



Department for  
Communities and  
Local Government

Rachael Bibby  
Planning Prospects  
4 Mill Pool  
Nash Lane  
Belbroughton  
Worcestershire DY9 9AF

Our Ref: APP/K3415/A/14/2225799

Your ref: Alrewas

13 February 2017

Dear Madam

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78  
PLANNING APPEAL BY LIONCOURT HOMES LTD  
AT LAND TO THE NORTH OF DARK LANE, ALREWAS, BURTON UPON TRENT,  
STAFFORDSHIRE**

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Inspector, Mrs K A Ellison BA, MPhil, MRTPI, who opened a public inquiry on 7 July 2015 into your client's appeal against the refusal by Lichfield District Council ("the Council") to grant planning permission for a residential development of 121 dwellings together with associated access, parking, public open space and landscaping on land to the north of Dark Lane, Alrewas, Burton upon Trent, Staffordshire in accordance with application ref 13/01175/FULM, dated 1 November 2013.
2. On 27 May 2015, the Secretary of State recovered the appeal for his own decision because it involves a proposal for residential development of over 10 dwellings in an area where a qualifying body has submitted a neighbourhood plan proposal to the local planning authority; or where a neighbourhood plan has been made.

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

3. The Inspector recommended at IR 12.80 that the appeal be allowed and planning permission granted subject to the conditions set out in Annex 1 of the Inspector's Report (IR). The Secretary of State agrees with the Inspector's conclusions (except where stated), and agrees with her recommendation. A copy of the IR is enclosed, and all references to paragraph numbers, unless otherwise stated, are to that report.

**Procedural matters**

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4. The Secretary of State has taken account of the Inspector's comment at IR1.4 that the scheme considered by the Council concerned a proposal for 140 dwellings, and that your client sought to reduce this to 121 dwellings at the inquiry. For the reasons given by the Inspector (IR1.5), the Secretary of State agrees that the proposed amendment would not prejudice the interests of any party. He has therefore determined the appeal on the basis of the amended scheme for 121 dwellings.
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) 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. As part of this reference back exercise, the Secretary of State has taken into account the representations made by all the parties on this issue of whether there is a 5 year housing land supply, together with the Lichfield District SHLAA 2015 which updated the information available during the inquiry and shows the completions with the plan period from 2008. In September 2016, the Council published its Strategic Housing Land Availability Assessment 2016 and Five Year Housing Land Supply Paper 2016.
7. The Secretary of State has had regard to the representations of Lion Court Homes of 25 January 2017. As they relate to the proceedings of the Council have not impacted on his decision he has not found it necessary to circulate them or reproduce them here. Copies may be obtained on written request to the address at the foot of the first page of this letter.

## **Policy considerations**

8. In deciding this appeal, 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.
9. 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 agrees with the Inspector that the policies most relevant to this appeal are those referred to at IR4.1 - 4.4.
10. With regard to the Inspector's remarks on the emerging Alrewas Neighbourhood Plan (eANP) at IR4.5, the Secretary of State observes that the eANP was formally withdrawn by Alrewas Parish Council on 11 February 2016. The Alrewas Neighbourhood Plan withdrawal statement makes clear that the further work envisaged includes revising the withdrawn eANP's policies; preparing more evidence to try to address the Examiner's concerns about the eANP; consultation on a resubmitted draft plan; and submission of the draft plan to an independent examiner.

11. Other material considerations which the Secretary of State has taken into account include the National Planning Policy Framework ('the Framework') (2012) and the subsequent planning guidance ('the Guidance') (2014); as well as the Community Infrastructure Levy (CIL) Regulations 2010 as amended.
12. 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. The Secretary of State has also paid special attention to the desirability of preserving or enhancing the character or appearance of conservation areas, as required by section 72(1) of the LBCA.

### **Main issues**

13. The Secretary of State agrees with the Inspector that the main issues relevant to this appeal are those listed at IR12.1.

### ***Implications for highway users***

14. The Secretary of State agrees with the Inspector's analysis at IR12.2 – 12.20. He agrees with the Inspector (IR12.19) that whilst there is likely to be an increase in demand during those periods of greatest pressure for parking, and incidents of conflicting traffic movements are likely to be exacerbated, these periods seem to be short-lived and concentrated at key points such as in the vicinity of the village shop and surgery. The Secretary of State agrees with the Inspector that whilst traffic from the appeal proposal would add to this pattern, the evidence does not suggest that the impact would be unacceptable. The Secretary of State further agrees with the Inspector for the reasons given at IR12.20 that while there would be a modest increase in vehicle movements and on-street parking along those streets closest to the appeal site that the increased risk would fall well short of a severe adverse impact for which the development should be prevented or refused on transport grounds applying paragraph 32 of the Framework.

### ***Heritage assets***

#### ***Alrewas Conservation Area***

15. The Secretary of State has had regard to s.72 of the LBCA, paying special attention to the desirability of preserving or enhancing the character or appearance of the conservation area. Having carefully considered the Inspector's analysis at IR12.22-12.27, he agrees with the Inspector (IR12.22) that as no built development is proposed for that part of the site located within the conservation area the main points at issue are whether there would be an adverse impact on the character and appearance of Alrewas Conservation Area as a result of the additional levels of traffic and parking associated with the proposed development and, if so, the extent of such an effect on the area's significance.
16. For the reasons given by the Inspector (IR12.22–12.27) and considering paragraphs 131 to 134 of the Framework, the Secretary of State agrees with the Inspector that even though there may be a perceptible increase in the presence of vehicles and in vehicular-related activity the overall effect would not be so noticeable as to materially impair the aesthetic value of the conservation area. Therefore, in agreement with the Inspector at IR12.28, the Secretary of State considers that there would be no adverse impact on the character and appearance of the Alrewas Conservation Area. In this regard, the

Secretary of State notes that English Heritage (now Historic England) offered no objection.

#### *Other designated heritage assets*

17. In accordance with section 66 of 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. Having carefully considered the Inspector's analysis at IR12.30-12.31 and applying paragraphs 131-134 of the Framework, the Secretary of State agrees with the Inspector (IR12.30) for the reasons given that the proposed measures would be sufficient to ensure that the existing setting of the Grade II listed No.25 Dark Lane would be preserved (IR12.30).
18. As to the development being seen in views from higher ground in the vicinity of the Grade II\* listed St Leonard's Church Wychnor and the nearby Deserted Medieval Village (Scheduled Ancient Monument), the Secretary of State agrees with the Inspector's analysis that the dwellings, albeit visible, would be seen against the backdrop of the existing village so that they would not impinge on the current setting (IR12.31). For the reasons given by the Inspector (IR12.31) and having considered paragraphs 131-134 of the Framework, the Secretary of State agrees that the setting of the Grade II\* listed St Leonard's Church Wychnor and the nearby Deserted Medieval Village (Scheduled Ancient Monument) would be preserved.

#### *Undesignated heritage assets*

19. Having regard to paragraph 135 of the Framework, the Secretary of State agrees with the Inspector's analysis for the reasons given (IR12.32) that the historic significance of the landscape would be preserved by means of the proposed archaeological scheme of investigation and report. The Secretary of State further agrees with the Inspector for the reasons given that the design of the proposal makes provision for the retention of field boundaries, thus preserving key elements of the historic landscape (IR12.32).

#### ***Living conditions***

20. On behalf of the Council it was asserted that the level of impact upon amenity would be so severe as to amount to incompatibility with Article 8 of the ECHR (IR12.33). Impacts were identified in relation to car parking, road safety, heritage assets, risk of crime and loss of access to open space (IR 12.33).
21. For the reasons given by the Inspector (IR12.34), the Secretary of State is not persuaded that the highway impact would be so marked as to represent a material reduction in amenity. Turning to heritage assets (IR 12.35), the Secretary of State agrees with the Inspector that in view of his findings above concerning the lack of harm to the significance of designated and undesignated assets it follows that no appreciable harm would be caused to the amenity of those using or visiting those assets.
22. Although the site is easily accessible due to its permeability, like the Inspector (IR12.36), the Secretary of State considers that the dwellings themselves have been arranged and designed to ensure a good level of surveillance within and around properties, and this represents an appropriate design response sufficiently balancing any risk of crime associated with this level of permeability (IR 12.36). Moreover, the Secretary of State agrees with the Inspector that the permeability of the site would in part address those objections concerned with the loss of access to open space. While the Secretary of State notes, from the written representations and those made during the inquiry, that the appeal site forms part of the adjacent countryside, which contributes to local residents'

experience of their village, he agrees with the Inspector that as the appeal site has no formal status as recreational open space this does not weigh against the proposal in the planning balance (IR 12.37).

23. Overall, the Secretary of State agrees with the Inspector and concludes that it has not been demonstrated that the proposal would have an unacceptable impact on the amenity or living conditions of local residents (IR12.38).

### ***Flood risk***

24. The Secretary of State has carefully considered: the Inspector's analysis (IR 12.40-12.45); the evidence including the Flood Risk Assessment; parties' submissions on the issue; the views of the Environment Agency and Staffordshire County Council as lead local flood authority; and Section 10 of the Framework and the Flood Risk section of the Guidance. Having regard to the above, the Secretary of State agrees with the Inspector's conclusion (IR12.45) for the reasons given that the proposal makes adequate provision for flood risk.

### ***The supply of market and affordable housing***

25. The Secretary of State has given careful consideration to the Inspector's analysis on the supply of market and affordable housing at IR 12.46–12.69.
26. As part of the reference back exercise (referred to at paragraphs 5-6 above), the Secretary of State has also taken into account the representations made by all the parties on this issue listed in Annex B. 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 by Lichfield District Council. He has taken all the above evidence and the Inspector's analysis into consideration in his assessment of the HLS position.

### **Housing Requirement**

27. The Council has a recently adopted Local Plan, the Lichfield District Local Plan Strategy 2008-2029 ('LP'). 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***

28. 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.
29. 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.
30. 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 Guidance. 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.

31. 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 the 'Sedgefield approach' 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.
32. 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 (IR 12.50).
33. Having carefully considered these issues, 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, he agrees with the LP Inspector and the Inspector (IR 12. 51) that the shortfall should be apportioned across the remaining plan period.
34. Accordingly, the Secretary of State 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*

35. 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 this issue, the Secretary of State agrees with the Inspector's analysis for the reasons given [IR 12.54-12.57] 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*

36. Paragraph 48 of the Framework and paragraph 3-24-2-140306 of the Guidance states that LPAs 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 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*

37. 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, for the reasons given by the Inspector (IR12.69).

### **Delivery**

38. Having regard to the Inspector's analysis (IR 12.62- 12.68), footnote 11 of paragraph 47 of the Framework, the relevant paragraphs of the Guidance, and the parties' representations, the Secretary of State has gone on to consider the deliverability of the disputed sites in this matter.
39. The Secretary of State notes that the St John's Hospital site is currently under construction, and that the Tesco site benefits from full planning permission, and concludes, agreeing with the Inspector (IR 12.63 and IR 12.66), that 22 units for the Tesco site and 18 units for the St John's Hospital site should be retained in the supply figures.
40. Turning to Friarsgate, the Secretary of State notes that the site now has planning permission in place. Having regard to the planning permission and the Council's 2016 SHLAA and 5 Year HLS paper, the Secretary of State disagrees with the Inspector and concludes that it will deliver 95 residential dwellings within the next five year period.
41. For Tolsons Mill (IR12.65), the Inspector considered that as there is not any continuing interest in its development for residential purposes, there is no evidence to suggest that it will come forward in the next five years. However, the Secretary of State notes that the Council say (in their letter of 15 June 2016) that discussions with the landowner and developer on 19 January 2016 suggest that the site will be developed within five years, and agrees with the Council that the site should remain part of the housing land supply.
42. In regard to King Edward VI School, while the Secretary of State has taken account of the Council's representation of 15 June 2016, which states that pre-application discussions have been held regarding this site and the likelihood that it will come forward within 5 years, the Secretary of State concludes, in agreement with the Inspector (IR 12.67) that there is insufficient evidence to include the site within the Council's housing land supply, and therefore he removes the figure of 32 dwellings from his calculations.
43. The Secretary of State concludes that while dwellings on sites South of Lichfield (Dean Slade Farm) 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.

### *Conclusions on five year HLS*

44. 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.

45. 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.
46. 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.
47. As such, the Secretary of State finds that there is a surplus of 307 dwellings, or a 5.11 year housing land supply.
48. For the reasons set out above, the Secretary of State 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.

#### *Affordable housing*

49. The Secretary of State notes that since the inquiry closed, the Council's affordable housing requirement for the site has increased from 25% to 31%. The Secretary of State agrees with the Inspector for the reasons given (IR12.71) that the need for affordable housing in the district is acknowledged to be acute and, therefore, the affordable housing element of the scheme should carry substantial weight.

#### ***The development plan and sustainability***

50. The Secretary of State agrees with the Inspector for the reasons given (IR12.72) that the proposal would not have an unacceptably adverse effect on the safety and convenience of highway users, nor would it give rise to harm to the significance of heritage assets or to the amenity of residents. He also shares the Inspector's view that the scheme makes adequate provision in relation to flood risk. In these respects, therefore, the Secretary of State agrees with the Inspector that there would be no conflict with LPS Core Policies 3, 5, 10 and 14 or with LPS development management policies ST1 and BE1 (IR12.72). He further agrees with the Inspector that the proposal would accord with the provisions of the LPS's settlement specific policies Alr1 and Alr2 and that it would satisfy saved policy C2 of the 1998 LP (IR12.72).
51. The Secretary of State agrees with the Inspector that the appeal site lies outside the settlement boundary for Alrewas as defined in the 1998 LP (IR12.74). Given his findings on 5 year HLS above, the Secretary of State considers that the settlement boundary policy is not out of date. He agrees with the Inspector that the relationship of the development to the village would not detract from its compact character, and that questions as to the permanence of the current boundary are raised by the terms of policy Alr4 which specifically refers to the possibility of sites beyond it (12.74). For these reasons, the Secretary of State attributes moderate weight to the conflict with that aspect of the 1998 LP.
52. Having carefully considered the Inspector's analysis at IR12.75-12.76, the Secretary of State agrees with the Inspector for the reasons given that there is no conflict with LPS Core Policy 1 or Alr 4.
53. The Secretary of State agrees with the Inspector (IR12.77) that although the proposal does not fully accord with the development plan in that the site lies outside the defined



development boundary, it accords in all other key respects. Accordingly, the Secretary of State considers applying the first limb of section 38 (6) of the Planning and Compulsory Purchase Act 2004, that the proposal is in accordance with the development plan as a whole.

### **Cannock Chase SAC**

54. The Secretary of State has given careful consideration to the Inspector's analysis at IR10.1-10.4. As competent authority for the purposes of the Conservation of Habitats and Species Regulations 2010, the Secretary of State agrees with the Inspector and considers that he needs to carry out an Appropriate Assessment. This is at Appendix C to this letter and sets out his independent consideration of the relevant technical information. For the reasons set out in his Appropriate Assessment, the Secretary of State concludes that the mitigation measures will suffice to prevent any adverse effects from the proposal (including in combination effects with other plans or projects) on the integrity of the Cannock Chase SAC

### **Planning conditions**

55. The Secretary of State has carefully considered the recommended conditions at Annex A, the Inspector's analysis at IR 11.1 - 11.4, paragraph 206 of the Framework, and the relevant Guidance. For the reasons given by the Inspector, the Secretary of State is satisfied that the agreed conditions comply with the policy test set out at paragraph 206 of the Framework and the relevant Guidance.

### **Planning obligations**

56. The Secretary of State has carefully considered the signed and dated planning obligations submitted in this case, national policy set out at paragraphs 203-205 of the Framework, the relevant Guidance; and the CIL Regulations 2010 as amended.
57. Having carefully considered the terms of the Unilateral Undertaking in favour of Staffordshire County Council of 23 June 2016 and the s106A Supplemental Deed in favour of Lichfield District Council of 30 June 2016, the Secretary of State considers that the provisions are necessary to make the development acceptable and are fairly and reasonably related to the proposal and the requirements of paragraph 204 of the Guidance and Regulation 122 of the CIL Regulations are met.

### **Planning balance**

58. In deciding this appeal, 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. In accordance with section 66(1) of the 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. In accordance with Section 72 of the LBCA 1990, the Secretary of State has paid special attention to the desirability of preserving or enhancing the character or appearance of a conservation area. For the reasons given above, the Secretary of State considers that the appeal scheme is in accordance with the development plan overall.
59. The Secretary of State has gone on to consider, applying the second limb of Section 38(6) of the Planning and Compulsory Purchase Act 2004, whether there are material considerations which indicate that the proposal should be determined other than in accordance with the development plan.

60. Weighing in favour of the proposal for the reasons given above he attaches substantial weight to the benefits of the provision of affordable housing and also attaches further significant weight to the benefits of 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 which are not diminished owing to the Council now being able to demonstrate a five year supply.
61. Weighing against the proposal for the reasons given above he gives moderate weight to the conflict with the settlement boundary, little weight to the impact of the proposal on highway users, and little weight to the impact on the amenity or living conditions of local residents.
62. He therefore concludes, in agreement with the Inspector (IR 12.80) and applying Section 38(6) of the Planning and Compulsory Purchase Act 2004, that the proposal is in accordance with the development plan as a whole and that there are no material considerations that indicate that the proposal should be determined other than in accordance with the development plan.

### **Formal Decision**

63. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. He hereby allows your client's appeal and grants planning permission for a residential development of 121 dwellings together with associated access, parking, public open space and landscaping on land to the north of Dark Lane, Alrewas, Burton upon Trent, Staffordshire in accordance with application ref 13/01175/FULM, dated 1 November 2013 (as amended at the inquiry) subject to the conditions set out in Annex A.
64. 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.
65. 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**

66. 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 six 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.
67. A copy of this letter has been sent to the Council. A notification e-mail / letter has been sent to all other parties 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 attached to grant of planning permission 13/01175/FULM, dated 1 November 2013 (as amended at the inquiry).**

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans:
  - (i) Site Location Plan (Drawing Reference 1425\_202 T)
  - (ii) Site Layout Plan (Drawing Reference 1425\_402)
  - (iii) Site Housetype Plan (Drawing Reference 1425\_403)
  - (iv) Site Landscape Plan (Drawing Reference 1425\_404)
  - (v) Low Loader Swept Path (Drawing Reference MID3117-055)
  - (vi) Construction Management — long vehicles (Drawing Reference MID3117-060)
  - (vii) Low Loader Entire Village (Drawing Reference MID3117-060)
  - (viii) Dark Lane Accesses (Drawing Reference MID3117-273)
  - (ix) 1425\_301 A Alder Housetype
  - (x) 1425\_302 Ash Housetype
  - (xi) 1425\_302\_3A Ash Housetype plots 16 and 86
  - (xii) 1425\_303 Aspen Housetype
  - (xiii) 1425\_304 A Beech Housetype
  - (xiv) 1425\_305 A Birch Housetype
  - (xv) 1425\_306 Bungalow
  - (xvi) 1425\_307 A Cedar Housetype
  - (xvii) 1425\_308 A Chestnut Housetype
  - (xviii) 1425\_309 Elm Housetype
  - (xix) 1425\_310 A Elm Plus Housetype
  - (xx) 1425\_312 Hawthorn Housetype
  - (xxi) 1425\_313 Hawthorn Plus Housetype
  - (xxii) 1425\_314 Larch Housetype
  - (xxiii) 1425\_315 Oak Housetype
  - (xxiv) 1425\_316 Sycamore Housetype

- (xxv) 1425\_317 Walnut Housetype
- (xxvi) 1425\_318 Garages
- (xxvii) 1425\_301-2 Alder Rendered
- (xxviii) 1425\_302-2 Ash Rendered
- (xxix) 1425\_305-2 Birch Rendered
- (xxx) 1425\_307-2 Cedar Rendered
- (xxxi) 1425\_309-2 Elm Rendered
- (xxxii) 1425\_316-2 Sycamore Rendered

- 3) Before the development is commenced, full details of the following shall be submitted to and approved in writing by the Local Planning Authority:
- (i) Bricks to be used in the construction of the external walls;
  - (ii) Render, including colour, to be used on the external walls;
  - (iii) Exterior roof materials; and
  - (iv) External surfacing materials.

The development shall thereafter be undertaken in accordance with the approved details.

- 4) Before the development is commenced, full details of the finished floor levels, which shall be not less than 600mm above the 1:100 year flooding event and not less than 150mm above finished ground level, of the proposed dwellings, including their relationship to the levels of the highway, existing development and existing ground levels, shall be submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be undertaken in accordance with the approved details.
- 5) Before the development is commenced, full details of the height, type and position of all site and plot boundary walls, retaining walls, fences and other means of enclosure to be erected on the site shall be submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be undertaken in accordance with the approved details.
- 6) Before the development is commenced, full details for the disposal of surface water and foul drainage shall be submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be undertaken in accordance with the approved details.
- 7) Before the development is commenced, a scheme for the offsetting of biodiversity impacts at the site shall be submitted to and approved in writing by the Local Planning Authority. The offsetting scheme shall include:
- (i) A method for the identification of receptor sites;
  - (ii) The identification of receptor sites, including the part of the site to the west of the proposed dwellings;

- (iii) Details of the offset requirements of the development, in accordance with the recognised offsetting metrics standard outlined in the DEFRA Metrics Guidance dated March 2012;
- (iv) The provision of arrangements to secure the delivery of offsetting measures, including a timetable for their delivery; and
- (v) A management and monitoring plan, to include for the provision and maintenance of the offsetting measures in perpetuity. The management and monitoring plan is to include:
  - a) Description of all habitat(s) to be created/enhanced with the scheme including expected management condition and total area;
  - b) Review of the ecological constraints;
  - c) Detailed designs and/or working methods (management prescriptions) to achieve proposed habitats and management conditions, including extent and location or proposed works;
  - d) Type and source of materials to be used, including species list for all proposed planting and abundance of species within any proposed seed mix;
  - e) Identification of persons responsible for implementing the works;
  - f) A timetable of ecological monitoring to assess the success of all habitat creation/enhancement;
  - g) The inclusion of a feedback mechanism, allowing for the alteration of working methods/management prescriptions, should the monitoring deem it necessary.

The arrangement necessary to secure the delivery of the offsetting measures shall be executed prior to written approval by the Local Planning Authority. The offsetting scheme shall thereafter be implemented in accordance with the requirements of the approved scheme.

- 8) Before the development is commenced, the trees and hedgerows shown to be retained on the approved plans shall be protected in accordance with British Standard 5837:2012. No works shall continue on site until the approved tree protection measures are in place. The tree protection measures shall be retained for the duration of construction including any clearance works until all parts of the development have been completed and all equipment, machinery and surplus materials have been removed from the site, unless otherwise agreed in writing with the Local Planning Authority. No fires, excavation, change in levels, storage of materials, vehicles or plant, cement or cement mixing, discharge of liquids, site facilities or passage of vehicles, plant or pedestrians shall occur within the protected areas.
- 9) Before the development is commenced, a detailed landscape and planting scheme, which shall include an area of woodland planting in the western section of the site, shall be submitted to and approved in writing by the Local Planning Authority. The approved landscape and planting scheme shall thereafter be implemented within the first available planting season, unless otherwise agreed in writing by the Local Planning Authority.

