



Department for
Communities and
Local Government

Our Ref: APP/K3415/A/14/2224354

Mr Richard Brown
CBRE Ltd
55 Temple Row
Birmingham B2 5LS

13 February 2017

Dear Mr Brown

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78
APPEAL MADE BY IM PROPERTIES DEVELOPMENT LIMITED, THE GREAVES
FAMILY AND THE HOLLINSHEAD FAMILY
LAND AND BUILDINGS OFF WATERY LANE, CURBOROUGH, LICHFIELD WS13 8ES
APPLICATION REF: 14/00057/OUTMEI**

1. I am directed by the Secretary of State to say that consideration has been given to the report of John L Gray, DipArch, MSc, Registered Architect, who held a public local inquiry on 10-13 and 17-20 March 2015 and closed in writing on 26 January 2016 into your clients' appeal against the decision of Lichfield District Council ('the Council') to refuse planning permission by notice dated 16 January 2014 for the removal of buildings and other structures and construction of up to 750 dwellings, primary school, care village, neighbourhood facilities to include retail development (Use Classes A1, A2, A3, A4, A5), community building (use Class D1), parking, comprehensive green infrastructure comprising formal and informal open space, footpaths, cycleways, water areas (also including sustainable drainage systems) and landscaping, new access points to Watery Lane and Netherstowe Lane and improvements to Netherstowe Lane (all matters reserved except points of access) in accordance with application ref: 14/00057/OUTMEI dated 20 May 2014.
2. On 24 September 2014 this appeal was recovered for the Secretary of State's determination, in pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act 1990, because the appeal involves proposals for residential development of over 150 units or a site of over 5 hectares, which would significantly impact on the Government's objective to secure a better balance between housing demand and supply and create high quality, sustainable, mixed and inclusive communities.

Inspector's recommendation and summary of the decision

3. The Inspector recommended that the appeal be dismissed.
4. For the reasons given below, the Secretary of State disagrees with the Inspector's recommendation. He has decided to allow the appeal and grant planning permission. A copy of the Inspector's report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

Matters arising since the close of the inquiry

5. On 23 May 2016 the Secretary of State referred back to the parties to invite representations on: the five year land supply position; the Court of Appeal judgment in the cases of *Suffolk District Council v Hopkins Homes Ltd & Secretary of State for Communities and Local Government* and *Richborough Estates Partnership LLP v Cheshire East Borough Council & Secretary of State for Communities and Local Government* [2016] EWCA Civ 168; the adoption by Lichfield District Council of its Community Infrastructure Levy Charging Schedule on 19 April 2016, and the impact of the proposal on the integrity of the Cannock Chase SAC, alone or in combination with impacts from other development. The Secretary of State has taken the representations received (listed at Annex B below) into account in reaching his decision. As these representations were circulated to the parties the Secretary of State does not find it necessary to reproduce them here. Copies may be obtained on written request to the address at the foot of the first page of this letter.
6. In September 2016 the Council published on its website its Strategic Housing Land Availability Assessment 2016 and Five Year Housing Land Supply Paper 2016.

Policy and statutory considerations

7. In reaching his decision, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise.
8. In this case, the development plan consists of the saved policies of the Lichfield District Local Plan (1998) (LP), and the Lichfield District Local Plan Strategy 2008-2029 (2015) (LPS). The Secretary of State considers that the development plan policies of most relevance to this case are those set out at IR22-28.
9. Other material considerations which the Secretary of State has taken into account include the National Planning Policy Framework ('the Framework') and associated planning guidance ('the Guidance'), as well as the Community Infrastructure Levy (CIL) Regulations 2010 as amended.
10. In accordance with section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (LBCA), the Secretary of State has paid special regard to the desirability of preserving listed structures or their settings or any features of special architectural or historic interest which they may possess.

Main issues

11. The Secretary of State agrees with the Inspector that the main issues are those set out at IR232.

Highway matters

12. For the reasons set out by the Inspector at IR233-240, the Secretary of State agrees that walking and cycling distances are longer than could be desired, but also that the appeal site is better placed than many other locations in the Lichfield area. He considers that there would be appropriate public transport provision, owing in particular to the improvement in bus connectivity proposals. Having considered paragraph 32 of the Framework, he does not consider that permission should be refused on transport grounds in this case.

Landscape character

13. For the reasons set out at IR241–246, the Secretary of State agrees that the landscape and visual harm from development should not weigh heavily against the appeal proposals.

Trees and hedgerows

14. For the reasons given at IR248-250, the Secretary of State agrees that while translocation of the historic hedgerows would be a poorer conservation option than retaining the hedgerows in their historic location, the visual character of the hedgerow need not be lost. He further agrees that the proposed access using an improved Netherstowe Lane remains the least harmful of the proposed options.

15. For the reasons given at IR251-2, the Secretary of State agrees with the Inspector that trees T134 and T125 should be accepted as veteran trees. For the reasons given at IR253-255 the Secretary of State agrees that even were harm to the root systems of the trees avoided, their appearance would be harmfully diminished. The Secretary of State concludes, in agreement with the Inspector (IR258) that there would be harm to the ancient hedgerow along the west side of Netherstowe Lane. He further agrees that the loss of the hedgerow on the east side of the road would be modestly harmful. He further agrees that one could only be confident that hedgerow trees, including T134 and T135, would survive only if very limited works to widen the road were carried out, and that it is unclear that, even if acceptable in highway terms, these would leave the trees unharmed.

Curborough Grange

16. For the reasons given at IR259-265, and having considered paragraphs 131 to 134 of the Framework, the Secretary of State agrees that there is harm to the setting of the Grade II listed Curborough Grange, a farmhouse dating from the early to mid 18th century. He agrees that the farmland setting is an important aspect of the significance of the listed building, with the combination of the setting and the basic fabric of the buildings (farmhouse and farmstead) conveying the original function of a working farm. It is no longer a working farm and the traditional farmstead buildings to its east have been converted to dwellings. Overall, the Secretary of State agrees that the harm is 'less than substantial' for the purpose of paragraph 134 of the Framework.

Views of Lichfield Cathedral

17. For the reasons set out at IR266-268, and having applied paragraphs 131 to 134 of the Framework, the Secretary of State agrees that the harm to the setting of the Grade I listed Cathedral would be so slight as barely to cause any harm at all to the significance of the Cathedral as a listed building. He also agrees that, while there would be conflict with Policy CP14, there is only one publicly-available view of the Cathedral from Netherstowe Lane. However, having given special regard to the desirability of preserving the setting of the Cathedral, he gives considerable weight to the slight harm to the setting. He agrees with the Inspector that, as this harm is 'less than substantial', paragraph 134 of the Framework applies.

Housing Land Supply (HLS)

18. As part of the reference back exercise (referred to at paragraphs 5-6 above), the Secretary of State has taken into account the representations made by all the parties on this issue. He notes too that in September 2016, both the Lichfield District SHLAA 2016 and the Council's Five Year Housing Land Supply Paper 2016 were published on its website by Lichfield District Council. He has taken all the above evidence and the Inspector's analysis (IR 269-300) into consideration in his assessment of the HLS position.

Housing Requirement

19. The Council has a recently adopted Local Plan, the Lichfield District Local Plan Strategy 2008-2029 (LP) which was adopted on 17 February 2015. The Secretary of State considers that the LP provides a robust housing requirement figure of 10,030 dwellings for the plan period, or 478 dwellings per annum (dpa).

Addressing shortfall

20. Since the beginning of the plan period (2008), the Council has accumulated a shortfall of 1,943 dwellings. This is set out within the Five Year Housing Land Supply Paper 2016. There is a need for this shortfall to be met in addition to the on-going requirement for housing in the area.

21. There are two commonly used methods for addressing an accumulated shortfall. The 'Liverpool approach' apportions the shortfall across the remaining years of the plan period, whilst the 'Sedgefield approach', seeks to make up the shortfall during the next five years. The Secretary of State has had regard to the Guidance which advocates the 'Sedgefield approach' stating that Local Planning Authorities should aim to deal with any undersupply within the first 5 years of the plan period where possible.

22. However, he notes that this was an issue recently considered by the Local Plan Inspector who found, following rigorous examination, that the 'Liverpool approach' was more appropriate in the case of Lichfield notwithstanding the advice in the PPG. The Local Plan Inspector's conclusion was reached having regard to past rates of delivery in the district, including prior to the recession, and the requirement for completions far in excess of the highest levels ever achieved in the district if the 'Sedgefield approach' were adopted. The Local Plan Inspector highlighted that plans are required to be realistic as well as aspirational and that the Local Plan would likely fail if the Sedgefield approach was used.

23. The Secretary of State further notes that the Local Plan Inspector recognised the potentially critical impact of using either the Liverpool or Sedgefield approaches, and the Guidance, before reasoning that the required housing trajectory using Sedgefield was highly likely to prove unrealistic due to the serious doubt about the necessary high rate of delivery over five years would be attainable in market terms.
24. The Secretary of State has carefully considered the parties' submissions in favour of the 'Sedgefield approach' being adopted. These are, in summary: That past rates of delivery were constrained by policy to direct development towards the urban area; That the Council has published increased housing projections; and that in the period since the LP Inspector considered this issue, it has become clear that the under-provision of housing in Birmingham will lead to increased housing demand in Lichfield.
25. Having carefully considered the parties submissions in favour of the 'Sedgefield approach' being adopted, the Secretary of State considers that these matters do not represent sufficient grounds to not follow the 'Liverpool approach' to addressing shortfall adopted within the LP following rigorous examination and, therefore, agrees with the LP Inspector for the reasons given by the LP Inspector that the shortfall should be apportioned across the remaining plan period.
26. Accordingly, the Secretary of State therefore finds that addressing the shortfall over the remaining plan period would give an annual requirement of 627 dpa, or 3,135 over the 5 year period.

Buffer

27. Paragraph 47 of the Framework requires that an additional buffer of 5% be added to this figure (moved forward from later in the plan period) to ensure choice and competition in the market for land. Where there has been a record of persistent under delivery, it states the buffer should be increased to 20% for the same reason, and to provide a realistic prospect of achieving the planned supply. Having carefully considered the evidence and the parties' submissions on the issue, the Secretary of State considers that a 20% buffer is appropriate in this case, given the historic under delivery of housing in the District and that the 20% buffer should also be added to the shortfall. This leads to a 5 year requirement of 3,762 dwellings or 752 dpa.

Supply

Windfalls

28. Paragraph 48 of the Framework and paragraph 3-24-2-140306 of the Guidance states that Local Planning Authorities may make an allowance for windfall sites in the 5 year supply if they have compelling evidence that such sites have consistently become available in the local area and will continue to provide a reliable source of supply. It states any allowance should be realistic having regard to the SHLAA, historic windfall delivery rates, and expected future trends. Having had regard to the average historic delivery of windfall permissions in the District, as set out in the SHLAA 2016, the Secretary of State considers that a windfall allowance of 50dpa is reasonable and consistent with paragraph 48 of the Framework.

Lapse rate

29. The Secretary of State considers that given the historic low rate of non-implemented permissions in the District, as set out in the 5 year HLS Paper 2016 that a 5% lapse rate is appropriate.

Delivery

30. Having regard to footnote 11 of paragraph 47 of the Framework and the relevant paragraphs of the PPG, the Secretary of State has gone on to consider the deliverability of the disputed sites in this matter.

East of Lichfield (Streethay) SDA

31. The Secretary of State has considered the submissions of the parties, and of the Pegasus Group, who act for the developers of the site, and the 5 Year Housing Land Supply Paper 2016, and noting that planning permission is in place, concludes that 40 units can be delivered at this site during the reporting year and 640 units over the five year period.

South of Lichfield (Short Butts Lane) SDA

32. The Secretary of State has carefully considered representations of the parties and the 5 Year Housing Land Supply Paper 2016, and, given the presence of an outline planning permission subject to a s106 agreement, concludes that 450 homes can be delivered at this site in five years.

South of Lichfield (Cricket Lane) SDA

33. The Secretary of State concludes that the trajectory within the SHLAA 2016 remains robust given that the public consultation has taken place and an application is anticipated shortly.

Fradley SDA

34. The Secretary of State concludes that the number of homes built at this site will be determined at reserved matters stage of the planning permission. He further notes that a number of other applications within the Fradley SDA will contribute to the total number of homes: 13/00633/OUTM; 14/01038/OUTM; 16/00272/OUTM. The Secretary of State concludes in agreement with the Inspector (IR283) that the site could deliver 475 dwellings.

East of Burntwood Bypass SDA

35. The Secretary of State has carefully considered the representations of the parties and the Five Year Housing Supply Paper 2016, and noting that the SDA is under construction the Secretary of State concludes that it is reasonable to assume that the position on build out rates and lead in times found sound by the LP examination is robust and that 351 homes will be built at this site by 2019/2020.

East of Rugely SDA

36. The Secretary of State has had regard to the representations of the parties and the 5 Year Housing Land Supply Paper 2016 and notes that this site is currently under

construction and thus concludes that it is reasonable to assume that the site could deliver 56 dwellings over the period.

South of Lichfield (Dean Slade Farm)

37. The Secretary of State concludes that while dwellings on these sites have been allocated in emerging or made Neighbourhood Plans, in the absence of extant planning permissions it is too early to conclude that 275 dwellings could be delivered over the five year period. He thus excludes them from his Housing Supply calculations.

Contributions from Small Sites

38. The Secretary of State has had regard to the likely delivery of 100 dwellings at a site at Tolsons Mill. He has considered the representations of the parties and the Five Year Housing Land Supply Paper 2016 and considers that there is no clear evidence that the site will not be developed within five years, given that an extant planning permission is in place, subject to a s106 agreement, and has, therefore, included 100 units in his calculations.

Land to the North of Dark Lane

39. The Secretary of State has had regard to the delivery of 121 units at land to the north of Dark Lane, Alrewas, which was granted planning permission by the Secretary of State on the date of this letter.

Birmingham's unmet housing need

40. The Secretary of State agrees with the Inspector (IR294) that while there is a distinct possibility of Lichfield having to provide for some of Birmingham's housing need, there is a mechanism for a review in the Local Plan and that it would be inappropriate now to speculate on any contribution by Lichfield. As such the Secretary of State agrees that this should not be considered when assessing the merits of this appeal scheme.

Conclusions on five year HLS

41. The Secretary of State concludes that an annual target of 478 dpa leads to a 5 year requirement of 2,390 dwellings (478x5). Addressing the shortfall of 1,943 dwellings over the remaining plan period (1,943 divided by 13 = 149) gives an annual requirement of 627 dpa (478+149), or 3,135 over the 5 year period.

42. To this the Secretary of State has applied a 20% buffer to this figure, including the shortfall, for the reasons set out above, thus finding a total housing requirement of 3,762 over the five year period, or 752 dpa.

43. The Secretary of State notes from the 5 year Housing Land Supply Paper 2016 that the Council states it has 4,149 net deliverable capacity in the 5 year period. For the reasons given above the Secretary of State has deducted 307 units from the net deliverable capacity for the disputed Dean Slade Farm and King Edwards School sites leaving a total of 3,842 net deliverable capacity.

44. As such, the Secretary of State finds that there is a surplus of 307 dwellings, or a 5.11 years housing land supply.

45. For the reasons set out above the Secretary of State disagrees with the Inspector and concludes in his judgement that the local planning authority can now demonstrate a 5 year supply of deliverable housing sites. In these circumstances, paragraph 49 of the Framework is not engaged and the Secretary of State concludes that the relevant policies of the development plan are up to date.

Biodiversity

46. The Secretary of State agrees with the Inspector at IR307 that subject to suitable conditions, no compelling objection on biodiversity grounds remains.

Special Areas of Conservation (SACs)

47. The Secretary of State has carefully considered the Inspector's conclusions at IR308-311. In respect of the River Mease SAC and the Cannock Extension Canal SAC, the Secretary of State agrees with the Inspector at IR308 that, due to the lack of any hydrological connection between the proposal and these SACs, the proposal would have no likely significant impact on those sites.

48. In respect of the Cannock Chase SAC, the Secretary of State considers that an Appropriate Assessment is required in view of the likely significant effects of the proposal, in combination with other plans and projects, on this site. The Appropriate Assessment is at Annex C to this letter and sets out his independent consideration of the relevant technical information.

49. In carrying out this Appropriate Assessment the Secretary of State has had regard to conclusions of the Inspector at IR310 and representations from Natural England dated 7 June 2016. For the reasons given in the Appropriate Assessment, he concludes that the mitigation measures will suffice to prevent any adverse effects from the proposal (including in combination effects with other plans and projects) on the integrity of the Cannock Chase SAC.

Planning conditions and obligations

50. The Secretary of State has given consideration to the Inspector's analysis at IR312-315 of the recommended conditions at Annex A and the reasons for them, and to national policy in paragraph 206 of the Framework and the relevant Guidance. He is satisfied that the conditions recommended by the Inspector comply with the policy test set out at paragraph 206 of the Framework and the relevant Guidance.

51. The previous planning obligations submitted to the Inspector have been superseded by the s106 agreement dated 20 December 2016 to take account of the introduction of the Council's Charging Schedule. Having carefully considered the provisions of the s106 agreement, national policy set out at paragraphs 203-205 of the Framework, the relevant Guidance, and the CIL Regulations 2010 as amended the Secretary of State considers that the provisions are necessary to make the development acceptable in planning terms, directly related to the development, and are fairly and reasonably related in scale and kind to the development and, therefore, the requirements of paragraph 204 of the Guidance and Regulation 122 of the CIL Regulations are met.

Planning balance and overall conclusion

52. For the reasons given above, the Secretary of State considers that the appeal scheme is not in accordance with Core Policies and Policies NR3, NR4, NR5 and BE1 of the

adopted Local Plan Strategy, Policies DC1, DC1 or H3, E3 and E18B, and Core Policies 14 and C1 of the Lichfield District Local Plan 1998. He thus concludes that the proposal is not in accordance with the development plan overall. He has gone on to consider whether there are material considerations which indicate that the proposal should be determined other than in accordance with the development plan.

53. He attaches very substantial weight to the benefits of the provision of affordable and market housing. In doing so he considers that the appeal proposal advances the social and economic roles identified in paragraphs 7 and 8 of the Framework (IR302) which are not diminished owing to the Council now being able to demonstrate a five year supply.
54. He gives modest weight to the landscape and visual harm from development. However, he gives considerable weight to the harm to the setting of Curborough Grange and Lichfield Cathedral, albeit that this is less than substantial for the purpose of 134 of the Framework. He also gives considerable weight to the loss of veteran trees and ancient hedgerows.
55. However, the Secretary of State concludes that the social and economic benefits of providing affordable and market housing are of such importance that they outweigh the environmental harm, and that the proposal would thus represent sustainable development. Overall, therefore, he concludes that the material considerations indicate that the appeal should be allowed.

Formal decision

56. Accordingly, for the reasons given above, the Secretary of State disagrees with the Inspector's recommendation. He hereby allows your clients' appeal and grants planning permission for the removal of buildings and other structures and construction of up to 750 dwellings, primary school, care village, neighbourhood facilities to include retail development (Use Classes A1, A2, A3, A4, A5), community building (use Class D1), parking, comprehensive green infrastructure comprising formal and informal open space, footpaths, cycleways, water areas (also including sustainable drainage systems) and landscaping, new access points to Watery Lane and Netherstowe Lane and improvements to Netherstowe Lane (all matters reserved except points of access) in accordance with application ref: 14/00057/OUTMEI dated 20 May 2014.
57. This letter does not convey any approval or consent which may be required under any enactment, bye-law, order or regulation other than section 57 of the Town and Country Planning Act 1990.
58. An applicant for any consent, agreement or approval required by a condition of this permission for agreement of reserved matters has a statutory right of appeal to the Secretary of State if consent, agreement or approval is refused or granted conditionally or if the Local Planning Authority fail to give notice of their decision within the prescribed period.

Right to challenge the decision

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

60. A copy of this letter has been sent to Lichfield District Council, and notification has been sent to others who asked to be informed of the decision.

Yours faithfully

Philip Barber

Authorised by Secretary of State to sign in that behalf

Annex A – conditions

Commencement and phasing of development

1. No development (other than demolition or ground works) shall take place within any relevant phase of the development without the prior approval of the details for that phase of the siting, design and external appearance of buildings and structures, the means of pedestrian, cycle and vehicular access (save for vehicular access into the site from Watery Lane and Netherstowe Lane and improvements to the northern section of Netherstowe Lane) and landscaping (hereinafter called “the reserved matters”) which shall be obtained from the local planning authority in writing before any development in that phase is commenced.
2. The development in any relevant phase hereby approved shall be begun either before the expiration of three years from the date of this permission, or before the expiration of two years from the date of approval of the last reserved matter to be approved for that relevant phase, whichever is the later.
3. The first reserved matters application shall be made within three years of the date of this planning permission. Applications for the approval of all reserved matters shall be made before the expiration of five years of the date of this permission.
4. The reserved matters to be submitted in accordance with condition 1 for any relevant phase shall include:
 - (i) details of all earthworks, mounding, finished floor levels of all buildings and details of existing and proposed site levels in that phase;
 - (ii) the disposition of roads, buildings and other site features in that phase and their relationship with land and buildings adjacent to that phase;
 - (iii) sample details of facing, roofing, boundary and hard surfacing materials for that phase;
 - (iv) details of the means of pedestrian and cycle access and parking layout in that phase; and
 - (v) details of soft landscaping in that phase in accordance with other conditions attached to this permission including those concerned with landscaping, trees, and ecology.
5. Plans and particulars of the reserved matters in any relevant phase referred to in conditions 1 and 4 above shall be submitted to and approved in writing by the local planning authority and the development shall be carried out in accordance with the approved details.
6. On or before the submission of Reserved Matters in relation to a relevant phase of the development hereby approved, a phasing plan shall be submitted to the local planning authority for approval. This shall include a plan or plans and associated information to set out details of:
 - (i) the timing of the provision of infrastructure to serve the proposed development or phase thereof, including the proposed haul road and permanent distributor road to the development from Netherstowe Lane, other off-site and on-site highways works, drainage and other utilities provision and improvements;
 - (ii) the timing of the provision of green infrastructure within the site and off-site habitat creation/enhancement works to serve the proposed development or phase thereof, including the ecological mitigation and compensation areas and other formal open space, informal open space, allotments, biodiversity, sustainable urban drainage and strategic landscaping features; and
 - (iii) the timing of the provision of the proposed primary school, community hall building, local neighbourhood centre, care facility and public transport facilities associated with the development or phase thereof.

The phasing plan shall be prepared in accordance with other conditions attached to this permission relating to the timing of specified highways works and community facilities. The development or phase thereof shall be carried out in accordance with the approved phasing plan.

7. No more than 250 dwellings shall be occupied until the community hall hereby approved has been completed in accordance with the details approved under condition 1 above.

Drawings, plans and design

8. All applications for approval of reserved matters shall be broadly in accordance with the following drawings:
 - (i) C1650 / PP / 001 Rev A - Parameter Plan 1: Land Use;
 - (ii) C1650 / PP / 002 Rev A - Parameter Plan 2: Areas of potential built development;
 - (iii) C1650 / PP / 003 Rev A - Parameter Plan 3: Building Heights;
 - (iv) C1650 / PP / 004 Rev A - Parameter Plan 4: Landscape and Open Space Structure;
 - (v) C1650 / PP / 005 Rev A - Parameter Plan 5: Access and Movement.
9. On or before the submission of reserved matters in respect of any relevant phase of the development hereby permitted, a design brief concerning that phase shall be submitted to the local planning authority for approval. The design brief shall include the following information:

Urban design details:

- (i) general building form, heights and housing mix;
- (ii) street types and road hierarchy;
- (iii) footpath and cycle networks;
- (iv) parking strategy;
- (v) landscape , open space, SUDS and boundary treatment design principles, including how landscaping proposals will take account of the setting of the Grade II listed Curborough Grange;
- (vi) how the development seeks to maintain and enhance public views of Lichfield Cathedral; and
- (vii) details of how the development broadly accords with the approved Parameter Plans and the Indicative Master Plan.

Detailed design principles:

- (viii) building materials palette;
- (ix) elevational composition;
- (x) corner treatments;
- (xi) placement of entrances;
- (xii) types of refuse and recycling storage;
- (xiii) boundary and surface treatment palette; and
- (xiv) planting and soft landscaping palette.

Reserved matters shall be in accordance with the approved design brief.

Roads, parking and travel

10. No development (other than demolition and ground works) shall take place within any relevant phase of the development until details of a Pedestrian and Cyclist Connectivity Scheme, including a timetable for the provision/improvement of linkages to footpaths, footways and cycleways adjacent to that phase, have been submitted to and approved in writing by the local planning authority. The development or phase thereof shall be carried out in accordance with the approved details.
11. No dwelling shall be occupied until a Public Transport Connectivity Scheme has been submitted to and approved in writing by the local planning authority. The Scheme shall include details of the duration, routing, frequency and delivery of bus services serving the development in accordance with the following:
 - On or before the occupation of the 50th dwelling, a half-hourly bus service shall be provided into and out of the development via Watery Lane, linking the development with the town centre and Lichfield Trent Valley railway station;
 - On or before the occupation of the 250th dwelling, a half-hourly bus service shall be provided through the site linking the development with the town centre, Lichfield Trent Valley railway station and Fradley Park.Development or the relevant phase thereof shall be carried out in accordance with the approved details.
12. No development (other than demolition and ground works) shall take place within any relevant phase of the development until the engineering details and specification of the proposed roads, cycleways, footways, footpaths and highway drains required for that phase have been submitted to and approved in writing by the local planning authority. No building shall be occupied until the road works necessary to provide access from the publicly maintained highway to it have been completed in accordance with the approved details.
13. No buildings in any relevant phase of the development hereby permitted shall be occupied until the individual vehicular accesses, entrances, turning and manoeuvring areas and driveways/parking spaces to serve it have been completed in accordance with details first submitted to and approved by the local planning authority. These features shall thereafter be kept available for their approved use.
14. Before the construction of any buildings within any relevant phase of the development is commenced, a scheme for the provision of secure cycle parking for any apartments, commercial premises, primary school, care facility or community hall provided within that phase shall be submitted to and approved in writing by the local planning authority. The cycle parking shall be implemented in accordance with the approved details prior to the first occupation of those buildings and shall thereafter be kept available for that use.
15. Development shall not commence before a scheme of highway improvements relating to the junction of Netherstowe Lane and Wood End Lane and improvements to the northern section of Netherstowe Lane has been submitted to and approved in writing by the local planning authority. The scheme shall be broadly in accordance with drawing no. Figure 9 (Issue 02), or an alternate scheme as may be required as a result of the alignment of HS2. No building in any phase relying on access by way of Netherstowe Lane shall be occupied before the improvements have been completed in accordance with the approved details.
16. Development shall not commence before a scheme of highway improvements for the southern section of Watery Lane has been submitted to and approved in writing by the local planning authority. The scheme shall include a signalised priority arrangement and dedicated footway beneath the Watery Lane railway bridge and shall be broadly in accordance with drawing no. Figure 08 (Issue 04). No building in any phase relying on

access by way of Watery Lane shall be occupied before the improvements have been completed in accordance with the approved details.

17. Development shall not commence before a scheme of highway improvements for the junction of Watery Lane and Eastern Avenue has been submitted to and approved in writing by the local planning authority. No building in any phase relying on access by way of Watery Lane shall be occupied before the improvements have been completed in accordance with the approved details.
18. Development shall not commence before details of the distributor road between Netherstowe Lane and Watery Lane have been submitted to and approved in writing by the local planning authority. The details shall be broadly in accordance with drawing no. C1650 / PP / 001 Rev A - Parameter Plan 5: Access and Movement. The distributor road shall be completed in accordance with the approved details on or before occupation of the 250th dwelling in the development.
19. The distributor road shall not come into operation before a traffic management scheme designed to prevent or limit vehicular traffic using the southern section of Netherstowe Lane has been completed in accordance with details first submitted to and approved in writing by the local planning authority.
20. On or before occupation of the 500th dwelling in the development, a scheme of highways improvements at the junction of Capper's Lane and Europa Way, Lichfield, shall have been completed in accordance with details first submitted to and approved in writing by the local planning authority. The scheme shall be broadly in accordance with drawing no. Figure 34 (Issue 02).
21. Before any relevant phase of the development is commenced, full details of ground levels, earthworks and excavation within that phase within 10 metres of the boundary of land associated with the West Coast Mainline railway, including a risk assessment and method statement for those works, shall be submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.
22. The development shall not restrict access to the land and infrastructure associated with the West Coast Mainline railway such as may be required for necessary maintenance and other associated operations.

