



Department for
Communities and
Local Government

Our Ref: APP/K3415/W/15/3024063

Mr Shaun Taylor
Satplan Ltd
Kemp House
152 City Road
London EC1V 2NX

13 February 2017

Dear Mr Taylor

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78
APPEAL MADE BY LYLEVALE PROPERTY LIMITED
LAND AT EXPRESS ESTATE, FISHERWICK ROAD, FISHERWICK, LICHFIELD,
STAFFORDSHIRE, WS13 8XA
APPLICATION REF: 14/00394/OUTM**

1. I am directed by the Secretary of State to say that consideration has been given to the report of Michael Boniface MSc MRTPI who held a public local inquiry on 17-20 November and 9 December 2015 into your client's appeal against the decision of Lichfield District Council ('the Council') to refuse by notice dated 24 February 2015 planning permission for up to 180 dwellings including access in accordance with application ref: 14/00394/OUTM dated 14 March 2014.
2. On 13 January 2016 this appeal was recovered for the Secretary of State's determination, in pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act 1990, because the appeal involves proposals for residential development of over 150 units or a site of over 5 hectares, which would significantly impact on the Government's objective to secure a better balance between housing demand and supply and create high quality, sustainable, mixed and inclusive communities.

Inspector's recommendation and summary of the decision

3. The Inspector recommended that the appeal be dismissed.
4. The Secretary of State agrees with the Inspector's conclusions, except where stated, and agrees with his recommendation and has decided to dismiss the appeal and refuse planning permission. A copy of the Inspector's report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

Matters arising since the close of the inquiry

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

Policy and statutory considerations

8. In reaching his decision, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise.
9. In this case, the development plan consists of the saved policies of the Lichfield District Local Plan (1998) (LP), and the Lichfield District Local Plan Strategy 2008-2029 (2015) (LPS). The Secretary of State considers that the development plan policies of most relevance to this case are those set out at IR8-12. The Secretary of State has also given consideration to the emerging Whittington and Fisherwick Neighbourhood Plan. Paragraph 216 of the Framework states that decision makers may give weight to relevant policies in emerging plans according to: (1) The stage of preparation of the emerging plan; (2) The extent to which there are unresolved objections to relevant policies in the emerging plan; and (3) The degree of consistency of relevant policies to the policies in the Framework. While he considers that the relevant policies in the draft Neighbourhood Plan are not inconsistent with the objectives of the Framework, the Secretary of State has taken into account that the emerging Neighbourhood Plan is at an early stage of preparation, and has not yet been through Examination and that there are outstanding objections to the Neighbourhood Plan. For these reasons, therefore, the Secretary of State agrees with the Inspector (IR 191) and considers that the emerging Neighbourhood Plan carries very limited weight.
10. Other material considerations which the Secretary of State has taken into account include the National Planning Policy Framework ('the Framework') and associated planning guidance ('the Guidance'), as well as the Community Infrastructure Levy (CIL) Regulations 2010 as amended.

Main issues

11. The Secretary of State agrees with the Inspector that the main issues are those set out at IR112.

Housing Land Supply (HLS)

12. As part of the reference back exercise (referred to at paragraphs 5-7 above), the Secretary of State has taken into account the representations made by all the parties on this issue. He notes too that in September 2016, both the Lichfield District SHLAA 2016 and the Council's Five Year Housing Land Supply Paper 2016 were published by Lichfield District Council on its website. He has taken all the above evidence and the Inspector's analysis into consideration in his assessment of the HLS position.

Housing Requirement

13. The Council has a recently adopted Local Plan, the Lichfield District Local Plan Strategy 2008-2029 (LP) which was adopted on 17 February 2015. The Secretary of State notes (IR114) that it is agreed by the parties that the LP provides a robust housing requirement figure of 10,030 dwellings for the plan period, or 478 dwellings per annum (dpa).

Addressing shortfall

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

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

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

17. The Secretary of State further notes that the Local Plan Inspector recognised the potentially critical impact of using either the Liverpool or Sedgefield approaches, and the Planning Policy Guidance, before reasoning that the required housing trajectory using Sedgefield was highly likely to prove unrealistic due to the serious doubt about the necessary high rate of delivery over five years would be attainable in market terms.

18. The Secretary of State has carefully considered the appellant's submissions in favour of the 'Sedgefield approach' being adopted summarised at IR 27-30 and analysed by the Inspector at IR 115-124. Having regard to the arguments in favour of the 'Sedgefield approach' being adopted, the Secretary of State considers that these matters do not represent sufficient grounds to not follow the 'Liverpool approach' to addressing shortfall adopted within the LP following rigorous examination and, therefore, agrees with the LP

Inspector and appeal Inspector (IR 124) that the shortfall should be apportioned across the remaining plan period.

19. The Secretary of State thus finds that addressing the shortfall over the remaining plan period would give an annual requirement of 627 dpa, or 3,135 over the 5 year period.

Buffer

20. Paragraph 47 of the Framework requires that an additional buffer of 5% be added to this figure (moved forward from later in the plan period) to ensure choice and competition in the market for land. Where there has been a record of persistent under delivery, it states the buffer should be increased to 20% for the same reason, and to provide a realistic prospect of achieving the planned supply. Having carefully considered the evidence and the parties' submissions on the issue, the Secretary of State agrees with the Inspector's analysis for the reasons given (IR 125-129) that a 20% buffer is appropriate in this case, given the historic under delivery of housing in the District and that the 20% buffer should also be added to the shortfall. This leads to a 5 year requirement of 3,762 dwellings or 752 dpa.

Supply

Windfalls

21. Paragraph 48 of the Framework and paragraph 3-24-2-140306 of the PPG states that LPAs may make an allowance for windfall sites in the 5 year supply if they have compelling evidence that such sites have consistently become available in the local area and will continue to provide a reliable source of supply. It states any allowance should be realistic having regard to the SHLAA, historic windfall delivery rates, and expected future trends. The Secretary of State notes that the parties have agreed that a windfall allowance of 50dpa is reasonable (IR 19). Having had regard to the average historic delivery of windfall permissions in the District, as set out in the SHLAA 2016, the Secretary of State considers that a windfall allowance of 50dpa is reasonable and consistent with paragraph 48 of the Framework.

Lapse rate

22. The Secretary of State notes that the parties agree that a 5% lapse rate is appropriate (IR19).

Delivery

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

Walsall Road and Limburg Avenue, Hallam Park

24. The Secretary of State has had regard to the Five Year Housing Land Supply Paper 2016 and concludes that while the site will not deliver any dwellings in 2016/2017, as planning permission has been granted it is reasonable to conclude that over the 5 year period 157 units will be delivered.

East of Lichfield (Streethay) SDA

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

South of Lichfield SDA

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

East of Burntwood Bypass SDA

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

King Edward School

28. In regard to King Edward VI School, while the Secretary of State has taken account of the Council's representation of 15 June 2016, which states that pre-application discussions have been held regarding this site and the likelihood that it will come forward within 5 years, the Secretary of State concludes, in agreement with the Inspector (IR 12.67) that there is insufficient evidence to include the site within the Council's housing land supply, and therefore he removes the figure of 32 dwellings from his calculations.

Dean Slade Farm

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

Conclusions on five year HLS

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

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

32. The Secretary of State notes from the 5 year Housing Land Supply Paper 2016 that the Council states it has 4,149 net deliverable capacity in the 5 year period. For the reasons given above the Secretary of State has deducted 307 units from the net deliverable

capacity for the disputed Dean Slade Farm and King Edwards School sites leaving a total of 3,842 net deliverable capacity.

33. As such, the Secretary of State finds that there is a surplus of 307 dwellings, or a 5.11 year housing land supply.
34. For the reasons set out above the Secretary of State agrees with the Inspector and concludes in his judgement that the local planning authority can demonstrate a 5 year supply of deliverable housing sites. In these circumstances, paragraph 49 of the Framework is not engaged and the Secretary of State concludes that the relevant policies of the development plan are up to date.

Location, accessibility and sustainable travel

35. For the reasons set out by the Inspector at IR147-176, the Secretary of State agrees that the site is not an appropriate location for residential development given its lack of accessibility. He further agrees that the future residents of the development would become unacceptably reliant on the use of private cars, failing to contribute to objectives within the Framework to promote sustainable patterns of development and means of travel so as to combat climate change, reduce greenhouse gases and achieve sustainable development. He also agrees with the Inspector that the development is not of a scale and nature appropriate to its locality, nor would it reduce the overall need to travel, whilst optimising choice of sustainable modes of travel, particularly walking, cycling and public transport, and would thus conflict with Policies CP5, ST1 and BE1 of the LP (IR 176).

Character and appearance

36. For the reasons set out at IR177-193 the Secretary of State agrees with the Inspector that while the development would initially cause moderate adverse harm to landscape character, subject to an appropriate landscape strategy, these impacts would significantly reduce over time so as to become minor by year 15. He also agrees that the existing site is itself an anomaly in the landscape and the proposed woodland planting offers an opportunity for landscape regeneration in an area noted to be in need of such intervention.
37. The Secretary of State agrees that the landscape impacts must be compared against the existing situation, which is a negative feature on the landscape, as well as being balanced against the proposed landscape regeneration in the form of woodland planting. As such, he agrees with the Inspector that the development would not materially harm the character and appearance of the area. He thus finds no conflict with Policies CP1, CP3, Core Policy 12, Core Policy 14, NR1 or BE1 of the LP.

Other matters

38. Whatever the current position in relation to the Council's HLS, the Secretary of State agrees that the Council has a significant need for affordable housing that it is failing to meet year on year. He agrees that the proposed development would provide 31% affordable housing, equating to 56 units out of 180. This would be a significant contribution towards meeting the identified, and undisputed, need in the district. He attaches significant weight to this benefit.
39. The Secretary of State has had regard to the other benefits of the proposal, including potential ecological enhancements; use of renewable energy and energy efficiency

technology; economic gains during construction, increased population and local expenditure and payments to the Council through the New Homes Bonus. Agreeing with the Inspector's conclusions at IR195 that even cumulatively these matters do not outweigh the harm identified and the conflict with the development plan, he affords them moderate weight.

Planning conditions

40. The Secretary of State has given consideration to the Inspector's analysis at IR198-209 of the recommended conditions set out at the end of the IR and the reasons for them, and to national policy in paragraph 206 of the Framework and the relevant Guidance. While he is satisfied that the conditions recommended by the Inspector comply with the policy test set out at paragraph 206 of the Framework and the relevant Guidance he does not consider that the imposition of these conditions would overcome his reasons for dismissing this appeal.

Planning obligations

41. The Secretary of State has carefully considered the Inspector's analysis at IR210-214, the planning obligations set out in the Unilateral Undertaking dated 9 December 2015, paragraphs 203-205 of the Framework, the Guidance, and the Community Infrastructure Levy Regulations 2010, as amended. However, as the Council's Community Infrastructure Levy (CIL) charging regime came into force on 13 June 2016, the Secretary of State has gone on to consider whether these still apply. He concludes that the requirement for affordable housing; the provision of open space; the Primary Education Contribution; the Travel Plan measures; and the Traffic Regulation Order would still apply. However, the Leisure contribution has now fallen away as it is now subject to CIL, and no regard has been had to that in reaching his decision.

42. The Secretary of State agrees with the Inspector's conclusion for the reasons given in IR213 that the obligations set out in the Unilateral Undertaking of 9 December 2015 comply with Regulation 122 of the CIL Regulations and the tests at paragraph 204 of the Framework and are necessary to make the development acceptable in planning terms, directly related to the development, and are fairly and reasonably related in scale and kind to the development. However, the Secretary of State does not consider that the obligations overcome his reasons for deciding that the appeal should be dismissed.

Planning balance and overall conclusion

43. 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. For the reasons given above, the Secretary of State considers that the appeal scheme is not in accordance with Policies CP5, ST1 and BE1 of the development plan. Therefore, applying the first limb of Section 38(6) of the Planning and Compulsory Purchase Act 2004, the Secretary of State considers that the proposal is not in accordance with the development plan overall. He has gone on to consider, applying the second limb of Section 38(6) of the Planning and Compulsory Purchase Act 2004, whether there are material considerations which indicate that the proposal should be determined other than in accordance with the development plan.

44. For the reasons given, he attaches significant weight to the benefits of the provision of market and affordable housing. In doing so he considers that the appeal proposal

advances the social and economic roles identified in paragraphs 7 and 8 of the Framework which are not diminished owing to the Council now being able to demonstrate a five year supply. For the reasons above, he attaches further moderate weight to the benefits of potential ecological enhancements; use of renewable energy and energy efficiency technology; economic gains during construction, increased population and local expenditure and payments to the Council through the New Homes Bonus.

45. As the development would not materially harm the character and appearance of the area, with no conflict with the relevant policies referred to at paragraph 37 above, the Secretary of State gives no weight to this. However, he attaches significant weight to the lack of accessibility of the site, given that it would not be located appropriately in terms of accessibility to services and facilities. He has had regard to paragraph 34 of the Framework, which seeks to ensure that developments which would generate significant movement are located where the need to travel will be minimised and the use of sustainable transport modes can be maximised. Whilst opportunities for sustainable transport are likely to be less in a rural area such as this one, he agrees with the Inspector that this location is particularly poor and would require future residents to be heavily reliant on private vehicles. The development is not of a scale and nature appropriate to its locality, nor would it reduce the overall need to travel, whilst optimising choice of sustainable modes of travel, particularly walking, cycling and public transport.
46. Having assessed the proposal against the Framework taken as a whole, the Secretary of State agrees with the Inspector at IR216 that the significant environmental harm that would result from the development is such that, notwithstanding the benefits of the proposal, it should not be considered to represent 'sustainable development' for the purposes of the Framework.
47. The Secretary of State concludes that overall the material considerations do not indicate that the proposal should be determined other than in accordance with the development plan. The Secretary of State therefore concludes that your client's appeal should be dismissed.

Formal decision

48. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. He hereby dismisses your client's appeal and refuses planning permission for up to 180 dwellings including access in accordance with application ref: 14/00394/OUTM dated 14 March 2014.

Right to challenge the decision

49. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged. This must be done by making an application to the High Court within 6 weeks from the day after the date of this letter for leave to bring a statutory review under section 288 of the Town and Country Planning Act 1990.
50. A copy of this letter has been sent to Lichfield District Council, and notification has been sent to others who asked to be informed of the decision.

