



Department for  
Communities and  
Local Government

Mr Robert Gardner  
GVA Grimley  
3 Brindley Place  
Birmingham  
B1 2JB

Our Ref: APP/Q4625/A/14/2220892

5 November 2015

Dear Sir,

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78  
APPEAL BY LIONCOURT HOMES ON LAND AT TIDBURY GREEN FARM, FULFORD  
HALL ROAD, TIDBURY GREEN B90 1QZ**

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Inspector, Mr Philip J G Ware BSc(Hons) DipTP MRTPI, who held a hearing on 14-15 April 2015 into your client's appeal against the decision of Solihull Metropolitan District Council to refuse outline planning permission for a proposed residential development of up to 190 dwellings with associated infrastructure, including means of access, sustainable urban drainage systems (SUDS) and open space. All development, works and operations to be in accordance with the illustrative layout, at land at Tidbury Green Farm, Fulford Hall Road, Tidbury Green in accordance with application ref: 2013/1705, dated 1 October 2013 refused by notice dated 30 January 2014.
2. On 2 July 2014, the appeal was recovered for the Secretary of State's determination because the appeal involved a proposal for significant development in the Green Belt.

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

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

**Procedural Matters**

4. In reaching this position, the Secretary of State has taken into account that, following the quashing of parts of the Solihull Local Plan (2013) by the High Court in April 2014, the majority of the site is no longer within the Green Belt.

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## **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 the development plan consists of the Solihull Local Plan (2013).
6. Following a successful challenge to the Local Plan by Gallagher Homes Ltd and Lioncourt Homes Ltd, a High Court judgment (Solihull MBC v Gallagher Homes [2014] EWHC 123 (Admin) was handed down on 30 April 2014 and an Order was subsequently made on 15 May 2014. The Order treats those parts of the Local Plan relating to:
  - i. The housing land provision target (the target set by Policy P5, its justification, the housing trajectory and the five year housing land requirement); and
  - ii. inclusion of two sites at Tidbury Green within the Green Belt

as not adopted by the Council and remitted to the Planning Inspectorate for re-examination. In December 2014 the Court of Appeal dismissed the Council's appeal upholding the cross-application so that the relevant parts of the Local Plan were remitted to the local authority rather than the Planning Inspectorate (Solihull MBC v Gallagher Homes [2014] EWCA Civ 1610). The Secretary of State agrees with the Inspector (IR19) that the development plan at the current time is the Local Plan (2013) excluding those policies and the former Green Belt allocation of the appeal site which were quashed in the courts.

7. Other material considerations which the Secretary of State has taken into account include the National Planning Policy Framework (the Framework), the associated planning practice guidance (the Guidance) and the Community Infrastructure Levy (CIL) Regulations 2010 as amended.

## **Main considerations**

8. The Secretary of State agrees with the Inspector (IR55) and notes that the main parties have agreed there are two relevant consequences of the judgment:
  - i. The majority of the appeal site is no longer within the Green Belt, and
  - ii. The Council does not have an adopted housing target for the plan period against which to assess its five year supply of housing land, as required by the Framework.

The Secretary of State notes (IR56) that following the Court of Appeal judgment in December 2014 (reference above), the Council resolved not to oppose the appeal and issued a revised Statement of Case, stating in the light of the judgment and given there were no other material planning reasons that indicated that permission should be refused, the position of the authority was that planning permission should be granted. He further notes there are consequently a wide range of agreed matters between the main parties (IR57).

9. The Secretary of State agrees with the Inspector the main matters remaining are as described at IR59.

## **The identification of the development plan and whether the development accords with the current development plan**

9. Having given careful consideration to the Inspector's analysis at IR61-65 the Secretary of State agrees that the adopted Local Plan (2013) is the current development plan and that the former Solihull Unitary Development Plan (2006) has been replaced. The Secretary of State agrees with the Inspector's finding in IR 65 that remitted policies and allocations quashed by the High Court and Court of Appeal in the judgments detailed above cannot be ascribed any weight, following the judgment of the courts (references above).
10. Applying section 38(6) of the Planning and Compulsory Purchase Act 2004, the Secretary of State agrees with the Inspector's conclusions in paragraphs 78 to 91 that the proposal broadly complies with the development plan as expressed in Local Plan policies on accessibility and in IR 102 in relation to environmental policies. The Secretary of State notes paragraphs 103 to 105 in the Inspector's report and agrees that further consideration regarding house types and conformity with LP policy P4 in relation to the range of the proposed houses can be considered at the reserved matters stage.

## **Housing land supply**

11. The Secretary of State agrees with the findings of the Inspector at IR 69-72, that there is no five year housing land supply, thus paragraph 14 of the Framework is engaged. For the reasons given by the Inspector at IR66-72 the Secretary of State agrees that there is a shortage of housing in the Borough and this proposal would provide up to 190 homes in accordance with the objective in the Framework to significantly boost the supply of housing. He agrees with the Inspector that these matters weigh significantly in favour of the appeal (IR72).

## **The provision of affordable housing**

12. The Secretary of State has given careful consideration to the Inspector's reasoning (IR73-74), noting that affordable housing need is exceptionally high in Solihull and LP policy P4 requires delivery of 40% affordable housing on sites of 0.2 hectares or more and the proposal conforms to this requirement and would provide much needed affordable accommodation. He agrees that the affordable housing proposal is in line with the Local Plan in relation to affordable housing provision and national policy and he weighs this significantly in favour of the proposal.

## **The scale of the development**

13. The Secretary of State notes and agrees with the Inspector's conclusions at IR 75 to 77 and finds that the scale of development does not amount to harm in planning terms, and that the provision of additional housing is a substantial benefit which weighs in favour of the development, despite its potential to alter the character of the area.

## **Accessibility**

14. The Secretary of State has carefully considered the Inspector's reasoning (IR78-90) and agrees with his conclusions (IR91) that the proposal complies with Local Plan policies P7 and P8 relating to accessibility and sustainable modes of transport. He notes that although the scheme does not comply entirely with some of the accessibility criteria on policy P7 the policy allows for consideration of local circumstances and for

investment in local public transport measures as proposed in the appeal scheme. He gives the matter moderate weight in favour of the proposal.

### **The area within the Green Belt**

15. The Secretary of State has very carefully considered the Inspector's reasoning at IR 92-96. He notes that a small part of the eastern area of the site (some 3 hectares) remains within the established West Midlands Green Belt and that this designation was not affected by the quashing of parts of the Local Plan and no built development is proposed on this land (IR92). He further notes the use of the southern part of this land for the Sustainable Urban Drainage System (SUDS) and the northern part of the land as an area of open space. The Secretary of State notes paragraph 79 of the Framework, and that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open, and concludes that the fact that no built development is proposed on this land broadly conforms with Green Belt policy aims as set out in the Framework.
16. The Secretary of State agrees with IR 93, that the Sustainable Urban Drainage System is an engineering operation within the scope of paragraph 90 of the Framework, and therefore appropriate development in the Green Belt.
17. The Secretary of State disagrees with IR 94 and considers that use of part of the Green Belt as an area of open space is not inappropriate development in light of paragraph 89 of the Framework, as this use amounts to provision of facilities for outdoor recreation (it provides an informal recreation area which is currently lacking in the area) and preserves the openness of the Green Belt. Moreover the provision of open space would be compliant with paragraph 81 of the Framework in providing opportunities for outdoor recreation.
18. In light of the above findings the Secretary of State does not consider that this development amounts to inappropriate development in the green belt within the meaning of paragraphs 87 and 88 of the Framework. The Secretary of State furthermore agrees with the Inspector that there is no reason for the development not to go ahead on the basis of the use of this small area of land within the Green Belt, and therefore that this matter is neutral in the planning balance (IR98).

### **Landscape and trees**

19. For the reasons given by the Inspector at IR99-102 the Secretary of State agrees that the proposal accords with Local Plan policy P14 and that this weighs moderately in favour of the proposal.

### **Dwelling mix**

20. For the reasons given by the Inspector at IR103-105 the Secretary of State agrees that there is no objection to the agreed approach of addressing the nature of the housing to be provided in future at the reserved matters stage, to ensure compliance with the Supplementary Planning Document, "Meeting Housing Needs" and conformity with LP policy P4 in relation to the mix of housing to be provided, and therefore that this matter is neutral in the planning balance.

### **Highways**

21. The Secretary of State agrees with the Inspector's findings at IR108 that there is no objection to the proposal on highway grounds in relation to LP policy P8. He agrees that this matter is neutral in the planning balance.

### **Flooding, ecology and heritage**

22. The Secretary of State notes the Inspector's remarks and agrees with his conclusions that there is no reason to conclude any adverse effect on the setting of any non-designated heritage assets (IR109-110).

### **Balance**

23. The Secretary of State agrees with the Inspector's conclusion at IR 125 that the proposal accords with the development plan, albeit the Secretary of State notes certain of the development plan policies in relation to housing, as detailed in paragraph 6 above, have been remitted for reconsideration as a result of the judgment in *Solihull MBC v Gallagher Homes*. In applying paragraph 14 of the Framework, the Secretary of State concludes that there are no adverse impacts of granting outline planning permission which would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework as a whole.

