the academy which would receive the secondary school contribution. I am satisfied that none of the financial contributions fall foul of the pooling restrictions in regulation 123 CIL regulations and as such they can be taken into account.

- 9.15 At the start of the Inquiry there were a number of disputes between the Appellant and the Council and SCC regarding the drafting of the UU<sup>120</sup>. Many of these disputes regarding the mechanics of the agreement fell away, with the exception of one remaining dispute regarding the release of individual plot purchasers from the binding obligations in the executed UU.<sup>121</sup>
- 9.16 Clause 5.6 of the UU confirms that the deed shall not be enforceable against owner-occupiers or tenants (other than in relation to on-site affordable housing provisions). A conditionality clause is included at clause 5.7 deleting clause 5.6 in the event that the Secretary of State considers it to be unreasonable and concludes that no weight should be attached to the UU.
- 9.17 The Council contends that it is inappropriate to release individual purchasers/tenants where there are ongoing obligations in the deed such as education and highways payments and in the Travel Plan provisions. A fundamental legal tenet of planning obligations is that they should run with the land so as to be binding on the successors in title of the original parties. Any planning obligation is registered as a local land charge and would become known to any potential plot purchaser. The Appellant is concerned that this would be off-putting to purchasers and their mortgagees.
- 9.18 In this case it is important to look at the terms upon which the financial contributions are to be made. The off-site affordable housing contribution is to be made in four tranches before occupation of 20%, 40%, 60% and 80% of the market housing. It is important to look at the commercial risk to the Council of a developer not honouring these payments. In this instance it is reasonable to assume that there would be a reasonable profit in the provision of 20% of market housing such as to provide the developer with a commercial incentive to make the payment. Any failure to meet the obligation would be apparent on 20% occupation (or the other points thereafter) and the Council could take steps to enforce against the developer.
- 9.19 The combined education payments are to be paid in a number of tranches; 10% prior to development, 30% before occupation of 20% of the housing, 30% to be paid prior to occupation of 40% of the dwellings and the balance prior to occupation of 60% of the dwellings. Again this is a reasonably tight timescale in terms of the financial contribution being front-loaded on the development. The education contribution would be paid in full before 60% of the houses had been occupied which would provide adequate security for the Council.
- 9.20 Finally the highways contribution would be paid in instalments with 10% prior to commencement on any phase and the balance on that phase to be paid prior to 50% occupation.

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<sup>120</sup> Set out at GDL.21 and ESBC.11

<sup>121</sup> GDL.28, UU executed 10 June 2016.

- 9.21 Having regard to the above I conclude that the commercial risks to the Council of exempting plot purchasers from the obligation are very limited. The contributions are spread evenly across the development which further reduces the risk. In other words this is not a case where the financial contribution is made at the end and where the developer could sell off most of the houses and not make payment. It would be apparent that a breach had occurred if there was non-payment at any of the trigger points and the Council could take action. I also bear in mind that the Council confirmed that it had never taken action against individual plot purchasers which I do not find surprising.
- 9.22 Finally the provision of a Travel Plan is secured by condition prior to the occupation of the 50<sup>th</sup> dwelling. It will set out objectives, targets, mechanisms and measures to achieve targets. Given the nature of this requirement it would not be possible or reasonable to enforce travel plan measures against an individual occupier in any event.
- 9.23 I therefore conclude that it is reasonable to allow the plot purchaser exemption provisions in clause 5.6 of the UU to remain. I would recommend that the UU be taken into account with clause 5.6 intact. I note that this is an approach recommended previously.<sup>122</sup>

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<sup>122</sup> GDL.25, report to Secretary of State Land at Church Lane, Wistaton.

## Inspector's Conclusions

*In this section the numbers in [subscript] refer to preceding paragraphs*

- 10.1 Section 70(2) of the Town and Country Planning Act 1990 provides that, in dealing with proposals for planning permission, regard must be had to the provisions of the development plan, so far as material to the application and to any other material considerations. Section 38(6) of the Planning and Compulsory Purchase Act 2004 provides that if regard is to be had to the development plan for any determination then that determination must be made in accordance with the plan unless material considerations indicate otherwise.
- 10.2 In this case the Council and Appellant are broadly agreed that the proposal is contrary to the development plan <sup>[6.8, 6.8, 7.2, 7.11, 7.13]</sup>. There are then a series of material considerations relevant to a final assessment and planning balance. Those considerations include national policy advice in the Framework, in particular the presumption in favour of sustainable development and the need to maintain a 5 YHLS; education considerations including the extent of any unmet general need within the borough and the degree to which the proposal would make a positive contribution to it and the loss of BMV agricultural land. In addition SOS raises concerns in relation to highways, landscape and other issues which I shall also consider. <sup>[8.17-8.38]</sup>
- 10.3 I shall first assess the proposal against the development plan and then go on to examine the other material considerations, before giving my overall conclusions and recommendation.

### *Conformity with the development plan*

- 10.4 The development plan for the area containing the appeal site includes the adopted ESLP and the 'made' SNP. It is common ground that the proposal conflicts with ESLP policy SP8 because it is located outside the settlement boundary. One of the exceptions within SP8 allows for facilities outside settlement boundaries, as long as they are for use by the general public and on sites close to an existing settlement which are reasonably accessible. It is agreed that the site fulfils the second limb of this criterion in that it is on the edge of the settlement and it is reasonably accessible. <sup>[5.2, 5.3]</sup> Whether or not the provision of a school site constitutes the 'provision of facilities' is a separate and disputed matter.
- 10.5 In its sixth exception SP8 further allows infrastructure development outside settlement boundaries where there is an overriding need for the development to be in the countryside. The explanatory text confirms that the definition of infrastructure is to be construed widely and includes education facilities. <sup>[6.7]</sup>
- 10.6 I am not persuaded by the Appellant's argument that the proposal, in terms of the provision of land for educational purposes, gains support from these exceptions in policy SP8 for a number of reasons. Firstly, it is not possible to dis-aggregate the provision of safeguarded land from the wider residential scheme. It is clear that the appeal scheme is primarily for the provision of housing. The offer to transfer land for the purposes of providing a new

school was motivated<sup>123</sup> by the need for the residential scheme to mitigate its impact on educational provision.<sup>[3.1,8,7]</sup>

- 10.7 The offer of land may result in provision over and above that required to mitigate the demands resulting from the housing. However the extent of any forecast deficit in primary school provision is in dispute as is the appropriateness of the appeal site as a location for a new primary school. I shall return to these matters later. In addition there is a requirement to demonstrate an overriding need for the development to be located in the open countryside, which the Council argue has not been demonstrated.<sup>[7.10]</sup>
- 10.8 In the meantime, irrespective of any findings on the above disputes, the promise within the UU is for land to be transferred to the SCC for the purposes of a school site<sup>124</sup>. As it relates to a transfer of land I do not accept that the offer constitutes the provision of facilities in the second exception in SP8 (my emphasis). Further I doubt that it constitutes 'infrastructure' within the meaning in the sixth exception of SP8 and expounded upon in the explanatory text. Even if it did, the relative proportions of safeguarded land to be transferred (1.69ha) as against the remainder of the site for housing (21.57ha<sup>125</sup>) points to this being a housing-led scheme.
- 10.9 It is clear therefore that the proposal is contrary to SP8. This is an important key strategic policy which seeks to balance the need to protect the countryside, with recognition that the rural economy and tourism is a vital part of the Borough's economy<sup>126</sup>.
- 10.10 ESLP policy SP2 sets out the settlement hierarchy and confirms that development will be directed to the main towns. It is agreed that Stretton forms part of the Burton upon Trent urban area which is classified as a main town in SP2.<sup>6.4</sup> The policy clearly states that '*new development should be concentrated within the settlement boundary of the Main Towns.....as shown on the Proposals Map*'.
- 10.11 The Appellant does not expressly accept that the proposal is in conflict with SP2 given the location of the site adjacent to the settlement boundary and the wording of the policy<sup>127</sup>. In particular Mrs Hodson advocates that the inclusion of the word 'should' in the policy text does not imply that all development must be within the settlement boundary. Mrs Hodson further contends<sup>128</sup> that there is some support from this policy given the agreement that the site is in an accessible location on the edge of the settlement boundary of a main town.<sup>[6.4, 7.11]</sup>
- 10.12 However the explanatory text to the policy clearly sets out the importance attached to directing development to the most sustainable places having regard to the hierarchy. The settlement boundaries assist in defining those main towns and villages in the hierarchy and in providing clarity as to where

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<sup>123</sup> CD12.8, SCC consultation response to 425 houses proposal

<sup>124</sup> UU definitions clauses schedule 3

<sup>125</sup> Total site area is 23.36ha as set out at §3.1.1 SCG

<sup>126</sup> ESLP §3.24, CD 7.1

<sup>127</sup> Mrs Hodson examination in chief and proof of evidence §5.1.8

<sup>128</sup> In cross-examination by Mr Hunter

development will take place<sup>129</sup>. When the policy text is read as a whole, supported by the explanatory text, I consider the most sensible meaning to be that the development requirement should be within the settlement boundaries. Given the location of the appeal site outside the settlement boundary I conclude that the proposal is contrary to this policy.

10.13 Neither do I accept that the location of a site on the edge of, but outside a settlement boundary and in an accessible location, garners support from this policy. A site outside the settlement boundary is a site within the open countryside and falls to be assessed accordingly against other relevant plan policies.

10.14 SP4 of the ESLP guides the distribution of housing growth throughout the plan period. The text of the policy assigns a 'development requirement' to the various settlements and goes on to record that '*The Development Requirement assigned to the Main Towns and Tier 1 and Tier 2 settlements will be delivered within settlement boundaries or in accordance with a Made Neighbourhood Plan*'. The Appellant points to the explanatory text which states that '*The majority of sites contributing to the development requirement will be brownfield. Greenfield may be acceptable in accordance with Strategic Policy 1 and Detailed Policy 3*'<sup>130</sup>.

10.15 The wording of the policy text is absolutely clear; the development requirement will be either within the settlement boundary or in accordance with a neighbourhood plan. I do not consider that the explanatory text revises or adds to that wording in any way. It is merely a supplement to the body of the text to explain the thinking behind it. Given that the appeal site is outside the boundary and not allocated in the SNP it follows that the proposal is contrary to policy SP4.

10.16 ESLP policy SP1 is an overarching policy promulgating the presumption in favour of sustainable development. It sets out 15 broad ranging criteria against which proposals should be assessed with a view to deciding whether '*a development proposal is as sustainable as possible*'. Of the 15 criteria the Council contend that the scheme offends only one; namely the requirement to safeguard the long term capability of BMV land. The Appellant agrees that this criterion is breached but that the weight to be attached to this factor should be assessed by reference to the Council's historic approach to BMV land.<sup>[6.22-6.26,7.13]</sup>

10.17 At this point it is sufficient to conclude that the loss of BMV land means that the proposal would be contrary to one of the 15 criteria in SP1 used to assess proposals. I shall consider this matter further in the context of the Framework's guidance on BMV.

10.18 In terms of the SNP<sup>131</sup> it is agreed that the proposal would be contrary to policy S1 given its location outside the settlement boundary which is replicated from the ESLP proposals map.<sup>[6.8,7.13]</sup>

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<sup>129</sup> §§3.14 to 3.18 CD 7.1 and in particular §3.17 regarding the '*benefits of identifying specific settlements*' providing a '*clear approach for communities, setting out where development will take place over the plan period*'

<sup>130</sup> *Ibid* §3.37

<sup>131</sup> CD 7.1

*Conclusions on conformity with the development plan*

- 10.19 The proposal is contrary to ESLP policies SP8, SP2 and SP4 as well as SNP policy S1 because of its location outside the settlement boundary. These are key strategic policies sitting at the heart of each of the development plans and are tasked with directing development to appropriate locations. In addition the proposal would be contrary to one element of ESLP SP1 as a result of the loss of BMV land.
- 10.20 Having regard to the nature and scale of the proposal and the strategic nature of the development plan policies breached, I conclude that the proposal is not in conformity with the development plan as a whole.

*The Five Year Housing Land Supply*

- 10.21 The National Planning Policy Framework (the Framework) seeks to boost significantly the supply of housing and requires local authorities to identify and update annually a supply of specific deliverable sites sufficient to provide five years' worth of housing (the 5 YHLS). Paragraph 49 confirms that housing applications should be considered in the context of the presumption in favour of sustainable development. Relevant policies for the supply of housing will not be considered up-to-date if an authority cannot demonstrate a 5 YHLS.
- 10.22 The Council and Appellant are agreed that ESLP policies SP2, SP4 and SNP policy S1 are all policies concerned with the supply of housing<sup>132</sup>. I also agree with this assessment. It follows that, in the absence of a 5 YHLS, these particular policies will be considered out-of-date. I now turn to consider the question of the 5 YHLS.
- 10.23 ESLP policy SP3 identifies a minimum housing requirement of 11,648 dwellings over the plan period. The stepped trajectory means that the minimum annual housing requirement is 466 dwellings per annum for the years 2012-2018 and 682 dwellings per annum for the remainder of the plan period.<sup>4.2</sup> The latest position is set out in the Council's '*31 March 2016 5 Year Housing Land Supply Statement*'<sup>133</sup> which details completions for the first four years of the plan period totalling 1315 as against a local plan target of 1864.
- 10.24 The parties are agreed that the calculation of the 5 YHLS should be carried out using the same methodology as that employed by the Local Plan Inspector.<sup>[5.5.5.6]</sup> This involved the application of a 20% buffer (in accordance with paragraph 47 of the Framework) to the base requirement and the shortfall. The respective calculations of the Council and Appellant are set out in evidence<sup>134</sup>.
- 10.25 The Council has adopted the Sedgefield approach in its calculation of a 5 YHLS and therefore aims to deal with any undersupply within the first five years of the plan period<sup>135</sup>. This results in a new five year requirement of

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<sup>132</sup> Mrs Hodson proof of evidence §§5.1.9, 5.1.21, 5.1.28, 5.1.54 and Mrs Kurihara in cross-examination

<sup>133</sup> Appendix 1 to Rebuttal Statement of Mrs Kurihara

<sup>134</sup> For the Council in appendix 2 to the rebuttal proof of Mrs Kurihara and for the Appellants at Inquiry document GDL.05

<sup>135</sup> Melissa Kurihara proof of evidence §§5.17-5.26

3574 houses when the buffer is added, with any under-delivery still to be factored in. This much is agreed.

10.26 As previously indicated the dispute between the parties centres upon two key matters; first is the method by which completed properties are counted and the second is the deliverability of the housing sites relied upon by the Council in its supply chain.<sup>[7.16,7.17, 6.15 and 6.16]</sup>

#### *Completions*

10.27 The Council calculates that some 1315 dwellings have been completed in the first four years of the plan period up to March 2016, leading to an under-delivery of 549 dwellings. The Appellant calculates the completions at 1045 putting the under-delivery at 819 units. The disparity between the two completions figures is further increased by application of the 20% buffer.

10.28 The Council uses a number of sources to identify completions<sup>136</sup>, including building control records, supplemented by Officer site visits during which a Council Officer carries out a visual inspection of the site and counts the number of completed units. Sometimes discussions are held with site managers. Completed units are taken to include those houses which are obviously lived in but also those with a completed external structure which are capable of being lived in.

10.29 The background information on the 31 March 2016 position statement explains that there was a data cleanse of the Council's housing data during October and November 2012. At that time the Council moved from a desk based calculation of supply to one based on twice yearly site visits. The explanation was that *'this approach represents the most up to date and accurate way of assessing the way in which housing permissions move through the construction phase to completion'*.

10.30 The Appellant has used the information contained within the DCLG 'Live Tables' on the P2 quarterly house-building returns. Both parties point out potential deficiencies in the approach of their opposite number.<sup>[6.17,6.18,7.20-7.23]</sup>

10.31 There is no prescribed approach to the counting of completions in national policy or national guidance. This is evidenced by a variety of approaches being taken by different authorities<sup>137</sup> and by the difference between the parties in this case. To my mind the question to be asked is: is the approach which has been used reliable and has the authority been consistent in the application of that approach? The need for a consistent approach is self-evident given that monitoring returns are produced on an annual basis and if the methodology changes in the intervening periods then the figures could be skewed.

