

Delegated Report for P/2016/01659

Application Number	P/2016/01659	
Planning Officer	Sachin Parmar	
Site Address	Land at the Brookhouse Hotel Brookside Rolleston on Dove Burton on Trent DE13 9AA	
Proposal	Construct three detached dwellings and convert former hotel and coach house to create 10 residential units also including construction of a single storey rear extension and demolition of an existing outbuilding and conservatory *Amended Plans received on 11/04/18 after meetings and discussions with the planning agent and developer. Number of new backland residential plots has been reduced.	
Expiry Dates	Weekly List	26/05/17
	Neighbours	26/04/18
	Consultations	26/04/18
	Site Notice	16/11/17
	Newspaper Advert	17/11/17
Application not Determined within Statutory Time Period - Reason	<i>Extension of time to 22/05/18 was agreed with the developer for the assessment of the revised scheme.</i>	
Environmental Assessment	Screening opinion undertaken	N/A
	Schedule 1 or 2	N/A
	EIA Required	N/A
Relevant Planning Policies/Guidance	Government Documents	The National Planning Policy Framework The National Planning Practice Guidance
	Local Plan Policies	Strategic Policies: SP1 – Approach to Sustainable Development SP2 – Settlement Hierarchy SP4 – Distribution of Housing Growth SP8 – Development Outside Settlement Boundaries SP9 – Infrastructure Delivery and Implementation SP10 – Education Infrastructure SP17 – Affordable Housing SP24 – High Quality Design SP25 – Historic Environment SP27 – Climate Change, Water Body Management and Flooding SP29 – Biodiversity and Geodiversity SP32 – Outdoor Sports and Open Space SP35 – Accessibility and Sustainable Transport Detailed Policies: DP1 – Design of New Development DP3 – Design of New Residential Development, Extensions and Curtilage Buildings DP5 & DP6 – Protecting the Historic Environment DP7 – Pollution and Contamination DP8 – Tree Protection
	Supplementary Planning Documents	East Staffordshire Design Guide Parking Standards SPD Housing Choice SPD Open Space SPD

	Other Policies/Guidance	<p>Rolleston Conservation Area Appraisal</p> <p>Rolleston on Dove Neighbourhood Plan – <i>examined in October 2013 however, to date the status of the plan remains in draft. The Council have yet to take a formal decision on the Neighbourhood Plan and therefore full weight cannot be given to it.</i></p>
Relevant History	No relevant recent planning history	
Consultation Responses	<p>Internal Consultees:</p> <ul style="list-style-type: none"> • Communities, Open Spaces & Facilities Manager: Requested off-site contributions of £11,750 for open space. • Environmental Health Division: Comments that the application does not include an initial consideration of potential soil and groundwater contamination. Pre-commencement conditions requiring contaminated land assessments should be attached to any decision. • Environment Manager: Comments made that developer will need to demonstrate that a refuse vehicle can adequately access the site and utilise the turning head to avoid difficult reversing manoeuvres. Requested contributions to provide bins. • Housing Strategy Officer: Advice provided on level of affordable housing required and minimum units required on-site and commuted sum off-site. • ESBC Principal Planning Policy Officer: Assessment has been undertaken against the Housing Needs Survey provided. Comments that it has not been demonstrated to the Council's satisfaction that the housing need identified cannot be met through other developments, or through general housing available for sale. • ESBC Heritage Adviser : Further to an assessment of the scheme (as revised) concludes that :- <p><i>“The one and half storey outbuilding to the rear of the site has a degree of architectural and historic merit being curtilage listed to the main listed building. It appears to be in sound condition and there is no justification for its loss. Therefore, the total loss of this asset which could be utilised for ancillary accommodation/storage results in less than substantial harm.</i></p> <p><i>The open aspect at the rear of the site has received a degree of alteration including the implementation of hardstanding that has reduced its positive contribution. Therefore, there is considered to be scope for development to the rear of site without adversely impacting on the character. However, this should appear ancillary and subservient to the host building and reflect the current hierarchy of the site. The proposed residential development does not respond to this character due to its scale, form, bulk and design. The extent, scale and character of development does not respond to the hierarchy and ancillary character of the built form and results in less than substantial harm to the setting of the listed building and to a lesser degree the character of the CA.</i></p> <p><i>Elements of the proposal are therefore considered to result in less than substantial harm and not outweighed by the benefit of bringing the building back into use with more appropriate solutions available. As per paragraph 134 of the NPPF where a proposal will result in less than substantial harm this should be weighed against the public benefit of the proposal.”</i></p> <p>Staffordshire County Council:</p> <ul style="list-style-type: none"> • Highways Authority: Initially objected to proposal as access is geometrically substandard and 	

	<p>development would fail to make adequate provision for parking. Technical opinion was then no objections subject to conditions for amended plans. Object to final amended plans as application fails to provide sufficient technical details.</p> <ul style="list-style-type: none"> • Lead Local Flood Authority (LLFA): Initially objected but having considered the latest amended plans confirmed no objections subject to conditions. • Education Authority: Requested contribution of £42,159.50 towards primary provision and high school places. • Historic Environment Adviser: No archaeological concerns are raised. <p>External Bodies/Consultees:</p> <ul style="list-style-type: none"> • The Environment Agency: Confirmed no objections subject to conditions. • Historic England: Do not wish to offer any comments. • Severn Trent Water: Confirmed no objections subject to pre-commencement condition relating to drainage plans for the disposal of foul and surface water flows. • Rolleston Civic Trust: Object to proposal. Would like to see the hotel building come back into use however the new market houses are proposed outside of the settlement boundary. There are insufficient parking spaces to serve the development. Also the level of flood risk is not acceptable and the submitted FRA does not tie in with the actual experience of the site which floods. Concerns also raised about the number of trees which would be felled and the proposed bin collection point which from an aesthetic point of view would be a large and ugly placement directly in front of the hotel building. • Police Architectural Liaison Officer: No objections raised. Advice given about measures which could reduce the opportunity for crimes to be committed. • Green Infrastructure Officer - National Forest: No comments as site lies outside of the National Forest.
<p>Councillors</p>	<p>Cllr B Toon: Originally made a call-in request for the application to be determined at Planning Committee. Comments made that there are no problems with the Brookhouse application itself but the 8 new dwellings and removal of trees to the rear will exasperate the flooding issues and to nearby streets. Some of the dwellings are also outside of the settlement boundary. There is also limited access and egress onto a very busy road and is potentially open for accidents.</p> <p><i>The case officer kept Cllr Toon updated on progress and on amended plans. Cllr Toon advises that she happy with professional opinion and for application to be refused under delegated powers.</i></p>
<p>Parish Council</p>	<p>Object to proposal. Comments made that the Parish Council recognises the need for the former hotel and outbuildings to be developed and generally support this aspect. The addition of flats to the village is welcomed as they could become starter homes allowing young people onto the property ladder. However, object strongly to the new build aspects within the car park area. Raise major concerns with flooding when access to the property is impassable. Building on the car park will increase flood risk elsewhere. Also loss of privacy to houses which back onto the car park. The car park is outside of the settlement boundary and this area is not included within the Local Plan or current Draft</p>

	Neighbourhood Plan. A traffic survey has not been undertaken, there are too few parking spaces proposed and due to the entrance being tight and the number of cars there would be a detrimental effect upon the highway. Access would be difficult for emergency vehicles too. Concerns raised that so many trees would be removed which would harm the character of the area.
Neighbour Responses	<p>Objections have been received from 11 local residents. Below is a summary of the concerns raised:</p> <ul style="list-style-type: none"> • Flooding issues and potential for increasing flood risk in and around the site • Flood report has a number of inaccuracies • Inadequate justification for building unplanned dwellings on floodplain. • Parking spaces and access is in area which floods. So new residents would be forced to wade through flood water to reach their front doors. • Substandard access through to the back of Brookhouse as it is single vehicle only and restricted. • Parking problems • Highways safety concerns • Traffic effects and congestion • Market houses would be outside of the settlement boundary • Conversion would result in loss of hotel permanently so it would be a loss of a facility and permanent loss of jobs • Questions raised about the evidence put forward for the need for market houses • No section 106 agreement and lack of information about what obligations would be paid • Privacy concerns • Development will result in more external activity / noise / disturbance to nearby neighbours due to new gardens • Loss of trees
Human Rights Act Considerations	There may be implications under Article 8 and Article 1 of the First Protocol regarding the right of respect for a person's private and family life and home, and to the peaceful enjoyment of possessions. However, these issues have been taken into account in the determination of this application.
Crime and Disorder Implications	It is considered that the proposal does not raise any crime and disorder implications.
Equalities Act 2010	Due regard, where relevant, has been given to the East Staffordshire Borough Council's equality duty as contained within the Equalities Act 2010.
Planning Officer's Assessment	<p>Site and surroundings:</p> <p>The application site falls within Rolleston Conservation Area and is visually distinct as two parts; a 'northern' and 'southern' section. The southern section is occupied by the former Brookhouse Inn Hotel which is a Grade II Listed Building. The 3 storey building was formerly a farmhouse with alterations of 1877 and later. The construction is red brick with tiled roof behind parapet and verge parapets. Architectural details of interest include end stacks, raised brick bands at floor/ceiling levels, 3-window front, segmental headers and central entrance with stone porch. There is a lower gabled wing adjoining to the right which creates a coach entry covered way. To the rear the building has spacious grounds with outbuildings located along the eastern boundary. Beyond the east boundary are the gardens of residential properties along Alderbrook Close. To the west the application site is bounded by the Rolleston Brook.</p> <p>The gabled wing of the building has an open area beyond the southern elevation which is enclosed by a line of coniferous trees. Beyond this boundary there is a car park associated with the nearby car garage/workshop which fronts Station Road.</p>

The northern section of the site has a sense of openness and includes an area of hardstanding which was formerly car park associated with the hotel use. This is set against the backdrop of an open field beyond a line of mature trees. The application site includes a linear section of this neighbouring field. There are numerous trees within the application site including a group of trees towards the northwest corner.

Details of the Application:

The application can be regarded as two parts. The first is to renovate the Listed Building and the adjoining wing to bring forward new residential units. This would also involve demolition of garaging and outbuildings.

The second element is to construct a scheme of three 2 storey detached dwellings within the northern section of the application site. Two of these dwellings would feature linked garage elements that also feature a first floor whilst the other dwelling would have an associate detached garage.

Summary of Relevant Policies:

Strategic Policies

Policy SP1 includes principles for assessing development. This includes whether the development harms the character of open countryside.

Policies SP2 and SP4 sets out a development strategy directing growth to the most sustainable places.

Policy SP8 makes a general presumption against development outside settlement boundaries unless it benefits from falling under a specified list of categories. These categories includes where development is 'otherwise appropriate in the countryside'. The policy further lists separate criteria for which proposals are then judged against. This includes whether considerable urban form is avoided and whether the detailed siting is compatible with the character of the surrounding area.

Policy SP9 states that planning obligations will continue to be the basis to secure developer contributions and the level of contributions will be determined on a case by case basis.

Policy SP10 deals with Education Infrastructure provision, Policy SP17 sets out the basis for Affordable Housing and Policy SP32 relates to Outdoor Sports and Open Space.

Policy SP16 states that residential development in the main towns shall provide an appropriate dwelling or mix of dwellings given the mix required in that part of the Borough.

Policy SP24 requires that development contributes positively to the area, reinforces character and identity and integrates with the existing environment.

Policy SP25 states that development proposals should protect, conserve and enhance heritage assets and their settings which includes Conservation Areas and Listed Buildings.

Detailed Policies

Under Policy DP1 the Council will have regard to the arrangement of buildings, the massing in relation to the context, the materials to be used and the impact upon the amenity of neighbouring occupiers.

Policy DP3 requires that new residential development should not result in any loss of light to principal windows or amenity space of adjacent dwellings, should not have an unacceptably overbearing impact on adjacent dwellings and the layout should allow reasonable privacy to new occupiers of the dwellings and surrounding occupiers.

Policy DP5 states that the Borough's historic environment and heritage assets will be protected and enhanced where new development proposals will be expected to make a

positive contribution to existing buildings and Conservation Areas. New development within the historic environment such as within Conservation Areas must respect the context of the character and appearance of such heritage assets in terms of using sound design principles which are stipulated in the Design SPD. Key views into and out of Conservation Areas will remain uninhibited as part of the aims of Policy DP5.

Policy DP5 also states that alterations, extensions or development which adjoins a Listed Building must respect the context of the character and appearance of the heritage asset. It is expected that alterations and extensions to Listed Buildings should generally preserve and enhance the integrity and setting of a Listed Building without harm.

Policy DP6 states that permission will be permitted for development proposals that can demonstrate that the integrity and setting of a heritage asset will be protected and enhanced. New development in villages should carefully consider scale, massing and layout where the historic layout and form should be preserved and legible.

Policy DP7 states that development proposals will only be granted permission where they will not give rise to, or be likely to suffer from, unacceptable pollution in respect of noise or light, or contamination of ground, air or water.

Policy DP8 states that within sites developments should be designed to retain as many trees and other natural features as possible and to minimise harm to existing trees.

Determining Considerations:

The foremost issues relate to whether the principle is acceptable and an assessment of harm upon open countryside, the character of the Conservation Area and the setting and significance of the Listed Building. The impact upon visual and residential amenity, highways safety concerns, flood risk, the merits of any Section 106 Agreement and any other technical matters will then be weighed against the appropriateness of the scheme.

Principle and Housing Need

Any application should be determined against policies from the Development Plan with the NPPF as an obvious material consideration. With regards to this application the site is split by the settlement boundary where part of the vegetated garden grounds to the rear of the building and land to the north including the former car park area, and field, are all outside of the settlement boundary. The settlement boundary cannot effectively be changed via the route of a planning application and Policy SP2 and Policy SP8 are relevant as they seek to concentrate new development within the strategic village, whilst within the countryside development will not be permitted where it would be better situated in an accessible urban location.

The scheme proposes backland dwellings within the northern section of the site which is outside of the settlement boundary. It is considered that the proposal does not benefit from falling into any of the specified criteria under Policy SP8 for appropriate countryside development. The principle of development is therefore unacceptable.

The developer accepts that the new houses are proposed outside of the settlement boundary however the counter argument is that the land is associated with the former hotel and previously developed as it was a car park and still has hardstanding areas. However, it is considered that this part of the proposal does not constitute redevelopment of brownfield or previously developed land. The NPPF provides a definition for 'Previously Developed Land' and this specifically excludes private residential gardens and land that was previously-developed but where the remains of the permanent structure or fixed surface structure have blended into the landscape in the process of time. It is considered that the hardstanding area which is flat is perceived as undeveloped land which is blending into the landscape due to nature taking it back over and shares a relationship with the openness of immediate rural surroundings. Therefore, it is considered that the site is greenfield undeveloped land.

Notwithstanding the inappropriateness of the new backland houses in principle the scheme would have also failed to meet the remaining impact based criteria of Policy SP8 in relation to the impact upon open countryside. It is considered that prominent two storey dwellings with associated outbuildings occupying the site, and domestic gardens encroaching into a section of open field to the north, would result in the introduction of

urban form in an otherwise rural surrounding and the character of open countryside would be harmed taking into account the extent of new domestic curtilages. Furthermore, it is considered that the scheme does not provide any significant benefits to the appearance or character of open countryside which can overcome the fundamental conflict against policies in terms of the principle.

The Council does currently have a 5 year land housing supply (most recent calculation uses figures as at 30th September 2017 and concludes there is 5.23 years of supply) and therefore housing supply policies from the development plan are not silent. However, the national context should also be taken into account where there is a need to significantly boost housing supply. Nevertheless, it is considered that any case for housing need would not outweigh both the inappropriateness of the scheme and the harm identified to open countryside.

Enabling Development

The developer is of the opinion that the new build backland houses are required in order to enable the conversion works to the Listed Building to be progressed. However, a scheme for 'enabling development' would be subject to a rigorous and complex test taking into account the extensive guidance set out by Historic England. This route has not been pursued in this instance (and willingness of the developer to enter into a section 106 agreement in relation to the provision of affordable housing/education provision/public open space — as set out below - suggests that there is no such enabling development case to be made in this instance). There is evidence of some support within the local community for renovating the Listed Building and bringing it back into a viable residential use. However, any such local support in principle is outweighed by the negative impacts of the present scheme.

Impact upon Heritage Assets

The Listed Building makes a positive contribution to the character of the Conservation Area reflecting its agricultural origins and development. Internally there have been alterations and later extensions which do not contribute to the significance or character of the building. The conservatory to the rear is of no interest and a proposed orangery style replacement is acceptable considering the existing. The setting to the rear has been altered with the formation of the car park which does not make a positive contribution. There have also been alterations to the outbuilding as part of the hotel conversion however the character of this building remains ancillary and subservient and reflects the former historic farming complex.

The main building used to be a farmhouse and there have been subsequent works as part of the modern hotel use which has resulted in a more open plan form on the ground floor and resulted in the loss of features. It is considered that bringing the building back into viable use as residential would not be unacceptable as the conversion would make use of all original external openings in order to preserve the character and appearance of the building.

There are a number of outbuildings associated with the building including curtilage listed assets. The adjoining wing to the front of the site has previously been converted for accommodation and residential use is considered appropriate. However, concern is raised with regards to how the frontage beyond the south wall of this wing is sub-divided. While the road views of the front of the wing are restricted by vegetation cover when approaching the site, the frontage area can be appreciated as part the complex. In order to prevent a residential character and to maintain a more ancillary appearance as well as retaining the relationship with the house, sub-division should be restricted to the north front of the wing only (a matter that could reasonably have been addressed by condition if there was support in principle for the scheme).

To the rear of former hotel it is proposed to demolish the garaging which is of no architectural or historic merit.

Also to the rear of the principal listed building is a 1½ storey outbuilding which lies along the east boundary. The 1½ storey outbuilding appears to be of some age and interest and is considered curtilage listed to the main farmhouse. The scheme looks to demolish this element in order to propose parking. The building looks to be in sound condition and not structurally compromised. It would lend itself to storage/ancillary use and proposed

demolition is not considered justified and results in a harm with its total loss.

With regards to the new backland houses to the rear it is considered that this area of the application site remains open in its character whilst the field and paddock beyond contribute positively to understanding the historic rural setting, much of which has been eroded by later modern estate development. In the opinion of the Council's Heritage Adviser there is scope for development in the northern section of the application site without adversely affecting the setting of the Listed Building. The most appropriate form and scale would be to reflect the existing ancillary outbuilding complex in order to remain subservient to the host building and retain the discernible hierarchy of the site despite later alterations. The proposed backland houses including adjoining garaging is of 2 storeys where the design and scale of the new builds reflects a domestic character with porches, string courses, chimneys and domestic fenestration detailing in addition to the use of render. Dual-pitched roofs would dominate the site and hipped gables proposed on the end of dwellings are not in keeping with the character of the site as a whole. Gable ends are wide and do not reflect the traditional narrow depth of historic buildings found elsewhere on the site which increases the bulk and mass of the buildings. The proposed new builds due to their domestic character, design, scale and form would not respond to the hierarchy of the existing built form where surrounding buildings appear ancillary to the Listed Building.

Overall from a heritage view it is considered that there is no justification for the loss of the 1½ storey outbuilding which appears to be in a sound condition and is of architectural and historic merit being curtilage listed to the main Listed Building. Therefore, the total loss of this asset which could be utilised for ancillary accommodation/storage would result in less than substantial harm. The open aspect to the rear of the site has received a degree of alteration due to hardstanding areas that has reduced its positive contribution. However, it is considered that the new houses as proposed do not respond to the hierarchy and ancillary character of the built form on the site and would not appear subservient to the host building. It is considered that the extent, scale, design and domestic character of the development would therefore result in less than substantial harm to the setting of the Listed Building and the characterful aspects of this part of the Conservation Area.

As outlined above elements of the proposal would result in harm upon the significance and setting of the Listed Building and harm upon the character and appearance of the Conservation Area and it is considered that this would not be outweighed by the benefit of bringing the building back into use. The identified harm upon heritage assets should be added to the planning balance and weighed against any public benefits of the proposal.

Flooding Matters

When determining applications which are in areas at risk of flooding and for the purposes of applying the NPPF all sources of flooding should be included. For fluvial (river) and sea flooding, this is principally land within Flood Zones 2 and 3. It can also include an area within Flood Zone 1 which the Environment Agency has notified the Local Planning Authority as having critical drainage problems. The application site includes areas that fall within Flood Zone 2 and 3. The clear evidence presented within objections from local residents and the Parish Council is that the narrow entrance to the site, and areas beyond the front elevation of the building, all flood to significant depths from Rolleston Brook and River Dove combined which are both main rivers. The proposed new houses to the rear of the site would be reliant on this sole narrow access whilst they would also be bounded by flood zone to the front and rear. The Environment Agency has raised no objections in principle subject to conditions relating to finished floor levels and maintaining a buffer to the brook. Initially the Agency had objected to the proposal on grounds that the Flood Risk Assessment (FRA) was unacceptable.

The submitted Flood Risk Assessment outlines that the site is suitable for the type of development proposed and flood risks to the site have been managed through careful site layout and mitigation. The Environment Agency is happy for the development to be carried out in accordance with mitigation measures detailed within the FRA.

It is accepted that from a drainage engineering view there is a technical solution as priority can be given to SuDS which itself would not cause flooding and would not

contribute to flooding elsewhere. There is a culverted ordinary watercourse under the site that discharges into Rolleston Brook. However, within the amended plans the proposed development would not pose a threat to this watercourse and clear access to the culvert would be maintained over its line in case it needs to be maintained or repaired in the future. From a technical view dealing with drainage and managing any flood risk as a result of surface water run-off the Lead Local Flood Authority (LLFA) has raised no objections.