24. The Secretary of State agrees with the Inspector at IR 72 and 123 that there is a shortage of housing in the Borough and this proposal would provide up to 190 homes. He gives this delivery of housing significant weight in favour of the appeal. He further agrees the affordable housing proposal of 40% affordable housing is in line with the Local Plan and consistent with paragraphs 50 and 215 of the Framework and therefore gives this significant weight in favour of the proposal. He agrees that the proposal complies with Local Plan policies relating to accessibility and sustainable modes of transport and gives this moderate weight. He gives moderate weight to the proposal's response to existing trees, vegetation and local landscape character.

25. The Secretary of State has carefully considered the proposed usage of the 3 hectares of land remaining in the West Midlands Green Belt and decides this matter is neutral in the planning balance. He has further considered the approach to dwelling mix and highways and also decides this is neutral in the planning balance. As the proposals have no effect on the setting of any non-designated heritage assets he decides that this is also neutral in the planning balance.

26. In summary, the Secretary of State agrees with the Inspector's conclusions at IR 122 to 124 and further concludes that the proposal represents sustainable development, that the presumption in paragraph 14 of the Framework is fully engaged given the lack of a five year housing land supply, and that the proposal accords with the development plan.

### **Conditions and Obligations**

27. The Secretary of State has considered the Inspector's comments at IR111-120 and the Schedule of conditions he recommends at page 24-28 of his report. The Secretary of State is satisfied that the proposed conditions are reasonable and necessary and would meet the tests of paragraphs 204 and 206 of the Framework.

## **Formal Decision**

28. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. He hereby grants outline planning permission subject to conditions for up to 190 dwellings with associated infrastructure, including means of access, sustainable urban drainage systems (SUDS) and open space.

## **Right to challenge the decision**

29. 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.

30. A copy of this letter has been sent to Solihull Metropolitan Borough Council. Notification has been sent to all other parties who asked to be informed of the appeal decision.

Yours faithfully

**Philip Barber**

Authorised by Secretary of State to sign in that behalf

**Land at Tidbury Green Farm, Fulford Hall Road, Tidbury Green**  
**Schedule of conditions**

- 1) The development hereby permitted shall be begun before the expiration of three years from the date of this permission or before the expiration of two years from the date of approval of the last of the reserved matters to be approved, whichever is the later.
- 2) Application for approval of the reserved matters shall be made to the local planning authority before the expiration of three years from the date of this permission.
- 3) The development hereby permitted shall be carried out in accordance with the following approved plans: Site Location Plan DE090-008; Redline Plan DE090-007; Proposed S178 works 5117672/TP/GA/002B (in respect of junction details only).
- 4) The development hereby permitted shall be carried out in general accordance with the Illustrative Layout (Rev A) and the Indicative Housing Plan.
- 5) No development shall commence (except for highways works needed to facilitate access to the development) until vehicular access to the site has been provided in accordance with the details contained on drawing number: 5117672/TP/GA/002B.
- 6) Approval of the details of (a) appearance; (b) landscaping; (c) layout; and (d) scale ('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.
- 7) 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 materials.
- 8) Prior to commencement of the development, details of an external street lighting scheme shall be submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 9) No development shall take place on the site until a programme of archaeological work has been undertaken in accordance with a written scheme of investigation which has been submitted to and approved in writing by the local planning authority.
- 10) The development hereby permitted shall not commence until plans for the disposal of surface water, foul sewage, and a sustainable urban drainage scheme have been submitted to and approved by the local planning authority. The scheme shall be implemented in accordance with the approved details before the relevant part of the development is first brought into use.
- 11) The development hereby permitted by this planning permission shall be carried out in accordance with the Flood Risk Assessment (FRA), prepared by Atkins, dated

30 September 2013. The mitigation measures in the FRA shall be implemented prior to the first occupation of any dwelling.

- 12) The development shall not commence, including any works of demolition, until a Construction Method Statement (CMS) has been submitted to, and approved in writing by, the local planning authority. The approved CMS shall be adhered to throughout the construction period. The CMS shall provide for:
  - (i) The parking of vehicles of site operatives and visitors.
  - (ii) Loading and unloading of plant and materials.
  - (iii) Storage of plant and materials used in constructing the development.
  - (iv) The erection and maintenance of security hoardings, including decorative displays.
  - (v) Wheel washing facilities.
  - (vi) Measures to control the emission of dust and dirt during construction.
  - (vii) Details of haul routes.
  - (viii) Before and after carriageway surveys of haul routes the extent of which to be agreed with the local planning authority.
  - (ix) A scheme for recycling/disposing of waste resulting from any demolition and construction works.
- 13) No dwelling shall be occupied until the off-site highways scheme has been submitted to and approved by the local planning authority. The scheme shall be implemented in accordance with the approved details.
- 14) The development shall not be occupied until a residential Travel Plan has been submitted to and approved in writing by the local planning authority. The residential Travel Plan shall include details of:
  - (i) Residential surveys.
  - (ii) The role of the Travel Plan coordinator over the life of the plan.
  - (iii) The implementation of Travel Plan measures over a period of 5 years and incentives to promote sustainable modes of transport.
- 15) No development shall take place until there has been submitted to and approved in writing by the local planning authority a scheme of hard and soft landscaping, which shall include indications of all existing trees and hedgerows on the land, and details of any to be retained together with measures for their protection in the course of development.
- 16) 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.

- 17) No development shall take place until a landscape management plan, including long-term design objectives, management responsibilities and maintenance schedules for all landscaped areas (except privately owned domestic gardens), shall be submitted to and approved in writing by the local planning authority. The landscape management plan shall be carried out as approved. The landscape management plan shall include the following elements:
  - (i) Detail, extent and type of new planting.
  - (ii) Details of maintenance regimes.
  - (iii) Details of treatment of site boundaries and/or buffers around water bodies.
  - (iv) Details of management responsibilities.
  
- 18) In this condition "retained tree" means an existing tree which is to be retained in accordance with the approved plans and particulars; and paragraphs (i) and (ii) below shall have effect until the expiration of 1 year from the date of the occupation of the last dwelling hereby approved:
  - (i) No retained tree shall be cut down, uprooted or destroyed, nor shall any retained tree be topped or lopped other than in accordance with the approved plans and particulars, without the written approval of the local planning authority.
  - (ii) If any retained tree is removed, uprooted or destroyed or dies, another tree shall be planted at the same place and that tree shall be of such size and species, and shall be planted at such time, as may be specified in writing by the local planning authority.
  - (iii) The erection of fencing for the protection of any retained tree shall be undertaken in accordance with the approved plans and particulars before any equipment, machinery or materials are brought on to the site for the purposes of the development, and shall be maintained until all equipment, machinery and surplus materials have been removed from the site. Nothing shall be stored or placed in any area fenced in accordance with this condition and the ground levels within those areas shall not be altered, nor shall any excavation be made, without the written approval of the local planning authority.
  
- 19) No development shall take place until an Environment Protection Plan has been submitted to and approved in writing by the local planning authority. The plan shall include:

- (i) An appropriate scale plan showing the environment protection zones where any construction activities are restricted and where protective measures will be installed or implemented.
- (ii) Details of protective measures (both physical measures and related to working practices) to avoid impacts during construction.
- (iii) A timetable to show phasing of construction activities to avoid periods of the year when sensitive wildlife could be harmed (such as the bird nesting season).

All construction activities shall be undertaken in accordance with the approved details and timing of the Environment Protection Plan.

- 20) No development shall take place until full details of a Protected Species Contingency Plan has been submitted to and approved in writing by the local planning authority. The plan shall include:
- (i) Surveys at agreed periods carried out by an expert to determine the possible presence of protected species.
  - (ii) Details of appropriate mitigation measures and contingency plans should such a protected species be found to be present and either preparing to breed or in the process of breeding or rearing young.
  - (iii) The surveys, mitigation and contingency measures shall be implemented in accordance with the Protected Species Contingency Plan.
- 21) No development shall take place until full details of an ecological creation, enhancement and restoration scheme have been submitted to and approved in writing by the local planning authority, and these works shall be carried out as approved. The details shall include:
- (i) The purpose, aims and objectives of the scheme.
  - (ii) A review of the site's ecological potential and any constraints.
  - (iii) A description of target habitats and range of species appropriate to the site.
  - (iv) Selection of appropriate strategies for creating and restoring target habitats or introducing and encouraging target species.
  - (v) Selection of specific techniques and practices for establishing vegetation.
  - (vi) Sources of habitat material (e.g. plant stock) or species.
  - (vii) Method statement for site preparation and establishment of target features.
  - (viii) Extent and location of proposed works.
  - (ix) Aftercare and long term management.

- (x) Timings of works.
- (xi) Monitoring.
- (xii) Disposal of waste arising from the works.

All habitat creation works shall be carried out in accordance with the approved details, unless otherwise approved in writing by the local planning authority. The works shall be carried out in accordance with the programme agreed with the local planning authority.

- 22) Construction works shall not take place outside 0730 hours to 1800 hours Mondays to Fridays, and 0800 hours to 1300 hours on Saturdays, nor at any time on Sundays or Bank Holidays.