- 10) Before the development hereby approved is commenced, a written scheme of archaeological investigation ('the Scheme') shall be submitted to and approved in writing by the Local Planning Authority. The Scheme shall provide details of the programme of archaeological works to be carried out within the site, including post-excavation reporting and appropriate publication. The Scheme shall thereafter be implemented in full in accordance with the approved details.
- 11) Before the development is commenced, the site shall be subjected to a detailed scheme for the investigation and recording of any contamination of the site and a report shall be submitted to and approved in writing by the Local Planning Authority. The report shall identify any contamination on the site, the subsequent remediation works considered necessary to render the contamination harmless and the methodology used. The approved remediation scheme shall thereafter be completed and a validation report submitted to and approved in writing by the Local Planning Authority within 1 month of the approved remediation being completed, to ensure that all contaminated land issues on the site have been adequately addressed prior to the first occupation of any part of the development.
- 12) Before the development is commenced, full details of the accesses and traffic management works off Dark Lane and Micklehome Drive (indicated on drawing no. MID3117-053), shall be submitted to and approved in writing by the Local Planning Authority. The accesses and off-site highway works shall thereafter be constructed in accordance with a timetable to be submitted to and agreed in writing with the Local Planning Authority.
- 13) Before the development is commenced, full details of the 'temporary secure parking area for residents' shall be submitted to and approved in writing by the Local Planning Authority. The parking area shall thereafter be provided in accordance with the approved details prior to the commencement of development and retained for the duration of the construction works.
- 14) Before the development hereby approved is commenced, a Traffic Management Plan/Construction Method Statement shall be submitted to and approved in writing by the Local Planning Authority. The Plan and Statement shall include:
  - (i) Construction traffic access and routing
  - (ii) Delivery time restrictions
  - (iii) Provision for parking of vehicles for site operatives and visitors
  - (iv) Method of prevention of mud being carried onto highways
  - (v) Pedestrian and cyclist protection, with particular reference to Dark Lane and Micklehome Drive
  - (vi) Proposed temporary traffic restrictions
  - (vii) Arrangements for turning vehicles
  - (viii) Loading and unloading of plant and materials
  - (ix) Storage of plant and materials

The approved traffic management plan and construction management scheme shall thereafter be implemented prior to any works commencing on site and shall thereafter be retained and adhered to until completion of construction.

- 15) The development hereby approved shall be carried out in accordance with the approved Flood Risk Assessment and Drainage Strategy ref 5117802 V4 dated 19th January 2015. This shall include the following:
- (i) Limiting the rate of surface water run-off generated by the 1 in 100 year plus 30% critical storm, so that it will not exceed 17.8 l/s.
  - (ii) Provision of 115 cubic metre infiltration basin on the site to accommodate a 1 in 100 year plus 30% rainfall event;
  - (iii) No built structures to be provided or raising of ground levels within the floodplain of the River Trent.
  - (iv) Ensuring that any flooding occurring within the proposed development for up to and including the 1 in 100 year plus 30% event must be contained within the site boundary in a safe manner and allowed to discharge when downstream capacity permits; and
  - (v) A scheme for the maintenance of the surface water system for the lifetime of the development. The scheme shall include confirmation of the body responsible for its maintenance.

The mitigation measures shall be carried out in accordance with the timing/phasing arrangements embodied within the scheme.

- 16) Any tree, hedge or shrub planted as part of the approved landscape and planting scheme (or replacement tree/hedge) on the site and which dies or is lost through any cause during a period of 5 years from the date of first planting shall be replaced in the next planting season with others of a similar size and species.
- 17) No trees, shrubs or hedgerows planted or retained as part of the approved landscape and planting scheme shall be topped, lopped or cut down without the prior written consent of the Local Planning Authority.
- 18) No construction activities shall take place outside the hours of 07.30 to 19.00 Mondays to Fridays and 08.00 to 13.00 on Saturdays. There shall be no construction activities on Sundays and Bank/Public Holidays.
- 19) Details of a noise attenuation scheme and a timetable for its implementation shall be submitted to and approved in writing by the Local Planning Authority, in accordance with Section 5 of the report N005 prepared by Wardell Armstrong, dated January 2015. Development shall be carried out as approved before the development is first occupied.
- 20) The recommendations and mitigation measures within the following ecological reports and the protected/priority species reports shall be complied with in full:
- (i) Breeding Bird Survey (January 2015)
  - (ii) Wintering Bird Survey (January 2015)
  - (iii) Bat Survey Report (January 2015)
  - (iv) Badger Survey Report (January 2015)
  - (v) Extended Phase 1 Habitat Survey Report (January 2015)



The mitigation measures shall thereafter be retained for the life of the development, unless otherwise agreed in writing by the Local Planning Authority.

[ENDS]

## **Annex B – Schedule of representations**

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

<b>Party</b>	<b>Date</b>
Bal Nahal, Solicitor, Lichfield District Council	3 June 2016
Brian G Hall	5 June 2016
Rachael Bibby, Associate Director, Planning Prospects Ltd	7 June 2016
Will Chapman, Vice Chair, Alrewas Neighbourhood Plan & DCLG Neighbourhood Planning Champions Network	7 June 2016
Antony Muller, Natural England	7 June 2016

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

<b>Party</b>	<b>Date</b>
Carol Davies-Lee	14 June 2016
Antony Muller, Natural England	14 June 2016
Rachael Bibby, Associate Director, Planning Prospects Ltd	15 June 2016
Bal Nahal, Solicitor, Lichfield District Council	15 June 2016
Roger Davies-Lee	15 June 2016
Anne Tasker, Alrewas Civic Society	15 June 2016

## **Annex C**

### **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. 13/01175/FULM, land to the north of Dark Lane, Alrewas, Burton upon Trent, Staffordshire

#### **Project description:**

121 dwellings together with associated access, parking, public open space and landscaping on land to the north of Dark Lane, Alrewas, Burton upon Trent, Staffordshire in accordance with application ref 13/01175/FULM, dated 1 November 2013.

**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. The proposal was considered as part of the housing provision of the adopted Local Plan Strategy and by virtue of the current Guidance to Mitigate the Impact of New Residential Development March 2015.
5. 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.
6. 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 producing their advice Natural England took into consideration:
  - The submitted transport assessment -Amended Transport Assessment – ss4.14-4.20 Trip generation and inward outbound trip assignment (JMP Consultants Ltd – Jan 2014)
  - Highways Agency traffic assessment guidance – Design Manual for Roads and Bridges – Volume 11 s4 – Assessment of implication on European sites
  - The Conservation of Habitats and Species Regulations 2010 – Regulation 62
  - Cannock Chase Special Area of Conservation Guidance to mitigate the impact of residential development

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. Part of the proposal site lies within 15km of the Cannock Chase SAC, an area protected because of its unique heathland habitat. (European dry heaths Annex 1 habitat). 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**

9. 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.
10. 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.
11. 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.
12. 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

13. Natural England provided advice (7 June 2016) was based on a 'source-pathway-receptor' approach taking into consideration the location, scale and distance of the appeal proposal site from the Cannock Chase SAC. Taking account of the transport assessment and the relevant Highways Agency traffic assessment guidance, Natural England concluded that the appeal proposal is unlikely to cause significant air quality effects on Cannock Chase SAC either alone or in combination with other development.
14. As such the Secretary of State concludes that the appeal proposal that there would be no adverse impacts on air quality either alone or on combination.
15. 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 states that the recreation impacts would have an adverse effect on the integrity of the SAC in the absence of mitigation. However, its 14 June representation further states that as the appeal proposal has been included in the housing numbers used when considering the local planning authority's contribution to the overall cost of the Strategic Access Management and Monitoring Measures (SAMMM) in respect of Cannock Chase SAC. Consequently NE states that no additional specific mitigation measures over and above those agreed as part of the Cannock Chase SAC Partnership SAMMM are needed for the appeal proposal.
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 Secretary of State agrees. 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 of 20 December 2016.

## **Conclusion**

17. Having had regard to the above evidence, and in particular the evidence of Natural England on likely impact both alone and in combination with other projects, the Secretary of State concludes that the existing and proposed mitigation measures 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 Watery Lane.

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

**by Mrs KA Ellison BA, MPhil, MRTPI**

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

**Date: 1 December 2015**

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**Town and Country Planning Act 1990**

**Lichfield District Council**

**Appeal by**

**Lioncourt Homes Ltd**

Inquiry opened on 7 July 2015

Land to the north of Dark Lane, Alrewas, Burton upon Trent, Staffordshire

File Ref: APP/K3415/A/14/2225799

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**File Ref: APP/K3415/A/14/2225799**

**Land to the north of Dark Lane, Alrewas<sup>1</sup>, Burton upon Trent, Staffordshire**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Lioncourt Homes Ltd against the decision of Lichfield District Council.
- The application Ref 13/01175/FULM dated 1 November 2013 was refused by notice dated 28 July 2014.
- The development proposed was residential development of 140 dwellings together with associated access, parking, public open space and landscaping but was amended to development of 121 dwellings together with associated access, parking, public open space and landscaping.

**Summary of Recommendation: The appeal (as amended) be allowed, and planning permission granted subject to conditions.**

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## **1. Procedural Matters**

- 1.1. The inquiry opened on 7 July 2015 and sat for 6 days. After hearing closing submissions, it was adjourned to await the outcome of an application to quash the Lichfield Local Plan Strategy 2015; to allow for further information as to the progress of the Alrewas Neighbourhood Plan; and for submission of a completed s106 Agreement in line with the Unilateral Undertaking provided to the inquiry.
- 1.2. The application to quash the Local Plan did not succeed so the inquiry was closed in writing on 4 August 2015. In line with my request at the inquiry, a copy of the Examiner's Report on the Alrewas Neighbourhood Plan was submitted following its publication in August. The parties were given the opportunity to comment on the implications of that report for the appeal proposal. Comments were received on behalf of Lioncourt Homes. A completed s106 Agreement with Lichfield District Council was received along with a Unilateral Undertaking in favour of Staffordshire County Council. These are addressed in the relevant sections of this report.
- 1.3. The appeal was recovered for decision by the Secretary of State for Communities and Local Government by a direction dated 27 May 2015. The reason for recovery was that the appeal involved residential development in an area where a qualifying body has submitted a Neighbourhood Plan proposal to the Local Planning Authority.
- 1.4. The scheme considered by the Council concerned a proposal for 140 dwellings (the 140 scheme). At the Inquiry, the Appellant sought to amend the proposal through a reduction in the number of dwellings to 121, to be achieved through the removal of residential development from that portion of the site within the Conservation Area (the 121 scheme). The nature of the amendments would bring the appeal scheme into line with a revised planning application for 121 units on

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<sup>1</sup> With regard to pronunciation, the Parish Council helpfully provided Doc PC3, which notes that Alrewas is reputedly the only word in the English language that rhymes with 'walrus'

the site for which the Council had refused planning permission on 24 June 2015.

- 1.5. The Council expressed its preference that the inquiry should consider the 121 scheme. The letter of 15 June 2015 which gave notification of the Inquiry also referred to the 121 scheme. Alrewas Parish Council had no objection to the amendment other than that it should be understood that the strength of local objection to the principle of development was undiminished. I proposed, therefore, that the objections received from members of the public to the 140 scheme should be taken to apply in equal measure to the 121 scheme. Such an approach would be sufficient to ensure that the proposed amendment would not prejudice the interests of other parties to the appeal. The inquiry proceeded on the basis of the 121 scheme.
- 1.6. In its Statement of Case, the Council advised that it did not wish to pursue its fourth reason for refusal for the 140 scheme, which related to flood risk. This had not been a reason for refusal for the 121 scheme. However, the Parish Council and many local residents continued to express concerns in this regard.
- 1.7. On the opening day of the inquiry I identified the following main matters for consideration:
  - (i) the level and pattern of traffic movements and parking demand likely to be generated by the development and the implications for the character and appearance of the Alrewas Conservation Area and for highway safety;
  - (ii) the relationship of the proposed development to existing residential properties and the implications for the amenity of local residents;
  - (iii) whether there would be any other identifiable adverse impacts including the relationship of the proposal to Alrewas village, particularly in terms of scale and location and whether the proposal would make adequate provision in relation to flood risk;
  - (iv) the benefits associated with the proposal, particularly in terms of its contribution to the supply of market and affordable housing;
  - (v) an assessment of the proposal against the Development Plan, the policies of the emerging Neighbourhood Plan and national planning policy, including whether a grant of permission would undermine the plan-making process and whether the presumption in favour of sustainable development is engaged.

## **2. The Site and Surroundings**

- 2.1. The site is some 8.8ha in size and is linear in form. Its northern boundary leads on to open fields with the canal and river beyond. Dark Lane runs along most of the southern boundary of the site. The Trent and Mersey Canal and the River Trent lie to the west. The existing built form of the village lies to the south, with the A38 being beyond the site boundary further to the east. A path leads from the village to the canal and its associated towpaths. The western portion

of the site lies within the boundary of the Alrewas Conservation Area. No. 25 Dark Lane, a Grade II listed late C16 house is located just beyond the southern boundary. Alrewas village has a number of community facilities and services including a primary school, local shops and village hall. There are three secondary schools within 4 miles of the site. Dark Lane currently affords access to several properties before converting into a bridleway which leads on to Micklehome Drive.

### **3. The Proposal**

- 3.1. The proposal concerns a residential development of 121 dwellings together with associated access, parking, public open space and landscaping. The scheme would be generally linear in form. The main access would be taken from Dark Lane although there would also be an access from Micklehome Drive which would mainly serve inbound traffic from the A38. There would be a mix of dwelling types and sizes, with 25% being affordable. Flood compensation works would be carried out within the site in the areas of open land to the north and west of the residential development. Footpath links to the surrounding countryside would be provided.

### **4. Planning Policy**

- 4.1. The Lichfield District Local Plan Strategy 2008-2029 was adopted on 17 February 2015. Under Core Policy 1, Alrewas is identified as one of five Key Rural Settlements within the District's settlement hierarchy. A presumption in favour of sustainable development is set out in Core Policy 2. Core Policy 3 seeks to deliver sustainable development. Among the key issues which development should address are: protection of the amenity of residents, promotion of social cohesion including through the provision of affordable housing and assisting in the evolution of towns and villages. Core Policy 5 expects new development to widen transport choice, including by making provision for improving road safety. This is further developed through policy ST1, which seeks to secure more sustainable travel patterns by, amongst other things, only permitting traffic-generating development where it is compatible with the transport infrastructure in the area.
- 4.2. Provision for housing delivery is made within Core Policy 6, which expects approximately 440 dwellings to be delivered in the Key Rural Settlements during the plan period. Under policy CP10, new development should be designed to be integrated with surrounding communities. With regard to conservation areas, Core Policy 14 seeks to protect the built environment and requires new development to make a positive contribution to the local distinctiveness of the historic environment. Policy BE1 expects a high quality of development and encourages development which would have a positive impact on the significance of the historic environment.
- 4.3. In relation to Alrewas itself, policy Alr1 aims to maintain the high quality living environment and ambience of Alrewas including by careful traffic management. As Alrewas is a Key Rural Centre, policy Alr2 supports the improvement of facilities in the village. Housing

considerations are outlined in policy Alr4, which states that 90-180 homes should be provided, with details to be determined via the Local Plan Allocations document. It goes on to note that some sites beyond the village boundary may be needed. Smaller homes should be provided, to address downsizing need.

- 4.4. Some saved policies of the Lichfield District Local Plan (Adopted 1998) are still in force. Policy C2 seeks to enhance or preserve the character of conservation areas and does not permit development which would prejudice the ambience of an area. The appeal site lies outside the settlement boundary for Alrewas as defined in the 1998 Local Plan.

### ***Emerging Planning Policy***

- 4.5. The Alrewas Neighbourhood Plan was submitted to Lichfield District Council in February 2015. The Examiner's Report was published in August 2015. He concluded that, subject to his recommendations, the Plan meets the basic conditions and the requirements of the relevant legislation. The table below sets out those policies of particular relevance to the appeal and the Examiner's recommendations:

**Table 4.1 Alrewas Neighbourhood Plan: submitted policies and Examiner's recommendations**

<b>Policy</b>	<b>Recommendation</b>
Policy 2.1: impact of additional traffic on roads within the village	delete
Policy 3.1: protection of public access to the rural and canal side environment	change to support for protection and enhancement of publicly accessible open space and the canal side environment
Policies 4.1 4.2 and 4.4: high quality of design, especially within or immediately adjacent to the Conservation Area	change policy 4.1 to expect high quality design consistent with village character delete 4.2 and 4.3
Policy 4.6 designates two areas of Local Green Space. Part of Area 1 lies within the appeal site.	delete
Policy 5.1.1 prioritises small scale developments;	change to support for small scale infill development
Policies 5.2 and 5.2.1 refer to an established allocation of 90 dwellings and limit expansion of the village boundary to 30 dwellings in any single development	delete both policies
5.2.2 seeks to protect the village centre from traffic impact arising from expansion development	delete
Policy 5.2.3 criteria for expansion development	change to require that new residential development outside the existing built area must, among other things, respect its local context

Policy 5.2.5 expansion locations: not permitted to the north of the village	delete
Policy 5.3 Flood impact mitigation	delete
Policy 5.4.2 encourages provision of smaller properties (3 bedrooms or fewer)	change to support for types of properties to meet recognised need in the village
Policy 5.6 encourages good design	amend references to the Building for Life standards

## 5. Other Agreed Facts

- 5.1. The Council and Appellant were agreed that any ecology or bio-diversity issues, archaeological issues, landscape impact issues, flood risk or site drainage issues could be resolved or addressed by planning condition.
- 5.2. There is a Statement of Common Ground, Highways (SoCGH, CD34A) between the Appellant and Staffordshire County Council. This agreed all aspects of the Transport Assessment and Travel Plan, including trip rates, distribution and assignment of vehicles and consideration of congestion. It further agreed that there was no problem of road safety in the area. On-street parking in the Conservation Area would not increase as a result of the development and any which did occur would be unlikely to cause congestion or safety problems. It sets out the basis for a construction management plan and concludes that no mitigation measures are required to address the increase in traffic.
- 5.3. There is also a Highway Statement of Common Ground (HSoCG, CD34B) between the Appellant and Lichfield DC. It defines those streets under consideration and includes agreement as to the local highway context, accident records, parking surveys, traffic counts and journey times.

## 6. The Case for Lichfield District Council

### *Introduction*

- 6.1. Whilst the issues between the parties have somewhat narrowed since the initial refusal decision, with common ground being agreed on a number of highways issues and the level of disagreement on the five year housing land supply falling, there remains significant disagreement. The Council has maintained the remaining reasons for refusal in evidence before this inquiry and submits that each remains as a valid reason to dismiss the appeal. In all regards the Appellant has overstated their case. There is little to no acknowledgement as to any possible downsides to the scheme whereas the reality is, as the Council's evidence has shown, that the negative planning consequences of the proposal are significant and warrant the appeal being dismissed.

## **Highways<sup>2</sup>**

- 6.2. The disputes between the parties on highways matters can be split into three broad categories; trip generation; assignment; and parking. There is then the further and most pertinent issue, as to how these interact and the impact on highway safety.
- 6.3. The Appellant contends for and relies upon a trip generation rate produced using the TRICs system. By contrast the Council contends for a trip rate based on locally assessed data. Both witnesses produced rebuttal proofs primarily aimed at addressing criticisms levelled at each other in the main proofs of evidence. The Appellant's rebuttal proof responds to criticisms of the parameters used in the TRICs model. However, the Council's case to this inquiry was that this was to illustrate the validity of the concerns that the TRICs model simply wasn't able to incorporate many of the local characteristics.
- 6.4. For example, whilst there is disagreement as to car ownership figures (Appellant: 1.57 vs Council 1.7) both are beyond the range used in the TRICs model of 0.6 – 1.5 cars per dwelling. As the Appellant notes, a range of 1.6 to 2.0 would result in only one suitable site being presented. This demonstrates the Council's concerns about the use of TRICs in this case and supports the use of locally validated data. In responding to the Council's criticisms, the Appellant makes great play of using census data to show that whilst car ownership might be high in Alrewas, the largest commuting age group of 21-29 are under represented in the village. However, in XX Mr Bain stated that he did not place any particular reliance on this point to support his position on trip rates.
- 6.5. Mr Bailes' trip rates for the proposal are based solely on local data. They are drawn from two sources: first is the traffic count of Mellor Drive and Burway Meadow set out at Table 7.1 of the Highways Statement of Common Ground; the second is the traffic count at AB7 of his proof of evidence. Some concern was raised by the Appellant as to why the Wakefield Road count from this second traffic survey was not used as part of the trip rate calculation. Mr Bailes explained this quite simply as being due to the fact that it was a cul de sac inhabited primarily by retired people and was therefore not representative of the area. The Appellant does not provide any evidence to counter this.
- 6.6. Mr Bain was unable to comment fully on the reliability of the second traffic survey as he was not aware of the methodology by which it had been produced. However, he was willing to accept the principle that trip rates produced on the basis of two surveys rather than one (provided they were both properly produced) were capable of being more robust.

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<sup>2</sup> Although the Proof from the Council's highway witness does not feature a professional attestation clause, Mr Bailes confirmed to the inquiry that his evidence was true and given in accordance with the guidance of his professional institution.

- 6.7. The parties' respective positions on trip rates and the associated trip generation are set out at Table 1 of Appendix AB2. The Council's rates are higher in the am peak period but lower in the 17:00 – 18:00 peak. Importantly, what Mr Bailes also shows is a peak in the 16:00 – 17:00 period. This becomes significant when considering the matter of parking and the interaction between the two.
- 6.8. Mr Bailes' evidence is based on locally observed data. He has used not simply one but two data sets to produce his trip generation rates. They are robust and more likely to take into account any local peculiarities than the Appellant's modelled data. Consequently Mr Bailes' evidence is to be preferred in this regard.
- 6.9. The next highways issue of dispute is assignment. Whilst distribution onto the network was agreed between the parties and forms part of the SoCG the local assignment could not be agreed. When considering the Appellant's position in this regard, the starting point has to be the Transport Assessment. The Appellant seeks to rely on the statement of common ground with the County Council in order to support their position and as confirmed by Mr Bain it is upon the Transport Assessment that this agreement is based.
- 6.10. Dealing first with inbound traffic, para 4.12 of the Transport Assessment asserts that 50% of the traffic travelling from the North, South and East will use the Main Street to Dark Lane access and 50% will use the Micklehome Drive access. Confusingly para 4.16 goes on to say that 75% will use Micklehome Drive and 25% will use Main Street to Dark Lane. Mr Bain clarified in XX that there was indeed an error here and in fact the correct position was the 75% v 25% split. If this is correct, then it appears that what the County Council have agreed to is the 75% v 25% split. This is not what the Appellant's evidence now contends.
- 6.11. Mr Bain in his proof of evidence and then again orally at the inquiry asserted that in fact all of the inbound traffic from the North, South and East would use the Micklehome Drive access. This is not a position that appears anywhere in the Transport Assessment and therefore cannot be something to which the County Council has agreed. Mr Bain's position in XX then became somewhat confused as he simultaneously seemed to be attempting to maintain that all inbound traffic would use the Micklehome Drive access but that some cars might also want to use the shops on their way back to the site. Both cannot be the case.
- 6.12. The 100% routing through Micklehome Drive is not agreed with the County Council and as a matter of common sense would seem to be unlikely to be correct as some drivers may well wish to use the shops. Mr Bailes instead contends for a split based on the distance from residences on the proposed layout to the different access points. This gives a 41% Micklehome Drive v 59% Dark Lane split. Whilst both highways witnesses accept that distance is not the only factor that influences route decision, it is a significant one and there is a clear logic therefore to Mr Bailes' division.