Construction management

23. No development, including demolition, shall take place within any relevant phase of the development until a Construction Environmental Management Plan (CEMP) for that phase has been submitted to the local planning authority for approval. The CEMP shall be adhered to throughout the construction period and shall include details of:
 - (i) a risk assessment of construction activities with a potentially damaging effect on ecological receptors;
 - (ii) the methods to be used to control the emission of dust, noise and vibration from construction works, including details of any mitigation measures required for that phase;
 - (iii) a scheme for dust deposition monitoring;
 - (iv) the disposal of surface water during construction;
 - (v) measures (including wheel washing facilities) to control the deposit of mud and similar debris on adjoining public highways;
 - (vi) site fencing and security;
 - (vii) pedestrian and cyclist protection;
 - (viii) measures to identify and protect 'biodiversity protection zones', SUDS and other green infrastructure during construction;

- (ix) temporary contractor's buildings, plant, storage of materials, lighting and parking for site operatives;
- (x) the location and timing of sensitive work to avoid harm to biodiversity features;
- (xi) working and delivery hours;
- (xii) the use of generators;
- (xiii) the construction of a temporary haul road from Netherstowe Lane broadly along the route of the proposed Distributor Road to the site, as shown on Drawing No. CH003 (Issue 01); the temporary haul road shall be provided before the construction of any buildings within the development;
- (xiv) measures to control the routing of construction traffic, including measures to limit the potential for bridge strike impacts from development traffic on the Watery Lane Railway Bridge;
- (xv) arrangements for the turning of vehicles within the site so that they may enter and leave the site in a forward gear;
- (xvi) restrictions on burning; and
- (xvii) roles and responsibilities for the implementation of CEMP requirements and measures.

Noise and odour

24. No development shall take place within the proposed local neighbourhood centre until a scheme for noise attenuation of any operational noise emitting from fixed or mobile plant or machinery, and a scheme to control odour relating to any Class A3, A4 or A5 uses, has been submitted to and approved in writing by the local planning authority. The approved noise attenuation and odour control schemes shall be implemented in accordance with the approved details prior to the first occupation of the commercial uses contained within the local neighbourhood centre and shall thereafter be operated and maintained in accordance with the manufacturer's instructions.
25. Before the construction of any buildings within any relevant phase of the development is commenced, a scheme for protecting existing and proposed residents from operational noise shall be submitted to and approved in writing by the local planning authority. The scheme shall include details of any noise mitigation measures required for that phase, a timetable for the implementation of the approved measures and provision for a validation report to be submitted to and approved in writing by the local planning authority. The validation report shall ensure that all noise issues have been adequately addressed prior to the buildings in that phase being first occupied.

Contamination

26. No development shall take place within any relevant phase of the development until that phase has been the subject of a detailed scheme for the investigation and recording of contamination of the land and risks to the development, its future uses and surrounding environment. A detailed written report on the findings, including proposals and a programme for the remediation of any contaminated areas and protective measures to be incorporated into the buildings, shall be submitted to and approved in writing by the local planning authority. A validation report shall be submitted to the local planning authority for approval within three months of completion of the remediation works. If further evidence of contamination is revealed during the course of the development, work at the location will cease until such contamination is investigated and remediation measures, approved in writing by the local planning authority, have been implemented.
27. No development shall take place within any relevant phase of the development until full details of any soil or soil-forming material, whether taken from elsewhere within the development site or imported from outside the site, for use within garden areas, soft landscaping, filling and level-raising within that phase, have been submitted to and approved in writing by the local planning authority. Where the donor site is unknown or is

brownfield, the material shall be tested for contamination and suitability for use on site. Full donor site details and proposals for contamination testing, including testing schedules, sampling frequencies and allowable contaminant concentrations (as determined by appropriate risk assessment), shall be submitted to the local planning authority for approval prior to importation to the site. The approved testing must then be carried out and validatory evidence submitted to and approved in writing by the local planning authority prior to any soil or soil-forming materials being brought on to site.

Archaeology

28. No development shall take place within any relevant phase of the development until the applicant has secured the implementation of a programme of archaeological work for that phase, including excavation, post-excavation analysis and publication of a report, in accordance with a written scheme of investigation which has first been submitted to and approved in writing by the local planning authority.

Landscaping, trees and ecology

29. The development hereby approved shall be carried out in full accordance with the protection, mitigation and compensation measures outlined within the Framework Ecological Mitigation and Compensation Strategy dated March 2015.
30. Before the construction of any buildings within any phase of the development is commenced, a Landscape and Planting Scheme, including a Landscape and Ecology Management Plan connected with that phase, shall be submitted to and approved in writing by the local planning authority. The approved scheme shall include:
 - (i) a description and evaluation of the features to be managed;
 - (ii) long term landscape and ecology design objectives and management responsibilities;
 - (iii) a plan showing the planting layout of proposed tree, hedge, shrub and grass areas;
 - (iv) a schedule of proposed planting, indicating species, size at time of planting, numbers/densities of plants and a proposed implementation timetable;
 - (v) a written specification outlining cultivation and other operations associated with plant and grass establishment, including adherence to current Sport England design guidance for the proposed playing pitches;
 - (vi) existing and proposed finished levels or contours;
 - (vii) means of enclosure and boundary treatments;
 - (viii) a schedule of maintenance for all landscape and ecology areas other than privately owned domestic gardens for a period of five years from the date of first planting;
 - (ix) details of the body or organisation responsible for implementation of the plan; and
 - (x) ongoing monitoring and remedial measures.
31. On or before the submission of reserved matters in respect of any relevant phase of the development hereby permitted, a Tree Protection Plan, Arboricultural Method Statement and Arboricultural Implications Assessment for that phase shall be submitted to the local planning authority for its written approval. The details shall include a scheme setting out specific tree and hedgerow protection measures in accordance with BS 5837 and a specification and programme for the translocation of existing hedgerows, as may be required in relation to that phase. The measures shall be implemented in accordance with the approved details prior to the commencement of any construction works within that phase and maintained for the duration of construction works in that phase.
32. Any tree, hedge or shrub planted or translocated within the site as part of the approved landscaping and planting scheme which dies or is lost through any cause during a period of five years from the date of first planting or translocation shall be replaced in the next planting season with another of a similar size and species, unless otherwise agreed in writing by the local planning authority.

33. No works for any phase of the development, including site clearance and demolition works, shall commence until details of an Ecological Design Strategy (EDS) to serve that phase have been submitted to and approved in writing by the local planning authority. The approved EDS shall be broadly in accordance with details set out in the Framework Ecological Mitigation and Compensation Strategy dated March 2015. The mitigation, compensation, management and other detailed measures and requirements, including a programme for implementation, set out in the approved EDS shall be implemented in accordance with the approved details. The EDS for each phase shall include the following:
- (i) the purpose and conservation objectives for that phase of the proposed works;
 - (ii) a review of the ecological potential and constraints in that phase;
 - (iii) detailed designs and/or working methods to achieve the objectives, including the extent and location of proposed works; where relevant this will include details of a Hedgerow Translocation Strategy and Tree Management Plans;
 - (iv) the type and source of materials to be used;
 - (v) a timetable for implementation demonstrating that works are aligned with the proposed phase of development; and
 - (vi) identification of the persons responsible for implementing the works.

The EDS shall be implemented in accordance with the approved details and all features shall thereafter be retained as approved.

34. No works for any phase of the development, including site clearance and demolition works, shall commence until details of mitigation proposals under GCN Mitigation Option 2, as set out in the Framework Ecological Mitigation and Compensation Strategy dated March 2015 (the Strategy), have been submitted to and approved in writing by the local planning authority. The proposals shall address the medium population of great crested newts recorded at Pond P3 within the Strategy and Reasonable Avoidance Measures to be implemented in relation to Pond P6, as set out in the Note Regarding Pond P6 dated April 2015. A method statement, including timescales, shall be submitted to and approved in writing by the local planning authority prior to commencement of any of these works. All works shall be carried out in accordance with the approved details and method statement.

Renewable energy and sustainability

35. Before the construction of any buildings within any relevant phase of the development is commenced, details of the sustainability measures/technologies to be used within that phase shall be submitted to and approved in writing by the local planning authority. The approved sustainability measures/technologies shall thereafter be implemented in accordance with the approved details.

Lighting

36. No phase of the development shall commence until details of a lighting scheme to serve that phase, including a timetable for implementation, have been submitted to and approved in writing by the local planning authority. The lighting scheme shall be designed to reduce effects upon sensitive species and upon sensitive habitats to be retained or created on the site. The lighting scheme shall be provided in accordance with the approved details.

Drainage and flood risk

37. No development shall take place until a scheme setting out measures to deal with flood risk, surface water drainage, foul sewage and outfall for the development or any phase thereof has been submitted to and approved in writing by the local planning authority. The scheme shall include:
- (i) how the development or phase thereof shall limit surface water run-off from the site to a 1 in 100 year flood event plus an allowance of 30% for climate change;

- (ii) details of the hydrological and hydrogeological context of the development and the sustainable drainage strategy to be implemented for the development or phase thereof, including details of SUDS elements and attenuation, storage and treatment capacities, future maintenance and management;
- (iii) a plan showing the proposed layout and types of surfacing for any relevant phase, as an integrated part of an overall sustainable urban drainage system, and a written specification of proposed surfacing materials and operations;
- (iv) the results of site porosity tests for any relevant phase to assess the suitability of the ground for infiltration purposes; and
- (v) details of flood mitigation and resilience measures for the development or phase thereof, including a timetable for the implementation.

The development or phase thereof shall be carried out in accordance with the approved measures.

Local neighbourhood centre

38. The total permitted floorspace in the approved local neighbourhood centre for Class A1-A5 uses shall be a maximum of 1,500 square metres gross. Within this total, the maximum floorspace for a Class A1 convenience foodstore shall be 400 square metres gross. Other Class A1 retail units shall have a maximum floorspace of 100 square metres gross for each unit. The total maximum floorspace for Class A1 uses shall be 750 square metres gross.

Annex B

Representations received before the Secretary of State's letter of 23 May 2016

Party	Date
Bal Nahal, Solicitor, Lichfield District Council	23 May 2016

Representations received in response to the Secretary of State's letter of 23 May 2016

Party	Date
Bal Nahal, Solicitor, Lichfield District Council	31 May 2016 (identical letter to one dated 23 May 2016)
Bal Nahal, Solicitor, Lichfield District Council (enclosing one shown above dated 31 May 2016)	03 June 2016
Antony Muller, Natural England	7 June 2016
Richard Brown, Director Planning, CBRE Ltd	7 June 2016

Representations received in response to the Secretary of State's letter of 8 June 2016

Party	Date
Antony Muller, Natural England	14 June 2016
Bal Nahal, Solicitor, Lichfield District Council	15 June 2016
Richard Brown, Director Planning, CBRE Ltd (enclosing response by Pegasus Group dated 7 June 2016, and one by CBRE dated 15 June 2016)	15 June 2016

Other representations received after 23 May 2016

Party	Date
Christopher Moulton, Town Clerk, Lichfield City Council	9 June 2016

Annex C – Appropriate Assessment

RECORD OF THE HABITATS REGULATIONS ASSESSMENT UNDERTAKEN UNDER REGULATION 61 OF THE CONSERVATION OF HABITATS AND SPECIES REGULATIONS 2010

Project Title and Location:

Recovered planning appeal No. 14/00057/OUTMEI Land at Watery Lane, Curborough,
Lichfield WS13 8ES

Project description:

The removal of buildings and other structures and construction of up to 750 dwellings, primary school, care village, neighbourhood facilities to include retail development (Use Classes A1, A2, A3, A4, A5), community building (use Class D1), parking, comprehensive green infrastructure comprising formal and informal open space, footpaths, cycleways, water areas (also including sustainable drainage systems) and landscaping, new access points to Watery Lane and Netherstowe Lane and improvements to Netherstowe Lane (all matters reserved except points of access) in accordance with application ref: 14/00057/OUTMEI dated 20 May 2014.

Completion Date: 31/1/17

Introduction

1. The above project, being a 'recovered appeal', is to be determined by the Secretary of State for Communities and Local Government using his powers under section 78 of the Town and County Planning Act 1990. The Secretary of State is therefore the 'competent authority' for the purposes of the Conservation of Habitats and Species Regulations 2010.
2. This assessment has been prepared for the purpose of determining whether the proposed project would have any adverse effect on the integrity of the Cannock Chase Special Area of Conservation (SAC), either alone or in combination with impacts from other development.
3. An Appropriate Assessment was prepared by the Cannock Chase SAC Partnership to inform the Local Plan making process (November 2012). This concluded that, in order to prevent adverse effects on the integrity of the SAC, a package of mitigation measures was required for the purpose of all applications for new dwellings within the 15 km zone of influence.
4. During the course of the inquiry, the Council endorsed the Cannock Chase SAC Guidance to Mitigate the Impact of New Residential Development. The SAC Partnership acknowledges a 15 km Zone of Influence but requires financial contributions towards mitigation only from developments within 8 km. In completing this assessment the Secretary of State has given careful consideration to the mitigation measures which are referred to in more detail below.
5. He has also consulted Natural England in line with Reg 61(3) (7/6/16 & 14/6/16) and has taken to account their advice as summarised below. In preparing its advice, Natural England took into consideration:
 - The Conservation of Habitats and Species Regulations 2010 – Regulation 62
 - Cannock Chase Special Area of Conservation Guidance to mitigate the impact of residential development
6. He has taken into account the Inspector's Report dated 21 March 2016 and subsequent representations from Lichfield District Council and the appellant.
7. The Secretary of State has also drawn on guidance contained in the NPPF, Circular 06/2005 and the EC publications 'Managing Natura 2000 sites: The provisions of Article 6 of the 'Habitats' Directive 92/43/EEC', and 'Assessment of plans and projects significantly affecting Natura 2000 sites – Methodological guidance on the provisions of Article 6(3) and (4) of the Habitats Directive 92/43/EEC'.

Cannock Chase SAC

8. The distance between the location of the proposed project and Cannock Chase SAC is 10.5km).

9. The Cannock Chase SAC is an area protected because of its unique heathland habitat. (European dry heaths Annex 1 habitat). Conservation objectives are to maintain:-
- dwarf shrub heath
 - broadleaved, mixed and yew woodland

Assessment

10. The Cannock Chase SAC experiences pressures through road traffic air pollution and disturbance or erosion caused by visitors and recreational users. These pressures are likely to increase as a result of population growth. In the absence of sufficient mitigation measures, the proposed project could be expected to contribute to increased road traffic air pollution and recreational use.
11. This assessment therefore focuses on whether the existing and proposed mitigation measures will be sufficient to prevent any adverse effects on the integrity of the Cannock Chase SAC arising from this proposal either alone or in combination with other plans or projects.
12. The proposed project was not considered as part of the housing provision of the adopted Local Plan Strategy. However, Local Plan Policy NR7 requires mitigation measures to be secured from developments within 15km. This policy is qualified by the Cannock Chase SAC Guidance to Mitigate the Impact of New Residential Development (March 2015), which the Council has endorsed, as this requires financial contributions towards mitigation only from developments within 8 km.
13. A set of Strategic Access Management Measures (SAMM) to prevent harm to the SAC from new housing development have been costed and agreed. The total cost of this mitigation strategy is now estimated at £1.97 million. The Cannock Chase SAC Partnership concluded that the SAMM will enable the delivery of the planned housing provision within the Local Plan Strategy within Lichfield District and the other local authorities within the SAC Partnership.
14. Existing mitigation measures include:
- Engagement of three of four key sectors: walkers and dog walkers; cyclists; horse riders.
 - Development of volunteering and education programmes.
 - An overarching strategy for visitors and nested strategies for car parking, track and footpath management and each visitor sector, plus a monitoring strategy
 - Physical management: improvement of paths and tracks
 - Implementation of parking plan; way marking and on-site interpretation panels Two aerial survey of paths and tracks,
 - Ground truthing and targeted biological monitoring as necessary
 - Two visitor surveys
15. The Council states (3 June 2016) that, subject to an additional mitigation package referred to below, the 'in combination' impact of proposals involving a net increase of one

or more dwellings within a 15km radius of the SAC would have an adverse effect on its integrity, as increased visitor numbers would cause additional damage from site use and vehicle emissions.

16. An additional mitigation package for this proposal provides for a new visitor hub, including circular walks, car parking provision, cycleway provision, visitor information and interpretation and additional habitat creation. The Council considers that these measures will prevent any adverse impact on the integrity of the SAC. The Appellant has agreed to this mitigation, if necessary, and a mechanism for contributions towards Strategic Access Management Measures (SAMMs) exists via the CIL Charging Schedule and the s106 agreement.
17. The Secretary of State has given careful consideration to the representations of Natural England (NE) dated 7 & 14 June 2016. In their letter of 7 June, NE state that the air quality impacts of increases in traffic volumes, and the recreation impacts, would have an adverse effect on the integrity of the SAC.
18. In their letter of 14 June, NE noted that the appellant and the district council appear to have sought to re-negotiate the terms of the submitted mitigation package in that it appeared to omit a developer contribution in respect of residual impacts because the appeal proposal site lies outside the 0-8km zone where SAC contributions are levied. Without a developer contribution to address these residual impacts, NE advised that it cannot be ascertained that the appeal proposal would not have an adverse effect on the integrity of Cannock Chase SAC.
19. In the circumstances, NE advised that:
 - a developer contribution should be secured (using for example a Section 106 agreement); or
 - CIL funding is secured to address the residual impacts

and either option may allow the Secretary of State to ascertain there is no adverse effect on the integrity of the Cannock Chase SAC.

20. Having taken into account the Section 106 Agreement of 20 December 2016, the Secretary of State has had regard to clause 4.1, which sets out that in the event of the SAC mitigation contribution not being covered by the Council's CIL Regulation 123 list the Owners covenant to pay the SAC Mitigation Contribution prior to occupation of 25% of the dwellings.

Conclusion

21. Having had regard to the above evidence, the Secretary of State concludes that the existing and proposed mitigation measures, being secured by s106 Agreement of 20 December 2016 between Lichfield District Council, Staffordshire County Council, IM Properties Ltd, Valerie and Wendy Hollinshead and Kay Wrighton and John and Margaret Greaves will prevent any adverse effects from the proposed project on the integrity of the

Cannock Chase SAC either alone or in combination with other plans or projects, including the proposed development at land north of Dark Lane.

Report to the Secretary of State for Communities and Local Government

by John L Gray DipArch MSc Registered Architect

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

Date: 21 March 2016

TOWN AND COUNTRY PLANNING ACT 1990

LICHFIELD DISTRICT COUNCIL

**APPEAL BY I M PROPERTIES DEVELOPMENT LIMITED,
THE GREAVES FAMILY AND THE HOLLINSHEAD FAMILY**

Inquiry held on 10-13 and 17-20 March 2015

Inquiry adjourned on 20 March 2015 and closed in writing on 26 January 2016

Land and Buildings off Watery Lane, Curborough, Lichfield, WS13 8ES

File Ref. APP/K3415/A/14/2224354

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File Ref. APP/K3415/A/14/2224354

Land and Buildings off Watery Lane, Curborough, Lichfield, WS13 8ES

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
- The appeal is made by I M Properties Development Limited, the Greaves family and the Hollinshead family against the decision of Lichfield District Council.
- The application, ref. 14/00057/OUTMEI, dated 16 January 2014, was refused by notice dated 20 May 2014.
- The development proposed is "Removal of buildings and other structures and construction of up to 750 dwellings, primary school, care village, neighbourhood facilities to include retail development (Use Classes A1, A2, A3, A4, A5), community building (use Class D1), parking, comprehensive green infrastructure comprising formal and informal open space, footpaths, cycleways, water areas (also including sustainable drainage systems) and landscaping, new access points to Watery Lane and Netherstowe Lane and improvements to Netherstowe Lane (all matters reserved except points of access)".
- The appeal was recovered for decision by the Secretary of State on 25 September 2014.
- The reason for the direction was that "the appeal involves proposals for residential development of over 150 units or on sites of over 5 hectares, which would significantly impact on the Government's objective to secure a better balance between housing demand and supply and create high quality, sustainable, mixed and inclusive communities".

Summary of Recommendation: that the appeal be dismissed

PROCEDURAL MATTERS

1. The inquiry opened on 10 March 2015 and sat for eight days. I made an accompanied site inspection on 19 March 2015. I also made unaccompanied visits that day to the surroundings of the site and viewpoints of it as well as to Strategic Development Allocation (SDA) sites around Lichfield, as allocated for housing in the Local Plan Strategy, and their relationship to city centre.
2. The business of the inquiry was concluded on 20 March 2015 with closing submissions on behalf of the Council and the appellants. I nevertheless adjourned the inquiry rather than concluding it. There was a primary reason for this and three secondary reasons.
3. The first and primary reason for the adjournment was that the appellants had challenged the adopted Local Plan Strategy under s.113 of the Planning and Compulsory Purchase Act 2004 and a High Court hearing date had been set for 22 April 2015.^A That date came before this report would be submitted to the Secretary of State and it was acknowledged that the success or failure of the challenge could have major implications for the conclusions to be drawn from the evidence to the inquiry.
4. The second was the anticipation that Highways England (the Agency Highways as it then was) would imminently indicate that it no longer held any objection to the proposals, thus clarifying the approach to be taken in this report. That indeed was the case.^B
5. The third was the need to seek the views of the parties on the impact, if any, of the 2012-based household projections. I set dates for the submission of representations, reported upon at paras. 193-199 below.

^A Document 2.

^B Document A5 contains all of the relevant correspondence.

6. The fourth was that two nearby ponds had yet to be surveyed for great crested newts, there having been difficulties in gaining access to them; the revised Framework Mitigation and Compensation Strategy submitted to the inquiry^A was expected by both the appellants and the Council to cater for whatever was found; even so, I considered it would be helpful to know of the survey results, which would be available by the time of the High Court hearing, again clarifying the approach to be taken in this report.^B
7. A section 106 obligation was to have been submitted by 20 March 2015. In light of the adjournment, however, it was not necessary for it to be executed by that date. It was convenient to allow time for further negotiation on the covenants to be included, whether by agreement or unilateral undertaking. In the event, both an agreement and a unilateral undertaking were submitted, on an either/or basis, on 22 May 2015^C – reported on at paras 190-192 below.

The s.113 challenge

8. It transpired, subsequent to my adjourning the inquiry, that the High Court hearing on 22 April 2015 would consider only an interim suspension of the Local Plan Strategy (and other matters not directly related to the appeal) and that the substantive hearing would be on 10 June 2015. Since it would have been inappropriate to submit a report to the Secretary of State on which no action could sensibly be taken before the High Court judgement, I adjourned the inquiry for a further period, initially to 30 June 2015 and then to 7 August 2015.
9. On 20 July 2015, the Honourable Mr Justice Cranston refused the application to quash the Local Plan.^D Leave to appeal to the Court of Appeal was not granted but IM Properties sought permission directly. I adjourned the inquiry first until 29 October 2015 and then until 8 January 2016. On 27 November 2015, the Court of Appeal refused permission to appeal.^E
10. I then sought written representations from the appellants and the Council to provide an update on any material changes in circumstances since 20 March 2015.^F The gists of those representations are reported at paras 200-215 (Lichfield District Council) and 216-231 (IM Properties). The inquiry was closed in writing on 26 January 2016.
11. In fact, the appellants renewed the application for permission to appeal to the Court of Appeal. It was considered at a Court of Appeal Hearing on 25 February 2016 and permission was again refused.

The refused planning application

12. The application was refused for seven reasons. Reason for refusal 6 (relating to the wind turbine approved on an adjacent site) was withdrawn prior to the inquiry.^G No evidence was adduced on ecological matters (part of reason for refusal 5) and retail matters (reason for refusal 7), those matters having been resolved outside the inquiry, subject to agreed conditions to be attached to

^A Document 26.

^B Document A8 has the survey results and related material. In particular, the matter is covered in the Second Statement of Common Ground: Ecology.

^C Document A8 contains all that was submitted on 22 May 2015.

^D Document A10 – IM Properties Development Limited v Lichfield District Council [2015] EHCW 2077 (Admin).

^E Document A11.

^F Documents A12-A16.

^G See the Council's Statement of Case at 5.6.1.

outline planning permission, were it to be granted. Evidence on highways and transportation matters (reason for refusal 2) was limited to a round table session during the inquiry and the objections resolved, again subject to conditions and also to the Highways Agency being able to withdraw its holding objection.

THE SITE AND SURROUNDINGS^A

13. The site lies north-east of the West Coast Main Line railway, which passes immediately north of Lichfield and, to date, acts as a north-east boundary to the built-up area of the city (the exception being Streethay, on the former A38 road to the north-east of the railway line). The site extends to virtually 50 hectares (ha) and lies between Watery Lane to its west and Netherstowe Lane to its east. Those two roads run between Eastern Avenue, in Lichfield, and Wood End Lane, which passes a little to the north of the site and runs from Fradley and the A38 trunk road (to the north-east of the site) towards Rugely (to the north-west).
14. The site may be described as Y-shaped. The arms run broadly south-to-north with a frontage to Watery Lane of close to 850m and a width varying between about 320m and 450m; the leg extends east to Netherstowe Lane, by roughly a further 300m with a width of about 220m. A ribbon extension of the northerly arm of the 'Y' runs north-east to Netherstowe Lane and thence to Wood End Lane; its inclusion is solely to cater for one of the proposed accesses.
15. The majority of the site is in agricultural use. Also within it are Curborough Antiques and Craft Centre and the farmhouse and associated buildings of Curborough Hall (both at the mid-point of the Watery Lane frontage), a number of man-made fishing and associated lakes (the Curborough Fishery, also used by a private angling club, located centrally within the site) and areas of trees and shrubs, both natural and planted (primarily associated with the lakes). There are two public footpaths across the site, running broadly north-south and east-west (the latter forming part of the Darwin Walk).
16. The south-westerly leg of the 'Y' extends as far as the West Coast Main Line railway and the northerly leg to the Curborough waste water treatment works (operated by Severn Trent Water). Otherwise the boundaries are with agricultural land, although there are various houses (of various ages) along both Watery Lane and Netherstowe Lane. More particularly, the buildings of Curborough Grange stand in the angle of the easterly leg and northerly arm of the 'Y'. Curborough Grange is listed in grade II;^B it is now a private dwelling and the traditional farm building range associated with it has been converted for residential use.
17. A little to the north-east of the site is the Curborough Sprint Course, a local motor sports track which makes use of hardstanding areas of the former Fradley Airfield. Beyond that is the safeguarded route of the High Speed 2 (HS2) rail link from London to the north. North-east again is Fradley Park employment site, also largely on the site of the former airfield, and Fradley village.

^A Document CD118, the Statement of Common Ground, has a description at p.8.

^B Document CD88b contains the list description.

18. The existing hedgerows and associated verges and ditches along Netherstowe Lane, where it is proposed to be improved for access to the site, are a locally-designated Site of Biodiversity Interest (SBI).^A Some of the hedgerow trees along this section of the road were included in a Tree Preservation Order (TPO) made in February 2015.^B The hedgerow along the Watery Lane site boundary, from the Curborough Craft Centre south to the West Coast Main Line, is a locally-designated Biodiversity Alert Site (BAS).^C Further afield are three Special Areas of Conservation (SACs) – Cannock Chase SAC (10.5km distant),^D Cannock Extension Canal SAC (11.2km) and the River Mease SAC (5.6km). The Stowe Pools and Walkmill Clay Pit Site of Special Scientific Interest (SSSI) lies 1.28km from the site and the Christian Fields Local Nature Reserve (LNR) 630m away.

THE PROPOSALS^E

19. The application description (at the head of this report) is comprehensive. The development is proposed as a 750-dwelling extension of Lichfield.^F Up to 25% of the dwellings would be affordable. The care village would provide up to 200 bed-spaces. A 1-form entry primary school would be provided on a site large enough for extension to a 1.5-form entry plus a nursery school. The Curborough Antiques and Craft Centre would be retained and expanded as a Neighbourhood Centre. The proposals include 2.25ha of formal open space, including provision as part of the proposed primary school, and just over 12ha of informal open space, which would include retention and remodelling of the existing lakes, a sustainable drainage system and improvement of the green corridor along the course of the Curborough Brook.
20. A distributor road through the site would run between Watery Lane, south of the Craft Centre, and Netherstowe Lane, towards its northern end. There would be priority junctions on the existing roads; the distributor road would be the priority road, the northerly leg of Watery Lane and the southerly leg of Netherstowe Lane giving way to it.^G The length of Netherstowe Lane from the priority junction north to Wood End Lane would be widened and improved. Watery Lane beneath the West Coast Main Line would become signal-controlled so that the carriageway could be reduced to 4.0m wide, enabling a 2.0m-wide footway.
21. Development would be phased.^H Timing of the improvements to Watery Lane and Netherstowe Lane would be aligned to the development phases. Parameters plans define land use and areas of potential built development, building heights, landscaping and open space structure, and access and movement.

^A Document LDC6, Appendix 7.

^B Document 7.

^C Document 26 – Fig. 15.2 identifies SBIs and BASs on or in the vicinity of the appeal site.

^D Document 16 indicates the relationship of the appeal site to the Cannock Chase SAC.