10.32 The DCLG tables collate returns from building control records and are used to provide estimates of house-building activity<sup>138</sup>. The returns are sent in on a quarterly basis and the tables updated to ensure accuracy. The purpose of the returns is to give a broad picture of the number of new houses built on a

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<sup>136</sup> A full explanation of the methodology is set out in the email contained at GDL.02

<sup>137</sup> Explained by Mrs Kurihara during examination in chief. Also Mrs Hodson confirmed in cross-examination that every authority does something different.

<sup>138</sup> GDL.01, first paragraph.

national basis. This represents a proportionate approach in terms of the information requested from local planning authorities to enable central government to track house-building rates. I see nothing wrong with using the tables as a device for counting completions at a local level for the purpose of the calculation of housing land supply figures.

10.33 However, a Council seeking to collate information on completions for the purposes of calculating a 5 YHLS may also want the most up-to-date information in terms of the number of houses completed. To that end, it may be prepared to expend more resources in the pursuit of more detailed information and as such I consider the use of site visits to supplement other information to be an entirely reasonable approach. The Appellant<sup>139</sup> accepted that there was no allegation of double-counting but maintains that houses were being counted before they should have been.

10.34 There is no definition of a 'completed' house in planning guidance or policy. If a house is, to all intents and purposes, fully built as evidenced by a letter box, house number, bins<sup>140</sup> then it is perfectly reasonable to say it is completed within the ordinary meaning of that word. I do not agree that a completions certificate is a pre-requisite to 'completion' in these circumstances. It may be a pre-requisite for other things, such as obtaining a mortgage, but that is not material here. For these reasons, I conclude that the method used by the Council is sufficiently precise and robust and that the Council have provided a clear explanation as to how the figures are arrived at.

10.35 More importantly, the method used by the Council was the same method as that used in calculating completions before the Local Plan Inspector. It did not attract any adverse comments from either the Inspector or other participants. I have already referred to the importance to be attached to maintaining a consistent methodology when monitoring takes place on an annual basis. To change the method of counting completions at this point would risk skewing the figures and would render a comparison with previous statistics more difficult and less meaningful. I see no reasonable basis for changing the method of counting completions at this point in time.

10.36 It follows therefore that I prefer the Council's figures on completions over those of the Appellant. The consequence of this finding is that the Council's housing requirement figure of 4,235 in terms of the 5 YHLS is also to be preferred.<sup>[7.18]</sup>

#### *The deliverability of sites*

10.37 To be considered deliverable, sites should be available now, offer a suitable location for development now and be achievable with a realistic prospect that housing will be delivered on the site within five years. Sites with planning permission should be considered deliverable until permission expires unless there is clear evidence that schemes will not be implemented within five years.<sup>141</sup> Robust, up to date evidence is required to support the deliverability of sites and constraints such as the provision of infrastructure will also have

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<sup>139</sup> Mrs Hodson in cross-examination and in response to the Inspector's questions

<sup>140</sup> GDL.02- Mrs Kurihara's analysis

<sup>141</sup> Footnote 11 of §47.

to be considered. The size of sites and their respective build out rates, as well as the time needed to commence development, will also be important factors in assessing the deliverability of sites.<sup>142</sup>

- 10.38 Each of the experts<sup>143</sup> made points regarding the assessment of deliverability. The Council assert that, given the recent adoption of the ESLP, the starting point must be the LP Inspector's finding in his 7 October 2015 report<sup>144</sup> that there was a 5 YHLS. The Council relies on advice in the PPG that a section 78 appeal is not the forum to revisit arguments about supply given the short time which has elapsed since the LP Inspector's report.<sup>[7.16]</sup>
- 10.39 On behalf of the Appellant it was pointed out that a full year of monitoring has taken place and that the mere fact of adoption of the ESLP in October 2015 does not absolve the Council from its duty to demonstrate a 5 YHLS.<sup>[6.15]</sup>
- 10.40 Both contentions are valid. It is a material consideration of significant weight that some 9 months ago, following a full and proper examination, my colleague Inspector made findings about individual sites and about the overall supply. I consider that those findings create an assumption that there is a 5 YHLS unless there is significant and clear evidence to the contrary, including a material change in circumstances since the LP examination. This applies equally to the findings about individual sites. Indeed I note that the deliverability of 16 sites was in dispute at the LP examination and the Inspector made individual findings on those sites. Many of those sites feature in the current dispute between the parties in this appeal.
- 10.41 However I also accept that the availability of the 5 YHLS position statement now means that there is 12 months more data available in terms of completions. In addition, the passage of time is a relevant factor in considering the likely timing of completions on a site.
- 10.42 There is a dispute between the Council and Appellant regarding the deliverability of houses on some 18 sites.<sup>[6.19-6.217.24-7.29]</sup> A summary of the disputes are set out in the tables within the Council's closing and those appended to the Appellant's closing. More detailed analysis is set out on a site by site basis within the evidence of the Appellant and the Council.<sup>145</sup> I now turn to consider those individual sites.
- 10.43 I shall deal firstly with the large sites with planning permission and recognise at the outset that in such cases the starting point is an assumption that the site is considered deliverable unless there is clear evidence to the contrary.
- 10.44 *Land South of Branston*: this is a large sustainable urban extension site with outline planning permission for up to 660 dwellings in phases. The first phase of 64 dwellings is under construction and a second reserved matters approval has been given for a second phase of 204 dwellings. The first phase is well under way with construction started on the second phase. The dispute

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<sup>142</sup> PPG Reference ID: 3-031-20140306.

<sup>143</sup> Mrs Kurihara (MK) for the Council and Mrs Hodson (JVH) for the Appellants

<sup>144</sup> CD7.3: extracts from the LP Inspector's report.

<sup>145</sup> Appendix 9 to proof of JVH and Appendix 2 to the rebuttal proof of MK

is regarding the rates of delivery. The LP trajectory estimated some 80 dwellings per annum (dpa) from this site.

- 10.45 The Appellant has applied a delivery rate of 36dpa to this site based on a telephone exchange with a Senior Surveyor at the developer company. The Appellant confirms that there is only one developer. The Council has an email from the agent confirming a build out rate of 50dpa. The build out rate of phase 1 works out at around 64 dwellings in a 26 month period from the date of approval of reserved matters to the anticipated date of completion. This represents clear evidence as to a realistic rate of delivery. For this reason I accept the Appellant's rate of delivery and 61 units shall be removed from the 5 YHLS.
- 10.46 *Beamhill/Upper Outwoods Farm*: outline planning permission was granted for 950 dwellings on this site in August 2013. The ESLP trajectory assumed a build out rate of 80dpa commencing in year 2018/19. The planning consultants<sup>146</sup> confirm this completion rate remains realistic. Whilst the Appellant has produced a letter from the promoter with slightly different predictions, this letter<sup>147</sup> does not contradict the estimates supplied by the planning consultants. It further indicates that they are 'well progressed with a developer' on the scheme and confirms that 80dpa is not an unreasonable figure. Whilst reserved matters applications in relation to dwellings are outstanding there is no clear evidence that there are substantial constraints which would jeopardise the approval of reserved matters or the projected date for completion of the first dwellings. There is no clear evidence to overturn the assumption of 80dpa or the projected time for commencement of development. The Council's figures are preferred.
- 10.47 *JCB Pinfold Street*: a large site with outline planning permission for 257 dwellings. The LP anticipated a delivery rate of 40dpa commencing in 2018/19. The outline permission requires all landowners to enter into a section 106 agreement. The Appellant contends that the site is not now deliverable, given that one of the freehold owners of the Bridge Street Industrial site is not prepared to enter into the agreement. I further note that the Council has chosen not to exercise its powers under the Compulsory Purchase Act<sup>148</sup>.
- 10.48 The Bridge Street Industrial Estate is a small, self-contained site located just behind phase 1 (the retail store) of the much larger, wider site. The agents acting on behalf of the freehold owners of the industrial estate confirm that '*at this moment*' his clients have not signed an agreement and they will not do so until '*commercially acceptable terms for the sale of the land can be agreed*'. This does not indicate a refusal to sell; it merely represents a negotiating position held at this time. The assumed trajectory is relatively modest and I do not accept that there is clear evidence that the site is undeliverable or will not come forward at the assumed rate. The Council's figures are preferred.

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<sup>146</sup> Sigma Planning letter 8 March 2016 to the Council at p36 to MK appendix 2.

<sup>147</sup> GDL.06

<sup>148</sup> GDL.18

- 10.49 *Forest Road*: the Secretary of State granted planning permission for up to 300 dwellings on this site in 2014. The Council's anticipated completions from this site represent an increase on those assumed in the LP trajectory. I note that the site requires groundworks due to its steep topography. The Appellant relies on projections made by the agents acting at outline stage. The email from Rushton Hickman regarding a start date does not contradict the Council's assumed completions rate.
- 10.50 The Council have predictions from both the current agents at reserved matters stage and the house developer. In particular the house builder's projections<sup>149</sup> as to completions are detailed, up-to-date and specific and I see no reason not to rely upon them. By contrast the letter from Bellway at GDL7 is dated 1 June 2015 and gives a broad estimation as to 'sales figures' on Burton sites. The Council's figures are adopted.
- 10.51 *Branston Locks*: this is a very large mixed use strategic site with outline planning permission for 2500 dwellings, employment, education, leisure and healthcare uses. Reserved matters are yet to be approved. The permission contains a restriction on developing only 300 houses until such time as strategic highways works have been completed. A further condition effectively prevents occupation of any part of the development which generates over a specified threshold of vehicle movements. Other infrastructure works are also required.
- 10.52 The Council has revised its delivery expectations from this site downwards from the LP trajectory, in line with estimates from the agent acting on behalf of the land promoter and owner. The Appellant also spoke to the same agent who confirmed that there was no appointed developer as yet. However, the estimates given to the Council were in response to a specific questionnaire about the contribution to the 5 YHLS for monitoring purposes and I am satisfied that they are up-to-date and reliable.
- 10.53 General issues regarding the provision of infrastructure and the complexities of developing a large site were known to the LP Inspector at the time of his assessment. I note that the highway works, to Branston junction and Branston Lane, are due to commence in May 2016 with a completion date of June 2017. There is no materially new or significantly different information which would cause me to doubt the information provided by Jones Lang LaSalle. Whilst the Appellant contends that further time has elapsed since the LP Inspector's consideration of this matter, it is clear that matters are progressing. The estimates provided by Jones Lang LaSalle were provided as at 10 March 2016 from a senior person familiar with the site and current progress and I consider the figures to represent the best information available. The Council's figures are preferred.
- 10.54 *Demontfort Way*: is a site with planning permission for up to 10 dwellings and is in the hands of a private landowner. The Appellant questions the deliverability of this site on the basis that there is a ransom element but this is not mentioned by the agent in either of his emails to the Council and Appellant<sup>150</sup>. What is clear is that the agent and his clients were conscious

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<sup>149</sup> Bellway email 18 April 2016 at p. 58 to MK appendix 2.

<sup>150</sup> JVH site 8 and MK page 80 of appendix 2

that there may be changes in Government policy regarding the requirement for affordable housing and tariff style planning obligations from small sites. That change has now occurred and contributions will not now be sought from developments of 10-units or less.<sup>[1.10]</sup>

- 10.55 In the circumstances I consider that this change, as indicated by the agent, '*may improve the sale value of the site*' inducing the landowner to sell to a developer. As such I consider the deliverability of the site to be a realistic prospect and can see no reason to demur from the Council's assumptions which have moved the delivery expectations one year further on to 2017/18.
- 10.56 *Barton Marina*: was granted outline planning permission for up to 75 dwellings. The Appellant's evidence is that following market research, the developer has submitted a second application for 54 units but has also submitted reserved matters in relation to the outline permission 'as a back stop position' to keep the permission alive. The outline permission was won at appeal, this together with the submission of reserved matters, indicates to me that the developer is intent on developing out this site, albeit that a scheme for 54 units is preferred.
- 10.57 The application for 54 units has not been decided but the outline permission has already established the principle of residential development on the site. Whilst I note that ward councillors have opposed development of the site, given all of the above factors, I consider that the prospects of a planning permission being granted for a reduced scheme are likely to be favourable. Even if they are not, this is a developer who has expended time and money to gain an outline planning permission at appeal and has submitted a reserved matters application to keep that permission alive. The email from Cameron homes refers to the 71 unit scheme not being a 'preferred position'. There is no indication that the scheme is not viable or not deliverable, just that the 54 unit scheme is preferable.
- 10.58 As requested by the parties I visited this site. Whilst development has not commenced there are house-builder's flags on the site which advertise a forthcoming development. All of this points to the positive intentions of the developer with regards to the site.
- 10.59 With regards to timing I note that the LP trajectory anticipated this site delivering in years 2017/18 and 2018/19. Even if there is some slippage to account for the second application, the units on a 54 house scheme could still comfortably be delivered within the 5 year period. I conclude that the Council's approach of reducing the delivery from this site from 75 to 54 units is a pragmatic and realistic one.
- 10.60 *Roycroft Farm, Uttoxeter*: gained planning permission on appeal for up to 140 houses in January 2015. Approval for reserved matters was given on 19 January 2016 for two phases of development. There are two pieces of written evidence before the Inquiry, an email from Lioncourt Homes to the Appellant<sup>151</sup> confirming a start on site date of March 2016 and an anticipated sales rate of 6 houses per quarter. It is notable that the writer confirms that they are hoping for a quicker rate of sales. The emails from Lioncourt Homes

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<sup>151</sup> JVH appendix 9, site 10, page 10.2

to the Council<sup>152</sup> confirm that phase one will start to be developed over the next 12 months with phase 2 following thereafter. The second email confirms that they are looking to build out the site in the next two to three years.

- 10.61 The email to the Appellant refers to sales which is not necessarily the same as completions. The Appellant has translated these comments to a delivery rate of 6 dwellings in the first year 2016/17 and then 24 thereafter. However, in my experience a site is marketed as soon as development commences with houses sold 'off plan' if necessary. If the Appellant's figures are based upon projected sales I see no reason why a figure of 24 should not be used in the first year after commencement of development. In any event the information provided to the Council is specific and is from the Design Manager who has responded to a specific request about completions. I place more reliance on the communications to the Council because of this and I see no reason to depart from the Council's projected completions figures.
- 10.62 *Tutbury Road/Harehedge Lane/Glenville Farm*: this is a site allocated in the ESLP which was granted planning permission in December 2015 for 500 units. The Appellant points to a Grampian condition requiring the completion of a section 106 agreement and the fact that SCC, as landowners, are not actively marketing the site to reduce the LP trajectory figures from 55 to 20. This indicates that they accept that some completions will be achieved within the 5 year period but it is the rate of those completions which is challenged.
- 10.63 This is a site with planning permission which the SCC has now confirmed is in the hands of its property partner PENDA<sup>153</sup>. Condition 2 requires that an application for reserved matters approval of the first phase of 110 dwellings should be made not later than December 2017<sup>154</sup> and that development should begin not later than 2 years from the date of approval of the last of the reserved matters to be approved. This will provide an impetus for the commencement of development. The LP trajectory estimated some 40 dwellings of the 500 dwellings would be completed in the last year of the five year period. The business of estimating completions is based on judgments and I do not consider that there is any fresh evidence to change the estimates in the LP trajectory<sup>155</sup>.
- 10.64 The following sites are from table B in the Council's 5 YHLS Position Statement and they are sites with a resolution to approve subject to completion of a section 106 agreement.
- 10.65 *Land at Pennycroft Lane*: this is a Council owned site which is currently tenanted by two commercial occupiers. The Council have appended an email from its own Enterprise Manager confirming that it will be delivered within 5 years. Mrs Hodson spoke to the same person who also confirmed that it was the Council's intention to sell the land and that it did not want to pay compensation to relocate the tenants. A section 106 agreement has now been signed and planning permission granted for 49 dwellings.

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<sup>152</sup> MK appendix 2, pages 71-72

<sup>153</sup> P.33 MK appendix 2

<sup>154</sup> Being two years from the date of the outline planning permission.

<sup>155</sup> Save for the deletion of 15 units from the supply as at 2016/17 agreed by both parties.