- 6.13. In relation to outbound traffic, both parties agree that all the traffic will have to pass through the conservation area. The Appellant contends for a 50% Exchange Road v 25% William IV Road v 25% Post Office road split. Again, this outbound assignment does not appear in the statement of common ground with the County Council and is therefore not an agreed position with them. There is no mention in the Transport Assessment of using Post Office Road and the only mention of William IV Road is at para 4.15 as follows: *"Drivers heading west are likely to use the Dark Lane exit and travel along William IV Road and Main Street to head directly to the A513."* Mr Bailes raised concerns about any additional vehicles using William IV road as it is a single carriageway, meaning pedestrians must walk on the road. He also detailed that it is a route currently used by school children to walk to school, although that was disputed by Mr Bain.
- 6.14. Para 4.21 of the Transport Assessment says *"By way of a worst case scenario assessment JMP have assumed that all development traffic will be routed via the Exchange Road route."* This is what the County Council agree should be assessed, this is what Mr Bailes says should be assessed and it is what should be assessed for the purposes of this inquiry.
- 6.15. The parking surveys are agreed between the two main parties. Both sides have sought to represent these visually using different methods. However, the Appellant does not seem to have given much consideration to the 16:00 – 17:00 period. Mr Bain in XX accepted that there was a peak in parking between 16:30 and 17:00. The extent of this peak is well illustrated in Mr Bailes' stress heat map. It can be seen from the raw data that whilst the average parking stress through Alrewas is 28%, as accepted by Mr Bain, it is higher on Exchange Road where the average stress is 34%. Between 16:00 and 18:00 this rises further still. The consequence of this is that Exchange Road operates essentially as a one way road at certain times. This is well illustrated by the PM parking plan (at Appendix C of Mr Bain's proof of evidence), which shows that currently there are times when all but two of the parking spaces on the eastern side of Exchange Road are in use. This reduces the operational width to less than 3.25m.
- 6.16. According to the Appellant, there will be around a 10% increase in parking demand associated with the development, which would equate to a single extra space being occupied at peak time. The Council accepts that this is very difficult to quantify but contends such a figure is too low. Much of the development is not within recommended walking distances for bus stops and the consequence of this will be an increase in car usage.
- 6.17. In XX Mr Bain whilst attempting to maintain that it was robust to route all the inbound traffic from the North, South and East up Micklehome Drive also stated that up to 10 vehicles could come to use the shops and stay for between 5 and 10 minutes each, depending on what it was they wanted to purchase. If 10 new cars need to use the shops for 10 minutes each over an hour period this would mean the demand would be for more than one new parking space.



- 6.18. Looking at Mr Bain's PM parking survey plan, if one additional car parking space on the eastern side of Exchange Road was taken up, this would extend the length over which it would essentially operate as a one way road. Alternatively if the car was to park on the west side of the road, it would create a situation where, as illustrated in the drawings at AB6, it would become very difficult for just one car to pass down the road.
- 6.19. The video surveys do not support the assertion that this is a problem free area. The week used is not a neutral one. Mr Bain in XX accepted that it was important to use a neutral week but his evidence was then that the guidance relied upon by Mr Bailes was simply not the relevant one. Even if this is the case, which is not accepted, it still illustrates the importance of using a neutral week. The week chosen for the video survey arguably fails in this regard due to its proximity to Easter.
- 6.20. In order to understand the full impact of these issues there is a need to have a proper understanding of the base conditions in the relevant areas. This is difficult in some regards, as in the Transport Assessment there is no assessment of the base flows down William IV Road. Mr Bain in XX attempted to explain this by saying that they were simply so low they did not need to be assessed. He also argued that as all salient junctions had been assessed and showed no problems this illustrated that the relevant road conditions were all within acceptable limits. However, if Mr Bain's assessment of route choices is preferred, the impact must be assessed without knowing the existing conditions on the road.
- 6.21. Mr Bain in his proof of evidence sought to use the Staffordshire County Council design guide as a proxy for the link capacity of Exchange Road giving 211 two way movements as the capacity. As a matter of mathematics, whoever's trip rates are used, in the AM peak if the development were to be approved there would be in excess of 211 movements on Exchange Road. In XX Mr Bain then sought to distance himself from this position arguing that this was not meant to be expressed as a maximum and that actually the theoretical capacity of the road was somewhere between 211 and 900 vehicles per hour.
- 6.22. In the AM there is a dispute as to how much traffic will flow down Exchange Road but, as per the Transport Assessment, what should be assessed is the assumption that all outbound traffic will travel on Exchange Road. This will result, on either set of trip rates, in roughly a 50% increase in traffic flow. In the PM there will be an increase in parking on Exchange Road. This will cause a restriction on the traffic flows on this road requiring more complex manoeuvring to be undertaken by drivers on the road. This will be coupled with an increase in vehicle numbers which will serve to accentuate these issues and will have a severe impact on highway safety and for this reason the appeal should be refused.

### ***The Conservation Area***

- 6.23. As agreed by Mr Hodgkinson in XX, the salient parts of the NPPF for the purposes of heritage issues are paragraphs 131 – 134. As he also

agreed, paragraph 132 requires that an assessment of the significance of the heritage asset in question is undertaken. This has simply not been done.

- 6.24. The Alrewas Conservation Area is predominantly made up of HUCA 3 which is scored as being of high importance in the Alrewas Extensive Urban Survey. Mr Hodgkinson could not point to anywhere in the Heritage Assessment that accompanied the application that recognised this. His proof fails to set out the significance of HUCA 3. If you have not assessed the significance of the asset you cannot have properly assessed the impact on it. As a result of this failing the evidence of Mrs Boffin on heritage impacts must be preferred.
- 6.25. It is also important to note in relation to the significance of the Conservation Area that it was first designated in 1970 and that it is one of 23 medieval towns and villages in Staffordshire.
- 6.26. The parties are agreed that there is very little guidance regarding assessing the impact traffic can have on a conservation area but it is not disputed by the Appellant that it is something that is capable of causing harm to a heritage asset. The salient local guidance that exists on the matter is paragraph 9.7 of the Alrewas Conservation Area Appraisal and Action 13 of the Conservation Area Management Plan 2011. The Appellant seems to rely on the fact that as nothing has been done in relation to Action 13 then there is not an existing problem. This is not in accordance with Mrs Boffin's evidence who in essence explained that the lack of action was essentially a question of resources and having other actions to work through.
- 6.27. The wording of paragraph 9.7 of the Appraisal appears plain: *"Traffic Management needs to be considered and a solution to parking issues in Main Street should be sought along with a solution to problems with traffic, particularly with regard to HGVs that use the Main Street."* Recognition of a need for traffic management in a conservation area appraisal would only logically arise if traffic was an issue that needed to be addressed. Mr Hodgkinson agreed that the Council thinks there is an existing problem and does not present anything by way of a baseline assessment to counter this.
- 6.28. On anybody's case there will be an increase in traffic through the conservation area. The issue is whether or not it is perceptible. In the AM peak there is a potential for an increase of 50% in traffic flows on Exchange Road. On any reading of the transport evidence, there would be a perceptible increase that would have a detrimental impact on the conservation area.
- 6.29. It is not contended by the Appellant that this increase in traffic will enhance the value of the conservation area. It is not entirely clear whether Mr Hodgkinson is of the view that there will be some less than substantial harm or whether there is no harm at all. This may be in part explained by the fact that he appeared to be of the understanding that there was a level of less than substantial harm that did not engage paragraph 134 of the NPPF. This was not a view shared by his own planning witness Mr Bateman. If there is harm that is not substantial

then, however insubstantial, it is less than substantial harm. In the context of Alrewas, it cannot be properly argued that an increase in traffic flows preserves the conservation area. The only proper conclusion that can be reached is that there is less than substantial harm.

6.30. With regards to the levels of less than substantial harm, the inspector and the Secretary of State will have to take a view as to whose evidence is to be preferred. Both witnesses accept that given the lack of guidance on how to assess the impact traffic can have on a heritage asset, then it is a matter for them to produce an assessment of the impact informed by their professional training and experience. However, as set out above, Mr Hodgkinson has not acknowledged the significance of the asset he is assessing and seems to have misunderstood paragraph 134 of the NPPF. Accordingly, Mrs Boffin's evidence must be preferred.

6.31. When there is less than substantial harm then paragraph 134 is engaged. The proper application of this test is informed by case law<sup>3</sup>.

*This does not mean that an authority's assessment of likely harm to the setting of a listed building or to a conservation area is other than a matter for its own planning judgment. It does not mean that the weight the authority should give to harm which it considers would be limited or less than substantial must be the same as the weight it might give to harm which would be substantial. But it is to recognize, as the Court of Appeal emphasized in Barnwell, that a finding of harm to the setting of a listed building or to a conservation area gives rise to a strong presumption against planning permission being granted. The presumption is a statutory one. It is not irrebuttable. It can be outweighed by material considerations powerful enough to do so. But an authority can only properly strike the balance between harm to a heritage asset on the one hand and planning benefits on the other if it is conscious of the statutory presumption in favour of preservation and if it demonstrably applies that presumption to the proposal it is considering.*

6.32. It is clear from this that the statutory presumption against development that harms a heritage asset is a strong one. In fact, it is a rebuttable presumption that it should not be approved. Mr Wood in his proof of evidence acknowledges the benefits the proposal would bring. However, he relies upon the evidence of Mrs Boffin and concludes that permission should be refused. The Appellant has not rebutted the presumption against development that harms the Conservation Area and for this reason the appeal should be dismissed.

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<sup>3</sup> CD83: [2014] EWHC 1895 (Admin) R. (on the application of Forge Field Society) v Sevenoaks DC paragraph 49

### **Five Year Housing Land Supply**

- 6.33. The Council's latest position on 5 year housing land supply is set out in CD 103. Before the issue of specific sites and allocations can be considered, there are three important points of principle to be resolved: whether the Liverpool or the Sedgefield approach should be applied; whether a 5% or a 20% buffer should be applied; and the timing at which the relevant buffer is to be applied. It is important to bear in mind that the Lichfield District Local Plan Strategy 2008 – 2029 was adopted by the Council on 17th February 2015, the Inspector's report which found the plan sound having been published on 16th January 2015. Between adoption and the end of this inquiry only 5 months have passed.
- 6.34. CD103 refers to the Planning Practice Guidance (PPG) which states<sup>4</sup>: *"The examination of Local Plans is intended to ensure that up to date housing requirements and the deliverability of sites to meet a five year supply will have been thoroughly considered and examined prior to adoption, in a way that cannot be replicated in the course of determining individual applications and appeals where only the applicant's/appellant's evidence is likely to be presented to contest an authority's position."*
- 6.35. On the Liverpool v Sedgefield question the only salient evidential change that has taken place between now and the Local Plan Examination is the publication of the 2014 SHLAA. Mr Bateman contends that this marks a significant change as in one year the LPA are aiming to build more than 1000 houses, whereas part of the reason the Inspector found that the Liverpool approach was appropriate was because the LPA had never managed more than 600 houses before. He further contends that the Liverpool v Sedgefield question was not given a proper airing at the Local Plan examination and it would therefore be appropriate for an alternative finding to be made at this inquiry.
- 6.36. Regarding the latter contention, it is clear from CD 42<sup>5</sup> that the question of Liverpool v Sedgefield approach was before the Local Plan examiner. It was a question that he did have to come to a conclusion on and the conclusion that he made was that Liverpool was the appropriate approach. CD 42 Table 3 shows that on the basis of the 2013 SHLAA the Council was contending for a delivery capacity of 3,422. This would amount to more than 600 a year on average and the examiner was therefore aware that the Council was proposing to build at a higher rate than previously. In these circumstances the examiner still found the Liverpool approach was the appropriate one.
- 6.37. Mr Bateman in his proof of evidence at 7.30 states that it is important to have regard to NPPF's aim of targets being both realistic and aspirational. It is exactly for that reason that the examiner adopted the Liverpool approach, as set out at his report, paragraph

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<sup>4</sup> PPG Paragraph: 033 Reference ID: 3-033-20150327

<sup>5</sup> CD 42: Local Plan Examination Matter 3: Assumed Delivery Rates

213: *"I consider therefore that the Liverpool approach would lead to housing supply figures which would be both realistic and aspirational."* That reasoning remains valid. There is nothing presented by the Appellant to this inquiry that would warrant a departure from the Liverpool Method.

- 6.38. Again the 5% v 20% was a live debate before the Local Plan examiner [as illustrated by CD 42]. Mr Bateman was in attendance at the examination and made submissions that a 20% buffer was appropriate. Again the only salient evidential change that has taken place is the publication of the 2014 SHLAA which provided details of completions against targets for one additional year.
- 6.39. A point is taken by the Appellants that upon reading paragraph 214 of the Local Plan report <sup>6</sup> the examiner does not appear to have regard to the 2013 SHLAA. As confirmed by Mr Jervis and evidenced by CD 42, the 2013 SHLAA was before the examiner for him to have regard to as he saw fit.
- 6.40. The Appellant through Mr Bateman contends that historically it has been easy for the Council to meet their targets as it has been based on a suppressed requirement. He points to the Council's own projections and where they have not met them to suggest that this is a more realistic indicator of the situation in Lichfield. Ultimately all the Council can and should be judged against is their actual targets, that is what the NPPF requires and that is what should be done. You cannot reach a target if the target doesn't exist.
- 6.41. There is no binding authority regarding the definition of persistent under delivery. It remains within the remit of the relevant decision maker. Here the examiner had information regarding delivery in a 12 year period. His approach was to take a longer period as the relevant period because "the longer period provides the more robust evidence as it takes better account of peaks and troughs in the housing market cycle". Having done so, he concluded that the Council did not have a record of persistent under delivery. He does not express concern or suggest that it was a finely balanced decision. The Council submits that the availability of one more year of data does not tip the balance into persistent under delivery.
- 6.42. The final issue of difference in approach is the stage at which the appropriate buffer is applied. Mr Bateman points to two appeal decisions where his approach is endorsed. Mr Jervis relies upon the inspector's letter from the Amber Valley Local Plan (CD104) to support his approach. Whilst it has to be accepted by the Council that this letter does not expressly endorse Mr Jervis' approach in the text, it would seem odd of the Inspector to follow this approach if he did not approve it. The point that follows from this is that there is again no definitive authority on the approach that should be followed and it is therefore entirely reasonable to adopt the approach used by Mr Jervis. The purpose of the application of the buffer as set out at NPPF

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<sup>6</sup> CD39

paragraph 47 is to provide a realistic prospect of achieving the planned supply and to ensure choice and competition in the market for land. Applying the buffer before the surplus is added, as Mr Jervis has done, achieves this objective.

- 6.43. Having considered the basic differences in approach between the parties the next step is to consider supply issues. There is a dispute as to the appropriate level of discount that should be applied. The Appellant contends for a 10% rate and the Council a 5% rate. Mr Bateman submits that his 10% rate is appropriate as it considers a broad range of potential factors that can impact upon delivery. He points to numerous appeal decisions and a high court decision where it is accepted as a reasonable approach, but it is not the only approach and it is not an approach that has been specifically tailored to the circumstances of Lichfield. Mr Jervis' 5% discount rate is.
- 6.44. The evidence base for the 5% rate is clearly set out in the SHLAA<sup>7</sup>. It takes into account the very low lapse rate in Lichfield which, if the year 2010-2011 is excluded, stands at just 1.2%. The Inquiry has heard from multiple parties that in simple terms, the situation in Lichfield is if you build them they will come. Given that the evidence is available, it therefore must be more appropriate to use rather than simply applying a generic reduction rate and accordingly here the 5% rate should be used.
- 6.45. There are three sites where extant planning permissions exist that the Appellant argues should be removed from the 5 year supply figures. As Mr Jervis points out NPPF states sites with planning permission should be considered deliverable *"unless there is clear evidence that schemes will not be implemented within five years, for example they will not be viable, there is no longer a demand for the type of units or sites have long term phasing plans."*<sup>8</sup> Mr Bateman has stated his reasons why these three sites will not come forward but it is submitted that the information he has been able to provide does not amount to clear evidence that they will not be implemented and accordingly these sites should be included in the 5 year supply.
- 6.46. In particular, the evidence regarding Friarsgate is that a revised scheme with an additional 49 dwellings is to be submitted. The mere fact of this illustrates a clear intention by the developers to bring forward housing on this site. If anything the provision from this site should be increased rather than reduced.
- 6.47. Mr Bateman argues that the site at St John's Hospital cannot come forward at the moment as it would be in breach of Policy HSC-2 of the adopted Local Plan. However, Mr Jervis points out that the Tennis Club is no longer in operation and the intention of the developer is to bring forward housing on this site. The existence of the Tennis Club is not an automatic bar to development and, given that there has been an

<sup>7</sup> CD 46: SHLAA 2014 paragraphs 6.20 – 6.22

<sup>8</sup> NPPF footnote 11 to paragraph 47

indication there is an intention to bring it forward, it is not unreasonable to include it in the supply.

- 6.48. Mr Bateman submits that housing development at King Edward VI School simply isn't possible due to the level of need there is for the school to accommodate pupils. However, it is the case that it is the school which has proposed this as a site for potential development.
- 6.49. The Council relies in full on Mr Jervis' evidence regarding the Land off Burton Road.
- 6.50. If the Appellant's supply figure is accepted, the Liverpool approach is followed and a 5% buffer is applied after the shortfall is included, then the Council has a 4.96 year housing land supply. If the available supply is a mere 25 houses higher, then this would result in the Council having a 5 year supply. As such, if the Secretary of State finds in favour of the Council regarding the rate of discount or nearly any of the disputed sites, then this will result in the Council being able to demonstrate a five year supply.

### ***Planning Matters***

- 6.51. Reason for refusal one is that the application is premature with regards to the spatial strategy for Alrewas. Mr Wood in XX quite properly accepted that the allocations document is not yet in existence and that the Council is of the view there are fundamental flaws with the proposed Neighbourhood Plan. However, he remained of the view that to develop this site now would deprive local people of the ability to have any input into the allocation of housing in Alrewas.
- 6.52. Policy ALR-4 provides for 90-180 houses to be developed in Alrewas over the plan period. However, primacy is given to infill development. Mr Bateman identifies in the region of 75 houses being available by virtue of infill development in Alrewas. If all of those come forward and this development is approved now then this would result in 195 houses being delivered in Alrewas. Whilst it is accepted by the Council that the 90-180 figures are not a maximum, this gives an indication of the scale of this development in the context of Alrewas. Accordingly as maintained by Mr Wood to approve it now would be premature.
- 6.53. A couple of discrete points also need to be addressed. The parties' planning witnesses are at odds as regards to whether policy 134 of the NPPF is a restrictive policy. This is a matter of objective interpretation. Paragraph 134 tells us that unless the benefits of the scheme outweigh the harm to the heritage asset, it should not be approved. The starting point is therefore one of refusal. If the starting point is refusal then the consequence is that development is restricted by the policy. The further consequence of this is that footnote 9 is engaged and the presumption in paragraph 14 of the NPPF is not engaged.
- 6.54. Mr Bateman seeks to give particular primacy to the importance of housing development above other forms of the development. He draws this from the text of the foreword to the NPPF and the general tenor of the document. However, he has to accept that if one looks at

paragraph 17 of the NPPF where the core principles are set out, no such express primacy is given to housing provision.

### **Conclusion**

6.55. The Council is able to demonstrate a 5 year housing supply. Bullet point 2 of NPPF paragraph 14 is not engaged and the appeal falls to be determined on the basis of compliance with the development plan. The Council maintains two specific reasons for refusal, highway safety and harm to the Alrewas Conservation area. As set out above, the evidence presented to this inquiry shows that for both of these reasons the appeal should be refused. Further, the proposed development is premature with regards to the spatial strategy for Alrewas and should be refused.

6.56. The final matter is that of amenity and impact on human rights and the Inquiry has heard from Cllr Marshall in this regard.

6.57. In light of the above the appeal should be dismissed.

### **7. The Case for Alrewas Parish Council and residents<sup>9</sup>**

7.1. The Parish Council fully embraces the policies in the recently adopted Lichfield District Local Plan. It feels strongly that ALR4 clearly defines how the village should be developed. The appeal proposal fails to satisfy that policy for the following reasons:

- although the proposal falls within the range of 90-180 dwellings, the Local Plan Allocation Document which is to determine final numbers and locations has not been prepared;
- approximately 40 houses have so far been constructed leaving 50-140 to be delivered. This proposal represents 240% of the minimum and 86% of the maximum remaining range, for a Local Plan that still has 14 years to run. In the context of the village it is not small scale and does not represent modest or proportionate growth;
- this proposal is not infill, is beyond the current village boundary and has not been considered by the Local Plan Allocation Document;
- housing locations are expected to take into account information gathered by, and in conjunction with the local community but current information shows clear opposition to development on this site;
- whilst the proposal would meet the need for affordable homes, that need could be accommodated in other locations within the village. The proposal does not accord with the mix proposed in

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<sup>9</sup> Although Alrewas Parish Council did not seek Rule 6 status, I asked that it make a formal closing statement to the inquiry, in reflection of its involvement in the preparation of the emerging Neighbourhood Plan and its role in making known the views of residents. I have drawn on that statement and the other submissions in preparing this summary.



the South Staffordshire Housing Assessment or meet the requirement for suitable high quality houses to address downsizing for older residents which are addressed in the Neighbourhood Plan;

- 7.2. The Neighbourhood Plan has been in development for nearly 3 years. It should be given material consideration at this Inquiry. There has been a high level of participation. The Consultation Questionnaire achieved a 38% response rate. Consultation was also undertaken with businesses and developers, albeit Lioncourt did not get involved in that process.
- 7.3. The Neighbourhood Plan is pro-development and includes a housing target which falls within the range contained in the Local Plan. There are proposals within the Neighbourhood Plan as to how this target and the required housing mix should be achieved. The requirement for a Strategic Environmental Assessment (SEA) was questioned during the Inquiry. The Neighbourhood Plan is robust. An SEA is not necessary in view of the decision to follow policy NR7 from the Local Plan.
- 7.4. Key points from the Neighbourhood Plan include:
- Alrewas is by far the smallest Parish in Lichfield District by area. The village has boundary constraints of major roads, rivers and flood plains along with a medieval road structure within the Conservation Area. The fundamental approach of the Neighbourhood Plan is to meet the housing target, within this constrained area, whilst avoiding a high concentration of new development in any one location which would have an adverse impact on traffic flows within the Conservation Area and therefore reduce the sustainability of the village.
  - Due to the boundary constraints, this site is the only open land within ready walking distance of the village. It is an objective of the Neighbourhood Plan to meet the housing target whilst minimising development on this land, so that the bulk of it can be retained as an accessible green border to the village.
  - A number of other developers have already held pre-application planning meetings with the Parish Council to assess compliance with the emerging Plan.
  - Traffic is a significant issue in Alrewas. Any significant development which relies on traffic flow through the centre of the village would add to this.
- 7.5. The Parish Council has demonstrated that the evidence put forward by the appellant is subject to interpretation and doubt. Its own surveys and reports demonstrate that the impact of this development would be far greater than the appellant suggests.
- 7.6. Whilst the appellant's approach concentrates on peak traffic flows along with junction loading, it has not adequately addressed the more significant issue of the extent of constraints on the existing road system in this part of the village: namely double parking, properties in

the medieval street pattern with no offsite parking, roads with no footpaths and proximity to old/listed/vulnerable buildings. The video evidence submitted by the Appellant does not show the appropriate time periods to illustrate these issues.

