

**Leicester City CIL.**

**Representation DCS017**

**Written statement on behalf of Leicestershire Police.**

**Michael Lambert**

**Growth and Design Officer.**

**June 2015**

## **Introduction**

I append additional material that I refer to in the text. I have assumed that the Inspector has access to the Inspectors report on the City Core Strategy, NPPF and the GIA Assessment Executive Report. The case made by Leicestershire Police is captured in my email representations of the 8/7/14, 30/10/14 and 10/3/15 and I assume that the Inspector has also been given access to these. A number of arguments support changes to the draft charging schedule to more adequately meet the needs of Leicestershire Police [LP]. I also refer to the difficulties we are experiencing in securing commitments towards necessary policing infrastructure to support the City's Ashton Green Development. In response LP say that infrastructure requirements for Ashton Green should be added to and paid for through CIL., in the absence of any s106 contributions to policing infrastructures and if the development is to be sustainable and acceptable in NPPF terms.

### **Main argument 1**

**The infrastructure Plan and charging schedule depend, to an extent, on work carried out nearly 10 years ago for the "GIA" Assessment. Policing elements therein are dated and need to be brought up to date to meet current needs**

- The origin of the Councils infrastructure list is work carried out in 2007 and 2008 culminating in a report at 4/09 known as the GIA assessment. Although dated that captured the need to include policing to serve projected growth concluding "that most of the capital requirements incurred by growth will not be covered by existing mainstream central and local [police] funding". Para 82 of the Executive Report 2009.[my insertion]

### **Main argument 2**

**The presence of large infrastructure projects linked to major growth across the City dominated this previous infrastructure needs assessment.**

- The content of the infrastructure schedule to the GIA was overwhelmingly to meet the transport proposals of the highways and transport authorities including the City Council. In this, the impact on day to day services was dwarfed. See the chart at page 19 of the GIA Executive report. Similar conclusions might be reached looking at the draft charging schedule. Content in main argument 5 below picks up on the relative costs and importance of adequate policing.

### **Main argument 3**

**The Core Strategy anticipated further work to identify facilities and infrastructures for Policing.**

- The content of the Inspectors report page 5 and para vi and the related changes in appendices A and C. Changes to the Infrastructure Plan, which was based on assessment carried out in preparation for the GIA, were to include funding to Mansfield House City HQ for Police [pages 32, 36, and 38] and work at police stations at Beaumont Leys in association with Ashton Green [page 42] and Keyham Lane [page 43] in association with growth at Hamilton.

- Inspectors report page 13 para 34 explains why and what was been included in the amended infrastructure schedule at the time. "However that is not the end of the matter" with further refinement to take place in subsequent plans and planning applications. Referring to FPC 68 "I am satisfied that that the council will collaborate with police" on contributions and provision of infrastructure. FPC 68 says that through a DPD the council will engage with providers.

Despite the Inspectors conclusions no s106 contribution agreements exist to make provision towards additional policing to serve additional growth being considered through the planning processes in the City. The DPD presaged by the City Council, and the subject of FPC 68, has never emerged. Police have chased this finding the document shelved by the City Council. The dialogue and outcomes anticipated by the Inspector have just not happened. The Inspector can take a view as to the extent CIL preparations and consultations have captured this missing dialogue.

- High levels of growth were anticipated in the Core Strategy and at 4/10, during the Examination, much time was spent on the reality of this scale of growth at that point in the recession - Inspectors report para 11 and 12. "Very challenging" might have been an understatement. The Inspector did however anticipate further adjustments and review of the plan, the need for pump priming delivery of sites and at para 14 monitoring to ensure appropriate development to changing conditions. Police have expressed the view that review of likely actual growth rates to time through the recession is justified and that this should be in step with revised infrastructure requirements. We have not been involved in any of the review exercises suggested in the Inspectors report. We have nevertheless reviewed our current needs related to the housing level in the CIL proposal and at Ashton Green.

- Change PC37 page 15 related to Ashton Green - the council to work with infrastructure providers to ensure necessary infrastructure is in place. Police have made a consistent case here without any commitment from the City Council towards necessary funds to date. We are not aware of the "close work" the need for which was identified by the Inspector.

#### **Main argument 4**

**For our part, and on behalf of communities who need to be kept safe and healthy, LP have acted in good time and in good faith in identifying our objectively assessed needs against the CIL housing figure and in relation to Ashton Green.** We have drawn on our experience in many appeals and plan Examinations to provide this.

- my **appendix 1** is our OAN in relation to the CIL proposal at 30/10/14 submitted for consideration in the City Councils deliberations. Extracting from this

#### **Quantifying the impact of 2772 additional houses in Leicester City.**

- The employment and deployment of 36.5 additional staff.
- 10 additional vehicles at **£141966**
- Additional investment in radio transmission capacity over a 5 year period to take additional traffic at **£10256**

- Additional investment in PND capacity over 5 years to take additional information hits at **£7207**
- Additional investment in Control Room telephony to add capacity to deal with additional calls at **£47595**
- Additional investment in 3 ANPR units at strategic road locations at **£24666** plus 2 Mobile units to serve growth areas and other hinterlands **£6,000**.
- Investment in Policing drop in hub equipment, existing or additional **£5544**
- Start up and personal equipment for additional staff at **£214583**
- Premises expenditure to cater for additional staff **£1427734**. This will be used to expand the buildings we use to police the City to take 36.5 staff.
- Total requirement **£1885551**

That does not appear to have resulted in any review or changes to the Councils Infrastructure list or charging schedule from the time this representation was submitted.

- in relation to Ashton Green, 3500 additional houses, my **appendix 2** is a contribution request at 16/4/14 with extract

Start up equipment	£317466
Vehicles	£183260
Additional radio call capacity	£17850
PND additions	£9800
Additional call handling	£15890
ANPR	£24666
Mobile CCTV	£4500
Additional premises	£2263140
Hub equipment	£3500
<b>Total</b>	<b>£2840072</b>

and my **appendix 3** is an extract relating to just the first phase of that development in response to a request by the City Council.

We do not see any connection between this providers assessments and what appears in the infrastructure projects list or draft charging schedule for CIL. In relation to Ashton Green LP have yet to secure, despite our efforts, a commitment for the development to fund what is necessary from the City Council as landowner, LPA or indeed main developer. That reflects the situation across the City in relation to our s106 requests.

All these documents identifying Policing impacts and necessary mitigations use a methodology accepted in all planning appeals and local plan/ core strategies that have considered this and, which

have in response, made provision for necessary policing facilities and infrastructures. A consistent case is made to all LPAs across our sub region. We are content from legal advice and from CIL guidance that all that we seek is *necessary/compliant* in planning application decisions both LPA and at appeal, *essential* in planning policy infrastructure schedules and *appropriate* for CIL. There is an established material position here acknowledged by most Leicestershire LPAs. For brevity I have not provided the 17 appeal decisions nor Local Plan Infrastructure schedules that demonstrate this. I can do so if the Inspector wishes to look at these.

**Main Argument 5**

**The centrality of adequate policing to sustainable development, NPPF and as captured in recent decisions.**

- Police refer to NPPF for the inextricable links between planning, sustainability, the health and safety of communities and adequate policing. Securing sufficient facilities and services to meet local needs is a Core Planning Principle [para 17]. Planning is to deliver facilities and services that communities need [para 70] and Supplementary Planning documents can assist applicants in this. Plan policies should deliver the provision of security infrastructure and other local facilities [para 156]. Plan policy and decision making should be seamless [para 186]. Infrastructure Planning should accompany development planning by LPAs [177] who should work collaboratively with infrastructure Providers [162]. NPPF seeks environments where crime and disorder and the fear of crime do not undermine the quality of life and community cohesion [58] and Planning Policies and decisions should deliver this. Such quality of life considerations are repeated in relation to achieving healthy communities at Para 69.
- My **appendix 4** is a particular planning appeal where an Inspector captured the argument, para 291 forward -

*" it seems to me that the introduction of additional population and property to an area must have an impact on Policing , in the same way as it must on education and library services for example. Moreover it also seems to me that the twelfth core planning principle of the framework, that planning should take account of and support local strategies to improve health, social and cultural wellbeing for all, and deliver sufficient community and cultural facilities and services to meet local needs, can only be served if Policing is adequate to the additional burdens imposed on it in the same way as other local public service. The logic of this is inescapable. Section 8 of the Framework concerns the promotion of healthy communities and planning decisions, according to para 69, should aim to achieve places which promote, inter alia, safe and accessible environments where crime and the fear of crime and disorder, do not undermine quality of life or community cohesion.....adequate policing is so fundamental to the concept of sustainable communities that I can see there is no reason, in principle, why it should be excluded from the purview of s106 financial contributions, subject to the relevant tests applicable to other*

*public services There is no reason it seems to me why Police equipment and other items of capital expenditure necessitated by additional development should not be funded alongside for example additional classrooms and stock and equipment for libraries"*

My underlining

- My appendix 5 is the judgement from a recent JR case initiated by LP. I extract as follows

*- It is obvious that a development of the nature described [4500] homes would place additional and increased burdens on local health, education and other services including the Police force. [Para11]*

*- the Police Challenge could not be characterised as a quibble [para 61]*

*- occupiers of the development will want to know that they are living in a safe Policed environment - the consumer view of the issue [para 61].*

*- Police have statutory responsibilities to carry out and although the sums at stake are small in comparison with what will be required to complete the development the sums are large for Police [para 61].*

*- if a survey of local opinion were taken concerns would be expressed if it were thought that the developers were not going to provide Police with sufficient to meet the demands of Policing the new area. Fair points are made by Police about the terms of the agreement [para 62].*

*- Looked at objectively the way the Police contribution was handled in the s106 is not very satisfactory and there are some legitimate criticisms to the formulation of the trigger mechanism.*

*- the Judge suspected that irrespective of the outcomes of this case, the issue of the timing of Police contributions will have to be revisited [para 84]*

My underlining

We do not understand why this centrality does not appear to sufficiently influence what is in the infrastructure list and draft charging schedule. The matters of the relative small size of what police require to keep communities safe, the public view and the purpose of planning and associated infrastructure funding and delivery also feature in these decisions. That should equally apply to the CIL housing number and the Ashton Green development.

### **Main argument 6**

**That making adequate provision for Policing in the infrastructure list and charging schedule will have little overall impact on the deliverability of development and the viability of CIL.**

Content in the main items above demonstrate the small relative cost of Policing to other infrastructures but its centrality nevertheless. The charging schedule evidences a funding gap of £94,440,000 with that limited in relation to Policing at £450,000 against a single property project. That represents 0.5% of the funding gap. Increasing this to meet what we require and have evidenced will take the total funding gap to £95,875,551. The police content of this would change to 1.9% of the total funding gap. Policing would still be the smallest element in the charging schedule by some way. At an even smaller scale the cost of policing this additional development would equate to two cycle/footbridges, or one improvement to a river corridor.

Turning to the viability study update I note that uplift residential land valuations assume that an adequate level of Policing infrastructure is maintained proportionate to that existing - para 4.2. That will not be possible without adequate mitigation through s106 or CIL. Looking at the ratio between CIL at £25pm<sup>2</sup> and the funding gap identified the increase to meet adequate and necessary policing would make a miniscule impact on the CIL rate. Indeed it seems to me that the basis of the calculations in the viability study appear to have tolerances well beyond the level to secure for adequate and necessary policing infrastructures. Looking at the table on page 46 the difference in the CIL cost as a proportion of residual value in order to fund what police need will change little if at all. Looking at the residual use values and traffic light indicators page 45 the reduction to meet adequate and necessary policing will not cause any indicator to change colour. What the consultant says and quotes at para 4.45, 4.46 and 4.52 can only support this.

I add that it is helpful to consider an adequate provision in relation to Policing after the Examination has heard evidence as to viability. I do not believe that this will bring up anything that would suggest that viability will be threatened by providing for what Police need.

## **Conclusion**

There are a number of significant arguments which justify inclusion of Police up to date infrastructure needs in the draft charging schedule and the setting of CIL at a level to fund this. Doing so will not make any significant impact on viability. Police have made these points over some time and in responding when consulted on CIL by the City Council. Despite Core Strategy Policy and the findings of the Inspector on the subject of necessary additional contact and development work, LP are not benefitting from any developer contributions from within the City. That also applies to the significant Ashton Green greenfield development being lead by the City Council. For these reasons LP believe that the proposed Ashton Green development should be included in CIL. Finally Police again refer to legal advice, **my appendix 6** para 15, sought by the service nationally and particularly to the issue of ensuring payments are passed to providers. That applies in relation to what already appears in the charging schedule and must also apply if this is brought up to date as Police request. The Inspector is invited to endorse the point being made by Ian Dove QC.

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## **City CIL. Residual requirement of 2772 homes.**

### **Up to date objectively assessed development and infrastructure requirements of Police**

#### **Growth proposed and Police Background**

The Council are pursuing CIL and have identified that this should meet the needs of a residual housing requirement of 2772 homes across the City.

Police have taken advice on the applicability of NPPF tests relating to obligations to CIL charging schedule preparation and content and preparation of Infrastructure Plans. This included advice as to what is infrastructure.

- Infrastructure is not a narrowly defined term and the definition in the Planning Act 2008 provides a non exhaustive list to the extent that there is no difficulty in the proposition that contributions towards Police infrastructure can be within the definition.
- Infrastructure is not limited to buildings and could include equipment such as vehicles, communications technology, and surveillance infrastructure such as CCTV.
- the test which is posed in relation to the inclusion of items within the CIL schedule posed by Regulation 14 is very different to the test under Regulation 122. Regulation 122 relates to planning obligations and requires the three tests to be passed in relation to site specific planning obligations. In setting the CIL schedule the test is different. What is required in setting the level of the levy is an understanding of the costs of infrastructure "*required to support the development of its area*".
- Thus there will be a relationship between the infrastructure on the schedule and the development which is anticipated across the local authority's area but because it is an overarching calculation questions of necessity and direct relationships do not arise. Provided that the infrastructure is required for the development in the area, it qualifies for inclusion on the Schedule.

#### **Working in Partnership**

The City Council recognises that growth of this scale will place additional demands on Policing and National Planning Policy makes provision for plan making and decision taking to

consider and mitigate this especially where there is no prospect of other funding to do this. The Council's infrastructure planning and CIL charging schedule should include Policing infrastructure necessary to accompany growth. That is a principle accepted in the councils Core Strategy however this is out of date in the view of police. In relation to individual planning applications Police provide a fully evidenced case to meet the NPPF tests. There is a history of support for this in all Planning appeals across the Police District which apply the common methodology adopted here. We will keep our requirements under regular review and where funding commitments are made will explore flexibility to assist delivery using our abilities to borrow and spread the costs of infrastructure upon new development. Policing is a service funded and delivered sub regionally with many of our infrastructures serving City and District Council areas across their individual boundaries. For this and other reasons Police support the principles of the Community Infrastructure Levy and commend it to local Councils.

### **Policing Leicester City.**

Policing demand from the City is the highest across our sub region. It reflects higher crime rates with about half the content of demand and asset deployment. There were 123,100 households in the 2011 census. In 2013 we handled 416414 calls from these dispatching emergency attendances on 52700 occasions and we visited on 30994 occasions to follow up less urgent cases. There were 29062 recorded crime incidents in the last year in the City and in addition we handled 12222 recorded incidents of antisocial behaviour.

Leicestershire Police are recognised as a good performing service by comparison with others across a range of indicators used by Her Majesties Inspectorate and available on their website.

To deal with the existing Policing demands of the District we currently deploy -

- (i) 627 staff in the LPU local beat offices and emergency response Hub in the City.
- (ii) 73 staff in City County Basic Command Unit at Mansfield House.
- (iii) in support teams mainly at Force HQ Enderby - including criminal justice and courts case management and prisoner detention and processing, control centre/contact management, Intelligence research, Operations planning, dogs and firearms, special branch, forensic, Road Policing, Workshops/garages, Tactical Support Group, Road Safety Unit, IT and communications, Safeguarding/ vulnerability, Child abuse team, Economic crime team and in Regional/major crime working.

- (iv) in organisational support functions at Force HQ Enderby providing finance, human resources, welfare, estates, training and top level management of the Force.  
921 staff are employed delivering these later two functions to the City.
- (v) 206 fully comms equipped Police vehicles of varying types and functions
- (vi) Radio cover with a number of base stations sufficient to cover the existing pattern of development and annual investment in hardware to ensure the capacity of this system at £91,000 pa for the City.
- (vii) PND intelligence system running at planned capacity dealing with 3632 hits pa to deliver Policing to the existing development in the district with annual re investment in equipment running at £63700 pa for the City.
- (viii) A control room with telephony and comms to answer calls and deploy responses. 143 staff work here on calls from the City. The building and its telephony runs at capacity at peak times.
- (ix) CCTV technologies including 13 ANPR cameras at strategic road locations in the city and at its boundaries to detect crime related vehicle movements.
- (x) Premises- 6 LPUs, one emergency response hub one BCU in the City. Essential support facilities like vehicle workshops, the control room and tactical asset deployment from Police HQ Enderby. 24886 m2 in total.

## **Police Funding**

This is entirely revenue via Home office settlements and the precepted local rate base. The cost of our capital infrastructures has to be met from borrowing using these revenue incomes. The Policing priority is to maintain the front line of our service and we have to dedicate over 90% of our revenue resources to staffing to do this. Because of this pattern of funding Police have for some time sought developer contributions where additional development will result in the need for additional investment in our capital infrastructures. Our capital programme [3 year period] is entirely related to re investing in our current level of capital infrastructures eg our vehicle fleet, comms. and transmissions infrastructures, and in relation to premises only dealing with existing known problems in our buildings eg as recent at Loughborough. All of the capital items referred to in this paper are within capital streams in our capital programme and are dealt with as such by Police and the Home Office. There is no growth element in our capital programme and our funding gives no basis to include this. Using our current capital programme as a guide and applying current policing demand from the district we expect to spend £2784713 pa re investing in our current infrastructures at the current level in the City. There are no planned or funded provisions to extend these

infrastructures as a result of growth proposed by the City Council and this is not surprising bearing in mind that there have never been funds in our budget to pay for this.

Turning to our revenue income this has for many years barely been sufficient to cover our front line staffing costs even with rate base increases in band D as a result of housing growth. Nevertheless we do not seek contributions towards revenue funding. All of the information on our asset deployment in this paper is accurate at the time of writing and is post recent staff and premises reductions. The case for Police funding through contributions from development and indeed CIL is historic and not made as a result of the Comprehensive Spending Review. Financial strictures do however emphasise the importance of continuing to secure funds from this external source.

The financial position of the Police was externally and independently examined by Roger Tym in the Growth Infrastructure Assessment of the sub region which Harborough Council part commissioned and paid for. They concluded in relation to policing that "It is sensible to assume that most of the capital requirements incurred by growth will not be covered by existing mainstream central and local funding".

I attach our current budget together with a commentary so that you can verify what I say in this submission.

#### **Quantifying the impact of 2772 additional houses in Leicester City.**

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- Start up and personal equipment for additional staff at **£214583**

- Premises expenditure to cater for additional staff **£1427734**. This will be used to expand the buildings we use to police the City to take 36.5 staff.

Premises information. As with other infrastructures we cannot afford to maintain these beyond our current needs ie with spare capacity. We have in house estates functions to manage this including disposals when necessary and design and build on replacement premises, adaptations and extensions. The build costs used in forecasting premises spend are current and verified by Estates and through tendering [ £2794pm2]. Current occupancy rate across the force is 1 staff to 14m2. Additional floorspace will need to be added to these premises to serve this growth proposed by the City Council.

### **Conclusion**

Police are committed to work with the Council on the lines indicated in this paper however we can't programme to spend funds or develop and procure items without firm funding commitments. We are happy to take part in long term planning however procurement will be triggered by actual growth on the ground. To serve the housing growth now proposed by the Council we will require **£1882551** to procure the capital items indicated.

This is entirely based on the levels of deployment to meet the Policing demands of the existing City community. Without delivery of this additional infrastructure, Policing to this existing community will be seriously and adversely impacted. The methodology used in this paper is common to that used to determine Plan content across our sub region with two plans being found unsound without adequate Policing provision.

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Leicestershire  
**Police**

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Council Ref

**Att Mike Richardson,  
Leicester City Council,  
Planning,  
New Walk Centre,  
Welford Place,  
Leicestershire,  
LE1 6ZG.**

16/4/14

Dear Mr Richardson.

**RE: Ashton Green growth Point. 3,500 dwellings, employment and related infrastructure.**

I refer to the recent application to vary conditions here and I note that this was permitted despite objections raised by Police. If you recall we were concerned that the former condition to meet the Policing needs of the development through its phases was being abandoned for something which was geared to secure built community facilities. In considering this your conclusions were "I consider a strategic approach to the delivery of community and governance facilities will see an appropriate level of facilities provided at suitable times within the overall build timeframe" and "Whilst the requirement for meeting the policing needs of the development is not contained within its own specific condition, its inclusion in the community condition still secures adequate provision to meet the policing needs of the development. I consider the deletion of the condition to be acceptable". I am concerned that the new wording [condition 29 page 36] doesn't actually say this and further that no reason is given in the report as to why deletion of the bespoke condition was necessary. Nevertheless in an attempt to move things forward I thought it would be helpful to apply what is currently regarded as our compliant request approach to this development to identify Policing impacts and necessary mitigations.



### **The nature of the development**

The application seeks to develop a number of open fields to north west of the City as an urban extension. 3500 houses are proposed together with an area for employment development, schools and medical facilities as well as access, open space and other infrastructures. Illustrative plans show that the development will be aimed at family occupation with a mix of uses not dissimilar to those in the surrounding area. This existing development locality provides a reliable basis for gathering "baseline" data in terms of policing demand and deployment.

### **Current levels of local Policing demand**

Policing is a 24/7 service resourced to respond and deploy on an "on demand" and "equal access" basis and is wholly dependent on a range of facilities for staff to deliver this. Calls and deployments via our control room at Force Headquarters Enderby are monitored and can give an indication of the level of service demand in different areas such as to the 19520 existing households in the Beaumont Leys LPU and the 6459 households in the Beaumont Leys beat [C03].

In the 2011 year we dealt with 73564 calls from the Beaumont Leys LPU area, we dispatched emergency attendances to 13616 locations and non emergency follow ups to 3464 addresses. Attributing to the CO3 beat 24276 calls were handled, emergency attendances were sent to 4493 addresses and there were 1143 non emergency attendances.

The site represents most of the north of this beat which is undeveloped unlike the the south of the beat which has large areas of residential, retail and commercial development. Crime incidents are concentrated in the built areas of the beat with 1722 recorded incidents in the last year. Crime mapping shows an even but dense spread of incidents across the adjoining areas with burglary and theft the main content. There is a concentration of incidents at the Beaumont Leys shopping centre where local people visit and shop. Forcewide the total crime level has been static since late 2011. Burglary levels rose late last year to a 3



year high. Levels of theft remain static. Turning to the beat Total crime and theft has remained static over this period however has been increasing steadily in the last year. The trend in local burglaries reflects that Force wide. Police also deal with Anti Social Behaviour incidents with 1009 of these in the beat in the 2011 year.

Perhaps a further demonstration of response to demand is the regular patrolling of the locality and local community contact maintained by the Neighbourhood Policing team located at the Beaumont Leys LPU building.

### **Current levels of deployment and infrastructures to Police Charnwood District.**

**Staff** delivering Policing to the Beaumont Leys LPU area are spread across the following functions:

- 66 staff in the Neighbourhood team operating from Beaumont Leys LPU station.
- 77 staff in the City Basic Command Unit at Mansfield House Leicester City Centre, delivering response Policing, investigations, intelligence, and LPU management
- in delivery teams mainly at Force HQ Enderby - Criminal justice including courts case management and prisoner detention and processing, control centre/contact management, Intelligence research, Operations planning, dogs and firearms, special branch, forensic, Road Policing, Workshops/garages, Tactical Support Group, Road Safety Unit, IT and communications, Safeguarding/ vulnerability, Child abuse team, Economic crime team and in Regional/major crime working.
- in organisational support functions at Force HQ Enderby providing finance, human resources, welfare, estates, training and top level management of the Force. 158 staff are employed delivering these later two functions to the LPU area.

301 staff deliver Policing to The Beaumont Leys area.



Because of the integrated nature of Policing - there no longer being one local police station serving all the local need - all these functions will be called upon to deliver Policing to the proposed development. Across our 301 staff employed to deliver Policing to Beaumont Leys, Policing an existing development of this size would fully occupy 54 members of staff. Staffing levels are under constant review to ensure that minimum acceptable numbers are deployed to meet existing levels of Policing demand. This has the benefit of much needed savings in costs, but as a result there is no additional capacity to extend existing staffing to cover additional development.

Where additional development is proposed we will seek to deploy additional staffing and additional infrastructures at the same level that is required to deliver Policing to the locality. It would be complacent not to do this because without additional support unacceptable pressure will be put on existing staff and our capital infrastructures which will seriously undermine our ability to meet the Policing needs of this development and maintain the current level of Policing to the rest of the local beats and across Beaumont Leys and the wider City area. The impacts of the development are so significant that they cannot be met without additional staff deployed at a level consistent with the current Policing of the locality of the development.

The following infrastructure is required for all Policing activities in Leicester City.

***Personal equipment for staff*** comprising workstations, radios, protective equipment, uniforms and bespoke training in the use of these. In general we retain this equipment when existing staff leave and are replaced however additional staff will require additional equipment. There are practical limits to the extent to which existing equipment can be re used eg with uniforms or where technology has moved on.

***Police vehicles*** of varying types and functions covering existing patterns of development and community demand. The 36 fully equipped vehicle fleet



is kept at a level to meet existing patterns of demand from the LPU with reductions made whenever possible. Vehicles are used by staff on patrol, deployed to deal with emergency responses and for follow up of recorded crimes eg by Scene of Crimes Officers. There is no capacity in this deployment for increases to meet the demands of this development.

**Radio cover** in the form of a number of base stations sufficient to cover the existing pattern of development and investment in hardware, signal strengthening etc to ensure the capacity of this system to meet existing call levels costs £20,000 pa.

**Police National Database** is a vital tool for law enforcement purposes with hardware costs to ensure this capacity at £10976 pa in Beaumont Leys. The system is now at planned capacity including dealing with 1561 hits pa as a result of Policing the existing communities there.

**Control room telephony** We employ 20 staff to take and deploy responses to calls from Beaumont Leys. The control centre is maintained to capacity use and there are particular times when our telephony runs close to overload eg at weekends and evenings.

**CCTV technologies** including 12 ANPR cameras at strategic road locations in the City to detect crime related vehicle movements. In addition two mobile CCTV units are deployed with local partners to detect and deter crime at hotspots in the locality. Cameras have in the past been deployed as funding has permitted, including s106 receipts, in an attempt to cover the existing pattern and size of development. There is no capacity to meet the additional demands that growth places upon these. New developments should benefit from the same technology as elsewhere in the Police District where it has been shown to detect and deter crime.



**Premises** sufficient to accommodate the staff and services outlined above in Beaumont Leys LPU, Mansfield House BCU City Centre and Force HQ Enderby. The Force have an active estates review function minimising our premises need to meet existing Policing demand. We just can't afford to have buildings under used and will dispose of these wherever necessary using receipts to re invest where there are known difficulties. The existing LPU, BCU and HQ premises are used to capacity and this is maintained through the processes I have described. All will need to be extended to accommodate additional staff as a result of the development.

At Force HQ a number of specialist functions and support teams are located at our 11 hectare site. It is typical for our control room to be at capacity at peak times and where 20 existing staff are employed to process existing calls from Beaumont Leys. Additional staff will need to be employed to take additional calls from the new development and to deploy our resources as responses to these. These additional staff will need to be accommodated.

**Other capital infrastructures** such as specialist equipment in use by Forensics, our tactical teams eg in firearms and dog handling, freestanding IT and data recording in relation to vulnerable groups, prisoner detention, transportation and processing including cells at core locations. We do not seek contributions towards these infrastructures at this stage since they have some spare capacity to deploy.

### **The disposition of Leicestershire Police as regards major growth development**

A primary issue for Leicestershire Police is to ensure that new development of this scale makes adequate provision for the future Policing needs that it will generate. Like some other public services our primary funding is insufficient to be able to add capital infrastructures to support major new development when and wherever this occurs. Further there are no bespoke capital funding regimes, eg



like Building Schools for the Future or the Health Lift, to provide capital re investment in our facilities. We fund capital infrastructures by borrowing. However, in a service where over 90% of our budget is staffing related, our capital programme can only be used to overcome pressing issues with our existing facilities eg premises replacement Loughborough, or to re provide essential facilities like vehicles once these can no longer be used. This situation has been recognised by the Association of Chief Police Officers nationally for some time and there are public statements which explain our particular funding difficulties. The position of Police funding was examined and verified by external consultants employed by Local Councils - The Leicestershire Growth Impact Assessment of 2009 which concluded at para 82 in relation to Policing "It is sensible to assume that most of the capital requirements incurred by growth will not be covered by existing mainstream central and local funding".

Faced with unprecedented levels of growth being proposed across our sub region Leicestershire Police have resolved to seek developer contributions to ensure that existing levels of service can be maintained as this growth takes place. We are a regular and constant participant in the statutory Planning process evidencing the impact of growth through work with local Councils in their Plan making, preparation of guidance, preparations for CIL and the consideration of individual Planning applications including attendance at appeals. Police nationally encourage this approach to offset the impact of growth on the Police service.

### **The Policing impact of 3500 additional houses at the site.**

The proposed development will increase the overnight population of this settlement by 9345 people. It is a fact that 3500 additional dwellings will bring additional Policing demands and particularly as there is no Policing demand from the existing site as open fields. I do not doubt that there will be a corresponding increase in crime and demand from new residents for Policing services across a wide spectrum of support and intervention as they go about their daily lives at the site, in the locality and across the Policing sub region. There will be a significant



daytime population swelled by employees and users of the facilities to be built on the site.

Empirical data based on existing crime patterns, and policing demand and deployment from existing residential areas in the local beat indicates the direct and additional impacts of the development on local Policing that will be manifested in demand and responses in the following areas-

- 13,300 additional calls and responses per year via our control centre.
- Attendance to an additional 2573 emergency events within the proposed development and locality each year.
- 625 additional non emergency events to follow up with public contact each year.
- 933 additional recorded crimes in the development and locality per year based on beat crime and household data. In addition 547 recorded anti social behaviour incidents each year within the new development and locality.
- The demand for increased patrol cover.
- Additional vehicle use relating to 13 additional vehicles over a 6 year period.
- Additional calls on our Airwaves system where our funding seeks to maintain capacity for call demand at current levels.
- Additional use of our PND systems to process and store crime records and intelligence and based on existing levels of use equating to 280 additional hits and data entries per year.
- Additional demand for deployment of Mobile CCTV technologies
- Additional demand for local access to beat staff from the Beaumont Leys LPU.
- Additional Policing cover and interventions in all the areas described when considering staffing and functions above and for additional accommodation from which to deliver these.



### **Planning Policy justifications for a Policing contribution**

The National Policy position to support our request exists in NPPF. Securing sufficient facilities and services to meet local needs is a Core Planning Principle [para 17]. Planning is to deliver facilities and services that communities need [para 70] and Supplementary Planning documents can assist applicants in this. Plan policies should deliver the provision of security infrastructure and other local facilities [para 156]. Plan policy and decision making should be seamless [para 186]. Infrastructure Planning should accompany development planning by LPAs [177] who should work collaboratively with infrastructure Providers [162]. NPPF seeks environments where crime and disorder and the fear of crime do not undermine the quality of life and community cohesion [58] and Planning Policies and decisions should deliver this.

Leicester City CS Policy 19 forms local policy justification for a policing contribution and through the Examination of your Core Strategy policing requirements, accepted as primary, feature in the attached infrastructure schedule. These include works to Mansfield House and the LPU at Beaumont Leys to accompany growth proposed at Aston Green.

The City Council are aware of the Policing impact of additional development through Police submissions to the Core Strategy Examination and Planning applications with significant additional housing content. In relation to Ashton Green the City Council have recognised that Policing needs should be met through the phases of the development. Police have made approaches to City Council officers dealing with CIL with no response. A consistent approach will be pursued here following guidance in the CIL Regulations and NPPF. This is an approach recognised in recent public Examinations of Core Strategies where soundness of Plans is dependent on provisions for adequate infrastructure to accompany growth proposed.

### **The Police contribution request**



£2,840,072 is sought to mitigate the additional impacts of this development because our existing infrastructures do not have the capacity to meet these and because, like some other services, we do not have the funding ability to respond to growth whenever and wherever proposed. We anticipate using rates and Home Office revenues to pay for staff salaries and our day to day routine additional costs [eg call charges on telephony and Airwaves, vehicle maintenance and so on]. As already confirmed these sources do not have the capacity to fund additional borrowing for additional capital infrastructures necessitated by the development.

Police expect to agree a programme to procure these additional facilities and have no difficulty including this as a clause in a legal agreement. We are committed to procure these items subject to the contribution sought. Contributions are only sought that are related in scale and kind to the development.

As a further justification of our request, we confirm that the contribution will be used wholly to meet the direct impacts of this development and wholly in delivering Policing to it. Without the development in place it is reasonable to forecast the impacts it will generate using information about the known Policing demands of comparable local development. Assumptions about pupil numbers and health needs similarly depend on comparables and we believe the Framework encourages this.

The development should make provision to mitigate the direct and additional Policing impacts it will generate and cannot depend on the Police to just absorb these within existing facilities with limited capacities and where Police have no flexibility in our funding to do this. This has been the situation since 2006 when Leicestershire Police started to seek contributions. It is not forced by current spending reductions although strictures across the public sector re-enforce the need to ensure that developments mitigate the direct impacts they cause.



Because of the very serious implications for Policing of very significant and large developments, like this one, Police nationally have taken advice about the best way to proceed in the transition period prior to the CIL regime. As a result Leicestershire Police no longer make requests based on a formula but solely in relation to the development under consideration; its direct impacts on Policing and the necessary mitigations that it should provide. I should add that this is consistent with Inspectors views in recent appeal decisions. What follows is a detailed explanation of Methodologies used to calculate the contribution and our application of the NPPF tests to justify each part.

### **Mitigation of impacts and methodologies identified by Leicestershire Police**

Baseline background. At October 2012 total floorspace occupied by the Force to deliver Policing to this locality and the subregion more generally was 54,274m<sup>2</sup>. We employed 3606 staff to do this. Existing households in the Police district [2011 census] was 405,500 with 19520 in Beaumont Leys. Across the Force 301 Police staff deliver Policing to the LPU area.

Households to staff for Beaumont Leys is 65:1

Floorspace to staff Forcewide is 15 m<sup>2</sup>.

### **Equipping staff.**

Additional staff needed to Police the development will require additional equipment.

For a Police Officer the additional equipment items are uniform £873, radio £525, Workstation £1508, De Montford University foundation/basic accreditation £2333, Other external Training £2182. Uniformed officers work in shifts where workstations can be shared and as a result start up cost will be £7421 per uniformed officer.

For other staff the additional equipment items are workstation £2286 and training £687, total £2973.

We employ staff to officers at a ratio of 0.33 to 0.66 and so the average cost of equipping a new member of staff is £5879.



Because the development is forecast to generate the need to employ 54 additional members of staff the contribution for equipment should be **£317466** from this new development.

The Force could not have officers attending this development with less than adequate equipment with un-necessary risks to themselves and occupiers served.

*Is the contribution necessary to make the development acceptable in planning terms?*

Crime and community safety are Planning considerations and the Council's Core Strategy content demonstrates this further. The Framework identifies the need to achieve security in new development and makes provisions to deliver this through the planning system. Deployment of equipped staff is fundamental to delivering community safety and mitigating crime.

*Is it directly related to the development?*

The Policing demands of this development are identified and Police mitigation of these can only be delivered by adequately equipped staff.

*Is the contribution fairly and reasonably related in scale and kind to the development?*

This is a residential development and the Policing demands it will generate are known by comparison with local residential development. That is the only satisfactory way of determining the need from development that is not yet built. Such comparables are used in identifying the impact of additional populations on most if not all public services. Demand and mitigations have been determined by the scale of the development.

**Police vehicles** In managing and responding to crime a number of different vehicles can be deployed ranging General Response Vehicles[patrol cars], unmarked general support vehicles, Public Service Unit vans and minibuses,



scientific [eg SOCO] vehicles, pursuit vehicles - 4x4 and high speed, motorcycles and so on. Current fleet deployment to Beumont Leys is 36 vehicles serving 19520 existing households. The average equipped cost of a vehicles is £15,774 and this is very close to the actual cost of a GRV. Our guideline for the majority of marked vehicles is to replace every three years or 120,000 miles. The condition of vehicles at the end of their Police life varies however we forecast that we will redeem on average 10% of a vehicles original value on disposal.

36 vehicle units at net value £511077

Existing households 19520 = £26.18 per H hold x 2 to give 6 year life of provision.

In relation to this particular development additional vehicle costs to deliver Policing and meet community safety needs will be **£183260**. Impact of the development without the contribution will be pressure to spread existing transport too thinly to the extent that service delivery is prejudiced. Residents of the new development and their representatives will expect the same degree of cover as elsewhere in the locality and existing residents will expect existing cover to be maintained and not reduced as a result of the new development.

*Is the contribution necessary to make the development acceptable in planning terms?*

Vehicles are a fundamental capital infrastructure and facility to deliver community safety and address crime especially at Neighbourhood level.

*Is it directly related to the development?*

Fleet deployment is related to the known Policing demands of comparable development in the locality. The direct demand from the new development can be accurately forecast. Delivering Policing direct to this development will not be possible without additional vehicles to do so.



*Is the contribution fairly and reasonably related in scale and kind to the development?*

This is a residential development and the Police vehicle demands it will generate are known by comparison with deployment to other local residential development. Level of demand and mitigations have been determined by the scale of the development.

**Radio Cover/capacity** It is necessary to expand the capacity of our existing system to cater for additional calls as a result of the development. The development will increase the use of our radio system which is maintained at existing capacity by investing in additional hardware including servers, system refinement signal strengthening and improved transmission technologies. We spend £20,000 pa adding such capacity to the existing system in Beaumont Leys which serves 19520 households. Annual cost of these capacity increases to an existing household is £1.02. Capacity improvements are expected to last for 5 years and without these the system will fail to adequately carry both existing and additional calls as a result of this additional development. The additional cost of the additional capacity in relation to houses in this development will be **£17850**.

The impact of the development on Policing with reduced Airwaves capacity will be increased attendance times, delays in message passing and the implications of this for attendance and apprehension. Occupiers and those that represent them will expect existing performance and attendance levels to be maintained.

*Is the contribution necessary to make the development acceptable in planning terms?*

Deployment to adequately deliver community safety and security will not be met where this is prejudiced by insufficient radio system capacity. Crime, community safety and security are Planning considerations.

*Is it directly related to the development?*



The additional demands of this development in relation to this infrastructure have been identified as have mitigations.

*Is the contribution fairly and reasonably related in scale and kind to the development?*

This is a residential development and the Policing demands it will generate, in terms of additional radio calls, are known by comparison with similar local residential development. Demand and mitigations have been determined by the scale of the development.

**Police Database capacity.** It is necessary to expand the capacity of our existing system to cater for additional calls as a result of the development. This is a secured stand alone information source integrating a variety of data nationally and allowing this to be compared over time in relation to individuals and locations. Additional hits as a result of the development to access existing crime information and add more crime data to be accessed by more staff generate a need to add capacity to this system. The current system and access to it reached planned capacity usage this year. Dedicated hardware is used with our contribution to this at £1,456,000 through the 14 year growth period at today's prices. In addition, local servers are replaced every 2.5 years at £83k each time to add further capacity to meet the demand placed adding £464,800 to PND costs through to 2026. We spend £10976 on PND system enhancements to serve Beaumont Leys at £0.56 per household per year. Over 5 years the development should contribute **£9800.**

Failure to increase PND capacity in step with growth the subject of this application will directly impact the ability of the Force to rapidly access and respond to crime information.

*Is the contribution necessary to make the development acceptable in planning terms?*



Deployment to adequately deliver community safety and security, will not be met where this is prejudiced by insufficient capacity in the Police PND system.

*Is it directly related to the development?*

The additional demands of this development in relation to this infrastructure have been identified as have mitigations.

*Is the contribution fairly and reasonably related in scale and kind to the development?*

This is primarily a residential development and the Policing demands it will generate, in terms of PND use, are known by comparison with existing local residential development. The development is not built and this is a reasonable way to forecast this impact. Demand and mitigations have been determined by the scale of the development.

**Control Room telephony** Police control room call handling equipment is used to capacity at peak times. Our call handling centre at Force HQ Enderby directs all calls and deploys resources to respond and continue monitoring. We know the capacity of the technology and the calls it currently handles [fixed around minimum times with callers] and will be expected to handle as a result of the proposed development. In order to deal with additional calls as a result of additional planned development across our sub region additional telephony, lines, licenses, workstations and monitoring screens will be required at a total cost of £199,000. 8% of all calls handled relate to the 19520 households in Beaumont Leys LPU area and additional calls forecast from this development are identified. The Council proposes 3,500 additional houses for Beaumont Leys in their plan period. Each new household in the LPU area will generate a need to invest an additional £4.54 in this system. The development should contribute **£15890** towards the additional equipment needed to answer the additional calls it will generate. Police preference is to use this money when the existing telephony is extended and renewed at 2018 however this does not prevent procurement of additional capacity in the meantime as a result of the impact of this development.



There will be a call handling impact and delays in response times if we attempt to serve this development with our current telephony systems.

*Is the contribution necessary to make the development acceptable in planning terms?*

Crime and community safety are Planning considerations. NPPF identifies need to achieve security in new development and makes provisions to deliver this through the planning system. These considerations will not be met where Policing delivery is prejudiced by insufficient telephony capacity to take calls and deploy responses in good time.

*Is it directly related to the development?*

The additional demands of this development in relation to this infrastructure have been identified as have mitigations.

*Is the contribution fairly and reasonably related in scale and kind to the development?*

This is a residential development and the Policing demands it will generate, in terms of use of control room telephony, are known by comparison with other local residential development. Demand and mitigations have been determined by the scale of the development.

**ANPR CCTV Deployment** Police are deploying fixed ANPR cameras on main road network and close to or in settlements. These cameras are server linked to identify number plates of vehicles in use for crime. This type of camera offers particular benefits to the immediate surrounding area especially where vehicle related crime is present. We deploy these as resources permit however our financially constrained programme makes no provision for the impacts of additional areas of housing. The use of these technologies has a beneficial impact in terms of minimising staff attendance. Unit cost is £8000 which includes installation and satellite links. Additional server capacity will be required to



process and store images and integrate to PND at £222 per new camera. Police take the view that in the light of the stand alone nature of the development, the additional road links and accessibility proposed and existing crime patterns, it should fund 3 additional cameras to be sited on a main access points serving the development at **£24,666**.

Impact without this contribution will be an inability to monitor crime related vehicle movements and address incidents effectively. Our response would be less than available elsewhere in Charnwood District where this cover is provided.

**Mobile CCTV Deployment** Units are acquired as funding, including s106, permits however our financially constrained programme makes no provision for cover of additional areas of development. Cameras are deployed in partnership with other local agencies to detect and deter crime and can be moved to follow crime patterns. There are two such cameras in use in the LPU area. Typical locations are where there is an expressed fear of crime, at emerging crime hotspots that residents use eg near commercial premises, or where there are increasing levels of anti social behaviour. Unit cost is £1500 and Police pay the revenue costs for movement. Bearing in mind the location and nature of the development as previously described, purchase of three additional mobile units is required to serve the development and its hinterland at a cost of **£4500**.

Impact without this contribution will be less access to deployment of this equipment than elsewhere in Leicester City and the wider Police District, and would give rise to a lower rate of detection and deterrence of crime that would in turn have consequences for other police resources.

*Is the contribution necessary to make the development acceptable in planning terms?*

Policing is a Planning consideration and NPPF provides guidance about local facilities and the provision of security. Core Strategy policy and content supports this consideration. Deployment of CCTV technologies significantly increases



detection and deterrence with reduced need for staff presence and particularly contributes towards achieving community safety. This will be prejudiced where new development places additional demands on existing deployment without mitigation and the ability of these technologies to deliver safety is undermined where new development creates additional accessibility and network gaps.

*Is it directly related to the development?*

The additional demands of this development in relation to this infrastructure have been identified as have mitigations. The nature of the development and its size and location in relation to the existing settlement and camera deployment are a direct consideration in these technologies.

*Is the contribution fairly and reasonably related in scale and kind to the development?*

This is a residential development and the Policing demands it will generate, in terms of additional crime and vehicle movements, are known by comparison with other similar residential development. Demand and mitigations have been determined by the scale of the development.

**Premises** For Beaumont Leys Policing is delivered from the LPU, Mansfield house BCU and HQ premises. Additional staff will need to be accommodated to serve the development. Occupation of local and Force wide premises is maintained to capacity. Premises cost is amount of floorspace per staff member [15] x number of staff generated by the development [54] x Build and land/lost opportunity cost [£2794pm<sup>2</sup>] giving a total of **£2263140** from this development. The latter is the build cost in use by Force Estates and has been externally verified by tender.

This will be spent to extend and or increase floorspace in these premises used to Police the area and in proportion to the numbers of staff located in these as described above. In relation to HQ and Forcewide premises a number of functions necessary to Police the development are already using these to



capacity. Typical of these is the Force Control room which is secured constructed, perimeter secured and attack resistant and is at capacity.

Impact of this development without premises expansion to accommodate additional staff will be an unacceptable degree of overcrowding and inefficiencies in responses and delivering Policing as a result. With the level of local Policing demand and the numbers of staff employed to meet this impact will be significant without mitigation.

*Is the contribution necessary to make the development acceptable in planning terms?*

Crime and community safety are Planning considerations and accommodating staff in the optimum location to serve the development is essential if this is to be achieved.

*Is it directly related to the development?*

The additional staffing needs the development will generate have been established by reference to existing local deployment reflecting the actual Policing demands and crime patterns of the locality. In a similar vein the premises requirements that result from the need to accommodate additional staff at these levels is known. A direct relationship between the development, additional staffing and accommodation is demonstrated and it is appropriate to mitigate this through the planning system.

*Is the contribution fairly and reasonably related in scale and kind to the development?*

This is a residential development and the accommodation needs of staff delivering Policing to meet local demands of development of this nature are known. It is based on the scale and kind of residential development.

**Additional Crime Prevention equipment.** This sizeable new development will increase the demand for local accessibility to Policing and the deployment of



crime prevention initiatives. We have restricted funds to deliver such initiatives to existing development to pay for equipment eg Smartwater kits[fluid, sprays, detectors] or signage for local occupiers to use. Each initiative budgets for capital expenditure of £4,000 with the developer asked to contribute £1 per new unit as a fair and proportionate contribution from this development.

*Is the contribution necessary to make the development acceptable in planning terms?*

Crime and community safety are Planning considerations and ensuring accessibility for the public to Policing is important to community safety, combating and reducing crime and the fear of crime.

*Is it directly related to the development?*

These crime prevention initiatives will specifically serve the development and a proportionate contribution towards increasing their equipment capacity is sought.

*Is the contribution fairly and reasonably related in scale and kind to the development?*

This is a residential development and experience with existing development locally demonstrates the need to invest in additional crime prevention measures. The contribution is based on the scale and kind of residential development.

## **SUMMARY OF CONTRIBUTION REQUESTED**

The Police contribution request considers the amount and type of development proposed and compares this with existing Policing demand and crime information for the beat and LPU areas in which it will be situated. The existing deployment of Police assets to Police the locality are identified and applied to the application site to forecast the impact of this individual development. The funding and capacity position of the Force is defined. NPPF and local Policy supporting a Policing contribution are identified. Commitments are made to manage the



contribution. Finally the contribution is itemised as below with individual methodologies applied to this development and the CIL tests of compliance are applied to these.

Start up equipment	£317466
Vehicles	£183260
Additional radio call capacity	£17850
PND additions	£9800
Additional call handling	£15890
ANPR	£24666
Mobile CCTV	£4500
Additional premises	£2263140
Hub equipment	£3500
Total	£2840072 [£811pd]

### **Conclusion**

Without the necessary contribution the development will be unacceptable in Planning terms and permission should not be granted as indicated in NPPF Guidance. The lack of capacity in existing infrastructure to accommodate the population growth and associated demands occasioned by the development means that it is necessary for the developer of the site to provide a contribution so the situation might be remedied. The request is directly related to the development and the direct Policing impacts it will generate based on an examination of demand levels in the LPU and local beat in which it is situated, adjacent areas and existing Policing demands and deployment in relation to this. The request is wholly related to the scale and kind of the application development.

Leicestershire Police have refreshed our approach to contributions taking account of the advice of leading Counsel and recent reductions in our



deployment. We are advised that the contents of this letter are sufficient to justify the contribution sought and that the request is compliant with NPPF tests.

Without the necessary contribution to meet Police needs there is a **formal objection to the development on sustainability grounds and because the development is unacceptable without the necessary contribution.**

I refer to the 7 Planning appeal decisions attached where the current approach of Police in seeking contributions was determined as compliant by Inspectors and the Secretary of State.

I confirm that the methodology employed in this request is similar to that used in all of these appeals subject of course to local data about Policing demand and deployment to each development. Policing the development will depend on all of the capital infrastructures I have identified including delivery from premises inside and outside the City again as I have described and as identified in your Core Strategy Infrastructure Plan.

My conclusion at this stage is in several parts.

a] the development will have very significant impacts on Policing and these will need to be adequately mitigated if it is to be sustainable and the safety of the local community assured. That has to be a mutual interest between the City Council and Leicestershire Police.

b] Necessary primary Policing infrastructures need to be considered in the viability of the development alongside for example schools and medical facilities.

c] Police believe the planning permission for the development as recently amended does not adequately consider nor reflect necessary infrastructures to meet Policing needs.

Please give this your consideration and I suggest that we meet at your earliest convenience to hear how the LPA will make adequate provision to meet Policing needs as a result of the development.



Best regards

**Michael Lambert**

**Growth and Design Officer**

**Leicestershire Police**

[michael.lambert@leicestershire.pnn.police.uk](mailto:michael.lambert@leicestershire.pnn.police.uk)

*Without prejudice to any other obligation imposed upon it, it shall be the duty of each local authority to exercise its various functions with due regard to the likely effect of those functions on, and the need to do all that it reasonably can, to prevent crime and disorder in its area: Section 17(1) of the Crime and Disorder Act 1998.*

## Paul Statham

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**From:** Lambert Michael <Michael.Lambert@leicestershire.pnn.police.uk>  
**Sent:** 13 October 2014 12:52  
**To:** Geoff Mee  
**Cc:** Dawkins Paul  
**Subject:** NOT PROTECTIVELY MARKED:- Phae 1 Ashton Green  
**Attachments:** NOT PROTECTIVELY MARKED:- FW: City Ashton green 3500 units at 16-04-14 final; CountyBeats1.pdf

Dear Geoff.

At our recent meeting you asked me to look at our infrastructure needs against the first phase of Ashton Green and you also asked for some comparables looking at Policing demands in other parts of the City area. The context for you is the planning conditions you explained and the context for Police is our objective and up to date assessment of needs. You have been copied into the latter dated 16/4 this year and I attach again for your reference. We know that the approach we use here is in wide circulation and indeed accepted as compliant in all recent planning appeals considered by the Secretary of State and his Inspectors. The findings of Mr Justice Foskett in relation to the recent JR case may also assist as regards the case we make, adequacy of Policing infrastructures and public perception of this. Please let me know if you do not have this judgement.

We appreciate that you are not pursuing CIL to meet the infrastructure needs of this site.

You have helpfully provided your housing delivery estimate which says that 506 houses will be on site by the end of 2020 and I have referred to this in what follows. The programme also shows that total housing to be built at Ashton Green is now reduced to 2500. You have explained that works have started on site and we have pointed to the local crime context and our experience on building sites elsewhere. The more obvious additional policing demand starts as soon as materials are put on site.

Based on our up to date assessment we would expect to procure a package of infrastructure to a total cost of £410,594 to serve the needs of the additional house residents in the first phase. Our preference will be to spend amounts of this immediately, eg to secure sufficient additional comms, IT and vehicles so that these are in place as quickly as possible to serve housing and other facilities as they are built and occupied.

With four phases planned to 2034 we are going to have to take a view on when best to provide some infrastructures and I know other providers share this dilemma particularly where premises are concerned. It will be necessary for us to hold funds across phases to make the most of economies in scale and best value for the public purse. It will also be necessary to use some of these funds to prepare projects in advance. Perhaps a final factor is that providers will have to keep their needs assessments up to date. We are already doing this and will co-operate fully to assist you in this requirement.

Based on existing deployment in our objective assessment in this first phase we would procure

- 7 staff work stations
- 2 vehicles
- Additional server and network capacity on our radio system at £2600
- Additional server and network capacity on our PND system at £1500
- Additional capacity in our call handling telephony at £2300
- 1 ANPR camera
- 1 mobile CCTV camera
- Preparation [fees] for a premises project at £193,983.

We are looking for covenanted commitments to the entirety of what we seek for the whole of the development. Without these we will not have the necessary certainty to entirely procure these items in phase 1 or commit to their provision as additional funds are received from later phases. In relation to premises we may need to embark on temporary solutions as long as these afford the security we need. We would not expect to meet the cost of these temporary solutions with costs additional to the above.

I trust this provides the picture you have asked for. If development has commenced we need to move rapidly to put in place legal agreements to convey these funds and procure if it is to be sustainable. I appreciate that you will need to consider the development cash flow to the City Council over time, borrowing and receipt of New Homes Bonus to

meet this need. I would be happy to look at this with you and particularly with other infrastructure providers who will also have needs to meet if the development is to be sustainable.

Before looking at comparables I have to point out that our assessment is based upon the actual location of the development site. That is within the Beaumont Leys LPU and we cannot avoid this especially bearing in mind the need to establish a direct relationship between the development, its locality, Policing demand and deployment. Trying to choose different demand rates from elsewhere is something that we could not contemplate without losing the whole thrust of objectivity that we are required to meet. We will keep this up to date and that is a more reliable mechanism to fit demands to needs eg perhaps at the beginning of each phase. That can only be against a covenant to meet our requirements from the start of the development. Demand/deployment rates may reduce, but they may also increase and we have experienced both over such extended timescales.

To answer your question I confirm the following current breakdown of policing demand across the CITY LPUs. This is based on call centre data.

B Leys 18%  
Hinckley Road 17%  
Keyham 16%  
Centre 18%  
Spinney 17%  
Welford 14%

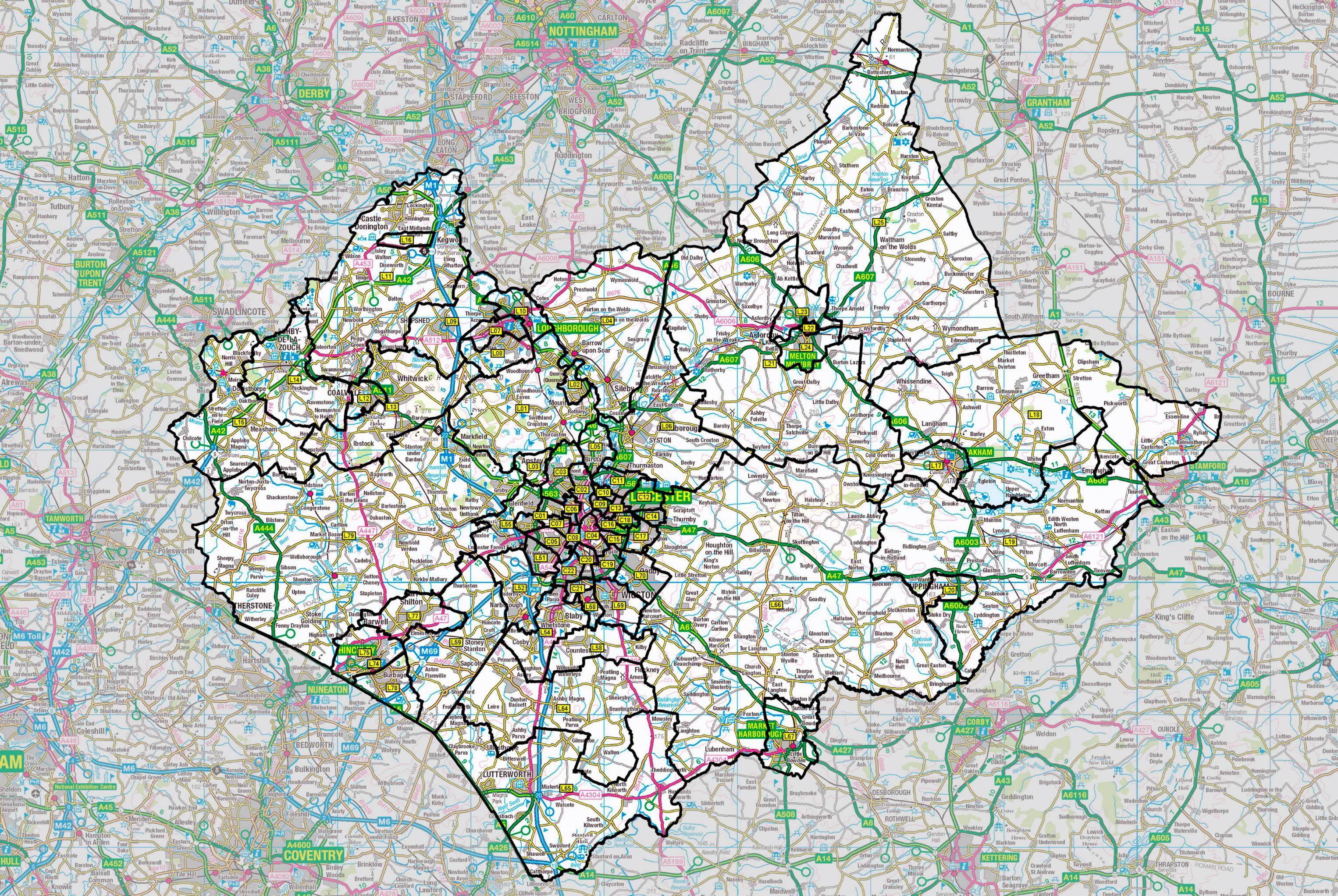
The average is 16.67 % across all CITY LPUs. The demand in Charnwood District with the adjoining County LPUs is closest to that in the City, Keyham LPU.

I am happy to answer any further queries that you have on these demand variations across the City. I attach a map identifying these LPUs.

I hope that you will find this of assistance and I look forward to meeting you to discuss how the City will help meet the Policing infrastructure demands of its development at your earliest opportunity.

Best regards

Michael Lambert  
Growth and Design Officer  
Leicestershire Police  
[michael.lambert@leicestershire.pnn.police.uk](mailto:michael.lambert@leicestershire.pnn.police.uk)  
0116 248 2201



## Paul Statham

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**From:** Lambert Michael <Michael.Lambert@leicestershire.pnn.police.uk>  
**Sent:** 16 April 2014 15:16  
**To:** Nixon Rob; Dawkins Paul  
**Cc:** Morris Kevin  
**Subject:** NOT PROTECTIVELY MARKED:- FW: City Ashton green 3500 units at 16-04-14 final  
**Attachments:** 14-04-08 3-in-1 Mountsorrel Lane Charnwood 2196928.pdf; READONLY.PDF; APPEAL DECISION.PDF; Land north of Bill Crane Way, Lutterworth, Leics Decision..pdf; READONLY.PDF; READONLY.PDF; DECISION.PDF; City Ashton green 3500 units at 16-04-14 final.doc

Gentlemen

You are familiar with my task. In the last year we have achieved consistent success in Planning decisions using this approach in the County area. Inevitably we need to re engage with the City on the impact of growth they are pursuing.

By comparison with County some of the figures here in terms of demand, cost, crime and so on are eye watering. More the case that we cannot ignore this. Additional Policing cost per household is more than double in the City.

We are at least making our point in this. I have had time with Kevin Morris to work through and verify the figures and I am grateful for his help. I do not know what City Planners will make of this.

I should say that effective engagement with City on the growth agenda has been impossible in the past even when we had three people on this work in the former team and we all had more time to try and make a difference. I have some personal trepidation about re opening this debate therefore. However we can't ignore it.

Best Regards

Michael Lambert  
Growth and Design Officer  
Leicestershire Police  
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**From:** Lambert Michael  
**Sent:** 16 April 2014 15:05  
**To:** 'planning'  
**Subject:** NOT PROTECTIVELY MARKED:- City Ashton green 3500 units at 16-04-14 final

Dear Mr Richardson

Please find my letter in relation to the Ashton Green proposal. This follows your recent consideration and is self explanatory. The approach is well and truly proven in recent appeal testing and bearing in mind the scale of this Greenfield development and the already considerable deployment we make to the area at present we have to engage on this. I suggest a meeting to look at Policing impact and necessary mitigation through the Planning process.

Best Regards

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Leicestershire  
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Protecting our communities

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Our Ref:

Council Ref

**Att Mike Richardson,  
Leicester City Council,  
Planning,  
New Walk Centre,  
Welford Place,  
Leicestershire,  
LE1 6ZG.**

16/4/14

Dear Mr Richardson.

**RE: Ashton Green growth Point. 3,500 dwellings, employment and related infrastructure.**

I refer to the recent application to vary conditions here and I note that this was permitted despite objections raised by Police. If you recall we were concerned that the former condition to meet the Policing needs of the development through its phases was being abandoned for something which was geared to secure built community facilities. In considering this your conclusions were "I consider a strategic approach to the delivery of community and governance facilities will see an appropriate level of facilities provided at suitable times within the overall build timeframe" and "Whilst the requirement for meeting the policing needs of the development is not contained within its own specific condition, its inclusion in the community condition still secures adequate provision to meet the policing needs of the development. I consider the deletion of the condition to be acceptable". I am concerned that the new wording [condition 29 page 36] doesn't actually say this and further that no reason is given in the report as to why deletion of the bespoke condition was necessary. Nevertheless in an attempt to move things forward I thought it would be helpful to apply what is currently regarded as our compliant request approach to this development to identify Policing impacts and necessary mitigations.



### **The nature of the development**

The application seeks to develop a number of open fields to north west of the City as an urban extension. 3500 houses are proposed together with an area for employment development, schools and medical facilities as well as access, open space and other infrastructures. Illustrative plans show that the development will be aimed at family occupation with a mix of uses not dissimilar to those in the surrounding area. This existing development locality provides a reliable basis for gathering "baseline" data in terms of policing demand and deployment.

### **Current levels of local Policing demand**

Policing is a 24/7 service resourced to respond and deploy on an "on demand" and "equal access" basis and is wholly dependent on a range of facilities for staff to deliver this. Calls and deployments via our control room at Force Headquarters Enderby are monitored and can give an indication of the level of service demand in different areas such as to the 19520 existing households in the Beaumont Leys LPU and the 6459 households in the Beaumont Leys beat [C03].

In the 2011 year we dealt with 73564 calls from the Beaumont Leys LPU area, we dispatched emergency attendances to 13616 locations and non emergency follow ups to 3464 addresses. Attributing to the CO3 beat 24276 calls were handled, emergency attendances were sent to 4493 addresses and there were 1143 non emergency attendances.

The site represents most of the north of this beat which is undeveloped unlike the the south of the beat which has large areas of residential, retail and commercial development. Crime incidents are concentrated in the built areas of the beat with 1722 recorded incidents in the last year. Crime mapping shows an even but dense spread of incidents across the adjoining areas with burglary and theft the main content. There is a concentration of incidents at the Beaumont Leys shopping centre where local people visit and shop. Forcewide the total crime level has been static since late 2011. Burglary levels rose late last year to a 3



year high. Levels of theft remain static. Turning to the beat Total crime and theft has remained static over this period however has been increasing steadily in the last year. The trend in local burglaries reflects that Force wide. Police also deal with Anti Social Behaviour incidents with 1009 of these in the beat in the 2011 year.

Perhaps a further demonstration of response to demand is the regular patrolling of the locality and local community contact maintained by the Neighbourhood Policing team located at the Beaumont Leys LPU building.

### **Current levels of deployment and infrastructures to Police Charnwood District.**

**Staff** delivering Policing to the Beaumont Leys LPU area are spread across the following functions:

- 66 staff in the Neighbourhood team operating from Beaumont Leys LPU station.
- 77 staff in the City Basic Command Unit at Mansfield House Leicester City Centre, delivering response Policing, investigations, intelligence, and LPU management
- in delivery teams mainly at Force HQ Enderby - Criminal justice including courts case management and prisoner detention and processing, control centre/contact management, Intelligence research, Operations planning, dogs and firearms, special branch, forensic, Road Policing, Workshops/garages, Tactical Support Group, Road Safety Unit, IT and communications, Safeguarding/ vulnerability, Child abuse team, Economic crime team and in Regional/major crime working.
- in organisational support functions at Force HQ Enderby providing finance, human resources, welfare, estates, training and top level management of the Force. 158 staff are employed delivering these later two functions to the LPU area.

301 staff deliver Policing to The Beaumont Leys area.



Because of the integrated nature of Policing - there no longer being one local police station serving all the local need - all these functions will be called upon to deliver Policing to the proposed development. Across our 301 staff employed to deliver Policing to Beaumont Leys, Policing an existing development of this size would fully occupy 54 members of staff. Staffing levels are under constant review to ensure that minimum acceptable numbers are deployed to meet existing levels of Policing demand. This has the benefit of much needed savings in costs, but as a result there is no additional capacity to extend existing staffing to cover additional development.

Where additional development is proposed we will seek to deploy additional staffing and additional infrastructures at the same level that is required to deliver Policing to the locality. It would be complacent not to do this because without additional support unacceptable pressure will be put on existing staff and our capital infrastructures which will seriously undermine our ability to meet the Policing needs of this development and maintain the current level of Policing to the rest of the local beats and across Beaumont Leys and the wider City area. The impacts of the development are so significant that they cannot be met without additional staff deployed at a level consistent with the current Policing of the locality of the development.

The following infrastructure is required for all Policing activities in Leicester City.

***Personal equipment for staff*** comprising workstations, radios, protective equipment, uniforms and bespoke training in the use of these. In general we retain this equipment when existing staff leave and are replaced however additional staff will require additional equipment. There are practical limits to the extent to which existing equipment can be re used eg with uniforms or where technology has moved on.

***Police vehicles*** of varying types and functions covering existing patterns of development and community demand. The 36 fully equipped vehicle fleet



is kept at a level to meet existing patterns of demand from the LPU with reductions made whenever possible. Vehicles are used by staff on patrol, deployed to deal with emergency responses and for follow up of recorded crimes eg by Scene of Crimes Officers. There is no capacity in this deployment for increases to meet the demands of this development.

**Radio cover** in the form of a number of base stations sufficient to cover the existing pattern of development and investment in hardware, signal strengthening etc to ensure the capacity of this system to meet existing call levels costs £20,000 pa.

**Police National Database** is a vital tool for law enforcement purposes with hardware costs to ensure this capacity at £10976 pa in Beaumont Leys. The system is now at planned capacity including dealing with 1561 hits pa as a result of Policing the existing communities there.

**Control room telephony** We employ 20 staff to take and deploy responses to calls from Beaumont Leys. The control centre is maintained to capacity use and there are particular times when our telephony runs close to overload eg at weekends and evenings.

**CCTV technologies** including 12 ANPR cameras at strategic road locations in the City to detect crime related vehicle movements. In addition two mobile CCTV units are deployed with local partners to detect and deter crime at hotspots in the locality. Cameras have in the past been deployed as funding has permitted, including s106 receipts, in an attempt to cover the existing pattern and size of development. There is no capacity to meet the additional demands that growth places upon these. New developments should benefit from the same technology as elsewhere in the Police District where it has been shown to detect and deter crime.



**Premises** sufficient to accommodate the staff and services outlined above in Beaumont Leys LPU, Mansfield House BCU City Centre and Force HQ Enderby. The Force have an active estates review function minimising our premises need to meet existing Policing demand. We just can't afford to have buildings under used and will dispose of these wherever necessary using receipts to re invest where there are known difficulties. The existing LPU, BCU and HQ premises are used to capacity and this is maintained through the processes I have described. All will need to be extended to accommodate additional staff as a result of the development.

At Force HQ a number of specialist functions and support teams are located at our 11 hectare site. It is typical for our control room to be at capacity at peak times and where 20 existing staff are employed to process existing calls from Beaumont Leys. Additional staff will need to be employed to take additional calls from the new development and to deploy our resources as responses to these. These additional staff will need to be accommodated.

**Other capital infrastructures** such as specialist equipment in use by Forensics, our tactical teams eg in firearms and dog handling, freestanding IT and data recording in relation to vulnerable groups, prisoner detention, transportation and processing including cells at core locations. We do not seek contributions towards these infrastructures at this stage since they have some spare capacity to deploy.

### **The disposition of Leicestershire Police as regards major growth development**

A primary issue for Leicestershire Police is to ensure that new development of this scale makes adequate provision for the future Policing needs that it will generate. Like some other public services our primary funding is insufficient to be able to add capital infrastructures to support major new development when and wherever this occurs. Further there are no bespoke capital funding regimes, eg



like Building Schools for the Future or the Health Lift, to provide capital re investment in our facilities. We fund capital infrastructures by borrowing. However, in a service where over 90% of our budget is staffing related, our capital programme can only be used to overcome pressing issues with our existing facilities eg premises replacement Loughborough, or to re provide essential facilities like vehicles once these can no longer be used. This situation has been recognised by the Association of Chief Police Officers nationally for some time and there are public statements which explain our particular funding difficulties. The position of Police funding was examined and verified by external consultants employed by Local Councils - The Leicestershire Growth Impact Assessment of 2009 which concluded at para 82 in relation to Policing "It is sensible to assume that most of the capital requirements incurred by growth will not be covered by existing mainstream central and local funding".

Faced with unprecedented levels of growth being proposed across our sub region Leicestershire Police have resolved to seek developer contributions to ensure that existing levels of service can be maintained as this growth takes place. We are a regular and constant participant in the statutory Planning process evidencing the impact of growth through work with local Councils in their Plan making, preparation of guidance, preparations for CIL and the consideration of individual Planning applications including attendance at appeals. Police nationally encourage this approach to offset the impact of growth on the Police service.

**The Policing impact of 3500 additional houses at the site.**

The proposed development will increase the overnight population of this settlement by 9345 people. It is a fact that 3500 additional dwellings will bring additional Policing demands and particularly as there is no Policing demand from the existing site as open fields. I do not doubt that there will be a corresponding increase in crime and demand from new residents for Policing services across a wide spectrum of support and intervention as they go about their daily lives at the site, in the locality and across the Policing sub region. There will be a significant



daytime population swelled by employees and users of the facilities to be built on the site.

Empirical data based on existing crime patterns, and policing demand and deployment from existing residential areas in the local beat indicates the direct and additional impacts of the development on local Policing that will be manifested in demand and responses in the following areas-

- 13,300 additional calls and responses per year via our control centre.
- Attendance to an additional 2573 emergency events within the proposed development and locality each year.
- 625 additional non emergency events to follow up with public contact each year.
- 933 additional recorded crimes in the development and locality per year based on beat crime and household data. In addition 547 recorded anti social behaviour incidents each year within the new development and locality.
- The demand for increased patrol cover.
- Additional vehicle use relating to 13 additional vehicles over a 6 year period.
- Additional calls on our Airwaves system where our funding seeks to maintain capacity for call demand at current levels.
- Additional use of our PND systems to process and store crime records and intelligence and based on existing levels of use equating to 280 additional hits and data entries per year.
- Additional demand for deployment of Mobile CCTV technologies
- Additional demand for local access to beat staff from the Beaumont Leys LPU.
- Additional Policing cover and interventions in all the areas described when considering staffing and functions above and for additional accommodation from which to deliver these.



### **Planning Policy justifications for a Policing contribution**

The National Policy position to support our request exists in NPPF. Securing sufficient facilities and services to meet local needs is a Core Planning Principle [para 17]. Planning is to deliver facilities and services that communities need [para 70] and Supplementary Planning documents can assist applicants in this. Plan policies should deliver the provision of security infrastructure and other local facilities [para 156]. Plan policy and decision making should be seamless [para 186]. Infrastructure Planning should accompany development planning by LPAs [177] who should work collaboratively with infrastructure Providers [162]. NPPF seeks environments where crime and disorder and the fear of crime do not undermine the quality of life and community cohesion [58] and Planning Policies and decisions should deliver this.

Leicester City CS Policy 19 forms local policy justification for a policing contribution and through the Examination of your Core Strategy policing requirements, accepted as primary, feature in the attached infrastructure schedule. These include works to Mansfield House and the LPU at Beaumont Leys to accompany growth proposed at Aston Green.

The City Council are aware of the Policing impact of additional development through Police submissions to the Core Strategy Examination and Planning applications with significant additional housing content. In relation to Ashton Green the City Council have recognised that Policing needs should be met through the phases of the development. Police have made approaches to City Council officers dealing with CIL with no response. A consistent approach will be pursued here following guidance in the CIL Regulations and NPPF. This is an approach recognised in recent public Examinations of Core Strategies where soundness of Plans is dependent on provisions for adequate infrastructure to accompany growth proposed.

### **The Police contribution request**



£2,840,072 is sought to mitigate the additional impacts of this development because our existing infrastructures do not have the capacity to meet these and because, like some other services, we do not have the funding ability to respond to growth whenever and wherever proposed. We anticipate using rates and Home Office revenues to pay for staff salaries and our day to day routine additional costs [eg call charges on telephony and Airwaves, vehicle maintenance and so on]. As already confirmed these sources do not have the capacity to fund additional borrowing for additional capital infrastructures necessitated by the development.

Police expect to agree a programme to procure these additional facilities and have no difficulty including this as a clause in a legal agreement. We are committed to procure these items subject to the contribution sought. Contributions are only sought that are related in scale and kind to the development.