- 10.66 The LP trajectory estimates that this site will deliver 20 dwellings in 2018/19 and a further 29 dwellings in 2019/20. The LP Inspector was aware of the commercial occupation of the site<sup>156</sup>. There is no evidence to suggest that the site cannot be delivered. Even if the tenancy issues take longer to resolve and there is slippage on the timetable, the expectation was that the site would deliver in years 3 and 4 of the 5 year cycle. Therefore even with slippage I consider that completion of the units on the site within 5 years remains a realistic prospect.
- 10.67 *Land north of Rocester*: has a resolution to grant planning permission for 53 dwellings subject to completion of a section 106 agreement. The resolution was made in August 2014 and the Appellant points to a long delay in its completion indicating a lack of will to bring the land to market. It is also contended that the affordable housing will now have increased given the site's location outside the settlement boundary.
- 10.68 However, the scheme architects confirmed to the Council that the section 106 is nearing completion<sup>157</sup>. Also in response to the Council's 5 YHLS questionnaire, the landowners, JCB, have confirmed that the figure is deliverable indicating an intention to proceed with development. The site is a greenfield site and there is no evidence to suggest that there are physical or legal impediments to its delivery. Given that it is for 53 units and the section 106 will result in the issue of a planning permission, I conclude that it is likely to be delivered within the five year period.
- 10.69 *Eyes Farm, Rocester*: has been the subject of a resolution in January 2014 to grant permission for 18 dwellings subject to completion of a section 106 agreement. The Appellant points out that an agreement has still not been executed. Mrs Hodson believes that there is a ransom strip forming part of the site with a dispute between two landowners and properties still occupied on the site but there is no documentary evidence to support this.
- 10.70 By contrast the Council has had confirmation<sup>158</sup> from planning consultants acting on behalf of Radmore Homes who suggest that the agreement is nearing completion and that preliminary discussions have already taken place with regard to a reserved matters application. A screenshot from the website of Radmore Homes advertises the site with '*more details to follow of 16 super new homes to be commenced in the coming months*'. The Council have moved the completions one year forward to 2017/18 from the LP Trajectory.
- 10.71 There is no clear or substantial evidence to suggest that occupation is a barrier to development. The Council have moved the delivery expectations forward but this would seem sensible in light of the current position. Again I conclude that this site is deliverable and the Council's assumed completion dates are realistic.
- 10.72 *Howard Transport, Clays Lane*: had a previous outline planning permission for residential development which was granted in July 2011. The site was marketed, unsuccessfully, and the permission lapsed because of a failure to submit reserved matters details. The Council resolved to grant planning

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<sup>156</sup> CD7.3 §99.9

<sup>157</sup> Email Jim Malkin to ESBC confirming his conversation with Hill Dickinson solicitors. Page 75 MK Appendix 2.

<sup>158</sup> MK appendix 2, pages 77-79.

permission for a second outline permission for 86 dwellings subject to a section 106 agreement.

10.73 Mrs Hodson's consultancy is the agent for the landowner and she confirmed that the site is still in use as a haulage depot and the bungalow on the site is occupied by an elderly relative. She believes that there are difficulties in developing the site because the land level to the rear of the site has to be raised to meet flood risk requirements. In addition she gives details of increased contributions<sup>159</sup> which are affecting the attractiveness of the site to develop.

10.74 The Council has produced an email from Mrs Howard which confirms that they are hoping to develop the site and are waiting for their solicitor to deliver a section 106 agreement for signing<sup>160</sup>.

10.75 The site has a history, with a previous outline permission for residential development falling by the wayside. It is not a straightforward development site. It is evident that there are a number of hurdles to overcome before development commences, the section 106 agreement needs to be signed, the reserved matters application submitted and approved and the site needs to be vacated and then placed in the hands of a developer/housebuilder.

10.76 I am conscious that the current landowner is not a developer/housebuilder. In circumstances where a residential permission has previously lapsed and where the site is difficult to build out and where there are increased financial burdens in terms of the section 106 contributions there is a question as to whether or not there remains a realistic prospect of this site delivering new homes within 5 years. Certainly the Council's assumed expectations indicating 20 new homes in 2017/18 appear somewhat optimistic. I shall exclude this site from the 5 year supply for these reasons (ie minus 86 units.)

10.77 I now turn to consider those sites in the 5 YHLS which are allocated sites within the ESLP but where no planning application has yet been submitted<sup>161</sup>.

10.78 *Churnet Farm, Rocester*: a previous application was withdrawn because of heritage issues but the developers have indicated to the Council that they expect the housing to be delivered on the site commencing within the next 12 to 18 months, subject to the planning process. This is an allocated site and in including it in the LP trajectory, the LP Inspector was aware of the issues. Whilst another monitoring year has passed, it is clear that matters are progressing in that an application has already been submitted and, although it was withdrawn, the developer's letter confirms its continued intentions. In addition Mrs Kurihara gave evidence<sup>162</sup> that there have been recent discussions with English Heritage to resolve matters. This site still has a realistic prospect of completion within the next 5 years.

10.79 *Bargates Molson Coors and High Street, Burton*: these are two sites in the town centre. The Bargates site is owned by the Council and is currently in use as a car park. The Molson Coors site is in active use as a brewery. In

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<sup>159</sup> GDL.08 note

<sup>160</sup> MK appendix 2 p. 93

<sup>161</sup> Table D 5 YHLS position statement

<sup>162</sup> Examination in chief

2010 the whole site was unsuccessfully marketed as a mixed use site<sup>163</sup>. More recently the Council has been in talks with a major developer interested in buying the site<sup>164</sup> but it would appear that these talks have broken down<sup>165</sup>. The Council anticipates the provision of 40 units within 5 years from the car park site. The Council's Enterprise Manager confirms<sup>166</sup> that the site will be delivered within 5 years. Whilst the wider site may be more problematic<sup>167</sup>, the car park use is easily displaced and I consider that anticipated completions from this part of the site remain a realistic prospect for delivery within the next 5 years.

10.80 *Molson Coors Middle Yard*: This is a large town centre site which is currently in use as the main transport depot for a brewery. It is an allocated site in the LP<sup>168</sup> although a planning application has not been submitted. Nonetheless the landowner has confirmed that 100 units will be delivered on the site in 5 years. In addition pre-application discussions have been held throughout 2015. The site remains a realistic prospect for the delivery of 100 units within 5 years.

10.81 *Derby Road, Burton*: this is a site earmarked for 250 homes with some 40 homes to be delivered in the last year of the 5 year period according to the LP Trajectory. It is a long thin site along the Derby Road corridor in multiple ownerships and active commercial and industrial uses. There has been no activity or progress with a view to developing the site. Given the passage of time and the complications of multiple ownerships, I am not persuaded that this remains a realistic prospect for delivery within the 5 year period. I shall deduct 40 units from the supply.

10.82 *College Fields, Rolleston*: this site has a protracted planning history set out fully at ESBC.6. It has been through the appeals process and following a legal challenge is back before the Secretary of State for redetermination. The LP Inspector supported the allocation of the site and included some 100 units in the 5 YHLS. Even though the site does not have the benefit of a planning permission, the factors before me are not materially different to those on which the LP Inspector made his determination. At the time of the LP examination the Inspector was aware that the proposal had been recommended for approval and was subject to a redetermination by the Secretary of State. This remains the case today.

10.83 In response to the delay caused by redetermination the Council has adjusted the delivery expectations and moved them forward by one year, such that the site would be completely delivered in year four. Therefore even allowing for a further 12 months slippage the site will be delivered in five years.

#### *Conclusions on Five Year Housing Land Supply*

10.84 I have concluded that the Council's methodology in terms of counting completions is reasonable and that for the sake of consistency it is to be

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<sup>163</sup> GDL.09

<sup>164</sup> ESBC.02

<sup>165</sup> GDL.26

<sup>166</sup> MK appendix 2, p.20

<sup>167</sup> The LP Inspector confirmed that a modification to the policy wording would enable the two sites to come forward separately CD7.3, §81.12

<sup>168</sup> See policy SP11 and §§3.87-3.91 ESLP

preferred over the Appellant's methodology. This means that the current five year housing land requirement (incorporating the buffer and the past under-delivery) is 4235 dwellings, equating to an annual requirement of 847 dwellings.

10.85 I have then made a series of findings in relation to the deliverability of individual sites within a 5 year period. The consequence of those findings is that I have removed some 187 units<sup>169</sup> from the 5 YHLS. Using the Council's figures I have simply deducted 187 from the housing supply and divided this by the annual requirement<sup>170</sup>. The outcome is a current housing land supply of some 5.5 years.

10.86 The Appellant has pointed out that the Council has changed the basis of its assessment in that previously some sites of 10 or more units were not individually assessed but pooled and a 10% lapse rate applied. In its latest position statement the Council has requested information on and assessed all sites of 10 or more units. The delivery from some sites has been reduced in accordance with the information received. This does not represent a change in methodology; rather it is the Council applying its resources to achieve more accurate information regarding likely delivery.<sup>[7.27]</sup>

10.87 The Appellant highlights the past performance of the Council and the failure to meet its annual trajectory every year since the start of the plan period. However the LP Inspector based his assessment on completions up to March 2015. The position on actual completions for the first 3 years of the local plan was known and was before the LP Inspector when he concluded that the provision was acceptable and there was a 5 YHLS on the basis of a stepped trajectory. The only new data on completions before me is the data for one year up to March 2016. This last year has resulted in the delivery of 459 units which is very close to the target of 466 dpa.

10.88 The LP Inspector described the calculation of the 5 YHLS by way of the proposed stepped trajectory as 'cautiously conservative' and indicated that the Council could demonstrate a sufficient HLS. His prediction was that the Plan would start to bring forward well in excess of its average annual housing requirement within 2.5 years of adoption<sup>171</sup>.

10.89 In short, the under-delivery position for the first 3 years was known to the LP Inspector at the time of his conclusions. The additional information before me indicates that the Council has now, to all intents and purposes, met its annual delivery target for the 12 months ending March 2016. This does not indicate a worsening of the position on that which was before the LP Inspector, rather it indicates that in the fourth year of monitoring the ESLP annual target is now close to being met and in line with previous expectations.

10.90 I have concluded that the Council has a 5 YHLS. The ESLP is recently adopted and is in conformity with the Framework. As such there are no other

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<sup>169</sup> Relating to the sites at Land south of Branston (61 units), Howard Transport (86 units) and Derby Road, Burton (40 units).

<sup>170</sup>  $(4852-187)/847=5.5$  years

<sup>171</sup> CD7.3, §115.

reasons advanced for the policies within the plan being out-of-date. I shall return to this matter in my conclusions.<sup>[7.28]</sup>

*The Loss of Best and Most Versatile Agricultural Land*

- 11.1 The total land area occupied by the appeal site is some 22 hectares. The site falls within an area depicted on the provisional MAFF Agricultural Land Classification (ALC) sheets as being of grade 2 quality.<sup>172</sup> The only detailed agricultural land quality data available is in relation to a site known as Upper Outwoods Farm. This land has been subject to a planning application accompanied by a detailed agricultural land quality assessment. The assessment sets out the proportions of the site deemed to be BMV land<sup>173</sup> and there is a clear correlation between the assessment and the indicative grading on the ALC maps. This provides some degree of confidence in the ALC maps.
- 11.2 Following the Council's determination the Appellant has produced two maps<sup>174</sup> which distinguish between areas of grade 2 and sub-grades 3a and 3b soils on the appeal site. These maps are not supported by other empirical data indicating soil sampling, although Mrs Hodson confirmed in her oral evidence that they are based on trial hole borings. In any event they depict a large swathe of grade 2 land in the centre of the site surrounded overwhelmingly by soils of sub-grade 3a.
- 11.3 It is accepted that the proposal would result in the irreversible loss of this BMV and as such it would be contrary to 1 of the 15 criteria in ESLP SP1. In addition SP8, responsible for controlling development outside settlement boundaries sets out a requirement to have regard to the need to maintain land of high agricultural value for food production.<sup>[6.22, 6.23]</sup>
- 11.4 The Framework also requires that the economic and other benefits of BMV land are taken into account in decision-making. By virtue of the land area involved and the scale of housing proposed, I consider that the loss of 23 hectares of BMV constitutes a significant development.<sup>175</sup> In such circumstances the Framework directs that where development of such land is demonstrated to be necessary, planning authorities should seek to use areas of poorer quality land in preference.
- 11.5 An assessment as to the weight to be given to this matter depends on a number of other contextual factors. I have already made a finding that the Council has a 5 YHLS. Consequently at this moment in time the requirement to have an appropriate supply of land available for housing does not translate to a pressing need to release additional sites<sup>176</sup>.
- 11.6 The Appellant points to other sites containing BMV land which have been allocated as development sites<sup>177</sup> and to other sites not allocated which were allowed on appeal. However the allocated sites came about in circumstances where the Council was seeking to ensure a 5 YHLS and to make strategic

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<sup>172</sup> Mr Kernon proof of evidence §1.4

<sup>173</sup> Some 18.2%, Mr Kernon Appendix KCC5

<sup>174</sup> CD12.14

<sup>175</sup> This conclusion accords with the views of Natural England in its consultation response CD3.2

<sup>176</sup> Accepted by Mrs Hodson in cross-examination

<sup>177</sup> Sites at Branston Locks and Glenville Farm, ESBC.14 and ESBC.15

allocations. Other appeal sites will have been decided on their particular merits having regard to a series of other material considerations. I also note that the SHLAA did not refer to the existence as BMV land as a barrier to development on the appeal site. However these matters do not negate the policy requirements to have regard to the question of BMV when assessing the suitability of the current proposal.<sup>[6.24, 6.25]</sup>

- 11.7 It is also useful to look at the relative rarity of the resource when assessing what its loss would mean. The Appellant's Agricultural Land Quality report<sup>178</sup> appends a map showing the predicted extent of BMV land in the Burton upon Trent area. It concludes that the agricultural quality of the appeal site is likely to be typical of much of the land around Burton upon Trent<sup>179</sup>. However that map depicts a swathe of BMV land running from the north-east corner of the administrative district to the south west. It is notable that a significant proportion of the land depicted as BMV in that map extract has already been developed. By contrast a large proportion of the agricultural/greenfield land to the west of the appeal site is not indicated as BMV land and has not been developed. I note that some of that land lies in the floodplain or comprises natural forest which would preclude development. Having regard to all of these matters and the indicative maps I accept Mr Kernon's assessment that the majority of directions in which expansion could occur is likely to be on land which is not predicted to be of BMV quality.<sup>[7.31-7.32]</sup>
- 11.8 A table produced by Mr Kernon provides details of the relative proportions of different grades of agricultural land in East Staffordshire, Staffordshire and England.<sup>180</sup> Interpreting the data is somewhat difficult because the grade 3 category includes both grade 3(a) BMV land and grade 3(b) non-BMV land. It is however fair to say that in East Staffordshire grade 2 BMV land is a relatively scarce resource at 2.9%. It is more common across Staffordshire at 11% and more common across England as a whole where some 20% of land is grade 1 or 2.
- 11.9 Finally the Appellant points to the fact that the appeal site is 'enclosed' in that it is surrounded by development and in multiple ownerships. However, it has a field access and is of a significant size such that its location would not preclude its use for arable purposes. Many agricultural land-holdings contain different parcels of land separated from the main farm enterprise and comprised of land in different ownerships. I do not see these matters acting as a barrier to an agricultural use.<sup>[6.25]</sup>
- 11.10 In conclusion, I am satisfied that BMV agricultural land is a reasonably scarce resource in East Staffordshire by virtue of the proportion of BMV in the district and because of the amount of BMV which already appears to be in non-agricultural use. It has not been demonstrated that the development is necessary. As such the development is contrary to paragraph 112 of the Framework, as well as ESNP policy SP1. Having regard to all of the above matters I conclude that some weight should be attached to the harm caused by the loss of BMV land.