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

by Phillip J G Ware BSc(Hons) DipTP MRTPI

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

Date: 23 June 2015

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TOWN AND COUNTRY PLANNING ACT 1990

SOLIHULL METROPOLITAN BOROUGH COUNCIL

APPEAL BY LIONCOURT HOMES LIMITED

Hearing held on 14-15 April 2015

Land at Tidbury Green Farm, Fulford Hall Road, Tidbury Green

File Ref: APP/Q4625/A/14/2220892

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**File Ref: APP/Q4625/A/14/2220892**

**Land at Tidbury Green Farm, Fulford Hall Road, Tidbury Green B90 1QZ**

- 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 Lioncourt Homes against the decision of Solihull Metropolitan Borough Council.
- The application Ref 2013/1705, dated 1 October 2013, was refused by notice dated 30 January 2014.
- The development proposed is residential development of up to 190 dwellings with associated infrastructure, including means of access, SUDS and open space.

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

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**Procedural Matters**

1. The appeal was recovered for decision by the Secretary of State on 2 July 2014. The reason for recovery was that the appeal involved a proposal for significant development in the Green Belt. (As is explained below, the majority of the site is no longer within the Green Belt, but the appeal remains recovered.)

**The site and surroundings**

2. The appeal site is located to the east of Fulford Hall Road on the eastern side of the settlement of Tidbury Green and is part of Tidbury Green Farm. The land is broadly flat, with a slight slope to a stream at the southern end, and comprises several fields separated by mature hedgerows and trees<sup>1</sup>. The trees are protected by a Tree Preservation Order<sup>2</sup>.
3. The site is bounded to the north by the buildings of Tidbury Green Farm and by the combined site of Tidbury Green school and nursery, along with the village hall. To the northeast is Dickens Wood, a Local Wildlife Site, whilst to the east is an area planted with native trees in the 1990s. These have grown significantly in subsequent years. To the southeast are open fields and the rear gardens of houses fronting Norton Lane. West of the site, across Fulford Hall Road, are further residential properties<sup>3</sup>.
4. Tidbury Green is around 300 metres east of Wythall/Grimes Heath and about 800 metres to the southwest of Dickens Heath, with Shirley 4km to the north. The centre of Solihull is 6km to the northeast. Tidbury Green largely comprises a triangle formed by Fulford Hall Road, Norton Lane and Lowbrook Lane, with ribbons of development extending along the approach roads<sup>4</sup>.
5. The facilities in each settlement are set out in the Statement of Common Ground<sup>5</sup>. Broadly speaking, Tidbury Green has few facilities aside from the school and the village hall, while Wythall/Grimes Hill has a post office and a

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<sup>1</sup> Best appreciated at Figure 7 of the Design and Access Statement

<sup>2</sup> TPO 2014 (No. 1012) On case file

<sup>3</sup> Figure 2 of the Design and Access Statement

<sup>4</sup> Figure 1 of the Design and Access Statement

<sup>5</sup> Document 17

surgery. The new settlement of Dickens Heath has a wide range of shops and services.

6. In terms of public transport accessibility there is a bus service and two stations (Wythall and Whitlock's End) available for Tidbury Green residents.

### **The proposal**

7. There are no previous planning applications affecting the appeal site.
8. The proposal is in outline, aside from the means of access into the site from Fulford Hall Road. This would require the removal of two trees<sup>6</sup>.
9. If permission were granted the main parties agreed that a condition should require that the development should be in general accordance with the illustrative layout. The layout and landscaping works which would be the main features of any reserved matters application are set out in the Statement of Common Ground<sup>7</sup>.
10. There would also be some off-site highway works which would be carried out under S278 of the Highways Act<sup>8</sup>. The parties agreed that this should be the subject of a 'Grampian' condition. Various infrastructure contributions are the subject of the completed Planning Obligation, which also addresses the provision of affordable housing<sup>9</sup>.

### **Planning policy and the evolution of the Council's position**

11. At the time the planning application was submitted in 2013, the development plan was the Unitary Development Plan (UDP) (2006). In that plan the majority of the site was identified as safeguarded housing land (along with other sites) under policy H2.
12. This excluded a small area within the appeal site which was, and remains, within the West Midlands Green Belt – further references to this small area (on which no built development is proposed) will be made below<sup>10</sup>. The remainder of this section deals with the majority of the site.
13. The Council prepared a draft Local Plan, which was examined in 2013, and was adopted by the Council in December 2013. In the Solihull Local Plan (2013) (LP) the appeal site was identified as being within the Green Belt.
14. The application which is the subject of this appeal was refused in January 2014. The sole reason for refusal related to the fact that the site was within the Green Belt as defined in the recently adopted LP, and that the proposal would be inappropriate development, would harm the openness of the Green Belt, and conflict with the purposes of designating the Green Belt. Reference was made to LP policy P17.

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<sup>6</sup> The appellant has submitted an Arboricultural Survey detailing the condition and amenity value of all the trees on the site

<sup>7</sup> Document 17 Paragraph 3.4

<sup>8</sup> Set out at Document 17 Paragraph 3.7

<sup>9</sup> Document 22

<sup>10</sup> Around 3 hectares

15. A legal challenge to the Council's decision to adopt the LP was jointly made by the appellants and Gallagher Estates (who wish to develop land at Lowbrook Farm, abutting the west side of Tidbury Green). For reasons most concisely set out in the Statement of Common Ground<sup>11</sup>, the High Court judgement (April 2014)<sup>12</sup> had the effect of quashing parts of the LP. Those parts of the LP were remitted (at that time) to the Planning Inspectorate for re-examination.
16. The Council appealed the judgement of the High Court (and a cross-application by the appellants' related to the relief was also made). The Court of Appeal (December 2014) dismissed the Council's appeal<sup>13</sup> (and upheld the cross-application so that the relevant parts of the LP were remitted to the local authority rather than the Planning Inspectorate).
17. The parties agree<sup>14</sup> that the effect of the decision of the courts is that:
  - The Council does not have an adopted housing target for the plan period against which to assess its five year supply of housing land, as required by the National Planning Policy Framework (the Framework).
  - The appeal site is not within the Green Belt.
18. In February 2015 the Council issued a revised Statement of Case<sup>15</sup> in which it stated that, in the light of the judgement of the courts and given that there were no other material planning reasons that indicated that permission should be refused, the authority concluded that permission should be granted. The authority no longer contested the appeal. (The authority also stated that the determination of the application did not turn on whether the Council could demonstrate a five year supply of housing and that, whilst it considered that it could demonstrate such a supply at the present time, this was not a factor which would prevent the grant of permission.)
19. The development plan at the current time is therefore the LP, excluding those policies and the former Green Belt allocation of the appeal site which were quashed in the courts<sup>16</sup>. The parties have agreed the LP policies which are relevant to the determination of the appeal, as set out in the Statement of Common Ground<sup>17</sup>. In the light of the matters which are for determination at this time and given the objections raised by third parties, the following LP policies are of most direct relevance:
  - Policy P4. Meeting housing needs. Amongst other matters this deals with the provision of 40% affordable housing on larger sites, tenure, and housing mix. A Supplementary Planning Document gives greater detail<sup>18</sup>.

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<sup>11</sup> Document 17 Paragraphs 4.5 – 4.8

<sup>12</sup> Gallagher Homes Limited, Lioncourt Homes Ltd v Solihull Metropolitan Borough Council. [2014] EWHC 1283 (Admin)

<sup>13</sup> Solihull Metropolitan Borough Council v Gallagher Homes Limited and Lioncourt Homes Ltd [2014] EWCA Civ 1610

<sup>14</sup> Document 17 Paragraph 4.19

<sup>15</sup> On file

<sup>16</sup> The Council for the Protection of Rural England takes a different view – discussed below

<sup>17</sup> Document 17 Paragraphs 4.20 – 4.39

<sup>18</sup> Affordable Housing Supplementary Planning Document

- Policy P7. Accessibility and ease of access. This deals with the need to locate development in the most accessible locations and enhance accessibility levels.
- Policy P8. Managing demand for travel and reducing congestion. Amongst other matters this states that development which compromises highway safety will not be permitted. The use of sustainable modes of transport will be encouraged.
- Policy P10. Natural Environment. This provides that development should incorporate measures to protect, enhance and restore landscapes.
- Policy P14. Amenity. Amongst other matters, this policy provides that important trees should be safeguarded.
- Policy P15. Design quality. This provides that all proposals should achieve good quality and sustainable design.
- Policy P17. Countryside and the Green Belt. (Relevant to that part of the site still outside the Green Belt.)
- Policy P20. Open space. Amongst other matters, this provides that new open space will be required as an integral part of new development.
- Policy P21. Developer contributions and infrastructure provision. This states that development will be expected to provide contributions or mitigate its impact.

### **Other matters agreed between the main parties**

20. There is a range of matters agreed between the main parties related to the principle of the development and the access (i.e. those matters which are submitted for decision at this stage):
- As set out above, the majority of the site (i.e. all that part proposed for built development) is not in the Green Belt, and the relevant LP policy<sup>19</sup> is not engaged. National policies and guidance related to the Green Belt in the National Planning Policy Framework (the Framework) and Planning Practice Guidance (the Guidance) are not relevant to the majority of the site.
  - The site is not 'best and most versatile land'<sup>20</sup> and that the relevant LP policy<sup>21</sup> is not engaged.
  - The development would not be in the setting of any Designated Heritage Assets. There are non-designated assets in the vicinity<sup>22</sup>, but no objection is raised to the effect on the setting of any of these.
  - The provision of up to 190 dwellings, with 40% affordable housing, would contribute to the existing substantial housing need. The proposal complies with the relevant LP policy<sup>23</sup>.