Yours faithfully

Philip Barber

Authorised by Secretary of State to sign in that behalf

Annex A

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

Party	Date
Bal Nahal, Solicitor, Lichfield District Council	3 June 2016
Shaun Taylor, Managing Director, Satplan Ltd	7 June 2016
Sophie Sherratt, Staffordshire County Council	7 June 2016
Martyn Bennett, Chairman, Whittington and Fisherwick Parish Council	Dated 9 May 2016 in error

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

Party	Date
Shaun Taylor, Managing Director, Satplan Ltd	15 June 2016
Bal Nahal, Solicitor, Lichfield District Council	15 June 2016

Report to the Secretary of State for Communities and Local Government

by Michael Boniface MSc MRTPI

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

Date: 15 March 2016

TOWN AND COUNTRY PLANNING ACT 1990
LICHFIELD DISTRICT COUNCIL
EXPRESS ESTATE, FISHERWICK ROAD, FISHERWICK, LICHFIELD
APPEAL BY LYALVALE PROPERTY LTD

Inquiry held on 17, 18, 19 & 20 November 2015 and 9 December 2015

Express Estate, Fisherwick Road, Fisherwick, Lichfield, Staffordshire, WS13 8XA

File Ref: APP/K3415/W/15/3024063

File Ref: APP/K3415/W/15/3024063

Express Estate, Fisherwick Road, Fisherwick, Lichfield, Staffordshire, WS13 8XA

- 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 Lyalvale Property Ltd against the decision of Lichfield District Council.
- The application Ref 14/00394/OUTM, dated 14 March 2014, was refused by notice dated 24 February 2015.
- The development proposed is up to 180 dwellings including access.

Summary of Recommendation: That the appeal be dismissed.

Procedural Matters

1. After the Inquiry had closed, the appeal was recovered by the Secretary of State for Communities and Local Government for his own determination, in accordance with his powers under section 79 and paragraph 3 of Schedule 6 of the Town and Country planning Act 1990¹. The reason for the Secretary of State's direction was that the appeal involves proposals for residential development of over 150 units or a site of over 5 hectares, which would significantly impact on the Government's objective to secure a better balance between housing demand and supply and create high quality, sustainable, mixed and inclusive communities.
2. The application is submitted in outline with access to be considered. Matters of appearance, landscaping, layout and scale are reserved for subsequent consideration.
3. During the appeal, the appellant submitted a revised Illustrative Master Plan '015-007-005 Rev A'². This was considered by the Council and discussed during the Inquiry.
4. Prior to the Inquiry, a revised Transport Assessment (October 2015) and Travel Plan (October 2015) were provided by the appellant, which sought to deal with a number of the concerns raised by the Council. Various Rebuttal Statements were also exchanged in relation to highways matters. This led to the parties agreeing traffic generation and distribution figures and an acceptance by the Council that the development would not have a severe impact on the local highway network, subject to mitigation of impacts at two junctions. Following this agreement, the Council did not defend this aspect of refusal reason 2, other than in relation to the necessary junction improvements.

The Site and Surroundings

5. The site extends to approximately 9.77 hectares and was formerly used for the storage of explosives used in the quarrying industry. It is currently used for the storage of components used in the manufacture of sporting ammunition. It comprises 13 concrete storage buildings/magazines surrounded by earth bunds of approximately 4m in height. Each magazine is equipped with a lightning rod of approximately 16m in height. A chain link fence surrounds the facility. The site is located in open countryside, around 1.4 miles (2.2km) from the village

¹ Direction letter dated 13 January 2016

² Contained at Appendix SAT3 of Proof of Evidence of Shaun Taylor (October 2015)

centre of Whittington. The Lyalvale Express Ltd building, which continues to manufacture sporting ammunition, is located adjacent to the site.

6. A long private access road serves the site and the adjacent factory premises. Large areas of hard standing also exist within the site, forming an internal road network that provides vehicular access to each of the magazines. It is agreed between the parties that the site is previously developed land³.

Planning Policy

7. The development plan comprises the Lichfield District Local Plan Strategy 2008 - 2029 (LP) (adopted 17 February 2015).
8. Core Policy 1 (CP1) of the LP sets out the Spatial Strategy for the district, confirming that a minimum of 10,030 dwellings will be delivered within the most sustainable settlements, making best use of and improving existing infrastructure. Throughout the district, growth is to be located at the most accessible and sustainable locations in accordance with the settlement hierarchy. Proposals will be expected to make efficient use of land and prioritise the use of previously developed land.
9. The settlement hierarchy seeks to direct residential development to the Strategic Centre (Lichfield), Other Large Centre (Burntwood) and Neighbourhood Towns (Rugeley and Tamworth), before Key Rural Settlements (Fradley, Fazeley, Shenstone, Armitage with Handsacre, Whittington and Alrewas) and Other Rural areas. The nearest settlement to the site is Whittington, identified as a Key Rural Settlement within the hierarchy, but the site is some way outside of the village in open countryside.
10. Core Policy 6 (CP6) sets out details as to the level of housing development expected in various locations. In addition to the deliverable and developable sites identified by the Council, 440 dwellings are to be distributed across the Key Rural Settlements. This will be apportioned through the Local Plan Allocations Document or Community Led Plans, both of which are at very early stages of preparation. Housing in the Other Rural areas may be brought forward via a Community Led Plan. This policy recognises that some sites adjacent to existing settlement boundaries will need to be identified to accommodate housing that cannot be built within existing settlements.
11. Policy Whit4 expects a range of between 35 – 110 homes to be built at Whittington.
12. Core Policy 3 (CP3) seeks to deliver sustainable development requiring, amongst other things, that development is of a scale and nature appropriate to its locality; encouraging the re-use of previously developed land in the most sustainable locations; and reducing the overall need to travel, whilst optimising choice of sustainable modes of travel, particularly walking, cycling and public transport. Core Policy 5 (CP5), Policy ST1 and Policy BE1 have similar objectives to promote sustainable travel.

³ Paragraph 2.4 of the Planning Statement of Common Ground (November 2015)

Planning History

13. A summary of the site's planning history is contained in the Council's committee report⁴ but there is no history which is relevant to the current appeal.

The Proposals

14. The development would involve the construction of up to 180 dwellings with vehicular access provided along the route of the existing private track to Fisherwick Road. All matters, other than access, are reserved for subsequent consideration but it is agreed that the development would involve buildings a maximum of two storeys high, that 2.6ha of open space would be provided on site and that landscape buffers would be provided on the periphery of the site⁵. 25% of the proposed dwellings (45 out of 180 units) would be provided as affordable housing. The indicative drawing provided demonstrates how the proposed scheme might be laid out⁶.

Other Agreed Facts

15. The appeal documents include a Planning Statement of Common Ground (November 2015), an Agreed Statement of Common Ground relating to Landscape Matters (16 November 2015), Statement of Common Ground - Highways and Transportation (October 2015), Housing Land Supply Statement of Common Ground (November 2015) and a Statement of Common Ground Relating to Education Contribution (9 December 2015).
16. The first document agrees the reasons for refusal; a description of the site and surroundings; a description of the proposal and the development parameters; the development plan policies relevant to the proposal, as well as supplementary planning documents and national policy and guidance documents; and that no objections to the planning application had been received from consultees other than Staffordshire County Council.
17. The second includes details of the site location and description, along with applicable policies. The following detailed matters are also agreed:
- The appeal site is located outside the settlement boundary of Whittington;
 - The site is not allocated for any purpose and is located in open countryside;
 - The site is previously development or brownfield land;
 - The site is not subject to any planning designations, including any environmental, historic environment, open space or qualitative landscape designations;
 - The National Planning Policy Framework (the Framework) includes a 'presumption in favour of sustainable development', defines the meaning of sustainable development and highlights that the three roles contributing to sustainable development should not be read in isolation;

⁴ Appendix 2 to Proof of Evidence of Susan Hodgkinson

⁵ Paragraph 3.3 of the Planning Statement of Common Ground (November 2015)

⁶ Drawing 015-007-005 Rev A - Contained at Appendix SAT3 of Proof of Evidence of Shaun Taylor (October 2015)

- The site is not subject to any national, regional and local landscape designation and will not affect any wider statutorily protected sites or landscape;
- The Landscape and Visual Impact Assessment (February 2014) provides a suitable basis on which to assess the landscape and visual impacts of the proposal. Two additional photo viewpoints are nonetheless provided by the Council;
- The site is not a recognised 'valued landscape' in the terms of paragraph 109 of the Framework and this part of the rural area is not classified as a high quality landscape;
- The site falls within the Central Rivers initiative (Policy EA14);
- There are few landscape features within the site;
- Existing trees and vegetation associated with ditches would be largely retained, with the exception of some clearance of vegetation alongside the existing ditches to facilitate a SuDS drainage scheme.

18. With regards to Highways and Transportation, the following matters are agreed:

- The submitted Personal Injury Collision records, traffic flow and turning count survey data used in the Transport Assessment are appropriate;
- The development would generate 147 total vehicle trips (arrivals and departures) in each peak hour;
- For the traffic impact assessment, the AM peak is 08.00-09.00 and the PM peak is 17.00-18.00;
- Trip distribution data is agreed⁷;
- The traffic impact assessment considers an opening year of 2017 and a future year of 2020;
- The growth factors for the scenario years, determined by TEMPRO (as set out in the revised Transport Assessment) and applied in the traffic impact assessment are realistic;
- The following junctions have been included in the traffic impact assessment: A51/Lichfield Road; Lichfield Road (or Whittington Common Road)/Cappers Lane/Church Street (with Darnford Lane being incorporated with Lichfield Road movements; A51/Common Lane; Main Street/Fisherwick Road/Common Lane/Church Street; Fisherwick Road/Site Access; Fisherwick Road/A513 Tamworth Road;
- The findings of the traffic impact assessment, which was undertaken using PICADY software, demonstrate that none of the junctions currently have or are forecast to have capacity issues during the scenario years tested;
- The site is accessed from Fisherwick Road by an access road that is to be 5.5m wide and have a footway of 2m wide along one side;

⁷ Table 1.1 of the Statement of Common Ground – Highways and Transportation (Oct. 2015)

- The site access has been designed to be suitable for future adoption but no decision has been made as to whether the County Council would adopt;
- The site access road and junction with Fisherwick Road has been demonstrated via swept path analysis as being suitable for refuse and heavy goods vehicles;
- The site access has sufficient visibility splays in both directions;
- A clear 1.2m wide footway would be provided along Fisherwick Road over the West Coast Mainline from the junction with the site access road to the junction with the U3067 to facilitate pedestrian movements;
- The Coventry Canal Towpath is a permissive path as opposed to a public right of way. There is no legal right of access, however public use of the route is permitted by the landowner (The Canal and Rivers Trust). The route can be closed as required;
- Any upgrade to the towpath would be subject to detailed discussions and agreement from the Canal and Rivers Trust;
- There is no capacity concern at the junction of Church Street/Fisherwick Road/Main Street/Common Lane, however, there are existing sub-standard visibility splays. The introduction of a Traffic Regulation Order at this location would improve visibility and prevent obstruction;
- A no stopping order would help to manage movements outside Whittington Primary School and a financial contribution could be secured as a Planning Obligation in this respect.

19. The following matters are agreed in respect to Housing Land Supply:

- The most recent information available relating to the Council's five year housing land supply position is contained in the Council's 2015 Strategic Housing Land Availability Assessment (SHLAA) Update published in October 2015;
- The housing requirement is set within the LP and requires 10,030 dwellings to be provided within the plan period 2008-2029. This equates to 478 dwellings per annum;
- The Examining Inspector for the Local Plan concluded that the Liverpool approach to dealing with a shortfall in housing supply should be used for Lichfield;
- The density assumptions set out in the SHLAA for sites without planning permission are appropriate and reasonable;
- The Council's windfall allowance of 50 dwellings per annum contained within its housing supply figure is considered reasonable;
- The 5% non-implementation rate for lapsed planning permissions is appropriate;
- Housing completions in Lichfield since 2008 have been below the annual requirement of 478 dwellings.

20. The Statement of Common Ground relating to Education Contribution confirms agreement of the following matters:

- A contribution of £765,497 is required to mitigate the impact of the development on primary education facilities;
- The contribution will be used towards additional educational provisions at Whittington Primary School;
- The contribution complies with Regulations 122 and 123 of the Community Infrastructure Levy Regulations 2010;
- Subject to the primary education contribution being secured, there is no objection to the appeal proposal on education grounds.

The Case for the Appellant

21. The proposed development would involve reuse of brownfield land which presently causes detriment to the landscape, which is said to be of very low quality. Strong market evidence exists to show that the site would be deliverable as a beneficial residential development (**Document 5⁸**).
22. The Council has failed to meet its housing target for the past 7 consecutive years and has delivered just 5% of its affordable housing needs since the beginning of the plan period. There is a serious backlog in housing supply which needs to be addressed. The Council's anticipated delivery assumptions are ambitious and unrealistic. The Council cannot demonstrate a deliverable five year housing land supply but even if it were concluded that it could this would be extremely fragile given the reliance on a number of large sites to deliver at pre-recession rates, only achieved in the past on one site in 2008⁹. In any case, sustainable development should be supported even where a 5 year housing land supply exists and this is supported by an increasing body of appeals.
23. Although the site is located some distance from the nearest settlement, this does not make it inherently unsustainable and there are numerous examples of development being allowed under similar circumstances (including at Shipston on Stour¹⁰, Formby¹¹ and Whittington Barracks). Inevitably many journeys between the site and Whittington would involve use of a car but these journeys would be very short. Furthermore, there is a real prospect of using other modes of transport. The appellant puts forward an innovative solution to encourage sustainable travel, including the provision of a community mini-bus that would be funded from an annual service charge on individual properties, bridging the gap in public transport.
24. The proposal would make a contribution towards an immediate housing need, including affordable housing. It would utilise previously developed land and provide an alternative to the inevitable release of Green Belt land in the area. The development would have little impact on landscape character subject to the

⁸ Letter of interest from Mulbury dated 20 October 2015

⁹ East Rugeley SDA

¹⁰ APP/J3720/A/12/2185727 (Appendix MM4 of Proof of Evidence of Kevin Riley)

¹¹ Paragraph 2.4.3 of Proof of Evidence of Kevin Riley

proposed mitigation. The proposal would represent sustainable development and would deliver a number of significant benefits.

Housing land supply

25. Paragraph 47 of the Framework requires that local planning authorities should identify and update annually a supply of specific deliverable sites sufficient to provide five years worth of housing against their housing requirements.
26. Dispute exists between the parties as to whether a deliverable five year housing land supply can be demonstrated and this is reliant on the detailed figures and assumptions leading into the calculation. The appellant's Rebuttal with regards to Housing Land Supply suggests a 4.73 years supply at best, though a range of other scenarios were also submitted which show a significantly worse situation¹². This figure was also amended during the course of the Inquiry following concessions by the appellant as to the correct supply figure but remained below a five year supply at 4.85 years¹³.