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<sup>178</sup> CD 8.1

<sup>179</sup> Ibid §3.1

<sup>180</sup> ESBC.5

*Educational Provision*

- 11.11 ESLP policy SP10 sets out the Council's objectives in relation to educational provision and strategic allocations for new primary school provision. It confirms that the Council will work in partnership with SCC to bring forward new schools and that such proposals will be required to demonstrate a need for the development and a role within a wider strategy. Any proposal will also need to show that the location is accessible for the need it is intended to meet. The objective is carried forward into SP9 regarding Infrastructure Delivery and Implementation which specifically mentions educational infrastructure.
- 11.12 The Framework confirms that the Government attaches great importance to ensuring that a sufficient choice of school places is available to meet the needs of existing and new communities. It provides that great weight should be given to the need to create, expand or alter schools and encourages Local Planning Authorities to take a pro-active, positive and collaborative approach.
- 11.13 It is agreed between the parties that the extra demands placed on secondary schools by the proposed development could be adequately mitigated or met by the financial contribution to secondary school provision secured by the UU. In addition the financial contribution towards primary school provision (adjusted to recognise the land contribution)<sup>181</sup> is also agreed.
- 11.14 The Council and Appellant are further agreed that the development would result in a need for 81 additional primary school places equivalent to 0.5 form of entry (FE). The Appellant contends that, in the face of a deficit in primary schools places, the provision of 1.69 hectares of land would enable a 1FE primary school to be built, with sufficient land available for an extension to 2FE. It contends that any additional provision over and above 0.5 FE would be a net benefit of the scheme and should attract positive weight in the overall planning balance.
- 11.15 As previously recorded there is agreement between the Appellant and SCC (as Local Education Authority) regarding the offer of a school site and these matters are set out in the two position statements before the Inquiry.<sup>[5.12-5.20]</sup> The dispute between the Council and Appellant revolves around whether the provision of 1.69 hectares of land for educational purposes is appropriate having regard to the existence and extent of any deficit and the location of the site, as well as the likelihood of a school being delivered on the site. I turn now to consider those matters.
- 11.16 *The Position on Primary School Need and Capacity:* the position of SCC is that the demand for primary school places in Burton upon Trent will start to exceed supply from 2015. It further states that, if left unaddressed, this trend will continue to rise to a deficit of around 9.6FE to 11.6FE by 2030/31. The Council's position is that whilst there is a primary school deficit across Burton, the identified need will be addressed by new and completed provision and planned future provision.<sup>182</sup>

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<sup>181</sup> §1.2.4 Education Statement of Common Ground

<sup>182</sup> Proof of evidence of Ms Miller (AM) §1.42

- 11.17 The evidence on primary school need and capacity is contained within a series of studies. The first of these is the Council's own high level infrastructure study<sup>183</sup> which was commissioned to inform the Local Plan preparation and to provide a broad overview of future infrastructure requirements. Following this the Borough Council (ESBC), together with SCC, jointly commissioned a study of school capacity in Burton upon Trent (The Cambridge Report).<sup>184</sup> The Borough Council also commissioned its own Infrastructure Delivery Plan (IDP).<sup>185</sup> A further study was subsequently prepared on behalf of the SCC to assess sites which may be suitable for future provision (The AMEC report)<sup>186</sup>.
- 11.18 The reports each set out different figures in relation to a forecast deficit, in part due to the application of different assumptions. The purposes for which, and circumstances in which, each report was commissioned assist in understanding the projections. Mrs Miller was the only witness to give oral evidence on this matter supported by her proof of evidence. It was evident that she was closely involved with the commissioning process<sup>187</sup> and had a clear grasp of the facts and figures informing each strategic piece of work.
- 11.19 It is relevant to note that the Cambridge Report was intended to be part one of a two part exercise in which firstly the extent of the future need was forecast having regard to scenarios with and without housing growth. Then, at stage two, options for meeting that need were to be examined. The second part of the Cambridge Report did not proceed. In her oral evidence Mrs Miller confirmed that the AMEC report was commissioned by SCC because it felt that need had not been addressed through the Local Plan process and that the intention of the AMEC report was to conduct a school sites search exercise.
- 11.20 The Cambridge Report forecast that, in the absence of additional provision and taking account of planned housing growth, the deficit in primary school places would rise from -2.5FE in 2016 to -9FE in 2030.<sup>188</sup> This compares to a projected deficit of -10.5FE in the IDP report. Mrs Miller explained that the difference in these figures is as a result of different baselines/starting points on capacity. Four new planned primary schools<sup>189</sup> were included in the Cambridge Report as part of the existing capacity but were not included in the IDP report as part of the baseline capacity, instead they were included as part of the supply. The Cambridge study divided the borough's schools into 5 primary clusters. Cluster area 1 relates to North Burton and it is projected to have a deficit of -5.3FE at 2030 (included in the overall deficit of -9.0FE).
- 11.21 The AMEC report confirms that the evidence on need was drawn from the two earlier reports.<sup>190</sup> It records a deficit of between -9.6FE to -11.6FE in primary school provision across Burton to 2030/31. The deficit figures were predicated upon the Cambridge study deficit figure of -9.1FE, with an

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<sup>183</sup> East Staffordshire Infrastructure Study Part 1, Roger Tym and Partners, Final Report June 2012. AM appendix A.

<sup>184</sup> CD12.1

<sup>185</sup> Prepared by ARUP. AM appendix B.

<sup>186</sup> CD12.2

<sup>187</sup> The Borough Council led the preparation and management of the tender process in relation to the Cambridge Report, AM §1.8

<sup>188</sup> Appendix C

<sup>189</sup> New St Modwens site, Scientia Academy, Christchurch Infants and River View Primary School.

<sup>190</sup> CD12.2 §1.2.1

additional 5% allowance for surplus capacity. The Council do not dispute that a 5% allowance should be included in the deficit figures but they say there is no evidence to explain the upper figure of -11.6FE.

11.22 I have examined the figures in table 3.20 of the Cambridge Report and looked at them in light of the explanatory text on page 37. From the table it is evident that in 2030/31, with new housing, the total number of projected reception pupils will be 1317. There will be a shortage of 276 places equivalent to -9FE. The text explains this much and then goes on to say that an allowance for a 5% surplus to ensure a degree of parental choice has not been factored in. The text then says that allowing for this surplus would require an additional 342<sup>191</sup> reception places. It would appear that the 5% allowance has been applied to the total number of reception pupils (1317) to give a surplus of 66 additional places for flexibility. The 66 places have then been added to the projected shortfall (276) thus increasing it to 342. A requirement for 342 additional places equates to -11.4FE<sup>192</sup>.

11.23 The above explanation as to how the figure of -11.4FE has been arrived at seems to me the most logical one based on the information in the Cambridge Report. There is a clear correlation between the mathematical calculations and the end figure and I am satisfied that the interpretation which I have placed upon the explanatory text is the most logical one.

11.24 I further note that a 5% allowance does not appear to have been applied to the IDP study projected deficit of -10.5FE. In principle I consider such an allowance to be pragmatic and logical and in accordance with planning objectives seeking to ensure sufficient choice. Applying such an allowance would increase this IDP identified deficit further.<sup>193</sup>

11.25 The AMEC Report further assumes that an allowance for additional housing arising as a result of windfall sites has not been taken into account and therefore increases the deficit by a further 1FE to -12.5FE. This matter was in contention. The Cambridge Report sets out the forecast with housing and records the development allowance of 10,284 units in the plan period '*comprising allocated sites and windfalls*'.<sup>194</sup>

11.26 In her oral evidence Mrs Miller confirmed that her instructions were that windfalls would be an important part of the supply of housing and it was important that they were captured in the figures. She confirmed that her instructions to the Cambridge Report consultants were to assume 1000 units representing windfalls across Burton and to divide those houses across the five clusters. Mrs Miller also reiterated that it was not the job of the AMEC consultants to revisit the question of capacity forecasting but to identify possible sites to meet the forecasted demands. Her evidence about this matter was compelling and supports the comments in the report referred to above. I therefore do not accept that the increase in the requirement from 11.5FE to 12.5FE as set out in the AMEC study is justified.

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<sup>191</sup> This is calculated as 5% surplus on the total number of reception pupils ie  $5\% \times 1317 = 65.85$

<sup>192</sup> Based on an assumption of 30 pupils per 1FE (PAN numbers at page 6 Cambridge report)

<sup>193</sup> I have not undertaken this exercise because the ARUP tables provide cumulative pupil numbers rather than numbers in reception classes.

<sup>194</sup> First paragraph, page 35 Cambridge Report and appendix D.

- 11.27 In light of these findings I conclude that the adjusted forecast need figure of 11.5FE is to be preferred. This brings me to the question of planned additional provision.
- 11.28 The amount of provision already made or planned is set out in Mrs Miller's proof of evidence.<sup>195</sup> As recorded above, whilst the Cambridge Report treated four of the schools as part of the baseline/supply, the IDP report counted these 4 schools as part of the future provision. In addition further projects have come forward. The Council has been consulted on a proposal to increase Mosely Academy by 0.5FE but this is at a very early stage and I consider that no real reliance can be placed on it. In the week prior to the Inquiry the Council has resolved to grant planning permission for a 2FE primary school on land off Aviation Lane, Henhurst Hill.
- 11.29 A recent planning permission for housing granted at Red House Farm was accompanied by a UU securing an off-site contribution towards the 1FE school proposed at Henhurst Ridge thus creating a 2FE school. The likelihood is that the offered provision will come forward.
- 11.30 In terms of the Cambridge Report the future/planned provision and the additional unplanned provision amounts to 10.28FE.<sup>196</sup> However I have already found that no real reliance can be placed on the Mosley Academy consultation which reduces the total provision to 9.78FE. I have now reached the point where it is clear that there is a disparity between the likely forecast deficit/future requirement of -11.5FE and the planned and additional provision to be made in the plan period of 9.78FE.
- 11.31 I therefore conclude that during the plan period there is likely to be a need for additional primary school provision over and above that which is currently programmed. As such any additional provision which emanates from the appeal proposal, over and above the 0.5FE necessary to meet the requirements of the development itself, would go some way to meeting the deficit in numerical terms. I now turn to consider the appropriateness of the appeal site as a location for a new primary school.
- 11.32 *The Location of the School:* at the outset the Borough Council acknowledge that greenfield sites are a better option for the provision of additional educational infrastructure<sup>197</sup>. It is clear that in the event of a 1FE school being built that one half of the pupils would come from the appeal site. Two other strategic developments<sup>198</sup> are within half a mile of the appeal site and amount to some 600 dwellings.
- 11.33 The AMEC report examined the suitability of sites and came up with six 'areas with potential'. The appeal site was one of the sites examined and it was concluded that the site is away from main growth locations and the LEA's areas of need but that it remained in an area of growth between two strategic allocations and would serve the catchment households required with relatively sustainable distances.<sup>199</sup>

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<sup>195</sup> Table 1 and Table 2.

<sup>196</sup> §85, Council's closing submissions.

<sup>197</sup> AM §1.9

<sup>198</sup> Guinevere Avenue and Land at Tutbury Road & Rolleston Road. Addendum Statement of Common Ground.

<sup>199</sup> §4.2.1. Page 20

- 11.34 However, the parameters of site selection were set at a minimum of 2 hectares when in fact SCC acknowledges that a site area of 1.1ha would be required for a 1FE primary school and an absolute minimum of 1.65hectares for a 2 FE primary school.<sup>200</sup> In addition there is no comparative exercise between the potential sites in terms of agricultural land quality which could prefer lower quality land over BMV land. On this basis I acknowledge that other sites could have been discounted which, had different parameters been applied, might be suitable for future provision. In addition those sites may also be on land which is not BMV land.
- 11.35 I note that the site is located within the SCC Burton 1 Primary School cluster which is projected to experience the largest deficit. It is also to be the recipient of the largest amount of planned provision.
- 11.36 Irrespective of any comparative exercise, it is apparent that the school site would be in a relatively accessible location on a site which is located in an area of growth between two strategic allocations.
- 11.37 *The Likelihood of Delivery:* the planning application was amended to reduce the number of proposed houses and include an area of safeguarded land. The Appellant then submitted updated technical reports, including a revised Transport Assessment, to assess the impacts of a 1FE primary school and the housing<sup>201</sup>. Initial objections on highways grounds were subsequently addressed by a series of off-site highway improvements which rendered the development acceptable to the Council and relevant Highways Authorities.
- 11.38 No assessments have been carried out as to the combined impact of a 2FE primary school and the housing. Given that there were previous objections on highways grounds which had to be addressed, there is no guarantee that an extension of a 1FE primary school to a 2FE school would be acceptable in planning terms.
- 11.39 The Council points out that there is no mechanism to ensure that a school will be built on the site. The UU contains a covenant on behalf of the Owner promising to offer to transfer the school site to SCC. Whilst there is nothing to compel SCC to accept the transfer, given its co-operation with the Appellant and the agreed position statement it would seem likely that such a transfer would proceed.
- 11.40 Following any transfer there would be the matter of obtaining planning permission. In relation to this matter it is only possible to acknowledge that, if this appeal succeeds there does not appear to be any unsurmountable objections, in planning terms to the delivery of a 1FE primary school. The same cannot be said for a 2FE primary school given the previous difficulties with regard to highways objections and the fact that the Transport Assessment has not modelled the position with a 2FE primary school. In any event the intention appears to be the delivery of a 1FE school with a possibility of further expansion.

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<sup>200</sup> Consultation response email 3 November 2014 at appendix A to Education Statement of Common Ground.

<sup>201</sup> §1.2.3 Education Statement of Common Ground.

### *Conclusions on Educational Provision*

- 11.41 Having regard to all of the evidence I have concluded that it is likely that there will be a net deficit in primary school provision to 2030/31 after planned and anticipated provision has been made. The offer of a school site would meet the demands of the development in terms of primary school provision and would make a small contribution to reducing this deficit. It would be located on the edge of a settlement, in an accessible location close to two other strategic sites. Whilst I acknowledge the possibility of other sites not on BMV, those sites are not before me.
- 11.42 Pragmatically Mrs Miller acknowledges that the Borough Council is not concerned where education provision goes provided it meets genuine need, is located close to that need and mitigates its impact. It does object to bringing additional housing forward to meet this aim.<sup>202</sup> This seems to me to be an entirely reasonable proposition. However, I have found that there is likely to be a deficit and this deficit would exist irrespective of the housing on the appeal site coming forward. In these circumstances it appears to me that any additional provision over and above 0.5FE would go to meeting the deficit.
- 11.43 On balance I conclude that the proposal would provide a benefit in terms of primary school provision. I am further satisfied that there is a strong likelihood of the transfer of school land taking place if development were to proceed. However at this moment in time some degree of reliance can only be placed upon the provision of a 1FE school given the uncertainties surrounding a 2FE school. It is reasonable to assume that the proposal would result in a benefit in terms of a likely future contribution of 0.5FE towards meeting that deficit.
- 11.44 The Minister of State for Housing and Planning has set out that supporting housing development to increase housing supply, and providing a high quality school place for every child, are two of the Government's top priorities.<sup>203</sup> The Appellant contends that great weight should be given to the need to ensure the sufficient schools are available. I agree with this to the extent that this is a reiteration of national policy objectives in paragraph 72.
- 11.45 Given these conclusions it follows that I am satisfied that the obligation contained in the UU regarding the transfer of the school site satisfies the tests in the Framework and in regulation 122 and it should be taken into account in the final determination.
- 11.46 In terms of the weight which ought to be attached to any educational benefits arising as a result of the proposal, it is relevant to have regard to all of the considerations set out above. The projected deficit over the plan period is relatively small as a proportion of the overall requirement. It is also evident that the search parameters applied may have restricted the consideration of sites. In addition school sites which have not been planned for have previously come forward as windfalls, such as the recent Red House Farm appeal.

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<sup>202</sup> AM §1.36

<sup>203</sup> Minister's letter to Local Authority Chief Executives at GDL13

11.47 The 0.5FE contribution which the appeal proposal would make represents a small proportion of the additional future requirement of 11.5FE which must be found. It would make a relatively modest contribution to the gap between planned and identified possible future provision and the additional requirement. Having regard to all of these matters I conclude that a limited amount of weight should be accorded to this benefit. In coming to this view I have had regard to the Secretary of State's views in the Bideford case.<sup>204</sup> In that case the entire proposal was for a school in circumstances where there was an acknowledged need and where there was a lack of other suitable alternative sites.

## **Other Matters**

### *Highways*

11.48 The 'Save our Stretton' group (SOS) raise a series of concerns about the effects of the proposals on the local highway network and the transport assessments. These include concerns about implications for traffic safety on the Church Road junction, Craythorne Road North and the A38. SOS point out that the road structure in the centre of Stretton is historic and struggles to cope with the demands of modern traffic flows. An example of this is the staggered junction next to the Church and the one way system introduced at The Green for safety reasons. [8.17-8.29]

11.49 On behalf of SOS, Mr Lamb gave evidence about the Church Road junction being a main thoroughfare at the heart of the village. He pointed out that the junction limitations result in delays with drivers seeking to pull out quickly into emerging gaps. The situation, he says, is exacerbated by schoolchildren walking along narrow pavements on their way to William Shrewsbury and de Ferrers school. Mr Lamb also raised questions about the Appellant's modelling of the impact on the junctions given the inputs into the model. SOS sought to sense check some of the outputs from the SATURN model used by undertaking its own traffic surveys at key locations.