- 7.7. The Surgery is located on Exchange Road and 50% of users live outside of the village, as do many of the customers of the village shops. Many people therefore have no option but to drive into the village centre and park on its narrow roads. For significant periods of the day, parking on Exchange Road and Main Street is on both sides, and often on footpaths, severely reducing the width of the road. HGVs frequently have difficulty passing and pedestrians and mobility scooter users often have to proceed along the road due to obstructed footpaths.
- 7.8. The other routes to and from the site, William IV Road and Post Office Road, suffer similar congestion with on-street parking and a lack of footpaths in some areas. There is a frequent need for cars to stop and reverse to allow others to pass or to manoeuvre blindly on the wrong side of the road<sup>10</sup>. The proposed development will exacerbate the current situation and the impact has not been adequately considered. This situation is reinforced by the Police who advised primary school children not to cycle to school as they consider the roads to be too dangerous. The National Cycling Route N54 has been rerouted to avoid Main Street and Exchange Road due to the identified danger to cyclists. An accident near the War Memorial in 2014 does not figure in the accident statistics. Development on the proposed site is therefore the most problematic from a traffic perspective. This has been a key consideration in the Neighbourhood Plan development when considering alternative sites.
- 7.9. There can be no doubt that the increased traffic will have a considerable detrimental impact on the amenity of existing residents and result in an increased risk to safety. In our view, this outweighs any perceived benefit the development might offer.
- 7.10. The Parish Council has demonstrated reasonable doubt with regard to the technical evidence base for the Appellant's flood mitigation approach. Current best practice guidance has not been used in this case, including an inappropriate flood and greenfield run off prediction method. The site suffers flooding well in excess of that predicted by the Environment Agency's current models. Areas supposedly only subject to 1 in 100 year events flood regularly. This local knowledge has not been taken into account.
- 7.11. The flood mitigation proposals rely on raising the ground level of the site by 0.6 metres and providing balancing ponds and other artificial interventions. This will not be an effective solution in the long term. It has the potential to increase the risk of flooding in other parts of the village during periods of high water levels. This approach to flood management will impact on views in this part of the village and is

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<sup>10</sup> See photographic evidence within PC04 and the letter from Mr Latham, ID09

inappropriate in such a sensitive setting. It is contrary to the NP policy 5.3 which was strongly supported by the Environment Agency in its response to the final NP. Furthermore NPPF clearly discourages development in areas where flooding is a risk<sup>11</sup>. The sequential test has not been applied here. The Neighbourhood Plan identifies alternative sites which are not subject to flood risk. This alone should be enough to prevent this development.

- 7.12. There are doubts as to the proposed storm water drainage system as it relies on attenuation and outfalls which are unlikely to operate properly in times of high water. This will add to the already serious flooding on the site. This will not be properly assessed until development stage when water authority applications are made. In the last two years, insurers have begun to remove flood cover from existing residents adjacent to the site. There is a real risk that potential buyers of these houses may not be able to get insurance which will satisfy a mortgage lender.
- 7.13. The Environment Agency was supportive of the approach in the Neighbourhood Plan, stating: *"To the north and east of the parish, there are large areas of floodplain (Flood Zones 2 and 3) associated with the Rivers Trent and Tame. ...Any future proposals or planning applications will need to take account of this."* The Strategic Flood Risk Assessment for Lichfield District (2014) states that *"the importance of preserving this floodplain must be highlighted as any constrictions introduced in this area would have significant affects downstream"*. The Neighbourhood Plan recognises the need for new development to avoid floodplain areas and we have noted that community feedback recommends that *`new development should be avoided in areas adjacent to the existing floodplain boundary in order to mitigate additional risk of flooding in the village'*.
- 7.14. Sustainability is a key tenet of the NPPF. It requires the application of all NPPF policies, not a subjective interpretation based on location and adjacency to facilities as appears to be being applied by the appellant. Village infrastructure is at capacity. Our primary school is turning away pupils, our surgery patient list is full, our roads are congested, and the vast majority of our population commute elsewhere to work. No additional large scale expansion can be sustainable.
- 7.15. The Neighbourhood Plan aims to ensure that the scale of development is modest and in accordance with the Local Plan. Development must be gradual to enable facilities to expand and adapt; and spread around the settlement to minimise traffic impact. It must be well designed to blend in to the historic streetscape and be in accordance with NPPF Para 58 which requires a Neighbourhood Plan to ensure good design. Accordingly NP Policy 5.6 requires developments to reflect "Building for Life 12". This development falls well short of this standard.

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<sup>11</sup> See paragraphs 94, 99, 100 and 101

- 7.16. The Local Plan is intended to have a fifteen year life. Spread over this timescale, the proposed housing allocation in the Local Plan is achievable, giving the village time to develop its infrastructure. To provide the balance of our entire maximum allocation via a single large development is unsustainable and against the policies of the Local Plan.
- 7.17. Local Environment - The Local Plan (para 17.28) cites the lack of open space in the north and east of the village. The land north of Dark Lane has for generations been used by the community as open amenity space, crisscrossed with formal and informal footpaths, dotted with mature hedgerows, water meadows and rich in flora and fauna. This is where the River Trent and the Trent & Mersey Canal converge in a rare river section.
- 7.18. This riverside location, with its bridges and weir is the jewel in Alrewas' crown and by far the most accessible rural open space. It is the point of arrival for canal boats, which is important to our aim to attract further visitors to the village and the National Memorial Arboretum. The Conservation Area itself, the views into and out of it and the adjacent fields are all deemed highly important in the Conservation Area Management Plan (para 2.20). The Parish Council consider that this application has a significant detrimental impact on the north of the village, the loss of valuable 'rural' but accessible space, huge negative impact on the views into and out of the area and a very significant impact on the amenity of Alrewas residents adjacent to the site and well beyond.
- 7.19. Alrewas has a long and valuable history being mentioned in the Domesday Book of 1086 and was the third Conservation Area designated in Staffordshire in 1968. Historically the village had three ancient meadows — only the one to the north remains and this would be lost under this development. The site remains an untouched open field system adjacent to the ancient Roman Road and at the junction of the ancient Salters Way/Dark Lane, it retains some remnants of Ridge and Furrow, but may contain significant potential archaeology as yet undiscovered.
- 7.20. The development would have an inevitable detrimental effect on the setting of listed buildings and those of recognised historic importance (as noted in the Conservation Management Plan) which surround the site. The traffic would further have a detrimental impact on the medieval road system, and potentially put a number of historic buildings at risk. This is highlighted in the Conservation Officer's report to committee where she states: "I still consider that the proposals will have an adverse impact on the character and appearance or significance of the Alrewas Conservation Area".
- 7.21. In the Staffordshire County Council Historic Environment Character Assessment Report for Lichfield District (Feb 2009), the Trent Valley flood plain north of Alrewas was scored as the second most important historic environment in the district, second only to Lichfield City's Historic Cathedral Core, and more important than the historic village centre itself (see page 28, table 5.2). The report states: "The areas to

the north and west of Alrewas have scored quite highly and any development in these zones would need to consider the historic environment as discussed in the individual LHECX reports". Inadequate consideration has been given to the historical importance this report gives to this site, as the second most important historic environment in the entire Lichfield District.

7.22. NPPF (Para 66) requires applicants to work closely with the community affected by their proposals. During 2011 there was a series of consultations relating to the Rural Master Plan. They were useful in providing an initial view of the key issues facing the village along with a number of potential solutions. Lioncourt carried out a single 4 hour public event on a Friday afternoon in July 2012. The appellant recorded the concerns raised at this event in its Consultation Statement, but failed to address them fully. There has been no subsequent consultation. Not only do we consider this to be clearly inadequate, but the proposal which the appellant presented at the event bears little resemblance to the current scheme. Most notably the initial scheme relied on two way traffic being instigated on the A38 slip road, identifying correctly that this was a necessity to avoid the traffic problems in the centre. This approach was rejected on highway grounds so the proposal was amended to rely on the existing road network regardless of the impact. Throughout the period from December 2012 to the current day, the Neighbourhood Plan Steering Committee have held numerous consultation and feedback sessions to garner and develop the views of the residents.

7.23. The Parish Council is strongly opposed to this proposal for the following reasons:

- It does not comply with the key policies in Adopted Local Plan.
- It does not comply with the policies in the Emerging Neighbourhood Plan.
- It does not adequately consider and offer solutions to the real traffic issues.
- The development is on an area prone to flooding. Data and remedies have been presented which are not considered reliable and viable.
- There are locally determined alternatives which will meet the housing requirements in terms of numbers and mix.

7.24. Finally the Parish Council would like to quote the Prime Minister from a recent BBC programme: "planning reforms would make it easier for communities to say they are not going to have big plonking housing estates landing next to the village which would endanger lovely countryside". We think that sums our position most eloquently.

## 8. The Case for Lioncourt Homes Ltd

### *Introduction*

- 8.1. This application was made in accordance with the principles set out in **Bernard Wheatcroft Limited v Secretary of State for the Environment and Another (1982) 43P&CR233** and also follows the principles for amendment set out in Annexe M<sup>12</sup> of the Planning Inspectorate's Procedural Guide dated 1<sup>st</sup> April 2014.
- 8.2. Officers recommended that planning permission be granted in respect of both the scheme for 140 dwellings and 121 dwellings. Indeed, the policy advice was:

*No policy objections to the principle of residential development at Alrewas. It is identified within the adopted Local Plan Strategy as a key rural settlement to take between a minimum of 90-180 homes within the plan period. This proposal is located adjacent to the settlement boundary and is within the range identified by the Local Plan Strategy.*

- 8.3. Statements of common ground have been entered into with both the District Council and the County Council as the highway authority. The County Council is quite clear: there is no objection whatsoever due to highway safety or adverse impact upon the highway network either due to traffic movements or parking as a result of the proposed development. It is highly surprising that the District Council has sought to maintain the case based upon adverse impact on highway safety. The evidence in this regard is simply not credible.

### *Traffic and Parking*

- 8.4. It is clear from the evidence, including the Statements of Common Ground with the Highway Authority and Lichfield District Council, that the roads in the vicinity of the appeal site which may be subject to development traffic have an extremely good safety record. That is unsurprising given the extremely low flows within the conservation area<sup>13</sup>: -
- For Park Road (between Dark Lane and Exchange Road) - 110 vehicles in the AM peak and 84 in the PM peak. That amounts to some 1.8 vehicles per minute and 1.4 vehicles per minute respectively;
  - For Exchange Road – 146 vehicles in the AM peak and 118 vehicles in the PM peak (being 2.4 vehicles per minute and 2.0 vehicles per minute in the respective peak hours)
  - For Park Road (between Exchange Road and Micklehome Drive) – some 52 vehicles in the AM peak and 54 vehicles in the PM peak (being 0.9 vehicles per minute in each peak);

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<sup>12</sup> Para M2.2

<sup>13</sup> As set out at Bain proof paragraph 3.23 and table 3.7

- Post Office Road (traffic entering and leaving at the Main Street junction) – 134 vehicles in the AM peak and 169 in the PM peak (amounting to 2.2 vehicles per minute and 2.8 vehicles per minute in the relevant peak hours).

- 8.5. There was some dispute as to the likely level of trip generation but, even so, the differences are minimal, with the Council's assessment producing an additional 5 vehicles in the AM peak and 11 fewer vehicles in the PM peak<sup>14</sup>. The Appellant's data indicates around one additional trip per minute through the conservation area in the morning peak and around two during the afternoon peak<sup>15</sup>. This would be only slightly more using the Council's figures<sup>16</sup>. On any realistic and proportionate basis, these represent a negligible or very minor impact so far as the operation of any of the roads in the conservation area are concerned. The County Council as Highway Authority did not object to this proposal<sup>17</sup>.
- 8.6. The Transport Assessment is robust. It used trip generation rates derived from TRICS, a nationally recognised source of data, as well as locally validated figures. It also used a correct data set having regard to car ownership in Alrewas parish<sup>18</sup>. The local validation shows that the TRICS rates are robust and higher than those from the locally generated trip rates<sup>19</sup>.
- 8.7. There is also dispute as to trip distribution and trip assignment. The distribution (showing the general direction of where traffic would go) showed the principal directions of travel as 70% going south towards Lichfield and Birmingham and around 20% going north to Burton and Derby<sup>20</sup>. In agreement with SCC, the Transport Assessment adopts a worst case approach of assigning all traffic down Exchange Road. However, in reality traffic would be more likely to be distributed along Exchange Road, William IV Road and Post Office Road<sup>21</sup>. The result is to reduce the traffic experienced by any one road such that in the morning peak Exchange Road would experience one trip every 2.3 minutes, William IV Road every 4.1 minutes and Post Office Road every 4.1 minutes. In the evening peak Exchange Road would experience a trip every 4.2 minutes, William IV Road, every 7.1 minutes and Post Office Road every 7.1 minutes. As the time taken to drive down each of these streets is much less than a minute, during the majority of the

<sup>14</sup> Appendix AB2, Table 1. Mr Bailes also posited a further "peak hour" of 4pm to 5pm, though that suggestion appeared to be without any material significance as was evident from the diagrams contained in his appendix AB8, which showed higher peak hour flows in the peak hour between 5pm and 6pm.

<sup>15</sup> Bain proof, table 3.5, page 11

<sup>16</sup> 1.3 additional vehicles per minute in the AM peak and 1.2 additional vehicles in the PM peak (5 till 6pm).

<sup>17</sup> CD34A

<sup>18</sup> See also Bailes proof paragraph 4.6, though this changed to a wider output area in the rebuttal proof.

<sup>19</sup> Bain table 3.3, page 9 and ABN para 3.12

<sup>20</sup> Bain table 3.4, page 10.

<sup>21</sup> Bain table 3.6

peak hours there would be little chance of seeing a vehicle arising from the development on any of these streets.

- 8.8. A similar picture would arise on the Council's assessment, which assigns all traffic down Exchange Road even though 70% of the traffic in the morning peak would be heading in a different direction, towards Fox Lane. That is highly suggestive both in terms of distance and time that there would be a split in assignment. However, even assuming this worst case, the road and the junction with Main Street both operate satisfactorily and very substantially within capacity.
- 8.9. Not all the trips entering the site would travel through the conservation area. Most would travel on the A38, through the A513/A38 roundabout and then along the service road to enter the site via Micklehome Drive. Some 94% of the traffic heading into the site or 47% of the total vehicle trips would not pass through the conservation area<sup>22</sup>.
- 8.10. Drawing MID3912/002<sup>23</sup> shows the various cross-sectional widths of all of the roads in question. Clearly none were designed with Manual for Streets (MfS) in mind. However, Exchange Road has a cross-sectional width of between 5.47 metres and 6.14 metres - a theoretical capacity of some 900 vehicles per hour according to DMRB. As an analogy, the SCC Residential Design Guide states that a street of 5.5 metres can serve up to 300 dwellings<sup>24</sup>. The suggestion that Exchange Road falls below this theoretical capacity due to the amount of parking on it is irrelevant. The new roads within the proposed development will comply with the SCC Residential Design Guide and all of the roads with which it connects self-evidently have the requisite capacity to accept, with a very high margin, the proposed development traffic.

## **Parking**

- 8.11. Parking does take place within the conservation area but both its extent and impact have been exaggerated. The parking survey commissioned by the Council shows that parking extends only to around 28% throughout the day, even through the peak hours of 8am to 9am and 5pm to 6pm (or indeed 4pm to 5pm)<sup>25</sup>.
- 8.12. With regard to the impact of parking and traffic movements on the Conservation Area, there is no policy either national or local to assist the Council's position. Nor is there any guidance from any recognised or authoritative source to suggest this is a feature which, in principle, is harmful to significance. Indeed as Mr Hodgkinson explained<sup>26</sup> conservation areas exist in urban areas and are potentially subject to busy roads. However even if it were concluded that there was some in-principle objection, there is no properly founded evidence to justify the contention that the scale of change could fall within this heading.

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<sup>22</sup> See Bain 3.16 and 3.17

<sup>23</sup> Which was provided in large format to the Inquiry – see also Bain proof App D

<sup>24</sup> Bain para 3.26

<sup>25</sup> Bain Rebuttal proof App D

<sup>26</sup> XC



The numbers of potential additional movements generated by the development, even in the peak hour, are very small, amounting to only about 1 extra vehicle per minute. Whether or not this would be perceptible, no harm would thereby arise to the character or appearance of the conservation area so as to engage operation of paragraph 134 of the NPPF. It would be minor or negligible. A more accurate description of any harm simply becomes a matter of theoretical speculation. That is the position here.

- 8.13. The Council's commissioned parking surveys have formed a common base to this Inquiry. They demonstrate the very considerable surplus capacity for parking within the conservation area, with overall average use of some 28%. Even for Exchange Road it is clear that between 8am and 9am there is always very substantial spare capacity in terms of numbers of spaces. Parking spaces are, on the basis of this survey, always available.
- 8.14. It was further contended that the effect of that parking was to render Exchange Road a "one way street"<sup>27</sup>. That suggestion is erroneous. All of the roads are two way streets that are fully able to accommodate all of the traffic upon those roads. One consequence, though, is that drivers proceed relatively slowly and demonstrate courteous behaviour.
- 8.15. As to speed, the average and 85<sup>th</sup> percentile speeds are set out in tables 3.1 to 3.5 of the Statement of Common Ground with Lichfield District Council. All of the speeds are low. Driver behaviour of giving way whilst making headway along any of these routes is evident, including from the video record<sup>28</sup>.
- 8.16. There was some criticism from the Council that the video clips represented a "survey" and that they were potentially unrepresentative having been undertaken during a week following return to school in late April 2015. Neither criticism is justified. The video clips represent observations of actual driver behaviour both in terms of traffic movement and parking. They are not a survey to which the TAG guidance applies and have not been used in the Transport Assessment or other work. The video diary is, in essence, a reasonably comprehensive visual record of what drivers actually do. Neither the Council nor anyone else produced any alternative evidence or critique of those video recordings to suggest that they were otherwise unrepresentative. They certainly did not provide any alternative video material. In the circumstances, proper reliance can be placed upon them as providing a representative understanding of actual driver behaviour in the locality.

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<sup>27</sup> AB, repeatedly XC

<sup>28</sup> set out in Bain: 13 CDs and supplementary proof explaining the driver behaviour; see also CD114, which suggests selected clips, though any other clips from those observations could be selected

### **Highway safety**

- 8.17. Despite all of the attempts to paint a picture that the roads in the conservation area are either dangerous or likely to become dangerous as a result of the proposed development, those contentions are palpably erroneous. These roads enjoy a very good safety record. The Personal Injury Accident Records for 2005-2013 (the only official records and the only records provided to the Inquiry) are agreed with LDC<sup>29</sup>. They show only 5 slight accidents, 2 of which occurred in 2005 and 3 in 2007. All occurred on Main Street<sup>30</sup>. None show any pattern indicating any highway safety issue.
- 8.18. In short, there is no proper evidential basis whatsoever to conclude that the introduction of the appeal proposal will by reason of its traffic generation, trip distribution/assignment or additional parking demand give rise to any adverse impacts for safety (whether pedestrian, cyclist or vehicular); or for the operation of any road or junction. The impacts most assuredly could not be regarded as "severe" within the terms of paragraph 32 of the NPPF<sup>31</sup>.

### **Construction traffic**

- 8.19. The issue of construction traffic and management is a matter that can be dealt with via the imposition of appropriate conditions. Almost all construction projects give rise to very short term and localised impacts but the approach identified<sup>32</sup> demonstrates this can be minimised and conflict with existing road users avoided. The vast majority of construction traffic will use the route from the A38 and Burton Road, once the new access has been constructed.

### **Travel plan**

- 8.20. The development, consistent with national policy, seeks to persuade future residents to make more sustainable travel choices. It was suggested the travel plan objectives of reducing use of the private car in favour of other transport modes had led to the trip generation figures being understated. That is erroneous. No alternative evidence to contradict that evidence was advanced on the part of the Council and there is no substantive challenge upon that point.
- 8.21. The site has very real advantages in terms of proximity and accessibility to facilities in Alrewas, making it unlikely that all shopping trips would be by car. The likely additional parking generation was calculated in proportion to the size of the existing settlement and by reference to constraints such as doctors opening hours<sup>33</sup>. Given that the population of Alrewas parish is 2852<sup>34</sup> and that the proposed

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<sup>29</sup> CD34B: Highways Statement of Common Ground

<sup>30</sup> See Statement of Common Ground table 5.1

<sup>31</sup> The suggestion by Mr Bailes that the effects would be "severe" are palpably erroneous and simply underline the wildly exaggerated nature of the Council's case upon this issue.

<sup>32</sup> CD 113

<sup>33</sup> See supplementary rebuttal proof from Mr Bain, section 6

<sup>34</sup> 2011 census – Bain rebuttal paragraph 6.3

development of 121 dwellings would generate approximately 290 people<sup>35</sup> this would represent a 9.8% increase on the overall population of the parish. Making the reasonable assumption of the same shopping and travel patterns and drawing on the parking survey which showed that two parking spaces are used in front of the shops, this would give rise to a negligible increase in parking demand during the morning peak. Applying the 9.8% factor to the seven parking spaces used during the afternoon peak would result in a single extra parking space being occupied following the development of the appeal site. Use of the doctors surgery is estimated to amount to no more than three additional trips every five days, with a parking requirement of between 30 and 60 minutes per space. Given the availability of spaces, that would not prove problematic.

- 8.22. In addition, the journey distance plans<sup>36</sup> show that the appeal site is as well located in terms of walking distance to all of the facilities within Alrewas as the majority of the settlement and indeed fares better than a range of other locations to the west and south-west, a further indication of the robustness of the Appellant's traffic generation figures.

### ***Heritage Impacts***

- 8.23. This issue is solely directed to whether there is said to be an adverse impact on the character and appearance of the Alrewas Conservation Area by reason of the additional traffic and parking generated by the proposed development<sup>37</sup>. No adverse impact upon any other heritage asset, including 25 Dark Lane, was relevant to the consideration of the proposal<sup>38</sup>.
- 8.24. Alrewas Conservation Area was designated in 1970 and there is no dispute that it has heritage value by reason of that designation. However, that is not the point. The issue is whether there will be harm to the significance of that asset by reason of the proposed development. The Appellant maintains that there will not be any such harm.
- 8.25. There is no policy or national guidance, whether from the Secretary of State or from English Heritage (now Historic England), which suggests that the issue of either traffic or parking is a feature which gives rise to adverse impact in the meaning of either Section 66/72 of the Listed Buildings Act or paragraph 134 of the NPPF. Although the reason for refusal asserted that there would be substantial harm to the conservation area, that was not the view of Mrs Boffin (XX). Nor was it the view of Mr Wood (XX).

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<sup>35</sup> Based on the average household occupancy in England of 2.4 people per household

<sup>36</sup> shown at Appendix F to Mr Bain's rebuttal proof

<sup>37</sup> Confirmed by Mrs Boffin XX

<sup>38</sup> DH agreed and his reference in paragraph XXXX was not to be considered as a discrete adverse impact which would fall for consideration under paragraph 134 of the NPPF – PG XC, QI

8.26. Further, Policy Alr4 of the Lichfield Core Strategy<sup>39</sup> specifically provides for Alrewas to take housing in the range of 90 to 180 dwellings. The process giving rise to that allocation is one that had been the subject of sustainability appraisal<sup>40</sup>. That process did not suggest that there was a constraint on the quantum of housing development that Alrewas could accommodate due to the presence of its conservation area and any perceived difficulties with regard to either traffic or parking<sup>41</sup>. In fact the reverse, the SA of the local plan found that approach to be sustainable. Mrs Boffin confirmed (PG XX) that she was part of the process giving rise both to the local plan allocation and the sustainability appraisal of it. In consequence it is now simply illogical and inconsistent to suggest that there is any constraint on housing being located at Alrewas. As she accepted (PG XX) housing is allocated to Alrewas, the local plan inspector was not provided with any evidence to indicate that such an allocation was inappropriate or otherwise constrained by the conservation area. Any development at or around Alrewas will give rise to additional traffic. That again sits ill with the Council's now contended case that even one more vehicle movement through the conservation area would be harmful.