As a further justification of our request, we confirm that the contribution will be used wholly to meet the direct impacts of this development and wholly in delivering Policing to it. Without the development in place it is reasonable to forecast the impacts it will generate using information about the known Policing demands of comparable local development. Assumptions about pupil numbers and health needs similarly depend on comparables and we believe the Framework encourages this.

The development should make provision to mitigate the direct and additional Policing impacts it will generate and cannot depend on the Police to just absorb these within existing facilities with limited capacities and where Police have no flexibility in our funding to do this. This has been the situation since 2006 when Leicestershire Police started to seek contributions. It is not forced by current spending reductions although strictures across the public sector re-enforce the need to ensure that developments mitigate the direct impacts they cause.



Because of the very serious implications for Policing of very significant and large developments, like this one, Police nationally have taken advice about the best way to proceed in the transition period prior to the CIL regime. As a result Leicestershire Police no longer make requests based on a formula but solely in relation to the development under consideration; its direct impacts on Policing and the necessary mitigations that it should provide. I should add that this is consistent with Inspectors views in recent appeal decisions. What follows is a detailed explanation of Methodologies used to calculate the contribution and our application of the NPPF tests to justify each part.

### **Mitigation of impacts and methodologies identified by Leicestershire Police**

Baseline background. At October 2012 total floorspace occupied by the Force to deliver Policing to this locality and the subregion more generally was 54,274m<sup>2</sup>. We employed 3606 staff to do this. Existing households in the Police district [2011 census] was 405,500 with 19520 in Beaumont Leys. Across the Force 301 Police staff deliver Policing to the LPU area.

Households to staff for Beaumont Leys is 65:1

Floorspace to staff Forcewide is 15 m<sup>2</sup>.

### **Equipping staff.**

Additional staff needed to Police the development will require additional equipment.

For a Police Officer the additional equipment items are uniform £873, radio £525, Workstation £1508, De Montford University foundation/basic accreditation £2333, Other external Training £2182. Uniformed officers work in shifts where workstations can be shared and as a result start up cost will be £7421 per uniformed officer.

For other staff the additional equipment items are workstation £2286 and training £687, total £2973.

We employ staff to officers at a ratio of 0.33 to 0.66 and so the average cost of equipping a new member of staff is £5879.



Because the development is forecast to generate the need to employ 54 additional members of staff the contribution for equipment should be **£317466** from this new development.

The Force could not have officers attending this development with less than adequate equipment with un-necessary risks to themselves and occupiers served.

*Is the contribution necessary to make the development acceptable in planning terms?*

Crime and community safety are Planning considerations and the Council's Core Strategy content demonstrates this further. The Framework identifies the need to achieve security in new development and makes provisions to deliver this through the planning system. Deployment of equipped staff is fundamental to delivering community safety and mitigating crime.

*Is it directly related to the development?*

The Policing demands of this development are identified and Police mitigation of these can only be delivered by adequately equipped staff.

*Is the contribution fairly and reasonably related in scale and kind to the development?*

This is a residential development and the Policing demands it will generate are known by comparison with local residential development. That is the only satisfactory way of determining the need from development that is not yet built. Such comparables are used in identifying the impact of additional populations on most if not all public services. Demand and mitigations have been determined by the scale of the development.

**Police vehicles** In managing and responding to crime a number of different vehicles can be deployed ranging General Response Vehicles[patrol cars], unmarked general support vehicles, Public Service Unit vans and minibuses,



scientific [eg SOCO] vehicles, pursuit vehicles - 4x4 and high speed, motorcycles and so on. Current fleet deployment to Beumont Leys is 36 vehicles serving 19520 existing households. The average equipped cost of a vehicles is £15,774 and this is very close to the actual cost of a GRV. Our guideline for the majority of marked vehicles is to replace every three years or 120,000 miles. The condition of vehicles at the end of their Police life varies however we forecast that we will redeem on average 10% of a vehicles original value on disposal.

36 vehicle units at net value £511077

Existing households 19520 = £26.18 per H hold x 2 to give 6 year life of provision.

In relation to this particular development additional vehicle costs to deliver Policing and meet community safety needs will be **£183260**. Impact of the development without the contribution will be pressure to spread existing transport too thinly to the extent that service delivery is prejudiced. Residents of the new development and their representatives will expect the same degree of cover as elsewhere in the locality and existing residents will expect existing cover to be maintained and not reduced as a result of the new development.

*Is the contribution necessary to make the development acceptable in planning terms?*

Vehicles are a fundamental capital infrastructure and facility to deliver community safety and address crime especially at Neighbourhood level.

*Is it directly related to the development?*

Fleet deployment is related to the known Policing demands of comparable development in the locality. The direct demand from the new development can be accurately forecast. Delivering Policing direct to this development will not be possible without additional vehicles to do so.



*Is the contribution fairly and reasonably related in scale and kind to the development?*

This is a residential development and the Police vehicle demands it will generate are known by comparison with deployment to other local residential development. Level of demand and mitigations have been determined by the scale of the development.

**Radio Cover/capacity** It is necessary to expand the capacity of our existing system to cater for additional calls as a result of the development. The development will increase the use of our radio system which is maintained at existing capacity by investing in additional hardware including servers, system refinement signal strengthening and improved transmission technologies. We spend £20,000 pa adding such capacity to the existing system in Beaumont Leys which serves 19520 households. Annual cost of these capacity increases to an existing household is £1.02. Capacity improvements are expected to last for 5 years and without these the system will fail to adequately carry both existing and additional calls as a result of this additional development. The additional cost of the additional capacity in relation to houses in this development will be **£17850**.

The impact of the development on Policing with reduced Airwaves capacity will be increased attendance times, delays in message passing and the implications of this for attendance and apprehension. Occupiers and those that represent them will expect existing performance and attendance levels to be maintained.

*Is the contribution necessary to make the development acceptable in planning terms?*

Deployment to adequately deliver community safety and security will not be met where this is prejudiced by insufficient radio system capacity. Crime, community safety and security are Planning considerations.

*Is it directly related to the development?*



The additional demands of this development in relation to this infrastructure have been identified as have mitigations.

*Is the contribution fairly and reasonably related in scale and kind to the development?*

This is a residential development and the Policing demands it will generate, in terms of additional radio calls, are known by comparison with similar local residential development. Demand and mitigations have been determined by the scale of the development.

**Police Database capacity.** It is necessary to expand the capacity of our existing system to cater for additional calls as a result of the development. This is a secured stand alone information source integrating a variety of data nationally and allowing this to be compared over time in relation to individuals and locations. Additional hits as a result of the development to access existing crime information and add more crime data to be accessed by more staff generate a need to add capacity to this system. The current system and access to it reached planned capacity usage this year. Dedicated hardware is used with our contribution to this at £1,456,000 through the 14 year growth period at today's prices. In addition, local servers are replaced every 2.5 years at £83k each time to add further capacity to meet the demand placed adding £464,800 to PND costs through to 2026. We spend £10976 on PND system enhancements to serve Beaumont Leys at £0.56 per household per year. Over 5 years the development should contribute **£9800.**

Failure to increase PND capacity in step with growth the subject of this application will directly impact the ability of the Force to rapidly access and respond to crime information.

*Is the contribution necessary to make the development acceptable in planning terms?*



Deployment to adequately deliver community safety and security, will not be met where this is prejudiced by insufficient capacity in the Police PND system.

*Is it directly related to the development?*

The additional demands of this development in relation to this infrastructure have been identified as have mitigations.

*Is the contribution fairly and reasonably related in scale and kind to the development?*

This is primarily a residential development and the Policing demands it will generate, in terms of PND use, are known by comparison with existing local residential development. The development is not built and this is a reasonable way to forecast this impact. Demand and mitigations have been determined by the scale of the development.

**Control Room telephony** Police control room call handling equipment is used to capacity at peak times. Our call handling centre at Force HQ Enderby directs all calls and deploys resources to respond and continue monitoring. We know the capacity of the technology and the calls it currently handles [fixed around minimum times with callers] and will be expected to handle as a result of the proposed development. In order to deal with additional calls as a result of additional planned development across our sub region additional telephony, lines, licenses, workstations and monitoring screens will be required at a total cost of £199,000. 8% of all calls handled relate to the 19520 households in Beaumont Leys LPU area and additional calls forecast from this development are identified. The Council proposes 3,500 additional houses for Beaumont Leys in their plan period. Each new household in the LPU area will generate a need to invest an additional £4.54 in this system. The development should contribute **£15890** towards the additional equipment needed to answer the additional calls it will generate. Police preference is to use this money when the existing telephony is extended and renewed at 2018 however this does not prevent procurement of additional capacity in the meantime as a result of the impact of this development.



There will be a call handling impact and delays in response times if we attempt to serve this development with our current telephony systems.

*Is the contribution necessary to make the development acceptable in planning terms?*

Crime and community safety are Planning considerations. NPPF identifies need to achieve security in new development and makes provisions to deliver this through the planning system. These considerations will not be met where Policing delivery is prejudiced by insufficient telephony capacity to take calls and deploy responses in good time.

*Is it directly related to the development?*

The additional demands of this development in relation to this infrastructure have been identified as have mitigations.

*Is the contribution fairly and reasonably related in scale and kind to the development?*

This is a residential development and the Policing demands it will generate, in terms of use of control room telephony, are known by comparison with other local residential development. Demand and mitigations have been determined by the scale of the development.

**ANPR CCTV Deployment** Police are deploying fixed ANPR cameras on main road network and close to or in settlements. These cameras are server linked to identify number plates of vehicles in use for crime. This type of camera offers particular benefits to the immediate surrounding area especially where vehicle related crime is present. We deploy these as resources permit however our financially constrained programme makes no provision for the impacts of additional areas of housing. The use of these technologies has a beneficial impact in terms of minimising staff attendance. Unit cost is £8000 which includes installation and satellite links. Additional server capacity will be required to



process and store images and integrate to PND at £222 per new camera. Police take the view that in the light of the stand alone nature of the development, the additional road links and accessibility proposed and existing crime patterns, it should fund 3 additional cameras to be sited on a main access points serving the development at **£24,666**.

Impact without this contribution will be an inability to monitor crime related vehicle movements and address incidents effectively. Our response would be less than available elsewhere in Charnwood District where this cover is provided.

**Mobile CCTV Deployment** Units are acquired as funding, including s106, permits however our financially constrained programme makes no provision for cover of additional areas of development. Cameras are deployed in partnership with other local agencies to detect and deter crime and can be moved to follow crime patterns. There are two such cameras in use in the LPU area. Typical locations are where there is an expressed fear of crime, at emerging crime hotspots that residents use eg near commercial premises, or where there are increasing levels of anti social behaviour. Unit cost is £1500 and Police pay the revenue costs for movement. Bearing in mind the location and nature of the development as previously described, purchase of three additional mobile units is required to serve the development and its hinterland at a cost of **£4500**.

Impact without this contribution will be less access to deployment of this equipment than elsewhere in Leicester City and the wider Police District, and would give rise to a lower rate of detection and deterrence of crime that would in turn have consequences for other police resources.

*Is the contribution necessary to make the development acceptable in planning terms?*

Policing is a Planning consideration and NPPF provides guidance about local facilities and the provision of security. Core Strategy policy and content supports this consideration. Deployment of CCTV technologies significantly increases



detection and deterrence with reduced need for staff presence and particularly contributes towards achieving community safety. This will be prejudiced where new development places additional demands on existing deployment without mitigation and the ability of these technologies to deliver safety is undermined where new development creates additional accessibility and network gaps.

*Is it directly related to the development?*

The additional demands of this development in relation to this infrastructure have been identified as have mitigations. The nature of the development and its size and location in relation to the existing settlement and camera deployment are a direct consideration in these technologies.

*Is the contribution fairly and reasonably related in scale and kind to the development?*

This is a residential development and the Policing demands it will generate, in terms of additional crime and vehicle movements, are known by comparison with other similar residential development. Demand and mitigations have been determined by the scale of the development.

**Premises** For Beaumont Leys Policing is delivered from the LPU, Mansfield house BCU and HQ premises. Additional staff will need to be accommodated to serve the development. Occupation of local and Force wide premises is maintained to capacity. Premises cost is amount of floorspace per staff member [15] x number of staff generated by the development [54] x Build and land/lost opportunity cost [£2794pm<sup>2</sup>] giving a total of **£2263140** from this development. The latter is the build cost in use by Force Estates and has been externally verified by tender.

This will be spent to extend and or increase floorspace in these premises used to Police the area and in proportion to the numbers of staff located in these as described above. In relation to HQ and Forcewide premises a number of functions necessary to Police the development are already using these to



capacity. Typical of these is the Force Control room which is secured constructed, perimeter secured and attack resistant and is at capacity.

Impact of this development without premises expansion to accommodate additional staff will be an unacceptable degree of overcrowding and inefficiencies in responses and delivering Policing as a result. With the level of local Policing demand and the numbers of staff employed to meet this impact will be significant without mitigation.

*Is the contribution necessary to make the development acceptable in planning terms?*

Crime and community safety are Planning considerations and accommodating staff in the optimum location to serve the development is essential if this is to be achieved.

*Is it directly related to the development?*

The additional staffing needs the development will generate have been established by reference to existing local deployment reflecting the actual Policing demands and crime patterns of the locality. In a similar vein the premises requirements that result from the need to accommodate additional staff at these levels is known. A direct relationship between the development, additional staffing and accommodation is demonstrated and it is appropriate to mitigate this through the planning system.

*Is the contribution fairly and reasonably related in scale and kind to the development?*

This is a residential development and the accommodation needs of staff delivering Policing to meet local demands of development of this nature are known. It is based on the scale and kind of residential development.

**Additional Crime Prevention equipment.** This sizeable new development will increase the demand for local accessibility to Policing and the deployment of



crime prevention initiatives. We have restricted funds to deliver such initiatives to existing development to pay for equipment eg Smartwater kits[fluid, sprays, detectors] or signage for local occupiers to use. Each initiative budgets for capital expenditure of £4,000 with the developer asked to contribute £1 per new unit as a fair and proportionate contribution from this development.

*Is the contribution necessary to make the development acceptable in planning terms?*

Crime and community safety are Planning considerations and ensuring accessibility for the public to Policing is important to community safety, combating and reducing crime and the fear of crime.

*Is it directly related to the development?*

These crime prevention initiatives will specifically serve the development and a proportionate contribution towards increasing their equipment capacity is sought.

*Is the contribution fairly and reasonably related in scale and kind to the development?*

This is a residential development and experience with existing development locally demonstrates the need to invest in additional crime prevention measures. The contribution is based on the scale and kind of residential development.

## **SUMMARY OF CONTRIBUTION REQUESTED**

The Police contribution request considers the amount and type of development proposed and compares this with existing Policing demand and crime information for the beat and LPU areas in which it will be situated. The existing deployment of Police assets to Police the locality are identified and applied to the application site to forecast the impact of this individual development. The funding and capacity position of the Force is defined. NPPF and local Policy supporting a Policing contribution are identified. Commitments are made to manage the



contribution. Finally the contribution is itemised as below with individual methodologies applied to this development and the CIL tests of compliance are applied to these.

Start up equipment	£317466
Vehicles	£183260
Additional radio call capacity	£17850
PND additions	£9800
Additional call handling	£15890
ANPR	£24666
Mobile CCTV	£4500
Additional premises	£2263140
Hub equipment	£3500
Total	£2840072 [£811pd]

### **Conclusion**

Without the necessary contribution the development will be unacceptable in Planning terms and permission should not be granted as indicated in NPPF Guidance. The lack of capacity in existing infrastructure to accommodate the population growth and associated demands occasioned by the development means that it is necessary for the developer of the site to provide a contribution so the situation might be remedied. The request is directly related to the development and the direct Policing impacts it will generate based on an examination of demand levels in the LPU and local beat in which it is situated, adjacent areas and existing Policing demands and deployment in relation to this. The request is wholly related to the scale and kind of the application development.

Leicestershire Police have refreshed our approach to contributions taking account of the advice of leading Counsel and recent reductions in our



deployment. We are advised that the contents of this letter are sufficient to justify the contribution sought and that the request is compliant with NPPF tests.

Without the necessary contribution to meet Police needs there is a **formal objection to the development on sustainability grounds and because the development is unacceptable without the necessary contribution.**

I refer to the 7 Planning appeal decisions attached where the current approach of Police in seeking contributions was determined as compliant by Inspectors and the Secretary of State.

I confirm that the methodology employed in this request is similar to that used in all of these appeals subject of course to local data about Policing demand and deployment to each development. Policing the development will depend on all of the capital infrastructures I have identified including delivery from premises inside and outside the City again as I have described and as identified in your Core Strategy Infrastructure Plan.

My conclusion at this stage is in several parts.

a] the development will have very significant impacts on Policing and these will need to be adequately mitigated if it is to be sustainable and the safety of the local community assured. That has to be a mutual interest between the City Council and Leicestershire Police.

b] Necessary primary Policing infrastructures need to be considered in the viability of the development alongside for example schools and medical facilities.

c] Police believe the planning permission for the development as recently amended does not adequately consider nor reflect necessary infrastructures to meet Policing needs.

Please give this your consideration and I suggest that we meet at your earliest convenience to hear how the LPA will make adequate provision to meet Policing needs as a result of the development.



Best regards

**Michael Lambert**

**Growth and Design Officer**

**Leicestershire Police**

[michael.lambert@leicestershire.pnn.police.uk](mailto:michael.lambert@leicestershire.pnn.police.uk)

*Without prejudice to any other obligation imposed upon it, it shall be the duty of each local authority to exercise its various functions with due regard to the likely effect of those functions on, and the need to do all that it reasonably can, to prevent crime and disorder in its area: Section 17(1) of the Crime and Disorder Act 1998.*



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# Appeal Decision

Inquiry opened on 14 May 2013

Site visit made on 16 May 2013

by **C J Ball** DArch DCons RIBA IHBC

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

Decision date: 30 May 2013

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## Appeal Ref: APP/G2435/A/13/2192131

### Land south of Moira Road, Ashby-de-la-Zouch LE65 2NJ

- 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 J S Bloor (Measham) Ltd against the decision of North West Leicestershire District Council.
  - The application Ref 09/00620/FUL, dated 30 June 2009, was refused by notice dated 8 January 2013.
  - The development proposed in 2009 was described as the erection of 83 no. dwellings with associated garaging and formation of new access road to Moira Road.
- 

### Decision

1. The appeal is allowed and planning permission is granted for the erection of 69 no. dwellings with associated garaging, parking, open space, landscaping and infrastructure on land to the east of 57 Moira Road, Ashby-de-la-Zouch in accordance with the terms of the application Ref 09/00620/FUL, dated 30 June 2009, as amended, subject to the conditions set out in Annex A.

### Preliminary matters

2. The inquiry sat for 3 days on 14-16 May and I made an accompanied inspection of the site and its surroundings on 16 May.
3. The application, first submitted in 2009, was held in abeyance for several years while matters relating to the River Mease Special Area of Conservation (SAC) were considered. The application was subject to detailed negotiations, including a reduction in house numbers from 83 to 69. An amended scheme was submitted in April 2012 and, following further revision and the resolution of SAC and highway issues, was considered by the Council in January 2013. At the suggestion of the appellant the amended application was described as 'the erection of 69 no. dwellings with associated garaging, parking, open space, landscaping and infrastructure on land to the east of 57 Moira Road, Ashby-de-la-Zouch'. I have adopted that description for the purposes of this appeal.
4. On 12 April 2013, after the decision but before the appeal, the Order to revoke the East Midlands Regional Strategy (RS) in its entirety came into force. Directions preserving structure plan policies in the Region were also revoked so that the statutory development plan for the area now consists solely of the saved policies of the North West Leicestershire Local Plan (LP), dating from 2002. I have considered the effect of the revocation of the RS in this case but since, given the clear prospect of revocation, the parties placed no reliance on RS policies in evidence, the revocation has no real impact on my conclusions.

### **Agreed matters**

5. Before the inquiry the main parties submitted a statement of common ground. This outlines the application and its accompanying documentation; gives a brief description of the site and its planning history; and describes the proposed scheme of development, including highway considerations. The statement sets out the planning policy background and itemizes detailed matters of agreement, including location and design approach, amenity space and neighbour impact, access and highway considerations, flood risk and drainage, archaeological impact, and affordable housing provision. Areas where developer contributions would be required towards mitigation of the impact of the development on local infrastructure are noted. There is agreement that, if the Council cannot demonstrate a 5 year supply of deliverable housing land, the relevant policies for the supply of housing are deemed to be out of date. The statement also helpfully sets out the matters in dispute and includes a list of suggested conditions to be imposed if the appeal succeeds and planning permission is granted.
6. At the inquiry, an addendum statement of common ground was submitted, updating the housing position to April 2013 and outlining the areas of agreement and disagreement.

### **Planning obligation**

7. Before the inquiry the appellant submitted a draft Agreement as a deed of planning obligation under s106 of the Act. The draft was in agreed form between the parties to it - the joint owners of the site, the District Council and the County Council. A certified copy of the executed Agreement, unaltered from the draft, was submitted at the end of the inquiry. I consider its provisions in more detail later in this decision.

### **Application for costs**

8. At the inquiry an application for costs was made by the appellant against the Council. That application is the subject of a separate Decision.

### **Main issues**

9. From the reasons for refusal and the evidence given to the inquiry I consider there to be 4 main issues in this case:
  - whether the Council has a 5 year supply of deliverable housing land and the consequent policy implications
  - whether the site is in a sustainable location
  - the effect of the proposal on the character and appearance of the area
  - the impact of the proposed development on local infrastructure and whether any harm would be overcome by planning obligation.

### **Reasons**

10. The site, currently 2 fields in agricultural use, lies on the western edge of Ashby, outside but adjoining the LP settlement boundary. It fronts onto Moira Road, a main route into the town from the west. Existing housing development lies along Moira Road and Abbey Drive, to the north-east of the site, while the south-eastern boundary of the site borders housing development in Beaumont Avenue and Woodside. The north-western boundary is partially enclosed by No.57 Moira

Road and its extensive range of outbuildings. The site adjoins open farmland to the west and south-west. It slopes gently down from Moira Road to a ditch at the south-western boundary, which lies within the catchment area of the River Mease. A public footpath, part of The Ivanhoe Way (a long distance circular route) crosses the site.

11. The scheme would provide 69 new dwellings in a range of types and sizes, including 18 affordable units. Vehicular access would be from Moira Road, and The Ivanhoe Way would be accommodated within the site layout. New areas of public open space would be provided within the scheme adjacent to the central hedgerow and the ditch. The Council acknowledges that the proposed development would have no adverse impact on the residential amenities of neighbours. Subject to appropriate conditions and planning obligations there are no design or technical objections to the proposal.
12. The proposed development clearly conflicts with saved LP policies S3 and H4/1 aimed at restricting residential development on land which lies outside the settlement boundary. However, ¶49 of the National Planning Policy Framework (the Framework) makes it clear that relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a 5 year supply of deliverable housing sites.

***Whether the Council has a 5 year supply of deliverable housing land and the consequent policy implications***

13. The current LP, adopted in 2002, covered the period April 1991 to March 2006. It allocated no land for housing development beyond that time and is clearly dated. The evidence base for RS housing policies dates from 2004. The household projections from that time are out of date and it is no longer appropriate to draw on that evidence. The emerging Core Strategy (CS) is intended to cover the 25 year period from April 2006 to March 2031. Although the CS carries limited weight at this stage, its housing policies are supported by a 2011 SHLAA, which identifies 9 potential housing sites in Ashby, (including the appeal site), and by a 2011 Housing Requirements Study (the G L Hearn Study). These helped to set the CS housing requirement over the plan period at 9,700 dwellings, 388 per annum. Since it has a strong, up-to-date evidence base I give this figure substantial weight. The appellant considers that it may be an underestimate, but relies on this figure for the purposes of this appeal.
14. In emerging CS policy CS37, Ashby is allocated at least 1,400 dwellings over the plan period. Taking account of completions to March 2012 and outstanding permissions, the CS indicates that sufficient land needs to be found for at least 605 more homes to be built by 2031. While the CS does not allocate sites, it identifies the preferred direction of growth as to the north of Ashby (Money Hill).
15. In the seven years from the beginning of the plan period to April 2013, 1,887 dwellings were built in Ashby. At 388 per annum, the requirement was for 2,716. There is thus an agreed shortfall of 829 dwellings over this period.
16. Much of the evidence at the inquiry centred on how this shortfall should be recovered. The Council prefers to spread recovery over the remainder of the plan period (the residual or Liverpool method) and refers to a recent appeal decision in the locality where that approach has been taken, although I note that that decision has been challenged<sup>1</sup>. That approach would add 46 to the CS figure

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<sup>1</sup> APP/K2420/A/12/2181080 Groby Cemetery

of 388, giving a base figure of 434 dwellings per annum over each of the next 5 and following 13 years of the plan. The appellant points to ¶47 of the Framework which requires local planning authorities to boost significantly the supply of housing and argues that this requires the shortfall to be dealt with as quickly as possible by adding it to the next 5 years worth of housing provision (the Sedgefield method). Reference is made to a number of appeal decisions where this approach has been adopted, including by the Secretary of State<sup>2</sup>.

17. The Framework is silent on this matter and there is no firm guidance elsewhere but having regard to the decisions referred to above, and to the Ministerial statement *Planning for Growth*, I take the view that 'to boost significantly' implies a substantial and immediate effect, above and beyond the normal provision. For that reason I consider the Sedgefield method of recovering the shortfall to be the most effective way of meeting the Framework objective.
18. The Council refers to larger sites in the district allocated for future development as providing an available reservoir of developable land, but I consider that it cannot realistically be assumed that sites allocated to a future date will be brought forward by market demand or that such early take-up would cancel out the shortfall within 5 years. I therefore consider that, over the next 5 years, the shortfall of 829 must be added to the CS provision of 388 x 5, 1,940, to give a base figure of 2,769 or 554 dwellings per year.
19. The second bullet point at ¶47 of the Framework explains that local planning authorities should not only be able to identify sufficient sites to provide 5 years worth of housing against their housing requirements, but should also add a buffer of 5%, to ensure choice and competition in the market for land. It goes on to say that where there has been a record of persistent under delivery of housing, this buffer should be increased to 20% to provide a realistic prospect of achieving the planned supply.
20. 'Persistent under delivery' is not further defined in the Framework or elsewhere but, since the Framework requires the assessment of future housing delivery to look forward 5 years, looking back 5 years to assess the record of past delivery seems to me a reasonable approach. In fact, the provision of 388 dwellings has been achieved in none of the past 7 years, from the start of the CS plan period. The annual average provision over these years was about 70%, leading to the cumulative shortfall of 829. Furthermore, taken against the RS requirement of 510 dwellings per annum, arguably more applicable to these years before its revocation in April 2013, the annual average was little more than 50%. That is by any standard a record of persistent under delivery.
21. The Council argues that over 1991-2006, the LP plan period, there was a cumulative record of over provision and that delivery should be averaged over the years 1991-2013. However the LP, in force before the current CS plan period, was subject to very different planning circumstances, and I do not consider that the suggested approach would be a reliable pointer to future performance. The Council also argues that there are specific local reasons for the shortfall, including a moratorium on development pending the resolution of the River Mease SAC problems. However, that only applied to a part of the district and in any event, taken on its face, the Framework looks at the plain fact of under delivery and takes no account of why that may be.

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<sup>2</sup> APP/J3720/A/11/2163206 Shottery (SoS), APP/H1840/A/12/2171339 Honeybourne, APP/Y2810/A/12/2174386 Long Buckby.

22. I therefore consider that a buffer of 20% should be applied to the next 5 years housing requirement. 20% of the base figure of 2,769 is 554 so this increases the 5 year housing requirement figure at 1 April 2013 to 3,323, an annual requirement of 665.
23. I now go on to consider housing land supply, having regard to the Framework requirement for the identification of specific deliverable sites sufficient to provide 5 years worth of housing against the housing requirement. Against the requirement of 3,323, the parties agree that, over the 5 year period from April 2013, there should be a windfall allowance of 235 dwellings, large sites under construction will provide 859 dwellings and sites allocated in an adopted Local Plan will deliver 230 dwellings.
24. With regard to sites with planning permission but not yet started, there is a measure of agreement although the appellant considers that the Brookes Machine Tools site in Kegworth is not deliverable within the 5 year period. He argues that, although planning permission for 16 dwellings is extant, the owner has no immediate plans to sell and has yet to find premises to which to relocate. The Framework makes it clear that sites with planning permission should be considered deliverable unless there is clear evidence that schemes will not be implemented within 5 years. There is no such evidence before me so I consider that the Council's projected total of 174 dwellings in this category is deliverable.
25. The deliverability of unallocated sites without planning permission is less certain. The appellant accepts that 327 houses are deliverable but argues that the further 875 claimed by the Council relate to proposals which have either been refused planning permission or for other reasons are not deliverable within the current 5 year projection. The position is unclear but what is clear is that, even if all the sites nominated by the Council are included, that would still only amount to 4.06 year's worth of supply ( $235 + 859 + 230 + 174 + 1202 = 2,700$ ;  $2,700 \div 665 = 4.06$ ). On the other hand, if the appellant's figures are relied on, there would only be 2.74 years worth of supply ( $235 + 859 + 230 + 174 + 327 = 1,825$ ;  $1,825 \div 665 = 2.74$ ). The actual figure may lie somewhere in between but it is evident that, however the calculation is made, as at April 2013 the Council cannot identify specific deliverable sites sufficient to provide 5 years worth of housing against the housing requirement.
26. As a result, as indicated in ¶149 of the Framework, relevant policies for the supply of housing cannot be considered to be up-to-date. That applies not just to housing supply policies but also to policies which direct or restrict the location of housing, such as policies S3 and H4/1. In that respect I note the recent legal advice to the Council which points out that the LP is out of date and the limits to development it sets will need to be breached if the Council is to meet the existing and future need for housing land; that means that planning permission will need to be granted for land which the LP currently defines as countryside. For these reasons I give little weight to the CS replacement countryside policy CS8.
27. At the heart of the Framework is a presumption in favour of sustainable development and ¶14 of the Framework requires that, where development plan policies are out of date, planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the Framework policies taken as a whole. I therefore go on to consider the other matters raised by the Council.

***Whether the site is in a sustainable location***

28. Ashby is the second largest settlement in the district and has a wide range of services and facilities, including shops, post office, library, employment and leisure facilities; the town is served by primary and secondary schools and by a district hospital and health centre. A major employment site and an edge-of-town superstore lie on its eastern edge, close to the A42 link. The site lies on Moira Road, a main road into the town and a principal public transport route. Located on the western edge of the built-up area, the site is partially enclosed by existing housing and its development would not give rise to any further westward extension of the overall built form of Ashby into the countryside.
29. The site is classified as grade 3 agricultural land. As such it is of an equivalent or lower agricultural value than the much larger area of preferred development land at Money Hill. It cannot therefore be argued with any conviction that it is unsuitable for development on grounds of agricultural quality. It is a relatively small area, some 2.5 Ha, and even if it were of the higher grade 3a argued by objectors, its loss would have a very minor impact on the national stock of best and most versatile land. I do not consider that the development of this site would represent an unsustainable loss of good quality farmland. In that respect I note that as long ago as 1998, in assessing suitable housing sites, the LP Inspector considered that this was one of the better candidate sites and could, if need dictated, make a useful contribution to the District's housing land supply. It was not considered necessary at that time. I also note that the site was included in the Council's 2011 SHLAA, which indicated its good accessibility.
30. Local facilities include a small convenience store, about 120 m from the site, a recreation ground at 170 m and Ashby Hill Top Primary School about 290 m away. These are all within 5 minutes walk from the site. It is about 1 km to the town centre, a walk of 10-15 minutes, and most of the urban area of Ashby, including the secondary schools, lies within 2 km. All the employment areas, and the superstore, are within about 3 km of the site. DoT statistics show that the average trip length regularly undertaken by the population of Great Britain is, on average, walking about 1 km, cycling about 4.5 km and by bus about 8 km. It can be concluded from this that the site is within easy walking or cycling distance of all the town's facilities.
31. There are 2 bus stops close to the site, well within the distances set out in the Council's 6C's Design Guide, with 3 buses an hour to the town centre and 2 buses an hour from it. Journey time to the town centre is about 5 minutes. Service 2 operates a one-way town centre loop while Services 9 and 9A operate in both directions, linking the town to Coalville and Burton on Trent. There are opportunities for interchange with other bus services in the town centre, including a town service to the superstore.
32. From this I consider that residents of the site would have good access to the town centre and would have a realistic option of travelling to all the facilities the town has to offer by walking, cycling or using public transport. The Council asserts that local knowledge shows that the DoT statistics cannot be applied to the people of Ashby and that residents of the site would be unlikely to walk or use the bus. I find that a surprising line to take, particularly when the promotion of sustainable means of travel is a key Framework objective. It may be so – future residents of the site may choose to use a private car – but it cannot be said that they would have to rely on it. Alternative means of travel would be readily available, and I consider the site to be in a sustainable location.

***The effect of the proposal on the character and appearance of the area***

33. The area currently has the character of 'urban edge', where the built-up area of the town meets the countryside, and there are attractive views across fields and hedgerows to the west. The site is partially enclosed by existing housing development. Development of this site will clearly change the nature of the land from countryside to residential. The loss of rural outlook across the 2 fields, and the re-routing of the footpath through a housing area, would be keenly felt by local residents.
34. However, the site's southern boundary would align with the existing extent of development at Woodside, so there would be no significant expansion of the town into open countryside. An extensive area of similar countryside would remain to the west and south of the site, and wider views would remain largely unaltered. As the LP Inspector noted, the site is well related to the existing built form of this end of Ashby and appropriate landscaping could bring about some visual improvement in the current western approach to the town. I concur with his view that little significant harm would arise from the loss of countryside resulting from this development.
35. Existing hedgerows would be retained, public space would be fully landscaped and new trees would be planted, ensuring that the site harmonises with and reflects both its urban and rural surroundings. The proposal would in effect retain the 'urban edge' character of the area. I do not consider that development of the site would significantly change the distinctive character of The Ivanhoe Way, which already takes in the urban area of Ashby. Overall I consider that the proposal would have no unacceptably harmful effect on the character and appearance of the area.

***The impact of the proposed development on local infrastructure and whether any harm would be overcome by planning obligation.***

36. The site lies within the National Forest where guidelines require either 20% of the site to be woodland planting or a contribution towards equivalent offsite planting. It also lies within the catchment area of the River Mease, where mitigation of development and remediation of pollution of the river is required in accordance with the River Mease SAC Water Quality Management Plan (WQMP). The development would increase the local population of adults and children and this would substantially increase the existing pressure on local infrastructure and the current provision of local services. To cater for increased usage, expansion or improvement would be required at the health centre, leisure centre and library. To accommodate additional children, significant expansion and improvement would be required at the nearby Ashby Top Hill Primary School. The additional population would also bring additional policing requirements, which would need to be addressed.
37. The s106 Agreement would effectively bind the appellant to providing 18 affordable dwellings as part of the development. It would also require the appellant to make, and the District Council and County Council to disburse, contributions of:
- £40,000 towards the programme of tree planting in the National Forest
  - £19,350 towards projects identified in the River Mease SAC WQMP Contributions Strategy

- £25,258.56 towards the expansion and improvement of Ashby Health Centre
  - £75,900 towards the expansion and improvement of Hood Park Leisure Centre
  - £24,903 towards the capital costs of policing the development
  - £184,025.94 towards the expansion and improvement of Ashby Hill Top Primary School
  - £4,130 towards the improvement of Ashby Library
  - £120 to provide an information display at the eastbound bus stop on Moira Road
  - £10,000 towards making and implementing the Traffic Regulation Order necessary to introduce 'no waiting' restrictions along the site's frontage to Moira Road
38. Parking on the site road frontage would be prevented, thereby eliminating hazardous conditions, and in addition the appellant would provide Travel Packs and bus passes to the occupiers of each dwelling in order to encourage walking, cycling and the use of public transport. The appellant would also contribute towards both Councils' costs of monitoring compliance with the obligations.
39. Evidence submitted to the inquiry showed that, without these contributions, the development would not be acceptable in planning terms because of its harmful impact on local infrastructure. These measures are therefore necessary to mitigate that impact. The need for additional facilities arises directly from the development of the site so the contributions are directly related to it. The extent of additional provision in each case has been carefully considered and is proportionate, appropriate and no more than is necessary to meet the additional demands, so the provisions of the Agreement are fairly and reasonably related in scale and kind to the development. The provisions of the Agreement therefore comply with ¶203 of the Framework and meet the tests of Regulation 122 of the CIL Regulations 2010. I therefore consider that the harmful impact of the proposal on local infrastructure would be satisfactorily overcome by the binding planning obligations.

## **Conclusions**

40. I have found that the Council cannot demonstrate a 5 year supply of deliverable housing sites. As a result, relevant development plan policies for the supply of housing cannot be considered to be up-to-date. In these circumstances, planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits.
41. As the Council has to acknowledge, future development will have to take place on land which the LP currently defines as countryside. This is such a site. I consider it to be in a sustainable location. Subject to appropriate conditions and the planning obligations there are no design or technical objections to the proposed development and nor would it have an unacceptably harmful effect on the character and appearance of the area. The harmful impact it would have on local infrastructure would be overcome by planning obligation.
42. The draft CS is currently at pre-publication stage. There are unresolved objections so it could potentially be amended. At present it carries limited weight but, bearing in mind that the CS calls for at least 605 new dwellings in Ashby

over the plan period, this development of 69 houses is not so substantial that it would significantly undermine the Council's preferred location for growth or prejudice strategic decisions by predetermining the scale and location of new housing currently being considered as part of the CS process. There is no justification for considering the application to be premature.

43. The proposed development would provide a number of economic, social and environmental benefits, not least a significant boost to the town's supply of houses, including a range of affordable dwellings. It would lead to substantial tree planting in the National Forest and would help to clean up the River Mease. I find no adverse impacts sufficient to outweigh these benefits or the presumption in favour of sustainable development. It is therefore my intention to grant planning permission subject to appropriate conditions.
44. The parties agreed a list of conditions at the inquiry. Compliance with the submitted plans is necessary to ensure the scheme is built as approved. Some minor design features need further approval to control the appearance of the scheme and to ensure pedestrian safety, and permitted development rights should be withdrawn to safeguard the amenities of neighbours. The submission of boundary treatment details and a full landscaping scheme is necessary, together with a maintenance plan to ensure its long term survival. Conditions are necessary to ensure the site is properly drained and to reduce the risk of flooding. A Grampian-type condition is necessary for the provision of off-site highway works to improve access and highway safety. There is some potential for archaeological remains so a programme of archaeological work is necessary to ensure proper investigation and recording. A Construction Method Statement is necessary to prevent encroachment onto the highway and to safeguard the interests of neighbours during the construction period.
45. I consider that all these conditions are a necessary and reasonable means of controlling the development. I have adjusted some of the suggested wording in the interests of clarity and to conform more with Circular 11/95. On that basis, for the reasons given above, I conclude that the appeal should be allowed.

*Colin Ball*

Inspector

## **APPEARANCES**

### FOR THE LOCAL PLANNING AUTHORITY:

Timothy Leader, of Counsel                      Instructed by the Principal Solicitor to the Council.

    He called:  
    Andrew Murphy BA(Hons)                      Director, Stansgate Planning.  
    MSc MRTPI

### FOR THE APPELLANT:

Thomas Hill QC                                      Instructed by Max Whitehead of J S Bloor (Measham) Ltd.

    He called:  
    Andrew Kirby BSc MICE                      Director, Northern Transport Planning Ltd  
    Felicity Jane Gardner                      Director of Planning, Marrons.  
    BA(Hons) MRTPI

### FOR THE POLICE AND CRIME COMMISSIONER FOR LEICESTERSHIRE:

Thea Osmund-Smith of Counsel                      Instructed by the Police and Crime Commissioner for Leicestershire.

    She called:  
    Michael Lambert MRTPI                      Growth and Design Officer, Leicestershire Police.

### FOR LEICESTERSHIRE COUNTY COUNCIL:

Andrew James                                      Leicestershire County Council.

    He called:  
    Andrew Tyrer BA(Hons)                      Developer Contributions Officer, Leicestershire  
    MSocSci MRTPI                                      County Council.

### INTERESTED PERSONS:

Lisa Hvidsten-Birtwistle                      Local resident.

## **ADDITIONAL DOCUMENTS SUBMITTED AT THE INQUIRY**

### Joint documents

- 1 Addendum statement of common ground May 2013.
- 2 Amended list of agreed conditions.
- 3 Certified copy of the deed of planning obligation.

### Council documents

- 4 Addendum proof of evidence of Andrew Murphy May 2013.
- 5 Addendum 5b to appendix 5 of Mr Murphy's proof of evidence – housing calculations residual method.
- 6 Addendum 5c to appendix 5 of Mr Murphy's proof of evidence – housing calculations Sedgefield method.
- 7 Copy of PINS Good Practice Advice Note 07, highlighting precedent.

- 8 Copy of letter to the Council dated 15 May 2013 from LCC regarding archaeological considerations for the site.
- 9 Copy of Council's Building Regulation record relating to the Brookes Machine Tools site confirming start of work on site.
- 10 Copy of outline planning permission 12/00323/OUTM for 110 houses on land adjoining 90 Ashby Road, Kegworth.
- 11 Copy of email to the Council dated 9 May 2013 from Blaby District Council confirming withdrawal of their objection to draft Core Strategy policy CS1.
- 12 Copy of responses to Core Strategy pre-submission consultation and suggested changes.

#### Appellant documents

- 13 Addendum proof of evidence of Jane Gardner May 2013.
- 14 Note of planning committee 7 May 2013 and summary of associated legal advice.
- 15 Agricultural assessment, Money Hill site.
- 16 Copy of Local Plan policies T9 and T10.
- 17 Extract from the Council's 6C's design guide.
- 18 Copy of draft Core Strategy policy CS23: Transport.
- 19 Plan of the appeal site in relation to the Ashby Broad Locations for Growth.

#### Police documents

- 20 Copies of 2 appeal decision notices highlighting s106 police contributions.

#### County Council documents

- 21 Corrected proof of evidence of Andrew Tyrer.

#### Interested person's documents

- 22 Mrs Hvidsten-Birtwistle's statement.
- 23 Miss C J Bryant's written submission.
- 24 Campaign poster

#### Closing statements

- 25 Mr Leader's closing statement for the Council.
- 26 Copy of Fox v SoS [2012] EWCA Civ 1198 [2013] 1 P & CR 6.
- 27 Mr James's closing statement for the County Council (written submission).
- 28 Ms Osmund-Smith's closing statement for the Police Commissioner.
- 29 Mr Hill's closing statement for the Appellant.

**ANNEX A**

Planning permission is granted for the erection of 69 no. dwellings with associated garaging, parking, open space, landscaping and infrastructure on land to the east of 57 Moira Road, Ashby-de-la-Zouch in accordance with the terms of the application Ref 09/00620/FUL, dated 30 June 2009, as amended, subject to the following conditions:

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans:

ME_0013_11PL1	Revision M	Site Plan
M110-100		FRA Plan
NTP 12006.02	Revision O	Highways Plan
ME-0013-11-Dur.02	Revision A	Plots 1, 2, 64, 65
ME-0013-11-Dur.03	Revision A	Plot 3
ME-0013-11-Bel.01	Revision B	Plot 4
ME-0013-11-Fen.01	Revision B	Plots 5, 31
ME-0013-11-Dur.01	Revision A	Plots 6, 7
ME-0013-11-Han.05	Revision B	Plot 8
ME-0013-11-Han.03	Revision C	Plots 9, 14, 32
ME-0013-11-Som.SP.01	Revision A	Plot 10
ME-0013-11-Som.SP.04	Revision B	Plot 11
ME-0013-11-Ard.01	Revision A	Plots 12, 30, 35, 37
ME-0013-11-Ham.02	Revision B	Plot 13
ME-0013-11-Han.02	Revision B	Plot 15
ME-0013-11-Ham.01	Revision B	Plot 16, 46
ME-0013-11-Ard.02	Revision B	Plot 17, 36, 38, 39
ME-0013-11-Ard.05	Revision C	Plot 18
ME-0013-11-Han.01	Revision B	Plot 19
ME-0013-11-Fen.02	Revision B	Plot 20
ME-0013-11-Som.SP.02	Revision A	Plots 21 & 22 Floor Plans
ME-0013-11-Som.SP.03	Revision A	Plots 21 & 22 Elevations
ME-0013-011-1BF01/1BF02/3B5P.01		Plots 23-27 Floor Plans
ME-0013-011-1BF01/1BF02/3B5P.02	Rev B	Plots 23-27 Elevations
ME-0013-011-Bam/Lan.01	Revision A	Plots 28 & 29
ME-0013-11-Som.SP.05	Revision B	Plot 33
ME-0013-11-Ham.03		Plot 34
ME-0013-11-Ard.04	Revision B	Plots 40 & 41 Elevations
ME-0013-11-Ard.03	Revision A	Plots 40 & 41 Floor Plans
ME-0013-11-Ard/Lan.01	Revision A	Plots 42 & 43 Floor Plans
ME-0013-11-Ard/Lan.02	Revision B	Plots 42 & 43 Elevations
ME-0013-11-Ard/Lan.03	Revision B	Plots 42 & 43 Elevations
ME-0013-11-3B4P.01	Revision B	Plots 44 & 45
ME-0013-11-Fai/Oxb/Lev.01	Revision A	Plots 47-50 Floor Plans
ME-0013-11-Fai/Oxb/Lev.02	Revision A	Plots 47-50 Floor Plans
ME-0013-11-Fai/Oxb/Lev.03	Revision A	Plots 47-50 Floor Plans
ME-0013-11-Fai/Oxb/Lev.04	Revision B	Plots 47-50 Elevations
ME-0013-11-Fai/Oxb/Lev.05	Revision A	Plots 47-50 Elevations
ME-0013-11-Fai/Oxb/Lev.06	Revision B	Plots 47-50 Elevations
ME-0013-11-Lan/Sed.01	Revision A	Plots 51 & 52 Floor Plans
ME-0013-11-Lan/Sed.02	Revision B	Plots 51 & 52 Elevations

ME-0013-11-Bun.01	Revision B	Plot 53
ME-0013-11-2B3P/Far.01	Revision C	Plots 54-56 Floor Plans
ME-0013-11-2B3P/Far.02	Revision C	Plots 54-56 Elevations
ME-0013-11-2B4P.01		Plots 57-59 Floor Plans
ME-0013-11-2B4P.02	Revision A	Plots 57-59 Elevations
ME-0013-11-3B4P/Far/Bun.01	Revision B	Plots 60-63 Floor Plans
ME-0013-11-3B4P/Far/Bun.02	Revision B	Plots 60-63 Plans & Elev's
ME-0013-11-3B4P/Far/Bun.03	Revision B	Plots 60-63 Elevations
ME-0013-11-Dur.04	Revision A	Plots 66 Floor Plans
ME-0013-11-Dur.05	Revision B	Plots 66 Elevations
ME-0013-11-Dur.06	Revision A	Plots 67 Floor Plans
ME-0013-11-Dur.07	Revision B	Plots 67 Elevations
ME-0013-11-Han.04	Revision B	Plots 68
ME-0013-11-Han.06	Revision B	Plots 69
ME-0013-11-Gar.01	Revision A	Garages
ME-0013-11-Gar.02	Revision A	Garages
ME-0013-11-Gar.03		Garages
ME-0013-11-Car.01	Revision A	Carport
ME-0012-11-Car.02	Revision A	Carport
M110_BD_01		Boundary Details
M110_GD_01		Gate Details

- 3) No development shall take place until samples of the materials to be used in the construction of the external surfaces of the buildings hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 4) No development shall take place until samples of the materials to be used in the construction of the external paved surfaces hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 5) No development shall take place until details, including location and treatment, of utility boxes, chimneys, verges and barn gate features have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 6) No development shall take place until details of waste storage for units within the site have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 7) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any Order revoking and re-enacting that Order) no development relating to Classes A to E of Part 1 Schedule 2 Article 3 shall be undertaken.
- 8) No development shall take place until full details of both hard and soft landscape works, including details of the landscaping for the balancing pond, have been submitted to and approved in writing by the local planning authority. All hard and soft landscape works shall be carried out in accordance with the approved details. The works shall be carried out prior to the occupation of any part of the development or in accordance with a programme agreed with the local planning authority.

- 9) If within a period of 5 years from the date of planting any tree or plant is removed, uprooted or destroyed or dies, or becomes, in the opinion of the local planning authority, seriously damaged or defective, another tree or plant of the same species and size as that originally planted shall be planted at the same place, in the next planting season, unless the local planning authority gives its written approval to any variation.
- 10) A landscape management plan, including long term design objectives, management responsibilities and maintenance schedules for all landscape areas, other than small, privately owned, domestic gardens, shall be submitted to and approved by the local planning authority prior to the occupation of the development or any phase of the development, whichever is the sooner, for its permitted use. The landscape management plan shall be carried out as approved.
- 11) No development shall take place until a detailed scheme for the boundary treatment of the site has been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details before the first occupation of any dwelling on the site.
- 12) No development shall take place until detailed plans for the disposal of foul sewage have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details before the first occupation of any dwelling on the site.
- 13) The development hereby permitted shall be carried out in full accordance with the approved Flood Risk Assessment (FRA) Revision 2, dated 3 April 2012, Ref: 10172/FRA/01 and the following mitigation measures detailed within the FRA:
  1. Limiting the surface water run-off generated by all rainfall events up to the 100 year plus 30% (for climate change) critical rain storm so that it will not exceed the run-off from the undeveloped site and not increase the risk of flooding off-site (Section 4).
  2. Provision of surface water attenuation storage in the form of an open water balancing pond (Section 4).
  3. Finished floor levels are set a minimum of 300mm above the banks of the adjacent ordinary watercourse (Paragraph 3.37)

The mitigation measures shall be fully implemented before the first occupation of any dwelling on the site.
- 14) No development shall take place until details of the implementation, maintenance and management of a sustainable surface water drainage scheme have been submitted to and approved in writing by the local planning authority. The scheme shall be implemented before the first occupation of any dwelling on the site and thereafter managed and maintained in accordance with the approved details. Those details shall include:
  - i) a timetable for its implementation
  - ii) limiting the discharge rate and storing the surface water run-off generated by all rainfall events up to the 100 year plus 30% (for climate change) critical rain storm so that it will not exceed the run-off from the undeveloped site and not increase the risk of flooding off-site
  - iii) provision of surface water run-off attenuation storage to accommodate the difference between the allowable discharge rate/s and all rainfall

- events up to the 100 year plus 30% (for climate change) critical rain storm
- iv) detailed design (plans, cross, long sections and calculations) in support of any surface water drainage scheme, including details on any attenuation system, and the outfall arrangements
  - v) a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public body or statutory undertaker, or any other arrangements to secure the operation of the sustainable drainage scheme throughout its lifetime
- 15) No development shall take place at plots 15-21 and at the surface water balancing pond until the culvert forming the existing farm field access crossing forming part of the southern ditch as shown on drawing M110-100 has been removed.
- 16) Before the first occupation of the 26th dwelling hereby approved, the off-site highway works on Moira Road being the provision of a new footway, a crossing facility, speed cushions and a vehicle activated sign (with the exception of the location of the crossing and with the possible relocation of a bus stop) shall be completed in accordance with the details shown on drawing NTP 12006.02.
- 17) Before the first occupation of any dwelling plot hereby approved, the following plot-related access works shall be completed:
- The gradients of the access drives shall not exceed 1:12 for the first 5 metres behind the highway boundary.
- Any garage doors shall be set back from the highway boundary a minimum distance of 5.5 metres for sliding or roller/shutter doors, 6.1 metres for up-and-over doors or 6.5 metres for doors opening outwards.
- The approved pedestrian visibility splays in connection with the access serving that dwelling shall be provided with nothing within those splays higher than 0.6 metres above ground level, in accordance with the current standards of the highway authority
- Its access drive and any turning space shall be surfaced with tarmacadam, concrete or similar hard bound material (not loose aggregate) for a distance of at least 5 metres behind the highway boundary
- 18) No development shall take place until a programme of archaeological work, commencing with an assessment of the dating of the burnt deposit detected by the trial trenching, has been implemented in accordance with a written scheme of investigation which has been submitted to and approved in writing by the local planning authority. The scheme shall include an assessment of significance and research questions; and:
- A programme and methodology of site investigation and recording (including the initial trial trenching, assessment of results and preparation of an appropriate mitigation scheme)
  - A programme for post-investigation assessment
  - Provision to be made for analysis of the site investigation and recording
  - Provision to be made for publication and dissemination of the analysis and records of the site investigation
  - Provision to be made for archive deposition of the analysis and records of the site investigation

The scheme shall include the nomination of a competent person or persons/organisation to undertake the works set out within the written scheme of investigation.

- 19) No demolition or development shall take place other than in accordance with the written scheme of investigation approved under condition 18.
- 20) The development shall not be occupied until the site investigation and post investigation assessment has been completed in accordance with the programme set out in the written scheme of investigation approved under condition 18 and the provision made for analysis, publication and dissemination of results and archive deposition has been secured.
- 21) No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by, the local planning authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:
  - the parking of vehicles of site operatives and visitors
  - loading and unloading of plant and materials
  - storage of plant and materials used in constructing the development
  - the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate
  - wheel washing facilities
  - measures to control the emission of dust and dirt during construction
  - a scheme for recycling/disposing of waste resulting from demolition and construction works.

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## Appeal Decision

Inquiry opened on 12 November 2013

Site visit made on 9 December 2013

**by Martin Whitehead LLB BSc(Hons) CEng MICE**

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

**Decision date: 2 January 2014**

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**Appeal Ref: APP/T2405/A/13/2200867**

**Land at Seine Lane/Forest Road, Enderby, Leicestershire**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
  - The appeal is made by Mrs S Shropshire-Boddy, H Knowles and J E Smith against the decision of Blaby District Council.
  - The application Ref 12/0823/1/OX, dated 9 October 2012, was refused by notice dated 27 June 2013.
  - The development proposed is the erection of up to 244 dwellings, public open space, landscaping and vehicular access.
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### Decision

1. The appeal is dismissed.

### Procedural and Preliminary Matters

2. The inquiry opened on 12 November and sat for 5 days on 12, 13, 14 and 15 November and 9 December. I made unaccompanied visits to the area surrounding the appeal site on 11 November at about 1600 hours, prior to opening the inquiry, on 13 November at about 1730 hours and on 14 November at about 0845 hours to observe the traffic and site at different times of the day. I made an accompanied site visit on 9 December at about 1000 hours, prior to closing the inquiry.
3. At the inquiry an application for costs was made by the Council against the appellants. This application is the subject of a separate decision.
4. At the opening of the inquiry, the appellants confirmed that the application was submitted in outline form with all matters of detail, except access, reserved for later consideration. During the course of the inquiry they suggested that they are willing to have the appeal determined on the basis of only the vehicular access being considered or access being a reserved matter. I have taken these considerations into account in my determination of this appeal.
5. The Council has accepted that the alternative illustrative layout plan Drawing No 5010 Revision B and updated Transport Assessment and Travel Plan have been the subject of appropriate public consultation. I have therefore taken into consideration the details provided by this plan and documents, together with those on amended illustrative plans which the appellants subsequently provided at the inquiry.

6. Leicestershire County Council, as the Highway Authority (HA) confirmed at the inquiry that it was satisfied that its objections with respect to reason for refusal 3, regarding the effect on the B582/Leicester Lane/High Street junction, would be overcome by a contribution by way of a planning obligation to fund the installation and operation of MOVA<sup>1</sup> on the signals at the junction. It also accepted that its objections regarding the proposed junction on Forest Road given in reason for refusal 5 would be addressed by the provision of the T-junction detail shown on submitted plan Drawing No F12064/09 Rev A; and those regarding the accessibility of services given in reason for refusal 6 would be overcome by the provision of a footbridge. Blaby District Council (the Council) suggested that it would not contest reasons for refusal 3, 5 and 6 if the above measures are secured.
7. I am satisfied that the Council has been able to demonstrate that it has a five year supply of deliverable housing sites in accordance with the National Planning Policy Framework (Framework), which the appellants conceded at the inquiry. As such, the relevant policies for the supply of housing are to be considered up-to-date in accordance with paragraph 49 of the Framework.

### **Main Issues**

8. The main issues are the effect of the proposal on the character and appearance of the surrounding countryside; its effect on highway safety and convenience; and whether it would represent sustainable development with regard to its accessibility by other means of transport to the car.

### **Reasons**

#### **Character and Appearance**

9. The appeal site mainly consists of grassed fields surrounded by hedges and trees. It abuts Seine Lane to the north and east, Forest Road to the west and a densely planted belt of mature trees along the former railway line, known as Whistle Way, to the south east. At my site visits I saw cattle and sheep grazing in the fields, and it is clear that the site is used for farming. It has been agreed that the site is outside, but adjacent to, the designated settlement boundaries of Enderby, of which the western boundary is defined by Whistle Way.
10. The site is within the character area described as 'Thurlaston Rolling Farmland' in the Blaby District Landscape Character Assessment (BDLCA). I am satisfied that the site and surrounding area exhibit many of the key characteristics given in the Assessment, including a gently rolling landform, long open views and wide vistas, a simple land use pattern, a regular and organised field pattern with large fields bounded by well managed hedgerows and an audibly prominent transport corridor. Although the appellants have argued that the appeal site does not offer long open views and wide vistas, I consider that to the west there are very few obstacles to such views.
11. I have observed that the built development surrounding the site is noticeable in many views, particularly along Seine Lane. However, much of it is what you would expect to find in the countryside, including glasshouses, farms, riding stables and small clusters of houses, and it is generally at a much lower density than built development within a settlement. Furthermore, the surrounding

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<sup>1</sup> Microprocessor Optimised Vehicle Actuation

- fields, including the appeal site, provide further separation between the buildings and give the area an open rural character and appearance. As such, I find that the appeal site forms part of the countryside and the surrounding area does not exhibit urban fringe characteristics, as suggested by the appellants.
12. The BDLCA suggests that for Enderby the western boundary is defined by a disused railway which forms a mature wooded boundary to the settlement and provides a strong separation between the village and the wider countryside. I agree that this is the case and that the fact that it is a man made boundary does not diminish the impact that it makes in defining this edge of the settlement. The BDLCA further suggests that expansion beyond the line would need to retain the key characteristics of the village and a strong mature wooded buffer between the landscape and urban edge would need to be retained. I have not seen any other strong mature wooded area that would act as a buffer should the appeal site be developed.
  13. With regard to the proposed development for up to 244 dwellings, it appears to me that the appellants have not designed the illustrative layout in accordance with the principles stated in the Design and Access Statement (DAS), and it has not been informed by the Landscape and Visual Impact Assessment (LVIA). The DAS indicates that the development would be predominantly 2 storey properties with maximum ridge heights of about 9 to 9.7 metres and include a small number of 'feature' 3 storey properties that would have a maximum ridge height of about 11.5 metres.
  14. In response to the findings of the LVIA, which indicated a 7.5 metre ridge height, the appellants have suggested at the inquiry a planning condition to restrict the maximum ridge height to 8 metres. This calls into question the design of the proposed development that has been applied for, and I am not convinced that the proposed reduction in ridge height would be sufficient to ensure that the houses would be adequately screened by the proposed and existing planting.
  15. The appellants' landscape witness has provided an illustrative plan in his proof of evidence to show how the findings of the LVIA could be applied to the proposed development. I consider that this would result in significant changes to the illustrative layout plan Drawing No 5010 Revision B considered by the Council, particularly with regard to the relative size and location of the proposed areas of planting.
  16. At the inquiry, the appellants provided an alternative illustrative layout plan, Drawing No DM.08. They have indicated that the layout takes on board the LVIA recommendations and the principles identified on the sketch layout provided by the Council, which the Council has suggested would require the number of houses to be reduced by about 100. This has resulted in the appellants suggesting that the maximum number of houses be restricted to 200 by way of a planning condition. However, I am concerned that insufficient details have been provided to show that the proposed reduction in the number of dwellings would provide an acceptable layout that would meet the principles and recommendations in the DAS and LVIA. As such, I find that the appellants have not demonstrated that the proposal would have a high quality design and that it would have a locally inspired or distinctive character.
  17. The main connectivity with Enderby would be provided by the proposed footbridge over Whistle Way. Although there is some uncertainty over the

provision of this footbridge, due to land ownership by the Council, I am satisfied that there is a reasonable prospect that it would be able to be delivered. As such, the use of a Grampian condition would be appropriate. However, I am concerned that the alternative means of access along Forest Road and Seine Lane between the site and Enderby would not be safe, particularly as the details of footway widths, lighting, traffic calming and pedestrian crossing facilities have not all been agreed with the HA. This would mean that, as the proposal would be separated from the other development within Enderby by Whistle Way, it could form an isolated community that would fail to integrate with the existing settlement, particularly if the footbridge would not act as a safe and attractive route for pedestrians and cyclists.

18. In terms of the impact on the character and appearance of Whistle Way, the appellants have provided evidence to show that there has previously been a bridge over it at a similar location to the proposed footbridge. However, the appellants accepted that there are very little visible remains of this bridge and I have been provided with limited information regarding its design and appearance. The mature planting that lines Whistle Way provides a screen at the location of the bridge. The proposed footbridge would need to be open and lit to adequately protect the safety of those that would be likely to use it, as it would provide the main pedestrian link to Enderby. Therefore, by providing better surveillance, it would erode the rural character of Whistle Way.
19. Turning to the impact of the proposed development on the character and appearance of the site and surrounding area, I find that the landscape has a high local value due to it being accessible by footpaths V66 and V64 and from Whistle Way, which are used for publicised recreational walks. The appellants have argued that, as the relevant walking route is directed away from the site, the effect of the proposed built development would be less apparent to those following the instructions. However, I have observed that the footpaths show signs of being well used. As such, many of these users would be likely to be walking towards the site and would have clear views of the development.
20. The site is also viewed from Seine Lane and Forest Road as open fields surrounded by low, well maintained, hedgerows. I am satisfied that it has a medium susceptibility to change due to the presence of built development nearby, albeit at a relatively low density and including rural buildings. However, the proposed residential development would result in a high magnitude of change, as it would be at a higher density than the surrounding visible development, it would have a suburban character based on the details provided, and would be located on an undeveloped open area of countryside with no buildings currently on it.
21. Although the proposal would include space for planting, it would take a significant time to establish the proposed landscaping. As such, it would fail to adequately replace within an acceptable period of time the existing screening to the edge of the built development that is provided by Whistle Way. Even then, I am not convinced by the illustrative layouts provided that the proposal would not result in a significant adverse effect on the rural character and appearance of the area. This harm would be due to the loss of open land and field patterns, the disturbance to the well defined edge of settlement and an increase in lighting and domestic activity, which would be very apparent from the footpaths V66 and V64 that cross the site and from Forest Road and Seine

Lane, particularly through the gaps in the proposed landscaping required for access.

22. For the above reasons, I find on this main issue that the proposal would have a significant adverse effect on the character and appearance of the surrounding countryside. As such, it would fail to accord with Blaby District Local Plan (Core Strategy) Development Plan Document (DPD), February 2013, Policy CS2 as it would not achieve a high quality environment or respect distinctive local character and the details provided do not show that it would represent a high quality design; and Policy CS18, as it would have a significant adverse effect on the character and appearance of the landscape.

### ***Highway Safety and Convenience***

23. The proposal would provide a single vehicular access from Forest Road. The location of this access has been agreed with the HA. This would be unlikely to be any different if it is reserved for later consideration. In any event, the effect of the traffic generated by the proposed development on the surrounding highways should be considered.
24. The stage 1 safety audit was carried out using the plan detailing a right turn lane and ghost island for the proposed access. This access arrangement and footway has not been shown to be able to be satisfactorily provided within the existing land take and line of hedgerow. As a result, the appellants have agreed with the HA a proposed access consisting of a simple T-junction as shown on its revised plan Drawing No F12064/09 Rev B.
25. At the inquiry, the HA referred to 3 recorded accidents that have occurred on Forest Road near to the access that had not been taken into account in the appellants' Transport Assessment (TA). Although the appellants have argued that one of these accidents occurred in 2008, which is outside the 5 year period that has been considered, I am concerned that the level of accidents on this stretch of road is relatively high given that it is subject to a weight restriction and is currently not heavily trafficked. It is also unlit, has bends on it and the agreed widths show that it is relatively narrow.
26. The HA have not agreed on the traffic distribution that the appellants have used in the TA. However, this would not have a significant effect on the level of additional traffic that would use Forest Road, as the only vehicular access would be directly onto it. The vehicle movements at the junction of the access with Forest Road would be from future residents accessing employment, schools, leisure facilities and shops, together with deliveries and visitors to the dwellings.
27. The appellants have applied the recommendations given in Manual for Streets (MfS) 2 to the existing highways. However, traffic speeds of up to 60 mph are permitted along that part of Forest Road, even though the recorded speeds are closer to 40 mph. Although it is subject to a 7.5 tonne weight restriction, it is an existing rural road which is unlit and relatively narrow with no footway. It also provides a through route for passing traffic. Therefore, I am not convinced that the standards in MfS 2 should be applied to Forest Road, unless its character is materially changed. Such changes would need to include a speed restriction, a footway, drainage and street lighting, which have not been designed in detail and would be likely to cause significant harm to its rural character.

28. Based on the above, I have been given insufficient evidence to show that the likely increase in traffic from the development, including a significant number of vehicles turning into, or out of, the proposed access during the morning and evening peak hours, would not have a harmful effect on highway safety on Forest Road.
29. With regard to Seine Lane, it is apparent to me at the inquiry that there is uncertainty as to whether it would be lit and what level of traffic calming would be provided. The stage 1 safety audit was undertaken on a design that included traffic calming measures. The appellants have indicated that Seine Lane would provide an alternative means of pedestrian access to Enderby village centre to that provided by the footbridge. This would include at least part of it being used as a 'shared surface'. I accept that it is currently used by pedestrians and horses and I have not been given any details of recorded accidents on it. However, I am concerned that the lack of any detailed design as to what accesses would be provided onto it from the development and the amount of traffic calming or lighting, mean that there is little evidence to show that its increased use would not create a potential risk to highway safety.
30. Although the SHLAA<sup>2</sup> has indicated that there would be no fundamental transport reasons why the part of the site abutting Seine Lane should be excluded from consideration, it also suggests that consideration in more detail would be required which might lead to it being viewed less favourably. I find on this main issue that I have been given insufficient details that have been agreed to show that the proposal would not have an unacceptable harmful effect on highway safety and convenience. This would also be an important consideration if access is taken as a reserved matter.

### ***Accessibility by other means of Transport to the Car***

31. The HA has accepted that the proposal would provide the required level of access by bicycle and pedestrian access to buses and schools, shops and other facilities within Enderby by the provision of the proposed footbridge and improvements to the bus service, preferably by a new service into the development. The footbridge would be secured by a planning condition and the bus service improvements would be financed for 5 years by way of a planning obligation in a Section 106 Agreement.
32. The appellants' transport expert has argued that the footbridge would not be necessary if suggested improvements would be made to Forest Road, including the provision of a footway, and Seine Lane. There is insufficient detail that has been agreed with the HA to satisfy me that these routes would be feasible or safe to use. As such, the satisfactory accessibility of the site is dependent upon the provision of a suitable footbridge over Whistle Way that would need to be lit and overlooked for security.
33. I conclude on this main issue that the proposal would represent sustainable development with regard to its accessibility by other means of transport to the car by providing a footbridge over Whistle Way and improvements to the bus service. As such, it would accord with Core Strategy Policy CS10, as it would be located where there is frequent, accessible and comprehensive public transport links.

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<sup>2</sup> Strategic Housing Land Availability Assessment

### **Other Matters**

34. In considering the need for the proposed housing, I have taken account of the Government's aim, given in paragraph 47 of the Framework, to boost significantly the supply of housing. In this respect, the Core Strategy has recently been adopted in February 2013, having been found to be sound by the Examination Inspector.
35. Core Strategy Policy CS5 identifies Enderby as a 'Larger Central' village with a minimum housing requirement of 155. The appellants have not contested the Council's claim that the number of houses built and committed in this village is some 156. The proposal would result in the minimum requirement for Enderby being exceeded by a significant amount. As such, I am concerned that, by allowing this appeal, it would materially harm the delivery of future housing in accordance with the recently established Vision and Strategy of focussing new housing towards the Principal Urban Area (PUA) of Leicester, including Lubbethorpe Sustainable Urban Extension under Policy CS3, and preventing excessive development in the non-PUA, given in Policy CS1.
36. Core Strategy Policy CS5 suggests that detailed locations of proposed developments will be determined through the Allocations, Designations and Development DPD. The Council has confirmed that this DPD is scheduled to be submitted for Examination in August 2014. I have been given nothing to indicate that it would include a significant increase in development at Enderby. The inclusion of part of the appeal site as one of the sites considered in the SHLAA<sup>3</sup> carries very limited weight in this appeal, given that the SHLAA pre-dates the Core Strategy.
37. The appellants have referred to the following benefits that the proposal would provide in relation to the 3 dimensions to sustainable development given in paragraph 7 of the Framework. With regard to the social role, the appellants have agreed to 30% of the houses being affordable housing, secured by a planning obligation in the S106 Agreement. This would be greater than the 25% minimum requirement given in Core Strategy Policy CS7. However, I have limited information to show that a developer would be willing to acquire the site at an acceptable price to develop it for this level of affordable housing, a footbridge and a reduced number of dwellings within a reasonable timescale after the grant of planning permission.
38. In terms of the economic role, the additional employment during construction is a material consideration, but this would be the case with any built development and there is limited evidence to show when the site would be likely to be developed should planning permission be granted. The economic support that the additional residents would provide for the services and facilities within Enderby has not been substantiated, given that there is no evidence to show that they are failing at present.
39. The appellants have supported the environmental role by the findings of their Habitat Survey & Protected Species Assessment, which suggest that the proposed features such as the balancing pond and planted areas would help sustain protected species, including bats and reptiles, which are shown to currently be absent on the site. However, I have not been provided with a definitive layout to show how this would be successfully achieved within the

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<sup>3</sup> Strategic Housing Land Availability Assessment

housing development, and I have found that there would be serious harm to the environment due to the loss of this rural landscape to the proposed housing. Therefore, I find that the above alleged benefits, and the additional boost in housing that the proposal would be likely to provide, would not outweigh the harm that I have found that it would cause and would not make it a sustainable development in accordance with the Framework.

40. The appellants have referred to previous appeal decisions in support of this appeal proposal, including one recently determined involving development at Whetstone. I find that the development permitted in these other appeals involves significantly different circumstances from those of the current appeal, particularly with regard to the number of houses proposed, the relative location of the site, or the date of adoption of the development plan. Whilst I have noted the points raised, no direct comparisons can be made and I have determined this appeal on its own individual planning merits in the light of prevailing policies and guidance.

### ***Planning Obligations***

41. At the inquiry, the appellants submitted an engrossed Section 106 Agreement. The planning obligations would secure 30% affordable housing, contributions towards a bus service, bus passes, travel packs, highway improvements, healthcare, libraries, police and the maintenance of the proposed footbridge and public open space that would form part of the scheme. I have considered the evidence provided in writing and at the inquiry, including that from Leicestershire County Council regarding contributions towards libraries and from Leicestershire Police regarding contributions towards policing services and facilities, to demonstrate that the obligations meet the tests in Community Infrastructure Levy Regulation 122.
42. Although the affordable housing obligation would secure a greater percentage than the minimum required in Core Strategy Policy CS7, I have taken account of this additional provision of affordable housing in my determination of this appeal. The contributions towards public transport, including the bus service and bus pass, and highway improvements, including at the A482/Leicester Lane signal junction, are necessary to overcome some of the reasons for refusal.

### ***Overall Conclusions***

43. For the reasons given above, I have found that the proposal would have a significant adverse effect on the character and appearance of the surrounding countryside; would have a harmful effect on highway safety and convenience; and would only represent sustainable development with regard to its accessibility by other means of transport to the car by the provision of a footbridge and bus service improvements.
44. Whilst I accept that there is insufficient evidence to show that, on transport grounds, the residual cumulative impacts of the proposal would be severe, the harm to transport combined with the other harm that I have found that it would cause would outweigh the benefits of the proposal. As such, it would fail to accord with Core Strategy Policy CS24, as it would not represent sustainable development; and Policy CS18, as the need to retain the countryside in this case outweighs the need to provide new development. It would also fail to represent sustainable development in accordance with the Framework.

Therefore, having regard to all matters raised, I conclude that the appeal should fail.