11.50 Mr Jackson, the Appellant's appointed Highways expert<sup>205</sup> gave oral evidence to the Inquiry and was cross-examined by SOS on highway matters. He confirmed that prior to the application being submitted the Appellant's experts had engaged in preliminary discussions with SCC (as local Highways Authority) and Highways England (HE) responsible for the strategic network. Both SCC and HE instructed the Appellant's highways consultant to use the Burton SATURN model. This is an area model for Burton to include the major junctions and validated by traffic count data. The model is produced by Atkins but owned by SCC and is used to assess the effect of major development on the highway network.

11.51 The parameters and methodology to be utilised in assessing the effects of the appeal proposal were agreed by both SCC and HE. The trip rates assumed and applied to the model were rates provided by SCC. The work resulted in the Transport Assessment<sup>206</sup> of June 2014 submitted with the planning application. In their consultation responses to the application both SCC and

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<sup>204</sup> CD10.15 Bideford SoS & IR

<sup>205</sup> Ashley Helme Associates

<sup>206</sup> CD1.6

HE raised initial objections to the scheme and required further modelling and information. A revised Transport Assessment (TAS) was submitted in July 2014 to assess the amended scheme for 385 dwellings and a single form entry primary school.<sup>207</sup> [6.32-6.34]

- 11.52 HE have responsibility for the wider strategic road network and determined that mitigation works were required in relation to study junction 5 as a result of the proposed development.<sup>208</sup> This scheme has been designed<sup>209</sup> and agreed and subject to an independent Stage 1 Road Safety Audit, the findings of which were also agreed. The off-site highway works are the subject of conditions. Following the submission of revised details both SCC and HE removed their objections to the proposal subject to off-site highway works being secured and other conditions imposed on any grant of planning permission. The agreements reached between the Appellant and both SCC and HE are set out in the two position statements.<sup>210</sup> [5.21-5.29]
- 11.53 The mitigation proposals also include a financial contribution of £830 per dwelling towards the Burton Transport Strategy which is intended to make improvements along the main routes through Stretton. A Travel Plan, to be secured by condition, was included in the final TA and agreed with SCC. In addition SCC approved the site access arrangements.<sup>211</sup> [6.38]
- 11.54 I turn now to consider the objections of SOS. The first concern is in relation to the data inputs into the SATURN model. It is clear that any modelling is sensitive to the data fed into it and any discrepancies could lead to erroneous conclusions. Mr Lamb points out that the initial Transport Assessment and appendices was resubmitted after an error. However Mr Jackson confirmed that the error was in an output file which locked one of the figures and the error was not associated with inputted data.<sup>212</sup>
- 11.55 The model is based on data from 2012 projected forward to reflect traffic growth to 2026 and with additional traffic from the development modelled and fed into the figures. SOS conducted its own traffic surveys in relation to vehicles turning into Bitham Lane from Rolleston Road from the north and south and in relation to traffic travelling from Derby Road onto the northbound A38.<sup>213</sup>
- 11.56 Mr Jackson believed that the traffic surveys of SOS were not dissimilar to the modelled figures and he accepted the figures were likely to be representative of current traffic flows. However he pointed out that the model relies on verified baseline data from 2012 which is projected forward to 2026. Therefore a comparison with survey data at a different point in time is problematic. In addition the traffic predicted from the development is loaded onto the network and into the model. The model then makes various adjustments assuming driver response and re-routing due to pockets of congestion and network changes.

<sup>207</sup> CD8.4.1

<sup>208</sup> Claymills Lane/A15121 Derby Road/A38 Northbound on/off slip roads.

<sup>209</sup> Drawing number 1324/40/A

<sup>210</sup> Highways Statement of Common Ground with Highways England and Highways Statement of Common Ground with Staffordshire Council.

<sup>211</sup> Depicted on drawing number 1324/30/C

<sup>212</sup> During cross examination by Mr Lamb.

<sup>213</sup> SOS proof of evidence of Mr Lamb §3.12 and 3.21

- 11.57 The traffic flow on A38 northbound coming from Derby Road is predicted to be lower in 2026, post development, than the current survey figures. However I accept Mr Jackson's explanation that additional congestion and network changes are likely to influence driver behaviour and result in re-routing. It is also notable that the model does not predict an overall decrease in traffic at the A38/Claymills Lane junction at 2026 post-development but instead predicts an overall increase as would be expected.
- 11.58 With regard to the Bitham Road/Rolleston Road junction, Mr Jackson explained that he queried the model output figures with Atkins. This was because one of the outputs assumed a zero rate traffic flow in relation to cars turning from the northern end of Rolleston Road into Bitham Lane. The explanation is that because of development to the west, at Beamhill, there is predicted to be an increase in traffic at the junction and increased flows along Bitham Lane. This in turn would result in vehicles travelling north to south finding alternative routes and the model predicted that vehicles travelling south would divert to Dovecliffe Road. Mr Jackson did however accept that local traffic, for example parents dropping children off at school, would be unlikely to divert. In any event the model again predicts an overall increase, in 2026 and post development, of about 19% in the AM peak hour and 23% in the PM peak hour at the Bitham Lane/ Rolleston Road junction.<sup>214</sup>
- 11.59 The SATURN model has been verified and is owned by SCC and accepted by HE. The parameters and data inputs were also stipulated by SCC and HE and the outputs accepted by both. The explanation regarding the differences in traffic volumes between the modelled flows and Mr Lamb's sense testing surveys has been adequately explained by Mr Jackson. I am satisfied that the modelling represents a reasonable predictive tool upon which assessments regarding the impact of development can be made.
- 11.60 It is evident that at times, such as the AM peak, there is some congestion on the local road network. I saw this for myself outside the William Shrewsbury Primary School on Church Road. It is indisputable that additional development on Craythorne Road would add to the traffic on the local network. The question is not whether the congestion is acceptable per se but whether or not that congestion has reached or is likely to reach levels which are harmful to highway safety such as to make the proposed development unacceptable.
- 11.61 In 2026 the TAS confirms that the Bridge Street arm of the Bridge Street/Main Street junction is predicted to operate above capacity in the AM peak without the development. This situation would be exacerbated with traffic from the development. Similarly two arms of the junction are predicted to operate above capacity, in the PM peak, at the 2026 baseline situation<sup>215</sup>. At the request of SCC the Appellant's highways experts modelled 2 options setting out highway modifications to address these matters. The improvement schemes would ensure that the junction would largely operate within capacity at 2026 with projected growth and traffic from the development<sup>216</sup>.

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<sup>214</sup> This is the 2026 figure compared to the 2012 baseline. See appendix 3 Mr Jackson's proof of evidence.

<sup>215</sup> ie without development

<sup>216</sup> With the exception of the Hillfield Lane arm

- 11.62 SCC was satisfied that the various options illustrated that a satisfactory scheme could be devised to address congestion and on this basis agreed a financial contribution of somewhere in the region of £319,000 towards the Burton Transport Strategy would be earmarked for the Stretton ward. This strategy proposes improvements along Bitham Lane, Bridge Street, Church Street and Claymills Road which are the main highway routes in Stretton. The feasibility of these mitigation works at study junctions 3 and 4 have been produced to SCC.<sup>217</sup>
- 11.63 The appeal proposal also relies upon the introduction of passing bays on Craythorne Road which is a narrow road, without a footway or street lighting, running to the north of the development.<sup>218</sup> This would result in an improvement along this stretch of the road leading to Rolleston on Dove. Based on information from SCC education department it was assumed that 7% of pupils to any new primary school on the site would come from Rolleston on Dove<sup>219</sup>. On this basis SCC and the Appellant's highways consultant are agreed that the development would not significantly increase pedestrian movements along Craythorne Road to the north of the site. I accept this as a reasonable assumption on the evidence available and conclude that the proposal would not materially increase traffic along the section of Craythorne Road to the north of the site.
- 11.64 SOS has referred me to the conclusions of a fellow Inspector in an appeal decision in Worcestershire.<sup>220</sup> In that appeal the Inspector concluded that whilst the junction in question did not have a bad safety record, there was an increased risk of accidents in the future. However this was due to a significant increase in queue length and waiting times. This would not be the case here. In this appeal the TA has been undertaken in accordance with the SCC model and the proposal has been deemed acceptable in highway terms subject to the off-site highway improvement works and agreed contributions. There is no substantive evidence before me to persuade me that the conclusions of SCC and HE are incorrect.
- 11.65 SOS also contends that a number of accidents have taken place in the Stretton Area and on the A38 and that the TAS only uses accident data for a limited period<sup>221</sup>. Newspaper extracts have been provided in relation to accidents along the A38 as well as a report that there is to be a major review into safety on the A38. Firstly the reports are about accidents along the length of the A38 through Burton as opposed to any specific connection to study junction 5. I have already considered the effects of development on the junction onto the A38 and the necessary measures to address additional traffic travelling through that particular junction.
- 11.66 The additional traffic generated by the development and travelling along the A38 would be, in all probability, a very small proportion of the total traffic travelling along that main arterial route. I conclude that the additional traffic from the development would be unlikely to materially affect highway safety on that route.

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<sup>217</sup> SOS 8 Email SCC to Ashley Helme Associates dated 15 October 2014.

<sup>218</sup> Indicated in principle on drawings 1324/30 revision C and 1324/37 at CD8.4.5 and CD8.4.6

<sup>219</sup> Mr Jackson explained that this was 12% of the 60% of pupils due to come from areas off-site.

<sup>220</sup> Appeal reference APP/P1805/A/14/2225584: Land at Whitford Road, Bromsgrove, Worcestershire.

<sup>221</sup> 1/11/2010 to 31/10/2013.

- 11.67 Secondly the accident data used in the TAS covered a three year period for each of the study junctions and was agreed with SCC and is typical of many transport assessments. As Mr Jackson explained it is usual to look for clusters of accidents or recurring patterns in them so as to identify deficiencies. In his oral evidence Mr Jackson confirmed that in the 3 year period up to 2013 covered in the TAS there has been 21 accidents. This compares with most recent accident data from May 2012 to April 2015 in which there were 24 accidents which is not materially different.
- 11.68 Access onto the appeal site would be via two access points from Craythorne Road referred to as the northern access and the southern access. The alignment of the accesses would facilitate an internal access road through the site which is intended to be the main route from the southern end of Craythorne Road to its northern end. The existing stretch of Craythorne Road between the two points would effectively be used for access to serve those existing properties. In addition the portion of Craythorne Road between the southern access point and Bitham Lane would be widened and a pedestrian crossing introduced on Bitham Lane is also proposed.
- 11.69 The re-alignment of the carriageway at the northern access point would remove the 'notorious' bend which SOS expressed concern about. It is evident that access to all properties would be maintained and at the Inquiry a condition was discussed to secure further details of the accommodation works and means of access.<sup>222</sup> Having carefully examined the proposed access plan and conducted my site visit I am satisfied that the proposed new access roads would not impinge on an existing trees on the appeal site. Finally SOS raise concerns about the southern access road being used as a drop off zone for school children on the proposed school site but this could be controlled by waiting restrictions. In any event this is a matter which would have to be considered on any planning application for a new school.
- 11.70 *Conclusions on highways issues:* for all of the above reasons I conclude that the impacts of development on the highways network could be satisfactorily addressed by the off-site highway works proposed and by the financial contribution towards the Burton Transport Strategy. The designed access to the site is acceptable and I would recommend approval of this matter.

#### *Landscape*

- 11.71 A Landscape and Visual Impact Assessment<sup>223</sup> was submitted with the scheme and the Council and Appellant are agreed on various matters with regard to landscape impact and these are set out in the SCG. Their principal agreement is that the wider impacts would not be severe and the appeal proposal would have a minor adverse to negligible impact on the area in landscape and visual terms at year 15. SOS takes issue with the landscape conclusions in a number of respects.<sup>[8.30-8.32]</sup>
- 11.72 The LVIA has been produced in accordance with GLVIA 3 which acknowledges that whilst there is some scope for quantitative measurements,

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<sup>222</sup> Suggested condition 12 in the schedule ESBC.16

<sup>223</sup> CD1.5

much of the assessments must rely on qualitative judgments.<sup>224</sup> SOS point out that the Council did not have the LVIA checked by a landscape expert.

11.73 The appeal site lies within the Needwood and South Derbyshire Claylands' National Character Area and the local landscape character type 'Settled Plateau Farmlands'. The site does not have any national designation and lies on the north-western edge of Stretton.

11.74 The eastern edge of the site nestles into Craythorne Road as the road winds its way up to Rolleston on Dove from the south. This boundary is framed by field hedgerows interspersed with boundary trees and some wide verges as the road bends a corner. The southern site boundary is bordered by the rear gardens of the houses which line Bitham Lane. The former golf club lies to the east. An internal ancient hedgerow along a footpath, known as the Bulwaulk, separates the two main fields which make up the site.

11.75 Within the setting of a wider rural landscape the site is reasonably well-contained and somewhat removed from that wider rural landscape. Loss of the site to housing development would dramatically change the site and its immediate environs. However, the impact of development on the landscape in its own right would be limited by virtue of the site's location within that landscape and its location adjacent to existing development. I am satisfied that the assessment of minor adverse to negligible impact on the landscape as a natural resource is a reasonable one.

11.76 The consideration of the site is somewhat different in terms of an assessment on the visual effects of the development, having regard to the significance of the effect upon various receptors. The Appellant's description is of a site which is surrounded on all sides by development. Whilst this may be factually correct it does not necessary convey a true impression of the site in visual terms.

11.77 The site comprises a large area of agricultural land which is clearly enclosed by housing on its eastern and southern boundaries. The golf site is not readily apparent from either within the appeal site or from vantage points along Craythorne Road. In addition, from Craythorne Road the rolling topography of the appeal site and intervening hedgerows limit views much beyond the appeal site's far western boundary such that the site does not read as an enclosed piece of agricultural land but as the edge of a rural landscape. This is a relevant when it comes to assessing the significance of the effects on visual amenity.

11.78 SOS point out that Craythorne Road is an important recreational route for walkers and indeed it is included as part of the route for one of the parish walks in the Neighbourhood Plan.<sup>225</sup> Turning into Craythorne Road from Bitham Lane, a walker experiences an almost immediate change from the tightly knit housing on both sides of Bitham Lane to the open aspect on the western side of Craythorne Road. The houses are set back and the lack of a footway enhances the tranquil, rural feel of Craythorne Road. Its location on the edge of the settlement indicates to me that it is likely to be a route

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<sup>224</sup> §1.17 Guidelines for Landscape and Visual Impact Assessment, Third Edition.

<sup>225</sup> CD7.4, Appendix V, walk 2.

popular with local walkers and used to access the wider footpath network and local walks such as the Jinny Trail. In addition, the length of Craythorne Road is such that walkers would experience the open aspect to the west for an appreciable time as they walked along its length.

- 11.79 For all of these reasons I conclude that the assessment in the LVIA in terms of the visual impact on transient receptors along Craythorne Road has been underestimated. I consider that these receptors are of high sensitivity and that the effects in the long term would be moderate adverse because the rural aspect would be permanently lost along a recreational route and replaced by the edge of a housing development, albeit with landscaping and hedgerow retention along that boundary.
- 11.80 SOS also gave evidence as to the history of the Bulwaulk and its importance to local people.<sup>226</sup> This is an informal footpath along the ancient hedgerow which divides the two fields of the appeal site. Ms Kirkland explained that the walkway has been there for very many years and was based on an ancient system of three agricultural fields in rotation. She further confirmed that, to her knowledge, the footpath has been used by Stretton residents for over 80 years.
- 11.81 Whilst the Appellant has indicated a willingness to incorporate a walkway through any proposed development, it is inevitable that the development would change the experience of walkers along this path. The footpath is not a public right of way although an application for a modification order<sup>227</sup> has been submitted to and acknowledged by SCC. Whilst the Bulwaulk has evidently enjoyed by residents, their future use of the footpath is not guaranteed.
- 11.82 The LVIA also assesses the effect of development from other viewpoints surrounding the site but these are not controversial. It is right to record that in these other viewpoints, there would only be partial or glimpsed views of the development from the wider surrounding area. In relation to these remaining viewpoints the LVIA characterises any harm at year 15 as none, negligible or minor adverse at its highest. I conclude that this is a fair assessment of the effects.
- 11.83 *Conclusions on Landscape issues:* Bringing all of the above together I conclude that, whilst there would be no material harm to the wider landscape there would be moderate harm to the visual amenity of pedestrian receptors along Craythorne Road for the reasons set out. Having regard to the extent of the walking route involved and its proximity to the village and the likelihood of its use by villagers, I conclude that limited weight should be attached to this harm in the final planning balance.