^E Document CD118, the Statement of Common Ground, has a description at p.6. Documents CD1-CD6 are the application plans. Document 36 supersedes CD3 (the illustrative master plan) and CD5 (the parameters plans).

^F Although there were earlier proposals for new settlements on larger areas of land which included the appeal site.

^G Document CD6 has the drawings for the access junctions.

^H Document CD4.

PLANNING POLICY

22. The Lichfield District Local Plan Strategy was adopted on 17 February 2015,^A following receipt of the Inspector's Report on 16 January 2015.^B Many of the policies referred to in the Decision Notice have thus been superseded. For clarity, the relevant Local Plan Strategy policies relating to the remaining reasons for refusal are now these:
- Reason for refusal 1 (no residential allocation, contrary to spatial strategy) – Policies CP1 and CP6;
 - Reason for refusal 2 (highways matters and sustainability, in so far as they still obtain) – Policies CP1, CP3, CP5, CP10, ST1 and BE1;
 - Reason for refusal 3 (scale of development and impact in countryside location) – Policies CP1, CP3, CP13, CP14, NR1 and BE1;
 - Reason for refusal 4 (heritage matters) – Policies CP1, CP3, CP14, NR5 and BE1;
 - Reason for refusal 5 (trees/hedges/habitats/biodiversity, in so far as they still obtain) – Policies CP1, CP3, CP13, NR3, NR4 and BE1.
23. Policy CP1^C is the spatial strategy for the District. In particular, it seeks "sustainable development to deliver a minimum of 10,030 dwellings between 2008 and 2029 within the most sustainable settlements, making best use of and improving existing infrastructure". Table 4.1, following it, defines the settlement hierarchy. Lichfield is the "Strategic Centre"; approximately 38% of housing development would be accommodated in Lichfield and on the four Strategic Development Allocation (SDA) sites south and east of the city.^D
24. Policy CP6^E refines this strategy. It sets a target of 478 new homes each year and overall figures for the SDAs – including 450 on each of the three SDAs south of Lichfield, 750 at Streethay (east of Lichfield and also east of the appeal site) and 1,250 at Fradley (east of both Lichfield and the appeal site). Table 8.1 following Policy CP6 sets out the intended distribution and delivery of new homes.
25. Policy CP2^F (not mentioned in the reasons for refusal) in effect restates the NPPF's presumption in favour of sustainable development; Policy CP3 sets out in 17 bullet points how development should address the achievement of sustainability. Most relevant to this appeal are to "be of a scale and nature appropriate to its locality", to "reduce the overall need to travel ...", to "... conserve, enhance and expand natural, built and heritage assets and improve understanding of them wherever possible" and to "maximise opportunities to protect and enhance biodiversity ... and green infrastructure ...".
26. Policy CP5^G seeks to ensure that all new development is "well served by an attractive choice of transport modes" providing alternatives to the private car and promoting "healthier lifestyles". Following it, Policy ST1 identifies the ways in which more sustainable travel patterns can be secured, including by locating development accessibly, by requiring travel plans and by ensuring compatibility with the transport infrastructure of the area. Policy CP10^H deals more specifically

^A Document CD39.

^B Document CD49.

^C Document CD39, pp.22-25.

^D South of Lichfield – Shortbutts Lane, Cricket Lane and Dean Slade Farm; East of Lichfield – Streethay.

^E Document CD39, pp.49-50.

^F Ibid, p.32.

^G Ibid, pp.44-45.

^H Document CD39, pp.66-67.

with healthy and safe lifestyles, including by providing ease of access to various facilities, including footpath and cycle connections, open space, recreational spaces and "greenspaces".

27. Policies CP13 and CP14^A seek to protect/conserv/enhance natural resources and the built and historic environment, respectively. Following CP13, Policy NR1 deals with countryside management, Policy NR3 amplifies CP13 in terms of biodiversity and protected species and their habitats, Policy NR4 does the same in terms of trees, woodland and hedgerows and Policy NR5 enables development which does not "negatively impact upon ... archaeological and historically important landscapes". Following Policy CP14, Policy BE1 seeks high quality development; among the seven areas on which development should have a positive impact is the historic environment, including "archaeological sites, sites of historic landscape value, listed buildings and skylines containing important historic, built and natural features".
28. In addition, reference was made at the inquiry to Planning for Landscape Change,^B adopted in 2001 by Staffordshire County Council as Supplementary Planning Guidance to the Staffordshire and Stoke on Trent Structure Plan 1996-2011.^C Also to be borne in mind are the Supplementary Planning Documents entitled Trees, Landscaping and Development (draft, 2014), Residential Design Guide (2007), Planning Obligations (2006), Trees and Development (2005), and Open Space, Sport and Recreation (draft, 2005).^D

PLANNING HISTORY^E

29. The history of approved planning applications relates entirely to development associated with the Curborough Antiques and Craft Centre and the Curborough Hall Fishing Lakes.
30. A planning application submitted in March 2008, which included land within the northern part of the appeal site, sought planning permission for a new community of up to 5,000 dwellings. It was withdrawn in February 2011. Other versions were subsequently put forward; a 2,000-dwelling new settlement was being promoted at the time of the initial hearings of the examination into the emerging Local Plan Strategy Proposals, with the appeal scheme for 750 dwellings being the subject of pre-application discussions at that time and being envisaged by the Inspector as the first phase of the new village.^F
31. An application to erect a single wind turbine within the site of the Curborough Waste Water Treatment Works was refused by the Council but allowed at appeal in February 2013. It is the subject of representations (but not an objection) by Severn Trent Water.^G

^A Document CD39, pp. 78 and 89 respectively.

^B Document CD43.

^C Document CD118, the Statement of Common Ground, lists five other Supplementary Planning Documents

^D Documents CD42 and CD44-CD47.

^E Core Document 118, the Statement of Common Ground, itemises the planning history.

^F Document CD49, paras 168-175.

^G Severn Trent's letter, together with appeal decision APP/K3415/A/12/2174564 and a location plan are in the red folder in the appeal file.

THE CASE FOR THE COUNCIL

Set out here is the gist of the original case for Lichfield District Council, drawn primarily from closing submissions made on 20 March 2015 (Document 33) and elaborated upon where appropriate by reference to the proofs of evidence and what was said at the inquiry. The gist of the Council's representations on the 2012-based household projections is at paras 193-19.5 The gist of the January 2016 updating representations at paras 200-215.

32. In essence, the case for the Council is that the proposal is not in accordance with the Development Plan and that there are no material considerations to outweigh a decision in accordance with the Plan. The appeal site lies outside the settlement boundary in both the now superseded Local Plan and the very recently adopted Local Plan Strategy. It is not an allocated site in the Local Plan Strategy.
33. An allocation for up to 750 units at the appeal site was promoted as an alternative to the proposed Strategic Development Allocation (SDA) sites for Lichfield City during the examination of the Local Plan Strategy. The adopted Plan has not accepted the case for allocation of the site, on the basis of meeting objectively assessed housing need, either as an alternative SDA or as an additional one. That is the spatial choice the very recently adopted Plan has made. It has reviewed the directions of growth for Lichfield and decided which sites should properly comprise the planned growth of the settlement and fall within its boundaries.
34. The following policies of the recently adopted Local Plan Strategy are engaged by the proposal: CP1, CP3, CP5, CP6, CP14, NR1, NR3, NR4 and NR5.
35. It is clear that the proposal conflicts with Policies CP1 and CP6. The appeal site is not a location to which development is directed; it is neither to the south or the east of Lichfield; it is not an SDA; and it is not identified as being "at the most accessible and sustainable locations" in accordance with the Settlement Hierarchy in Table 4.1.
36. The Local Plan should make the major development choices. The present proposal for 750 dwellings is plainly strategic in scale. The very recently adopted Local Plan has consciously chosen not to incorporate the appeal site within the spatial strategy. The appeal site is in the countryside, not the urban area. The case the appellants now seek to make, that there is a fit with the strategy, is entirely misplaced.
37. The original proposal was for a new settlement, not an urban extension. That approach continued through the Local Plan hearings in 2013. Indeed, the present proposal is noted by the Local Plan Inspector as a first phase of the new village. It is clear from the evidence to this inquiry that the appellants continue to 'have an eye' to the larger scheme. Within that earlier process, the 'critical mass' of the new settlement was put forward as a key element of its sustainability credentials.^A The appeal scheme removes the original landscape buffer between Lichfield and the new settlement and now presents itself as an urban extension. The scale of the proposal is said to be generated by the desire to provide a primary school and other elements of the mixed use in order to enhance the self-containment credentials in sustainability terms and sought

^A Accepted by Mr Brown in cross-examination.

originally to provide greater levels of retail use with the same in mind. All of that signals the absence of inherent relative sustainability in this location.

38. The Local Plan Strategy targets approximately 38% of the 10,300 housing requirement to Lichfield. That is around 3,800. The appeal proposal is for about 20% of that. Plainly, to allow this proposal to proceed would be prejudicial to the adopted spatial strategy. The scheme falls to be assessed as the appellants have done in their Statement of Case.^A It is a scheme to meet the shortfall of 900 homes identified in the Local Plan Inspector's interim findings; and it is the "lion's share" of that.
39. The Local Plan Strategy has a review mechanism in place to meet any unmet housing needs emanating from Birmingham. The appeal proposal seeks to predetermine the level of that need and the spatial choices in response thereto.
40. Policy CP6 identifies that the Council will plan, monitor and manage the delivery of around 478 new homes each year. It provides the focus for the distribution of development, including the identification of the SDAs around Lichfield. The number of SDAs, the number of dwellings to be derived from SDAs over the plan period and the direction of growth identified by the SDAs can be found in the policy. Moreover, there is a policy mechanism for addressing the levels of delivery. Policy CP6 also cross-refers to the Settlements Chapter – but the proposal conflicts with that too,^B because it is not an SDA and does not extend the city to the south or east.
41. The attempt by the appellants to show a fit with the above policies is not properly to read them. The proposal is fundamentally at odds with the very recently adopted spatial strategy.

Highways and Accessibility

Highways impact

42. The appellants provided the VISSIM micro simulation modelling to the highway authority on 3 March 2015, clearly very late to allow for a carefully considered response. Concerns remain about the residual impact of the proposed development on three junctions.^C The pre-mitigation impact on one of those junctions (the A38 link road with Wood End Lane) would be, in terms of the NPPF at para. 32, "severe". The solution proposed by the appellants has previously failed following a safety audit in relation to a different development proposal.
43. That said, the matter is under review by the Highways Agency and, more importantly, the local highway authority has been able to confirm that there is an alternative means of mitigation, by way of measures at two other junctions at Fradley Park.^D Accordingly, subject to confirmation by the Highways Agency and the terms of the section 106 obligation, it is now agreed that the possibility of a severe impact on the local highway network can be overcome.

Sustainability

44. While the accesses to the site may be acceptable in vehicular terms, subject to conditions, the work that has been done to show the sustainability credentials of

^A Document CD111.

^B Primarily Policies Lichfield 5 and 6 (Document CD39, pp.101-103)

^C Document 23E, drawing CH013 – junction 'L' (Wood End Lane / A38 link road) and junctions 'P' (Cappers Lane on and off slip roads).

^D Ibid – junctions J and K.

the proposal for the full range of non-car modes of transport is desultory. There is no detailed consideration of relevant walking and cycling distances to Lichfield. The Transport Assessment (TA) deals with sustainable travel patterns in the most general of terms. The only comparative exercise is by the landscape witness, not an expert. There is no reference to relevant guidance, no consideration of the quality of connectivity, no measurement of distances against recognised standards and no equivalent to the work of Geoffrey Evenson, for the Council, which shows the poor quality of pedestrian and public transport connectivity.^A

45. Following refusal of the application, the appellants have sought to bring forward proposals for sustainability improvements. The bus connectivity proposals have improved. The highway authority has responded constructively but considers that the appeal scheme, particularly because of the poor pedestrian connectivity, is still likely to be unduly reliant on the private car, more so than the allocations in the Local Plan Strategy. In other words, the proposal remains relatively inaccessible and unsustainable. Whilst the comparative work now includes a comparison with Fradley,^B the SDA there is not an urban extension to Lichfield and is justified quite separately in planning terms.
46. The only evidence of substance on this issue, especially on pedestrian and cycling connectivity, has been provided by Geoffrey Evenson for the Council. That provides relevant distances and compares the position with other SDAs. It also shows:
- public right of way 79 as no more than a recreational route;
 - a constrained access along Watery Lane (which it will remain post-improvement); poor connectivity to existing bus stops;
 - no existing facilities for day-to-day needs (the Craft Centre has a specialist offer);
 - significant and unacceptable distances to local facilities; and
 - noticeably greater distances than the SDAs to both Lichfield town centre and a main-line railway station.
47. The appeal scheme conflicts with Policy CP5 because it is not located within the most accessible settlements and relies heavily on the private car, thus promoting unsustainable travel behaviour. It is not in Lichfield – it is outside it, in the countryside. It is not in the most sustainable location – the Local Plan Strategy determines that by way of the allocated SDAs. It is not the role of the Secretary of State to retrace the steps of his own Inspector, who considered the spatial choices in examining and reporting on the Local Plan Strategy.

Landscape

48. Scale of development is very obviously a landscape issue. There is plainly a difference between a scheme for 50 houses and one for 750. The impact on the landscape will be different and the level of harm must be individually assessed.^C Any proper assessment of landscape harm must entirely disregard the planning arguments that may be put as justification for it. The need for a development and the impacts of a development are separate and discrete

^A Document LDC5 – section 6 deals with the sustainable travel audit; the tables at 6.31, 6.32, 6.6.5, 6.8-6.10 and 6.11.2 set out walking and cycling distances to various destinations.

^B Document 28, adding to the original information in Table 7.2 in Document LDC5.

^C For the appellants, Mr Grantham-Wright accepted in cross-examination that his written evidence was wrong in that respect.

issues. It is quite obvious that the landscape evidence in support of the scheme conflates the two issues.

49. The SDA sites did give rise to degrees of harm, including to landscape, but the case for those sites was made within the plan-making process and accepted. It is for the Development Plan to make those choices and to make allocations. It is then for the decision taker to make decisions in accordance with the plan unless material considerations indicate otherwise. The appellants do not properly engage with the primacy of plan-making as the central tenet of the statutory scheme – they seek instead to castigate the local planning authority for misunderstanding the position in a s.78 appeal; at the same time, however, they fail to recognize the full import of the absence of the strategically-scaled appeal site from the recently-adopted plan.

Landscape character

50. The appellants' Landscape and Visual Impact Assessment (LVIA) under-estimates the impact on landscape character at the local level. The Council's evidence is correct in terms of magnitude and severity of impact at that level. The LVIA addressed the Landscape Character Area (LCA) as a whole. It is agreed that that impact would be negligible, inevitably so given the size of the LCA – but it is the more immediate impacts that are key to the weight that should go to the degree of harm to landscape character.^A
51. In fact, the LVIA and the appellants' evidence to the inquiry under-valued the landscape as a resource, under-valued the appeal site with its public access and recreational value, over-estimated the acknowledged detractors in the landscape, under-estimated the positive characteristics of the appeal site reflecting the wider landscape type and ignored the policy objectives^B that prompted the character assessment.
52. The landscape quality of the zone in which the appeal site lies is accepted as low. However, to derive low landscape value from that is incorrect. The proposal would introduce incongruous features (adding to existing ones) at the expense of those features making a positive contribution to the character area. Housing, particularly on the scale of this proposal, is a manifestation of the threats described in the SPG^C and runs entirely counter to the objectives for this landscape. What the appellants have done is to undervalue not only landscape value but also sensitivity to change.
53. The appellants have chosen to look at the broad similarities between the appeal scheme and the SDAs. That approach is incorrect. This is a s.78 appeal and must be concerned with the impacts of the appeal scheme itself as a matter of degree. The Council's evidence is that the comparative impacts in landscape and visual terms are greatest for this site. Any urban extension will cause harm, it will vary in each case as a matter of degree (depending on scale and location) and the level of incongruity will vary from case to case. It is unduly simplistic to analyse the position as the appellants have done.

^A Document CD21 is the LVIA. Para. 8.236 confirms that it is harm to the LCA as a whole that is being considered. *Inspector's note* – I said, for the benefit of both the appellants and the Council, that impact on landscape character at the local level could not help but be severe, simply because there would be development where at present there was countryside. Mr Grantham-Wright accepted that.

^B Document CD43(1), pp. 2 and 8.

^C Document CD43(3) – "new housing development", p.17, and "urban expansion", p.187.

54. On the scale used by the appellants,^A the landscape value of the appeal site should be assessed as “medium”. To say that the residual effect on landscape character would be “minor beneficial” is untenable; to develop the site for 750 dwellings cannot possibly reflect the policy objective of landscape character restoration. It is quite a different thing to say that townscape will be different but not necessarily harmful in itself (though there is no urban design evidence by which to judge); what is proposed, though, would be substantially harmful in terms of what is protected by policy but would be lost.

Visual effects

55. A similar pattern emerges. The assessment of harm in the LVIA is agreed as undervaluing the impact of the proposal when properly assessing it at the more immediate and localized level. Moreover, the methodology adopted in the LVIA leads to an under-estimation of visual impact.^B
56. The Council’s evidence provides the more accurate visualization material. It focuses on eight viewpoints, considered and assessed in the context of the corresponding viewpoint within the 25 views assessed in the LVIA.^C There is a significant underestimation of visual effects from five of the viewpoints, two are broadly similar and from one,^D not assessed in the LVIA, there would be a major adverse effect. The Council’s high quality visual material enables a fuller understanding of the existing landscape under consideration. The baseline assessment shows the retention of important rural characteristics.^E
57. The site is accessible for recreational purposes but is otherwise visually and, to a degree, physically separate from the urban core of Lichfield. It cannot be considered as a natural extension to the existing urban settlement pattern. This is a site-specific issue not shared by the SDAs. While the Streethay SDA lies north-east of the railway line, the context in terms of the existing settlement and connectivity is quite different and less harmful. In this sense, an urban extension would be an incongruity over and above the incongruity to landscape character.

The comparison evidence

58. This responds to the Inspector’s request at the pre-inquiry meeting. The sites to be looked at were agreed. However, it is not, especially in the context of a recently-adopted Local Plan, for the Secretary of State to revisit the position and evidence base accepted by his own examining Inspector.^F

^A Document CD21, p.85, Table 8.1.

^B Document CD21 is the LVIA. Table 8.6 (p.87), dealing with magnitude of impact, tests it against a narrower range of criteria than considered appropriate by Mr Coe, for the Council (Document LDC2, para. 4.26). Table 8.7 (p.87), dealing with receptor sensitivity, omits railway users and visitors to attractions such as Curborough Hall. The photomontages are not in accordance with Landscape Institute (LI) guidance (see Document LDC2 at para. 4.29). And the extent of annotation of photographs is not as helpful as it could be, for example, in noting the location of the farm complex or the extent of the appeal site in any view.

^C Document LDC2.1

^D Viewpoint 7 – Netherstowe Lane, location of the proposed access road improvements.

^E It is accepted that HS2 will have an impact on the baseline. The extent of that impact will depend on the specific alignment and details of the scheme – but such infrastructure cannot be described as “urban” because it passes, in the main, through countryside.

^F Document CD103 is the note of the pre-inquiry meeting. *Inspector’s note* – I made it clear at the pre-inquiry meeting, and in the inquiry, that I was not revisiting what were rightfully the issues for the Local Plan Inspector; what I wished to understand was whether the reasons for refusal of the appeal scheme were, or were not, broadly comparable with any objections to the SDA sites but which were outweighed by need to find land to cater for housing requirements.

59. The exercise carried out by Thomas Grantham-Wright for the appellants is neither robust nor sound. It ranges well beyond his expertise, which is landscape. It uses criteria loaded in favour of the appeal scheme and reaches a highly contentious conclusion.
60. Most obviously, Green Belt is not a landscape designation.^A In addition, the approach does not appear to derive from any source-based document, contains somewhat arbitrary categories, contains an evaluation matrix that appears neither objective nor neutral, arrives at scores that are opaque, contentious and not a substitute for reasoned judgement and does not objectively engage with the evidence base for those comparison sites. Many of those criticisms were accepted but eventually 'batted away' on the basis that the appeal site was anyway a "good site".
61. By contrast, Mr Coe, for the Council, considers the evidence base and provides an appraisal. All of the comparison sites are acknowledged to have adverse landscape and visual effects but still amount to better locations for extensions to the settlement of Lichfield. The railway line constitutes a barrier which compromises the ability of the appeal site to integrate with the city centre. Development upon it would appear to be a major new settlement (or the first phase of one) rather than an extension to an existing settlement.
62. The historic elements of the landscape around the appeal site are considered separately. However, they add to and reinforce the harm that would be caused to landscape character.
63. It should be concluded that to allow the appeal scheme:
- would be to locate development in other than the most sustainable of locations, as spatially identified in Policy CP1;
 - would not have a positive impact on the natural and historic environment in landscape terms, contrary to Policy BE1;
 - would be contrary to Policy NR1, because it would be significantly harmful to the countryside as an asset in its own right (in terms of both character and visual impact); and
 - would cause related harm under Policies CP13 and CP14 (dealt with below).

Heritage

The setting of the listed building

64. The harm to the designated heritage asset, the grade II listed Curborough Grange, is properly to be regarded as "less than substantial" in the terms of paras. 132-134 of the NPPF, a step back from the initial view that there would be "substantial harm" to the setting of the building.
65. Curborough Grange is an example of a three-storey Staffordshire farmhouse designed to be prominent in the landscape, as a status symbol. The setting of the building should be considered to include the field to the north, the field immediately to the south (assumed to be the site of the deserted medieval settlement) and the curtilage of the Grange itself. The eastern section of the proposed housing on the appeal site would be within the immediate setting and would cause harm as a result of:

^A In any event, two SDA sites have been removed from the Green Belt on adoption of the Local Plan Strategy and, accordingly, are not to be considered as constrained by that designation.

- the loss of open green space within which the listed building is experienced;
 - the presence of a modern suburban housing estate within that setting;
 - the loss of context of the listed building within a loose cluster of farmsteads;^A
 - the loss of a crucial sense of distance from neighbouring development;
 - the significant impact on important views due to housing and additional screening;
 - the loss the visual prominence of a building designed to be seen in the landscape; and
 - the change from a predominantly landscape setting to an urban one.
66. There would be an impact on evidential value (through the loss of historic hedgerows), historical illustrative value (relationship to the landscape) and aesthetic value (compromise to views from Netherstowe Lane) in a manner not susceptible to successful mitigation. The harm to the setting of Curborough Grange would be at the upper end of “less than substantial”.
67. The Environmental Statement assesses the harm as low/minimal/negligible^B – clearly negative, even if not greatly so. The setting is not defined but the negative impact is acknowledged and the main reason for the low assessment is the role of the screen planting. The evidence to the inquiry acknowledges that the fields on all sides of the listed building form part of its historical setting, although greater significance is apportioned to those to the north and east.^C The conclusion that “retaining an agricultural setting is not of high importance in contributing to the significance of the listed building”^D shows that at least some importance is ascribed to the setting.
68. The supplementary proof^E contains a change of mind – to there being no harm to the setting. This is said to arise from a misunderstanding but derives mainly from the Secretary of State’s decision at Javelin Park.^F That, though, is a remarkably different context – and each case is to be considered on its own merits. At Javelin Park, characterization of context was pivotal to the Inspector’s view (the appeal site was described as “urban fringe rather than rural”) and there was a fall-back position of buildings “on the whole Javelin Park site” – and one of the experts had failed to follow the relevant English Heritage guidance.
69. If Nansi Rosenberg says she has misinterpreted guidance in giving evidence for the appellants, then Deborah Boffin, for the Council, is clear that she has not – a good reason for preferring her evidence. She says that Javelin Park endorses the stepped approach in the guidance, which she has followed and supported with properly sourced evidence. Her evidence is clear as to why there will be significant, if less than substantial, harm to the setting of the listed building, something to which considerable weight must be ascribed as a matter of law. She also assesses the SDAs and does not find in them the same degree of harm.

^A Document LDC1 – paras. 7.23-7.25 identify, and speculate upon, the nature of the loose cluster of farmsteads.

^B Document CD21, p.270.

^C *Inspector’s note* – the land to the north and east went with the farm; the land to the south and west did not.

^D Document IMP16, para. 3.1.36.

^E Document IMP19.

^F Document 5.

Views of Lichfield Cathedral

70. Harm to the views of Lichfield Cathedral is clearly in a more distant context. The housing on the eastern part of the appeal site would be constructed on a localized knoll of land. It would intrude into the presently open and rural view of the Cathedral from Netherstowe Lane.
71. Nansi Rosenberg was not involved in any way in the formulation of the illustrative layout plans.^A She was unable to say that the effect on views of the Cathedral might be either neutral or beneficial. In contrast, Deborah Boffin was clear that there would be harm and that there was little scope for mitigation.
72. There is also a contrast with the position at the Streethay SDA, where it was possible to show that existing views would be safeguarded. The opening up of alternative views, were that possible, does not address the requirement of Policy CP14 in relation to existing views.

Ancient hedgerows

73. The evidence plainly shows that the loss of historically important hedgerow is a material consideration in this appeal. Sixteen hedges meet the historic criteria under the Hedgerow Regulations in that they are recorded as an integral part of a field system pre-dating the Inclosure Acts.^B Their removal would require a Hedgerow Removal Notice to be submitted to the Council under the Hedgerow Regulations 1997.^C Of the sixteen, eight meet a further criterion in that they mark part of a boundary of a historic parish;^D and four of those can be dated to Tudor or pre-Tudor times.^E Thus, important elements of the historic landscape would be lost – 45m of parish boundary hedgerows H11 and H25 in the vicinity of Netherstowe Lane would be lost; 243 m of ancient parish boundary hedgerow H21 and 240m of ancient historic hedgerow H17 would be degraded.^F
74. The importance of these hedgerows is all the greater because of other losses due to 20th century farming practices. Moreover, the historic field boundaries within and surrounding the site are an integral part of the historic landscape, illustrating and linking back to past agricultural practices.

Trees

75. Reason for refusal 5 alleges harm to “designated and non-designated trees and hedges”. At that time, the only designated interest was the county-level important hedgerow. Subsequently, a tree preservation order (TPO) was made on 5 February 2015 covering most of the trees along Netherstowe Lane.
76. The implications of tree loss due to development are a material consideration, whether or not the trees are protected by a TPO. This is especially so when the evidence shows a clear need to consider whether any are veteran trees. Given that the loss of trees is in issue, whether they are designated or not, it is inexplicable for Thomas Grantham-Wright to say that he does not deal with tree loss because of the absence of a TPO when he wrote his proof of

^A Conceded in cross-examination.

^B Document LDC6, section 8.5 and Appendices 24 and 25.

^C Ibid, Appendix 23.

^D Ibid, section 8.6 and Appendices 26-29.

^E Ibid, section 8.7 and Appendices 30-32.

^F Ibid, Appendix 3 – the hedgerows affected by the proposals are numbered on the plan.

evidence. Concerns about losses because of works within the root protection areas (RPAs) of the trees in Netherstowe Lane have long been known.

77. For the Council, Portia Howe's evidence gives a clear explanation of the provenance of root damage, including why work within the RPAs is highly likely to result in root severance and a negative impact on the remaining roots; it gives a proper explanation of the approach to the plotting of RPAs; it considers the full remit of the works, and the expectation that information would be forthcoming on construction techniques, soils and drainage; and it considers the specific characteristics and vulnerabilities of individual trees.
78. All of that should have been done by the appellants but was not. Instead, the evidence is that there would be some (unascertained) losses which would have to be accepted because the proposed access is the least harmful of the options examined.^A The suggestion of a pinch-point in the highways round-table session (by a highways witness, not a tree expert) is unacceptable as the road would still be wholly within the RPAs of the trees concerned.
79. The Council's evidence should be accepted. The proposals would result in the long term in the decline of the tree stock and the loss of individual trees.

Veteran trees

80. The tree stock includes trees assessed as having "veteran" status. Such trees warrant specific mention in the NPPF (para. 118) and are themselves a material consideration. Trees T128 and T129 are veterans but their protection can be satisfactorily addressed. T148 is also a veteran, outside the appeal site and 25m from the proposed works; careful detailed design can ensure its protection. That leaves T134 and T135, which the Council considers to be veterans but the appellants do not.
81. These two trees are not identified as veterans in a hedgerow survey, which did look at Netherstowe Lane. It is regrettable that they were not identified – but hardly decisive. T135 (ash) has the girth of a veteran tree and various other veteran attributes.^B The girth of T134 (oak) is on the borderline^C but it displays other veteran characteristics.^D Age is a requirement for an ancient tree but not for a veteran. Nor do any of the 'flaws' evident in the two trees significantly reduce their life expectancy or biodiversity value.
82. These two veteran trees are likely to be damaged, if not lost, as a result of the proposed road widening.^E Even if the trees remained, the requirement for 5m clearance over the highway would see them, especially T134, deprived of a significant amount of their crowns. The loss of a veteran tree is considered incapable of mitigation, which must weigh heavily against the proposals. The high bar of para. 118 of the NPPF is not met.