*M J Whitehead*

INSPECTOR

## **APPEARANCES**

### FOR THE LOCAL PLANNING AUTHORITY:

Simon Stanion	Solicitor/Partner, Marrons Shakespeares
He called	
Rob Thornhill BSc(Hons) DipSP MA	Principal Planning Policy Officer, Blaby District Council
Kingsley Cook	Team Manager, Transport Development Control, Leicestershire County Council
BEng(Hons) CEng MICE	
Ian Davies BSc(Hons) DipTP MRTPI	Team Leader, Development Management, Blaby District Council
Ian Grimshaw BA(Hons) MA MSc CLA	Director, The Environment Partnership Ltd

### FOR THE APPELLANT:

Richard Humphreys	QC, instructed by Lance Wiggins, Landmark Planning
He called	
C Bancroft AdvDipTS FCILT	Director, Bancroft Consulting Transport Consultancy Services
Donald James Munro DipLA CMLI	Director and Principal of the Practice, Munro + Whitten Ltd
Lance Stewart Wiggins DipUP MRTPI	Associate Director, Landmark Planning Ltd

### FOR THE RULE 6 PARTY (LEICESTERSHIRE POLICE):

Thea Osmund-Smith	Of Counsel
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### FOR THE RULE 6 PARTY (LEICESTERSHIRE COUNTY COUNCIL):

Andrew James	Solicitor and Head of Legal Services, Leicestershire County Council
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### INTERESTED PERSONS:

Alan West	Councillor, Narborough Parish Council
Jackie Dickinson	Councillor, Leicestershire County Council, Blaby District Council and Enderby Parish Council

## **DOCUMENTS SUBMITTED AT THE INQUIRY**

- 1 Council's letter of notification and list of those notified, submitted by the Council on 12 November
- 2 E-mail, dated 8 November 2013 from Andrew Senior regarding Lubbethorpe Section 106 agreement, submitted by the Council on 12 November
- 3 Letter, dated 11 November 2013, from the Group Manager responsible for Blaby District Council's Asset Management Department regarding the proposed footbridge over Whistle Way, submitted by the Council on 12 November
- 4 High Court Judgment of William Davis Limited and Jelson Limited against the Secretary of State and North West Leicestershire District Council, submitted by the Council on 12 November

- 5 Local Highway Authority Proof of Evidence for Public Transport and Travel Plan Contributions, submitted by the Council on 12 November
- 6 Opening Statement on behalf of the appellants, submitted by the appellants on 12 November
- 7 Opening Statement of Blaby District Council, submitted by the Council on 12 November
- 8 Statement of Common Ground on Highway Related Reasons for Refusal, submitted by the appellants on 12 November
- 9 Extract from Blaby District Landscape Character Assessment, submitted by the appellants on 12 November
- 10 Note from the appellants regarding the 5 year housing land supply, submitted by the appellants on 13 November
- 11 Statement of Jackie Dickinson, submitted and read out at the inquiry by Jackie Dickinson on 13 November
- 12 Statement of Alan West, submitted and read out at the inquiry by Alan West on 13 November
- 13 Detailed Reports of Additional Accidents on Forest Road, submitted by the Council on 13 November
- 14 Coloured extract from Blaby District Landscape Character Assessment, submitted by the appellants on 14 November
- 15 Extract from Manual for Streets 2, submitted by the appellants on 14 November
- 16 Note from Mrs S Shropshire-Boddy regarding a footbridge over Whistle Way, submitted by the appellants on 14 November
- 17 Brief Closing Statement on behalf of The Police and Crime Commissioner for Leicestershire, submitted by the Council on behalf of Leicestershire Police on 15 November
- 18 Letter, dated 14 November 2013, from John H Smith regarding the footbridge over Whistle way, submitted by the appellants on 15 November
- 19 Extract from the superseded Planning Policy Statement 7, submitted by the appellants on 15 November
- 20 Extracts from the Archaeological Desk Base Study showing past plans of the area, submitted by the appellants on 15 November
- 21 Aerial photograph of the area of the site from the web site of Leicestershire Villages, submitted by the appellants on 15 November
- 22 Letter from Shakespeares, dated 14 November 2013, regarding the proposed footbridge over Whistle Way, submitted by the appellants on 15 November
- 23 Draft of the Section 106 Agreement, submitted by the Council on 15 November
- 24 Suggested Conditions, submitted by the Council on 15 November
- 25 Suggested Site Visit itinerary, submitted by the Council on 15 November
- 26 Copy of letter, dated 5 December 2013, from Marrons Shakespeares to Landmark Planning, submitted by the Council on 6 December
- 27 Application for Costs on behalf of Blaby District Council, submitted by the Council on 6 December
- 28 Copies of e-mails, dated 2 December, confirming agreement with the carriageway width measurements and clarifying the overall position, submitted by the appellants on 9 December
- 29 Copies of e-mails, dated 2 December, issuing copies of latest access and footway drawings, submitted by the appellants on 9 December
- 30 Copy of e-mail from Leicestershire County Council to Bancroft Consulting, dated 4 December, confirming suitability of T-junction layout and principle of footway alignment, submitted by the appellants on 9 December

- 31 Draft Section 106 Agreement, submitted by the appellants on 9 December
- 32 Revised Suggested Conditions, submitted by the Council on 9 December
- 33 Note regarding the appeal application and copy of another application, submitted by the appellants on 9 December
- 34 Note regarding the footbridge, submitted by the appellants on 9 December
- 35 Closing submissions on behalf of Blaby District Council, submitted by the Council on 9 December
- 36 Closing Statement on behalf of the appellants, submitted by the appellants on 9 December
- 37 Skeleton Response to Costs Application on behalf of the appellants, submitted by the appellants on 9 December
- 38 Signed and dated Section 106 Agreement, submitted by the appellants on 9 December

### **PLANS SUBMITTED AT THE INQUIRY**

- A Copy of Illustrative Layout Plan Drawing No 5010 Revision B, submitted by the appellants on 12 November
- B Copy of Plan Drawing No F12064/12 giving measured widths of Forest Road, submitted by the appellants on 13 November
- C Plan of agreed routes in Enderby to drive along, submitted by the Council on 13 November
- D Copy of Figures 8, 11 and 12 from Blaby District Landscape Character Assessment, submitted by the appellants on 14 November
- E Sketch plan of suggested layout for development, submitted by the Council on 14 November
- F Extract of 1906 plan of the area, submitted by the appellants on 15 November
- G Extract of 1982 plan of the area, submitted by the appellants on 15 November
- H Historical Maps showing the footbridge over Whistle Way, submitted by the appellants on 15 November
- I Plan of illustrative layout with a suggested reduction in houses, submitted by the appellants on 15 November
- J Amended Drawing No F12064/12 of agreed carriageway widths along Forest Road, submitted by the Council on 2 December
- K Drawing No F12064/03 Rev C: Proposed Footway along Forest Road, submitted by the appellants on 9 December
- L Drawing No F12064/09 Rev B: Proposed Simple T-Junction Access at Forest Road, submitted by the appellants on 9 December
- M Drawing No F12064/12 showing final agreed existing carriageway widths along Forest Road, submitted by the appellants on 9 December
- N Alternative Layout Plan, Figure DM.08, submitted by the appellants on 9 December



# Appeal Decision

Hearing held on 5 December 2012

Site visit made on 5 December 2012

**by Kay Sheffield BA(Hons) DipTP MRTPI**

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

**Decision date: 14 February 2013**

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**Appeal Ref: APP/F2415/A/12/2179844**

**Land north of Bill Crane Way, Lutterworth, Leicestershire.**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with a condition subject to which a previous planning permission was granted.
  - The appeal is made by William Davis Limited against the decision of Harborough District Council.
  - The application Ref 12/00613/VAC, dated 26 April 2012, was refused by notice dated 4 July 2012.
  - The application sought outline planning permission for residential development with associated infrastructure, public open space and provision of vehicular and pedestrian access without complying with a condition attached to planning permission Ref 11/00117/OUT, dated 23 January 2012.
  - The condition in dispute is No 3 which states that: The development hereby approved shall be carried out in general accordance with the plan "Indicative Site Layout B" (Drawing Ref: 10-116 SK09).
  - The reason given for the condition is: To ensure a satisfactory form of development that mitigates impact on the character and appearance of the countryside and the Conservation Area settlement of Bitteswell and to accord with Policies IN/1, EV/5, EV/11 and EV/16 of the Harborough District Local Plan and the aims and objectives of PPS1 "Delivering Sustainable Development", PPS3 "Housing" and PPS5 "Planning for the Historic Environment".
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## Decision

1. The appeal is allowed and planning permission is granted for residential development with associated infrastructure, public open space and provision of vehicular and pedestrian access at land north of Bill Crane Way, Lutterworth, Leicestershire in accordance with the application Ref 12/00613/VAC dated 26 April 2012, without compliance with condition number 3 previously imposed on planning permission Ref 11/00117/OUT dated 23 January 2012 but subject to the other conditions imposed therein, so far as the same are still subsisting and capable of taking effect and subject to the following new condition:

The development hereby approved shall be carried out in general accordance with the plan entitled Indicative Site Layout A 10-116 SK08 with regard to the extent of the area of the site to be used for the erection of housing.

## Procedural matters

2. The outline planning permission for the residential development of the appeal site restricted the area which could be built upon in order to mitigate the effect of the development on the character and appearance of the countryside and the Bitteswell Conservation Area. In imposing the condition which placed this

restriction on the development the Council relied on policies of the Harborough District Local Plan, 2001 (the LP) and various Planning Policy Statements (PPS) in force at the time. However, subsequent to the granting of the outline permission the Council adopted the Harborough District Local Development Framework Core Strategy, 2011 (the CS) and whilst the Council's reasoning behind the refusal of the application to vary the condition reflected the reason for its initial imposition, it relied on policies of the CS which has replaced most of the LP.

3. In addition the PPS's cited by the Council in the reason for imposing the condition on the outline permission have been cancelled by the National Planning Policy Framework, 2012 (the Framework). The Framework reaffirms the statutory duty to determine planning applications and appeals in accordance with the development plan unless material considerations indicate otherwise. It also indicates that for 12 months from the date of its publication decision-takers may continue to give full weight to relevant policies adopted since 2004 even if there is a limited degree of conflict with the Framework. Since the Council relied on policies of the CS in refusing permission and this was only adopted in 2011 full weight can be attributed to them in the determination of the appeal.
4. Therefore, in determining the appeal, regard has been had to extant policies of the LP, policies of the CS and the guidance in the Framework.
5. On 11 December 2012 the Government made an Order in Parliament to revoke the Regional Strategy for the East of England with effect from 3 January 2013. Whilst the Regional Strategy forms part of the development plan, none of its policies have been relied on in evidence by the parties. I am therefore satisfied that the revocation of the Regional Strategy does not alter my conclusions in respect of the appeal.

### **Main Issue**

6. The main issue is the effect the variation of the condition to allow a greater part of the site to be built upon would have on the character and appearance of the countryside and whether it would preserve or enhance the setting of the Bitteswell Conservation Area.

### **Reasons**

#### *The appeal site and its surroundings*

7. The appeal site is undeveloped land in the open countryside but lies at the edge of the built development of Lutterworth. The southern and eastern boundaries of the site are marked by Bill Crane Way and Leicester Road respectively and to the north and west are open fields, Bitteswell Brook forming the western boundary. To the south of the site is a modern residential estate set back from the carriageway of Bill Crane Way behind landscaped verges. To the south west lies the settlement of Bitteswell, a large proportion of which is designated as a Conservation Area and within which the Church of St Mary, a Grade II\* Listed Building, is located.
8. The appeal site currently consists of three open fields with the ground levels falling in an east to west direction across the site, dropping down towards Bitteswell Brook. The extent of the built development as allowed by the condition which is in dispute is restricted to the largest of these fields which

would leave land at the western end open. The variation of the condition proposes extending the built development into part of this open area which would bring the development closer to Bill Crane Way along a greater part of the site frontage with the highway and would reduce the distance between the built development and Bitteswell Brook.

### *Planning Policy*

9. The Council acknowledged that at the time it took the decision to refuse to vary the condition, it did not have a five year supply of housing land. However, recently published figures confirmed that at 30 September 2012 a supply in excess of five years and including a 5% buffer as required by paragraph 47 of the Framework was available.
10. Nevertheless Policy CS2 of the CS requires at least 700 dwellings to be provided in Lutterworth over the plan period. In addition Policy CS14 of the CS indicates that in the provision of new housing, any extensions to the settlement boundary will take place to the north of the town. Whilst the appellant contended that there would be a shortfall in the number of dwellings, the evidence does not indicate that the target for Lutterworth would not be met. Notwithstanding this, there is no reason to resist development which may result in this figure being exceeded, particularly in light of the guidance in the Framework which seeks to boost significantly the supply of housing.
11. The use of the appeal site for residential development has been established by the outline planning permission and although the Council has an adequate supply of housing land, it is considered that there are no policy reasons with regard to housing land supply to resist an increase in the number of dwellings by increasing the area of the site which could be built upon.
12. The coalescence of Bitteswell with Lutterworth has evidently been of long standing concern to the Council and extant Policy EV/3 of the LP identifies an area between the settlements within which development that would adversely affect the open character of the land or result in a reduction in the existing open land separating them would be resisted. The western end of the appeal site abuts the northern boundary of the separation area. Policy CS14 of the CS maintains the principle of a separation area and states in the justification of the policy that the proximity of Lutterworth and Bitteswell demands an approach which in seeking appropriate location for additional housing development, avoids coalescence.
13. In the Council's Areas of Separation Review, 2011 consideration has been given to the designation of the separation area in the light of the policy context set by the CS. This document is a technical report which will provide evidence to help inform the preparation of the Council's Allocations Plan and it is acknowledged that as part of this process the extent of the separation area may alter.
14. However, the likely location of new development has been taken into account in assessing where existing separation may be threatened. Although the land to the south of the appeal site, which is currently within the separation area, and that to the west are both recommended in the report to be considered for allocation within an Area of Separation, the appeal site has not been identified for inclusion. In addition the extent of the built development proposed would be offset from the boundaries of the site with the separation area ensuring

open land would be directly adjacent to it. Although the extent of the separation area will be subject to further consideration as part of the development plan, a need to keep any part of the appeal site free from development has not been highlighted in the Review and given that open space retained within the site would continue to support the Council's aim to ensure that the coalescence of Lutterworth and Bitteswell does not take place, it is considered that there is insufficient reason to warrant dismissal of the appeal on these grounds.

*Effect on character and appearance*

15. At present there are clear views from the site and its immediate surroundings towards Bitteswell, its Conservation Area, the church and the mature trees which form a prominent feature of the Conservation Area and the surrounding landscape. However, these views would change and become more restricted by the development allowed by the outline permission and it is therefore the additional effect of the increased development being sought by the variation of the condition which needs to be assessed.
16. The appeal site is reviewed in the Council's Lutterworth and Broughton Astley Landscape Character Assessment and Landscape Capacity Study, 2011 which will be used to inform the Council's Local Development Documents. It gives a detailed analysis of the sensitivity of the land around the edge of Lutterworth and assesses the capacity to accommodate future development, particularly residential. Although it may have some bearing on further consideration given by the Council to the extent of the separation area in the preparation of the Allocations Plan, limited weight can be attributed to it in the determination of this appeal.
17. The study identifies the part of the appeal site on which development is allowed by the outline permission as having a medium capacity for development and the land on which the additional built development is being sought as having a low capacity. The study recognises that there are important views from Bill Crane Way towards Bitteswell which show the open countryside to the north west and the separation between Lutterworth and Bitteswell. It also considers that the development of this land would not relate well to the existing residential development on the northern edge of Lutterworth or to Bitteswell and would compromise the separation between the two settlements. The study concludes that given the prominent nature of the slopes within the parcel, their visibility from the surrounding area and their importance in the setting of Bitteswell it is not considered appropriate to develop this area of land.
18. However these comments are made in relation to an area of land which stretches along Bitteswell Brook and includes part of the separation area set out in the Areas of Separation Review, 2011. The appeal site forms only a small part of its eastern edge and development on it would be seen not only in the context of existing built development but also in the context of the development allowed by the outline permission which itself will restrict views of the open countryside to the north west and will be highly visible from the surrounding area.
19. The main effect of the proposed increase in the area of the built development on the surrounding area would be in views from Bill Crane Way looking in a westerly direction from its junction with Leicester Road. The extent of the built development being sought would bring the development closer to the frontage

with Bill Crane Way which would reduce the extent of the view of Bitteswell, its church and the Conservation Area. However, the development would relate well to both the existing and proposed developments and although views towards Bitteswell would be reduced, when these are considered in the light of the restriction which would be placed on them by the development already permitted it is considered any additional harm which may be caused to the character or appearance of the area or the setting of the Conservation Area would not be significant.

20. The northern boundary of the appeal site is marked by a mature hedge and it is proposed that this would be supplemented by a belt of tree planting which would break up views of the built development from this direction. In addition the properties would be seen against the backdrop of the existing residential development to the south. Also in views from Bitteswell the properties, which would be set on lower ground, would be seen against the backdrop of the development allowed by the outline permission as well as in the context of existing development. Although the distance between the development and the Bitteswell Conservation Area would be reduced, ample separation would be retained to ensure that the effect of the additional built development would not cause harm to its setting.
21. Similarly from the south, a relatively wide section of open land would remain on the western boundary of the site which would allow views through to the open countryside beyond. Although the outline permission would allow a greater expanse of open space, it is considered that the reduction as part of the appeal proposal would still ensure that adequate separation between the two settlements would remain and that the setting of the Conservation Area and Bitteswell Brook would be preserved, particularly in views from the public footpath which crosses the western end of the appeal site on a line parallel to the brook.
22. In addition, the permission for the development of the site was granted in outline and although the submitted drawings showed an indicative layout of the site, this is a matter which, together with the design of the dwellings, requires approval. Although the Council is of the opinion that the design and layout of the development would not satisfactorily mitigate its effect on its surroundings, there is no definitive evidence that the detailed design of the overall scheme would not ensure that views of the open countryside and towards the Conservation Area from significant viewpoints both outside the site and from within the development would not be treated sensitively.
23. The evidence therefore leads me to conclude that the effect of the additional built development would not be detrimental to the character and appearance of the countryside and would preserve the setting of the Bitteswell Conservation Area, in accord with Policies CS11, CS14 and CS17 of the CS which seek to ensure development respects the context in which it is taking place.

#### *Unilateral Undertaking*

24. A signed Unilateral Undertaking (UU) under Section 106 (s106) of the Town and Country Planning Act, 1990 was submitted to the hearing. It covers the same range of contributions as the s106 agreement in respect of the outline planning permission although the level of the contributions has been adjusted to reflect the increase in the number of dwellings as a consequence of the increased area to be developed.

25. The UU would not replace the s106 agreement already in place thus ensuring that contributions would be required whichever permission was implemented. However, its wording makes some matters dependent on the UU being found to be compliant with the tests set out in Regulation 122 of the Community Infrastructure Levy Regulations, 2010 (the CIL Regulations). These tests are whether the UU is necessary to make a development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind to the development.
26. The UU covenants in favour of the Council contributions in respect of the provision and maintenance of open space as part of the development and towards allotments, cemetery provision, policing services, medical facilities, recycling, community facilities and the provision of 30% of the units as affordable housing. The UU also covenants in favour of the Leicestershire County Council financial contributions towards education, public transport measures including bus stops, travel packs and bus passes, and library provision.
27. Whilst the Council and the County Council confirmed that the terms of the submitted UU were acceptable, the appellant questioned whether the contribution in respect of policing was compliant with the tests set out in the CIL Regulations. The appellant suggests that there is no evidence that the proposed development would result in a need for increased police resources. It is also argued that there should be no automatic assumption that the development should bear the cost of the provision of additional policing since the anticipated growth of such costs in this area could have been budgeted for and the new residents will generate Council Tax revenue.
28. However, it is recognised by both the County Council and the Council's guidance<sup>1</sup> that a contribution towards policing could be triggered if there is a need arising from the development. The guidance therefore establishes the principle of a contribution although there needs to be clear evidence that the level of contribution would be justified having regard to the tests set out in the CIL Regulations.
29. The written evidence submitted by Leicestershire Police detailed the impact the proposed development would have on policing, forecasting the number of potential incidents and the anticipated effect this would have on staffing, accommodation, vehicles and equipment. In view of the requirement of national planning policy to create safe and accessible environments where crime and disorder, and the fear of crime, do not undermine quality of life, it is considered that, on the evidence before me, a contribution towards policing is necessary to make the development acceptable in planning terms.
30. Whilst the additional staff, accommodation, vehicles and equipment detailed by the Police could not be regarded as being for the exclusive use of the development, they would be necessary to provide for the effective policing of and to attend incidents on the site. In addition the number of staff and level of resources required to police the development has been based on the number of incidents estimated to be generated by the site. In respect of policing services the UU makes provision for the payment of £426 per dwelling and this is the figure sought by Leicestershire Police. The level and range of the mitigation

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<sup>1</sup> Leicestershire County Council Statement of Requirements for Developer Contributions in Leicestershire, 2006 and Harborough District Council Planning Obligations Developer Guidance Note, 2009.

would therefore appear to be directly related to the development and also to be fairly and reasonably related in scale and kind to it.

31. I have had regard to the fact that the s106 Agreement, dated 18 January 2012, in respect of the existing outline planning permission makes provision for a contribution of £606 per dwelling for policing. The appellant has indicated that this agreement was concluded under time pressure and the police have had a change in policy since, under which only major developments would be targeted for contributions. However, the report also states that contributions would be pursued where a significant impact on policing is foreseen and can be quantified. It would appear that the most relevant implication of the change in policy is that the contribution required by the police in respect of this appeal was reduced following quantification of the anticipated effect of the development. This affirms my view that the UU before me meets the CIL tests.
32. Reference has been made to a number of appeal decisions where it has been concluded that the police contributions failed to meet the tests and others where a contrary conclusion has been reached. However, I am not aware of the scope of the evidence provided in these cases and a comparison with the appeal cannot therefore be made.
33. On the basis of the evidence before me, therefore, I am satisfied that the contribution towards policing set out in the UU is necessary, directly related to the development and fairly and reasonably related to it in scale and kind – as required by the tests set out in the CIL Regulations. I conclude the same with regard to the elements of the UU which are not in dispute and I have taken the UU into consideration in reaching my decision.

### **Conclusions**

34. For the reasons given above, and having had regard to all other matters raised, it is concluded that the variation of the condition to allow a greater part of the site to be built upon would not be detrimental to the character or appearance of the countryside and would preserve the setting of the Bitteswell Conservation Area. The appeal is therefore allowed and planning permission is granted.

*Kay Sheffield*

Inspector

## **APPEARANCES**

### FOR THE APPELLANT:

Mark Flood BA(Hons) DipTP MRTPI	Insight Town Planning Limited.
Simon Roper-Pressdee BSC(Hons) PGCert MIHBC PIFA	Senior Associate Director, CgMs Consulting.
Phil Rech BA(Hons) BPhil MLI	Director, FPCR Environment and Design Limited.
Elizabeth Marjoram LLB	Partner, Bird, Wilford and Sale Solicitors.

### FOR THE LOCAL PLANNING AUTHORITY:

Nicholas White	Planning Officer.
Adrian Eastwood MRTPI	Development Control Manager.

### INTERESTED PERSONS:

Andrew Tyrer BS(Hons) MRTPI	Development Contributions Officer, Leicestershire County Council.
John Prendergrast	Principal Solicitor, Leicestershire County Council.
Steve Kettle	Modernising Services Manager, Leicestershire County Council.

## **DOCUMENTS**

- 1 Council's notification letter dated 1 November 2012 and circulation list regarding the arrangements for the hearing.
- 2 Statement submitted by Andrew Tyrer on behalf of Leicestershire County Council.
- 3 Signed Section 106 Unilateral Undertaking.
- 4 Plan showing the boundary of the Bitteswell Conservation Area.
- 5 Planning Obligations Developer Guidance Note, 2009.
- 6 Assessment of Local Community Provision and Developer Contribution, 2010.
- 7 Decision letter in respect of Appeal Ref: APP/T2405/A/10/2125563, Land off Huncote Road, Stoney Stanton, Leicestershire, LE9 4DH.
- 8 Areas of Separation Review, December 2011.



Department for  
Communities and  
Local Government

Mr R J Gardner  
GVA Grimley Ltd  
3 Brindley Place  
BIRMINGHAM  
B1 2JB

Our Ref: : APP/X2410/A/12/2173673  
Your Ref: Jelson Barrow on Soar

14 May 2013

Dear Sir,

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78  
APPEAL BY JELSON HOMES  
LAND AT MELTON ROAD, BARROW UPON SOAR, LEICESTERSHIRE, LE12 8NN  
APPLICATION REF: P/10/1518/2**

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Inspector, Keith Manning BSc (Hons) BTP MRTPI, who held a public local inquiry on 7 days between 9 October 2012 and 16 January 2013 into your clients' appeal against the refusal of Charnwood Borough Council ("the Council") to grant outline planning permission for residential development at land at Melton Road, Barrow Upon Soar, Leicestershire, LE12 8NN, in accordance with application ref: P/10/1518/2.
2. On 18 June 2012, the appeal was recovered for the Secretary of State's determination, in pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act 1990, because it involves a proposal over 150 units on a site of more than 5 ha which would significantly impact on the Government's objective to secure a better balance between housing demand and supply and create high quality, sustainable mixed and inclusive communities.

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

3. The Inspector recommended that the appeal be allowed and planning permission granted. For the reasons given below, the Secretary of State agrees with the Inspector's conclusions and recommendations. A copy of the Inspector's report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

**Matters arising following the close of the inquiry**

4. Nicky Morgan MP wrote to the Planning Inspectorate on 2 April 2013 to point out that the Council's Cabinet would be considering their draft Core Strategy document at a meeting on 11 April with a view to approving it for consultation, and the Parish Council

Jean Nowak, Decision Officer  
Planning Casework Division  
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wrote to the Secretary of State on 7 May 2013 drawing attention to the revocation of the *East Midlands Regional Plan 2009 (RS)* and to the Council's approval of the Core Strategy for public consultation. Copies of this correspondence can be obtained by written application to the address at the bottom of the first page of this letter, and the points raised are covered in paragraph 5 below.

### **Policy considerations**

5. 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 this case, following the revocation of the RS with effect from 12 April 2013, the Development Plan consists of the saved policies of the Charnwood Local Plan 1991-2006. The Secretary of State does not consider that the revocation of the RS raises any matters that would require him to refer back to the parties for further representations prior to reaching his decision on this appeal, and he is satisfied that no interests have thereby been prejudiced. He has also had regard to the fact that the Council is progressing work on its Core Strategy. However, as that is at an early stage in its preparation, he gives it little weight.
6. Other material considerations which the Secretary of State has taken into account include the National Planning Policy Framework (The Framework); *Technical Guidance to the National Planning Policy Framework* (March 2012); Circular 11/1995: *Use of Conditions in Planning Permission*; and the *Community Infrastructure Levy (CIL) Regulations 2010* as amended.

### **Main issues**

7. The Secretary of State agrees with the Inspector that the main issues in this case are those identified by the Inspector at IR219.

#### Housing land supply

8. The Secretary of State agrees with the Inspector that, for the reasons given at IR220-221, the presumption in favour of sustainable development set out in paragraph 14 of the Framework is engaged and the failure to demonstrate a 5 year supply of deliverable housing sites is a matter to which substantial weight must be accorded.

#### Sustainability

9. For the reasons given at IR222-232, the Secretary of State agrees with the Inspector's conclusion at IR233 that the appeal site's basic credentials in terms of natural resource conservation, potential for good design, choice of sustainable transport modes and scope for future improvement of public transport in response to demand are highly conducive to development of the type proposed. Like the Inspector (IR234), the Secretary of State recognises that other considerations impinge on the overall sustainability of the site, and he goes on to consider those individually below.

#### Highway safety

10. The Secretary of State notes (IR236) that the Highway Authority has not objected to the appeal proposals but that the junction of Grove Lane with Sibley Road/South Street does not provide the visibility to the left that, ideally, it should. Having carefully

considered the evidence summarised by the Inspector at IR235-243, the Secretary of State agrees with him (IR244) that it is appropriate to consider the matter of the safety of the Grove Lane junction in the round. He therefore agrees with the Inspector (IR244-245) that, despite its perceived deficiency in respect of visibility to the left, the junction operates safely and should not trigger prevention of the proposed scheme unless the impact of the proposed development on its continued safe operation would be demonstrably severe in the sense intended by paragraph 32 of the Framework.

11. Accordingly, for the reasons given at IR247-248, the Secretary of State agrees with the Inspector that it would not be unreasonable to conclude that the safety of the junction would not be materially diminished by the extra traffic from the proposed development. He also agrees with the Inspector (IR249) that, on the basis of the evidence seen by the Inspector, there would seem to be no reason why safety should be reduced for pedestrians or cyclists. Overall, therefore, he agrees (IR250) that the balance of evidence points to a judgement that highway safety would not be materially compromised by the appeal scheme and that only limited weight should be afforded to the perception of any such risk.
12. With regard to the site access itself (IR251-253), the Secretary of State agrees with the Inspector that there is no reason to disagree with the Highway Authority with regard to the need for a separate emergency access (IR252); and that no weight should be accorded to any potential deficiencies in the forward visibility to the access roundabout from the north east (IR253).

#### Traffic circulation in Barrow Upon Soar

13. Having regard to the Inspector's consideration of the traffic circulation issues arising from the concentration of traffic onto the listed Barrow Road bridge, and the periodic inundation of the alternative route via Slash Lane placing more pressure on the bridge when such flooding occurs (IR254-256), the Secretary of State agrees with the Inspector at IR257 that the key question is whether the extra traffic impact of the proposed development on flood days would be so severe as to render it untenable. Taking account of the Inspector's deliberations at IR258-264, including the appellant's off-site proposals to improve capacity through traffic management measures and the fact that the highway authority is satisfied with them, the Inspector concludes that he has seen no cogent evidence to suggest that the position would be untenable; and the Secretary of State sees no reason to disagree with that conclusion.

#### Flood risk

14. Like the Inspector, the Secretary of State considers that, despite the apprehension of local residents, the proposed development should not make matters worse in any significant way for the existing population (IR265-267) and may possibly improve the position for some existing householders (IR274). The Secretary of State also agrees with the Inspector (IR268) that, although the evidence produced so far has been sufficient to satisfy the Environment Agency that relevant objectives could be met, if more detailed investigation subsequently shows that they could not actually be satisfied, the development would not be able to proceed. Overall, for the reasons given at IR269-274, the Secretary of State agrees with the Inspector's conclusions at IR275-276 that there is no significant conflict with the intentions of the development plan or the Framework in respect of flood risk, and that any potential impact on foul

drainage and risk of surcharge arising from flooding of Fishpool Brook can be addressed by the imposition of conditions.

### Infrastructure

15. Like the Inspector (IR301), the Secretary of State appreciates the local perception in the community of growth and consequent pressure. Nevertheless, having carefully considered the Inspector's deliberations on infrastructure provision at IR277-300 (and taking account of his conclusions on the terms of the planning obligation at paragraph 20 below), the Secretary of State agrees with the Inspector at IR 301 that the proposed development would provide the necessary mitigation, but little more, of its own impact and so should not lead to the deterioration in the quality of life which the Parish Council and others assert. He therefore also agrees with the Inspector (IR302) that the proposed development would not lead to a deterioration in the quality of life of existing residents sufficient to warrant dismissal of the appeal.

### Accordance with the development plan and the Framework

16. For the reasons given at IR303-311, and taking account of the revocation of the RS, the Secretary of State agrees with the Inspector's conclusion at IR312 that the appeal scheme displays a very substantial degree of accordancy with the development plan as a whole apart from the conflict with the protection of the countryside outside defined settlement boundaries - where the local plan intention has to be tempered by the presumption in favour of sustainable development in the Framework. The Secretary of State also agrees with the Inspector's more detailed conclusions with regard to accordancy with the Framework at IR313-323.

17. Furthermore, like the Inspector, he has given careful consideration to the core principle with regard to "empowering people to shape their surroundings" (IR324), but he agrees with the Inspector that that pulls in the opposite direction to the presumption in favour of sustainable development that is engaged in this case. In coming to this conclusion, the Secretary of State agrees with the Inspector (IR326) that, as the aspiration to prepare a neighbourhood plan is clearly some time from fulfilment, with no firm programme for preparation, paragraph 14 of the Framework is inescapably influential in the context of the Framework as a whole, bearing in mind the sustainability of the appeal scheme in terms of its location and characteristics.

### The planning balance

18. For the reasons given at IR327-337, the Secretary of State agrees with the Inspector at IR338 that, while there are harmful aspects to the appeal scheme to which weight should be accorded, these have to be weighed against the very substantial contribution to housing needs that the site is capable of providing in the context of an acknowledged shortage of suitable land and the inherent sustainability of the location. He also agrees that those aspects of the planning obligation which help to mitigate the impact of the proposed development should be accorded due weight and that, bearing in mind the policies of the Framework as a whole and the development plan taken as a whole, the presumption in favour of sustainable development should be the decisive factor.

## **Conditions and obligations**

19. The Secretary of State has considered the Inspector's reasoning and conclusions on planning conditions as set out at IR197-215, and he is satisfied that the conditions as proposed by the Inspector and set out at Annex A to this letter are reasonable, necessary and comply with Circular 11/95.
20. With regard to the Planning Obligation (IR4, IR216-218, and IR283-301), the Secretary of State is satisfied that the provisions set out in the signed and sealed Planning Agreement dated 4 October 2012, as varied by the Deed of Variation dated 15 January 2013 (to make its provisions conditional upon their items being determined by the Secretary of State to meet the statutory tests) can be considered to be compliant with CIL Regulation 122. For the reasons given at IR286, the Secretary of State agrees with the Inspector at IR287 that no weight should be given to the Travel Plan Penalty element of the planning obligation.

### **Overall Conclusions**

21. The Secretary of State gives significant weight to the fact that the Framework indicates that, in the absence of a 5 year housing land supply in an up-to-date, adopted development plan, planning permission should be granted for the proposal. He is satisfied that the appeal site is in a sustainable location for housing development, and that, as the adverse impacts of granting planning permission would not significantly and demonstrably outweigh the benefits when assessed against the Framework taken as a whole, he does not consider that there are any material considerations of sufficient weight to justify refusing planning permission.

### **Formal Decision**

22. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendations. He hereby grants outline planning permission for residential development at land at Melton Road, Barrow Upon Soar, Leicestershire, LE12 8NN, in accordance with application ref: P/10/1518/2.
23. 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.
24. 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.

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

25. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged by making an application to the High Court within six weeks from the date of this letter.

26. 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

**JEAN NOWAK**

Authorised by Secretary of State to sign in that behalf

## CONDITIONS

1. Details of the appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development begins and the development shall be carried out as approved.
2. Application for approval of the reserved matters shall be made to the local planning authority not later than three years from the date of this permission.
3. The development hereby permitted shall begin not later than two years from the date of approval of the last of the reserved matters to be approved.
4. No development shall commence until both a Master Plan in general conformity with the submitted Illustrative Masterplan 4045\_SK\_001 rev E and a Design Code for the site have been submitted to and approved in writing by the local planning authority. Both shall substantially accord with the submitted Design and Access Statement Rev G. Any amendment to either shall be submitted to and approved in writing by the local planning authority. The Design Code shall address the following:-
  - i) Architectural and sustainable construction principles
  - ii) Character areas
  - iii) Lifetime home standards
  - iv) Car parking principles
  - v) Cycling provision including pedestrian and cycle links to adjoining land
  - vi) Street types and street materials
  - vii) Boundary treatments
  - viii) Building heights (which should be limited to a maximum height of three storeys, being located on the main street only, as indicated on pages 33/34 of the Design and Access Statement, and two storeys for the remaining parts of the development)
  - ix) Building materials
  - x) Provision of public open spaces (including timetable for implementation)
  - xi) Design of the site to accord with Secure by Design principles.
  - xii) Phases of development.

Applications for approval of the reserved matters submitted pursuant to condition 2) above shall be in accordance with the Master Plan and Design Code as approved. In addition to the Design and Access Statement previously referred to, The Master Plan and Design Code and the reserved matters submitted for approval shall also accord with the principles set out in the following submitted documents: Flood Risk Assessment June 2010; Addendum to Flood Risk Assessment January 2011; Ecological Appraisal June 2010; Bats in Trees Addendum December 2010; Tree Assessment Report Rev A; and Badger Mitigation Strategy December 2010. Development shall be carried out in accordance with all matters approved pursuant to this condition.

5. Notwithstanding the generality of condition 4) above, the development hereby permitted shall be carried out in accordance with the following approved plans:

4045\_SK\_005 Site Location Plan  
 0940/SK/010 rev C Typical Badger Tunnel Detail  
 0940/SK/013 rev E Melton Road Alternative Site Access Roundabout  
 0940/SK/014 rev A Site Access Roundabout  
 0940/SK/022 rev B Fishpool Brook Pedestrian Footbridge Crossing  
 0940/ATR/002 rev A Proposed Site Access – Swept Path Analysis  
 4045-L-01 rev D Types of Open Space

4045-L-02 rev A Extended Floodplain Area to be Regraded  
4045-L-04 Public Open Space Phasing Plan  
NTW/307/Figure 4 Rev A Indicative Floodplain Sections  
NTW/307/Addendum Figure 1 Rev A Fishpool Brook Modelled Floodplain Extent

6. The maximum area of residential development on the site (excluding the areas of public open space, structural landscaping, meadow and SUDS) shall be defined on the Master Plan to be approved pursuant to condition 4) above and shall not exceed 8.32 hectares, and no more than 300 dwellings shall be constructed on the site.
7. No construction on any phase of the development hereby permitted shall commence until such time as the following details in respect of that phase have been submitted to and approved in writing by the local planning authority:
  - a) Siting including details of proposed levels of ground surfaces and finished floor levels of all buildings and a number of selected typical sections across the phase.
  - b) A landscaping scheme including details of all trees and hedgerow to be retained, full planting specification, timing or phasing of implementation, services above and below ground; and a landscape management plan covering a minimum period of 10 years following completion of the development. Any trees or plants removed, dying, being severely damaged or becoming seriously diseased within 5 years of planting shall be replaced in the following planting season by trees or plants of a size and species similar to those originally required to be planted;
  - c) Treatment of all hard surfaced areas, including types and colours of materials street furniture, signing and lighting of all public spaces.
  - d) Boundary treatment to all open areas where the site bounds other land (where confirmed in writing by the local planning authority to be required) including design, height, materials and colour finish.
  - e) Details of the proposed standard signage for the footpaths at the points where footpath I 23 is proposed to be crossed by the new estate roads.
  - f) Layout and design of children's play areas; Multi Use Games Area/skate park area and any other play/ recreation area within the development;
  - g) Details of external lighting.

Development shall be carried out in accordance with the approved details.

8. No development shall commence until the applicant or developer has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation which has been submitted to and approved in writing by the local planning authority, and no development shall take place except in accordance with the approved scheme details.
9. No development shall commence until drainage plans for the disposal of foul sewage have been submitted to and approved in writing by the local planning authority. No dwelling, in any phase of construction, shall be occupied until all the works necessary in respect of that phase have been implemented in accordance with the approved details.
10. No development shall commence until a surface water drainage scheme for the site, based on sustainable drainage principles and an assessment of the hydro-geological context of the development, including any requirement for the provision of a balancing pond, has been submitted to and approved in writing by the local planning authority. No dwelling, in any phase of construction, shall be occupied until all the works necessary in respect of that phase have been implemented in accordance with the approved details. The balancing pond, if required, shall be completed and be in operation before the occupation of the first dwelling on any phase.

11. No development shall commence until a scheme to install trapped gullies has been submitted to and approved in writing by the local planning authority. The scheme shall be implemented in accordance with the approved details. No dwelling, in any phase of construction, shall be occupied until all the works necessary in respect of that phase have been implemented in accordance with the approved details.
12. If during development contamination not previously identified is found to be present at the site then no further development should be carried out in that location until such time as a remediation strategy has been submitted to and agreed in writing by the local planning authority and the works carried out in accordance with the agreed strategy prior to re-commencement on that part of the site.
13. Prior to the commencement of development, a scheme for the protection of trees and hedges to be retained on site shall be submitted to and approved in writing by the local planning authority. The scheme shall include:-
  - Details of all trees and hedges to be retained on site.
  - Details of any works proposed in respect of any retained trees and hedges on site.
  - Details of operational and physical measures proposed for the protection of trees and hedges
  - Details of any ground works that are to be carried out within 10 metres of any tree or hedge identified as being retained.
  - Details of the methodology to be employed when carrying out ground or other works within 10 metres of any tree or hedge to be retained.

Development shall be carried out in accordance with the approved details.

14. No development shall commence on any phase until the tree/hedge protection measures for that phase approved pursuant to condition 13) above have been fully implemented. The approved tree/hedge protection measures shall be retained and maintained in their approved form until development on the phase in which they are located is complete. Within the areas agreed to be protected, the existing ground level shall be neither raised nor lowered, and no materials or temporary building or surplus soil of any kind shall be placed or stored thereon unless approved as part of the details submitted to discharge the condition.
15. No development shall commence until a scheme of noise attenuation/mitigation measures (in order to reduce noise likely to be experienced in dwellings and private gardens from the use of the railway corridor to the south west of the site) has been submitted to and approved in writing by the local planning authority. No dwelling in any phase of the site identified by the scheme as being affected by railway noise shall be occupied until the required measures have been implemented in accordance with the approved scheme.
16. No development shall commence until details of the construction of the proposed access roundabout (as shown indicatively on drawing 0940/SK/013 Rev E) and the footpath/cycleway bridge across the Fishpool Brook (as shown indicatively on drawing 0940/SK/022 rev B) have been submitted to and approved in writing by the local planning authority. No dwelling on the site shall be occupied until the access roundabout and pedestrian bridge have been constructed in accordance with the approved details.
17. No development shall commence until a detailed scheme of works for the improvement of traffic flow at the Barrow Road Bridge of the type illustrated on WSP UK drawing numbered SK/017 Rev A has been submitted to and approved in writing by the local planning authority. No dwelling on the site shall be occupied until the improvement works at the bridge have been fully implemented in accordance with the approved details.
18. No development shall take place until a Construction Method Statement has been submitted to, and approved in writing by, the local planning authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:

- i) the parking of vehicles of site operatives and visitors
- ii) the routing of construction traffic throughout the construction process and the mechanism for securing adherence to approved routes
- iii) loading and unloading of plant and materials
- iv) storage of plant and materials used in constructing the development
- v) the erection and maintenance of security fencing
- vi) wheel washing facilities
- vii) measures to control the emission of dust and dirt during construction
- viii) a scheme for recycling/disposing of waste resulting from the construction works
- ix) precautionary measures to ensure that no badgers become trapped or injured during development work

19. No development shall commence until procedures have been initiated to upgrade the existing public footpaths I 23 and I 24 (part) beyond the edge of the meadow boundary to the eastern boundary of the application site to footpaths/cycleways. The upgrading works (including those approved through Condition 7) shall be completed prior to the occupation of 50% of the dwellings on the site.
20. No development shall commence until a scheme of electronic or other suitable signing to warn of flooding on Slash Lane has been submitted to and approved by the local planning authority. No dwelling on the site shall be occupied until the scheme has been fully implemented in accordance with the approved details.
21. No development shall commence until a scheme of public art to be delivered on site has been submitted to and agreed in writing by the local planning authority. Those elements of the approved public art scheme which are to be delivered on a particular phase of the development shall be delivered prior to the occupation of 80% of the dwellings in that phase.
22. No development shall commence until an assessment of the anticipated energy requirements arising from the development has been submitted to and approved in writing by the local planning authority. That assessment must demonstrate how a minimum of 10% of the energy requirements shall be secured from decentralised and renewable or low-carbon energy sources. Details and a timetable of how these measures are to be achieved, including details of any physical works on site, shall be submitted to and approved in writing by the local planning authority. The approved details shall be implemented in accordance with the approved timetable and retained as operational thereafter.



The Planning  
Inspectorate

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

by Keith Manning BSc (Hons) BTP MRTPI

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

Date: 13 March 2013

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**TOWN AND COUNTRY PLANNING ACT 1990**

**CHARNWOOD BOROUGH COUNCIL**

**APPEAL BY**

**JELSON HOMES**

Inquiry opened on 9 October 2012

Land at Melton Road, Barrow Upon Soar, Leicestershire LE12 8NN

File Ref(s): APP/X2410/A/12/2173673

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**File Ref: APP/X2410/A/12/2173673**

**Land at Melton Road, Barrow Upon Soar, Leicestershire LE12 8NN**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
- The appeal is made by Jelson Homes against the decision of Charnwood Borough Council.
- The application Ref P/10/1518/2, dated 12 July 2010, was refused by notice dated 9 December 2011.
- The development proposed is residential development.

**Summary of Recommendation: The appeal be allowed, and planning permission granted subject to conditions**

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**Procedural Matters**

1. The Inquiry sat for seven days in total, from 9 October – 12 October and on 13 November 2012, and on 15 and 16 January 2013, having been unfortunately delayed in its completion by the serious illness of one of the parties' representatives. I visited the site and various other locations in Barrow Upon Soar, on an accompanied basis, on 6 December 2012.
2. For consistency, I use the spelling Barrow Upon Soar throughout. 'The Council' is a reference to the Charnwood Borough Council. 'The County Council' is a reference to the Leicestershire County Council and 'The Parish Council' is a reference to the Barrow Upon Soar Parish Council.
3. The application subject to appeal is in outline with all matters except access reserved for subsequent approval.
4. A Planning Agreement dated 4 October 2012 was submitted at the Inquiry, accompanied by a Deed of Variation dated 15 January 2013. This does not affect the substance of the Agreement, the signatories to which are Jelson Limited, the Council of the Borough of Charnwood and Leicestershire County Council.
5. The agreement provides for financial contributions in respect of Community Facilities, Healthcare, Policing, Education, Libraries, Pedestrian and Cycle Routes, Travel Passes, Travel Packs and Bus Shelters. It provides for a financial penalty in respect of the Travel Plan in prescribed circumstances.
6. The agreement also provides for the provision and maintenance of open space within the site and for the provision of Affordable Housing as part and parcel of the residential development proposed in accordance with an Affordable Housing Scheme to be approved by the Council prior to the commencement of the proposed development. 30% of the dwellings would be Affordable Housing as defined in the National Planning Policy Framework or any successor document.
7. A Statement of Common Ground (SoCG) between the Council and the appellant was agreed in May 2012 confirming a good measure of agreement across a broad spectrum of considerations. It lists the following as having been submitted in support of the application: Planning Statement (PS); Design and Access Statement (DAS); Transport Assessment (TA), Addendum Transport Assessment (ATA), Framework Travel Plan (FTP), Updated Framework Travel Plan (UFTP), VISSIM Modelling Report (VMR), Stage One Road Safety Audit (RSA1); Flood Risk Assessment (FRA); Arboricultural Survey (AS); Ecological Survey (ECOS);

Archaeological Information (AI); and an Acoustic Report (AR). There is also a submitted Addendum (AFRA) to the Flood Risk Assessment dated 17 January 2011. [The abbreviations are mine for the purposes of this report].

### **The Site and Surroundings**

8. The site comprises approximately 15 hectares of agricultural land on the eastern edge of Barrow upon Soar. None of the land falls within the category of Best and Most Versatile. It is predominantly Sub-grade 3b with small pockets of Sub-grade 3c.<sup>1</sup>
9. The site fall into two distinct parts; a relatively low-lying area of meadow surrounded by mature hedgerows and semi-mature trees on its western side, associated with the line of Fishpool Brook and Breachfield Road; and a large sloping field surrounded by mature hedges and trees. The field slopes gently upwards towards the north-east and gives the impression of being part of a shallow bowl or valley side in the broader scale rural landscape beyond, with much of the existing built-up area of the village occupying a corresponding slope to the north-west. West of Fishpool Brook, houses on Breachfield Road stand elevated above much of their back garden areas, which are susceptible to flooding.
10. To the south, the site is bounded by the Midland Main Railway.
11. The site is traversed by two public footpaths.

### **Planning Policy**

12. National Planning Policy, which is a material consideration, is contained in the Framework.
13. The development plan currently comprises the East Midlands Regional Plan (RSS) and saved policies of the Charnwood Local Plan 1991-2006 ('the local plan').
14. The Council's Core Strategy has not progressed since 2008 (Issues and Options stage) and it is common ground between the main parties that it should be accorded no weight in the determination of the appeal.<sup>2</sup>
15. It is common ground between the main parties that the Council's Supplementary Planning Guidance (SPG) documents *Leading in Design* and *S106 Developer Contributions* are relevant material considerations.<sup>3</sup>
16. While many policies in the development plan taken as a whole are relevant, an agreed range being set out in Section 4 of the SoCG, there are few which are in contention as policies which the proposed development would conflict with and these are confined to the local plan. The policies of the RSS were in force at the time of the Inquiry and remain in force at the time of my report. They may be accorded due weight on that basis. The following local plan policies merit explanation at this point, whereas other policies may need to be referred to and their gist explained at the relevant point in my conclusions. The text of the

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<sup>1</sup> Doc 35

<sup>2</sup> SoCG paragraph 5.7

<sup>3</sup> Ibid paragraph 5.6

following policies is reproduced in Appendix 2<sup>4</sup> to the evidence of Mr Thorley and elsewhere.

17. Local plan policy **TR/6** concerns the impact on highways of development on non-designated sites. Its first requirement (i) is that such development should not result in “unsafe and unsatisfactory operation of the highway system”. This is not inconsistent in principle with the relevant intentions of the Framework, albeit paragraph 32 creates a test of “severity” for the residual impacts after mitigation that the local plan policy does not. The latter refers in its explanation to the “acceptability” and “unacceptability” of such impacts with relevant adopted standards to be fully taken into account.
18. Local plan policy **ST/1** is a multi-faceted policy concerning the development needs of the Charnwood Borough and, inter alia; promotes sustainable development; aims to conserve, protect and enhance those features of the environment particularly valued by the community; and seeks to protect the character and appearance of the countryside for its own sake, especially within areas of particularly attractive countryside and other areas of local landscape value. In principle, such intentions are not inconsistent with broadly equivalent intentions of the Framework.
19. Local plan policy **ST/2** effectively confines built development (subject to specified exceptions) to allocated sites and other land within identified limits to development. To the extent that such an intention supports the concept of development being plan-led, it is not inconsistent with the intentions and core principles of the Framework.
20. Policies **CT/1** and **CT/2** together seek to strictly control development in the open countryside, i.e. outside the development limits defined for settlements. Insofar as they recognise the intrinsic character and beauty of the countryside and seek to conserve environmental assets, the policies are not inconsistent with broadly equivalent intentions of the Framework.
21. A wide range of other relevant policies, including RSS policies, is listed in the SoCG, albeit with no suggestion of conflict. I refer to policies from this list only if it is necessary to do so.

### **Planning History**

22. A previous application for residential development of the appeal site, Ref P/09/2376/2, was refused by the Council in March 2010 for nine reasons. In addition to concerns over the Grove Lane junction, these related primarily to an absence of certain supporting technical information and a number of site specific matters since addressed. It is common ground that none of the reasons concerned the principle of residential development on the site.
23. The application subject to appeal was refused for the following single reason:

***“The existing junction of Grove Lane with South Street/Sileby Road\* is lacking in adequate visibility to the left out of Grove Lane. The proposal if approved would lead to increased dangers for road users and not be in the interests of highway safety. Accordingly, the development is contrary to policy TR/6 of the Borough of Charnwood Local Plan 2004.”*** (\* NB For convenience, I refer to this throughout as ‘the Grove Lane junction’.)

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<sup>4</sup> A1a

## **The Proposals**

24. Although the application is in outline, considerable supporting information to explain and illustrate the intended manner of development of the site has been submitted, encapsulated in the Illustrative Masterplan.<sup>5</sup>
25. Within the envelope created by the existing boundary vegetation comprising hedgerows and trees, up to 300 dwellings of varying size and type would be constructed, arranged around a central loop road and access ways off. The loop would be designed to accommodate buses and access to the existing highway system would be via a new roundabout constructed on Melton Road at the north west extremity of the site, linked to an internal roundabout by a short stretch of road incorporating a badger tunnel and designed with the roundabouts to facilitate “run-over” for emergency access purposes in the event of carriageway blockage.
26. The public footpath crossing the site west to east would be retained, as would a route from Breachfield Road across to the south east extremity of the site, where the old footbridge across the railway has been demolished pending replacement by Network Rail. A new pedestrian/cyclist bridge across Fishpool Brook to Breachfield Road is proposed.
27. Open space would generally be disposed around the periphery of the site but a more substantial area of open space would correspond to the existing meadowland in the floodplain of the Fishpool Brook, the capacity of which would be increased by limited excavation and re-grading of the existing landform. A broadly equivalent area of open space would be created in the lower lying southern margin of the site near the railway. This would incorporate an attenuation pond. A multi-use games area, a play area and a community orchard would be located in the main area of open space in the south and west of the site.

## **Other Agreed Matters Defining the Common Ground**

28. The SoCG sets out in detail what is agreed as common ground. The following points agreed by the main parties are salient:
  - Following a lengthy period of negotiation and discussion between the appellant and officers of the Council, the application was reported to the Council's Development Control Committee in December 2011 with a recommendation for approval.
  - The only robust and evidence-based housing targets for the Borough of Charnwood at present are those within the RSS and that these should be used to assess the five year supply for the purposes of the Framework. As at October 2011 the housing land supply for the period April 2012 to April 2017 was 2.63 years for the district as a whole. The position has not materially altered (for the better) since the application was refused and that it will not improve during the anticipated determination period of the appeal. Indeed, the August 2012 Addendum to the SoCG shows that as at June 2012, the supply position had worsened significantly, with only 1.98 years' supply of deliverable sites being available when a 20% buffer to compensate for under-

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<sup>5</sup> Drawing No 4045\_SK\_001 rev E.

delivery, as per the Framework, has been added to the base calculation. When divided between the Principal Urban Areas and the Non-Principal Urban Areas, this deficit equates to 0.59 years and 3.55 years supply respectively. It is common ground that the allocations in the local plan only cover the period to 2006 and are now expended. The Council will be unable to meet its needs on brownfield land alone and the majority of new housing will need to be on greenfield sites.

- Barrow Upon Soar is a sustainable location for development on the scale proposed. In the "Further Consultation" version of the emerging Core Strategy it is suggested as a "Service Centre", a higher order settlement for nearby villages with a range of community facilities including a supermarket, post office, primary school, secondary school, health centre, pharmacy, optician, library, cash points and public houses. It is suggested that the village could accommodate in the region of 500 new homes in the period to 2026.
- The site is within easy walking distance of the community facilities in the village centre of Barrow upon Soar, existing bus stops and the Barrow upon Soar railway station. It is also common ground that this gives ready access to the major centres of Leicester, Loughborough and Nottingham.
- The site is suitable and sustainable and that the proposals represent sustainable development for the purposes of paragraphs 14, 49, and 197 of the Framework and that the proposals comply with the intentions of paragraphs 37 and 38.
- The proposals accord with relevant policies of the RSS, notably Policy 3 and Policy 12, and that they will help to meet the housing needs of the district as set out in Policies 13a and SRS3.
- The proposals accord with a wide range of local plan policies but conflict with the intentions of policies ST/2, CT/1 and CT/2 which generally seek to restrict development in the countryside. Insofar as these policies concern the supply of housing land, it is common ground between the main parties that these should not be considered up-to-date in the context of paragraph 49 of the Framework bearing in mind the lack of a five-year supply of deliverable housing sites.<sup>6</sup>
- The residential development of the site is acceptable in principle.
- Save for the Grove Lane junction, the base data used in the preparation of the highways and transport assessments are robust and fit for purpose and that the inclusion of the FTP accords with the intentions of paragraphs 35 and 36 of the Framework.
- Save for the Grove Lane junction, all other impacts on the highways network would be satisfactorily mitigated by the package of highways measures proposed, including those for the Barrow Road Bridge.

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<sup>6</sup> SoCG paragraph 6.12

- Save for the impact on the Grove Lane junction, the proposals fully comply with the relevant transport policies of the local plan and the intentions of paragraphs 32 and 35 of the Framework.
  - The proposals demonstrate a high standard of design and that they comply with the design policies EV1 and H16 of the local plan, the Council's *Leading by Design* SPG and Section 7 of the Framework 'Requiring good design'.
  - There would be no adverse impact on the living conditions of existing residents in the vicinity of the site and that an adequate standard of residential amenity for up to 300 dwellings within the site can be achieved and that this would not be compromised by noise from the railway. There would, it is agreed, be no conflict with the intentions of the relevant local plan policies in this respect.
  - The interests of nature conservation would not be compromised and that biodiversity would be maintained or enhanced, satisfying relevant policies in the local plan and according with the relevant intentions of paragraph 118 of the Framework.
  - Existing flooding in the area would not be exacerbated by the proposed development and that the resulting increased capacity of the floodplain of Fishpool Brook would be a benefit with the potential to reduce the risk of flooding in the gardens of the adjacent properties on Breachfield Road. It is therefore agreed that the relevant policies and intentions of the local plan and the Framework in respect of flood risk and climate change would be complied with.
  - Save for the policing contribution, the provisions of the planning obligation accord with relevant local policy, meet the intentions of the Framework and comply with the CIL Regulations.
29. The only area of disagreement between the main parties concerns the safety of the Grove Lane junction, specifically with regard to visibility to the left.

### **The Case for Jelson Homes** (Docs 2, 44, A1, A2, A3 & A4)

*The salient material points are:*

30. This is an appeal in respect of a single reason for refusal, on highway grounds, issued contrary to the advice of the Council's own officers and that of the highway authority.
31. It is agreed that the proposal represents sustainable development in a sustainable location that would contribute to overcoming a severe shortfall of housing land, would provide needed affordable housing and that the presumption in favour of sustainable development applies.
32. Policies 1, 3, 12, 13a, 14, 15 and SRS3 of the RSS are complied with and it was accepted by the Council that this was so. The proposal would deliver market and affordable housing in accordance with the relevant targets adjacent to a service centre without infringing any environmental restraint in the RSS.
33. The local plan contains policies to prevent development in the countryside outside settlements defined to accommodate a level of housing need that is now historical. It was prepared in the 1990s. Current needs cannot be met by the

- local plan and require that development takes place on substantial areas of land classified by the local plan as “countryside” adjoining urban areas or settlements, the boundaries of which reflect historical needs. There is therefore a conflict within the development plan and section 38(5) of the Planning and Compulsory Purchase Act 2004 requires that the RSS prevails.
34. The development plan as a whole is complied with and the alleged conflict with policy TR/6 of the local plan is not accepted.
  35. In any event the Framework now provides, at paragraph 32, that proposals should only be refused (on highways grounds) where the impacts are severe. The second bullet point thereof clearly refers to the access to the site itself, a matter that can be controlled by the developer, whereas the third bullet point refers to the wider highway network. Safety is important, but real evidence of danger has not been demonstrated. The risk referred to by the Council and others is theoretical.
  36. Overall, the proposals conform to the development plan and should be approved without delay according to paragraph 14 of the Framework.
  37. It is agreed that the policies preventing development in the countryside are out-of-date and they are in any case deemed to be so by virtue of paragraph 49 of the Framework. The proposition put by Mr Reid for the Council, that they should nevertheless attract substantial weight, is untenable. His approach was rejected in two recent appeal decisions in Charnwood<sup>7</sup> and he accepted the approach in the Bishop’s Cleeve decision<sup>8</sup> that such policies should be given substantially reduced weight. Following the approach in the Worsley decision<sup>9</sup>, very little weight should be accorded to the Council’s 27 September 2012 decision regarding what may be an emerging local plan strategy. These are simply early thoughts on its part.
  38. The objection to the proposal on highway grounds cannot be sustained. There is no material shortfall in visibility. On the basis of appropriate calculations<sup>10</sup>, visibility to the left (‘Y –distance’) of some 38 metres is required but some 42 metres<sup>11</sup> is actually available.
  39. The accident record over many years confirms the Grove Lane junction to be a safe junction. The evidence of experience clearly demonstrates this to be so. Circa 1.5 million vehicles per annum use it, together with many pedestrians and cyclists. Its physical circumstances have remained constant and over the eight years for which formal accident records are now available there have been none recorded relating to visibility. There have been two recent accidents<sup>12</sup> but one (3 October 2012) occurred 500 metres to the east and there is no evidence that lack of visibility played any part in the accident of 27 September 2012.

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<sup>7</sup> Documents 36 & 37

<sup>8</sup> Appendix 7 to evidence of Mr Thorley

<sup>9</sup> Appendix 6 to evidence of Mr Thorley

<sup>10</sup> Evidence of Mr Young paragraph 6.3.12 and Appendix H

<sup>11</sup> Subsequently confirmed to be 42.5 metres with one metre encroachment or 40.3 metres with 0.75 metres encroachment (Doc 20).

<sup>12</sup> Docs 8 and 10

40. In any event Manual for Streets<sup>13</sup> states that there is no evidence of a relationship between reduced visibility and the potential for accidents and there is no evidence that an increase in traffic will lead to any increased risk of accidents. The TMS report<sup>14</sup> shows that the statistical correlation is nowhere near that which would be required to demonstrate a reliable relationship between the two factors. This junction has huge spare capacity. Increasing flows will not have any effect on the potential for accidents.
41. There is no evidence that the relevant criterion (i) of local plan policy TR/6 would be breached and no evidence of any harmful impact on the highway network.
42. It should be borne in mind as context that the proposed development will add only 30 movements to the left turn in the peak hour, which would be imperceptible, the average "queue" over this period being less than one vehicle. Any delays will be minimal and will not lead to frustrated drivers taking risks.
43. Two factors should be taken into account in calculating the appropriate visibility requirement, the appropriate 85th percentile speed and the appropriate MfS2 calculations.
44. The speed survey of the appellant's consultant, Mr Young, is to be preferred to that of the Council's consultant, Mr Bancroft. It complied with the mandatory TA22/81 requirement of 200 readings. Furthermore these readings were taken beyond the potential influence of local or bank holidays. The appropriate wet weather correction was made, whereas no such correction was made by Mr Bancroft whose recorded speed of 31.4 mph was not so corrected despite conditions being observed as merely damp/intermittent rain. The further readings<sup>15</sup> were inappropriately contrary to TA22/81 methodology being over a 24 hour period and thereby distorting the results with high speeds.
45. Mr Young's Stopping Sight Distance (SSD) calculation correctly made no allowance for HGVs and buses in compliance with the guidance because 2.9% HGV/bus content in the recorded vehicles was by reference to 2 X 3 hour periods rather than simply peak hours. It is therefore reliable.
46. If it is assumed that such vehicles should be included then the MfS2 reduction for buses of 10% (not accounted for by Mr Bancroft) should be applied to HGVs also. This is consistent with everyday observation and the admittedly small sample of readings referred to by Mr Young which show a 10.03% reduction. This approach results in a SSD of 40.83m.<sup>16</sup>
47. The amended figures from Mr Bancroft<sup>17</sup> are wrong because they do not make any speed reduction and the Council's preferred figure of 47.5 makes no speed reduction at all. In summary, the 43.86 metre splay distance requirement is based on the incorrect speed of 31.48mph; the 42.93 metre requirement is based on the WSP speed but uncorrected for wet weather; the 38.21 metre requirement is correct; and all the figures in the right hand column are wrong as they fail to allow for the lower speeds of HGVs and buses.

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<sup>13</sup> Referred to generally as MfS (or more specifically MfS1 or MfS2 as appropriate)

<sup>14</sup> Doc 9

<sup>15</sup> C1b Appendix I to the evidence of Mr Bancroft

<sup>16</sup> Rebuttal evidence of Mr Young, but based on Mr Bancroft's speed, not Mr Young's.

<sup>17</sup> 09/10/12 *Statement to address amendment to visibility calculation* (Mr Bancroft C1c)

48. As far as the available visibility is concerned, there is agreement between all three highway witnesses following a visit to the junction observed by the Inspector. From 2.4m on the centre line of Grove Lane (a starting point accepted by Mr Bancroft) there is a Y distance of 42.5m to a 1m off-set and Mr Bancroft accepted<sup>18</sup> a 1.3m off-set, so on his evidence there would be materially more than 42.5m. From 2.4m offset by 1m to the centre of the left turning lane there is a Y distance of 40.3m to a 0.75m off-set. But such a small offset cannot be justified because there is a virtually non-existent possibility of a motorcycle being closer into the kerb on approach from the east.
49. Mr Young's measurements are not only vindicated but found to be understated and there plainly is no material shortfall in visibility, even on the basis of unreliable speeds.
50. However the requirement should be calculated the junction has proved to be very safe and drivers in any event take more care at restrictions on the road network. If the objection were to prevail, moreover, needed development would be stifled at countless locations as Mr Young explained that the majority of junctions in most towns and cities are substandard; and that would be flatly contrary to the intentions of the Framework. The conventional approach to such matters is used in the recent appeal decision<sup>19</sup> at Bramcote Road, Loughborough and a similar approach is advocated here. In any event, if ever the operation of the junction required improvement, there is adequate scope for improvement.
51. The additional points raised by the Parish Council and others have no support from either the Council or the highway authority.
52. The highways objections raised by the Parish Council cannot be substantiated. First, at the site access it is inappropriate to rely on DMRB<sup>20</sup>, which is primarily for motorways and trunk roads when the proper guidance for this location, applied by the highway authority, is MfS. If the 85<sup>th</sup> percentile speed of 34.5mph is correct the required SSD is 52.5m which is achievable.<sup>21</sup> There is no problem with levels.
53. The visibility requirements of MfS are not absolute and applying the necessary wet weather reduction gives a 28.5 mph speed generating a requirement of 38 metres, which is available.
54. The single point of access contested as inappropriate by the Parish Council raises no objection from the highway authority whose own guidance advocates assessment of the matter on a site-by-site basis and concludes that a cul-de-sac may be the best solution in certain circumstances.
55. Thirdly, conflict with local plan policy TR/6 or the Framework does not arise at the Barrow Road Bridge as in the peak hour the development would add an imperceptible 93 vehicles and there is no evidence that this would make any difference to the safety or satisfactory operation of the bridge. The proposed

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<sup>18</sup> Paragraph 5.5 of the evidence of Mr Bancroft

<sup>19</sup> Doc 37, para. 29

<sup>20</sup> *Design Manual for Roads and Bridges*

<sup>21</sup> Rebuttal evidence of Mr Young Appendix D

- improvements would more than offset any impact as is shown by the LINSIG output in the ATA.
56. The VISSIM model showed the effects of the MOVA system proposed as reducing delay by around 13% with a consequential 2-3% improvement in capacity at the bridge accepted as an improvement arising from the development by the highway authority. It was accepted by Mr Cage in cross-examination that paragraph 6.3 of the later report,<sup>22</sup> which stated that the CD modelling the traffic flows showed the impact of development at the bridge, was misleading.
  57. Mr Cage's second proof is of no assistance because the model deployed assumes fixed timings which ignores the reality and negates the purpose of the MOVA system proposed, which shares out capacity according to demand at any given time. In fact, table 3.2/3.3 of the relevant report shows an improvement in capacity that exceeds the impact of the development with consequential benefits for base traffic. There would be a decrease not an increase in queuing at the bridge.
  58. There are other problems with the figures and results and, in summary, the report is not reliable evidence, whereas the WSP model is.
  59. So far as Appendix B to the report<sup>23</sup> is concerned, it simply ignored the proposed improvements to hatching which would enable the optimum location of stop lines for a 9/10 second intergreen phase.
  60. The occasional flooding at Slash Lane cannot be a highway objection to the proposed development. Unlike the Redland development<sup>24</sup>, there is no proposal to take access at this location. A number of the other points raised in respect of the bridge scheme are matters for detailed design.
  61. Two thirds of the development will be within 400 metres of a good bus service to Leicester and Loughborough and the extremities within 800 metres, which is comfortably accessible and both the Council and the highway authority consider this a sustainable location. Access to the rail station and good services is also easy.
  62. Even without the rail footbridge to the south-east corner of the site the accessibility of the proposed development would be good and the Council and the highway authority are satisfied that is so. In any event network Rail are pursuing its replacement, having obtained permission and approached landowners. Mr Cage thinks it could be built within five years.
  63. The Breachfield Road junction with Grove Lane (a short one-way stretch) is an existing situation with no record of accidents. The developer is entitled to assume that people will continue to observe the law here.
  64. The concern of the Parish Council as set out in its statement of case is with the impact of the proposed development on the existing community and its facilities, as set out in evidence by Mr Cattle, not the proposition in its closing submissions that deliverability over a five year period is in doubt. The technical material

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<sup>22</sup> Doc 26

<sup>23</sup> Ibid.

<sup>24</sup> Ref T/APP/X2410/A/95/259402/P4 at Appendix A to PC3

- supporting the proposal satisfies the Council and the highway authority in that context and the appellant is an experienced developer well versed in addressing practical issues.
65. Service capacity constraints in Barrow (identified by the Council as a service centre appropriate for growth) are to be addressed by the section 106 obligation that meets the requirements of the relevant statutory providers. This also provides for benefits sought by the Parish Council.
  66. The benefits of the proposed development for the whole settlement will include; increased floodplain capacity; improvements at Barrow Road Bridge; the introduction of warning signs to alert people of flooding on Slash Lane; upgraded pedestrian and cycle links to the centre of the village; the services of a Travel Plan Co-ordinator; additional public open space and some additional community facilities.
  67. Despite this, the Parish Council maintains that Barrow has had enough of development and can take no more, a position adopted by many residents and Barrow upon Soar Community Association (BUSCA). It is not for the developer to remedy the perceived deficiencies referred to by the latter, but the substantial S106 contributions are agreed as appropriate by the local planning authority and the statistics demonstrate that Barrow's growth has been comparable to other settlements and relatively less in some cases. It is calculated that less than 20% of the village population object to the proposal, rather than the overwhelming majority as claimed.
  68. 'Amber' values in the Council's assessment of potential service centres<sup>25</sup> do not preclude growth, simply some constraints. Several of the potential service centres are constrained in some respect. The 'amber' status in respect of health services is historic and rectified and the appropriate contribution in the planning obligation is supported by the Primary Care Trust and the Council. The excellence of care at the health centre was explained by Dr Parker who was careful to explain not that this would be jeopardised but that future improvement would be more challenging. Similarly, education is not threatened and very substantial contributions to education are provided for with the support of the relevant authorities.
  69. Parking difficulties in the village centre are aggravated by commuter parking and is not a matter peculiar to this village, being also a question of management. Few objectors refer to landscape and visual impact and the site has no special designations. In the Worsley decision previously referred to substantial harm in that respect was outweighed by the benefits of housing gain.
  70. No part of the developed area would be outside Flood Zone 1 according to the FRA which has been rigorously assessed by the Environment Agency, whose findings have subsequently been verified by the new hydraulic model of the Fishpool Brook catchment it has created. The proposals comply with the relevant policies of the Framework and there will be some betterment in that although gardens on Breachfield Road will continue to flood the occurrence and severity of

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<sup>25</sup> *Charnwood 2028 Local Development Framework (LDF) Core Strategy Service Centre Capacity Assessment (Final Report) December 2011 ('SCCA')* – Appendix D to Evidence of Mr Cantle (PC4) and Appendix 2 to Evidence of Mr Thorley (A1a)

such events will be reduced. With appropriate planning conditions as recommended by the EA, there is no reason to resist the proposal on surface or foul water drainage grounds.

71. **In conclusion**, the proposals comply with the development plan as a whole and should be approved without delay.

**The Case for Charnwood Borough Council** (Docs 4, 43, C1 & C2)

*The salient material points are:*

72. The application was refused because members disagreed with their officer's view. This was based on advice from the highway authority. Although this recognised the Grove Lane junction to be deficient it decided, all other objections having been addressed, that it could not support an objection on the basis of the one single issue of visibility alone.
73. At the time of application the appellant recognised that the junction fell short of the relevant visibility standard but now claims it will be met.
74. This standard is that the 'x' distance should be measured from a point 2.4m back from the give way line in the centre of the carriageway. The 'y' distance depends on variables affecting the SSD.
75. On a robust assessment the visibility splay is inadequate and the junction will not operate safely, giving rise to conflict with policy TR/6(i) of the local plan and the intentions of the Framework.
76. The conflict with the development plan is not outweighed by other considerations and the appeal should be dismissed.
77. Two recent appeals<sup>26</sup> in the Charnwood District have been allowed because of the inadequate housing land supply but that makes little difference to the merits of this case. In particular the junction inadequacy on its own should preclude the grant of permission in this case. None of the appeal decisions referred to in evidence by the appellant<sup>27</sup> involved determinative highway inadequacies and they are of limited assistance in this case.
78. The Council is cognisant of the benefits of the proposed development (these are set out for example in the officer's committee report) and the appellant has not suggested that the Council was not aware of them.
79. The main issue for the Council is the adequacy of the visibility for left turning traffic at the Grove Lane junction.
80. UK practice (as explained by MfS2) generally focuses on SSD. Paragraph 10.3.1 explains how the minimum SSD is deployed. This shows why a cautious approach is necessary to permitting additional traffic at junctions with inadequate visibility.
81. Although MfS2 explains, on the basis of research undertaken by TMS, that there was no evidence to suggest that failure to provide standard visibility at junctions

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<sup>26</sup> Docs 36 & 37

<sup>27</sup> Appendices 3 – 7, 12 – 14 and 16 – 18 to A1 Evidence of Mr Thorley

- resulted in an increase in injury collisions at 'high-risk' urban sites, it did not conclude that the evidence disproved the assumption that this would be so. The outcome of the research should be treated with caution and it is significant that MfS2 does not jettison the concept of adequate visibility splays being required.
82. Without local evidence to the contrary, it says, a reduction from recommended visibility will not necessarily lead to a significant problem.
  83. Local evidence goes beyond the Personal Injury Accident (PIA) record. It means all relevant local circumstances, including the particular features of the junction.
  84. In this case these include: frequent overrunning of the kerb (where it is dropped to facilitate crossing by pedestrians) by left turning vehicles so as to avoid encroaching onto the westbound lane used by oncoming vehicles; the route is also well used by cyclists; there are a number of private drives impinging on the junction layout, adding to potential conflicts; marked turning lanes are often ignored; and bus turning manoeuvres using the entire carriageway cause oncoming vehicles to brake suddenly.
  85. This local evidence militates in favour of caution as it may simply be good fortune that there are no recorded PIAs, rather than the junction being safe as the appellant suggests.
  86. It became common ground that the appropriate point in the carriageway to measure the 'y' distance to is 1 metre in from the carriageway edge.
  87. Based on one day surveys the parties variously calculated the appropriate wet weather speed for calculating SSD as 28.51mph (appellant) and 31.38mph (Council). In view of these differences a subsequent survey was undertaken by the Council between Thursday 30 August and Monday 3 September 2012, giving a 7 day average 85th percentile speed of 32.8mph.
  88. The Council's interpretation is that wet weather conditions do not have a major impact on speeds at this junction and it may therefore be unwise to rely on the lowest 85th percentile speed of 28.51mph advocated by the appellant.
  89. Notwithstanding criticism from the appellant that the Council's survey did not comply with TD22/81 guidance, aspects of its own work failed to comply, including reliance on single day surveys. Moreover, informed interpretation of the guidance by experienced professionals is more important than the quantity of vehicles included. Therefore surveying only 100 vehicles rather than the 200 advocated by the guidance is common practice among professionals, usually acceptable to highway authorities. The Council's results are reliable.
  90. Buses and HGVs have different characteristics in this context, with slower deceleration making for longer SSD and hence longer visibility splays, but guidance suggests that, in combination, bus and HGV traffic of less than 5% of total flow need not be assessed, subject to local circumstances. The appellant's TA did not contain information on the composition of traffic flow but both the appellant and the Council commissioned further survey work to address the point.
  91. However, the appellant's survey covered only the AM and PM peak hours, contrary to MfS2 guidance, whereas the Council's work covered 24 hour periods in which the proportion of HGVs/buses significantly exceeds the 5% threshold.