Addressing shortfall

27. It is agreed by the parties that a shortfall of 1,665 dwellings exists, accumulated since the beginning of the plan period¹⁴. The appellant suggests that the 'Sedgefield approach' to addressing any shortfall in housing delivery should be applied and this is consistent with advice in Planning Practice Guidance, in order to remedy the shortfall as quickly as possible and meet the Framework's objective to boost significantly the supply of housing¹⁵.
28. This is a matter considered by the Examining Inspector for the LP, who concluded that the 'Liverpool approach' was appropriate in the case of Lichfield and that application of the Sedgefield approach would result in a requirement that was unrealistic and unachievable. In short, the plan would be likely to fail under these circumstances¹⁶. Notwithstanding this, the appellant highlights that there has now been another year's under-supply. Furthermore, the latest trajectory published by the Council suggests that housing delivery will be such as to meet the numbers necessary if the Sedgefield approach were to be applied.
29. The Council's latest housing projections¹⁷ anticipate net delivery exceeding 1,000 dpa, peaking at 1,191 in 2018/19. This is dramatically more than anticipated in the trajectory before the Examining Inspector. It was suggested that such a rate of delivery would be similar, and in fact in excess of, the peak Sedgefield figures (approaching 1,000) discounted by the LP Examining Inspector as unrealistic. The implication was made that if such figures could be relied upon, there is no reason not to use the Sedgefield approach in line with PPG.
30. This, the appellant suggests, is a materially different situation to that considered by the Examining Inspector and calls for a re-evaluation of the approach to

¹² Paragraph 4.2 of Rebuttal with regards to Housing Land Supply

¹³ See Note for Inspector Mr Boniface: Updated 5 year supply tales following round table discussion (Updated 20 November 2015)

¹⁴ P.28 of the SHLAA (2015)

¹⁵ Paragraph 035, ID Ref. 3-035-20140306

¹⁶ Paragraph 212 of Report to Lichfield District Council by Robert Yuille (Examining Inspector)

¹⁷ Table 6.4 of the SHLAA (2015)

addressing the shortfall. If the Council's trajectory can be relied upon, there is no good reason not to apply Sedgefield.

Buffer

31. Paragraph 47 of the Framework requires that an additional buffer of 5% be added to the requirement figure (moved forward from later in the plan period) to ensure choice and competition in the market for land. Where there has been a record of persistent under delivery, the buffer should be increased to 20% for the same reason, and to provide a realistic prospect of achieving the planned supply.
32. The appellant seeks a 20% buffer, citing a persistent under delivery of housing against the recognised requirements. The housing requirement has not been met for the last 7 years, the entire plan period so far. Furthermore, the Council's Strategic Housing Land Availability Assessment (SHLAA) 2015 suggests that the requirement will not be met again this year.
33. Although the Examining Inspector for the LP concluded that only a 5% buffer was appropriate at that time, it is suggested that this decision was based on out of date information. His reference to oversupply for 7 out of the last 11 years can only have looked at the period up to 31 March 2012 since the Council has not met its requirement during this plan period since 2008¹⁸.
34. Since Examination of the LP the SHLAA 2014 Addendum (January 2015)¹⁹ and SHLAA 2015 (October 2015)²⁰ have been published by the Council. These show a worsened situation and delivery has now fallen significantly short of the requirement for the past 7 years. Furthermore, the Council's own projections suggest that the requirement will not be met by some margin in this reporting year²¹.
35. Although the findings of the LP Inspector attract significant weight, a conclusion must be reached in this case on the basis of the most up to date information and it is suggested that the situation is now materially different. It is clear that there has now been persistent under delivery and that a 20% buffer should be applied.
36. The buffer should also be applied to the shortfall that has accumulated over the plan period (1,665 dwellings) since this remains part of the housing requirement for the area. This approach was endorsed by the Secretary of State in two recent appeal decisions at Wychavon²² and Nantwich²³ and by Inspectors²⁴.

Supply

37. The SHLAA 2015 sets out assumptions applied by the Council in respect of lead-in times and build out rates where no contrary site specific information is

¹⁸ Paragraph 2.14 of Examining Inspector's Report (Appendix 3 of Proof of Evidence of Melissa Kurihara

¹⁹ Appendix 1 of Proof of Evidence for Melissa Kurihara

²⁰ Appendix 2 of Proof of Evidence for Melissa Kurihara

²¹ Table 6.4 (P.30) of the SHLAA (October 2015)

²² Appendix PDT 9 of Proof of Evidence of Peter Taylor: Extracts of Appeal Decisions APP/H1840/A/13/2199085 & APP/H1840/A/13/2199426

²³ (**Document 10**) Appeal decision APP/R0660/A/13/2197532 & APP/R0660/A/13/2197529

²⁴ Appendices PDT 10 and 11 of Proof of Evidence of Peter Taylor: Extracts of Appeal Decisions APP/R0335/A/14/2219888 & APP/V0510/A/14/2224671

- available²⁵. The appellant largely accepts these assumptions and questions the apparent lack of application of the generic lead-in times in respect of four major sites, including three Strategic Development Area's (SDA)²⁶. It is suggested that the generic lead-in times should be applied to these sites to ensure consistency and accuracy in approach.
38. In these cases, the Council has used site specific information from the LP Examination and through recent discussions with the developer to apply differing lead-in times. It is also noted that no distinction is made between sites with outline planning permission and those with full planning permission.
39. Although the Examining Inspector endorsed the generic build-out rates used by the Council the appellant considers them to be extremely optimistic, noting that only one site in the district has ever come close to the rate of delivery anticipated. This was in the Rugeley Eastern Regeneration Zone, of regional significance. The build-out rates are expressed as maxima and it is clear that this represents the best case scenario. The build out rate assumed by the Council, roughly 50 dwellings per annum per developer, is far in excess of that anticipated in neighbouring authorities including Cannock Chase and East Staffordshire²⁷.
40. It is suggested that the build-out rates proposed should be treated with extreme caution and that a sensitivity check should be applied to ensure that a more realistic picture is created. A build out rate of 40 dwellings per annum per developer is suggested.
41. The build out rates outlined by the Council are far in excess of those ever achieved in the district. The delivery rates suggested by the appellant would be 699 dwellings per annum, still in excess of past rates but far more realistic. The Council's delivery trajectory relies on up to 7 sites with 14 developers all delivering at the maximum anticipated rate of 50 dwellings per annum, a position which is unprecedented. The appellant's position is far more realistic, reducing the annual delivery rate by 10 dwellings per annum per developer and applying the Council's own lead in times from the SHLAA across the board.
42. On the basis of the appellant's supply and requirement assumptions there is at best a 3.57 year housing land supply. Under these circumstances, paragraphs 49 and 14 are engaged, relevant policies for the supply of housing are out of date and the presumption in favour of sustainable development applies.

Location, accessibility and sustainable travel

43. With one exception, there is no dispute between the parties that the site can be safely accessed by vehicular traffic which can be accommodated on the road network without safety or capacity issues in the terms of paragraph 32 of the Framework²⁸. The one exception to this is the junction between Fisherwick Road/U3067. If it is determined that a scheme is required to improve visibility then it can be delivered within the public highway and secured by a Grampian

²⁵ Paragraphs 4.18 and 4.19 of the SHLAA 2015

²⁶ Detailed in Table 5.1 of Proof of Evidence of Peter Taylor

²⁷ Build-out rates compared at paragraph 4.15 of Proof of Evidence of Peter Taylor

²⁸ Transport Assessment contained in Appendix MM1 to Proof of Evidence of Kevin Riley

style condition. However, the appellant asserts that this is not necessary given the lack of any accident data, the limited number of existing and proposed traffic movements at the junction²⁹, the limited potential for conflict given low traffic flows from the east, the reasonable visibility already available and potential for correcting the incorrect road markings at the junction to improve the situation.

44. The real dispute is the site's location and accessibility, in particular, whether measures can be put in place to render the site sufficiently accessible so as to enable it to be viewed as sustainable overall. The appellant suggests that they can for the following reasons:
- The site is a very short car journey to Whittington with a range of services and facilities including opportunities to access public transport;
 - The site is similarly an easy cycle ride to Whittington along lightly trafficked roads already used by cyclists;
 - The site is 1.4 miles from the centre of Whittington (around a 30min walk)³⁰. There is a realistic opportunity to walk safely into the village. For the most part on footways, albeit that a section of the route would necessarily be on carriageway or along the canal towpath;
 - A mechanism is proposed to provide for a dedicated minibus facility through a mandatory and ongoing management charge which could be used to promote sustainable travel for future residents. The revenue from the charge could also support other sustainable travel initiatives. This would provide solutions in perpetuity;
 - A Travel Plan is proposed to encourage sustainable travel such as car sharing and would include a range of measures to ensure a choice of travel modes;
 - The site is well located in terms of proximity and access to strategic networks including road and rail for travelling further afield.
45. There are numerous instances where decision makers have concluded that a site which is physically removed from a settlement but proximate nonetheless is sustainable development provided suitable measures are in place to encourage non-car journeys, and mindful that journeys would be short and less environmentally damaging. One example is the Whittington Barracks site which is a similar distance from the village.
46. The distance and route for walking to Whittington will be appropriate for the majority of people, notwithstanding that inclement weather might dissuade some. A segregated route would be provided for the majority of the route into the village, with awareness raising measures such as signage provided along the 380m stretch that would be on carriageway³¹. Alternatively, people may choose to bypass the on carriageway section in favour of the Coventry Canal towpath which would be upgraded. This allows for personal choice and capability.

²⁹ See Transport Assessment

³⁰ Paragraph 3.5.17 of the Transport Assessment (October 2015)

³¹ Detail at Sections 2 and 3 of Proof of Evidence of Kevin Riley

47. There is no reason to believe that the canal towpath cannot be suitably surfaced and upgraded notwithstanding that no agreement is currently in place. Discussions with the Canal and River Trust (the Trust), who are responsible for the towpath are ongoing. Correspondence is clear that upgrading can be achieved³². The Trust is a public body and must act in the public interest in accordance with the Trust Settlement (**Document 17**). The evidence produced by the Council demonstrated that instances of towpath closure are rare and none have been recorded in the vicinity of the site. There is no reason to believe that the towpath would not remain open and available as a viable route for future residents, notwithstanding its permissive nature.
48. For some, even a short walk may not be desirable or possible but the vast majority of people could and would utilise the route available, in full knowledge of the site's location prior to purchase. The gradient of the access onto the canal towpath could be improved but is unlikely to ever reach DDA compliance standards. Nevertheless, an alternative route is available.
49. It is suggested that the on-carriageway route is perfectly safe and usable with a straight alignment and good inter-visibility between pedestrians and vehicles, with regular locations to step off the carriageway if necessary. The road is currently used by pedestrians and cyclists yet there is no record of accidents on the stretch. Signage and road markings could be introduced to improve the situation further and alert oncoming vehicles. Traffic flows are low, not materially higher than the levels found acceptable in County Council guidance in respect of routes for children to walk to school³³. The distance involved is short, just 380m on carriageway.
50. Cycling represents an opportunity for sustainable travel and the roads in the vicinity are already used for this purpose. Higher order settlements are within 5km of the site and opportunities exist for a modal shift from car use to cycle to access many services and facilities. Cycle parking facilities are also available within Whittington, including outside the Co-op store.
51. The nearest bus stop is within Whittington and this provides a good level of service by rural standards³⁴. Opportunities exist for combined trips when visiting the village, as well as use of the proposed minibus facility so as to pick up public transport in the village. The minibus and other sustainable travel measures will be paid for by the charge on individual properties and it is, therefore, likely that people will wish to make use of the service they are paying for. Measures such as electric car charging points, storage space for bicycles and high speed broadband to increase the potential for home working can all be incorporated into the development to reduce the need to travel and encourage modal shift.

Character and appearance

52. The site comprises previously developed land adjacent to a large commercial enterprise which is screened by extensive structural planting. The site accommodates a series of incongruous mounds and freestanding buildings with

³² Appendix MM5 – Proof of Evidence of Kevin Riley

³³ Staffordshire County Council Walking Route Assessment Criteria (2014)

³⁴ Paragraph 3.5.2 of Transport Assessment (Appendix MM1 in Proof of Evidence of Kevin Riley)

- hard standing around, lightning rods throughout and a chain link fence surrounds. The site is incongruous and jarring in the landscape and benefits from no structural planting to mitigate its effects.
53. There are very few places where the proposed development would be visible and indeed, where viewpoints show visibility, the existing site and incongruous structures are already apparent.
54. The Council's case with regards to landscape impact has been made on the basis of the indicative master plan originally submitted, with no recognition of the fact that the application is in outline form with matters of landscaping and layout reserved for subsequent consideration. Therefore, there is scope for improvement of the landscaping and a reduction in visual impacts and this was accepted by the Council during the Inquiry having regard to the most recent master plan. The visualisations produced by the Council³⁵ overstate the impact of the development having been produced in light of the superseded master plan, which is in any case indicative.
55. The appeal site does not lie within any designated landscape, nor does it contain any particular physical features which would warrant it being protected as a 'valued landscape' in the terms of paragraph 109 of the Framework. The site is previously developed land containing incongruous structures in an otherwise rural landscape. It can be described as isolated, incongruous, contains obvious urban features, is an intrusive feature in the rural landscape and is unrelated to the existing settlement pattern. Therefore, it is itself harmful to landscape character. This is the baseline against which the proposed development should be assessed.
56. The site falls within National Character Area 69: Trent Valley Washlands³⁶, a narrow, linear and low lying landscape comprising the river flood plain corridors of the middle reaches of the River Trent's catchment. It is accepted by both parties that this is a high level assessment and that local documents are more helpful in assessing landscape impact in this case.
57. 'Planning for Landscape Change'³⁷ is produced by the County Council as Supplementary Planning Guidance. It identifies the area within which the site is located as the Terrace Alluvial Lowlands Landscape Character Type. This is a small area that the site sits roughly centrally within. It is characterised by small broadleaved woodland; hedged fields and hedgerow trees; waterside tree species along ditches; flat landform; intensive mixed pasture and arable farming; Large fields; lush improved pasture; scattered farmsteads; straight roads and small winding lanes; traditional village character; and canals.
58. It also identifies that the lack of landform results in views through the landscape being controlled by the intactness of the hedgerows and density of the tree cover. In proximity to villages the scale reduces to a landscape of very small, irregularly shaped fields with plentiful hedgerow oaks controlling views to a maximum of one field distance.