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<sup>19</sup> LP Policy P17

<sup>20</sup> It is agreed to be Category 4

<sup>21</sup> LP Policy P17

<sup>22</sup> Set out in the appellant's desk based Heritage Assessment (2013)

<sup>23</sup> LP policy p4

- The provision of local construction and supply chain employment would be a sustainability benefit.
  - The scheme is sustainable development as defined in the Framework, and complies with the relevant LP policies in this respect<sup>24</sup>.
  - Subject to off-site highway works and a contribution to incentivise bus use, the proposal is acceptable from a highways perspective. These matters are included in the agreed planning conditions and the Planning Obligation. The proposal complies with the relevant LP policy<sup>25</sup>.
  - The potential impact of the development on healthcare and educational facilities is addressed by the Planning Obligation. The proposal complies with the relevant LP policy<sup>26</sup>.
21. There are also other agreed matters which are based on the illustrative plans which have been submitted. A condition would require the development to be carried out in general accordance with the illustrative plans. These matters are:
- The illustrative layout responds positively to existing trees and vegetation and is acceptable in landscape terms. It complies with relevant LP policies in this respect<sup>27</sup>.
  - The illustrative layout complies with LP policies<sup>28</sup> related to urban design, aside from matters related to dwelling mix (discussed below).
  - Subject to agreed planning conditions and the Planning Obligation, the illustrative scheme is acceptable in terms of ecology, protected species and trees. It complies with the relevant LP policy<sup>29</sup>.
  - The illustrative layout shows a public open space and an informal recreation area (for all residents of the settlement), structural landscaping, footpaths to the adjacent woodland area, the retention of all but two existing mature trees and additional native planting. These are benefits of the proposal.
  - The proposed Sustainable Urban Drainage System (SUDS) would introduce a new wetland habitat which would enhance biodiversity.
  - Subject to agreed planning conditions and a contribution towards a drainage mitigation scheme, the illustrative layout is acceptable in relation to flood risk and drainage. The site is in Flood Zone 1 and complies with the relevant LP policy<sup>30</sup>.
  - There is also agreement, set out in the Statement of Common Ground, related to the lack of harm to residents' living conditions.
  - There would be no harm to archaeological interests (subject to a condition).

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<sup>24</sup> LP policies P7, P8, P9, P16, P18 and P21

<sup>25</sup> LP policy P7

<sup>26</sup> LP policy P21

<sup>27</sup> LP policies P10 and P20

<sup>28</sup> LP policies P4 and P15

<sup>29</sup> LP policy P10

<sup>30</sup> LP policy P11

## **The case for the appellant**<sup>31</sup>

22. A substantial part of the appellant's position is set out in the matters agreed with the Council (above) and these do not need to be repeated here. There are other elements of the appellant's case, some of which address matters raised by third parties, which are summarised below.
23. The adoption of the LP replaced all the saved policies of the former UDP. The assertion (below) made by the Campaign to Protect Rural England that certain policies in the UDP remain a part of the development plan, and that the quashed policies in the LP are of some weight, is incorrect. Schedule 8 paragraph 1 of the Planning and Compulsory Purchase Act 2004 prescribes that an old plan (i.e. the UDP) ceases to be the development plan when a new policy expressly replacing it is adopted. This happened in December 2013, and the LP specifically states the position<sup>32</sup>. The site is therefore 'white land' outside the Green Belt and is not subject to any allocation or designation.
24. The Council agrees that the appeal proposal complies with the development plan, and it is also agreed that the proposal should be approved without delay, in line with paragraph 14 of the Framework. In addition, as there is agreement that there is no five year housing land supply (in relation to paragraph 49 of the Framework) paragraph 14 comes into play. Relevant policies for the supply of housing are absent, as they have been quashed by the Courts. In terms of paragraph 14, all material considerations are in favour of the proposal.
25. The 2012 household projections are a robust starting point, but no full objectively assessed housing need has been produced by the Council. The unchallenged evidence, without prejudice to consideration as part of the Local Plan, is that there is a significant shortfall (of about 2.5 years). This is a powerful factor in favour of the proposal.
26. There is a limited part of the eastern area of the site which remains within the Green Belt. The southern part of this would be used for the SUDS which, in the light of paragraph 90 of the Framework, is an engineering operation and is not inappropriate development. The northern part of the Green Belt land is shown on the illustrative plans as an area of open space, which is technically a change of use from agricultural land, and is inappropriate development.
27. There are substantial material considerations which amount to the very special circumstances necessary to allow inappropriate development in the Green Belt. In particular:
  - The proposed use falls within paragraph 81 of the Framework, as it would provide access and opportunities for outdoor sport and recreation – which is especially important due to the lack of facilities of this nature in the area. It would be in line with LP policy P17.
  - The proposed use would preserve openness – no structures of any kind are proposed.

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<sup>31</sup> Based on the Appellant's statement and the discussion at the Hearing

<sup>32</sup> At paragraph 1.1.5

- The use of this part of the site for open space would make the most efficient use of the majority of the site, which is outside the Green Belt, and would secure the numerous benefits arising from the proposal<sup>33</sup>. There is agreement as to the benefits of the development, especially in the lack of a five year housing land supply.
28. If the existence of very special circumstances were not accepted, there is an agreed condition prohibiting any development on the land in question. There is more than sufficient room on the remaining site for the entire development if this area were omitted.
  29. In relation to the concerns regarding the possible merging of Dickens Heath and Tidbury Green, there is an area of Green Belt which will prevent the coalescence of the two settlements. There is a substantial woodland barrier between the settlements, and there is no inter-visibility.
  30. In terms of accessibility the development would be accessible by non-car modes for work and other journeys<sup>34</sup>. The choice of travel modes includes walking, cycling, buses and trains as well as the private car<sup>35</sup>. There is a choice of railway stations which can be accessed on foot, by bus or by bicycle from the site. Whitlock's End station (1.6km from the site) provides a 20 minute service frequency to Kidderminster, Worcester, Birmingham and Stratford-on-Avon. Whitlock's End station is around 19 minutes on foot and six minutes by bicycle. Wythall station (1.1km from the site) provides hourly services to Stourbridge Junction, Birmingham and Stratford-on-Avon<sup>36</sup>, and is within convenient walking and cycling distance.
  31. There are bus stops on Dickens Heath Road and Fulford Hall Road, within around 400 metres of the site access. Two services run in term time into Solihull, and the S3 provides hourly services in both directions to Whitlocks End Station, Dickens Heath, and Solihull<sup>37</sup>.
  32. The local centre in Dickens Heath can be reached by pedestrians in less than 20 minutes and by cyclists in 6 minutes.
  33. Footway widths in the area are limited in some locations due to overgrown vegetation. However in those locations where this is a pre-existing issue it can be addressed by the highway authority. Some limited stretches do not have street lighting, but there is no requirement to provide this as part of the current proposal.
  34. The 2009 Settlement Study, was relied on by some objectors to demonstrate the alleged inaccessibility of the site. However this does not allow for improvements to public transport in the vicinity of the site since then<sup>38</sup>:
    - Bus route S3 frequency has increased.

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<sup>33</sup> Document 71 Paragraphs 6.1 – 6.4

<sup>34</sup> Details set out in appellant's Transport Statement Paragraphs 5.5 – 5.10

<sup>35</sup> Walking and cycling isochromes set out in appellant's Transport Statement Paragraphs 5.5 – 5.10

<sup>36</sup> Details of services in appellant's Transport Statement Table 5.2

<sup>37</sup> Document 4, details of routes in appellant's Transport Statement Table 5.1

<sup>38</sup> Document 4

- Contributions (along with agreed contributions from other developments) will improve the bus service.
  - Trains at Whitlock's End station have increased in frequency, and the car park has been enlarged.
35. The Settlement Study was not part of the evidence base for the LP. The location of strategic growth in the Borough in the LP was founded on a Strategic Accessibility Study (2010) and the Strategic Housing Land Availability Assessment (2012)<sup>39</sup>. These studies reached significantly different conclusion to the earlier Settlement Study. These documents, combined with the appellant's sustainability evidence, demonstrate that the site is in a sustainable location.
36. Overall, the proposal is fully in accordance with the development plan, and there are no material considerations which indicate a decision other than in accordance with the development plan.

#### **The case for the Council<sup>40</sup>**

37. The Council considers that the proposal complies fully with the development plan. In addition policies relevant to the supply of housing cannot be considered up to date in the absence of a five year housing land supply - as such paragraph 14 of the Framework is fully engaged. Planning permission should therefore be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole; or specific policies in the Framework indicate that development should be restricted.
38. The position of the Council is that there are no material considerations which indicate that planning permission should not be granted.
39. The proposal would deliver vital housing in the area, local employment and other benefits, including substantial open space, footpaths and recreational space.
40. Although there is some disagreement as to whether the Council can currently demonstrate a five year housing land supply, both parties agree that paragraph 14 of the Framework is engaged.
41. The Council considers that, using household projections as the basis of the housing requirement, it can demonstrate a small surplus of 54 dwellings against the five year housing land supply requirement. The position is being updated using 2012 based household projections. However unless additional sites come forward from later in the Plan period, or the current windfall housing land supply rate increases significantly, the Council accepts that the five year supply is unlikely to be maintained throughout the current year.
42. The housing land supply issue is a matter which can properly be considered at a Local Plan examination, where other parties will be present and able to submit representations.