^A Document CD87 is the Assessment of Alternative Access Options.

^B Document LDC6, Appendix 20 (pp. 97-100), with reference to Appendices 17 and 18. The tree has extensive trunk hollowing and part of its crown has been lost, though there is vigorous growth in the new crown.

^C *Inspector's note* – during my site visit, the girth was measured as slightly greater than said in evidence and met the criterion for a veteran.

^D Document LDC6, Appendix 20 (pp. 95-97), again with reference to Appendices 17 and 18. The tree has lost its original crown and upper trunk (probably due to lightning), and also some of its bark on the side away from the road, but has good growth in its secondary crown.

^E The RPAs of the two trees (about 14.4m for T134 and 8.40m for T135) extend well into the existing road. Impact on the trees would depend on the construction of the widened carriageway; any significant excavation could mean the loss of both.

Conclusion on heritage impact

83. The setting of Curborough Grange will not be conserved or enhanced, contrary to Local Plan Strategy Policy CP14. Based on the comparison evidence of Deborah Boffin, the Council has directed change to the most appropriate locations in heritage terms – and this location is not one of them. The appeal site does not perform as well as the SDAs. In addition, the appeal proposals would cause localised harm to views of Lichfield Cathedral, again contrary to Policies CP14 and BE1.
84. The appeal site is not within a designated landscape – but there are no elements of local landscape importance and historic interest which would be harmed, contrary to Policy NR5.
85. The appellants place considerable importance on the view of English Heritage. That, however, was not the product of a site visit with this application in mind;^A the weight given to it must diminish accordingly. What is clear is English Heritage's view that the "application should be considered in accordance with national and local policy guidance, and on the basis of your specialist conservation advice".^B It is absolutely clear that English Heritage considers that the appeal scheme "affects the setting of Curborough Hall Farmhouse" and Deborah Boffin has provided detailed evidence to show that the degree of that impact has been under-estimated by English Heritage.

Biodiversity

86. There are clear concerns about the ecological impact of the loss of historic hedgerows and losses from local conservation sites. The hedgerows on either side of Netherstowe Lane are locally designated as Sites of Biological Interest (SBI, a designation which includes the ditches and verges alongside them);^C the hedgerow on the appeal site boundary between Curborough Hall and the railway line is locally designated as a Biodiversity Alert Site (BAS).^D About a quarter of the 381 linear metres of hedgerow to be destroyed can be clearly demonstrated to provide very valuable habitat. Moreover, the appellants' ecology strategy originally failed to grasp that impact cannot be assessed purely in linear terms – ecological interest is to be found not only in a hedgerow and its component trees but also in the associated banks, ditches and verges.
87. That said, the appellants' and Council's ecological experts worked together in the lead up to the inquiry, and during it, on the basis that those concerns were accepted. A revised Framework Mitigation and Compensation Strategy and Statement of Common Ground^E were submitted which accept that there would be irreplaceable losses requiring compensation. Even so, the harm is considerable and would not be outweighed by planning benefits, contrary to Local Plan Strategy Policy NR3.

^A Document LDC1, Appendix 2-2.5 (p.91).

^B Document IMP16, Appendix 1, pp.26-27.

^C Document LDC8, para. 9.2 and Appendix 14.

^D Ibid, para. 9.2 and Appendix 15.

^E Document 25 is the updated Ecological Statement of Common Ground; Document 26 is the Framework Ecological Mitigation and Compensation Strategy, Rev. B, March 2015; Document 27 is the Great Crested Newt Habitat Suitability Index Assessment, March 2015.

Great crested newts, bats and farmland birds

88. There is no robust evidence on the presence or otherwise of great crested newts in circumstances where their presence can be anticipated from prior survey information. However, matters are now being addressed and a revised mitigation strategy will incorporate the findings of the up-to-date surveys now underway as a result of recently obtained access. Subject to revised and enhanced mitigation proposals, the Council is now able to accept that a grant of planning permission would not result in a negative impact on a European Protected Species.
89. Lighting along linear features and its potential impact on the bat population has also now been dealt with in the revised Framework Mitigation and Compensation Strategy.
90. The Environmental Statement (ES) identified eleven species of farmland bird resorting to the site or likely to use it for breeding, leading originally to a conclusion of detriment to declining species. The revised Framework Mitigation and Compensation Strategy now addresses this concern.

Net loss to biodiversity

91. The Council's evidence is clear and shows a significant net loss. This has eventually been recognised by the appellants by adding a series of measures to ensure a net gain. However, there would be clear harm, in terms of Local Plan Strategy Policies NR3 and NR4, and para. 118 of the NPPF, which should be accepted only if it is clearly outweighed by the planning benefits of the proposal.

The planning balance

92. The appellants' case is that the need for a development of up to 750 dwellings is a material consideration sufficient to justify a decision other than in accordance with the Development Plan. They sought to promote the appeal site as a site to be allocated within the Local Plan process. Their Statement of Case for this appeal, dated August 2014, put forward two bases of need^A – 750 dwellings would comprise the "lion's share" of the 900 dwellings identified as needed at that time by the Local Plan Inspector and there would be the additional need to accommodate a share of Birmingham's housing needs.
93. Both have been overtaken by events. The now adopted Local Plan Strategy makes provision for the 900 additional dwellings found necessary by the Inspector by identifying appropriate sites (with neither of the additional SDAs being of the scale of the appeal scheme); and any requirement for Lichfield to provide for Birmingham's unmet needs is dealt with by the mechanism for review in the Plan itself. The proposal is thus not in accordance with either central element of recently adopted Local Policy.
94. The Local Plan Strategy makes provision for a minimum of 10,030 dwellings over the Plan period – not 10,030 + 750. If the Local Plan Inspector had felt it necessary to recommend that the Council make further strategic allocations, he could have said so. He did not.
95. The Council accepts that securing 25% affordable housing is a planning benefit of significant weight. However, it is not the premise of the recently adopted Plan that it is necessary to make further allocations in order to

^A Document CD111, para. 7.

secure additional affordable homes; and a policy-compliant level of affordable housing does not come remotely close to justifying this strategic proposal.

96. Any suggestion that the most recent of the appellants' legal challenges may have greater success than previous ones must be disregarded. There is an adopted Local Plan. It was found sound following examination, in a report as recent as January 2015. The appeal should be determined in accordance with the adopted Local Plan unless material considerations indicate otherwise.
97. The Local Plan Inspector accepted the evidence base underpinning the Local Plan. He accepted that the objectively assessed housing need is properly catered for by the Plan. He accepted that there is a 5-year housing land supply, with a clear statement of the methodology used to calculate it. He accepted that the policies of the Plan are consistent with the NPPF. He accepted that the Council's strategy is the most sustainable one when compared to reasonable alternatives. Any attempt to airbrush these matters away is misconceived and wrong.

5-year housing land supply

98. Of the various scenarios postulated by the appellants,^A those premised upon the quashing of the Plan are not relevant. There is an adopted Plan and it remains so unless the Court orders otherwise. The appellants have elected to pursue the appeal knowing that the Plan must be presumed to be lawful. The Council reserves its position if the situation changes.

Liverpool v Sedgfield

99. The Local Plan Inspector deployed the Liverpool method in calculating the 5-year housing land supply.^B The rationale for using the Liverpool method has not changed since the Inspector reported. It would be perversely inconsistent, in the absence of a compelling reason, to use the Sedgfield method for the purposes of determining this appeal.
100. Housing land supply is accepted as a dynamic field. The modest variations tabulated by the appellants^C are immaterial in the context of the rationale for the Liverpool approach. Moreover, there is a very clear explanation as to why the net deliverable capacity of 3,678 within five years cannot be directly translated into either an annual requirement figure or the assumed figure for actual annual delivery.^D The target figure is clear and the 5-year calculations show an available supply to meet that target, with a 5% buffer plus flexibility. And the Inspectors report^E shows that the target figure is both aspirational and realistic, lying at the very top end of what has been achieved historically.^F A total of 3,678 over five years is very similar to both the 3,422 figure put before the Local Plan Inspector and the 3,867 figure identified in the SHLAA addendum.^G The variations do not undermine the reasoning behind the target in any way.

^A Document CD128, Appendix 1.

^B Document CD49, paras. 210-213.

^C Document 14.

^D Document LDC7.1 – the table at pp.8/9 shows net deliverable capacity at line F and the 5-year requirement plus a 5% buffer at line J.

^E Document CD49, para. 56.

^F Ibid, paras. 212/213.

^G Documents CD56 and CD48 respectively.

SDA delivery

101. The second main attack on the 5-year housing land supply figures was the assertion that the assumptions for delivery from the SDAs were unduly optimistic, based on the evidence of Mr Willet.^A However, to call a professional expert to review the local plan evidence base and the assumptions arising from that process, and to expect such market-facing evidence to be accepted, amounts to a subversion of proper plan making and decision taking.
102. CBRE was a participant in the hearings and could have, but did not, call this evidence within that process. Delivery rates were part of the evidence base in the hearings. Mr Willet's evidence, had it been adduced there, would have received the testing of the house-building sector in a proper context. It was that context, in which the development industry, house-builders and agents took part, that led to the rates now criticised. The evidence of the party responsible for delivery should be preferred and, plainly, the Local Plan Inspector considered reliable the views being expressed, all the more so as reservations about delivery were expressed by some participants.^B
103. Moreover, Mr Jervis was challenged by the appellants for an alleged failure to follow the SHLAA methodology^C when it was Mr Willet who had not done so – and his evidence is not such as to displace the assumptions in the methodology. Mr Jervis provided evidence^D from site developers, or their agents, which was a refinement of, but continued to support, the 5-year housing land supply figures put forward by the Council.
104. The assumptions being attacked are the sales per month and the number of sales outlets on large sites. The first is fully justified by the exceptional strength of the market, referred to in the evidence in a number of places and true of both city and non-city sites. The second relates to the number of sales outlets (flags). Mr Willett acknowledged that the assumptions used in the Plan and in the SHLAA methodology are based on the information provided by the builders or their agents. His simple contention was that the reality would prove different – for example, that Miller Developments would have only two flags at the Streethay SDA in direct contradiction of what its agent, on instruction, had said previously.^E Moreover, experience from Rugely shows that large site delivery rates can entail the use of three flags and, in a reasonable market, 50 dwellings per annum per flag.
105. In any event, it may be noted that, even with just two flags per site, there remains a 5-year supply, with a 5% buffer and some flexibility.
106. The Shortbutts Lane SDA will make a contribution to this. The representations from Pegasus show a different view of delivery on its client's site than Mr Willet's, one that is consistent with the position accepted by the Local Plan Inspector. Pegasus also acts for Miller Homes, developer of the

^A Document IMP4.

^B Document CD49, para. 215-217.

^C Document CD50, pp.24-25 – para. 5.8 sets allowances for lead-in times for different scales of development with and without planning permission; para. 5.9 sets appropriate 'build out' rates, again for different scales of development; both are to be used in the absence of further information from those best placed to provide it.

^D Document LDC7.1.

^E Document LDC7.1 Appendix 1 – Matter 3 at 2.4-2.10.

Streethay SDA. Again, its evidence, that the delivery rates assumed in the Local Plan are realistic, directly contradicts the unchecked evidence of Mr Willet. Moreover, it is clear that the delivery assumptions for the other two Lichfield SDAs are pessimistic – both developments can be expected to commence in the latter part of 2016/17 and to provide 300 dwellings more than the assumptions.^A Accordingly, significant flexibility exists, which would be in accordance with the adopted strategy, not in conflict with it.

107. The Secretary of State's decision at Leeds^B is a material consideration. In particular, it notes that the base requirement of an up-to-date Development Plan amounts to an "indisputable basis for the determination of appeals" and that a 5-year land supply having been established in an up-to-date Development Plan means that para. 49 of the NPPF does not take effect (and the test at para. 14 does not come into play).

108. At a more nuanced level the Secretary of State's decision and the Inspector's report lend further support to the Council. Supply is not to be approached in a policy vacuum but in the context of the strategy, not only the directions for growth but also the assumptions for that growth, including, surely, the delivery assumptions. Moreover, the SHLAA assumptions were used in the Leeds case, where, unlike here, the development industry and the Council were at odds. As at Leeds, the policies of the adopted Local Plan Strategy should "be given the opportunity to bed down and form the framework for housing supply", particularly when there is a policy (CP6) to monitor and manage supply.

The decision

109. If there is a 5-year housing land supply, the presumption in para. 14 of the NPPF does not come into play. However, the absence of a 5-year housing land supply does not displace the presumption in favour of the Development Plan.

110. In this case, another statutory presumption comes into play. Para. 134 of the NPPF engages para. 132 and requires there to be clear and convincing justification for harm to the setting of a listed building. While the harm is less than substantial, the weight to be attached to it is considerable.

111. Para. 118 of the NPPF also comes into play. Within the mitigation hierarchy, it is the last resort of compensation that is being resorted to; that is an acknowledgement of harm, in this case considerable harm. A reverse presumption is created in relation to the loss of irreplaceable habitat (the veteran trees), which can only be permitted if the need for and benefit of the proposed development, in this particular location, clearly outweigh the loss.

112. Accordingly, in two respects, this is a case in which the specific policies of the NPPF indicate that development should be restricted. On both bases, without more, the appeal should fail.

113. In addition, the presumption in favour of sustainable development does not apply if para. 119 is engaged, as here. The Judgement in Smyth^C does, however, appear to offer support for a narrower interpretation if the competent authority

^A *Inspector's note* – these are the South of Cricket Lane and Dean Slade Farm SDAs; in the updating representations, the Council estimates 225 dwellings from the South of Cricket Lane SDA by 31 March 2020.

^B Document 12, paras. 10 and 13 in particular.

^C Document 13 – Dianne Smyth v SSCLG and others, [2013] EWHC 3844 (Admin).

(the Secretary of State) is satisfied with the appropriate assessment already undertaken.

114. Even if para. 49 were engaged and the second footnote to para. 14 were not, there is still the question of cumulative harm. That can be summarized as:
- significant harm to the plan-led system and public confidence in it by allowing this strategic proposal to proceed;
 - policy harm and significant harm in relation to more accessible development, in terms of pedestrian and cycle distances and quality of connectivity (Policy CP5);
 - policy harm associated with the less than substantial harm to the setting of the listed building, to which considerable weight should be ascribed (Policy CP14);
 - policy harm associated with the loss of irreplaceable ecological interest to which significant weight should be ascribed, notwithstanding the mitigation and compensation measures (Policies NR3 and NR4);
 - policy harm associated with the now acknowledged significant level of impact on landscape and visual character and a form of urban extension which would not relate well to the existing settlement pattern, albeit a matter of moderate significance because there is no landscape designation (Policy NR1);
 - policy harm to existing views of the Cathedral, which have not been shown to be addressed, a matter of moderate weight (Policy CP14).
115. The retail reason for refusal is withdrawn, subject to an agreed condition being attached to any planning permission. The revised Framework Ecological Mitigation and Compensation Strategy also ensures that there would be no unacceptable impact on protected species or net loss to biodiversity. Also, subject to confirmation from the Highways Agency, para. 32 of the NPPF is not engaged by the traffic impacts of the appeal scheme.
116. The reduction in weight to be accorded to the policies for the supply of housing, absent a 5-year land supply, is a planning judgment neither dictated by the NPPF nor fixed by case law. The judgement in *Crane*^A says that the weight “will vary according to the circumstances, including, for example, the extent to which the policies actually fall short of providing for the required five-year supply, and the prospect of development soon coming forward to make up the shortfall”. It also says that the critical question the decision-maker must ask is whether, in the particular circumstances of the case, the harm associated with the development proposed “significantly and demonstrably” outweighs its benefit, or that there are specific policies in the NPPF which indicate that development should be restricted. Here, there is no shortfall – but, if it were concluded that there was, the evidence shows that delivery from the SDAs not included in the calculations is actually anticipated to come forward more quickly, within five years.

Conclusion

117. It is acknowledged that benefits do flow from the proposals, including in respect of meeting housing need, making a policy-compliant contribution to affordable housing and responding to the social and economic dimensions of the NPPF. Nevertheless, if para. 14 of the NPPF is engaged, this is a case in

^A Document 21 – *Ivan Crane v SSCLG and Harborough DC* [2015] EWHC 425 (Admin).

which the adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in the NPPF taken as a whole. However, it is not engaged – and the decision should be taken in accordance with the development plan, there being no material considerations indicate otherwise.

118. The appeal should be dismissed.

THE CASE FOR THE APPELLANTS

Set out here is the gist of the case for I M Properties Development Limited, the Greaves Family and the Hollinshead Family, drawn primarily from closing submissions made on 20 March 2015 (Document 34) and elaborated upon where appropriate by reference to the proofs of evidence and what was said at the inquiry. The gist of the appellants' representations on the 2012-based household projections is at paras 196-199 and the gist of the January 2016 updating representations at paras 216-231.

119. The appellants seek permission to develop the appeal site for 750 homes and associated facilities to create a sustainable urban extension of Lichfield. The application is in outline with all matters reserved for future consideration apart from access, which falls to be determined at this stage.
120. The legal and factual context for the consideration of the appeal is in a constant state of flux and the most the parties are able to do is state the position as it obtains at the time of the inquiry. The decision, however, is subject to more uncertainties than most and these submissions cannot be the last word. The Inspector has acknowledged that arrangements will have to be made to make further submissions to accommodate two large events, namely the publication of the 2012-based household formation figures and the resolution to the challenge made under s.113 of the Planning and Compulsory Purchase Act 2004 against the lawfulness of the Council's decision to adopt the plan.
121. It is sensible to contemplate a third event. A study will soon be published indicating the quantified scale and distribution of Birmingham's unmet housing need. This may well have serious implications for the Lichfield Local Plan Strategy, even assuming it survives the challenge, because it may transpire that it no longer makes provision for the full objectively-assessed needs of the District taking account of the duty to co-operate and the requirement to accommodate (some of) Birmingham's unmet housing needs. All that is for the (near) future and it is highly likely that the legal and evidential picture will change such as to generate the need for additional submissions. The most that may be achieved now is a discussion on the basis of the evidence heard at the inquiry.
122. Despite these complexities, the conclusion from the evidence to the inquiry may be reduced to a classic contest of need against harm. But what is the alleged harm? The reasons for refusal describe a picture of profound and varied harm, most of which has now evaporated. The original seven reasons for refusal each contained several separate complaints. It is common ground, however, based on what the Local Plan Inspector has said, that the scheme for 750 dwellings represents sustainable development; and, by the time the inquiry was adjourned on 20 March, the Council had accepted that all of its other concerns are either non-existent or can be satisfactorily addressed by conditions or a section 106 obligation.

The s.113 challenge

123. The parties have been careful to avoid any discussion of the merits of the challenge, which will be considered elsewhere. However, in the context of prematurity, there is a possible relationship between a decision to quash the main modifications to the Local Plan Strategy, leading to a need to identify land for 900 dwellings, and the size of the appeal proposal. It is therefore necessary to sketch the argument in support of a partial quashing of the plan and the consequences for the prematurity argument.
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124. The Council has been far too casual in its approach to the Green Belt, which it has treated as just one consideration to be weighed in the planning balance. Such an approach is wrong in law, as held by Hickinbottom J in *Gallagher*;^A it is clear from that case that the test of necessity is well beyond a balance of planning considerations one way or another. The appeal site was recognised by the Local Plan Inspector as a sustainable location at which to meet the housing needs of Lichfield District. Once this finding of fact had been made, it was no longer open to the Inspector to conclude that the legal test of necessity was met. The most that could be said is that the Green Belt sites were preferable – but that is not the same thing as the legal test of necessity.
125. Moreover, the scope for making main modifications to a plan is limited. It is not open to a council to introduce fundamental boundary changes in the Green Belt by way of that procedure.
126. If the Court upholds the challenge for either or both of these reasons, then it will not simply be a question of reconsidering the planning balance. The effect of the judgment would be to exclude a change to the Green Belt on the basis that the legal test for exceptional circumstances is not made out. This would exclude an approach of meeting the need for an additional 900 dwellings on land in the Green Belt.

Harm – overview

127. The Council's witnesses were each asked to describe the high point of the harm for which they contended. Taken together, the highest that goes is to suggest:
- less than substantial harm to a single grade II listed building because development would be within its setting;
 - a possible effect on two trees, which may or may not be veterans; and
 - a possible effect on an indeterminate length of hedgerow that may require translocation.^B

This harm would occur in a low-quality landscape of low sensitivity which includes some of the lowest lying land around Lichfield. When seen from its immediate environment, the effect on landscape character would be significant adverse but, in a wider appreciation of Landscape Character Area (LCA) 67,^C the impact would be negligible. It is remarkable how slight that harm is in the context of a proposal with this degree of public benefit.

Heritage

128. The Council has raised issues about the historic landscape, veteran trees, protected hedges and views of Lichfield Cathedral. None of these issues engages NPPF para. 134, although each is potentially significant in itself and has been

^A *Gallagher Homes Limited, Lioncourt Homes Limited v Solihull MBC*, [2014] EHC 1283 (Admin), subsequently upheld in the Court of Appeal, [2014] EWCA Civ 1610 (Document CD75).

^B The proposal on Netherstowe Lane is to translocate the boundary hedge on the west side of the road, leaving that on the east side in place, save for a gap for allow a cycle track along the other side of the hedge to pass through; translocation would be by a few metres, clear of the improved road and its services, in an area of very similar ground conditions.

^C Document CD21, Chapter 8, pp. 95-97, paras. 8.111-8.113; also Document CD43(3), pp.187-189. The appeal site lies within LCA 67, Cannock Chase and Cankwood. It is defined in CD43 as "settled farmlands" (CD43(3) at p.187) and an area for "landscape restoration" (CD43(4) Map 1). It is assessed in CD21 as of "low sensitivity".

taken into account. The only designated heritage asset which engages para. 134 of the NPPF is Curborough Grange, a grade II listed building.^A

Designated heritage assets

129. The issue is now limited to a narrow point, heavily contracted from the Council's previous view that there would be a substantial impact. It is now a question of less than substantial harm to the heritage asset or no harm at all.
130. "Setting is not a heritage asset, nor a heritage designation."^B The appeal proposal would not affect the asset itself, or its associated farmstead, so there would be no loss of evidential value. It would impact only indirectly on the asset. The Council's case is based on the question of inter-visibility.^C Its witness,^D however, was unaware of the Secretary of State's decision on Javelin Park^D and did not follow the two-stage analysis affirmed as correct in that decision. "First, the significance of the asset must be identified, including the contribution made by setting and second, the effect of the appeal proposal on that contribution must be assessed."^E The setting has already been so heavily compromised that it no longer makes any relevant contribution to the significance of the asset, so the analysis ceases at that first stage. Moreover, the farmland associated with Curborough Grange lay to its north and east and is entirely unaffected by the appeal scheme; and the land and buildings immediately around it, and the Grange itself, have been heavily modified by 20th century alterations and additions. Other developments within the setting include modern steel-framed buildings, the fishing lakes and the sewage treatment works. The net effect is to eliminate any contribution to the significance of Curborough Grange from the land surrounding it.
131. Even if that is wrong, the second stage of the process requires consideration of the effect of the appeal proposals (if any) on the contribution of the setting to the significance of the asset. That is a judgement to be made after taking into account mitigation. The indicative layout shows a 10m-wide landscaped buffer along the common boundary, securing a verdant setting for the listed building.
132. Accordingly, special regard has been paid to preserving and enhancing the character and appearance of the listed building. When the matter is approached correctly, as set out in the Javelin Park decision, the overall effect of the proposals is neutral – and neither s.66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 nor NPPF para. 134 has any role to play in the determination of the appeal.
133. If that submission is rejected, then a finding of less than substantial harm engages the balance invited by NPPF para. 134. The judgement in Barnwell Manor^F makes clear that even slight harm to a designated heritage asset must be given significant weight in order to respect the statutory regime. Bearing that in mind, the principle of consistency requires a comparison to be drawn with the

^A *Inspector's note* – that is incorrect if it is accepted that the appeal site lies within the setting of Lichfield Cathedral.

^B Document CD89, p.7 at 2.4.

^C Document LDC1 – for example, at paras. 8.2, 8.5, 8.13.

^D Document 5.

^E Document 5.1, para. 286.

^F *Barnwell Manor Wind Energy Ltd v East Northamptonshire DC, English Heritage, National Trust and SSCLG and [2014] EWCA Civ 137.*

scale of impact on heritage assets which the Council has found tolerable in order to meet housing needs by allocating land and granting permission for SDAs.

134. It is clear from the Council's evidence^A that other SDAs have been permitted which cause far greater harm to heritage assets than anything proposed at the appeal site. Permission has been granted at Streethay^B and elsewhere to proposals on sites which include heritage assets, as distinct from developing within their vicinity. Further, all of the SDAs involve a number of assets, as opposed to the appeal site, where there would be a marginal or nil effect on a single asset. In this context, it cannot sensibly or fairly be contended that harm to the significance of Curborough Grange is so great as to warrant the refusal of planning permission.
135. The Council also objects to the interruption of views of Lichfield Cathedral. English Heritage, on the other hand, noted that the proposed layout had taken into account the single view of concern to the Council. Policy Lichfield 1 in the Local Plan Strategy^C simply requires views to be taken into account. The matter can be addressed at the reserved matters stage and should not be a constraint to a grant of outline planning permission.

Trees

136. The Council's concern about adverse impact on trees has become more perceived than real. It has recently made a tree preservation order covering a number of trees on Netherstowe Lane, the intention apparently being to avoid pre-emptive felling and to focus attention on their sensitivity during the construction phase. No trees have been felled and the construction phase could be managed by conditions dealing with working methods. The tree preservation order is thus not a constraint on approval of the appeal scheme.
137. It was argued that several trees were "veterans", though agreed that all but two could be safeguarded from harm. Those two are an oak and an ash on opposite sides of Netherstowe Lane;^D they are of indeterminate age, health and status. Whether they can properly be said to be "veterans" is distinctly dubious.^E They are nowhere registered or recorded. As the Council's witness agreed,^F it is a matter of speculation (though she took view that they were veterans).
138. These two trees were expressly considered in the highways round table session, when an important point was made about the difference between highway construction and traffic management. It would be both acceptable and desirable to introduce a pinch point on Netherstowe Lane to control traffic speeds and enhance highway safety. The pinch point could be designed to coincide with the location of the two trees and could, in turn, avoid the need to carry out any construction works for the road within their root circumference. The effect would be to avoid any adverse impact. In addition, there are a number of technical solutions to drainage matters so that there is no prospect of detriment to the trees. Accordingly, there are design solutions that could avoid causing any harm.

^A Document LDC1, section 9.

^B Where there is a listed building within the site which the access road would pass close by.

^C Document CD39, p.96.

^D T134 (oak) and T135 (ash), most easily located in Document LDC6, Appendix 3.

^E Documents IMP9, paras. 114-121, and IMP9A, paras. 68-79.

^F In cross-examination.

139. Even if the two trees were to be treated as veterans, there is still a balance to be struck against the benefits of the proposed development.^A Two matters specific to arboricultural interests suggest that the balance should weigh in favour of the grant of consent. Firstly, a great deal of thought has been applied to finding access options and alignments which minimise impacts on trees and hedges.^B The Council's witness agreed that the proposed route is, overall, the least harmful. Secondly, it is relevant to have regard to the sheer scale of proposed tree planting, hedge planting and habitat creation within the proposals that can compensate for this loss.

Landscape

140. The parameters are set by the need to meet housing requirements and the absence of land within the built-up urban area on which that need may be met. It is inevitable, therefore, that impact on landscape will have to be tolerated in meeting housing needs. The appellants, however, do not adopt a complacent or cavalier attitude to landscape impact. The evidence demonstrates the considerable skill and care applied to the issue.

141. The first step is to appreciate the magnitude of the harm. Planning for Landscape Change^C assesses the character and quality of the landscape throughout the District. Map 7^D provides a helpful summary. It shows the appeal site to be the lowest quality in the District – and also of low sensitivity. The Council agreed. The corollary, purely in landscape terms, is that there is no better location in which to meet the District's housing needs. In addition, the appeal site occupies some of the lowest land around Lichfield, further reducing its sensitivity to change.

142. Thus, it is inevitable that land must be found in the countryside to meet housing needs – and there is no land around Lichfield that provides, in landscape terms, a better location than the appeal site. These propositions arise from agreed evidence to the inquiry; accordingly, landscape impact cannot be a basis for withholding consent in the context of an established need for housing land.