#### *Flood risk*

- 11.84 The appeal site is in flood zone 1 and a flood risk assessment was submitted with the planning application.<sup>228</sup> The assessment acknowledges that the proposal would increase the chances of local flooding due to hard surfacing in

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<sup>226</sup> Proof of evidence of June Kirkland

<sup>227</sup> SOS.10

<sup>228</sup> CD1.11

the development facilitating quicker runoff during periods of heavy rainfall. The report concludes that development can be accommodated on the site without increasing flood risk elsewhere by mitigating all identified long term residual flood risks in the area. This would be achieved by the incorporation of a sustainable urban drainage system which would reduce peak run off and attenuation storage, as well as surface water discharge via land drains.

- 11.85 The Environment Agency, SCC and the Council have no objections to the proposal on grounds of flood risk subject to conditions to secure the above matters.<sup>229</sup> The various reports confirm that balancing ponds would be best placed on the lowest, eastern corner of the site to utilise the gently sloping topography. SOS raises concerns that this is the area now indicated to be reserved for the school site.<sup>230</sup> However the reserved land is a relatively small portion of the land on the eastern boundary and the two requirements are not mutually exclusive. The CIRIA document<sup>231</sup> quoted by Mr Lamb does not preclude the use of surface water basins near to primary schools but instead indicates appropriate safety measures to be taken.
- 11.86 I further note that the UU shows the general location of the school site and confirms that the exact position will be determined in accordance with any planning permission.<sup>232</sup>
- 11.87 The SOS group contend that evidence of localised flooding on Craythorne Road and the golf course were submitted to the Appellant and disregarded. It is clear however that the solution proposed is designed to result in a situation where surface water runoff rates are certainly no greater than existing rates and may result in some reduction. I conclude that, subject to the suggested conditions, an appropriate design solution could be achieved, which would not prejudice the school site coming forward and would not increase the risk of flooding off-site.

#### *Other matters*

- 11.88 Local residents and SOS asserted that provision has not been made in relation to local special needs schools but this is not a position taken by the local education authority. People also raised concerns about the effects of development on healthcare and other services but again there is nothing other than anecdotal evidence before me. Given the location of the site and the existing degree of separation between Rolleston and Stretton I am satisfied that the development would not result in coalescence of the two settlements.
- 11.89 An ecological survey was commissioned and an Aboricultural Assessment submitted with the application.<sup>233</sup> Two relatively small sections of hedgerow would be lost with the development but the majority would be retained thus retaining existing habitat. I am satisfied that the effects of development would not prejudice ecological interests subject to the two suggested

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<sup>229</sup> Suggested condition 24 ESBC.16

<sup>230</sup> Plan showing s106 school land appended to the UU.

<sup>231</sup> CIRIA RP992 THE SuDS Manual Update: Health and Safety Risk Assessment Principles for SUDS at p. 27 Graham Lamb proof of evidence.

<sup>232</sup> UU definitions clause, page 27.

<sup>233</sup> CD1.8 and CD1.9

conditions to protect retained habitats and protected species and to adhere to an agreed planting scheme.<sup>234</sup>

11.90 SOS also raised concerns about the community engagement exercise undertaken by the Appellant. It is clear that a public consultation exercise was undertaken both by the Appellant and by the Council during two rounds of consultation. This is evident from the large numbers of representations. It is clear that local residents have engaged with the planning process at various stages and indeed this is apparent from the Rule 6 status afforded to the SOS group and the full part it has played at the Inquiry.

## Overall Conclusions

- 12.1 At the start of my conclusions I set out the exercise to be undertaken. I have concluded that the proposal is contrary to the development plan as a whole because of the nature and scale of the scheme and the strategic nature of the policies offended.<sup>[10.1-10.3, 10.20-10.21]</sup>
- 12.2 I have examined the question of whether the Council has a 5 year supply of housing land and concluded that it does. Therefore the relevant provision in paragraph 49 of the Framework is not engaged. In addition, the ESLP and SNP are both recently adopted and made and there is no suggestion that policies are otherwise absent, silent or out-of-date for other reasons. Both plans have been found to be sound and therefore consistent with national objectives in the Framework, including the presumption in favour of sustainable development.<sup>[10.22-10.91]</sup>
- 12.3 The section 38(6) duty enshrines in statute the primacy of the development plan. As an essential component of the 'plan-led' system, it is also reiterated in the Framework<sup>235</sup>. The duty has variously been described as a '*presumption in favour of the development plan*'<sup>236</sup> and '*a priority to be given to the development plan in the determination of planning matters*'<sup>237</sup>.
- 12.4 The Framework is of course a material consideration to which substantial weight should be attached. Paragraph 14 recites the presumption in favour of sustainable development and sets out what it means for decision-taking. The proposal does not accord with the development plan and relevant policies are not absent, silent or out-of-date, therefore the first and second bullet points of paragraph 14 do not apply here. Given my findings, it follows that, unless material considerations indicate otherwise, and tip the balance in favour of development, then planning permission should be refused.
- 12.5 The Framework seeks to boost significantly the supply of housing. However the objective of boosting housing significantly is not simply to be applied in a vacuum without regard to other objectives. Rather it is to be viewed in the context of the overarching presumption in favour of sustainable development. That is precisely what paragraph 49 of the Framework envisages.
- 12.6 The Appellant's socio-economic report refers to the population growth in East Staffordshire since 1991 but this growth and future projected growth has

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<sup>234</sup> Suggested conditions 21 and 22 ESBC.16

<sup>235</sup> §§11, 12, 196

<sup>236</sup> Lord Hope of Craighead in *City of Edinburgh Council v Secretary of State for Scotland* [1997] 1 WLR 1447

<sup>237</sup> Ibid Lord Clyde

been considered through the LP examination process when decisions were made as to the most appropriate locations to accommodate such growth. It is also notable that the aim of significantly boosting housing supply set out in paragraph 47 is directed at plan-making activities and a requirement to fully assess needs before allocating sites and then maintaining a sufficient supply. In other words the vehicle intended to deliver the much needed boost to supply is the plan-led system itself. The consequences of failing to deliver and maintain a sufficient supply of housing are clearly set out in paragraphs 49 and 14.

- 12.7 I now turn to examine the other relevant material considerations. In doing so it is useful to group those considerations into the three dimensions which make up sustainable development.

*An Environmental Role*

- 12.8 The proposal would result in the development of a greenfield site contrary to national objectives in relation to conserving and enhancing the natural environment. It would also result in the loss of 22 hectares of BMV land which is a reasonably scarce resource in East Staffordshire. I have found that some weight should be attached to the harm caused by the loss of this BMV land.<sup>[11.1-11.10]</sup> In addition I have concluded that a limited amount of weight should be attached to the harm to the visual amenity of the area in landscape terms.<sup>[11.82]</sup>

- 12.9 The Appellant contends that public access to the Bulwaulk would be secured and it is a factor in support of the proposal. However, the nature of the Bulwaulk would completely change from a footpath in an open countryside setting to a footpath within a housing estate. I do not consider that this would represent a net benefit of any material weight. The provision of green infrastructure on the site and sustainable urban drainage are matters required to ensure that the proposal is satisfactory. I am not satisfied that they would result in material net additional benefits over and above the retention of a green field.

*A Social Role*

- 12.10 The proposal would result in a benefit<sup>238</sup> due to the likelihood of net additional 0.5FE primary school provision over and above that required to meet the demands of the development. I have concluded that this would make a modest contribution to the acknowledged need and should attract limited weight.<sup>[11.46]</sup>
- 12.11 The proposal would also result in market housing and affordable housing in an accessible location as well as the provision of open spaces and cycle ways. The parties are agreed that the provision of affordable housing attracts substantial weight in the planning balance.<sup>239</sup> However this should be viewed in the context of my finding that the Council can demonstrate a five year supply of housing land. I consider it to be a reasonable assumption that the sites identified in that supply are also likely to make a contribution in terms of market and affordable housing. Those sites were only recently allocated

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<sup>238</sup> CD2.4 Socio-Economic Sustainability Statement

<sup>239</sup> SCG §6.6.3

through the recent development plan process and were examined in light of a national policy presumption in favour of sustainable development.

*An Economic Role*

12.12 The proposal would result in construction jobs and other economic benefits over the lifetime of the development. It would contribute to growth in the area and would generate Council Tax revenue. Whilst contributions are to be made under the UU these are intended to mitigate the effects of the development and render it acceptable in planning terms. Such payments do not constitute benefits in the planning balance.

12.13 The Appellant also contends that the Council would receive a New Homes Bonus but no schemes upon which the bonus would be spent have been identified. In accordance with the advice in the PPG<sup>240</sup> it would not be appropriate to make a decision based on the potential for the development to raise money for the Council in the absence of evidence to demonstrate how that money would be used to make this particular development acceptable in planning terms.

*The Presumption in Favour of Sustainable Development*

12.14 The Appellant contends that the proposal constitutes sustainable development and that this is a material consideration which outweighs any conflict with the development plan and points to the grant of planning permission. A recent High Court judgment, the Wychavon case<sup>241</sup>, and the Red House Farm appeal decision<sup>242</sup> are relied upon in support of this approach. The Red House Farm decision is cited as being particularly relevant given that it is a recent decision in similar circumstances in the same local planning authority area as the present appeal.

12.15 In this case the ESLP and the SNP make up the development plan and both indicate that development should not be allowed on the appeal site. Both of these plans have been recently adopted, having been tested through the examination process and deemed to be sound and in accordance with the principles of sustainable development enunciated in the Framework. Therefore paragraph 14 of the Framework does not apply.

12.16 The failure to accord with the development plan as a whole is a significant matter indicating that planning permission should be refused unless material considerations indicate otherwise. In this case there are other benefits and dis-benefits of the proposal. When these material considerations are weighed in the balance I am quite satisfied that they do not overcome the statutory presumption in favour of the development plan. I conclude that planning permission should not be granted.

12.17 In coming to the above view I have had regard to the approach recommended by the Appellant. The Council has also referred me to the Renew case<sup>243</sup> which was determined at the same time. On the face of it the difference between the two cases appears to be one of the approach to the

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<sup>240</sup> Reference ID: 21b-011-20140612

<sup>241</sup> Wychavon Developments Ltd [2016] EWHC 592 (Admin)

<sup>242</sup> Land off Lower Outwoods Road, Burton upon Trent. Appeal reference: APP/B3410/W/16/3142808

<sup>243</sup> Cheshire East BC v SSCLG [2016] EWHC 571 (admin)

application of the presumption in favour of sustainable development and its relationship to paragraph 14.

12.18 Mr Justice Jay in the Renew case confirmed his view that paragraph 14 is about process, not outcome and that 'a decision maker will only know if a proposal is sustainable or not by obeying the processes mandated by the paragraph. An integral part of the process is a positive weighting in favour of sustainable development in the sense that the proposal will be assessed as such unless the planning harm clearly and significantly outweighs the planning gain'. (my emphasis)

12.19 Mr Justice Jay indicates that the question as to whether or not a proposal is sustainable development can only be answered by carrying out the exercise outlined in paragraph 14. In the Wychavon case Mr Justice Coulson sets out the relevant approach at paragraphs 20-25 as follows:

*'20. In my view, in the sort of circumstances that arose in the present case, the correct approach required the decision-maker to ask a number of questions in sequence.*

*21. First: is there is a development plan? It is only if there is a development plan that s.38(6) of the 2004 Act comes into play.*

*22. Second: if there is a development plan, is it absent or silent or are relevant policies out-of-date? That question needs to be asked in order to see whether the approach set out in the second bullet point of paragraph 14 comes into play.*

*23. Third: if there is a development plan which is not silent and/or relevant policies are not out-of-date, then the decision-maker has to decide whether or not the proposed development is in accordance with the development plan. If it is in accordance with the plan, the proposed development must be approved without delay.*

*24. Fourth: if the proposed development is not in accordance with the development plan then the decision-maker has to undertake the balancing exercise referred to in s.38(6). In other words, the decision-maker must start with the statutory priority of the development plan, and therefore a presumption against granting planning permission, and balance against that, other material considerations that may indicate the contrary result. That is also in accordance with paragraphs 11 - 13 of the NPPF.*

*25. Fifth: if the development plan is silent or the relevant policies are out-of-date then the decision-maker must grant permission unless one or other of the two alternative limbs in the second bullet point in paragraph 14 of the NPPF applies.*

12.19 The approach which I have applied above is consistent with the steps outlined by Mr Justice Coulson in the Wychavon case. Mr Justice Coulson further comments that '*it is quite wrong to say that a presumption in favour of sustainable development does not exist in the NPPF outside paragraph 14*'.<sup>244</sup> This seems unsurprising given that the Framework states that the presumption in favour of sustainable development is a golden thread or theme running through the whole of this instrument of government policy.

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<sup>244</sup> Ibid §41

- 12.20 However, the overarching objective of achieving sustainable development does not, in my view, equate to a separate test which sits outside the statutory presumption and process enshrined in section 38. Instead the consideration of the development plan and other material considerations, (including the Framework and its objectives and the presumption in favour of sustainable development) effectively lead to a judgment which will either be permissive of development which is sustainable or preclude development which is not.
- 12.21 On behalf of the Appellant<sup>245</sup> it was accepted that in any separate examination of sustainability it was relevant to consider the conformity with an adopted development plan which itself was in conformity with the Framework.
- 12.22 In the circumstances of this case, even if I were to apply the approach advocated by the Appellant the recommendation would remain one of dismissal. This is because a freestanding consideration of the three dimensions of sustainable development would lead me to the conclusion that the proposal does not equate to sustainable development because it would result in the unfettered release of a greenfield site, the loss of BMV and some harm to visual amenity to which I have attributed limited weight. The other benefits outlined do not cumulatively outweigh these dis-benefits.
- 12.23 Finally, I have considered the Red House Farm appeal decision. The Council inform me that it has issued instructions for the appeal decision to be challenged by an application for judicial review. It is not for me to pre-judge the outcome of any proceedings in the High Court and as such the appeal decision remains a material consideration in my determination. However the Secretary of State will wish to satisfy himself as to the position regarding that piece of litigation at the time of his determination.
- 12.24 That appeal was for residential development on a greenfield site outside the settlement boundary in the Council's administrative area. Therefore the same development plan policies are at play and it was common ground that the Council had a five year housing land supply. However the case did not involve the loss of BMV and therefore the planning balance was different. In addition I note that the above appeal was determined by written representations and it may be that the points raised before me were not put to that Inspector. In particular I note that he was made aware of the Wychavon case but not the Renew case. I have made my recommendation addressing the issues raised between the parties and ventilated fully at the Inquiry.

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<sup>245</sup> Mrs Hodson in cross-examination.

## **Recommendation**

- 13.1 For all of the above reasons I recommend that the appeal should be dismissed.
- 13.2 If the Secretary of State is minded to disagree with my recommendation, Annex A lists the conditions that I consider should be attached to any permission granted.