- The only criticism by the appellant was that the survey was 30 August to 3 September, which, although school term time locally, was not entirely neutral given that results could still be affected by the holiday period. This is a flimsy criticism, not based on guidance, which should be rejected.
92. It was agreed by the appellant that on the basis of the Council's data HGVs/buses should be taken into account. However, no separate survey of HGV/bus speeds has been undertaken by any party and therefore the information is imperfect.
93. In these circumstances the 85th percentile speed for all vehicles should not be used as it includes buses and HGVs.
94. Although MfS2 does not recommend it, the appellant sought to argue that there should be a 10% reduction of the 85th percentile speed for HGVs as well as buses, indicating how constrained the junction is. No such reduction is warranted in relation to HGVs. The practical consequences are that an overtaking HGV driver might not see a driver emerging from Grove Lane until it is too late to stop.
95. The available splay measured to the agreed 1 m point in the carriageway is agreed to be 42.5m.<sup>28</sup>
96. The appellant considers the required splay length to be 38m, but this assumes a wet weather 85th percentile speed of only 28.51mph, much lower than that observed by the Council in wet weather and lower than the ATC data suggests the average 7 day 85th percentile speed is. The appellant's splay length takes no account of the different deceleration rate for HGVs and buses.
97. The Council concludes that the required splay length is 47.5m, using an 85th percentile speed of 31.48mph, which is reasonable given that it is in the middle of the three available measured speeds, also reasonably not discounting buses and HGVs as there is insufficient data upon which to do so. The Council's assessment is more robust and is to be preferred.
98. That leads to a shortfall against the available splay of 5m which is in excess of 10% and not de minimis. MfS2 does not endorse unlimited flexibility but rather says that 'y' distances should be based on the recommended SSD values. While a reduction in visibility will not necessarily lead to road safety problems, that depends on local evidence.
99. The Council submits that the shortfall in visibility is a serious one and should not be accepted. Its evidence is that adding additional traffic as proposed would lead to a situation on the highway that is unsafe and unsatisfactory and hence there is conflict with policy TR/6 of the local plan.
100. This policy is not out-of-date and is in any event consistent with the aims of the Framework.
101. The threshold of severity the appellant claims to be the meaning of paragraph 32 of the Framework is not relevant to this as there is either a well founded highway safety concern or there is not and it would be extraordinary if planning permission could not be refused on the basis of a really serious (as opposed to

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<sup>28</sup> Doc 20

severe) risk to highway safety. It is more likely that the “safety” part of paragraph 32, the second bullet point, applies here, whereas the third bullet point is concerned with convenience, delay etc where severity is a more meaningful concept.

102. **In conclusion**, the appeal should be dismissed.

**The Case for Barrow Upon Soar Parish Council** (Docs 3, 42 & PC1 - PC4)

*The salient material points are:*

103. The Parish Council does not oppose the principle of residential development in the settlement but believes it cannot support substantial development of the type proposed in this case without major infrastructure improvements, principally the upgrading of Slash Lane to provide two flood free links to the A6 and the provision of a new or significantly upgraded health centre. These concerns are evidenced by the Parish Plan final report, the NHS response to the application and the lack of permissions for major house building in the last 12 years.<sup>29</sup>
104. But for the Secretary of State’s intervention and consequent inquiry, the application would not have been sufficiently scrutinised in terms of deliverability in the context of meeting the Charnwood shortfall in housing land supply. Moreover, the proposed development is not “sustainable development” of the type envisaged by the Framework and insufficient mitigation is provided in respect of local infrastructure constraints, the consequences of which are articulated by those with local knowledge and experience.
105. The Parish Council’s concerns lead to technical objections concerning traffic impact, safety, sustainability and flood risk management and practical objections in respect of the ability of the village infrastructure to cope with this and other housing development that may occur.
106. The Council’s emerging core strategy shifts the emphasis away from the identified service centre settlements such as Barrow Upon Soar.
107. The proposed development will increase the risk of accidents at the Grove Lane junction and the wider highway network is severely constrained. The approaches to the village are subject to capacity issues as a consequence of growth in traffic with attendant safety concerns, notably when Slash Lane is flooded for typically 2 or 3 days around 12 times a year. The exacerbation of these concerns by the proposed development will not be adequately mitigated.
108. The site access arrangements and external linkages are inadequate.
109. There should be at least two points of access for a development on this scale, one of which could be an emergency access. This should be separate from the principal access and the proposed arrangements in this case are unacceptable. The development could be marooned by a road accident or a fuel spillage.

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<sup>29</sup> Appendix G to the Parish Council’s evidence in fact records, inter alia, the grant of permission for 360 dwellings to David Wilson homes (land between Cotes Road and Willow Way Ref P/04/0999/2 in outline and subsequent reserved matters P/05/2778/2)

110. There is insufficient assurance from the submitted material that adequate forward visibility to the access roundabout on approach from the north east could be achieved without tree removal and re-grading of third party land.
111. There will be a risk that the short section of Grove Lane that is one-way to the north of its junction with Breachfield Road will be increasingly abused by impatient drivers, an occurrence which anecdotal evidence suggests to be periodic and which led to a recorded accident with a pedestrian on 17 December 2008. This is a further indicator that the main vehicular route to the site is constrained.
112. The Grove Lane junction has been considered in great detail and the Parish Council endorses the case made by the Council. The second scenario agreed by the parties<sup>30</sup> is considered appropriate, i.e. Splay 2: 2.4 (offset 1 metre east of centreline) x 40.3 x 0.75 (encroachment) metres. This is because right turning vehicles constrain the observed propensity of left turning drivers to position themselves at the centreline for maximum turning advantage.
113. The majority of vehicles turning left emerge from the junction and impinge on the opposite carriageway to avoid overrunning the kerb.
114. Even with speed cushions the surveyed wet weather speed recorded by the Council is 31mph and should not be reduced further for the purposes of calculating the splay requirement. The requisite 45m visibility is not available.
115. Both MfS2 and the WSP supporting research paper are caveated by cautions as to their conclusions regarding the relationship between visibility at junctions and accidents. It is common sense that constrained visibility to the left reduces the necessary attention that drivers can give to traffic approaching from the right.
116. This is the principal route from the site and it is unsuitable for serving significant new housing development.
117. With regard to the proposed improvements at the Barrow Road Bridge, the ATA acknowledges that MOVA control is only likely to result in a 2-3% increase in capacity. Moving the stop lines closer prevents HGVs passing or causes vehicles passing to take additional time. The humpback of the bridge restricts visibility and deters efficient use of the green phase. Cyclists now have a dedicated phase that will negate the proposed capacity improvements. The absence of an adverse impact from this has not been demonstrated. The location of the signal heads cannot be optimised because the bridge is a listed structure.
118. The anticipated MOVA improvements will only materialise if both approaches are not at saturation. The WSP VISSIM model underestimated the queues and therefore didn't account for queuing vehicles beyond the purview of the model, a deficiency that will be exacerbated by anticipated traffic growth. The proposed 'hurry loop' to prevent vehicles queuing back onto the Jerusalem roundabout will cause excessive queuing from the west in the AM peak.
119. Barrow upon Soar is a constrained location due to periodic flooding of Slash Lane and the Barrow Causeway. It is primarily a dormitory settlement and travel beyond it to work and for main food shopping and leisure is a constant necessity.

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<sup>30</sup> Doc 20

- No meaningful improvements to current travel patterns are proposed and the principles of paragraph 32 of the Framework need to be applied.
120. The sustainability credentials of the proposal are questionable as far as travel is concerned, with most residents travelling to work by car outside the settlement. There is no new employment proposed and no linkage across the railway and parking facilities in the village centre are inadequate.
121. Without the replacement footbridge, the programme for which is uncertain, over one third of the site would be in excess of 400m from a bus stop. The footpath crossing of Fishpool Brook will be within the flood alleviation area and if raised to avoid the water would impede flow, a scenario that has not been modelled.
122. The proposed improved pedestrian routes to the village centre are subject to a number of deficiencies and it has not been demonstrated that the £40,000 provided for improvement will be adequate. It is questionable whether the routes are truly “walkable” and hence whether the centre is within 10 minutes walk of the site as advised by MfS.
123. The Travel Plan target of a 14% modal shift away from the private car is unlikely to be realised as it has no real incentives. There is no proposed increase in the level of bus services and no proposed changes to train services or accessibility to the train station.
124. The train station suffers from the lack of car parking or drop-off facilities; it is only accessible by a large number of steps and is unmanned with an isolated platform with little in the way of shelter. It is an overstatement to say that it offers an excellent level of service. Its existence does not automatically make the appeal site sustainable. Only 1% of the Barrow Upon Soar population used the train to travel to work in 2001 and despite increased rail patronage the level of service remains unaltered, indicative of the usage made. Similarly the existence of a half-hourly bus service does not automatically make the appeal site sustainable. It is the practical ability to use such services on a sustained basis that is material. The Travel Plan does not and cannot provide that level of reassurance. The Travel Plan Co-ordinator may be of some benefit but without improved services there is little that can be achieved. The Travel Plan Penalty is nowhere near the level of funding that would be required to improve services.
125. The gaps in the technical information concerning the site development profile, sewage disposal and ground conditions mean that there is insufficient means to assess whether the houses proposed can be delivered within five years, with question marks also in respect of highway capacity, traffic flow and surface water drainage.
126. Ground conditions including a Phase 1 contamination survey have yet to be investigated but it is known that there are lime kilns within the site and old mine workings in the vicinity. The effect on works required to drain the site is unknown.
127. The potential increase in surface water flows have not been properly assessed and flood risk and flood management issues will be exacerbated, together with foul drainage difficulties. There is doubt about the ability of the site to contain its surface water flows so as to ensure no further increase in flood risk to adjoining land and this could affect layout and hence housing yield.

128. The exacting requirements of the Environment Agency's suggested condition (8)<sup>31</sup>, the lack of discussions with Severn Trent Water and the configuration of the existing drainage diminish confidence in the occupation of any dwellings on the site within 5 years. This is highlighted by the fact that the appellant has not had discussions with Severn Trent Water and the knowledge that the sewer is at capacity due to gradient and already discharges at times of peak flow. The opportunities for redirecting the flow away from this catchment are limited and the construction of a new sewer would require a tunnel under the railway and the crossing of third party land, possibly with a need to upgrade a pumping station. There is therefore no certainty that any houses on the site could be occupied within 5 years.
129. There are concerns about the impact of the culvert under the railway being blocked and the revised modelling that took some account of this took no account of the impact of serviceable pedestrian crossing points for Fishpool Brook.
130. EA acceptance of the revised FRA was not without reservation and the exacting requirements of the suggested conditions (5), (7) and (8)<sup>32</sup> should be borne in mind.
131. The EA response is detailed and prescriptive and indicates that much detailed work is yet to be done, including soakage tests. No assessment of the consequences of exceedance of the propose drainage systems in extreme events such that water flows directly into Fishpool Brook and no conclusions can be drawn on the adequacy of the drainage proposals.
132. The EA remains concerned because it advocates the lifting of floor slabs to 48m AOD. However, a large element of the proposed development is below 48m AOD and the raising of slab levels to that height has unknown consequences for the layout.
133. The absence of blockage modelling highlights the issue that at a flood level of 48m there would be an impact on the floor slabs of existing houses on Breachfield Road.
134. The proposed and any additional pedestrian crossings of Fishpool Brook will cause more flooding of properties upstream than has currently been modelled.
135. There will be a greater risk of debris in the brook and consequent blocking of the culvert during significant events with deeper flooding of the properties on Breachfield Road as a consequence.
136. The local health centre will be placed under unacceptable pressure and the mitigation proposed in the form of a contribution for extra car parking spaces will not address the underlying concern regarding a health centre operating at capacity.
137. The education contributions, which are phased, will not guarantee the provision of new classrooms and the same applies to contributions to community facilities and other contributions. The proposed mitigation will not deliver the necessary

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<sup>31</sup> Doc 29 Revised Draft Conditions

<sup>32</sup> Ibid

facilities to achieve the improvements now required from the planning system by paragraph 9 of the Framework.

138. **In conclusion**, the proposals will not lead to a better quality of life or positive improvements as advocated by the Framework but rather it will lead to deterioration in the quality of life currently enjoyed by Barrow Upon Soar residents. Although they seek to meet the Charnwood housing shortfall, they remain incomplete and uncertain in delivery with harmful impacts such as not to be the type of sustainable development the Framework encourages. The grant of outline consent would have a number of adverse effects and the appeal should be dismissed.

### **The Cases for Interested Parties**

*The salient material points are:*

#### **Mr Hilsdon** (Docs 32 & 34)

139. Gardens in Breachfield Road flood on a regular basis. This won't affect the new residents but the situation for existing residents will be made worse. There is a danger that the culvert under the railway will block, making the situation worse. What guarantee do the residents have that these things will not occur? Old mine workings could exacerbate drainage and flood problems.

#### **Mr Willcocks**

140. The travel plan will not work. Experience of commuting to Leicester prior to retirement is that the service is poor, unreliable and overcrowded. There are only two carriages on the relevant trains and the station is rudimentary. The railway is only useful for a journey to work if the stations are walkable at both ends of the journey.

#### **Dr Sarah Parker** (Doc 5 re: GPs' practice at the Barrow Upon Soar Health Centre)

141. The health centre was purpose built in 1980 around which time the practice list of 4,500 was broadly comparable to the population. The current population of Barrow Upon Soar is circa 6,320 but the practice list is around 8,650. New types of patient place new demands on a practice and at present the clinical skills available match the demographic profile.
142. The premises have adapted in response to a rising population, with S106 monies from another development being used for refurbishment in 2011, bringing into use rooms vacated by district nurses, health visitors and school nurses pursuant to NHS re-organisation. The limited surgery space is shared to manage clinical availability and evening appointments are offered on a Wednesday.
143. The practice boundary has been redrawn to curtail pressure and patients are no longer accepted from outside the boundary. The appeal site is within it and will therefore have an impact, as only under exceptional circumstances can GPs lists be closed.
144. The objection arises because the appeal proposal comes hard on the heels of the challenge posed by the ongoing construction of 360 houses elsewhere in Barrow Upon Soar.

145. The Practice is challenged by the rising population, having been rated “deep amber” by the PCT prior to refurbishment and there are ongoing uncertainties arising from further NHS reorganisation. The health centre is currently operating at 70% over capacity and will be 90% over if the appeal scheme is developed. There is no prospect of NHS funded capital investment at present. Adding patients to the current practice list will cause deterioration in the services offered.
146. The central location of the health centre is appreciated by patients for its good public transport links but at busy times the car park is often full.
147. The quality of care provided is good and the Practice is keen to improve it further. The continued rapid growth of the Practice population would make achieving improvement extremely challenging and would be detrimental to the care of both existing and future patients.
148. The appeal should be dismissed.

**Nicky Morgan MP** (Doc 16 on behalf of constituents in Barrow Upon Soar)

149. First, the former Planning Minister Greg Clark and the former Local Government Minister Bob Neill have both emphasised the Government’s commitment to Localism and empowering communities to shape their neighbourhoods through neighbourhood plans as the Parish Council wants to do. This is clear in the Framework. To ignore residents’ concerns is to ignore the policy intentions of Localism. I have not been contacted by a single resident of Barrow Upon Soar in favour of this development. The community has had more than its fair share of new development through the large Willow Road development. This proposal outside the village limits is a step too far.
150. Secondly, the Secretary of State needs to be aware of the vulnerability of Councils such as Charnwood, which does not yet have a core strategy in place, to speculative applications such as this. The framework says weight can be given to an emerging core strategy and in September 2012 the Council indicated its intention that service centres including Barrow upon Soar would share 200 homes between them over 15 years, whereas this proposal is for 300 homes in Barrow Upon Soar alone.
151. Thirdly, the development would put intolerable strains on the physical and social infrastructure of the settlement and it is inconceivable that the residents of the proposed development would use public transport rather than their cars. The development cannot be considered sustainable.
152. The appeal should be dismissed.

**Mr Rowland** (Doc 18 Landmark Planning for Barrow Residents’ Action Group)

153. BRAG supports the Council’s reason for refusal.
154. The appeal site is on rising land and prominent. The proposed development would harm the landscape and the harm could not be mitigated by the proposed landscaping scheme. It would therefore be contrary to saved local plan policies CT/1 and CT/2.
155. The harm to the rural landscape and the danger to highway safety would outweigh the benefit of reducing Charnwood’s housing land deficit.

156. The appeal should be dismissed.

**Councillors Ranson and Fryer** (Docs 17 & 40)

157. We support the Parish Council, the Barrow Residents' Action Group (BRAG) and the residents in their opposition to the development.

158. Its adverse effects would significantly outweigh its benefits when assessed against the Framework as a whole. It is over dominant and alters the whole character of the village. The roads will not cope and access to the schools is under stress as roads serving them do not have the scope to be improved. More than 500 houses have been built or approved in 10 years and the High Street facilities suffer from lack of parking already. It is unrealistic to suppose people will walk to the shops and back.

159. Slash Lane is often closed by flooding and more warning signs would do little to help drivers already committed to using the route through the village, which takes traffic from other villages en route to the A6, M1 and A46.

160. The health centre is heavily oversubscribed and access to it from the appeal site would be by car, adding to congestion.

161. Existing residents have made welcome the occupiers of many new houses in recent years. They are not "NIMBYs" but do object to the sheer scale of what is proposed. The changing climate is increasingly disrupting the road system through flooding around the village and the measures proposed will not help. Huge investment is needed, for example at Slash Lane.

162. The appeal should be dismissed.

**Mr Wilson**

163. Experience suggests that, with the fire station being based in Loughborough, there will be problems of accessibility for it if the roads are congested at times of flood.

**Mr Burton** (Doc 39)

164. This is the first area to flood in Leicestershire, up to 12 times per year. Traffic congestion is always caused, with of a mile in length. The police put signs up and additional signs will not help as most people know when roads will be closed.

165. The abuses of the one-way system between Breachfield Road and Melton Road are not reported to the police. The station is inaccessible due to the many steps and people are more likely to drive in any event because they can visit superstores and the like during the course of their journeys, or they will drive to the station and park on roads near the station.

166. The sewer is at capacity and subject to storm overflows, but Severn Trent Water tends not to object. However, there has been no mention of the water Framework Directive which requires rivers to be improved by 2027. It is doubtful if surface water can be dealt with using SUDS

167. Previous applications in the countryside have been rejected and nothing has changed to justify this one.

**Mr Smith** (Doc 19)

168. There is a highway danger at the Melton Road/Breachfield Road/Babington Road junction close to the appeal site as illustrated on my annotated plan.<sup>33</sup>
169. MOVA might help with Barrow Road Bridge but the wider area including Slash Lane needs to be looked at.

**Councillor Forrest** (Chair of BRAG)

170. Local residents are not "NIMBYs". Lots of them have had new houses "in their back yard". Barrow Upon Soar is a great place to live and we do welcome newcomers, but we are at saturation point and enough is enough. The infrastructure will not cope.

**County Council** (represented by Mr Prendergrast, Mrs Owen, Mr Kettle and Mr Tyrer) (Docs CC1 & CC2)

171. In its essentials, the position of the County Council is as set out in the written evidence submitted and there is little to add. A Civic Amenities site is no longer required as one has been provided at Mountsorrel.
172. The adopted County Council policy in respect of developer contributions is the *Statement of Requirements for Developer Contributions in Leicestershire* (SRDCL) which is the starting point for negotiating appropriate contributions, the latest review of which was in 2007.
173. There are written submissions from Mr Tyrer, the Developer Contributions Officer and Mr Cook in respect of highways and transportation matters.

**Mrs Anderson** (Doc 15 for Leicestershire and Rutland Primary Care Trust)

174. The concerns expressed by the practice regarding the pressure of extra patients are echoed<sup>34</sup> but in terms of consequential capacity improvements to premises the need would be for extra parking capacity, for which a £30,000 contribution is sought.

**Mr Page**

175. Traffic on Grove Lane/Melton road is at the capacity of the highway and creates a potential danger to children.

**Mrs Noon** (Doc 28 for CPRE Charnwood District Group)

176. The County Council has given insufficient weight to the appeal decision referenced T/APP/X2410/A/95/259402/P4<sup>35</sup> regarding the disruptive effect to traffic of flooding on Slash Lane. This is relevant to any additional development in Barrow Upon Soar. The circumstances have not changed in the 14 years that have since elapsed but rather they have been exacerbated.
177. This is an important appeal decision and consideration should be given to the increased volumes of traffic that the proposed development would add to various

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<sup>33</sup> Doc 19

<sup>34</sup> Doc 15

<sup>35</sup> Included also as Appendix 2 to Doc 28

routes in Barrow Upon Soar that are already disrupted by flooding and the appeal should be dismissed for this reason.

**Mrs Reed**

178. Parked vehicles disrupt the flow of traffic, especially lorries, on the eastern approach to the Barrow Road Bridge and this will undermine the proposed improvements.

**Mr Pepper**

179. Cyclists will inevitably slow traffic as it passes over Barrow Road Bridge because of the configuration of the highway and cycling has been encouraged in Barrow Upon Soar. Mountsorrel Lane also floods and that practically leaves the bridge as the only route. 30% of residents in a Parish Plan survey cited flood disruption as a reason not to build.

**Mr Hobbs**

180. A trial run of MOVA should be considered as set out in letter.<sup>36</sup>

**Mrs Rodgers** (Doc 41 for Barrow Upon Soar Community Association)

181. BUSCA is looking to build a new purpose built community centre in the village to accommodate a variety of activities in response to identified needs.<sup>37</sup> Dual use of the Humphrey Perkins School facilities, including the sports hall, has been curtailed for practical reasons. Little attention has been given by the developers, or by the Council, to the detrimental impact of a large influx of new residents and the social consequences.

182. In order to maintain social cohesion it is imperative that the village has the facility BUSCA hopes to build at an estimated cost of around £1.5 million. This is an essential facility that would be necessitated by the proposed development and the sum proposed in the planning obligation (£100,000) will not cover the cost.

**Written Representations**

*The salient material points are:*

**The County Council**

183. The signing of the S106 planning obligation obviated the need for the representatives of the County Council who had prepared evidence to be called as witnesses. That evidence therefore effectively becomes written submissions.

184. The gist of the evidence in respect of financial contributions to education and library services is that they are based on formulae in the SRDCL,<sup>38</sup> adopted by the County Council as Supplementary Planning Guidance.

185. In respect of education, the proposed development will not affect the high school but will impact on the primary and upper schools, which are full and predicted to remain so. This will give rise to a need for funding of school places

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<sup>36</sup> Doc 31

<sup>37</sup> Detailed in Doc 41

<sup>38</sup> *The Statement of Requirements for Developer Contributions in Leicestershire*

at circa £12,099 per primary school place and circa £18,355 per upper school place, the deficit in the number of places relative to the number of dwellings being calculated according to standard formulae.

186. The contributions sought are proportionate, necessary and directly related to the development. They are therefore CIL compliant.
187. In respect of library facilities, the contribution would be used to improve the lending stock and computing facilities at Barrow Upon Soar Library and reconfigure its internal space to provide for additional public access. Calculated by standard formulae, the contribution sought is proportionate, necessary and directly related to the development. It is therefore CIL compliant.
188. The contributions for public transport and pedestrian and cycle improvements stem from the core principle of the Framework that patterns of growth should be actively managed to make the fullest possible use of public transport, walking and cycling, and focus significant development in locations which are or can be made sustainable.
189. The proposed enhancements to the walking and cycling routes to the High Street, the Humphrey Perkins High School and the Sibleby Road bus stops are necessary to cater for and encourage increased use in accordance with travel plan objectives. £40,000 is proportionate and the need stems from the development given the likely demand that development on this scale will give rise to. The Travel Packs Contribution, 6 month public transport passes and the funding of two bus shelters are necessary, proportionate and directly related to the proposed development, the object being to facilitate and encourage public transport use from the outset.
190. The Travel Plan Penalty will become payable if monitoring demonstrates that the modal shift target of 14% in the Travel Plan is not achieved. This penalty will incentivise the developer to seriously implement the travel plan and give comfort to the County Council that further funding would be available to encourage modal shift if targets are not met. The penalty is necessary, directly related and proportionate.

### **Nicky Morgan MP**

191. The application was refused prior to the finalisation of the Framework. This clarifies the meaning of sustainable development and the impact on the roads, schools and health services in particular render it unsustainable in terms of the Framework. There is a five year land supply in the local area. The development will, by taking open countryside, harm the character and visual amenity of the area contrary to saved policies CT/1 and CT/2 of the local plan. It is also contrary to saved policy ST/1(ii) because it is clear from the level of objection that this landscape is "particularly valued by the local community". The refusal on highway safety grounds is supported.

### **Barrow Upon Soar Parish Council**

192. It is misleading for the appellant to suggest that the Borough Council has previously supported the proposed development "in principle". The application is speculative and exploits the Borough Council's failure to deliver a Local Development Framework. It is unsustainable because it is on greenfield valuable

agricultural land outside the limits to development, visually dominant on high ground, and will overload healthcare and schools in the village.

### **Leicestershire Constabulary**

193. The policing contribution is necessary, proportionate and directly related to the development. It is therefore CIL compliant.

### **Barrow Residents' Action Group**

194. The appeal site is on rising land and prominent. The proposed development would harm the landscape and the harm could not be mitigated by the proposed landscaping scheme. It would therefore be contrary to saved local plan policies ST/1(ii), CT/1 and CT/2. The harm to the rural landscape and the danger to highway safety would outweigh the benefit of reducing Charnwood's housing land deficit.

### **Private Individuals**

195. There is a great weight of correspondence from local residents. In reading this I have discerned a number of consistent themes:

- First, there is a widespread feeling that the village community has witnessed rapid expansion and that it is outgrowing the physical and social infrastructure available to it.
- Secondly, there is a concern at the loss of countryside around the village.
- Thirdly, there is a concern with highway safety, especially at the Grove Lane junction
- Fourth, many people believe that the capacity of the highways is near its limit, certainly at peak times, and that the problems are particularly intense because periodic flooding already disrupts flows.
- Fifth, there is a perception that the proposed development will increase flooding.

196. In addition, there are numerous comments raising concerns which include; the effect on the living conditions of neighbouring residents, parking pressure in the village centre, noise and disturbance to existing residents, destruction of trees and hedges, inadequate public transport, harm to biodiversity, loss of agricultural land, unsuitable ground conditions, potential to increase crime and disorder, the slow progress or halting of existing residential developments for lack of demand, encouragement of car-based travel building and the disregard of the opportunities for using existing empty properties.

## **Conditions and the Planning Obligation**

### *Conditions*

197. A number of suggested conditions (SC) were agreed between the Council and the appellant.<sup>39</sup> Discussion of these at the Inquiry was inclusive of the Parish Council and interested local residents.

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<sup>39</sup> Doc 29

198. I have reviewed the SC in the light of the advice in Circular 11/95 *The Use of Conditions in Planning Permissions* and the relevant tests therein, together with the advice of the Framework. Some require minor rewording to more closely accord with the relevant advice of the circular and others may usefully be combined for economy, but in general they are appropriate.
199. The standard timescales (SC1) for an outline permission and submission of reserved matters are appropriate but these should be more precisely expressed so as to define the reserved matters and the associated timescales.
200. Accordance with the definitive plans (SC2) should be prescribed by condition for the avoidance of doubt and in the interests of good planning but general accordance with supporting documents is an imprecise approach. However, precision may be introduced by requiring the submission of details for approval by the local planning authority in relevant cases to be in accordance with the principles contained therein. Bearing in mind, inter alia, the planning obligation, I do not consider the approach appropriate for the TA, the ATA, the UFTP or VISSIM modelling. It is inappropriate to address the proposed off-site works at Barrow Road Bridge in this fashion as the land involved is not in the control of the appellant. However, bearing in mind that these are essentially traffic management measures susceptible to refinement and I am not persuaded, having considered the evidence and observed the relevant circumstances of the bridge on site, by the proposition [117] that there would be impediments to its detailed implementation in practice that could not be readily resolved, I consider it could appropriately be dealt with separately through a Grampian style condition. (See also my comments on SC15 below.)
201. The various assessments have been based on a maximum of 300 new houses and as this number is not specified in the description of the development or the application, which is simply for "residential development" it is necessary to limit the number to a maximum of 300 (SC3) by specific condition. Moreover, it is necessary to prescribe the maximum developable area bearing in mind the importance of flood alleviation, the scope for SUDS and the role of the structural landscaping, with a Master Plan creating an overarching framework for the submission of reserved matters. However, the submitted masterplan is purely illustrative. This difficulty may be overcome by the approach advanced in SC4, as this builds on the general principle illustrated to create a firm framework and phasing programme, the latter being necessary for a development on this scale, in my view. I see no difficulty in requiring general conformity to the illustrated principles according to which the proposal has been advocated as a sustainable form of development. This would not fail the test of precision as those principles are spatially expressed on the illustrative masterplan and articulated in the Design and Access Statement. It would be for the Council to reasonably consider whether or not the Master Plan and Design Code submitted pursuant to the relevant condition were in general conformity with them.
202. SC5 increases the focus on the detailed implementation of any particular phase approved pursuant to SC4 and this seems to me to be an entirely necessary and reasonable approach.
203. The site is known to have some archaeological potential including the remains of lime kilns of varying age from early post-medieval until perhaps as recently as the nineteenth century, but the Archaeological Services team at the University of

Leicester is satisfied that the matter can be addressed by a programme of work following a written Scheme of Investigation.<sup>40</sup> This may be secured by a condition such as SC6.

204. Although SC7 – SC9 are all essentially concerned with drainage it seems to me that, in the circumstance of the site, the matters addressed are most practically dealt with by separate conditions specifically concerned with sustainable surface water drainage, foul sewage and the specific detail of trapped gully provision in each phase of development.
205. The site is currently in arable use and there is no reason to suspect widespread contamination. However, its archaeological characteristics suggest that disturbance of buried deposits might, in places, give rise to concern and hence, on balance, a precautionary condition of the type suggested (SC10) is appropriate.
206. SC11 seeks to protect retained trees and hedges on the site as the development progresses through phases. It would require an overall scheme to be first approved, supplemented as necessary by the implementation of the approved measures as each phase commences (SC12). This seems to me to be a logical and methodical approach to this important matter that it is necessary to address in the interests of sustainability.
207. SC13 reflects the concerns regarding the impact of the railway on the living conditions of future occupiers of parts of the site and while there is no reason to constrain development in principle for that reason, suitable detailed measures to secure amenity are necessary.
208. SC14 effectively requires the precise details of the access applied for to be resolved and the works, including the pedestrian and cyclists' bridge over the Fishpool Brook to be fully implemented before any dwelling is occupied; and I consider this to be necessary as these involve the sole vehicular access and the principal pedestrian route anticipated.
209. SC15, in effect, partially replicates the suggested content of SC2 insofar as it specifically concerns the off-site works for the Barrow Road Bridge traffic management scheme to improve its capacity, and involves further consideration of the details of the improvement, notwithstanding the satisfaction of the highway authority with the details submitted to date. This is necessary and will potentially cater for the effects of the cyclists phase subsequently introduced. Being off-site on land not controlled by the appellant, it needs to be negatively expressed in 'Grampian' style and to ensure early delivery and benefit the condition should, as suggested, make first occupation of a dwelling contingent upon its implementation.
210. SC16 – SC18 are best combined within the purview of a standard form of construction management condition suitably adapted to include, inter alia, the precautions to be taken in respect of badgers passing through the works.
211. SC19, if appropriately cross-referenced to the details of design, would require the retained public footpaths within the site to be upgraded by the time half the houses are occupied. This seems a reasonable and necessary precaution to

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<sup>40</sup> Doc 24

ensure that such improvements are incorporated in the development in a timely fashion whilst accommodating any unavoidable delay.

212. The Slash Lane Flood warning system (SC20) is promoted as a benefit of the proposal and a means of mitigating the impact of extra traffic on such occasions and is seen as such by the highway authority. Despite some scepticism amongst third parties as to its value or efficacy I am nevertheless satisfied that it is necessary to secure the benefit by condition.
213. Insofar as public art (SC21) is required by the provisions of the development plan, it is necessary to secure its implementation by condition. Local plan policy EV/43 seeks to make public art integral to the design of major developments and, given this development plan rationale for the condition, it is not in my view inappropriate, in this instance, to seek to reinforce the quality of the detailed scheme design in this way.
214. Insofar as the Framework encourages renewable energy as an important aspect of sustainability, it is necessary to reinforce this locally on a development of this scale by a condition such as SC22.
215. The Parish Council promoted a condition to minimise the risk of flooding caused by the blocking of the Fishpool Brook culvert under the railway line, suggesting that the land as far as the culvert is in the control of the appellant and that the test of necessity is met by the need to avoid such blockage. However, I am not persuaded that this is appropriate or necessary as the potential blockage of culverts is a universal and ongoing matter for the appropriate authorities rather than the developer of any particular site. Moreover, I do not consider the risk of blockage to be demonstrably increased by the proposed development as the risk of unauthorised disposal of items likely to cause such a problem would arguably be reduced by the greater surveillance of the Fishpool Brook that is likely.

#### *Planning Obligation*

216. The Framework sets the tests for planning obligations consistent with the statutory requirements of the Community Infrastructure Levy Regulations 2010 (CIL Regulations). The Council's evidence addresses in some detail<sup>41</sup> the developer contributions provided for and concludes, with reservations regarding the Travel Plan Penalty, that all bar the Policing Contribution are compliant with the relevant tests and the CIL Regulations. The separate matter of Affordable Housing in the obligation is justified on the basis of local and national policy and the relevant local evidence base. The precise level of affordable housing is a matter of negotiation on the specifics of any particular site, but it seems to me that 30% affordable, to be tailored to local needs as regards the mix of Social Rented Dwellings and Intermediate Affordable Dwellings, is a reasonable expectation on a greenfield site of this nature. The rationale for the Education and Library Facilities contributions is set out in the written evidence of the County Council,<sup>42</sup> which also refers to the original request for a Civic Amenity contribution, subsequently dropped as a result of convenient local facilities with adequate capacity having been provided.

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<sup>41</sup> C2 Evidence of Mr Reid, Section 3

<sup>42</sup> CC1 Evidence of Mr Tyrer

217. I have no reason to depart from the Council's analysis in respect of Public Open Space/Recreation and Community Facilities, Education and Library Services, all of which are calculated on the basis of established practice locally and with a view to specific provision in response to the predicted impacts of the proposed developments. Full weight may be accorded to those elements of the Planning Obligation. They are necessary to make the development acceptable in planning terms, directly related to the development, and fairly and reasonably related in scale and kind to the development.

218. More substantial comment, to which I return in due course in the context of my conclusions regarding infrastructure, is necessary on the financial contributions provided for in respect of Highways and Transport, Policing and Health.

## Conclusions

*References are made, where appropriate, to previous parts of the report by indicating the relevant paragraph number thus [0].*

## Main Considerations

219. I have identified the following main considerations in this case:

- (i) Whether the Council can demonstrate a five year supply of deliverable housing;
- (ii) The sustainability of the proposed development;
- (iii) The effect of the proposed development on highway safety, in particular its effect on the safe operation of the junction of Grove Lane with Sibley Road and South Street ('the Grove Lane junction');
- (iv) The effect of the proposed development on traffic circulation within Barrow Upon Soar, including at times of flooding;
- (v) The effect of the proposed development on flood risk;
- (vi) The effect of the proposed development on the infrastructure of the village and whether its impacts may be adequately mitigated by the provisions of the planning obligation;
- (vii) Whether the proposed development accords with the development plan for the area in respect of highway safety and the protection of the countryside;
- (viii) The accordance of the proposed development with the intentions of the National Planning Policy Framework ('the Framework') regarding the delivery of a wide choice of high quality homes, good design and the promotion of healthy communities; and
- (ix) Whether any harm arising from the proposals would be outweighed by other considerations, i.e. the planning balance.

### *(i) Housing Land Supply*

220. The Council accepts that it cannot demonstrate a five year supply of deliverable housing sites and there was no substantive, evidence-based, challenge from any party regarding this. Accordingly, the Council accepts that the local plan policies

concerning housing land supply, specifically, cannot be considered up-to-date. [28]

221. I have no reason to doubt the position and it merits no further discussion other than to note that the presumption in favour of sustainable development set out in paragraph 14 of the Framework is thereby engaged. The failure to demonstrate a five year supply of deliverable housing sites is a matter to which substantial weight must be accorded.

*(ii) Sustainability*

222. Sustainability is a multi-faceted concept most authoritatively articulated in the Framework for present purposes. It merits some attention in that the sustainability credentials of the site are questioned by many, albeit not the Council [28], including numerous local residents who object to the proposals.

223. In land resource terms it has been established that the site does not comprise Best and Most Versatile land [8] and hence the loss of farmland does not weigh significantly against the proposal in sustainability terms, given the inevitability of having to develop greenfield sites in the Council's area.

224. Moreover, I am satisfied that there are no seriously adverse implications from the point of view of biodiversity. Again this is common ground between the main parties [28]. It seems to me that, if anything, the enrichment of habitat through extensive landscaping with appropriate species and the additional benefits afforded by individual suburban gardens in the fullness of time would be a benefit, notwithstanding that some species associated with farmland would be unlikely to return to the site itself.

225. Insofar as design is an important facet of sustainability, the qualities of the layout are such that it is common ground [28] between the main parties that relevant objectives would be met or would be capable of being achieved at the detailed design stage. It seems to me that the proposals balance the need to make efficient use of the site with the need to provide adequate open space to not only create a pleasant setting but also to accommodate appropriate SUDS measures and flood attenuation in a practical fashion.

226. The majority of the site is within a reasonable walking distance of the village centre. I noted that at reasonable walking pace it is 10-15 minutes and the upgrading of the routes would encourage their use. The south eastern part of the site is the least accessible at present, including to the bus stops on Sileby Road to the south. However, the evidence before me suggests [62] that Network Rail fully intends to replace the closed pedestrian crossing point of the railway that currently disrupts the footpath network with a footbridge and I have no reason to believe that this replacement will not in due course be implemented. The layout of the site makes for the encouragement of trips on foot and by bicycle and certainly facilitates such modes for those who wish to utilise them in preference to using a car for local journeys.

227. More strategically, the existence of the railway station, which provides access to major centres for employment, shopping and leisure, is a major advantage of the settlement of Barrow Upon Soar which would be readily shared by residents of the proposed development. I acknowledge that the station is perhaps more properly described as a 'halt' rather than a 'station', insofar as the latter is more

commonly understood as a substantial building or group of buildings with ticket office, staff and possibly shops and cafés. Nevertheless, the fact of the matter is that it exists and enables the population of Barrow Upon Soar to make ready use of the railway to travel to a variety of important destinations for employment, shopping, leisure and many other services, should they choose to do so. It may not be the most comfortable of facilities but for the majority of able-bodied people it is a perfectly practicable proposition.

228. This is an important consideration in terms of the concept of sustainability, to which the long view is intrinsic. Transient factors such as the state of the rolling stock or the quality of the service are less important than the fact of heavy and permanent infrastructure investment having already been undertaken, thereby representing an asset to be capitalised upon as needs dictate. The fact that usage is apparently low at present [124]<sup>43</sup> does not detract from the fundamental long term advantage of the railway as a focus for residential development.
229. The Framework<sup>44</sup>, importantly, puts it thus: (Planning should)... *“actively manage patterns of growth to make the fullest possible use of public transport, walking and cycling, and focus development in locations which are or can be made sustainable”*. This core principle places Barrow Upon Soar in a category of existing settlements which are inherently sustainable and, moreover, the appeal site itself is all within an entirely comfortable walking distance of the station<sup>45</sup>. Many of the houses would be within 800m and none would be further than one kilometre, equivalent to a 10-15 minute comfortable walk for most. [28,61]
230. In addition, the existence of regular local bus services, for the most part within 400m<sup>46</sup> of the proposed houses with the potential for diversion through the site in due course, complements the more strategic accessibility afforded by the railway. [25,28,61]
231. It is relevant in this context to note in full the reported comments of the County Council’s Director of Environment and Transport, set out in full in Appendix 3 to *Charnwood 2028 Local Development Framework (LDF) Core Strategy Service Centre Capacity Assessment (Final Report) December 2011* (‘the SCCA’) [68]. These were that Barrow Upon Soar... *“is well served by bus services, and has a railway station but accessibility for pedestrians is currently limited to stairs only. However, existing public transport levels are insufficient to cater for the level of modal shift away from the car that would be required in order for the village to be considered suitable for a further significant expansion in housing provision.”*
232. The third key element in the equation as regards the sustainability of the location is the existence of a village centre with a good range of services that is already accessible on foot for those with the time and inclination to walk, and can be made more pleasantly so by the measures provided for in the planning obligation. There is no reason to regard the site as disadvantageous or discouraging to the use of bicycles.

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<sup>43</sup> PC1 Evidence of Mr Cage, Appendix 1

<sup>44</sup> Paragraph 17

<sup>45</sup> ATA fig 3.2

<sup>46</sup> ATA Fig 3.1

233. For the above reasons I conclude that the appeal site's basic credentials in terms of both natural resource conservation, potential for good design, choice of sustainable transport modes and, importantly, scope for future improvement of public transport in response to demand, are in fact highly conducive to development of the type proposed.

234. It is of course the case that many other considerations impinge on the overall sustainability of the site and those that are of potentially decisive importance, namely highway safety, traffic circulation, flood risk and village infrastructure are separately considered below in order that an assessment in the round within the context of the development plan and the Framework can be made.

*(iii) Highway safety*

235. Grove Lane joins Sileby Road/South Street in the form of a section of one-way street with left turning and right turning lanes. The visibility to the right is entirely adequate but the visibility to the left is constrained by an existing property and it was agreed,<sup>47</sup> on the basis of on-site measurement during the course of the Inquiry, that the available visibility was, in practical terms, 42.5 metres to a 1 metre offset from the kerb. [48].

236. Much evidence was adduced regarding observed speeds on the road, adjustments for wet weather conditions and the composition of the traffic, to which I have given careful consideration. It seems to me, bearing in mind not only the totality of the evidence but also the response of the Highway Authority, which does not object to the proposals that, were the junction being constructed today, a more generous 'Y' distance of around 45 metres would be provided as a matter of course. Correspondence between the appellant's highway engineers and the highway authority<sup>48</sup> indicates its view that 45 metres was the appropriate standard to work to and that this could be achieved by the use of a 1.31m offset from the kerb. In other words, the layout of the junction does not provide the visibility to the left that, ideally, it should [114] [38 - 50, 73-99 and 112 – 114 for detail of the cases put].

237. This perceived deficiency must, in my view, be considered in the light of a number of factors, including the, albeit cautious, conclusion in MfS2 that there is no invariable relationship between visibility and collision risk. A second contextual factor is the reality that numerous junctions in urban areas are below current standards but are not normally reconfigured unless there is evidence of safety problems arising on a regular basis as a consequence. Otherwise they are left alone to carry volumes of traffic far in excess of those that originally typified the streets, on the basis that drivers exercise the necessary degree of caution as circumstances demand. The proposition was advanced that, if absolute standards were to be routinely applied to junctions in the network at a distance from individual application sites, this would unnecessarily inhibit the development of urban areas [50].

238. In response to my questions on that matter, Mr Young, for the appellant, explained the reality of the general picture very clearly and I concur with the commonsense assessment that he gave. Moreover, the Framework, at

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<sup>47</sup> Doc 20

<sup>48</sup> ATA, Appendix A email from Younus Seedat to Stephen Yeates 25/01/11 @16:46

paragraph 32, sets out an approach which takes account the need for safety at the site access itself and residual cumulative impacts on the network that must be severe if development is to be prevented or refused. While it was submitted on behalf of the Council [101] that severity is a concept that that is inapplicable to the safe operation of a junction, i.e. it is either safe or it is not, I do not consider that the real world operates in that way. It would of course be wrong to sanction any development that self-evidently gave rise to significant deterioration in road safety without effective mitigation of the problem, but there is no cogent evidence to suggest that would be the case here.

239. MfS advises that local evidence should be taken into account in exercising the necessary judgement about any junction and the evidence in this instance is a sustained freedom from recorded accidents at the Grove Lane junction. It is of course the case that lack of accidents related to visibility is not proof that a substandard junction is inherently safe, but it does strongly suggest that it operates in practice in a safe manner because of its particular circumstances and the response of the drivers using and approaching the junction to such circumstances.
240. I observed the operation of the Grove Lane junction both as a driver and as a bystander on a number of occasions during the course of my visit to the area. There is no doubt that larger vehicles emerging from the junction to turn left do impinge on the far side of the carriageway, but they appear to do so in a cautious manner which gives adequate time where necessary for vehicles approaching from the east to adjust their speed to accommodate the manoeuvre. I also observed that certain other vehicles turning left do cross the lowered kerb so as to remain within the nearside of the highway whilst effecting the manoeuvre, whereas the great majority had no need to do that. The tyre marks and the evidence of my own eyes suggest that this is a regular, if not unduly frequent, occurrence, but the fact remains that large numbers of vehicles have exited the junction over the years without mishap. On the basis of agreed flows the junction carries in excess of 1.5 million vehicles annually, albeit right turning as well as left turning [39].
241. The reasons for the evidently safe operation of the junction may well include driver knowledge of its characteristics, including the lack of turns into it by reason of its one-way flow. But I also note that the approach to the junction from the east is up a perceptible gradient which is traffic calmed to some extent with occasional speed cushions and subject to the "friction" of parked cars where parking is not restricted and the improved forward visibility that results where it is, the net result being that drivers unfamiliar with the road are likely to approach the junction from the east with appropriate caution rather than assuming that they may proceed with impunity at a constant speed, as would be the tendency for instance on a free-flowing rural road. The urban and complex driving conditions give rise to a driver response that meets the circumstances, as is the case in countless situations throughout the country.
242. Competing assessments on the part of the appellant and the Council<sup>49</sup> make for a range of required visibility from 38.21m to 43.86m when appropriate reductions in average speeds to account for HGVs and buses are made [47].

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<sup>49</sup> Doc 44, paragraph 25

The actual visibility based on what I consider to be an appropriate offset from the kerb of 1 metre, inside of which the highly unlikely and extremely rare occurrence of a motorcycle overtaking another vehicle overtaking a parked vehicle would not be entertained by its rider owing to the risk of kerb clipping, grids etc, is 42.5m from the centre line of Grove Lane<sup>50</sup>. This comfortably exceeds the mid-point of the range, which is fractionally over 41m. Therefore, if the appellant is right in its calculation of 38m<sup>51</sup> being the appropriate distance there is clearly no deficiency at all but the Council's more cautious approach without speed reductions for HGV/Bus content in the flows would produce a deficiency of the order of 3% against the 42.5m available. Using the appellant's surveyed speed uncorrected for wet weather, the 42.93m requirement would give a deficiency of around 1%. Only the most extreme requirement canvassed of 47.5 metres (Council's preferred figure with no speed reductions at all) would give a deficiency of around 10%.

243. Clearly a deficiency of that order would not be de minimis, but it is material that a more pragmatic approach was taken by the highway authority itself, which regarded 45 metres as being the desirable visibility and in any event does not object to the proposed development, and that the appellant's approach, in my view, more closely accords with the totality of the relevant available advice, little of which is wholly prescriptive, and contains the necessary ingredient of judgement on the circumstances and evidence.

244. I therefore consider it is appropriate to consider the matter of the safety of the Grove Lane junction in the round, bearing in mind the contextual considerations I have described, the lack of recorded accidents that could be ascribed to visibility, and the fact that the highway authority has at no time considered the junction to be in any sense a priority for improvement, notwithstanding that it is one of the principal junctions in the settlement of Barrow Upon Soar. I am also conscious that its one-way operation makes for a simpler pattern of movement and interaction between road users than would be the case if it were a conventional two-way flow with traffic entering it from the main road. It is pertinent to bear in mind the advice originally set out in MfS1<sup>52</sup> concerning driver reaction and stopping sight distances, the various strands of local evidence and the revised guidance in MFS2<sup>53</sup>. All things considered, I conclude that, despite its perceived deficiency in respect of visibility to the left, the junction, on the basis of that local evidence, operates safely and would not, understandably, be a priority candidate for improvement on the basis of current usage.

245. In my estimation, the deficiency, such as it is, is of marginal significance when the judgement is made in the round and should not trigger prevention of the proposed development unless the impact upon its continued safe operation would be demonstrably severe in the sense intended by paragraph 32 of the Framework. In the ordinary course of events developers cannot reasonably be expected to address imperfections in the existing network unless the impact of the proposals would be significantly adverse.

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<sup>50</sup> Doc 20

<sup>51</sup> Doc 44 paragraph 19

<sup>52</sup> MfS1 7.5

<sup>53</sup> MfS2 10.1 – 10.5

246. That begs the question in this instance of whether the impact of additional traffic on the junction would be so significant as to undermine its currently safe operation.
247. The traffic forecast calculations accepted by the highway authority and the parties as the correct basis of calculation show that with no allowance for modal shift as a result of the Travel Plan but with allowance for unreduced<sup>54</sup> traffic growth to 2020 the proposed development would add some 62 right turners and some 30 left turners during the am peak hour to the one way exit from Grove Lane. PICADY results show that the consequential delays per vehicle at 2020<sup>55</sup> would be of the order of a few seconds only for left turners and a little longer for right turners, with less than one vehicle being added to the left turning queue and 1.3 vehicles being added to the right turning queue. The ratio of flow to capacity would be 0.401 for left turners and 0.58 for right turners, well within the accepted capacity threshold of 0.850. Similarly, the pm peak flows would be well within capacity.
248. On that basis, it is evident that the junction would continue to operate comfortably within capacity at the busiest times, with little additional delay for drivers that might otherwise cause impatient behaviour that could potentially undermine the demonstrably safe current operation of the junction. It seems to me that the evidence demonstrates conclusively that the junction should continue to operate without significant change when the additional traffic from the development has built up to its maximum anticipated level, which would in any event be a gradual process which would allow drivers to adjust their habits to compensate for any perceptions of additional delay in any event. Bearing all the relevant considerations in mind, I see no reason why, on a robust assessment, the safety of the junction would be materially diminished by the extra traffic from the proposed development.
249. Nor do I see any reason on the basis of the evidence before me [39, 83 - 85] why pedestrian safety in the vicinity of the junction should be any less than it is now, or that safety for cyclists would be diminished. In relation to the latter, I am conscious that MfS2 notes that greater visibility at T- junctions is associated with higher cycle collision rates.
250. For all the above reasons, while I understand the perception of the Council and the Parish Council that the imperfection of the Grove Lane junction with regard to its geometry and visibility to the left would be a cause for concern [72 - 101, 112 - 116] albeit not one ultimately shared by the highway authority, if the proposed development were to go ahead, I consider that the balance of evidence points conclusively to the judgement that highway safety would not be materially compromised by it. I therefore accord only limited weight to that perception and accordingly, I am unable to conclude that the effect of the proposed development would have an unacceptable impact in those terms as far as the Grove Lane junction is concerned. It follows that the claimed conflict with criterion (i) of local plan policy TR/6, set out in the Council's sole reason for refusal [23], is not, in my estimation, substantiated.

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<sup>54</sup> Surveyed flows at the junction have decreased between 2009 and 2012

<sup>55</sup> Capacity assessment updated to 2020 at request of highway authority and summarised in evidence of Mr Young at table 5.3 of his evidence (A2)

251. I turn now briefly to the matter of the site access itself. The Council raises no objection to the proposed site access [28] and neither does the highway authority. The Parish Council, on the other hand maintained that the vehicular access to the site itself would be unsatisfactory in two principal respects, namely the single access point (with no separate emergency access) and the forward visibility to the access roundabout from the north east [109, 110].
252. The more usual approach is to provide for two or more access points on a development of this size, or a separate emergency access, but that is not always possible, a fact recognised by the highway authority's own guidance<sup>56</sup> which advocates assessment on a site-specific basis [54]. In this case, the requisite emergency access would be 'designed in' to the access roundabouts and short connecting road by the provision of over-run areas to be constructed sufficiently firmly and kept free of obstruction so as to allow emergency vehicles the option of leaving the carriageway itself to get round any obstruction within it. Clearly there is always the possibility that an incident such as a road traffic accident or fuel spillage could close the access itself for a while, but in such circumstances emergency vehicles would be able to reach the relevant area and no doubt by-pass it on the over-run area provision in the event that a simultaneous emergency occurred within the housing area beyond. The highway authority is entirely satisfied on this point [28] and I have no reason to disagree. There are no objections from the relevant emergency service providers in any event.
253. As far as the forward visibility to the roundabout is concerned, the relevant and appropriate guidance in MfS2 suggests that on the current observed speeds the necessary distance is around 52 metres and that, it is claimed by the appellant can be achieved, even when the changing levels of the land and adjacent land are taken into account as the Parish Council suggests. Having carefully studied the levels information on Drawing No 0940/SK/014 rev A and the drawing at Appendix D to Mr Young's rebuttal evidence,<sup>57</sup> and having observed the lie of the land and positioning of retained trees at my site visit I am satisfied that is so. The Highway authority has no objection to the proposed geometry either. Moreover, the speeds measured by the Parish Council in this 30 mph limit are clearly a driver response to the highway geometry as it currently exists, not the geometry proposed, which would include a signified roundabout and a more curved road, both of which would tend to reduce speeds in any event. This is not, in my estimation, a significant point against the proposed development which would create conflict with the intentions of the development plan or the Framework in respect of highway safety and no weight should be accorded to it [52,53,110].

*(iv) Traffic circulation in Barrow Upon Soar*

254. The particular geography of Barrow Upon Soar tends to concentrate traffic entering and leaving the settlement via the nearby A6 onto the historic Barrow Road Bridge, a listed structure. The alternative route to and from the A6 via Slash Lane to the east of the settlement is regularly inundated by flooding, albeit there appear to be no reliably precise records of exactly how many days in the year it is wholly impassable to motor vehicles.<sup>58</sup> Nevertheless, from all that I

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<sup>56</sup> The so-called '6 C's' guidance (Appendix C to PC1 Evidence of Mr Cage)

<sup>57</sup> A3

<sup>58</sup> See for example paragraph 13.1 of evidence of Mr Cage on flooding (PC3)

saw and heard I have no doubt that this is a strategic difficulty for the settlement, indeed a difficulty that contributed to the dismissal of an appeal in of an appeal in 1997 [60,176]. I have studied this decision carefully and it seems to me that the circumstances of the site were different in that it was directly related to the possibility of providing a flood reduced link via Slash Lane to ensure the accessibility of the business premises at that time proposed, but there were in any event a range of other substantiated objections to the proposal and the Inspector concluded, amongst other things, that... *“such consequences of poorly sited development are particularly unnecessary at this time when there is no urgent need for further employment land to be released and when there is to be debate over how to best provide for future needs in the context of the emerging Local Plan.”*<sup>59</sup>

255. At the strategic level a further distinguishing feature was the lack of demonstrable need for the release of employment land at the time and I am also conscious that housing development has continued apace in Barrow Upon Soar, especially on its northern fringe, despite the obvious difficulty that the periodic severance of Slash Lane and other routes causes. Nevertheless, it seems to me that in the ordinary course of events the expansion of the settlement without resolution of the problem via public investment in the necessary works, however funded, does weigh against the current proposal in the absence of a clear mechanism, set out for example in an up to date development plan, so as to overcome the difficulty, which, unresolved, must ultimately limit the growth of the settlement, especially if climate change increases its frequency.
256. Against that, the settlement is established and must continue to thrive despite those intermittent difficulties which load additional traffic onto the more reliable route across Barrow Road Bridge, leading on such occasions to additional and widespread congestion. The relationship of the proposed development to the Slash Lane difficulty is not so direct or unique that it would be reasonable to require resolution of the problem, which is common to the entire settlement, to be funded by the appellant in this case and there is no suggestion from the Council or the highway authority (neither of which objects to the proposed development on the grounds of the Slash Lane situation) that it should be. Some mitigation of the extra impact of the proposed development on ‘flood days’ is arguably necessary but has been catered for by the commitment to extra warning signs, albeit these do not address the root cause of the difficulty.
257. The key question is whether the extra traffic impact of the proposed development on flood days would be so severe as to render the development untenable as a consequence of the extra loadings on the Barrow Bridge route on those occasions which disrupt the traffic flow and cause congestion in the settlement in any event, but I have no cogent evidence to suggest that a critical threshold would be crossed so as to render the existing unfortunate situation wholly unacceptable.
258. Moreover, the appellant’s off-site proposals to improve the capacity of the Barrow Road Bridge through the use of some additional traffic management measures, including the repositioning of the traffic lights and stop-lines and the installation of MOVA technology would serve to ease, it seems to me, the position

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<sup>59</sup> Ibid paragraph 33

on flood days in the same way that it would on the ordinary days when Slash Lane and sometimes Mountsorrel Lane, apparently, are closed. Clearly the congestion would be greater and more enduring on such occasions but that simply reflects the current position without the proposed Barrow Road Bridge improvements necessitated by the additional traffic from the development proposed in this instance.

259. The effectiveness of those proposed improvements was questioned by the Parish Council [117,118], albeit not the Council or the highway authority, on a number of counts. While I can see that an overly ambitious approach to repositioning the stop lines could potentially cause difficulties in the event of large vehicles meeting at the point of constriction, I have no doubt that precise positioning at the point of implementation would minimise the risk of such an occurrence. Moreover, there is no cogent evidence that the listing of the structure would necessarily inhibit the most advantageous re-positioning of the traffic signals. It does seem that the recent introduction of a dedicated cyclists' phase by the highway authority has the potential to require further modification to the proposals, but the highway authority is the instigator of that and I have no doubt that adjustments could be made as it considers necessary.
260. Fundamentally, it seems to me, the MOVA system proposed, being a dynamic means of traffic management in response to the prevailing circumstances, has the potential for continuous adjustment, for example in the event of the so-called 'hurry loop' introducing unintended consequences<sup>60</sup>, to achieve the optimum outcome at a bridge which has served the settlement and will continue to do so on the basis of alternating one-way flows. The appellant's VISSIM modelling was criticised as being too limited in its scope on the approach roads, for example stopping short of the 'Jerusalem Roundabout' but the inclusion of the additional traffic in a wider purview would tend to dilute its significance in any event. Ultimately, all such modelling has its limitations and the Parish Council's evidence failed to convince me that its VISSIM modelling ultimately gave a more accurate prediction. It seems to me that the CD visualisation of the predicted traffic movement failed to take into account matters that would be properly addressed by experienced drivers on a day to day basis, such as minimising delays caused by right turners into Proctor's Park Road.
261. In any event, the addition of around 90 vehicles in the peak hour or around 1.5 vehicles per minute, whilst not perhaps, at 6% increase, imperceptible as the appellant claims<sup>61</sup>, would certainly not give rise to insurmountable or unacceptable levels of increase in congestion relative to the existing situation, even if the installation of the proposed measures were to be less effective than predicted. While I have no doubt that there are occasions when the bridge does give rise to difficulties in the settlement, I observed it on a number of occasions, including my formal site visit (timed to observe am peak conditions at the Jerusalem Roundabout.) I can only conclude, having done so, that, given the constriction in the network that the bridge must inevitably create, for the most part it operates as well as can reasonably be expected and that, with the benefit of the improvements proposed, it will continue to do so and may even experience some improvement as the appellant claims. It is significant that the highway

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<sup>60</sup> Doc 42 paragraph 5.16

<sup>61</sup> Doc 44 paragraph 39

authority is satisfied with the proposed mitigation of additional flows on the network in this respect and that there is in any event continuing scope for refinement of a system that is intrinsically sensitive to demand at any time and allocates the available capacity of the bridge accordingly, i.e. an intelligent system. A 'trial run', as has been suggested by a local resident [180], would, in the circumstances, neither be practical, nor, in my view, necessary.

262. All in all, given the proposed improvements, there is no reason to consider that the increased traffic at the Barrow Road Bridge would lead to any conflict with the intentions of the development plan or those of paragraph 32 of the Framework, which says that decisions should take account of, inter alia, whether...

*"improvements can be undertaken within the transport network that cost effectively limit the significant impacts of the development. Development should only be prevented or refused on transport grounds where the residual cumulative impacts of development are severe."* The residual impact of the proposal on the Barrow Road Bridge following the introduction of the proposed MOVA system, even if were to fail to fully live up to its promise of more than compensating for the impact of the proposed development<sup>62</sup>, could by no stretch of the imagination be described as 'severe' even though some adverse impact might at some point on some occasions conceivably occur.

263. Moreover, the visibility towards the bridge is perfectly adequate from both directions and would remain so even after the adjustments proposed to the signal heads were effected. There is no convincing evidence to demonstrate that visibility at the bridge, or the layout of the road, is in any sense a cause of undue danger. The bridge is an inconvenience known, logically, to most drivers in the peak hours and almost certainly to a sizeable majority of those using it outside those hours. The only potentially decisive question is one of consequential materially and unacceptably reduced capacity on the highway network and, for the reasons previously explained, I do not consider that to the case in any event.

264. Finally, as regards the day to day operation of the highway network elsewhere, there was contention; from the Parish Council [111]<sup>63</sup> that abuse of the short stretch of one-way routeing between the junction of Breachfield Road with Grove Lane, between it and Melton Road; and from Mr Smith [168]<sup>64</sup> regarding the speed of traffic passing the junction of Babbington Road with Melton Road in the vicinity of the northern end Breachfield Road; that both were potential sources of danger, underlining constraints in the network. With regard to the latter point, I consider that the introduction of the proposed site access roundabout (Drawing No 0940/SK/014 rev A) would advantageously change the geometry of Melton Road, improving visibility whilst calming traffic. As regards the former point, it can only reasonably be assumed that local motorists will obey the law and resist the temptation to short-cut. If anything, a perception of increased flow, such as it would be, would reduce that temptation rather than increase danger, in my view. I do not consider that either point would amount to a conflict with local plan policy TR/6 or the intentions of Framework policy concerning road safety and, again, I am conscious that there is no objection from the highway authority.

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<sup>62</sup> Ibid paragraph 45

<sup>63</sup> Doc 42 paragraph 5.4

<sup>64</sup> Doc 19

*(v) Flood risk*

265. Flood risk is not an objection raised by the Council, which is satisfied on the basis of the technical evidence and the position of the Environment Agency (EA) that, with the imposition of appropriate conditions, the appropriate standard of mitigation will be achieved, principally through siting the dwellings wholly within Flood Zone 1 within a specified maximum area, by SUDS techniques to maintain run-off rates of surface water at the existing greenfield level and by an engineered increase in the capacity of the existing floodplain of Fishpool Brook. The latter would ameliorate<sup>65</sup>, it is suggested, albeit not eliminate, the problems for existing householders on Breachfield Road with rear gardens bounded by the brook.
266. Having visited certain of the gardens and studied, in particular, the photographs<sup>66</sup> submitted by Mr Hilsdon and Mr Burton, as well as those appended<sup>67</sup> to the FRA and AFRA, I can well appreciate the apprehension of residents [139] that flooding of Fishpool Brook would be exacerbated, notwithstanding that their gardens are clearly designed and profiled to cope with such periodic flooding. It plainly occurs. It cannot be pleasant, and the prospect of it increasing would be a cause for dismay. However, such a prospect is not borne out by the evidence, even though it was not possible for the FRA to survey this private land specifically, causing reliance on so-called 'glass wall' modelling techniques.
267. Understandable apprehension is no substitute for robust evidence and the FRA and its submitted addendum to address masterplan amendments provides just that. The evidence of Mr Rassool, sections 3.00 – 6.00 in particular, demonstrates very effectively that a robustly pessimistic or conservative approach in the modelling has been taken and that there could well be the prospect of a slight improvement in the experience of the householders, albeit that flooding of their lower gardens will still occur. The proposed development would not, therefore, be a panacea. However, I am satisfied that a careful approach has been taken, rooted in the appropriate scientific principles and, on that basis, the proposed development should certainly not make matters worse in any significant way. The EA's updated modelling<sup>68</sup> provides a further level of comfort on the issue. Moreover, the note prepared by Mr Rassool<sup>69</sup> in response to Mr Hilsdon's concerns about drainage from old mine workings<sup>70</sup> deals authoritatively, in my view, with that matter.
268. The Parish Council's submissions on flooding<sup>71</sup> are extensive but miss the essential point that, whilst stating that its requirements would be "exacting", the work undertaken satisfies the EA, and the essential point also that such requirements can be secured through the imposition of appropriate planning conditions such that the development could not proceed if more detailed investigations belie the conclusion that, in principle, all relevant requirements

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<sup>65</sup> AFRA paragraphs 1.16, 1.17 and 1.23

<sup>66</sup> Docs 32 and 39 respectively

<sup>67</sup> Appendices I and A respectively

<sup>68</sup> Ref NTW307/TN1 (Appendix B to A4 Evidence of Mr Rassool)

<sup>69</sup> Doc 38

<sup>70</sup> Doc 32

<sup>71</sup> Doc 42 Section 4.0

appear capable of being satisfied on the basis of the work undertaken to date. This is an outline application for a large development with sufficient scope for flexibility, for example in attenuation capacity, regarding SUDS techniques built into the basic masterplan; and it would negate the spirit and purpose of the outline procedure if the expense of comprehensive and definitive investigation and design of the end state solution were to be required in advance of the certainty of planning permission that might be withheld for other reasons. It is sufficient at this stage to demonstrate to the EA and, with the benefit of its advice, the decision maker, that the most up to date and refined modelling available, in combination with a site layout that incorporates the principles that would enable the relevant objectives to be met, give sufficient comfort that a practicable solution is in prospect. I have seen no evidence sufficiently compelling to convince me that is not the case.

269. Moreover, it seems to me that future investigation of the permeability of the sub-strata in detail, bearing in mind the above, may improve upon the situation, if it proves better than has been portrayed,<sup>72</sup> although there would be no adverse consequences if it did not.

270. Further, while I note the contention that the modelling did not account for any reduction in capacity of the floodplain of Fishpool Brook if, for example, a causeway approach were to be adopted in its design, I am conscious that other solutions could be considered which would allow the free passage of floodwater in any event, whilst maintaining the passage of pedestrians across the low lying area. Alternatively, acceptance of the partial submergence of an at grade pedestrian route as a temporary inconvenience would not significantly undermine the sustainability credentials of the site as alternative routes would be available via the principal access to the site. Although perhaps not ideal, I do not consider the consequences of the pedestrian link crossing the floodplain to be intrinsically insurmountable and I have no reason to consider that the consequences in terms of flood risk would be sufficient to change my overall assessment that the flood risk modelling is adequate.

271. Nor do I consider the alleged increase in risk of the culvert under the railway blocking to be a matter to which weight should be accorded. The culvert is presently rather inaccessible and consequently rarely observed. Hence debris potentially causing a blockage is likely to go unreported. More natural surveillance of the Fishpool Brook could just as readily reduce the risk of blockage as more public access to the adjacent land might increase it. I have no evidence to suggest that this is a serious criticism of the scheme which should carry any weight. Similarly, the maintenance of the culvert is ultimately the responsibility of Network Rail and I have no evidence that the potential for increased scour is a serious threat to its structural integrity or continued effectiveness.

272. The Parish Council's submission [132] that the EA recommendation to keep floor slabs at 48 metres AOD or above to cater for potential 50% blockage of the culvert in the 1 in 100 year plus climate change event would cause significant problems is not borne out by the evidence. The western edge of the development area shown on the masterplan, within which the layout is

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<sup>72</sup> Ibid paragraph 4.6

illustrative, broadly corresponds with the 48m contour shown on the site survey drawing included as Appendix A to the FRA. It is plain to me that the necessary precautionary minimum slab level which the EA recommends would readily be achieved by the scheme as currently conceived without unduly radical revisions to the layout. Moreover, the AFRA<sup>73</sup> shows the 100 year plus 20% for climate change modelled floodplain to be well below this level, such that any blockage would have to cause flooding at significant additional depth over a very extensive area to cause significant problems in that respect. That possibility is plainly remote in the extreme when the relevant contours are studied.

273. In the final analysis, the expert responsible statutory consultee is content that the approach to flood risk at outline stage is sufficient to engender confidence that its requirements can be met in practice. This is powerful evidence of the ability of the scheme to comply with relevant policy regarding flood risk in the Framework and associated technical guidance and a position to which substantial weight and credence is to be accorded. The logic of the approach to flood risk within the design of the scheme is compelling and I am satisfied that in principle it effectively addresses the matter, with a firm prospect of the broad approach to the disposition and extent of land uses illustrated being retained in broadly the same form at detailed design stage. The illustrative masterplan has a logic to it that has clearly taken into account the relevant precautionary requirements regarding flood risk. In short, I am satisfied that the evidence shows that, subject to the imposition of the EA's requirements, the proposed development would not be subject to fluvial inundation on any reasonable assessment of risk and nor would it materially increase flood risk elsewhere in the catchment.

274. For all the above reasons I am able to conclude that, whilst the definitively detailed measures have not been designed at this stage, the evidence, including the evident satisfaction of the EA, which is fully aware of the master plan proposals for the site, clearly indicates that in practice they will be effective in avoiding any increase in flood risk; and may possibly give rise to betterment that could, on occasion, improve the position of certain of the existing householders whose lower rear gardens are currently affected by flooding.

275. There is, therefore, no significant conflict with the intentions of the development plan or the Framework in respect of flood risk.

276. As to the potential impact of the flooding of Fishpool Brook on foul drainage and the risk of surcharge, I see no reason in principle why appropriate design measures could not be incorporated to secure the system, thereby effecting an improvement on the current situation. The matter is capable of being addressed as necessary by planning condition.

*(vi) Infrastructure*

277. It is apparent that Barrow Upon Soar, over a number of decades, has expanded through the development of housing estates from its original core. Its location on the north east side of the of the River Soar, which effectively separates the settlement from the group of settlements comprised of Loughborough, Quorn and Mountsorrel, makes it relatively freestanding but there is little to suggest that it is notably self-contained despite its identification as a 'Potential Service Centre' in

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<sup>73</sup> Figure 1

the evidence base for the Council's forthcoming Core Strategy. Nevertheless, in the context of an expansion of the total Charnwood population of 15.4%, the document in question (SCCA) [68] indicates, at Table 7, that other settlements - Mountsorrel (36.9%), Rothley (30%) and Wymeswold (24.5%) – have expanded in population terms relatively more in the period 1991 – 2009. Barrow Upon Soar, by comparison, has expanded by some 20.6% in population terms over the same period, with 619 houses having been built. Clearly, this expansion is ongoing with the continuing development at the Willow Road site in the northern part of the settlement, together with smaller sites, as the Parish Council's evidence clearly indicates, suggesting a likely increase of the order of 50% since 2001 if the proposed development in this case were to be allowed and constructed.<sup>74</sup>

278. Table 12 of the SCCA broadly classifies the range of facilities on a comparative basis as between their level of provision in the identified Service Centres. In the case of Barrow Upon Soar 'Services and facilities', 'Quality of centre', 'Opportunities for improvement' and 'Planning constraints' are ranked as "reasonable" with a moderate level of capacity constraint, whilst 'Transport access', 'Employment self-containment' and 'Infrastructure capacity' are ranked as "fair" with a significant level of capacity constraint. No category is ranked as poor or as giving rise to a very significant or potentially overriding level of constraint.
279. The classification is broad and has yet to be tested through independent examination. Moreover, the development strategy itself for the district has yet to be settled in terms of the emerging plan and it is common ground between the main parties that it should be accorded no weight in the determination of the appeal [14]. Nevertheless, the evidence base presents a picture that is perhaps less constrained than the very clear perception of the Parish Council and the numerous local residents [103 -105, 136,137, 141-148,151,158-161,170,174,181,182 185] who have made representations that the physical and social infrastructure of Barrow Upon Soar is unduly stretched, although elsewhere in the SCCA [68] specific concerns are highlighted. For example, Table 2 notes the highway authority's concern that the Barrow Road bridge is constrained in capacity terms and that the settlement is prone to disruption when Sibley Road and Slash lane are flooded, together with the comment that *"it is not readily apparent how these issues might be addressed in order to accommodate further housing growth in the village"*.
280. I also note that Table 11 of the SCCA indicates, inter alia, that there is potential for improvement through contributions to *"capacity of services and facilities where justified"* and that there is the opportunity to... *"Improve provision for buses, cycling and walking plus better traffic management to help reduce pressures. New highway capacity only considered where no other reasonable alternative can address traffic related problems."*
281. These matters go to the heart of my previous consideration of the suggested planning conditions and the planning obligation submitted and what, because of the statutory CIL tests, may or may not be accorded weight in the decision making process as far as the latter is concerned, notably in relation to the

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<sup>74</sup> PC4 Evidence of Mr Cattle paragraphs 2.2 – 2.7

- financial contributions provided for in respect of Highways and Transport, Policing and Health.
282. The County Council's written evidence to inform the Inquiry [183 – 190] includes details<sup>75</sup> of the manner in which specified contributions for Highways and Transport are intended to be spent and my conclusions are summarised below.
283. The bus shelter and pedestrian and cycle routes contributions relate to physical works and infrastructure so as to more effectively serve the proposed development by public transport and physically link it into the existing built village with improved access to the village centre and the Humphrey Perkins High School. They involve capital expenditure which is necessary to make the development acceptable in the sense of keying it in to the fabric of the settlement and this is directly related to the development and, it seems to me, fairly and reasonably related to it in scale and kind. Full weight may be accorded to this element of the Planning Obligation.
284. It is common ground between the main parties that the site is sustainably located. The 'Travel Pass Contribution' is essentially a form of revenue expenditure effectively, albeit indirectly, subsidising the provision of rail and bus services for a temporary period to induce good habits in potential customers. There can be no guarantee that such habits will continue. People tend to be rational in the exercise of transport choice and, if it suits their needs to make use of the public transport services to which the site is inherently accessible, they will do so; otherwise they will use other means, whether that be bicycle, motorcycle or motor car. However, insofar as it would promote sustainable transport habits to capitalise on the advantages of the site's location, thereby contributing to the promotion of sustainable transport advocated by the Framework, the contribution may be regarded as a necessary complement to help ensure that the sustainability credentials of the development are maximised at the outset.
285. The obligation also provides for a 'Travel Packs Contribution'. Such packs are undoubtedly good practice. They may influence the behaviour and travel choices of a proportion of the occupants of the proposed houses, initially at least. Again, to the extent that they would promote sustainable transport habits from the outset, they may be regarded as a necessary complement to help ensure that the sustainability credentials of the development are fully utilised early on. The packs would clearly be directly related to the development proposed and I have no reason to consider the sums of money involved disproportionate.
286. However, the Travel Plan Penalty (CC2, para. 3.3) cannot, logically, be necessary to make the development acceptable in planning terms. It caters for the possibility that, notwithstanding the services of a Community Travel Plan Co-ordinator (CTC) for a temporary period<sup>76</sup> whilst the development takes place, the Travel Plan fails to meet its target of 14% modal shift away from the private car, which of itself is a laudable objective in policy terms. However, by the time that failure had become apparent, the houses would have been built and occupied and the additional measures to pursue modal shift objectives that the £45,000 penalty would fund would be further physical measures or travel packs and passes, it is said, but the latter would only be for a temporary period. It is also

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<sup>75</sup> CC2 Evidence of Mr Cook

<sup>76</sup> Fourth Schedule to planning obligation, paragraph 5.3.7

said that the penalty provides an incentive for the developer to seriously implement the measures in the travel plan but, realistically, in the context of a development of 300 new houses and, possibly, a commensurate reduction in the base value of the land in any event, I cannot see that this would be so. It may have merit as a signal that necessary good practice is expected, but I do not consider such an arrangement to be necessary to make the development acceptable in planning terms in the longer term. The concept of necessity, in my view has to be more robust than a measure that, at best, would seek to retrofit good practice and unspecified physical measures at some point in the future after the development had been implemented in any event.