³⁵ Appendix 1 to Proof of Evidence of Pete Coe

³⁶ National Character Area Profile, Natural England

³⁷ Staffordshire County Council, 2000

59. The critical factor which limits landscape quality is identified as the relatively poor representation of characteristic semi-natural vegetation. Other factors which limit quality to a lesser extent are a loss of some characteristic landscape features; a decline in the condition of those features that remain; and an increase in the representation of incongruous features. The document notes that the potential value of new woodland planting would be moderate to very high. The area is a National Forest Preferred Area. Hedgerows, hedgerow trees and small copses, it is said, will contribute to the enclosed small scale and respond to the strong land cover pattern without subverting it.
60. The Central Rivers Initiative³⁸ refers specifically to opportunities for landscape enhancement at Fisherwick, close to the site. Here, it is noted that the river terrace at Fisherwick has suffered significant loss of characteristic landscape features and patterns, so that restoration is not possible, and replacement landscapes of a new character are now required.
61. The site forms a small part of a large character area and the development would not have a harmful impact on the wider character area if approved. The appeal site presents no characteristics which are identified as key or positive in the landscape area. 'Planning for Landscape Change'³⁹ identifies that the site falls within a low value landscape area which is not in need of restoration but regeneration.
62. The Council accepted during the Inquiry that the effects of the revised master plan would fall from the Moderate impact initially found to Minor Moderate. This is below the level of significant impacts but is also akin to the level of effect resulting from the existing incongruous site in the landscape. In short, the effect of the proposed development would be no worse than that of the existing site which has no landscape planting mitigation. Therefore, there is no material impact in landscape terms.
63. The closest public views of the site are from 0.5km away and, even at that distance, the site is evidently developed by large engineered structures within a secured compound⁴⁰. The principal visual impact is from the South where there is potential for extensive tree screening to mitigate visual effects. This was accepted by the Council during the Inquiry. Any such tree planting would increase in effect with maturity.
64. From the East, the existing site is clearly visible as an incongruous feature in the landscape. In contrast, the proposed housing would be screened behind extensive tree planting. The Council's position that the change would have a high-moderate adverse effect is, therefore, implausible when the baseline position is taken into account and the potential mitigation considered.
65. If the appeal is not successful, the appellant has sought advice regarding alternative uses⁴¹. It is likely that use would be made of the existing licence on

³⁸ Central Rivers Initiative, Landscape Character and Opportunities for Landscape Enhancement, September 2014

³⁹ Staffordshire County Council, 2000

⁴⁰ Photoviewpoints contained within Volume 2: Appendices, Plans and Photoviewpoints to Proof of Evidence of Jonathan Berry

⁴¹ Letter from CBRE contained at Appendix SAT9 in Proof of Evidence of Shaun Taylor

the site to store explosive material and that the existing buildings and hard surfacing would be extended under permitted development rights to maximise their use⁴². This would result in a significant increase in the size of the buildings, removal of some of the grass bunds surrounding and an extensive increase in hard standing to accommodate heavy goods vehicles. It is also said that the number of heavy goods vehicles attracted to the site would significantly increase. This would result in significant additional visual impact without any opportunity for the Council to secure landscaping or other mitigation. This is said to be the appellant's fallback position which, it is suggested, would be implemented if the appeal fails.

The Case for the Council

66. The Council adopted the LP as recently as February 2015. The development would be in conflict with the LP and there are no material considerations that indicate that a contrary decision should be taken. Policy CP1 is clear that development will be prioritised in the most sustainable settlements. The site falls within the 'other rural area' at the bottom of the hierarchy, the least accessible and sustainable location. The scale of development proposed is out of kilter with this location within the hierarchy. Development should be located within existing built-up areas and not the countryside. This is notwithstanding that the site is previously developed.
67. The Council's approach to calculating housing land supply is fully in accordance with that of the Examining Inspector's in respect to the LP. There is no justification for altering the approach endorsed through the examination process. Although there has been a further year of undersupply since adoption of the LP, this situation is not materially different. The requirement figure is firmly established by the LP and the supply figure has been fully justified and supported by site specific evidence. A five year housing land supply is demonstrated.
68. The location of the site is remote from services and facilities, which would not be easily accessible to all future residents by sustainable means. Insufficient visibility is available at the junction of Fisherwick Road/U3067. There are no facilities proposed within the development and the scope for local employment is limited. Access to the nearest settlement by walking or cycling is extremely poor, even with the suggested improvements. Services and facilities are too far away and there is no viable route for accessing them by sustainable means.
69. The site is isolated in open countryside and the development would not relate well to the nearest settlement in landscape terms. The existing site, although incongruous, has blended into the landscape over a period of time. The proposed development would be harmful in both landscape and visual terms regardless of the proposed mitigation measures, such as tree screening. The fall-back position is unconvincing and unproven.

Housing Land Supply

70. The Examining Inspector for the LP endorsed the Council's approach to calculating housing land supply. The early years after adoption of an LP are critical and it must be given the opportunity to succeed. Considerable weight

⁴² Schedule 2, Part 7, Class J of the GPDO 2015

should be attached to housing figures that have passed through the examination process and been adopted.

Addressing shortfall

71. Use of the 'Liverpool approach' in addressing the Council's shortfall in housing delivery was expressly considered and endorsed by the Examining Inspector for the LP, notwithstanding advice in the PPG⁴³. It was reasoned that the Liverpool approach was more appropriate in the case of Lichfield having regard to past rates of delivery in the district, including prior to the recession, and the requirement for completions far in excess of the highest levels ever achieved in the district if the Sedgefield approach were adopted. It was highlighted that plans are required to be realistic as well as aspirational⁴⁴ and that the plan would likely fail if the Sedgefield approach was used.
72. It is suggested that there has been no material change in circumstances since this time to give weight to any alternative approach. The Liverpool approach is particularly appropriate given the reliance of the Council on a large number of large SDA's which take time to deliver. There are a number of large strategic sites in the pipeline that will see a bulge in housing delivery. This does not indicate that Sedgefield should now be applied as delivery will be challenging even with Liverpool figures in place. The Sedgefield approach would result in an unachievable inflated requirement for the first 5 years. The 'Liverpool approach' is an entirely reasonable and sound approach in the circumstances and the PPG provides scope for consideration of individual circumstances.
73. It is noted that one additional year's under supply has now resulted but this does not alter the overall conclusion reached by the Examining Inspector that Sedgefield figures could not be realistically delivered.

Buffer

74. The Council does not consider that an additional year's undersupply (2014/15) since the adoption of the LP leads to persistent under delivery in the terms of the Framework so that a 20% buffer should be applied. There is no defined period over which to assess this matter but the Examining Inspector was clear that there was no persistent under delivery at the time of examining the LP. Furthermore, the PPG advises that the assessment of a local delivery record is likely to be more robust if a longer term view is taken, since this is likely to take account of the peaks and troughs of the housing market cycle⁴⁵. In examining the LP, the Inspector looked back beyond 2008, noting that the Council had achieved its requirement in 7 out of the 11 years⁴⁶ considered.
75. The Council explain that prior to 2008 it demonstrated a good record of delivery and that factors such as the recession, constraints on sites in the emerging LP (which is now adopted) and the uncertainty resulting from the plan making process including subsequent challenges have had an adverse effect on delivery. Under these circumstances, it is suggested that a 5% buffer is appropriate.

⁴³ Paragraphs 210-213 of Inspector's Report (Appendix 3 of Proof of Evidence of Melissa Kurihara)

⁴⁴ Paragraph 154 of the Framework

⁴⁵ PPG Reference ID: 3-035-20140306

⁴⁶ Paragraph 214 of Report to Lichfield District Council (16 January 2015)

76. Having regard to the Secretary of State's decision in Gresty Lane, Crewe⁴⁷ it is clear that the buffer should only apply to the base requirement for housing and not to any past shortfall in provision.

Supply

77. The Council relies on the detailed assessment of housing supply contained within the SHLAA and has applied generic build-out rates and lead-in times unless specific evidence is available which allows a more accurate prediction. This is the case in respect of 4 sites disputed by the appellant:

SHLAA Ref. 89 & 90: Walsall Road & Limburg Avenue, Hallam Park

78. Although no planning permission existed on this site when the Inquiry opened, full planning permission has now been granted. As such, there is no reason why the site could not deliver the expected 25 dwellings during 2016/17 and continue in line with the Council's trajectory thereafter⁴⁸, notwithstanding the need to deal with conditions and clear the site. Although there is no written evidence from the developer to support an intention to commence this year, the Council has received verbal indications that this is the case and the grant of planning permission indicates progress.

SHLAA Ref. 125 & 408: East of Lichfield (Streethay) SDA

79. The site has outline planning permission for 750 dwellings, with two reserved matters approvals, one of which provides for 325 dwellings. The appellant notes the outline planning permission was granted in 2014⁴⁹ but does not acknowledge the more recent reserved matters approvals. This is evidence that the site is progressing towards delivery. The hearing statement provided by the developer in respect of the LP Examination anticipates completions on site in the first quarter of 2016⁵⁰. This was confirmed more recently in an e-mail to the Council on behalf of the developer dated 3 March 2015⁵¹. A further e-mail (**Document 19**) sent on behalf of the developer as recently as 11 November 2015 confirms that the anticipated commencement remained unchanged.

80. Although the Council accepts that the delivery of 40 units in this reporting year is optimistic, there is no reason to believe that it cannot be achieved.

SHLAA Ref. 109, 378, 414: South of Lichfield SDA

81. This site has a resolution by the Council to grant outline planning permission subject to a S106. The Council expects this to be completed imminently, at which point outline planning permission can be granted. The hearing statement⁵² provided by the developer to the LP Examination suggested an intention to deliver all 450 homes in 5 years, with the first completions expected at the first quarter of 2016. This estimate is amended by an e-mail on behalf of the

⁴⁷ Appeal Ref. APP/R0660/A/13/2209335 (Appendix 8 to Proof of Evidence of Melissa Kurihara)

⁴⁸ Appendix C to SHLAA 2015 (P.265)

⁴⁹ Table 5.1 - Proof of Evidence of Peter Taylor

⁵⁰ Appendix 1 of Council 5 Year Housing Land Supply Rebuttal

⁵¹ Appendix 2 of Council 5 Year Housing Land Supply Rebuttal

⁵² Appendix 3 of Council 5 Year Housing Land Supply Rebuttal

developer⁵³ which suggests that completions are unlikely until 2016/17 and includes the likely rate of completions. These updated completion dates and rates are utilised in the Council's trajectory. Whilst the outline planning permission is not yet in place, this is likely to be imminent. If reserved matters applications follow promptly, there is no reason to believe that the site will not deliver in line with the estimates put forward.

SHLAA Ref. 497 & 478: East of Burntwood Bypass SDA

82. Full planning permission has been granted for 375 dwellings and the developer is currently dealing with conditions. Two developers are on site, which is being cleared for development at the current time. There is no reason to doubt the lead-in time adopted by the Council.
83. Generic lead-in times have not been applied to these sites because the Council has used site specific information from the LP Examination and through recent discussions with the developer to apply differing lead-in times. This is an approach supported by PPG, which recognises that the advice of developers and local agents will be important in assessing lead-in times and build-out rates by year⁵⁴. Where such information is available, this is likely to be more reliable than generic figures and is to be favoured.
84. The build-out rates used by the Council are those detailed in the SHLAA 2015⁵⁵. This document, including the generic build-out rates, was verified and endorsed by an industry panel as part of the SHLAA process⁵⁶. Furthermore, they are the same as those endorsed by the Examining Inspector for the LP and are supported by the detailed representations from individual developers⁵⁷. Therefore, the Council maintains a supply of 3,995 dwellings as set out in the SHLAA 2015⁵⁸.
85. The PPG is clear that the examination of Local Plans is intended to ensure that up to date housing requirements and the deliverability of sites to meet a five year supply will have been thoroughly considered and examined prior to adoption in a way that cannot be replicated in the course of determining individual applications and appeals where only the applicant's/appellant's evidence is likely to be presented to contest an authority's position⁵⁹. Significant weight should, therefore, be attached to the housing land supply approach endorsed through this process.
86. On this basis, the Council can demonstrate a 6.43 year housing land supply⁶⁰.

Location, accessibility and sustainable travel

87. The development would result in an unacceptable impact on highway safety in the absence of mitigation to deal with substandard visibility at the junction of Fisherwick Road/U3067. There is a clear intensification of use of this junction

⁵³ Appendix 2 of Council 5 Year Housing Land Supply Rebuttal

⁵⁴ PPG Reference ID: 3-023-20140306

⁵⁵ Paragraph 4.19 of the SHLAA 2015

⁵⁶ Details at Appendix A of the SHLAA 2015

⁵⁷ Appendices to Council 5 Year Housing Land Supply Rebuttal

⁵⁸ Table 6.2 of the SHLAA 2015

⁵⁹ PPG Reference ID: 3-033-20150327

⁶⁰ Paragraph 6.22 and Table 6.3 of SHLAA 2015

(127% and 83% in the AM and PM peaks) and visibility is substandard by Manual for Streets standards notwithstanding low vehicle speeds.

88. The proposed development would not provide safe and suitable access for all⁶¹, including disabled people, persons with young children and pushchairs and walkers, other than the more hardy and able. The proposed large scale development would be located in open countryside. There are no amenities within the development and future residents would necessarily rely on the services and facilities provided in Whittington. The scope for local employment is very limited in terms of access by walking and cycling.
89. The distance to amenities in Whittington will inevitably result in a reliance on the private car. The walking distances⁶² from the site to a range of amenities within Whittington, including the primary school, pubs, shop, church, village hall and post office are all in excess of the maximum walking distance of 2km recommended in the IHT publication 'Providing for Journeys on Foot' (2000). The nearest bus stop is also in Whittington, also in excess of recommended maximum walking distances.
90. The school, a key facility for future residents is 1.57 miles (2.5km) away, significantly in excess of the recommended maximum. The appellant refers to the Staffordshire County Council Walking Route Assessment Criteria (2014)⁶³ and suggests that a walking distance of 2 miles is appropriate. However, this document was produced in the County Council's capacity as Local Education Authority and differs from the preferred distance of 600m outlined in the Staffordshire Residential Design Guide (2000). In any case, the proposed walking route does not accord with the wider criteria stipulated by the Walking Route Assessment Criteria, with excessive traffic flows on the route identified by the submitted Transport Assessment (October 2015).
91. The site is too remote from services and facilities to be regarded as having acceptable accessibility for those travelling on foot or by bus and cycling is likely to be a recreational activity in this area rather than being used on a regular basis. The inaccessibility for pedestrians is not simply a matter of distance but of the acceptability of the routes in terms of providing full assured access for all people. The existing route to Whittington is not appropriate for use by up to 180 households and so significant improvements would be necessary.
92. It is not possible to provide a footway along part of the route and this leads to the need for pedestrians to utilise the carriageway. This stretch is characterised by assessed vehicles speeds of 38-42mph⁶⁴ and is used by large vehicles including tractors. There are no meaningful step off points from the carriageway that would be suitable for all users, particularly those that do not have an ability to access the towpath. Variable visibility is available and high hedges stand either side of the carriageway. The route might be used by hardy walkers but it is not an appropriate route for most people occupying the development, notwithstanding its rural location.