Although surface water flood risk can be managed and dealt with there is a key issue around placing new houses in a location which is known to flood locally and where occupiers could be put in a vulnerable position. One of the aims of a flood risk assessment are to establish whether a proposed development is likely to be affected by current or future flooding from any source. The NPPF states that inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk. With the technical opinions of the Agency and LLFA to mind it is considered that the scheme would be appropriately flood resilient, flood risk would not increase elsewhere and priority has been given to a sustainable drainage system. However, it is considered that the heart of flooding policy is to avoid inappropriate development in areas at risk of flooding. In this case the new houses to the rear of the site would be served by a single narrow access which evidently floods to significant depths during big events. This would needlessly place people within a flood risk situation where they would have to wade through water to get to their homes. The former hotel building already deals with this scenario however the additional houses to the rear would be further away from services and the narrow access could pose issues for emergency services to gain access during a flood. With these points to mind it is considered that there are sufficient grounds for a refusal as new houses would be placed in a location where the primary only access is susceptible to flooding to significant depths from a Main River during a big event which would lead people to be needlessly placed at risk accessing or exiting their homes.

Highways Impacts

The Highway Authority had initially reiterated an objection on technical grounds with regards to the restricted forward visibility and inadequate width of the narrow coach access past the Listed Building and adjoining wing. The scheme has however been reduced in the number of new backland plots whilst it should be taken into account that the access has served the former uses of the site as a farmhouse and as a modern hotel for a number of years. The northern area of the site was also used for car parking.

It is highlighted that during the course of the application the Highway Authority has advised no objections subject to a number of pre-commencement conditions requiring additional details to be provided. However, a later response advises that the amended scheme should be refused on highways grounds as details which could have first been agreed under pre-commencement conditions has now failed to be provided within the application process.

Taking a pragmatic view it is considered that the development would be accessible and there are technical solutions available such as introducing a lay-by beyond the north front wall of the adjoining outbuilding which could allow cars to pull over and see oncoming vehicles. The nature of the access with a bend means that vehicles would be entering or exiting at a slow speed allowing time to see oncoming cars. Furthermore, the number of total units is not considered to generate substantially more movements in comparison to use as a modern hotel. With regards to parking provision it is considered that the site could accommodate sufficient parking spaces for each residential unit in accordance with the Council's Parking Standards guidance and there are adequate turning areas to allow vehicles to turn and exit in a forward gear. There are technical solutions which can ensure that the development would not prejudice the safe or efficient use of the highway and as a result it is considered that there are insufficient highways grounds for a refusal.

Developer Contributions

In line with the NPPF any planning obligation should meet the tests of being necessary in planning terms, directly related to the development and fairly and reasonably related in scale and kind.

The application includes draft information for heads of terms which states the developer is willing to enter into a section 106 agreement to contribute affordable housing on-site and an off-site contribution, monies towards education provision and for public open space within the area. Due to the fundamental concerns of the scheme with regards to the principle of development and heritage impacts as outlined above the negotiations to agree a planning obligation has not been advanced.

The developer has shown a willingness to enter into a planning obligation which would help to ensure that the scheme meets some identified local needs and potentially contributes towards the housing mix aim. The potential benefits of a planning obligation should be added to the planning balance.

Other Matters

Notwithstanding the principle of development and matters discussed above it is considered that the northern section of the site is spacious and could reasonably in physical terms alone accommodate residential development. Exact external facing materials and detailing could also be controlled via planning conditions but such controls could not mitigate the harm to the locality and heritage assets identified.

The dwellings as positioned would have sufficient curtilage where main habitable room windows would have outlook over their own respective plots rather than directly into neighbouring properties. There are also no neighbouring dwellings within close proximity to where new buildings are proposed and the site would feel secluded. As a result it is considered that the scheme as proposed would result in minimal loss in daylight/sunlight to neighbouring properties and would not give rise to unacceptable invasion of privacy or undue overlooking to existing nearby occupiers.

The application includes a protected species report and the survey work concludes that no bats were detected emerging from the buildings. There is potential for bat roost features within the buildings however no behaviour associated with roosting has been found. Some mitigation actions for bats is outlined including the installation of bat tubes and boxes. The report further identifies that some bird nesting has been located on the building and therefore a precautionary approach is required to ensure operations remain lawful and a nesting bird survey would be required prior to works commencing.

The scheme would result in some loss of a number of trees including the line of trees which marks the boundary with the paddock field. The amended scheme does however propose new tree planting to compensate for the loss. As the number of houses to the rear of the site has been reduced a number of trees within the shared amenity area to the rear of the Listed Building would be retained in addition to the group of trees within the north-west corner of the site. Taking into account the number of trees to be retained and new planting it is considered that there are insufficient grounds for refusal based on loss of trees.

It is considered that there are no other material considerations which should be added to the planning balance when determining this application.

Conclusion:

Overall the conversion of the Listed Building and plans to renovate it and bring it back into a viable use is desirable however this does not outweigh elements of the scheme as proposed which would harm the open rural setting and character and setting of heritage assets in addition to harm upon countryside. New houses would also be placed in an unacceptable location where people would be forced to rely on a single access which is prone to flooding to significant depths from a Main River. Accordingly, it is considered that the proposal conflicts with the aims and criteria of relevant policies from the Local Plan, the Council's SPD's and the National Planning Policy Framework.

Recommend Refusal

Planning Officer's response to Parish Council

It is considered that the scheme should be refused for the reasons as set out in the assessment above.

Signature & date	22 May 2018	
Engagement	<p>The Local Planning Authority has taken a positive approach to decision-taking in respect of this application concluding, however, that it is an unsustainable form of development which conflicts with relevant development plan policies and material planning considerations including the National Planning Policy Framework. Although it has not been possible to approve this application, possible solutions were proactively considered in an attempt to secure a development that improves the economic, social and environmental conditions of the area in accordance with the requirements of Paragraphs 186 and 187 of the National Planning Policy Framework.</p>	
Section 106 required?	<p><i>Yes - Would be required if scheme was considered appropriate. Contributions would have been sought from the developer for affordable housing, education and open space.</i></p>	
Draft Decision Notice checked by Planning Officer or Team Leader		
Team Leader Comments		

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Planning Officer	Sachin Parmar	
Site Address	Land at the Brookhouse Hotel Brookside Rolleston on Dove Burton on Trent DE13 9AA	
Proposal	Listed Building Consent sought for internal and external alterations to facilitate the conversion of former hotel and coach house to 10 residential units, including the demolition of existing outbuilding and conservatory, the erection of a single storey rear extension, creation of and alterations to window and door openings and demolition of wall <i>*Amended Plans received on 11/04/18 after meetings and discussions with the planning agent and developer. Outbuilding would still be demolished.</i>	
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Relevant Planning Policies/Guidance	Government Documents	Planning (Listed Building and Conservation Areas) Act 1990 The National Planning Policy Framework The National Planning Practice Guidance
	Local Plan Policies	SP25, DP5, DP6
	Supplementary Planning Documents	East Staffordshire Design Guide
	Other Policies/Guidance	Rolleston Conservation Area Appraisal Historic Environment Record (HER) entry
Relevant History	No relevant recent planning history	
Consultation Responses	<ul style="list-style-type: none"> Heritage Adviser: Advised that proposal would result in elements of harm upon the significance and setting of the Listed Building. 	
Parish Council	No response received	
Neighbour Responses	<p>Objections have been received from 2 local residents. Below is a summary of the concerns raised:</p> <ul style="list-style-type: none"> Flooding issues and potential for increasing flood risk in and around the site Highways safety concerns Traffic effects and congestion <p>Comments that in principle the internal and external conversions with the Brookhouse are welcomed as the Brookhouse is now in a desperate state of disrepair. It is becoming an</p>	

	eye sore and could certainly be a target for vandalism. The conversion of the Coachhouse is also a welcome addition to the plans.
Human Rights Act Considerations	There may be implications under Article 8 and Article 1 of the First Protocol regarding the right of respect for a person's private and family life and home, and to the peaceful enjoyment of possessions. However, these issues have been taken into account in the determination of this application.
Crime and Disorder Implications	It is considered that the proposal does not raise any crime and disorder implications.
Equalities Act 2010	Due regard, where relevant, has been given to the East Staffordshire Borough Council's equality duty as contained within the Equalities Act 2010.
Planning Officer's Assessment	<p>Policy SP25 of the East Staffordshire Local Plan states that development proposals should protect, conserve and enhance heritage assets and their settings which includes Conservation Areas and Listed Buildings. Detailed Policy 5 of the East Staffordshire Local Plan states that alterations, extensions or development which adjoins a Listed Building must respect the context of the character and appearance of the heritage asset. It is expected that alterations and extensions to listed buildings should generally preserve and enhance the integrity and setting of a listed building without harm. Local Plan Policy DP6 states that permission will be permitted for development proposals that can demonstrate that the integrity and setting of a heritage asset will be protected and enhanced.</p> <p>Section 12 of the National Planning Policy Framework states that proposals should not pose significant harm to any heritage asset and should aim to preserve or enhance the asset by way of sensitive and appropriate design. Paragraph 126 of the National Planning Policy Framework states that Local Planning Authorities should recognise that heritage assets are an irreplaceable resource and conserve them in a manner appropriate to their significance.</p> <p>The National Planning Policy Framework (specifically paragraphs 17 and 128 to 141) states that work to a Listed Building should respect and preserve architectural heritage, with specific reference to "<i>the desirability of sustaining and enhancing the significance of heritage assets and putting them to viable uses consistent with their conservation, the positive contribution that conservation of heritage assets can make to sustainable communities including their economic vitality; and the desirability of new development making a positive contribution to local character and distinctiveness</i>".</p> <p>Determining considerations:</p> <p>The only issue to consider is whether the works to the Listed Building would affect its character as a building of special architectural or historic interest.</p> <p>The former Brookhouse Inn Hotel is a Grade II Listed Building. The 3 storey building was formerly a farmhouse with alterations of 1877 and later. The construction is red brick with tiled roof behind parapet and verge parapets. Architectural details of interest include end stacks, raised brick bands at floor/ceiling levels, 3-window front, segmental headers and central entrance with stone porch. There is a lower gabled wing adjoining to the right which creates a coach entry covered way. To the rear the building has spacious grounds with outbuildings located along the eastern boundary.</p> <p>Under this application the intention is to renovate the Listed Building and the adjoining wing to bring forward new residential units. Internally there have been alterations and later extensions which do not contribute to the significance or character of the building. The conservatory to the rear is of no interest and a proposed orangery style replacement is acceptable considering the existing. The demolition of an adjoining wall is also considered to be acceptable and generally the setting to the rear has been altered with the formation of the car park which does not make a positive contribution. There have also been alterations to the lower gabled wing as part of the hotel conversion however the character of this building remains ancillary and subservient and reflects the former historic farming complex.</p>

	<p>The main building used to be a farmhouse and there have been subsequent works as part of the modern hotel use which has resulted in a more open plan form on the ground floor and resulted in the loss of features. It is considered that the conversion works as proposed would not result in harming the integrity of the building and its appearance would be preserved.</p> <p>There are a number of outbuildings associated with the building including curtilage listed assets. The adjoining wing to the front of the site has previously been converted for accommodation and further works internally are considered acceptable. To the rear it is proposed to demolish the garaging which is of no architectural or historic merit.</p> <p>Also to the rear of the listed building is a 1½ storey outbuilding which lies along the east boundary. The 1½ storey outbuilding appears to be of some age and interest and is considered curtilage listed to the main farmhouse. The application seeks to demolish this element in order to propose parking. The building looks to be in sound condition and not structurally compromised. It would lend itself to storage/ancillary use and proposed demolition is not considered justified and results in a degree of harm with its total loss.</p> <p>Overall it is considered that there is no justification for the loss of the 1½ storey outbuilding which appears to be in a sound condition and has a degree of architectural and historic merit being curtilage listed to the main Listed Building. Therefore, the total loss of this asset which could be utilised for ancillary accommodation/storage would result in harm upon the hierarchy of the built form. Although the works directly to the Listed Building former farmhouse are acceptable the demolition of this curtilage listed outbuilding would be unacceptable as the setting of the Grade II Listed Building of special architectural and historic interest would be harmed contrary to Section 12 of the National Planning Policy Framework and Local Plan Policies SP25, DP5 and DP6.</p> <p>Recommend consent if refused.</p>	
Planning Officer's response to Parish Council	No response required	
Signature & date	21 May 2018	
Engagement	<p>The Local Planning Authority has taken a positive approach to decision-taking in respect of this application concluding, however, that the works will result in the loss of a heritage which conflict with relevant development plan policies and material planning considerations including the National Planning Policy Framework. Although it has not been possible to approve this application, possible solutions were proactively considered in an attempt to secure works that improve the economic, social and environmental conditions of the area in accordance with the requirements of Paragraphs 186 and 187 of the National Planning Policy Framework.</p>	
Section 106 required?	No	
Draft Decision Notice checked by Planning Officer or Team Leader		
Team Leader Comments		

Local Plan



 **East
Staffordshire**
Borough Council

2012

Planning for Change

2031

- Well connected
- Thriving
- Well served
- Fair for everyone

3.12 The following policy seeks to address this local definition and will be applicable to all development, in conjunction with all other local plan policies which add more detail on specific topics.

3.13 The Council will facilitate the delivery of integrated sustainable development through a variety of means, including the appropriate use of planning conditions and obligations, planning performance agreements, neighbourhood plans and local development orders, supplementary planning documents and further non-statutory planning guidance.

STRATEGIC POLICY 1

East Staffordshire Approach to Sustainable Development

In line with **Principle 1**, development proposals will be required to demonstrate the principles of sustainable development and will be assessed against the presumption in favour of sustainable development as interpreted and applied locally to East Staffordshire Borough Council.

In assessing whether a development proposal or allocation is as sustainable as possible, the Council will apply the following principles depending on the type of application or development proposed :

- located on, or with good links to, the strategic highway network, and should not result in vehicles harming residential amenity, causing highway safety issues or harming the character of open countryside;
- it is convenient and safe to walk, cycle and travel by public transport between (and for larger sites, around) the site and existing homes, workplaces, shops, education, health, recreation, leisure, and community facilities and between any new on-site provision;
- retains, enhances, expands and connects existing green infrastructure assets into networks within the site and within the wider landscape;
- re-uses existing buildings where this is practicable and desirable in terms of the contribution the buildings make to their setting
- integrated with the character of the landscape and townscape, provides for archaeological investigation where this is appropriate and conserves and enhances buildings of heritage importance, setting and historic landscape character;

- designed to protect the amenity of the occupiers of residential properties nearby, and any future occupiers of the development through good design and landscaping;
- high quality design which incorporates energy efficient considerations and renewable energy technologies;
- developed without incurring unacceptable flood risk or drainage problems and uses Sustainable Drainage Systems (SUDS) where appropriate;
- does not harm biodiversity, but rather enhances it wherever possible, including increasing tree-cover, especially as part of the National Forest;
- creates well designed and located publicly accessible open space;
- would demonstrably help to support the viability of local facilities, businesses and the local community or where new development attracts new businesses and facilities to an area this does not harm the viability of existing local facilities or businesses;
- would contribute towards the creation of sustainable communities through the provision of a mix of housing types and tenures;
- uses locally sourced, sustainable or recycled construction materials (including wood products from the National Forest where this is appropriate), sustainable waste management practices and minimises construction waste;
- safeguards the long term capability of best and most versatile agricultural land (Grade 1, 2 and 3a in the Agricultural Land Classification) as a resource for the future; and
- would result in the removal of contamination and other environmental problems associated with the site.

the plan period whilst also giving a degree of certainty to service providers who will be able to effectively plan future provision.

3.18 Proposed amendments to settlement boundaries are shown on the Policies Maps. Boundaries have been amended to incorporate strategic allocations in the main towns and Tier 1 villages. Further amendments to Tier 2 settlements have been identified following close engagement with parishes. The hierarchy of settlements is explained in paras 2.20 to 2.28 above.

STRATEGIC POLICY 2

Settlement Hierarchy

Development will be directed towards the most sustainable locations in accordance with the following settlement hierarchy:

Main Towns

Burton upon Trent and Uttoxeter

Tier 1: Strategic Villages

Tutbury, Barton under Needwood, Rolleston on Dove and Rocester

Tier 2: Local Service Villages

Abbots Bromley, Yoxall, Marchington, Mayfield, Denstone and Draycott in the Clay.

Tier 3: Small Villages and other settlements

Including Bramshall, Stramshall, Church Leigh, Hanbury, Ellastone, Newborough, Kingstone, Anslow, Rangemore, Tatenhill, Stubwood, Stanton, Lower Leigh, Withington, Wootton and all other settlements not included in Tiers 1 and 2 above.

New development should be concentrated within the settlement boundary of the Main Towns, Strategic Villages, Local Service Villages and Rural Industrial Estates, as shown on the policies maps.

Tier 3 Small Villages and other settlements (without settlement boundaries) and employment areas without boundaries are treated as open countryside where development will be permitted only in exceptional circumstances as set out in NP1 and Strategic Policies 8, 14, 15, 18, 20 and 21.

Role of Neighbourhood Plans

3.19 Neighbourhood Development Plans (Neighbourhood Plans) are part of the suite of community rights brought in by the 2011 Localism Act. A Neighbourhood Plan is a community-led framework for guiding development, regeneration and

STRATEGIC POLICY 4

Distribution of Housing Growth 2012 – 2031

Land is allocated to meet to meet the housing provision of Strategic Policy 3 in accordance with the following distribution¹⁵:

New strategic allocations in the Local Plan

Main Towns:		Units
<u>Burton upon Trent</u>		
<u>Brownfield</u>	Branston Depot	483
	Bargates/Molson Coors High Street	350
	Molson Coors Middle Yard, Hawkins Lane	300
	Derby Road	250
	Pirelli	300
<u>Greenfield</u>	Land South Of Branston	660
	Branston Locks	2580
	Tutbury Road/Harehedge Lane	500
	Beamhill/Outwoods	950
	Guinevere Avenue	100
Total		6473
<u>Uttoxeter</u>		
<u>Brownfield</u>	Brookside Industrial Estate	90
	JCB, Pinfold Road	257
<u>Greenfield</u>	Uttoxeter West	750

¹⁵ This table is based upon the land supply situation at the start of the plan period: 1 April 2012. At that time none of the sites in Strategic Policy 4 had permission granted.

	Hazelwalls	400
Total		1497

Barton under Needwood	Efflinch Lane	130
Rolleston on Dove	College Fields Site	100
Rocester	Land south of Rocester	90
Tutbury	Burton Road	224
Total		544

Development Requirement

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 Development Requirement assigned to Tier 3 settlements and rural areas will be delivered on windfall sites such as on Exception Sites under Strategic Policy 18, in rural areas in accordance with Strategic Policy 8 or in accordance with a Made Neighbourhood Plan.

Main Towns (of Burton Upon Trent and Uttoxeter):	1359 Development Requirement (minimum)
Tier 1: Strategic Villages:	Development Requirement
Barton under Needwood	25
Rolleston on Dove	25
Rocester	25
Tutbury	26
Tier 2: Local Service Villages:	Development Requirement
Abbots Bromley	40
Yoxall	40
Marchington	20
Mayfield	20

Denstone	20
Draycott in the Clay	20
<i>Tier 3: Small Villages, other settlements and the countryside</i>	Development Requirement which includes Housing Exceptions and development acceptable in the countryside (Strategic Policies 8 & 18) Include Neighbourhood Plans
Including Bramshall, Stramshall, Church Leigh, Hanbury, Ellastone, Newborough, Kingstone, Anslow, Rangemore, Tatenhill, Stubwood, Stanton, Lower Leigh, Withington, Wootton and all other settlements not included in Tiers 1 and 2 above.	250
Total	1870
Grand Total	10,384

Distribution of Employment Growth 2012 – 2031

3.44 Burton upon Trent is the economic heart of the Borough with the highest proportion of existing employment land in and around the town and is considered a key location within the West Midlands. Uttoxeter also has an established employment base but is of a smaller scale. However, the town is strategically well located on the A50 and JCB is a major employer in the town with both their World Parts Centre and Heavy Products factory in the town and the company has their world headquarters seven miles north in Rocester.

3.45 No new allocations are made in the rural areas but they contribute to the existing employment base with businesses located on the former camps. These are usually smaller units though they are an important source of employment in the rural economy. Applications for employment in the rural areas will be dealt with by Strategic Policy 14 – Rural Economy.

3.46 The Retail and Leisure Study includes an assessment of the Office market in Burton upon Trent. This confirms previous reports that Burton town centre does not have an established office sector and there is no demand for new provision. Whilst there is no quantitative demand, existing office space should be protected and new office development promoted to improve the qualitative offer in the town centre. This new provision should be part of a mixed use development on the Bargates/Molson Coors Strategic allocation.

in Burton to meet the needs of higher earning households, particularly those working in the town in order to reduce commuting. However there are not the same opportunities in other parts of the Borough and hence a need for significant amounts of housing for single people and couples outside Burton.

3.114 The mix of mainstream market housing required in different parts of the Borough is identified in the Housing Choice SPD and new housing development will need to provide this mix of types and sizes in order to meet the needs of the Borough's changing population.

3.115 The Council encourages the provision of market housing flats in Burton through the conversion of existing buildings and on town sites. The Council welcomes institutional investment in this type of development to create Market Housing for Rent (also see Affordable Housing below).

3.116 The preferred type of flatted development elsewhere, apart from flats for older people, is the Duplex/Tyneside Flat so that flats externally resemble houses.