287. For these reasons, I do not consider that any weight should be accorded to that particular element of the planning obligation.

288. The 'Police Authority Contribution' is for £177,255. The manner in which the authority would seek to spend it is set out in the Third Schedule to the Planning Obligation. By letter to the Planning Inspectorate of 6 August 2012, the Leicestershire Constabulary explained in some detail its approach to the use of S106 monies for police infrastructure throughout the county, supported by a number of appeal decisions in which it was concluded that the contributions in each case passed the relevant tests and could therefore be accorded weight. The letter appends (Appendix 2) a useful note from the Association of Chief Police Officers which draws the distinction between capital expenditure on equipment and premises, the basic infrastructure of policing, and revenue expenditure which might reasonably be expected to be supported by the increased number of households. A January 2012 policy statement from the Leicestershire Police Authority *Policing Contributions from Development Schemes* is also included. This sets out its approach to the increased pressure on policing from additional housing development. The document includes at Section 7 the principles whereby financial contributions will be deployed, including provision for repayment if the police authority fails to spend the contributions, linkage to the development in question and use for additional needs arising from it and a "clear audit trail demonstrating that financial contributions have been used in a manner that meets the tests" (in the subsequently cancelled Circular 05/2005 Planning Obligations.)

289. Those tests are essentially the same as those of the extant CIL Regulations and hence there is a clear recognition by the Leicestershire Police Authority that development is not simply a source of additional finance to be spent in an unspecified or unrelated way. Moreover, the appellant in this case has "signed up" to the Policing Contribution, albeit under, it seems, protest. The evidence of Mr Thorley<sup>77</sup> addresses this matter at Section 12 and his Appendix 10<sup>78</sup> is a paper on the topic that refers to a number of appeal decisions where a contribution to policing has not been supported, for example the appeal in Sapcote (Ref APP/T2405/A/11/2164413) in which the Inspector comments, in paragraph 41 of his decision, that... *"it has not been shown, in the light of the statutory tests, that the contribution would be directly linked to the impacts arising from the appeal proposal."*

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<sup>77</sup> A1

<sup>78</sup> In A1a

290. Equally, the material submitted by the Police Authority under cover of its letter of 6 August 2012 includes a number of appeal decisions pointing in the opposite direction, for example the appeal in Bottesford (Ref APP/Y2430/A/11/2161786) where the Inspector comments, in paragraph 68, that *“there was also specific justification of the individual elements within this global sum directly related to the circumstances of the appeal proposal. Therefore the contribution does meet all three tests for CIL compliance.”*
291. The Inspectors will have reached their own conclusions on the particular evidence and submissions put to them at appeal and I shall approach the evidence in this case in the same way, i.e. on its merits. It seems to me that the introduction of additional population and property to an area must have an impact on policing, in the same way as it must on education and library services, for example. Moreover, it also seems to me that the twelfth core planning principle of the Framework, that planning should... *“take account of and support local strategies to improve health, social and cultural wellbeing for all, and deliver sufficient community and cultural facilities and services to meet local needs”*, can only be served if policing is adequate to the additional burdens imposed on it in the same way as any other local public service. The logic of this is inescapable. Section 8 of the Framework concerns the promotion of healthy communities and planning decisions, according to paragraph 69, should aim to achieve places which promote, inter alia, *“safe and accessible environments where crime and disorder, and the fear of crime, do not undermine quality of life or community cohesion.”*
292. Adequate policing is so fundamental to the concept of sustainable communities that I can see no reason, in principle, why it should be excluded from the purview of S106 financial contributions, subject to the relevant tests applicable to other public services. There is no reason, it seems to me why police equipment and other items of capital expenditure necessitated by additional development should not be so funded, alongside, for example, additional classrooms and stock and equipment for libraries.
293. In this case, the planning obligation clearly sets out in its third schedule the items anticipated to be needed as a consequence of policing the proposed development alongside the existing settlement and apportioned accordingly. It seems to me to be sufficiently transparent to be auditable and at a cost equivalent to, perhaps (if 300 dwellings are constructed) £590.85 per dwelling, it does not equate to an arbitrary “roof tax” of the type complained of, whatever previous practice may have been.
294. For these reasons I am of the view that the ‘Police Authority Contribution’ is compliant with the CIL Regulations and that weight should therefore be accorded to it as a means of mitigating the predicted impact of the development.
295. The ‘Healthcare’ contribution of £30,000 is solely for the improvement of the health centre car park rather than, for example, additional consulting space, albeit more efficient use of space and hence easier parking should, in principle, help to improve the efficiency of throughput as people have less difficulties in prompt attendance. The PCT,<sup>79</sup> despite its reservations about the impact of the proposed development on its ability to deliver continuously improving services

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<sup>79</sup> Doc 15

through the health centre, nevertheless sees this specific action as complementary to premises improvement funded by previous S106 monies. Given the inevitable increase in patient numbers that the proposed development would give rise to, it does appear to be a considered and specified use of funds for a relevant capital project to cater for additional demand rather than simply a bid to overcome an existing deficiency. In the circumstances that have been described to me [145,146,174] it would therefore meet the relevant tests and may be accorded weight.

296. For the above reasons, I consider the contributions to the infrastructure of Barrow Upon Soar and encouragement of public transport use that would be delivered via the executed obligation should be accorded weight in the planning balance, but that the Travel Plan Penalty ought not to be accorded weight.
297. The majority of the provisions in the obligation are necessary to the grant of planning permission and do otherwise meet the relevant tests, the upshot being that the concerns of the residents and the Parish Council concerning pressures on the physical and social infrastructure of the village are capable of being met, but only barely so in the context of individual applications for development such as this one. The reality is that the mitigation of impact is confined to that which may directly be ascribed to the proposed development. Therefore, whilst the impact of development might be mitigated in the sense of services and infrastructure ultimately remaining no more stretched than previously, the perception is one of increased pressure on a finite quantum of service provision; hence the sentiment expressed in the Parish Council's closing submissions that the proposals will not lead to a better quality of life or positive improvements as advocated by the Framework but rather it will lead to deterioration in the quality of life currently enjoyed by Barrow Upon Soar residents [138].
298. I have previously drawn conclusions in respect of traffic and the highways infrastructure which, with the measures proposed, the highway authority considers will cope and I do not consider that the residual cumulative impacts would be severe. Therefore, bearing in mind the principle set out in paragraph 32 of the Framework and notwithstanding that the existing situation is perceived as unsatisfactory, certainly on flood days when one or more routes out of the settlement is closed, refusal would not be warranted on that ground, albeit the prospects for further growth in the absence of more radical measures would in my view be questionable and would ideally be addressed in the context of the development plan.
299. As I have noted, the planning obligation makes sufficient provision to mitigate the impacts of the proposed development on schools, libraries, policing, open space and recreation facilities and community facilities. In other words, the status quo would be broadly maintained at the existing level of pressure, whereas, it seems to me that local residents and the Parish Council feel that the existing level of pressure is already unsatisfactory due to the pace of growth in the relatively recent past. Perhaps understandably in the circumstances, a single proposal to construct up to 300 additional dwellings is perceived as too much for the community to absorb. It would of course be built out over a period of time, albeit relatively short, and the planning obligation makes provision for that in terms of stepped contributions as specified thresholds are crossed in respect of, for example, education. In other words, funds would be released proportionate to the impact over time.

300. The Health Centre and its services are clearly under pressure from an increasing population [141-148], albeit its commitment to excellence suggests that it would cope even if anticipated improvements are delivered less rapidly than might be hoped for. However, notwithstanding my previous observations on the generality of public services for the community in the context of policing, I do not consider that the limits to growth of a settlement can in principle be determined by the availability of health service resources that the increasing population would have to avail itself wherever it was housed in any event. It seems to me that such services are inherently malleable and capable of being expanded locally to meet demand, much in the same way as commercially provided services in a settlement respond to the opportunities created by additional population, albeit in the case of public services the necessary funding is prone to different disciplines and priorities. Put simply, it would be absurd to turn away needed housing simply because the present number of medical staff in a particular settlement was set at a finite number. The answer is clearly to improve upon their availability through the established funding channels to match population growth. The adequacy or otherwise of such funding is not a matter for me to address. Provision is made, in this instance, for the physical improvement of the capacity of the Health Centre car park so as to improve efficiency and help mitigate the impact [145] of significantly increased patient numbers.

301. In all the circumstances, while I can appreciate the local perception in the community of growth and consequent pressure, the reality is that in accordance with the CIL Regulations and the relevant formulae where applicable used by the public services, the proposed development would provide for the necessary mitigation, but little more, of its own impact and on that basis should not lead to the deterioration in the quality of life that the Parish Council and others assert. If additional benefits were to be provided for in the sense of positive but extraneous improvements not directly related to the proposed development, I would not be able to recommend that they should be given weight in the determination of the appeal. The most obvious example of this would be the funding sought by BUSCA for a community centre. I have no doubt that it would be perceived as a substantial benefit by the community, but funding of that order is not on offer and could not weigh in favour of the proposed development if it were.

302. In the final analysis, the approach adopted by the appellant, the Council and the County Council to the provision of physical and social infrastructure is, in the main, the correct one insofar as it aims to provide for proportionate mitigation of impact. There is no lack of such mitigation that would weigh decisively against the proposed development in this case, whatever the perception to the contrary might be. The provision made is sufficient, in accordance with relevant legislation and local and national policy. Given that position, I do not accept the proposition that in those terms the proposed development would lead to a deterioration in the quality of life of existing residents sufficient to warrant dismissal of the appeal.

*(vii) Accordance with the development plan*

303. The appellant maintains that the proposed development accords with the development plan as a whole [32-34,71]. I consider it more correct to say that there is substantial accordance with many aspects of the development plan, but clear conflict with certain key elements of it.

304. It is common ground between the main parties that the proposed development accords with a wide range of policies [21,28], both in the RSS and in the local plan. I have no reason to depart from that analysis.
305. The Council [23] alleges conflict with policy TR/6 but I have concluded that there is no conflict with that policy.
306. It is common ground that the proposals conflict with the intentions of policies ST/2, CT/1 and CT/2 which generally seek to restrict development in the countryside [28].
307. More specifically: ST/2 seeks to confine development to allocated sites within the defined limits of settlements and the appeal site lies outside the defined limit for Barrow Upon Soar. CT/1 seeks to strictly control development in the open countryside outside such limits to specified categories of essentially rural development. CT/2 permits development that would not harm the character and appearance of the countryside and which would safeguard its historic, nature conservation, amenity and other local interest value.
308. The conflict with ST/2 is self-evident. Moreover, suburban housing estates do not fall within the purview of what is contemplated by policy CT/2. The rural ambience of the appeal site would be transformed into that of such an estate and in that sense the conflict with CT/2 is clear, albeit there is no objection on the grounds of nature conservation or historic value in this instance.
309. Third parties [191,194] have specifically cited conflict with local plan policy ST/1(ii) in the sense that the nature of the many objections was indicative of the value ascribed by the community to the appeal site. Policy ST/1 states that, in providing for the development needs of the Borough measures will be taken to, amongst other things.....*"conserve, protect and enhance those features of the natural, historic and built environment which are particularly valued by the community"*... but gives no objective criteria by which to identify such features, specifically, albeit the explanation associated with the policy at paragraphs 2.24 – 2.27 appears to imply by its topic coverage that criterion (ii) is primarily concerned with heritage assets and designated sites, rather than the more nebulous concept simply of environment that is valued. On that basis, there would be no conflict with the policy as the appeal site contains no such assets or designations or features otherwise formally recognised.
310. Notwithstanding the groundswell of objection to the prospective loss of the site to development, I therefore do not consider the policy as originally conceived and drafted would be contravened in the manner that has been suggested and there is no suggestion from the Council that this would be the case, either in the SoCG or the evidence of Mr Reid. In terms of impact the loss of "ordinary" undesignated countryside that the appeal site represents would undoubtedly be keenly felt by a significant section of the community. However, although pleasant in its present rural appearance, the site is well contained by the vegetation at its margins that has the potential to be retained and strengthened in the overall landscaping scheme that would be necessary. The sloping nature of the site does make for prominence but the nature of the topography is such that this would be largely confined to visibility from within the existing settlement and the outer margins would be below the skyline given the nature of the topography [9] and would in some respects mirror the existing development on the gently sloping land to the west of the Fishpool Brook. This is particularly

evident when the site is viewed in context from its north-eastern margin. If it is necessary to release this greenfield site for development, there are, in my estimation, no overriding aesthetic objections to doing so based on development plan policy.

311. What the SoCG does confirm is the Council's view that policies ST/2, CT/1 and CT/2, being adopted prior to 2004, may only be given weight commensurate with the extent that they comply with the provisions of the Framework.<sup>80</sup> Moreover, it also confirms the Council's view that the policies, whilst generally restricting development in the countryside, also relate to the supply of housing and are "out of date" when considered in the context of paragraph 49 of the Framework because the Council is unable to demonstrate a five year supply of deliverable housing land [28]. I have no reason to depart from that analysis.
312. For the above reasons, I consider the proposed development displays a very substantial degree of accordance with the development plan as a whole, bar conflict with the protection of the countryside outside defined settlement boundaries. However, that local plan intention must be tempered by the presumption in favour of sustainable development as set out in paragraph 14 of the Framework. The Council accepts that the proposed development represents sustainable development [28] and I have drawn a similar conclusion in my initial broad analysis of its sustainability credentials. Nothing in my subsequent analysis of the main considerations would lead me to an alternative view.

*(viii) Accordance with the Framework*

313. The Framework promotes sustainable development and I have concluded that the proposal represents sustainable development in a sustainable location where a variety of transport choices, including rail travel, are already available and could in principle be improved upon.
314. I have also concluded, with the pedestrian and cycling measures provided for, that safe and suitable access to the site can be achieved for all and that the improvements to the operation of the Barrow Road Bridge would help to limit the impact of additional traffic and that the residual cumulative impacts of the proposed development in transport terms would not be severe and that the Grove Lane junction geometry is not, in the light of local evidence and circumstances, a sufficient reason to withhold planning permission.
315. The Travel Plan measures provided for can only serve to improve the situation and at least encourage the sustainable transport choices necessary to serve broad policy intentions articulated in the Framework. This represents good practice that accords with the spirit of the Framework's intentions in respect of promoting sustainable transport, albeit I do not consider the Travel Plan Penalty to be justified. Moreover, the site is capable of being readily linked in to the existing fabric of the settlement in terms of footpaths and cycleways and there is no reason to doubt that this objective will ultimately be better realised at the south-eastern extremity of the site when Network Rail fulfils its putative obligations<sup>81</sup> by constructing a footbridge to restore the footpath connection across the tracks.

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<sup>80</sup> SoCG paragraph 6.13

<sup>81</sup> Submitted Planning Statement, paragraphs 8.15 – 8.23 and Doc 44, paragraph 56

316. The layout of the site avoids placing residential development in the floodplain of the Fishpool Brook, allows for increasing its capacity and, moreover would enable houses to be placed above the required level to future proof them in respect of the potential effects of climate change, whilst allowing sufficient scope through SUDS techniques not to increase levels of run-off. The generous provision of open space within the proposed development required to achieve these outcomes would also facilitate recreational activity, a pleasantly landscaped setting and the promotion of biodiversity.
317. Many of the above characteristics assist the promotion of a healthy community and the housing proposed, which would be 30% affordable would make a valuable contribution to the delivery of a wide choice of high quality homes. Although there is evident and widespread concern that the existing community of Barrow Upon Soar will struggle to accommodate the additional population, especially in view of ongoing expansion as a result of permissions granted in the relatively recent past, the executed planning obligation would at least mitigate the impact of additional population in a proportionate manner commensurate with statutory requirements, even if compensating provision for perceived pressure already arising from existing expansion would not be added to that mitigation. The proposed development achieves what it must in terms of the latter.
318. The design of the proposed houses themselves is a reserved matter but given the carefully conceived layout to address a number of the above matters, I have no reason to consider that a standard of design appropriate to the essentially suburban nature of the existing settlement could not be achieved. The layout itself is also a reserved matter but its importance to the acceptability of the proposal is such that it would be necessary to secure its essential principles through the imposition of a planning condition (SC4 as previously referred to). The Framework of course provides for that approach.
319. As the proposed development is able to adequately address flood risk, the appeal site is not subject to any specific policies in the Framework that would inhibit its development in the manner indicated by paragraph 14 (Footnote 9 to the Framework refers). Nor would the development involve the loss of Best and Most Versatile land as discouraged by paragraph 112.
320. Bearing all of the above in mind and the acknowledged inability of the Council to demonstrate a five year supply of deliverable housing sites, together with its acknowledgement that policies ST/2, CT/1 and CT/2 may thereby not be considered up-to-date, and my conclusion that in any event the proposed development displays a very substantial degree of accordance with the development plan as a whole, I have no doubt that the presumption in favour of sustainable development is, in principle, engaged.
321. The Parish Council submitted [125 – 131] that the practical difficulties associated with bringing the site into development would inhibit its full development within a five year period, but that approach is in my view a misconception as to the relevant approach to land availability as conceived by the Framework at paragraph 47. To enter the five year land supply an unallocated site such as this must be granted planning permission, not necessarily full permission, with a realistic prospect that housing will be delivered on the site within five years. There is no clear evidence in this case that the scheme would

- or could not be delivered over a five year period. There is no evidence to suggest that it is not viable, or that there is no longer a demand for the types of units (primarily family housing) proposed. For practical reasons the build-out of a site such as this should and would be phased, but that is a sequence of events, not in this case a means of preventing development prior to specified dates.
322. There would of course be practical matters to address, conditions precedent to discharge and consents to be gained before development could commence, but that is by no means unusual for a greenfield development on this scale. There is nothing to suggest that that an experienced developer, with the surety of an outline planning permission, would not invest heavily and with alacrity in the necessary up-front efforts to bring a site such as this into development. It is in no way dependent on a significant publicly funded infrastructure programme that might have to be implemented in advance. Even though other agencies such as Severn Trent Water and the highway authority may be involved in various ways they have statutory obligations in any event and the major financial resources needed would be in the control of the developer, to be deployed through other agencies where necessary.
323. It cannot of course be guaranteed that all the dwellings would be built and occupied within five years but there is, in my view, a realistic prospect of substantial delivery, thereby facilitating the availability of needed houses as the Framework intends. At this juncture, there is no cogent evidence that would significantly belie the appellant's intention or ability to secure substantial delivery within an appropriate timescale. I have no reason to doubt that, building on the work undertaken so far, vigorous concerted action by an experienced house builder would bring the development into being within a realistic timescale. Approval in principle is the essential catalyst to the necessary action on a site such as this. Little weight should, in my view, therefore be placed on the Parish Council's submissions in this respect.
324. The Framework does incorporate the core principle that decision taking should be... *"genuinely plan-led, empowering people to shape their surroundings, with succinct local and neighbourhood plans setting out a positive vision for the future of the area"*. This principle was most forcefully put by Nicky Morgan MP [149] and is without doubt material. It pulls in the opposite direction to the presumption in favour of sustainable development that is engaged by this case and I have given considerable thought to those representations, summarised below.
325. The Council itself specifically states that no weight should be accorded to its emerging core strategy and it is clear that with the exception of the single highway safety reason for refusal based on conflict with local plan policy TR/6 it considers the proposal to be not only sustainable but substantially in accordance with the development plan as it currently stands, with the obvious exception of policies ST/2, CT/1 and CT/2, which it says are "out-of-date". Bar its conclusion on policy TR/6 I have no reason to take a different view in this case and therefore place less weight on Mrs Morgan's proposition than might be appropriate in other circumstances.
326. Moreover, in respect of the neighbourhood planning process, Mr Cattle confirmed, in response to my question on the matter, that it was the Parish Council's intention, following discussions with the Council, to follow the progress

and context of the core strategy insofar as its aspiration to prepare a neighbourhood plan was concerned. That is clearly some time off and Mr Cattle confirmed that the Parish Council did not have 'Frontrunner' status in the neighbourhood planning initiative. Nor do I have any evidence of a firm programme of preparation (albeit reference is made by the Parish Council to the spirit and implementation of the Localism Act 2011).<sup>82</sup> Accordingly, although the representations on the point merit weight in the context of the first core principle of the Framework, and might be regarded as an adverse impact in terms of public expectations, the presumption set out in paragraph 14 is inescapably influential in the context of the Framework as a whole, bearing in mind the sustainability of the proposal in terms of its location and characteristics.

*(ix) The planning balance*

327. The background to this appeal includes an uncontested shortfall in residential land supply in Charnwood Borough. A development of the order of 300 dwellings, deliverable at pace once necessary investigative and detailed design work and associated approvals are achieved, would make a significant contribution to reducing that shortfall, representing around 10% of the current deficit.<sup>83</sup> Nearly a third of the dwellings would be affordable. This quantum of housing in that context is a benefit which merits substantial weight.
328. Notwithstanding the existing disruption to road traffic that the settlement periodically experiences as a consequence of the flooding of strategic highway connections, the evidence demonstrates that on a day to day basis the traffic flows generated by the proposed development would be accommodated by the highway network, with specific improvements to the Barrow Road Bridge provided for, without the modal shift intended by the Travel Plan and its associated incentives and penalty. If that shift occurs it would be a bonus and a significant benefit, but I am unable to conclude that it would be necessary for the development to go ahead, or that it would be necessary to make it sustainable.
329. The essential characteristics of the settlement in this context are that it is served by a railway and bus services. The infrastructure for public transport is already in place, with connections to a variety of significant destinations. The existence of such infrastructure is particularly advantageous in the case of rail. Services are potentially capable of being improved in response to demand as the operators may see fit. The settlement has an accessible centre, albeit with parking difficulties as many are, but can be reached on foot from the site by those wishing to do so, relatively easily. Given the existence of the settlement and the public transport infrastructure, the location of the site is inherently sustainable. This weighs heavily in favour of the proposed development.
330. Other aspects of sustainability, including the direction of development away from Best and Most Versatile land and the protection and promotion of biodiversity, would be well served by the proposals.
331. While the highway safety arguments of the Council and others are not in my estimation substantiated in all the local circumstances, the perception that further traffic growth should not be contemplated is understandable in a

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<sup>82</sup> PC4 Evidence of Mr Cattle, paragraph 4.3

<sup>83</sup> Addendum to SoCG shows a shortfall of 2,980 units at June 2012

settlement that is regularly disrupted by flooding on the highway network. This is a matter to which some, weight should, in my view, be accorded. If it is a problem that merits significant investment to overcome it, it is an existing and long-established problem that cannot reasonably be resolved by private funding from an individual developer such as the appellant. The proposed development would not worsen the flooding, but its occupants are potentially inconvenienced by it, if they choose to travel by car on flood days. While the problems of Barrow Upon Soar in this regard must ultimately inhibit the further growth of the settlement if not resolved, I am unable to conclude on the evidence that the present periodic disruption is a sufficient reason in itself to refuse permission for the development at issue, large though it may be. The matter does weigh against the development but not, in my view, decisively so.

332. The outline design of the development has the potential to at least adequately mitigate the potential run-off through SUDS techniques. It would not place the new dwellings proposed at risk from fluvial inundation and could create some marginal improvement for existing homeowners with gardens prone to flooding. Importantly, the Environment Agency is satisfied that, with the measures it recommends, the development may go ahead without causing harm in this context.
333. Given the expansion of the village, recently and in previous decades, the concerns of the community regarding its social as well as its physical infrastructure are understandable and should, in the circumstances, be accorded weight. This is a material concern. However, within the constraints of what is permitted by the CIL Regulations, the appellant has made provision to mitigate the impact of the proposed development, calculated in the main according to the established formulae of the relevant service providers. Clearly, there will be additional pressure but, given that provision, the existing situation should not be materially worsened even if no tangible improvements are perceived. Due weight should be therefore accorded to the planning obligation entered into by the appellant, the Council and the County Council.
334. While the dismay of the local health centre at the prospect of additional pressure on its services must be acknowledged, I do not accept that such pressure should count decisively against the development. Such services must perforce adapt to demand within the budgetary constraints within which they operate and the obligation provides for physical improvements to the operation of the centre, albeit to the car park, in any event. Only limited weight should therefore be accorded to the representations made against the proposals on such grounds.
335. There is no significant conflict with an extensive range of policies identified in the SoCG [21] and this is a factor to which significant weight should be accorded. Nor have I found there to be significant conflict, in practice, with the intentions of local plan policy TR/6. Again, this is a factor to which significant weight should be accorded. There is clear conflict with the intentions of local plan policies ST/2, CT/1 and CT/2 but, insofar as the effective operation of these policies is contingent upon an adequate supply of housing land in the form of specific allocations or unallocated land within the existing settlement boundaries, these policies are rendered out-of-date by paragraph 49 of the Framework and it is common ground that is so. I have no reason to take a different view and the

weight that might otherwise be accorded to such harmful conflicts is thereby reduced.

336. The conflict with local plan policy ST/1 alleged by certain parties [191,194] is not borne out, on analysis, by the terms of the policy and its explanation. The sense of prospective loss expressed by local residents regarding the appeal site as a positive contribution to the rural setting of Barrow Upon Soar is real nevertheless and merits weight insofar as the intrinsic character and beauty of the countryside is valued by the Framework.

337. The intentions embodied in the first core principle of the Framework concerning plan-led development and local empowerment at the neighbourhood level is also a material consideration to which weight should be accorded. However, substantial harm or potential harm in that respect has not been demonstrated in this instance, and there is substantial accordance with the intentions of the Framework to promote sustainable development, in this case contributing to the delivery of a wide choice of high quality homes in a well designed scheme that facilitates healthy lifestyles.

338. While I am bound to report that there are harmful aspects to this development to which weight should be accorded, these must be weighed against the very substantial contribution to housing needs that the site is capable of providing in the context of an acknowledged shortage of suitable land and the inherent sustainability of the location. Those aspects of the planning obligation which may be taken into account to mitigate the impact of the proposed development should also be accorded due weight. The presumption in favour of the sustainable development, bearing in mind the policies of the Framework as a whole and the development plan taken as a whole, should therefore be the decisive factor in this case.

### **Overall Conclusion and Recommendation**

339. In the light of the above main considerations and having taken full account of all other matters raised, I consider the balance of planning advantage to be in favour of the scheme. I therefore recommend that the appeal be allowed and planning permission granted, subject to the conditions set out in the attached annex.

*Keith Manning*

Inspector

## **Annex: Schedule of Recommended Conditions**

- 1) Details of the appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development begins and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than three years from the date of this permission.
- 3) The development hereby permitted shall begin not later than two years from the date of approval of the last of the reserved matters to be approved.
- 4) No development shall commence until both a Master Plan in general conformity with the submitted Illustrative Masterplan 4045\_SK\_001 rev E and a Design Code for the site have been submitted to and approved in writing by the local planning authority. Both shall substantially accord with the submitted Design and Access Statement Rev G. Any amendment to either shall be submitted to and approved in writing by the local planning authority. The Design Code shall address the following: -
  - i) Architectural and sustainable construction principles
  - ii) Character areas
  - iii) Lifetime home standards
  - iv) Car parking principles
  - v) Cycling provision including pedestrian and cycle links to adjoining land
  - vi) Street types and street materials
  - vii) Boundary treatments
  - viii) Building heights (which should be limited to a maximum height of three storeys, being located on the main street only, as indicated on pages 33/34 of the Design and Access Statement, and two storeys for the remaining parts of the development)
  - ix) Building materials
  - x) Provision of public open spaces (including timetable for implementation)
  - xi) Design of the site to accord with Secure by Design principles.
  - xii) Phases of development.

Applications for approval of the reserved matters submitted pursuant to condition 2) above shall be in accordance with the Master Plan and Design Code as approved. In addition to the Design and Access Statement previously referred to, The Master Plan and Design Code and the reserved matters submitted for approval shall also accord with the principles set out in the following submitted documents: Flood Risk Assessment June 2010; Addendum to Flood Risk Assessment January 2011; Ecological Appraisal June 2010; Bats in Trees Addendum December 2010; Tree Assessment Report Rev A; and Badger Mitigation Strategy December 2010. Development shall be carried out in accordance with all matters approved pursuant to this condition.

- 5) Notwithstanding the generality of condition 4) above, the development hereby permitted shall be carried out in accordance with the following approved plans:

4045\_SK\_005 Site Location Plan  
0940/SK/010 rev C Typical Badger Tunnel Detail  
0940/SK/013 rev E Melton Road Alternative Site Access Roundabout  
0940/SK/014 rev A Site Access Roundabout  
0940/SK/022 rev B Fishpool Brook Pedestrian Footbridge Crossing  
0940/ATR/002 rev A Proposed Site Access – Swept Path Analysis  
4045-L-01 rev D Types of Open Space  
4045-L-02 rev A Extended Floodplain Area to be Regraded  
4045-L-04 Public Open Space Phasing Plan  
NTW/307/Figure 4 Rev A Indicative Floodplain Sections

NTW/307/Addendum Figure 1 Rev A Fishpool Brook Modelled Floodplain Extent

- 6) The maximum area of residential development on the site (excluding the areas of public open space, structural landscaping, meadow and SUDS) shall be defined on the Master Plan to be approved pursuant to condition 4) above and shall not exceed 8.32 hectares, and no more than 300 dwellings shall be constructed on the site.
- 7) No construction on any phase of the development hereby permitted shall commence until such time as the following details in respect of that phase have been submitted to and approved in writing by the local planning authority:
  - a) Siting including details of proposed levels of ground surfaces and finished floor levels of all buildings and a number of selected typical sections across the phase.
  - b) A landscaping scheme including details of all trees and hedgerow to be retained, full planting specification, timing or phasing of implementation, services above and below ground; and a landscape management plan covering a minimum period of 10 years following completion of the development. Any trees or plants removed, dying, being severely damaged or becoming seriously diseased within 5 years of planting shall be replaced in the following planting season by trees or plants of a size and species similar to those originally required to be planted;
  - c) Treatment of all hard surfaced areas, including types and colours of materials street furniture, signing and lighting of all public spaces.
  - d) Boundary treatment to all open areas where the site bounds other land (where confirmed in writing by the local planning authority to be required) including design, height, materials and colour finish.
  - e) Details of the proposed standard signage for the footpaths at the points where footpath I 23 is proposed to be crossed by the new estate roads.
  - f) Layout and design of children's play areas; Multi Use Games Area/skate park area and any other play/ recreation area within the development;
  - g) Details of external lighting.Development shall be carried out in accordance with the approved details.
- 8) No development shall commence until the applicant or developer has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation which has been submitted to and approved in writing by the local planning authority, and no development shall take place except in accordance with the approved scheme details.
- 9) No development shall commence until drainage plans for the disposal of foul sewage have been submitted to and approved in writing by the local planning authority. No dwelling, in any phase of construction, shall be occupied until all the works necessary in respect of that phase have been implemented in accordance with the approved details.
- 10) No development shall commence until a surface water drainage scheme for the site, based on sustainable drainage principles and an assessment of the hydro-geological context of the development, including any requirement for the provision of a balancing pond, has been submitted to and approved in writing by the local planning authority. No dwelling, in any phase of construction, shall be occupied until all the works necessary in respect of that phase have been implemented in accordance with the approved details. The balancing pond, if required, shall be completed and be in operation before the occupation of the first dwelling on any phase.
- 11) No development shall commence until a scheme to install trapped gullies has been submitted to and approved in writing by the local planning authority. The scheme shall be implemented in accordance with the approved details. No dwelling, in any phase of

construction, shall be occupied until all the works necessary in respect of that phase have been implemented in accordance with the approved details.

- 12) If during development contamination not previously identified is found to be present at the site then no further development should be carried out in that location until such time as a remediation strategy has been submitted to and agreed in writing by the local planning authority and the works carried out in accordance with the agreed strategy prior to re-commencement on that part of the site.
- 13) Prior to the commencement of development, a scheme for the protection of trees and hedges to be retained on site shall be submitted to and approved in writing by the local planning authority. The scheme shall include: -
- Details of all trees and hedges to be retained on site.
  - Details of any works proposed in respect of any retained trees and hedges on site.
  - Details of operational and physical measures proposed for the protection of trees and hedges
  - Details of any ground works that are to be carried out within 10 metres of any tree or hedge identified as being retained.
  - Details of the methodology to be employed when carrying out ground or other works within 10 metres of any tree or hedge to be retained.

Development shall be carried out in accordance with the approved details.

- 14) No development shall commence on any phase until the tree/hedge protection measures for that phase approved pursuant to condition 13) above have been fully implemented. The approved tree/hedge protection measures shall be retained and maintained in their approved form until development on the phase in which they are located is complete. Within the areas agreed to be protected, the existing ground level shall be neither raised nor lowered, and no materials or temporary building or surplus soil of any kind shall be placed or stored thereon unless approved as part of the details submitted to discharge the condition.
- 15) No development shall commence until a scheme of noise attenuation/mitigation measures (in order to reduce noise likely to be experienced in dwellings and private gardens from the use of the railway corridor to the south west of the site) has been submitted to and approved in writing by the local planning authority. No dwelling in any phase of the site identified by the scheme as being affected by railway noise shall be occupied until the required measures have been implemented in accordance with the approved scheme.
- 16) No development shall commence until details of the construction of the proposed access roundabout (as shown indicatively on drawing 0940/SK/013 Rev E) and the footpath/cycleway bridge across the Fishpool Brook (as shown indicatively on drawing 0940/SK/022 rev B) have been submitted to and approved in writing by the local planning authority. No dwelling on the site shall be occupied until the access roundabout and pedestrian bridge have been constructed in accordance with the approved details.
- 17) No development shall commence until a detailed scheme of works for the improvement of traffic flow at the Barrow Road Bridge of the type illustrated on WSP UK drawing numbered SK/017 Rev A has been submitted to and approved in writing by the local planning authority. No dwelling on the site shall be occupied until the improvement works at the bridge have been fully implemented in accordance with the approved details.
- 18) No development shall take place until a Construction Method Statement has been submitted to, and approved in writing by, the local planning authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:
- i) the parking of vehicles of site operatives and visitors

- ii) the routing of construction traffic throughout the construction process and the mechanism for securing adherence to approved routes
  - iii) loading and unloading of plant and materials
  - iv) storage of plant and materials used in constructing the development
  - v) the erection and maintenance of security fencing
  - vi) wheel washing facilities
  - vii) measures to control the emission of dust and dirt during construction
  - viii) a scheme for recycling/disposing of waste resulting from the construction works
  - ix) precautionary measures to ensure that no badgers become trapped or injured during development work
- 19) No development shall commence until procedures have been initiated to upgrade the existing public footpaths I 23 and I 24 (part) beyond the edge of the meadow boundary to the eastern boundary of the application site to footpaths/cycleways. The upgrading works (including those approved through Condition 7) shall be completed prior to the occupation of 50% of the dwellings on the site.
- 20) No development shall commence until a scheme of electronic or other suitable signing to warn of flooding on Slash Lane has been submitted to and approved by the local planning authority. No dwelling on the site shall be occupied until the scheme has been fully implemented in accordance with the approved details.
- 21) No development shall commence until a scheme of public art to be delivered on site has been submitted to and agreed in writing by the local planning authority. Those elements of the approved public art scheme which are to be delivered on a particular phase of the development shall be delivered prior to the occupation of 80% of the dwellings in that phase.
- 22) No development shall commence until an assessment of the anticipated energy requirements arising from the development has been submitted to and approved in writing by the local planning authority. That assessment must demonstrate how a minimum of 10% of the energy requirements shall be secured from decentralised and renewable or low-carbon energy sources. Details and a timetable of how these measures are to be achieved, including details of any physical works on site, shall be submitted to and approved in writing by the local planning authority. The approved details shall be implemented in accordance with the approved timetable and retained as operational thereafter.

\* \* \*

## APPEARANCES

### FOR THE LOCAL PLANNING AUTHORITY:

Melissa Murphy	Of Counsel
She called	
Mr Chris Bancroft Adv Tip TS FCILT	Director, Bancroft Consulting
Mr Iain Reid DipTP DipLD MRTPI	Director, Iain Reid Landscape Planning Limited

### FOR THE APPELLANT:

Christopher Lockhart-Mummery QC	
He called	
Mr Robert Thorley BA (Hons) DipTP MRTPI	Associate Planner, GVA
Mr Alan Young BSc (Hons) MBA CEng MICE FCIHT	Senior Technical Director, WSP
Mr Iqbal Rassool BEng (Hons) CEng MCIWEM	Service Director, BWB

### FOR THE BARROW UPON SOAR PARISH COUNCIL:

John Pugh-Smith	Of Counsel
He called	
Parish Councillor Peter Cantle CertEd DipComEd	Barrow Upon Soar Parish Council
Mr Jonathan Cage Eng (Hons) MSc CEng MCIHT MICE	Managing Director, Create Consulting Engineers Limited

### INTERESTED PERSONS:

Councillor P Ranson	Ward Councillor
Councillor H Fryer	Ward Councillor
Dr Sarah Parker	GP Barrow Upon Soar Health Centre, on behalf of Dr NHR Simpson and Partners
Mrs Nicky Morgan MP	MP for the Loughborough constituency
Councillor S Forrest	Chair of BRAG
Mr P Rowland	Landmark Planning on behalf of BRAG
Mr J Prendergrast	Solicitor, Leicestershire County Council (LCC)
Mrs Owen	LCC
Mr Kettle	LCC
Mr A Tyrer	Development Contributions Officer LCC
Mrs A Anderson	Primary Care Premises Manager, Leicester, Leicestershire and Rutland PCT Cluster
Mrs J Noon	CPRE Charnwood Group
Mrs S Rodgers	Vice Chair Barrow Upon Soar Community Association
Mrs P Reed	Local resident

Mr K Pepper	Local resident
Mr T Burton	Local resident
Mr C Smith	Local resident
Mr P Hilsdon	Local resident
Mr A Willcocks	Local resident
Mr D Wilson	Local resident
Mr K Page	Local resident
Mr G Hobbs	Local resident
Mrs Burrows	Local resident
Mr R Billson	Local resident
Mr T Anderson	Local resident
Mrs C Hilsdon	Local resident
Mr D Ellison	Local resident

## INQUIRY DOCUMENTS

- 1 Council's notification letter
- 2 Appellant's opening submissions
- 3 Parish Council's opening submissions
- 4 Council's opening submissions
- 5 Dr Sarah Parker's speaking notes
- 6 Report to Cabinet of 27 September 2012 re local development framework
- 7 Minutes of Cabinet meeting of 27 September 2012
- 8 Email exchange of 9 October 2012 between Create Consulting Engineers and Leicestershire Police re Incident 82: 03/10/2012 and Incident 460: 27/09/2012
- 9 Extract (pages 13 – 16) from TMS report *Safer Roads for Everyone*
- 10 Email exchange of 4 October between Parish Council and Leicestershire Police re Incident 460: 27/09/2012
- 11 Tables of Estimated Population Increase in Barrow Upon Soar
- 12 Letter dated 5 May 2011 from Parish Council with Parish Council minutes of 02/11/10, 7/12/10, 13/04/11, 03/07/11 and 06/07/11
- 13 Email from Alison Saunders (08 October 2012 @ 14:24) with Technical notes from Create Consulting Engineers Ltd re Micro-simulation Traffic Model, email exchange with Leicestershire Police re Incident 460: 27/09/2012 and Telephone Note by Mark Allen (dated 08/10/120 re conversations on 3/10/12 with Richard Clay and Kingsley Cook of Leicestershire County Council.
- 14 2001 Census data re Travel to Work
- 15 Representation from Primary Care Trust re impact of proposed development on GP practice at Barrow Health Centre
- 16 Statement by Nicky Morgan MP
- 17 Statement by Councillors Ranson and Fryer
- 18 Statement by Barrow Residents Action Group
- 19 Annotated map of local road network by Mr Charles Smith
- 20 Agreement by Bancroft Consulting, WSP and Create Consulting re achievable visibility at South Street/Sileby Road/ Grove Lane junction
- 21 Report of the Overview Scrutiny Group re Local Development Framework Position Report and Way Forward: Cabinet – 27 September 2012
- 22 East Midlands Trains Timetable (Leicester-Nottingham-Cleethorpes) 09/12/12 to 18/05/13
- 23 Committee Report of 9 December 2009 on Application Ref P/09/2376/2
- 24 University of Leicester letter dated 5 July 2010 concerning archaeological work
- 25 Various emails (12/01/10, 11/11/10 & 14/02/11) from Network Rail (Margaret Lake) to Council (Neil Thompson)
- 26 CCE VISSIM Model Report
- 27 Email from GVA 24/10/12 re CCE VISSIM Model Report and response from Parish Council (Lesley Bell 29/10/12) with comments from Jonathan Cage of CCE
- 28 Statement from Charnwood District Group CPRE
- 29 Revised Draft Conditions
- 30 Extract (R A Crowder) Chapter 7 Hydraulic Analysis and Design
- 31 Letter from Mr Hobbs to PINS dated 27/11/12
- 32 Letter from Mr Hilsdon received by PINS 24/12/12 'Record of Flooding, Fishpool Brook. Barrow upon Soar 1983-2012'
- 33 Email from Parish Council dated 10/01/13 with Analysis of Comments
- 34 Letter from Mr Hilsdon received by PINS 10/01/13 re; mine workings (Soar Valley Local Plans) Agricultural Land Classification of appeal site
- 35 Appeal Ref. APP/X2410/A/12/2177327 (Iveshead Road, Shepshed)
- 36 Appeal Ref. APP/X2410/A/12/2177036 (Bramcote Road, Loughborough)
- 37 Appeal Ref. APP/X2410/A/12/2177036 (Bramcote Road, Loughborough)
- 38 Note by Mr Rassool in response to letter from Mr Hilsdon (Doc 32 above)

- 39 Set of photos of flooding at locations in Barrow Upon Soar submitted by Mr Burton
- 40 Concluding statement from Councillors Ranson and Fryer
- 41 Statement from Barrow Upon Soar Community Association
- 42 Closing Statement – Barrow upon Soar Parish Council
- 43 Closing Submissions – Charnwood Borough Council
- 44 Closing Submissions – Appellant

**S106 Planning Agreement dated 4 October 2012 (with Deed of Variation dated 15 January 2013)**

**Proofs of Evidence**

*Appellant*

- A1 Evidence of Mr Thorley
- A1a Appendices to A1
- A2 Evidence of Mr Young (Volume 1)
- A2a Appendices to A2 (Volume 2)
- A3 Rebuttal evidence of Mr Young
- A4 Evidence of Mr Rassool

*Council*

- C1 Evidence of Mr Bancroft (Volume 1)
- C1a Appendices A-E to C1 (Volume 2)
- C1b Appendices F-N to C1 (Volume 3)
- C1c Statement to address amendment to visibility calculation (Mr Bancroft)
- C2 Evidence of Mr Reid

*Parish Council*

- PC1 Evidence of Mr Cage – highways, transport, sustainability
- PC2 Evidence of Mr Cage – flood risk and drainage
- PC3 Evidence of Mr Cage – Slash Lane flooding
- PC4 Evidence of Councillor Cattle
- PC5 Appendices to PC4

*County Council*

- CC1 Evidence of Mr Tyrer
- CC2 Evidence of Mr Cook



## Department for Communities and Local Government

### **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 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**

Decisions on called-in applications under section 77 of the TCP Act (planning), appeals under section 78 (planning) may be challenged under this section. 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 under this section must be made within six weeks from the date of the decision.

#### **SECTION 2: AWARDS OF COSTS**

There is no statutory provision for challenging the decision on an application for an award of costs. The procedure is to make an application for Judicial Review.

#### **SECTION 3: 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 report of the Inspector's report of the inquiry or hearing within 6 weeks of 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.



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# Appeal Decision

Hearing held on 27 March 2013

Site visit made on 28 March 2013

**by P E Dobsen MA (Oxon) DipTP MRTPI FRGS**

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

**Decision date: 15 April 2013**

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**Appeal Ref: APP/X2410/A/12/2187470**

**Land at (the former) Rearsby Roses Ltd, Melton Road, East Goscote LE7 4YP**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
  - The appeal is made by GEG Properties against the decision of Charnwood Borough Council.
  - The application (Ref: P/12/1709/2), dated 13 August 2012, was refused by notice dated 12 October 2012.
  - The development proposed is "erection of 60 dwellings following demolition of nursery buildings and formation of site access (revised scheme)".
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## Decision

1. The appeal is allowed and outline planning permission is granted for the erection of 60 dwellings following demolition of nursery buildings and formation of site access, on land at the former Rearsby Roses Ltd, Melton Road, East Goscote LE7 4YP, in accordance with the terms of the application, Ref: P/12/1709/2, dated 13 August 2012, and the plans submitted with it, subject to the conditions in the attached schedule.

## Preamble to statement of main issue

2. The application is in outline, with all matters reserved except for access. It is supported by a design and access statement and by various technical and other studies, as listed in a Statement of Common Ground (SCG, para. 2.2). The SCG confirms that there are no technical or design issues between the main parties, and that design details and miscellaneous other matters could be addressed by a number of agreed planning conditions [Doc 6].
3. Likewise, the main parties agree that the provision of some 18 dwellings as affordable housing (30% of 60, in accordance with the Council's policy), together with various financial contributions towards local infrastructure - including payments to the Council, Leicestershire County Council and Leicestershire Police - would be met by the terms of a unilateral planning obligation [Doc 4], submitted at the hearing.
4. Thus the main issue between the main parties is the principle of development on what is at present a greenfield site designated as part of an Area of Local Separation (ALS) between the 2 villages of East Goscote and Rearsby.

5. The following matters in particular are disputed: i) the weight of saved local plan policies aimed at protecting the countryside, notably in ALSs, from significant development; ii) the nature and degree of any harmful impact from the proposed development on the East Goscote/Rearsby ALS, in terms of its strategic purpose and integrity, and its landscape characteristics and value; and iii) whether any conflict with policy is outweighed by the Council's acknowledged lack of a 5 year housing land supply, and/or by the presumption in favour of sustainable development stated in the National Planning Policy Framework ("the Framework").
6. Although local residents - both from East Goscote and Rearsby - have raised additional matters (such as traffic generation and nature conservation) as grounds for objection, it seems to me that they too are primarily opposed to the principle of development on the ALS, and the possibility, as they see it, of that leading to further "losses" of the ALS which might close the existing open countryside gap between the 2 villages.

### **Main Issue**

7. With the preceding points in mind, I find that the main issue, in the light of the relevant development plan and other (Framework) policies, is whether the proposed development of 60 houses would harm the purpose, integrity and landscape character of the Area of Local Separation (ALS) between East Goscote and Rearsby; and if so, whether that harm is outweighed by: a) pressing considerations of housing land supply, in particular the Council's acknowledged lack of a 5 year supply, and/or b) the national (Framework) policy presumption in favour of sustainable development.

### **Reasons**

8. *Background - The site and its surroundings:* The appeal site, some 4.7 ha. in size and approximately rectangular in shape, lies on the east side of Melton Road, and adjacent to the north of an area of modern housing (at Lilac Way etc.) It is a greenfield site, currently grassed and used for horse grazing, but previously used for rose growing. It is flat and devoid of any significant topographical or other features, but is surrounded in part by hedges and intermittent small hedgerow trees. Its northern part contains a cluster of buildings and other structures associated with the former rose business; according to the application particulars, these would be demolished and removed, and this part of the site retained as open, grassed paddocks.
9. The site forms the south-eastern salient (my term) of an extensive designated<sup>1</sup> ALS between the 2 villages of East Goscote to the south and Rearsby to the north. The larger part of this ALS comprises farmland on the west side of Melton Road, between it and the railway line to Melton Mowbray. The smaller part lies east of Melton Road, but by virtue of the appeal site itself extends further to the south on this eastern side of the road, reflecting the southerly projection of Rearsby on this side. Thus the ALS boundary has a staggered form - it extends further to the north on the western side of the road, and further to the south on the eastern side. This means that the area proposed to be developed is already bounded and contained on 2 sides by modern housing - in Lilac Way to the south, and at The Meadows and The Headland to the west, up to the junction with Broome Lane.

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<sup>1</sup> In the Charnwood Borough Local Plan 1991-2006

10. East of Melton Road, the ALS includes other open and undeveloped land between the appeal site and Grange Avenue, which marks the southernmost extent of built development in Rearsby. This is apparently unused, or used only for rough grazing, and is contained by boundary lines of mature trees.
11. East Goscote and Rearsby both lie north of the much larger settlement of Syston, beyond the northern-most fringes of Leicester, and within the valley of the River Wreake. While Rearsby is much the older of the two in origin, as reflected in its picturesque medieval bridge and the church and listed buildings in its central conservation area, East Goscote - somewhat larger - was built mainly in the 1960s, but with some more recent additions<sup>2</sup>. Thus, as I saw during my site visit, the 2 villages are generally rather different in age, built form and character. Both however have a range of local services and facilities (more fully described in the appellants' statements), and bus services along Melton Road.
12. *Background - Development Plan and Framework policies:* At the date of the hearing, the development plan still comprised the East Midlands Regional Strategy (EMRS), adopted in 2009, and the saved policies of the Borough of Charnwood Local Plan (BCLP), adopted in 2004. The plan period for the EMRS was 2006-2026, and that of the BCLP 1991-2006. However, the EMRS was formally revoked before this decision was issued, as the revocation order came into force on 12 April 2013 (Doc 5). Therefore the only remaining part of the development plan is limited to the saved policies of the BCLP.
13. While the EMRS no longer forms part of the development plan and has no continuing status, the BCLP saved policies will remain in place until they are formally superseded by the borough's Core Strategy and other development plan documents (CS). However, CS preparation remains at a relatively early stage, and I was told that its adoption is not likely to occur until some time late in 2014. A site allocations DPD is likely to be adopted some time after that.
14. The Council acknowledges that the BCLP is time-expired, and that its housing strategy and allocations are out of date. However, it argues that the saved BCLP countryside policies, in particular policy CT/4 referring to ALSs, remain relevant and retain the full weight of development plan policy. For their part, the appellants maintain that there are no relevant and up to date development plan policies, and that in these circumstances greater weight should be given to the national policies in the Framework.
15. Para. 215 of the Framework advises that (from March 2013 onwards) due weight should be given to relevant policies in existing plans according to their degree of consistency with the Framework.
16. The Framework contains many references to the need to conserve and enhance the natural environment, and one of its core principles is that planning should recognise the intrinsic character and beauty of the countryside. It stresses the continuing need to protect valued parts of the countryside from development, including through plan-making, which may (para. 157) "indicate broad locations for strategic development on a key diagram and land use designations on a proposals map". Para. 157 goes on to say that Local Plans should also identify land where development would be inappropriate, for instance because

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<sup>2</sup> Such as that around Lilac Way in the 1990s

of its environmental ... significance". Elsewhere, para. 76 refers to the scope for designating land as Local Green Space.

17. I conclude from all these references that local planning authorities may still identify areas (other than Green Belt) where various types of countryside protection policies may apply, whether those are the subject of saved policies or are new policies in local development frameworks. Therefore I agree with the Council that saved BCLP policy CT/4 does not clearly conflict with the Framework, and I give it some weight, even though the Framework does not specifically refer to ALSs. But that does not mean that all land within existing ALSs in the borough should be permanently sterilised from development; instead, I consider that each case for development within an ALS should be considered on its merits. Therefore I turn next to the planning merits of the appeal proposals.

### **Conclusions on the main issue**

18. *Effects of proposed development on the purpose, integrity and character of the ALS between East Goscote and Rearsby:* BCLP policy CT/4, Areas of Local Separation, aims to keep such areas<sup>3</sup> open, and substantially free of development. Thus the ALSs have a strategic role, and are intended to act as small, open, rural buffers whose main purpose is to prevent neighbouring settlements from merging or coalescing.
19. By building 60 houses on a greenfield site, the proposed development would clearly affect the existing ALS between East Goscote and Rearsby. It would significantly reduce its extent on the east side of Melton Road, and when seen from virtually any direction would replace open views of a large field with views of 2 storey housing, estate roads and footpaths, a play area and other ancillary development. Thus the character and appearance of the site itself would be changed radically.
20. However, in my opinion there are several reasons for thinking that the impact of the development on the ALS would be quite limited, and not very harmful - much less fatal - to its overall purpose, integrity, or character. In brief, these reasons are as follows.
21. First, the site is already contained on 2 sides by built development, which acts as a backdrop in views of it from various viewpoints and directions. Thus it is located on the northern edge of East Goscote, and not in the open countryside as such. Second, owing to the aforementioned "stagger" in the ALS's plan form, the minimum extent of the open and undeveloped gap between the two villages would not be reduced any further, although it would, of course, be reduced on the east side of Melton Road.
22. But (third), even on that eastern side there would still remain a substantial open gap - both actual and "perceived" - between the northern edge of built development on the appeal site and Grange Avenue in Rearsby, which is the nearest built development to the north. This retained gap would include both the northern part of the appeal site itself, which as mentioned above would be kept open and undeveloped, and the large, tree-fringed paddock between that and Grange Avenue. In my judgement, this gap would be sufficiently wide to prevent any demonstrable coalescence or merging between the villages, which could lead to the undesirable diminution of their separate identities.

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<sup>3</sup> As defined in the BCLP proposals map

23. Fourth, in terms of its intrinsic landscape character and value, no one at the hearing argued that the appeal site itself is particularly interesting or attractive. Like the rest of the ALS, it has not been designated for its *landscape* value, but only for its location and function as a small part of the ALS. Indeed, it both looks like, and is, rather a dull and featureless flat expanse of grass, overlooked by nearby houses and bordered by the busy Melton Road.
24. For all those reasons, I consider that the proposed development would not significantly harm the landscape character of the site, or undermine the planning purpose or overall integrity of the wider ALS. Nor would it necessarily lead (as assumed by some local residents) to any further loss or erosion of the ALS in this area.
25. Nevertheless, under this heading there would be some slight harm, to be weighed in the overall planning balance. The other side of the balance includes considerations of housing land supply, and the Framework presumption in favour of sustainable development. I now turn to these.
26. *Considerations of housing land supply:* Since there is no disagreement about this matter, I can be very brief. Housing land requirements in Charnwood have in recent years been based on the adopted figures in the EMRS, and there is as yet no new district-wide requirement to work to. As the SCG confirms, in June 2012 there was a district-wide housing supply of only 1.98 years for the period 2013-2018, a shortfall of 2980 dwellings. Even the Council's latest, informal estimate (at December 2012) only reduces that shortfall slightly, to 2168 dwellings. These figures allow for and include a "buffer" of 20%<sup>4</sup> as described in para. 47 of the Framework.
27. The Framework advises at para. 49 that policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a five-year supply of deliverable housing sites.
28. It must be emphasised that one of the main purposes of the Framework is to stimulate the delivery of housing nationally, and particularly in those areas where there are demonstrable shortfalls. In my view, this significant shortfall in the borough's housing land supply is an important factor which counts strongly in favour of the appeal scheme.
29. *Presumption in favour of sustainable development:* The presumption is stated in para.14 of the Framework. This advises that where the development plan is absent, silent or relevant policies are out of date, permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against Framework policies taken as a whole.
30. In this appeal, the Council acknowledges that the CBLP - the only remaining part of the development plan - is significantly out of date. But as noted above some of its saved policies, including policy CT/4 on ALSs, still merit due weight as development plan policies. Although there would be some conflict with this policy, this, for the reasons stated above, would be limited.
31. The proposed development itself would provide much-needed and well-designed new housing in an accessible location in a reasonably "sustainable" settlement (East Goscote), not far from Leicester. The village contains a

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<sup>4</sup> "where there has been a record of persistent under delivery of housing"

primary school, and a number of other facilities, shops and services of its own and is also accessible to and fairly well connected with other higher-level facilities and services in larger centres nearby, including Syston, Sileby and Leicester.

32. I therefore find, on balance, that the proposed development should benefit from the national policy presumption in favour of sustainable development.

### **Summary of conclusions**

33. The proposed development would have a somewhat harmful effect on the purpose and integrity of the ALS. However, this harm would be limited, and would not be sufficient to undermine its continuing planning function, or to cause the coalescence (or even near-coalescence) of East Goscote and Rearsby. The larger part of the ALS would be unaffected, and even on the eastern side of Melton Road adequate physical and visual separation between the two villages would be maintained.
34. In line with Framework housing policies, the acknowledged absence of a 5 year land supply in Charnwood strongly supports the proposals, as does the provision of additional housing per se, including 18 affordable dwellings. There are no significant access, technical, environmental or design issues which cannot be addressed by planning conditions, and various necessary contributions to local infrastructure would be met by a planning obligation. On balance, the proposals represent sustainable development to which the Framework's presumption in favour should apply.

### **Deed of Undertaking**

35. At the hearing the appellants tabled a signed and executed S106 unilateral planning obligation containing various clauses including: (in schedule 1) those relating to the provision of 18 units of affordable housing; (in schedule 2) the payment of monies to the Council comprising a health facilities contribution (approx. £14,000), a police contribution (approx. £25,000), and an open space contribution (approx. £42,000); and (in schedule 3) payments to Leicestershire County Council towards education (approx. £110,000) and transport (approx. £17,000); together with miscellaneous matters.
36. There was some discussion at the hearing as to the justification for some of the financial contributions sought. However, having regard to all the evidence to the hearing, and the criteria in para. 204 of the Framework, I am satisfied that all these provisions for infrastructure payments are necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind to the development. They also meet the 3 statutory tests set out in regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended).

### **Conditions**

37. All 20 planning conditions agreed by the main parties are necessary for the development to proceed, and they would also meet all the other tests for conditions in Circular 11/95 *The use of conditions in planning permissions*.
38. Conditions 1-3 are conventional reserved matters conditions, requiring details of the scheme's appearance, landscaping, layout and scale, and setting appropriate time limits. Condition 4 requires the submission of a design code,

- and condition 5 an ecological management plan, including the details of a defined corridor allowing badger movements to and from a known sett near the site. Condition 18, also related to nature conservation, requires the provision of bird and bat boxes within the scheme.
39. Conditions 6-8 concern landscaping details and works, in the interests of providing an attractive green setting for the housing areas. Likewise, conditions 19 and 20 require the retention of a number of identified boundary trees, and measures for their protection during building works. Conditions 9, 10 and 11 require further details of the scheme's drainage and sewage disposal, and a programme of archaeological investigation. Condition 13 requires a further investigation of potential ground contamination and remediation.
40. In the interests of highways safety and ease of movement, conditions 14 and 15 relate to the provision of the new site access, and the closure of the existing access from Melton Road. Owing to the scale of the development, and the need to encourage sustainable travel modes, condition 16 requires the submission and implementation of a residential travel plan. To minimise inconvenience to local residents and road users during the construction period, condition 12 sets out the matters and measures to be covered by a construction method statement, and requires their implementation.
41. I have considered all the other matters raised in the evidence and at the hearing, including both main parties' references to other recent appeal decisions on greenfield housing proposals in Charnwood and elsewhere in Leicestershire. Whatever the outcome, all of these cases exhibit some features in common with this appeal, but in other respects they are quite different. Neither this, nor any other matter alters or outweighs my conclusions on the main issue in this appeal.

*Paul Dobsen*

INSPECTOR

### **Schedule of conditions**

- 1) Details of the appearance, landscaping, layout, scale, and proposed ground levels and finished floor levels of all buildings (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development begins and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than two years from the date of this permission.
- 3) The development hereby permitted shall begin not later than one year from the date of approval of the last of the reserved matters to be approved.
- 4) No development shall commence until a Design Code for the site has been submitted to and approved in writing by the local planning authority. This shall follow principles established within the Design and Access Statement

dated July 2012. Any amendment to the code shall be submitted to and approved in writing by the local planning authority.

The Design Code shall address the following:-

- Architectural and sustainable construction principles
- Lifetime home standards
- Car parking principles
- Street types and street materials
- Boundary treatment
- Building heights as indicated in the Design and Access Statement
- Building materials
- Provision of open space (including timetable for implementation and any availability for public use)
- Design of the site to accord with Secure By Design principles
- A lighting scheme designed to minimise impact on wildlife

5) The areas of open space shown on the plans shall be managed in accordance with an Ecological Management Plan which shall be agreed in writing prior to the occupation of the first dwelling and implemented in accordance with the agreed details. In addition, the badger corridor on the Southern and Eastern boundaries shall be approximately 3.5m in width and be provided in accordance with the measures identified in the submitted Ecological Assessment.

6) No development, including site works, shall begin until a landscaping scheme, to accord with the Influence landscape design strategy (July 2012), has been submitted to and agreed in writing by the local planning authority. The scheme shall set out the following:

- i) the treatment proposed for all ground surfaces, including hard areas;
  - ii) full details of tree planting;
  - iii) planting schedules, noting the species, sizes, numbers and densities of plants;
  - iv) finished levels or contours;
  - v) any structures to be erected or constructed;
  - vi) functional services above and below ground; and
  - vii) all existing trees, hedges and other landscape features, indicating clearly those to be removed.
- viii) the new wildlife pond including cross section, depth, and profile.

7) All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development, whichever is the sooner; and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.

8) The hedge located along the eastern boundary of the application site shall be retained and maintained at a height no lower than 3 metres. The hedges along the southern and western boundaries of the site shall be retained and maintained at a height no lower than two metres. Any part of the hedge which is removed, dying, severely damaged or becoming seriously diseased shall be replaced with hedge plants of such size and species as previously agreed in writing by the local planning authority, within one year of the date of any such loss.

9) No development shall commence until the applicant or developer has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation which has been previously submitted to and agreed in writing by the local planning authority, and no development shall take place except in accordance with the approved details.

10) No development shall commence until details of a sustainable drainage system for the site have been submitted to and approved in writing by the local planning authority. The scheme shall subsequently be implemented in accordance with the approved details before the development is completed. The scheme shall ensure that flood risk is not increased and that water quality is not reduced as a result of the development.

11) No development shall take place until details of the disposal of foul sewage have been submitted to and approved in writing by the local planning authority. The scheme shall be implemented in accordance with the approved details before the development is brought into use.

12) No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by, the local planning authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:-

i) the routing of construction traffic

ii) the times of construction work which shall not take place outside 08.00 hours to 19.00 hours Mondays to Fridays and 08.30 hours to 13.00 hours on Saturdays and not at any time on Sundays and Public Holidays

iii) the parking of vehicles of site operatives and visitors

iv) loading and unloading of plant and materials

v) storage of plant and materials used in constructing the development

vi) measures to control the emission of dust and dirt during construction including measures to ensure that the highway is kept free of mud, water, stones etc.

vii) a scheme for recycling/disposing of waste resulting from demolition and construction works

viii) measures to protect the hedges located along the eastern, southern and western boundaries of the application site during the duration of the construction works.

13) No development shall take place until a Phase II ground investigation has been undertaken to establish the full nature and extent of any contamination of the site and the results of the investigation together with details of any remediation strategy necessary to render the site safe shall be submitted to the local planning authority for their assessment and written approval. Any remediation work required by the approved strategy shall be carried out prior to the occupation of the first dwelling.

14) Prior to the occupation of the first dwelling on the site, the applicants shall construct, complete and open for use the access works shown on White Young Green drawing numbered A072719/35/18/007.

15) The existing vehicular access that becomes redundant as a result of this proposal shall be closed permanently and the existing vehicular crossing reinstated in accordance with a scheme that shall first have been submitted to and approved by the local planning authority in consultation with the highway authority within one month of the new access being brought into use.

16) No part of the development shall be occupied until details of a Residential Travel Plan for the development as a whole has been submitted to and agreed in writing by the local planning authority. The travel plan shall be implemented in accordance with the agreed details.

17) No dwelling shall be occupied until a scheme of public art within the built fabric of the development, including its future management and a timetable for its implementation, has been submitted to and agreed in writing by the local planning authority. The agreed scheme shall be fully implemented in accordance with the agreed timetable.

18) Details of a scheme to incorporate bird and bat boxes within the proposed building fabric shall be submitted to and agreed by the local planning authority prior to the commencement of the development. The scheme shall be implemented in accordance with the agreed details.

19) The existing trees on the south west boundary, the north east boundary and the eastern boundary of the site, named as trees T1, T2, T6, T7, T8, T9 and T10, and W1 as indicated on the drawing 4876-A-02 and within the Arboricultural Assessment dated December 2011, shall be retained and shall not be felled, lopped, topped or uprooted without the previous written agreement of the local planning authority. Any trees removed, dying, being severely damaged or becoming seriously diseased shall be replaced with trees of such size and species as previously agreed in writing by the local planning authority within one year of the date of any such loss, for a period of 5 years from the date development begins.

20) No development, including site works, shall commence until each tree shown to be retained on the approved plan has been protected, in a manner which shall have first been submitted to and agreed in writing by the local planning authority. Each tree shall be protected in the agreed manner for the duration of building operations on the application site. Within the areas agreed to be protected, the existing ground level shall be neither raised nor lowered, and no materials or temporary building or surplus soil of any kind shall be placed or stored thereon. If any trenches for services are required in the protected areas, they shall be excavated and back-filled by hand and any tree roots encountered with a diameter of 5cm or more shall be left un-severed.

## **APPEARANCES**

### FOR THE APPELLANTS:

Mr. G. Longley BSc DipTP MRTPI	Pegasus Planning
Mr. J. Golby BA DipLA MA CMLI	Pegasus Landscape Design
Mr. J. Deakin	David Wilson Homes (prospective developer)

### FOR THE LOCAL PLANNING AUTHORITY:

Mr. N. Thompson BA DipTP	Principal Planning Officer
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### INTERESTED PERSONS:

Mr. M. Lambert (represented by Ms. T. Osmund-Smith)	For Police and Crime Commissioner for Leicestershire (re S106 contributions)
Mr. J. Prendergrast	Principal Solicitor, Leicestershire County Council
Mr. A. Tyrer	Leics CC (re S106 contributions)

### Local residents:

Mr. J. Lambert	For Parish Councils of East Goscote and Rearsby
Ms. S. Johnson	Rearsby Lodge Farm
Ms. W. Sutton	1 The Headland
Mr. R. Pocock	1664 Melton Road
Ms. B. Gaylard	1664 Melton Road
Mr. K. Holme	1764 Melton Road

## **DOCUMENTS (tabled at the hearing)**

- 1 List of persons present at hearing
- 2 Letter of notification of hearing
- 3 Written responses to Doc 2
- 4 S106 unilateral planning obligation, put in by the appellant
- 5 Revocation Order (SI 2013 No. 269) re East Midlands Regional Strategy and  
Written Ministerial Statement dated 14 March 2013
- 6 List of agreed planning conditions, in the event of a successful appeal

## **PLANS**

- A The application plans (as listed in Statement of Common Ground)



Department for  
Communities and  
Local Government

Mr R J Gardner  
GVA Grimley Ltd  
3 Brindley Place  
BIRMINGHAM  
B1 2JB

Our Ref: : APP/X2410/A/12/2173673  
Your Ref: Jelson Barrow on Soar

14 May 2013

Dear Sir,

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78  
APPEAL BY JELSON HOMES  
LAND AT MELTON ROAD, BARROW UPON SOAR, LEICESTERSHIRE, LE12 8NN  
APPLICATION REF: P/10/1518/2**

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Inspector, Keith Manning BSc (Hons) BTP MRTPI, who held a public local inquiry on 7 days between 9 October 2012 and 16 January 2013 into your clients' appeal against the refusal of Charnwood Borough Council ("the Council") to grant outline planning permission for residential development at land at Melton Road, Barrow Upon Soar, Leicestershire, LE12 8NN, in accordance with application ref: P/10/1518/2.
2. On 18 June 2012, the appeal was recovered for the Secretary of State's determination, in pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act 1990, because it involves a proposal over 150 units on a site of more than 5 ha which would significantly impact on the Government's objective to secure a better balance between housing demand and supply and create high quality, sustainable mixed and inclusive communities.

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

3. The Inspector recommended that the appeal be allowed and planning permission granted. For the reasons given below, the Secretary of State agrees with the Inspector's conclusions and recommendations. A copy of the Inspector's report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

**Matters arising following the close of the inquiry**

4. Nicky Morgan MP wrote to the Planning Inspectorate on 2 April 2013 to point out that the Council's Cabinet would be considering their draft Core Strategy document at a meeting on 11 April with a view to approving it for consultation, and the Parish Council

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wrote to the Secretary of State on 7 May 2013 drawing attention to the revocation of the *East Midlands Regional Plan 2009 (RS)* and to the Council's approval of the Core Strategy for public consultation. Copies of this correspondence can be obtained by written application to the address at the bottom of the first page of this letter, and the points raised are covered in paragraph 5 below.

### **Policy considerations**

5. 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 this case, following the revocation of the RS with effect from 12 April 2013, the Development Plan consists of the saved policies of the Charnwood Local Plan 1991-2006. The Secretary of State does not consider that the revocation of the RS raises any matters that would require him to refer back to the parties for further representations prior to reaching his decision on this appeal, and he is satisfied that no interests have thereby been prejudiced. He has also had regard to the fact that the Council is progressing work on its Core Strategy. However, as that is at an early stage in its preparation, he gives it little weight.
6. Other material considerations which the Secretary of State has taken into account include the National Planning Policy Framework (The Framework); *Technical Guidance to the National Planning Policy Framework* (March 2012); Circular 11/1995: *Use of Conditions in Planning Permission*; and the *Community Infrastructure Levy (CIL) Regulations 2010* as amended.

### **Main issues**

7. The Secretary of State agrees with the Inspector that the main issues in this case are those identified by the Inspector at IR219.

#### Housing land supply

8. The Secretary of State agrees with the Inspector that, for the reasons given at IR220-221, the presumption in favour of sustainable development set out in paragraph 14 of the Framework is engaged and the failure to demonstrate a 5 year supply of deliverable housing sites is a matter to which substantial weight must be accorded.

#### Sustainability

9. For the reasons given at IR222-232, the Secretary of State agrees with the Inspector's conclusion at IR233 that the appeal site's basic credentials in terms of natural resource conservation, potential for good design, choice of sustainable transport modes and scope for future improvement of public transport in response to demand are highly conducive to development of the type proposed. Like the Inspector (IR234), the Secretary of State recognises that other considerations impinge on the overall sustainability of the site, and he goes on to consider those individually below.

#### Highway safety

10. The Secretary of State notes (IR236) that the Highway Authority has not objected to the appeal proposals but that the junction of Grove Lane with Sibley Road/South Street does not provide the visibility to the left that, ideally, it should. Having carefully

considered the evidence summarised by the Inspector at IR235-243, the Secretary of State agrees with him (IR244) that it is appropriate to consider the matter of the safety of the Grove Lane junction in the round. He therefore agrees with the Inspector (IR244-245) that, despite its perceived deficiency in respect of visibility to the left, the junction operates safely and should not trigger prevention of the proposed scheme unless the impact of the proposed development on its continued safe operation would be demonstrably severe in the sense intended by paragraph 32 of the Framework.

11. Accordingly, for the reasons given at IR247-248, the Secretary of State agrees with the Inspector that it would not be unreasonable to conclude that the safety of the junction would not be materially diminished by the extra traffic from the proposed development. He also agrees with the Inspector (IR249) that, on the basis of the evidence seen by the Inspector, there would seem to be no reason why safety should be reduced for pedestrians or cyclists. Overall, therefore, he agrees (IR250) that the balance of evidence points to a judgement that highway safety would not be materially compromised by the appeal scheme and that only limited weight should be afforded to the perception of any such risk.
12. With regard to the site access itself (IR251-253), the Secretary of State agrees with the Inspector that there is no reason to disagree with the Highway Authority with regard to the need for a separate emergency access (IR252); and that no weight should be accorded to any potential deficiencies in the forward visibility to the access roundabout from the north east (IR253).

#### Traffic circulation in Barrow Upon Soar

13. Having regard to the Inspector's consideration of the traffic circulation issues arising from the concentration of traffic onto the listed Barrow Road bridge, and the periodic inundation of the alternative route via Slash Lane placing more pressure on the bridge when such flooding occurs (IR254-256), the Secretary of State agrees with the Inspector at IR257 that the key question is whether the extra traffic impact of the proposed development on flood days would be so severe as to render it untenable. Taking account of the Inspector's deliberations at IR258-264, including the appellant's off-site proposals to improve capacity through traffic management measures and the fact that the highway authority is satisfied with them, the Inspector concludes that he has seen no cogent evidence to suggest that the position would be untenable; and the Secretary of State sees no reason to disagree with that conclusion.