143. The Council raises two other landscape-related issues. The first is that the appeal scheme would be an "incongruous urban intrusion" into the countryside. The landscape character type which includes the appeal site also includes Sreethay, where the SDA for 750 homes will create its own defining impact on the character of the landscape. In this context, it is wrong to suggest that the appeal proposals are incongruous. In any event, there are already diverse urban influences around the appeal site, including the railway and the sewage works. Moreover, all of the SDAs brought forward in the Local Plan Strategy involve an "incongruous urban extension into the countryside" and in no case was that found to be an acceptable basis for withholding consent in the context of the scale of housing need.

144. Secondly, the Council is concerned that the appeal proposal will close the gap between Lichfield and Fradley. However, there is no policy recognising the gap as deserving of any special protection; HS2 will create a permanent barrier

^A NPPF, para. 118 (penultimate bullet point).

^B Document CD87 is the assessment of access options.

^C Document CD43, Supplementary Planning Guidance (SPG), Staffordshire County Council, 2001.

^D Document CD43(2), between pp. 32 and 33.

between the two settlements;^A and there is anyway a vast amount of land that will continue to provide that separating function, even if the appeal succeeds.

Housing need and land supply

145. There are four determining issues – the Liverpool-Sedgefield dichotomy; the timing of delivery of the SDAs; the rate of delivery of the SDAs; and residual disputes about smaller sites. The period for assessment of these issues is agreed as 2014-2019; further written representations will be made about the effect of the recently published 2012-based household projections.
146. The inquiry has been held in the shadow of the recently approved Local Plan Strategy, which is presumed to have been lawfully adopted. It is obviously a highly material consideration – but it is not decisive. If the High Court quashes some or all of the Local Plan, then the context changes radically. Even if it does not, the conclusions of the Local Plan Inspector must be carefully considered. Factual circumstances may have changed so materially that different conclusions should now be reached on issues considered by the Local Plan Inspector – or it may be possible simply to disagree (for good reasons) with his analysis.
147. It may also be noted at this point that there are those^B with an interest in the outcome of the appeal who have chosen to make only written representations about this key issue. The appellants have been denied the opportunity of cross-examining that evidence whereas its own has been fully exposed to examination. Where there is a conflict, the appellants' more weighty evidence should prevail.

Liverpool-Sedgefield

148. It is agreed that, if the Sedgefield method is to apply, then the Council cannot demonstrate a 5-year supply of deliverable housing land. If so, then the NPPF (para. 49) operates so as to exclude the housing restraint policies of the Local Plan Strategy.
149. It is also agreed that Sedgefield is the norm, or default position, in accordance with the national Planning Practice Guidance (PPG) and the central objective of national housing policy to boost significantly the supply of housing land, as the Local Plan Inspector understood in his report.^C The question is therefore whether there is particular justification for not applying Sedgefield. The Local Plan Inspector found that there was and the Council has adopted his reasoning.
150. However, that reasoning should be seen as wrong and/or overtaken by events. His approach, and thus the Council's, should be rejected. Expectations for the delivery of housing land should be both realistic and aspirational. The Local Plan Inspector rejected Sedgefield solely because it would be unrealistic – but does that remain a viable conclusion on the evidence before this inquiry?
151. The primary data is agreed. The backlog is 1,413 dwellings. The annual housing requirement is 478. When these figures are converted to a 5-year requirement and adjusted to include a 5% buffer, the figure is either 2,980 using Liverpool or 3,925 using Sedgefield, annually 596 and 785 respectively. The Council's case is that 785 is unrealistic but 596 is both realistic and aspirational; the appellants' is that Liverpool gives an artificially constrained supply of 596 when the deliverable supply is far higher than that. In other words, using

^A See document IMP10, Figures 8.23-8.25.

^B Essentially Pegasus Planning Ltd – see its letters dated 5 November 2014, 5 March 2015 and 17 March 2015.

^C Document CD49, para. 210.

Liverpool prevents the market from bringing forward land to meet local needs contrary to the whole thrust of national housing policy.

152. The Council's annual deliverable supply was 684 when the Local Plan Inspector was considering the matter but had risen to 773 by January 2015, before falling back to 738 at the time of the inquiry.^A Liverpool constrains supply to 596^B – the opposite of aspirational, preventing 142 dwellings annually which are agreed to be deliverable. Sedgefield, on the other hand, brings an annual requirement of 785 – broadly the same as the Council's deliverable figure of 773 in January 2015 and only slightly higher than the revised figure of 738. That is both realistic and aspirational. The small shortfall can be closed by bringing forward more land instead of erecting unnecessary barriers to the approval of applications for what would be sustainable development.
153. The facts have clearly changed since the Local Plan Inspector wrote his report. He did not have an opportunity to take account of this radically different set of circumstances. For example, the agreed delivery rate of 773 (now 738) dwellings per annum (dpa) entirely undermines his conclusion on this issue.^C Alternatively, for the reasons discussed above, his analysis is wrong. Either way, the Secretary of State is entitled to, and should, depart from that reasoning and reject the evidence presented to the inquiry by the Council on this issue.

The timing of the SDAs

154. The Council has been unfair in the way it has applied the general assumptions in the SHLAA. It applies those assumptions to the appeal site despite three years of information about its deliverability; on the other hand, it has accepted unsupported assertions from self-interested parties and does not apply the same general assumptions to the SDAs. The Secretary of State should apply the SHLAA assumptions – because they derive from a clear view of the public and private sector participants in the panel exercise, all of whom have a particular familiarity with the operation of the housing market in this area. On that basis, the agreed evidence is that the Council's calculated supply should be discounted by 590 dwellings. The remaining surplus of only 108 is accounted for by Tolson's Mill and other small sites (see below).
155. Consistent application of the SHLAA assumptions thus creates an inadequate 5-year supply even assuming the Liverpool method. The Council contends that the SHLAA assumptions may be rejected in favour of more particular information about each site. But such specific information could give figures either lower or higher – making the evidence on the matter very important.
156. Looking simply at the Shortbutts Lane SDA, a resolution to grant consent was passed in May 2014 but, to date, the parties have been unable to conclude the section 106 obligation on which the resolution was based. That in itself should raise serious concerns about deliverability. The site is in multiple (fractured) ownerships, which has led (amongst other things) to a dispute over access on to London Road. Contrary to the representations from Pegasus, Lichfield City Council controls the access; it had an in-principle objection to the grant of planning permission and it is not possible to say whether or at what price it would sell its ransom interest. This leads to serious doubts about whether any

^A Document 14.

^B Document LDC7.1, p.12, row L.

^C Document CD49, para. 56, incorporated into the conclusion at para. 212.

dwellings will be delivered on this site in the next five years. In addition, there are the delays inherent in resolving the planning, technical and infrastructure issues which inhibit delivery.

157. Pegasus responded with some bland assertions about negotiations continuing but the language used strongly suggests that there is no binding contractual position. Therein lies the difference between the Council and the appellants. The Council has been inclined to accept those assertions at face value; the appellants are more sceptical and realistic. This, taken together with the question of the rate of deliverability, should discount the Shortbutts SDA to zero.

The rate of delivery

158. For the appellants, Adrian Willet gave a market-facing appraisal based on the highest standard of professional authority and derived from over twenty years experience living and working in this area. His evidence is an unquestionably qualified source. It is important his evidence is not misunderstood. He offered his own professional opinion. He spoke to four land managers from nationally important house builders but was not reporting their views – instead, their views reinforced his own evidence.
159. The house-building industry has learned some difficult lessons from the market crash of 2008 and following recession. It has now adopted a cautious approach. Housebuilders will now restrict the circumstances in which they will expose themselves to competition. This militates strongly against having three flags (builders) on one site, in part because, irrationally, they tend to discount their product as year-end targets approach, introducing a degree of competition which they prefer to avoid. Against this, the Council relies on the self-serving statements of those with a vested interest in avoiding or restricting competition.
160. The appellants' evidence is extremely important. It establishes that the 'three flags' scenario is unreliable and should be reduced to two. The only evidence from the Council to set against it is the delivery from a site east of Rugely which, in fact, delivered 150 dwellings in only one year – which is no basis for a generalised assumption about consistent future delivery rates in the District.

Residual disputes

161. Tolson's Mill is a good example of the remaining issues, which account for around 200 dwellings. For the appellants, Richard Brown's familiarity with the site enabled him to say that there was no financially viable way in which development could be brought forward. He said it should be discounted to 20 dwellings within the 5-year period, recognising that a partial solution may be found in due course. The Council, without that familiarity, assumed it could deliver 100 dwellings.

Conclusion on 5-year housing land supply

162. The Secretary of State cannot sensibly be invited to reach a conclusion on precise housing land supply while the High Court's response to the s.113 challenge is unknown. The most that may be offered at this stage is a preliminary conclusion – but the only live issue is the extent of the undershoot. The Council cannot demonstrate a 5-year supply of deliverable housing land. That is agreed to be true in all situations where Sedgefield is applied. Even if Sedgefield is not applied, the evidence still suggests a deficit – because 1,190 dwellings have to be discounted when the alleged over-supply is around 700, a
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shortfall of nearly 500. Either way, the Council cannot demonstrate a 5-year housing land supply.

Policy

163. The most important point is whether the appeal proposals are in accordance with the underlying strategy of the Local Plan or at odds with it. The Secretary of State is invited to consider the issue in the context of the Council failing to demonstrate a 5-year supply of deliverable housing land and the constraint policies of the Local Plan thus not applying.^A What remains is the high-level abstract approach of the Local Plan towards meeting housing needs.
164. Policy CP1 provides the strategic approach. It requires the concentration of growth on the established settlement hierarchy, with the lion's share of new development being directed to Lichfield City, its urban areas and the SDAs. The strategy concentrates growth in and around Lichfield as this provides the best means of achieving of sustainable mixed communities with inter-connectivity to established centres. In locational terms, the development of the appeal site would fit neatly within this strategic approach.
165. The strategy identifies SDAs to the south and east of Lichfield – but that does not go to the context of the issue. If the Council cannot demonstrate a five year supply then more land must be found around Lichfield in addition to the designated SDAs. The policies in the Plan which restrict peripheral expansion only to those areas designated as SDAs are, on this analysis, “policies for the supply of housing” and cannot apply in the absence of a five year supply.^B Additional land must come forward to address the shortfall.
166. It was explained that the Council, and its strategy, had discounted a new village option of 2,000 dwellings to the north-east of Lichfield because of concerns about adverse impacts on ecology, landscape and views towards the Cathedral. To the extent that this may be regarded as a policy of strategic constraint, the appeal proposals do not conflict with it – because the appeal proposals would develop only a small part of the area proposed for the new village and because the three issues identified by the Council have been thoroughly examined in the course of the inquiry and have been found not to warrant refusal.
167. On top of all this, the overarching consideration of sustainability dictates the overall strategy of the Plan. This may be taken briefly – because it is agreed. The Local Plan Inspector notes the Council's agreement that the appeal site is in a sustainable location and that the proposal for 750 dwellings is sustainable.^C Accordingly, the appeal proposals constitute sustainable development in a location that exactly accords with the strategic priority for meeting housing need.
168. It may be true that the Local Plan Inspector rejected the north-east of Lichfield as a location for a SDA – but it is clear from his report that he was addressing his mind to the new village option for 2,000 units and was carrying out a comparative exercise in a plan making context; that differs from a s.78 appeal and its focus on a single site.

^A Because of para. 49 of the NPPF.

^B In the context of para. 49 of the NPPF.

^C Document CD49, paras. 99 and 170.

169. It is also important to note, in the context of addressing unmet housing needs, the agreement that the appeal proposals are deliverable, within the meaning of the NPPF.^A The evidence differs on how many units could be delivered within five years (175 or 225) but the key agreement is that the appeal site would be able to come forward immediately following a grant of consent.
170. Also to be considered is the possibility that there is found to be a 5-year housing land supply. In that event, Birmingham's housing needs become a crucial consideration. It is agreed that Birmingham is unable to meet its own requirements and the full scale of need required to be addressed in surrounding areas is still an open question. In fairness to the Council's case, the precise strategy for meeting that need is also undecided at present. As a matter of judgment and probability, it must be concluded that Lichfield will be required to accommodate some of Birmingham's housing needs and, for the reasons discussed above, there is no location throughout the whole of the District that is better suited to meeting those needs than the appeal site. When asked, Miss Eggington, for the Council, said that she could not advance any land that would be better than the appeal site for meeting Birmingham's needs.
171. The Leeds decision^B considered at the inquiry reflects the Secretary of State's view that it is desirable to include a degree of flexibility in housing provision beyond the 5% or 20% buffer. In general, that is a rational approach since an undersupply is far more harmful than an oversupply. It becomes highly desirable in the specific circumstances of Lichfield, when there is the high probability that housing needs are about to increase in order to accommodate some of Birmingham's overspill. This is reflected in the Local Plan Inspector's requiring the Main Modifications to be expressed as a minimum.
172. It is also important to consider the policy approach if there is not a 5-year housing land supply. Crane^C is a pedantic legal intervention which draws a distinction between no weight and limited weight. This is a piece of scholasticism adding nothing to decision making. Where para. 49 of the NPPF applies, very little weight should attach to the policies for the supply of housing.
173. The Council contended that there were other policies which excluded the grant of consent even in the absence of a 5-year housing land supply – CP14, CP5, NSR3, NSR4 and the heritage policies. The principle of consistency demands consideration of how those policies were applied at Streethay, an apposite comparator because that was also an outline proposal for 750 dwellings, in conflict with the Development Plan and in the context of there being no 5-year housing land supply. In that case, the Council noted that those policies were all engaged but found they could be satisfactorily addressed through conditions, contributions and the reserved matters process. The facts differ – but the key point is that the general degree of harm caused by Streethay and the other SDAs is broadly similar to that caused by the appeal proposals. None of the SDAs was excluded because of those specific policy requirements and the principle of consistency affords no proper basis for excluding the appeal proposals.

^A Footnote to para. 47.

^B Document 12.

^C Document 21.

Policy and the NPPF

174. If the Secretary of State, as the competent authority, finds from the appropriate assessment already undertaken that the proposals would not have any negative effect on an SAC, then para. 119 of the NPPF has no role to play in the determination of the appeal.^A The Council suggested that the broad approach is still permissible as an interpretation of the NPPF. It is not. The Court is the arbiter of the meaning of policy and it has excluded the broad interpretation.
175. Para. 118 of the NPPF is not controversial. The first question is whether the trees are veterans, the second is whether the proposals will cause their loss or deterioration and the third is whether the benefit exceeds the harm. For the Council, Simon Wood agreed that, if the third issue is reached and the conclusion is that the balance favours the proposals, then para. 118 is not a “specific policy” indicating that development should be restricted in the context of para. 14.
176. Para. 134 of the NPPF is agreed as being governed by a similar approach. There is a heritage question which must be considered. Firstly, does the proposal cause no harm or less than substantial harm to the heritage asset. Para. 134 is only relevant in the second situation. Even if it applies, the public benefit must be weighed. If the balance favours the proposals then para. 134 is not a policy which specifically indicates development should be restricted.
177. The structure of both policies is similar. Both require an initial decision on the facts to decide the threshold question of whether the policy applies at all. If they apply, both then require an assessment of harm against advantage. If advantage outweighs harm, then neither restrict the application of para. 14.
178. For the Council, Simon Wood’s approach to sustainability was confused. His concession that the proposals (in the absence of a 5-year supply) advance the social and economic roles was well made. The environmental harm is inevitable and of a scale similar to that found to be acceptable elsewhere, as a means of meeting housing needs. Applying para. 8 of the NPPF, the three limbs are addressed simultaneously and the Council was right to concede that the proposals are sustainable.

Conclusion

179. The precise basis for making the decision is unclear at the time of the inquiry but the decision itself is overwhelmingly obvious. There is a massive shortfall in housing land availability in Lichfield District. The appeal site is able to come forward now to address that shortfall – and it is in a location that respects strategic and national policy objectives for urgently increasing sustainable housing provision.
180. The appeal should be allowed.

^A Document 13.

WRITTEN REPRESENTATIONS

181. **Lichfield City Council** supported the District Council's refusal of planning permission, saying that the site had been considered and rejected in the (then) emerging Local Plan, that the development would be an incongruous spur into open countryside and that the proposed accesses were totally inadequate.
 182. **Staffordshire County Council** submitted a paper explaining how it calculated the Education Contributions it had requested and how they met the requirements of the Community Infrastructure Levy (CIL) Regulations.
 183. **Severn Trent Water** wrote on 9 March 2015, not in objection but drawing attention to its extant permission for a wind turbine on neighbouring land.
 184. The **Pegasus Group** wrote on 5 November 2014, again on 5 March 2015 (having seen the proofs of evidence for the inquiry), and again on 17 March 2015 (having seen the appellants' written response to the earlier March letter).
 185. Pegasus is agent to Persimmon Homes West Midlands Ltd, which has a controlling interest in two of the SDAs now allocated in the Local Plan Strategy – 'South of Lichfield' (Shortbutts Lane) and 'South of Lichfield – Cricket Lane' (the latter introduced by a Main Modification to the Plan). Persimmon operates under three main brands – Persimmon Homes, Charles Church and Westbury Partnerships. Pegasus also acts for Miller Homes in relation to the East of Lichfield (Streethay) SDA. Pegasus's views were these.
 186. The appeal proposals do not accord with the adopted Local Plan Strategy and the site is not as sustainable as the alternative deliverable options. By contrast, the Shortbutts Lane, Cricket Lane and Streethay sites are allocated in the now-adopted Local Plan Strategy and there is no significant impediment to the delivery of dwellings on any of them.
 187. The Council has resolved to grant planning permission for a development of up to 450 homes, a new country park and associated infrastructure on the Shortbutts Lane SDA. Good progress is being made on the section 106 obligation and Persimmon is working to ensure that pre-commencement conditions can be discharged expediently. All 450 homes can be delivered without the need to complete the Southern Bypass. Persimmon has contractual arrangements in place to acquire the property which must be demolished to enable the southern London Road access to the site. There is no dispute with Lichfield City Council over the London Road access; positive and proactive negotiations are proceeding and the site remains deliverable. The condition on outline planning permission requiring improvements to the A38/A5148 before first occupation does not raise any concerns; negotiations have taken place with the Highways Agency and it is proposed that an application will be made to vary the timing of the works once outline planning permission has been granted. A realistic assumption is that 100 dwellings will be delivered in 2016/17, and 150 in both 2017/18 and 2018/19.
 188. At Cricket Lane, an outline application is expected to be submitted in mid-2015 and completions may be expected in the latter part of 2016/17.
 189. Outline planning permission has been granted at Streethay and a number of pre-commencement conditions have already been discharged. Miller Homes has contractual arrangements in place to acquire the freehold interest in the listed Streethay House Farm. It is expected that around 40 homes will be delivered in 2015/16 and 150 homes, through multiple outlets, in subsequent years.
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CONDITIONS AND OBLIGATION

190. A list of suggested conditions was submitted to the inquiry. I made my comments and queries in writing for consideration of the parties. An amended list of suggestions was discussed on the penultimate day of the inquiry. A further list of agreed suggestions was submitted immediately after the inquiry and another on 5 May 2015, taking into account subsequent progress on highways and ecological matters. My comments on that final amended list^A and my recommendations on the conditions to be attached to a planning permission, should the Secretary of State allow the appeal, are at Annex C to this report.
191. Progress regarding a section 106 obligation is set out at para. 3 above, under the heading 'Procedural Matters'. Two obligations were submitted on 22 May 2015 (on an either/or basis) – an executed agreement, in counterpart form, and a unilateral undertaking.^B Both provide for the following:
- affordable housing amounting to 25% of the development;
 - open space within the appeal site, an open space contribution and a leisure contribution;
 - a travel plan and contributions towards various highways works;
 - primary and secondary education contributions, with the option, instead of making the former, of providing the new primary school on the appeal site.
- In addition, the unilateral undertaking provides for a contribution towards the mitigation of any impact on the nearby Cannock Chase SAC. The Council did not require this contribution, because of guidance adopted during the inquiry in March 2015. However, it was initially requested by Natural England and the appellants take the view that it may be payable.
192. I appraise in my conclusions below the merits of the obligation and the extent to which its provisions satisfy the tests in CIL Regulation 122.

^A Document A17.

^B Document A9.

REPRESENTATIONS ON 2012-BASED HOUSEHOLD PROJECTIONS

On adjourning the inquiry on 20 March 2015, I asked that written representations on the 2012-based household projections be submitted by 8 April 2015, with the opportunity to comment on the opposing representations by 17 April 2015. The conclusions were very similar and the parties agreed to my suggestion that there was no need for cross-comments. For clarity, I set out here the conclusions of the representations from the appellants and the Council (Documents A3 and A4).

Conclusions of report by Nathaniel Lichfield & Partners (NLP) for the Council

193. The latest Sub-National Housing Projections (SNHP) are the starting point in deriving an appropriate objectively assessed need (OAN) for Lichfield but they are not the whole picture. NLP has not been able fully to update its HEaDROOM modelling as the full datasets for the 2012 SNHP have yet to be released. It is nevertheless important that the 2012 SNHP and its implications are considered.
194. Given that the latest 2012 SNHP projections have generated household representative rates that sit between the 2011- and 2008-based SNHPs, albeit closer to the 2008-based figures, the outcome of any future modelling is not anticipated to be substantially different to that outlined in previous studies.
195. Taking the 2012 SNHP at face value, they do not appear to indicate that the suggested OAN range of 410-450 dwellings per annum (dpa) would be substantially altered had the latest household projections been available to use in NLP's earlier PopGroup model. This initial hypothesis may need to be reviewed once the Stage Two 2012 SNHP datasets are released.

Conclusions of report by Regeneris Consulting Ltd for the appellants

196. If the Council repeated its OAN analysis with the 2012-based, rather than the 2008- and 2011-based projections, it would still arrive at an OAN figure of at least 430 dpa.
 197. Whilst the 2012-based projections point to a need for 340 dpa, that should be only a starting point in assessing the OAN. It is inconceivable that the Council would leave the raw household projections unadjusted. They point to a substantial loss of working age residents over the plan period, which does not represent the sustainable future that the Plan seeks to encourage. This loss of working age residents is wholly incompatible with the Local Plan's quantified economic growth targets. Also, they allow for very little recovery on household formation rates. Nor do they factor in any market signals adjustments, for which the evidence for Lichfield strongly suggests a need.
 198. The Local Plan Strategy OAN figure of 430 dpa, only recently found sound by the Local Plan Inspector, provides some headroom within which the Council can respond to these various demographic, economic and market signals adjustment factors. The uplift to 478 dpa is still required to help meet needs in neighbouring areas (there is no suggestion that the 2012-based household projections will lead to a dampening down of housing need in Tamworth and Cannock Chase).
 199. Based on the above, the Local Plan Strategy requirement of 478 dpa should continue to be used as the basis for any current 5-year land supply calculations. In accordance with Policies CP1 and CP6, this should continue to translate into a minimum of 10,030 net new dwellings to be completed between 2008 and 2029.
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UPDATING REPRESENTATIONS – January 2015

The Court of Appeal having refused permission to IM Properties Development Limited to appeal against the judgement of the High Court, I asked that written representations to update matters since the adjournment of the inquiry on 20 March 2015 be submitted by the Council and the appellants by 15 January 2016, with a further week, until 22 January 2016, for comment on each other's representations. I give here the gist of those representations.

REPRESENTATIONS BY THE COUNCIL^A

200. The base date for the housing land supply evidence to the inquiry was 1 April 2014, as recorded in the 2014 SHLAA. This has been updated to 1 April 2015, as contained in the 2015 SHLAA.^B There are no methodological differences between the two SHLAAs, save for a slight difference in the windfall allowance.
201. Net completions in 2014/2015 were 226; those on allocated sites amounted to 82. The total is less than the 291 completions anticipated in the 2014 SHLAA. The total backlog has become 1,665 dwellings. Resolving that using the Liverpool approach gives a 5-year housing requirement of 2,985 (or 597 per annum).^C
202. Providing a 5% buffer, the requirement is 3,135; with a 20% buffer it would be 3,582. Net deliverable capacity of supply over five years is 3,995 dwellings – a 6.43 years supply using the Liverpool approach, 5.76 using Sedgefield.^D

Liverpool v Sedgefield

203. There are no grounds for suggesting that the Sedgefield methodology would now be more appropriate than Liverpool. Two appeal decisions^E support the Council's case that there is no need to change from the valid conclusion of the Local Plan Inspector that the Liverpool method is appropriate. The appellants use the Council's supply projections in arguing for the use of the Sedgefield method but, at the same time, criticise the lead-in times and build-out rates used in coming to those projections as overly optimistic.

5% or 20% buffer

204. At the inquiry, the appellants were perfectly content that a 5% buffer was appropriate. The additional shortfall accrued from a single monitoring year, 2014/15, does not suddenly render the Council a persistent under-deliverer. The robust approach is that of the Local Plan Inspector, who considered a longer period of years than the appellants.^F The decision in the case referred to by Mr Brown for the appellants is dated 13 February 2013, which raises the question of why it was not referred to at the inquiry but now is.

^A Documents A13 and A15.

^B Document A13b.

^C Document A13a – table at para. 1.8.

^D Ibid, para. 1.10 and the detailed table above it.

^E Documents A15b and A15c.

^F Eleven years to 2011, in the first seven of which (before the crash and recession) the Council met its targets.

SDA sites

205. On the South of Lichfield (Short Butts Lane) SDA, the information from Pegasus already before the inquiry^A has been used as the basis for the trajectory set out in the 2015 SHLAA. It remains the best available evidence on likely delivery. There is a resolution to grant outline planning permission subject to a section 106 obligation, which it is understood is shortly to be circulated for signature. The number of dwellings anticipated within five years (from 1 April 2015) is 450.
206. The East of Lichfield (Streethay) SDA has outline planning permission for 750 dwellings. The information from Pegasus has again been used in the 2015 SHLAA. Since then, two reserved matters permissions have been granted. Severn Trent Water has started sewerage works on the site. Delivery of 40 dwellings in 2015/16 is unlikely but there is clear progress being made broadly in line with the SHLAA trajectory, which anticipates 640 dwellings within five years.
207. There is outline planning permission for 750 dwellings on the Fradley SDA. A masterplan is presently with the Council for consideration. A reserved matters application has also been received. There is a resolution to grant permission on a scheme for 250 dwellings on a separate part of the site, subject to a section 106 obligation which is expected to be signed imminently. The present occupation of part of the site poses no constraints. Another part of the site has outline planning permission for 70 dwellings, again subject to a section 106 obligation. The number of dwellings anticipated within five years is 525.
208. Full planning permission for 351 dwellings was granted on the East of Burntwood Bypass SDA in July 2015. Site clearance has commenced. In line with the Council's trajectory, 350 dwellings are anticipated within five years.
209. Development is under way on the East of Rugely SDA, with 82 completions in 2014/15 and 60 to date in the current year (expected to rise to 69 in the full year). A separate part of the SDA has full planning permission for 71 dwellings, with a likely start on site in February 2016. Anticipated completions within five years amount to 163.
210. On the South of Lichfield (Cricket Lane) SDA, the information from Pegasus already before the inquiry indicated the potential for delivery as early as 2016/17. No application has been submitted but pre-application discussions have been held and an application is expected by Easter 2016. A cautious approach anticipates 225 dwellings from this SDA within five years.
211. The South of Lichfield (Dean Slade Farm) SDA was not, and still is not, expected to contribute any dwellings within five years.
212. In total, the SDAs are expected to yield 2,518 dwellings within the five years from 1 April 2015. That is a small increase of 26 on the numbers anticipated at the inquiry, for the five years from 1 April 2014.

Permissions and appeals since 31 March 2015

213. Since 31 March 2015, the Council has granted 57 residential planning applications for a total of 1,220 new dwellings. They include a mixture of dwellings expected to come forward on SDA sites and windfalls. There are four

^A Document LDC7.1.

residential appeals still to be determined, including one for up to 140 dwellings (north of Dark Lane, Alrewas) and another for up to 180 dwellings (Fisherwick Road, Lichfield).

Birmingham's future housing needs

214. There is already a mechanism in the Local Plan Strategy to deal with the allocation of any further sites that may be needed. This is not a new issue but one that is still evolving. There may be greater certainty about the quantum of overspill but the distribution is still very much unknown and undetermined.

Contributions from small sites

215. Firstly, there is no double counting with regard to replacement dwellings; the SHLAA does not count replacement dwellings as a component of supply.^A Secondly, Mr Brown questions the inclusion of non-policy-compliant sites within the 5-year supply; clear evidence is required that a site will not deliver and there are good reasons to indicate that seven sites are deliverable.

REPRESENTATIONS BY THE APPELLANTS^B

216. It remains the appellants' firm view that the Council is unable to show a 5-year supply of deliverable housing land. The requirement has increased since the adjournment of the inquiry because of the under-delivery in 2014/15. The Council has, over the past seven years, continually over-estimated the amount of housing to be delivered in a given year; that suggests it is being far too optimistic in its current housing delivery assumptions and raises significant doubts over its assessment of the deliverable supply for the next five years.