3.117 Ensuring that different sizes and tenures of housing are fully integrated will ensure that new developments contribute to sustainable mixed communities.

3.118 Building new homes to optional Building Regulations Requirement M4(2) where applicable will ensure that new housing is accessible and adaptable to meet people's needs as they change over time.

3.119 The Council is keen to encourage the inclusion of a suitable number of Self-build Plots within housing developments to provide an opportunity for residents to choose their own design of home and to foster innovation and diversity in housing design (also see Affordable Housing below).

STRATEGIC POLICY 16

Meeting Housing Needs

Residential development in the main towns and Strategic Villages shall provide an appropriate dwelling or mix of dwellings given the mix required in that part of the Borough according to the Councils evidence base or other evidence, including Housing for Older People.

Residential development elsewhere shall provide a dwelling or a mix of dwellings to best meet local need according to a local housing needs survey or where applicable the Councils evidence base.

Developments will also provide Affordable Housing in accordance with Strategic

Policy 17

Developments shall be permitted on Exception Sites in accordance with Strategic Policy 18.

Different sizes and tenures of housing shall be fully integrated by means of dispersal around the site.

All newly erected housing providing ground floor living accommodation shall meet requirement M4(2) of the Building Regulations (accessible and adaptable dwellings).

Proposals to develop Extra-care Housing and Retirement Housing on suitable sites will be welcomed.

Inclusion of an appropriate number of Self-build Plots within developments will be welcomed.

Affordable Housing

3.120 The Strategic Housing Market Assessment 2013 (SHMA) has identified that there is a need for new affordable housing to meet the needs of residents whose needs are not met by the market. The annual requirement for new affordable housing is 112 units. This represents around 18% of the total annual housing requirement for the Borough. This is not expected to be unachievable and hence does not require an increase in the total housing target.

3.121 The Council has decided that development of 4 dwellings or more should make provision for affordable housing, so that new affordable housing is shared around as many sites as possible. However local policy has to comply with national policy.

3.122 Taking account of extant permissions granted prior to the plan period means that market housing led development approved during the plan period on sites above this threshold needs to provide an average of 25% affordable housing.

3.123 The amount of affordable housing to be provided by an individual market housing led site above the threshold will be governed by viability and the availability of subsidy.

3.124 Taking account of agreements already reached before adoption of the Local Plan, the affordable housing still needed equates to over 40% of the housing from which the affordable housing contribution has not yet been agreed. The Councils Plan Viability Study assesses that some sites should be able to deliver 40% affordable housing. 40% is therefore the affordable housing target and the maximum amount of affordable housing which will be

- The Historic Environment Record (HER) (which includes Farmsteads data and mapping) – provided by Staffordshire County Council
- Historic Landscape Characterisation – provided by Staffordshire County Council
- Historic Environment Character Assessments – provided by Staffordshire County Council
- Extensive Urban Surveys – provided by Staffordshire County Council
- Historic Farmsteads Survey & Regional Statement – provided by English Heritage
- English Heritage publications, – for secular and non-secular buildings such as New Work in Historic Places of Worship
- Any evidence provided alongside the preparation of Neighbourhood Plans

3.187 The above sources and evidence base will be updated as and when it is considered necessary, where the Borough Council will continue to work with English Heritage and Staffordshire County Council on relevant studies.

STRATEGIC POLICY 25

Historic Environment

Development proposals should protect, conserve and enhance heritage assets and their settings, taking account of their significance, as well as the distinctive character of the Borough's townscapes and landscapes. Such heritage assets may consist of undesignated and designated assets including conservation areas, listed buildings, scheduled monuments, archaeological sites, registered parks and gardens and historic landscapes which contribute to the Borough's historic environment and local distinctiveness.

This should include the use of high quality design as stipulated in the NPPF and the Borough Council's Design SPD. Development proposals that are likely to have negative impacts on the historic environment should demonstrate how harm can be effectively and justifiably mitigated.

Development proposals should be informed by the various information sources and evidence base that are available.

The towns of Burton-upon-Trent and Uttoxeter, including their historic retail centres should be a focus for heritage-led regeneration and the repair of key heritage assets will be supported. Such regeneration should be informed by relevant historic environment evidence base. This will be delivered through various initiatives such as

through new development proposals or regeneration schemes with key partners such as English Heritage and the Heritage Lottery Fund.

Inner Burton is a focus for regeneration in order to improve poor quality building stock which consists of Victorian terraced housing. Initiatives should therefore consist of effective repair and refurbishment of Victorian housing stock as part of sustainable development with opportunities to introduce innovative energy efficiency technology, which reflects the local historic character.

National Forest

3.188 The National Forest is transforming the landscape to create a mosaic of land uses and enhance biodiversity; creating a major resource for tourism, recreation and education; providing a productive alternative use for farmland and enabling farm diversification; contributing to the UK's timber needs; stimulating the economy and creating jobs and making a small but significant contribution to the UK's efforts to reduce atmospheric carbon dioxide.



Byrkley Park Garden Centre, Rangemore

3.189 The National Forest covers both the south-eastern rural areas of East Staffordshire and the urban centre of Burton upon Trent, which is the capital of the National Forest. Since its establishment in the mid-1990s, around 1000 hectares of new woodland have been created within The National Forest in East Staffordshire. The Borough Council will pursue a robust and imaginative approach towards development in the area whilst ensuring that the commercial return from development helps to support the implementation of the National Forest Strategy 2004-14.

3.190 The Borough Council will continue to work in Partnership with The National Forest Company to ensure tree planting is included in new developments through the application of this policy in planning decisions, ensuring standards for tree planting are met on site and where appropriate off site in accordance with National Forest Planting Guidelines. Where possible the Borough Council will work with The National Forest Company and other organisations such as Staffordshire Wildlife Trust, the Woodland Trust and community groups to provide additional planting where opportunities exist.

prepared by Staffordshire County Council's Historic Environment team, documents prepared by English Heritage such as the West Midlands Farmsteads study and Village Design Statements prepared by Parish Councils. Such evidence should form part of the planning decision making process in addition to the historic environment policies contained in the Local Plan. The Council will continue to update the evidence base such as updating Conservation Area Appraisals.

- 4.11 Further supplementary guidance will be provided to support the historic environment policies in the Local Plan, such as updating the Design Supplementary Planning Document (SPD) and commissioning new SPDs to cover specific topic areas such as local heritage assets, vernacular rural buildings, historic shopfronts and Burton upon Trent's brewing heritage.

DETAILED POLICY 5

Protecting the Historic Environment: All Heritage Assets, Listed Buildings, and Conservation Areas and Archaeology

The significance of the Borough's historic environment and heritage assets (designated and undesignated) will be protected and enhanced where new development proposals will be expected to make a positive contribution to the fabric and integrity of existing buildings, conservation areas or other non-designated areas where there is distinctive character, strategic views or a sense of place.

All heritage assets

New development proposals within the historic environment such as within conservation areas or which fixes or adjoins a listed building must respect the context of the character and appearance of such heritage assets in terms of using sound design principles which are stipulated in the Design SPD. The design of new development must be informed by the context of its surroundings and take account of the local character through the Historic Environment Record and/or other relevant sources of information/evidence base.

There may be an opportunity to introduce innovative development which complements the existing historic environment through high quality contemporary architecture and energy efficient technology, where such technology would not cause harm to the character, setting or fabric of the heritage asset.

The reuse of heritage assets contributes to viable places and should be seen as a positive opportunity. The reuse of a heritage asset should continue in its original function where possible, but where this is not economically viable, a sensitive change of use should be considered which retains the significance of the heritage

asset. Development Proposals should articulate how the heritage asset can accommodate the new use without causing significant harm to the context and fabric of the asset.

Listed Buildings

Alterations, extensions to listed buildings or development within the listed curtilage or that which affects the setting of a listed building will be considered if accompanied with a Statement of Significance which sets out how the proposal would potentially affect the significance of the asset. It is expected that alterations and extensions to listed buildings should generally preserve and enhance the integrity and setting of a listed building without harm.



*Listed Building, Bagot Street,
Abbots Bromley*

If harm cannot be avoided, then this must be articulated in the Statement of Significance with clear justification as to why harm is not avoidable and how such harm can be mitigated. Development Proposals to reuse vacant listed buildings, such as those that are at risk or neglected, for reuse are supported, subject to appropriate methods of repair and that conversions do not have an undue impact on the existing fabric of the building.

The loss of listed buildings or significant fabric of a listed building, a significant building in a conservation area or heritage asset normally constitutes substantial harm and therefore should be considered 'wholly exceptional'. The loss of historic fabric through a development proposal must be clearly justified and the loss of an entire listed building must be accompanied by a structural survey and full economic viability study which should provide evidence as to why the listed building cannot be retained. Where any loss (either fully or partly) has been determined to be justified then suitable mitigation in the form of a record should be made to advance understanding of the heritage asset's significance.

Conservation Areas

Development will be permitted in conservation areas, including demolition of existing buildings or structures, where it can be demonstrated that it would protect and enhance the character and appearance, including the setting of the conservation area and is in accordance with the principles set out in the Design SPD as well as using guidance set out in relevant Conservation Area Appraisals.

Should a Conservation Area Appraisal be absent, then a Character Statement

should be submitted. It will be expected that any new development within or adjacent the conservation area will respect the existing character in terms of scale, form, materials and detailing. Key views into and out of the conservation (some of which may be identified within a Conservation Area Appraisal) will remain uninhibited.



*Converted Building within Clarence Street/
Anglesey Road Conservation Area*

Scheduled Monuments, Archaeology & Archaeology Sites

Scheduled Monuments are legally protected under the Ancient Monuments and Archaeological Areas Act (1979). No works are to be carried out on Scheduled Monuments without Scheduled Monument Consent. Applications for consent are submitted to English Heritage in their role as advisors to the Secretary of State for Culture, Media & Sport.

Scheduled Monuments and other nationally important archaeological sites and their settings should be preserved and development proposals should take account of undesignated archaeological sites and sites of potential archaeological interest. This should be informed by relevant information including the Historic Environment Record (HER), Historic Environment Assessment (HEA) and the Extensive Urban Survey (EUS) (if relevant). Archaeological sites should be subject to appropriate and relevant assessment and field assessment where appropriate especially to determine whether remains should remain in situ or to be excavated. All subsequent archaeological reports should be deposited with the Staffordshire County Council so that the information is made publicly available.

DETAILED POLICY 6

Protecting the Historic Environment: Other Heritage Assets

Shopfronts and Advertisements

Traditional shopfronts which form part of a listed building, on a building within conservation areas or on a building that may be undesignated but is considered as a heritage asset should be retained and repaired. If a replacement shopfront is considered necessary, it should be designed appropriately to relate to its host building and using the correct proportions. New shopfronts should utilise the existing facia and use appropriate materials, finishes and illumination. For shopfronts on listed buildings and on buildings within conservation areas, traditional materials and

finishes will be expected.

Non-designated heritage assets

Should planning permission be granted which includes the loss of an undesignated heritage asset an appropriate level of recording should take place prior to, and/or during, the commencement of works.

Setting

Planning permission will be permitted for development proposals that can demonstrate that the integrity and setting of a heritage asset will be protected and enhanced, through the use of high quality design, materials with appropriate scale and massing. This could be in the form of new building or new public realm.

The roofscape and skyline of the towns of Burton upon Trent and Uttoxeter reinforce the character of not only the respective towns but the approaches to them. These should be protected with the sensitive location of new development and appropriate massing in order to retain an appropriate skyline.

New development in villages and rural areas should carefully consider scale, massing and layout (including orientation). This includes new the change of use and new development for historic farmsteads, where the historic layout and form should be preserved and legible.

Historic Landscape and townscape character

Where Statements of Significance and Environmental Impact Assessments are required the applicant should also assess the impact of new development upon the wider historic landscape character, potential unseen archaeology and local townscape and seek to protect and enhance it where appropriate. The assessment of historic character should also be used to inform the design of any new development and seek opportunities to retain any significant or defining assets of the historic landscape/townscape as part of open space and Green Infrastructure provision where appropriate.



The JCB Academy, Rocester

Registered parks and Gardens and Other Significant Landscapes

Development proposals should consider the setting of a Registered Park and Garden and other significant landscapes in terms of potential overall impact of the wider landscape.

Canals

Development Proposals should take account of the historic significance of canals and its setting. New development alongside the Trent and Mersey Canal, including any brownfield sites should interact and interrelate with each other and utilise appropriate high quality design. Historic fabric and heritage assets such as structures that are related to the canal should be conserved.

Pollution

- 4.12** Where a development is likely to be affected by, or generate a source of pollution, advice will be sought in the first instance, from the Council's Enforcement service as to potential impacts, potential mitigation measures and other material considerations.
- 4.13** In addition, coal mining activities have taken place within parts of the East Staffordshire area, particularly in the eastern part of Burton upon Trent. These activities will have left a legacy of potential land instability and other public safety issues.

DETAILED POLICY 7

Pollution and Contamination

Development proposals will only be granted planning permission where they will not give rise to, or be likely to suffer from, land instability and/or unacceptable levels of pollution in respect of noise or light, or contamination of ground, air or water

New development proposals within the affected coal mining areas will need to take account of coal mining legacy issues and include appropriate mitigation or remedial measures.

Tree Protection

- 4.14** With parts of the Borough within the National Forest, and historically the Needwood Forest covering much larger areas, trees – whether within the town or the countryside – are important features worthy of protection. Whilst National Forest planting aims at increasing the amount of tree coverage, existing trees covered by Tree Preservation Orders (TPOs) need to be protected too. Some significant



A Protected Tree within the Borough

Housing Choice

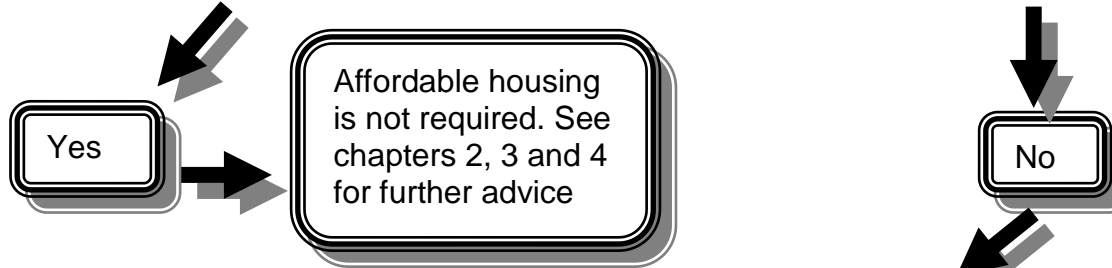
Supplementary Planning Document



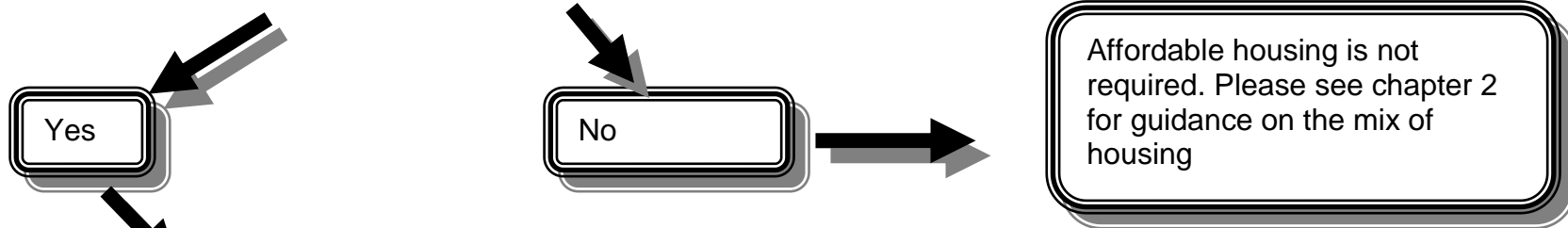
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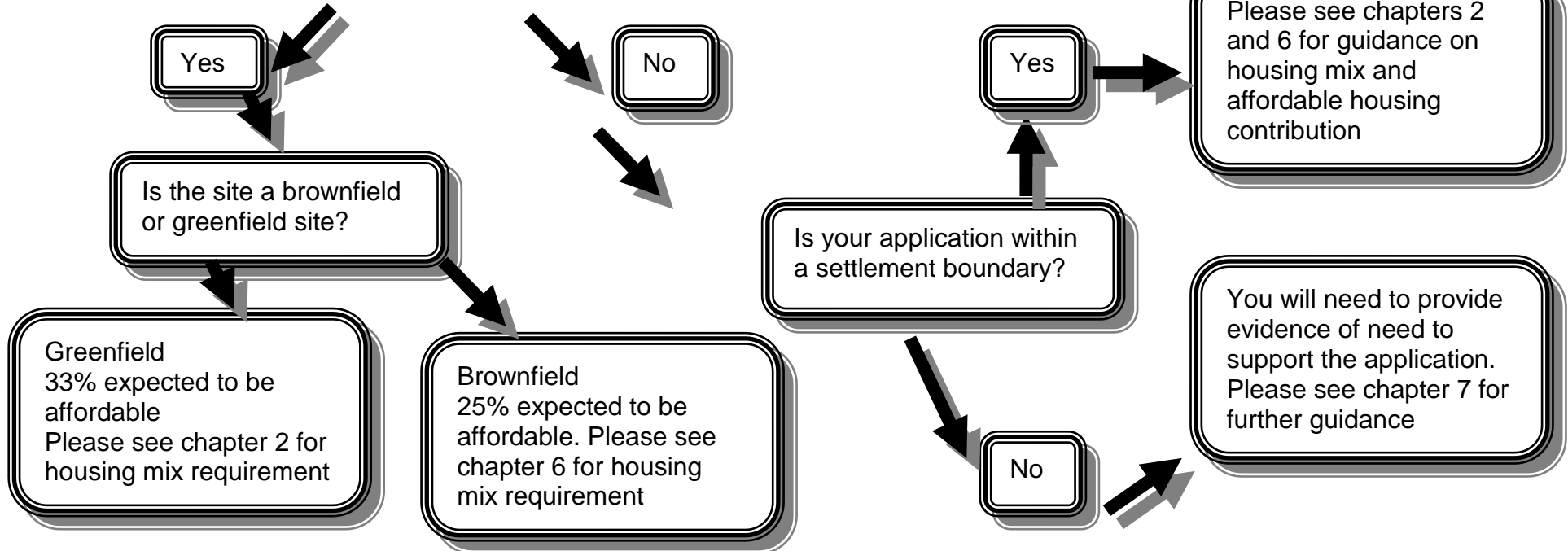
Is your application for Retirement housing; Extra-care housing or Market housing for rent?



Is your application for 4 dwellings or more or on a site above 0.14 hectares?



Is your application in Burton Upon Trent, Uttoxeter or a Strategic Village?



1. Introduction

- 1.1 The purpose of any Supplementary Planning Document (SPD) is to provide additional guidance on key development plan policies and how they will operate. The Housing Choice SPD provides advice on the Council's approach to creating and maintaining sustainable and inclusive mixed communities including affordable, market and specialised housing.
- 1.2 This SPD will provide applicants, developers including housing associations and other registered providers, valuers and landowners with information about the Council's requirements, to assist them in planning new housing developments and making planning applications.
- 1.3 In October 2015 the Borough Council adopted its Local Plan which is compliant with the National Planning Policy Framework (NPPF). Brand new housing policies form part of the Local Plan which has resulted in this revision of the previous Housing Choice SPD.
- 1.4 East Staffordshire Local Plan Strategic Objective and policies supported by this SPD:

Strategic Objective:

- **SO2: Well designed communities:** To provide a mix of well designed, sustainable market, specialist and affordable homes that meet the needs of existing and future residents given ongoing and expected population change in the Borough.

Local Plan Policies:

- **Strategic Policy 16:** Meeting Housing Needs
 - **Strategic Policy 17:** Affordable Housing
 - **Strategic Policy 18:** Residential Development on Exception Sites
 - **Strategic Policy 19:** Sites for Gypsies, Travellers and Travelling Showpeople
- 1.5 The evidence base which supported the preparation and examination of the Local Plan policies includes:
- The *Strategic Housing Market Assessment (SHMA)* for East Staffordshire, published in October 2013 and updated in April 2014.
 - The *East Staffordshire Borough Council - Local Plan & Community Infrastructure Levy Viability Study (Plan Viability Study)*, produced for the Council by HDH Planning & Development which was published in November 2013 and revised in February 2014.

- 1.6 The SPD has been prepared in line with the requirements of the Town and Country Planning (Local Planning) (England) Regulations 2012 and it replaces the 2014 Housing Choice SPD which was revoked in October 2015.
- 1.7 A Sustainability Appraisal and Habitats Regulations Assessment Screening Report has been carried out and consulted upon for the East Staffordshire Local Plan. As the draft SPD supports the East Staffordshire Local Plan 2015, there is no further need to undertake a separate Sustainability Appraisal or Habitats Regulations Assessment for the SPD itself.

Status of this Document

- 1.8 This Supplementary Planning Document SPD is a material consideration in the determination of relevant planning applications within the Borough of East Staffordshire. A full schedule of responses made to the draft SPD and how these comments have been taken into account can be viewed in a separate document.

2. Strategic Policy 16: *Meeting Housing Needs*

- 2.1 New residential development needs to help create or maintain sustainable inclusive mixed communities. It should extend the choice of accommodation available in the area to better meet the needs of all types of household.
- 2.2 The National Planning Policy Framework requires the Council to plan to meet the full objectively assessed needs for market housing as well as affordable housing. It specifically requires the Council to identify the size, tenure and range of housing that is required in particular locations, reflecting local demand.
- 2.3 There are two categories of residential development set out in this document:
- a) **Mainstream housing** – dwellings not defined as specialised accommodation in point b.
 - b) **Specialised accommodation** – *Extra-care housing, Retirement housing, Self-build housing, Traveller pitches, Market housing for Rent, Care homes and Nursing homes.*
- 2.4 Strategic Policy 16 details how these two categories will be delivered.