⁶¹ As per paragraph 32 of the Framework

⁶² Paragraph 6.62 – 6.66 – Proof of Evidence of Geoffrey Evenson

⁶³ Appendix G of the Transport Assessment

⁶⁴ See Transport Assessment (October 2015)

93. The alternative route offered along the towpath is of variable width and quality; it is not intended to be a footpath. It is used as a permissive route only and is not a public right of way; access can be closed at any time and this is demonstrated in closures of other parts of the canal network⁶⁵. The objectives of the Canal and Rivers Trust do not require the towpath be upgraded to the status of a public right of way and the existing access from the public highway is unsuitable in terms of both surfacing and gradient. Furthermore, the e-mail correspondence⁶⁶ with the Trust demonstrates reluctance to a suitable all weather surface or lighting. It is also pertinent that the towpath is isolated and lacks natural surveillance. There is no agreement in place and no direct control over the path or any upgrades. The towpath cannot be relied upon as a regular route to the village.
94. The distance involved for cyclists is acceptable to the Council but for the same reasons as above, the route would be unattractive to all but recreational or hardy users.
95. The distance to the nearest bus stop is around 1.4 miles (2.2km), far in excess of the 350m distance sought by the Staffordshire Residential Design Guide. This distance is far too far to encourage modal shift from the private car and there is no dispute that the site cannot itself sustain public transport.
96. The unusual proposals advanced in the submitted Travel Plan are not supported by any identified house builder and there is no indication that any house builder would be willing or able to implement such a plan. No specific targets are contained in the plan to ensure modal shift, nor are there any default measures in the event of the proposed sustainability measures failing. The Travel Plan lacks detail and cannot be relied upon.
97. The levy proposed by the appellant for sustainability measures is no substitute for an appropriately located site. Periodic hire of a minibus and driver is unlikely to meet the day to day needs of individuals within the development. There is no single example of such a scheme ever having been employed elsewhere and there is insufficient information as to how the scheme will be managed and maintained. The appeal lacks evidence that any bus company would be willing to operate the service or that there would be any willingness of future occupants to maintain and utilise the service.
98. The proposed levy is in no way comparable to SuDS maintenance or similar where physical infrastructure is on site from day one. Furthermore, the use of a minibus by an employer where members of staff are starting and finishing on site on a regular pattern is somewhat different to the type of usage now proposed, with residents competing schedules and needs. It is unclear how the proposed measures and levy could be properly secured as part of any planning permission and retained thereafter were it found unnecessary or workable.
99. The proposal will not take place in the most sustainable location in accordance with the LP (Policy CP1); the proposal would promote unsustainable travel behaviour with residents unduly reliant on the private car (Policy CP3) and is not served by an attractive choice of transport modes to provide alternatives (Policy

⁶⁵ Paragraph 6.34 in Proof of Evidence of Geoffrey Evenson

⁶⁶ Appendix MM5 – Proof of Evidence of Kevin Riley

CP5); and would be poorly integrated and connected to the closest settlement of Whittington and the services and facilities that it offers (Policy CP10).

Character and appearance

100. The site lies in open countryside where there is a distinctly rural character. It does not lie within a settlement or adjacent to a settlement. The site is separated from Whittington by agricultural land and is to be regarded as isolated. The site currently has no residential character and relates poorly to the existing settlement pattern in the nearest village. The development would create an isolated housing estate entirely uncharacteristic of the area.
101. Although the existing site with its bunkers and lightning conductors has an effect on landscape character, this has to an extent blended into the landscape owing to the extensive grass bunds surrounding the buildings.
102. The site falls within National Character Area 69: Trent Valley Washlands⁶⁷. The associated Statement of Opportunity suggests that new development will need to be carefully planned and managed to ensure that landscape character and ecosystem services are strengthened.
103. The appellant's evidence underestimates the impacts of the development for the following reasons:
- The site cannot be considered to be on the fringe of Whittington; it is too remote;
 - There are some detracting elements in the existing landscape but these have been overplayed;
 - The scheme fails to reflect the Statement of Opportunity contained in the Council's SPG⁶⁸, which seeks to locate new development within existing settlements;
 - Village expansion is incongruous in the Terrace Alluvial Lowlands character area which tends to comprise nucleated villages. The proposed isolated development would be all the more incongruous;
 - The LVIA⁶⁹ does not fully engage with the guidance of GLVIA⁷⁰ in terms of the short, medium and long-term effects, concentrating on long term effects;
 - Pre-mitigation impacts are agreed to be moderate adverse and so impacts are greater at the earlier stages of development (construction and completion);
 - Visual effects are greater than anticipated by the appellant;
 - Previous iterations of the master plan would have involved limited reduction of visual effects post-mitigation, though it is accepted that the revised scheme reduces the effect to Minor-Moderate adverse;

⁶⁷ National Character Area Profile, Natural England

⁶⁸ 'Planning for Landscape Change', Staffordshire County Council (2000)

⁶⁹ Landscape and Visual Impact Assessment (March 2014)

⁷⁰ Guidelines for Landscape and Visual Impact Assessment, Third Edition, Landscape Institute and Institute of Environmental Management & Assessment

- Insufficient weight has been given to effects prior to year 15;
- The proposal relies on a substantial screening belt.

104. The proposed fallback position is noted but unconvincing. Much of the proposed fallback would require planning permission (permitted development only allows a small amount of development); the use permitted on the site is restrictive and specialist; and there is no convincing evidence that it is realistic for the site owner to seek to intensify the use of the appeal site. Any fallback position pursued under these circumstances would in any event involve far less development than the appeal proposal. No details of any proposed scheme were provided for comparison, there is no proven need for the envisaged use and its viability is unclear, notwithstanding the appellant's generic evidence⁷¹. The fallback position should attract limited weight.

The Case for Interested Parties

105. Objections were presented to the Inquiry by Geoffrey Hanson, a local resident. He raised concern regarding the distance from the site to the village of Whittington, including any public transport. It was asserted that people would not walk the distance involved and that approximately 200 car journeys would be generated every day. It was noted that heavy goods vehicles currently use the route to the site and that this causes conflict with cars. There is an existing traffic problem in Whittington, especially near the school. Congestion is a problem on Main Street, near to the village shops. The Canal towpath is in very poor condition and would need significant works.

106. John Cannon of Whittington Parish Council also attended the Inquiry but chose not to speak in favour of submitting a leaflet containing the results of a village survey 'Developers' Day, Your Comments & Feedback' (**Document 7**).

Written Representations

107. A Proof of Evidence was submitted on behalf of Staffordshire County Council in its capacity as Local Education Authority. This set out detailed justification supporting the need for both primary and secondary education contributions to mitigate the effect of the development on local schools and ensure sufficient capacity. However, the evidence was not presented to the Inquiry following agreement between the parties that only the primary education contribution was necessary for increasing capacity at Whittington Primary School. The Council chose not to pursue the secondary education contribution.

108. At the application stage, a range of letters were received from statutory and other consultees, as well as 46 letters of objection from local people raising a range of concerns which are summarised within the committee report⁷². The main concerns include the prevailing policy context, distance of the site from the village in both environmental and social cohesion terms, highway safety and congestion, loss of employment land, lack of capacity within local infrastructure and flooding.

⁷¹ Letter from CBRE contained at Appendix SAT9 in Proof of Evidence of Shaun Taylor

⁷² Report and letters included in appeal questionnaire documentation

Conditions and Obligations

109. A list of 15 conditions is proposed by the Council in the event that planning permission is granted⁷³. These were discussed during the Inquiry and agreed by the appellant subject to the relevant plans being specified in conditions 2 and 9. I shall return to this matter later in the report.

110. A Unilateral Undertaking has been submitted by the appellant to secure the following planning obligations:

- £765,497 'Primary Education Contribution' to facilitate an increase in the number of teaching rooms at Whittington Primary School;
- £128,744 'Leisure Contribution' towards the redevelopment and extension of Friary Grange Leisure Centre to provide an additional swimming pool and sports hall;
- Provision of open space within the development on the basis of 1.4ha per predicted 100 population (to be established by the eventual Reserved Matters Approval);
- Travel Plan measures, including annual performance reports, a community minibus, appointment of a Travel Plan management company, provisions for a service charge to fund sustainable travel measures identified within the Travel Plan and a sum of £6,300 for the monitoring and review of the Travel Plan.
- 25% affordable housing provision; and
- £5,000 'Traffic Regulation Order Contribution' to fund the imposition of a TRO to control parking at the junction of Church Street/Fisherwick Road/Main Street/Common Lane and to control parking and stopping outside Whittington Primary School.

111. A Community Infrastructure Levy (CIL) Regulations Compliance Statement is provided⁷⁴ which seeks to demonstrate that the obligations accord with the tests set out at Regulation 122 of the CIL Regulations 2010 and paragraph 204 of the Framework. These documents also demonstrate that no more than 5 obligations would be in place to fund any one of the projects identified so as to prevent the obligations being taken into account in accordance with CIL Regulation 123. Detailed evidence provided from various consultees to the planning application seeks to justify the obligations⁷⁵. The submitted obligations are a material consideration which I consider in more detail below.

⁷³ Contained in the appeal submissions

⁷⁴ Document 24 and Appendix 5 from Proof of Evidence of Susan Hodgkinson

⁷⁵ Contained within the appeal questionnaire documentation

Inspector's Conclusions

[Numbers in square brackets refer to previous paragraphs above]

112. The main considerations in this case are:

- whether the Council can demonstrate a deliverable five year housing land supply;
- whether the site is appropriately located in terms of sustainable travel objectives, with particular regard to the pedestrian route to Whittington;
- the effect on the character and appearance of the area; and
- if the Council cannot demonstrate a deliverable five year housing land supply, whether any adverse impacts arising from the development would significantly and demonstrably outweigh the benefits.

Housing Land Supply

113. Paragraph 47 of the Framework requires that local planning authorities should identify and update annually a supply of specific deliverable sites sufficient to provide five years worth of housing against their housing requirements. Whether such a supply exists is a matter of dispute between the parties. The Council suggests that a supply of 6.43 years can be demonstrated [86] and the appellant just 4.73 years at best [26], highlighting that assumptions within the calculations could significantly reduce this figure. The appellant's figure was amended to 4.85 years at best during the Inquiry to reflect a concession in respect of supply [26].

114. The Council has a recently adopted Local Plan, the Lichfield District Local Plan Strategy 2008 - 2029 (LP) (adopted 17 February 2015). It is agreed between the parties that this provides a robust housing requirement figure of 10,030 dwellings for the plan period, equating to 478 dwellings per annum (dpa) [19].

Addressing shortfall

115. Since the beginning of the plan period (2008), the Council has yet to deliver this annual requirement and has accumulated a shortfall of 1,665 dwellings. This is set out within the Strategic Housing Land Availability Assessment 2015 (SHLAA) (October 2015) and is agreed by the appellant. As such, there is a need for this shortfall to be met in addition to the ongoing requirement for housing in the area.

116. There are two commonly used methods for addressing an accumulated shortfall. The 'Liverpool approach' apportions the shortfall across the remaining years of the plan period, whilst the 'Sedgefield approach' seeks to make up the shortfall during the next five years. The Planning Practice Guidance (PPG) advocates the Sedgefield approach [27] where possible and this is consistent with the objectives of the Framework to boost significantly the supply of housing.

117. However, this was a matter considered by the Inspector examining the LP, who found that the Liverpool approach was more appropriate in the case of Lichfield, notwithstanding advice in the PPG. This conclusion was reached having regard to past rates of delivery in the district, including prior to the recession, and the requirement for completions far in excess of the highest levels ever

- achieved in the district if the Sedgefield approach were adopted. It was highlighted that plans are required to be realistic as well as aspirational and that the plan would likely fail if the Sedgefield approach was used [28].
118. If I were to determine that the Sedgefield approach was to be favoured at this stage and the shortfall was apportioned over the current five year period, a requirement of 811 dpa (plus buffer) would need to be achieved consistently for the next 5 years. This would be in excess of the expected requirements considered by the LP Examining Inspector and even further from the maximum delivery rate recorded in the District of 647 dwellings in 2005/6. The Examining Inspector found such figures to be unrealistic and it is clear, therefore, that the requirement arising now would be even less realistic in these terms.
119. I note that the Council's latest housing projections anticipate net delivery exceeding 1,000 dpa, peaking at 1,191 in 2018/19 [29]. It was suggested that such a rate of delivery would be similar, and in fact in excess of, the peak Sedgefield figures (approaching 1,000) discounted by the LP Examining Inspector as unrealistic. The implication was made that if such figures could be relied upon, there is no reason not to use the Sedgefield approach in line with PPG.
120. The Council explained that the peak in expected delivery reflected the certainty provided by adoption of the LP, removing constraints from a number of key sites, namely the Strategic Development Allocations (SDA's). Furthermore, I note that this peak is expected to occur in the later part of the five year period, with much lower delivery expected in the early years. This would allow a lead-in time for large sites to begin to deliver. Given that relatively few sites are expected to deliver in significant numbers in the next two years, an inflated requirement is highly unlikely to be met.
121. The significant increase in delivery expected by the Council during the five year period follows discussions between the Council and various developers and is to be welcomed given the significant shortfall in housing provision since 2008. Imposing an alternative strategy to dealing with the accumulated shortfall, in conflict with the approach taken in the recently adopted LP could be regarded as 'moving the goal posts'. This would undermine the LP position without having given it opportunity to deliver the housing numbers it provides for. Whilst the Council's past projections no doubt accounted for the effect of adopting the LP, this was anticipated to occur in 2014 and the later adoption will have prevented housing deliveries, which have been pushed back in the plan period, and increased the cumulative shortfall.
122. The fact that the Council relies on a number of SDA's which typically take a number of years to come forward and deliver supports the use of the Liverpool approach, which aligns with the strategy to deliver higher numbers over a longer period. I do not consider that an expected short term peak in housing delivery rates should influence the overall strategy for delivery. The actual delivery of housing numbers sufficient to meet year on year requirements is yet to be borne out. The appellant highlighted the past unreliability of the Council's housing projections and this makes it all the more important that the housing requirement is soundly based.
123. The LP Examining Inspector considered a range of housing numbers, including a higher requirement, and was informed by input from a range of industry sources. The PPG advises that the examination of Local Plans is intended to

ensure that up to date housing requirements and the deliverability of sites to meet a five year supply will have been thoroughly considered and examined prior to adoption in a way that cannot be replicated in the course of determining individual applications and appeals where only the applicant's/appellant's evidence is likely to be presented to contest an authority's position [85].

124. I attach considerable weight to the requirement in the LP, particularly the use of the Liverpool approach, for the reasons set out above. Although I have had regard to the new evidence provided in this case, namely the increased housing projections published by the Council, I am not persuaded that this justifies deviating from the approach to addressing shortfall adopted within the LP following rigorous examination. Therefore, the shortfall should be apportioned across the remaining plan period, leading to an annual requirement of 597 dwellings.