8.27. The Council sought to place some reliance upon the statement within the Conservation Area Appraisal concerning the need for a solution to parking issues in Main Street<sup>42</sup>. As Mr Hodgkinson identified (XX) this makes no reference to the remainder of the conservation area. Further, the Conservation Area Management Plan states that "*the Council will work in partnership with the county council over new schemes which will improve the control of traffic flow, parking and pedestrian access in the Alrewas Conservation Area without any detrimental impact on the conservation area*".<sup>43</sup> Mrs Boffin explained (XX) that no steps had been taken either by the Council on its own or in conjunction with any other body including the County Council to take any such matters forward. Nor had the Council pursued any restriction on parking in the conservation area. Not one single meeting had been held with the County Council in order to try and fulfil that aim. No proposals on how that should be fulfilled had been put forward by the Council nor had anything been done in respect of HGVs in Main Street. Other than the potential imposition of parking restrictions by reason of a Traffic Regulation Order, Mrs Boffin was unable to suggest any means by which the parking issues could be addressed.

8.28. The appeal proposal involves no alterations to any physical fabric within the conservation area and in no way alters the medieval street pattern of Alrewas. Instead, there is something of a freestanding expression of adverse impact on the conservation area. An impact that would arise, in any event, simply from the Council's own plans whether

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<sup>39</sup> CD38

<sup>40</sup> PG XX Mrs Boffin

<sup>41</sup> PG XX DB

<sup>42</sup> CD57 paragraph 9.7

<sup>43</sup> CD58 Action 13

for infill development within Alrewas or any development on the periphery. Seemingly there has been no calibration of the harm attributable in this case. However, Mrs Boffin was clear that even within the category covered by “less than substantial harm” the same weight should not be attributed uniformly to all harm that fell within that category. Instead there would be a range from that nearer to substantial harm to that of or near negligible harm. Her response to an earlier amendment to reduce the number of proposed dwellings from 151 to 144 had been that this was “more finely balanced”. Given that the proposal now before the Secretary of State is one for 121 dwellings, the judgment must be more finely balanced still or alternatively it should tip in favour of the proposal.

8.29. It is notable that English Heritage has been consulted twice upon this proposal and has not objected. This was not by reason of some oversight or slip as it had specifically been brought to the attention of English Heritage<sup>44</sup>. Mr Ian George of English Heritage had reiterated in a telephone conversation that he did not see that there was any ground for objection by reason of adverse impact on the conservation area due to either traffic or parking. The medieval street pattern will be left wholly unaffected by the proposal. Indeed even insofar as the contended impact upon aesthetic values, that movement (including movement of traffic) is specifically part of the aesthetic value of the conservation area<sup>45</sup>.

### ***Residential Amenity***

8.30. Although Councillor Marshall sought to assert that there would be some adverse impact on amenity, no other Council witness was prepared to agree with that suggestion<sup>46</sup>. In short there will be no adverse effect to the amenity of any existing residents by reason of the carrying out of the development that would not otherwise be capable of being adequately controlled by the imposition of appropriate conditions.

### ***Scale and Location of development***

8.31. As identified earlier, the Council’s officers did not suggest that there was any conflict with the development plan due to either the scale or location of the proposed development on the appeal site<sup>47</sup>. Indeed, it falls within the modest and proportionate level of development anticipated by Policy Alr 4 and aligns with core policies 1 and 6.

### ***Flood Risk***

8.32. Appended to the proof of evidence of Mr Bateman is what is described as a “shadow proof” provided by Mr Chris Brown<sup>48</sup>. This has dealt with all requisite issues relating to flood risk. It is to be noted

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<sup>44</sup> As DB explained (PG XX)

<sup>45</sup> conceded by Mrs Boffin in XX

<sup>46</sup> including Mr Wood, who provided no support whatsoever

<sup>47</sup> particularly Mr Jervis, but also Mr Wood

<sup>48</sup> Mr Bateman Appx 22

that neither the Environment Agency nor Staffordshire County Council (as lead local flood authority) raise any issue in respect of the site being unsuitable for development by reason of flood risk.

8.33. The site is located in Flood Zone 1 and despite the anecdotal suggestions of flooding there is no proper evidence-based justification for consent to be withheld on this ground. Indeed it was accepted that the exercise with which the Inspector and the Secretary of State were concerned should be an objective and evidence-based exercise. Further, the Council had determined to withdraw its reason for refusal in relation to flooding on the basis that there was no justification for it and no professionally qualified expert witness could be found who would seek to maintain that reason<sup>49</sup>.

8.34. In response to certain of the later concerns raised by residents, CD112 answers all of those queries. In short, there is neither a flood risk nor a drainage objection which may be sustained in respect of the proposed development.

### ***Benefits of the proposal – especially market and affordable housing***

8.35. The benefits of the proposed development extend beyond simply the provision of market and affordable housing. They include the economic value attributable to the process of construction, the economic spend provided by new residents of the development (both for the local economy in Alrewas and in the district), the New Homes Bonus, Council tax in subsequent years and the support that will be provided to local infrastructure and facilities (including schools) arising from the development.

### ***Housing land supply***

8.36. The Council does not have a 5 year housing land supply. The Council seeks to assert that it does and prays in aid its relatively recently adopted core strategy. However, that core strategy and its policies relevant to the supply of housing must be considered out of date in view of the failure to provide a 5 year housing land supply in accordance with paragraph 49 of the NPPF. A series of discrete issues fall to be considered.

### ***Liverpool / Sedgefield***

8.37. As is evident from the Council's case, the local plan inspector preferred the Liverpool method of assessment but this was due to the information before him at that time and which appears to have been incomplete. His report<sup>50</sup> anticipated that a rate of over 600 dwellings per annum would not be deliverable. In part that was based upon an examination of historic performance. However that was significantly influenced by the previous regional spatial strategy, which had a very firm policy approach to restrict development in the shire counties in

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<sup>49</sup> Cllr Marshall (XX)

<sup>50</sup> CD39 paragraph 56

favour of Birmingham and Coventry<sup>51</sup>. Further, the figures given for districts such as Lichfield were maximum figures whereas those in the urban area were minima. Hence the LPA's record was one based upon previous historic constraint.

8.38. Secondly it is clear that Lichfield is a high demand area. If enough sites were provided, then the number that could be delivered could easily be 1000 dwellings per annum. The Council's own SHLAA figure fully expects delivery in the order of 1000 dwellings per annum<sup>52</sup>. The actual housing supply is a build-up of 3 figures: sites with planning permission (861 units in 2017/18; 693 units in 2018/19)<sup>53</sup>, deliverable strategic development allocations (125 dwellings in 2017/18; 225 dwellings in 2018/19)<sup>54</sup> and deliverable SHLAA sites (286 units in 2017/18; 174 units in 2018/19)<sup>55</sup>. That gives a total of 1272 expected completions in 2017/18 and 1092 units in 2018/19. There is no proper basis to consider that the plan would be otherwise than properly realistic and aspirational if it provided for a figure well in excess of the 600 in the local plan inspector's report<sup>56</sup>.

8.39. In consequence, it is no longer the case that the market cannot be expected to provide that higher level of delivery. Indeed the reverse is the case. One can expect significantly more to be built and therefore the basis for selecting the Liverpool method has disappeared and the Sedgefield approach is to be preferred. That is also consistent with the government policy of the need for a significant boost in housing land.

8.40. Also, at the time of the local plan inquiry it was known that Birmingham would require more houses to be accommodated in locations outside the city area, including areas such as Lichfield. It is now known that Birmingham has a significant under-provision. As a result, the market demand will be higher in Lichfield<sup>57</sup>. In consequence it is not just reasonable but desirable that the Inspector and Secretary of State in respect of this case adopt the Sedgefield rather than the Liverpool approach to dealing with the backlog.

#### *Buffer – 5% or 20%?*

8.41. As became clear during the course of the cross examination of Mr Jervis, the local plan Inspector's report at paragraph 214 simply cannot be read as identifying that he took any cognisance of any data after 2011/12. Otherwise, he could not have made the findings that he did of under-supply in 4 out of 5 years or 7 out of 11. With the benefit of the two further years of figures it is now clear that the Council has failed to meet even its own housing requirement for 6 out of the last 7 years. Upon any realistic basis that must be regarded as persistent. It

<sup>51</sup> ACB specifically cited Policy CF3 of the regional strategy

<sup>52</sup> CD47 pages 240 and 267

<sup>53</sup> CD47 page 267

<sup>54</sup> CD47 page 268

<sup>55</sup> CD47 page 271

<sup>56</sup> CD39 paragraph 56 or the annual requirement of between 581 and 653 homes referred to in paragraph 213

<sup>57</sup> Mr Bateman in answer to the Inspector

cannot be excused by having met previous requirements which had been deliberately restrained. Such a finding would be consistent with the approach of the inspector into the Warwick District Local Plan<sup>58</sup>, where there had been under-delivery in each of the last 6 years and 7 out of the last 10. Indeed one may have expected that the Lichfield local plan inspector anticipated more housing provision than has been achieved. In addition, this higher buffer is not a penalty but is simply to assist authorities to provide the housing required<sup>59</sup>.

- 8.42. A discrete issue arose as to when the calculation of the buffer should be undertaken. The Council appeared to contend that it should only be applied to the housing requirements and not any shortfall. That is not the approach accepted by inspectors elsewhere<sup>60</sup>. It is clear that the buffer should be calculated having regard to both the Council's requirement and its shortfall. That approach is logical as the amount represented by the shortfall should, of course, have already been provided (had the Council by that stage met its own requirements). It is noted that the Council sought to pray in aid, by inference, the calculation undertaken by the Amber Valley local plan inspector<sup>61</sup>. However, there is no indication that the inspector accepted the Council's figures, which appear to have been derived from the Council itself. The matter was not the subject of any explicit consideration or reasoning by the inspector in that case. For that reason, that example does not avail the Council.

### ***Housing sites still in contention***

- 8.43. The Council have made a number of concessions via CD103, namely: a deduction of 18 dwellings having regard to Mr Bateman's paragraph 7.35; a deduction of 299 units in respect of the strategic development allocations, in response to Mr Bateman's paragraphs 7.40 to 7.47; and a deduction of 22 units in respect of the former HSBC Hire site at Streethay. The following further sites remain in contention: -

Site 1 - the Tesco Extra site. Although planning permission was granted and implemented in 2009, Tesco has evinced absolutely no intention of developing the housing component of that site. Indeed, the Appellant's information indicates Tesco's position as it never having been Tesco's desire to build dwellings on the site; that Tesco wishes to maintain the visibility of the site; and that the use for residential purposes of a part of its existing car park would be disadvantageous given how busy that car park gets. It is most unlikely that the residential element will ever be built.

Site 2 – Friarsgate. This site has been the subject of schemes dating back to 2006 which involve the demolition of an existing car dealership and multi-storey car park. At the last count there had been some 8 different applications. The largest single difficulty is viability as it

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<sup>58</sup> CD100 paragraph 40

<sup>59</sup> Mr Bateman XX

<sup>60</sup> eg the Warwick local plan inspector CD100 paragraph 41; or the inspector in the Chard appeal

<sup>61</sup> CD104 figure 14



relates to a retail proposal. It is correct that the latest scheme does show an increase in residential units but a final scheme is still to be submitted and it is far from clear that an acceptable scheme will ever emerge. As Mr Jervis accepted, the key issue is whether any development proposed is realistic and deliverable. In respect of this site, it is not. Also, there is no justification for the attempt to speculatively increase the number of potential units by 49 in respect of a scheme not yet submitted, let alone considered or granted planning permission.

Site 3 - Tolsons Mill. This is another site with a lengthy but unfulfilled planning history, in this case dating back to 2009. That planning permission has been renewed and is due to expire in October 2015. No application to renew has been submitted. Tolsons Mill is a listed building and houses some 20 businesses. There is no indication that those businesses are likely to relocate elsewhere at any time in the near future. Indeed there has been recent investment to include a coffee shop which does not indicate any intention for those uses to be discontinued in the short term. In the light of the above it is most unlikely that this scheme would be built within the relevant 5 year period.

Site 5 – St John's Hospital. These are old tennis courts. Unless provision was made for replacement courts, this would be contrary to Policy HSC2 and Local Plan paragraph 10.41. The Council was unable to identify that any exercise had been undertaken to identify where a replacement provision would arise. In consequence the release of this site in the manner proposed by the Council is not in accordance with its own plan policies and should be discounted from any housing land supply exercise.

Site 6 – King Edward VI School. This involved a putative inquiry by the school a number of years ago relating to the potential redevelopment of a building. However there is a shortage of secondary education provision in Lichfield and the loss of school classrooms would be at odds with the local plan strategy. If residential development were to take place here then the lost capacity would have to be found elsewhere. Further, what was not much more than an enquiry has become part of the Council's 5 year housing land supply. Given that the school is not master of its own destiny but is the responsibility of Staffordshire County Council it is pertinent to note that the County Council has not made public any intention whatsoever to release this site or any part of it.

### **10% discount**

8.44. The 10% discount figure goes beyond any lapse rate figure. It deals with the whole gamut of circumstances in which planning permissions do not come forward at the rate forecast. Mr Bateman's table 1 on page 65 indicates the marked variation between forecast and actual completions between 2006 and 2013/14 (the last full year upon which data is available). The divergence is substantially more than 10% and in consequence his allowance is if anything highly conservative and

certainly robust. That 10% discount approach has been accepted on numerous occasions by inspectors, the Secretary of State and the High Court<sup>62</sup>. This is a reasonable allowance to make here.

### ***Calculation of housing land supply in light of the above***

8.45. In light of the above it is clear that the Council does not have a five year housing land supply and in consequence policies for the supply of housing comprising CP1, CP6 and ALR4 are out of date<sup>63</sup>.

8.46. An inspector and Secretary of State at appeal is at liberty to examine the issue of a five year housing land supply. That is the approach adopted by inspectors and the Secretary of State at other appeals<sup>64</sup>. As regards whether this would represent a "rounded assessment", as referred to at paragraph 26 of the Hunston Judgment in the Court of Appeal, that remark was made in the context of a need to potentially carry out a full objectively assessed need of housing<sup>65</sup>. That is not a requirement here. What is clear is that it is perfectly reasonable to consider the most up to date information. The same approach was adopted by the inspector in the Chard decision letter<sup>66</sup> at paragraphs 46 to 49. Further, at the Lichfield local plan inquiry there was no in-depth consideration of 5 year supply. It amounted to no more than a half day examination of the deliverability of the main housing sites over the plan period, with little discussion of supply.

8.47. NPPF identifies a need to substantially boost the supply of housing and this is very important given the national failure to provide sufficient housing.

### ***Affordable housing***

8.48. There is no dispute between the parties that the district has an acute and longstanding shortage in respect of affordable housing<sup>67</sup>. The Council has a future need derived from its 2012 SHMA update amounting to 377 houses per annum<sup>68</sup>. The Council has delivered only 119 dwellings in the 6 years from 2008/09- 2013/14, an average of only 20 per annum, just 5% of the requirement. Within the Lichfield District North Sub Housing Market Area it is clear that delivery has also been similarly lamentable<sup>69</sup>. The appeal proposal will provide 25% of the total dwellings as affordable housing – some 30 units. As Mr Wood acknowledged, the appeal site is not one likely to be affected by viability concerns so delivery of the full complement of affordable housing should be accorded substantial weight (XX). As well as meeting the social dimension of sustainable development, this will

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<sup>62</sup> references: Tetbury DLs, Droitwich DL and High Court – Cotswold v Secretary of State (regarding Tetbury DLs)

<sup>63</sup> Mr Bateman's answer to Inspector

<sup>64</sup> Tetbury, Droitwich among others

<sup>65</sup> Inspector's question

<sup>66</sup> CD108

<sup>67</sup> ACB proof section 8 (pages 79 to 80) and table 7

<sup>68</sup> CD52, table 1.1

<sup>69</sup> CF ACB para 8.5

make a very real contribution to meeting a need that has existed in the district for so long and where the district has been unable to make much progress in addressing it.

### ***Development Plan***

- 8.49. There is no conflict with the development plan. Similarly, Mr Wood concurred with Mr Jervis that the proposed development both aligns and accords with the spatial strategy of the adopted core strategy<sup>70</sup>. In those circumstances, consistent with paragraph 14 of the NPPF, planning permission ought to be granted without delay. However, if a different view were taken regarding the extent to which there is or is not conformity with the development plan, there are a range of other considerations which weigh in favour of the development.
- 8.50. The first of these relates to housing land supply and also the deficiency in the provision of affordable housing, as dealt with above.
- 8.51. The proposals specifically align with Local Plan Strategy Core Policies 1 and 6 which look to accommodate housing development at or around a number of settlements including Alrewas. As Mr Jervis and Mr Wood both accepted, such development is not a minimum and is not to be constrained by settlement boundaries - development will have to occur beyond the existing built form<sup>71</sup>. Further, policy Alr 4 also anticipates this will occur and, whatever priority might be given to infill development or support for small-scale redevelopment, modest scale development such as the appeal proposal is to be anticipated. It was not suggested by any Council witness that the proposed scale and location of development was contrary to or inconsistent with these policies. Far from it, as Mr Wood agreed that the proposals align with these policies.

### ***Prematurity and emerging plans (including the draft Neighbourhood Plan)***

- 8.52. The Council's reasons for refusal contended that the proposals would be premature pending the Council's emerging Allocations Plan and the Alrewas Neighbourhood Plan. Upon scrutiny of these issues it became evident that the Council abandoned that argument via the evidence of Mr Jervis and Mr Wood. With respect those concessions were entirely correct.
- 8.53. There is no Allocations Plan in being, even in draft form. In consequence, consistent with paragraph 216 of the NPPF and section 21b-015 of the PPG there is no document to which the proposal can be said to be premature<sup>72</sup>.
- 8.54. Despite what was said in the reasons for refusal, an objection based upon prematurity pending the adoption of the Alrewas Neighbourhood Plan and reliant upon its current progress is not maintained by the District Council. Nor could it be. The emerging neighbourhood plan is

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<sup>70</sup> PG xx

<sup>71</sup> PG xx

<sup>72</sup> Mr Jervis and Mr Wood explicitly both concurred with this view (PG xx)

subject to fundamental objections of the most serious kind going to its basic conditions<sup>73</sup>. The reasons for objection by the District Council (and by other parties too, including the Appellant) are damning<sup>74</sup>. The advice as to the need for an SEA was ignored. Perhaps more significantly is that, even if an SEA had been carried out, it would not have been sufficient to meet the fundamental objections which still remain. Given the fundamental objections, no expectation can exist that the neighbourhood plan can go forward to a referendum and be lawfully adopted. In those circumstances little if any weight can be attributed to it.

- 8.55. In addition, in the light of **Woodcock**<sup>75</sup> it is clear that a neighbourhood plan examiner cannot look at the appropriateness of allocations proposed in a neighbourhood plan and in the light of the learned judge's analysis, no prematurity in respect of the neighbourhood plan can arise in this instance<sup>76</sup>.

### ***Presumption in favour of sustainable development***

- 8.56. The presumption in favour of sustainable development is engaged because there are no specific policies whereby development should be restricted. Paragraph 134 of the NPPF makes clear that planning permission is not restricted and does not indicate that planning permission should be refused. It is simply that a balance needs to be undertaken. In any event, the proposal is one that accords with the development plan, whereby planning permission should be granted. In addition benefits weigh greatly in its favour and are not significantly and demonstrably outweighed by any purported detriments.
- 8.57. The Council has sought to contend that the operation of the provisions within footnote 9 to the NPPF necessitated that the presumption in favour of sustainable development would not be engaged or apply in this instance. That view should be rejected. The second sub bullet point dealing with decision-making in paragraph 14 is directed only to circumstances where permission should be restricted. The NPPF is self-evidently cast in very positive terms and there are only a limited number of instances where the policy directs refusal (unless certain restrictive criteria are met). Hence, in respect of green belts and local green space, permission should be refused unless very special circumstances apply. In respect of development in an AONB for instance, paragraph 115 indicates that great weight should be given to

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<sup>73</sup> These are set out in Mr Bateman's paragraphs 6.79 and 6.80, with the full text of the Council's objections set out at ACB appendix 26

<sup>74</sup> It is also to be noted that the advice of the Council is also shared by Natural England and English Heritage.

<sup>75</sup> ACB appendix 23 paragraph 132 to 134

<sup>76</sup> Following the Examiner's Report, the Appellant commented (doc ref):

*The Neighbourhood Plan, as modified to meet the basic conditions, would result in a policy document that has a far more limited local influence in respect of directing the location and scale of residential development and planning decisions in general, placing greater emphasis on the policies contained within the recently adopted Lichfield District Local Plan. ... (W)e maintain the position that the Neighbourhood Plan does not represent a key material consideration in respect of this appeal, a position which we consider has been strengthened following receipt of Mr McGurk's report.*

conserving landscape and scenic beauty. However, in respect of major development paragraph 116 requires that planning permission should be refused except in exceptional circumstances and where it can be demonstrated that they are in the public interest. Plainly, the former is not restrictive of development but the latter is.

8.58. Similarly, in respect of harm to heritage assets, if paragraph 133 is engaged (involving substantial harm) the policy is clearly restrictive. However, if paragraph 134 applies (which, by common consent, is the case here) the policy is not restrictive (it does not indicate that planning permission ought to be withheld, save in certain circumstances) but simply indicates the balance that would need to be achieved.

8.59. However, even if a different and more restrictive view were taken as to the proper application of paragraph 14 in the consideration of the appeal proposals, the substantial public benefits that arise in this case would clearly outweigh any perceived detriment said to be caused to the character and appearance of the Conservation Area due to increased traffic or parking.

8.60. In view of the inevitable consequence of the accepted accord with the strategy of the adopted development plan (and the absence of conflict with the policies of the development plan) planning permission should be granted, without delay. Further, as the Council is unable to demonstrate a five year housing land supply then the paragraph 14 presumption in favour of sustainable development exercise is also engaged and applies. That includes a consideration of whether the proposed development constitutes sustainable development and whether the positive attributes of the development outweigh the negative. That involves an eventual judgement on the sustainability of the development proposal<sup>77</sup>.

### ***Human rights***

8.61. The objection to the proposed development, based upon some conflict with the Human Rights Act and the European Convention on Human Rights was difficult to understand and became no clearer during the inquiry<sup>78</sup>. It appeared that it was not based on legal advice (whether internal or external to the Council). There was no identified feature that would arise from this development which would not be considered and dealt with by the conventional application of domestic planning law and policy (PG XX). In other words, the UK planning system had within it all of the requisite means by which any of the rights in question, pursuant to Article 8 of the Convention, could be appropriately considered and balanced for the purposes of anyone with a requisite human right which was said to be engaged or violated. Secondly, Councillor Marshall was giving evidence on behalf of the Council. The Council is an "emanation of the state". Neither the state nor emanations of the state have any human rights: only persons have

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<sup>77</sup> See paragraph 54 of *Dartford BC v Secretary of State* [2014] EWHC 2636 (Admin) (doc ref)

<sup>78</sup> evidence of Councillor Marshall, speaking on his own behalf and Councillor Strachan

such rights and no persons have asserted that such rights will be violated in this case. Thirdly, although Councillor Marshall was keen to speak of the human rights (it is inferred) of residents, it must be noted that similar rights also extend to the landowner, and which also have to be considered and protected.

8.62. Lord Justice Pill neatly summarises the position in **Lough v the First Secretary of State and Bankside Developments Limited [2004] EWCA Civ 905** at paragraph 43 and his conclusions at paragraphs 45 to 53 of that judgment. No discrete convention rights appear to arise in the circumstances of this case. If any do, it is open to the public authority to justify interference in accordance with Article 8 (2) of the Convention. When balances are struck the various competing interests must be considered and the public authority will be granted a certain margin of appreciation (which may be wide when implementing planning policies) when ensuring compliance with Article 8<sup>79</sup>.

8.63. In light of the above no discrete human rights issue arises in this case.

### ***Conditions***

8.64. These are essentially agreed between the principal parties. As identified above, they specifically deal with the issue of construction management.