STRATEGIC POLICY 16

Meeting Housing Needs

Residential development in the main towns and Strategic Villages shall provide an appropriate dwelling or mix of dwellings given the mix required in that part of the Borough according to the Councils evidence base or other evidence, including Housing for Older People.

Residential development elsewhere shall provide a dwelling or a mix of dwellings to best meet local need according to a local housing needs survey or where applicable the Councils evidence base.

Developments will also provide Affordable Housing in accordance with Strategic Policy 17

Developments shall be permitted on Exception Sites in accordance with Strategic Policy 18.

Different sizes and tenures of housing shall be fully integrated by means of dispersal around the site.

All newly erected housing providing ground floor living accommodation shall meet

requirement M4(2) of the Building Regulations (accessible and adaptable dwellings).

Proposals to develop Extra-care Housing and Retirement Housing on suitable sites will be welcomed.

Inclusion of an appropriate number of Self-build Plots within developments will be welcomed.

2.5 Specialist housing is also expected to be delivered on Sustainable Urban Extensions as set out in Strategic Policy 7.

2.6 The Borough Council expects prospective developers to consider whether a site is suitable for specialised accommodation. Guidance on specialised accommodation is provided in Chapters 2 and 4. Chapter 3 explains how the amount and mix of Affordable housing required on market housing led development will be determined. Exception Sites and their development are set out in Chapter 5.

2.1 Housing within Settlement Boundaries of Burton Upon Trent, Uttoxeter and Strategic Villages

Mainstream housing

2.7 The amount and density of mainstream housing on a site will need to be consistent with the sizes and types of dwellings which are appropriate alongside other types of development and open space requirements.

Market housing mix in Burton, Uttoxeter, and Strategic Villages

2.8 The Council will need to be satisfied that the mainstream market housing to be provided on a development is appropriate. Applicants therefore need to take full account of the information that follows and to negotiate proposals with the Council at the earliest opportunity.

2.9 The mix shown in Table 1 is the Council's assessment of likely demand for mainstream market housing in that area over the period 2012-2031. If an applicant has carried out their own research to identify current demand, and if this indicates that there is currently a lack of demand for a particular type of home shown, then the Council will take this into account when considering whether a proposed mix is appropriate.

Table 1: Mainstream market housing mix

	Burton			Uttoxeter	Strategic Villages
1-bedroom homes (flats, houses or bungalows)	3%			3%	2%
2-bedroom homes (flats, houses or bungalows)	2%			20%	20%
	Branston Burton Eton Park Outwoods	Anglesey Horninglow Shobnall Stretton	Brizlincote Stapenhill Winshill		
<i>Housing for Older People**</i>	11%	20%	50%	10%	35%
2-bedroom houses	14%	13%	8%	8%	6%
3-bedroom houses	32%	29%	17%	30%	23%
4-bedroom houses	26%	23%	14%	20%	10%
5-bedroom houses	11%	10%	6%	9%	4%

**** Housing for Older people**

DEFINITION: Bungalows or houses which are specifically designed with older people wanting to downsize in mind, offering for example a downstairs bathroom and/or a level access or low threshold shower. These are mainstream market dwellings which will be sold freehold without any age restriction or requirement to pay service charges. Applicants will need to evidence that proposed dwellings have been designed with older people in mind.

2.10 To be appropriate, development will need to be consistent with the mix required in the area but also reflect the nature of the site:

- a) Where existing non-residential buildings are being converted the type of dwelling is likely to be largely determined by the physical constraints of the building.
- b) Development of entirely or predominantly flats may be appropriate on smaller sites within the built up area, in which case developments should include 1-bedroom flats appropriate for private renting.

- c) Developments of entirely *Housing for Older People* may be appropriate on smaller sites, particularly in Brizlincote, Stapenhill, Winshill and *Strategic villages*.
- d) Appropriate development on smaller sites is otherwise likely to mean the type and size of housing most lacking in the immediate vicinity, in order to extend choice and inclusivity, with a mix of such dwellings and inclusion of *Housing for Older People* wherever possible.
- e) Larger sites of 10 or more dwellings are expected to provide the mix shown in Table 1.
- f) Smaller sites may be particularly appropriate for Affordable housing led development.

2.11 Different sizes and tenures of housing must be fully integrated across a site. Hence all phases of a development need to provide a mix of dwelling types and sizes; different character areas can be achieved by varying such things as design, materials and landscaping rather than by segregating different sizes and types of dwelling.

2.2 Housing Outside the Settlement Boundaries of Burton, Uttoxeter and the Strategic Villages

Market housing need outside Burton, Uttoxeter. the Strategic villages

2.12 Note that this section does not apply to:

- a) Exception Sites: see Chapter 5.
- b) *Self-build* housing development.
- c) Conversion of existing buildings providing the number of net units generated is less than 4, see Chapter 3

2.13 Mainstream housing development outside Burton, Uttoxeter and the Strategic villages has to best meet local housing needs.

2.14 Applicants are invited to ask the Council whether a valid local housing needs survey has already been carried out. This could include evidence to inform a Neighbourhood Plan or a bespoke village housing needs survey.

2.15 A valid housing needs survey is needed before other development of new mainstream housing to identify local need and ensure that development best

meets that need. Survey results must be provided to the Council by the applicant before a planning permission can be granted to determine the on-site Affordable Housing requirement. Where an outline approval was granted before the Local Plan was adopted in October 2015, survey results must be provided by the applicant before reserved matters can be determined.

- 2.16 A valid housing needs survey is one carried out in accordance with Chapter 6 no earlier than 3 years before the date of planning application.
- 2.17 Applicants should discuss the results of a housing needs survey with the Council at the earliest opportunity and preferably at the pre-application stage.
- 2.18 Development shall then provide the dwelling or dwellings required to best meet the local need identified by the survey. Need for Affordable housing must be met first (up to the maximum amount required), followed by market housing for households who need alternative housing (e.g. to look after an elderly relative), followed by market housing for households wanting alternative housing (e.g. downsizing or upsizing to accommodate a growing family). The Borough Council has an expectation that these alternative housing that is both needed and wanted should relate to local households only where there is a justification and local connection to the area.

When a Housing Needs Survey is not Required

- 2.19 Development on a site smaller than 1,400 m², of 1 to 3 dwellings each not exceeding 93 m² Gross Internal Area (GIA), of which any more than one dwelling must be Housing for Older People, will be deemed to meet local need identified by the Council's evidence base in the absence of valid housing needs survey results, so that a housing needs survey need not be carried out. If more dwellings can be provided on a site than those required to meet identified local need, the additional dwellings shall each not exceed 93 m² Gross Internal Area (GIA), to contribute to the wider need in rural areas for smaller dwellings.

3. Building Regulations Part M

- 3.1 Applicants need to verify that proposed newly built housing providing ground floor living accommodation will meet or exceed requirement M4(2) of the Building Regulations (Accessible and adaptable dwellings). This is the second category of requirement M4 not the universal first category.

In this respect:

- a) Newly built means newly constructed, excluding housing created by converting an existing building.
- b) Ground floor living accommodation means any room on the ground floor apart from toilets, bathrooms and utility rooms.

3.2 Policy SP16 states that all dwellings must comply with this standard. However following the adoption of the Local Plan and the practical implications of applying the policy to all dwellings, it has become clear that it is not possible to achieve. The Council therefore accept that due to site constraints such as topography, size of site and location the standard cannot be achieved. The Council have published separate guidance on applying the standard and will review the guidance note regularly in consultation with the Councils Building Consultancy team.

4. Specialised Housing for Older People

4.1 East Staffordshire Borough has an increasingly elderly population and it is important that their housing needs are met in the future. Extra care and continuing retirement communities often provide self-contained units.

Extra-Care Housing

DEFINITION: A development of clustered dwellings and communal facilities for households with varying care needs where overnight on site care services will be available to occupiers so that they are able to remain in their own homes as their care needs increase. May also include accommodation for staff.

Retirement Housing

DEFINITION: A development of clustered dwellings and communal facilities meeting requirement M4 (3) of the Building Regulations (wheelchair user dwellings) with occupation restricted to older people. May also include other accommodation for staff.

4.2 The Council will need to be satisfied that a proposed development meets these definitions before it grants permission. Permission will then be subject to conditions and/or obligations to ensure the development meets this definition. Applicants will need to verify that proposals for both Extra Care and Retirement Housing meet or exceed M4(3)(2)(a) of the Building Regulations relating to wheelchair adaptable dwellings.

4.3 Extra-care developments are expected to include Affordable Housing in accordance with identified need and policy SP 17, but this is subject to the

availability of funding; developers of Extra-care housing are not required to provide affordable Extra-care housing without grant. Developers are expected to explore the availability of Government funding, and the Council may be able to provide grant funding from commuted sums; the Council will look to fund schemes which provide an appropriate mix of tenures.

- 4.4 There is no Affordable housing requirement from Retirement housing, to encourage investment, in recognition of its higher costs which make Affordable housing without grant unviable, and because need for Affordable Retirement housing has not been identified to justify grant funding.
- 4.5 It is recognised that the level of care and associated facilities provided in such developments can vary considerably.
- 4.6 The best locations for Extra-care housing and Retirement housing are those within easy walking distance of the services residents most need in order to live independently, including:
- Shops to meet daily needs
 - Cash dispenser or bank/post office
 - Public transport
 - Community facilities eg places of worship
 - Primary health care
 - Pharmacy
- 4.7 Extra-care housing and Retirement housing should be designed in accordance with:
- a) *Guidelines for the Planning of Housing for Senior Citizens*¹, and
- b) The ten HAPPI design recommendations²:
- i. Generous internal space standards (within flats)
 - ii. Plenty of natural light in the home and in circulation spaces
 - iii. Balconies and outdoor space, avoiding internal corridors and single-aspect flats
 - iv. Adaptability and 'care aware' design which is ready for emerging tele-care and tele-health-care technologies
 - v. Circulation spaces that encourage interaction and avoid an 'institutional feel'

¹ Wel-Hops, 2007, available on the Council's website

² *Housing our Ageing Population: Plan for Implementation*, All Party Parliamentary Group on Housing and Care for Older People, November 2012

- vi. Shared facilities and community ‘hubs’ where these are lacking in the neighbourhood
 - vii. Plants, trees, and the natural environment
 - viii. High levels of energy efficiency, with good ventilation to avoid overheating
 - ix. Extra storage for belongings and bicycles
 - x. Shared external areas such as ‘home zones’ that give priority to pedestrians
- 4.8 Relevant design considerations to respect cultural diversity include:
- i. Larger schemes should include a number of separate communal spaces to allow men and women to socialise separately.
- 4.9 Where Extra-care housing and Retirement housing are provided as part of a larger housing development the aim should be to create a Lifetime Neighbourhood throughout the larger development which means:
- Accessible and inclusive;
 - Aesthetically pleasing;
 - Safe (in terms of both traffic and crime);
 - Easy and pleasant to access; and
 - Communities that offer plenty of services, facilities and open space.
- 4.10 Applicants therefore need to discuss proposed Extra-care housing or Retirement with the Council at the earliest opportunity, before making a planning application.
- 4.11 Applicants are also encouraged to discuss Extra-care housing proposals with Staffordshire County Council’s District Commissioning Lead for East Staffordshire - Helen Gill helen.gill@staffordshire.gov.uk; Telephone 07773 791909.

Care homes and Nursing homes

- 4.12 The Local Plan identifies the need for new places in Care/Nursing homes and the Council welcomes applications to provide these places.
- 4.13 An appropriate location for these facilities will depend on the level of services and care that each facility provides. Applications will be treated on a case by case basis and an assessment of the services provided and the services in the immediate vicinity will be undertaken.

5. Self-build

- 5.1 Self-build housing is an important element of the Government's housing strategy because self-build can contribute towards housing delivery and economic growth. The Government therefore wants to see an increase in the amount of land providing plots for self-building.
- 5.2 Self-build housing, also called Custom-build housing, is a dwelling which an individual (or dwellings which an association of individuals) builds itself or has built by a builder it chooses, on land it owns, to a design that it chooses, to be occupied by that individual (those individuals) as their sole or main residence (not as a second home).

Self Build

DEFINITION: A serviced³ plot which will be sold to an individual household which will build, or have built by a builder unrelated to the vendor, a dwelling for its own occupation.

- 5.3 The Council will need to be satisfied that the proposed development meets this definition before it grants outline or full permission or Self-build housing. Permission will then be subject to conditions and/or obligations to ensure it meets this definition. The Council will also have regard to the Self-Build register required under the 'Self-Build and Custom Housebuilding' draft planning practice guidance and any subsequent guidance.
- 5.4 Hence the building of a dwelling on a plot acquired from a builder who builds the dwelling wholly or mainly to plans or specifications decided or offered by them does not qualify as Self-build in accordance with the East Staffordshire Local Plan.

³ Serviced means with access to a public highway and connections for electricity, water and waste water.

- 5.5 The Council encourages the inclusion of a suitable number of Self-build plots within housing developments or as stand alone applications in line with policies in the Local Plan, to provide an opportunity for residents to choose their own design of home and to foster innovation and diversity in housing design.
- 5.6 To specifically encourage the provision of smaller Self-build plots which will be more affordable than larger plots and hence accessible by a wider range of households, there is no Affordable housing requirement from Self-build plots of up to 250 m² in size. An Affordable housing contribution is required from Self-build plots over 250 m² in size.

6. Strategic Policy 17: Affordable Housing

- 6.1 The aim of Policy SP17 is to provide more Affordable Housing units in the Borough, for the benefit of the community and in particular those in housing need.
- 6.2 Affordable Housing will form part of most new development schemes. It is therefore essential that developers clearly demonstrate early in the pre-application process how Affordable Housing will be integrated into a scheme. Developers should engage early with the Borough Council before a planning application is submitted.
- 6.3 The Housing Choice SPD advises on what is considered to be the appropriate amount, size, type, tenure and location of affordable housing units. Developers are urged to meet with a Registered Provider at the earliest opportunity to discuss the layout of the site and the design of the affordable housing units.

STRATEGIC POLICY 17

Affordable Housing

Market housing led residential development that will provide 4 or more dwellings or on a site of 0.14 hectares or more shall provide up to 40% of the dwellings as affordable housing. This threshold may be revised during the lifetime of the plan if national policy changes.

- The affordable housing required from a particular scheme is the following percentage or the amount which is evidenced by an applicant to be viable. The percentages shown may be revised during the lifetime of the plan in the light of updated viability evidence.
 - On previously developed land within the built up areas of Burton and Uttoxeter: 25%;
 - On Greenfield sites within and on the edge of Burton and Uttoxeter: 33%;
 - On other land; 40%.
- To evidence what other amount of affordable housing is viable an applicant will need to submit their development appraisal and supporting evidence to the Council on an open book basis and to fund the Council's costs of assessing this.
- An application for development which extends an earlier permission will be treated together with that permission as one scheme.
- Planning permission will be subject to agreement to provide the required amount of affordable housing, and on schemes providing less than 40% and likely to be developed in phases over the longer term to agreement of a

suitable mechanism to increase the amount of affordable housing provided over time if viability improves.

- Affordable housing is not required from Self-build Plots of up to 250 square metres in size, from Retirement Housing, or from Market Housing for Rent (definitions in the Glossary).
- The amount of affordable housing which must be provided *on site* will be as follows, with the balance commuted off site in accordance with the Housing Choice SPD:
 - On Burton and Uttoxeter - 13% of dwellings;
 - On Strategic Village sites, an amount consistent with local need;
 - On other sites, an amount determined by the housing needs survey.

Residential development permitted in accordance with a Made Neighbourhood Plan on a site which is outside a settlement boundary and not a rural exception site shall provide an amount of affordable housing determined as above, or the amount required by the neighbourhood plan if greater.

Well-planned affordable housing led residential development providing an appropriate mix of housing will be welcomed.

Extra-care developments are expected to include affordable housing alongside market housing in accordance with identified need, subject to the availability of funding including via the Council from commuted sums.

On site affordable housing shall be provided as follows:

- Affordable housing will normally be provided on each phase of a development.
- The mix on Burton and, Uttoxeter developments shall be agreed with the Council based on the need identified in the Housing Choice SPD.
- The mix on Strategic Village developments shall be agreed with the Council based on local need
- The mix on other developments shall be agreed with the Council based on the housing needs survey carried out in accordance with Housing Choice SPD.
- In accordance with the definitions in the Housing Choice SPD
- Affordable housing shall be fully integrated by means of dispersal around the site in clusters of no more than eight dwellings so that no street or part of the street is dominated by affordable housing.
- Affordable housing shall be externally indistinguishable from market housing on the same site.

What is Affordable Housing?

- 6.4 Affordable housing is provided to eligible households who are unable to rent or buy housing at market rates. It is therefore housing which is subsidised in some way and the Council defines Affordable Housing as it is set out in the National Planning Policy Framework:

Affordable Housing

DEFINITION: Social Rented, Affordable Rented and Intermediate housing which is provided to eligible households⁴ whose needs are not met by the market and which will remain affordable unless subsidy is recycled for alternative affordable housing provision.

Intermediate Housing

DEFINITION: Discounted Sale housing and Shared Ownership housing

- 6.5 These are the only types of housing which contribute towards the Affordable housing requirement. The Government, towards the end of 2015 consulted on proposed changes to the NPPF to widen the definition of affordable housing to include other forms of housing such as starter homes. Should these changes be confirmed through legislation or amendments to national policy this SPD will be revised and if necessary amended.
- 6.6 Rented Affordable housing will normally mean either Social Rented housing or Affordable Rented housing. However S106 agreements entered into before adoption of the 2015 Local Plan may specifically require Social Rented housing.
- 6.7 Rented Affordable housing needs to contain fixtures and fittings to the standard normally expected by Registered Providers of Social Housing. Rented Affordable housing has to be built by or transferred to a Registered Provider of Social Housing. Applicants are strongly encouraged to contact Registered Providers at the earlier opportunity to discuss the proposed Affordable housing. The Council welcomes investment from any Registered Provider but will be pleased to supply applicants with the contact details of Registered Providers already operating in the Borough on request.
- 6.8 Rented Affordable housing provided under S106 has to be allocated in accordance with the Council's allocation scheme. Under that scheme most allocation is by means of choice based letting, and Registered Providers acquiring housing are expected to co-operate with allocation on that basis.
- 6.9 Owner-occupied Affordable housing means Shared Ownership housing and Discounted Sale housing. These types of housing are interchangeable, so

⁴ Eligible households means households who are unable to pay the capital value of the housing.

that either can be provided to meet the need for Owner-occupied Affordable housing. Full definitions are provided in the Glossary. Shared Ownership housing is normally transferred to a Registered Provider of Social Housing, but it does not have to be. Discounted Sale housing is sold to the occupier rather than to a Registered Provider. Applicants therefore have a choice about whether or not to sell Owner-occupied Affordable housing to a Registered Provider.

Affordable housing threshold

- 6.10 Affordable housing is required from sites providing 4 or more dwellings and sites of 0.14 hectares (1,400 sq m) or more in size.
- 6.11 Applicants are reminded that the number of dwellings proposed on a site will need to be consistent with the sizes and types of market housing which are appropriate and the required mix of Affordable housing.

Affordable housing requirement

- 6.12 The proportion of Affordable housing required from housing developments at or above the threshold is as follows:
- 25% on previously developed land within the built up areas of Burton and Uttoxeter, although it is not expected that this will be viable on every site;
 - 33% on Greenfield sites within and on the edge of Burton and Uttoxeter (see glossary);
 - 40% on other land.
- 6.13 The relevant percentage is applied to the number of qualifying dwellings to give the Affordable housing requirement as a number of dwellings (including fractions thereof).
- 6.14 Qualifying dwellings means all dwellings (Use Classes C3 and C4) except for: dwellings to be built on Self-build plots of up to 250 square metres in size; Retirement housing, Extra-care housing, and Market housing for rent.
- 6.15 A different proportion of Affordable housing will be required where:
- a) An applicant evidences that a lower proportion of *Affordable housing* is necessary to make development viable;
 - b) The applicable Neighbourhood Plan requires a higher proportion;
 - c) The site is an Exception Site as explained in Chapter 4.

Evidencing limited viability

6.16 Any applicant can choose to present evidence to the Council that a lower proportion of Affordable Housing is necessary to make development of the site viable. To do this, they need to submit their development appraisal and supporting evidence on an open book basis, and agree to fund the Council's costs of assessing this.

6.17 The development appraisal needs to clearly show what proportion of Affordable Housing is viable given an appropriate mix of mainstream market housing in accordance with Chapter 2 and appropriate development density.