Birmingham's future housing needs^C

217. Since March 2015, Birmingham City Council has endorsed and consulted upon Main Modifications to the Birmingham Development Plan and the Greater Birmingham and Solihull Enterprise Partnership (GBSLEP) Strategic Housing Needs Study (SHNS) has been published. Despite an absence of detail, these allow the conclusion that the full OAN for Lichfield, which makes no provision for Birmingham's needs, is now unreliable. There must now be substantive support for the appeal site as a location for housing growth.

218. Further detail will emerge on publication of the GBSLEP Spatial Plan, expected during 2016. Indisputably, however, some of Birmingham's needs will be directed to Lichfield District. This is important since, even in the Council's most favourable scenario, supply exceeds OAN by only a relatively small amount. While there is a Local Plan mechanism to deal with Birmingham's needs, that

^A Document A15a has a list of replacement dwellings at attached Appendix 3.

^B Documents A14 and A16.

^C Document A14a, paras 2.1-2.26, supported by Document A14b, the GBSLEP SHNS Stage 3 Report. In short, Birmingham's housing requirement is 89,000, of which 51,100 would be provided within Birmingham, leaving almost 38,000 to be provided elsewhere. Under the Public Transport Corridors scenario, Lichfield, Bromsgrove and Redditch are specifically identified as having rail connections to Birmingham which could be further expanded. The appellants argue that, with the single exception of land north of Lichfield, all other potential land under this scenario is undeliverable. The SHNS notes Watery Lane as one of the few Strategic Urban Extension (SUE) proposals not in the Green Belt.

process will be lengthy, despite the national planning policy imperative to boost significantly the delivery of housing and to meet in full the OAN for the area.

219. The appeal proposal is advanced as a sustainable residential development independent of any wider new settlement proposal mentioned in the SHNS.^A Moreover, it is the only opportunity for further strategic housing development within the HMA which:

- is not in the Green Belt;
- is available, sustainable and able to start delivery in the short term;
- is located on the edge of a main settlement and accessible to a main line rail station with convenient links to Birmingham; and
- has adequate or readily provided highways and other infrastructure.

Liverpool v Sedgefield

220. The Sedgefield method is the correct approach in quantifying 5-year housing land supply requirements. That position is further validated by one particular appeal decision issued since the inquiry; other recent appeal decisions also support the use of Sedgefield rather than Liverpool.^B Here, the Council's own figures show the existence of a 5-year housing land supply capable of delivering the required numbers of dwellings even using the Sedgefield method.

5% or 20% buffer

221. There is now evidence of persistent under-delivery, warranting the application of a 20% buffer rather than 5%. It is clear from the SHLAA that the Council has failed to meet its annual housing target in any year from 2008/09 to date.^C Over a period of seven years, only around 50% of the required housing, based on the Council's objectively assessed need (OAN) has been delivered. The shortfall in 2014/15 was 247 and the cumulative total over seven consecutive years is now 1,665. That is to be set against a target of 3,346 (478 annually) and equates to an under-delivery of over 2,000 dwellings in terms of an annualised residual target. The position now is materially different to that considered by the Local Plan Inspector. The period and extent of continual under-delivery is now much more significant than he was able to assess. Moreover, applying a 20% buffer would be consistent with other appeal decisions,^D which support the appropriateness of using the previous five years' completions in assessing whether there has been persistent under-supply.

Contributions from small sites

222. The majority of the small sites still disputed by the parties should be removed from contributing to the 5-year housing land supply. So too should certain additional sites within the 2015 SHLAA – partly because they involve double-counting, partly because some are not policy-compliant and do not have planning

^A The SHNS refers to such a proposal at Watery Lane as being one of only two across the entire Housing Market Area (HMA). It acknowledges that only Lichfield District could potentially deliver a new settlement capable of contributing to housing needs in the short-medium term (the other candidate being Brookhay and Twin Rivers, also in Lichfield District but remote from the rail network).

^B APP/Y3940/A/14/2222641, para. 22 – the Local Plan Inspector's report and the evidence base supporting the Plan did not restrict the Inspector on a s.78 appeal from taking account of evidence which had subsequently emerged. APP/M1710/A/2226723, para. 25 – the Inspector concluded that Planning Practice Guidance and the existence of a 5-year housing land supply warranted the use of Sedgefield.

^C Document A16, Table RB1 at para. 1.7.

^D APP/F1610/A/11/2165778, para. 14 in the Secretary of State's decision, paras 14.19-24 of the Inspector's report, endorsed by the High Court in [2013] EHC 3719 (paras 42-52).

permission and should not, therefore, be regarded as being available for development. On this basis, the contribution from small sites towards the 5-year land supply should be reduced by 293.^A

SDA sites

223. There has been no delivery on any of the SDA sites in 2014/2015.^B The projected delivery over the 5-year period to March 2020 is 871 dwellings, a shortfall of around 500. The Council's position is at best fragile.
224. There has been mixed progress on the Fradley SDA since March 2015. The Evans of Leeds land (750 dwellings) has seen no progress. Brookfields (70 dwellings) has a resolution to grant planning permission from 24 August 2015 but the section 106 obligation is still being negotiated. Planning permission for Hay End Lane (250 dwellings) is still awaited, despite its being considered at Committee in December 2015. In addition to the conventional planning process, the Council requires the approval of a masterplan or design code before the submission of any reserved matters, which will cause further delay. Also, there is a commercial tenant who can remain on site contractually until 2017, with the intention to extend for a further three years. Thus, there is a real prospect of no housing delivery on this site; one may nevertheless reasonably assume 120 dwellings within five years – compared with the Council's projection of 525.^C
225. Reserved matters were secured on 24 June 2015 for 352 dwellings on the East of Lichfield (Streethay) SDA. Miller Homes anticipates a start on site in March 2016 and the first unit sale within a year. That suggests a total of 330 dwellings in five years (assuming two flags, not three, on the site) against the Council's estimate of 640.^D It is understood, however, that the Severn Trent sewer installation will not begin until April 2016, with commissioning at the end of June.
226. On the South of Lichfield (Short Butts Lane) SDA, there has been no resolution in terms of the many technical, planning, highways and legal ownership constraints. It is no more likely now to deliver housing within five years than it was in March 2015. The resolution to grant planning permission is now 20 months old, which begs the question of whether it is now time-expired. One of the landowners (Lichfield City Council) is not a signatory to the section 106 obligation. The delivery projection for this site should be zero, not 450.^E
227. There is still no planning permission on the South of Lichfield (Cricket Lane) SDA. It is difficult to see the delivery of more than 125 dwellings in the 5-year period, compared with the Council's projection of 225.^F
228. Detailed planning permission was granted on 21 July 2015 on the East of Burntwood Bypass SDA. The joint developers are now mobilising for site remediation and subsequent delivery. The site is part of a former colliery and remediation will include ground stabilisation. Vacant possession will be delayed by the presence of various leases and licences. Reflecting these matters, 240 dwellings may be expected within the 5-year period, compared with the Council's projection of 350.^G

^A Document A14c.

^B Save for East of Rugely – see para. 209 above.

^C Document A14a, paras 3.4-9.

^D Ibid, paras 3.10-14.

^E Ibid, paras 3.15-20.

^F Ibid, paras 3.22-23.

^G Ibid, paras 3.24-27.

229. There is no dispute about the East of Rugely SDA and the South of Lichfield (Dean Slade Farm) SDA. The former can deliver 56 dwellings within the 5-year period; the latter remains for delivery beyond the 5-year period.
230. Overall, there has been a clear deterioration in the Council's 5-year housing delivery projection. The Council continues to under-estimate planning and technical delivery constraints and legal ownership issues. The Council's projection is for the delivery of 2,246 dwellings from the SDA sites, the appellants 871 – a variance of 1,375 dwellings.^A In addition, the Tolson's Mill site is identified as delivering 100 units within the 5-year period but the site is still for sale, with no short or medium term prospect of contributing to housing numbers.

Conclusion on 5-year housing land supply

231. Even if disregarding Birmingham's housing needs, Lichfield does not have a 5-year housing land supply in virtually every scenario examined.^B Even if it did, however, and NPPF para. 14 were thus not engaged, it would still be necessary to undertake a balancing exercise of harm against benefits. There are a number of decisions allowing appeals where there has been a 5-year housing land supply but the proposals represented sustainable development contributing to meeting housing targets, including for affordable housing.^C Here, the appeal proposal would be sustainable development and the degree of harm from it would be limited, with much of it capable of being overcome by planning conditions and the section 106 obligation.

^A Ibid, para 3.30, Table 3.1.

^B Document A14a, Tables 2.4-2.13, with explanatory text at paras 2.50-55.

No Table shows a 5-year supply using the Sedgfield method.

No Table shows a 5-year supply if Birmingham's needs are taken into account.

Only if using the 2015 SHLAA is there a 5-year supply using either a 5% or 20% buffer.

Only if using a 5% buffer is there a 5-year supply based on two flags only on a site and using amended small site supply figures.

Inspector's Note – Tables 2.5, 2.7, 2.9, 2.11 and 2.13 are based on the Local Plan being quashed and may therefore be ignored.

^C APP/Y2810/A/14/2228921, paras 43 and 71;

APP/A0665/A/14/2226994, paras 56-62;

APP/A0665/W/14/3000528, paras 60-68.

INSPECTOR'S CONCLUSIONS

Superscript numbers in these Conclusions refer to earlier paragraphs in this report. Footnotes continue to be identified alphabetically.

232. The s.113 challenge having failed, the adopted Lichfield District Local Plan Strategy remains a lawful part of the Development Plan for the area. There are five considerations that can be assessed on their own merits, against the Local Plan Strategy and the provisions of the National Planning Policy Framework (NPPF), before then looking at the position on housing land supply. They are:

- highways matters;
- the effect on landscape character;
- the effect on historic trees and hedges;
- the effect on the significance of the listed Curborough Grange, and
- the effect on views of Lichfield Cathedral.

Highways matters^{36-41, 161}

233. There are no technical highways matters remaining to be resolved that cannot be dealt with by conditions attached to outline planning permission.³⁸ Highways England has withdrawn its holding objection.^A The local highway authority had indicated, in any event, that potential concerns relating to the junction of Wood End Lane with the A38 trunk road could be overcome by measures to adapt the junctions closest to its west.³⁷

234. The Council accepts that the proposed accesses to the appeal site would not be unsafe or otherwise unsuitable in highways terms.³⁸ The access from Netherstowe Lane is the most appropriate option from the north-east. Improvements to Watery Lane where it passes under the West Coast Main Line railway (using signal-controlled one-way operation and narrowing the carriageway to enable a wider footway) would overcome concerns about access from the south-west.

235. What remains is whether the location of the appeal proposal would be sustainable in highways terms – more particularly, in relation to non-car modes of transport.

236. The Council accepts that bus connectivity proposals have improved since the application stage.³⁹ The Travel Plan provides that a bus route would link the appeal site to Lichfield town centre via Eastern Avenue from occupation of the 50th dwelling and that the route would be extended to Fradley, giving links between the town centre and the Fradley Strategic Development Allocation (SDA) and employment site, from occupation of the 250th dwelling.^B The obligation provides that the service would be supported financially for a period of five years,^C after which the judgement on whether to continue it would be a commercial one for the operator. That represents appropriate (and constructive, in that it would bring the additional link with Fradley) public transport provision.

^A Document A5 has the correspondence leading up to withdrawal of the holding objection.

^B Document 23F (Issue 2 of the Travel Plan).

^C Document A7 (the relative merits of the agreement and the unilateral undertaking are considered below).

237. It may well be that pedestrian and cycle links would be such that residents of the proposed development would likely rely more on the private car than might be hoped.³⁸ Walking to existing bus stops would be further than desirable; walking to the town centre, or to either of the railway stations, or to the main employment locations, would be highly unlikely; walking to existing primary schools seems irrelevant when a new primary school is proposed on-site; and it seems inappropriate to consider walking to existing local conveniences when a certain amount of shopping is proposed on-site and has been limited in its area by the Council for fear of a harmful impact on those very facilities. Cycling times, naturally, would be lower and perhaps more acceptable.
238. The Council's objection, however, appears to be based more on comparative analysis than objective assessment⁴⁰ and seems fettered by the stance that the site is not in Lichfield, as defined in the Local Plan Strategy. It is true that the site is less sustainable and accessible from the town centre when compared with the SDA sites around the south of Lichfield. Detailed consideration, taking account also of the SDAs at Streethay and Fradley, reveals a rather more complex picture.^{39,A}
239. The appeal site is further from Lichfield town centre than any of the SDA sites around the town but considerably closer than Fradley SDA. (There are good planning reasons for that SDA but Fradley itself has limited facilities and did not score well in the Council's sustainability appraisal for the Local Plan Strategy.^B) It is a little closer to Lichfield Trent Valley railway station (on the West Coast Main Line) than four of the SDAs. On the other hand, it is further from Lichfield City station than all but Fradley. (The City station serves Birmingham but so too, though less regularly, does Trent Valley). As far as the three main employment areas (Eastern Avenue, Europa Way and Fradley) are concerned, there is not a lot to choose when they are taken all together. Also, if one were looking for a housing location around Lichfield (the main settlement in the District) additional to those allocated in the Local Plan Strategy, it seems that none would obviously be better placed than the appeal site.
240. Accordingly, looked at objectively, there must be concerns about walking and cycling distances. The SDAs score better, taken overall, but exactly those concerns would arise in considering any site around Lichfield additional to the SDAs. Transport sustainability cannot, therefore, weigh heavily in the balance against the appeal proposal – particularly so in light of the Local Plan Inspector having recorded the Council's agreement that the scheme for 750 dwellings represented, in broad terms, sustainable development.¹¹⁶

Landscape character^{44-57, 121, 137-138}

241. There cannot be any doubt that a development of 750 dwellings would have a significant effect on the landscape character of the appeal site and its immediate environs. The site itself would change from being part of the landscape to being a built-up area; its character would change dramatically and irrevocably. When passing close to the site, one would be passing a built-up area, not a rural area. It is difficult, however, to consider the effect on landscape character without also

^A The reference to para. 39 is really to Document 28, referred to in the footnote to that paragraph. The comparisons in the paragraph above are drawn purely from Document 28.

^B Document CD49, pp.28-29, paras. 152-158, summarises the position.

considering the need for the development.⁴² There appear to be two principal questions that help towards an objective assessment. The first is what is the landscape quality of the site itself? The second is how would the proposed development appear when seen from a little distance beyond the site?

242. The intrinsic quality of the landscape within and immediately surrounding the appeal site is not high. It is part of Landscape Character Area 67, an area assessed in the Environmental Statement, fairly reasonably in my opinion, as of low sensitivity.¹²¹ There may be criticisms of the appellant's Landscape and Visual Impact Assessment (LVIA)⁴⁴⁻⁴⁶ but I have used the evidence to assist my own visual assessment. The land is gently undulating, largely in agricultural use, its fields have mainly hedged boundaries, with numerous hedgerow trees, and there is some woodland a little to the north and north-east of the site. The landscape cannot be described as anything more than pleasant. Its rural quality is constrained by an assortment of urban or man-made influences – the West Coast Main Line railway, the sewage treatment works, dwellings of various types and ages, pylons and overhead electricity wires, the fishing lakes and even the Curborough Craft Centre, with its car parking and nowadays somewhat commercial character.^{9-11,137}
243. These intrusions heavily influence, and undermine, the visual quality of the landscape itself – and their nature means there is no real likelihood of their being reversed. If housing were to be built on the appeal site, it cannot be said (in broad terms) that something of significant landscape importance would be lost.
244. In that sense, while the advent of a substantial development might initially be seen as an “incongruous urban intrusion” (reason for refusal no. 3), it is a matter for debate whether it would be more incongruous than any other development beyond the existing urban boundary of Lichfield. The appellants' comparison evidence on the subject was hardly robust.⁵³ Even so, the four SDAs around Lichfield in the Local Plan Strategy might also be described as incongruous intrusions; all are acknowledged to have adverse landscape and visual effects,⁵⁵ though their impact would depend on detailed design and the extent, and location, of landscaping and open space. That may apply particularly to the Streethay SDA, which is in the same general area as the appeal site.¹³⁷
245. There is also the question of the gap separating the built-up areas of Lichfield and Fradley. The Council is concerned to maintain it – but there is no policy support for that concern in the recently-adopted Local Plan Strategy; also, the High Speed 2 (HS2) rail link, if it goes ahead as originally planned, on a high embankment, will be a very substantial man-made barrier between the two settlements.¹³⁸ Even if it were to be in a cutting, it would be an obvious physical barrier, if less of a visual one.
246. In summary, if housing land is needed, then the appeal site presents itself as a logical choice where development would do little harm to landscape interests of acknowledged importance. Even if it were not necessary to find housing land, the landscape and visual harm from development should not weigh heavily against the appeal proposals.

Trees and hedgerows

247. The access from the north-east would require the improvement of Netherstowe Lane for a distance of around 470m south from its junction with Wood End Lane.
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The carriageway would have to be widened to 6.5m.^A At present, it is little more than a single-track road with verges, ditches, hedges and a number of hedgerow trees on either side;^B the clear width between the hedges is 10.0m or less.

Ancient hedgerows^{67-68, 121}

248. The hedgerows on either side of Netherstowe Lane are historic, pre-dating the Inclosure Acts and, on the east side of the Lane, marking a former parish boundary.⁶⁷ They are also designated as Sites of Biological Interest, a designation that includes the ditches and verges alongside them.⁸⁰ Put simply, to widen the carriageway to 6.5m would leave a verge of little more than 1.5m on either side. It would be impossible to do that without affecting the biodiversity interest of the hedgerows and also, because construction would almost inevitably require a greater width, the hedgerows themselves.
249. The appellants' response to this is to translocate the hedgerow on the western side of the road, leaving the one on the eastern side (the former parish boundary) largely untouched.¹²¹ (I say "largely", because a gap would have to be introduced into the hedgerow to enable the cycle track to run on its east side; the length of hedgerow to be lost, however, does not appear unacceptable in the context of what would remain.) There appears to be scope for the translocation of the western hedgerow because adequate verge space could be left for the widened carriageway and its services (potentially, lighting and drainage) and ground and drainage conditions in the new location would be very little different. Translocation is clearly a poorer conservation option than retaining the hedgerow in its historic location but, in my experience elsewhere, it can work very well and the visual character of the hedgerow need not be lost.
250. Various access road options were assessed before the application was submitted but those that avoided any impact on the designated hedgerows had greater disadvantages for other reasons. In those terms, and accepting that translocation would be an appropriate measure in visual terms, the proposed access using an improved Netherstowe Lane remains the least harmful of the potential options.¹³³

Veteran trees^{74-76, 131-133}

251. There are three trees whose veteran status is not in dispute. Two of those are not threatened by the development proposals and potential harm to the third can be avoided, if it proved necessary, by means of a planning condition at reserved matters stage.^{74,131} There are two trees, almost opposite each other on Netherstowe Lane, whose status is disputed (T134, oak, and T135, ash).^{74,131}
252. It is true that these two trees are of indeterminate age¹³¹ – but age is not automatically a defining criterion for veteran status. What has happened to them might also put a question mark against their health¹³¹ – but the Council's evidence was clear that the damage they have suffered in years gone by is not a threat, to either their longevity or their biodiversity value.⁷⁵ They should be accepted as veteran trees.
253. The root protection areas (RPAs) of the two trees extend well into the existing road. Their nominal radii are about 14.4m for T134 and 8.40m for T135.⁷⁶ Impact on the trees would depend very much on the construction of the widened

^A Document CD6.1.

^B Document LDC6, Appendix 2 – the photographs on p.14 (internal p.10 of 19) give a good impression.

carriageway. If it were possible to rely on the existing carriageway construction, and make no significant change to the edge along its east side, then no harm might come to T134 (or the other hedgerow trees on the east side of the road). On the west side, however, while the hedgerow itself might be translocated, T135 (and the other hedgerow trees on that side) would almost inevitably be lost to a straightforward widening of the carriageway to 6.5m. Of course, and not unexpectedly at this outline stage, there are no details that could enable a firm judgement to be made.

254. The suggestion of introducing a pinch point (or more than one) was made at the highways round table session. Again not unexpectedly, there are no details of any standards for such pinch points. Also, no one with arboricultural expertise was involved in the session. One can, however, come to a judgement^A that the carriageway would probably have to be narrowed for a length of some 20m to ensure no significant damage to the root systems of the two trees (though a lesser length might prove acceptable, depending on constructional detail).
255. There is another potential problem. Roads generally require 5.0m vertical clearance and it is inevitable that pruning or cutting back of the crowns of the trees would be necessary. Thus, even if harm to the root systems could be avoided, and the trees remained, their appearance, especially that of T134, would be harmfully diminished by standard highway clearance requirements.⁷⁶

Other trees^{69-72, 130}

256. A recent TPO covers a number of trees in Netherstowe Lane.^{130,B} The intention in making the TPO was apparently to avoid pre-emptive felling and focus attention on their sensitivity. No trees have been felled. The question is whether the road improvements necessitated by the appeal scheme could have appropriate regard to their sensitivity.
257. With a straightforward widening of the carriageway, one could expect all of the trees on the west side of the road to be lost. Compensation for that could come only from new planting, a necessary measure, although new trees would take some time to grow and mature. Constructing the improved road with pinch points to slow traffic could only avoid some of those losses, and only if their spacing would be satisfactory in highway terms and the existing carriageway at those points was found to be adequate without improvement. As with T134, the hedgerow trees on the east side of the road could be guaranteed to survive if only modest construction/improvement works were necessary on that side of the road. Equally, as with T134 and T135, cutting back the crowns to give 5.0m clearance would be necessary and likely harmful.

Conclusion on trees and hedges

258. There would be harm to the ancient hedgerow along the west side of Netherstowe Lane, simply because it would have to be translocated; there must be some doubt as to whether it could retain or regain its biodiversity interest, even if its visual interest, as a hedgerow alongside the road, would be retained. The loss of a short length of hedgerow on the east side of the road would also be harmful, albeit modestly so. One might be confident that the hedgerow trees on the east side of the road, including the veteran T134, could survive, though only

^A By scaling from dwg. 13-22-17 in Document LDC6, Appendix 2 (from Document CD83, the revised Tree Survey).
^B Document 7.

if very limited works on that side were required to improve the existing road. Equally, one can be confident that the hedgerow trees on the west side of the road, including the veteran T135, would be lost in widening the existing carriageway to 6.5m. The possibility of pinch points was raised at the round table session but it is wholly unclear that, even if acceptable in highways terms, they would allow the trees to be left unharmed.

Curborough Grange^{58-63, 124-128}

259. Curborough Grange is listed in grade II, as a farmhouse dating from the early to mid 18th century.^A It has two storeys plus an attic and is a type of farmhouse designed to be seen in the landscape.⁵⁹ It is no longer a working farm and the traditional farmstead buildings to its east have been converted to dwellings. There is known to be a deserted or shrunken medieval settlement in the area, possibly within the appeal site.⁵⁹
260. The Council says that harm to the significance of the designated historic asset (the listed building) as a result of development within its setting would be "less than substantial" (in the terms of paragraph 134 of the NPPF).⁵⁸ That harm would come primarily from loss of prominence in the landscape (and thus views of it) because it would be close to a housing development rather than set in open land.⁵⁹ It would also result from the loss of historic hedgerows;⁶⁰ and it would arise from the loss of historic context, as one of a loose cluster of farmsteads.⁵⁹
261. The appellants, on the other hand, see no harm at all to the significance of the asset as a result of the proposed development. The proposals would not affect the listed building itself, or its associated (and now converted) farmstead; there would be no loss of evidential value; the development would not be on the farmland associated with it, which lay to the north and east; and the setting has already been heavily compromised by 20th century alterations, additions, conversions and nearby development.¹²⁴ In addition, the proposals include a landscape buffer to ensure a continuing verdant setting.¹²⁵
262. How one judges the effect of changes to the setting of the listed building depends in part on how one views the changes to the building itself, its farmstead and its immediate curtilage. The building was a farmhouse but no longer is; nevertheless, it remains essentially as built, though what one sees now may well be the product of a number of stages of development.^B The farmstead associated with it has been converted to residential use, although conversion has been carried out so that what one sees from Netherstowe Lane or the public footpaths retains the essence of its traditional agricultural character.^C Thus, the function of the listed building and its curtilage buildings has changed but, from a distance, both still convey a perception of that original function.
263. Because that perception of a farmhouse and farmstead remains – buildings one expects to see in the countryside, not in built-up areas – the proposed development must be considered to cause harm to the setting of the listed building. In one way, that harm is important, because it is the combination of

^A Document LDC1, Appendix 2.3 is the list description – though it is incorrect in saying "one storey and attic".

^B Document IMP16 – the photograph on p.33 shows the building as it is today, that on p.35 as it is seen from further afield; the diagram on p.32 shows a possible evolution of the listed building but one which cannot be confirmed without internal inspection of the fabric.

^C Ibid – the photographs on p.34.

the setting and the basic fabric of the buildings (farmhouse and farmstead) that conveys the original function; in another, it is less important, simply because the original function has now gone. Either way, that harm can only be less than substantial. If there were a scale within "less than substantial", the latter conclusion would be very much at the lower end. In my opinion, however, the farmland setting is an important aspect of the significance of the listed building.

264. The historic context of a loose cluster of farmsteads does not alter the thread of that assessment. That said, an archaeological evaluation condition, aimed at the deserted/shrunken medieval settlement, could lead towards a better understanding of the wider history.

265. The Council acknowledged that the SDAs identified in the Local Plan Strategy would cause harm to heritage assets. That would be particularly so at Streethay, where there is a listed building within the site.¹²⁸ That does not affect my conclusion on this matter – but it does show that impact on heritage assets has been tolerated elsewhere when catering for housing need.

Views of Lichfield Cathedral^{64-66, 129}

266. Policies CP14 and Lichfield 1 in the Local Plan Strategy seek to protect existing views of Lichfield Cathedral.⁶⁶ However, they give no indication of any priority to views from any particular direction or distance. I disagree with the appellants' apparent contention¹²² that paragraph 134 of the NPPF does not apply. In my opinion, because the Cathedral spires are so clearly seen from various points within the appeal site and its surroundings, the land comes within its setting.

267. In practice, however, there is just one publicly-available view of the Cathedral from Netherstowe Lane – and it can only be obtained by stepping off the carriageway towards a field gate. It is true that that view would probably be lost by the erection of new houses on the intervening land. On the other hand, there is very possibly the opportunity of new views⁶⁶ from the spine road before it enters the development, perhaps even from within the development itself.

268. Almost any development on any land that allows views towards the Cathedral would conflict with Policy CP14. In the absence of any definition of what might be important views, and in the absence of a clear view from within Netherstowe Lane, it is impossible to give any significant weight to this objection. The harm to the setting of the Cathedral would be so slight as barely to cause any harm at all to the significance of the Cathedral as a listed building.

Housing land requirement and supply^{92-102, 139-155, 193-231}

269. The appellants' evidence to the inquiry in March 2015 pointed to five main considerations in assessing whether there had been any material change in circumstances, in terms of either housing land requirement or supply, since publication of the Local Plan Inspector's report and the subsequent adoption of the Local Plan Strategy. They were:

- the Liverpool or Sedgefield methods of dealing with the backlog of housing under-provision;
 - the clear possibility of Lichfield having to provide for some of Birmingham's housing need;
 - the timing of the SDAs;
-

- the rate of delivery of the SDAs; and
- residual disputes about smaller sites.¹³⁹

An additional consideration arises from the updating representations submitted in January 2016 – the under-delivery of housing in 2014-15 and whether past performance now warrants a 20% buffer, rather than 5%, to be added to the nominal 5-year housing land supply.

Liverpool v Sedgefield^{99-100, 148-153, 203, 220}

270. The Local Plan Inspector accepted the case for the Council using the Liverpool method of dealing with the backlog (spread over the whole Plan period) rather than the Sedgefield method (over the first five years following adoption).⁹³ He rejected Sedgefield solely because he considered it unrealistic.¹⁴⁴
271. Using Liverpool, the requirement for the five years from 1 April 2014 would be 2,980 dwellings, or 596 dwellings per annum (dpa); using Sedgefield, it would be to 3,925, or 785 dpa.¹⁴⁵ Using Liverpool, the updated requirement, for the five years from 1 April 2015, would be virtually unchanged at 2,985 dwellings, or 597 dpa.^{201,A} To that must be added a 5% or 20% buffer, giving 3,135 or 3,580 respectively (627 or 716 dpa). Using Sedgefield, the requirement now would be 4,055^B, rising to 4,260 (851 dpa) with a 5% buffer or 4,866 with a 20% buffer (1,020 dpa).
272. The deliverable supply was 684 dpa when the Local Plan Inspector was considering the matter but had risen to 773 by January 2015 before falling back to 738 in March 2015¹⁴⁶ (3,678 in five years⁹⁴). At the time of the inquiry, the supply was not significantly less than the 785 dpa requirement using Sedgefield.¹⁴⁶ In January 2016, the Council put the 5-year supply of deliverable sites at 3,995²⁰² (799 dpa) – over 50 dpa below the requirement using Sedgefield and a 5% buffer.
273. The position now may well be different to what the Local Plan Inspector was considering. In itself, however, that cannot justify making a significant change to the way in which the 5-year housing requirement is calculated less than one year (at the time of writing) after adoption of the Local Plan Strategy. The Local Plan Inspector recognised the potentially critical impact of using either Liverpool or Sedgefield, and also the guidance that Sedgefield should be used where possible, before reasoning that the required housing trajectory using Sedgefield was highly likely to prove unrealistic.^C
274. The figures suggest that it is still unrealistic. Deliverable supply may well have increased according to the Council's figures but the appellants consider that forecast far too optimistic;²¹⁶ and, if they are correct, supply would fall well below the requirement using Sedgefield. On the other hand, even if all of the deliverable land did come forward, it would perhaps matter little – the housing requirement in a Plan is a minimum, not a maximum.^D

^A 478 dpa annual target x 5 = 2,390; 1,665 shortfall ÷ 15 (remaining years of Plan period) = 119 dpa; 478 + 119 = 597 dpa = 2,985 5-year requirement.