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<sup>39</sup> Document 5

<sup>40</sup> Based on the Statement of Common Ground, the Council's statement and the discussion at the Hearing

43. The appeal scheme, as shown on the illustrative plans, does not comply with the Council's Supplementary Planning Document 'Meeting Housing Needs' in relation to the mix of market housing. However this is a matter which can be dealt with at the reserved matters stage.

**The case for others appearing at the Hearing, and written representations** <sup>41</sup>

44. Solihull Ratepayers Association & Dickens Heath Residents Action Group objected to the proposal. There has been a considerable increase in traffic in the area as a result of development at Dickens Heath and additional through traffic. The location is unsustainable and is poorly served by public transport. The development would put further pressure on infrastructure and services in Dickens Heath. There are sufficient housing sites in the area to meet LP requirements. The proposal would be out of scale with the settlement and would erode the gap between Tidbury Green and Dickens Heath.
45. Tidbury Green Parish Council objected to the proposal. The fact that the site is not in the Green Belt does not necessarily mean that it is suitable for development. The proposal is not a sustainable form of development. It is located in a settlement with few services and facilities, as identified in the Settlements Study (2009) – in which Tidbury Green scored only 3 points out of a possible 140, based on a range of socio-economic indicators. Tidbury Green has two churches, a sports and social club, a car dealership and workshop, a restaurant, a primary school and a village hall. There is no surgery or shop selling fresh food.
46. Most residents use private cars to get to work. Wythhall station is closest to the site, but has no car parking and trains to Stratford and Birmingham only on an hourly basis. Whitlocks End does provide parking – although this is often full in the mornings and is not easily accessed other than by the private car. Buses only offer a limited service to facilities some distance away and, when used to get to railway stations, buses do not necessarily coincide with train times. Walking routes are not continuous and are narrow at points, with poor lighting and gradients.
47. The proposal is out of scale and character with the area. The 2011 census showed 285 dwellings in the wider area of Tidbury Green – the proposal would represent a 67% increase in dwellings. In addition there is another appeal related to Lowbrook Farm, also on the edge of the settlement, which would further emphasise the scale of the imbalance. The intention had been to release land in a phased manner, but it was now all coming forward at once.
48. Dickens Heath Parish Council objected to the proposal. The individual and cumulative impacts, without corresponding infrastructure or social/community facilities, would be harmful. The proposal would increase the danger of coalescence with Dickens Heath, which is further threatened by LP allocations in the area. There are few local services and facilities in Tidbury Green, and the proposal would swamp the settlement. The Transport Assessment does not allow for other approved developments in the area.

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<sup>41</sup> Based on the third parties' written representations, attached statements submitted at the Hearing, and the discussion at the Hearing

49. The Campaign to Protect Rural England (Warwickshire Branch) (CPRE) objected to the proposal. The development would be unsustainable and conflict with the Framework. The proposal would add to the closing of the gap between Dickens Heath and Tidbury Green. The facilities in the settlement are poor and public transport is limited – Dickens Heath should be regarded as the southernmost end of suburban development, because of the relatively frequent nature of public transport only as far as that settlement. Significant development should not be permitted further away from the main urban centres. Even though the Council does not have a five year housing land supply, there would be significant harm to the area caused by the proposed unsustainable development.
50. CPRE also made submissions<sup>42</sup> related to the development plan in force in relation to the site. As an area of land must have a development plan allocation in force, the site specific policies of the UDP are again part of the development plan. In addition the LP policies which have been quashed in the courts and have been remitted to the Council are material considerations.
51. Mr C Farr objected to further housing development in the area, which should be Green Belt.
52. Ms D Wright objected on the basis that there was an excess of development in the area already, and the settlement cannot take any further building.
53. Mr Z Shah opposed the development. The area and the local road network are unsuited to walking or cycling.
54. There have been a number of written representations, at the application and appeal stages<sup>43</sup>. These do not raise significant additional matters, and largely cover the ground summarised above.

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<sup>42</sup> Document 9

<sup>43</sup> On file

## Inspector's conclusions

[Numbers in square brackets denote source paragraphs]

### *Background, agreed matters and main considerations*

55. The Council originally opposed the development solely on Green Belt grounds [14]. Following a successful legal challenge in the High Court and subsequently the Court of Appeal, parts of the adopted Solihull Local Plan (2013) (LP) were quashed and remitted to the local authority [15, 16]. In relation to this appeal, the main parties have agreed that there are two relevant consequences of the judgement [17]:
- The majority of the appeal site is no longer within the Green Belt (the land remaining in the Green Belt – not proposed for built development - will be considered below).
  - The Council does not have an adopted housing target for the plan period against which to assess its five year supply of housing land, as required by the National Planning Policy Framework (the Framework).
56. Following the Court of Appeal judgement in December 2014, the Council resolved not to oppose the appeal, and issued a revised Statement of Case in which it stated that, in the light of the judgement and given that there were no other material planning reasons that indicated that permission should be refused, the position of the authority is that planning permission should be granted [18].
57. There are consequently a wide range of agreed matters between the main parties [19-21].
58. The remainder of this report will focus on the main matters raised in third party representations, along with additional matters put forward by the appellant in favour of the proposal.
59. These main matters are:
- The identification of the development plan (raised by the Campaign to Protect Rural England (CPRE)).
  - Housing land supply (largely raised by the appellant).
  - The provision of affordable housing (raised by the appellant).
  - The scale of the development (raised by third parties).
  - Accessibility (raised by third parties).
60. There are a number of other matters, which are also dealt with below.

### *Main matter - the identification of the development plan*

61. CPRE made submissions related to the definition of the development plan in force in relation to the site [50].
62. Their approach is that it is impossible for an area of land to not be covered by a development plan designation. Therefore, with the decision of the courts to

quash parts of the adopted LP, relevant site-specific parts of the former Solihull Unitary Development Plan (2006) (UDP) (which predated the LP) are again in force as part of the development plan. In addition, CPRE's view is that those parts of the LP which have been quashed and have been remitted to the Council remain material considerations as they are at the pre-submission stage.

63. It is clear that the appeal site is still subject to a wide range of policies in the adopted LP, and this is not in doubt [19, 22, 50]. However, following the decision of the courts, the site no longer has any site specific allocation. But this is far from unusual, and there is no requirement that every parcel of land has to be covered by a land use designation. The phrase 'white land' was used at the Hearing and, although this does not appear to have any statutory definition, it is a well-known term of art to describe land which has no designation or allocation.
64. The adoption of the LP replaced all the saved policies of the former UDP. This is in line with Schedule 8 paragraph 1(2) of the Planning and Compulsory Purchase Act 2004, which prescribes that the old plan (in this case the UDP) ceased to be the development plan when a new policy expressly replacing it was adopted. This happened in December 2013 when the LP was adopted, as is confirmed at paragraph 1.1.5 of the LP itself. The LP is clearly the development plan for the area, and the former UDP has been replaced.
65. The approach of the Council to those parts of the LP which have been quashed and have been remitted to the Council is unknown and will be considered at a future Examination. These remitted policies and allocations cannot be ascribed any weight, following the judgement of the courts.

*Main matter - housing land supply*

66. The National Planning Policy Framework (the Framework) requires (paragraph 47) local planning authorities to identify and annually update a supply of specific deliverable sites sufficient to provide five years' worth of housing against their housing requirements, with an additional buffer of 5% or 20%. The Framework confirms (paragraph 49) that the relevant policies for the supply of housing should not be considered up to date if the authority cannot demonstrate a five year supply of sites.
67. The key consequence of such a position is that the Framework advises (paragraph 14) 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 the policies in the Framework taken as a whole, or specific policies in the Framework indicate development should be restricted.
68. In this case, both parties agree that paragraph 14 of the Framework is engaged [24,40]. There are two reasons for this. The first reason is that, as a result of the judgement of the courts, the relevant policies for the supply of housing are absent, as they have been quashed.
69. Secondly, based on the evidence, there is no five year housing land supply, and paragraph 14 is also engaged for that reason. The Council's position is that there is currently a small surplus against the five year housing land supply requirement – but unless additional sites come forward from later in the LP

period, or the current windfall housing land supply rate increases significantly, any five year supply which may currently exist is unlikely to be maintained even for the rest of 2015 [41]. The conclusion must be that, even if the Council's position on the current small surplus was accepted, there is effectively no five year supply. On that basis the Council accepts that the appeal should be determined on the basis of paragraph 14 [40].

70. Furthermore the appellant criticises the Council's calculation of housing land supply. The appellant states that, in the absence of a development plan requirement, the 2012 projections are a robust starting point, but emphasises that no full objectively assessed need has been produced. There is also criticism of the Council's approach in a number of respects: the alleged use of household projections as a proxy for full objectively assessed need; the approach to windfall sites; the issue of whether the position of the authority should be considered in isolation; and the size of the buffer which is required. The appellant's evidence concludes that there is a significant shortfall (of around 2.5 years) [25].
71. These matters will doubtless be considered at a future LP examination, in a way that cannot be replicated by this appeal. There is no certainty that the same conclusion will be reached when the relevant parts of the LP are examined in public, as that process will be informed by evidence from a far wider range of parties. This will doubtless include an assessment by the Council of the full objectively assessed need. Consequently the position in this case does not bind the Council or other Inspectors at appeal.
72. The importance of these matters is twofold. Firstly, regardless of the precise figures, there is no doubt that there is a shortage of housing in the Borough. This proposal would provide up to 190 homes in accordance with the objective in the Framework to boost significantly the supply of housing. Furthermore there is no suggestion that there is any policy which requires a five year housing land supply to be demonstrated or that, if such a supply were present, it would act as a cap on further housing development. Secondly, as set out above, national policy applied to this proposal is that permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits. These are agreed matters which weigh significantly in favour of the appeal.