*Karen L Ridge*

INSPECTOR

## APPEARANCES

### FOR THE LOCAL PLANNING AUTHORITY:

Mr John Hunter Of Counsel	Instructed by the Solicitor to East Staffordshire Borough Council (ESBC)
He called	
Mr Tony Kernon BSc(Hons) MRICS FBIAC	Principal, Kernon Countryside Consultants Ltd
Mrs Anna Miller MSc BSc(Hons) Dip.TP MRTPI	Planning Manager, ESBC
Ms Melissa Kurihara MLPM MRTPI	Principal Planning Consultant, Urban Vision

### FOR THE APPELLANT:

Mr Paul Cairnes, Queens Counsel	Instructed by Gladman Developments Ltd
He called	
Mr Benjamin Jackson BEng(Hons) MSc MCIHT	Director, Ashley Helme Associates Ltd
Mrs Janet Hodson BA(Hons) Dip.TP MRTPI	Principal, JVH Town Planning Consultants Ltd

### FOR SAVE OUR STRETTON:

Mr Graham Lamb	Local resident
Mrs June Kirkland	Local resident

### INTERESTED PARTIES

Mr Sanderson	Chairman Rolleston Parish Council
Mr Windmill	CPRE
Mr Abberley	Local resident

## DOCUMENTS SUBMITTED TO THE INQUIRY

### Documents submitted by ESBC

- ESBC.1 Opening remarks on behalf of the Council.
- ESBC.2 Extract from Burton Mail 'Deal for Bargates site'.
- ESBC.3 Draft schedule of conditions.
- ESBC.4 Statement of CIL compliance.
- ESBC.5 Statement of Agricultural Land Quality in England, Staffordshire and East Staffordshire from Kernon Countryside Consultants.
- ESBC.6 College Fields timeline setting out chronology of events.
- ESBC.7 Appeal decision APP/B3410/W/15/3140446, Nene House, Uttoxeter Road, Kingstone, Uttoxeter dated 27 April 2016.
- ESBC.8 Hunston Properties Ltd v SSCLG & St Albans City and District Council [2013] EWCA Civ 1610.
- ESBC.9 Bloor Homes V SSCLG & Hinckley and Bosworth Borough Council [2014] EWHC 754 (Admin).
- ESBC.10 Extract 'Council of Mortgage Lenders Answers for England and Wales'.
- ESBC.11 Copy letter Staffordshire County Council regarding Unilateral Undertaking dated 3 May 2016.
- ESBC.12 SSCLG decision letter re Land East of Broad Road, Hambrook, Chichester, West Sussex dated 25 April 2016.
- ESBC.13 Schedule of suggested conditions.
- ESBC.14 Committee report re Branston Locks, Lawns Farm, Branston Road, Tatenhill, Staffordshire dated 21 October 2013.
- ESBC.15 Committee report re Glenville Farm, Tutbury Road, Burton upon Trent, Staffordshire dated 27 October 2015.
- ESBC.16 Closing submissions on behalf of the Council.

### Documents submitted by the appellants

- GDL.01 Live Tables and explanatory text – Housing Evidence Base documents.
- GDL.02 Correspondence JVH and ESBC re Completions.
- GDL.03 Correspondence re Council Tax Starts.
- GDL.04 Screenshot re Housing Evidence Base Documents.
- GDL.05 JVH note re Requirement and Supply.
- GDL.06 Hallam Land letter regarding Beamhill Road 22 April 2016.
- GDL.07 Bellway letter regarding Burton on Trent sales rates dated 1 June 2015.
- GDL.08 JVH note regarding Howard Transport and particulars from AR Argyle.
- GDL.09 Email Philip Hickman to JVH Planning dated 21 April 2016 and Bargates particulars.
- GDL.10 EBSC planning responses regarding school sites at Tatenhill and Henhurst Ridge.
- GDL.11 Wychavon DC v SSCLG v Crown House [2016] EWHC 592 (Admin).
- GDL.12 Opening statement.
- GDL.13 Brandon Lewis Letter on school funding dated 9 February 2016.
- GDL.14 Focal Research Ltd- Delivery Rates on UK's Top 10 Housebuilders.

- GDL.15 Draft unilateral undertaking.
- GDL.16 Appeal decision Lower Outwoods Farm, Burton upon Trent APP/B3410/W/16/3142808.
- GDL.17 Red House Farm masterplan.
- GDL.18 Article on JCB compulsory purchase order dated 27 January 2016
- GDL.19 St Modwen Developments v SSCLG v East Riding of Yorkshire [2016] EWHC 968 (Admin)
- GDL.20 Extract from Building Bulletin 103.
- GDL.21 Table depicting areas of disagreement on Unilateral Undertaking.
- GDL.22 List of locations and supporting maps detailing sites the Inspector is requested to visit.
- GDL.23 Map showing public rights of way in the vicinity of the appeal site.
- GDL.24 Minutes from Stretton Parish Council meeting dated 2 February 2016.
- GDL.25 Inspector's Report to SoS on Land at Church Lane, Wistaton, Crewe, Cheshire appeal reference APP/R0660/A/14/2213505.
- GDL.26 Newspaper report 'Discussions break down over Bargates land sale' dated 3 March 2016.
- GDL.27 Appellant's closing statement.
- GDL.28 Office copy entries from the land registry in relation to appeal site land.

#### Documents submitted by Save our Stretton

- SOS.01 Appeal Decision- land south of Dereham Road, Mattishall, Norfolk. Reference APP/F2605/W/15/3027972.
- SOS.02 IMcH Planning and Development Consultancy Planning Statement in relation to Guinevere Avenue, Stretton.
- SOS.03 Photographs entitled 'Craythorne Road after heavy rain'.
- SOS.04 Photographs entitled 'Church Road Schools Traffic'.
- SOS.05 Opening Statement.
- SOS.06 Bundle of documents submitted to aid cross-examination of Mr Jackson.
- SOS.07 Email Ashley Helme Associates to Geoff Evenson dated 15 October 2014.
- SOS.08 Bundle of documents to aid cross-examination of Mrs Hodson.
- SOS.09 Email Rebecca Buckley to Andrew Dunum dated 16 May 2016.
- SOS.10 Closing Statement.

#### Documents submitted by other interested parties

- 3P.1 Statement from Mr Stuart Abberley.
- 3P.2 Representation 1: Planning Policy on behalf of The Campaign to Protect Rural England (Staffordshire).
- 3P.3 Representation 2: Housing on behalf of The Campaign to Protect Rural England (Staffordshire).
- 3P.4 Extract CPRE report 'Set up to fail: why housing targets based on flawed numbers threaten the countryside', submitted by the Campaign to Protect Rural England.

- 3P.5 Extract CPRE report 'Getting Houses Built', submitted by CPRE.
- 3P.6 Explanatory note relating to the Highway Sum in the section 106 agreement, submitted on behalf of Staffordshire County Council.
- 3P.7 East Staffordshire Borough Integrated Transport Strategy 2014-2031, submitted by Staffordshire County Council.
- 3P.8 District Integrated Transport Strategies 'Report on the Outcome of the Consultation Process 2011/12' submitted by Staffordshire County Council.

## **CORE DOCUMENTS**

### **Folder 1**

#### **CD1- Application Documents**

- 1.1 Application letter, forms and Certificates
- 1.2 Location Plan (including Application Red Line)
- 1.3 Development Framework Plan
- 1.4 Design and Access Statement
- 1.5 Landscape and Visual Impact Assessment
- 1.6 Transport Assessment and Appendices
- 1.7 Travel Plan
- 1.8 Ecological Appraisal
- 1.9 Arboricultural Assessment
- 1.10 Site Investigation

### **Folder 2**

#### **CD1- Application Documents (continued)**

- 1.11 Flood Risk Assessment
- 1.12 Noise Assessment
- 1.13 Archaeological DBA
- 1.14 Foul Drainage Analysis
- 1.15 Air Quality
- 1.16 Statement of Community Involvement
- 1.17 Socio-economic Sustainability Assessment
- 1.18 Planning Statement

### **Folder 3**

#### **CD2- Documents submitted post application**

- 2.1 Development Framework 5191-I-02\_L
- 2.2 Design and Access Statement 5191-May 2015-D
- 2.3 Transport Assessment 1324-6-TAS
- 2.4 Socio-economic Statement May 2015
- 2.5 Planning Statement Final May 2015
- 2.6 Sports Facilities Audit
- 2.7 Flood Risk Assessment J-D1021-R05

#### **CD3- Correspondence with Local Planning Authority**

- 3.1 Affordable Housing
- 3.2 Agricultural Land Quality - Natural England Response 16.07.15
- 3.3 Case Officer
- 3.4 Education
- 3.5 Highways England
- 3.6 Highways Authority
- 3.7 Environment Manager
- 3.8 Environmental Health
- 3.9 Flood Risk Planning
- 3.10 Severn Trent Water
- 3.11 Sport England
- 3.12 EIA Screening letter

#### **CD4- Committee Report and Minutes**

- 4.1 Officer's Report 21.07.15
- 4.2 Planning Committee Minutes 21.07.15
- 4.3 Update Report of the Head of Service

#### **CD5- Decision Notice**

- 5.1 Decision Notice 23.07.15

#### **FOLDER 4**

#### **CD6- Relevant Correspondence- Post Submission of Appeal**

- CD 6 Intentionally blank

#### **CD7 -The Development Plan**

- 7.1 East Staffordshire Local Plan 2011-2031 (October 2015)
- 7.2 East Staffordshire Policies Map - Inset Map 1 (Burton upon Trent and District)
- 7.3 Extracts of the Local Plan Inspector's Report (October 2015)
- 7.4 Stretton Neighbourhood Plan 2014-2031 (February 2016)
- 7.5 Briefing Note (09.07.15) Ashley Helme Report of the Independent Examiner (November 2015)
- 7.6 County Council Hearing Statement to EIP
- 7.7 Local Plan Inspector's Interim Findings (October 2014)

#### **CD8- Documents submitted Post Application**

- 8.1 Agricultural Land Quality Report - LRA 15.02.16
- 8.2 Arboricultural Assessment rev A FPCR - January 2016
- 8.3 Addendum Noise Assessment - Wardell Armstrong (21.07.15)
- 8.4.1 Transport Assessment 1324/2/C July 2014 (Ashley Helme)
- 8.4.2 Transport Assessment 1324/2/C July 2014 (Ashley Helme) App F + drawings
- 8.4.3 Briefing Note (09.07.15) Ashley Helme
- 8.4.4 1324/40 Rev A - Claymills Junction - Indicative Improvements
- 8.4.5 1324/37 Craythorne Road proposed passing bay scheme
- 8.4.6 1324/30 Rev C - Proposed site access arrangements

#### **CD9- Evidence Base for the Development Plan**

- 9.1 Strategic Housing Market Assessment (April 2014)
- 9.2 Strategic Housing Land Availability Assessment 2014 - Craythorne Road, Stretton
- 9.3 ESBC Note on 5 Year Land Supply Methodology 30.09.15
- 9.4 Note on Methodology Used in Determining Historic Housing Windfall rate, and in Putting Forward a Future Likely Windfall Allowance in the 5 Year Housing Supply Calculation (January 2014)
- 9.5 Gladman Representations on the East Staffordshire Local Plan Pre-submission consultation
- 9.6 East Staffordshire Local Plan EIP Hearing Statement Matter 7 Housing Land Supply – Gladman
- 9.7 Regeneris on behalf of Gladman Day 5 Part 1 Hearing Statement
- 9.8 East Staffordshire Local Plan EIP Hearing Statement Day 5, Part 2 Gladman
- 9.9 East Staffordshire Local Plan EIP Hearing Statement Alternative (Omission) Sites - Land at Craythorne Road

- 9.10 East Staffordshire Local Plan EIP Housing Supply/Trajectory Addendum paper Gladman
- 9.11 Impact of DCLG Household projections April 2015
- 9.12 Housing Choices SPD (April 2016)
- 9.13 Waste, Storage and Collection Guidance Document (2012)
- 9.14 Open Space Supplementary Planning Document (2010)

## **FOLDER 5**

### **CD10- Relevant Appeal Decisions**

- 10.1 Land at Southwell Road, Farnsfield, Nottinghamshire.  
APP/B3030/W/15/3006252
- 10.2 Land to the east of Hardingstone, north of Newport Pagnell Road, Northampton. APP/V2825/A/14/2228866
- 10.3 Land at The Asps, bound by Europa Way (A452) to the east and Banbury Road (A425) to the west. APP/T3725/A/14/2221613
- 10.4 Land south of Hare Street Road, Buntingford, East Hertfordshire.  
APP/J1915/A/14/2220854 & APP/J1915/A/14/2220859
- 10.5 Land off Worcester Road, Drakes Broughton, Worcestershire.  
APP/H1840/W/15/3008340
- 10.6 Land at Hill Top Farm, By-Pass Road, Northwich, Cheshire.  
APP/A0665/W/14/3000528
- 10.7 Land east of Wellesbourne Road and north of Wasperton Lane, Barford.  
APP/T3725/A/14/2215618 & APP/T3725/A/14/2222805
- 10.8 Money Hill, Land north of Wood Street, Ashby-de-la-Zouch.  
APP/G2435/A/14/2228806
- 10.9 Land off Rosemary Lane, Leintwardine, Herefordshire.  
APP/W1850/W/15/3006428
- 10.10 Land at Fountain Lane, Davenham, Cheshire. APP/A0665/A/14/2226994
- 10.11 Land at Berkeley Farm, Swindon Road, Wroughton.  
APP/U3935/W/15/3035660
- 10.12 Land north of Long Copse Lane, Westbourne, Emsworth.  
APP/L3815/W/15/3003656
- 10.13 Land west of Beech Tree Close, Oakley, Basingstoke  
APP/H1705/W/15/3005729
- 10.14 Land east of Mount Hindrance Farm, Chard APP/R3325/A/13/2209680
- 10.15 Steart Farm, Bideford APP/W1145/A/14/2228356 &  
APP/W1145/A/14/2228355
- 10.16 39 Highwood Road, Uttoxeter APP/B3410/W/15/3132685
- 10.17 Land between Ashflats Lane and A449 mosspit, Stafford APP/A/14/2217578
- 10.18 Land Bounded by Gresty Lane, Rope Lane, Crewe Road and A500, Crewe  
APP/R0660/A/13/2209335
- 10.19 Land at Whitford Road, Bromsgrove APP/P1805/A/14/2225584
- 10.20 Land South of New Moor arm and East of North End, Southminster  
APP/X1545/A/14/2224678
- 10.21 Agricultural land to both the north and south of Mans Hill, Burghfield  
Common, Reading, Berkshire APP/W0340/A/14/2226342
- 10.22 Land at Tilehurst Lane, Binfield, Bracknell, Berkshire  
APP/R0335/A/14/2219888
- 10.23 Land off Muxton Lane, Muxton, Telford APP/C3240/W/15/3010085
- 10.24 Abbey Road, Syresham, Northamptonshire APP/Z2830/W/14/3000537
- 10.25 Land off Station Road, Ivinghoe, Buckinghamshire  
APP/J0405/W/15/3002218

- 10.26 Land to the rear of 10 Gorse Lane, Bayston Hill, Shropshire  
APP/L3245/W/15/3127978
- 10.27 Land south of Leadon Way, Ledbury, Herefordshire  
APP/W1850/W/15/3009456

### **CD11 Relevant Judgments**

- 11.1 Woodcock Holdings Limited v Secretary of State Judgement [2015] EWHC 1173 (Admin)
- 11.2 Cheshire East BC & SSCLG v Renew Land Developments [2016] EWHC 571 (Admin)
- 11.3 Suffolk Coastal District Council v Hopkins Homes v SSCLG and Richborough Estates Partnership LLP v Cheshire East Borough Council v SSCLG [2016] EWCA Civ 168

### **FOLDER 6**

#### **CD12- Other Documents**

- 12.1 Cambridge Education - School Planning Study Part 1
- 12.2 AMEC SCC Burton upon Trent School Site Search
- 12.3 PPG Extract - Housing and Economic Land Availability Assessments
- 12.4 The Save Our Stretton report (June 15)
- 12.5 East Staffordshire Borough Integrated Transport Strategy 2014 – 2031
- 12.6 Henhurst Ridge Primary Traffic Assessment (attached)
- 12.7 Branston School Proposals (attached)
- 12.8 The General Application Correspondence Files - **Electronic copy only**
- 12.9 Stretton Allotments Flood Consultation
- 12.10 East Staffs Housing Pipeline (sites with planning permission as at 30.03.15)
- 12.11 East Staffs Housing Pipeline (sites with planning permission as at 30.09.15)
- 12.12 Extracts from East Staffordshire Local Plan (Examination) Revised Sustainability Appraisal December 2014
- 12.13 Correspondence between JVH Planning and ESBC re Annual Monitoring - expected site delivery details
- 12.14 Soils and Agricultural Land Quality - Maps 2 + 3 (Land Research Associates)

## **Annex A- List of Acronyms**

BMV Best and most versatile agricultural land

CD Core Document

CIL Community Infrastructure Levy

CPRE Campaign for the Protection of Rural England

dpa Dwellings per annum

ESBC East Staffordshire Borough Council

ESLP East Staffordshire Local Plan

FE Form of Entry (in relation to schools provision)

5YHLS Five year housing land supply

GLIVIA3 Guidelines for Landscape and Visual Impact Assessment Version 3

LVIA Landscape and Visual Impact Assessment

SCC Staffordshire County Council

SCG Planning Statement of Common Ground between the Council and Appellant

SOS Save our Stretton (a rule 6 party)

TA Transport Assessment

UU Unilateral Undertaking

## **ANNEX B**

List of Recommended Conditions in the event that the Secretary of State is minded to allow the appeal and planning permission is granted.