### ***Section 106 Obligation***

8.65. An executed section 106 obligation in unilateral form has been provided to the inquiry. It is understood that this meets all of the requirements of the relevant authorities. However, in order to assist the practical operation of the mechanisms contained in the obligation, it is intended that a planning obligation to which both the district council and county council will also be signatories will be provided.

### ***Conclusions***

8.66. The appeal proposals represent sustainable development adjacent to a settlement which is acknowledged by the Council to represent a sustainable location for development. There is nothing about the scale of the proposed development which materially alters that judgement. The Council does not have a 5 year housing land supply and the shortfall in both market and affordable housing is longstanding, acute and continuing. Further, the magnitude of the shortfall is neither marginal nor insignificant. Properly considered, the proposal is one that accords with the development plan and continues to benefit from the presumption in favour of sustainable development and there are clear and substantial benefits from the proposal that are economic, social and environmental. These are not outweighed by any of the alleged detrimental impacts and it is respectfully submitted that the appeal should be upheld and planning permission ought to be granted.

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<sup>79</sup> Keene LJ briefly makes similar points in his concurring judgment at paragraphs 54 and 55

## 9. Written Representations

- 9.1. Several rounds of public consultation took place in relation to the 140 dwelling scheme as well as the 121 scheme. These produced a high volume of responses from neighbouring residents on each occasion. For example, there were 220 letters of objection to the first consultation on the 140 scheme and 194 to the 121 scheme. The general tenor indicates that the successive amendments did not address the underlying causes of local opposition, which generally concern matters of principle, a point emphasised by the Parish Council. The objections raised are reflected in the case for the Parish Council. Further details are summarised in the Committee Reports<sup>80</sup>.

## 10. Cannock Chase SAC

- 10.1. Local Plan policy NR7 states that development that results in an increase in dwellings within a 15km radius of the Cannock Chase Special Area of Conservation (SAC) will be deemed to have an adverse effect on the SAC unless mitigation measures have been secured. The policy also notes that work is underway to develop a Mitigation and Implementation Strategy including contributions to a range of mitigation measures such as access management and visitor infrastructure. Part of the appeal site lies within 15km of the SAC.
- 10.2. The Cannock Chase SAC is essentially a heathland site and experiences pressures through road traffic air pollution and disturbance or erosion caused by visitors and recreational users. According to a strategic level Appropriate Assessment prepared by the Cannock Chase SAC Partnership<sup>81</sup>, these pressures are likely to increase as a result of population growth. The Partnership has published a range of documents relating to the SAC (February 2013) including a Mitigation Report. These strategic level documents set out that any proposals for a net increase in new dwellings within the 15km zone of influence will need to identify a package of mitigation, because of the potential significant effects on the SAC. This could take the form of a financial contribution and/or provision of suitable alternative natural green space (SANGS).
- 10.3. At the Inquiry, the Council advised that further work has now been undertaken, including agreement as to the costs of a set of Strategic Access Management Measures. These costs are to be met by contributions from developments within an 8km radius, since these have been identified as generating a significantly higher proportion of visitors. As the appeal proposal is beyond that distance, no contribution is required (CD110).
- 10.4. For the purposes of Regulation 61(1) of the Habitats Regulations 2010, it is likely that the appeal proposal would have an adverse effect on the integrity of the Cannock Chase SAC, in combination with other development, since it could be expected to contribute to increased road

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<sup>80</sup> CD01 and CD02

<sup>81</sup> Natural England and all Local Authorities within 15km of the SAC, including Lichfield District

traffic air pollution and recreational use. Nevertheless, arrangements have been put in place to address the 'in combination' impact of this and other developments. These arrangements are overseen by the Cannock Chase SAC Partnership, which has advised that it will not be necessary for proposals such as this, which are in the 8-15km radius, to include further specific mitigation measures.

## **11. Conditions and Obligations**

- 11.1. The conditions set out in Annex 1 are based on those agreed between the Council and Appellant<sup>82</sup>, with some amendments in the light of discussions at the inquiry. They accord with relevant national policy and advice contained in NPPF and PPG. Should planning permission be granted, I recommend that they be imposed for the reasons set out below.
- 11.2. A condition to define the permission is necessary for the avoidance of doubt and in the interests of good planning (condition 2). Details of the external materials, boundary treatments and the landscaping scheme are all necessary to ensure the satisfactory appearance of the development and to safeguard the character and appearance of Alrewas and the Conservation Area (conditions 3, 5, 8, 9, 17 and 18). To ensure a satisfactory form of development, details of the finished floor levels, the means of drainage and the measures to manage flood risk are necessary (conditions 4, 6 and 15). A scheme for offsetting biodiversity impacts is necessary in the interests of nature conservation (condition 7).
- 11.3. Given the indications of heritage assets within the site, a scheme of investigation is necessary to safeguard any archaeological interests (condition 10). To safeguard the living conditions of future residents, schemes are necessary for the investigation of any contamination and for noise attenuation (conditions 11 and 19). Details of the accesses and the temporary parking area for residents are necessary in the interests of highway safety (conditions 12 and 13). A Traffic Management Plan/Construction Method Statement is necessary in the interests of highway safety and to safeguard amenity (condition 14). Controls over hours of construction are needed to safeguard the amenity of nearby residents (condition 18). The recommendations set out in the ecological reports should be implemented in order to ensure the protection of European Protected Species and in the interests of nature conservation (condition 20).
- 11.4. A further condition was suggested to limit permitted development rights for those plots bordering Dark Lane. However, given the degree of separation from existing properties, I consider that such a restriction would not be warranted (condition 21, contained in Annex 2).
- 11.5. Although a Unilateral Undertaking was provided while the Inquiry was in session, the Appellant was of the view that Planning Agreements with the County and District Councils would be preferable

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<sup>82</sup> CD115



so a timetable was agreed to allow for their submission. In due course the Appellant reported that, although an agreement had been reached with the District Council, it had not been possible to do so with the County Council. The Secretary of State therefore has the option of considering on the one hand the Unilateral Undertaking in favour of both Councils dated 15 July 2015 or, on the other, the s106 Agreement with Lichfield District Council and the Unilateral Undertaking in favour of Staffordshire County Council, both dated 18 August 2015. The key difference in relation to Lichfield is that the s106 Agreement specifies the use to which the monies for the indoor sports contribution will be put. For this reason, I consider that the 18 August obligations are preferable so they are considered here. However, the same matters are dealt with in both cases.

- 11.6. Within the Local Plan Strategy, core policy 4 and development management policy IP1 set out the overall basis for developer contributions to infrastructure and facilities necessary to create and support sustainable communities.
- 11.7. The s106 Agreement with Lichfield District Council provides for affordable housing, public open space and indoor sports. Local Plan Strategy policy H2 seeks up to 40% affordable housing, with the proportion being decided according to market conditions. Based on its monitoring work, the Council confirms that in current market conditions it regards the proposal to provide 25% affordable housing as being policy compliant. Policies HSC1 and HSC2 set out standards for various types of open space and for playing fields. Under the Agreement, on-site open space would be provided in accordance with the approved plans and a management company would be set up to ensure its maintenance. An Indoor Sports Contribution of £86,545 would be made, to be used for the provision of facilities at a leisure centre in Lichfield. This reflects the conclusions of the Council's Facilities Planning Model and its Swimming Pool and Sports Hall Feasibility Study 2013. The Council advises that such a contribution would comply with CIL Reg 123, as regards the pooling of contributions.
- 11.8. The Unilateral Undertaking in favour of Staffordshire County Council deals with the education contribution and the travel plan. The education contribution of £579,186 reflects the advice of the County Council as to the number and cost of additional educational provision for the 121 scheme<sup>83</sup>. It would be used at a local primary school and academy, to meet identified demand expected to arise from the proposed development. Arrangements for the travel plan and its monitoring are to be agreed with the County Council and a sum of £6,300 provided for monitoring and review.
- 11.9. The Undertaking does not meet with the approval of the County Council because it does not bind the interests of individual owners or occupiers. This is said to be necessary because of the delayed trigger

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<sup>83</sup> The basis for the assessment is set out in the County Council's representation dated 25 November 2014

for the education contribution (to be paid in two instalments, on completion of 30 and 75 dwellings respectively). Also, the Council would prefer the duty to implement the travel plan to have been placed on future residents.

- 11.10. The deed is clear that payment of the education contribution is the responsibility of the developer, reinforced by the link to completion of dwellings rather than occupation. As for the travel plan, it seems to me there could be difficulties holding individual residents to account in relation to any failure in its implementation so that the mechanisms to ensure its effectiveness should be contained within the plan. Consequently, I am not persuaded that the Undertaking is deficient in these respects.
- 11.11. Two other points are raised in relation to the education contribution: it has not been index linked; and the wording does not make adequate provision for any change in the name or type of school establishment. As the sum is not index-linked, there is a possibility that the payment would not meet in full the education need arising from the development. However, in such a strong local housing market it is not unreasonable to expect that the development would proceed in a timely fashion so that any shortfall is unlikely to be so extensive as to warrant withholding planning permission. As regards the named establishments, Schedule 2 includes the proviso 'unless otherwise agreed in writing ...' [Schedule 2 paragraph 1.1] which would appear to make reasonable provision for a change in the name or type of school.
- 11.12. The County Council points out that it has had only a limited opportunity to comment on the Unilateral Undertaking of 18 August, although the later obligation is presented in the same terms as that of 15 July.
- 11.13. All of the provisions are necessary to make the development acceptable and are fairly and reasonably related to the proposal. The requirements in NPPF paragraph 204 and Regulation 122 of the Community Infrastructure Levy Regulations 2010 are met, so that account should be taken of the s106 Agreement and the Unilateral Undertaking.

## **12. Conclusions**

*The figures in square brackets [ ] refer to relevant paragraphs in earlier sections of this report.*

- 12.1. Drawing on the main considerations set out at [1.7] and in the light of the evidence presented, I consider that the main planning issues in relation to these appeals are:
- (i) the implications of the proposal for the safety and convenience of highway users
  - (ii) the effect of the proposal on heritage assets, with particular reference to the impact on the Alrewas Conservation Area
  - (iii) the effect on the living conditions of existing residents

- (iv) whether the proposal makes appropriate provision in relation to flood risk
- (v) the contribution of the proposal to the supply of market and affordable housing
- (vi) whether the proposal represents a sustainable form of development having regard to local and national planning policy.

***(i) implications for highway users***

12.2. There would be two points of access to the site. The main one, from Dark Lane, would serve both inbound and outbound traffic and would lead to the main road through the village, Main Street by one of three routes: Post Office Road, William IV Road or Exchange Road. The second access, onto Micklehome Drive, would be used mainly by vehicles arriving from the A38, since it would enable them to access the site without travelling through the village. However, as the route from the A38 serves inbound traffic only, vehicles exiting the site at this point would be most likely to travel down Exchange Road to Main Street<sup>84</sup>.

12.3. Trip rates used in the Transport Assessment were arrived at on the basis of information taken from TRICS<sup>85</sup>. The Council takes issue with this on the basis that the TRICS assessment relies on criteria which are not representative of the situation in Alrewas. For example, the parameter for car ownership rates was set at 0.6-1.5 whereas in Alrewas rates are thought to be higher – 1.57 according to the Appellant, 1.7 according to the Council. The Council also points out that the criteria set for population within 1 and 5 miles of the site were much higher than is actually the case for Alrewas (see Bailes PoE 4.6-4.8). As a result, the Council contends that the trip rates derived from TRICS underplay the impact of traffic on the surrounding network. In contrast, the Council presents trip rates derived from two surveys carried out in Alrewas in April and November 2014. The resulting figures are compared in the table below:

Period	Departures		Arrivals	
	Appellant	Council	Appellant	Council
08.00-09.00	55	59	18	19
16.00-17.00	27	28	43	49
17.00-18.00	31	22	54	52

12.4. The Council's analysis does indeed produce a higher predicted number of trips during the 08.00-09.00 peak, showing 59 departures

<sup>84</sup> See CD34B, Highways Statement of Common Ground with Lichfield DC for a detailed description of the local highway context

<sup>85</sup> a database of transport surveys which represents the industry standard system for assessing trip rate generation – see CD97

compared to 55, and 19 arrivals compared to 18. However in the evening peak, 17.00-18.00, it is the Appellant's figures which are higher, showing 31 departures to the Council's 22, and 54 as compared to 52 arrivals. The Council contends that there is actually a double peak in the afternoon, and that consideration should also be given to conditions during the period 16.00-17.00. The Council's analysis suggests a higher number of trips for this hour, with 28 departures and 49 arrivals compared to the Appellant's 27 and 43. [6.3-8, 8.5-6]

- 12.5. Whilst the respective assumptions applied by the Appellant and Council lead to some variations in the predicted volumes of traffic, the fact that the development is concerned with 121 dwellings means that the extent of this difference is not of a particularly significant order of magnitude, when looked at in the round. This becomes even more evident when considering the routes such vehicles are likely to take and the potential impacts on traffic flows and parking.
- 12.6. The roads to the north of Main Street currently serve a limited number of properties. Unsurprisingly therefore, traffic surveys undertaken in 2012 indicate a generally low volume of background traffic<sup>86</sup>. In particular, the morning peak flow along Exchange Road was 146 vehicles, with 118 in the evening.<sup>87</sup> Observed 85th percentile vehicle speeds were some 20mph northbound and 22mph southbound<sup>88</sup>. [8.4]
- 12.7. The Council contends that the proposal should be assessed on the basis of a worst case scenario – namely, that all outbound traffic would leave via Exchange Road. If that was so, this suggests an additional 70-80 vehicles could be travelling along Exchange Road during the morning peak. Exchange Road is a residential street with continuous footways on either side and on average is 5.5m in width. The Appellant draws attention to DMRB methodology, which suggests that a road of this width might have a design capacity of 900 vehicles per hour. More pertinently, the Staffordshire County Council residential design guide states that a street of this width could serve up to 300 dwellings which would yield an indicative capacity of 211 vehicles per hour<sup>89</sup>. The worst case scenario, even using the Council's own estimates, would indicate a little over 220 vehicles in total would pass along Exchange Road during the morning peak. Whilst this would be marginally higher than the capacity estimated on the basis of the design guide, the difference would be unlikely to give rise to a materially different impact on safety. [6.21, 8.20]
- 12.8. In terms of inbound traffic, the Council suggests the Appellant has underestimated the proportion of trips which will be routed through

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<sup>86</sup> CD19, Transport Assessment, Figs 4.1 and 4.2 and Bain p12 Table 3.7

<sup>87</sup> These are the standard morning and evening times of 08.00-09.00 and 17.00-18.00.

<sup>88</sup> CD34B: SCG(T) – L Tables 3.1-3.5

<sup>89</sup> For the Appellant, Mr Bain arrived at this figure by applying the trip rates for the appeal proposal to a nominal 300 dwelling scheme, producing an estimated peak flow of 211 vehicles. Whilst the Council then objected that the flow along Exchange Road using worst case assumptions would exceed this hypothetical figure, that further comparison is based on so many assumptions as to be of little assistance in assessing the likely impact of the appeal proposal.

Exchange Road. However, even on the Council's own figures, vehicle numbers during the afternoon peak are predicted to be 178, with 157 during 16.00-17.00, well within the notional capacity. [6.10-12, 8.4]

- 12.9. Outbound traffic leaving via Dark Lane would have the option of turning left then right onto Exchange Road or right then left either onto William IV Road or on to Post Office Road, in order to reach Main Street. Surveys indicate drivers would find little to choose from between Exchange Road and William IV Road in terms of time and distance to Main Street, so that route choice is likely to be based on personal preference<sup>90</sup>. The Appellant suggests this may result in some 15 vehicle trips along William IV Road during the morning peak, or 8 in the evening<sup>91</sup>. William IV Road is a short, residential street containing a small number of dwellings and a public house. Although no survey data has been provided, I agree with the Appellant that other survey data indicates background flows are unlikely to be very high. Whilst characteristics of William IV Road such as the absence of footways or the presence of vegetation mean that pedestrians must often walk in the carriageway, traffic speeds are less than 20mph so that such limited growth in traffic is unlikely to materially affect current levels of safety. [6.13-14, 8.7-8]
- 12.10. Residents also raised concerns as to the implications of increased traffic flows through Micklehome Drive. This is a modern residential street mainly serving culs de sac although a small number of properties take direct access from the through route. Although it did not feature in the accident records, residents pointed to signs of repairs to a property boundary as evidence of a past accident and being indicative of a risk for the future. They also suggested vehicle speeds here tended to be higher, as most drivers took time to adjust to the lower speed limits after leaving the A38 dual carriageway. However, the proposed site access from Micklehome Drive would be located towards its eastern end. Since few inbound vehicles would be likely to travel the length of this road, I consider that there would be no appreciable impact on safety. [7.6, 8.9]
- 12.11. Although the streets which would serve the appeal site are residential in character, the data on trip generation and assignment does not suggest that the additional level of traffic movements associated with this proposal would impose unacceptable demands in terms of capacity.
- 12.12. The Council contends that particular consideration should be given to the interaction between the increase in traffic and the additional parking demand, particularly in the vicinity of the Exchange Road/Main Street junction. [6.2]
- 12.13. The local doctors' surgery is situated towards the southern end of Exchange Road on the opposite side of the road to, and slightly north of, the service access for the small parade of shops on Main Street.

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<sup>90</sup> TA, CD19, pp 20-21

<sup>91</sup> Bain PoE Table 3.6

The yellow lines on the Exchange Road/Main Street junction indicate that parking is already a problem. This is confirmed by the parking surveys, which indicate that vehicles are regularly parked on both sides of Exchange Road during the morning peak<sup>92</sup>, with parking stress being higher again in the afternoon. The effect of this, according to the Council, is to reduce Exchange Road to a one way road.

- 12.14. Clearly, as the traffic survey indicates, Exchange Road does not actually function in this way, in spite of the levels of parking which already occur. At the inquiry, some time and effort was devoted to assessing the increase in parking demand in this locality which might arise as a result of the appeal scheme. The Council's assessment is the more straightforward, being based on distance. However, this fails to recognise the range of influences on car use. To my mind therefore, the better estimate is that provided by the Appellant, which is based on an analysis of existing parking behaviour in the village and applies an increase in proportion to the likely increase in population. This suggests parking demand could well be almost 10% higher<sup>93</sup>. This would represent the equivalent of one additional parking space being in almost constant use<sup>94</sup>. [6.15, 6.18, 8.13-14]
- 12.15. From the evidence presented, it is clear that parking behaviour is a matter of considerable concern in Alrewas, a point reinforced by the representations from the Parish Council and many residents. It is also highlighted in the relevant Conservation Area documents. The interrelationship between parking associated with the shops and surgery, as it affects Exchange Road, is of particular concern<sup>95</sup>. [6.15-18, 7.6-9, 8.11-13]
- 12.16. The Appellant draws attention to the video survey, which reinforces the point that traffic levels are generally low and indicates that drivers behave courteously, giving way to approaching vehicles as road conditions require<sup>96</sup>. Whilst this may well be the case on the majority of occasions, I noted during at least one site visit that voices were raised when an incident of conflicting vehicle movements took some time to be resolved. Thus, whilst the quantitative data does not indicate there would be any material effect on traffic flows, it has to be acknowledged that there will be occasions where some residents may experience quite noticeable personal inconvenience. Thus, even an apparently modest increase of 10% could be regarded as sufficient to add perceptibly to the level of inconvenience experienced by road users. [6.19, 8.16]

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<sup>92</sup> CD34B: SCG(T) – L, Appendix C

<sup>93</sup> The Parish Council's estimate that 50% of users of the surgery live outside the village further suggests that the Appellant's estimate is reasonably robust

<sup>94</sup> The Council's further assessment that this must be an underestimate if vehicles were to be parked for 10 minutes at a time, appears to be entirely speculative and is of little assistance in assessing the likely impact.

<sup>95</sup> See, for example, the evidence of Mr Walton and Mrs Charnley

<sup>96</sup> In this regard, whilst the video survey evidence may have been carried out close to a holiday period, it nevertheless stands as a record of driver behaviour and the road conditions in Alrewas

- 12.17. Nevertheless, having regard to the characteristics of Exchange Road, the generally low vehicle speeds and the likelihood of a modest increase in parking demand, it has not been demonstrated that the proposal would give rise to an unacceptable adverse effect on safety in Exchange Road.
- 12.18. There are also other areas where on-street parking occurs, most notably that stretch of Park Road which connects to Micklehome Drive. However, overall numbers would be low, with probably less than 20 additional vehicles during peak times. Given that there is adequate visibility in each direction, I consider that there would be no unacceptable reduction in current levels of road safety.
- 12.19. There is some force to the Council's argument that if existing patterns of traffic movement and parking are reinforced as a result of the proposed development, there is likely to be an increase in demand during those periods of greatest pressure for parking and incidents of conflicting traffic movements are likely to be exacerbated. However, these periods are not due to lack of capacity in the road network. They seem to be short-lived and concentrated at key points such as in the vicinity of the village shop and surgery. It is clear that they are already experienced as causing inconvenience. Even so, whilst traffic from the appeal proposal would add to this pattern, the evidence does not suggest that the impact would be unacceptable.
- 12.20. In numerical terms, there would be a modest increase in vehicle movements and on-street parking along those streets closest to the appeal site. As a result, the development would probably add to the number of occasions when drivers need to negotiate with and give way to other road users, particularly during peak times and along those sections where more intensive roadside parking occurs. However, these are essentially residential streets where speeds are generally low and the resulting situation would not be untypical for such a setting. In such circumstances, I consider that although there would be some increased risk, it would fall well short of a severe adverse impact.

***(ii) heritage assets***

- 12.21. Although the main heritage concern related to the impact on the Alrewas Conservation Area, as expressed in the reason for refusal, the Parish Council and others also raised concerns in relation to a nearby listed building and other designated and undesignated assets.

*Conservation Area*

- 12.22. The conservation area is based on the historic settlement pattern of Alrewas and extends northwards as far as the River Trent and the Trent and Merseyside Canal. The western part of the appeal site lies within the conservation area but, as no built development is proposed for that portion of the site, the main points at issue are whether there would be an indirect impact on the conservation area as a result of the levels of traffic and parking associated with the proposed development and, if so, the extent of such an effect on the area's significance.