6.18 Development appraisal means an appraisal of the cost and value of the development.

a) The cost of the development includes: the value of the site; the cost of building the mainstream housing (market and affordable); the cost of preparing plots for other uses; the cost of CIL (if applicable), meeting planning conditions, and planning obligations *required by the Council*; reasonable development profit, and; marketing, sales and financing costs.

b) The value of the site will take into account the current value of the site given its existing use and any realistic alternative use (apart from housing) to determine the price for which a reasonable landowner would be willing to sell, with undevelopable land, planning requirements and abnormal development costs reducing that price. If a developer has paid a higher price than that was at their risk and will deliver reduced profit. Indicative land values from the Plan Viability Study, applicable to the gross area of a site excluding land with no existing use or realistic alternative use, are as follows:

Small edge of village sites:	£240,000 / ha (exception sites) to £360,000 / ha (other sites)
Other Greenfield land:	£236,000 / ha (large sites) to £330,000 / ha (smaller sites)
Urban Brownfield land with viable alternative use:	£370,000 / ha (vacant sites) to £444,000 / ha (sites in current use) ⁵

⁵ Source of figures: Chapters 4 and 9 of the East Staffordshire Local Plan and CIL Viability Assessment 2014

- c) Reasonable development profit will vary depending on the riskiness of the development which is affected by size, complexity, infrastructure requirements, remediation costs, etc.
 - d) The value of the development means the market value of the *mainstream housing (market housing and affordable housing)* and the market value of plots for any other uses.
- 6.19 Providing supporting evidence on an open book basis means providing sufficient information to be able to verify all costs and values. Where development has already been carried out on the site or by the developer on a nearby site, this will include evidence of the actual costs incurred and values achieved (ignoring marketing incentives). Clear justification will be required if costs exceed evidence on standardised figures. Site specific evidence (cost estimates) should be provided by the applicant and benchmarked against comparable market evidence, where relevant. The Council undertakes to keep commercially sensitive information confidential to protect the applicant and developer's business interests.
- 6.20 The Council will provide on request an estimate of its costs to assess a development appraisal for a particular development and will advise the applicant of the revised estimated cost if this subsequently increases. The Council will only take account of an applicant's development appraisal if the applicant agrees to pay these costs and once the applicant has paid them to the Council.
- 6.21 Providing all necessary supporting evidence is provided and these costs are paid, the Council will use the development appraisal to determine the optimum package of obligations which can be provided. The Council will also consider whether this is sufficient to make the development acceptable and hence whether planning permission should be granted. The Council may also provide grant funding to make a greater amount of Affordable housing viable, or it may require an amount of Affordable housing subject to grant being secured.
- 6.22 Where the viable amount of Affordable housing on a development is shown by development appraisal to be less than 40%, approval may be subject to one or more of the following three provisions:
- a) The time allowed for implementation of the planning permission may be shortened.
 - b) Agreement of a review mechanism. This will define an appropriate trigger point (or more than one on a large scheme which will be developed over

many years) when the applicant will provide an updated development appraisal for the remainder of the development, based on updated evidence. This will determine the proportion of *Affordable housing* required from the remainder of the development. (The contribution from dwellings already completed will be subject to the overage mechanism explained below).

- c) Agreement of an overage mechanism. This means that the applicant will report to the Council what value was realised (from the prices paid by purchasers), and where this was higher than the value expected in the development appraisal, the developer shall pay to the Council 75% of the additional value sufficient to bring the total *Affordable housing* contribution up to the otherwise required percentage. If a development is subject to a review mechanism, the overage mechanism will apply to dwellings completed up to the first trigger point.

Amount of *on-site* Affordable housing provision and off commuted sum

6.23 Policy SP17 requires on-site provision with the balance of the Affordable housing requirement commuted off-site. There are a couple of exceptions which include the following:

- developments of exactly 4 dwellings; on these developments the balance of the Affordable housing requirement is waived (so that no commuted sum is payable).
- on-site Affordable housing will not normally be required from blocks of flats in Burton if it could only be provided in a mixed tenure block.

6.24 Affordable housing commuted off-site in accordance with this document shall be at the rate of £40,000 per Affordable Housing dwelling (pro-rata). The evidence for the rate can be found in Appendix 1.

6.25 The commuted sum in lieu of Affordable Housing is payable in four equal instalments prior to occupation of more than 20%, 40%, 60% and 80% of all qualifying market housing.

Example 1: Demonstration of commuted sum off site instalments for 73 qualifying market dwellings

- 20% = 14.6
- First instalment payable before *more than 14 dwellings* are occupied = before occupation of the 15th dwelling

- 40% = 29.2
- Second instalment payable before *more than 29 dwellings* are occupied = before occupation of the 30th dwelling
- Etc

6.26 The following examples set out the application of policy in this respect.

6.27 In Burton and Uttoxeter (including urban extensions) 13% of qualifying dwellings - rounded up to the next whole number - will normally need to be provided as on-site Affordable housing. Applicants should anticipate this requirement when preparing an outline application, but are advised to check with the Council before preparing a full application.

Example 2: 180 qualifying dwellings on an urban extension to Uttoxeter

- 33% Expected Affordable housing requirement
- $180 \times 33\% = 59.4$ Total Affordable housing requirement
- $180 \times 13\% = 23.4$ rounded up to 24 dwellings on-site
- $59.4 - 24 = 35.4$ dwellings commuted off-site.
- $35.4 \times \text{£}40,000 = \text{£}1,416,000$ commuted sum
- $\text{£}1,416,000 / 4 = \text{£}354,000$ equal instalments
- $180 - 24 = 156$ market dwellings
- Instalments payable before occupation of more than 31, 62, 93 and 124 market dwellings

6.28 In the Strategic villages of Barton under Needwood, Rocester, Rolleston on Dove and Tutbury, the Council will advise on request what proportion of on-site Affordable housing needs to be provided to meet local need. An applicant who disagrees with the Council can carry out and provide the results of a housing needs survey to demonstrate that a different amount of on-site provision is needed. When preparing an application for up to 10 dwellings applicants can assume that the maximum number of on-site Affordable housing dwellings will be required.

Example 3: 9 qualifying dwellings in a Strategic Village

- 40% Expected Affordable housing requirement
- $9 \times 40\% = 3.6$ total affordable housing requirement
- Maximum number required on-site
- 3 Affordable housing dwellings on-site

- $3.6 - 3 = 0.6$ dwelling commuted off-site
- $0.6 \times \text{£}40,000 = \text{£}24,000$ commuted sum
- $\text{£}24,000 / 4 = \text{£}6,000$ equal instalments
- $9 - 3 = 6$ market dwellings
- Instalments payable before occupation of more than 1, 2, 3 and 4 market dwellings

6.29 Elsewhere in the Borough, all applications for housing development at or above the Affordable housing threshold must be accompanied by the results of a housing needs survey which will demonstrate the amount and mix of Affordable housing required to meet local need. These sites shall then provide the maximum number of on-site Affordable housing dwellings towards that need.

Example 4: 18 qualifying dwellings in a Tier 2 Village

- 40% Expected Affordable housing requirement
- $18 \times 40\% = 7.2$ dwellings total affordable housing requirement
- The housing needs survey shows a need for 5 Affordable housing dwellings to meet local need
- 5 Affordable housing dwellings on-site
- $7.2 - 5 = 2.2$ dwellings commuted off-site
- $2.2 \times \text{£}40,000 = \text{£}88,000$ commuted sum
- $\text{£}88,000 / 4 = \text{£}22,000$ equal instalments
- $18 - 5 = 13$ market dwellings
- Instalments payable before occupation of more than 3, 5, 8 and 10 market dwellings

6.30 The Council will spend commuted sums on measures to address housing need within the Borough, for example by funding repairs to existing housing so that the occupants no longer need Affordable housing, construction of Extra-care Affordable housing, or purchase of existing homes for Affordable housing.

Extension of an earlier permission

6.31 The Local Plan Viability Study provides up to date evidence of the amount of affordable housing that can be provided by sites. It indicates that some sites on which a reduced amount of affordable housing was agreed without development appraisal prior to adoption of the plan can afford to provide a larger amount. Should any applications be submitted for an extension to these

schemes it is appropriate to take this into account. This would apply when applications are made for development which extend a development already approved since April 2012 but prior to adoption of the Local Plan in 2015. Extension in this context means further residential development on the same site or on adjacent land originally in the same ownership as the approved development. Below provides an example:

Example 5: A development of 200 dwellings was approved in July 2012. The scheme will provide 30 affordable houses on site and an off site contribution of £1 million. An extension is proposed that will provide a further 100 dwellings.

Stage 1

The relevant percentage is applied to the cumulative total number of dwellings on the approved development and the currently proposed development. This gives the target amount of affordable housing of 99 dwellings overall



Stage 2

The amount of on-site affordable housing agreed before adoption of this document is multiplied by 1.27 to determine the equivalent value of on-site under new policy. This is to reflect the fact that the on-site affordable housing required previously was more expensive to provide.

Example continued: The approved development is providing 30 on-site affordable dwellings. 30×1.27 equates to 38.1 affordable dwellings under this document.



Stage 3

The total of commuted sums already agreed is divided by £40,000 to determine the equivalent value of off-site *Affordable housing* under this document.

Example continued: The approved development is also providing a commuted sum of £1m. £1m divided by £40,000 equates to 25 affordable dwellings under this document.



Stage 4

The sum of those two equivalent values is deducted from the target amount of *Affordable housing*. This is then the amount of *Affordable housing* required from the proposed development, subject to a cap of 40% *Affordable housing*.

Example continued: 38.1 + 25 equals 63.1 equivalent affordable dwellings already secured. 99 minus 63.1 leaves 35.9 dwellings to be provided by the new development. This is 35.9% of the further 100 dwellings, and since this is less than 40%, this is the amount of Affordable housing required.

- 6.32 An applicant can choose to provide their development appraisal to show that a smaller amount of *Affordable housing* is viable. In this case the development appraisal needs to be for the cumulative development, and hence to include both the proposed development and the already approved development.

S106 Agreement

- 6.33 Planning permission will be subject to agreement under Section 106 of the Town and Country Planning Act 1990 (as amended) to provide the required *Affordable Housing* contribution.
- 6.34 Outline planning permission will be subject to agreement to provide the required percentage of *Affordable housing* dwellings (the on-site provision) and the formula for calculation of an *Affordable housing* sum (the commuted

sum) as the required percentage of qualifying dwellings multiplied by £40,000. Hence the split between on-site and commuted sum will be fixed at outline approval stage; however the S106 agreement will allow that this can be revised with the written agreement of the Council as necessary.

- 6.35 For outline permission of development to be delivered in more than one phase, the Section 106 Agreement will deal with how on-site Affordable housing will be distributed between phases, with the default expectation being the same percentage of Affordable housing on each phase. It may also apply the instalments provision in 0 to individual phases.
- 6.36 Full planning permission will be subject to agreement to provide a specified number of Affordable housing dwellings (the on-site provision) and a defined Affordable housing sum (the commuted sum).
- 6.37 A cap mechanism was employed in a previous SPD only to deal with an unforeseen increase in other S106 costs which may not have been allowed for in the then most recent viability assessment. However an appropriate level of other S106 costs has now been allowed for in the Plan viability assessment, to the satisfaction of the Local Plan Inspector, and hence there is no need for the cap mechanism under the new Plan.

How to incorporate affordable housing into the design and layout of developments

- 6.38 The Affordable housing flats sought by the Council are Duplex/Tyneside Flats with one flat on the ground floor and one on the first floor each having its own external ground level front door. Hence each two flats externally resemble a house.
- 6.39 Affordable housing needs to be dispersed around the site in clusters of no more than 8 dwellings and so that no street or part of a street is dominated by Affordable housing. Hence clusters of Affordable housing need to be surrounded on each side along the street and across the street by market housing
- 6.40 Affordable housing needs to be externally indistinguishable from market housing on the same site.

On-site Affordable housing mix

- 6.41 The mix of on-site Affordable housing must be agreed with the Council based on the information that follows.

Table 2: On-site Affordable housing mix - Burton

Type	Mix
4-bedroom 6-person <i>rented</i> houses	10%
4 bedroom 7-person <i>rented</i> houses	10%
2-bedroom 4-person <i>rented</i> houses	45%
1-bedroom 2-person <i>rented</i> flats or houses	25%
3-bedroom 6-person <i>rented</i> houses	10%

Table 3: On-site Affordable housing mix - Uttoxeter

Type	Mix
1-bedroom 2-person <i>rented</i> flats or houses	20%
2-bedroom 4-person <i>rented</i> houses	30%
3-bedroom 6-person <i>rented</i> houses	10%
2-bedroom 4-person <i>owner-occupied</i> houses ⁶	10%
1 or 2-bedroom <i>owner-occupied</i> flats or houses	25%
4-bedroom 6-person <i>rented</i> houses	5%

- 6.42 In the Strategic Villages of Barton under Needwood, Rocester, Rolleston on Dove and Tutbury, the mix of Affordable housing to be provided will be advised by the Council in consultation with the relevant Parish Council, who will often have local knowledge and understanding of local requirements
- 6.43 Elsewhere in the Borough, the mix of Affordable housing to be provided will be advised by the Council on request taking into account the needs identified by the housing needs survey and the existing Affordable housing in the area.
- 6.44 Where a development of entirely Housing for Older People market housing is appropriate the Affordable housing associated with that development can be for older people. The affordable housing in this case could therefore be the same type of housing the only difference being that the cost/management of it.

⁶ Such as intermediate, discounted houses for sale

Affordable housing led development

- 6.45 Affordable housing led development means residential development which is entirely or predominantly Affordable housing. Hence this is typically development carried out by or for Housing Associations.
- 6.46 The Council welcomes appropriately planned Affordable housing led development which helps to deliver the Affordable housing needed in the area.
- 6.47 New housing development needs to help create and maintain sustainable and inclusive mixed communities. Affordable housing led development needs to be planned to achieve this, for example through appropriate design which reflects and integrates the new Affordable housing into the existing community.
- 6.48 However there remains the risk that Affordable housing led development of larger sites can create segregation of social housing, sustainability concerns, and polarisation within the community.
- 6.49 Developers therefore need to discuss sites with the Council at the earliest opportunity and before designing a development to agree what mix of housing will be appropriate.
- 6.50 As a guide, developments of exclusively Rented Affordable housing for General needs should not normally contain more than 25 dwellings. Sites which can accommodate more than 25 dwellings should also include other types of housing, for example Rented Affordable housing designated for allocation to older people, market housing for sale or rent, Owner-occupied Affordable housing where appropriate, or Self-build plots, in order to enhance the inclusivity and sustainability of the development.
- 6.51 Where different types and tenures of housing are included, these need to be as fully integrated as possible by means of dispersal around the site.

7. Strategic Policy 18: *Exception Sites*

- 7.1 The Exception Sites policy enables the development of Affordable housing and Traveller pitches to meet local need in rural settlements where this cannot be achieved within settlement boundaries or on allocated sites or where no such boundary or sites exist. Such development is an exception to the policy that most development will take place within settlement boundaries, and sites on which such development is permitted are therefore called Exception Sites.
- 7.2 To justify such development an applicant will firstly need to demonstrate the need for Affordable housing within the area or the need for Traveller pitches in the local area, in accordance with Chapter 5.
- 7.3 The Council will then need to be satisfied that the need will not otherwise be met, from turnover of existing Affordable housing or Traveller pitches, or from new development within settlement boundaries or on approved Exception Sites.
- 7.4 Assessments of the need for housing and for Traveller pitches are independent of each other. Hence there is no need to assess the need for housing to justify development of Traveller pitches, and no need to assess the need for Traveller pitches to justify development of housing. However both assessments will be needed to justify development which includes both housing and Traveller pitches.
- 7.5 Evidence gathered to support Neighbourhood Plans or the East Staffordshire Local Plan such as housing surveys or Objectively Assessed Housing Assessments are not sufficient in themselves to justify a need. Applicants would be expected to provide more detailed information on the current need within the area for which the development is proposed.

STRATEGIC POLICY 18

Residential Development on Exception Sites

Where the Council is satisfied in the light of evidence that there is a need for new affordable housing or Traveller pitches which will not otherwise be met, permission may be granted for a small development to specifically meet that need on a suitable site outside a settlement boundary provided that:

- Evidence of need is provided in accordance with the Housing Choice SPD;
- The development will specifically meet the assessed need;
- The site is within or on the edge of a settlement;
- The site is within easy reach of local services and facilities;

- The scale of development is appropriate given the size of the existing settlement;
- The majority of units (dwellings and pitches) provided on the site will be affordable housing or Traveller pitches to meet the need. A minority of the units provided may deliver a mix of market housing that is appropriate to meet local need based firstly on a housing needs survey and secondly on other evidence of need in that part of the Borough;
- Permission will be subject to agreement of cascade arrangements to provide priority in perpetuity for local people;
- Occupation of Traveller pitches will be restricted to Gypsies, Travellers and Travelling Showpeople;
- Affordable housing will remain affordable in perpetuity.
- The development complies with other relevant policies in this Plan.

7.6 Where the Council is satisfied that a need for development has been evidenced, permission may be granted for a small development to specifically meet that need on a suitable site outside a settlement boundary provided that:

- a) The development will specifically meet the assessed need for *Affordable housing* or *Traveller pitches*. This means that the site will meet all the identified need if at all possible. Sites that would only provide housing for members of the site owner's family will not be permitted (unless that is the only need identified) since the objective is to ensure that all need for *Affordable housing* is met, not to benefit only those whose families own land;
- b) The site is within or on the edge of a settlement. This will normally mean adjacent to existing development which is clearly situated within a recognised Tier 3 village or adjacent to a Tier 1 or 2 village settlement boundary;
- c) The site is within easy reach of local services and facilities. This ideally means that there are services and facilities in the settlement or in a nearby settlement which are accessible without the use of a private motor vehicle. Weighing of this issue will consider the types of household for which development is proposed;
- d) The scale of development is appropriate given the size of the existing settlement. Appropriate scale means amounting to only a modest proportionate increase in the size of the settlement.

- 7.7 Exception Site development is only justified by need for Affordable housing or Traveller pitches, and this need must be met first. Affordable housing means housing as defined in Chapter 3. The mix of Affordable housing provided will be in accordance with the identified need which will not otherwise be met.
- 7.8 However a site may also provide market housing amounting to less than 50% of units (dwellings and pitches). The mix of market housing provided will be in accordance with the local need identified by the housing needs survey, firstly market housing for households who need alternative housing, followed by market housing for households wanting alternative housing. Any additional market housing dwellings shall each not exceed 93 m² Gross Internal Area (GIA), to contribute to the wider need in rural areas for smaller dwellings.
- 7.9 The number of Traveller pitches allowed will not be more than the number shown to be needed.
- 7.10 To ensure integration into the community, Traveller pitches on Exception Sites must provide permanent accommodation not transit accommodation.

Occupation

- 7.11 To ensure that development on Exception Sites meets and continues to meet local need, permission for housing other than rented Affordable housing and permission for Traveller pitches will be subject to agreement of cascade arrangements to provide priority in perpetuity for local people. The cascade arrangements will be part of the S106 agreement and will continue to apply to the land in perpetuity.
- 7.12 The cascade arrangements will require that once built the homes or pitches shall firstly be offered to the households identified by the housing needs survey as having the need.
- 7.13 The cascade arrangements will also normally specify that for the first four weeks the home or pitch can only be sold or transferred to and occupied by a person who is local to the parish in which the site is situated. That for the following 9 weeks the home or pitch can only be sold or transferred to and occupied by a person who is local to the Housing Market Area as defined by the Council. That if no such occupier has been secured within 13 weeks, that the home or pitch can then be sold or transferred to a person who is not local.
- 7.14 The definition of 'local' can be agreed with the Council by the local Parish Council, or by the Community Land Trust developing the site. Failing that 'local' will normally be defined as being:
- a) Continuously resident in the parish/area for at least the last 5 years; or
 - b) Having lived in the parish/area at some point for at least 30 years; or
 - c) Previously a resident of the parish for at least 5 years and with family (parent, child, brother or sister) currently living in the parish/area; or
 - d) Current or confirmed permanent employment in the parish/area; or
 - e) Continuously resident in the parish/area for the last year and a need to remain living in the parish so that children can remain at their primary school.
- 7.15 The Council's Allocation Scheme will provide priority access to Rented Affordable housing for local people.
- 7.16 Occupation of Traveller pitches will be restricted to Gypsies and Travellers and Travelling Showpeople who own the site or who occupy under a long lease.

8. Strategic Policy 19: *Gypsy and Traveller Sites*

8.1 In accordance with national guidance, the specific planning criteria in Strategic Policy 19 have been adopted to reflect the special characteristics of Sites for Gypsies, Travellers and Travelling Showpeople, and to ensure that they meet the needs of occupiers and are successfully integrated into the wider community.

STRATEGIC POLICY 19

Sites for Gypsies, Travellers and Travelling Showpeople

In assessing the suitability of sites for residential and mixed use occupation by Gypsies, Travellers and Travelling Showpeople, and for the purposes of considering planning applications for such sites, proposals will be supported where the following criteria are met:

- The site affords good access to local services including schools;
- The site is not at risk of flooding or adjacent to uses likely to endanger the health of occupants such as a refuse tip, sewage treatment works or contaminated land;
- The development is appropriate in scale compared to the size of the existing settlement;
- The development will be able to achieve a reasonable level of visual and acoustic privacy both for people living on the site and for those living nearby;
- The development will provide a high quality frontage onto the street which maintains or enhances the street scene and which integrates the site into the community;
- The development will be well-laid out to provide adequate space and privacy for residents;
- The development complies with relevant national planning policies;
- The development complies with the other relevant policies in this Plan.

If and when a need is identified, the Council will set pitch targets and/or plot targets accordingly and will identify a site or sites to meet the need through a Development Plan Document as necessary.

- 8.2 Sites for Gypsies, Travellers and Travelling Showpeople means sites providing any number of Traveller pitches.
- 8.3 Traveller pitches mean pitches for residential occupation of caravans by Gypsies and Travellers or Travelling Showpeople, together with ancillary development e.g. amenity blocks and, where applicable, business use.
- 8.4 Development of Traveller pitches within settlement boundaries or on sites allocated in a Development Plan Document does not need to be justified by showing a need.
- 8.5 Traveller pitches may be permitted on Exception Sites in accordance with Chapter 4 where need is demonstrated in accordance with Chapter 6.
- 8.6 There is no Affordable housing requirement from Traveller pitches.