Buffer

125. Paragraph 47 of the Framework requires that an additional buffer of 5% be added to this figure (moved forward from later in the plan period) to ensure choice and competition in the market for land. Where there has been a record of persistent under delivery, the buffer should be increased to 20% for the same reason, and to provide a realistic prospect of achieving the planned supply.

126. As set out above, the Council has failed to deliver against its housing requirement during this plan period from 2008 [19]. PPG advises that the assessment of a local delivery record is likely to be more robust if a longer term view is taken, since this is likely to take account of the peaks and troughs of the housing market cycle [74]. In examining the LP, the Inspector looked back beyond 2008, noting that the Council had achieved its requirement in 7 out of the 11 years considered [33]. It was accepted by the appellant that the Council met its housing requirements for the years preceding 2008.

127. Since this time, the SHLAA 2014 Addendum (January 2015) and SHLAA 2015 (October 2015) have been published by the Council. These show a worsened situation and delivery has now fallen significantly and consistently short of the requirement for the past 7 years. Furthermore, the Council's own projections suggest that the requirement will not be met by some margin in this reporting year [32].

128. The Council explain that prior to 2008 it demonstrated a good record of delivery and that factors such as the recession, constraints on sites in the emerging LP (which is now adopted) and the uncertainty resulting from the plan making process including subsequent challenges have had an adverse effect on delivery. I do not doubt that all of these factors have had an influence but it seems to me that there has now been a prolonged period of shortfall and that this trend is set to continue for at least another year. In my view, this now amounts to persistent under delivery.

129. The Framework seeks to boost significantly the supply of housing and this is not being achieved by the Council's continued failure to meet need. The purpose of the buffer is to ensure choice and competition in the market, and where there has been a persistent under delivery, to provide a realistic prospect of achieving the planned supply. Notwithstanding the factors that might have influenced delivery over the past years, it is clear that additional stimulus is necessary to

ensure an increase in delivery. A 20% buffer is, therefore, appropriate in this case.

130. There is dispute between the parties as to whether the buffer should be applied to the housing requirement before or after the shortfall is added. The Council refers to an appeal in Crewe in which the Secretary of State applied an approach whereby the buffer is not applied to the shortfall, raising concern of double counting if it were done in the alternative [76]. However, the appellant drew my attention to numerous appeal decisions where an alternative view was taken, concluding that the shortfall should be added to the overall requirement prior to the application of the buffer [36]. Notwithstanding that the application of the buffer was not expressly considered by the Secretary of State in the latter decisions, the approach is clear from the Inspector's reports and the calculations involved, which he plainly endorsed.
131. There is no guidance within the Framework or PPG that assists with the expected approach. However, it seems to me that the accumulated shortfall is part of the overall requirement for housing, the need for which remains. Given the purpose of the buffer, set out above, I can see no reason why it should not apply to the housing requirement as a whole or why the shortfall should be discounted from attempts to improve the likelihood of delivery. During the Inquiry, the Council's housing land supply witness noted that the buffer brought forward supply from later in the plan period but was unable to explain how 'double counting' might occur by applying the buffer to the shortfall. Therefore, I favour the appellant's approach and agree that the buffer should apply to the housing requirement, inclusive of the past shortfall. This leads to a five year requirement of 3,580 dwellings, equating to 716 dpa.

Supply

132. The SHLAA 2015 sets out assumptions applied by the Council in respect of lead-in times and build out rates where no contrary site specific information is available [37]. The appellant largely accepts these assumptions and questions the apparent lack of application of the generic lead-in times in respect of four major sites, including three SDA's. In these cases, the Council has used site specific information from the LP Examination and through recent discussions with the developer to apply differing lead-in times [78-82]. This is an approach supported by PPG, which recognises that the advice of developers and local agents will be important in assessing lead-in times and build-out rates by year [83]. Where such information is available, this is likely to be more reliable than generic figures and is to be favoured.

SHLAA Ref. 89 & 90: Walsall Road & Limburg Avenue, Hallam Park

133. Planning permission is in place and the first 25 dwellings are expected to be delivered during 2016/17. Notwithstanding the need to deal with conditions and clear the site, I see no reason why the site could not deliver within this timescale. Although there is no written evidence from the developer to support an intention to commence this year, the Council refers to verbal indications that this is the case and the grant of planning permission represents significant progress [78]. Whilst there has not been a start on site to date, I have seen no evidence to discount the Council's position in respect of the lead-in time for this site and I therefore accept its position.

SHLAA Ref. 125 & 408: East of Lichfield (Streethay) SDA

134. The site has outline planning permission for 750 dwellings, with two reserved matters approvals, one of which provides for 325 dwellings. The appellant notes the outline planning permission was granted in 2014 but does not acknowledge the more recent reserved matters approvals. This is evidence that the site is progressing towards delivery. The Council refers to the hearing statement provided by the developer in respect of the LP Examination which anticipates completions on site in the first quarter of 2016. This was confirmed more recently in an e-mail to the Council on behalf of the developer dated 3 March 2015. During the Inquiry I was passed a further e-mail sent on behalf of the developer as recently as 11 November 2015 which confirmed that the anticipated commencement remained unchanged [79].
135. This site specific information, informed by the developers own intentions, appears to me to be a robust basis on which to base the lead in time. Although the Council accepted that the delivery of 40 units in this reporting year was optimistic, there is no reason to believe that it cannot be achieved based on the information before me.

SHLAA Ref. 109, 378, 414: South of Lichfield SDA

136. This site has a resolution by the Council to grant outline planning permission subject to a S106. The Council expected this to be completed by the end of 2015, at which point outline planning permission was to be granted. The hearing statement provided by the developer to the LP Examination suggested an intention to deliver all 450 homes in 5 years, with the first completions expected at the first quarter of 2016 [81].
137. This estimate is amended by an e-mail on behalf of the developer which suggests that completions are unlikely until 2016/17 and includes the likely rate of completions [81]. These updated completion dates and rates are utilised in the Council's trajectory. Whilst the outline planning permission is not yet in place, indications are that this is likely to be imminent. If reserved matters applications follow promptly, there is no reason to believe that the site will not deliver in line with the estimates put forward. I note that the developer has pushed back its expected delivery rates, but estimates can only ever be approximate and my considerations must be based on the evidence available.

SHLAA Ref. 497 & 478: East of Burntwood Bypass SDA

138. Full planning permission has been granted for 375 dwellings and the developer is currently dealing with conditions. Two developers are on site, which is being cleared for development at the current time [82]. The appellant accepted this position at the Inquiry and agreed that there was no longer any reason to doubt the lead-in time adopted by the Council.
139. The SHLAA 2015 sets out a range of build out rates that will be applied to various scales of development. The appellant questions the assumed build out rate for major sites which, broadly speaking, involves a rate of 50 dwellings per annum, per developer on site. However, the rates are consistent with the findings of the Inspector examining the LP [84], who noted that this rate was demonstrated at East of Rugeley SDA. Furthermore, other developers confirmed during the Examination that more than one developer would be likely to operate

on the other SDA sites, with the potential to deliver up to 150 dpa on each site. Lichfield was identified as an area of high demand for housing where sites are capable of high rates of delivery.

140. The conclusion reached by the Examining Inspector was based on a range of evidence, including input from developers themselves. As noted above, the LP Examination process is one which cannot be replicated in individual appeals, involving evidence from a wide range of participants. Consequently, I attach substantial weight to the build out rates endorsed through this process.
141. I acknowledge that the East of Rugeley SDA is the only site to have delivered close to the identified rate but this is the only SDA that has come forward ahead of the adoption of the LP. Now that an up to date LP is in place and planning constraints have been removed from other allocations, it can be expected that further sites will progress. There is no reason to doubt, given the past performance at Rugeley, that sites will not achieve similar delivery rates.
142. Although the build out rates expected by the Council are considered to be optimistic by the appellant, I have seen no evidential basis on which to discount the figure. The SHLAA is put before a development industry panel prior to publication in order to test the information and assumptions contained within, including assumed build out rates [84]. The SHLAA 2015 was endorsed by the panel according to the Council and this is not disputed by the appellant. This adds significant weight to the most recent SHLAA.
143. The sensitivity test proposed by the appellant would reduce the build out rate across all major sites to 40 dpa. This figure appears arbitrary, based on the appellant's subjective view, rather than any evidential basis such as build out rates for other sites in the district. As such, I see no reason to impose an alternative build out rate to those found sound during the Examination of the LP and subsequently adopted by the Council in producing its housing trajectory. This is particularly so as the detailed evidence provided by the Council in respect of the disputed major sites continues to support the build out rates anticipated [78-82]. Whilst I note that the Council's trajectory relies upon a number of major developments coming forward simultaneously, it has already been noted that the housing market is strong in the area and I have no reason to doubt that multiple sites could deliver.
144. Having favoured the Council's position in respect of lead-in times and build out rates on the disputed sites, I have no reason to discount the supply figure of 3,995 dwellings offered by the Council [84].

Five year supply position

145. Setting this supply against the requirement established above (716 dpa) for the next five years, the Council can currently demonstrate a 5.6 year housing land supply (3,995/716).
146. In these circumstances, paragraphs 49 and 14 of the Framework are not engaged and the relevant policies of the LP can be regarded as up to date.

Location, accessibility and sustainable travel

147. The development plan seeks to promote sustainable patterns of development, seeking to direct development to the most accessible and sustainable locations in

the district in accordance with the settlement hierarchy [7-12]. The proposed development would make use of previously developed land in accordance with Policy CP1 of the LP and deliver housing in accordance with its objective. However, the site is not located within an established settlement and is agreed to fall in open countryside. Whittington, a Key Rural Settlement, is the closest village to the site but the site cannot be said to be part of the village given its physical separation. It is clear, therefore, that the site falls at the bottom end of the hierarchy, forming one of the least accessible and sustainable locations in the district.

148. That said, if the development were found to be acceptable in all other respects, it would contribute to the rural housing need of the area and potentially to the nearest settlement of Whittington. Policy Whit4 of the LP expects the village to accommodate between 35-110 homes. In addition, Policy CP6 requires that 440 further dwellings be apportioned across the rural area during the plan period, which may include Whittington. This apportionment is to be determined through the plan making process [10] but that does not alter the fact that the need exists now or the Framework's objective to boost significantly the supply of housing. In terms of accessibility and relative sustainability, the proposal must be considered against the more detailed criteria set out in Policies CP3, CP5, ST1 and BE1 of the LP [12].
149. The site is located around 1.4 miles (2.2km) from the centre of Whittington, which offers a range of services and facilities and an hourly bus service to higher order settlements. The level of services and facilities available in Whittington is reflected in its designation as a Key Rural Settlement and this role is expected to be maintained and enhanced during the plan period. As set out above, significant housing growth is expected within and adjacent to the village. However, the site cannot be said to be adjacent to the village. It is in fact both visually and physically separated with poor transport and pedestrian links at the present time, despite there being a sizeable business adjacent which the site is currently associated with.
150. The appellant identifies that the site is located around 1.4 miles (2.2km) from the services and facilities of Whittington, a walking journey time of around 30 minutes [44]. The Council's highways witness details the walking distances [89] from the site to a range of amenities within Whittington, including the primary school, pubs, shop, church, village hall and post office, all of which exceed the maximum walking distance of 2km recommended in the IHT publication 'Providing for Journeys on Foot' (2000). The nearest bus stop is also in Whittington, again in excess of recommended maximum walking distances.
151. The school, a key facility for future residents is 1.57 miles (2.5km) away, significantly in excess of the recommended maximum. The appellant refers to the Staffordshire County Council Walking Route Assessment Criteria (2014) [90] and suggests that a walking distance of 2 miles is appropriate. However, I was told that this document was produced in the County Council's capacity as Local Education Authority and differs from the preferred distance of 600m outlined in the Staffordshire Residential Design Guide (2000). Whilst it should be expected that County Council documents will be compatible, I find the IHT guidelines a more reliable and commonly used benchmark. In any case, the proposed walking route did not appear to accord with the wider criteria stipulated by the

Walking Route Assessment Criteria, with excessive traffic flows on the route identified by the submitted Transport Assessment (October 2015).

152. The appellant recognises the need to ensure sustainable modes of travel as an important facet of sustainability, suggesting that appropriate means could be employed to minimise the reliance of future residents on the private car. Key to this are proposed improvements to the pedestrian route between the site and the village to ensure safe and suitable access is achieved for all people. Whilst I consider that the distance involved is likely to reduce the likelihood of people walking to local facilities, the quality and availability of the route will also have a significant impact on the likely usage.
153. The parties agree that appropriate improvements could be made along much of the identified route to the village but there is disagreement regarding the reliance on a section of the Coventry Canal towpath or carriageway (with no footpath) along Fisherwick Road. The width and nature of Fisherwick Road, a rural country road with hedgerows close on either side for a 380m stretch, is such that the provision of a footway is impractical. Therefore, it is suggested that access to the canal towpath be provided close to the junction between Fisherwick Road and the U3067.
154. This would require pedestrians to cross Fisherwick Road and negotiate a steep ramp from the carriageway to the level of the towpath at both ends of the route. The appellant suggests that improvements could be made to accessibility but recognised that it was unlikely that a DDA compliant access could be achieved [48], limiting its usability for many people including the disabled or people with young children or prams. The towpath is currently an informal and unmade route close to the edge of the canal. The appellant proposes to upgrade the surface and cited ongoing discussions with the Canal and River Trust (the Trust), who are responsible for the towpath.
155. It is clear that discussions have taken place and that the Trust is open to improvement [47], but the extent of any upgrading has not been agreed and a number of significant questions remain, of particular concern, the permissible surface material and lack of lighting. The towpath is promoted as the main route for most people occupying the site and it must therefore be appropriate for year round use if people are to be encouraged to utilise it on a regular basis. The Trust has expressed a reluctance to allow a bound surface material despite the recognised lack of durability of a crushed stone surface, its preference in this rural area. Furthermore, it is suggested that lighting is unlikely to be appropriate for both character and ecology reasons.
156. Pedestrians and cyclists will need to access the services and facilities offered by Whittington throughout the day and year if sustainable modes of travel are to be attractive. The use of a crushed stone surface is prone to pooling in inclement weather and its lack of durability could lead to it becoming an undesirable option for pedestrians and cyclists. This is particularly likely in the winter months when wet weather is common and daylight hours reduced. The proximity of the path, which would necessarily be very close to the edge of the canal, would also be a hazard to pedestrians if the path were to remain unlit. Whilst the risk may be small, I am mindful that the route is expected to provide access to the local primary school for children and this seems to me to be an undesirable prospect.