- 12.23. As regards the principle of there being any effect on significance, it has to be recognised that there is no formal guidance which directly addresses the impact of through traffic or parking on a heritage asset, where no change to the physical fabric is involved. The most relevant guidance can be found in Conservation Principles<sup>97</sup>, which considers the ways in which a heritage asset can be valued. In particular, 'aesthetic' value derives from the sensory and intellectual stimulation which can be drawn from a place. To my mind therefore, it is possible in principle for the significance of this heritage asset to be affected. It would be necessary to show that a material increase in traffic flows would occur, to the extent that it would injure or diminish the capacity to appreciate its aesthetic value, even though there would be no change to its physical fabric. In this respect, I note that the Appellant's own heritage witness acknowledged that a conservation area could be affected by traffic flows if, for example, they led to excessive noise or congestion. [6.26, 8.25]
- 12.24. The Alrewas Conservation Area Appraisal<sup>98</sup> notes that the settlement's medieval origins and form of development can be discerned in the framework of streets and spaces. Further detail is provided as part of the Extensive Urban Survey (EUS). In terms of aesthetic value, this states that the integrity of the historic character of the planned medieval town is well preserved in this part of the conservation area, with the street pattern constituting one of the integral components of this character<sup>99</sup>. This part of the conservation area is defined as being of high value, indicating a high sensitivity to change. [6.24-5, 7.19]
- 12.25. It stands to reason that a development of 121 dwellings which is to a substantial degree reliant on the conservation area as a route for vehicular access will lead to an increase in vehicular activity. Exchange Road is the area where any effects are likely to be most strongly felt. Taking the Council's assessment as being the worst case scenario, this part of the conservation area could see an additional 75 vehicles during the morning peak and 57 during the evening peak. There may also be an extra 61 vehicles during the 16.00-17.00 period<sup>100</sup>. This would equate to somewhere in the region of one additional vehicle per minute. To this should be added the increased parking demand, especially around the shops and surgery. Numerically speaking, an increase there most certainly would be. Since passing vehicles must already give way due to the presence of parked cars, such incidents are also likely to increase, even though they may be difficult to quantify. [6.28-9]
- 12.26. Traffic is already identified as an issue in Main Street. This is reinforced by the representations from the Parish Council and residents, which make clear that some parts of the village, especially around Main Street, are seen to be car-dominated, especially at certain

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<sup>97</sup> CD 62

<sup>98</sup> CD58

<sup>99</sup> CD68: Historic Urban Character Area 3 or HUCA3

<sup>100</sup> Albeit the Appellant estimates 38 vehicle movements in the evening peak - heritage assessment 7.23



times of the day. In all likelihood therefore, the additional traffic generated by the appeal proposal will accentuate that situation. This would be the case even on the basis of the Appellant's assessment. In the context of a street where the car gained greater dominance, the scope to appreciate the street's aesthetic value, as expressed through the harmonious juxtaposition of the form of the street and the associated plots and dwellings, would be diminished. Similar considerations would apply to Post Office Road and William IV Road. There would be some shift in the balance of street activity, as increased number of vehicles would bring additional obstructions and visual clutter to the street scene. [7.6-9]

12.27. However, it does not necessarily follow that this effect would be of such a scale as to amount to material harm to the significance of the conservation area. First of all, this is a conservation area based on a village core, where movement within and through it is part of its existing character and which might even be regarded as beneficial, since it would add to vitality. Even if the increased presence of vehicles was perceptible, there would be both positive and negative aspects to this impact. Secondly, the effects would be felt within a relatively small, albeit important, portion of the conservation area and over a limited period of time, probably around the weekday morning and afternoon peaks. Thirdly, the effect relates solely to the aesthetic value, with no effect having been identified in relation to its evidential, historical or communal value. [8.27-29]

12.28. For these reasons, it seems to me, even though there may be a perceptible increase in the presence of vehicles and in vehicular-related activity, the overall effect would not be so noticeable as to materially impair the aesthetic value of the conservation area. The effect of the proposal would be neutral. In this regard, it should be noted that after specific discussions on this question, English Heritage offered no objection.

#### *Other designated heritage assets*

12.29. No 25 Dark Lane is a Grade II Listed Building dating from the late C16 and has later alterations and additions. The Appellant's evidence records that it is an early example of the infilling of village burgage plots<sup>101</sup>. It goes on to note that the setting contributes to its significance, although the approach along Dark Lane does not do so. The Appellant expresses the view that this would result in some limited harm to its significance. On the other hand, the Council's witness confirmed at the inquiry that no objection was raised in relation to No. 25 Dark Lane.

12.30. I note that, within the proposed development, smaller house types would be used for that part of the site nearest to the listed building. In addition, these dwellings would be set further back from Dark Lane, so as to avoid undue encroachment. There would also be a small area of open space opposite. To my mind, these measures would be sufficient

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<sup>101</sup> Hodgkinson PoE #3.30

to ensure that the existing setting of the listed building would be preserved. [7.20, 8.25]

- 12.31. The Parish Council and residents also drew attention to that fact that the development would be visible in views from higher ground in the vicinity of St Leonard's Church Wychnor, a Grade II\* listed building and the nearby Deserted Medieval Village, which is a Scheduled Ancient Monument. However, although the dwellings would be visible, they would be seen against the backdrop of the existing village so that in my opinion they would not impinge on the current setting.

#### *Undesignated heritage assets*

- 12.32. The Parish Council and residents draw attention to the findings of the Historic Environment Character Assessment, which provides an overview of the historic environment at a broad level by integrating historic landscape characterisation with historic environment records<sup>102</sup>. In particular, LHECZ 12 assesses the Trent Valley flood plain north of Alrewas. It notes the archaeological potential of the zone and that it is highly sensitive to change such as medium or large scale development. The Parish Council points out that LHECZ 12 achieved a score of 19 points, indicating it is an area of high importance within Lichfield District. However, the historic significance would be preserved by means of the proposed archaeological scheme of investigation and report. In addition, the design of the proposal makes provision for the retention of field boundaries, thus preserving key elements of the historic landscape. [7.21]

#### **(iii) living conditions**

- 12.33. On behalf of the Council, it was asserted that the level of impact upon amenity would be so severe as to amount to incompatibility with Article 8 of the ECHR<sup>103</sup>. Impacts were identified in relation to car parking, road safety, heritage assets, risk of crime and loss of access to open space. However, it was not made clear how any of these matters would affect an individual's private and family life or home. As such, it has not been shown that there would be any interference with an Article 8 right. This section of the report therefore considers impact on amenity in relation to the matters raised and in the context of relevant planning policy.
- 12.34. With regard to car parking and road safety, I recognise that additional traffic may add to current levels of inconvenience experienced by other users of the highway. Concerns were also raised as to the need to restrict parking on Exchange Road during the construction period, in order to permit HGVs to exit the site. Provided a traffic management scheme was prepared, such restrictions would be in place for limited periods, thus causing low levels of disruption<sup>104</sup>.

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<sup>102</sup> CD66 and PC04

<sup>103</sup> Article 8(1) sets out the right to respect for a person's private and family life and home. Article 8(2) sets out the basis on which such interference may be justified.

<sup>104</sup> See CD113 for further details

Overall, I am not persuaded that the highway impact would be so marked as to represent a material reduction in amenity

12.35. In view of my findings concerning the lack of harm to the significance of designated and non-designated assets, it follows that no appreciable harm would be caused to the amenity of users of, or visitors to, those assets.

12.36. The Police Architectural Liaison Officer commented that the permeability of the site would promote crime due to ease of access and egress. As the landscape plan shows, there would be several routes into the site from Dark Lane for those on foot, in addition to the two points for vehicular access. There would also be links to the proposed permissive footpaths through the areas of open space to the north and west. However, as the Design and Access Statement makes clear, the dwellings themselves have been arranged and designed to ensure a good level of surveillance within and around properties<sup>105</sup>. To my mind, this represents an appropriate design response and is sufficient to balance any risk associated with this level of permeability. [6.56]

12.37. Moreover, the permeability of the site would in part address those objections concerned with the loss of access to open space. The informal recreational use of the open land to the north of the village and its importance as a route through to the canal and riverside was highlighted by the Parish Council as well as many residents. Indeed, during my site inspection my attention was drawn to tracks across the appeal site indicating the extent to which it was habitually used by residents. The recreational value of this area is further indicated by policies put forward through the Neighbourhood Plan<sup>106</sup>. From the written representations and those made during the inquiry, it is clear that the appeal site forms part of the adjacent countryside which contributes to local residents' experience of their village. However, the site has no formal status as recreational open space. Consequently, any restriction on access arising from this development cannot be weighed against the proposal in the planning balance. [7.17-18]

12.38. It has not been demonstrated that the proposal would have an unacceptable impact on the amenity or living conditions of local residents.

#### ***(iv) flood risk***

12.39. Although flood risk did not form a reason for refusal in relation to the 121 scheme, objections were maintained by the Parish Council and residents. [7.10-13, 8.32-34]

12.40. The Flood Risk Assessment (FRA) identifies three potential flooding sources: fluvial, surface water and sewers. It sets out the basis for a small scale floodplain compensation scheme to create a suitable

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<sup>105</sup> CD12 3.4.5

<sup>106</sup> Albeit that the relevant policy is recommended to be deleted

boundary for the area of residential development.<sup>107</sup> This is the 'area for floodplain compensation works' denoted on the appeal plans. An assessment of greenfield run-off rates forms the basis of the surface water drainage strategy, based on SuDS (retention and infiltration) supplemented by a positive drainage system discharging into the River Trent<sup>108</sup>.

- 12.41. The Parish Council and local residents emphasised that a number of incidents of flooding had been observed in and around the village<sup>109</sup>. Whilst these anecdotes are acknowledged in the FRA, including the tale of canoes being used on Main Street, there is concern locally that the document does not take full account of local features. The Parish Council raised specific objections on the basis that the greenfield run-off assessment is flawed and that the proposed drainage works would not function in the manner indicated.
- 12.42. Greenfield run-off rates have been calculated using IH 124, Flood Estimates for Small Catchments. Drawing on expert advice received in relation to the Neighbourhood Plan, the Parish Council refers to a study indicating that the methodology in IH 124 underestimates run-off rates. It also points to advice from the Environment Agency that IH124 should be avoided for catchments of less than 50ha<sup>110</sup>. On that basis, the Parish Council contends that the FRA is flawed.
- 12.43. The Appellant accepts that the methodology in IH 124 would produce an underestimate of run-off rates<sup>111</sup>. However, it is important to bear in mind the use which has been made of this assessment. The resulting figure of 17.8l/s has been used to set the maximum permitted discharge rate from the proposed development. Given that this is likely to be less than is currently generated from the site, it means that the development will, in effect, be required to operate to a lower rate of discharge than at present, with the site in its current greenfield state. In this respect therefore, the drainage scheme should be seen as being likely to reduce the level of flood risk downstream.
- 12.44. The Parish Council also takes issue with the design of the drainage scheme, raising detailed questions as to the efficacy of the infiltration basin at the western end of the site, the gradient of the collector pipe, the risk of the river encroaching up the drainage ditch and the effect on the current drainage arrangements for Dark Lane. Whilst these are all valid matters for the drainage scheme to address, the Appellant confirms that they have been taken into account in the scheme design. Thus, for example, the purpose of the positive outfall is to assist drainage during periods of high groundwater; the gradient of the collector pipe has been designed to satisfy the relevant standards; and valves would be in place to address the risk of inundation via drainage

<sup>107</sup> some 917m<sup>3</sup> of floodplain would be created to replace an estimated loss of 380m<sup>3</sup> – see CD30, Appx C, 5117802/002 RevB

<sup>108</sup> CD30: Appendix C, 5117802/006 Rev C

<sup>109</sup> see for example ID08A photographs attached to the representation from Alison Wright

<sup>110</sup> Docs PC01, 02 and 04

<sup>111</sup> CD112 p1

ditches<sup>112</sup>. It is also confirmed that the scheme would allow for the continued operation of the natural flow pathways from Dark Lane to the River Trent.

12.45. Given local knowledge as to flood events, it is understandable that there will be a high level of concern amongst residents and their elected representatives. The questions raised certainly suggest that careful thought has been given locally to the implications of the development. However, the technical response provided is sufficient to demonstrate that the proposal would make adequate provision for flood risk. Moreover, it should be noted that neither the Environment Agency nor Staffordshire County Council as lead local flood authority have taken issue with the findings of the FRA or the design of the drainage strategy.

**(v) *the supply of market and affordable housing***

12.46. Although it was initially common ground that the Council was unable to demonstrate a five year supply of deliverable housing sites, the Council altered its stance in the wake of the publication of the Local Plan Inspector's report. According to the Council, the annual housing requirement stands at 572. Since the supply stands at 3382, this is more than sufficient to meet the requirement, including a 5% buffer to allow for choice<sup>113</sup>.

12.47. The Appellant takes issue with this on four counts: that the Council has taken the wrong approach to addressing the shortfall; that there has been persistent under delivery, thus justifying a 20% buffer; that there are sites within the identified supply which are not deliverable; and that the supply figure should be adjusted to allow for non-implementation.

12.48. Shortfall: Core Policy 6 sets a target of 478 new homes to be delivered each year. The SHLAA calculates a shortfall of 1413 for the period 2008-2014. The Council contends this should be made up over the remaining plan period to 2029 (the 'Liverpool' approach), resulting in a requirement of 572dpa. The Appellant contends the 'Sedgefield' approach should be taken, whereby the shortfall should be made up within the next five years. This would result in a requirement of 761dpa<sup>114</sup>.

12.49. The Council justifies its approach on the basis of the outcome of the Local Plan examination. The Local Plan Inspector acknowledged that the Sedgefield approach should be taken where possible but noted that this would result in some 754-825dpa being required over the first five years of the plan period, with a trajectory approaching 1,000dpa. Having already found that an annual figure of over 600dpa would not be realistic, he concluded in favour of the Liverpool approach as being both realistic and aspirational<sup>115</sup>. [6.35-37]

<sup>112</sup> CD112 p1

<sup>113</sup> In CD 103, Table 2 the Council puts forward the figure of 2980, which includes a 5% buffer

<sup>114</sup> CD99, Table 5;  $761 \times 5 = 3805$

<sup>115</sup> CD39, paragraphs 56 and 210-213; CD42

- 12.50. The Appellant commends the Sedgefield approach for three reasons: that past rates of delivery were constrained by the then policy to direct development towards the urban area; that the SHLAA itself expects delivery in excess of 1000 units as early as 2017/18; and that in the period since the Local Plan Inspector considered this question, it has become clear that under-provision of housing in Birmingham will lead to increased housing demand in Lichfield. [8.37-40]
- 12.51. Undoubtedly, the Secretary of State is at liberty to reconsider this issue, notwithstanding the recent conclusions of the Local Plan Inspector. However, I am not convinced these represent sufficient grounds to jettison the Liverpool approach so soon after it has been found to be appropriate as part of the Local Plan examination.
- 12.52. The main reason for this is that the annual housing requirement figure in the Local Plan plays a particular role in the current plan-led system. It is a key mechanism which enables a balance to be struck between the policy objective of significantly boosting the supply of housing on the one hand and working towards the other elements of sustainable development, as expressed in the remainder of the Plan and in NPPF paragraphs 18-219. If the requirement figure was set at an unrealistically high level, it would continually undermine the weight which could be accorded to other policy objectives. Thus, although the factors identified by the Appellant certainly point to a clear need for continued measures to boost the supply of housing in Lichfield district, they do not in my view provide convincing evidence that planning decisions should be based on the higher annual housing requirement at this relatively early stage in the plan period.
- 12.53. However, should the Secretary of State decide otherwise, an annual housing requirement of 761dpa would, on its own, produce a five year requirement of 3,805 dwellings so that the Council would have failed to demonstrate a five year supply of deliverable housing sites.
- 12.54. The buffer: as part of the strategy to boost significantly the supply of housing, NPPF paragraph 47 requires local planning authorities to provide five years worth of housing sites against their requirements, with an additional buffer of 5% or 20% where there has been a record of persistent under delivery. The purpose of the buffer is to provide a realistic prospect of achieving the planned supply and to ensure choice and competition in the market for land.
- 12.55. The Council contends that the buffer should be set at 5%, pointing to the Local Plan Inspector's assessment of this question. Furthermore, the Council applies the buffer only to the annual housing requirement, not to the shortfall.
- 12.56. Having met the target in 7 out of the previous 11 years, the Local Plan Inspector concluded that a 5% buffer was appropriate. As the Appellant points out, this phrasing indicates that the Inspector's conclusions were based on the period up to 2011/12, notwithstanding that the information for 2012/13 had been provided. Taking this more recent data into account, along with that for 2013/14, the target would

have been met only in 7 out of the last 13 years, so that the rate of success is no longer so favourable.

- 12.57. Whilst the target in the early part of this period may have been a constrained one, it is nevertheless a matter of fact that it was met. However, other facts are that the target has been missed in 6 out of the last 7 years and the shortfall now stands at just over 1400 dwellings. To my mind, this points to a clearer pattern of under delivery. When viewed overall therefore, I consider that a 20% buffer is now justified.
- 12.58. The Council interprets the term 'housing requirement' in NPPF paragraph 47 as relating only to the annual housing requirement set out in the relevant policy – in this case, Core Policy 6. In support of this approach, attention is drawn to some comments provided by the Inspector running the examination of the Amber Valley Local Plan<sup>116</sup>. However, those comments could not have been the Inspector's final conclusions on the matter, as the correspondence itself is concerned with the suspension of the examination. Also, the more widespread approach, as the Appellant illustrates by reference to numerous other decisions, has been to apply the buffer both to the requirement and to the shortfall.
- 12.59. If this clause of paragraph 47 is read in context, it is clear that the purpose of the buffer is to help achieve the planned supply and to ensure choice and competition. I take the 'planned supply' to be a reference to the supply for the whole of the plan period to date as well as the next five year period. Otherwise, no margin at all would be in place to allow for choice and competition in relation to past under delivery. This would be inconsistent with the clear aim of according increased priority to delivery, choice and competition where there has been persistent under delivery in the past, as expressed in paragraph 47. Consequently, I consider that the 20% buffer should also be applied to the shortfall.
- 12.60. Using the Council's figures, this would result in the need for a buffer of 572 dwellings so that the five year requirement plus buffer would stand at 3432 dwellings. The identified supply of 3382 would be insufficient to meet this. [6.38-44, 8.41-42]
- 12.61. If the Secretary of State was to accept my conclusion in relation to under delivery, it would follow that the Council has been unable to demonstrate a five year supply of deliverable housing sites. However, for completeness I set out below my findings in relation to those other points made by the Appellant.
- 12.62. Deliverability: by the end of the inquiry, there was disagreement as to the deliverability of five sites which had been included within the Council's identified supply.

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<sup>116</sup> CD 104 - In that instance the Authority had taken the approach now promoted by the Council and the Inspector's response does not indicate any objection to the approach

- 12.63. Site 1 - Tesco Extra – 22 units: the Appellant suggests that the supermarket operator is unlikely to deliver these units, since they would affect the operation of the supermarket site. However, commercial considerations change and the planning permission is still live. Although the Appellant's evidence raises questions as to whether the site will come forward, it does not amount to clear evidence that it is not deliverable.
- 12.64. Site 2 – Friarsgate 95 units: this town centre site has a lengthy history of schemes, although none have yet come forward. The most recent scheme included a grant of planning permission for 46 units. The Council reports discussions are now underway for a scheme which would include 95 units. Whilst this continuing interest indicates that a scheme may well come forward within the next five years, it is insufficient reason to assume that the higher number of units will be delivered, as the Council has done. I consider that the supply figure should be reduced to 46 units, to reflect the planning permission in place.
- 12.65. Site 3 - Tolsons Mill – 100 units: a listed building housing some 20 businesses, this planning permission is due to expire in October 2015 and no approaches have been made for its renewal. In the absence of any indication of continuing interest in its development for residential purposes, I consider there is no longer sufficient evidence that it will come forward in the next five years so that the supply figure should be reduced by 100 units.
- 12.66. Site 5 – St John's Hospital – 18 units: the site of former tennis courts, the Appellant contends that this site will not come forward owing to a planning requirement to make replacement sports provision. However the Council advises the position on replacement is not so clear cut. It has not been shown that the policy on replacement provision would be fatal to the scheme so that these units should be retained in the supply.
- 12.67. Site 6 – King Edward VI School – 32 units: this site appears to have been included in the supply on the basis of an expression of interest from the school some years ago. In view of the lack of any evidence of continued interest, I consider there is insufficient basis for it to be included as a deliverable site so that these 32 units should be removed from the supply.
- 12.68. This would lead to the removal of 181 units from the Council's identified supply, resulting in a figure of 3201. [6.45-49, 8.43]
- 12.69. The Appellant then contends that a 10% discount should be applied, to allow for non-delivery. However, the Council advises that there Lichfield is an area of strong demand for housing. The SHLAA shows that there is a very low rate of lapsed permissions, being generally in the region of 1%, even during those years when house building rates were at their lowest<sup>117</sup>. On that basis, the Council has applied a non-

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<sup>117</sup> SHLAA 6.20-22; Jervis, Appendices pp34-36



implementation rate of 5%. I note that the discount is intended to allow for other causes of non-delivery and that 10% has been used in other localities. Nevertheless, I consider that 5% is not unreasonable in these circumstances. [6.43-44, 8.44]

- 12.70. In summary therefore, I consider that the supply of deliverable sites currently stands at 3201 units. The requirement stands at 2860 and a buffer of 572 should be allowed. The Council therefore has been unable to demonstrate a five year supply of deliverable housing sites. On that basis, particular weight should be attached to the contribution which this site would make to the supply of land for housing.

#### *Affordable housing*

- 12.71. The proposal would deliver 25% affordable housing, which would equate to 30 units. The need for affordable housing in the district is acknowledged to be acute and delivery has averaged just 20 units a year. As such, the affordable housing element of the scheme should carry substantial weight. [8.48]

#### **(vi) the development plan and the matter of sustainability**

- 12.72. On the basis of the evidence presented, it is my view that the proposal would not have an unacceptably adverse effect on the safety and convenience of highway users. Nor would it give rise to harm to the significance of heritage assets or to the amenity of residents. Also, it makes adequate provision in relation to flood risk. In these respects therefore, there would be no conflict with Core Policies 3, 5, 10 and 14 of the Lichfield District Local Plan Strategy 2008-2029 or with development management policies ST1 and BE1. The proposal would accord with the provisions of settlement specific policies Alr1 and Alr2. It would also satisfy saved policy C2 of the 1998 Local Plan. As regards the emerging Neighbourhood Plan, I do not identify any conflict with policies 2.1, 3.1, 4.1, 4.2 and 4.4.
- 12.73. The question remains, however, of the degree to which the proposal accords with the overall spatial strategy of the development plan and its expression in the emerging Neighbourhood Plan.
- 12.74. The appeal site lies outside the settlement boundary for Alrewas as defined in the 1998 Local Plan. However, in the context of this appeal that policy would amount to one for the supply of housing. In view of my findings on housing land supply, the policy cannot be regarded as up to date. Moreover, the relationship of the development to the village would not detract from its compact character and questions as to the permanence of the current boundary are raised by the terms of policy Alr4, which specifically refers to the possibility of sites beyond it. For these reasons, the conflict with that aspect of the 1998 Local Plan can carry only limited weight.
- 12.75. The settlement hierarchy set out in Core Policy 1 indicates that the Key Rural Settlements are expected to accommodate approximately 16% of the 10,030 dwellings to be delivered between 2008 and 2029. This would include 440 units to be allocated between these five

settlements through the Local Plan Allocations document. The indications are that about 75 dwellings could be accommodated on small sites within Alrewas. A further 121 on the appeal site would take provision in Alrewas above the upper end of the 90-180 range in Alr4. Moreover, as the Parish Council points out, Alrewas is one of the smaller Key Rural Settlements and, as the Appellant accepted, this is not a small scale site within the terms of the emerging Neighbourhood Plan.

12.76. As the Council accepted, there is not yet an emerging Allocations Plan so that a decision on the appeal site will not pre-empt such a plan. There is no certainty that all the other potential housing sites in Alrewas will come forward but, even if they did, Core Policy 1 and Alr 4 set a range for delivery rather than an absolute limit. In addition, there are clear indications that the pressure for housing in Lichfield District is upwards, as acknowledged by the Local Plan Inspector in his discussion of the situation with Birmingham<sup>118</sup>. Thus, in the event that housing provision in Alrewas was to exceed the range in Alr4, there is sufficient flexibility in the policies and demand in the housing market to indicate this would be unlikely to prejudice housing delivery in the other Key Rural Settlements. As regards the scale of the appeal proposal, although substantial in relation to the size of Alrewas, its design and layout would be sympathetic to the character of the existing village, so as to assist assimilation into the settlement. In the absence of any identifiable harm to the Conservation Area, there is no good reason to conclude it would detract from the character of the settlement in any other respect. As such, I find no conflict with Core Policy 1 or Alr 4. It must be acknowledged that the proposal would conflict with the housing policies of the draft Neighbourhood Plan (5.1.1, 5.2, 5.2.1, 5.2.3 and 5.2.5). However, given the Examiner's recommendations to amend or delete these policies, such conflict can carry little weight. [6.51-52, 7.14-16, 8.52-54]

12.77. The proposal does not fully accord with the development plan in that the site lies outside the defined development boundary. However, it accords in all other key respects. To my mind therefore, it should be regarded as being in accordance with the development plan as a whole. In the event that the Secretary of State reaches a different conclusion as to conformity with the development plan, it should be noted that the settlement boundary is that contained in the 1998 Local Plan whereas the Local Plan Strategy, adopted in 2015, indicates that boundary may no longer be appropriate. Moreover, a key aim of current national policy is to boost significantly the supply of housing. Whilst no aim is given primacy, that is nonetheless an important consideration. I consider that such material considerations would be sufficient to override the conflict with the defined settlement boundary. [6.55, 8.49-51]

12.78. Some time at the inquiry was also devoted to the question of whether the proposal should benefit from the presumption in favour of

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<sup>118</sup> CD39 paragraphs 17-23

sustainable development. If the Secretary of State agrees with either of the assessments in the preceding paragraph, such a question would have no bearing on the outcome. However, in the event the Secretary of State takes a different view, my understanding of the matter is set out here.