Gypsies and Travellers

DEFINITION: Persons of nomadic habit of life including such persons who on grounds only of their own or their family's or dependents' educational or health needs or old age have ceased to travel.

Travelling showpeople

DEFINITION: Members of a group organised for the purposes of holding fairs, circuses or shows. This includes such persons who on the grounds of their own or their family's or dependents' more localised pattern of trading, educational or health needs or old age have ceased to travel.

9. Evidencing Need

Housing needs surveys

- 9.1 Chapters 2 and 5 explain when a housing needs survey is needed to support an application for housing development outside Burton, Uttoxeter and the Strategic Villages.
- 9.2 The Council does not plan to carry out a programme of housing needs surveys. This is because the surveys it has carried out in the past have not led to development and the results have become obsolete.
- 9.3 A survey will be valid if it has been carried out (questionnaires returned) no earlier than 3 years before the date a valid outline or full planning application is made.
- 9.4 Hence a housing needs survey will need to be carried out once a specific development opportunity is being promoted, unless valid survey results already exist eg from the development of a Neighbourhood Plan or a previous development proposal.
- 9.5 A housing needs survey will assess need in one or more civil parish council areas, with the Council needing to agree that the survey area is appropriate. The Council expects that all surveys will be carried out by or in cooperation with the relevant Parish Council(s).
- 9.6 To be valid evidence of need, a survey must involve an appropriately designed questionnaire being delivered to all dwellings in the survey area giving sufficient time and opportunity for response.
- 9.7 The Council will in all cases need to see all the evidence including the returned questionnaires and assessment, so that it can ensure that the assessment is robust, consistent and fair. Questionnaires must therefore make clear that the information will be shared with the Council but not with anyone else.
- 9.8 The anonymous results of a survey must be made publically available and may be published by the Council.

Survey questions

- 9.9 Surveys need to invite all households and emerging households living in the survey area to answer questions about:
- a) Their current housing
 - b) Whether and why their current housing has become inadequate
 - c) What sort of other housing they need or want and why
 - d) How long they have been living in the survey area
 - e) Whether and why they need or want to remain living in the survey area
 - f) About their ability to meet their needs, in other words their level of savings, equity and income
 - g) How long they can wait for suitable housing
- 9.10 The Council will be pleased to supply a model questionnaire on request.

Assessment of surveys

- 9.11 A household needs alternative housing if its current home has become inadequate because:
- a) It is tied accommodation and the worker will reach retirement age within 5 years; or
 - b) It is too small as defined by Housing Benefit entitlement; or
 - c) It is unaffordable or unmanageable eg because it is too large; or
 - d) It does not meet their needs because they have specific requirements eg disability; or
 - e) It requires repairs or improvement and they cannot afford the necessary works; or
 - f) It is being harassed in their accommodation; or
 - g) It needs to move to be able to retain employment; or
 - h) It needs to move within the area to be able to receive or give care to a relative or dependant; or

- i) A household member aged 21+ is seeking independent accommodation.
- 9.12 A household which needs alternative housing is deemed to need housing within the survey area if:
- a) It has expressed sufficient reason to remain living in the area; and
 - b) At least one member of the household has been habitually resident in the area for the last 5 or more years; and
 - c) It can wait until new housing can be built.
- 9.13 If a household needs alternative housing within the survey area, the tenure of housing it needs must then be established by comparing its financial means with the prices of local market housing and owner-occupied Affordable housing.
- 9.14 If a household needs Affordable housing then the number of bedrooms it needs is deemed to be:
- a) In *rented Affordable housing* its entitlement under the Council's Housing Allocation Scheme or under Housing Benefit/Universal Credit depending on the circumstances of the particular household.
 - b) In *owner-occupied Affordable housing* its entitlement under Government Help to Buy Shared Ownership.
- 9.15 Local need for housing also includes the housing sought by resident households who do not satisfy the criteria above but who want to move to different accommodation in the survey area.

Need for Traveller pitches on Exception Sites

- 9.16 "Traveller" in this context means Gypsies and Travellers and Travelling Showpeople.
- 9.17 Applicants wishing to evidence a need for Exception Site development of Traveller pitches in the Borough are invited to contact the Council at the earliest opportunity. Each case will be assessed on its merits.

9.18 To demonstrate need for Exception Site development of a *Traveller pitch or pitches an applicant simply needs to do the following:*

- a) Show that the intended occupiers qualify as *Gypsies and Travellers or Travelling showpeople*; and
- b) Show that the intended occupiers need a pitch – see below; and
- c) Show that they have a connection to the local area – see below.

9.19 A Traveller household needs a pitch if:

- a) It lives in a caravan but has or will soon have no authorised site anywhere on which to reside (including if temporary permission is coming to an end); or
- b) Its existing caravan site accommodation is overcrowded or unsuitable; or
- c) It is a newly forming household including at least one person aged 21+ which has no pitch on which to set up a separate family unit; or
- d) It is a household living in bricks and mortar housing which is overcrowded or unsuitable, including unsuitable because the household has a medically confirmed psychological aversion to bricks and mortar accommodation, which wishes to return to caravan dwelling.

9.20 The local area means the area within 10 miles of the proposed site. A connection includes:

- a) currently settled in the local area;
- b) frequent travel to the local area;
- c) regular or frequent work in the local area;
- d) children attend school in the local area;
- e) family settled in the local area;
- f) previously settled in the local area.

Glossary

Affordable housing: Social Rented, Affordable Rented and Intermediate housing which is provided to eligible households whose needs are not met by the market and which will remain affordable unless the subsidy is recycled for alternative affordable housing provision.

Affordable housing led residential development: Residential development which is entirely or predominantly Affordable housing.

Affordable Rented housing: Housing which is let by a Registered Provider of Social Housing to a person allocated that Dwelling in accordance with the Council's Allocation Scheme at a controlled rent of no more than 80% of the local market rent.

Building Regulations Part M: As defined in the Approved Document 2015 edition for use in England or its replacement.

Care homes and Nursing homes: Residential institutions providing accommodation with shared facilities together with support and/or care.

Discounted Sale housing: Housing which is sold in perpetuity to an eligible person for their occupation at not more than 60% of the open market value. In addition it shall not be extended, and shall not be let other than to an eligible person at a rent no greater than 60% of the market rent.

Duplex/Tyneside Flats: A building providing one flat on the ground floor and one flat on the first floor, each with a separate entrance, so that the building resembles a single two-storey dwelling.

Dwelling: An individual self contained unit of accommodation containing the normal facilities for cooking, eating, washing and sleeping associated with use as a dwelling house. Includes self contained units within a development which may also provide communal facilities and services and non self contained accommodation.

Eligible household: A person and their household who is unable to pay the Capital Value of the Affordable Housing Unit as verified in writing by a financial advisor or a mortgage advisor and who intends to occupy the Dwelling as his/her home.

ESLP: The East Staffordshire Local Plan 2012 – 2031.

Extra-care Housing: A development of clustered dwellings and communal facilities for households with varying care needs where overnight on site care services will be available to occupiers so that they are able to remain in their own homes as their care needs increase. May also include accommodation for staff.

General needs: Affordable housing provided without support and not designated for a particular type of household.

Greenfield land: A general term to describe all sites that have not previously been developed.

Greenfield sites: Sites which are predominantly Greenfield land.

Ground floor living accommodation: Any room on the ground floor apart from toilets, bathrooms and utility rooms.

Gross Internal Area: The total floor space measured between the internal faces of perimeter walls that enclose the dwelling. This includes partitions, structural elements, cupboards, ducts, flights of stairs and voids above stairs, garages and conservatories. The internal face of a perimeter wall is the finished surface of the wall; for a detached house, the perimeter walls are the external walls that enclose the dwelling, and for other houses or apartments they are the external walls and party walls.

Gypsies and Travellers: Persons of nomadic habit of life including such persons who on grounds only of their own or their family's or dependents' educational or health needs or old age have ceased to travel.

Housing for Older People: Bungalows or houses which are specifically designed with older people wanting to downsize in mind, offering for example a downstairs bathroom and/or a level access or low threshold shower. These are mainstream market dwellings which will be sold freehold without any age restriction or requirement to pay service charges. Applicants will need to evidence that proposed dwellings have been designed with older people in mind.

Intermediate Housing: Discounted Sale housing and Shared Ownership housing.

Mainstream housing: Dwellings that are not: Extra-care housing, Retirement housing, Self-build housing, and Market housing for Rent.

Market housing: Dwellings that are not Affordable housing.

Market Housing for Rent: A development of dwellings which will be owned by an Institutional Investor or Registered Provider of Social Housing which will let the individual dwellings to individual household occupiers at market rents for at least 10 years following completion. An Institutional Investor means a pension fund, mutual fund, money manager, insurance company, investment bank, commercial trust, endowment fund or hedge fund which is investing clients' monies. Approval of *Market Housing for Rent* will be subject to conditions and/or obligations to ensure it meets this definition.

Market housing led residential development: Residential development of predominantly market housing.

Neighbourhood Plan: Neighbourhood Plans, or Neighbourhood Development Plans, were introduced by the Localism Act 2011. The term may also be used by some to refer to Neighbourhood Development Orders, which were also introduced by the Localism Act 2011 and are a second tool to enable neighbourhood planning. Communities will be able to prepare neighbourhood planning documents, outlining how they envisage their area developing in the future.

Newly built: Newly constructed, excluding housing created by converting an existing building.

Open book basis: Providing sufficient information to verify all costs and values.

Owner-occupied Affordable housing: Shared Ownership housing and Discounted Sale housing.

Previously developed land: Land which is or was occupied by a permanent structure, including the curtilage of the developed land and any associated fixed surface infrastructure. This excludes: land that is or has been occupied by agricultural or forestry buildings; land that has been developed for minerals extraction or waste disposal by landfill purposes where provision for restoration has been made through development control procedures; land in built-up areas such as private residential gardens, parks, recreation grounds and allotments; and land that was previously-development but where the remains of the permanent structure or fixed surface structure have blended into the landscape in the process of time.

Qualifying dwellings: All dwellings (Use Classes C3 and C4) except for: dwellings to be built on Self-build plots of up to 250 square metres in size; Retirement housing; Extra-care housing; and Market housing for rent.

Rented Affordable housing: Social Rented housing and Affordable Rented housing. Needs to contain fixtures and fittings to the standard normally expected by Registered Providers of Social Housing.

Residential development: Any development of housing, including housing as part of a mixed use development

Retirement housing: A development of clustered dwellings and communal facilities meeting requirement M4(3) of the Building Regulations (wheelchair user dwellings) with occupation restricted to older people. May also include other accommodation for staff.

Self-build: A dwelling which an individual (or dwellings which an association of individuals) builds itself or has built by a builder it chooses, on land it owns, to a design that it chooses, to be occupied by that individual (those individuals) as their sole or main residence (not as a second home). Hence the building of a dwelling on a plot acquired from a builder who builds the dwelling wholly or mainly to plans or specifications decided or offered by them does not qualify as *Self-build* under the ESLP.

Self-build Plot: A serviced plot which will be sold to an individual household which will build, or have built by a builder unrelated to the vendor, a dwelling for its own occupation. Serviced means with access to a public highway and connections for electricity, water and waste water.

Serviced: with access to a public highway and connections for electricity, water and waste water.

Settlement boundary: The boundary of the settlement as defined in the ESLP.

Shared Ownership housing: Housing which shall be occupied by eligible persons on a part rent/part sale basis under a HCA model lease or equivalent where the rent does not exceed 3% of the balance of the capital value and annual rent increases are limited to the Index plus 0.5%. In addition the initial leasehold interest shall be a 25% to 75% share of the capital value and the occupier shall have the right to increase his ownership share by purchasing additional equity over time at minimum points of 5% and at a price reflecting the capital value of the share being acquired at the date of acquisition but subject to statutory restriction of the maximum share which can be acquired.

Sites for Gypsies, Travellers and Travelling Showpeople: Sites providing any number of Traveller pitches.

Social Rented housing: Housing which is let by a Registered Provider of Social Housing to a person allocated that dwelling in accordance with the Council's Allocation Scheme at a rent determined through the national rent regime (Rent Influencing Regime guidance).

Specialised accommodation: Extra-care housing, Retirement housing, Self-build housing, Traveller pitches, Market housing for Rent, and Care homes and Nursing homes.

Specialised housing for older people: Extra-care housing and Retirement housing.

Strategic villages: Barton under Needwood, Rocester, Rolleston on Dove and Tutbury

Sustainable Urban Extensions: Development sites defined in ESLP Strategic Policy 7.

Traveller pitches: Pitches for residential occupation of caravans by Gypsies and Travellers or Travelling Showpeople, together with ancillary development eg amenity blocks and, where applicable, business use.

Travelling showpeople: Members of a group organised for the purposes of holding fairs, circuses or shows. This includes such persons who on the grounds of their own or their family's or dependents' more localised pattern of trading, educational or health needs or old age have ceased to travel.

Within and on the edge of Burton and Uttoxeter: Within the Settlement boundary of either town defined in the East Staffordshire Local Plan 2012-2031.

Appendix 1 – Calculation of £40,000 off site affordable housing contribution

SHMA Figures 8.25 and 82.6 identify the identified need for affordable housing which can be met offsite using Commuted Sums:

Figure 1

	1- bedroom	2- bedroom	3- bedroom	4- bedroom	Total
Extra-care Intermediate supply	16	9	0	0	25
Owner occupation in Inner Burton	24	6	0	0	30
Total Intermediate need	40	15	0	0	55
Extra-care rented affordable supply	12	3	0	0	15
Larger owner-occupier homes	0	0	0	6	6
Total Rented need	12	3	0	6	21
Total need which can be met offsite	52	18	0	6	76

The floorspace of the onsite affordable housing which would meet this need has then been calculated as follows, to determine the average size of affordable housing needed to meet this need.

Figure 2

	1- bedroom	2- bedroom	3- bedroom	4- bedroom	Total
Total Intermediate need	40	15	0	0	55
Size of dwellings (sq m)	50	70			
Total floorspace (sq m) (need x size)	2,000	1,050			3,050
Total Rented need	12	3	0	6	21
Size of dwellings (sq m)	45	70		110	
Total floorspace (sq m) (need x size)	540	210		660	1,410
Total floorspace (sq m)					4,460
Average floorspace (4460 / 76)					58.7

The opportunity cost to a developer of providing this affordable housing has then been calculated as follows, using values from Plan Viability Study Table 9.8:

Figure 3

	Market	Intermediate	Affordable Rent
Typical Value (£/sq m)	£2,000	£1,400	£1,000
Opportunity Cost (£/sq m)		£600	£1,000
Floorspace (from Table 2)		3,050	1,410
Total opportunity cost		£1,830,000	£1,410,000
		£3,240,000	
Average floorspace (sq m) (from Table 2)		58.7	
Average opportunity cost (Total / average floorspace)		£42,632	

£42,632 has been rounded down to £40,000.

Note on application:

The Council only proposes more than 13% onsite affordable housing on village sites (Strategic Policy 17 Option 3).

Plan Viability Study Table 10.5 shows that there is very large headroom on greenfield village sites, more than sufficient to absorb the difference between £40,000 and £42,632.

Guidance notes on applying the vacant building credit to affordable housing contributions November 2017

1. Introduction

1.1. Amendments to the National Planning Practice Guidance (NPPG) on Planning Obligations of May 2016 introduced changes to the way that affordable housing contributions can be sought from development. The changes include the introduction of the vacant building credit which is intended to provide an incentive for brownfield development on sites containing vacant buildings. This Note provides guidance on the Council's approach in applying the vacant building credit.

2. Application of the vacant building credit (VBC)

2.1. The VBC was introduced with the aim of stimulating the development of vacant buildings on brownfield sites. A financial credit, equivalent to the existing gross floorspace of any vacant buildings within the redline boundary of the application site brought back into any lawful use or demolished for re-development, should be deducted from the calculation of any affordable housing contributions sought from relevant development schemes. This will not however apply to vacant buildings which have been abandoned.

2.2. In order to apply for the VBC seeking reduced affordable housing contribution, a VBC Statement must be submitted alongside a planning application. The following information will need to be included in the Statement:

- Evidence that any referenced building is a 'vacant building'. A building is not considered as 'vacant' if the building has been in continuous use for any six months during the last three years up to the date of the planning application is submitted.
- The whole building must be vacant to apply for the VBC.
- Evidence that any referenced building is not an 'abandoned building' or vacated solely for the purpose of redevelopment. The onus will be on the applicant to demonstrate this. The factors the council will take into account include:
 - i) the physical condition of the building;
 - ii) the length of time that the building had not been used;
 - iii) whether it had been used for any other purposes; and
 - iv) The owner's intentions
- Information on the existing Gross Internal Floor Area (GIFA) and the proposed GIFA. GIFA is the area of a building measured to the internal face of the perimeter walls at each floor level. The Royal Institution of

Chartered Surveyors (RICS) definition of GIFA will be used for the purposes of assessing VBC. Please see a link in www.bathnes.gov.uk/cil to the RICS code for measuring practice <http://www.rics.org/uk/knowledge/professional-guidance/professional-statements/rics-property-measurement-1st-edition/>. However floorspace with headroom of less than 1.5m is excluded from the GIFA calculation.

2.3. The LPA will determine on a case by case basis whether a building is vacant or abandoned. As is commonly the case with outline planning applications it may not be clear what the actual number of dwellings, or the size of those dwellings, may be. Therefore it will be difficult to quantify what vacant building credit will be applicable. Where the local planning authority agrees that the VBC may be applicable, the applicant will be expected to enter into a S.106 Agreement at the outline stage to enable the matter to be deferred to a later stage when the relevant details of the scheme have been finalized. If the VBC is applicable to the proposed site, the information on floor space will inform the level of affordable housing contributions.

3. Examples of Vacant Building Credit calculation

Example 1	Housing development in AH Area 1. (Affordable Housing requirement 40%) 40 dwellings The Proposed Gross Internal Floor Area(GIFA): 4,000sqm The existing Gross Internal Floor Area(GIFA): 1,000sqm	
Step 1	Calculate the affordable housing contribution based on the total number of eligible dwellings and the affordable housing percentage (40%) required by the council's planning policy	Affordable housing contribution 40 units x 40% = 16 units
Step 2	Calculate the amount of existing floorspace, if any, as a proportion of the floorspace provided by the development: E/P x 100 (where E = existing floorspace and P = proposed floorspace)	1,000 sqm / 4,000 sqm x100 = 25%
Step 3	Calculate the number of AH credit: Step 1 AH units x Step 2 percentage	16 units x 25% = 4 units
Step 4	Deduct the AH credit from the policy compliant affordable housing contribution, Step 1 AH number – Step 2 AH number	16 units – 4 units = 12 units (12 affordable dwellings to be delivered on-site)

Example 2	Housing development in AH Area 2. (Affordable Housing requirement 30%) 100 dwellings The Proposed Gross Internal Floor Area(GIFA): 10,000 sqm The existing Gross Internal Floor Area(GIFA): 1,000sqm	
Step 1	Calculate the affordable housing contribution based on the total number of eligible dwellings and the affordable housing percentage (30%) required by the council's planning policy	Affordable housing contribution 100 units x 30% = 30 units
Step 2	Calculate the amount of existing floorspace, if any, as a proportion of the floorspace provided by the development: E/P x 100 (where E = existing floorspace and P = proposed floorspace)	1,000 sqm / 10,000 sqm x100 = 10%
Step 3	Calculate the number of AH credit: Step 1 AH units x Step 2 percentage	30 units x 10% = 3 units
Step 4	Deduct the AH credit from the policy compliant affordable housing contribution, Step 1 AH number – Step 2 AH number	30 units – 3 units = 27 units (27 affordable dwellings to be delivered on-site)

Example 3	Mixed use development in AH Area 1. (Affordable Housing requirement 40%) 100 Flats (8,000 sqm) and Office space (3,000 sqm) The Proposed Gross Internal Floor Area(GIFA): 11,000 sqm The existing Gross Internal Floor Area(GIFA): 3,000sqm	
Step 1	Calculate the affordable housing contribution based on the total number of eligible dwellings and the affordable housing percentage (40%) required by the council's planning policy	Affordable housing contribution 100 units x 40% = 40 units
Step 2	Calculate the amount of existing floorspace, if any, as a proportion of the floorspace provided by the development: E/P x 100 (where E = existing floorspace and P = proposed floorspace)	3,000 sqm / 11,000 sqm x100 = 27.27%
Step 3	Calculate the number of AH credit: Step 1 AH units x Step 2 percentage	40 units x 27.27% = 10.91 units
Step 4	Deduct the AH credit from the policy	40 units – 10.91 units = 29.09

	compliant affordable housing contribution, Step 1 AH number – Step 2 AH number	units (29 affordable units* to be delivered on-site)
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Example 4	Mixed use development in AH Area 2. (Affordable Housing requirement 30%) 100 Flats (8,000 sqm) and Office space (30,000 sqm) The Proposed Gross Internal Floor Area(GIFA): 38,000 sqm The existing Gross Internal Floor Area(GIFA): 20,000sqm	
Step 1	Calculate the affordable housing contribution based on the total number of eligible dwellings and the affordable housing percentage (30%) required by the council's planning policy	Affordable housing contribution 100 units x 30% = 30 units
Step 2	Calculate the amount of existing floorspace, if any, as a proportion of the floorspace provided by the development: E/P x 100 (where E = existing floorspace and P = proposed floorspace)	20,000 sqm / 38,000 sqm x100 = 52.63%
Step 3	Calculate the number of AH credit: Step 1 AH units x Step 2 percentage	30 units x 52.63% = 15.79 units
Step 4	Deduct the AH credit from the policy compliant affordable housing contribution, Step 1 AH number – Step 2 AH number	30 units – 15.79 units = 14.21 units (14 affordable units* to be delivered on-site)

* The number of AH unit will be rounded up to the nearest whole number e.g. 13.6 units becomes 14 units. Anything below 0.5 will be rounded down eg. 13.4 units becomes 13 units.