#### Flood risk

14. Like the Inspector, the Secretary of State considers that, despite the apprehension of local residents, the proposed development should not make matters worse in any significant way for the existing population (IR265-267) and may possibly improve the position for some existing householders (IR274). The Secretary of State also agrees with the Inspector (IR268) that, although the evidence produced so far has been sufficient to satisfy the Environment Agency that relevant objectives could be met, if more detailed investigation subsequently shows that they could not actually be satisfied, the development would not be able to proceed. Overall, for the reasons given at IR269-274, the Secretary of State agrees with the Inspector's conclusions at IR275-276 that there is no significant conflict with the intentions of the development plan or the Framework in respect of flood risk, and that any potential impact on foul

drainage and risk of surcharge arising from flooding of Fishpool Brook can be addressed by the imposition of conditions.

### Infrastructure

15. Like the Inspector (IR301), the Secretary of State appreciates the local perception in the community of growth and consequent pressure. Nevertheless, having carefully considered the Inspector's deliberations on infrastructure provision at IR277-300 (and taking account of his conclusions on the terms of the planning obligation at paragraph 20 below), the Secretary of State agrees with the Inspector at IR 301 that the proposed development would provide the necessary mitigation, but little more, of its own impact and so should not lead to the deterioration in the quality of life which the Parish Council and others assert. He therefore also agrees with the Inspector (IR302) that the proposed development would not lead to a deterioration in the quality of life of existing residents sufficient to warrant dismissal of the appeal.

### Accordance with the development plan and the Framework

16. For the reasons given at IR303-311, and taking account of the revocation of the RS, the Secretary of State agrees with the Inspector's conclusion at IR312 that the appeal scheme displays a very substantial degree of accordance with the development plan as a whole apart from the conflict with the protection of the countryside outside defined settlement boundaries - where the local plan intention has to be tempered by the presumption in favour of sustainable development in the Framework. The Secretary of State also agrees with the Inspector's more detailed conclusions with regard to accordance with the Framework at IR313-323.

17. Furthermore, like the Inspector, he has given careful consideration to the core principle with regard to "empowering people to shape their surroundings" (IR324), but he agrees with the Inspector that that pulls in the opposite direction to the presumption in favour of sustainable development that is engaged in this case. In coming to this conclusion, the Secretary of State agrees with the Inspector (IR326) that, as the aspiration to prepare a neighbourhood plan is clearly some time from fulfilment, with no firm programme for preparation, paragraph 14 of the Framework is inescapably influential in the context of the Framework as a whole, bearing in mind the sustainability of the appeal scheme in terms of its location and characteristics.

### The planning balance

18. For the reasons given at IR327-337, the Secretary of State agrees with the Inspector at IR338 that, while there are harmful aspects to the appeal scheme to which weight should be accorded, these have to be weighed against the very substantial contribution to housing needs that the site is capable of providing in the context of an acknowledged shortage of suitable land and the inherent sustainability of the location. He also agrees that those aspects of the planning obligation which help to mitigate the impact of the proposed development should be accorded due weight and that, bearing in mind the policies of the Framework as a whole and the development plan taken as a whole, the presumption in favour of sustainable development should be the decisive factor.

### **Conditions and obligations**

19. The Secretary of State has considered the Inspector's reasoning and conclusions on planning conditions as set out at IR197-215, and he is satisfied that the conditions as proposed by the Inspector and set out at Annex A to this letter are reasonable, necessary and comply with Circular 11/95.
20. With regard to the Planning Obligation (IR4, IR216-218, and IR283-301), the Secretary of State is satisfied that the provisions set out in the signed and sealed Planning Agreement dated 4 October 2012, as varied by the Deed of Variation dated 15 January 2013 (to make its provisions conditional upon their items being determined by the Secretary of State to meet the statutory tests) can be considered to be compliant with CIL Regulation 122. For the reasons given at IR286, the Secretary of State agrees with the Inspector at IR287 that no weight should be given to the Travel Plan Penalty element of the planning obligation.

### **Overall Conclusions**

21. The Secretary of State gives significant weight to the fact that the Framework indicates that, in the absence of a 5 year housing land supply in an up-to-date, adopted development plan, planning permission should be granted for the proposal. He is satisfied that the appeal site is in a sustainable location for housing development, and that, as the adverse impacts of granting planning permission would not significantly and demonstrably outweigh the benefits when assessed against the Framework taken as a whole, he does not consider that there are any material considerations of sufficient weight to justify refusing planning permission.

### **Formal Decision**

22. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendations. He hereby grants outline planning permission for residential development at land at Melton Road, Barrow Upon Soar, Leicestershire, LE12 8NN, in accordance with application ref: P/10/1518/2.
23. 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.
24. 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.

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

25. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged by making an application to the High Court within six weeks from the date of this letter.

26. 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

**JEAN NOWAK**

Authorised by Secretary of State to sign in that behalf

## CONDITIONS

1. Details of the appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development begins and the development shall be carried out as approved.
2. Application for approval of the reserved matters shall be made to the local planning authority not later than three years from the date of this permission.
3. The development hereby permitted shall begin not later than two years from the date of approval of the last of the reserved matters to be approved.
4. No development shall commence until both a Master Plan in general conformity with the submitted Illustrative Masterplan 4045\_SK\_001 rev E and a Design Code for the site have been submitted to and approved in writing by the local planning authority. Both shall substantially accord with the submitted Design and Access Statement Rev G. Any amendment to either shall be submitted to and approved in writing by the local planning authority. The Design Code shall address the following:-
  - i) Architectural and sustainable construction principles
  - ii) Character areas
  - iii) Lifetime home standards
  - iv) Car parking principles
  - v) Cycling provision including pedestrian and cycle links to adjoining land
  - vi) Street types and street materials
  - vii) Boundary treatments
  - viii) Building heights (which should be limited to a maximum height of three storeys, being located on the main street only, as indicated on pages 33/34 of the Design and Access Statement, and two storeys for the remaining parts of the development)
  - ix) Building materials
  - x) Provision of public open spaces (including timetable for implementation)
  - xi) Design of the site to accord with Secure by Design principles.
  - xii) Phases of development.

Applications for approval of the reserved matters submitted pursuant to condition 2) above shall be in accordance with the Master Plan and Design Code as approved. In addition to the Design and Access Statement previously referred to, The Master Plan and Design Code and the reserved matters submitted for approval shall also accord with the principles set out in the following submitted documents: Flood Risk Assessment June 2010; Addendum to Flood Risk Assessment January 2011; Ecological Appraisal June 2010; Bats in Trees Addendum December 2010; Tree Assessment Report Rev A; and Badger Mitigation Strategy December 2010. Development shall be carried out in accordance with all matters approved pursuant to this condition.

5. Notwithstanding the generality of condition 4) above, the development hereby permitted shall be carried out in accordance with the following approved plans:

4045\_SK\_005 Site Location Plan  
 0940/SK/010 rev C Typical Badger Tunnel Detail  
 0940/SK/013 rev E Melton Road Alternative Site Access Roundabout  
 0940/SK/014 rev A Site Access Roundabout  
 0940/SK/022 rev B Fishpool Brook Pedestrian Footbridge Crossing  
 0940/ATR/002 rev A Proposed Site Access – Swept Path Analysis  
 4045-L-01 rev D Types of Open Space

4045-L-02 rev A Extended Floodplain Area to be Regraded  
4045-L-04 Public Open Space Phasing Plan  
NTW/307/Figure 4 Rev A Indicative Floodplain Sections  
NTW/307/Addendum Figure 1 Rev A Fishpool Brook Modelled Floodplain Extent

6. The maximum area of residential development on the site (excluding the areas of public open space, structural landscaping, meadow and SUDS) shall be defined on the Master Plan to be approved pursuant to condition 4) above and shall not exceed 8.32 hectares, and no more than 300 dwellings shall be constructed on the site.
7. No construction on any phase of the development hereby permitted shall commence until such time as the following details in respect of that phase have been submitted to and approved in writing by the local planning authority:
  - a) Siting including details of proposed levels of ground surfaces and finished floor levels of all buildings and a number of selected typical sections across the phase.
  - b) A landscaping scheme including details of all trees and hedgerow to be retained, full planting specification, timing or phasing of implementation, services above and below ground; and a landscape management plan covering a minimum period of 10 years following completion of the development. Any trees or plants removed, dying, being severely damaged or becoming seriously diseased within 5 years of planting shall be replaced in the following planting season by trees or plants of a size and species similar to those originally required to be planted;
  - c) Treatment of all hard surfaced areas, including types and colours of materials street furniture, signing and lighting of all public spaces.
  - d) Boundary treatment to all open areas where the site bounds other land (where confirmed in writing by the local planning authority to be required) including design, height, materials and colour finish.
  - e) Details of the proposed standard signage for the footpaths at the points where footpath I 23 is proposed to be crossed by the new estate roads.
  - f) Layout and design of children's play areas; Multi Use Games Area/skate park area and any other play/ recreation area within the development;
  - g) Details of external lighting.

Development shall be carried out in accordance with the approved details.

8. No development shall commence until the applicant or developer has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation which has been submitted to and approved in writing by the local planning authority, and no development shall take place except in accordance with the approved scheme details.
9. No development shall commence until drainage plans for the disposal of foul sewage have been submitted to and approved in writing by the local planning authority. No dwelling, in any phase of construction, shall be occupied until all the works necessary in respect of that phase have been implemented in accordance with the approved details.
10. No development shall commence until a surface water drainage scheme for the site, based on sustainable drainage principles and an assessment of the hydro-geological context of the development, including any requirement for the provision of a balancing pond, has been submitted to and approved in writing by the local planning authority. No dwelling, in any phase of construction, shall be occupied until all the works necessary in respect of that phase have been implemented in accordance with the approved details. The balancing pond, if required, shall be completed and be in operation before the occupation of the first dwelling on any phase.

11. No development shall commence until a scheme to install trapped gullies has been submitted to and approved in writing by the local planning authority. The scheme shall be implemented in accordance with the approved details. No dwelling, in any phase of construction, shall be occupied until all the works necessary in respect of that phase have been implemented in accordance with the approved details.
12. If during development contamination not previously identified is found to be present at the site then no further development should be carried out in that location until such time as a remediation strategy has been submitted to and agreed in writing by the local planning authority and the works carried out in accordance with the agreed strategy prior to re-commencement on that part of the site.
13. Prior to the commencement of development, a scheme for the protection of trees and hedges to be retained on site shall be submitted to and approved in writing by the local planning authority. The scheme shall include:-
  - Details of all trees and hedges to be retained on site.
  - Details of any works proposed in respect of any retained trees and hedges on site.
  - Details of operational and physical measures proposed for the protection of trees and hedges
  - Details of any ground works that are to be carried out within 10 metres of any tree or hedge identified as being retained.
  - Details of the methodology to be employed when carrying out ground or other works within 10 metres of any tree or hedge to be retained.

Development shall be carried out in accordance with the approved details.

14. No development shall commence on any phase until the tree/hedge protection measures for that phase approved pursuant to condition 13) above have been fully implemented. The approved tree/hedge protection measures shall be retained and maintained in their approved form until development on the phase in which they are located is complete. Within the areas agreed to be protected, the existing ground level shall be neither raised nor lowered, and no materials or temporary building or surplus soil of any kind shall be placed or stored thereon unless approved as part of the details submitted to discharge the condition.
15. No development shall commence until a scheme of noise attenuation/mitigation measures (in order to reduce noise likely to be experienced in dwellings and private gardens from the use of the railway corridor to the south west of the site) has been submitted to and approved in writing by the local planning authority. No dwelling in any phase of the site identified by the scheme as being affected by railway noise shall be occupied until the required measures have been implemented in accordance with the approved scheme.
16. No development shall commence until details of the construction of the proposed access roundabout (as shown indicatively on drawing 0940/SK/013 Rev E) and the footpath/cycleway bridge across the Fishpool Brook (as shown indicatively on drawing 0940/SK/022 rev B) have been submitted to and approved in writing by the local planning authority. No dwelling on the site shall be occupied until the access roundabout and pedestrian bridge have been constructed in accordance with the approved details.
17. No development shall commence until a detailed scheme of works for the improvement of traffic flow at the Barrow Road Bridge of the type illustrated on WSP UK drawing numbered SK/017 Rev A has been submitted to and approved in writing by the local planning authority. No dwelling on the site shall be occupied until the improvement works at the bridge have been fully implemented in accordance with the approved details.
18. No development shall take place until a Construction Method Statement has been submitted to, and approved in writing by, the local planning authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:

- i) the parking of vehicles of site operatives and visitors
- ii) the routing of construction traffic throughout the construction process and the mechanism for securing adherence to approved routes
- iii) loading and unloading of plant and materials
- iv) storage of plant and materials used in constructing the development
- v) the erection and maintenance of security fencing
- vi) wheel washing facilities
- vii) measures to control the emission of dust and dirt during construction
- viii) a scheme for recycling/disposing of waste resulting from the construction works
- ix) precautionary measures to ensure that no badgers become trapped or injured during development work

19. No development shall commence until procedures have been initiated to upgrade the existing public footpaths I 23 and I 24 (part) beyond the edge of the meadow boundary to the eastern boundary of the application site to footpaths/cycleways. The upgrading works (including those approved through Condition 7) shall be completed prior to the occupation of 50% of the dwellings on the site.
20. No development shall commence until a scheme of electronic or other suitable signing to warn of flooding on Slash Lane has been submitted to and approved by the local planning authority. No dwelling on the site shall be occupied until the scheme has been fully implemented in accordance with the approved details.
21. No development shall commence until a scheme of public art to be delivered on site has been submitted to and agreed in writing by the local planning authority. Those elements of the approved public art scheme which are to be delivered on a particular phase of the development shall be delivered prior to the occupation of 80% of the dwellings in that phase.
22. No development shall commence until an assessment of the anticipated energy requirements arising from the development has been submitted to and approved in writing by the local planning authority. That assessment must demonstrate how a minimum of 10% of the energy requirements shall be secured from decentralised and renewable or low-carbon energy sources. Details and a timetable of how these measures are to be achieved, including details of any physical works on site, shall be submitted to and approved in writing by the local planning authority. The approved details shall be implemented in accordance with the approved timetable and retained as operational thereafter.



The Planning  
Inspectorate

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

by Keith Manning BSc (Hons) BTP MRTPI

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

Date: 13 March 2013

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**TOWN AND COUNTRY PLANNING ACT 1990**

**CHARNWOOD BOROUGH COUNCIL**

**APPEAL BY**

**JELSON HOMES**

Inquiry opened on 9 October 2012

Land at Melton Road, Barrow Upon Soar, Leicestershire LE12 8NN

File Ref(s): APP/X2410/A/12/2173673

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**File Ref: APP/X2410/A/12/2173673**

**Land at Melton Road, Barrow Upon Soar, Leicestershire LE12 8NN**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
- The appeal is made by Jelson Homes against the decision of Charnwood Borough Council.
- The application Ref P/10/1518/2, dated 12 July 2010, was refused by notice dated 9 December 2011.
- The development proposed is residential development.

**Summary of Recommendation: The appeal be allowed, and planning permission granted subject to conditions**

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**Procedural Matters**

1. The Inquiry sat for seven days in total, from 9 October – 12 October and on 13 November 2012, and on 15 and 16 January 2013, having been unfortunately delayed in its completion by the serious illness of one of the parties' representatives. I visited the site and various other locations in Barrow Upon Soar, on an accompanied basis, on 6 December 2012.
2. For consistency, I use the spelling Barrow Upon Soar throughout. 'The Council' is a reference to the Charnwood Borough Council. 'The County Council' is a reference to the Leicestershire County Council and 'The Parish Council' is a reference to the Barrow Upon Soar Parish Council.
3. The application subject to appeal is in outline with all matters except access reserved for subsequent approval.
4. A Planning Agreement dated 4 October 2012 was submitted at the Inquiry, accompanied by a Deed of Variation dated 15 January 2013. This does not affect the substance of the Agreement, the signatories to which are Jelson Limited, the Council of the Borough of Charnwood and Leicestershire County Council.
5. The agreement provides for financial contributions in respect of Community Facilities, Healthcare, Policing, Education, Libraries, Pedestrian and Cycle Routes, Travel Passes, Travel Packs and Bus Shelters. It provides for a financial penalty in respect of the Travel Plan in prescribed circumstances.
6. The agreement also provides for the provision and maintenance of open space within the site and for the provision of Affordable Housing as part and parcel of the residential development proposed in accordance with an Affordable Housing Scheme to be approved by the Council prior to the commencement of the proposed development. 30% of the dwellings would be Affordable Housing as defined in the National Planning Policy Framework or any successor document.
7. A Statement of Common Ground (SoCG) between the Council and the appellant was agreed in May 2012 confirming a good measure of agreement across a broad spectrum of considerations. It lists the following as having been submitted in support of the application: Planning Statement (PS); Design and Access Statement (DAS); Transport Assessment (TA), Addendum Transport Assessment (ATA), Framework Travel Plan (FTP), Updated Framework Travel Plan (UFTP), VISSIM Modelling Report (VMR), Stage One Road Safety Audit (RSA1); Flood Risk Assessment (FRA); Arboricultural Survey (AS); Ecological Survey (ECOS);

Archaeological Information (AI); and an Acoustic Report (AR). There is also a submitted Addendum (AFRA) to the Flood Risk Assessment dated 17 January 2011. [The abbreviations are mine for the purposes of this report].

### **The Site and Surroundings**

8. The site comprises approximately 15 hectares of agricultural land on the eastern edge of Barrow upon Soar. None of the land falls within the category of Best and Most Versatile. It is predominantly Sub-grade 3b with small pockets of Sub-grade 3c.<sup>1</sup>
9. The site fall into two distinct parts; a relatively low-lying area of meadow surrounded by mature hedgerows and semi-mature trees on its western side, associated with the line of Fishpool Brook and Breachfield Road; and a large sloping field surrounded by mature hedges and trees. The field slopes gently upwards towards the north-east and gives the impression of being part of a shallow bowl or valley side in the broader scale rural landscape beyond, with much of the existing built-up area of the village occupying a corresponding slope to the north-west. West of Fishpool Brook, houses on Breachfield Road stand elevated above much of their back garden areas, which are susceptible to flooding.
10. To the south, the site is bounded by the Midland Main Railway.
11. The site is traversed by two public footpaths.

### **Planning Policy**

12. National Planning Policy, which is a material consideration, is contained in the Framework.
13. The development plan currently comprises the East Midlands Regional Plan (RSS) and saved policies of the Charnwood Local Plan 1991-2006 ('the local plan').
14. The Council's Core Strategy has not progressed since 2008 (Issues and Options stage) and it is common ground between the main parties that it should be accorded no weight in the determination of the appeal.<sup>2</sup>
15. It is common ground between the main parties that the Council's Supplementary Planning Guidance (SPG) documents *Leading in Design* and *S106 Developer Contributions* are relevant material considerations.<sup>3</sup>
16. While many policies in the development plan taken as a whole are relevant, an agreed range being set out in Section 4 of the SoCG, there are few which are in contention as policies which the proposed development would conflict with and these are confined to the local plan. The policies of the RSS were in force at the time of the Inquiry and remain in force at the time of my report. They may be accorded due weight on that basis. The following local plan policies merit explanation at this point, whereas other policies may need to be referred to and their gist explained at the relevant point in my conclusions. The text of the

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<sup>1</sup> Doc 35

<sup>2</sup> SoCG paragraph 5.7

<sup>3</sup> Ibid paragraph 5.6

following policies is reproduced in Appendix 2<sup>4</sup> to the evidence of Mr Thorley and elsewhere.

17. Local plan policy **TR/6** concerns the impact on highways of development on non-designated sites. Its first requirement (i) is that such development should not result in “unsafe and unsatisfactory operation of the highway system”. This is not inconsistent in principle with the relevant intentions of the Framework, albeit paragraph 32 creates a test of “severity” for the residual impacts after mitigation that the local plan policy does not. The latter refers in its explanation to the “acceptability” and “unacceptability” of such impacts with relevant adopted standards to be fully taken into account.
18. Local plan policy **ST/1** is a multi-faceted policy concerning the development needs of the Charnwood Borough and, inter alia; promotes sustainable development; aims to conserve, protect and enhance those features of the environment particularly valued by the community; and seeks to protect the character and appearance of the countryside for its own sake, especially within areas of particularly attractive countryside and other areas of local landscape value. In principle, such intentions are not inconsistent with broadly equivalent intentions of the Framework.
19. Local plan policy **ST/2** effectively confines built development (subject to specified exceptions) to allocated sites and other land within identified limits to development. To the extent that such an intention supports the concept of development being plan-led, it is not inconsistent with the intentions and core principles of the Framework.
20. Policies **CT/1** and **CT/2** together seek to strictly control development in the open countryside, i.e. outside the development limits defined for settlements. Insofar as they recognise the intrinsic character and beauty of the countryside and seek to conserve environmental assets, the policies are not inconsistent with broadly equivalent intentions of the Framework.
21. A wide range of other relevant policies, including RSS policies, is listed in the SoCG, albeit with no suggestion of conflict. I refer to policies from this list only if it is necessary to do so.

### **Planning History**

22. A previous application for residential development of the appeal site, Ref P/09/2376/2, was refused by the Council in March 2010 for nine reasons. In addition to concerns over the Grove Lane junction, these related primarily to an absence of certain supporting technical information and a number of site specific matters since addressed. It is common ground that none of the reasons concerned the principle of residential development on the site.
23. The application subject to appeal was refused for the following single reason:

***“The existing junction of Grove Lane with South Street/Sileby Road\* is lacking in adequate visibility to the left out of Grove Lane. The proposal if approved would lead to increased dangers for road users and not be in the interests of highway safety. Accordingly, the development is contrary to policy TR/6 of the Borough of Charnwood Local Plan 2004.”*** (\* NB For convenience, I refer to this throughout as ‘the Grove Lane junction’.)

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<sup>4</sup> A1a

## The Proposals

24. Although the application is in outline, considerable supporting information to explain and illustrate the intended manner of development of the site has been submitted, encapsulated in the Illustrative Masterplan.<sup>5</sup>
25. Within the envelope created by the existing boundary vegetation comprising hedgerows and trees, up to 300 dwellings of varying size and type would be constructed, arranged around a central loop road and access ways off. The loop would be designed to accommodate buses and access to the existing highway system would be via a new roundabout constructed on Melton Road at the north west extremity of the site, linked to an internal roundabout by a short stretch of road incorporating a badger tunnel and designed with the roundabouts to facilitate "run-over" for emergency access purposes in the event of carriageway blockage.
26. The public footpath crossing the site west to east would be retained, as would a route from Breachfield Road across to the south east extremity of the site, where the old footbridge across the railway has been demolished pending replacement by Network Rail. A new pedestrian/cyclist bridge across Fishpool Brook to Breachfield Road is proposed.
27. Open space would generally be disposed around the periphery of the site but a more substantial area of open space would correspond to the existing meadowland in the floodplain of the Fishpool Brook, the capacity of which would be increased by limited excavation and re-grading of the existing landform. A broadly equivalent area of open space would be created in the lower lying southern margin of the site near the railway. This would incorporate an attenuation pond. A multi-use games area, a play area and a community orchard would be located in the main area of open space in the south and west of the site.

## Other Agreed Matters Defining the Common Ground

28. The SoCG sets out in detail what is agreed as common ground. The following points agreed by the main parties are salient:
  - Following a lengthy period of negotiation and discussion between the appellant and officers of the Council, the application was reported to the Council's Development Control Committee in December 2011 with a recommendation for approval.
  - The only robust and evidence-based housing targets for the Borough of Charnwood at present are those within the RSS and that these should be used to assess the five year supply for the purposes of the Framework. As at October 2011 the housing land supply for the period April 2012 to April 2017 was 2.63 years for the district as a whole. The position has not materially altered (for the better) since the application was refused and that it will not improve during the anticipated determination period of the appeal. Indeed, the August 2012 Addendum to the SoCG shows that as at June 2012, the supply position had worsened significantly, with only 1.98 years' supply of deliverable sites being available when a 20% buffer to compensate for under-

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<sup>5</sup> Drawing No 4045\_SK\_001 rev E.

delivery, as per the Framework, has been added to the base calculation. When divided between the Principal Urban Areas and the Non-Principal Urban Areas, this deficit equates to 0.59 years and 3.55 years supply respectively. It is common ground that the allocations in the local plan only cover the period to 2006 and are now expended. The Council will be unable to meet its needs on brownfield land alone and the majority of new housing will need to be on greenfield sites.

- Barrow Upon Soar is a sustainable location for development on the scale proposed. In the "Further Consultation" version of the emerging Core Strategy it is suggested as a "Service Centre", a higher order settlement for nearby villages with a range of community facilities including a supermarket, post office, primary school, secondary school, health centre, pharmacy, optician, library, cash points and public houses. It is suggested that the village could accommodate in the region of 500 new homes in the period to 2026.
- The site is within easy walking distance of the community facilities in the village centre of Barrow upon Soar, existing bus stops and the Barrow upon Soar railway station. It is also common ground that this gives ready access to the major centres of Leicester, Loughborough and Nottingham.
- The site is suitable and sustainable and that the proposals represent sustainable development for the purposes of paragraphs 14, 49, and 197 of the Framework and that the proposals comply with the intentions of paragraphs 37 and 38.
- The proposals accord with relevant policies of the RSS, notably Policy 3 and Policy 12, and that they will help to meet the housing needs of the district as set out in Policies 13a and SRS3.
- The proposals accord with a wide range of local plan policies but conflict with the intentions of policies ST/2, CT/1 and CT/2 which generally seek to restrict development in the countryside. Insofar as these policies concern the supply of housing land, it is common ground between the main parties that these should not be considered up-to-date in the context of paragraph 49 of the Framework bearing in mind the lack of a five-year supply of deliverable housing sites.<sup>6</sup>
- The residential development of the site is acceptable in principle.
- Save for the Grove Lane junction, the base data used in the preparation of the highways and transport assessments are robust and fit for purpose and that the inclusion of the FTP accords with the intentions of paragraphs 35 and 36 of the Framework.
- Save for the Grove Lane junction, all other impacts on the highways network would be satisfactorily mitigated by the package of highways measures proposed, including those for the Barrow Road Bridge.

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<sup>6</sup> SoCG paragraph 6.12

- Save for the impact on the Grove Lane junction, the proposals fully comply with the relevant transport policies of the local plan and the intentions of paragraphs 32 and 35 of the Framework.
  - The proposals demonstrate a high standard of design and that they comply with the design policies EV1 and H16 of the local plan, the Council's *Leading by Design* SPG and Section 7 of the Framework 'Requiring good design'.
  - There would be no adverse impact on the living conditions of existing residents in the vicinity of the site and that an adequate standard of residential amenity for up to 300 dwellings within the site can be achieved and that this would not be compromised by noise from the railway. There would, it is agreed, be no conflict with the intentions of the relevant local plan policies in this respect.
  - The interests of nature conservation would not be compromised and that biodiversity would be maintained or enhanced, satisfying relevant policies in the local plan and according with the relevant intentions of paragraph 118 of the Framework.
  - Existing flooding in the area would not be exacerbated by the proposed development and that the resulting increased capacity of the floodplain of Fishpool Brook would be a benefit with the potential to reduce the risk of flooding in the gardens of the adjacent properties on Breachfield Road. It is therefore agreed that the relevant policies and intentions of the local plan and the Framework in respect of flood risk and climate change would be complied with.
  - Save for the policing contribution, the provisions of the planning obligation accord with relevant local policy, meet the intentions of the Framework and comply with the CIL Regulations.
29. The only area of disagreement between the main parties concerns the safety of the Grove Lane junction, specifically with regard to visibility to the left.

**The Case for Jelson Homes** (Docs 2, 44, A1, A2, A3 & A4)

*The salient material points are:*

30. This is an appeal in respect of a single reason for refusal, on highway grounds, issued contrary to the advice of the Council's own officers and that of the highway authority.
31. It is agreed that the proposal represents sustainable development in a sustainable location that would contribute to overcoming a severe shortfall of housing land, would provide needed affordable housing and that the presumption in favour of sustainable development applies.
32. Policies 1, 3, 12, 13a, 14, 15 and SRS3 of the RSS are complied with and it was accepted by the Council that this was so. The proposal would deliver market and affordable housing in accordance with the relevant targets adjacent to a service centre without infringing any environmental restraint in the RSS.
33. The local plan contains policies to prevent development in the countryside outside settlements defined to accommodate a level of housing need that is now historical. It was prepared in the 1990s. Current needs cannot be met by the

- local plan and require that development takes place on substantial areas of land classified by the local plan as “countryside” adjoining urban areas or settlements, the boundaries of which reflect historical needs. There is therefore a conflict within the development plan and section 38(5) of the Planning and Compulsory Purchase Act 2004 requires that the RSS prevails.
34. The development plan as a whole is complied with and the alleged conflict with policy TR/6 of the local plan is not accepted.
  35. In any event the Framework now provides, at paragraph 32, that proposals should only be refused (on highways grounds) where the impacts are severe. The second bullet point thereof clearly refers to the access to the site itself, a matter that can be controlled by the developer, whereas the third bullet point refers to the wider highway network. Safety is important, but real evidence of danger has not been demonstrated. The risk referred to by the Council and others is theoretical.
  36. Overall, the proposals conform to the development plan and should be approved without delay according to paragraph 14 of the Framework.
  37. It is agreed that the policies preventing development in the countryside are out-of-date and they are in any case deemed to be so by virtue of paragraph 49 of the Framework. The proposition put by Mr Reid for the Council, that they should nevertheless attract substantial weight, is untenable. His approach was rejected in two recent appeal decisions in Charnwood<sup>7</sup> and he accepted the approach in the Bishop’s Cleeve decision<sup>8</sup> that such policies should be given substantially reduced weight. Following the approach in the Worsley decision<sup>9</sup>, very little weight should be accorded to the Council’s 27 September 2012 decision regarding what may be an emerging local plan strategy. These are simply early thoughts on its part.
  38. The objection to the proposal on highway grounds cannot be sustained. There is no material shortfall in visibility. On the basis of appropriate calculations<sup>10</sup>, visibility to the left (‘Y –distance’) of some 38 metres is required but some 42 metres<sup>11</sup> is actually available.
  39. The accident record over many years confirms the Grove Lane junction to be a safe junction. The evidence of experience clearly demonstrates this to be so. Circa 1.5 million vehicles per annum use it, together with many pedestrians and cyclists. Its physical circumstances have remained constant and over the eight years for which formal accident records are now available there have been none recorded relating to visibility. There have been two recent accidents<sup>12</sup> but one (3 October 2012) occurred 500 metres to the east and there is no evidence that lack of visibility played any part in the accident of 27 September 2012.

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<sup>7</sup> Documents 36 & 37

<sup>8</sup> Appendix 7 to evidence of Mr Thorley

<sup>9</sup> Appendix 6 to evidence of Mr Thorley

<sup>10</sup> Evidence of Mr Young paragraph 6.3.12 and Appendix H

<sup>11</sup> Subsequently confirmed to be 42.5 metres with one metre encroachment or 40.3 metres with 0.75 metres encroachment (Doc 20).

<sup>12</sup> Docs 8 and 10

40. In any event Manual for Streets<sup>13</sup> states that there is no evidence of a relationship between reduced visibility and the potential for accidents and there is no evidence that an increase in traffic will lead to any increased risk of accidents. The TMS report<sup>14</sup> shows that the statistical correlation is nowhere near that which would be required to demonstrate a reliable relationship between the two factors. This junction has huge spare capacity. Increasing flows will not have any effect on the potential for accidents.
41. There is no evidence that the relevant criterion (i) of local plan policy TR/6 would be breached and no evidence of any harmful impact on the highway network.
42. It should be borne in mind as context that the proposed development will add only 30 movements to the left turn in the peak hour, which would be imperceptible, the average "queue" over this period being less than one vehicle. Any delays will be minimal and will not lead to frustrated drivers taking risks.
43. Two factors should be taken into account in calculating the appropriate visibility requirement, the appropriate 85th percentile speed and the appropriate MfS2 calculations.
44. The speed survey of the appellant's consultant, Mr Young, is to be preferred to that of the Council's consultant, Mr Bancroft. It complied with the mandatory TA22/81 requirement of 200 readings. Furthermore these readings were taken beyond the potential influence of local or bank holidays. The appropriate wet weather correction was made, whereas no such correction was made by Mr Bancroft whose recorded speed of 31.4 mph was not so corrected despite conditions being observed as merely damp/intermittent rain. The further readings<sup>15</sup> were inappropriately contrary to TA22/81 methodology being over a 24 hour period and thereby distorting the results with high speeds.
45. Mr Young's Stopping Sight Distance (SSD) calculation correctly made no allowance for HGVs and buses in compliance with the guidance because 2.9% HGV/bus content in the recorded vehicles was by reference to 2 X 3 hour periods rather than simply peak hours. It is therefore reliable.
46. If it is assumed that such vehicles should be included then the MfS2 reduction for buses of 10% (not accounted for by Mr Bancroft) should be applied to HGVs also. This is consistent with everyday observation and the admittedly small sample of readings referred to by Mr Young which show a 10.03% reduction. This approach results in a SSD of 40.83m.<sup>16</sup>
47. The amended figures from Mr Bancroft<sup>17</sup> are wrong because they do not make any speed reduction and the Council's preferred figure of 47.5 makes no speed reduction at all. In summary, the 43.86 metre splay distance requirement is based on the incorrect speed of 31.48mph; the 42.93 metre requirement is based on the WSP speed but uncorrected for wet weather; the 38.21 metre requirement is correct; and all the figures in the right hand column are wrong as they fail to allow for the lower speeds of HGVs and buses.

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<sup>13</sup> Referred to generally as MfS (or more specifically MfS1 or MfS2 as appropriate)

<sup>14</sup> Doc 9

<sup>15</sup> C1b Appendix I to the evidence of Mr Bancroft

<sup>16</sup> Rebuttal evidence of Mr Young, but based on Mr Bancroft's speed, not Mr Young's.

<sup>17</sup> 09/10/12 *Statement to address amendment to visibility calculation* (Mr Bancroft C1c)

48. As far as the available visibility is concerned, there is agreement between all three highway witnesses following a visit to the junction observed by the Inspector. From 2.4m on the centre line of Grove Lane (a starting point accepted by Mr Bancroft) there is a Y distance of 42.5m to a 1m off-set and Mr Bancroft accepted<sup>18</sup> a 1.3m off-set, so on his evidence there would be materially more than 42.5m. From 2.4m offset by 1m to the centre of the left turning lane there is a Y distance of 40.3m to a 0.75m off-set. But such a small offset cannot be justified because there is a virtually non-existent possibility of a motorcycle being closer into the kerb on approach from the east.
49. Mr Young's measurements are not only vindicated but found to be understated and there plainly is no material shortfall in visibility, even on the basis of unreliable speeds.
50. However the requirement should be calculated the junction has proved to be very safe and drivers in any event take more care at restrictions on the road network. If the objection were to prevail, moreover, needed development would be stifled at countless locations as Mr Young explained that the majority of junctions in most towns and cities are substandard; and that would be flatly contrary to the intentions of the Framework. The conventional approach to such matters is used in the recent appeal decision<sup>19</sup> at Bramcote Road, Loughborough and a similar approach is advocated here. In any event, if ever the operation of the junction required improvement, there is adequate scope for improvement.
51. The additional points raised by the Parish Council and others have no support from either the Council or the highway authority.
52. The highways objections raised by the Parish Council cannot be substantiated. First, at the site access it is inappropriate to rely on DMRB<sup>20</sup>, which is primarily for motorways and trunk roads when the proper guidance for this location, applied by the highway authority, is MfS. If the 85<sup>th</sup> percentile speed of 34.5mph is correct the required SSD is 52.5m which is achievable.<sup>21</sup> There is no problem with levels.
53. The visibility requirements of MfS are not absolute and applying the necessary wet weather reduction gives a 28.5 mph speed generating a requirement of 38 metres, which is available.
54. The single point of access contested as inappropriate by the Parish Council raises no objection from the highway authority whose own guidance advocates assessment of the matter on a site-by-site basis and concludes that a cul-de-sac may be the best solution in certain circumstances.
55. Thirdly, conflict with local plan policy TR/6 or the Framework does not arise at the Barrow Road Bridge as in the peak hour the development would add an imperceptible 93 vehicles and there is no evidence that this would make any difference to the safety or satisfactory operation of the bridge. The proposed

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<sup>18</sup> Paragraph 5.5 of the evidence of Mr Bancroft

<sup>19</sup> Doc 37, para. 29

<sup>20</sup> *Design Manual for Roads and Bridges*

<sup>21</sup> Rebuttal evidence of Mr Young Appendix D

- improvements would more than offset any impact as is shown by the LINSIG output in the ATA.
56. The VISSIM model showed the effects of the MOVA system proposed as reducing delay by around 13% with a consequential 2-3% improvement in capacity at the bridge accepted as an improvement arising from the development by the highway authority. It was accepted by Mr Cage in cross-examination that paragraph 6.3 of the later report,<sup>22</sup> which stated that the CD modelling the traffic flows showed the impact of development at the bridge, was misleading.
  57. Mr Cage's second proof is of no assistance because the model deployed assumes fixed timings which ignores the reality and negates the purpose of the MOVA system proposed, which shares out capacity according to demand at any given time. In fact, table 3.2/3.3 of the relevant report shows an improvement in capacity that exceeds the impact of the development with consequential benefits for base traffic. There would be a decrease not an increase in queuing at the bridge.
  58. There are other problems with the figures and results and, in summary, the report is not reliable evidence, whereas the WSP model is.
  59. So far as Appendix B to the report<sup>23</sup> is concerned, it simply ignored the proposed improvements to hatching which would enable the optimum location of stop lines for a 9/10 second intergreen phase.
  60. The occasional flooding at Slash Lane cannot be a highway objection to the proposed development. Unlike the Redland development<sup>24</sup>, there is no proposal to take access at this location. A number of the other points raised in respect of the bridge scheme are matters for detailed design.
  61. Two thirds of the development will be within 400 metres of a good bus service to Leicester and Loughborough and the extremities within 800 metres, which is comfortably accessible and both the Council and the highway authority consider this a sustainable location. Access to the rail station and good services is also easy.
  62. Even without the rail footbridge to the south-east corner of the site the accessibility of the proposed development would be good and the Council and the highway authority are satisfied that is so. In any event network Rail are pursuing its replacement, having obtained permission and approached landowners. Mr Cage thinks it could be built within five years.
  63. The Breachfield Road junction with Grove Lane (a short one-way stretch) is an existing situation with no record of accidents. The developer is entitled to assume that people will continue to observe the law here.
  64. The concern of the Parish Council as set out in its statement of case is with the impact of the proposed development on the existing community and its facilities, as set out in evidence by Mr Cattle, not the proposition in its closing submissions that deliverability over a five year period is in doubt. The technical material

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<sup>22</sup> Doc 26

<sup>23</sup> Ibid.

<sup>24</sup> Ref T/APP/X2410/A/95/259402/P4 at Appendix A to PC3

- supporting the proposal satisfies the Council and the highway authority in that context and the appellant is an experienced developer well versed in addressing practical issues.
65. Service capacity constraints in Barrow (identified by the Council as a service centre appropriate for growth) are to be addressed by the section 106 obligation that meets the requirements of the relevant statutory providers. This also provides for benefits sought by the Parish Council.
  66. The benefits of the proposed development for the whole settlement will include; increased floodplain capacity; improvements at Barrow Road Bridge; the introduction of warning signs to alert people of flooding on Slash Lane; upgraded pedestrian and cycle links to the centre of the village; the services of a Travel Plan Co-ordinator; additional public open space and some additional community facilities.
  67. Despite this, the Parish Council maintains that Barrow has had enough of development and can take no more, a position adopted by many residents and Barrow upon Soar Community Association (BUSCA). It is not for the developer to remedy the perceived deficiencies referred to by the latter, but the substantial S106 contributions are agreed as appropriate by the local planning authority and the statistics demonstrate that Barrow's growth has been comparable to other settlements and relatively less in some cases. It is calculated that less than 20% of the village population object to the proposal, rather than the overwhelming majority as claimed.
  68. 'Amber' values in the Council's assessment of potential service centres<sup>25</sup> do not preclude growth, simply some constraints. Several of the potential service centres are constrained in some respect. The 'amber' status in respect of health services is historic and rectified and the appropriate contribution in the planning obligation is supported by the Primary Care Trust and the Council. The excellence of care at the health centre was explained by Dr Parker who was careful to explain not that this would be jeopardised but that future improvement would be more challenging. Similarly, education is not threatened and very substantial contributions to education are provided for with the support of the relevant authorities.
  69. Parking difficulties in the village centre are aggravated by commuter parking and is not a matter peculiar to this village, being also a question of management. Few objectors refer to landscape and visual impact and the site has no special designations. In the Worsley decision previously referred to substantial harm in that respect was outweighed by the benefits of housing gain.
  70. No part of the developed area would be outside Flood Zone 1 according to the FRA which has been rigorously assessed by the Environment Agency, whose findings have subsequently been verified by the new hydraulic model of the Fishpool Brook catchment it has created. The proposals comply with the relevant policies of the Framework and there will be some betterment in that although gardens on Breachfield Road will continue to flood the occurrence and severity of

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<sup>25</sup> *Charnwood 2028 Local Development Framework (LDF) Core Strategy Service Centre Capacity Assessment (Final Report) December 2011 ('SCCA')* – Appendix D to Evidence of Mr Cantle (PC4) and Appendix 2 to Evidence of Mr Thorley (A1a)

such events will be reduced. With appropriate planning conditions as recommended by the EA, there is no reason to resist the proposal on surface or foul water drainage grounds.

71. **In conclusion**, the proposals comply with the development plan as a whole and should be approved without delay.

**The Case for Charnwood Borough Council** (Docs 4, 43, C1 & C2)

*The salient material points are:*

72. The application was refused because members disagreed with their officer's view. This was based on advice from the highway authority. Although this recognised the Grove Lane junction to be deficient it decided, all other objections having been addressed, that it could not support an objection on the basis of the one single issue of visibility alone.
73. At the time of application the appellant recognised that the junction fell short of the relevant visibility standard but now claims it will be met.
74. This standard is that the 'x' distance should be measured from a point 2.4m back from the give way line in the centre of the carriageway. The 'y' distance depends on variables affecting the SSD.
75. On a robust assessment the visibility splay is inadequate and the junction will not operate safely, giving rise to conflict with policy TR/6(i) of the local plan and the intentions of the Framework.
76. The conflict with the development plan is not outweighed by other considerations and the appeal should be dismissed.
77. Two recent appeals<sup>26</sup> in the Charnwood District have been allowed because of the inadequate housing land supply but that makes little difference to the merits of this case. In particular the junction inadequacy on its own should preclude the grant of permission in this case. None of the appeal decisions referred to in evidence by the appellant<sup>27</sup> involved determinative highway inadequacies and they are of limited assistance in this case.
78. The Council is cognisant of the benefits of the proposed development (these are set out for example in the officer's committee report) and the appellant has not suggested that the Council was not aware of them.
79. The main issue for the Council is the adequacy of the visibility for left turning traffic at the Grove Lane junction.
80. UK practice (as explained by MfS2) generally focuses on SSD. Paragraph 10.3.1 explains how the minimum SSD is deployed. This shows why a cautious approach is necessary to permitting additional traffic at junctions with inadequate visibility.
81. Although MfS2 explains, on the basis of research undertaken by TMS, that there was no evidence to suggest that failure to provide standard visibility at junctions

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<sup>26</sup> Docs 36 & 37

<sup>27</sup> Appendices 3 – 7, 12 – 14 and 16 – 18 to A1 Evidence of Mr Thorley

- resulted in an increase in injury collisions at 'high-risk' urban sites, it did not conclude that the evidence disproved the assumption that this would be so. The outcome of the research should be treated with caution and it is significant that MfS2 does not jettison the concept of adequate visibility splays being required.
82. Without local evidence to the contrary, it says, a reduction from recommended visibility will not necessarily lead to a significant problem.
  83. Local evidence goes beyond the Personal Injury Accident (PIA) record. It means all relevant local circumstances, including the particular features of the junction.
  84. In this case these include: frequent overrunning of the kerb (where it is dropped to facilitate crossing by pedestrians) by left turning vehicles so as to avoid encroaching onto the westbound lane used by oncoming vehicles; the route is also well used by cyclists; there are a number of private drives impinging on the junction layout, adding to potential conflicts; marked turning lanes are often ignored; and bus turning manoeuvres using the entire carriageway cause oncoming vehicles to brake suddenly.
  85. This local evidence militates in favour of caution as it may simply be good fortune that there are no recorded PIAs, rather than the junction being safe as the appellant suggests.
  86. It became common ground that the appropriate point in the carriageway to measure the 'y' distance to is 1 metre in from the carriageway edge.
  87. Based on one day surveys the parties variously calculated the appropriate wet weather speed for calculating SSD as 28.51mph (appellant) and 31.38mph (Council). In view of these differences a subsequent survey was undertaken by the Council between Thursday 30 August and Monday 3 September 2012, giving a 7 day average 85th percentile speed of 32.8mph.
  88. The Council's interpretation is that wet weather conditions do not have a major impact on speeds at this junction and it may therefore be unwise to rely on the lowest 85th percentile speed of 28.51mph advocated by the appellant.
  89. Notwithstanding criticism from the appellant that the Council's survey did not comply with TD22/81 guidance, aspects of its own work failed to comply, including reliance on single day surveys. Moreover, informed interpretation of the guidance by experienced professionals is more important than the quantity of vehicles included. Therefore surveying only 100 vehicles rather than the 200 advocated by the guidance is common practice among professionals, usually acceptable to highway authorities. The Council's results are reliable.
  90. Buses and HGVs have different characteristics in this context, with slower deceleration making for longer SSD and hence longer visibility splays, but guidance suggests that, in combination, bus and HGV traffic of less than 5% of total flow need not be assessed, subject to local circumstances. The appellant's TA did not contain information on the composition of traffic flow but both the appellant and the Council commissioned further survey work to address the point.
  91. However, the appellant's survey covered only the AM and PM peak hours, contrary to MfS2 guidance, whereas the Council's work covered 24 hour periods in which the proportion of HGVs/buses significantly exceeds the 5% threshold.

- The only criticism by the appellant was that the survey was 30 August to 3 September, which, although school term time locally, was not entirely neutral given that results could still be affected by the holiday period. This is a flimsy criticism, not based on guidance, which should be rejected.
92. It was agreed by the appellant that on the basis of the Council's data HGVs/buses should be taken into account. However, no separate survey of HGV/bus speeds has been undertaken by any party and therefore the information is imperfect.
  93. In these circumstances the 85th percentile speed for all vehicles should not be used as it includes buses and HGVs.
  94. Although MfS2 does not recommend it, the appellant sought to argue that there should be a 10% reduction of the 85th percentile speed for HGVs as well as buses, indicating how constrained the junction is. No such reduction is warranted in relation to HGVs. The practical consequences are that an overtaking HGV driver might not see a driver emerging from Grove Lane until it is too late to stop.
  95. The available splay measured to the agreed 1 m point in the carriageway is agreed to be 42.5m.<sup>28</sup>
  96. The appellant considers the required splay length to be 38m, but this assumes a wet weather 85th percentile speed of only 28.51mph, much lower than that observed by the Council in wet weather and lower than the ATC data suggests the average 7 day 85th percentile speed is. The appellant's splay length takes no account of the different deceleration rate for HGVs and buses.
  97. The Council concludes that the required splay length is 47.5m, using an 85th percentile speed of 31.48mph, which is reasonable given that it is in the middle of the three available measured speeds, also reasonably not discounting buses and HGVs as there is insufficient data upon which to do so. The Council's assessment is more robust and is to be preferred.
  98. That leads to a shortfall against the available splay of 5m which is in excess of 10% and not de minimis. MfS2 does not endorse unlimited flexibility but rather says that 'y' distances should be based on the recommended SSD values. While a reduction in visibility will not necessarily lead to road safety problems, that depends on local evidence.
  99. The Council submits that the shortfall in visibility is a serious one and should not be accepted. Its evidence is that adding additional traffic as proposed would lead to a situation on the highway that is unsafe and unsatisfactory and hence there is conflict with policy TR/6 of the local plan.
  100. This policy is not out-of-date and is in any event consistent with the aims of the Framework.
  101. The threshold of severity the appellant claims to be the meaning of paragraph 32 of the Framework is not relevant to this as there is either a well founded highway safety concern or there is not and it would be extraordinary if planning permission could not be refused on the basis of a really serious (as opposed to

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<sup>28</sup> Doc 20

severe) risk to highway safety. It is more likely that the “safety” part of paragraph 32, the second bullet point, applies here, whereas the third bullet point is concerned with convenience, delay etc where severity is a more meaningful concept.

102. **In conclusion**, the appeal should be dismissed.

**The Case for Barrow Upon Soar Parish Council** (Docs 3, 42 & PC1 - PC4)

*The salient material points are:*

103. The Parish Council does not oppose the principle of residential development in the settlement but believes it cannot support substantial development of the type proposed in this case without major infrastructure improvements, principally the upgrading of Slash Lane to provide two flood free links to the A6 and the provision of a new or significantly upgraded health centre. These concerns are evidenced by the Parish Plan final report, the NHS response to the application and the lack of permissions for major house building in the last 12 years.<sup>29</sup>
104. But for the Secretary of State’s intervention and consequent inquiry, the application would not have been sufficiently scrutinised in terms of deliverability in the context of meeting the Charnwood shortfall in housing land supply. Moreover, the proposed development is not “sustainable development” of the type envisaged by the Framework and insufficient mitigation is provided in respect of local infrastructure constraints, the consequences of which are articulated by those with local knowledge and experience.
105. The Parish Council’s concerns lead to technical objections concerning traffic impact, safety, sustainability and flood risk management and practical objections in respect of the ability of the village infrastructure to cope with this and other housing development that may occur.
106. The Council’s emerging core strategy shifts the emphasis away from the identified service centre settlements such as Barrow Upon Soar.
107. The proposed development will increase the risk of accidents at the Grove Lane junction and the wider highway network is severely constrained. The approaches to the village are subject to capacity issues as a consequence of growth in traffic with attendant safety concerns, notably when Slash Lane is flooded for typically 2 or 3 days around 12 times a year. The exacerbation of these concerns by the proposed development will not be adequately mitigated.
108. The site access arrangements and external linkages are inadequate.
109. There should be at least two points of access for a development on this scale, one of which could be an emergency access. This should be separate from the principal access and the proposed arrangements in this case are unacceptable. The development could be marooned by a road accident or a fuel spillage.

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<sup>29</sup> Appendix G to the Parish Council’s evidence in fact records, inter alia, the grant of permission for 360 dwellings to David Wilson homes (land between Cotes Road and Willow Way Ref P/04/0999/2 in outline and subsequent reserved matters P/05/2778/2)

110. There is insufficient assurance from the submitted material that adequate forward visibility to the access roundabout on approach from the north east could be achieved without tree removal and re-grading of third party land.
111. There will be a risk that the short section of Grove Lane that is one-way to the north of its junction with Breachfield Road will be increasingly abused by impatient drivers, an occurrence which anecdotal evidence suggests to be periodic and which led to a recorded accident with a pedestrian on 17 December 2008. This is a further indicator that the main vehicular route to the site is constrained.
112. The Grove Lane junction has been considered in great detail and the Parish Council endorses the case made by the Council. The second scenario agreed by the parties<sup>30</sup> is considered appropriate, i.e. Splay 2: 2.4 (offset 1 metre east of centreline) x 40.3 x 0.75 (encroachment) metres. This is because right turning vehicles constrain the observed propensity of left turning drivers to position themselves at the centreline for maximum turning advantage.
113. The majority of vehicles turning left emerge from the junction and impinge on the opposite carriageway to avoid overrunning the kerb.
114. Even with speed cushions the surveyed wet weather speed recorded by the Council is 31mph and should not be reduced further for the purposes of calculating the splay requirement. The requisite 45m visibility is not available.
115. Both MfS2 and the WSP supporting research paper are caveated by cautions as to their conclusions regarding the relationship between visibility at junctions and accidents. It is common sense that constrained visibility to the left reduces the necessary attention that drivers can give to traffic approaching from the right.
116. This is the principal route from the site and it is unsuitable for serving significant new housing development.
117. With regard to the proposed improvements at the Barrow Road Bridge, the ATA acknowledges that MOVA control is only likely to result in a 2-3% increase in capacity. Moving the stop lines closer prevents HGVs passing or causes vehicles passing to take additional time. The humpback of the bridge restricts visibility and deters efficient use of the green phase. Cyclists now have a dedicated phase that will negate the proposed capacity improvements. The absence of an adverse impact from this has not been demonstrated. The location of the signal heads cannot be optimised because the bridge is a listed structure.
118. The anticipated MOVA improvements will only materialise if both approaches are not at saturation. The WSP VISSIM model underestimated the queues and therefore didn't account for queuing vehicles beyond the purview of the model, a deficiency that will be exacerbated by anticipated traffic growth. The proposed 'hurry loop' to prevent vehicles queuing back onto the Jerusalem roundabout will cause excessive queuing from the west in the AM peak.
119. Barrow upon Soar is a constrained location due to periodic flooding of Slash Lane and the Barrow Causeway. It is primarily a dormitory settlement and travel beyond it to work and for main food shopping and leisure is a constant necessity.

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<sup>30</sup> Doc 20

- No meaningful improvements to current travel patterns are proposed and the principles of paragraph 32 of the Framework need to be applied.
120. The sustainability credentials of the proposal are questionable as far as travel is concerned, with most residents travelling to work by car outside the settlement. There is no new employment proposed and no linkage across the railway and parking facilities in the village centre are inadequate.
121. Without the replacement footbridge, the programme for which is uncertain, over one third of the site would be in excess of 400m from a bus stop. The footpath crossing of Fishpool Brook will be within the flood alleviation area and if raised to avoid the water would impede flow, a scenario that has not been modelled.
122. The proposed improved pedestrian routes to the village centre are subject to a number of deficiencies and it has not been demonstrated that the £40,000 provided for improvement will be adequate. It is questionable whether the routes are truly “walkable” and hence whether the centre is within 10 minutes walk of the site as advised by MfS.
123. The Travel Plan target of a 14% modal shift away from the private car is unlikely to be realised as it has no real incentives. There is no proposed increase in the level of bus services and no proposed changes to train services or accessibility to the train station.
124. The train station suffers from the lack of car parking or drop-off facilities; it is only accessible by a large number of steps and is unmanned with an isolated platform with little in the way of shelter. It is an overstatement to say that it offers an excellent level of service. Its existence does not automatically make the appeal site sustainable. Only 1% of the Barrow Upon Soar population used the train to travel to work in 2001 and despite increased rail patronage the level of service remains unaltered, indicative of the usage made. Similarly the existence of a half-hourly bus service does not automatically make the appeal site sustainable. It is the practical ability to use such services on a sustained basis that is material. The Travel Plan does not and cannot provide that level of reassurance. The Travel Plan Co-ordinator may be of some benefit but without improved services there is little that can be achieved. The Travel Plan Penalty is nowhere near the level of funding that would be required to improve services.
125. The gaps in the technical information concerning the site development profile, sewage disposal and ground conditions mean that there is insufficient means to assess whether the houses proposed can be delivered within five years, with question marks also in respect of highway capacity, traffic flow and surface water drainage.
126. Ground conditions including a Phase 1 contamination survey have yet to be investigated but it is known that there are lime kilns within the site and old mine workings in the vicinity. The effect on works required to drain the site is unknown.
127. The potential increase in surface water flows have not been properly assessed and flood risk and flood management issues will be exacerbated, together with foul drainage difficulties. There is doubt about the ability of the site to contain its surface water flows so as to ensure no further increase in flood risk to adjoining land and this could affect layout and hence housing yield.

128. The exacting requirements of the Environment Agency's suggested condition (8)<sup>31</sup>, the lack of discussions with Severn Trent Water and the configuration of the existing drainage diminish confidence in the occupation of any dwellings on the site within 5 years. This is highlighted by the fact that the appellant has not had discussions with Severn Trent Water and the knowledge that the sewer is at capacity due to gradient and already discharges at times of peak flow. The opportunities for redirecting the flow away from this catchment are limited and the construction of a new sewer would require a tunnel under the railway and the crossing of third party land, possibly with a need to upgrade a pumping station. There is therefore no certainty that any houses on the site could be occupied within 5 years.
129. There are concerns about the impact of the culvert under the railway being blocked and the revised modelling that took some account of this took no account of the impact of serviceable pedestrian crossing points for Fishpool Brook.
130. EA acceptance of the revised FRA was not without reservation and the exacting requirements of the suggested conditions (5), (7) and (8)<sup>32</sup> should be borne in mind.
131. The EA response is detailed and prescriptive and indicates that much detailed work is yet to be done, including soakage tests. No assessment of the consequences of exceedance of the propose drainage systems in extreme events such that water flows directly into Fishpool Brook and no conclusions can be drawn on the adequacy of the drainage proposals.
132. The EA remains concerned because it advocates the lifting of floor slabs to 48m AOD. However, a large element of the proposed development is below 48m AOD and the raising of slab levels to that height has unknown consequences for the layout.
133. The absence of blockage modelling highlights the issue that at a flood level of 48m there would be an impact on the floor slabs of existing houses on Breachfield Road.
134. The proposed and any additional pedestrian crossings of Fishpool Brook will cause more flooding of properties upstream than has currently been modelled.
135. There will be a greater risk of debris in the brook and consequent blocking of the culvert during significant events with deeper flooding of the properties on Breachfield Road as a consequence.
136. The local health centre will be placed under unacceptable pressure and the mitigation proposed in the form of a contribution for extra car parking spaces will not address the underlying concern regarding a health centre operating at capacity.
137. The education contributions, which are phased, will not guarantee the provision of new classrooms and the same applies to contributions to community facilities and other contributions. The proposed mitigation will not deliver the necessary

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<sup>31</sup> Doc 29 Revised Draft Conditions

<sup>32</sup> Ibid

facilities to achieve the improvements now required from the planning system by paragraph 9 of the Framework.

138. **In conclusion**, the proposals will not lead to a better quality of life or positive improvements as advocated by the Framework but rather it will lead to deterioration in the quality of life currently enjoyed by Barrow Upon Soar residents. Although they seek to meet the Charnwood housing shortfall, they remain incomplete and uncertain in delivery with harmful impacts such as not to be the type of sustainable development the Framework encourages. The grant of outline consent would have a number of adverse effects and the appeal should be dismissed.

### **The Cases for Interested Parties**

*The salient material points are:*

#### **Mr Hilsdon** (Docs 32 & 34)

139. Gardens in Breachfield Road flood on a regular basis. This won't affect the new residents but the situation for existing residents will be made worse. There is a danger that the culvert under the railway will block, making the situation worse. What guarantee do the residents have that these things will not occur? Old mine workings could exacerbate drainage and flood problems.

#### **Mr Willcocks**

140. The travel plan will not work. Experience of commuting to Leicester prior to retirement is that the service is poor, unreliable and overcrowded. There are only two carriages on the relevant trains and the station is rudimentary. The railway is only useful for a journey to work if the stations are walkable at both ends of the journey.

#### **Dr Sarah Parker** (Doc 5 re: GPs' practice at the Barrow Upon Soar Health Centre)

141. The health centre was purpose built in 1980 around which time the practice list of 4,500 was broadly comparable to the population. The current population of Barrow Upon Soar is circa 6,320 but the practice list is around 8,650. New types of patient place new demands on a practice and at present the clinical skills available match the demographic profile.
142. The premises have adapted in response to a rising population, with S106 monies from another development being used for refurbishment in 2011, bringing into use rooms vacated by district nurses, health visitors and school nurses pursuant to NHS re-organisation. The limited surgery space is shared to manage clinical availability and evening appointments are offered on a Wednesday.
143. The practice boundary has been redrawn to curtail pressure and patients are no longer accepted from outside the boundary. The appeal site is within it and will therefore have an impact, as only under exceptional circumstances can GPs lists be closed.
144. The objection arises because the appeal proposal comes hard on the heels of the challenge posed by the ongoing construction of 360 houses elsewhere in Barrow Upon Soar.

145. The Practice is challenged by the rising population, having been rated “deep amber” by the PCT prior to refurbishment and there are ongoing uncertainties arising from further NHS reorganisation. The health centre is currently operating at 70% over capacity and will be 90% over if the appeal scheme is developed. There is no prospect of NHS funded capital investment at present. Adding patients to the current practice list will cause deterioration in the services offered.
146. The central location of the health centre is appreciated by patients for its good public transport links but at busy times the car park is often full.
147. The quality of care provided is good and the Practice is keen to improve it further. The continued rapid growth of the Practice population would make achieving improvement extremely challenging and would be detrimental to the care of both existing and future patients.
148. The appeal should be dismissed.

**Nicky Morgan MP** (Doc 16 on behalf of constituents in Barrow Upon Soar)

149. First, the former Planning Minister Greg Clark and the former Local Government Minister Bob Neill have both emphasised the Government’s commitment to Localism and empowering communities to shape their neighbourhoods through neighbourhood plans as the Parish Council wants to do. This is clear in the Framework. To ignore residents’ concerns is to ignore the policy intentions of Localism. I have not been contacted by a single resident of Barrow Upon Soar in favour of this development. The community has had more than its fair share of new development through the large Willow Road development. This proposal outside the village limits is a step too far.
150. Secondly, the Secretary of State needs to be aware of the vulnerability of Councils such as Charnwood, which does not yet have a core strategy in place, to speculative applications such as this. The framework says weight can be given to an emerging core strategy and in September 2012 the Council indicated its intention that service centres including Barrow upon Soar would share 200 homes between them over 15 years, whereas this proposal is for 300 homes in Barrow Upon Soar alone.
151. Thirdly, the development would put intolerable strains on the physical and social infrastructure of the settlement and it is inconceivable that the residents of the proposed development would use public transport rather than their cars. The development cannot be considered sustainable.
152. The appeal should be dismissed.

**Mr Rowland** (Doc 18 Landmark Planning for Barrow Residents’ Action Group)

153. BRAG supports the Council’s reason for refusal.
154. The appeal site is on rising land and prominent. The proposed development would harm the landscape and the harm could not be mitigated by the proposed landscaping scheme. It would therefore be contrary to saved local plan policies CT/1 and CT/2.
155. The harm to the rural landscape and the danger to highway safety would outweigh the benefit of reducing Charnwood’s housing land deficit.

156. The appeal should be dismissed.

**Councillors Ranson and Fryer** (Docs 17 & 40)

157. We support the Parish Council, the Barrow Residents' Action Group (BRAG) and the residents in their opposition to the development.

158. Its adverse effects would significantly outweigh its benefits when assessed against the Framework as a whole. It is over dominant and alters the whole character of the village. The roads will not cope and access to the schools is under stress as roads serving them do not have the scope to be improved. More than 500 houses have been built or approved in 10 years and the High Street facilities suffer from lack of parking already. It is unrealistic to suppose people will walk to the shops and back.

159. Slash Lane is often closed by flooding and more warning signs would do little to help drivers already committed to using the route through the village, which takes traffic from other villages en route to the A6, M1 and A46.

160. The health centre is heavily oversubscribed and access to it from the appeal site would be by car, adding to congestion.

161. Existing residents have made welcome the occupiers of many new houses in recent years. They are not "NIMBYs" but do object to the sheer scale of what is proposed. The changing climate is increasingly disrupting the road system through flooding around the village and the measures proposed will not help. Huge investment is needed, for example at Slash Lane.

162. The appeal should be dismissed.

**Mr Wilson**

163. Experience suggests that, with the fire station being based in Loughborough, there will be problems of accessibility for it if the roads are congested at times of flood.

**Mr Burton** (Doc 39)

164. This is the first area to flood in Leicestershire, up to 12 times per year. Traffic congestion is always caused, with of a mile in length. The police put signs up and additional signs will not help as most people know when roads will be closed.

165. The abuses of the one-way system between Breachfield Road and Melton Road are not reported to the police. The station is inaccessible due to the many steps and people are more likely to drive in any event because they can visit superstores and the like during the course of their journeys, or they will drive to the station and park on roads near the station.

166. The sewer is at capacity and subject to storm overflows, but Severn Trent Water tends not to object. However, there has been no mention of the water Framework Directive which requires rivers to be improved by 2027. It is doubtful if surface water can be dealt with using SUDS

167. Previous applications in the countryside have been rejected and nothing has changed to justify this one.

**Mr Smith** (Doc 19)

168. There is a highway danger at the Melton Road/Breachfield Road/Babington Road junction close to the appeal site as illustrated on my annotated plan.<sup>33</sup>
169. MOVA might help with Barrow Road Bridge but the wider area including Slash Lane needs to be looked at.

**Councillor Forrest** (Chair of BRAG)

170. Local residents are not "NIMBYs". Lots of them have had new houses "in their back yard". Barrow Upon Soar is a great place to live and we do welcome newcomers, but we are at saturation point and enough is enough. The infrastructure will not cope.

**County Council** (represented by Mr Prendergrast, Mrs Owen, Mr Kettle and Mr Tyrer) (Docs CC1 & CC2)

171. In its essentials, the position of the County Council is as set out in the written evidence submitted and there is little to add. A Civic Amenities site is no longer required as one has been provided at Mountsorrel.
172. The adopted County Council policy in respect of developer contributions is the *Statement of Requirements for Developer Contributions in Leicestershire* (SRDCL) which is the starting point for negotiating appropriate contributions, the latest review of which was in 2007.
173. There are written submissions from Mr Tyrer, the Developer Contributions Officer and Mr Cook in respect of highways and transportation matters.

**Mrs Anderson** (Doc 15 for Leicestershire and Rutland Primary Care Trust)

174. The concerns expressed by the practice regarding the pressure of extra patients are echoed<sup>34</sup> but in terms of consequential capacity improvements to premises the need would be for extra parking capacity, for which a £30,000 contribution is sought.

**Mr Page**

175. Traffic on Grove Lane/Melton road is at the capacity of the highway and creates a potential danger to children.

**Mrs Noon** (Doc 28 for CPRE Charnwood District Group)

176. The County Council has given insufficient weight to the appeal decision referenced T/APP/X2410/A/95/259402/P4<sup>35</sup> regarding the disruptive effect to traffic of flooding on Slash Lane. This is relevant to any additional development in Barrow Upon Soar. The circumstances have not changed in the 14 years that have since elapsed but rather they have been exacerbated.
177. This is an important appeal decision and consideration should be given to the increased volumes of traffic that the proposed development would add to various

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<sup>33</sup> Doc 19

<sup>34</sup> Doc 15

<sup>35</sup> Included also as Appendix 2 to Doc 28

routes in Barrow Upon Soar that are already disrupted by flooding and the appeal should be dismissed for this reason.

**Mrs Reed**

178. Parked vehicles disrupt the flow of traffic, especially lorries, on the eastern approach to the Barrow Road Bridge and this will undermine the proposed improvements.

**Mr Pepper**

179. Cyclists will inevitably slow traffic as it passes over Barrow Road Bridge because of the configuration of the highway and cycling has been encouraged in Barrow Upon Soar. Mountsorrel Lane also floods and that practically leaves the bridge as the only route. 30% of residents in a Parish Plan survey cited flood disruption as a reason not to build.

**Mr Hobbs**

180. A trial run of MOVA should be considered as set out in letter.<sup>36</sup>

**Mrs Rodgers** (Doc 41 for Barrow Upon Soar Community Association)

181. BUSCA is looking to build a new purpose built community centre in the village to accommodate a variety of activities in response to identified needs.<sup>37</sup> Dual use of the Humphrey Perkins School facilities, including the sports hall, has been curtailed for practical reasons. Little attention has been given by the developers, or by the Council, to the detrimental impact of a large influx of new residents and the social consequences.

182. In order to maintain social cohesion it is imperative that the village has the facility BUSCA hopes to build at an estimated cost of around £1.5 million. This is an essential facility that would be necessitated by the proposed development and the sum proposed in the planning obligation (£100,000) will not cover the cost.

**Written Representations**

*The salient material points are:*

**The County Council**

183. The signing of the S106 planning obligation obviated the need for the representatives of the County Council who had prepared evidence to be called as witnesses. That evidence therefore effectively becomes written submissions.

184. The gist of the evidence in respect of financial contributions to education and library services is that they are based on formulae in the SRDCL,<sup>38</sup> adopted by the County Council as Supplementary Planning Guidance.

185. In respect of education, the proposed development will not affect the high school but will impact on the primary and upper schools, which are full and predicted to remain so. This will give rise to a need for funding of school places

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<sup>36</sup> Doc 31

<sup>37</sup> Detailed in Doc 41

<sup>38</sup> *The Statement of Requirements for Developer Contributions in Leicestershire*

at circa £12,099 per primary school place and circa £18,355 per upper school place, the deficit in the number of places relative to the number of dwellings being calculated according to standard formulae.

186. The contributions sought are proportionate, necessary and directly related to the development. They are therefore CIL compliant.
187. In respect of library facilities, the contribution would be used to improve the lending stock and computing facilities at Barrow Upon Soar Library and reconfigure its internal space to provide for additional public access. Calculated by standard formulae, the contribution sought is proportionate, necessary and directly related to the development. It is therefore CIL compliant.
188. The contributions for public transport and pedestrian and cycle improvements stem from the core principle of the Framework that patterns of growth should be actively managed to make the fullest possible use of public transport, walking and cycling, and focus significant development in locations which are or can be made sustainable.
189. The proposed enhancements to the walking and cycling routes to the High Street, the Humphrey Perkins High School and the Sibley Road bus stops are necessary to cater for and encourage increased use in accordance with travel plan objectives. £40,000 is proportionate and the need stems from the development given the likely demand that development on this scale will give rise to. The Travel Packs Contribution, 6 month public transport passes and the funding of two bus shelters are necessary, proportionate and directly related to the proposed development, the object being to facilitate and encourage public transport use from the outset.
190. The Travel Plan Penalty will become payable if monitoring demonstrates that the modal shift target of 14% in the Travel Plan is not achieved. This penalty will incentivise the developer to seriously implement the travel plan and give comfort to the County Council that further funding would be available to encourage modal shift if targets are not met. The penalty is necessary, directly related and proportionate.

### **Nicky Morgan MP**

191. The application was refused prior to the finalisation of the Framework. This clarifies the meaning of sustainable development and the impact on the roads, schools and health services in particular render it unsustainable in terms of the Framework. There is a five year land supply in the local area. The development will, by taking open countryside, harm the character and visual amenity of the area contrary to saved policies CT/1 and CT/2 of the local plan. It is also contrary to saved policy ST/1(ii) because it is clear from the level of objection that this landscape is "particularly valued by the local community". The refusal on highway safety grounds is supported.

### **Barrow Upon Soar Parish Council**

192. It is misleading for the appellant to suggest that the Borough Council has previously supported the proposed development "in principle". The application is speculative and exploits the Borough Council's failure to deliver a Local Development Framework. It is unsustainable because it is on greenfield valuable

agricultural land outside the limits to development, visually dominant on high ground, and will overload healthcare and schools in the village.

### **Leicestershire Constabulary**

193. The policing contribution is necessary, proportionate and directly related to the development. It is therefore CIL compliant.

### **Barrow Residents' Action Group**

194. The appeal site is on rising land and prominent. The proposed development would harm the landscape and the harm could not be mitigated by the proposed landscaping scheme. It would therefore be contrary to saved local plan policies ST/1(ii), CT/1 and CT/2. The harm to the rural landscape and the danger to highway safety would outweigh the benefit of reducing Charnwood's housing land deficit.

### **Private Individuals**

195. There is a great weight of correspondence from local residents. In reading this I have discerned a number of consistent themes:

- First, there is a widespread feeling that the village community has witnessed rapid expansion and that it is outgrowing the physical and social infrastructure available to it.
- Secondly, there is a concern at the loss of countryside around the village.
- Thirdly, there is a concern with highway safety, especially at the Grove Lane junction
- Fourth, many people believe that the capacity of the highways is near its limit, certainly at peak times, and that the problems are particularly intense because periodic flooding already disrupts flows.
- Fifth, there is a perception that the proposed development will increase flooding.

196. In addition, there are numerous comments raising concerns which include; the effect on the living conditions of neighbouring residents, parking pressure in the village centre, noise and disturbance to existing residents, destruction of trees and hedges, inadequate public transport, harm to biodiversity, loss of agricultural land, unsuitable ground conditions, potential to increase crime and disorder, the slow progress or halting of existing residential developments for lack of demand, encouragement of car-based travel building and the disregard of the opportunities for using existing empty properties.

## **Conditions and the Planning Obligation**

### *Conditions*

197. A number of suggested conditions (SC) were agreed between the Council and the appellant.<sup>39</sup> Discussion of these at the Inquiry was inclusive of the Parish Council and interested local residents.