### **Approved Plans**

1. The development hereby permitted shall be carried out in accordance with the details shown on the approved access drawing ref: 1324/30 Rev C (March 2014) and the Site Location Plan drawing no. 2012-016-005 (dated 29.11.13)
2. The development hereby permitted shall be carried out substantially in accordance with the principles of the Design and Access Statement ref 5191-May 2015-Rev: D.
3. The development hereby permitted shall comprise no more than 385 dwellings.

### **Time Periods**

4. Prior to commencement of the development a Masterplan covering the whole site must be submitted to and approved in writing by the local planning authority. The Masterplan must include details of
  - a) Any phasing of the development;
  - b) Street layout of the primary access roads through the site;
  - c) Location of housing areas, including distribution of affordable housing across the phases/site;
  - d) The location of the 1.69ha of safeguarded land for the provision of a primary school;
  - e) Areas of public open space;
  - f) Areas of equipped play;
  - g) Areas of surface water attenuation;
  - h) Areas of landscaping;
  - i) Details of access to the school site;
  - j) Details of plot and site boundaries.

All Reserved Matters submissions in relation to the development hereby approved shall conform to the principles of the approved Masterplan.

5. For each phase of development, details of appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development begins on that phase of development and the development shall be carried out as approved.
6. Application for approval of reserved matters for the first phase of development must be made not later than the expiration of 2 years from the date of this permission and the development on that first phase of development must be begun not later than whichever is the later of the following dates:
  - (i) the expiration of 2 years from the date of this permission,
  - (ii) the expiration of 2 years from the final approval of the reserved matters for that first phase or, in the case of approval on different dates, the final approval of the last such matter to be approved.
7. Application for approval of reserved matters for all subsequent phases of development must be made not later than the expiration of 3 years from the date of this permission

and the development must be begun on each subsequent phase of development not later than whichever is the later of the following dates:

- (i) the expiration of 3 years from the date of this permission,
- (ii) the expiration of 3 years from the final approval of the reserved matters for that particular phase or, in the case of approval on different dates, the final approval of the last such matter to be approved.

### **Reserved matters**

8. There can be no development on any phase of the development hereby permitted until details of boundary treatments, including materials, finishes, heights and sections (where there are changes in topography) for each plot of that phase have been submitted to and approved in writing by the local planning authority. The boundary treatment shall be provided in accordance with the approved details prior to the first occupation/use of the part of the phase to which it relates.
9. There can be no development on any phase of the development hereby permitted until details of all road construction, street lighting and highways drainage, including longitudinal sections and an implementation programme for that phase of development have been submitted to and approved in writing by the local planning authority. The development on that phase shall be carried out in accordance with the approved details.
10. No phase of the development hereby permitted shall take place until a Noise Impact Assessment, together with details of any noise mitigation measures and an implementation programme, for that phase has been submitted to and approved in writing by the local planning authority. The mitigation measures shall be implemented in accordance with the approved details and retained for the life of the development.
11. Prior to the first occupation of the dwelling to which it relates, accesses, parking and turning areas for that dwelling shall be provided in a bound material in accordance with details that shall first have been submitted to and approved in writing by the local planning authority at reserved matters stage. The bound material shall have a high degree of porosity to reduce the amount of surface run-off. The accesses, parking and turning areas shall thereafter be made available at all times for these purposes and retained thereafter.

### **Highway Improvements**

12. No development shall commence until schemes for offsite highways works, to include a timetable for their implementation and details of their ongoing maintenance and management, have been submitted to and approved by the Local Planning Authority. The submitted schemes shall include the following:
  - a) all accommodation works for No's 86, 84, 82, 80 and 78 Craythorne Road as indicated in principle on submitted drawing no. 1324/30 Rev C (the southern access);
  - b) all accommodation works for No's 18, 8, 6, 4 Craythorne Road as indicated in principle on submitted drawing no. 1324/30 Rev C (the northern access);
  - c) a scheme for the widening of Craythorne Road and footway provision between Bridge Street and the southern access as broadly indicated on submitted drawing number 1324/30 Rev C ;
  - d) 5 (no.) passing bays on Craythorne Road as indicated in principle on drawings numbered 1324/30 Rev C and 1324/37;
  - e) a new pedestrian crossing on Bitham Lane as indicated in principle on drawings numbered 1324/30 Rev C and 1324/37.

13. No occupation on the development shall take place until and unless a detailed design scheme, as illustrated on drawing 1324/40 Rev A, has been submitted, approved and constructed to the written satisfaction of the planning authority.
14. Details required pursuant to Reserved Matters shall indicate at least 3(no.) car parking spaces available at all times within the curtilage of each 4 and 5 bedroomed dwelling.
15. Details required pursuant to Reserved Matters shall include minimum internal dimensions of 6.0m x 3.0m for single garages. These shall be retained for the parking of motor vehicles and cycles. They shall at no time be converted to living accommodation without the prior express permission of the Local Planning Authority.

### **Construction Management**

16. No development of any phase of the development hereby permitted shall take place, including any works of demolition, until a Construction Management Plan incorporating a Construction Method Statement for that phase of the development has been submitted to and approved in writing by the local planning authority. The approved Statement shall be adhered to throughout the demolition and construction period for that phase of the development. Subsequent phases of development will require separate Construction Method Statements for the phase of the development to which they relate. The Construction Method Statement shall provide for:
  - a) Details regarding the loading / unloading and storage of plant and materials used in constructing the development,
  - b) Provision of parking for vehicles of site operatives and visitors;
  - c) Construction traffic access including the routing of construction vehicles to and from the site including measures to mitigate the impact on the local highway network. The measures shall include the timing of movements to avoid traffic congestion and the exclusion of Rolleston on Dove;
  - d) Temporary traffic management measures to maintain free flow of traffic on the surrounding road network;
  - e) Arrangements for turning vehicles;
  - f) Loading and unloading of plant and materials;
  - g) Method of prevention of mud being carried onto the highway, including wheel washing facilities;
  - h) The control of construction noise;
  - i) Measures to control the emission of dust and dirt during construction (including sheeting);
  - j) Pedestrian and cyclist protection on the surrounding road network;
  - k) A scheme for recycling / disposing of waste resulting from demolition and construction works;
  - l) The erection and maintenance of security hoarding and boundary treatments including decorative displays and facilities for public viewing, where appropriate;
  - m) An implementation programme;
  - n) A permanent contact on site and/or traffic manager as a main contact point for all enquiries or issues;
  - o) Details of the location of any site compounds.
17. No development of any phase of the development hereby permitted (including demolition and ground works) shall take place outside the following hours of operation.
  - 08.00 – 18.00 hours Monday – Fridays,
  - 09.00 – 14.00 hours on Saturdays,
  - No works to take place on Sundays, public and Bank Holidays.

18. Prior to the commencement of development a detailed and site specific plan of dust mitigation measures must be submitted to the Planning Authority (drawing on but not limited to the proposed measures outlined in the Air Quality Assessment by Wardell Armstrong dated June 2014). The plan must cover each stage from demolition, earthworks, construction and track-out in line with the principles set out in "IAQM Guidance on the Assessment of Dust from Demolition and Construction (2014)". Commencement of the development must not take place until the dust mitigation plan has been approved by the Council and the development of each phase shall be carried out in accordance with the approved details.

#### **Site investigation/contaminated land**

19. No phase of the development hereby permitted shall take place until a contaminated land assessment, covering the whole site, to include the investigation of gas migration, and associated remedial strategy together with an implementation programme have been submitted to and approved in writing by the local planning authority. The contaminated land assessment shall include a desk study that shall detail the history of the site uses and a site investigation strategy based on the relevant information discovered by the desk study. The strategy shall be approved in writing by the local planning authority prior to investigations commencing on site. Any site investigation, including relevant soil, soil gas, surface and groundwater sampling, shall be carried out by a suitably qualified and accredited consultant/contractor in accordance with a Quality Assured sampling and analysis methodology. A site investigation report detailing all investigative works and sampling on site, together with the results of analysis, risk assessment to any receptors and a remediation strategy shall be submitted to and approved in writing by the local planning authority prior to any remediation works commencing on the site.

Remediation works for each phase shall be carried out in accordance with the approved strategy and under a quality assurance scheme to demonstrate compliance with the approved methodology and best practice guidance. If during the works contamination is encountered which has not previously been identified then the additional contamination shall be fully assessed and a remediation scheme and implementation programme shall be submitted to and approved in writing by the local planning authority. Remediation works shall thereafter be carried out in accordance with the approved scheme. Upon completion of the works of each phase, a closure report shall be submitted to and approved in writing by the local planning authority. The closure report for each phase shall include details of the remediation works and quality assurance certificates to show that the works have been carried out in full in accordance with the approved methodology; details of any post-remedial sampling and analysis to show the site has reached the required clean-up criteria; and details of what waste materials have been removed from the site.

20. No phase of the development hereby permitted shall take place until an archaeological survey covering the whole site, has been submitted to and approved in writing by the local planning authority. No phase of the development shall take place until a programme of archaeological works for that phase has been implemented in accordance with a written scheme of investigation which has first been submitted to and approved by the Local Planning authority.

#### **Tree protection measures**

21. The development on each phase of the development hereby approved shall be carried out in accordance with recommendations of the approved FPCR Arboricultural Report dated January 2016 and tree retention plan reference 5191-A-03 Rev C submitted with

the application. No phase of development shall begin until details of the means of protecting trees and hedges within and immediately adjacent to the site of that phase, including protecting root structure from injury or damage prior to or during the development works, have been submitted to and approved in writing by the Local Planning Authority. The approved protection measures shall be implemented before any works on that phase are carried out and retained during building operations and furthermore, no excavation, site works, trenches or channels shall be cut or laid or soil, waste or other materials deposited so as to cause damage or injury to the root structure of the retained trees or hedges.

### **Habitat Protection Measures**

22. No phase of the development shall begin until details of the means of protecting retained habitats on site for that phase, identified in the submitted FPCR Ecological Appraisal report dated January 2014, and a scheme of habitat creation for that phase has been submitted to and approved in writing by the Local Planning Authority. The planting scheme for habitat creation should use only native species and accord with the aspirations of the East Staffordshire Borough Council Green Infrastructure Study and the Staffordshire BAP.

The approved protection measures shall be implemented before any works are carried out on that phase and retained during building operations, and habitat creation shall be implemented prior to the occupation of that phase and all measures shall be retained thereafter.

### **Protected Species**

23. Before any development or other operations commence on each phase of the development,

- a) within one month of the planned commencement of works, an assessment of that phase for evidence of badgers; and
- b) during the latest survey season prior to the planned commencement of works, an assessment of that phase for evidence of Great Crested Newts;

shall be undertaken by a licensed ecologist. A copy of the assessment report shall be submitted to and approved in writing by the Local Planning Authority. The reports shall contain any necessary mitigation works required, and a timescale in which works are to be undertaken. If found to be present, no development shall commence on that phase until a mitigation strategy had been approved in writing by the Local Planning Authority. The mitigation shall be carried out in accordance with the approved details.

### **Nesting Birds**

24. No clearance of trees and shrubs in preparation for (or during the course of) development shall take place during the bird nesting season (March - August inclusive) unless a bird nesting survey has been submitted to and approved in writing by the Local Planning Authority to establish whether the site is utilised for bird nesting. Should the survey reveal the presence of any nesting species, then no development shall take place within those areas identified as being used for nesting during the period specified above.

### **Flooding and Drainage**

25. The development hereby permitted shall be carried out in accordance with the Flood Risk Assessment prepared by Opus International Consultants ref J-D1021-R05 dated May 2014.

No phase of the development hereby permitted shall take place until a flooding and drainage strategy, covering the whole site, has been submitted to and approved in

writing by the Local Planning Authority. The Strategy should include details of the mitigation of all potential impacts of flood risk and a satisfactory surface water design. The scheme should address the following matters:

- a) The provision of an adequate and agreed point of discharge of surface water for the whole site, including an agreed discharge rate. It is proposed that this will be to the Severn Trent sewer and ST are currently modelling the downstream system in order to recommend a proposed discharge rate;
- b) Based on the agreed discharge rate, that an adequate amount of floodwater attenuation storage is incorporated into the layout of the site ;
- c) The development shall include a perimeter drain or ditch, where necessary, to prevent water running off the site and affecting adjacent properties
- d) Any potential additional overland flows from upstream areas (including runoff from Craythorne Road) shall be considered in the design of the surface water system;
- e) The proposed system shall incorporate sustainable drainage techniques
- f) The system shall ensure that the development itself and downstream areas will not be adversely affected by flooding as a result of the development;
- g) The system shall ensure that adequate measures are in place to allow the future maintenance of any drainage systems by an appropriate body over the lifetime of the development;
- h) The system shall ensure that the proposed school site will not be undermined by the discharge of waters from the developments adjacent.

Development shall be carried out in accordance with the approved flooding and drainage strategy.

### **Foul Drainage**

26. No more than 25 dwellings will be occupied within the first 18 months from the date of this permission. This will allow time for the statutory undertaker to carry out any necessary measures to the foul and sewage waste system arising from the development of the site.

### **Levels**

27. No development shall take place, and no site works related to the development hereby approved shall be carried out, until details of all slab levels and garden levels and any regrading proposed to the site have been submitted to and approved in writing by the Local Planning Authority and the development shall only be carried out in accordance with the approved details.

### **Landscape Implementation**

28. No phase of the development hereby permitted shall take place until a Landscape Management Plan of that phase, indicating a scheme for the long-term management of open space, green infrastructure and planting within the public realm and details of biodiversity management has been submitted to and approved in writing by the local planning authority. The open space, green infrastructure and planting shall thereafter be managed in accordance with the approved Landscape Management Plan.
29. All planting, seeding or turfing comprised in the approved details of landscaping for each phase shall be carried out in the first planting and seeding seasons following first occupation of the dwellings on that phase or the completion of the development, whichever is the sooner. Any trees or plants which, within a period of five years from the completion of that phase of the development; die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with

others of similar size and species unless the Local Planning Authority gives written consent to any variation.

### **Open Space**

30. No phase of the development hereby permitted shall take place until details of an open space strategy for the whole site has been submitted to and approved in writing by the local planning authority. The open space strategy shall include a short term maintenance management plan for all areas of open space; all materials to be used in hard landscaping and all fencing and walling. The open space strategy shall be implemented in full on each phase of development in accordance with the approved phasing scheme and shall thereafter not be used for any purpose other than as stated.

### **Travel Plan**

31. Prior to the first occupation of any dwelling, an Interim Travel Plan shall be submitted to and approved in writing by the Local Planning Authority.

Thereafter and prior to the occupation of the 50th dwelling, a Final Travel Plan shall be submitted to and approved in writing by the Local Planning Authority. This Final Travel Plan shall include objectives, targets, mechanisms and measures to achieve targets and implementation timescales, monitoring and review provisions and provide for the appointment of a travel plan co-ordinator. The development shall thereafter be implemented in accordance with the approved Travel Plan.

END OF CONDITIONS



## **RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT**

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

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

### **SECTION 1: PLANNING APPEALS AND CALLED-IN PLANNING APPLICATIONS**

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

#### **Challenges under Section 288 of the TCP Act**

With the permission of the High Court under section 288 of the TCP Act, decisions on called-in applications under section 77 of the TCP Act (planning), appeals under section 78 (planning) may be challenged. Any person aggrieved by the decision may question the validity of the decision on the grounds that it is not within the powers of the Act or that any of the relevant requirements have not been complied with in relation to the decision. An application for leave under this section must be made within six weeks from the day after the date of the decision.

### **SECTION 2: ENFORCEMENT APPEALS**

#### **Challenges under Section 289 of the TCP Act**

Decisions on recovered enforcement appeals under all grounds can be challenged under section 289 of the TCP Act. To challenge the enforcement decision, permission must first be obtained from the Court. If the Court does not consider that there is an arguable case, it may refuse permission. Application for leave to make a challenge must be received by the Administrative Court within 28 days of the decision, unless the Court extends this period.

### **SECTION 3: AWARDS OF COSTS**

A challenge to the decision on an application for an award of costs which is connected with a decision under section 77 or 78 of the TCP Act can be made under section 288 of the TCP Act if permission of the High Court is granted.

### **SECTION 4: INSPECTION OF DOCUMENTS**

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