Appendix 1 National Planning Practice Guidance

NPPG Planning Obligations paragraph 021-023 introduces national policy relating to the Vacant Building Credit.

What is the vacant building credit?

Paragraph: 021

National policy provides an incentive for brownfield development on sites containing vacant buildings. Where a vacant building is brought back into any lawful use, or is demolished to be replaced by a new building, the developer should be offered a financial credit equivalent to the existing gross floorspace of relevant vacant buildings when the local planning authority calculates any affordable housing contribution which will be sought. Affordable housing contributions may be required for any increase in floorspace.

What is the process for determining the vacant building credit?

Paragraph: 022

Where there is an overall increase in floorspace in the proposed development, the local planning authority should calculate the amount of affordable housing contributions required from the development as set out in their Local Plan. A 'credit' should then be applied which is the equivalent of the gross floorspace of any relevant vacant buildings being brought back into use or demolished as part of the scheme and deducted from the overall affordable housing contribution calculation. This will apply in calculating either the number of affordable housing units to be provided within the development or where an equivalent financial contribution is being provided.

The existing floorspace of a vacant building should be credited against the floorspace of the new development. For example, where a building with a gross floorspace of 8,000 square metre building is demolished as part of a proposed development with a gross floorspace of 10,000 square metres, any affordable housing contribution should be a fifth of what would normally be sought.

Does the vacant building credit apply to any vacant building being brought back into use?

Paragraph: 023

The vacant building credit applies where the building has not been abandoned. The policy is intended to incentivise brownfield development, including the reuse or redevelopment of empty and redundant buildings. In considering how the vacant building credit should apply to a particular development, local planning authorities should have regard to the intention of national policy.

In doing so, it may be appropriate for authorities to consider:

- Whether the building has been made vacant for the sole purposes of re-development.
- Whether the building is covered by an extant or recently expired planning permission for the same or substantially the same development.

All England Official Transcripts (1997-2008)

R (on the application of Egerton) v Taunton Deane Borough Council

Town and country planning - Development - Building - Interested parties being granted planning permission for extension of farm building - Claimant challenging grant of permission on basis farm building within curtilage of different building with listed building consent - Local planning authority rejecting challenge - Whether authority erring - Planning (Listed Buildings and Conservation Areas) Act 1990, s 1

[2008] EWHC 2752 (Admin)

CO/3508/2007, (Transcript: Wordwave International Ltd (A Merrill Communications Company))

QUEEN'S BENCH DIVISION (ADMINISTRATIVE COURT)

SULLIVAN J

23 OCTOBER 2008

23 OCTOBER 2008

P Wadsley for the Claimant

P Cairnes for the Defendant

The Interested Parties did not appear and were not represented

Ashfords; Taunton Deane Borough Council

SULLIVAN J:

[1] In this application for judicial review the Claimant seeks a quashing order in respect of the Defendant's decision on 1 February 2007 to grant planning permission to the interested parties for an extension to Mill Barn, Jews Farm, Wiveliscombe without requiring the interested parties to apply for listed building consent.

[2] The Claimant lives at the Old Granary at Jews Farm. He objected to the interested parties' application for planning permission on the basis that Mill Barn was a listed building because it was within the curtilage of Jews Farmhouse which was listed on 26 March 1984. The Defendant rejected that contention and decided that Mill Barn was not listed, because it was not within the curtilage of the listed farmhouse.

[3] The listing on 26 March 1984 describes the farmhouse, 18th century, incorporating earlier work, with 19th century alterations, but does not describe or define its curtilage.

[4] It is common ground that if Mill Barn was within the curtilage of the farmhouse on 26 March 1984, it is to be treated as part of the listed building by virtue of s 1(5) of the Planning (Listed Buildings and Conservation Areas) Act 1990.

[5] It is also common ground that whether Mill Barn was within the curtilage of the farmhouse on 26 March 1984 is a question of fact, and that in deciding that question of fact, three factors are of particular relevance "They are (1) the physical 'layout' of the listed building and the structure, (2) their ownership, past and present, (3) their use or function, past and present." (See per Stephenson LJ at p 407 of *Attorney General ex rel Sutcliffe v Calderdale Borough Council* (1982) 46 P & CR 399, [1983] JPL 310). Stephenson LJ continued:

"Where they are in common ownership and one is used in connection with the other, there is little difficulty in putting a structure near a building or even some distance from it into its curtilage. So when the terrace was built, and the mill was worked by those who occupied the cottages, and the mill owner owned the cottages, it would have been hard, if not impossible, to decide that the cottages were outside the curtilage of the mill."

In that case the cottages were physically linked to the mill.

[6] On behalf of the Claimant, Mr Wadsley submitted that the Defendant had considered only the second factor, ownership, and had wrongly concluded that the farmhouse and Mill Barn were not in common ownership in 1984, and had failed to address the first and the third factors mentioned in *Calderdale*.

[7] The Defendant accepts that the evidence now available establishes, on the balance of probability, that the two properties were in the same ownership in 1984, and further accepts that when the dispute first arose in 2005, its conservation officer had focused on the question of common ownership. However, the Claimant was not satisfied with the Defendant's response to his queries in 2005 and referred the matter to the Local Government Ombudsman. In its response to the Ombudsman, the Defendant listed correspondence in which the Defendant's officers had referred, inter alia, to the *Calderdale* case and to relevant guidance to similar effect in paras 3.34 and 3.35 of Planning Policy Guidance 15: Planning and the Historic Environment. Further, the Defendant had stated that it was not persuaded "on the range of material criteria" that Mill Barn was included in the listing in 1984 and had referred to ownership as "one of the factors" that would have to be considered in any review.

[8] When the correspondence is read as a whole, I do not accept Mr Wadsley's submission that in determining the planning application some time later, in February 2007, the Defendant simply had regard to the question of ownership to the exclusion of the two other factors that are referred to in the *Calderdale* decision to which the Defendant had itself referred. Provided the Defendant correctly directed itself and had regard to the relevant factors, the question for this court is whether the Defendant could reasonably have come to the conclusion that Mill Barn was not within the curtilage of the farmhouse in 1984. It is not for this court to substitute its own view of the matter.

[9] However, in the present case that distinction between the court's own view and the range of views reasonably open to the Defendant local planning authority is of no consequence because, for the reasons set out below, I am satisfied that not merely was the Defendant entitled to come to the conclusion that Mill Barn was not within the curtilage of Jews Farmhouse, it was plainly the correct conclusion to come to on the basis of the admittedly limited evidence as to the circumstances as they existed on the ground in March 1984.

[10] Looking firstly at the physical layout of the farmhouse and Mill Barn, a 1965 aerial photograph shows the farmhouse enclosed on its western and southern sides by a wall. In his witness statement the Claimant says that this wall, which was replaced after 1984 by a higher wall, was approximately two foot nine inches to three foot tall. Mill Barn and the Old Granary are located to the south west of the farmhouse, on the other side of the wall.

[11] At its nearest point, Mill Barn is some 34 metres from the farmhouse. Between Mill Barn and the farmhouse is an outbuilding, which was in existence in 1984 and now belongs to Mill Barn. The outbuilding is some 13.5 metres from the farmhouse. The outbuilding is, and was in 1984 (see the Ordnance Survey annexed to a conveyance dated 13 April 1988), L-shaped. The Old Granary, which was also in existence in 1984, lies immediately to the north of Mill Barn. To the north east of the Old Granary, and directly to the west of the farmhouse, there is, and was in 1984, another building which now belongs to the Old Granary.

[12] I accept that it must be very much a matter of impression, but looking at the 1965 aerial photograph and the Ordnance Survey annexed to the 1988 conveyance, this group of four buildings, the Old Granary, Mill Barn, the L-shaped building and the building on their northern side, now owned by the Old Granary, together form a grouping of buildings which "turns its back" on the farmhouse on the other side of the wall.

[13] Although the Claimant contends in his witness statement that there was a five-barred gate which allowed vehicular access through the wall, which is hidden by trees in the 1965 aerial photograph, it would appear from examination of the Ordnance Survey annexed to the 1988 conveyance that this gate, which is just to the north of the L-shaped building, in fact gave access in 1984, not into the area enclosed by the wall, but into the field to the south of the wall.

[14] The Claimant, in his witness statement, refers to the position of this gate being evident on an extract from the 1904 Ordnance Survey. That is indeed the case. The 1904 Ordnance Survey perhaps illustrates why the group of four buildings, including Mill Barn, can be said to "turn their back" on the farmhouse and its curtilage behind the wall, or perhaps, to put the matter more accurately, why the farmhouse turns its back on them.

[15] In 1904, it would appear from the Ordnance Survey that the principal access to the farmhouse was from the south, with a drive that ended in a formal turning circle to the south of the house, which was framed by ornamental planting on either side. A gate, in the position referred to by the Claimant, probably led through into the farmyard buildings beyond to the west. At that time the main access to the farmyard to the west of the farmhouse was via the north side of the house. The access road then curved south, alongside the curved wall, to the west of the farmhouse.

[16] That curved wall still existed in 1984, but as the 1965 aerial photograph shows, the formal drive and planting to the south of the farmhouse had been cut through by a wall with two straight sections in a dog leg, which separated the farmhouse from what had, by 1965, become a field to the south of the wall.

[17] The Claimant contends that there was another pedestrian gate in the wall. The 1965 photograph clearly shows the line of a path running a little distance to the north of the northern building in the group of four buildings, to which I referred earlier, and there may well have been a gap or gate in the circular section of the wall at that point, hidden amongst the trees.

[18] On the assumption that there was such a gate (there is no contemporaneous evidence to that effect beyond that which may be inferred from the aerial photograph), the farmhouse and its curtilage behind the wall is still very obviously separate from the farm buildings beyond the wall.

[19] Beyond the four buildings to which I have referred, there were a number of larger agricultural buildings which stretched away further to the west. If Mr Wadsley is correct and the curtilage of the farmhouse was not defined by the wall on its western and southern sides, and extended so as to incorporate Mill Barn and the Old Granary, there is no readily discernible feature which might serve to define the curtilage to either the west or the south of the farmhouse. Mr Wadsley very properly accepted that the curtilage could not extend so as to include the whole of the farm, but one has to ask: if the curtilage of the farmhouse was not defined to the south by the wall, then where did it end? Beyond the wall there are simply fields. If the curtilage is not

defined to the west of the farmhouse by the wall, where does it end? Mr Wadsley submitted that the curtilage would include, consistently with his submissions, the large agricultural buildings further to the west of the four buildings.

[20] I do not accept the submission that either those buildings, or the group of four buildings, including Mill Barn, were within the curtilage of the farmhouse. In 1984 there was a clear distinction between the farmhouse and its curtilage and the farmyard with its buildings, which included Mill Barn. I accept that there will not necessarily be such a physical distinction in each and every case, but on the evidence of the aerial photograph and the Ordnance Survey, there was such a distinction in the present case.

[21] This view is reinforced by the only evidence as to the use and function of the Old Granary and Mill Barn in 1984, the third factor which *Calderdale* tells us must be taken into account. The names of the two converted barns, the Old Granary and Mill Barn, are not mere whimsy in the present case. It would seem that they reflect the former agricultural uses of those buildings.

[22] A letter from a Mr Buckingham, dated 13 April 2007, is the only evidence as to the use of the buildings in 1984. Mr Buckingham reared pheasants for many years towards the western end of Jews Farm with the permission of Richard Coate, who lived at Jews Farmhouse between 1978 and 1984, and then at a cottage known as Candletrees to the west of Jews Farmhouse between 1984 and 1991.

[23] Mr Buckingham says in his letter that Mr Coate was a farmer who traded in sheep and cattle throughout his time at Jews Farm on around 100 acres of farmland. Mr Buckingham says this about the use of the buildings:

"Prior to Mr Coate disposing of the two stone barns nearest to Jews Farmhouse and to the west of his home in 1998, I agreed to clear the barns which had been used as storage by him since they were reasonably weatherproof. The two barns had earlier been used for drying grain and milling operations."

[24] Mr Buckingham says that he has lived in Wiveliscombe all his life and, as far as he is aware, "[the] two barns were always used in conjunction with the farming activities carried on at Jews Farmhouse". Thus, it can be seen that in 1984 Mill Barn and the Old Granary were not being used for purposes that were ancillary to the use of the farmhouse as a dwelling house; they were being used for the purposes of the general farming enterprise which was being carried on at Jews Farm. They, and the agricultural buildings to the west, were being used for agricultural purposes. They were not being used, for example, to garage the farmer's car, to store his domestic items, as a children's playroom, staff quarters et cetera.

[25] Mr Wadsley accepted that on the evidence, limited though it was, Mill Barn was being used for agricultural purposes in 1984, but his principal submission was that this was of no consequence, because the farmhouse was not simply a dwelling house, it was the hub from which the agricultural business at Jews Farm was being conducted. I readily accept that the farm was being run from the farmhouse in 1984, but the whole of the farm, and all the agricultural buildings upon it, cannot sensibly be regarded as being within the curtilage of the farmhouse on that account.

[26] The primary use of the farmhouse was as a house. The farm, as a whole, was not listed, the farmhouse was listed, and its curtilage, as a house, was clearly defined by the wall which separated the residential use within the wall from the agricultural use that was being carried on in the agricultural buildings, including Mill Barn, and on the fields beyond.

[27] As Mr Cairnes pointed out on behalf of the Defendant, the separate and distinct residential function of the farmhouse was reinforced by the fact that after the farmhouse was sold by the Coate family in July 1984, very shortly after it was listed, Richard Coate continued to farm Jews Farm from another dwelling,

Candletrees (see Mr Buckingham's letter). He did so using Mill Barn and the Old Granary and the other buildings just as they had been used before the sale of the farmhouse, namely as agricultural buildings, until he obtained planning permission in 1987 to convert the Old Granary and Mill Barn to dwellings, following which they were sold for that purpose.

[28] For these reasons, although the whole of Jews Farm, including the farmhouse and all the agricultural buildings, including Mill Barn, was in common ownership when the farmhouse was listed in 1984, the listed farmhouse and its residential curtilage was both physically separated from, and functionally distinct from, the agricultural land and buildings on the other side of the wall. The fact that they were all constituent parts of the same farming enterprise at Jews Farm does not mean that Mill Barn, or any of the other agricultural buildings beyond the wall, were within the curtilage of the farmhouse. The Defendant's decision was, in my judgment, entirely correct, and there is therefore no basis upon which the planning permission should be quashed.

Application dismissed.

Neutral Citation Number: [2001] EWHC 697 (Admin)
IN THE HIGH COURT OF JUSTICE
(Queen's Bench Division)
ADMINISTRATIVE COURT

Cardiff Crown Court
Cathays Park
Cardiff

Date: Friday 18th May 2001

Before:

THE HON. MR. JUSTICE JACKSON, Kt

B E T W E E N

	ROGER MORRIS	Appellant
	-and-	
	WREXHAM COUNTY BOROUGH COUNCIL	1st Respondent
	THE NATIONAL ASSEMBLY FOR WALES	2nd Respondent

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MR. GERWYN SAMUELS appeared on behalf of the appellant

MISS RUTH HENKE appeared on behalf of the 2nd respondent

JUDGMENT

1. MR. JUSTICE JACKSON: This judgment is in six parts, namely

Part 1 "Introduction", Part 2 "The Facts", Part 3 "The Present Proceedings", Part 4 "The Law", Part 5 "Did the Inspector correctly apply the law to the facts of the present case?", Part 6 "Conclusion".

PART 1: Introduction

2. This is an appeal against an Inspector's decision upholding a listed building enforcement

notice. The appellant is Mr. Roger Morris, a property owner, who has been required by the enforcement notice to remove and replace certain roofing works. The first respondent is the Wrexham County Borough Council which served the enforcement notice. I shall refer to the first respondent as “the Council”. The second respondent is the National Assembly for Wales. The National Assembly for Wales appointed the Planning Inspector whose decision is now under appeal.

3. The enforcement notice was served pursuant to the Planning (Listed Building and Conservation Areas) Act 1990, to which I shall refer as “the 1990 Act”. The appellant's appeal to the Inspector and his subsequent appeal to this court have both been brought pursuant to the provisions of the 1990 Act.
4. In order to set the scene, I must briefly describe the property around which these proceedings revolve. The Lodge, Halton, Chirk, Wrexham, Clwyd, was formally a substantial house and is now a hotel. I shall refer to this building as “The Lodge”. In past times (but no longer) The Lodge, its outbuildings and certain farmland to the north and east of The Lodge were in common ownership and occupation. I shall refer to the outbuildings which stand close to The Lodge as “the outbuildings”. I shall refer to the farmland which lies to the north and to the east of the lodge as “the surrounding farmland”.
5. The outbuildings surround the northern part of what used to be the courtyard of The Lodge. The western part of those outbuildings now belongs to Mr. and Mrs. Davenport, who own The Lodge. I shall refer to these outbuildings as “the north-west outbuildings”. The eastern part of the outbuildings now belongs to the appellant, who also owns the surrounding farmland. I shall refer to these outbuildings as “the north-east outbuildings”. Part of the north-east outbuildings has been converted into a dwelling-house, which is now occupied by the appellant's mother. Part of the north-east outbuildings is used by the appellant as a cattle milking shed.
6. Somewhat to the north of all the outbuildings there stand other farm buildings, to which I shall refer as “the farm buildings”. These are now used by the appellant in conjunction with his farming activities.
7. The roofing works the subject of these proceedings were carried out by the appellant to the north-east outbuildings in 1996.
8. Now that I have set the scene and defined the terms to be used, I shall narrate the relevant facts in chronological order.

PART 2: The Facts

9. In the seventeenth century The Lodge was a hunting lodge for the Chirk Castle Estate. In the late eighteenth century, the nineteenth century and early twentieth century the area around The Lodge was used for coal mining and was known as the Black Park Colliery. During this period The Lodge served as home for successive managers of the colliery, and it was known by the name “Black Park Lodge”.
10. Between 1953 and 1962 one Ririd Myddleton owned The Lodge, the outbuildings and the surrounding farmland. In 1960 Mr. Myddleton leased The Lodge and the north-west outbuildings to Colonel Henry Bromilow. Colonel Bromilow was an elderly man. I am told by counsel that he was the last surviving son of the former colliery owner. He had lived in

the house since the 1940's. The rent payable by Colonel Bromilow was £120 per annum. It is agreed by counsel that this sum is substantially less than the rack rent would have been during that period. It is a reasonable inference that this low rental figure was fixed because of Colonel Bromilow's connection with The Lodge and, probably, his family relationship with Mr. Myddleton.

11. It appears that between 1953 and 1962 Mr. Myddleton, or a tenant of Mr. Myddleton, farmed the farmland surrounding The Lodge and used the north-east outbuildings in connection with that farming activity.
12. In July 1962 Mr. Myddleton conveyed to William Jones The Lodge, the outbuildings and the surrounding land. This conveyance was subject to the lease to Colonel Bromilow. On 29th June 1965 that lease came to an end by effluxion of time. On 30th June 1965 Mr. Jones granted a fresh lease to Colonel Bromilow of The Lodge and of the north-west outbuildings on the same terms as the previous lease. Again it seems probable that the low rental figure was fixed because of Colonel Bromilow's connections with The Lodge and/or his family connections with Mr. Jones. It appears to have been the intention of all parties that The Lodge should be Colonel Bromilow's home for life at a modest cost.
13. On 4th January 1966 the Secretary of State for Wales listed The Lodge, pursuant to s.32(1) of the Town and Country Planning Act 1962, as a building of special architectural or historic interest. The Secretary of State described The Lodge as follows in the list:

“Early nineteenth century. Brick with slated roof and brick stacks. Bracketed eaves. Three storeys. Sashes. Three-window front. Doric pillared porch. Two gables in front. Rectangular fanlight to door. Long wing at rear.”

In a separate section of the list, Mr. Jones was shown as the owner of The Lodge and Colonel Bromilow was shown as the occupier.

14. In November 1968 Mr. Jones conveyed The Lodge, the outbuildings and the surrounding farmland to one Iddon Evans, his wife Linda Evans and their son John Evans. Mr. and Mrs. Evans and their son were carrying on business as farmers under the firm name “I.G. Evans & Son”. The conveyance to the Evans family was subject to Colonel Bromilow's lease. Following this conveyance the Evans family farmed the farmland surrounding The Lodge, and they used the north-east outbuildings in connection with their farming activity. Colonel Bromilow continued to occupy The Lodge and to make such use as he wished of the north-west outbuildings.
15. On 29th June 1970 Colonel Bromilow's renewed lease came to an end by effluxion of time. It appears that thereafter Colonel Bromilow continued to occupy The Lodge and the north-west outbuildings without any action being taken to regularize his position. In or about 1971 Colonel Bromilow died. After the death of Colonel Bromilow, the Evans family became the occupiers as well as the owners of all of The Lodge, the outbuildings and the surrounding farmland. However, it seems doubtful that they treated this property as a composite whole. They continued to use the north-east outbuildings in connection with their farming activities, but it seems that they did not use the north-west outbuildings in the same way. The north-west outbuildings appear to have fallen into progressive disrepair over the years. Furthermore, when eventually the Evans family came to sell off The Lodge, they did not retain the north-west outbuildings as an adjunct to their farm. It seems to me unlikely that

the north-west outbuildings had any farming purpose in the 1970's and 1980's.