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<sup>39</sup> Doc 29

198. I have reviewed the SC in the light of the advice in Circular 11/95 *The Use of Conditions in Planning Permissions* and the relevant tests therein, together with the advice of the Framework. Some require minor rewording to more closely accord with the relevant advice of the circular and others may usefully be combined for economy, but in general they are appropriate.
199. The standard timescales (SC1) for an outline permission and submission of reserved matters are appropriate but these should be more precisely expressed so as to define the reserved matters and the associated timescales.
200. Accordance with the definitive plans (SC2) should be prescribed by condition for the avoidance of doubt and in the interests of good planning but general accordance with supporting documents is an imprecise approach. However, precision may be introduced by requiring the submission of details for approval by the local planning authority in relevant cases to be in accordance with the principles contained therein. Bearing in mind, inter alia, the planning obligation, I do not consider the approach appropriate for the TA, the ATA, the UFTP or VISSIM modelling. It is inappropriate to address the proposed off-site works at Barrow Road Bridge in this fashion as the land involved is not in the control of the appellant. However, bearing in mind that these are essentially traffic management measures susceptible to refinement and I am not persuaded, having considered the evidence and observed the relevant circumstances of the bridge on site, by the proposition [117] that there would be impediments to its detailed implementation in practice that could not be readily resolved, I consider it could appropriately be dealt with separately through a Grampian style condition. (See also my comments on SC15 below.)
201. The various assessments have been based on a maximum of 300 new houses and as this number is not specified in the description of the development or the application, which is simply for "residential development" it is necessary to limit the number to a maximum of 300 (SC3) by specific condition. Moreover, it is necessary to prescribe the maximum developable area bearing in mind the importance of flood alleviation, the scope for SUDS and the role of the structural landscaping, with a Master Plan creating an overarching framework for the submission of reserved matters. However, the submitted masterplan is purely illustrative. This difficulty may be overcome by the approach advanced in SC4, as this builds on the general principle illustrated to create a firm framework and phasing programme, the latter being necessary for a development on this scale, in my view. I see no difficulty in requiring general conformity to the illustrated principles according to which the proposal has been advocated as a sustainable form of development. This would not fail the test of precision as those principles are spatially expressed on the illustrative masterplan and articulated in the Design and Access Statement. It would be for the Council to reasonably consider whether or not the Master Plan and Design Code submitted pursuant to the relevant condition were in general conformity with them.
202. SC5 increases the focus on the detailed implementation of any particular phase approved pursuant to SC4 and this seems to me to be an entirely necessary and reasonable approach.
203. The site is known to have some archaeological potential including the remains of lime kilns of varying age from early post-medieval until perhaps as recently as the nineteenth century, but the Archaeological Services team at the University of

Leicester is satisfied that the matter can be addressed by a programme of work following a written Scheme of Investigation.<sup>40</sup> This may be secured by a condition such as SC6.

204. Although SC7 – SC9 are all essentially concerned with drainage it seems to me that, in the circumstance of the site, the matters addressed are most practically dealt with by separate conditions specifically concerned with sustainable surface water drainage, foul sewage and the specific detail of trapped gully provision in each phase of development.
205. The site is currently in arable use and there is no reason to suspect widespread contamination. However, its archaeological characteristics suggest that disturbance of buried deposits might, in places, give rise to concern and hence, on balance, a precautionary condition of the type suggested (SC10) is appropriate.
206. SC11 seeks to protect retained trees and hedges on the site as the development progresses through phases. It would require an overall scheme to be first approved, supplemented as necessary by the implementation of the approved measures as each phase commences (SC12). This seems to me to be a logical and methodical approach to this important matter that it is necessary to address in the interests of sustainability.
207. SC13 reflects the concerns regarding the impact of the railway on the living conditions of future occupiers of parts of the site and while there is no reason to constrain development in principle for that reason, suitable detailed measures to secure amenity are necessary.
208. SC14 effectively requires the precise details of the access applied for to be resolved and the works, including the pedestrian and cyclists' bridge over the Fishpool Brook to be fully implemented before any dwelling is occupied; and I consider this to be necessary as these involve the sole vehicular access and the principal pedestrian route anticipated.
209. SC15, in effect, partially replicates the suggested content of SC2 insofar as it specifically concerns the off-site works for the Barrow Road Bridge traffic management scheme to improve its capacity, and involves further consideration of the details of the improvement, notwithstanding the satisfaction of the highway authority with the details submitted to date. This is necessary and will potentially cater for the effects of the cyclists phase subsequently introduced. Being off-site on land not controlled by the appellant, it needs to be negatively expressed in 'Grampian' style and to ensure early delivery and benefit the condition should, as suggested, make first occupation of a dwelling contingent upon its implementation.
210. SC16 – SC18 are best combined within the purview of a standard form of construction management condition suitably adapted to include, inter alia, the precautions to be taken in respect of badgers passing through the works.
211. SC19, if appropriately cross-referenced to the details of design, would require the retained public footpaths within the site to be upgraded by the time half the houses are occupied. This seems a reasonable and necessary precaution to

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<sup>40</sup> Doc 24

ensure that such improvements are incorporated in the development in a timely fashion whilst accommodating any unavoidable delay.

212. The Slash Lane Flood warning system (SC20) is promoted as a benefit of the proposal and a means of mitigating the impact of extra traffic on such occasions and is seen as such by the highway authority. Despite some scepticism amongst third parties as to its value or efficacy I am nevertheless satisfied that it is necessary to secure the benefit by condition.
213. Insofar as public art (SC21) is required by the provisions of the development plan, it is necessary to secure its implementation by condition. Local plan policy EV/43 seeks to make public art integral to the design of major developments and, given this development plan rationale for the condition, it is not in my view inappropriate, in this instance, to seek to reinforce the quality of the detailed scheme design in this way.
214. Insofar as the Framework encourages renewable energy as an important aspect of sustainability, it is necessary to reinforce this locally on a development of this scale by a condition such as SC22.
215. The Parish Council promoted a condition to minimise the risk of flooding caused by the blocking of the Fishpool Brook culvert under the railway line, suggesting that the land as far as the culvert is in the control of the appellant and that the test of necessity is met by the need to avoid such blockage. However, I am not persuaded that this is appropriate or necessary as the potential blockage of culverts is a universal and ongoing matter for the appropriate authorities rather than the developer of any particular site. Moreover, I do not consider the risk of blockage to be demonstrably increased by the proposed development as the risk of unauthorised disposal of items likely to cause such a problem would arguably be reduced by the greater surveillance of the Fishpool Brook that is likely.

#### *Planning Obligation*

216. The Framework sets the tests for planning obligations consistent with the statutory requirements of the Community Infrastructure Levy Regulations 2010 (CIL Regulations). The Council's evidence addresses in some detail<sup>41</sup> the developer contributions provided for and concludes, with reservations regarding the Travel Plan Penalty, that all bar the Policing Contribution are compliant with the relevant tests and the CIL Regulations. The separate matter of Affordable Housing in the obligation is justified on the basis of local and national policy and the relevant local evidence base. The precise level of affordable housing is a matter of negotiation on the specifics of any particular site, but it seems to me that 30% affordable, to be tailored to local needs as regards the mix of Social Rented Dwellings and Intermediate Affordable Dwellings, is a reasonable expectation on a greenfield site of this nature. The rationale for the Education and Library Facilities contributions is set out in the written evidence of the County Council,<sup>42</sup> which also refers to the original request for a Civic Amenity contribution, subsequently dropped as a result of convenient local facilities with adequate capacity having been provided.

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<sup>41</sup> C2 Evidence of Mr Reid, Section 3

<sup>42</sup> CC1 Evidence of Mr Tyrer

217. I have no reason to depart from the Council's analysis in respect of Public Open Space/Recreation and Community Facilities, Education and Library Services, all of which are calculated on the basis of established practice locally and with a view to specific provision in response to the predicted impacts of the proposed developments. Full weight may be accorded to those elements of the Planning Obligation. They are necessary to make the development acceptable in planning terms, directly related to the development, and fairly and reasonably related in scale and kind to the development.

218. More substantial comment, to which I return in due course in the context of my conclusions regarding infrastructure, is necessary on the financial contributions provided for in respect of Highways and Transport, Policing and Health.

## Conclusions

*References are made, where appropriate, to previous parts of the report by indicating the relevant paragraph number thus [0].*

## Main Considerations

219. I have identified the following main considerations in this case:

- (i) Whether the Council can demonstrate a five year supply of deliverable housing;
- (ii) The sustainability of the proposed development;
- (iii) The effect of the proposed development on highway safety, in particular its effect on the safe operation of the junction of Grove Lane with Sibley Road and South Street ('the Grove Lane junction');
- (iv) The effect of the proposed development on traffic circulation within Barrow Upon Soar, including at times of flooding;
- (v) The effect of the proposed development on flood risk;
- (vi) The effect of the proposed development on the infrastructure of the village and whether its impacts may be adequately mitigated by the provisions of the planning obligation;
- (vii) Whether the proposed development accords with the development plan for the area in respect of highway safety and the protection of the countryside;
- (viii) The accordance of the proposed development with the intentions of the National Planning Policy Framework ('the Framework') regarding the delivery of a wide choice of high quality homes, good design and the promotion of healthy communities; and
- (ix) Whether any harm arising from the proposals would be outweighed by other considerations, i.e. the planning balance.

### *(i) Housing Land Supply*

220. The Council accepts that it cannot demonstrate a five year supply of deliverable housing sites and there was no substantive, evidence-based, challenge from any party regarding this. Accordingly, the Council accepts that the local plan policies

concerning housing land supply, specifically, cannot be considered up-to-date. [28]

221. I have no reason to doubt the position and it merits no further discussion other than to note that the presumption in favour of sustainable development set out in paragraph 14 of the Framework is thereby engaged. The failure to demonstrate a five year supply of deliverable housing sites is a matter to which substantial weight must be accorded.

*(ii) Sustainability*

222. Sustainability is a multi-faceted concept most authoritatively articulated in the Framework for present purposes. It merits some attention in that the sustainability credentials of the site are questioned by many, albeit not the Council [28], including numerous local residents who object to the proposals.

223. In land resource terms it has been established that the site does not comprise Best and Most Versatile land [8] and hence the loss of farmland does not weigh significantly against the proposal in sustainability terms, given the inevitability of having to develop greenfield sites in the Council's area.

224. Moreover, I am satisfied that there are no seriously adverse implications from the point of view of biodiversity. Again this is common ground between the main parties [28]. It seems to me that, if anything, the enrichment of habitat through extensive landscaping with appropriate species and the additional benefits afforded by individual suburban gardens in the fullness of time would be a benefit, notwithstanding that some species associated with farmland would be unlikely to return to the site itself.

225. Insofar as design is an important facet of sustainability, the qualities of the layout are such that it is common ground [28] between the main parties that relevant objectives would be met or would be capable of being achieved at the detailed design stage. It seems to me that the proposals balance the need to make efficient use of the site with the need to provide adequate open space to not only create a pleasant setting but also to accommodate appropriate SUDS measures and flood attenuation in a practical fashion.

226. The majority of the site is within a reasonable walking distance of the village centre. I noted that at reasonable walking pace it is 10-15 minutes and the upgrading of the routes would encourage their use. The south eastern part of the site is the least accessible at present, including to the bus stops on Sileby Road to the south. However, the evidence before me suggests [62] that Network Rail fully intends to replace the closed pedestrian crossing point of the railway that currently disrupts the footpath network with a footbridge and I have no reason to believe that this replacement will not in due course be implemented. The layout of the site makes for the encouragement of trips on foot and by bicycle and certainly facilitates such modes for those who wish to utilise them in preference to using a car for local journeys.

227. More strategically, the existence of the railway station, which provides access to major centres for employment, shopping and leisure, is a major advantage of the settlement of Barrow Upon Soar which would be readily shared by residents of the proposed development. I acknowledge that the station is perhaps more properly described as a 'halt' rather than a 'station', insofar as the latter is more

commonly understood as a substantial building or group of buildings with ticket office, staff and possibly shops and cafés. Nevertheless, the fact of the matter is that it exists and enables the population of Barrow Upon Soar to make ready use of the railway to travel to a variety of important destinations for employment, shopping, leisure and many other services, should they choose to do so. It may not be the most comfortable of facilities but for the majority of able-bodied people it is a perfectly practicable proposition.

228. This is an important consideration in terms of the concept of sustainability, to which the long view is intrinsic. Transient factors such as the state of the rolling stock or the quality of the service are less important than the fact of heavy and permanent infrastructure investment having already been undertaken, thereby representing an asset to be capitalised upon as needs dictate. The fact that usage is apparently low at present [124]<sup>43</sup> does not detract from the fundamental long term advantage of the railway as a focus for residential development.
229. The Framework<sup>44</sup>, importantly, puts it thus: (Planning should)... *“actively manage patterns of growth to make the fullest possible use of public transport, walking and cycling, and focus development in locations which are or can be made sustainable”*. This core principle places Barrow Upon Soar in a category of existing settlements which are inherently sustainable and, moreover, the appeal site itself is all within an entirely comfortable walking distance of the station<sup>45</sup>. Many of the houses would be within 800m and none would be further than one kilometre, equivalent to a 10-15 minute comfortable walk for most. [28,61]
230. In addition, the existence of regular local bus services, for the most part within 400m<sup>46</sup> of the proposed houses with the potential for diversion through the site in due course, complements the more strategic accessibility afforded by the railway. [25,28,61]
231. It is relevant in this context to note in full the reported comments of the County Council’s Director of Environment and Transport, set out in full in Appendix 3 to *Charnwood 2028 Local Development Framework (LDF) Core Strategy Service Centre Capacity Assessment (Final Report) December 2011* (‘the SCCA’) [68]. These were that Barrow Upon Soar... *“is well served by bus services, and has a railway station but accessibility for pedestrians is currently limited to stairs only. However, existing public transport levels are insufficient to cater for the level of modal shift away from the car that would be required in order for the village to be considered suitable for a further significant expansion in housing provision.”*
232. The third key element in the equation as regards the sustainability of the location is the existence of a village centre with a good range of services that is already accessible on foot for those with the time and inclination to walk, and can be made more pleasantly so by the measures provided for in the planning obligation. There is no reason to regard the site as disadvantageous or discouraging to the use of bicycles.

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<sup>43</sup> PC1 Evidence of Mr Cage, Appendix 1

<sup>44</sup> Paragraph 17

<sup>45</sup> ATA fig 3.2

<sup>46</sup> ATA Fig 3.1

233. For the above reasons I conclude that the appeal site's basic credentials in terms of both natural resource conservation, potential for good design, choice of sustainable transport modes and, importantly, scope for future improvement of public transport in response to demand, are in fact highly conducive to development of the type proposed.

234. It is of course the case that many other considerations impinge on the overall sustainability of the site and those that are of potentially decisive importance, namely highway safety, traffic circulation, flood risk and village infrastructure are separately considered below in order that an assessment in the round within the context of the development plan and the Framework can be made.

*(iii) Highway safety*

235. Grove Lane joins Sileby Road/South Street in the form of a section of one-way street with left turning and right turning lanes. The visibility to the right is entirely adequate but the visibility to the left is constrained by an existing property and it was agreed,<sup>47</sup> on the basis of on-site measurement during the course of the Inquiry, that the available visibility was, in practical terms, 42.5 metres to a 1 metre offset from the kerb. [48].

236. Much evidence was adduced regarding observed speeds on the road, adjustments for wet weather conditions and the composition of the traffic, to which I have given careful consideration. It seems to me, bearing in mind not only the totality of the evidence but also the response of the Highway Authority, which does not object to the proposals that, were the junction being constructed today, a more generous 'Y' distance of around 45 metres would be provided as a matter of course. Correspondence between the appellant's highway engineers and the highway authority<sup>48</sup> indicates its view that 45 metres was the appropriate standard to work to and that this could be achieved by the use of a 1.31m offset from the kerb. In other words, the layout of the junction does not provide the visibility to the left that, ideally, it should [114] [38 - 50, 73-99 and 112 – 114 for detail of the cases put].

237. This perceived deficiency must, in my view, be considered in the light of a number of factors, including the, albeit cautious, conclusion in MfS2 that there is no invariable relationship between visibility and collision risk. A second contextual factor is the reality that numerous junctions in urban areas are below current standards but are not normally reconfigured unless there is evidence of safety problems arising on a regular basis as a consequence. Otherwise they are left alone to carry volumes of traffic far in excess of those that originally typified the streets, on the basis that drivers exercise the necessary degree of caution as circumstances demand. The proposition was advanced that, if absolute standards were to be routinely applied to junctions in the network at a distance from individual application sites, this would unnecessarily inhibit the development of urban areas [50].

238. In response to my questions on that matter, Mr Young, for the appellant, explained the reality of the general picture very clearly and I concur with the commonsense assessment that he gave. Moreover, the Framework, at

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<sup>47</sup> Doc 20

<sup>48</sup> ATA, Appendix A email from Younus Seedat to Stephen Yeates 25/01/11 @16:46

paragraph 32, sets out an approach which takes account the need for safety at the site access itself and residual cumulative impacts on the network that must be severe if development is to be prevented or refused. While it was submitted on behalf of the Council [101] that severity is a concept that that is inapplicable to the safe operation of a junction, i.e. it is either safe or it is not, I do not consider that the real world operates in that way. It would of course be wrong to sanction any development that self-evidently gave rise to significant deterioration in road safety without effective mitigation of the problem, but there is no cogent evidence to suggest that would be the case here.

239. MfS advises that local evidence should be taken into account in exercising the necessary judgement about any junction and the evidence in this instance is a sustained freedom from recorded accidents at the Grove Lane junction. It is of course the case that lack of accidents related to visibility is not proof that a substandard junction is inherently safe, but it does strongly suggest that it operates in practice in a safe manner because of its particular circumstances and the response of the drivers using and approaching the junction to such circumstances.
240. I observed the operation of the Grove Lane junction both as a driver and as a bystander on a number of occasions during the course of my visit to the area. There is no doubt that larger vehicles emerging from the junction to turn left do impinge on the far side of the carriageway, but they appear to do so in a cautious manner which gives adequate time where necessary for vehicles approaching from the east to adjust their speed to accommodate the manoeuvre. I also observed that certain other vehicles turning left do cross the lowered kerb so as to remain within the nearside of the highway whilst effecting the manoeuvre, whereas the great majority had no need to do that. The tyre marks and the evidence of my own eyes suggest that this is a regular, if not unduly frequent, occurrence, but the fact remains that large numbers of vehicles have exited the junction over the years without mishap. On the basis of agreed flows the junction carries in excess of 1.5 million vehicles annually, albeit right turning as well as left turning [39].
241. The reasons for the evidently safe operation of the junction may well include driver knowledge of its characteristics, including the lack of turns into it by reason of its one-way flow. But I also note that the approach to the junction from the east is up a perceptible gradient which is traffic calmed to some extent with occasional speed cushions and subject to the "friction" of parked cars where parking is not restricted and the improved forward visibility that results where it is, the net result being that drivers unfamiliar with the road are likely to approach the junction from the east with appropriate caution rather than assuming that they may proceed with impunity at a constant speed, as would be the tendency for instance on a free-flowing rural road. The urban and complex driving conditions give rise to a driver response that meets the circumstances, as is the case in countless situations throughout the country.
242. Competing assessments on the part of the appellant and the Council<sup>49</sup> make for a range of required visibility from 38.21m to 43.86m when appropriate reductions in average speeds to account for HGVs and buses are made [47].

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<sup>49</sup> Doc 44, paragraph 25

The actual visibility based on what I consider to be an appropriate offset from the kerb of 1 metre, inside of which the highly unlikely and extremely rare occurrence of a motorcycle overtaking another vehicle overtaking a parked vehicle would not be entertained by its rider owing to the risk of kerb clipping, grids etc, is 42.5m from the centre line of Grove Lane<sup>50</sup>. This comfortably exceeds the mid-point of the range, which is fractionally over 41m. Therefore, if the appellant is right in its calculation of 38m<sup>51</sup> being the appropriate distance there is clearly no deficiency at all but the Council's more cautious approach without speed reductions for HGV/Bus content in the flows would produce a deficiency of the order of 3% against the 42.5m available. Using the appellant's surveyed speed uncorrected for wet weather, the 42.93m requirement would give a deficiency of around 1%. Only the most extreme requirement canvassed of 47.5 metres (Council's preferred figure with no speed reductions at all) would give a deficiency of around 10%.

243. Clearly a deficiency of that order would not be de minimis, but it is material that a more pragmatic approach was taken by the highway authority itself, which regarded 45 metres as being the desirable visibility and in any event does not object to the proposed development, and that the appellant's approach, in my view, more closely accords with the totality of the relevant available advice, little of which is wholly prescriptive, and contains the necessary ingredient of judgement on the circumstances and evidence.

244. I therefore consider it is appropriate to consider the matter of the safety of the Grove Lane junction in the round, bearing in mind the contextual considerations I have described, the lack of recorded accidents that could be ascribed to visibility, and the fact that the highway authority has at no time considered the junction to be in any sense a priority for improvement, notwithstanding that it is one of the principal junctions in the settlement of Barrow Upon Soar. I am also conscious that its one-way operation makes for a simpler pattern of movement and interaction between road users than would be the case if it were a conventional two-way flow with traffic entering it from the main road. It is pertinent to bear in mind the advice originally set out in MfS1<sup>52</sup> concerning driver reaction and stopping sight distances, the various strands of local evidence and the revised guidance in MFS2<sup>53</sup>. All things considered, I conclude that, despite its perceived deficiency in respect of visibility to the left, the junction, on the basis of that local evidence, operates safely and would not, understandably, be a priority candidate for improvement on the basis of current usage.

245. In my estimation, the deficiency, such as it is, is of marginal significance when the judgement is made in the round and should not trigger prevention of the proposed development unless the impact upon its continued safe operation would be demonstrably severe in the sense intended by paragraph 32 of the Framework. In the ordinary course of events developers cannot reasonably be expected to address imperfections in the existing network unless the impact of the proposals would be significantly adverse.

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<sup>50</sup> Doc 20

<sup>51</sup> Doc 44 paragraph 19

<sup>52</sup> MfS1 7.5

<sup>53</sup> MfS2 10.1 – 10.5

246. That begs the question in this instance of whether the impact of additional traffic on the junction would be so significant as to undermine its currently safe operation.
247. The traffic forecast calculations accepted by the highway authority and the parties as the correct basis of calculation show that with no allowance for modal shift as a result of the Travel Plan but with allowance for unreduced<sup>54</sup> traffic growth to 2020 the proposed development would add some 62 right turners and some 30 left turners during the am peak hour to the one way exit from Grove Lane. PICADY results show that the consequential delays per vehicle at 2020<sup>55</sup> would be of the order of a few seconds only for left turners and a little longer for right turners, with less than one vehicle being added to the left turning queue and 1.3 vehicles being added to the right turning queue. The ratio of flow to capacity would be 0.401 for left turners and 0.58 for right turners, well within the accepted capacity threshold of 0.850. Similarly, the pm peak flows would be well within capacity.
248. On that basis, it is evident that the junction would continue to operate comfortably within capacity at the busiest times, with little additional delay for drivers that might otherwise cause impatient behaviour that could potentially undermine the demonstrably safe current operation of the junction. It seems to me that the evidence demonstrates conclusively that the junction should continue to operate without significant change when the additional traffic from the development has built up to its maximum anticipated level, which would in any event be a gradual process which would allow drivers to adjust their habits to compensate for any perceptions of additional delay in any event. Bearing all the relevant considerations in mind, I see no reason why, on a robust assessment, the safety of the junction would be materially diminished by the extra traffic from the proposed development.
249. Nor do I see any reason on the basis of the evidence before me [39, 83 - 85] why pedestrian safety in the vicinity of the junction should be any less than it is now, or that safety for cyclists would be diminished. In relation to the latter, I am conscious that MfS2 notes that greater visibility at T- junctions is associated with higher cycle collision rates.
250. For all the above reasons, while I understand the perception of the Council and the Parish Council that the imperfection of the Grove Lane junction with regard to its geometry and visibility to the left would be a cause for concern [72 - 101, 112 - 116] albeit not one ultimately shared by the highway authority, if the proposed development were to go ahead, I consider that the balance of evidence points conclusively to the judgement that highway safety would not be materially compromised by it. I therefore accord only limited weight to that perception and accordingly, I am unable to conclude that the effect of the proposed development would have an unacceptable impact in those terms as far as the Grove Lane junction is concerned. It follows that the claimed conflict with criterion (i) of local plan policy TR/6, set out in the Council's sole reason for refusal [23], is not, in my estimation, substantiated.

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<sup>54</sup> Surveyed flows at the junction have decreased between 2009 and 2012

<sup>55</sup> Capacity assessment updated to 2020 at request of highway authority and summarised in evidence of Mr Young at table 5.3 of his evidence (A2)

251. I turn now briefly to the matter of the site access itself. The Council raises no objection to the proposed site access [28] and neither does the highway authority. The Parish Council, on the other hand maintained that the vehicular access to the site itself would be unsatisfactory in two principal respects, namely the single access point (with no separate emergency access) and the forward visibility to the access roundabout from the north east [109, 110].
252. The more usual approach is to provide for two or more access points on a development of this size, or a separate emergency access, but that is not always possible, a fact recognised by the highway authority's own guidance<sup>56</sup> which advocates assessment on a site-specific basis [54]. In this case, the requisite emergency access would be 'designed in' to the access roundabouts and short connecting road by the provision of over-run areas to be constructed sufficiently firmly and kept free of obstruction so as to allow emergency vehicles the option of leaving the carriageway itself to get round any obstruction within it. Clearly there is always the possibility that an incident such as a road traffic accident or fuel spillage could close the access itself for a while, but in such circumstances emergency vehicles would be able to reach the relevant area and no doubt by-pass it on the over-run area provision in the event that a simultaneous emergency occurred within the housing area beyond. The highway authority is entirely satisfied on this point [28] and I have no reason to disagree. There are no objections from the relevant emergency service providers in any event.
253. As far as the forward visibility to the roundabout is concerned, the relevant and appropriate guidance in MfS2 suggests that on the current observed speeds the necessary distance is around 52 metres and that, it is claimed by the appellant can be achieved, even when the changing levels of the land and adjacent land are taken into account as the Parish Council suggests. Having carefully studied the levels information on Drawing No 0940/SK/014 rev A and the drawing at Appendix D to Mr Young's rebuttal evidence,<sup>57</sup> and having observed the lie of the land and positioning of retained trees at my site visit I am satisfied that is so. The Highway authority has no objection to the proposed geometry either. Moreover, the speeds measured by the Parish Council in this 30 mph limit are clearly a driver response to the highway geometry as it currently exists, not the geometry proposed, which would include a signified roundabout and a more curved road, both of which would tend to reduce speeds in any event. This is not, in my estimation, a significant point against the proposed development which would create conflict with the intentions of the development plan or the Framework in respect of highway safety and no weight should be accorded to it [52,53,110].

*(iv) Traffic circulation in Barrow Upon Soar*

254. The particular geography of Barrow Upon Soar tends to concentrate traffic entering and leaving the settlement via the nearby A6 onto the historic Barrow Road Bridge, a listed structure. The alternative route to and from the A6 via Slash Lane to the east of the settlement is regularly inundated by flooding, albeit there appear to be no reliably precise records of exactly how many days in the year it is wholly impassable to motor vehicles.<sup>58</sup> Nevertheless, from all that I

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<sup>56</sup> The so-called '6 C's' guidance (Appendix C to PC1 Evidence of Mr Cage)

<sup>57</sup> A3

<sup>58</sup> See for example paragraph 13.1 of evidence of Mr Cage on flooding (PC3)

saw and heard I have no doubt that this is a strategic difficulty for the settlement, indeed a difficulty that contributed to the dismissal of an appeal in of an appeal in 1997 [60,176]. I have studied this decision carefully and it seems to me that the circumstances of the site were different in that it was directly related to the possibility of providing a flood reduced link via Slash Lane to ensure the accessibility of the business premises at that time proposed, but there were in any event a range of other substantiated objections to the proposal and the Inspector concluded, amongst other things, that... *“such consequences of poorly sited development are particularly unnecessary at this time when there is no urgent need for further employment land to be released and when there is to be debate over how to best provide for future needs in the context of the emerging Local Plan.”*<sup>59</sup>

255. At the strategic level a further distinguishing feature was the lack of demonstrable need for the release of employment land at the time and I am also conscious that housing development has continued apace in Barrow Upon Soar, especially on its northern fringe, despite the obvious difficulty that the periodic severance of Slash Lane and other routes causes. Nevertheless, it seems to me that in the ordinary course of events the expansion of the settlement without resolution of the problem via public investment in the necessary works, however funded, does weigh against the current proposal in the absence of a clear mechanism, set out for example in an up to date development plan, so as to overcome the difficulty, which, unresolved, must ultimately limit the growth of the settlement, especially if climate change increases its frequency.
256. Against that, the settlement is established and must continue to thrive despite those intermittent difficulties which load additional traffic onto the more reliable route across Barrow Road Bridge, leading on such occasions to additional and widespread congestion. The relationship of the proposed development to the Slash Lane difficulty is not so direct or unique that it would be reasonable to require resolution of the problem, which is common to the entire settlement, to be funded by the appellant in this case and there is no suggestion from the Council or the highway authority (neither of which objects to the proposed development on the grounds of the Slash Lane situation) that it should be. Some mitigation of the extra impact of the proposed development on ‘flood days’ is arguably necessary but has been catered for by the commitment to extra warning signs, albeit these do not address the root cause of the difficulty.
257. The key question is whether the extra traffic impact of the proposed development on flood days would be so severe as to render the development untenable as a consequence of the extra loadings on the Barrow Bridge route on those occasions which disrupt the traffic flow and cause congestion in the settlement in any event, but I have no cogent evidence to suggest that a critical threshold would be crossed so as to render the existing unfortunate situation wholly unacceptable.
258. Moreover, the appellant’s off-site proposals to improve the capacity of the Barrow Road Bridge through the use of some additional traffic management measures, including the repositioning of the traffic lights and stop-lines and the installation of MOVA technology would serve to ease, it seems to me, the position

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<sup>59</sup> Ibid paragraph 33

on flood days in the same way that it would on the ordinary days when Slash Lane and sometimes Mountsorrel Lane, apparently, are closed. Clearly the congestion would be greater and more enduring on such occasions but that simply reflects the current position without the proposed Barrow Road Bridge improvements necessitated by the additional traffic from the development proposed in this instance.

259. The effectiveness of those proposed improvements was questioned by the Parish Council [117,118], albeit not the Council or the highway authority, on a number of counts. While I can see that an overly ambitious approach to repositioning the stop lines could potentially cause difficulties in the event of large vehicles meeting at the point of constriction, I have no doubt that precise positioning at the point of implementation would minimise the risk of such an occurrence. Moreover, there is no cogent evidence that the listing of the structure would necessarily inhibit the most advantageous re-positioning of the traffic signals. It does seem that the recent introduction of a dedicated cyclists' phase by the highway authority has the potential to require further modification to the proposals, but the highway authority is the instigator of that and I have no doubt that adjustments could be made as it considers necessary.
260. Fundamentally, it seems to me, the MOVA system proposed, being a dynamic means of traffic management in response to the prevailing circumstances, has the potential for continuous adjustment, for example in the event of the so-called 'hurry loop' introducing unintended consequences<sup>60</sup>, to achieve the optimum outcome at a bridge which has served the settlement and will continue to do so on the basis of alternating one-way flows. The appellant's VISSIM modelling was criticised as being too limited in its scope on the approach roads, for example stopping short of the 'Jerusalem Roundabout' but the inclusion of the additional traffic in a wider purview would tend to dilute its significance in any event. Ultimately, all such modelling has its limitations and the Parish Council's evidence failed to convince me that its VISSIM modelling ultimately gave a more accurate prediction. It seems to me that the CD visualisation of the predicted traffic movement failed to take into account matters that would be properly addressed by experienced drivers on a day to day basis, such as minimising delays caused by right turners into Proctor's Park Road.
261. In any event, the addition of around 90 vehicles in the peak hour or around 1.5 vehicles per minute, whilst not perhaps, at 6% increase, imperceptible as the appellant claims<sup>61</sup>, would certainly not give rise to insurmountable or unacceptable levels of increase in congestion relative to the existing situation, even if the installation of the proposed measures were to be less effective than predicted. While I have no doubt that there are occasions when the bridge does give rise to difficulties in the settlement, I observed it on a number of occasions, including my formal site visit (timed to observe am peak conditions at the Jerusalem Roundabout.) I can only conclude, having done so, that, given the constriction in the network that the bridge must inevitably create, for the most part it operates as well as can reasonably be expected and that, with the benefit of the improvements proposed, it will continue to do so and may even experience some improvement as the appellant claims. It is significant that the highway

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<sup>60</sup> Doc 42 paragraph 5.16

<sup>61</sup> Doc 44 paragraph 39

authority is satisfied with the proposed mitigation of additional flows on the network in this respect and that there is in any event continuing scope for refinement of a system that is intrinsically sensitive to demand at any time and allocates the available capacity of the bridge accordingly, i.e. an intelligent system. A 'trial run', as has been suggested by a local resident [180], would, in the circumstances, neither be practical, nor, in my view, necessary.

262. All in all, given the proposed improvements, there is no reason to consider that the increased traffic at the Barrow Road Bridge would lead to any conflict with the intentions of the development plan or those of paragraph 32 of the Framework, which says that decisions should take account of, inter alia, whether...

*"improvements can be undertaken within the transport network that cost effectively limit the significant impacts of the development. Development should only be prevented or refused on transport grounds where the residual cumulative impacts of development are severe."* The residual impact of the proposal on the Barrow Road Bridge following the introduction of the proposed MOVA system, even if were to fail to fully live up to its promise of more than compensating for the impact of the proposed development<sup>62</sup>, could by no stretch of the imagination be described as 'severe' even though some adverse impact might at some point on some occasions conceivably occur.

263. Moreover, the visibility towards the bridge is perfectly adequate from both directions and would remain so even after the adjustments proposed to the signal heads were effected. There is no convincing evidence to demonstrate that visibility at the bridge, or the layout of the road, is in any sense a cause of undue danger. The bridge is an inconvenience known, logically, to most drivers in the peak hours and almost certainly to a sizeable majority of those using it outside those hours. The only potentially decisive question is one of consequential materially and unacceptably reduced capacity on the highway network and, for the reasons previously explained, I do not consider that to the case in any event.

264. Finally, as regards the day to day operation of the highway network elsewhere, there was contention; from the Parish Council [111]<sup>63</sup> that abuse of the short stretch of one-way routeing between the junction of Breachfield Road with Grove Lane, between it and Melton Road; and from Mr Smith [168]<sup>64</sup> regarding the speed of traffic passing the junction of Babbington Road with Melton Road in the vicinity of the northern end Breachfield Road; that both were potential sources of danger, underlining constraints in the network. With regard to the latter point, I consider that the introduction of the proposed site access roundabout (Drawing No 0940/SK/014 rev A) would advantageously change the geometry of Melton Road, improving visibility whilst calming traffic. As regards the former point, it can only reasonably be assumed that local motorists will obey the law and resist the temptation to short-cut. If anything, a perception of increased flow, such as it would be, would reduce that temptation rather than increase danger, in my view. I do not consider that either point would amount to a conflict with local plan policy TR/6 or the intentions of Framework policy concerning road safety and, again, I am conscious that there is no objection from the highway authority.

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<sup>62</sup> Ibid paragraph 45

<sup>63</sup> Doc 42 paragraph 5.4

<sup>64</sup> Doc 19

*(v) Flood risk*

265. Flood risk is not an objection raised by the Council, which is satisfied on the basis of the technical evidence and the position of the Environment Agency (EA) that, with the imposition of appropriate conditions, the appropriate standard of mitigation will be achieved, principally through siting the dwellings wholly within Flood Zone 1 within a specified maximum area, by SUDS techniques to maintain run-off rates of surface water at the existing greenfield level and by an engineered increase in the capacity of the existing floodplain of Fishpool Brook. The latter would ameliorate<sup>65</sup>, it is suggested, albeit not eliminate, the problems for existing householders on Breachfield Road with rear gardens bounded by the brook.
266. Having visited certain of the gardens and studied, in particular, the photographs<sup>66</sup> submitted by Mr Hilsdon and Mr Burton, as well as those appended<sup>67</sup> to the FRA and AFRA, I can well appreciate the apprehension of residents [139] that flooding of Fishpool Brook would be exacerbated, notwithstanding that their gardens are clearly designed and profiled to cope with such periodic flooding. It plainly occurs. It cannot be pleasant, and the prospect of it increasing would be a cause for dismay. However, such a prospect is not borne out by the evidence, even though it was not possible for the FRA to survey this private land specifically, causing reliance on so-called 'glass wall' modelling techniques.
267. Understandable apprehension is no substitute for robust evidence and the FRA and its submitted addendum to address masterplan amendments provides just that. The evidence of Mr Rassool, sections 3.00 – 6.00 in particular, demonstrates very effectively that a robustly pessimistic or conservative approach in the modelling has been taken and that there could well be the prospect of a slight improvement in the experience of the householders, albeit that flooding of their lower gardens will still occur. The proposed development would not, therefore, be a panacea. However, I am satisfied that a careful approach has been taken, rooted in the appropriate scientific principles and, on that basis, the proposed development should certainly not make matters worse in any significant way. The EA's updated modelling<sup>68</sup> provides a further level of comfort on the issue. Moreover, the note prepared by Mr Rassool<sup>69</sup> in response to Mr Hilsdon's concerns about drainage from old mine workings<sup>70</sup> deals authoritatively, in my view, with that matter.
268. The Parish Council's submissions on flooding<sup>71</sup> are extensive but miss the essential point that, whilst stating that its requirements would be "exacting", the work undertaken satisfies the EA, and the essential point also that such requirements can be secured through the imposition of appropriate planning conditions such that the development could not proceed if more detailed investigations belie the conclusion that, in principle, all relevant requirements

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<sup>65</sup> AFRA paragraphs 1.16, 1.17 and 1.23

<sup>66</sup> Docs 32 and 39 respectively

<sup>67</sup> Appendices I and A respectively

<sup>68</sup> Ref NTW307/TN1 (Appendix B to A4 Evidence of Mr Rassool)

<sup>69</sup> Doc 38

<sup>70</sup> Doc 32

<sup>71</sup> Doc 42 Section 4.0

appear capable of being satisfied on the basis of the work undertaken to date. This is an outline application for a large development with sufficient scope for flexibility, for example in attenuation capacity, regarding SUDS techniques built into the basic masterplan; and it would negate the spirit and purpose of the outline procedure if the expense of comprehensive and definitive investigation and design of the end state solution were to be required in advance of the certainty of planning permission that might be withheld for other reasons. It is sufficient at this stage to demonstrate to the EA and, with the benefit of its advice, the decision maker, that the most up to date and refined modelling available, in combination with a site layout that incorporates the principles that would enable the relevant objectives to be met, give sufficient comfort that a practicable solution is in prospect. I have seen no evidence sufficiently compelling to convince me that is not the case.

269. Moreover, it seems to me that future investigation of the permeability of the sub-strata in detail, bearing in mind the above, may improve upon the situation, if it proves better than has been portrayed,<sup>72</sup> although there would be no adverse consequences if it did not.

270. Further, while I note the contention that the modelling did not account for any reduction in capacity of the floodplain of Fishpool Brook if, for example, a causeway approach were to be adopted in its design, I am conscious that other solutions could be considered which would allow the free passage of floodwater in any event, whilst maintaining the passage of pedestrians across the low lying area. Alternatively, acceptance of the partial submergence of an at grade pedestrian route as a temporary inconvenience would not significantly undermine the sustainability credentials of the site as alternative routes would be available via the principal access to the site. Although perhaps not ideal, I do not consider the consequences of the pedestrian link crossing the floodplain to be intrinsically insurmountable and I have no reason to consider that the consequences in terms of flood risk would be sufficient to change my overall assessment that the flood risk modelling is adequate.

271. Nor do I consider the alleged increase in risk of the culvert under the railway blocking to be a matter to which weight should be accorded. The culvert is presently rather inaccessible and consequently rarely observed. Hence debris potentially causing a blockage is likely to go unreported. More natural surveillance of the Fishpool Brook could just as readily reduce the risk of blockage as more public access to the adjacent land might increase it. I have no evidence to suggest that this is a serious criticism of the scheme which should carry any weight. Similarly, the maintenance of the culvert is ultimately the responsibility of Network Rail and I have no evidence that the potential for increased scour is a serious threat to its structural integrity or continued effectiveness.

272. The Parish Council's submission [132] that the EA recommendation to keep floor slabs at 48 metres AOD or above to cater for potential 50% blockage of the culvert in the 1 in 100 year plus climate change event would cause significant problems is not borne out by the evidence. The western edge of the development area shown on the masterplan, within which the layout is

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<sup>72</sup> Ibid paragraph 4.6

illustrative, broadly corresponds with the 48m contour shown on the site survey drawing included as Appendix A to the FRA. It is plain to me that the necessary precautionary minimum slab level which the EA recommends would readily be achieved by the scheme as currently conceived without unduly radical revisions to the layout. Moreover, the AFRA<sup>73</sup> shows the 100 year plus 20% for climate change modelled floodplain to be well below this level, such that any blockage would have to cause flooding at significant additional depth over a very extensive area to cause significant problems in that respect. That possibility is plainly remote in the extreme when the relevant contours are studied.

273. In the final analysis, the expert responsible statutory consultee is content that the approach to flood risk at outline stage is sufficient to engender confidence that its requirements can be met in practice. This is powerful evidence of the ability of the scheme to comply with relevant policy regarding flood risk in the Framework and associated technical guidance and a position to which substantial weight and credence is to be accorded. The logic of the approach to flood risk within the design of the scheme is compelling and I am satisfied that in principle it effectively addresses the matter, with a firm prospect of the broad approach to the disposition and extent of land uses illustrated being retained in broadly the same form at detailed design stage. The illustrative masterplan has a logic to it that has clearly taken into account the relevant precautionary requirements regarding flood risk. In short, I am satisfied that the evidence shows that, subject to the imposition of the EA's requirements, the proposed development would not be subject to fluvial inundation on any reasonable assessment of risk and nor would it materially increase flood risk elsewhere in the catchment.

274. For all the above reasons I am able to conclude that, whilst the definitively detailed measures have not been designed at this stage, the evidence, including the evident satisfaction of the EA, which is fully aware of the master plan proposals for the site, clearly indicates that in practice they will be effective in avoiding any increase in flood risk; and may possibly give rise to betterment that could, on occasion, improve the position of certain of the existing householders whose lower rear gardens are currently affected by flooding.

275. There is, therefore, no significant conflict with the intentions of the development plan or the Framework in respect of flood risk.

276. As to the potential impact of the flooding of Fishpool Brook on foul drainage and the risk of surcharge, I see no reason in principle why appropriate design measures could not be incorporated to secure the system, thereby effecting an improvement on the current situation. The matter is capable of being addressed as necessary by planning condition.

*(vi) Infrastructure*

277. It is apparent that Barrow Upon Soar, over a number of decades, has expanded through the development of housing estates from its original core. Its location on the north east side of the of the River Soar, which effectively separates the settlement from the group of settlements comprised of Loughborough, Quorn and Mountsorrel, makes it relatively freestanding but there is little to suggest that it is notably self-contained despite its identification as a 'Potential Service Centre' in

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<sup>73</sup> Figure 1

the evidence base for the Council's forthcoming Core Strategy. Nevertheless, in the context of an expansion of the total Charnwood population of 15.4%, the document in question (SCCA) [68] indicates, at Table 7, that other settlements - Mountsorrel (36.9%), Rothley (30%) and Wymeswold (24.5%) – have expanded in population terms relatively more in the period 1991 – 2009. Barrow Upon Soar, by comparison, has expanded by some 20.6% in population terms over the same period, with 619 houses having been built. Clearly, this expansion is ongoing with the continuing development at the Willow Road site in the northern part of the settlement, together with smaller sites, as the Parish Council's evidence clearly indicates, suggesting a likely increase of the order of 50% since 2001 if the proposed development in this case were to be allowed and constructed.<sup>74</sup>

278. Table 12 of the SCCA broadly classifies the range of facilities on a comparative basis as between their level of provision in the identified Service Centres. In the case of Barrow Upon Soar 'Services and facilities', 'Quality of centre', 'Opportunities for improvement' and 'Planning constraints' are ranked as "reasonable" with a moderate level of capacity constraint, whilst 'Transport access', 'Employment self-containment' and 'Infrastructure capacity' are ranked as "fair" with a significant level of capacity constraint. No category is ranked as poor or as giving rise to a very significant or potentially overriding level of constraint.
279. The classification is broad and has yet to be tested through independent examination. Moreover, the development strategy itself for the district has yet to be settled in terms of the emerging plan and it is common ground between the main parties that it should be accorded no weight in the determination of the appeal [14]. Nevertheless, the evidence base presents a picture that is perhaps less constrained than the very clear perception of the Parish Council and the numerous local residents [103 -105, 136,137, 141-148,151,158-161,170,174,181,182 185] who have made representations that the physical and social infrastructure of Barrow Upon Soar is unduly stretched, although elsewhere in the SCCA [68] specific concerns are highlighted. For example, Table 2 notes the highway authority's concern that the Barrow Road bridge is constrained in capacity terms and that the settlement is prone to disruption when Sibley Road and Slash lane are flooded, together with the comment that *"it is not readily apparent how these issues might be addressed in order to accommodate further housing growth in the village"*.
280. I also note that Table 11 of the SCCA indicates, inter alia, that there is potential for improvement through contributions to *"capacity of services and facilities where justified"* and that there is the opportunity to... *"Improve provision for buses, cycling and walking plus better traffic management to help reduce pressures. New highway capacity only considered where no other reasonable alternative can address traffic related problems."*
281. These matters go to the heart of my previous consideration of the suggested planning conditions and the planning obligation submitted and what, because of the statutory CIL tests, may or may not be accorded weight in the decision making process as far as the latter is concerned, notably in relation to the

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<sup>74</sup> PC4 Evidence of Mr Cattle paragraphs 2.2 – 2.7

- financial contributions provided for in respect of Highways and Transport, Policing and Health.
282. The County Council's written evidence to inform the Inquiry [183 – 190] includes details<sup>75</sup> of the manner in which specified contributions for Highways and Transport are intended to be spent and my conclusions are summarised below.
283. The bus shelter and pedestrian and cycle routes contributions relate to physical works and infrastructure so as to more effectively serve the proposed development by public transport and physically link it into the existing built village with improved access to the village centre and the Humphrey Perkins High School. They involve capital expenditure which is necessary to make the development acceptable in the sense of keying it in to the fabric of the settlement and this is directly related to the development and, it seems to me, fairly and reasonably related to it in scale and kind. Full weight may be accorded to this element of the Planning Obligation.
284. It is common ground between the main parties that the site is sustainably located. The 'Travel Pass Contribution' is essentially a form of revenue expenditure effectively, albeit indirectly, subsidising the provision of rail and bus services for a temporary period to induce good habits in potential customers. There can be no guarantee that such habits will continue. People tend to be rational in the exercise of transport choice and, if it suits their needs to make use of the public transport services to which the site is inherently accessible, they will do so; otherwise they will use other means, whether that be bicycle, motorcycle or motor car. However, insofar as it would promote sustainable transport habits to capitalise on the advantages of the site's location, thereby contributing to the promotion of sustainable transport advocated by the Framework, the contribution may be regarded as a necessary complement to help ensure that the sustainability credentials of the development are maximised at the outset.
285. The obligation also provides for a 'Travel Packs Contribution'. Such packs are undoubtedly good practice. They may influence the behaviour and travel choices of a proportion of the occupants of the proposed houses, initially at least. Again, to the extent that they would promote sustainable transport habits from the outset, they may be regarded as a necessary complement to help ensure that the sustainability credentials of the development are fully utilised early on. The packs would clearly be directly related to the development proposed and I have no reason to consider the sums of money involved disproportionate.
286. However, the Travel Plan Penalty (CC2, para. 3.3) cannot, logically, be necessary to make the development acceptable in planning terms. It caters for the possibility that, notwithstanding the services of a Community Travel Plan Co-ordinator (CTC) for a temporary period<sup>76</sup> whilst the development takes place, the Travel Plan fails to meet its target of 14% modal shift away from the private car, which of itself is a laudable objective in policy terms. However, by the time that failure had become apparent, the houses would have been built and occupied and the additional measures to pursue modal shift objectives that the £45,000 penalty would fund would be further physical measures or travel packs and passes, it is said, but the latter would only be for a temporary period. It is also

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<sup>75</sup> CC2 Evidence of Mr Cook

<sup>76</sup> Fourth Schedule to planning obligation, paragraph 5.3.7

said that the penalty provides an incentive for the developer to seriously implement the measures in the travel plan but, realistically, in the context of a development of 300 new houses and, possibly, a commensurate reduction in the base value of the land in any event, I cannot see that this would be so. It may have merit as a signal that necessary good practice is expected, but I do not consider such an arrangement to be necessary to make the development acceptable in planning terms in the longer term. The concept of necessity, in my view has to be more robust than a measure that, at best, would seek to retrofit good practice and unspecified physical measures at some point in the future after the development had been implemented in any event.

287. For these reasons, I do not consider that any weight should be accorded to that particular element of the planning obligation.

288. The 'Police Authority Contribution' is for £177,255. The manner in which the authority would seek to spend it is set out in the Third Schedule to the Planning Obligation. By letter to the Planning Inspectorate of 6 August 2012, the Leicestershire Constabulary explained in some detail its approach to the use of S106 monies for police infrastructure throughout the county, supported by a number of appeal decisions in which it was concluded that the contributions in each case passed the relevant tests and could therefore be accorded weight. The letter appends (Appendix 2) a useful note from the Association of Chief Police Officers which draws the distinction between capital expenditure on equipment and premises, the basic infrastructure of policing, and revenue expenditure which might reasonably be expected to be supported by the increased number of households. A January 2012 policy statement from the Leicestershire Police Authority *Policing Contributions from Development Schemes* is also included. This sets out its approach to the increased pressure on policing from additional housing development. The document includes at Section 7 the principles whereby financial contributions will be deployed, including provision for repayment if the police authority fails to spend the contributions, linkage to the development in question and use for additional needs arising from it and a "clear audit trail demonstrating that financial contributions have been used in a manner that meets the tests" (in the subsequently cancelled Circular 05/2005 Planning Obligations.)

289. Those tests are essentially the same as those of the extant CIL Regulations and hence there is a clear recognition by the Leicestershire Police Authority that development is not simply a source of additional finance to be spent in an unspecified or unrelated way. Moreover, the appellant in this case has "signed up" to the Policing Contribution, albeit under, it seems, protest. The evidence of Mr Thorley<sup>77</sup> addresses this matter at Section 12 and his Appendix 10<sup>78</sup> is a paper on the topic that refers to a number of appeal decisions where a contribution to policing has not been supported, for example the appeal in Sapcote (Ref APP/T2405/A/11/2164413) in which the Inspector comments, in paragraph 41 of his decision, that... *"it has not been shown, in the light of the statutory tests, that the contribution would be directly linked to the impacts arising from the appeal proposal."*

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<sup>77</sup> A1

<sup>78</sup> In A1a

290. Equally, the material submitted by the Police Authority under cover of its letter of 6 August 2012 includes a number of appeal decisions pointing in the opposite direction, for example the appeal in Bottesford (Ref APP/Y2430/A/11/2161786) where the Inspector comments, in paragraph 68, that *“there was also specific justification of the individual elements within this global sum directly related to the circumstances of the appeal proposal. Therefore the contribution does meet all three tests for CIL compliance.”*
291. The Inspectors will have reached their own conclusions on the particular evidence and submissions put to them at appeal and I shall approach the evidence in this case in the same way, i.e. on its merits. It seems to me that the introduction of additional population and property to an area must have an impact on policing, in the same way as it must on education and library services, for example. Moreover, it also seems to me that the twelfth core planning principle of the Framework, that planning should... *“take account of and support local strategies to improve health, social and cultural wellbeing for all, and deliver sufficient community and cultural facilities and services to meet local needs”*, can only be served if policing is adequate to the additional burdens imposed on it in the same way as any other local public service. The logic of this is inescapable. Section 8 of the Framework concerns the promotion of healthy communities and planning decisions, according to paragraph 69, should aim to achieve places which promote, inter alia, *“safe and accessible environments where crime and disorder, and the fear of crime, do not undermine quality of life or community cohesion.”*
292. Adequate policing is so fundamental to the concept of sustainable communities that I can see no reason, in principle, why it should be excluded from the purview of S106 financial contributions, subject to the relevant tests applicable to other public services. There is no reason, it seems to me why police equipment and other items of capital expenditure necessitated by additional development should not be so funded, alongside, for example, additional classrooms and stock and equipment for libraries.
293. In this case, the planning obligation clearly sets out in its third schedule the items anticipated to be needed as a consequence of policing the proposed development alongside the existing settlement and apportioned accordingly. It seems to me to be sufficiently transparent to be auditable and at a cost equivalent to, perhaps (if 300 dwellings are constructed) £590.85 per dwelling, it does not equate to an arbitrary “roof tax” of the type complained of, whatever previous practice may have been.
294. For these reasons I am of the view that the ‘Police Authority Contribution’ is compliant with the CIL Regulations and that weight should therefore be accorded to it as a means of mitigating the predicted impact of the development.
295. The ‘Healthcare’ contribution of £30,000 is solely for the improvement of the health centre car park rather than, for example, additional consulting space, albeit more efficient use of space and hence easier parking should, in principle, help to improve the efficiency of throughput as people have less difficulties in prompt attendance. The PCT,<sup>79</sup> despite its reservations about the impact of the proposed development on its ability to deliver continuously improving services

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<sup>79</sup> Doc 15

through the health centre, nevertheless sees this specific action as complementary to premises improvement funded by previous S106 monies. Given the inevitable increase in patient numbers that the proposed development would give rise to, it does appear to be a considered and specified use of funds for a relevant capital project to cater for additional demand rather than simply a bid to overcome an existing deficiency. In the circumstances that have been described to me [145,146,174] it would therefore meet the relevant tests and may be accorded weight.

296. For the above reasons, I consider the contributions to the infrastructure of Barrow Upon Soar and encouragement of public transport use that would be delivered via the executed obligation should be accorded weight in the planning balance, but that the Travel Plan Penalty ought not to be accorded weight.
297. The majority of the provisions in the obligation are necessary to the grant of planning permission and do otherwise meet the relevant tests, the upshot being that the concerns of the residents and the Parish Council concerning pressures on the physical and social infrastructure of the village are capable of being met, but only barely so in the context of individual applications for development such as this one. The reality is that the mitigation of impact is confined to that which may directly be ascribed to the proposed development. Therefore, whilst the impact of development might be mitigated in the sense of services and infrastructure ultimately remaining no more stretched than previously, the perception is one of increased pressure on a finite quantum of service provision; hence the sentiment expressed in the Parish Council's closing submissions that the proposals will not lead to a better quality of life or positive improvements as advocated by the Framework but rather it will lead to deterioration in the quality of life currently enjoyed by Barrow Upon Soar residents [138].
298. I have previously drawn conclusions in respect of traffic and the highways infrastructure which, with the measures proposed, the highway authority considers will cope and I do not consider that the residual cumulative impacts would be severe. Therefore, bearing in mind the principle set out in paragraph 32 of the Framework and notwithstanding that the existing situation is perceived as unsatisfactory, certainly on flood days when one or more routes out of the settlement is closed, refusal would not be warranted on that ground, albeit the prospects for further growth in the absence of more radical measures would in my view be questionable and would ideally be addressed in the context of the development plan.
299. As I have noted, the planning obligation makes sufficient provision to mitigate the impacts of the proposed development on schools, libraries, policing, open space and recreation facilities and community facilities. In other words, the status quo would be broadly maintained at the existing level of pressure, whereas, it seems to me that local residents and the Parish Council feel that the existing level of pressure is already unsatisfactory due to the pace of growth in the relatively recent past. Perhaps understandably in the circumstances, a single proposal to construct up to 300 additional dwellings is perceived as too much for the community to absorb. It would of course be built out over a period of time, albeit relatively short, and the planning obligation makes provision for that in terms of stepped contributions as specified thresholds are crossed in respect of, for example, education. In other words, funds would be released proportionate to the impact over time.

300. The Health Centre and its services are clearly under pressure from an increasing population [141-148], albeit its commitment to excellence suggests that it would cope even if anticipated improvements are delivered less rapidly than might be hoped for. However, notwithstanding my previous observations on the generality of public services for the community in the context of policing, I do not consider that the limits to growth of a settlement can in principle be determined by the availability of health service resources that the increasing population would have to avail itself wherever it was housed in any event. It seems to me that such services are inherently malleable and capable of being expanded locally to meet demand, much in the same way as commercially provided services in a settlement respond to the opportunities created by additional population, albeit in the case of public services the necessary funding is prone to different disciplines and priorities. Put simply, it would be absurd to turn away needed housing simply because the present number of medical staff in a particular settlement was set at a finite number. The answer is clearly to improve upon their availability through the established funding channels to match population growth. The adequacy or otherwise of such funding is not a matter for me to address. Provision is made, in this instance, for the physical improvement of the capacity of the Health Centre car park so as to improve efficiency and help mitigate the impact [145] of significantly increased patient numbers.

301. In all the circumstances, while I can appreciate the local perception in the community of growth and consequent pressure, the reality is that in accordance with the CIL Regulations and the relevant formulae where applicable used by the public services, the proposed development would provide for the necessary mitigation, but little more, of its own impact and on that basis should not lead to the deterioration in the quality of life that the Parish Council and others assert. If additional benefits were to be provided for in the sense of positive but extraneous improvements not directly related to the proposed development, I would not be able to recommend that they should be given weight in the determination of the appeal. The most obvious example of this would be the funding sought by BUSCA for a community centre. I have no doubt that it would be perceived as a substantial benefit by the community, but funding of that order is not on offer and could not weigh in favour of the proposed development if it were.

302. In the final analysis, the approach adopted by the appellant, the Council and the County Council to the provision of physical and social infrastructure is, in the main, the correct one insofar as it aims to provide for proportionate mitigation of impact. There is no lack of such mitigation that would weigh decisively against the proposed development in this case, whatever the perception to the contrary might be. The provision made is sufficient, in accordance with relevant legislation and local and national policy. Given that position, I do not accept the proposition that in those terms the proposed development would lead to a deterioration in the quality of life of existing residents sufficient to warrant dismissal of the appeal.

*(vii) Accordance with the development plan*

303. The appellant maintains that the proposed development accords with the development plan as a whole [32-34,71]. I consider it more correct to say that there is substantial accordance with many aspects of the development plan, but clear conflict with certain key elements of it.

304. It is common ground between the main parties that the proposed development accords with a wide range of policies [21,28], both in the RSS and in the local plan. I have no reason to depart from that analysis.
305. The Council [23] alleges conflict with policy TR/6 but I have concluded that there is no conflict with that policy.
306. It is common ground that the proposals conflict with the intentions of policies ST/2, CT/1 and CT/2 which generally seek to restrict development in the countryside [28].
307. More specifically: ST/2 seeks to confine development to allocated sites within the defined limits of settlements and the appeal site lies outside the defined limit for Barrow Upon Soar. CT/1 seeks to strictly control development in the open countryside outside such limits to specified categories of essentially rural development. CT/2 permits development that would not harm the character and appearance of the countryside and which would safeguard its historic, nature conservation, amenity and other local interest value.
308. The conflict with ST/2 is self-evident. Moreover, suburban housing estates do not fall within the purview of what is contemplated by policy CT/2. The rural ambience of the appeal site would be transformed into that of such an estate and in that sense the conflict with CT/2 is clear, albeit there is no objection on the grounds of nature conservation or historic value in this instance.
309. Third parties [191,194] have specifically cited conflict with local plan policy ST/1(ii) in the sense that the nature of the many objections was indicative of the value ascribed by the community to the appeal site. Policy ST/1 states that, in providing for the development needs of the Borough measures will be taken to, amongst other things.....*"conserve, protect and enhance those features of the natural, historic and built environment which are particularly valued by the community"*... but gives no objective criteria by which to identify such features, specifically, albeit the explanation associated with the policy at paragraphs 2.24 – 2.27 appears to imply by its topic coverage that criterion (ii) is primarily concerned with heritage assets and designated sites, rather than the more nebulous concept simply of environment that is valued. On that basis, there would be no conflict with the policy as the appeal site contains no such assets or designations or features otherwise formally recognised.
310. Notwithstanding the groundswell of objection to the prospective loss of the site to development, I therefore do not consider the policy as originally conceived and drafted would be contravened in the manner that has been suggested and there is no suggestion from the Council that this would be the case, either in the SoCG or the evidence of Mr Reid. In terms of impact the loss of "ordinary" undesignated countryside that the appeal site represents would undoubtedly be keenly felt by a significant section of the community. However, although pleasant in its present rural appearance, the site is well contained by the vegetation at its margins that has the potential to be retained and strengthened in the overall landscaping scheme that would be necessary. The sloping nature of the site does make for prominence but the nature of the topography is such that this would be largely confined to visibility from within the existing settlement and the outer margins would be below the skyline given the nature of the topography [9] and would in some respects mirror the existing development on the gently sloping land to the west of the Fishpool Brook. This is particularly

evident when the site is viewed in context from its north-eastern margin. If it is necessary to release this greenfield site for development, there are, in my estimation, no overriding aesthetic objections to doing so based on development plan policy.

311. What the SoCG does confirm is the Council's view that policies ST/2, CT/1 and CT/2, being adopted prior to 2004, may only be given weight commensurate with the extent that they comply with the provisions of the Framework.<sup>80</sup> Moreover, it also confirms the Council's view that the policies, whilst generally restricting development in the countryside, also relate to the supply of housing and are "out of date" when considered in the context of paragraph 49 of the Framework because the Council is unable to demonstrate a five year supply of deliverable housing land [28]. I have no reason to depart from that analysis.
312. For the above reasons, I consider the proposed development displays a very substantial degree of accordance with the development plan as a whole, bar conflict with the protection of the countryside outside defined settlement boundaries. However, that local plan intention must be tempered by the presumption in favour of sustainable development as set out in paragraph 14 of the Framework. The Council accepts that the proposed development represents sustainable development [28] and I have drawn a similar conclusion in my initial broad analysis of its sustainability credentials. Nothing in my subsequent analysis of the main considerations would lead me to an alternative view.

*(viii) Accordance with the Framework*

313. The Framework promotes sustainable development and I have concluded that the proposal represents sustainable development in a sustainable location where a variety of transport choices, including rail travel, are already available and could in principle be improved upon.
314. I have also concluded, with the pedestrian and cycling measures provided for, that safe and suitable access to the site can be achieved for all and that the improvements to the operation of the Barrow Road Bridge would help to limit the impact of additional traffic and that the residual cumulative impacts of the proposed development in transport terms would not be severe and that the Grove Lane junction geometry is not, in the light of local evidence and circumstances, a sufficient reason to withhold planning permission.
315. The Travel Plan measures provided for can only serve to improve the situation and at least encourage the sustainable transport choices necessary to serve broad policy intentions articulated in the Framework. This represents good practice that accords with the spirit of the Framework's intentions in respect of promoting sustainable transport, albeit I do not consider the Travel Plan Penalty to be justified. Moreover, the site is capable of being readily linked in to the existing fabric of the settlement in terms of footpaths and cycleways and there is no reason to doubt that this objective will ultimately be better realised at the south-eastern extremity of the site when Network Rail fulfils its putative obligations<sup>81</sup> by constructing a footbridge to restore the footpath connection across the tracks.

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<sup>80</sup> SoCG paragraph 6.13

<sup>81</sup> Submitted Planning Statement, paragraphs 8.15 – 8.23 and Doc 44, paragraph 56

316. The layout of the site avoids placing residential development in the floodplain of the Fishpool Brook, allows for increasing its capacity and, moreover would enable houses to be placed above the required level to future proof them in respect of the potential effects of climate change, whilst allowing sufficient scope through SUDS techniques not to increase levels of run-off. The generous provision of open space within the proposed development required to achieve these outcomes would also facilitate recreational activity, a pleasantly landscaped setting and the promotion of biodiversity.
317. Many of the above characteristics assist the promotion of a healthy community and the housing proposed, which would be 30% affordable would make a valuable contribution to the delivery of a wide choice of high quality homes. Although there is evident and widespread concern that the existing community of Barrow Upon Soar will struggle to accommodate the additional population, especially in view of ongoing expansion as a result of permissions granted in the relatively recent past, the executed planning obligation would at least mitigate the impact of additional population in a proportionate manner commensurate with statutory requirements, even if compensating provision for perceived pressure already arising from existing expansion would not be added to that mitigation. The proposed development achieves what it must in terms of the latter.
318. The design of the proposed houses themselves is a reserved matter but given the carefully conceived layout to address a number of the above matters, I have no reason to consider that a standard of design appropriate to the essentially suburban nature of the existing settlement could not be achieved. The layout itself is also a reserved matter but its importance to the acceptability of the proposal is such that it would be necessary to secure its essential principles through the imposition of a planning condition (SC4 as previously referred to). The Framework of course provides for that approach.
319. As the proposed development is able to adequately address flood risk, the appeal site is not subject to any specific policies in the Framework that would inhibit its development in the manner indicated by paragraph 14 (Footnote 9 to the Framework refers). Nor would the development involve the loss of Best and Most Versatile land as discouraged by paragraph 112.
320. Bearing all of the above in mind and the acknowledged inability of the Council to demonstrate a five year supply of deliverable housing sites, together with its acknowledgement that policies ST/2, CT/1 and CT/2 may thereby not be considered up-to-date, and my conclusion that in any event the proposed development displays a very substantial degree of accordance with the development plan as a whole, I have no doubt that the presumption in favour of sustainable development is, in principle, engaged.
321. The Parish Council submitted [125 – 131] that the practical difficulties associated with bringing the site into development would inhibit its full development within a five year period, but that approach is in my view a misconception as to the relevant approach to land availability as conceived by the Framework at paragraph 47. To enter the five year land supply an unallocated site such as this must be granted planning permission, not necessarily full permission, with a realistic prospect that housing will be delivered on the site within five years. There is no clear evidence in this case that the scheme would

- or could not be delivered over a five year period. There is no evidence to suggest that it is not viable, or that there is no longer a demand for the types of units (primarily family housing) proposed. For practical reasons the build-out of a site such as this should and would be phased, but that is a sequence of events, not in this case a means of preventing development prior to specified dates.
322. There would of course be practical matters to address, conditions precedent to discharge and consents to be gained before development could commence, but that is by no means unusual for a greenfield development on this scale. There is nothing to suggest that that an experienced developer, with the surety of an outline planning permission, would not invest heavily and with alacrity in the necessary up-front efforts to bring a site such as this into development. It is in no way dependent on a significant publicly funded infrastructure programme that might have to be implemented in advance. Even though other agencies such as Severn Trent Water and the highway authority may be involved in various ways they have statutory obligations in any event and the major financial resources needed would be in the control of the developer, to be deployed through other agencies where necessary.
323. It cannot of course be guaranteed that all the dwellings would be built and occupied within five years but there is, in my view, a realistic prospect of substantial delivery, thereby facilitating the availability of needed houses as the Framework intends. At this juncture, there is no cogent evidence that would significantly belie the appellant's intention or ability to secure substantial delivery within an appropriate timescale. I have no reason to doubt that, building on the work undertaken so far, vigorous concerted action by an experienced house builder would bring the development into being within a realistic timescale. Approval in principle is the essential catalyst to the necessary action on a site such as this. Little weight should, in my view, therefore be placed on the Parish Council's submissions in this respect.
324. The Framework does incorporate the core principle that decision taking should be... *"genuinely plan-led, empowering people to shape their surroundings, with succinct local and neighbourhood plans setting out a positive vision for the future of the area"*. This principle was most forcefully put by Nicky Morgan MP [149] and is without doubt material. It pulls in the opposite direction to the presumption in favour of sustainable development that is engaged by this case and I have given considerable thought to those representations, summarised below.
325. The Council itself specifically states that no weight should be accorded to its emerging core strategy and it is clear that with the exception of the single highway safety reason for refusal based on conflict with local plan policy TR/6 it considers the proposal to be not only sustainable but substantially in accordance with the development plan as it currently stands, with the obvious exception of policies ST/2, CT/1 and CT/2, which it says are "out-of-date". Bar its conclusion on policy TR/6 I have no reason to take a different view in this case and therefore place less weight on Mrs Morgan's proposition than might be appropriate in other circumstances.
326. Moreover, in respect of the neighbourhood planning process, Mr Cattle confirmed, in response to my question on the matter, that it was the Parish Council's intention, following discussions with the Council, to follow the progress

and context of the core strategy insofar as its aspiration to prepare a neighbourhood plan was concerned. That is clearly some time off and Mr Cattle confirmed that the Parish Council did not have 'Frontrunner' status in the neighbourhood planning initiative. Nor do I have any evidence of a firm programme of preparation (albeit reference is made by the Parish Council to the spirit and implementation of the Localism Act 2011).<sup>82</sup> Accordingly, although the representations on the point merit weight in the context of the first core principle of the Framework, and might be regarded as an adverse impact in terms of public expectations, the presumption set out in paragraph 14 is inescapably influential in the context of the Framework as a whole, bearing in mind the sustainability of the proposal in terms of its location and characteristics.

*(ix) The planning balance*

327. The background to this appeal includes an uncontested shortfall in residential land supply in Charnwood Borough. A development of the order of 300 dwellings, deliverable at pace once necessary investigative and detailed design work and associated approvals are achieved, would make a significant contribution to reducing that shortfall, representing around 10% of the current deficit.<sup>83</sup> Nearly a third of the dwellings would be affordable. This quantum of housing in that context is a benefit which merits substantial weight.
328. Notwithstanding the existing disruption to road traffic that the settlement periodically experiences as a consequence of the flooding of strategic highway connections, the evidence demonstrates that on a day to day basis the traffic flows generated by the proposed development would be accommodated by the highway network, with specific improvements to the Barrow Road Bridge provided for, without the modal shift intended by the Travel Plan and its associated incentives and penalty. If that shift occurs it would be a bonus and a significant benefit, but I am unable to conclude that it would be necessary for the development to go ahead, or that it would be necessary to make it sustainable.
329. The essential characteristics of the settlement in this context are that it is served by a railway and bus services. The infrastructure for public transport is already in place, with connections to a variety of significant destinations. The existence of such infrastructure is particularly advantageous in the case of rail. Services are potentially capable of being improved in response to demand as the operators may see fit. The settlement has an accessible centre, albeit with parking difficulties as many are, but can be reached on foot from the site by those wishing to do so, relatively easily. Given the existence of the settlement and the public transport infrastructure, the location of the site is inherently sustainable. This weighs heavily in favour of the proposed development.
330. Other aspects of sustainability, including the direction of development away from Best and Most Versatile land and the protection and promotion of biodiversity, would be well served by the proposals.
331. While the highway safety arguments of the Council and others are not in my estimation substantiated in all the local circumstances, the perception that further traffic growth should not be contemplated is understandable in a

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<sup>82</sup> PC4 Evidence of Mr Cattle, paragraph 4.3

<sup>83</sup> Addendum to SoCG shows a shortfall of 2,980 units at June 2012

settlement that is regularly disrupted by flooding on the highway network. This is a matter to which some, weight should, in my view, be accorded. If it is a problem that merits significant investment to overcome it, it is an existing and long-established problem that cannot reasonably be resolved by private funding from an individual developer such as the appellant. The proposed development would not worsen the flooding, but its occupants are potentially inconvenienced by it, if they choose to travel by car on flood days. While the problems of Barrow Upon Soar in this regard must ultimately inhibit the further growth of the settlement if not resolved, I am unable to conclude on the evidence that the present periodic disruption is a sufficient reason in itself to refuse permission for the development at issue, large though it may be. The matter does weigh against the development but not, in my view, decisively so.

332. The outline design of the development has the potential to at least adequately mitigate the potential run-off through SUDS techniques. It would not place the new dwellings proposed at risk from fluvial inundation and could create some marginal improvement for existing homeowners with gardens prone to flooding. Importantly, the Environment Agency is satisfied that, with the measures it recommends, the development may go ahead without causing harm in this context.
333. Given the expansion of the village, recently and in previous decades, the concerns of the community regarding its social as well as its physical infrastructure are understandable and should, in the circumstances, be accorded weight. This is a material concern. However, within the constraints of what is permitted by the CIL Regulations, the appellant has made provision to mitigate the impact of the proposed development, calculated in the main according to the established formulae of the relevant service providers. Clearly, there will be additional pressure but, given that provision, the existing situation should not be materially worsened even if no tangible improvements are perceived. Due weight should be therefore accorded to the planning obligation entered into by the appellant, the Council and the County Council.
334. While the dismay of the local health centre at the prospect of additional pressure on its services must be acknowledged, I do not accept that such pressure should count decisively against the development. Such services must perforce adapt to demand within the budgetary constraints within which they operate and the obligation provides for physical improvements to the operation of the centre, albeit to the car park, in any event. Only limited weight should therefore be accorded to the representations made against the proposals on such grounds.
335. There is no significant conflict with an extensive range of policies identified in the SoCG [21] and this is a factor to which significant weight should be accorded. Nor have I found there to be significant conflict, in practice, with the intentions of local plan policy TR/6. Again, this is a factor to which significant weight should be accorded. There is clear conflict with the intentions of local plan policies ST/2, CT/1 and CT/2 but, insofar as the effective operation of these policies is contingent upon an adequate supply of housing land in the form of specific allocations or unallocated land within the existing settlement boundaries, these policies are rendered out-of-date by paragraph 49 of the Framework and it is common ground that is so. I have no reason to take a different view and the

weight that might otherwise be accorded to such harmful conflicts is thereby reduced.

336. The conflict with local plan policy ST/1 alleged by certain parties [191,194] is not borne out, on analysis, by the terms of the policy and its explanation. The sense of prospective loss expressed by local residents regarding the appeal site as a positive contribution to the rural setting of Barrow Upon Soar is real nevertheless and merits weight insofar as the intrinsic character and beauty of the countryside is valued by the Framework.

337. The intentions embodied in the first core principle of the Framework concerning plan-led development and local empowerment at the neighbourhood level is also a material consideration to which weight should be accorded. However, substantial harm or potential harm in that respect has not been demonstrated in this instance, and there is substantial accordance with the intentions of the Framework to promote sustainable development, in this case contributing to the delivery of a wide choice of high quality homes in a well designed scheme that facilitates healthy lifestyles.

338. While I am bound to report that there are harmful aspects to this development to which weight should be accorded, these must be weighed against the very substantial contribution to housing needs that the site is capable of providing in the context of an acknowledged shortage of suitable land and the inherent sustainability of the location. Those aspects of the planning obligation which may be taken into account to mitigate the impact of the proposed development should also be accorded due weight. The presumption in favour of the sustainable development, bearing in mind the policies of the Framework as a whole and the development plan taken as a whole, should therefore be the decisive factor in this case.