*Main matter - the provision of affordable housing*

73. The position in relation to affordable housing can be set out briefly. LP policy P4 (which is extant) requires delivery of 40% affordable housing on sites of 0.2 hectares or more [9]. The policy gives information on tenure and refers to a Supplementary Planning Document (SPD) which gives further guidance. This is in line with the Framework, which provides that local planning authorities should set out their policy on affordable housing in the local plan, and ensure that the full objectively assessed need for affordable housing is met.
74. The scheme provides for 40% affordable housing, which would be provided through the mechanism of the Planning Obligation [10]. The LP states that affordable housing need is exceptionally high in Solihull, and the proposal would provide much needed accommodation. It is therefore in line with the LP and national policy, and this matter weighs significantly in favour of the proposal.

*Main matter - the scale of the development*

75. A number of objectors stated that the proposal would be out of scale with Tidbury Green, and would 'swamp' the existing settlement. It was stated that the 2011 census showed 285 dwellings in the wider area of Tidbury Green, and that the proposed 190 dwellings would represent a 67% increase [47]. To that total must be added the proposal, which is the subject of a separate appeal, at Lowbrook Farm. This would put pressure on infrastructure and services. The intention had been to release land in a phased manner, by way of the LP, but development was all coming forward at one time [47].
76. Although no evidence was put forward as to the way in which the LP envisaged phasing of development in the area, it is certainly true that the current proposal, with or without the scheme at Lowbrook Farm on the opposite side of Tidbury Green, would represent a very considerable increase in the size of the settlement. This would undoubtedly have the effect of altering the character of the settlement. However, leaving aside the availability of services and accessibility (dealt with in the next section), there is nothing to suggest that such a change would be inherently harmful.
77. Additional housing in the Borough, acknowledged to be essential by the Council, will inevitably have the effect of altering the character of some areas – but this change does not amount to harm in planning terms. No policy was produced which provides that existing settlement sizes should remain unaltered. This matter is neutral in the planning balance.

*Main matter - accessibility*

78. The accessibility of the site, and the availability of non-car modes of transport to various services and destinations, was the subject of a number of objections [44,45,46,48,49,53]. This is an important issue in relation to aspects of sustainability.
79. LP policy P7 deals with ease of access and the need to locate development in the most accessible locations and enhance accessibility levels. It sets out criteria which should be followed when considering housing development, unless local circumstances dictate otherwise. It also provides that investment in local public transport and cycling/walking measures will be sought in association with development proposals which do not meet the accessibility criteria. LP policy P8 seeks to ensure that development promotes and encourages sustainable means of transport [19].
80. This LP policy, and others more generally related to sustainability, is in line with the approach of the Framework. This provides that decisions should ensure that developments that generate significant movement are located where the need to travel will be minimised and where the use of sustainable transport modes can be maximised.
81. Tidbury Green itself, given the relatively small scale of the settlement, has a reasonable level of facilities in easy walking and cycling distance of the appeal site. In particular it has two churches, a sports and social club, a car dealership and workshop, a restaurant, a primary school and a village hall. However there is no surgery or a shop selling fresh food [5]. Moving further afield, Dickens Heath provides the next level of services, along with other settlements in the

area. For the widest range of facilities, employment and services, one would look to Solihull or Birmingham.

82. In terms of buses, there are stops on Dickens Heath Road and Fulford Hall Road, around 400 metres from the site access [31]. The main bus service (leaving aside term time buses) is the S3, which provides hourly services in both directions to Whitlock's End Station, Dickens Heath, and Solihull [30]. The Planning Obligation provides a contribution towards the improvement in the frequency of these services [34]. Access to these bus stops on foot is perfectly adequate, and would be improved as part of the package of off-site highway works. The bus service represents a reasonable level of provision, which would be improved if the appeal scheme went ahead.
83. There is a choice of railway stations which can be accessed on foot, by bus (in the case of Whitlock's End) or by bicycle. Whitlock's End station (1.6km from the site) provides a 20 minute service to Kidderminster, Worcester, Birmingham and Stratford-on-Avon. Wythall station (1.1km from the site) provides hourly services to Stourbridge Junction, Birmingham and Stratford-on-Avon [30].
84. Residents explained that the recently extended car park at Whitlock's End station is often full during the morning peak and beyond. That is not doubted, but the station is within convenient walking and cycling distance from the site (around 20 minutes on foot). The S3 bus service serves the station, and there is no need to access the station by car. Wythall station has no parking (aside from cycle parking), but is also within reasonable walking and cycling distance (around 13 minutes on foot) [30].
85. The local centre in Dickens Heath can be reached by pedestrians in less than 20 minutes and by cyclists in around 6 minutes.
86. It is appreciated that the width of the pedestrian footways is limited in some locations due to overgrown vegetation, but in no area are the footpaths approaching impassable, and where this is an issue it can be addressed by the highway authority. Some limited parts of the relevant footways do not have street lighting, but there is no requirement to provide this.
87. In line with policy in the Framework, the proposal would include a Travel Plan, which can be ensured by a condition. The Framework advises that this is a key tool to protect and exploit opportunities for the use of sustainable transport modes.
88. The 2009 Settlement Study was relied on by one objector [45], to illustrate that Tidbury Green is an unsustainable location. However it appears that the Study considers settlements in isolation (aside from transport facilities) rather than dealing with access to facilities in nearby settlements. In addition this document was not part of the evidence base for the LP - unlike the Strategic Accessibility Study (2010) and the Strategic Housing Land Availability Assessment (2012). These reports reached significantly different conclusions to the Settlement Study.
89. There have been notable changes since the publication of the Settlement Study. In particular the increased frequency of bus route S3, the increased frequency of services at Whitlock's End station, and the enlargement of the car park at that location [34]. Overall, the 2009 Settlement Study is now dated and does

not accurately reflect the current position, let alone the position allowing for the transport contributions which would arise as a result of the current proposal.

90. The Framework, whilst seeking to maximise the use of sustainable transport, recognises that solutions will vary from urban to rural areas. In this case the opportunities for the use and encouragement of sustainable transport modes have been taken into account in the selection of the site and the details of the scheme. Sustainability is not an absolute concept and covers a wide range of topics. It would be unrealistic to consider a potential development as being sustainable only if it complied absolutely with every facet of sustainability. If that were the case, there would be very developments which could be considered sustainable.
91. Overall, the proposal complies with LP policies P7 and P8 related to accessibility and sustainable modes of transport (although this does not equate to the totality of sustainability). Although the site does not comply entirely with some of the accessibility criteria in policy P7, the policy itself allows for the consideration of local circumstances and for investment in local public transport and cycling/walking measures – as are proposed in the appeal scheme. The development also complies with the approach of the Framework. This matter weighs in favour of the proposal.

*Other matter – the area within the Green Belt*

92. As described above, there is a relatively small part of the eastern area of the site (some 3 hectares) which remains within the established West Midlands Green Belt [12,20]. This designation was not affected by the quashing of parts of the LP. In the illustrative plans accompanying the application, which a condition would provide should be broadly followed, no built development is proposed on this land [26].
93. The southern part of this land is shown as being used for the Sustainable Urban Drainage System. In accordance with paragraph 90 of the Framework this engineering operation is not inappropriate development.
94. The northern part of the Green Belt land is shown on the illustrative plans as an area of open space, which is a change of use from agricultural land, and is inappropriate development in the light of paragraph 90 of the Framework. Both the Framework and LP policy P17 oppose inappropriate development in the Green Belt.
95. However there are material considerations which amount to the very special circumstances necessary to allow inappropriate development in the Green Belt [27]. No objection has been raised to this approach by any party. In particular:
- The proposed use falls within paragraph 81 of the Framework, as it would provide access and opportunities for outdoor sport and recreation, which are lacking in the area.
  - The proposed use would preserve openness, as no structures of any kind are proposed within the Green Belt. This would be in line with LP policy P17.

- The use of this part of the site for open space would make the most efficient use of the majority of the site, outside the Green Belt, and would secure the numerous benefits arising from the proposal as a whole. There is agreement as to the benefits of the development, especially in the lack of a five year housing land supply.
96. If the Secretary of State were minded to grant planning permission for the development as a whole, it is considered that the harm to the Green Belt by reason of inappropriateness is clearly outweighed by these other considerations, so as to amount to the very special circumstances necessary to justify this part of the development.
97. In the alternative, again if the Secretary of State were minded to grant planning permission for the development as a whole, but did not consider that very special circumstances exist in relation to the Green Belt land, the parties have agreed a condition prohibiting any development on the land in question. This would be feasible as there is sufficient flexibility and space on the site outside the Green Belt to accommodate all aspects of the development.
98. Overall, there is no reason for the development not to go ahead on the basis of the small area of land within the Green Belt. This matter is neutral in the planning balance.