^B 2,390 (5-year target) + 1,665 (entire shortfall) = 4,055.

^C Document CD49, pp.38-39, paras. 210-213.

^D Document CD39 – the Local Plan Strategy recognises this in the words “at least” in Policy CP6 (on p.49), which conforms with the exhortation at para. 47 in the NPPF to “boost significantly the supply of housing”.

275. The Secretary of State's decision at Leeds^{165,A} took the view that an 8% over-supply gave "scope for some flexibility". The excess here could be much greater (over 30% on the Council's figures) but is not wholly inconsistent with that. Also, of course, if delivery did exceed the average annual requirement, then some of the backlog might be recouped earlier in the Plan period and a review could take account of what had actually happened.

276. To sum up, if the argument were accepted that Sedgefield should be used in preference to Liverpool, then the by-product, based on the appellants' supply forecasts, would be that more housing land would have to be found. However, the reason why the Local Plan Inspector thought that to use Sedgefield would be unrealistic was the serious doubt about whether the necessary high rate of delivery over five years would actually be attainable in Lichfield District in market terms, not in land availability terms. That doubt must remain, all the more so given the up-to-date requirement figures, meaning that Liverpool is still the more appropriate method.

5% or 20% buffer^{204, 221}

277. There was no disagreement at the inquiry that a 5% buffer was appropriate. It is only in the updating representations that a further year of under-delivery has prompted the appellants to argue that a 20% buffer should be applied. One of the appeal decisions referred to by the appellants pre-dates the inquiry and could have been raised then – but it was not. The argument, very simply, is whether one additional year of under-delivery should lead to the Council having to provide a 20% buffer in its land supply to meet its 5-year need.

278. The Local Plan Inspector looked at a period of eleven years, in seven of which (before the crash and recession) the Council had had met its targets; he concluded, reasonably, that the Council did not have a record of persistent under-delivery. The situation is now very different. The Council has failed to meet its targets in seven consecutive years – and by a substantial margin. The first four of those years were during the recession, when under-delivery may be argued as more to do with market forces than the performance of the Council. One would have expected to see an improvement over the last three years but that has not been forthcoming; and it is these three years of significant under-delivery in a period of improving economic circumstances, added to the previous four, that seem to provide sufficient evidence of the persistent failure that is necessary to justify a 20% buffer.

279. The position, however, is arguable. For that reason, I will look at overall supply in the context of both 5% and 20% buffers.

Land supply^{101-108, 154-162, 205-213, 222-231}

280. The SHLAA has a methodology for calculating delivery from identified sites. It includes both lead-in times and the delivery rates to be used in the absence of information from those best-placed to estimate.¹⁰³ If that methodology were used throughout, the Council's calculated supply at March 2015 would be reduced by 590 dwellings.¹⁵⁴ However, those methodological assumptions may be superseded by information from those in a good position to estimate 'build out' rates – which is exactly what the Council has taken into account. That is also what the Local Plan Inspector did; he had the advantage of hearing from various

^A Document 12, Appeal APP/N4720/A/13/2200640.

representatives of the development industry, some of whom questioned the robustness of the Council's delivery estimates whilst others thought them conservative.^A He was able to come to his conclusion on the basis of that broad sweep of evidence whereas, in this s.78 appeal, the evidence has come only from the appellants and the Council, plus written representations from one agent.

281. Before looking at individual sites, the likely rate of delivery on the SDA sites warrants consideration. The appellants do not believe that any of the SDAs will be built out by three house builders (three flags); thus, the maximum from any site would be 100 dpa (two flags), not 150 dpa (three). I expressed my concern on this point at the inquiry, because it seemed to me that it was perhaps a good one – that house builders had learnt a lesson from the 2008 crash and the recession and were more cautious about exposing themselves to competition.¹⁵⁹
282. The same evidence could, however, have been given to the Local Plan Inspector – but it was not.¹⁰² He concluded that the SDAs could deliver up to 150 dpa. At the inquiry, the only hard evidence for delivery as high as that came from a single site in a single year – not itself a particularly compelling endorsement of the general proposition. Nevertheless, there is no good reason to overturn the conclusion reached by the Local Plan Inspector on the evidence (some of it conflicting) of a cross-section of the development industry.¹⁰²
283. There has been some progress on the Fradley SDA since March 2015.^{207, 224} The commercial tenant on the site is on a part not to be developed until later, so may not pose a problem. There have been on-site works on the land for 750 dwellings but it is difficult to foresee the delivery of any houses at all in 2016/17. Section 106 obligations have still to be completed on the other two parcels of land (for 250 and 70 dwellings), so first deliveries on them may well be noticeably later. Given this, the Council's forecast of 525 dwellings by 31 March 2020 should be reduced to around 475.^B
284. On the East of Lichfield (Streethay) SDA, the first sale is expected by March 2017.²⁰⁶ That suggests a maximum of not many more than 450 dwellings by 31 March 2020.
285. The appellants queried the position on the South of Lichfield (Short Butts Lane) SDA at the time of the inquiry, when they understood that a section 106 obligation had still to be concluded, a piece of land affording access to the site had still to be acquired and multiple ownership was still a potential problem.¹⁵⁶ Despite all that, Pegasus, the agent for the house builder, asserted its confidence that site would come forward and 400 dwellings would be delivered within the (then) 5-year period.¹⁸⁷ One could not be certain from the information available what the true position was likely to be, all the more so as Pegasus did not appear at the inquiry and could not be cross-examined on what it was saying.¹⁴⁷ It seemed reasonable at that time, as with the SHLAA, to look to those who were best-placed to give guidance on the likely outcome.
286. In January 2015, however, there had been no obvious progress on this site. There was no evidence that the various constraints had been resolved and the appellants considered the site no more likely now to deliver housing within five years than it was in March 2015.²²⁶ The Council continued to rely on the

^A Document CD49, pp. 39-40, paras. 215-217.

^B By no means an exact science – but made up of 50, 100 and 150 in the 3 years of delivery on the site for 750 dwellings, possibly over 100 on the site for 250 dwellings and all 70 on the third site.

- information available to the inquiry.²⁰⁵ What is certain is that the section 106 obligation has yet to be executed, some 20 months after the resolution to grant planning permission – though the Council understands it is shortly to be circulated for signature. The Council maintains that 450 dwellings can be provided in the five years from 1 April 2015, the appellants say it cannot be assumed that any at all will be delivered. One reasonable scenario is that matters will be resolved to enable a start on site in 2017 with the first houses being delivered in early 2018, giving up to 300 dwellings by 31 March 2020.
287. Although there is still no planning permission on the South of Lichfield (Cricket Lane) SDA,^{210, 227} the Council's projection of 225 dwellings by 31 March 2020 is not unreasonable.
288. On the East of Burntwood Bypass SDA,^{208, 228} clearance and remediation work has started on site. Vacant possession might be delayed by negotiations on various existing leases and licences but the first dwelling sales may reasonably be anticipated in the latter half of 2017/18. The Council's projection of 350 dwellings is thus not unreasonable.
289. It is agreed that the East of Rugely SDA^{209, 229} can deliver 56 dwellings; and also that the South of Lichfield (Dean Slade Farm) SDA^{211, 229} is not expected to deliver within the 5-year period.
290. Accordingly, from the evidence to the inquiry and then in the updating representations, one may reasonably anticipate the delivery of around 1,860 dwellings from the SDAs by 31 March 2020.^A That is to be compared with the Council's estimate of about 2,250 from the SDAs. On this basis, the Council's overall estimate of the 5-year housing land supply falls from 3,995²⁰² to 3,605. The housing requirement at 1 April 2015 was 2,985 using Liverpool, 4,005 using Sedgefield (both without any buffer).
291. At the inquiry, it was said that there was some flexibility in that two of the SDAs were not included within the 5-year figures but were nevertheless likely to come forward sooner.¹⁰⁶ That now becomes one, because the Council's updated figures include 225 dwellings from the South of Lichfield (Cricket Lane) SDA. The remaining SDA, South of Lichfield (Dean Slade Farm), even if it came forward very quickly, would be unlikely to contribute more than around 200 dwellings.

Contributions from small sites

292. In dealing at the inquiry with what they termed "residual disputes about smaller sites",¹³⁹ the appellants referred only to Tolson's Mill.¹⁵⁵ It was suggested that only 20 dwellings should be assumed, rather than the Council's 100; now it is argued that no dwellings are likely to emerge from that source within five years.²³⁰ It is also argued that the Council is wrong in the way it deals with windfall sites, with a potential over-estimate of 50 dwellings over five years.²²²
293. I do not dispute that the appellants' witness may have better knowledge of Tolson's Mill than the Council; I favour assuming 20 dwellings from that source. On windfall provision, I do not believe that the Council has got its calculations wrong. Overall supply may therefore be reduced by a further 80 dwellings, to 3,525, to account for the shortfall on Tolson's Mill.

^A 475+450+300+225+350+56 = 1,856 (rounded to 1,860), to be compared with the Council's estimate of 525+640+450+225+350+56 = 2,246 (rounded to 2,250).

Birmingham's unmet housing need

294. There is the very distinct possibility, almost certainty, of Lichfield having to provide for some of Birmingham's housing need.¹⁷⁰ That is a matter already addressed in the Local Plan Strategy, with the position recognised and a review allowed for when more is known.⁹³ There is now a report identifying the likely quantum of the unmet need (around 38,000 dwellings)²¹⁷⁻²¹⁸ but it will inevitably be some time before there is agreement between the local planning authorities involved on how much of that need should be met where. Accordingly, and especially given the mechanism for a review in the Local Plan, it would be inappropriate now to speculate on Lichfield's contribution and to allow for that in assessing the merits of this appeal scheme.

Conclusion on housing land requirement and supply

295. The Local Plan Inspector concluded that the appropriate way to deal with the housing backlog was by the Liverpool method.⁹³ The deliverable supply over five years now put forward by the Council is much greater than he was considering¹⁴⁶ – but the appellants, with some justification, consider the Council's figures unduly optimistic. More importantly, the Inspector's concern was with realistic market expectations rather than the ability to provide an adequate supply of land – and the requirement using Sedgfield would be significantly higher now than he was considering. Accordingly, the Liverpool method remains the appropriate one.

296. It might seem somewhat premature to say that there has been a record of persistent under-delivery of housing in Lichfield. My own view is that three years of significant under-delivery in an improving economic climate tips the balance away from the 5% buffer advocated by the Local Plan Inspector and towards a 20% buffer. It is arguable, however – so I address both scenarios.

297. The Council has not erred in the method it has used to calculate the potential supply of housing. The timescales and numbers in the SHLAA methodology may be superseded, if appropriate, by more specific information on any particular site. That said, the conclusions reached by the Council seem optimistic.

298. Using the Liverpool method, the housing requirement for the five years to 31 March 2020 is 2,985 dwellings (597 dpa).^{201,A} To that must be added a 5% or 20% buffer, giving 3,135 or 3,580 respectively (627 or 716 dpa). One may reasonably anticipate the delivery of around 3,535 dwellings over five years. With a 5% buffer, there is a more than adequate supply of housing land – about 5.64 years. With a 20% buffer, requirement (3,580) and supply (3,525) are closely matched – about 4.92 years.

299. The appeal proposal would bring forward 750 dwellings – a very substantial number indeed. Delivery would, of course, be spread over a substantial period of time. The appeal scheme was agreed at the inquiry as deliverable; the difference between the parties was in the estimated number of dwellings likely to come forward within the 5-year period – 175 or 225. That should be no different after the passing of a further year (at the time of writing). The deliverable supply would become 5.17-5.24 years, which might give some comfort but cannot itself justify allowing the appeal.

^A 478 dpa annual target x 5 = 2,390; 1,665 shortfall ÷ 15 (remaining years of Plan period) = 119 dpa; 478 + 119 = 597 dpa = 2,985 5-year requirement.

300. Also, the very distinct likelihood of having to provide for some of Birmingham's unmet housing need cannot directly affect these conclusions. There is a mechanism for a review of the Local Plan Strategy as and when there is the information to act upon.

Sustainability

301. The Local Plan Inspector notes in his report that it was common ground that the site at Watery Lane (then anticipated as a new village of up to 2,000 dwellings) was a sustainable one. The argument, and the conclusion, was that it was less sustainable than the sites in the strategy proposed by the Council.^A
302. At the inquiry, the Council conceded that, in the absence of a 5-year housing land supply, the appeal proposal advanced the social and economic roles identified in para. 8 of the NPPF. It did, however, argue harm in relation to the environmental role – to the setting of Curborough Grange and through the loss of historic hedgerows and veteran trees (although, to put matters in perspective, a certain amount of environmental harm has proved inevitable elsewhere in seeking to meet housing needs – for example, there is a listed building within the East of Lichfield (Streethay) SDA.¹³⁴)
303. Here, the development would be on land not historically part of the farmland going with Curborough Grange and a landscape buffer would mitigate against the proximity of the new housing. That said, the landscape setting is important to the significance of the listed building and, by eroding it, the proposed development would harm (less than substantially) that significance.
304. A successfully translocated hedgerow would largely retain its visual characteristics, in that its relationship with the improved road would remain broadly the same. It would, however, be on a new line, away from its historic location, and the disturbance from translocation would likely mean a loss of biodiversity interest, at least temporarily (even though, looked at overall, there would be biodiversity compensation from the proposed open space and landscaping within the development).
305. The loss of one veteran tree, probably two (depending on the constructional detail of the highway improvements, presently unknown), would certainly be regrettable; so too would be the loss of other hedgerow trees along the line of the improved road. Given appropriate replacement planting, the effect on the visual quality of the landscape would be diminished over time – but the historic loss could not be compensated.
306. Accordingly, there would clearly be environmental losses. At the same time, housing land supply would fall only marginally short of a 5-year supply. The Local Plan Inspector was conducting a comparative exercise in the context of the need to find housing land; he found that development of the appeal site would be sustainable but not as sustainable as the other options being considered. The assessment now must be on a different basis. The adopted Local Plan Strategy very nearly provides for the necessary land. The appeal site remains a sustainable location but the social and economic benefits of providing housing for which there no undue need do not outweigh the environmental harm that the

^A Document CD41, 168-175 and 204-207.

development would cause. On that basis, the appeal proposal would not be sustainable development.

Biodiversity

307. No compelling objection remains. Notwithstanding the specific harm that would arise, the suggested conditions^A represent a resolution acceptable to the Council – and one with which I agree.

Special Areas of Conservation (SACs)^{113,174}

This was not the subject of dispute at the inquiry, other than in the way the NPPF should apply. How policy has developed may be material in considering the alternatives of a section 106 agreement or unilateral undertaking. It is thus a matter to be considered by the Secretary of State in coming to a decision on the appeal.

308. There are three SACs relatively close to the appeal site – the River Mease SAC (5.6 km away), Cannock Extension Canal SAC (11.2 km away) and Cannock Chase SAC (10.5km away).¹² Para. 119 of the NPPF says that para. 14 (the presumption in favour of sustainable development) does not apply where appropriate assessment under the Habitats Directives is being considered, planned or determined. There is no hydrological connection between the appeal site and the first two of those, enabling the conclusion at the application stage that impacts would have no significant environmental effect and no appropriate assessment was required.^B

309. On the third, the Cannock Chase SAC Partnership (which includes Natural England and all Local Authorities within 15 km of the SAC) worked jointly on an Appropriate Assessment in 2009 to inform the plan-making process. One of the conclusions was that all applications for new dwellings within the 15 km zone of influence would need to identify a package of mitigation, because of the potential significant effects on the SAC. It was on the basis of that Appropriate Assessment that a specific one was not prepared for this proposal.

310. During the course of the inquiry, the Council endorsed the Cannock Chase SAC Guidance to Mitigate the Impact of New Residential Development.^C The SAC Partnership acknowledges a 15 km Zone of Influence but requires financial contributions towards mitigation only from developments within 8 km. Policy NR7 in the Local Plan Strategy requires mitigation measures to be secured from developments within 15 km; the 2015 Guidance can, however, be deemed to qualify the adopted policy.

311. The interpretation of paragraph 119 and whether or not it applies to the proposed development is a matter of law. Technically, the proposed development is one that would require an Appropriate Assessment. In practice, work already carried out for the plan-making process has meant that a specific assessment for this proposal was not required. In my view, the Secretary of State, as the competent authority, can rely on that work and the conclusion resulting from it and, in the event that he disagrees with my recommendation

^A Conditions 29, 30 and 31 of the recommended conditions at Annex C.

^B Document CD33, the Committee report, at p.B96, paras. 5.9 and 5.10

^C Document 16.

below and allows the appeal, he need not carry out an Appropriate Assessment for the purposes of that decision. It follows that the NPPF's presumption in favour of sustainable development may be applied, if it is appropriate to do so.

Conditions and obligation

312. Annex C below has comments on the suggested conditions and also my recommendations for the conditions it would be appropriate to attach to outline planning permission, were the appeal to be allowed. The conditions would ensure appropriate timing or phasing and a satisfactory standard or quality of development, generally in accordance with what was addressed at the inquiry.
313. Either/or section 106 obligations were submitted – an agreement and a unilateral undertaking. The agreement was submitted in counterpart form.
314. Essentially, the only difference is that the unilateral undertaking provides for a contribution towards the mitigation of any impact on the nearby Cannock Chase SAC. That was initially requested by Natural England, although the Council no longer requires this contribution because of guidance adopted during the inquiry in March 2015. Otherwise, the provisions of both – affordable housing amounting to 25% of the development; open space within the appeal site, an open space contribution and a leisure contribution; a travel plan and contributions towards various highways works; and primary and secondary education contributions, with the option, instead of the former, of providing the new primary school on the appeal site – all comply with Community Infrastructure Levy (CIL) Regulation 122 in that they are necessary to make the development acceptable in planning terms, directly related to the development and fairly and reasonably related to it in scale and kind. All are site-specific (or development-specific) and there are no other contributions from elsewhere which could bring Regulation 123 into play.
315. The Council's Guidance supports Policy NR7 in the Local Plan Strategy. Given that there is no requirement for a contribution under the Guidance, the contribution in the unilateral undertaking may be considered unnecessary in terms of CIL Regulation 122. The agreement is therefore to be preferred.

Overall conclusion

316. There is no remaining highways or transportation objection. Highways England has withdrawn its standing objection. All outstanding matters can be controlled by planning conditions. There is no conflict with the policies referred to in reason for refusal no. 2^A or with the provisions of the NPPF.
317. Highways requirements are, however, inextricably linked with the objections relating to historic hedgerows and veteran trees. The inevitable harm to historic hedgerows from widening Netherstowe Lane may be alleviated, at least partially, by translocation; that would not be appropriate in conservation terms but successful translocation would at least enable the hedgerow to retain its visual character in relation to the improved road. Almost inevitably, however, those improvements would, mean the loss of certainly one tree, probably two, which can reasonably be classified as veterans. They would also, almost certainly,

^A Core Policies 1, 3, 5 and 10 and Policies ST1 and BE1 in the adopted Local Plan Strategy; Policy DC1 saved from the Lichfield District Local Plan 1998.

- mean the loss of all of the hedgerow trees along the western side of Netherstowe Lane. That conflicts with Core Policy 13 and Policies NR3 and NR4 of the adopted Local Plan Strategy, Policies DC1, E3 and E18B saved from the Lichfield District Local Plan 1998 – and also, subject to weighing the benefits, the provisions of para. 118 of the NPPF.
318. Apart from these specific problems, the landscape character of the appeal site and its immediate surroundings is not itself of such quality as to provide a reason for objecting to the proposed development. Reason for refusal no. 3, that the proposed development would appear as an incongruous urban intrusion into the landscape, would likely apply to any large urban expansion into what is defined in the Local Plan Strategy as countryside, were further housing land found necessary – but I have concluded that there is an adequate supply (albeit only narrowly). The location is accepted as a sustainable one, although not as sustainable as the SDA sites to the south of Lichfield, and there is no policy to protect the gap between Lichfield and Fradley. If it is not necessary to find housing land at this scale, as I have concluded, then there is conflict with the Core Policies of the Local Plan Strategy, Policies NR5 and BE1 thereof, Policies DC1 or H3 saved from the 1998 Local Plan and the provisions of the NPPF.
319. The proposed development would impinge on the setting of the listed Curborough Grange. The building is no longer a farmhouse and its farmstead has been converted to dwellings. However, the outward character and appearance of the group, from beyond the curtilage, remains essentially agricultural; and the setting is undoubtedly a contributor to this. The harm to the significance of the listed building would conflict with Core Policy 14 and also Policy C1 saved from the 1998 Local Plan. In terms of the NPPF, the harm would be less than substantial, bringing paragraph 134 into play and requiring the harm to be weighed against the public benefits of the proposal.
320. One publicly accessible view of Lichfield Cathedral would be lost but there is the possibility that others would be created. The effect on views of the Cathedral is not such as to put the appeal proposal seriously in conflict with Core Policy 14 or Policy NR5 of the Local Plan Strategy, or with saved Policy L48. That also comes within the ambit of paragraph 134 of the NPPF – but the harm would be very small indeed and may be considered compensated by the public benefit of the new views very likely to be obtainable from the proposed distributor road serving the development.
321. Whether there is a 5-year supply of housing land depends on whether one adds a 5% or 20% buffer and on how one views the likely delivery from the SDA sites. My conclusion is that supply falls marginally short of the 5-year requirement. If that is so, the policies for the supply of housing in the adopted Local Plan Strategy are not to be considered up-to-date, in accordance with paragraph 49 of the NPPF. In this case, however, that does not bring the second bullet point of paragraph 14, in relation to decision-taking, into play. There are specific policies affecting this proposal – in paragraphs 118 and 134 (though not, I have concluded, 119) – which indicate that development should be restricted; and, considered on its own merits, the proposal would not be sustainable development. Accordingly, the balance to be undertaken is a straightforward one, not the weighted one to be found in paragraph 14.
322. Great weight is to be given in the planning balance to any harm to the significance of a heritage asset, whether substantial (paragraph 133 of the NPPF) or less than substantial (paragraph 134). In addition, planning permission should
-

be refused for development resulting in the loss of veteran trees unless the need for and benefits of development in that location outweigh the loss (paragraph 118). Accordingly, the environmental harm in this case is significant. I have found that the need for the development is no more than marginal. In consequence, there are no public benefits from the proposed development which could outweigh that environmental harm.

RECOMMENDATION

323. I recommend that the appeal be dismissed.

324. If, however, the Secretary of State concludes otherwise, then outline planning permission should be granted subject to the executed section 106 agreement and the conditions at Annex C to this report.

John L Gray

Inspector

ANNEX A: APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY

Gary Grant, of Counsel	instructed by Bal Nahal, Solicitor to the Council.
He called	
Deborah Boffin BSc(Hons) DipTP DipBldCons(RICS) IHBC	Senior Conservation Officer with the Council.
Portia Howe BSc(Hons) TechCertArborA DipArb(RFS) CBiol MSB	Arboricultural Officer in the Council's Development Plans and Implementation Team.
Pete Coe BA DipLA CMLI	Landscape Architect, Urban Vision Partnership Ltd.
Patrick Jervis BA(Hons) MA MRTPI	Planning Officer in the Council's Development Plans and Implementation Team.
Clare Eggington BA DipEIA MA MRTPI	Planning Policy Manager with the Council.
Simon Wood BA(Hons) BTP MRTPI	Regional Planning and Building Control Manager, Urban Vision Partnership Ltd.
For the round table session on highways	
Geoffrey Evenson HNC FIHE	Senior Engineer, Staffordshire County Council.
For the session on conditions	
Bal Nahal	
Geoffrey Evenson	
Simon Wood	
Christopher Walsh BSc MBS ALGE	Biodiversity Officer in the Council's Countryside Team.

FOR THE APPELLANTS

Anthony Crean QC	instructed by Shoosmiths LLP.
He called	
Nansi Rosenberg BA(Hons) MA MCIA	Managing Director, Prospect Archaeology.
Thomas Grantham-Wright BA(Hons) DipLA CMLI CertArb	Director, Bea Landscape Design.
Adrian Willet BSc(Hons) FRICS FCIH	Senior Director, CBRE Ltd.
Richard Brown BSC(Hons) MRTPI	Associate Director, CBRE Ltd.
For the round table session on highways	
Johnny Ojeil MSc CTP MIHT	Director, Ove Arup and Partners.
Jagit Riat	Ove Arup and Partners.
For the session on conditions	
Richard Brown	
Jagit Riat	
Tim Willis	Shoosmiths LLP.
Dr Katy Read CEnv MCIEEM MCIWEM CWEM DipSM	Executive Director, Middlemarch Environmental Ltd.

ANNEX B: DOCUMENTS

Core Documents^A

CDX List of all Core Documents, as at 9 March 2015.

Proofs of evidence, supplementary proofs and rebuttal proofs

Submitted by the Council

- LDC1 Deborah Boffin's proof of evidence, with summary and Appendices 1.1-1.10, 2.1-2.5, 3.1-3.2, 4.1-4.16, 5.1-5.3. 6.1 and 7.1-7.5.
- LDC2 Pete Coe's proof of evidence, with Appendices 1 and 2.
- LDC2.1 Figures 1-12 from Appendix 1 in LDC2.
- LDC2.2 Pete Coe's summary proof of evidence.
- LDC2.3 Addendum and Errata to Pete Coe's proof of evidence.
- LDC3 Clare Eggington's proof of evidence, with summary and Appendices 1-39.
- LDC4 Dr John England's proof of evidence on retail matters (*not presented*).
- LDC4.1 Dr John England's summary proof of evidence (*not presented*).
- LDC5 Geoffrey Evenson's proof of evidence, with Appendices A-L.
- LDC5.1 Geoffrey Evenson's rebuttal proof of evidence, with Appendices A-I.
- LDC6 Portia Howe's proof of evidence, with summary and Appendices 1-32.
- LDC7 Patrick Jervis's proof of evidence, with summary and Appendices 1-19.
- LDC7.1 Patrick Jervis's 5-year housing land supply rebuttal proof of evidence.
- LDC8 Christopher Walsh's proof of evidence, summary and Appendices (*not presented*).
- LDC9 Simon Wood's proof of evidence, with Appendices 1-3.
- LDC10 Statement in relation to IMP21.

Submitted by the Appellants

- IMP1 Richard Brown's proof of evidence.
- IMP2 Appendices 1-4 to Richard Brown's proof of evidence.
- IMP3 Richard Brown's summary proof of evidence.
- IMP3A Richard Brown's speaking notes for evidence in chief.
- IMP4 Adrian Willet's proof of evidence, with Appendices 1 and 2.
- IMP5 Adrian Willet's summary proof of evidence.
- IMP6 Richard Lemon's proof of evidence on retail matters (*not presented*).
- IMP7 Richard Lemon's summary proof of evidence (*not presented*).
- IMP8 *Not used*
- IMP9 Thomas Grantham-Wright's proof of evidence.
- IMP9A Thomas Grantham-Wright's rebuttal proof of evidence.
- IMP10 Appendices to Thomas Grantham-Wright's proof of evidence (Figures 8.1-8.29).
- IMP11 Thomas Grantham-Wright's summary proof of evidence.
- IMP12 Johnny Ojeil's proof of evidence, with Appendices 1 and 2.
- IMP13 Johnny Ojeil's summary proof of evidence.
- IMP14 Dr Katy Reid's proof of evidence, with Appendices (*not presented*).
- IMP15 Dr Katy Reid's summary proof of evidence (*not presented*).
- IMP16 Nansi Rosenberg's proof of evidence, with Appendix.
- IMP17 Nansi Rosenberg's summary proof of evidence.
- IMP18 Richard Brown's supplementary proof of evidence on 5-year housing land supply, with Secretary of State decision APP/W4515/A/2186878 and Tables 1-7.
- IMP19 Nansi Rosenberg's supplementary proof of evidence.
- IMP20 Johnny Ojeil's supplementary proof of evidence.
- IMP21 Richard Brown's supplementary/rebuttal proof of evidence, with Figure 8.30.