### **Overall Conclusion and Recommendation**

339. In the light of the above main considerations and having taken full account of all other matters raised, I consider the balance of planning advantage to be in favour of the scheme. I therefore recommend that the appeal be allowed and planning permission granted, subject to the conditions set out in the attached annex.

*Keith Manning*

Inspector

## **Annex: Schedule of Recommended Conditions**

- 1) Details of the appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development begins and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than three years from the date of this permission.
- 3) The development hereby permitted shall begin not later than two years from the date of approval of the last of the reserved matters to be approved.
- 4) No development shall commence until both a Master Plan in general conformity with the submitted Illustrative Masterplan 4045\_ SK\_ 001 rev E and a Design Code for the site have been submitted to and approved in writing by the local planning authority. Both shall substantially accord with the submitted Design and Access Statement Rev G. Any amendment to either shall be submitted to and approved in writing by the local planning authority. The Design Code shall address the following: -
  - i) Architectural and sustainable construction principles
  - ii) Character areas
  - iii) Lifetime home standards
  - iv) Car parking principles
  - v) Cycling provision including pedestrian and cycle links to adjoining land
  - vi) Street types and street materials
  - vii) Boundary treatments
  - viii) Building heights (which should be limited to a maximum height of three storeys, being located on the main street only, as indicated on pages 33/34 of the Design and Access Statement, and two storeys for the remaining parts of the development)
  - ix) Building materials
  - x) Provision of public open spaces (including timetable for implementation)
  - xi) Design of the site to accord with Secure by Design principles.
  - xii) Phases of development.

Applications for approval of the reserved matters submitted pursuant to condition 2) above shall be in accordance with the Master Plan and Design Code as approved. In addition to the Design and Access Statement previously referred to, The Master Plan and Design Code and the reserved matters submitted for approval shall also accord with the principles set out in the following submitted documents: Flood Risk Assessment June 2010; Addendum to Flood Risk Assessment January 2011; Ecological Appraisal June 2010; Bats in Trees Addendum December 2010; Tree Assessment Report Rev A; and Badger Mitigation Strategy December 2010. Development shall be carried out in accordance with all matters approved pursuant to this condition.

- 5) Notwithstanding the generality of condition 4) above, the development hereby permitted shall be carried out in accordance with the following approved plans:

4045\_SK\_005 Site Location Plan  
0940/SK/010 rev C Typical Badger Tunnel Detail  
0940/SK/013 rev E Melton Road Alternative Site Access Roundabout  
0940/SK/014 rev A Site Access Roundabout  
0940/SK/022 rev B Fishpool Brook Pedestrian Footbridge Crossing  
0940/ATR/002 rev A Proposed Site Access – Swept Path Analysis  
4045-L-01 rev D Types of Open Space  
4045-L-02 rev A Extended Floodplain Area to be Regraded  
4045-L-04 Public Open Space Phasing Plan  
NTW/307/Figure 4 Rev A Indicative Floodplain Sections

NTW/307/Addendum Figure 1 Rev A Fishpool Brook Modelled Floodplain Extent

- 6) The maximum area of residential development on the site (excluding the areas of public open space, structural landscaping, meadow and SUDS) shall be defined on the Master Plan to be approved pursuant to condition 4) above and shall not exceed 8.32 hectares, and no more than 300 dwellings shall be constructed on the site.
- 7) No construction on any phase of the development hereby permitted shall commence until such time as the following details in respect of that phase have been submitted to and approved in writing by the local planning authority:
  - a) Siting including details of proposed levels of ground surfaces and finished floor levels of all buildings and a number of selected typical sections across the phase.
  - b) A landscaping scheme including details of all trees and hedgerow to be retained, full planting specification, timing or phasing of implementation, services above and below ground; and a landscape management plan covering a minimum period of 10 years following completion of the development. Any trees or plants removed, dying, being severely damaged or becoming seriously diseased within 5 years of planting shall be replaced in the following planting season by trees or plants of a size and species similar to those originally required to be planted;
  - c) Treatment of all hard surfaced areas, including types and colours of materials street furniture, signing and lighting of all public spaces.
  - d) Boundary treatment to all open areas where the site bounds other land (where confirmed in writing by the local planning authority to be required) including design, height, materials and colour finish.
  - e) Details of the proposed standard signage for the footpaths at the points where footpath I 23 is proposed to be crossed by the new estate roads.
  - f) Layout and design of children's play areas; Multi Use Games Area/skate park area and any other play/ recreation area within the development;
  - g) Details of external lighting.Development shall be carried out in accordance with the approved details.
- 8) No development shall commence until the applicant or developer has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation which has been submitted to and approved in writing by the local planning authority, and no development shall take place except in accordance with the approved scheme details.
- 9) No development shall commence until drainage plans for the disposal of foul sewage have been submitted to and approved in writing by the local planning authority. No dwelling, in any phase of construction, shall be occupied until all the works necessary in respect of that phase have been implemented in accordance with the approved details.
- 10) No development shall commence until a surface water drainage scheme for the site, based on sustainable drainage principles and an assessment of the hydro-geological context of the development, including any requirement for the provision of a balancing pond, has been submitted to and approved in writing by the local planning authority. No dwelling, in any phase of construction, shall be occupied until all the works necessary in respect of that phase have been implemented in accordance with the approved details. The balancing pond, if required, shall be completed and be in operation before the occupation of the first dwelling on any phase.
- 11) No development shall commence until a scheme to install trapped gullies has been submitted to and approved in writing by the local planning authority. The scheme shall be implemented in accordance with the approved details. No dwelling, in any phase of

construction, shall be occupied until all the works necessary in respect of that phase have been implemented in accordance with the approved details.

- 12) If during development contamination not previously identified is found to be present at the site then no further development should be carried out in that location until such time as a remediation strategy has been submitted to and agreed in writing by the local planning authority and the works carried out in accordance with the agreed strategy prior to re-commencement on that part of the site.
- 13) Prior to the commencement of development, a scheme for the protection of trees and hedges to be retained on site shall be submitted to and approved in writing by the local planning authority. The scheme shall include: -
- Details of all trees and hedges to be retained on site.
  - Details of any works proposed in respect of any retained trees and hedges on site.
  - Details of operational and physical measures proposed for the protection of trees and hedges
  - Details of any ground works that are to be carried out within 10 metres of any tree or hedge identified as being retained.
  - Details of the methodology to be employed when carrying out ground or other works within 10 metres of any tree or hedge to be retained.

Development shall be carried out in accordance with the approved details.

- 14) No development shall commence on any phase until the tree/hedge protection measures for that phase approved pursuant to condition 13) above have been fully implemented. The approved tree/hedge protection measures shall be retained and maintained in their approved form until development on the phase in which they are located is complete. Within the areas agreed to be protected, the existing ground level shall be neither raised nor lowered, and no materials or temporary building or surplus soil of any kind shall be placed or stored thereon unless approved as part of the details submitted to discharge the condition.
- 15) No development shall commence until a scheme of noise attenuation/mitigation measures (in order to reduce noise likely to be experienced in dwellings and private gardens from the use of the railway corridor to the south west of the site) has been submitted to and approved in writing by the local planning authority. No dwelling in any phase of the site identified by the scheme as being affected by railway noise shall be occupied until the required measures have been implemented in accordance with the approved scheme.
- 16) No development shall commence until details of the construction of the proposed access roundabout (as shown indicatively on drawing 0940/SK/013 Rev E) and the footpath/cycleway bridge across the Fishpool Brook (as shown indicatively on drawing 0940/SK/022 rev B) have been submitted to and approved in writing by the local planning authority. No dwelling on the site shall be occupied until the access roundabout and pedestrian bridge have been constructed in accordance with the approved details.
- 17) No development shall commence until a detailed scheme of works for the improvement of traffic flow at the Barrow Road Bridge of the type illustrated on WSP UK drawing numbered SK/017 Rev A has been submitted to and approved in writing by the local planning authority. No dwelling on the site shall be occupied until the improvement works at the bridge have been fully implemented in accordance with the approved details.
- 18) No development shall take place until a Construction Method Statement has been submitted to, and approved in writing by, the local planning authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:
- i) the parking of vehicles of site operatives and visitors

- ii) the routing of construction traffic throughout the construction process and the mechanism for securing adherence to approved routes
  - iii) loading and unloading of plant and materials
  - iv) storage of plant and materials used in constructing the development
  - v) the erection and maintenance of security fencing
  - vi) wheel washing facilities
  - vii) measures to control the emission of dust and dirt during construction
  - viii) a scheme for recycling/disposing of waste resulting from the construction works
  - ix) precautionary measures to ensure that no badgers become trapped or injured during development work
- 19) No development shall commence until procedures have been initiated to upgrade the existing public footpaths I 23 and I 24 (part) beyond the edge of the meadow boundary to the eastern boundary of the application site to footpaths/cycleways. The upgrading works (including those approved through Condition 7) shall be completed prior to the occupation of 50% of the dwellings on the site.
- 20) No development shall commence until a scheme of electronic or other suitable signing to warn of flooding on Slash Lane has been submitted to and approved by the local planning authority. No dwelling on the site shall be occupied until the scheme has been fully implemented in accordance with the approved details.
- 21) No development shall commence until a scheme of public art to be delivered on site has been submitted to and agreed in writing by the local planning authority. Those elements of the approved public art scheme which are to be delivered on a particular phase of the development shall be delivered prior to the occupation of 80% of the dwellings in that phase.
- 22) No development shall commence until an assessment of the anticipated energy requirements arising from the development has been submitted to and approved in writing by the local planning authority. That assessment must demonstrate how a minimum of 10% of the energy requirements shall be secured from decentralised and renewable or low-carbon energy sources. Details and a timetable of how these measures are to be achieved, including details of any physical works on site, shall be submitted to and approved in writing by the local planning authority. The approved details shall be implemented in accordance with the approved timetable and retained as operational thereafter.

\* \* \*

## APPEARANCES

### FOR THE LOCAL PLANNING AUTHORITY:

Melissa Murphy	Of Counsel
She called	
Mr Chris Bancroft Adv Tip TS FCILT	Director, Bancroft Consulting
Mr Iain Reid DipTP DipLD MRTPI	Director, Iain Reid Landscape Planning Limited

### FOR THE APPELLANT:

Christopher Lockhart-Mummery QC	
He called	
Mr Robert Thorley BA (Hons) DipTP MRTPI	Associate Planner, GVA
Mr Alan Young BSc (Hons) MBA CEng MICE FCIHT	Senior Technical Director, WSP
Mr Iqbal Rassool BEng (Hons) CEng MCIWEM	Service Director, BWB

### FOR THE BARROW UPON SOAR PARISH COUNCIL:

John Pugh-Smith	Of Counsel
He called	
Parish Councillor Peter Cantle CertEd DipComEd	Barrow Upon Soar Parish Council
Mr Jonathan Cage Eng (Hons) MSc CEng MCIHT MICE	Managing Director, Create Consulting Engineers Limited

### INTERESTED PERSONS:

Councillor P Ranson	Ward Councillor
Councillor H Fryer	Ward Councillor
Dr Sarah Parker	GP Barrow Upon Soar Health Centre, on behalf of Dr NHR Simpson and Partners
Mrs Nicky Morgan MP	MP for the Loughborough constituency
Councillor S Forrest	Chair of BRAG
Mr P Rowland	Landmark Planning on behalf of BRAG
Mr J Prendergrast	Solicitor, Leicestershire County Council (LCC)
Mrs Owen	LCC
Mr Kettle	LCC
Mr A Tyrer	Development Contributions Officer LCC
Mrs A Anderson	Primary Care Premises Manager, Leicester, Leicestershire and Rutland PCT Cluster
Mrs J Noon	CPRE Charnwood Group
Mrs S Rodgers	Vice Chair Barrow Upon Soar Community Association
Mrs P Reed	Local resident

Mr K Pepper	Local resident
Mr T Burton	Local resident
Mr C Smith	Local resident
Mr P Hilsdon	Local resident
Mr A Willcocks	Local resident
Mr D Wilson	Local resident
Mr K Page	Local resident
Mr G Hobbs	Local resident
Mrs Burrows	Local resident
Mr R Billson	Local resident
Mr T Anderson	Local resident
Mrs C Hilsdon	Local resident
Mr D Ellison	Local resident

## INQUIRY DOCUMENTS

- 1 Council's notification letter
- 2 Appellant's opening submissions
- 3 Parish Council's opening submissions
- 4 Council's opening submissions
- 5 Dr Sarah Parker's speaking notes
- 6 Report to Cabinet of 27 September 2012 re local development framework
- 7 Minutes of Cabinet meeting of 27 September 2012
- 8 Email exchange of 9 October 2012 between Create Consulting Engineers and Leicestershire Police re Incident 82: 03/10/2012 and Incident 460: 27/09/2012
- 9 Extract (pages 13 – 16) from TMS report *Safer Roads for Everyone*
- 10 Email exchange of 4 October between Parish Council and Leicestershire Police re Incident 460: 27/09/2012
- 11 Tables of Estimated Population Increase in Barrow Upon Soar
- 12 Letter dated 5 May 2011 from Parish Council with Parish Council minutes of 02/11/10, 7/12/10, 13/04/11, 03/07/11 and 06/07/11
- 13 Email from Alison Saunders (08 October 2012 @ 14:24) with Technical notes from Create Consulting Engineers Ltd re Micro-simulation Traffic Model, email exchange with Leicestershire Police re Incident 460: 27/09/2012 and Telephone Note by Mark Allen (dated 08/10/120 re conversations on 3/10/12 with Richard Clay and Kingsley Cook of Leicestershire County Council.
- 14 2001 Census data re Travel to Work
- 15 Representation from Primary Care Trust re impact of proposed development on GP practice at Barrow Health Centre
- 16 Statement by Nicky Morgan MP
- 17 Statement by Councillors Ranson and Fryer
- 18 Statement by Barrow Residents Action Group
- 19 Annotated map of local road network by Mr Charles Smith
- 20 Agreement by Bancroft Consulting, WSP and Create Consulting re achievable visibility at South Street/Sileby Road/ Grove Lane junction
- 21 Report of the Overview Scrutiny Group re Local Development Framework Position Report and Way Forward: Cabinet – 27 September 2012
- 22 East Midlands Trains Timetable (Leicester-Nottingham-Cleethorpes) 09/12/12 to 18/05/13
- 23 Committee Report of 9 December 2009 on Application Ref P/09/2376/2
- 24 University of Leicester letter dated 5 July 2010 concerning archaeological work
- 25 Various emails (12/01/10, 11/11/10 & 14/02/11) from Network Rail (Margaret Lake) to Council (Neil Thompson)
- 26 CCE VISSIM Model Report
- 27 Email from GVA 24/10/12 re CCE VISSIM Model Report and response from Parish Council (Lesley Bell 29/10/12) with comments from Jonathan Cage of CCE
- 28 Statement from Charnwood District Group CPRE
- 29 Revised Draft Conditions
- 30 Extract (R A Crowder) Chapter 7 Hydraulic Analysis and Design
- 31 Letter from Mr Hobbs to PINS dated 27/11/12
- 32 Letter from Mr Hilsdon received by PINS 24/12/12 'Record of Flooding, Fishpool Brook. Barrow upon Soar 1983-2012'
- 33 Email from Parish Council dated 10/01/13 with Analysis of Comments
- 34 Letter from Mr Hilsdon received by PINS 10/01/13 re; mine workings (Soar Valley Local Plans) Agricultural Land Classification of appeal site
- 35 Appeal Ref. APP/X2410/A/12/2177327 (Iveshead Road, Shepshed)
- 36 Appeal Ref. APP/X2410/A/12/2177036 (Bramcote Road, Loughborough)
- 37 Appeal Ref. APP/X2410/A/12/2177036 (Bramcote Road, Loughborough)
- 38 Note by Mr Rassool in response to letter from Mr Hilsdon (Doc 32 above)

- 39 Set of photos of flooding at locations in Barrow Upon Soar submitted by Mr Burton
- 40 Concluding statement from Councillors Ranson and Fryer
- 41 Statement from Barrow Upon Soar Community Association
- 42 Closing Statement – Barrow upon Soar Parish Council
- 43 Closing Submissions – Charnwood Borough Council
- 44 Closing Submissions – Appellant

**S106 Planning Agreement dated 4 October 2012 (with Deed of Variation dated 15 January 2013)**

**Proofs of Evidence**

*Appellant*

- A1 Evidence of Mr Thorley
- A1a Appendices to A1
- A2 Evidence of Mr Young (Volume 1)
- A2a Appendices to A2 (Volume 2)
- A3 Rebuttal evidence of Mr Young
- A4 Evidence of Mr Rassool

*Council*

- C1 Evidence of Mr Bancroft (Volume 1)
- C1a Appendices A-E to C1 (Volume 2)
- C1b Appendices F-N to C1 (Volume 3)
- C1c Statement to address amendment to visibility calculation (Mr Bancroft)
- C2 Evidence of Mr Reid

*Parish Council*

- PC1 Evidence of Mr Cage – highways, transport, sustainability
- PC2 Evidence of Mr Cage – flood risk and drainage
- PC3 Evidence of Mr Cage – Slash Lane flooding
- PC4 Evidence of Councillor Cattle
- PC5 Appendices to PC4

*County Council*

- CC1 Evidence of Mr Tyrer
- CC2 Evidence of Mr Cook



## Department for Communities and Local Government

### **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 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**

Decisions on called-in applications under section 77 of the TCP Act (planning), appeals under section 78 (planning) may be challenged under this section. 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 under this section must be made within six weeks from the date of the decision.

#### **SECTION 2: AWARDS OF COSTS**

There is no statutory provision for challenging the decision on an application for an award of costs. The procedure is to make an application for Judicial Review.

#### **SECTION 3: 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 report of the Inspector's report of the inquiry or hearing within 6 weeks of 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.



Neutral Citation Number: [2014] EWHC 1719 (Admin)

Case No: CO/831/2014

**IN THE HIGH COURT OF JUSTICE**  
**QUEEN'S BENCH DIVISION**  
**ADMINISTRATIVE COURT IN BIRMINGHAM**

Birmingham Civil Justice Centre  
Priory Courts  
Birmingham

Date: 27/05/2014

**Before :**

**MR JUSTICE FOSKETT**

-----  
**Between :**

**The Queen (on the application of The Police and  
Crime Commissioner for Leicestershire)**

**Claimant**

**- and -**

**Blaby District Council**

**Defendant**

**-and-**

- (1) Hallam Land Management Limited**
- (2) David Wilson Homes Limited**
- (3) Davidsons Developments Limited**
- (4) BDW Trading Limited**
- (5) Leicestershire County Council**
- (6) Martin Frank Spokes**
- (7) Richard Thomas Spokes**
- (8) Helen Joans Jones**
- (9) Frances Alison Mark Hicks**
- (10) The Trustees of the Will Trusts of Eric  
Roderick Brook Drummond**

**Interested  
Parties**

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**Jenny Wigley and Thea Osmund-Smith (instructed by East Midlands Police Legal Services)  
for the Claimant**

**David Elvin QC** (instructed by **Marrons Shakespeare LLP**) for the **Defendant**  
**Charles Banner** (instructed by **King Wood & Mallesons SJ Berwin LLP**) for **Interested**  
**Parties 1-4 & 10**  
**Alex Goodman** (instructed by **Legal Services of Leicestershire County Council**) for  
**Interested Party (5)**

Hearing date: 21 May 2014

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**Approved Judgment**

## **Mr Justice Foskett:**

### **Introduction**

1. This case concerns a substantial development called the “New Lubbesthorpe” scheme to the south west of Leicester for which the Defendant, as local planning authority for the district, resolved on 1 November 2012 to grant planning permission subject to certain conditions and to the conclusion of a suitable agreement under section 106 of the Town and Country Planning Act 1990 (“the 1990 Act”) between certain parties.
2. The section 106 agreement was concluded on 13 January 2014 and outline planning permission was granted on 14 January 2014.
3. The Claimant’s Claim Form seeking judicial review of the grant of planning permission was issued on 24 February 2014. The focus of the proposed challenge is upon the effect and implications of the section 106 agreement so far as the Claimant is concerned. The section 106 agreement provides for its own termination if the planning permission is quashed (see paragraph 17.7 of the agreement).
4. On 21 March 2014 Hickinbottom J ordered that the application for permission to apply for judicial review be heard on 21 May 2014 on a “rolled-up” basis and gave various directions. On 16 April he gave the Claimant permission to amend his grounds. He was of the view that the resolution of the claim required expedition. The urgency arises because the funding of £5 million from the Department of Transport (derived from what are known as “Pinch Point monies” under the Department’s scheme to assist funding highways infrastructure) for the M1 motorway bridge required to implement the scheme may be at risk if not spent before 31 March 2015. Plans are already in place for the temporary closure of the M1 on Christmas Day 2014 to lower the main bridge span into place (see paragraphs 6 and 7 below).
5. The hearing did indeed take place on 21 May and all Counsel completed their submissions within the day.
6. Because of the urgency, this judgment has been prepared in a little over 24 hours after the conclusion of the hearing, is inevitably shorter than might otherwise have been the case and has not received the refinement it might have received if there had been longer to prepare it. Inevitably, I have had to focus on those aspects of the argument that, in my view, represent the strongest grounds for claiming the relief sought rather than dealing with all matters raised.

### **The nature of the development**

7. The outline planning application submitted in February 2011 was for -  

“... 4,250 dwellings, a mixed use district centre and two mixed use local centres featuring a supermarket, retail, commercial, employment, leisure, health, community and residential uses, non-residential institutions including a secondary school, primary schools and nurseries, an employment site of 21 hectares, open spaces, woodlands, new access points and associated facilities and infrastructure, and detailed proposals

for two new road bridges over the M1 motorway and M69 motorway, and two road access points from Beggars Lane and new accesses from Meridian Way, Chapel Green/Baines Lane and Leicester Lane.”

8. The site for the development is open and undeveloped land stretching over 394 hectares and is separated from Leicester by the M1 motorway. This explains the need for one of the two road bridges referred to in the outline application and to which reference was made in paragraph 4 above. The bridge is undoubtedly a key component in making this development possible.
9. According to the witness statement dated 13 March 2014 of Ms Lynne Stinson, a Project Manager within the Environment and Transport Department of the 5<sup>th</sup> Interested Party (Leicestershire County Council), the development will generate £159 million of investment in new infrastructure, buildings and new parks and other open spaces and approximately 1530 full-time equivalent jobs. It will, according to her statement, provide a significant proportion of the new housing identified in the Defendant’s Core Strategy (as amended) as needed in the district in the period to 2029.
10. Whether those claims are justified is not a matter for the court, but the fact that they are made in those terms indicates the scale of the proposed development. The aerial photographs demonstrate the substantial area of land involved and Miss Jenny Wigley, who appeared with Miss Thea Osmund-Smith for the Claimant, described the development as a “new town” which seems an appropriate description. It will take many years to complete if it proceeds. The identities of some of the Interested Parties will give an indication of the commercial interests at stake.

### **The concerns of the Claimant**

11. It is obvious that a development of the nature described would place additional and increased burdens on local health, education and other services including the police force. The focus of this case is upon the effect upon the local police force. If it sought to shoulder those additional and increased burdens without the necessary equipment (including vehicles and radio transmitters/receivers for emergency communications) and premises, it would plainly not be in the public interest and would not be consistent with a policy that encourages “sustainable development”: see, for example, paragraphs 17 of 79 of the National Planning Policy Framework (‘NPPF’). It is that that leads to the Claimant’s interest in these matters.
12. Needless to say, the Claimant does not challenge the principle of the proposed development, nor is the potential amount of the provision of funding for police services by the developers in issue, but the concerns that have led to this application derive from what Miss Wigley submits is (i) an alleged inadequate provision of certain aspects of such funding at appropriate times during the course of the development and (ii) a lack of a clear commitment in the section 106 agreement (to which the Claimant is not a party) that anything will in fact be paid by the developers for premises required by the police in order to serve the community created by the development.

13. The need to provide funding for police resources had, of course, been identified during the discussions leading to the grant of planning permission and, as I have indicated, agreement was reached on the amount that would be required and met by the developers. However, the Claimant contends that there were procedural deficiencies in the final stages of that process that left the police out of the relevant negotiations and ought to lead to the planning permission being quashed or that the result, so far as the funding of police resources is concerned, was irrational and should, accordingly, be quashed on that basis also. The focus, as I have said, is on when certain features of the funding should, in effect, come on-stream during the development and whether there is a sufficiently clear commitment as to funding for police premises.
14. When the resolution for the grant of planning permission was passed on 1 November 2012, the resolution contained the following provision:
- “That planning application 11/0100/1/OX be referred to the Secretary of State as a departure under the Town and Country Planning (Consultation) (England) Direction 2009 as the application proposal is a departure to the Blaby District Local Plan (1999).
- That consequent upon the Secretary of State deciding not to intervene planning permission be granted subject to:
- The applicants entering into an agreement pursuant to Section 106 of the Town and Country Planning Act 1990 to secure the following:
- ...
- All CIL compliant capital infrastructures for Policing necessitated by the development and including officer equipment, communications, CCTV, vehicles and premises, the precise terms of this contribution to be settled by further negotiation.”
15. The reference to “CIL compliant capital infrastructures” related to the funding of police requirements through a planning obligation under section 106 of the 1990 Act, which in order to be “CIL compliant” must meet the tests specified in Regulation 122(2) of the Community Infrastructure Levy (‘CIL’) Regulations 2010. Those tests require that the sums are –
- “(a) necessary to make the development acceptable in planning terms;
- (b) directly related to the development; and
- (c) fairly and reasonably related in scale and kind to the development.”
16. The relevance of the CIL tests will be apparent in due course.

17. The parties to the section 106 agreement concluded on 13 January 2014 were the Defendant, the County Council (the highway and education authority for the area), the Second, Fourth and Sixth-Tenth Interested Parties (collectively known as “the owner”) and the First and Third Interested Parties (the beneficiaries of certain charges and options for the site). The agreement runs to over 170 pages including appendices and contains extremely detailed provisions concerning the way in which the development would proceed.
18. The provision that has given rise to the concerns of the Claimant is at paragraph 2 of Schedule 3 to the Agreement which reads as follows:
  - “2.1 The Owner shall pay to the District Council the Police Service Equipment Contribution no later than Occupation of 2,600 Dwellings and shall not Occupy more than 2,600 Dwellings until it has paid the Police Service Equipment Contribution to the District Council.
  - 2.2 (Subject to the Owner and the District Council at that time agreeing or it having been determined in accordance with clause 23 that the contribution is necessary and if so its appropriate level having regard to the progress of the Development and the availability of Police Service facilities within the area and the appropriate relevant policy guidance at the time) the Owner shall pay the Police Service Premises Contribution to the District Council no later than the Occupation of 3,750 Dwellings and shall not Occupy more than 3,750 Dwellings until it has paid the Police Service Premises Contribution.”
19. The Police Service Equipment Contribution referred to in paragraph 2.1 is defined elsewhere in the agreement as “the sum of £536,834 towards police equipment” and the Police Service Premises Contribution referred to in paragraph 2.2 is defined as “a sum not to exceed £1,089,660 towards the acquisition of premises or extension to existing premises such sum to be ascertained in accordance with [paragraph 2.2] of the Third Schedule. Those sums are, of course, to be paid by the “owner” (in effect, the developers) to the Defendant which would then be responsible for paying them over to the Claimant. Reference to Clause 23 is to a provision entitled “Dispute Provisions” that provide for reference to an independent expert in the event of disputes arising under the agreement. That procedure would, of course, only be available to a party to the agreement which the Claimant was not. It should also be noted that the possibility of the police (or any other non-party) relying on the Contracts (Rights of Third Parties) Act 1999 was excluded by clause 17.2 of the agreement.
20. Whilst the figures referred to in relation to equipment and premises costs did reflect figures that had been discussed and agreed between the Claimant and the Defendant, the terms of paragraphs 2.1 and 2.2 as to the circumstances in which those sums would be paid had not been the subject of express agreement and, the Claimant would argue, resulted from an inadequate process of engagement by the Defendant with the issues affecting the services that the Claimant would be required to provide and led to provisions that are irrational.

21. So far as the Police Service Equipment Contribution is concerned, Miss Wigley contends that it is irrational that it should be paid only when 2,600 homes are occupied because the contribution sought and agreed was calculated on the basis of 4,250 homes being constructed (each of which would contribute rateably to costs of the additional demand on policing infrastructure) and yet 2,600 homes would have to be policed without any additional resources to do so before the payment was received. There would be several thousand residents *in situ* before the police received any contribution towards the equipment recognized as necessary to fulfill its tasks. In her Skeleton Argument she asserts that an analogous position in the education sphere would be asking hundreds of pupils generated by the development to wait a decade before providing them with somewhere to study.
22. In relation to the Police Service Premises Contribution, which is required to provide accommodation for the additional staff said to be required to deal with the policing issues of the development, the trigger provided in the agreement, subject to the terms set out in parentheses at the beginning of paragraph 2.2, is that it may be necessary to await the construction and occupation of 3,750 homes before any prospect of payment materializes. Miss Wigley submits that it cannot rationally be suggested that over £1 million towards additional police premises should be paid by the developers only when the final 500 homes in the development remain to be constructed. She says that an element of need for such services arises from the occupation of the first home, if not before, and she also raises the spectre of the real possibility that at that stage in the development no further homes will be built, the result being that the developers will avoid a liability to contribute to policing costs that will have been required from a much earlier stage and which the police, in order to fulfill their public role, will have to have met from other sources prior thereto. She also submits that the prefatory words in parentheses at the beginning of paragraph 2.2 mean (a) that the payment of any sum is contingent on agreement as to its necessity between the owner (as defined: see paragraph 17 above) and the Defendant and (b) that the level of any payment, even if agreed in principle, is uncertain and would be capped at the figure specified. In terms of the financing of premises pending receipt of such sum as may be paid under this provision, she says in view of the uncertainties that there would be no realistic prospect of borrowing against the commitment provided by the section 106 agreement.
23. She contrasts the provisions of the section 106 agreement relating to the police with the health care provision that affords an absolute commitment to pay the first of two sums agreed as necessary to expand an existing health centre on the occupation of no more than 150 houses and the second on the occupation of no more than 250 houses. Equally, funds for an onsite health centre are to be released on the occupation of 900 houses.
24. Those submissions are made by way of comment on the terms of paragraphs 2.1 and 2.2 as they stand. I will return to those submissions after dealing with the history that led to their formulation in those terms. That history is of importance to the way it is contended that public law grounds exist for the court to interfere in the way Miss Wigley submits is appropriate.

### **The background to the terms of the section 106 agreement affecting the police**

25. It is first necessary to re-trace steps briefly to the resolution passed on 1 November 2012 (see paragraph 14 above).
26. As indicated above, this development proposal had been in gestation for a number of years before the resolution was passed. The police were involved in the negotiations prior thereto. The background from the perspectives of the parties involved is set out in the various witness statements and I need not deal with that background in detail. During the period of two years or so prior to November 2012 the view was taken by those representing the development interests in the site (and supported, at least to some extent, by the Defendant) that the sums sought by the police to be included as sums for which the developers should be liable were not CIL compliant (see paragraph 15 above). Sums in excess of £3 million were being sought. It seems that the view of the developers was that “an on-site police facility within the local community building would be more appropriate, relevant and beneficial to future residents” than what the police had in mind that stage. I need not go into details for present purposes, but that position obtained throughout 2012 and was reflected in the viability report prepared by DTZ on 20 September 2012 which was submitted as evidence to the Examination in Public session on 10 October 2012. It contained no allowance for contributions to police funding, but merely contained reference to the provision of community buildings on site to include a police presence.
27. In the run up to the planning committee meeting on 1 November 2012 there was something of an impasse, the Claimant maintaining the position that something over £3 million was required as the police contribution and the developers and the Defendant maintaining the position that this was excessive and not CIL compliant. Against that background the Claimant maintained an objection to any resolution in favour of the grant of planning permission. That impasse was resolved on the day of the meeting in a flurry of e-mails between the Claimant’s Finance Director and the Deputy Chief Executive of the Defendant in which the formula that became reflected in the resolution (the material parts of which are set out in paragraph 14 above) was agreed. The Deputy Chief Executive of the Defendant acknowledged that the intention behind the words was that “this is all up for negotiation in the future”.
28. That then is how matters were resolved at that stage. There was then a period during which it was necessary for the application to be considered by the Secretary of State. Discussions between the various parties were not actively renewed until the Secretary of State had indicated that he did not intend to call in the application. By the time that further discussions commenced in about March/April 2013, the potential of Pinch Point funding for the M1 bridge was “on the cards” and an application for such funding had been submitted to the Department of Transport.
29. On 10 April 2013 Mr Andrew Senior, the Lubbethorpe project manager for the Defendant, told Mr Michael Lambert, the Growth and Design Officer employed by the Claimant, that “viability work” was continuing and that it would “inform the section 106 negotiations especially levels of affordable housing.” He told him that the section 106 agreement was being negotiated and that the level of affordable housing had been changed from that originally contemplated. He referred to the bid for Pinch Point funding and said that, if successful, it would “free up the developers’ funds” and help to deliver, amongst other things, the early completion of the “east-west spine road”. It is clear that there remained differences about the police funding. By an e-mail of 22 August 2013, following a meeting a few days earlier, Mr Senior offered

some thoughts on how the Claimant might set out its case for a police contribution. It reflected on the approach to deciding on the level of policing necessary and how the appropriate infrastructure was identified, particularly how it would “relate directly” to the development (cf. CIL requirement (b)). He cited as an example the issue of a police car that would spend some time at the development site and some time elsewhere and raised the question of apportionment. It was plainly designed to be (and I am sure was taken as) a helpful contribution to the discussions.

30. The e-mail contained this paragraph to which Mr David Elvin QC, for the Defendant, drew attention as part of his response to the Claimant’s arguments:

“The final element would be how any contribution was to be phased, for smaller developments this would not be much of an issue, given that Lubbethorpe would potentially have a 20 year delivery time the phasing of contributions would need to be established. I would suggest this was done, as with other services, on the basis of thresholds which identify when any existing capacity is used to trigger the extra resources, clearly once a trigger is reached a range of infrastructure would be required. There would be a range of triggers across the period of the building.”

31. Mr Lambert responded to that in a lengthy e-mail of 4 September 2013. I need not quote it all, but Miss Wigley referred to the following paragraph:

“**Viability.** We need to be guided by you on this however we remain concerned that policing attracts fair and reasonable consideration on a par with other services if the development cannot afford the infrastructure it will need. We have heard about your successes in attracting growth funds for road infrastructure and welcome these. We need to see please how this will reduce pressure on other necessary infrastructures and so we again ask for an up to date overview of this particularly if decisions have to be made about what will be delivered in relation to policing and other necessary infrastructures.”

32. Mr Senior acknowledged receipt of the lengthy e-mail and commented that the approach was “sound” but emphasised that his comments should not be taken to imply the support of the Defendant for any particular bid. Mr Lambert shortly afterwards asked for Mr Senior’s “guidance on viability” given the external funding for the road that was then on offer. Mr Senior’s reply was that it had not to-date been the claim of the applicants that “overall the scheme is unviable”, but he drew attention to the fact that they had pointed out that there is “a cost of up front infrastructure to be delivered which affects cash flow especially in Phase 1.” He said that over the life of the scheme “the additional funding will improve the overall viability of the scheme” and suggested that the Claimant prepare its bid and the issue of viability could be addressed if it was raised in due course.

33. Mr Lambert had been working up a new bid which was sent to the Defendant by means of a letter under cover of an e-mail of 27 September. I need not try to summarise it save to say that the total sum sought was just over £1.79 million, a

substantial reduction from the original bid. Notwithstanding that, Mr Senior challenged a number of the items comprising the list constituting the bid as not being CIL compliant. One such element was the element for “additional premises” which, he argued, had not been “fully justified”, but may be “capable of being supported” as the development proceeds. He suggested a review formula that would include discussions between the developers, the Defendant and the Claimant.

34. Mr Lambert responded to that in detail by an e-mail of 15 October 2013. Again, I need not deal with that in detail, but the paragraph dealing with the proposed review clause should be noted:

“We accept the need for review clauses but this cannot be to the extent that there is no commitment or quantum at the outset when [planning permission] is issued and we cannot accept that the owner or the [the local planning authority] will be determining what we need. Neither are responsible for delivering policing. We are, and know what we need. You are supposed to be planning at outline not putting it off. Imagine the response if this was the review mechanism for schools or health or anything else i.e. wait till schools are overcrowded or people can't access health to provide premises essential for delivery. That is not the approach of [the National Planning Policy Framework].”

35. A meeting took place on 23 October, attended *inter alia*, by Mr Rob Back, the Planning and Economic Development Group Manager of the Defendant. He wrote to Mr Lambert on 24 October in which he acknowledged that some of the items sought were now accepted as meeting the CIL tests, but still maintaining that some did not, or were not sufficiently evidenced for that purpose. The letter contained this paragraph towards its conclusion:

“You have also explained that the police would be happy to work with the developer to agree a phased contribution to the costs above in line with the rate of development on the site. This approach could be significant to assisting the developers cash flow and we will explore this with them in more detail. We would be grateful if you could confirm that this approach may be appropriate to all elements of the police infrastructure related to the site.”

36. Mr Lambert replied by letter of 28 October acknowledging that he appreciated that the Defendant was attempting to conclude the section 106 Agreement as soon as possible and that there was “a sense of urgency”. The paragraph dealing with the possible phasing of the police contribution reads as follows:

“There are two elements to phasing. First what we will need and when, and we have looked at this before for you. Indeed what I attach in relation to vehicles demonstrates this to an extent. As I said at our meeting we need to sit down and work through this. Second our willingness and goodwill to borrow against the Section 106 contract. The latter depends on the

contractual commitment, which we have asked for and haven't seen, and our goodwill. Our goodwill erodes the more our fully justified request is dismissed and changes offered without good reason."

37. There was a meeting on 31 October attended by Mr Back and others from the Defendant and Mr Lambert and the Finance Officer of the Claimant. Mr Back refers to it in his witness statement, but Mr Lambert does not. Mr Back says this about what was said:

"... we confirmed that the ... developers consortium was not claiming that the development was financially unviable and that the role of financial appraisal in relation to [the development] was limited to phasing and deliverability. In response it was explained by Mr Lambert that the police had the ability to borrow against a Section 106 obligation in order to enable the timely delivery of infrastructure."

38. The following day (1 November) Mr Senior sent an e-mail to Mr Lambert summarising the items that the Defendant considered should be included in the section 106 Agreement in relation to police funding. In fact a good deal of the bid previously made (see paragraph 33 above) was agreed, including the additional premises contribution in the sum previously claimed. There were some reductions in the bids for start up equipment, vehicles and Automatic Number Plate Recognition, but the list was as follows:

"Items for inclusion in the agreement

Start-up equipment	£71,388
Vehicles 3 off	£47,415
Additional radio transmitter	£350,000
Additional radio call capacity	£7,650
PND additions	£4,887
Additional call handling	£10,115
ANPR 4 off	£32,888
Mobile CCTV	£4,500
Hub equipment	£8,000
Total	£536,843

Trigger points for these items need to be agreed, usually based on number of occupations.”

39. That list was on a document attached to the e-mail and the balance of the document, which related to the premises element of the police contribution, read as follows:

“Extensions to existing premises to a maximum of £1,089,660

A review of the need for extensions to existing premises at the commencement of Phase 3 (or other agreed trigger point)

Agreed funds to be paid in the following stages

10% within 2 weeks of notice from the police confirming that are proceedings with extensions

10% within 2 weeks of agreed design stage

40% within 2 weeks of the issue of tender for the construction contract

40% within 3 months of commencement of construction.”

40. Mr Senior said that he had “included trigger points which you may wish to amend, but not for the equipment which I will need you to supply.”

41. Mr Lambert replied to this e-mail on 7 November 2013 stating the following at the outset:

“The main issue for us in this is the lack of developer commitment to premises .... I am afraid what is proposed virtually removes the covenant as far as our premises are concerned and having successfully made the case for this to your satisfaction, i.e. that what we seek will be necessary when this development is built, we can't then move away from this and come back to the developer at future points to make the case afresh.”

42. The e-mail continued with various suggestions based upon the premise that the developers commit to funding part of what the police needed as a covenant in the section 106 agreement and the review mechanism to apply to the rest. The suggestion, on this basis, was that the Claimant would build to accommodate 14 staff to serve the development and would “aim to start the project at the 1200 trigger”.

43. This e-mail was forwarded by Mr Senior to Mr Paul Burton, a Director of the 1<sup>st</sup> Interested Party, on 11 November who replied in the following terms:

“We discussed on Friday the terms you believe to have some weight under the CIL requirements. We reached agreement on those contributions following our discussion about the payment timing and the review of the premises. It appears that this compromise to move matters forward is not being accepted by

Michael Lambert and there may still be a risk of him JR proceedings.

As you know, my view and the view of the other consortium members is that these requests are unreasonable and I find it amazing that the Lubbethorpe scheme will generate the need for 14 staff. I would like to discuss tomorrow the possibility of the Police continuing to argue their case, potentially to the courts and whether we can secure an agreement from them that if they accept your proposals that they will agree to not to take the point any further. If not, I am not sure there is much advantage to the consortium to accept terms that they wholeheartedly disagree with. Something to discuss tomorrow with the solicitors.”

44. That e-mail referred to a meeting that had been held on 8 November and one to be held the following day which Mr Burton attended with a good number of others, including Mr Senior and Mr Back of the Defendant, at which the outstanding issues concerning the section 106 agreement were discussed and resolved.
45. I think I should record what each of those who attended says about those meetings because it would appear that it was the combined effect of those meetings that constituted the “decision” about the section 106 agreement that underlies the Claimant’s challenge in these proceedings.
46. Mr Senior said this:

“41. On 8 November 2013 a meeting was held between the Council and the development consortium the outcome of which was summarised in an email from Paul Burton of the consortium on 11 November .... The discussion referred to in the e-mail considered two issues; first the cash flow of the scheme and the cost of the infrastructure to be provided in phase 1 and secondly how the police request which the Council felt should be given some weight could be supported. It was proposed all the items except premises could come forward at the end of phase 2. The premises could then be subject to a review as part of a viability review at the beginning of phase 3. This review would consider whether the provision of affordable housing could be increased towards the Council’s aspiration of 25% across the whole site, the Council having accepted a reduction in affordable housing percentage to help facilitate the development. If the need for [police] premises was agreed at the time of the review, this would be funded.

42. On 12 November 2013, a meeting was held between the Council and solicitors representing the County Council, and development consortium respectively. At that meeting it was agreed to incorporate the above proposals into the Section 106 Agreement. The discussion at the meeting took into account the issues of viability, compliance by the requests with the CIL

Regulations and the decision to accept the proposal resulted from a balanced judgement as to how to deliver as much of the police request as possible, albeit not within the time scales that they had requested, and at the same time deliver a viable development.”

47. Mr Back said this:

“14. On 12<sup>th</sup> November 2013 the Council organised a meeting with representatives of the Lubbethorpe Consortium, Leicestershire County Council and legal representatives from each of the above. This meeting considered all elements of the ... S106 agreement including the proposed policing contribution. At the meeting Council officers explained that we accepted that some elements of the request made by [the police] were compliant with the relevant Community Infrastructure Regulations. At this time, the developer consortium did not agree with the Council’s position but Council officers were able to negotiate a favourable position for [the police] partly due to the need to achieve a completed agreement in order to realise the M1 bridge Pinch Point funding. The financial pressures on the early phases of the development and the overall priorities for Lubbethorpe were discussed as a result of which it was agreed that the policing contributions would need to be triggered from the end of the second phase of the development. At the end of this meeting all parties agreed that further substantive changes to the agreement would be minimised in order to commence the complex process of completing the agreement with all parties.

15. In the context of the meeting described above it became clear that we ought to communicate the end of the negotiation process, particularly as it was clear that some service providers would not be receiving everything that they had requested, and/or that monies would be provided at a date other than that requested. On this basis I wrote to [the police] on 18<sup>th</sup> November to confirm that the position we had communicated at an earlier stage of the process (1<sup>st</sup> November 2013) was the Council’s final position on this matter .... I note with some surprise that [the police] claim not to have received this letter. Whilst this is unfortunate, I take some comfort in the fact that the letter only reiterated the Council’s already communicated position in any event.

16. It is entirely understood and appreciated that the ... S106 agreement is not a facsimile of the contribution request submitted on behalf of [the police]; it is worth emphasising that the Council was fully aware of this situation when the application was reported to the Development Control Committee for determination and remained the case at the point the agreement was completed. ... the Report to Committee ...

states “It will noted that the request for funding from the Police has only been agreed to in part”. This report and the associated recommendation and resolution should have clearly set the expectations of [the police] in this matter. As the detail of the [the police] request was examined over the course of the following months there were multiple communications ... between the Council and [the police] that made it abundantly clear that the Council did not accept the full extent of the [police] request. There could have been no expectation on the part of [the police] of any other conclusion.”

48. Mr Burton said this:

“26. The meeting on 12 November ... was called to finalise the outstanding issues in the s.106 agreement and it was critical to the delivery of the M1 bridge. The structure and timing of at least two highways contributions were discussed and resolved at this meeting .... Both contributions were pushed back in the programme of delivery works to secure a contribution. There has been no suggestion by the local highways authority that this was inappropriate ....

27. I recall at the November 12th meeting that there was specific discussion about the outstanding requests for contributions on the part of the Leicester City Council and the Claimant. These two issues, in my mind, were very similar in nature in that I did not see a clear link between the requests and the acceptability in planning terms of the Scheme.

28. In relation to the contributions sought by the Claimant, the key points of the discussion were the relevance of these contributions to the Scheme, their negative effect on the precarious cash-flow position of the project in the early phases and on the overall viability, and the now urgent need to bring s.106 negotiations to a conclusion so as to secure planning permission in the light of the funding position in relation to the M1 bridge .... There was debate as to the level and timing of the various contributions leading to the provisions that were ultimately documented in the s.106 agreement.

29. The outcome of this discussion was that significant contribution would be made to the Police (notwithstanding my significant reservations as to their CIL compliance) on the proviso that it did not add to the existing very heavy burden of the already agreed financial contributions and infrastructure obligations to be undertaken at the early stage of the development, so as not to risk the viability or deliverability of the scheme. This was entirely consistent with other decisions taken that day, on both highways and the bus station ....

30. I recall the Defendant's officers being comfortable with the eventual position reached on not just the Claimants' obligations but also the overall package of planning obligations that were discussed."
49. On 15 November 2013, Mr Lambert e-mailed Mr Senior saying that he had not heard from him and expressing concern about the "premises commitment and whether what we suggest will be included in the agreement." If it was to be included then he would, he said, "come back on vehicles and training and triggers", but if not he would need to take advice on the next steps. He emphasised that the issue was "fundamental" for the Claimant.
50. Mr Senior replied later that day saying that "[we] have not finished the final wording but there is provision for premises and I will get back to you early next week with the wording." Mr Lambert replied shortly afterwards and again stressing the importance of the premises element of the contribution being "triggered and paid for in Phase 1" of the development. He said he could provide the triggers for the other items "pretty quickly".
51. The reality, of course, is that the decisions had been made by then.
52. An odd feature of this case is that the letter written by Mr Back to the Claimant's Finance Director dated 18 November 2013 (to which he referred in his witness statement) explaining the position was never received by the Claimant. Everyone accepts that was so and so do I: indeed there are communications from Mr Lambert to Mr Senior and others thereafter that would, in the ordinary course, have referred to the letter had it been received. The letter does, however, reflect a relatively contemporaneous justification for the decision reached and it is worth quoting the substantive paragraphs:

"As you will be aware from our e-mail of 1 November, we set out the contributions which we support and when these will be triggered. Following negotiations with the applicant, it has been agreed that the £536,834 will be paid at the end of the second phase of development. The agreement will contain a commitment towards premises and a payment up to a maximum of £1,089,660 towards the premises that are agreed following a review of the needs of the police at the time.

I am aware that these contributions and the associated triggers do not match those requested by your organisation however please be assured that we have sought to achieve the best result for Lubbethorpe and the wider community. The trigger points have been agreed with the applicants in the light of the full range of contributions that have been sought and the Council have sought to balance all of the infrastructure and funding requirements associated with this complex development.

We have previously explained the urgency and timescales involved with this matter and we have today agreed with the developer that no further changes to agreement will be sought.

To make further changes would potentially jeopardise the funding of the M1 bridge and would potentially impact the viability and deliverability of the whole development.”

53. Because this was not received, so far as the Claimant as concerned, there were no further communications from the Defendant on the section 106 agreement until it was sent in its concluded form under cover of an e-mail dated 29 January 2014.

### **The legal arguments**

54. Before turning to the legal arguments, I should highlight a fact that Miss Wigley emphasises, namely, that there had never been any suggestion that the scheme was not viable, even before the £5 million of Department of Transport money became available. Mr Elvin and Mr Alex Goodman (for the 5<sup>th</sup> Interested Party) do not dispute that, but emphasise that it has always been the position of the development consortium that cash flow, particularly in the early stages of the development was a major issue.

55. I will address each of the Grounds advanced by Miss Wigley.

#### Ground 1

56. This is formulated as follows:

“The Council erred in failing to include provisions with the section 106 agreement to secure adequate and timely contributions towards policing so as to properly mitigate the adverse impact of the development. The Council also erred in failing to have regard to whether the section 106 agreement was adequate to achieve the necessary and required mitigation when it granted planning permission; the Agreement is fundamentally flawed and fails to achieve what is necessary to make the development acceptable in planning terms. No reasons have been given for the actions taken by the Council in respect of the Police contribution and why it has been dealt with differently to other contributions, and accordingly, the Council have acted irrationally.”

57. Miss Wigley says that the Defendant having agreed the principle of the police contribution, the legitimacy of the contributions vis-à-vis the CIL tests and the figures referred to in paragraphs 38 and 39 above, its task as planning authority, in accordance with the resolution of 1 November 2012, was to enter into a section 106 agreement “to secure” the provisions identified in the resolution which, of course, included the provisions concerning the police contribution. For the reasons summarised in paragraphs 20-24 above, she submits that, irrationally, this has not been achieved in relation to the premises contribution (because of the lack of commitment and the uncertainties) and neither has it been achieved in relation to the equipment contribution because rationally-derived trigger-points have not been identified. As to the latter (whilst it might also go to Ground 3), the submission is that the Defendant needed information from the police to enable it to define those trigger-points and failed to obtain it. She also submits, on the basis of what has been revealed

of the decision-making process leading to the section 106 agreement, that the necessary balancing exercise was neither rational nor fair.

58. Whilst she put the matter in a number of ways, the summary I have given above reflects the substance of this argument. She recognises the high threshold there is in this context for establishing such a ground of challenge: see, e.g., *R (Newsmith Stainless Ltd) v Secretary of State for the Environment* [2001] EWHC Admin 74, Sullivan J, as he then was, at [8].
59. Mr Elvin contends that the argument comes perilously close to a simple submission that the Defendant should have accepted the Claimant's approach and that no other rational course existed. That, he submits, is not sufficient and amounts to nothing more than a challenge to the planning merits of the considerations leading to the section 106 Agreement. He says that the evidence of those present at the meeting of 12 November 2013 demonstrates that those participating were aware of the Claimant's position, that it was taken into account along with the position of others and an assessment made of what was reasonable in the light of the cash flow issues that faced those endeavouring to put together the final, effective package of provisions to be incorporated in the section 106 Agreement. A planning judgment was reached that earlier trigger points for the financial contributions were not required to make the development acceptable and a material consideration was also not risking the timely delivery of the development itself.
60. Mr Goodman supports this approach and, in his Skeleton Argument, sought to characterise the argument that the decision was *Wednesbury* unreasonable and "hopelessly unarguable" and amounted to nothing more than "an impermissible quibble" about the merits of one relatively small factor within a very complex and far reaching decision."
61. I do not, with respect, agree that the challenge mounted by the Claimant in this case can be characterised as a quibble about a minor factor. Those who, in due course, purchase properties on this development, who bring up children there and who wish to go about their daily life in a safe environment, will want to know that the police service can operate efficiently and effectively in the area. That would plainly be the "consumer view" of the issue. The providers of the service (namely, the Claimant) have statutory responsibilities to carry out and, as the witness statement of the Chief Constable makes clear, that itself can be a difficult objective to achieve in these financially difficult times. Although the sums at stake for the police contributions will be small in comparison to the huge sums that will be required to complete the development, the sums are large from the point of view of the police.
62. I am inclined to the view that if a survey of local opinion was taken, concerns would be expressed if it were thought that the developers were not going to provide the police with a sufficient contribution to its funding requirements to meet the demands of policing the new area: lawlessness in one area can have effects in another nearby area. Miss Wigley, in my judgment, makes some entirely fair points about the actual terms of the section 106 Agreement so far as they affect the Claimant.
63. However, the issue is whether the strength of the argument to that effect surmounts the very high threshold for establishing irrationality in the sense required for the challenge to be successful. I am unable to accept that they do cross this threshold.

Whilst I can understand that the Claimant may feel that its approach has simply been rejected by the developers because it is inconvenient and that its persistence has been an irritant, the evidence does suggest that the Defendant has considered the matter properly and has reached a rational and sustainable conclusion even if it is not one with which everyone would agree.

Ground 2

64. This is formulated thus:

“In all circumstances, given the size and significance of the development, and the failure to secure appropriate mitigation of the impact of the development, it was incumbent upon the Officers to either return to matter to Committee for determination or articulate their reasons for accepting the Agreement in the terms they did. In the absence of any reasons, the inference is that the Council have acted irrationally.”

65. As articulated orally by Miss Wigley, this was effectively a restatement of the proposition that the planning committee had directed the officers to negotiate a section 106 agreement that secured CIL compliant police contributions (see paragraph 57 above) and that they had not done so. This should, she submits, have resulted in the matter being referred back to the planning committee. As she put it in the Skeleton Argument, having regard to the wording of the committee resolution and, in particular, the way in which the “premises contribution” was to be dealt with under the section 106 agreement, it was incumbent on the officers to report back to the members their inability to act in accordance with the resolution and to explain their proposed alternative course. She submits that it cannot be said with any certainty that the members would have been satisfied with the proposed course of action.
66. The well-known case of *R (Kides) v South Cambridgeshire District Council* [2002] EWCA Civ 1370 was referred to in this context as was the observation of the Court of Appeal in *R. (Dry) v West Oxfordshire DC* [2011] 1 P. & C.R. 16 at [16].
67. I do not really feel that this ground adds anything in real terms to the first ground (or indeed to Ground 3 that I will consider below). It does seem to me that Mr Elvin was right to submit that the resolution required the section 106 agreement to embrace “all CIL Compliant capital infrastructures for Policing”, that “the precise terms of this contribution [are] to be settled by further negotiation” and that this makes it clear that the committee envisaged that the further negotiations on this matter would be undertaken by the officers.
68. That, as it seems to me, is sufficient to dispose of this argument. In any event, in the particular circumstances of this case, whilst some questions might have been raised by members about the terms concerning the police contributions, it is fanciful to suggest that a scheme such as this would have foundered on such an issue. Given the new funding stream constituted by the Pinch Point funding, a resolution to defer the grant of permission pending further negotiations would, to my mind, have been so unlikely as to be a consideration that can safely be disregarded.

Ground 3

69. This is formulated thus:

“Furthermore, arising out of the correspondence, contact and agreement with the Council in this matter, the Police had a legitimate expectation that the Council would consult them on the level of and timing of the delivery of the contribution and that the outcome of those discussions would be represented in the Agreement.”

70. The foundation for this argument is the sequence of correspondence, meetings and other communications in the period running up to November 2013 to which I have referred above (see paragraphs 28-43 above).

71. There is, of course, a good deal of authority on the issue of legitimate expectation. I am quite prepared to accept for present purposes that a course of dealing between two parties in the kind of context with which this case is concerned can in some circumstances give rise to a legitimate expectation that some particular process will be followed by the public authority the subject of the challenged decision before the decision is taken. The course of dealing can be on such a basis that the necessarily “clear and unambiguous” representation upon which such an expectation is based may arise.

72. Did anything of that nature arise in this case? I do not think so. What one can see from the communications to which I have referred is a pattern of negotiation, in effect between the Claimant and the developers with the Defendant as the intermediary, where no unequivocal representation was made by the Defendant that could have led to an expectation that it would be consulted “on the level of and timing of the delivery of the contribution”. That having been said, however, there can be little doubt that the Defendant was aware of the Claimant’s view on the timing of the premises contribution which, in one sense, was the most significant part of what was required by way of infrastructure funding. The equipment contribution was discussed and the police could have given “chapter and verse” on that if they had chosen to do so prior to the final discussions between the Defendant and the developers. However, I do not see any basis for a specific obligation on the Defendant’s part to inquire about that.

73. There is no evidence to suggest that the way in which the Claimant’s position was handled during the prolonged negotiations towards the section 106 agreement was markedly different from that of the other parties who also engaged in the process whatever the ultimate outcome may have been. It seems to me that the accommodating approach of Mr Senior from August 2013 onwards was simply born of a desire to facilitate a smoothing of the passage towards a resolution of the impasse that otherwise existed and that it would be wrong to read it in any other way.

74. It seems to me that there was, at least initially, a difference of view about the approach to how the police contribution should be calculated (one apparently shared by others around the country at the time). That there was a revision of the approach during the negotiations is plain. That may have been aided by the decision in the Jelson Homes appeal to which Miss Wigley drew my attention. At all events, as it seems to me, there was nothing in what occurred during the various communications

that could reasonably have led the police to believe that it would be consulted on the specific terms of the section 106 agreement. As Mr Elvin submitted, the Claimant did make representations which the evidence suggests were considered. That, in my judgment, is as far as any legitimate expectation could take the Claimant.

#### Ground 4

75. This was added by a late amendment for which leave was granted by Hickinbottom J. As formulated it is as follows:

“The Council has breached Article 36 of the Town and Country Planning (Development Management Procedure) (England) Order 2010.”

76. The acronym ‘DMPO’ is applied to this order.
77. The contention is that that Article 36(3)(b) required the “travelling draft” of the section 106 agreement to be placed on the local planning register and that the Defendant’s failure to do so invalidates the planning permission.
78. Article 36(3) is as follows:

(3) Part 1 of the register shall contain in respect of each such application and any application for approval of reserved matters made in respect of an outline planning permission granted on such an application, made or sent to the local planning register authority and not finally disposed of—

(a) a copy (which may be photographic or in electronic form) of the application together with any accompanying plans and drawings;

(b) a copy (which may be photographic or in electronic form) of any planning obligation or section 278 agreement proposed or entered into in connection with the application;

(c) a copy (which may be photographic or in electronic form) of any other planning obligation or section 278 agreement entered into in respect of the land the subject of the application which the applicant considers relevant; and

(d) particulars of any modification to any planning obligation or section 278 agreement.

79. This follows Article 36(2) which provides that “each local planning register authority shall keep, in [two] parts, a register of every application for planning permission relating to their area”.
80. Whilst I have had very little opportunity to give this issue mature consideration, I find it difficult to find within Article 36(3)(b) an obligation that “travelling drafts” of a section 106 agreement should be placed on the register. Mr Goodman submitted that Article 36 is not intended to require that every iteration of a document “under

construction” by negotiation must be put on the planning register and I am inclined to agree that that is so.

81. At all events, Mr Elvin and Mr Goodman seem to me to have the complete answer to this allegation in this case, namely, that there is no evidence or even a claim that the Claimant checked the local planning register before the planning permission was granted and accordingly no prejudice could have arisen. If there was any failure to comply with Article 36(3)(b), it could have had no impact on the outcome of this case.
82. The evidential basis for the contention about the lack of material on the register is a witness statement of Rebecca Philips, a solicitor with the Derbyshire Constabulary, who made certain requests and enquiries of the Defendant’s planning office. However, there is a factual issue joined by virtue of Mr Senior’s second witness statement when he says that the various drafts of the section 106 agreements in question were available for inspection in hard form in the Council’s files on request. I cannot resolve any issues of fact on this application and, in any event for the reasons I have given, it is unnecessary to do so.

## **Conclusion**

83. I have not been able to cover every nuance of the arguments advanced. However, I am of the view that the grounds of challenge to the grant of planning permission do not succeed.
84. I repeat that, looked at objectively, there are features of the way the police contribution in this case was dealt with in the section 106 agreement that are not very satisfactory and, as I have said, some legitimate criticisms seem to me to be open to the formulation of the trigger mechanism. I rather suspect that, irrespective of the outcome of this case, the issue of the timing of the police contributions will have to be re-visited before the development proceeds too far to ensure that those who are considering purchasing properties on the development will have the reassurance that it will be properly and efficiently policed. However, that does not amount to, or evidence the need for, a conclusion at this stage that what was agreed between the Defendant and the developers was irrational or that there was anything unfair about the way the Defendant dealt with the issue.
85. The case was dealt with as a “rolled up” hearing. Mr Elvin is quite right to say that a claimant in such a situation should not be given permission to apply for judicial review “just because everyone is present at the hearing”. A “rolled up” hearing is often directed when there is a need for expedition and that is plainly why Hickinbottom J directed such a hearing in this case. The other aspect to the position advanced by Mr Elvin is that merely because a claimant loses at a “rolled up” hearing does not mean that permission to apply for judicial review should not be granted.
86. If this case had not been as urgent as it is and a judge had applied his or her mind to the usual considerations at the permission stage, I believe the Claimant would probably have overcome the relatively low threshold of “arguability” on Grounds 1 and 3, but not on grounds 2 and 4. Accordingly, I grant permission on Grounds 1 and 3, although I dismiss the substantive claims, but I refuse permission to apply for judicial review on Grounds 2 and 4.

87. I would express my appreciation to all Counsel for their assistance, both in their oral submissions and in writing.

### **Permission to appeal**

88. Because of the urgency and because of my non-availability in the next few weeks, it was agreed at the conclusion of the hearing that I should assume that any losing party would wish me to consider the issue of permission to appeal. It would be convenient for me to do so here.
89. This arises in relation to grounds 1 and 3 (because I have refused permission on grounds 2 and 4 and the normal route is a direct application to the Court of Appeal in relation to such grounds). Whilst I have treated grounds 1 and 3 as having crossed the arguability threshold for the purposes of permission to apply for judicial review, having heard the full argument I was satisfied that the grounds should not succeed. I am of the view that there is no realistic prospect of success on an appeal if pursued and, accordingly, I refuse permission to appeal.
90. Again, it was agreed by all parties that I should exercise my power effectively to foreshorten any period for seeking permission to appeal from the Court of Appeal. I will direct that any Appeal Notice seeking permission to appeal must be lodged within 7 days of the hand down of this judgment, that the notice must be served on all other parties and that an application in writing for an expedited consideration of the issue of permission to appeal must be made by the Claimant. It would, of course, be open to the other parties to make representations on this issue if so advised.
91. Arrangements will have been made for the final form of this judgment to be handed down on my behalf by a judge sitting in Birmingham during the week beginning 26 May and the 7-day period will commence on that day.

# No5 CHAMBERS

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PLANNING OBLIGATIONS AND POLICE  
CONTRIBUTIONS

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## PLANNING OBLIGATIONS AND POLICE CONTRIBUTIONS

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### ADVICE

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1. In this matter I am instructed on behalf of the Association of Chief Police Officers (“ACPO”) in relation to issues arising in respect of securing contributions towards Police services as part of the development control and Community Infrastructure Levy regime. I previously provided advice on the 20<sup>th</sup> October 2009. In many respects that advice has now been overtaken by events and a principal purpose of the present advice is to bring matters up to date.
2. Since my previous Advice there have been some important developments. In terms of the law the Community Infrastructure Levy Regulations 2010 have now come into force. Of particular importance in relation to the issues to be addressed are Regulations 122 and 123. These Regulations provide as follows:

*“122(2): A planning obligation may only constitute a reason for granting planning permission for the development if the obligation is –*

- (a) *Necessary to make the development acceptable in planning terms;*
- (b) *Directly related to the development; and*
- (c) *Fairly and reasonably related in scale and kind to the development.*

...

123(2) *A planning obligation may not constitute a reason for granting planning permission for the development to the extent that the obligation provides for the funding of provision of relevant infrastructure.*

(3) *A planning obligation (“obligation A”) may not constitute a reason for granting planning permission to the extent that –*

- (a) *Obligation A provides for the funding or provision of an infrastructure project or type of infrastructure; and*

- (b) *Five or more separate planning obligations that –*

- i. *relate to planning permissions granted for development within the area of the charging authority; and*

ii. *which provide for the funding or provision of that project, or type of infrastructure, have been entered into before the date that Obligation was entered into.*

*(4) In this Regulation... "Relevant determination" means –*

- a. In relation to paragraph (2), a determination made on or after the date when the charging authority's first charging schedule takes effect; and*
- b. In relation to paragraph (3), a determination made on or after the 6<sup>th</sup> April 2014 or the date when the charging authority's first charging schedule takes effect, whichever is the earlier; and*

*"relevant infrastructure" means*

- (a) Where a charging authority has published on its website a list of infrastructure projects or types of infrastructure that it intends will be, or may be, wholly or partly funded by CIL, those infrastructure projects of types of infrastructure, or*
- (b) When no such list has been published, any infrastructure."*

3. In relation to policy since my previous Advice Circular 05/2005, which contained in particular provisions in relation to pooled contributions for infrastructure, has been superseded by the National Planning Policy Framework. The Framework provides the following simplified advice in relation to planning obligations:

*“203. Local planning authorities should consider whether otherwise unacceptable development could be made acceptable through the use of conditions or planning obligations. Planning obligations should only be used where it is not possible to address unacceptable impacts through a planning condition.*

*204. Planning obligations should only be sought where they meet all of the following tests:*

- *Necessary to make the development acceptable in planning terms;*
- *Directly related to the development; and*
- *Fairly and reasonably related in scale and kind to the development.*

*205. Where obligations are being sought or revised, local planning authorities should take account of changes in market conditions over time and, wherever appropriate,*

*be sufficiently flexible to prevent planned development being stalled.”*

4. Whilst the previous advice in relation to pooling contributions has not been repeated it is a clear inference from the provisions of the Regulations that pooled contributions towards infrastructure can continue to occur. The drafting of Regulation 123 is complex, but its effect is that under Regulation 123(2) obligations cannot be taken into account after the date of the introduction of an authority's first CIL schedule if they relate to contributions to infrastructure which are included on a list published by the authority of infrastructure to be funded by CIL (or if there is no such list all infrastructure). Under Regulation 123(3) obligations cannot be taken into account after the date of the introduction of an authority's first CIL schedule takes effect or 6<sup>th</sup> April 2014 (whichever is the earlier) if there are already five s106 obligations in place funding the infrastructure which is the subject of the obligation in question. Against this background it is clear that there will remain circumstances (albeit far more limited than at present) where pooled contributions may occur.
  
5. Having noted these changes to the regime in which contributions can be sought it is necessary to engage with a number of issues which arise in the context of the alternative sources of contribution.

6. Dealing firstly with CIL. The first point to note is that “*infrastructure*” is not a narrowly defined term. Section 216 of the Planning Act 2008 provides a list of “*infrastructure*” but is clear that that list is non-exhaustive. That fact is demonstrated by the use of the word “*includes*” prior to the list being set out. In my view there is no difficulty in the proposition that contributions towards Police infrastructure can be within the definition of infrastructure for the purposes of the 2008 Act. In policy terms this is reinforced by the reference to security infrastructure in paragraph 156 of the National Planning Policy Framework.
  
7. Furthermore infrastructure is of course not limited to buildings. In the context of the police’s infrastructure the kind of items which could be included have been provided in my instructions and includes equipment such as vehicles and bicycles, communications technology and surveillance infrastructure such as CCTV equipment.
  
8. In settling the level of the CIL schedule, Regulation 14 of the 2010 Regulations requires the planning authority to strike a balance between viability of development and the desirability of funding the “*total cost of infrastructure required to support the development of its area*” taking account of other sources of funding. Cross-boundary issues will be included through the discharge of the duty to co-operate.

9. It follows from this and what has been set out above that the test which is posed in relation to the inclusion of items within the CIL schedule posed by Regulation 14 is very different to the test under Regulation 122. Regulation 122 relates to planning obligations and requires the three tests to be passed in relation to site specific planning obligations. In setting the CIL schedule the test is different. What is required in setting the level of the levy is an understanding of the costs of infrastructure “*required to support the development of its area*”.
10. Thus there will be a relationship between the infrastructure on the schedule and the development which is anticipated across the local authority’s area but because it is an overarching calculation questions of necessity and direct relationships do not arise. Provided that the infrastructure is required for the development in the area, it qualifies for inclusion on the Schedule. The two factors which will then potentially reduce the level of the levy are other sources of funding for the same infrastructure and issues related to development viability.
11. The other important feature of the 2010 Regulations is that in setting the Schedule the local planning authority need to produce “*relevant evidence*” as the basis on which they have prepared the Schedule. Beyond being relevant to demonstrating that the infrastructure is required to support the

development of its area no further strictures are required by the Regulations.

12. Clearly, given the long timescales of Development Plan Documents (usually looking at 15-20 years ahead) it is necessary for the relevant evidence to address the infrastructure that will be required to support development during that period. To this extent therefore the evidence will need to reflect the timescales of the forward planning process. Relevant evidence will undoubtedly include forward plans and strategies and the planned provision of infrastructure over that lengthy time period. It will be necessary to show firstly the relationship between the development anticipated and the infrastructure requirements to which it gives rise. Secondly it will be necessary to demonstrate that there are real plans for investment which have been settled into which the requirement fits. This requires therefore a fully formed future infrastructure plan with a commitment to delivery in relation to infrastructure generally and (perhaps coincidentally) the delivery of infrastructure associated with growth occurring. The plans must be realistic and costed. This is the relevant evidence which will be necessary in order to establish that they should be included within the CIL schedule.

13. In this connection it is material to note that the provisions of the Town and Country Planning (Local Planning)

(England) Regulations 2012. Regulation 2 (1), provides that "relevant authority" includes a local policing body for the purpose of consultation as to the contents of Local Plans. Clearly the Government expects that police concerns and interests should be accounted for within the planning system. Police are a legitimate stakeholder in this system.

14. Once collected Regulation 59 of the 2010 Regulations requires that the authority must spend the funds on infrastructure within its own area and further provides for a discretion for it to be spent on infrastructure outside its area. I see no reason for concluding that any different approach should be taken to the charging authority holding funds which have been levied against the costs of infrastructure to be provided by others that applies in relation presently to planning obligations. It will be therefore necessary for the charging authority to pass on to a relevant infrastructure provider the cost of infrastructure which has been levied by the CIL in order to enable that infrastructure provider to deliver the infrastructure required to support the development which has been granted permission.

15. Regulation 61 enlarges the powers of the charging authority to include for the reimbursement of expenditure which has already been incurred. Obviously the detailed administration

of funds raised through CIL may vary from authority to authority but plainly it would be perverse for a charging authority having levied monies against a CIL schedule in which Police contributions featured to then fail to pass that element of the levy on which was intended to support the provision of further Police infrastructure.

16. I turn now to consider the situation in relation to individual site contributions. It is important to appreciate that many of the adopted CIL schedules proceed on the basis of a Regulation 123 List of projects which are to be funded from CIL leaving other elements of infrastructure to be delivered on a site by site basis. This can happen in particular in respect of development plans which contain large allocations of development which can be expected to provide a comprehensive package of infrastructure solutions based on their own individual development.

17. Whilst these contributions are raised on the basis of the specific impact of an individual site two further points should be observed. Firstly, whilst the impact is related to the site, it is not limited to on-site impacts. It may, for instance, relate to the need to address off-site junction improvements caused by increased traffic from the development. Secondly, as set out above pooled contributions may be sought but subject to the limitations already rehearsed.

18. The extent to which individual site contributions can be sought depends upon the scope of the definition of “*necessary*”. This question was considered recently by the Court of Appeal in the case of Derwent Holdings v. Trafford Borough Council & others [2011] EWCA Civ 832. The case concerned the validity of a planning permission granted in respect of a proposed development in two parts, firstly a large superstore and secondly the redevelopment of the Old Trafford Cricket Ground. If permission was granted then the proceeds of sale of the Council’s land on which the superstore was to be sited were to be passed on to Lancashire County Cricket Club to subsidise the redevelopment of their cricket ground. The challenge was brought on the basis of a failure to take account of relevant guidance in relation to the planning agreement. In concluding in relation to the submissions made by the Claimant Carnwath LJ (as he then was) stated as follows:

*“15. Like the Judge, I am unable to accept this argument. We are entitled to start from the presumption that those members who voted for the proposal were guided by the officer’s advice. If so, they would have understood that they should consider the merits of the two parts of the proposal separately. They would have found in the officer’s report sufficient reasons to conclude that, so viewed, they were acceptable in planning terms. At the same time they would have been aware that the proposal that was being put forward is not merely acceptable, but is carrying*

*with it significant regeneration benefits, including the improvement to the cricket ground. The offer of a legal agreement to secure those benefits would no doubt have added to the attractions of the proposal. That does not mean that it was regarded as necessary to offset some perceived planning objections. Nor is there anything in the officer's report to suggest that it was. There is nothing objectionable in principle in a Council and a developer entering into an agreement to secure objectives which are regarded as desirable for the area, whether or not they are necessary to strengthen the planning case for a particular development."*

19. Thus in that case it can be seen that the Court of Appeal did not take a strict approach to the requirement of the Regulations in respect of the necessity of the obligation to make the development acceptable in planning terms. It may be that further clarification is required by the Courts of the test of necessity. There is no reason, however, in principle to suggest that contributions towards Police infrastructure cannot be sought from a Section 106 obligation from an individual site. It will however be necessary to demonstrate that either on-site or off-site infrastructure is necessary and directly related to the impact of the development which is being granted consent. Furthermore it will obviously be necessary to demonstrate that any contribution will in fact be used in order to pay for infrastructure which will actually be delivered.

IAN DOVE QC

26<sup>th</sup> December 2012

PLANNING OBLIGATIONS AND  
POLICE CONTRIBUTIONS

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**ADVICE**

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