12.79. To my mind the presumption ought not to be applied to this proposal on the basis of its relationship with the Cannock Chase SAC. Since the site is within 15km of the SAC, it is deemed to have an effect on it in combination with other proposals, under the terms of Local Plan policy NR7. Although no contribution to the necessary mitigation measures has been required, the 'in-combination' effect is predicted to occur nonetheless. Paragraphs 10.1-10.4 constitute the information necessary for the Secretary of State, as the competent authority, to carry out the Appropriate Assessment in relation to this proposal. As such, NPPF paragraph 119 is brought into play (that the presumption in favour of sustainable development does not apply where development requiring Appropriate Assessment is being determined).

### **Recommendation**

12.80. I consider that this proposal is in accordance with the plan as a whole. Consequently, I recommend that the appeal be allowed (as amended) and planning permission be granted, subject to the conditions set out in Annex 1.

*K.A. Ellison*

Inspector

## APPEARANCES

### FOR THE LOCAL PLANNING AUTHORITY:

Freddie Humphries, of Counsel

He called

Cllr Marshall	Vice Chair, Planning Committee
Patrick Jervis BA(Hons), MA, MRTPI	Principal Spatial Policy and Delivery Officer Lichfield District Council
Alan Bailes TPP, Dip Geog, MSc, FCILT, FCIHT	Director, The Transportation Consultancy Ltd
Deborah Boffin BSc (Hons), DipTP, MRTPI, DipBldgCons (RICS), IHBC	Senior Conservation Officer, Lichfield District Council
Simon Wood BA(Hons), BTP, MRTPI	Regional Planning and Building Control Manager, Urban Vision Partnership Ltd

### FOR THE APPELLANT:

Peter Goatley of Counsel

He called

Alan Bain MSc, MA, PGCertUD, MCIHT, MTPS	Director, JMP Traffic Consultants
David Hodgkinson BA(Hons) CIFA	Technical Director for Heritage and the Historic Environment, Wardell Armstrong
Anthony Bateman BA(Hons)TP, MRICS, MRTPI, MCMI, MIoD, FRSA	Managing Director, Pegasus Group

### INTERESTED PERSONS:

Cllr Janet Eagland	Member, Staffordshire County Council
Cllr Margaret Stanhope MBE	Member, Lichfield District Council and local resident
Richard Spedding	Alrewas Parish Council
Will Chapman	Vice Chair, Alrewas Parish Council
Graham Slight	local resident
Jane Pegg	local resident
Brian Hall	local resident
John Walton	local resident
Ralph Seville	local resident
John Pegg	local resident
Michael Morriss	local resident

**INQUIRY DOCUMENTS**

ID01	email from Alrewas Civic Society
ID02	letter from Mr JE Walton
ID03	letter from Mr BG Hall
ID04	email from Ms A Wright
ID05	letters from Mrs L Charnley
ID06	letter from Mrs J Wray
ID07	letter from Mr p Wray
ID08	letters from Ms A Wright
ID09	letter from Mr T Latham
ID10	letter from Mr JH Newall
ID11	letter from PE and JM May
ID12	Final submissions, Alrewas Parish Council
ID13	Closing submissions on behalf of Lichfield District Council
ID14	Closing submissions on behalf of Lioncourt Homes Ltd

**Documents submitted by Alrewas Parish Council**

PC1	FL 1-4, documents concerning flooding and flood risk
PC1a	extract from 'A survey and analysis of the Place-Names of Staffordshire'
PC2	Con 1-3, documents concerning Alrewas Conservation Area
PC3	Alrewas PC letter to Planning Committee, 29 June 2015 Note on place names
PC4	Flooding – note to inquiry
PC5	Correspondence between Alrewas PC and Staffordshire County Council, March/April 2015
PC6	Extract from SCC Historical environmental assessments HECA 13

**Documents accepted after the last sitting day of the Inquiry**

ID15	[2015] EWHC 2077 (Admin) IM Properties Development Ltd and Lichfield District Council
ID16	Alrewas Neighbourhood Plan Examiners Report August 2015
ID17	Letter on behalf of Appellant 1 August 2015
ID18	Unilateral Undertaking in favour of Staffordshire CC
ID19	s106 Agreement with Lichfield DC
ID20	Lioncourt Strategic Land letter 19 August 2015
ID21	Response from Staffordshire CC 21 August 2015

Core Document Reference	Document Reference
<b>Information relevant to application 15/00120/FULM</b>	
CD 01	Lichfield District Council Planning Committee Report reference 13/01175/FULM
CD 02	Lichfield District Council Planning Committee Report reference 15/00120/FULM
CD 03	Planning Application Decision Notice reference 13/01175/FULM
CD 04	Site Location Plan (drawing reference 1425_202 T)

CD 05	Site Layout Plan (drawing reference 1425_402)
CD 06	Site Housetype Plan (drawing reference 1425-403)
CD 07	Site Landscape Plan (drawing reference 1425-404)
CD 08	Low Loader Entire Village (drawing reference MID3117-060)
CD 09	Dark Lane Accesses (drawing reference MID3117-073)
CD 10	Housetype elevations and floor plans
CD 11	Planning Statement, January 2015
CD 12	Design and Access Statement, January 2015
CD 13	Noise Assessment, January 2015
CD 14	Phase 1 – Geo-environmental Desk Study Report, January 2015
CD 15	Heritage Assessment, January 2015
CD 16	Landscape and Visual Impact Assessment Addendum, January 2014
CD 17	Landscape and Visual Impact Assessment, October 2013
CD 18	Transport Statement and Travel Plan Update, January 2015
CD 19	Transport Assessment, v6 April 2014
CD 20	Travel Plan, October 2013
CD 21	Response to Ecology Comments, January 2014
CD 22	Arboricultural Report, January 2015
CD 23	Badger Survey Report, January 2015
CD 24	Bat Survey Report, January 2015
CD 25	Biodiversity Offsetting Report, January 2015
CD 26	Extended Phase 1 Update, January 2015
CD 27	Breeding Bird Report, January 2015
CD 28	Wintering Bird Report, January 2015
CD 29	Otter Report, October 2013
CD 30	Flood Risk Assessment and Drainage Strategy, January 2015
CD 31	Statement of Community Involvement, October 2013
CD 32	Desk Based Assessment, v3 October 2013
CD 33	Consultation Responses to application 15/00120/FULM
<b>Appeal Documents</b>	
CD 34	Agreed Statement of Common Ground
CD34A	Statement of Common Ground with Staffordshire County Council
CD34B	Highways Statement of Common Ground with Lichfield DC
CD 35	Appellants Rule 6 Statement with appendices
CD 36	Council's Rule 6 Statement
CD 37	Letter to Council re: Wheatcroft of appeal drawings
<b>Other Relevant Core Documents</b>	
CD 38	Adopted Local Plan Strategy
CD 39	Inspectors Final Report for the Local Plan Strategy
CD 40	National Planning Policy Framework
CD 41	Planning Practice Guidance
CD 42	Matter 3: Assumed Delivery Rates Hearing Statement - Lichfield District Council
CD 43	Representations made on behalf of Lioncourt Homes to the Local Plan Strategy
CD 44	Submitted Alrewas Neighbourhood Plan
CD 45	Representations made on behalf of Lioncourt Homes to the Emerging Neighbourhood Plan
CD 46	SHLAA 2014

CD 47	SHLAA 2014 Addendum
CD 48	The Implications of the 2011 based CLG Household Projections (NLP Housing Requirement Update)
CD 49	NLP Migration Scenario (Addendum to implications of the 2011 based CLG Household projections)
CD 50	ONS Statistical Bulletin Population and Household Estimates for the United Kingdom, March 2011
CD 51	Implications of the 2012 SNHP with regards to the housing OAN for Lichfield District
CD 52	Southern Staffordshire Districts Housing Needs Study and SHMA Update 2012
CD 53	Planning Reform Debate (page 77-79), Volume No. 573, Part No. 100 Parliamentary Debates (Hansard) House of Commons Official Report 8th January 2014
CD 54	Housing and Growth Ministerial Statement, CLG, September 2012
CD 55	Housing the Next Generation, Nick Bowles, MP, January 2013
CD 56	Estimated Housing Need, DCLG, November 2010
CD 57	Alrewas Conservation Area Appraisal, June 2008
CD 58	Alrewas Conservation Area Management Plan, June 2008
CD 59	Staffordshire Residential Design Guide, Staffordshire County Council, 2000
CD 60	Historic Environment Good Practice Advice in Planning Note 2 – Managing Significance in Decision Taking – March 2015
CD 61	English Heritage (2006) Streets for All, West Midlands
CD 62	English Heritage (2008) Conservation Principles, Policies and Guidance
CD 63	English Heritage (2004) Measuring Change in Conservation Areas
CD 64	English Heritage (2011) Understanding Place: Conservation Area Designation, Appraisal and Management
CD 65	Historic England (2015) Historic Environment Good Practice Advice in Planning Note 3: The Setting of Heritage Assets
CD 66	Staffordshire County Council (2009) Historic Environment Character Assessment: Final Report for Lichfield District Council
CD 67	Staffordshire County Council (2011) Conservation within the Highway: Structures of Historic Importance (Guidance Note)
CD 68	Staffordshire County Council (2013) Staffordshire Extensive Urban Survey: Alrewas Historic Character Assessment
CD 69	A Planning Guide to Residential Extensions SPD
CD 70	Manual for Streets
CD 71	Manual for Streets 2
CD 72	Street Design for All
CD 73	The Highway Code
CD 74	Health Social Trend 41 (ISSN 2040-1620)
CD 75	Traffic in Villages, Safety and Civility for Rural Road. A toolkit for communities.
CD 76	Guidance on Transport Assessments, Department for Transport 2007
CD 77	Sewers for Adoption, 7 <sup>th</sup> edition – original paper copy only
CD 78	C697 The Suds Manual, CIRIA, 2007
CD 79	Planning Policy Statement 25: Development and Flood Risk, DCLG, March 2010

CD 80	Planning Policy Statement 25: Development and Flood Risk: Practice Guide, DCLG, December 2009
CD 81	Flood Risk Standing Advice, Environment Agency
CD 82	Howell (2015) EWHC 539 (Admin)
CD 83	[2014] EWHC 1895 (Admin) R. (on the application of Forge Field Society) v Sevenoaks DC
CD 84	Lang (2013) EWHC 473 (Admin)
CD 85	Jay (2012) EWHC 4344 (Admin)
<b>Relevant documents associated with application 13/01175/FULM (140 dwellings)</b>	
CD 86	Site Location Plan (drawing reference 1425-202)
CD 87	Site Layout Plan (drawing reference 1425-201 Y)
CD 88	Site Landscape Plan (drawing reference 1425-204 Y)
CD 89	Housetypes Plan (drawing reference 1425-203 Y)
CD 90	Design and Access Statement, October 2013
CD 91	Planning Statement, April 2014
CD 92	Flood Risk Assessment and Drainage Strategy, October 2013
CD 93	Heritage Assessment, January 2014
<b>Additional documents</b>	
CD 94	not used
CD 95	Guideline for Planning for Public Transport in Developments (1999)
CD 96	Guidelines for Providing for Journeys on Foot (2000)
CD 97	TRICS Multi Modal Methodology 2014
CD 98	Planning Aid Flyer regard items of material concern and items of non-material concern for planning
CD 99	Appellant's Updated Housing Tables - comparison
CD 100	Warwick Local Plan Inspectors Letter, 1 <sup>st</sup> June 2015
CD 101	not used
CD 102	APP: note on differences 140/121 schemes and submissions on proposed amendment to appeal scheme
CD 103	LPA: Supplementary note on five year housing land supply
CD 104	LPA: Amber Valley Local Plan, Inspector's letter 12 May 2014
CD 105	LPA: consultation responses to (121) scheme
CD 106	LPA: note on car ownership figures
CD 107	LPA: note on walking distances
CD 108	APP: Appeal decisions APP/R3325/A/13/2209680 & 2203867, 3/6/2015 ('Chard')
CD 109	LPA: agreed conditions, amended scheme v1
CD 110	LPA: note on Cannock Chase SAC mitigation proposals
CD 111	APP: Unilateral Undertaking
CD 112	APP: flood risk technical note
CD 113	APP: Construction management plan
CD 114	APP: Video survey – further notes
CD 115	LPA: Revised agreed conditions
CD 116	LPA: Information on indoor sports contribution
CD 117	APP: [2004] EWCA Civ 905 Lough & Anr v First Secretary of State



## **Annex 1: Recommended Conditions**

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans:
  - (i) Site Location Plan (Drawing Reference 1425\_202 T)
  - (ii) Site Layout Plan (Drawing Reference 1425\_402)
  - (iii) Site Housetype Plan (Drawing Reference 1425\_403)
  - (iv) Site Landscape Plan (Drawing Reference 1425\_404)
  - (v) Low Loader Swept Path (Drawing Reference MID3117-055)
  - (vi) Construction Management — long vehicles (Drawing Reference MID3117-060)
  - (vii) Low Loader Entire Village (Drawing Reference MID3117-060)
  - (viii) Dark Lane Accesses (Drawing Reference MID3117-273)
  - (ix) 1425\_301 A Alder Housetype
  - (x) 1425\_302 Ash Housetype
  - (xi) 1425\_302\_3A Ash Housetype plots 16 and 86
  - (xii) 1425\_303 Aspen Housetype
  - (xiii) 1425\_304 A Beech Housetype
  - (xiv) 1425\_305 A Birch Housetype
  - (xv) 1425\_306 Bungalow
  - (xvi) 1425\_307 A Cedar Housetype
  - (xvii) 1425\_308 A Chestnut Housetype
  - (xviii) 1425\_309 Elm Housetype
  - (xix) 1425\_310 A Elm Plus Housetype
  - (xx) 1425\_312 Hawthorn Housetype
  - (xxi) 1425\_313 Hawthorn Plus Housetype
  - (xxii) 1425\_314 Larch Housetype
  - (xxiii) 1425\_315 Oak Housetype
  - (xxiv) 1425\_316 Sycamore Housetype
  - (xxv) 1425\_317 Walnut Housetype
  - (xxvi) 1425\_318 Garages
  - (xxvii) 1425\_301-2 Alder Rendered
  - (xxviii) 1425\_302-2 Ash Rendered
  - (xxix) 1425\_305-2 Birch Rendered
  - (xxx) 1425\_307-2 Cedar Rendered
  - (xxxi) 1425\_309-2 Elm Rendered
  - (xxxii) 1425\_316-2 Sycamore Rendered
- 3) Before the development is commenced, full details of the following shall be submitted to and approved in writing by the Local Planning Authority:
  - (i) Bricks to be used in the construction of the external walls;
  - (ii) Render, including colour, to be used on the external walls;
  - (iii) Exterior roof materials; and
  - (iv) External surfacing materials.

The development shall thereafter be undertaken in accordance with the approved details.
- 4) Before the development is commenced, full details of the finished floor levels, which shall be not less than 600mm above the 1:100 year flooding event and not less than 150mm above finished ground level, of the

proposed dwellings, including their relationship to the levels of the highway, existing development and existing ground levels, shall be submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be undertaken in accordance with the approved details.

- 5) Before the development is commenced, full details of the height, type and position of all site and plot boundary walls, retaining walls, fences and other means of enclosure to be erected on the site shall be submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be undertaken in accordance with the approved details.
- 6) Before the development is commenced, full details for the disposal of surface water and foul drainage shall be submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be undertaken in accordance with the approved details.
- 7) Before the development is commenced, a scheme for the offsetting of biodiversity impacts at the site shall be submitted to and approved in writing by the Local Planning Authority. The offsetting scheme shall include:
  - (i) A method for the identification of receptor sites;
  - (ii) The identification of receptor sites, including the part of the site to the west of the proposed dwellings;
  - (iii) Details of the offset requirements of the development, in accordance with the recognised offsetting metrics standard outlined in the DEFRA Metrics Guidance dated March 2012;
  - (iv) The provision of arrangements to secure the delivery of offsetting measures, including a timetable for their delivery; and
  - (v) A management and monitoring plan, to include for the provision and maintenance of the offsetting measures in perpetuity. The management and monitoring plan is to include:
    - a) Description of all habitat(s) to be created/enhanced with the scheme including expected management condition and total area;
    - b) Review of the ecological constraints;
    - c) Detailed designs and/or working methods (management prescriptions) to achieve proposed habitats and management conditions, including extent and location or proposed works;
    - d) Type and source of materials to be used, including species list for all proposed planting and abundance of species within any proposed seed mix;
    - e) Identification of persons responsible for implementing the works;
    - f) A timetable of ecological monitoring to assess the success of all habitat creation/enhancement;
    - g) The inclusion of a feedback mechanism, allowing for the alteration of working methods/management prescriptions, should the monitoring deem it necessary.

The arrangement necessary to secure the delivery of the offsetting measures shall be executed prior to written approval by the Local Planning Authority. The offsetting scheme shall thereafter be implemented in accordance with the requirements of the approved scheme.

- 8) Before the development is commenced, the trees and hedgerows shown to be retained on the approved plans shall be protected in accordance with British Standard 5837:2012. No works shall continue on site until the

approved tree protection measures are in place. The tree protection measures shall be retained for the duration of construction including any clearance works until all parts of the development have been completed and all equipment, machinery and surplus materials have been removed from the site, unless otherwise agreed in writing with the Local Planning Authority. No fires, excavation, change in levels, storage of materials, vehicles or plant, cement or cement mixing, discharge of liquids, site facilities or passage of vehicles, plant or pedestrians shall occur within the protected areas.

- 9) Before the development is commenced, a detailed landscape and planting scheme, which shall include an area of woodland planting in the western section of the site, shall be submitted to and approved in writing by the Local Planning Authority. The approved landscape and planting scheme shall thereafter be implemented within the first available planting season, unless otherwise agreed in writing by the Local Planning Authority.
- 10) Before the development hereby approved is commenced, a written scheme of archaeological investigation ('the Scheme') shall be submitted to and approved in writing by the Local Planning Authority. The Scheme shall provide details of the programme of archaeological works to be carried out within the site, including post-excavation reporting and appropriate publication. The Scheme shall thereafter be implemented in full in accordance with the approved details.
- 11) Before the development is commenced, the site shall be subjected to a detailed scheme for the investigation and recording of any contamination of the site and a report shall submitted to and approved in writing by the Local Planning Authority. The report shall identify any contamination on the site, the subsequent remediation works considered necessary to render the contamination harmless and the methodology used. The approved remediation scheme shall thereafter be completed and a validation report submitted to and approved in writing by the Local Planning Authority within 1 month of the approved remediation being completed, to ensure that all contaminated land issues on the site have been adequately addressed prior to the first occupation of any part of the development.
- 12) Before the development is commenced, full details of the accesses and traffic management works off Dark Lane and Micklehome Drive (indicated on drawing no. MID3117-053), shall be submitted to and approved in writing by the Local Planning Authority. The accesses and off-site highway works shall thereafter be constructed in accordance with a timetable to be submitted to and agreed in writing with the Local Planning Authority.
- 13) Before the development is commenced, full details of the 'temporary secure parking area for residents' shall be submitted to and approved in writing by the Local Planning Authority. The parking area shall thereafter be provided in accordance with the approved details prior to the commencement of development and retained for the duration of the construction works.
- 14) Before the development hereby approved is commenced, a Traffic Management Plan/Construction Method Statement shall be submitted to and approved in writing by the Local Planning Authority. The Plan and Statement shall include:
  - (i) Construction traffic access and routing

- (ii) Delivery time restrictions
- (iii) Provision for parking of vehicles for site operatives and visitors
- (iv) Method of prevention of mud being carried onto highways
- (v) Pedestrian and cyclist protection, with particular reference to Dark Lane and Micklehome Drive
- (vi) Proposed temporary traffic restrictions
- (vii) Arrangements for turning vehicles
- (viii) Loading and unloading of plant and materials
- (ix) Storage of plant and materials

The approved traffic management plan and construction management scheme shall thereafter be implemented prior to any works commencing on site and shall thereafter be retained and adhered to until completion of construction.

- 15) The development hereby approved shall be carried out in accordance with the approved Flood Risk Assessment and Drainage Strategy ref 5117802 V4 dated 19th January 2015. This shall include the following:
- (i) Limiting the rate of surface water run-off generated by the 1 in 100 year plus 30% critical storm, so that it will not exceed 17.8 l/s.
  - (ii) Provision of 115 cubic metre infiltration basin on the site to accommodate a 1 in 100 year plus 30% rainfall event;
  - (iii) No built structures to be provided or raising of ground levels within the floodplain of the River Trent.
  - (iv) Ensuring that any flooding occurring within the proposed development for up to and including the 1 in 100 year plus 30% event must be contained within the site boundary in a safe manner and allowed to discharge when downstream capacity permits; and
  - (v) A scheme for the maintenance of the surface water system for the lifetime of the development. The scheme shall include confirmation of the body responsible for its maintenance.

The mitigation measures shall be carried out in accordance with the timing/phasing arrangements embodied within the scheme.

- 16) Any tree, hedge or shrub planted as part of the approved landscape and planting scheme (or replacement tree/hedge) on the site and which dies or is lost through any cause during a period of 5 years from the date of first planting shall be replaced in the next planting season with others of a similar size and species.
- 17) No trees, shrubs or hedgerows planted or retained as part of the approved landscape and planting scheme shall be topped, lopped or cut down without the prior written consent of the Local Planning Authority.
- 18) No construction activities shall take place outside the hours of 07.30 to 19.00 Mondays to Fridays and 08.00 to 13.00 on Saturdays. There shall be no construction activities on Sundays and Bank/Public Holidays.
- 19) Details of a noise attenuation scheme and a timetable for its implementation shall be submitted to and approved in writing by the Local Planning Authority, in accordance with Section 5 of the report N005 prepared by Wardell Armstrong, dated January 2015. Development shall be carried out as approved before the development is first occupied.

- 20) The recommendations and mitigation measures within the following ecological reports and the protected/priority species reports shall be complied with in full:
- (i) Breeding Bird Survey (January 2015)
  - (ii) Wintering Bird Survey (January 2015)
  - (iii) Bat Survey Report (January 2015)
  - (iv) Badger Survey Report (January 2015)
  - (v) Extended Phase 1 Habitat Survey Report (January 2015)

The mitigation measures shall thereafter be retained for the life of the development, unless otherwise agreed in writing by the Local Planning Authority.

## **Annex 2: Condition Not Recommended**

- 21) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any Order revoking and re-enacting the Order with or without modification), no windows, other openings or dormers shall be created in Plots 1, 16, 17, 22, 23, 80, 82 – 85 and 96 as shown on approved plan 1425-402 and on the approved listed on this decision notice, in addition to or as enlargements of any which may be hereby approved without the prior written permission of the Local Planning Authority.



## **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.