16. The farm buildings which the Evans family used in connection with the farmland around The Lodge can be seen on the plan at page 35 of the bundle. These farm buildings were in the region of Ordnance Survey Part No. 2157. In addition to these farm buildings, the Evans family also used the north-east farm buildings for farming purposes, as I have previously stated.
17. In November 1989 Mr. and Mrs. Evans obtained planning permission to convert part of the north-east outbuildings into a dwelling. The part in question was the southern three-quarters of the eastern outbuilding. This work was carried out during 1990. Mr. and Mrs. Evans then moved into the newly created dwelling as their home. In order to delineate their garden, Mr. and Mrs. Evans constructed a combination of fencing and walling between the points marked E, F and G on the plan at page 16 of the bundle.
18. In February 1991 the Evans family sold to Mr. and Mrs. Davenport The Lodge and the north-west outbuildings. Mr. and Mrs. Davenport converted The Lodge into a hotel. Since 1993 Mr. and Mrs. Davenport have carried on a hotel business at that address. It appears from the photographs that Mr. and Mrs. Davenport have made no use of the north-west outbuildings. Those outbuildings have continued to deteriorate, and some of the windows have fallen out.
19. In November 1993 the Evans family sold to the appellant the north-east outbuildings and also the surrounding farmland. Since November 1993 the appellant has farmed that farmland. He has made use of the farm buildings at Ordnance Survey Part 2157 and also the north-east outbuildings, except for the section converted into a dwelling-house. That dwelling-house has been and is occupied by the appellant's mother.
20. In 1995 it became apparent that the slate roof of the north-east outbuildings was falling into disrepair. In July 1996 the appellant replaced the old defective roof with corrugated steel sheeting. The Council took the view that this new roofing was out of keeping with its surroundings. The Council also took the view that the north-east outbuildings were a listed building because they fell within the curtilage of The Lodge. On 5th November 1999 the Council served upon the appellant an enforcement notice (1) asserting that the construction of the new roof was a breach of listed building control, (2) requiring its removal and (3) requiring the construction of a tile or slate roof.
21. The appellant appealed against the enforcement notice, pursuant to s.39(1) of the 1990 Act, on a variety of grounds. The only ground which is relevant for present purposes is the contention that the north-east outbuildings are not a listed building because they do not fall within the curtilage of The Lodge.
22. The National Assembly for Wales appointed Mr. Clive Cochrane, a Planning Inspector, to hear and determine the appellant's appeal. The Planning Inspector received written evidence from both parties. On 10th July 2000 the Inspector visited the site and had the opportunity to ask any questions necessary to clarify the evidence. In a written decision dated 18th September 2000 the Inspector dismissed the appellant's appeal. The Inspector upheld the enforcement notice, save that he amended the description of the replacement roof which the appellant must construct.
23. The Inspector dealt with the question whether the north-east outbuildings constituted a listed

building as follows:

6.”The claim that the appeal building is not of special architectural or historic interest is made on the grounds that it does not form part of the curtilage of the principal listed building, The Lodge. Whereas ground (a) seeks to challenge the intrinsic architectural or historic value of a statutorily listed building, this part of the appeal actually amounts to an appeal under ground (b) because it is claimed that the appeal building is not actually part of the curtilage of the listed building, and consequently listed building consent is not required at all for the works carried out. Some historical evidence shows that the farmhouse and the farm buildings were subdivided into separate ownership over the years, and that part of the appeal property is not a separate dwelling with its own curtilage. Whilst the appeal building is part of an original barn, which is clearly not of the same architectural merit as The Lodge, it appears to form part of the historical and functional curtilage of the principal listed building, comprising a range of outbuildings around the farmyard of the main house.

7.However, the barns and outbuildings are not listed on their own merits, and therefore would only be protected by virtue of lying within the curtilage of the listed buildings at the time it was added to the statutory list. As paragraph 88 of Welsh Office Circular 61/96 makes clear, ‘the principal tests as to whether an object or structure is within the curtilage of a listed building relate to the physical layout of the land surrounding the listed building at the date of the statutory listing and the relationship of the structures on the surrounding land to each other’. The Circular goes on to point out that ‘the courts have held that for a structure or building within the curtilage of a listed building to be part of a listed building, it must be ancillary to the principal building, that it must have served the purposes of the principal building at the date of listing in a necessary or reasonably useful way, and must not be, historically, an independent building. Where a self-contained building was fenced or walled-off from the remainder of the site at the date of listing, regardless of the purpose for which it was erected and is occupied, it is likely to be regarded as having a separate curtilage’.

8.Historically, it is unlikely that the appeal building was independent of The Lodge, and it appears from the copies of conveyance and deed plans of 1962... [This is clearly a typographical error for 1968] ...that the barns and 113 acres of land remained in the same ownership as the house. Although it would appear that the farm buildings and land were leased separately from The Lodge from 1960 until 1970, it was not until 1991 that The Lodge was sold off as a separate unit from the farm buildings and land. Therefore, notwithstanding the leasehold of the main house at the date of listing in 1966, The Lodge and the barns, including the appeal building, and the farmland were all in the same ownership.

9.Therefore, in terms of its original function, history and ownership, the appeal building has all the attributes of an ancillary part of the listed building, and I conclude that it formed part of the curtilage of The Lodge at the date it was first added to the list of buildings of special architectural or historic

interest. The subsequent subdivision of part of the farmyard and the appeal building into a separate ownership in 1993 does not overcome the fact that these outbuildings are functionally and historically related to the listed building and form part of its curtilage.

10. Although it is claimed that no specific reference was made to the need for listed building consent when the conversion of part of the appeal barn into an agricultural worker's dwelling was approved in 1989, it is necessary for me to consider whether listed building consent would be required for the works alleged in the enforcement notice. Similarly, the failure of local searches and land charges to reveal that the building is part of the principal listed building do not remove the need to reach a decision on the legal grounds in this appeal.

11. I consider that the appeal building is an integral part of the curtilage of The Lodge, the principal listed building, as defined in section 1(5) of the Planning (Listed Buildings and Conservation Areas) Act 1990. Accordingly, listed building consent would be required for the material alterations carried out to the roof of the outbuildings, and ground (c) of the appeal fails. Had ground (b) also been pleaded, that too would fail for the same reasons.”

24. On the 13th October 2000 the appellant commenced the present proceedings, appealing to the High Court against the Inspector's decision.

PART 3: The Present Proceedings

25. The appellant's appeal is brought pursuant to s.65 of the 1990 Act. This provision enables the appellant to appeal against the Inspector's decision on a point of law. The grounds of appeal are formulated in the appellant's notice as follows:

“The appeal is on a point of law, namely whether the Inspector correctly applied the law when ruling that an outbuilding was within the curtilage of the listed building so as to extend the listing status to the outbuilding in question.”

26. The appellant's appeal has been heard over the last two days. Both the appellant and the National Assembly for Wales have been represented by counsel. The Council has taken no part in the appeal proceedings and has not been represented at the hearing.

PART 4: The Law

27. Section 1(5) of the 1990 Act provides as follows:

“In this Act ‘listed building’ means a building which is for the time being included in a list compiled or approved by the Secretary of State under this section; and for the purposes of this Act -

(a) any object or structure fixed to the building;

(b) any object or structure within the curtilage of the building which, although not fixed to the building, forms part of the land and has done so since before

1st July 1948

shall be treated as part of the building.”

28. Since The Lodge became a listed building on 4th January 1966, the crucial question in the present case is whether the north-east outbuildings were “within the curtilage” of The Lodge on that date. The meaning of the phrase “within the curtilage” in the context of listed building legislation has been the subject of much judicial consideration over the last 20 years. Whilst grateful for the abundance of authorities cited, I shall limit myself to those which are directly in point.
29. *Attorney-General ex rel. Sutcliffe v Calderdale Borough Council* [1982] 46 P.& C.R. 399 concerned a mill which was linked by a bridge to a terrace of cottages. The mill was listed as a building of special architectural or historic interest, pursuant to s.54 of the Town & Country Planning Act 1971. In 1981 the Calderdale Borough Council proposed to demolish the terrace of cottages. Skinner J held that the Council could not do so because the cottages fell within the curtilage of the mill. Section 54(9) of the Town & Country Planning Act 1971 was in similar terms to what is now s.1(5) of the 1990 Act. The effect of that provision was that the terrace formed part of the listed building. The Court of Appeal, with some hesitation, upheld Skinner J's decision. Stephenson LJ, who gave the leading judgment, said this at 406 to 507:

“There was, I think, at the end of the argument before us agreement that three factors have to be taken into account in deciding whether a structure (or object) is within the curtilage of a listed building within the meaning of section 54(9), whatever may be the strict conveyancing interpretation of the ancient and somewhat obscure word ‘curtilage’. They are (1) the physical ‘layout’ of the listed building and the structure, (2) their ownership, past and present, (3) their use or function, past and present. Where they are in common ownership and one is used in connection with the other, there is little difficulty in putting a structure near a building or even some distance from it into its curtilage. So when the terrace was built and the mill was worked by those who occupied the cottages, and the mill owner owned the cottages, it would have been hard, if not impossible, to decide that the cottages were outside the curtilage of the mill.”

Stephenson LJ went on to discuss the effect of changes in ownership and changes in use of the cottages in more recent times. At page 409 he concluded, with some hesitation, that these events had not taken the cottages out of the curtilage of the mill. Ackner LJ and Sir Sebag Shaw agreed. Sir Sebag Shaw stated that he shared Stephenson LJ's doubts about the terrace of cottages remaining within the curtilage of the mill.

30. The House of Lords revisited these issues in *Debenhams PLC v Westminster City Council* [1987] 1 A.C. 396. In that case two buildings were for a time linked by a subway and a bridge. One building was listed as being of special architectural or historic interest. The other was not. The House of Lords held, by a majority of four to one, that for listed building purposes the second building was neither fixed to nor within the curtilage of the first. Lord Keith, with whom Lord Templeman, Lord Griffiths and Lord Mackay agreed, discussed in some detail the facts and the decision in the *Calderdale* case. He then said this at page 403 D to H:

“In my opinion to construe the word ‘structure’ here as embracing a complete building not subordinate to the building of which it is to be treated as forming part, would, in the light of the considerations I have mentioned, indeed produce an unreasonable result. Stephenson LJ in the *Calderdale* case considered that objection to be offset by what he regarded as part of the purpose of the listing provisions, namely that of protecting the setting of an architecturally or historically important building. But if that was part of the purpose, it would have been to be expected that Parliament would not have stopped at other buildings fixed to or within the curtilage of such a building, but would have subjected to control also buildings immediately adjoining but not fixed to the listed building, or on the opposite side of the street. All these considerations and the general tenor of the second sentence of section 54(9) satisfy me that the word ‘structure’ is intended to convey a limitation to such structures as are ancillary to the listed building itself, for example the stable block of a mansion house, or the steading of a farmhouse, either fixed to the main building or within its curtilage. In my opinion the concept envisaged is that of principal and accessory. It does not follow that I would overrule the decision in the *Calderdale* case, though I would not accept the width of the reasoning of Stephenson LJ. There was in my opinion room for the view that the terrace of cottages was ancillary to the mill.”

Lord Mackay, with whom Lord Griffiths agreed, said this about the *Calderdale* case at page 411 B to D.

“In my opinion *Attorney-General ex rel. Sutcliffe v Calderdale Borough Council*, 46 P.& C.R.399, is a very special case on its facts, and I believe that it was possible to treat the terrace and the mill, having regard to the history of the properties, as a single unit. At the time the listing was made the whole property was in one ownership and therefore when the mill was included, a notice to that effect was served on the only person who was interested as owner in the terrace. For the reasons which I have already given, I cannot regard, with respect, the reasoning by which the Court of Appeal in that case reached its conclusion as according with the true construction of section 54(9) of the Act of 1971.”

31. *Watts v the Secretary of State for the Environment* [1991] J.P.L. 718 concerned a house known as Bix Manor, which was listed in 1985. A brick and flint wall abutted Bix Manor and ran alongside the drive. One of the outbuildings was converted to a dwelling, and the owner of that dwelling demolished a section of wall for the purpose of access. The Inspector held that the wall was a listed building because it was a structure attached to Bix Manor.

Sir Graham Eyre, QC, sitting as a Deputy Judge of the Queen's Bench Division, allowed an appeal against that decision. At page 724 the Deputy Judge said this:

“At the date of the listing, the section of wall formed part of the curtilage of a property separate from the listed building in terms of ownership and physical occupation. That property was being put to a wholly independent use, unassociated with Bix Manor. Did the section of wall constitute a structure and solely to a building to which it had merely been associated historically and physically at some time prior to the listing, of which its owner and occupier had not been given notice under section 54(7) of the Act? He would have had

little difficulty in finding that a wall was a structure ancillary to a listed building if at the time of listing it was fixed to the building and served the purpose of securing the building or its curtilage, and was therefore an accessory to the principal building. The use of words such as 'ancillary' and 'accessory' connoted an element of subordinate and subservient in both a functional and physical sense. At the time of the listing there was no functional connection, and that section of wall did not in any sense serve the listed building. It was clearly ancillary to another separate building and was not a structure ancillary to Bix Manor.”

32. In Secretary of State for the Environment, Transport and the Regions v Skerritts of Nottingham [2000] J.P.L. 789 the Court of Appeal held that a stable block standing in the grounds of a hotel fell within the curtilage of the hotel and was accordingly listed. Robert Walker LJ, who gave the leading judgment, said this at page 795:

“No piece of land can ever be within the curtilage of more than one building, and if houses are built to a density of twenty or more to an acre, the curtilage of each will obviously be extremely restricted. But Norse LJ recognised that in the case of what the now moribund Settled Land Act 1925 refers to as a 'principal mansion house' - which is what Grimsdyke was built as - the stables and other outbuildings are likely to be included within its curtilage.

I also respectfully doubt whether the expression 'curtilage' can usefully be called a term of art. That phrase described an expression which is used by persons skilled in some particular profession, art or science, and which the practitioners clearly understand even if the uninitiated do not. This case demonstrates that not even lawyers can have a precise idea of what 'curtilage' means. It is, as this court said in *Dyer*, a question of fact and degree.

In my judgment the deputy judge was mistaken in treating *Dyer* as having such clear force as he thought it had. Not only was it concerned with dispropriatory legislation, but *Calderdale* and *Debenhams* were not cited, and the court's observations about smallness were not, on the facts of *Dyer*, necessary to the decision. In the context of what is now Part 1 of the Act, the curtilage of a substantial listed building is likely to extend to what are or have been, in terms of ownership and function, ancillary buildings. Of course, as Stephenson LJ noted in *Calderdale* (at p. 407) physical 'layout' comes into the matter as well. In the nature of things the curtilage within which a mansion's satellite buildings are found is bound to be relatively limited. But the concept of smallness is in this context so completely relative as to be almost meaningless and unhelpful as a criterion.”

33. From this review of the authorities one of the principles of law which emerges is as follows: building A is within the curtilage of building B if (1) the buildings are sufficiently close and accessible to one another, and (2) in terms of function, building A is ancillary to building B.

PART 5: Did the Inspector correctly apply the law to the facts of the present case?

34. In paragraphs 6 to 9 of his decision, the Inspector primarily focuses upon the past history of The Lodge, when the main house and the outbuildings would have been in common occupation and would have been used as a composite whole. In my judgment this is the

wrong approach. While matters of past history are relevant, the primary focus of enquiry should be upon the state of affairs existing in January 1966, when The Lodge was listed.

35. What was the state of affairs in January 1966? Colonel Bromilow was living in The Lodge as his home. He was a retired army officer, not a practising farmer. Colonel Bromilow had no right to use the north-east outbuildings, since they fell outside the land leased to him. Furthermore, Colonel Bromilow had no occasion to use the north-east outbuildings, since they were adapted for agricultural use, namely the milking of cattle. Therefore in 1966 the north-east outbuildings were not ancillary to The Lodge.
36. I turn now to the geographical relationship between The Lodge and the north-east outbuildings. In physical terms they were relatively close. However, there appears to have been no ready access between them. A curved brick wall, which can be seen in photographs 1 and 2, ran from the north-western end to the south-eastern end of these outbuildings. The Yorkshire boarding which now stands on top of this wall and the roofing above it are all of more recent origin and should be ignored for present purposes. The position in 1966 appears to be that a brick wall of modest height separated the yard used by Colonel Bromilow from the north-east outbuildings. Whilst the Colonel could no doubt have clambered over the brick wall if he wished, access was hardly convenient.
37. If the legal principles stated in Part 4 of this judgment are applied to the facts of the present case, the only proper conclusion is that in January 1966 the north-east outbuildings were not within the curtilage of The Lodge. It is true that the Evans family owned The Lodge, subject to Colonel Bromilow's lease, and also owned and used the north-east outbuildings. However, this circumstance cannot have the effect of bringing the north-east outbuildings within the curtilage of The Lodge.

PART 6: Conclusion

38. For the reasons stated in Parts 4 and 5 of this judgment, the appellant's appeal succeeds. This matter must be remitted to the Inspector for a re-hearing.
39. I thank both counsel for their clear and helpful arguments, both written and oral.

MISS HENKE: My Lord, it has already been agreed that costs follow the event, and the claimant's costs, as I understand it, have now been agreed.

MR. JUSTICE JACKSON: Thank you very much. What is the figure?

ISS HENKE: My Lord, the figure is £8,267.60

MR. JUSTICE JACKSON: Very well. I will order the second respondent to pay the appellant's costs in the sum of £8,267.60.

MISS HENKE: My Lord, there is one other matter. I am instructed to apply for leave to appeal. The issue of what is a curtilage and what falls within a curtilage is a matter of great importance to the National Assembly who have to deal with matters through their Inspectors on a regular basis.

MR. JUSTICE JACKSON: Are the somewhat unusual facts of this case an appropriate vehicle to seek the general clarification of the law which the National Assembly for Wales desires?

MISS HENKE: My Lord, those are my instructions, and I simply put it on this basis: the Inspector

applied the Welsh Officer Circular as he understood it. Your Lordship's judgment and the test that you put so succinctly is somewhat different from the manner in which it appears in the Circular, and certainly the Welsh Assembly would want to test that in the Court of Appeal.

MR. JUSTICE JACKSON: Miss Henke, I understand the point which you make. I am concerned that the sum of money in issue in these proceedings is relatively small and is much less than the legal costs involved. Also I am concerned that the costs of an appeal to the Court of Appeal will be substantial. Clearly the concerns of your client extend beyond the facts of this case.

MISS HENKE: My Lord, yes.

MR. JUSTICE JACKSON: Is the National Assembly for Wales prepared to pay both sides' costs of the appeal irrespective of outcome?

MISS HENKE: My Lord, my instructions do not go that far.

MR. JUSTICE JACKSON: Do I have power to impose that condition?

MISS HENKE: My Lord, I do apologise for keeping your Lordship waiting. I have to confess, I looked the matter up before I came into court, put the necessary ribbon in the right place and subsequently moved it. Such is the way that when on your feet, a removed ribbon is the one place you cannot find. I do apologise for the delay. My Lord, the answer would appear to be yes. 52.3. My Lord, I look at the key particulars of the white book at page 988.

MR. JUSTICE JACKSON: I am terribly sorry?

MISS HENKE: Page 988, my Lord.

MR. JUSTICE JACKSON: "Conditional permission". Do you wish to make any submissions to me as to whether or not I should impose such a condition?

MISS HENKE: My Lord, my obligation to my client would be to submit that you ought not.

MR. JUSTICE JACKSON: Yes, I appreciate that. Have you any substantive arguments to put to me as to why I should not?

MISS HENKE: My Lord, no.

RULING

MR. JUSTICE JACKSON: This is an application by the National Assembly for Wales for permission to appeal against the judgment which I have just delivered. In support of her application for permission, Miss Henke submits that this case raises an important issue concerning the meaning of the phrase "within the curtilage of" in the context of listed building legislation. Miss Henke tells me that the National Assembly for Wales desires to obtain further clarification from the Court of Appeal concerning the meaning of this phrase, and she tells me that the National Assembly are concerned about the matter in view of its occurrence in other cases, having nothing to do with the present case.

For my part, I do accept that the point of law which arises in this case is of some importance. I can also see that the clarification of the law from the Court of Appeal would be of benefit to the National Assembly for Wales. I am, however, troubled by one matter. The sum which is at issue in

these proceedings is relatively small. If ultimately the appellant loses these proceedings, he will be put to the cost of replacing the corrugated sheet roofing which now sits on top of the north-east outbuildings. The cost of that re-roofing exercise must be substantially less than the costs of the legal proceedings.

The overriding objective, which is embodied in Part 1 of the Civil Procedure Rules, requires this court to deal with cases in a way which is proportionate to the amount of money involved, as well as proportionate to the importance of the case.

From the point of view of the National Assembly for Wales, the importance of this litigation is not limited to what happens to a particular outbuilding in the Wrexham area. From the point of view of the appellant, his interest is limited to the roof of that particular outbuilding.

In all the circumstances I have come to the conclusion that because of the importance of the point of law, I ought to grant permission to appeal. However, because of the circumstances which I have just mentioned, I should grant that permission subject to a condition as to costs. Pursuant to r.52.3(7)(b), I grant permission to appeal subject to the condition that the National Assembly for Wales pays all the costs of Mr. Morris in the Court of Appeal, irrespective of the outcome of the proceedings.

In the event that the National Assembly for Wales succeeds in its appeal and establishes the principles of law for which it contends, it will then be a matter for the discretion of the Court of Appeal whether or not to disturb the order for costs which I have made in this court. Nothing which I say this morning is intended to usurp the function of the Court of Appeal in exercising its discretion in respect of all costs incurred in lower courts, including of course this court.

MISS HENKE: My Lord, I am grateful.