^A **Note.** Not all Core Documents are necessarily to be found in numerical order. Document CDX is annotated by hand to say whether documents are to be found in the green ring binders submitted with the appeal (numbered 1-5) or in the white ring binders containing the Environmental Assessment (EA). Those Documents not annotated in CDX are in bundled separately numerical order.

Documents submitted during the inquiry

- 1 Appellants' position statement in respect of section 106 obligation.
 - 2 Letter dated 6/3/2015 from HM Courts & Tribunals Service to Shoosmiths.
 - 3 Opening submissions on behalf of the appellants.
 - 4 Opening submissions on behalf of the Council.
 - 5.1 Appeal APP/T1600/A/13/2200210 (Javelin Park) – extracts from Secretary of State's decision and Inspector's report.
 - 5.2 Appeal APP/T1600/A/13/2200210 (Javelin Park) – (different) extracts from Secretary of State's decision and Inspector's report.
 - 6 Extract from conditions on permission 12/00182/OUTMEI (Shortbutts Lane SDA).
 - 7 Tree Preservation Order 382-2015 (trees along/near Netherstowe Lane).
 - 8 List of points not agreed by the Council for inclusion in the Landscape Statement of Common Ground.
 - 9 Map 7 from CD43 (Planning for Landscape Change SPD).
 - 10 Illustrative Masterplan at A3 size.
 - 11 Note submitted by the Council re. HS2.
 - 12 Appeal decision APP/N4720/A/13/2200640 (Farsley, Leeds).
 - 13A High Court judgement [2013] EWHC 3844 (Admin) – (Smyth).
 - 13B High Court judgement [2013] EWHC 3844 (Admin) – (Smyth) – extract.
 - 14 Chronology of 5-year housing land supply.
 - 15 Email dated 5/2/15 from Treasury Solicitor's Department re. service of claim form for previous challenge on the Secretary of State.
 - 16 Cannock Chase SAC – Guidance to Mitigate the Impact of New Residential Development (10/3/2105).
 - 17 Written response to letter of 5/3/2015 from A C Bateman of Pegasus Group.
 - 18 5-Year Housing Land Supply Scenarios – supplementary document.
 - 19 Deliverable supply of housing based on a '2-flag' scenario.
 - 20 Note on housing trajectory referred to at paras. 212-213 of Document CD49.
 - 21 High Court judgement [2013] EWHC 425 (Admin) – (Crane).
 - 22 Extract from officer report on application 12/00746/OUTMEI (Streethay SDA).
 - 23A Drawing no. CH003/02 – proposed Netherstowe Lane Site Access Layout.
 - 23B Emails of 6 and 16/3/2015 re. VISSIM modelling.
 - 23C Emails of 6, 9 and 13/3/2015 re. junctions on which the Highways Agency's views are awaited.
 - 23D Table 7.2 from Mr Evenson's proof of evidence (Document LDC5) highlighted to show similarities with SDA sites.
 - 23E Overview of highway network assessment, with plans.
 - 23F Travel Plan, Issue 2 (3/3/2015).
 - 23G Letter dated 28/4/2014 from the Highways Agency confirming no objection in principle to the proposed development.
 - 24 ProLogis Park, Fradley – Stage 1 Road Safety Audit.
 - 25 Statement of Common Ground – Ecology.
 - 26 Framework Ecological Mitigation and Compensation Strategy, Rev. B, March 2015.
 - 27 Ponds P1 and P3 – Great Crested Newt Habitat Suitability Index Assessment 2015 (March 2015).
 - 28 Table 7.2 from Mr Evenson's proof of evidence (Document LDC5) with Fradley Employment Park and Fradley SDA added (with explanatory map).
 - 29 List of Plans and Drawings (as at 6/3/2015).
 - 30 Note on chronology of preparation of retail evidence.
 - 31 Suggested conditions.
 - 32 Summary of provisions of section 106 obligation.
 - 33 Closing submissions on behalf of the Council.
 - 34 Closing submissions on behalf of the appellants.
 - 35 Extract (Lord Hoffman's speech) from Tesco Stores Ltd v Secretary of State for the Environment and others, HL21/06/1995.
 - 36 Bundle of plans (Illustrative Masterplan and Parameters Plans) on which outline planning permission should be granted (replacing CD3 and CD5).
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Documents submitted after the inquiry had been adjourned

- A1 Suggested conditions agreed between the appellant and the Council (25/03/2015).
 - A2 Letter dated 17 March 2015 from Pegasus Group (not seen by the Inspector until 30/03/2015).
 - A3 Note by Regeneris Consulting Ltd, for the appellants, on the implications of the 2012-based household projections for the Local Plan Strategy.
 - A4 Note by NLP, for the Council, on the implications of the 2012-based household projections for the Local Plan Strategy.
 - A5 Email dated 29 April 2015 from Richard Brown for the appellants with attached:
 - a. Technical note dated 27/03/2015 by JMP on behalf of the Highways Agency (now Highways England);
 - b. Email dated 01/04/2015 from Jagjit Riat (Arup) to Eiryl McCook (Highways England);
 - c. Letter dated 15/04/2015 from Highways England to Arup;
 - d. Original objection by the Highways Agency, 2 May 2014;
 - e. Email trail, 15-22 April 2015, in relation to potential planning conditions.
 - A6 Written response to Document A2 by Adrian Willet for the appellants.
 - A7 Draft section 106 obligation, submitted by letter dated 20 April 2015.
 - A8 Submissions for the appellants in relation to Ponds P3 and P6, comprising:
 - a. email dated 29 April 2015;
 - b. email dated 6 May 2015;
 - c. Second Statement of Common Ground: Ecology, dated April 2015;
 - d. Note regarding Pond P6, with Appendices, 29 April 2015;
 - e. Report by Middlemarch Environmental, dated April 2015, relating to Pond P3;
 - f. Illustrative Masterplan, drawing no. P001 Rev B;
 - g. Middlemarch Environmental drawing no. C114597-02-01, dated April 2015;
 - h. Middlemarch Environmental drawing no. C117616-03, dated March 2015.
 - A9 Material relating to planning obligations, submitted by the appellants, comprising:
 - a. letter to Pins dated 22 May 2015 enclosing obligations;
 - b. Position Statement, 22 May 2015;
 - c. Counterpart Agreement signed and sealed by Lichfield District Council;
 - d. Counterpart Agreement signed by the appellants;
 - e. copy of page signed and sealed by Staffordshire County Council;
 - f. email confirmation of County Council action;
 - g. Unilateral Undertaking by the appellants.
 - A10 High Court judgement on s.113 challenge – [2015] EHC 2077 (Admin).
 - A11 Copy of Court of Appeal decision refusing permission to appeal the judgement of the High Court.
 - A12 Inspector's request for updating representations.
 - A13 Council's response, comprising:
 - a. Statement;
 - b. Appendix 1 – SHLAA 2015;
 - c. Appendix 2 – planning permissions granted for new residential development, 1/4/15-31/12/15.
 - A14 Appellants' response, comprising:
 - a. Statement;
 - b. Appendix AAP1 – GBSLEP Strategic housing Needs Study Stage 3 Report;
 - c. Appendix AAP2 – Assessment of Small Site Delivery;
 - d. Appendix AAP4 – Assessment of SDA Delivery.
 - A15 Council's rebuttal of appellants' representations in Document A12, comprising:
 - a. Rebuttal statement;
 - b. Appeal decision APP/X1545/W/15/3003795;
 - c. Appeal decision APP/R0660/A/13/2209335;
 - d. Statement provided at the request of Richard Brown for the appellants.
 - A16 Appellants' rebuttal of Council's representations in Document A11.
 - A17 Suggested conditions agreed between the appellant, the Council and the County Council, taking into account progress on highways and ecological matters.
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ANNEX C: SUGGESTED CONDITIONS

COMMENTS ON SUGGESTED CONDITIONS

Suggested conditions were circulated during the inquiry. I distributed my comments and queries on those conditions. An updated list of suggestions (Document 31) was subsequently circulated and considered in a discrete session on 19 March 2015. An updated and agreed schedule was submitted after the close of the inquiry (Document A1). A further schedule was submitted on 5 May 2015, taking into account subsequent progress on highways and ecological matters (Document A17). The comments below are made on the basis of this last document; numbers are those of the suggested conditions in it. There follows a list of recommended conditions, should the appeal be allowed and outline planning permission granted; the numbers of the respective recommended conditions are given in brackets after each comment below; the construction or wording of the suggestions may be varied in the interests of clarity or precision.

- (1)-(7) These vary from the standard reserved matters conditions but put reserved matters in the context of a phasing scheme for the whole development. The way in which this has been done appears acceptable. There is no need for the reference to "any subsequently approved amendments to the Phasing Plan"; if any amendment is sought, its approval would be appropriately conditioned. (1-7)
- (8)-(9) The drawing numbers are correct, save for an omitted 'C' from (iv). I queried the need for a design brief but see the merit in having one; it could be a single brief covering the whole of the site but the phrasing allows for phase-related briefs. As above, there is no need for the reference to "any subsequently approved amendments". (8-9)
- (10)-(22) These conditions are reasonable and appropriate in principle. There is an element of duplication between (12) and (13). For the same reason as above, there is no need for reference to variations in timing or detail in any of the conditions.
- (23) This condition is necessary and appears to be suitably comprehensive.
- (24)-(25) These conditions appear to be appropriate. It is not clear that (25) is absolutely necessary but that may not preclude it.
- (26)-(27) These conditions are necessary and deal appropriately with potential contamination.
- (28) The principal concern is the deserted/shrunken medieval village believed to lie to the south of Curborough Grange; the condition is necessary and deals reasonably with all eventualities.
- (29)-(34) These conditions are necessary and deal appropriately and reasonably with all landscape and ecology matters.
- (35)-(37) These conditions are necessary, appropriate and reasonable.
- (38) This condition is necessary, having been agreed as a means to overcome reason for refusal no. 7.
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RECOMMENDED CONDITIONS

Commencement and phasing of development

1. No development (other than demolition or ground works) shall take place within any relevant phase of the development without the prior approval of the details for that phase of the siting, design and external appearance of buildings and structures, the means of pedestrian, cycle and vehicular access (save for vehicular access into the site from Watery Lane and Netherstowe Lane and improvements to the northern section of Netherstowe Lane) and landscaping (hereinafter called "the reserved matters") which shall be obtained from the local planning authority in writing before any development in that phase is commenced.
 2. The development in any relevant phase hereby approved shall be begun either before the expiration of three years from the date of this permission, or before the expiration of two years from the date of approval of the last reserved matter to be approved for that relevant phase, whichever is the later.
 3. The first reserved matters application shall be made within three years of the date of this planning permission. Applications for the approval of all reserved matters shall be made before the expiration of five years of the date of this permission.
 4. The reserved matters to be submitted in accordance with condition 1 for any relevant phase shall include:
 - (i) details of all earthworks, mounding, finished floor levels of all buildings and details of existing and proposed site levels in that phase;
 - (ii) the disposition of roads, buildings and other site features in that phase and their relationship with land and buildings adjacent to that phase;
 - (iii) sample details of facing, roofing, boundary and hard surfacing materials for that phase;
 - (iv) details of the means of pedestrian and cycle access and parking layout in that phase; and
 - (v) details of soft landscaping in that phase in accordance with other conditions attached to this permission including those concerned with landscaping, trees, and ecology.
 5. Plans and particulars of the reserved matters in any relevant phase referred to in conditions 1 and 4 above shall be submitted to and approved in writing by the local planning authority and the development shall be carried out in accordance with the approved details.
 6. On or before the submission of Reserved Matters in relation to a relevant phase of the development hereby approved, a phasing plan shall be submitted to the local planning authority for approval. This shall include a plan or plans and associated information to set out details of:
 - (i) the timing of the provision of infrastructure to serve the proposed development or phase thereof, including the proposed haul road and permanent distributor road to the development from Netherstowe Lane, other off-site and on-site highways works, drainage and other utilities provision and improvements;
 - (ii) the timing of the provision of green infrastructure within the site and off-site habitat creation/enhancement works to serve the proposed development or phase thereof, including the ecological mitigation and compensation areas and other formal open space, informal open space, allotments, biodiversity, sustainable urban drainage and strategic landscaping features; and
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- (iii) the timing of the provision of the proposed primary school, community hall building, local neighbourhood centre, care facility and public transport facilities associated with the development or phase thereof.

The phasing plan shall be prepared in accordance with other conditions attached to this permission relating to the timing of specified highways works and community facilities. The development or phase thereof shall be carried out in accordance with the approved phasing plan.

- 7. No more than 250 dwellings shall be occupied until the community hall hereby approved has been completed in accordance with the details approved under condition 1 above.

Drawings, plans and design

- 8. All applications for approval of reserved matters shall be broadly in accordance with the following drawings:
 - (i) C1650 / PP / 001 Rev A - Parameter Plan 1: Land Use;
 - (ii) C1650 / PP / 002 Rev A - Parameter Plan 2: Areas of potential built development;
 - (iii) C1650 / PP / 003 Rev A - Parameter Plan 3: Building Heights;
 - (iv) C1650 / PP / 004 Rev A - Parameter Plan 4: Landscape and Open Space Structure;
 - (v) C1650 / PP / 005 Rev A - Parameter Plan 5: Access and Movement.
- 9. On or before the submission of reserved matters in respect of any relevant phase of the development hereby permitted, a design brief concerning that phase shall be submitted to the local planning authority for approval. The design brief shall include the following information:

Urban design details:

- (i) general building form, heights and housing mix;
- (ii) street types and road hierarchy;
- (iii) footpath and cycle networks;
- (iv) parking strategy;
- (v) landscape , open space, SUDS and boundary treatment design principles, including how landscaping proposals will take account of the setting of the Grade II listed Curborough Grange;
- (vi) how the development seeks to maintain and enhance public views of Lichfield Cathedral; and
- (vii) details of how the development broadly accords with the approved Parameter Plans and the Indicative Master Plan.

Detailed design principles:

- (viii) building materials palette;
- (ix) elevational composition;
- (x) corner treatments;
- (xi) placement of entrances;
- (xii) types of refuse and recycling storage;
- (xiii) boundary and surface treatment palette; and
- (xiv) planting and soft landscaping palette.

Reserved matters shall be in accordance with the approved design brief.

Roads, parking and travel

10. No development (other than demolition and ground works) shall take place within any relevant phase of the development until details of a Pedestrian and Cyclist Connectivity Scheme, including a timetable for the provision/improvement of linkages to footpaths, footways and cycleways adjacent to that phase, have been submitted to and approved in writing by the local planning authority. The development or phase thereof shall be carried out in accordance with the approved details.
11. No dwelling shall be occupied until a Public Transport Connectivity Scheme has been submitted to and approved in writing by the local planning authority. The Scheme shall include details of the duration, routing, frequency and delivery of bus services serving the development in accordance with the following:
 - On or before the occupation of the 50th dwelling, a half-hourly bus service shall be provided into and out of the development via Watery Lane, linking the development with the town centre and Lichfield Trent Valley railway station;
 - On or before the occupation of the 250th dwelling, a half-hourly bus service shall be provided through the site linking the development with the town centre, Lichfield Trent Valley railway station and Fradley Park.

Development or the relevant phase thereof shall be carried out in accordance with the approved details.

12. No development (other than demolition and ground works) shall take place within any relevant phase of the development until the engineering details and specification of the proposed roads, cycleways, footways, footpaths and highway drains required for that phase have been submitted to and approved in writing by the local planning authority. No building shall be occupied until the road works necessary to provide access from the publicly maintained highway to it have been completed in accordance with the approved details.
 13. No buildings in any relevant phase of the development hereby permitted shall be occupied until the individual vehicular accesses, entrances, turning and manoeuvring areas and driveways/parking spaces to serve it have been completed in accordance with details first submitted to and approved by the local planning authority. These features shall thereafter be kept available for their approved use.
 14. Before the construction of any buildings within any relevant phase of the development is commenced, a scheme for the provision of secure cycle parking for any apartments, commercial premises, primary school, care facility or community hall provided within that phase shall be submitted to and approved in writing by the local planning authority. The cycle parking shall be implemented in accordance with the approved details prior to the first occupation of those buildings and shall thereafter be kept available for that use.
 15. Development shall not commence before a scheme of highway improvements relating to the junction of Netherstowe Lane and Wood End Lane and improvements to the northern section of Netherstowe Lane has been submitted to and approved in writing by the local planning authority. The scheme shall be broadly in accordance with drawing no. Figure 9 (Issue 02), or an alternate scheme as may be required as a result of the alignment of HS2. No building in any phase relying on access by way of Netherstowe Lane shall be occupied before the improvements have been completed in accordance with the approved details.
 16. Development shall not commence before a scheme of highway improvements for the southern section of Watery Lane has been submitted to and approved in writing by the local planning authority. The scheme shall include a signalised priority arrangement and
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dedicated footway beneath the Watery Lane railway bridge and shall be broadly in accordance with drawing no. Figure 08 (Issue 04). No building in any phase relying on access by way of Watery Lane shall be occupied before the improvements have been completed in accordance with the approved details.

17. Development shall not commence before a scheme of highway improvements for the junction of Watery Lane and Eastern Avenue has been submitted to and approved in writing by the local planning authority. No building in any phase relying on access by way of Watery Lane shall be occupied before the improvements have been completed in accordance with the approved details.
18. Development shall not commence before details of the distributor road between Netherstowe Lane and Watery Lane have been submitted to and approved in writing by the local planning authority. The details shall be broadly in accordance with drawing no. C1650 / PP / 001 Rev A - Parameter Plan 5: Access and Movement. The distributor road shall be completed in accordance with the approved details on or before occupation of the 250th dwelling in the development.
19. The distributor road shall not come into operation before a traffic management scheme designed to prevent or limit vehicular traffic using the southern section of Netherstowe Lane has been completed in accordance with details first submitted to and approved in writing by the local planning authority.
20. On or before occupation of the 500th dwelling in the development, a scheme of highways improvements at the junction of Capper's Lane and Europa Way, Lichfield, shall have been completed in accordance with details first submitted to and approved in writing by the local planning authority. The scheme shall be broadly in accordance with drawing no. Figure 34 (Issue 02).
21. Before any relevant phase of the development is commenced, full details of ground levels, earthworks and excavation within that phase within 10 metres of the boundary of land associated with the West Coast Mainline railway, including a risk assessment and method statement for those works, shall be submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.
22. The development shall not restrict access to the land and infrastructure associated with the West Coast Mainline railway such as may be required for necessary maintenance and other associated operations.

Construction management

23. No development, including demolition, shall take place within any relevant phase of the development until a Construction Environmental Management Plan (CEMP) for that phase has been submitted to the local planning authority for approval. The CEMP shall be adhered to throughout the construction period and shall include details of:
 - (i) a risk assessment of construction activities with a potentially damaging effect on ecological receptors;
 - (ii) the methods to be used to control the emission of dust, noise and vibration from construction works, including details of any mitigation measures required for that phase;
 - (iii) a scheme for dust deposition monitoring;
 - (iv) the disposal of surface water during construction;
 - (v) measures (including wheel washing facilities) to control the deposit of mud and similar debris on adjoining public highways;
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- (vi) site fencing and security;
- (vii) pedestrian and cyclist protection;
- (viii) measures to identify and protect 'biodiversity protection zones', SUDS and other green infrastructure during construction;
- (ix) temporary contractor's buildings, plant, storage of materials, lighting and parking for site operatives;
- (x) the location and timing of sensitive work to avoid harm to biodiversity features;
- (xi) working and delivery hours;
- (xii) the use of generators;
- (xiii) the construction of a temporary haul road from Netherstowe Lane broadly along the route of the proposed Distributor Road to the site, as shown on Drawing No. CH003 (Issue 01); the temporary haul road shall be provided before the construction of any buildings within the development;
- (xiv) measures to control the routing of construction traffic, including measures to limit the potential for bridge strike impacts from development traffic on the Watery Lane Railway Bridge;
- (xv) arrangements for the turning of vehicles within the site so that they may enter and leave the site in a forward gear;
- (xvi) restrictions on burning; and
- (xvii) roles and responsibilities for the implementation of CEMP requirements and measures.

Noise and odour

24. No development shall take place within the proposed local neighbourhood centre until a scheme for noise attenuation of any operational noise emitting from fixed or mobile plant or machinery, and a scheme to control odour relating to any Class A3, A4 or A5 uses, has been submitted to and approved in writing by the local planning authority. The approved noise attenuation and odour control schemes shall be implemented in accordance with the approved details prior to the first occupation of the commercial uses contained within the local neighbourhood centre and shall thereafter be operated and maintained in accordance with the manufacturer's instructions.
25. Before the construction of any buildings within any relevant phase of the development is commenced, a scheme for protecting existing and proposed residents from operational noise shall be submitted to and approved in writing by the local planning authority. The scheme shall include details of any noise mitigation measures required for that phase, a timetable for the implementation of the approved measures and provision for a validation report to be submitted to and approved in writing by the local planning authority. The validation report shall ensure that all noise issues have been adequately addressed prior to the buildings in that phase being first occupied.

Contamination

26. No development shall take place within any relevant phase of the development until that phase has been the subject of a detailed scheme for the investigation and recording of contamination of the land and risks to the development, its future uses and surrounding environment. A detailed written report on the findings, including proposals and a programme for the remediation of any contaminated areas and protective measures to be incorporated into the buildings, shall be submitted to and approved in writing by the local planning authority. A validation report shall be submitted to the local planning authority for approval within three months of completion of the remediation works. If
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further evidence of contamination is revealed during the course of the development, work at the location will cease until such contamination is investigated and remediation measures, approved in writing by the local planning authority, have been implemented.

27. No development shall take place within any relevant phase of the development until full details of any soil or soil-forming material, whether taken from elsewhere within the development site or imported from outside the site, for use within garden areas, soft landscaping, filling and level-raising within that phase, have been submitted to and approved in writing by the local planning authority. Where the donor site is unknown or is brownfield, the material shall be tested for contamination and suitability for use on site. Full donor site details and proposals for contamination testing, including testing schedules, sampling frequencies and allowable contaminant concentrations (as determined by appropriate risk assessment), shall be submitted to the local planning authority for approval prior to importation to the site. The approved testing must then be carried out and validatory evidence submitted to and approved in writing by the local planning authority prior to any soil or soil-forming materials being brought on to site.

Archaeology

28. No development shall take place within any relevant phase of the development until the applicant has secured the implementation of a programme of archaeological work for that phase, including excavation, post-excavation analysis and publication of a report, in accordance with a written scheme of investigation which has first been submitted to and approved in writing by the local planning authority.

Landscaping, trees and ecology

29. The development hereby approved shall be carried out in full accordance with the protection, mitigation and compensation measures outlined within the Framework Ecological Mitigation and Compensation Strategy dated March 2015.
30. Before the construction of any buildings within any phase of the development is commenced, a Landscape and Planting Scheme, including a Landscape and Ecology Management Plan connected with that phase, shall be submitted to and approved in writing by the local planning authority. The approved scheme shall include:
- (i) a description and evaluation of the features to be managed;
 - (ii) long term landscape and ecology design objectives and management responsibilities;
 - (iii) a plan showing the planting layout of proposed tree, hedge, shrub and grass areas;
 - (iv) a schedule of proposed planting, indicating species, size at time of planting, numbers/densities of plants and a proposed implementation timetable;
 - (v) a written specification outlining cultivation and other operations associated with plant and grass establishment, including adherence to current Sport England design guidance for the proposed playing pitches;
 - (vi) existing and proposed finished levels or contours;
 - (vii) means of enclosure and boundary treatments;
 - (viii) a schedule of maintenance for all landscape and ecology areas other than privately owned domestic gardens for a period of five years from the date of first planting;
 - (ix) details of the body or organisation responsible for implementation of the plan; and
 - (x) ongoing monitoring and remedial measures.
31. On or before the submission of reserved matters in respect of any relevant phase of the development hereby permitted, a Tree Protection Plan, Arboricultural Method Statement and Arboricultural Implications Assessment for that phase shall be submitted to the local
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planning authority for its written approval. The details shall include a scheme setting out specific tree and hedgerow protection measures in accordance with BS 5837 and a specification and programme for the translocation of existing hedgerows, as may be required in relation to that phase. The measures shall be implemented in accordance with the approved details prior to the commencement of any construction works within that phase and maintained for the duration of construction works in that phase.

32. Any tree, hedge or shrub planted or translocated within the site as part of the approved landscaping and planting scheme which dies or is lost through any cause during a period of five years from the date of first planting or translocation shall be replaced in the next planting season with another of a similar size and species, unless otherwise agreed in writing by the local planning authority.
33. No works for any phase of the development, including site clearance and demolition works, shall commence until details of an Ecological Design Strategy (EDS) to serve that phase have been submitted to and approved in writing by the local planning authority. The approved EDS shall be broadly in accordance with details set out in the Framework Ecological Mitigation and Compensation Strategy dated March 2015. The mitigation, compensation, management and other detailed measures and requirements, including a programme for implementation, set out in the approved EDS shall be implemented in accordance with the approved details. The EDS for each phase shall include the following:
- (i) the purpose and conservation objectives for that phase of the proposed works;
 - (ii) a review of the ecological potential and constraints in that phase;
 - (iii) detailed designs and/or working methods to achieve the objectives, including the extent and location of proposed works; where relevant this will include details of a Hedgerow Translocation Strategy and Tree Management Plans;
 - (iv) the type and source of materials to be used;
 - (v) a timetable for implementation demonstrating that works are aligned with the proposed phase of development; and
 - (vi) identification of the persons responsible for implementing the works.

The EDS shall be implemented in accordance with the approved details and all features shall thereafter be retained as approved.

34. No works for any phase of the development, including site clearance and demolition works, shall commence until details of mitigation proposals under GCN Mitigation Option 2, as set out in the Framework Ecological Mitigation and Compensation Strategy dated March 2015 (the Strategy), have been submitted to and approved in writing by the local planning authority. The proposals shall address the medium population of great crested newts recorded at Pond P3 within the Strategy and Reasonable Avoidance Measures to be implemented in relation to Pond P6, as set out in the Note Regarding Pond P6 dated April 2015. A method statement, including timescales, shall be submitted to and approved in writing by the local planning authority prior to commencement of any of these works. All works shall be carried out in accordance with the approved details and method statement.

Renewable energy and sustainability

35. Before the construction of any buildings within any relevant phase of the development is commenced, details of the sustainability measures/technologies to be used within that phase shall be submitted to and approved in writing by the local planning authority. The approved sustainability measures/technologies shall thereafter be implemented in accordance with the approved details.
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Lighting

36. No phase of the development shall commence until details of a lighting scheme to serve that phase, including a timetable for implementation, have been submitted to and approved in writing by the local planning authority. The lighting scheme shall be designed to reduce effects upon sensitive species and upon sensitive habitats to be retained or created on the site. The lighting scheme shall be provided in accordance with the approved details.

Drainage and flood risk

37. No development shall take place until a scheme setting out measures to deal with flood risk, surface water drainage, foul sewage and outfall for the development or any phase thereof has been submitted to and approved in writing by the local planning authority. The scheme shall include:
- (i) how the development or phase thereof shall limit surface water run-off from the site to a 1 in 100 year flood event plus an allowance of 30% for climate change;
 - (ii) details of the hydrological and hydrogeological context of the development and the sustainable drainage strategy to be implemented for the development or phase thereof, including details of SUDS elements and attenuation, storage and treatment capacities, future maintenance and management;
 - (iii) a plan showing the proposed layout and types of surfacing for any relevant phase, as an integrated part of an overall sustainable urban drainage system, and a written specification of proposed surfacing materials and operations;
 - (iv) the results of site porosity tests for any relevant phase to assess the suitability of the ground for infiltration purposes; and
 - (v) details of flood mitigation and resilience measures for the development or phase thereof, including a timetable for the implementation.

The development or phase thereof shall be carried out in accordance with the approved measures.

Local neighbourhood centre

38. The total permitted floorspace in the approved local neighbourhood centre for Class A1-A5 uses shall be a maximum of 1,500 square metres gross. Within this total, the maximum floorspace for a Class A1 convenience foodstore shall be 400 square metres gross. Other Class A1 retail units shall have a maximum floorspace of 100 square metres gross for each unit. The total maximum floorspace for Class A1 uses shall be 750 square metres gross.
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RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT

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

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

SECTION 1: PLANNING APPEALS AND CALLED-IN PLANNING APPLICATIONS

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

Challenges under Section 288 of the TCP Act

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

SECTION 2: ENFORCEMENT APPEALS

Challenges under Section 289 of the TCP Act

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

SECTION 3: AWARDS OF COSTS

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

SECTION 4: INSPECTION OF DOCUMENTS

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