157. In addition to these concerns, the route is highly secluded, set behind an established hedgerow for the majority of its length with little or no surveillance from nearby houses, again undesirable for a route expected to serve 180 dwellings with its range of residents, including vulnerable people such as children.
158. It was also highlighted by the Council that the path is a permissive route only with no formal public right of way [93]. Whilst I have had regard to the Trust Settlement (**Document 17**) provided during the Inquiry and the objectives of the Trust to act in the public interest, there remains nothing to prevent closure of the path for legitimate reasons of maintenance or repair for example, particularly pertinent given the surface material favoured by the Trust. Whilst such instances are unlikely to be common, with no record of closures in this area since the Trusts' records began in 2006 [47], there would be no obligation on the Trust to provide an alternative route. Therefore, the opportunities for walking to Whittington could be significantly compromised. For all of these reasons, I am not persuaded that the canal towpath could provide a reliable, safe and convenient pedestrian or cycle route between the site and the village.
159. The only alternative to use of the towpath is to walk on the carriageway along Fisherwick Road for a stretch of around 380m. Whilst inter-visibility between vehicles and pedestrians is good for much of the stretch, the road is not entirely straight and long views are not always possible. The hedgerow is not hard up against the carriageway for the entire length of this stretch of road but I do not consider that the limited opportunities along the route to step off the carriageway would be sufficient to be reliable in the event that pedestrians need refuge from passing traffic. This is notwithstanding that traffic flows are relatively low according to the submitted Transport Assessment.
160. This is not least because the verge is narrow and raised with a hedgerow in close proximity. This would likely make it difficult for most people to easily step out of the way, but I am also mindful that this route is offered as the alternative to the towpath, which I have already established is not suitable for day to day use for many people. Those very people, perhaps with restricted mobility or pushchairs would be those most affected by the restricted step off points from the carriageway.
161. Should two vehicles pass one another, there would be very limited space or opportunity for people to move out of the way, if the opportunity were available at all. The road is rural in nature, with a number of farms nearby and the potential for large vehicles associated with the existing commercial use adjacent the site, and this further heightens my concerns in these respects. I also note that the recorded vehicle speeds were commonly in excess of the 30mph speed limit [92] on the route and I am not convinced that the proposed signing and lining scheme would be effective under the circumstances described.
162. There are a number of off-road public rights of way in the surrounding countryside but these are not realistic options for day to day travel into Whittington given their largely unmade surface and the significantly longer distance of the routes. The appellant suggested that people could take equipment such as torches to improve the ease of their journey but this does not, in my view, offer a reasonable alternative to a safe and usable walking route. The need for such measures is likely to discourage people from walking or

- cycling. Whilst the proposed improvements would be likely to improve opportunities for leisure walking and access to the existing business, it would not provide a safe and convenient walking and cycling route to the village for all future residents of the development.
163. The submitted Travel Plan (October 2015) seeks to maximise the opportunity for sustainable travel and reduce reliance on private vehicles. It sets out a range of measures from bicycle storage at individual properties and communal areas, to improvements along the pedestrian/cycle routes. However, having determined that the proposed routes do not provide a viable walking/cycling option for future residents, even with improvement, these measures are not likely to be effective.
164. Other proposed measures include electric car charging points at individual properties, funding of capital costs for a community minibus and that an ongoing revenue stream is secured through an annual charge on individual property owners. A welcome pack would also be used to educate new occupiers of the opportunities for sustainable travel in the area.
165. I was told that the Travel Plan was in draft form and that it would need to be updated and refined once the development had been carried out and occupiers identified. I understand the difficulties in outlining specific measures at this early stage but the document contains no targets or means by which to deal with any underperformance in achieving modal shift. In its current form, I am not persuaded that the document would be reliable and effective, but in any case, it is unlikely that a Travel Plan could ever be truly effective on a site which provides no services and facilities and which is so remote from the nearest settlement.
166. The reality of the site's location is that there are very few realistic sustainable travel options given the inability to access day to day services by walking and cycling. I have had regard to the proposed measures outlined in the Transport Assessment and the Travel Plan but these are not in my view sufficient to overcome the fundamental lack of sustainability arising from the location of the site.
167. The distance from Whittington, which is itself a rural settlement with a level of services and facilities commensurate with its role as a Key Rural Settlement, is likely to dissuade walking and cycling. This is particularly so given the lack of a suitable and safe off road route for all people. Whilst the village is served by an hourly bus service, I consider it unlikely that people will travel to the bus stop only to continue their journey using public transport. It is far more likely that people will simply utilise private vehicles to access the services and facilities of higher order settlements, perhaps making use of the local facilities for top-up shopping from time to time.
168. Many journeys from the site would likely be relatively short [44], to access the school for example, but these journeys would be regular and numerous given the scale of the development. Furthermore, many journeys will be much longer, seeking to access employment and higher order settlements.
169. Even if a community minibus were provided and a charge secured indefinitely against future residents for the purposes of promoting and providing sustainable travel I find it unlikely that residents would utilise an ad-hoc service in preference to the convenience of their own vehicle, notwithstanding that there will be some who choose to do so or have no alternative. Furthermore, the lack of detail

within the submitted Travel Plan calls into question the effectiveness of any mechanism to secure the charge – no amount or defined purpose is contained within the Travel Plan or Unilateral Undertaking. In my view, the site is simply too distant from the range of services and facilities needed to support sustainable patterns of travel.

170. Following discussions between the parties, there is no longer a dispute that vehicular traffic could access the site without safety or capacity issues for the local highway network. This is subject to mitigation measures at two junctions, the only one in dispute being the need for visibility splay improvements at the junction between Fisherwick Road and U3067. Traffic flows using this junction would be low, particularly traffic from the non-through route to the left on approach to the junction from the site [43].
171. Whilst this is so, visibility is significantly impaired at this junction by the fence and planting adjacent. The marked increase in traffic approaching the junction as a result of the development (roughly double according to the TA) [87] would significantly intensify usage and risk, necessitating improvement in my view. However, there is no dispute that a suitable junction improvement could be achieved and I am satisfied that this could be secured by condition if planning permission were to be granted.
172. Paragraph 34 of the Framework seeks to ensure that developments which would generate significant movement are located where the need to travel will be minimised and the use of sustainable transport modes can be maximised. Whilst the nature and location of the site must also be considered, noting that such opportunities are likely to be reduced in rural areas, the appeal site is at odds with this objective even by rural standards.
173. I have had regard to the other sites referenced by the appellant [23] where planning permission has been granted for residential development on brownfield sites some distance from the nearest settlement, including one where the use of a towpath was endorsed. However, all of these sites appear closer to the nearest settlement and/or associated services and facilities. Furthermore, it appears that suitable walking routes were available in these cases. For these reasons, I do not consider them to be comparable.
174. My attention was drawn to the Whittington Barracks site, now the Defence Medical Services Facility, which was noted to be a similar distance away from the centre of the village as the appeal site. The Council highlighted that a footpath was available between the two and that, at least historically, it provided a range of services to its residents within the site. It is also many residents' place of employment, requiring comparatively less travel. The site is also a long standing specialist military asset and I do not consider that it adds weight to the current proposal which must be considered in light of current policy and circumstances.
175. The appellant highlighted that the site has planning permission for a B8 use and that this could be significantly intensified through extensions to the buildings and improvement of the access roads using permitted development rights [65]. This fallback position is noted and I see no reason why it is not a realistic prospect, particularly given the appellants expressed intention to do so. That said, I have not been provided with any detailed information as to the likely increase in traffic that would result, or the type and size of vehicles anticipated. Whilst an increase in large vehicles passing through the village is no doubt

undesirable to local residents, I do not consider that the impacts would be so great, based on the limited information available, as to outweigh the significant harm that I have otherwise identified in respect of this issue.

176. Overall, the site is not an appropriate location for residential development given its lack of sustainability and accessibility in the terms of Policy CP1 of the LP. I note that the rural site allocations outlined by the policy are yet to come forward, but that does not negate the need for site specific consideration of sustainability credentials. In this case, future residents would become unacceptably reliant on the use of private cars, failing to contribute to objectives within the Framework to promote sustainable patterns of development and means of travel so as to combat climate change, reduce green house gases and achieve sustainable development. The development is not of a scale and nature appropriate to its locality, nor would it reduce the overall need to travel, whilst optimising choice of sustainable modes of travel, particularly walking, cycling and public transport. Therefore, it would be in conflict with Policies CP5, ST1 and BE1 of the LP.

Character and appearance

177. The site was designed for the storage of explosives and continues to be used for the storage of components used in the manufacture of sporting ammunition. The buildings and associated infrastructure are utilitarian in appearance and have clearly been designed with their function in mind [5].
178. The Council accept that the earth bunds, lightning rods and fencing are incongruous within the landscape but suggest that their prominence is reduced given the grassed nature of the bunds, which effectively hide the magazines [101]. While the bunds are, overall, beneficial in their screening effect they are undoubtedly incongruous manmade structures which I found to be highly prominent, along with the other site infrastructure, on views from the railway bridge to the south and from the east in particular. This is the baseline against which potential impacts of the development should be considered.
179. The site has been considered against various national and local landscape character assessments [56-60, 102-103] which provide a broad sense of the general landscape character in the area. However, neither party suggests that the site, in its current form, fits comfortably within this wider scale landscape character. Nor is the site or the immediate area surrounding it said to offer any particular physical features of merit or that could be strongly associated with the wider character areas. This is notwithstanding the parties' agreement that Whittington could be described as a nucleated settlement.
180. In short, the site and surrounding area are not good examples of the positive attributes identified within the wider area and in fact sit firmly within a degraded landscape that is noted to be in need of regeneration. That does not alter the fact the area maintains a rural character with some intrinsic value, but it cannot be said to be anything other than ordinary, noted in the County Council's document 'Planning for Landscape Change' to be of low landscape value [61]. The site does not fall within any national or local landscape designation. Furthermore, it was accepted by the Council that the landscape could not be considered a 'valued landscape' in the terms of paragraph 109 of the Framework [17].

181. The incongruous landscape effect of the existing site and the influence of other urban features, such as the Lyalvale building, the west coast mainline, associated embankments and bridge and the presence of a commercial garage and large solar arrays all detract from the rural character of the countryside and diminish its quality. This increases the capacity for change in the landscape. The Council accepts that this is a landscape that has suffered a loss of identity and a decline in its character which requires regeneration to redefine it and make it more resilient to further change.
182. Using the criteria contained within GLVIA3, it is agreed between the parties that the landscape has a medium sensitivity, indicating that it is of no more than local importance. The landscape contains some characteristic features and possesses intrinsic rural character. However, noting that the site and its immediate surroundings present no particular quality or distinctiveness, and the presence of incongruous features, this seems to me to be an appropriate assessment.
183. The Council go on to consider the magnitude of change to be medium but notes that the visibility of the site is to some extent contained. This view is shared by the appellant who notes a localised magnitude of change. This reflects the relatively short views of the site from the surrounding landscape, many of which are illustrated in the Landscape and Visual Impact Assessment (LVIA) (March 2014) and the subsequent visualisations and photographs contained within the evidence of Mr Berry and Mr Coe. Features such as the raised bridge over the west coast mainline and associated embankments serve to limit views from Whittington and Fisherwick, as do the woodland copses around Lyalvale and along the footpaths to the north. There is, however, no dispute that the introduction of 180 dwellings would change the character of the landscape.
184. The parties take a different view on the significance of the effect. The appellant suggests a Moderate Adverse effect at completion, reducing to Minor Adverse to Neutral after proposed woodland screening has become established. The Council conclude a Moderate Adverse effect on completion that would remain unchanged after 15 years, despite the proposed landscaping according to Mr Coe's evidence. It was, however, recognised that the revised indicative master plan, reducing the amount of development in the south east corner of the site and increasing landscape buffer planting, had improved the likely effectiveness of the proposed mitigation.
185. It was also accepted by Mr Coe during cross examination that a suitable landscape strategy could ensure appropriate screening of the development, so as to reduce its significance of effect to Minor-Moderate adverse [103]. Therefore, it is pertinent that landscaping remains a reserved matter, and that detailed landscaping proposals could be considered at the reserved matters stage. It should also be noted that the existing site is accepted to have an adverse landscape and visual effects.
186. The site is previously developed land and is incongruous within the landscape, detracting from the wider landscape character. Proposals to significantly screen a development or hide it from view are often inappropriate in landscape terms, but in this case, the introduction of woodland blocks are encouraged in the local landscape character assessments [59]. Given that this would contribute to the regeneration of the landscape, reflecting the wider character area objectives,

such an approach can be seen as preferable to the existing situation where the landscaping bunds and other site infrastructure are entirely alien and highly visible in the landscape.

187. Although limited assessment of construction or medium term effects has been presented, it is agreed between the parties that a Moderate Adverse effect would result immediately post completion. Construction effects would be temporary and it seems to me that immediately post completion represents the worst case scenario, when the development would be present but landscaping yet to establish. I have no reason to take a different view that the landscape effects would be Moderate Adverse at this time that would detract from the character of the area.
188. However, there seems to me to be no doubt that the visual impact would reduce over time. Subject to an appropriate landscape strategy, the residual effects would become Minor when the benefits of landscape screening are properly considered. This minor harm to the landscape must be compared against the existing situation, which is also a negative feature. For these reasons, I do not consider that the development would materially harm landscape character when a long-term view is taken.
189. In terms of visual effects, the parties take a different view as to the sensitivity of various receptors, the magnitude of effect and the overall level of effect. The Council suggests that residential occupiers and leisure walkers are likely to be highly sensitive and I agree with this as a general concept. However, the Council appears to base its overall assessment as to the level of effect on the landscaping shown in the indicative master plan. It has been established that there is scope for greatly improving the landscaping strategy and this mitigation would reduce the effects anticipated by the Council. Furthermore, the Council's assessment attributes little weight to the effect of the existing site on individual receptors. Taking these factors into account, I prefer the appellant's assessment, involving generally lower magnitudes of effect and overall levels of effect, leading to a Minor Adverse to Neutral effect once the woodland buffer planting is established.
190. In considering the proposed development, the Council's Conservation Officer raised no objection, noting that the LVIA produced by the appellant was sound. It was stated that residential development would be highly visible in the short term but woodland planting would mitigate its presence in the rural landscape. This is consistent with the appellant's case and my conclusions above. The appellant's approach has not changed from that considered in the LVIA but the scope for mitigation has been agreed to be greater than shown in the indicative master plan.
191. I note the Council's preference for the expansion of existing settlements to accommodate new development, which is supported by the objectives of the National Character Area Profile. I have also had regard to the availability of alternative sites on the edge of Whittington, identified in the SHLAA. However, I must consider the proposal before me. Whilst the SHLAA sites may be allocated for development at some point in the future, both the Allocations Local Plan and the Neighbourhood Plan are at the very early stages, attracting very little weight at the current time. Therefore, I have considered the proposal on its own merits.
192. Although the development would initially be harmful to landscape character, these impacts would significantly reduce over time so as to become minor by

year 15. The existing site is itself an anomaly in the landscape and the proposed woodland planting offers an opportunity for landscape regeneration in an area noted to be in need of such intervention.