*Other matter - landscape and trees*

99. The local landscape character consists of small rectilinear fields enclosed by deciduous hedgerows and trees. The topography of the area is gently undulating. The local landscape is pleasant but unremarkable and is not protected by any landscape designation [21].
100. Clearly the proposal would have a significant effect on the character of the immediate landscape, but views of the site are limited partly as a result of the extensive hedgerow and tree cover. There are no public footpaths across the site. There would be no significant impacts on wider landscape character, as the development would be screened from anything other than local views. This is assessed in the appellant's largely unchallenged Landscape and Visual Impact Assessment. Although there would be views of the development from some locations, there is nothing to suggest significant visual impact.
101. LP policy P14 deals, amongst other matters, with the need to safeguard important trees. There are a significant number of mature trees across the site and within the hedgerows which currently subdivide it. These are protected by a Tree Preservation Order. The trees are of significant visual amenity value and are considered in the appellant's Arboricultural Survey Report. The illustrative plans show these trees, aside from two proposed for removal to form the access, retained as part of the layout, and there is no reason to doubt that this could be achieved. Additional planting could be controlled by a condition.
102. Overall, the proposal responds positively to the existing trees and vegetation on the site, and to the local landscape character. It would accord with LP policy P10, dealing with the natural environment, and LP policy P14. This weighs in favour of the proposal.

*Other matter – dwelling mix*

103. LP policy P4 refers to the need for the mix of market housing to be assessed in relation to a range of factors, including the need to secure a range of house types in the light of local housing demand [19]. This policy is supported by a Supplementary Planning Document (SPD) 'Meeting Housing Needs'.
104. The application is in outline, although supported by illustrative plans. One of these illustrative plans shows the general range of house types. The Council maintains that this mix of market housing types is not in accordance with the SPD.
105. However, bearing in mind the outline nature of the current proposal, both parties agree that this is a matter which could be addressed at the reserved matters stage. The illustrative plan showing house types should not therefore be referred to in an outline permission. There is no objection to this approach, and this matter is neutral in the planning balance.

*Other matters - highways*

106. A Transport Assessment (TA) was submitted with the application, and this was updated by the appellant's evidence for the Hearing.
107. A third party stated that the Transport TA did not allow for other approved developments in the area [48]. However in fact the TA clearly allowed for two other developments which were proposed at that time (one is the subject of an outstanding appeal) by way of a sensitivity test. In addition, at the request of the Council, a further sensitivity test considered three strategic residential sites allocated in the (then-draft) LP.
108. On that basis, and given the agreement of the highway authority to the proposal and the off-site highway works, there is no objection to the proposal on highway grounds, in relation to LP policy P8. This matter is neutral in the planning balance.

*Other matters – flooding, ecology and heritage*

109. The application was supported by a range of studies, supplemented by the appellant's persuasive evidence submitted on appeal. In particular these include a Flood Risk Assessment, an Ecological Appraisal, a Protected Species report, and a Heritage Assessment.
110. Subject to the imposition of appropriate conditions, none of these matters was disputed by the Council or significantly by other parties. There is no reason to disagree with the conclusions of the studies, and in particular there is no reason to conclude any effect on the setting of any non-designated heritage assets.

*Conditions*

111. A set of conditions agreed between the main parties was discussed at the Hearing. I have considered these in the light of Planning Practice Guidance and simplified some accordingly. The recommended conditions are set out in the schedule at the end of this report.
112. The condition identifying the plans (for the avoidance of doubt) to be approved as part of this outline proposal is necessary (condition 2). In addition, a

condition requiring that the development be carried out generally in accordance with the illustrative material is necessary, as it is this illustrative material which has demonstrated how the development might go ahead in a satisfactory manner (4). As explained above, these illustrative plans should omit the dwelling mix.

113. A range of details need to be submitted for subsequent approval (1, 2 and 6) in the interests of the appearance of the development. Along with the full range of reserved matters, these are:

- The materials to be used (7).
- Street lighting (8).

114. A number of actions need to be taken before the commencement of the development. These include:

- The provision of the access to the site in the interests of highway safety (5).
- The production and implementation of a programme of archaeological work in the interests of heritage considerations (10).
- The production of a scheme for surface and foul water, to be implemented before occupation, in the interests of providing proper drainage and minimising flood risk (10).
- A hard and soft landscaping scheme, including a management plan. This needs to be approved, implemented and maintained within specified timescales, in the interests of the appearance of the development and the area. For the same reason, the trees to be retained need to be protected (15, 16, 17 and 18).
- In the interests of nature conservation and ecology, an Environmental Protection Plan and a Protected Species Contingency Plan, along with an ecological enhancement scheme, need to be submitted approved and implemented (19, 20 and 21).

115. There is a need for a number of controls over how the development would be undertaken:

- To minimise flood risk, the development should be undertaken in accordance with the Flood Risk Assessment, including the mitigation measures therein (11).
- In the interests of highway safety, a Construction Method Statement, dealing with the details of the highway aspects of the construction, needs to be approved and implemented (12).
- In the interests of the living conditions of nearby residents, the hours of construction work need to be controlled (22).

116. Before the occupation of any dwellings, a number of actions need to have been taken:

- The off-site highway scheme needs to have been implemented, in the interests of highway safety (13).

- A Travel Plan should have been approved and implemented, in the interests of encouraging sustainable modes of transport (14).

117. Finally, if it is considered that very special circumstances justifying development in that part of the site in the Green Belt do not exist, a condition should be imposed preventing development, including material changes of use of land in that area (23).

#### *Planning Obligation*

118. A Planning Obligation signed by all relevant parties has been submitted. (This replaces a Unilateral Obligation previously submitted.) The Obligation provides:

- A healthcare contribution towards the provision of healthcare services at local surgeries. This is in accordance with LP policy P21.
- A contribution towards educational provision at primary and secondary level, also in accordance with LP policy P21.
- A transport contribution related to improved bus services and two rounds of personalised travel planning, in accordance with LP policy P8.
- The provision of an on-site Sustainable Urban Drainage System, in accordance with LP policy P15.
- Affordable housing, in accordance with LP policy P4.
- The provision of on-site amenity open space, in accordance with LP policies P15 and P20.
- Off-site highway improvement works, in accordance with LP policy P8.

119. These matters are all supported by development plan policy (and in some cases Supplementary Planning Documents). There is comprehensive evidence in the documents submitted with the application and the appeal which further justifies the nature and quantum of the various aspects of the provisions of the obligation.

120. The Obligation therefore accords with the policy in paragraph 204 of the Framework and the tests in Regulation 122 of the Community Infrastructure Levy Regulations 2010. The Obligation is a material consideration in this case. Some of its provisions are designed to mitigate the impact of the proposal and these elements therefore do not weigh in favour of the appeal. However other matters, most notably the provision of affordable housing, weigh significantly in favour of the appeal.

#### *Overall planning balance*

121. There are three mutually dependant dimensions to sustainable development – economic, social and environmental.

122. In terms of the economic role, the development would support jobs during the construction phase. In addition there would be a continuing economic benefit arising from the general uplift in the local economic base.

123. In relation to the social role, the proposal would assist in providing the supply of housing required to meet the needs of present and future generations,

especially affordable housing. As set out above, the development would be accessible to local services.

124. Many of the aspects of the environmental role of sustainability would be considered in more detail at the reserved matters stage. However, to the extent to which the change in the character of the area might be considered to be detrimental, this would be mitigated by the creation of new habitats in the adjoining woodland, additional planting and the introduction of a wetland habitat by way of the SUDS.
125. Overall, the proposal represents sustainable development, and the presumption in paragraph 14 of the Framework is fully engaged. In this case the proposal accords with the development plan, and should therefore be approved. To the extent that part of the development plan is absent – in relation to housing policies – there are no adverse impacts of granting planning permission which would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework as a whole. There are no policies in the Framework which indicate development should be restricted.

### **Recommendation**

126. I recommend that the appeal be allowed and planning permission be granted subject to conditions.

*P. J. G. Ware*

Inspector

**APPEARANCES**

FOR THE APPELLANT:	
Mr C Lockhart-Mummery QC	Instructed by Pinsent Masons LLP
Mr R Gardner BSc(Hons) DipTP MRTPI	Associate, GVA Bilfinger
Mr C May BA(Hons) MRTPI	Director, Pegasus Group
Mr T Colles	Associate Director, Transport Planning, Atkins
Mr A Faizey	Lioncourt Homes

FOR THE LOCAL PLANNING AUTHORITY:	
Mr J C Burcher of Counsel	Instructed by the Borough Solicitor
Mr G Palmer DipTP MRTPI	Planning Manager
Ms R Batts MA MTRPI	Housing policy

INTERESTED PERSONS:	
Mr T Eames	Solihull Ratepayers Association & Dickens Heath Residents Action Group
Mr P Seddon	Tidbury Green Parish Council
Mr P Brandum	Dickens Heath Parish Council
Ms J Walters BSc(Hons) MRTPI	CPRE Warwickshire
Mr C Farr	Local resident
Ms D Wright	Local resident
Mr Z Shah	Local resident

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**DOCUMENTS**

Doc 1	Lists of those present at the Hearing
Doc 2	Council's notification letter and list of those notified
Doc 3	Appeal decision (27 March 2015) at Stow-on-the-Wold (APP/F1610/A/13/2203411)
Doc 4	Appellant's transport comments related to the Statement of Tidbury Green Parish Council
Doc 5	Appellant's planning comments related to the Statements of Tidbury Green Parish Council, Dickens Heath Parish Council and the CPRE
Doc 6	SHLAA 2012 (extract) – Tidbury Green sites
Doc 7	Solihull Strategic Accessibility Study (2010) (extract)
Doc 8	Hearing statement by Solihull Ratepayers Association & Dickens Heath Residents Action Group
Doc 9	CPRE response to the appellant's Rebuttal Statement
Doc 10	CIL Compliance Schedule
Doc 11	Plan of developments in the area (Mr Seddon)
Doc 12	Plan of school catchment areas
Doc 13	Solihull Strategic Housing Land Availability Assessment – Site Assessments (2012)
Doc 14	Email (10 April 2015) regarding the reopening of Lowbrook Farm Inquiry
Doc 15	Changes to Planning Practice Guidance
Doc 16	Letter (20 January 2014) clarifying TPO position
Doc 17	Statement of Common Ground
Doc 18	Unilateral Planning Obligation (14 April 2015) (Superseded)
Doc 19	Photograph of station cycle rack (15 April 2015)
Doc 20	Tidbury Green Parish Council response on transport matters
Doc 21	Appellant response to Tidbury Green Parish Council transport response
Doc 22	Bilateral Planning Obligation (24 April 2015)

## **Land at Tidbury Green Farm, Fulford Hall Road, Tidbury Green**

### **Schedule of conditions**

- 1) The development hereby permitted shall be begun before the expiration of three years from the date of this permission or before the expiration of two years from the date of approval of the last of the reserved matters to be approved, whichever is the later.
- 2) Application for approval of the reserved matters shall be made to the local planning authority before the expiration of three years from the date of this permission.
- 3) The development hereby permitted shall be carried out in accordance with the following approved plans: Site Location Plan DE090-008; Redline Plan DE090-007; Proposed S178 works 5117672/TP/GA/002B (in respect of junction details only).
- 4) The development hereby permitted shall be carried out in general accordance with the Illustrative Layout (Rev A) and the Indicative Housing Plan.
- 5) No development shall commence (except for highways works needed to facilitate access to the development) until vehicular access to the site has been provided in accordance with the details contained on drawing number: 5117672/TP/GA/002B.
- 6) Approval of the details of (a) appearance; (b) landscaping; (c) layout; and (d) scale ('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.
- 7) 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 materials.
- 8) Prior to commencement of the development, details of an external street lighting scheme shall be submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 9) No development shall take place on the site until a programme of archaeological work has been undertaken in accordance with a written scheme of investigation which has been submitted to and approved in writing by the local planning authority.
- 10) The development hereby permitted shall not commence until plans for the disposal of surface water, foul sewage, and a sustainable urban drainage scheme have been submitted to and approved by the local planning authority. The scheme shall be implemented in accordance with the approved details before the relevant part of the development is first brought into use.

- 11) The development hereby permitted by this planning permission shall be carried out in accordance with the Flood Risk Assessment (FRA), prepared by Atkins, dated 30 September 2013. The mitigation measures in the FRA shall be implemented prior to the first occupation of any dwelling.
- 12) The development shall not commence, including any works of demolition, until a Construction Method Statement (CMS) has been submitted to, and approved in writing by, the local planning authority. The approved CMS shall be adhered to throughout the construction period. The CMS shall provide for:
  - (i) The parking of vehicles of site operatives and visitors.
  - (ii) Loading and unloading of plant and materials.
  - (iii) Storage of plant and materials used in constructing the development.
  - (iv) The erection and maintenance of security hoardings, including decorative displays.
  - (v) Wheel washing facilities.
  - (vi) Measures to control the emission of dust and dirt during construction.
  - (vii) Details of haul routes.
  - (viii) Before and after carriageway surveys of haul routes the extent of which to be agreed with the local planning authority.
  - (ix) A scheme for recycling/disposing of waste resulting from any demolition and construction works.
- 13) No dwelling shall be occupied until the off-site highways scheme has been submitted to and approved by the local planning authority. The scheme shall be implemented in accordance with the approved details.
- 14) The development shall not be occupied until a residential Travel Plan has been submitted to and approved in writing by the local planning authority. The residential Travel Plan shall include details of:
  - (i) Residential surveys.
  - (ii) The role of the Travel Plan coordinator over the life of the plan.
  - (iii) The implementation of Travel Plan measures over a period of 5 years and incentives to promote sustainable modes of transport.
- 15) No development shall take place until there has been submitted to and approved in writing by the local planning authority a scheme of hard and soft landscaping, which shall include indications of all existing trees and hedgerows on the land, and details of any to be retained together with measures for their protection in the course of development.

- 16) 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.
- 17) No development shall take place until a landscape management plan, including long-term design objectives, management responsibilities and maintenance schedules for all landscaped areas (except privately owned domestic gardens), shall be submitted to and approved in writing by the local planning authority. The landscape management plan shall be carried out as approved. The landscape management plan shall include the following elements:
- (i) Detail, extent and type of new planting.
  - (ii) Details of maintenance regimes.
  - (iii) Details of treatment of site boundaries and/or buffers around water bodies.
  - (iv) Details of management responsibilities.
- 18) In this condition "retained tree" means an existing tree which is to be retained in accordance with the approved plans and particulars; and paragraphs (i) and (ii) below shall have effect until the expiration of 1 year from the date of the occupation of the last dwelling hereby approved:
- (i) No retained tree shall be cut down, uprooted or destroyed, nor shall any retained tree be topped or lopped other than in accordance with the approved plans and particulars, without the written approval of the local planning authority.
  - (ii) If any retained tree is removed, uprooted or destroyed or dies, another tree shall be planted at the same place and that tree shall be of such size and species, and shall be planted at such time, as may be specified in writing by the local planning authority.
  - (iii) The erection of fencing for the protection of any retained tree shall be undertaken in accordance with the approved plans and particulars before any equipment, machinery or materials are brought on to the site for the purposes of the development, and shall be maintained until all equipment, machinery and surplus materials have been removed from the site. Nothing shall be stored or placed in any area fenced in accordance with this condition and the ground levels within those areas shall not be altered, nor shall any excavation be made, without the written approval of the local planning authority.

- 19) No development shall take place until an Environment Protection Plan has been submitted to and approved in writing by the local planning authority. The plan shall include:
- (i) An appropriate scale plan showing the environment protection zones where any construction activities are restricted and where protective measures will be installed or implemented.
  - (ii) Details of protective measures (both physical measures and related to working practices) to avoid impacts during construction.
  - (iii) A timetable to show phasing of construction activities to avoid periods of the year when sensitive wildlife could be harmed (such as the bird nesting season).

All construction activities shall be undertaken in accordance with the approved details and timing of the Environment Protection Plan.

- 20) No development shall take place until full details of a Protected Species Contingency Plan has been submitted to and approved in writing by the local planning authority. The plan shall include:
- (i) Surveys at agreed periods carried out by an expert to determine the possible presence of protected species.
  - (ii) Details of appropriate mitigation measures and contingency plans should such a protected species be found to be present and either preparing to breed or in the process of breeding or rearing young.
  - (iii) The surveys, mitigation and contingency measures shall be implemented in accordance with the Protected Species Contingency Plan.
- 21) No development shall take place until full details of an ecological creation, enhancement and restoration scheme have been submitted to and approved in writing by the local planning authority, and these works shall be carried out as approved. The details shall include:
- (i) The purpose, aims and objectives of the scheme.
  - (ii) A review of the site's ecological potential and any constraints.
  - (iii) A description of target habitats and range of species appropriate to the site.
  - (iv) Selection of appropriate strategies for creating and restoring target habitats or introducing and encouraging target species.
  - (v) Selection of specific techniques and practices for establishing vegetation.
  - (vi) Sources of habitat material (e.g. plant stock) or species.

- (vii) Method statement for site preparation and establishment of target features.
- (viii) Extent and location of proposed works.
- (ix) Aftercare and long term management.
- (x) Timings of works.
- (xi) Monitoring.
- (xii) Disposal of waste arising from the works.

All habitat creation works shall be carried out in accordance with the approved details, unless otherwise approved in writing by the local planning authority. The works shall be carried out in accordance with the programme agreed with the local planning authority.

- 22) Construction works shall not take place outside 0730 hours to 1800 hours Mondays to Fridays, and 0800 hours to 1300 hours on Saturdays, nor at any time on Sundays or Bank Holidays.

***Condition related only to that part of the site within the Green Belt, which might be imposed if very special circumstances were not found to exist***

- 23) No development hereby permitted, including any material change of use, shall take place on that part of the site within the Green Belt.



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

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

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

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

The decision may be challenged by making an application for permission to the High Court under section 288 of the Town and Country Planning Act 1990 (the TCP Act). This new requirement for permission to bring a challenge applies to decisions made on or after 26 October 2015.

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

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

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

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

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

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

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

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

Where an inquiry or hearing has been held any person who is entitled to be notified of the decision has a statutory right to view the documents, photographs and plans listed in the appendix to the Inspector's report of the inquiry or hearing within 6 weeks of the 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.