193. For all of these reasons, the development would not materially harm the character and appearance of the area. As such, I find no conflict with Policies CP1, CP3, Core Policy 13, Core Policy 14, NR1 or BE1 of the LP, which amongst other things, seek to protect and enhance the character and distinctiveness of the natural environment; protect the countryside, as a valued asset; and secure appropriate hard and soft landscaping to ensure high quality development.

Other Matters

194. Notwithstanding my findings in relation to the Council's housing land supply position, I note that the Council has a significant need for affordable housing and that it is failing to meet this need year on year. The proposed development would provide 25% affordable housing, equating to 45 units out of 180. This would be a significant contribution towards meeting the identified, and undisputed, need in the district. I attach this benefit significant weight but it is not sufficient to outweigh the harm that I have identified in respect of the second main issue and the inherently unsustainable nature of the proposal.

195. I have had regard to the other benefits outlined by the appellant, including potential ecological enhancements; use of renewable energy and energy efficiency technology; economic gains during construction, increased population and local expenditure and payments to the Council through the New Homes Bonus but, even cumulatively, these matters do not outweigh the harm identified and the conflict with the development plan.

196. During the Inquiry, the appellant drew my attention to a Government consultation (**document 25**) that supports the use of brownfield land and considers the introduction of a presumption in favour of development of previously developed sites. There is no dispute that the efficient use of previously developed land is to be encouraged and this is an objective of Policy CP1 of the LP. However, this does not negate the need for development to meet other planning objectives. Given that the document is a consultation, there is no certainty that its contents will make its way into policy. Therefore, I attach it little weight.

197. The Council recognises that some sites on the edge of villages are likely to be released for development in order to meet housing needs, many of which are located in the Green Belt. If this appeal were allowed, housing could be delivered that might reduce the amount of Green Belt land needed. Land should only be taken out of the Green Belt in exceptional circumstances but this is a matter for the plan making process. Whilst I note the benefit of utilising land outside the established Green Belt, this does not outweigh the harm that would arise in other respects.

Conditions

198. The list of conditions proposed by the Council was agreed by the appellant during the Inquiry [109]. I agree that these would be necessary in the event that planning permission is granted and that they otherwise accord with the tests

- set out in the Framework and PPG⁷⁶, subject to some modification to ensure precision and to include the correct plan references.
199. In the event that the Secretary of State disagrees with my recommendation and intends to grant planning permission, I recommend that the conditions contained in the attached Annex are imposed. It should be noted that the condition numbering differs from that of the Council's proposed list of conditions following amendment.
200. Conditions 1 - 4 are necessary to set out the requirements for the submission of reserved matters, for commencement of development and to clarify the approved plans, noting that some are indicative. These have been re-worded to increase clarity and to incorporate the statutory timescales; no justification has been put forward for alternative timescales. Condition 5 sets out the detailed matters which must be dealt with as part of the reserved matters in order that sufficient information is available to properly assess the proposals.
201. Condition 6 is necessary to protect the living conditions of future occupants' in respect of noise, pertinent given the nature and proximity of the adjacent business.
202. Condition 7 requires full details of the proposed foul and surface water drainage system to ensure appropriate living conditions for future occupants' and to prevent flooding.
203. Condition 8 is necessary to secure the implementation of a programme of archaeological works noting the potential for remains in the vicinity of the site.
204. Conditions 9 and 15 are needed to ensure that ecological interests are protected and enhanced as appropriate, in accordance with the development plan.
205. Condition 10 requires the investigation and remediation of contamination so as to ensure safe living conditions for future occupants' and to prevent contamination of nearby controlled waters.
206. Conditions 11 and 12 are appropriate to secure full details of the proposed vehicular access within the site and the proposed highway works that are necessary outside of the site and to ensure their implementation in the interests of highway safety and to facilitate access to the nearest settlement. Condition 13 is also required in the interests of highway safety, to ensure efficient construction management.
207. Condition 14 is necessary to secure details of the proposed boundary treatments to ensure an appropriate appearance and to protect the living conditions of future occupants'.
208. Conditions 16 and 17 are needed to ensure protection of any trees to be retained within the site during construction and to require replacement of any trees which die or are lost in the first 5 years of the development in the interests of character and appearance, noting the importance of the proposed tree screening.

⁷⁶ Paragraph 206 of the Framework and Reference ID: 21a-003-20140306 of the PPG

209. Although detailed wording has not been proposed by the main parties, a condition is also necessary to ensure visibility improvements at the junction between Fisherwick Road/U3067 [170-171]. This is included as condition 18.

Planning Obligations

210. Various planning obligations are contained within the submitted Unilateral Undertaking [110].

211. Policy H2 of the LP sets out the requirement for affordable housing in the context of a recognised need in the district. Provision would be made for a minimum of 25% of the proposed dwellings to be affordable housing, comprising a mix of 35% Intermediate Housing Units and 65% Rented Social Housing Units. This level and mix of provision is agreed by the parties and accords with Policy H2. This is a positive benefit that would contribute to the identified need for affordable housing in the area and weighs in favour of the development. Although I attach significant weight to this benefit given the under provision made by the Council to date this does not, even cumulatively with other recognised benefits, outweigh the harm that has been identified.

212. The remaining obligations seek to mitigate the impacts of the development on local infrastructure and Core Policy 4 of the LP sets out the general requirement for new development to do so. The Leisure Contribution is required in connection with Core Policy 11 of the LP; Open space is to be provided in accordance with Policy HSC1 of the LP; the Primary Education Contribution would facilitate the additional teaching space needed to accommodate the development; the Travel Plan sum would ensure monitoring and review of the Travel Plan measures to facilitate sustainable travel in accordance with Policies CP5 and ST1 of the LP, as well as implementation of the sustainable travel measures such as the footway and road improvement proposed within the scheme; and the Traffic Regulation Order contribution would mitigate traffic impacts.

213. Some dispute exists between the parties as to the detailed wording and construction of the deed and the Council set out a range of issues in writing (**Document 23**). These were discussed during the Inquiry and resulted in a number of hand written amendments so increase the acceptability of the Undertaking to the Council. There is no dispute between the parties that the obligations proposed are necessary and I am satisfied that they are appropriate and can be taken into account having regard to CIL Regulations 122 and 123. Furthermore, the submitted Unilateral Undertaking would secure the required obligations if planning permission were to be granted.

214. Therefore, in the event that the Secretary of State disagrees with my recommendation and intends to grant planning permission for the development, I recommend that he has regard to the submitted obligations.

Overall Conclusion

215. Although the development would not harm the character and appearance of the area, it would not be located in an appropriate location in terms of accessibility to services and facilities and would lead to an unsustainable reliance on private cars, a failure to support sustainable means of travel and would not contribute to the need to reduce green house gases and combat climate change. The development is not of a scale and nature appropriate to its locality, nor

would it reduce the overall need to travel, whilst optimising choice of sustainable modes of travel, particularly walking, cycling and public transport. Therefore, it would be in conflict with Policies CP5, ST1 and BE1 of the LP. I have had regard to the potential benefits of the scheme but these are not sufficient to justify a decision other than in accordance with the development plan in this instance.

216. I have concluded that the Council can demonstrate a deliverable five year housing land supply and so the presumption in favour of sustainable development is not engaged in the terms of paragraphs 49 and 14 of the Framework. However, even if the Secretary of State took an alternative view on this matter, the significant environmental harm that would result from the development is such that it should not be considered to represent 'sustainable development' for the purposes of the Framework in any case. Consequently, the presumption in favour would still not apply.

Recommendation

217. I recommend that the appeal be dismissed.

218. In the event that the Secretary of State disagrees with me and allows the appeal, I recommend that the conditions contained in the Annex below be applied.

Michael Boniface

INSPECTOR

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Gary A Grant of Counsel Instructed by Bal Nahal, Solicitor to the Council

He called:

Pete Coe BA Dip LA CMLI Landscape Architect

Geoffrey Evenson FIHE Senior Engineer, Staffordshire County Council

Melissa Kurihara MLPM,
MRTPI Principal Planning Consultant

Andrew Marsden PgDip County Commissioner for Access for Learning

Susan Hodgkinson BSc
(Hons), MA Senior Planning Officer

Sophie Sherratt Solicitor

FOR THE APPELLANT:

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He called:

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Kevin Riley BSc (Hons),
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Oliver Nicholson BA (Hons) Strategy Director

Shaun Taylor BA (Hons),
MCD, MRTPI Director, Town Planner

Rebecca Mushing Solicitor

Anna Cartilage Solicitor

INTERESTED PERSONS:

Geoffrey Hanson Local resident

John Cannon Whittington Parish Council

DOCUMENTS SUBMITTED DURING THE INQUIRY

- Doc 1 Figure 4.3 - Proposed Access Layout (larger version of plan)
- Doc 2 Draft Unilateral Undertaking (including education contribution)
- Doc 3 Draft Unilateral Undertaking (without education contribution)
- Doc 4 Agreed Statement of Common Ground relating to Landscape Matters
- Doc 5 Letter from Mulbury to Shaun Taylor dated 20 October 2015
- Doc 6 Appendix 1 from Proof of Evidence of Pete Coe (larger version)
- Doc 7 Developers' Day, Your Comments & Feedback Leaflet
- Doc 8 Opening Submissions on behalf of the Appellant
- Doc 9 Opening Remarks on behalf of the LPA
- Doc 10 Appeal decisions APP/R0660/A/13/2197532 & 2197529
- Doc 11 Appeal decisions APP/W4705/A/11/2161990, 2162739 & 2162736
- Doc 12 Questions from EPDS Consultants arising from Staffordshire County Council Rebuttal of education matters
- Doc 13 Plan showing extent of adopted highway and visibility splays at junction of U3067 and Fisherwick Road
- Doc 14 Appeal decision APP/D3315/A/12/2170249
- Doc 15 Chronology of legal challenges to the Local Plan Strategy 2008 – 2029
- Doc 16 Appeal decision APP/K3415/A/14/2216143
- Doc 17 Trust Settlement between the Secretary of State for Environment, Food and Rural Affairs and Canal & River Trust
- Doc 18 Location Plan – Fox's Meadow Residential Development, Nr Wellington
- Doc 19 E-mail from Patrick Jervis of Pegasus Group dated 11 November 2015
- Doc 20 Extract from General Permitted Development Order, Class J
- Doc 21 Extract from Local Development Scheme (February 2015)
- Doc 22 Statement of Common Ground Relating to Education Matters
- Doc 23 Staffordshire County Council's submissions on outstanding matters in the Section 106 Unilateral Undertaking to be provided by the appellant pursuant to the appeal
- Doc 24 CIL Compliance Statement
- Doc 25 Extract (Page 11 & 12) of Government consultation 'Supporting new settlements, development on brownfield land sites, and delivery of housing agreed in Local Plans
- Doc 26 Draft Unilateral Undertaking
- Doc 27 Closing submissions on behalf of the LPA
- Doc 28 Closing submissions on behalf of the appellants
- Doc 29 Unilateral Undertaking

ANNEX – SCHEDULE OF SUGGESTED CONDITIONS

- 1) Details of the appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development begins and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than three years from the date of this permission.
- 3) The development hereby permitted shall begin not later than two years from the date of approval of the last of the reserved matters to be approved.
- 4) The development hereby permitted shall be carried out in accordance with the following approved plans: Location Plan '13/022/P01 Rev. B' and 'Figure 4.3: Proposed Access Layout'.
- 5) No development shall be commenced until details of the layout of the site including the disposition of roads and buildings; full road construction details including longitudinal sections; existing and proposed ground levels and finished floor levels; housing mix; the design of all buildings and structures; the external appearance of all buildings and structures including materials to be used on all external surfaces including those to remain in private ownership; the means of pedestrian access and parking layout; and the landscape and planting of the site, which shall include tree planting within the amenity open space and fronting Fisherwick Road, have been submitted to and approved by the Local Planning Authority as part of a Reserved Matters application.
- 6) Before the development hereby approved is commenced, a scheme for protecting the proposed dwellings from noise shall be submitted to and approved in writing by the Local Planning Authority. The approved scheme of noise protection shall thereafter be implemented before the development is first brought into use and shall be the subject of a validation report which shall be submitted to and approved in writing by the Local Planning Authority prior to the dwellings being first occupied. The validation report shall ensure that all noise issues on the site have been adequately addressed prior to the development being first brought into use. The approved measures shall thereafter be maintained for the life of the development.
- 7) Before the development hereby approved is commenced, full details of the proposed surface and foul water drainage system for the development, including details of outfall from those areas to remain in private ownership, for the development shall be submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be undertaken in accordance with the approved details prior to the first occupation of the dwellings hereby approved.
- 8) Before the development hereby approved is commenced, the applicant shall secure the implementation of a programme of archaeological work, including excavation, post-excavation analysis and publication of a report, in accordance with a written scheme of investigation, which shall be submitted to and approved in writing by the Local Planning Authority. The

programme of archaeological work shall thereafter be fully implemented in accordance with the approved scheme of investigation and timescales.

- 9) Before the development hereby approved is commenced, full details of a Habitat Management Plan, including a timetable for implementation, shall be submitted to and approved in writing by the Local Planning Authority. The Habitat Management Plan shall thereafter be fully implemented in accordance with the approved scheme.
- 10) Before the development hereby approved is commenced, a remediation strategy that includes the following components to deal with the risks associated with contamination of the site shall be submitted to and approved, in writing, by the Local Planning Authority:
 - a) A site investigation scheme, based on the Phase I geo-environmental detailed desk top study carried out by Curtins Consulting in August 2013 (report ref. EB1165/KR/3167, revision A, dated 11th February 2014), to provide information for a detailed assessment of the risk to all receptors that may be affected, including those off site.
 - b) The results of the site investigation and the detailed risk assessment referred to in (a) and, based on these, an options appraisal and remediation strategy giving full details of the remediation measures required and how they are to be undertaken.
 - c) A verification plan/report providing details of the data that will be collected in order to demonstrate that the works set out in the remediation strategy in (b) are complete and identifying any requirements for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action.
 - d) The report shall be submitted to and approved in writing by the Local Planning Authority within 1 month of the approved remediation being completed, to ensure that all contaminated land issues on the site have been adequately addressed prior to the first occupation of any part of the development.

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

- 11) Before the development hereby approved is commenced, full details of the site access works as broadly indicated on drawing number 'Figure 4.3: Proposed Access Layout' shall be submitted to and approved in writing by the Local Planning Authority. The highways works shall thereafter be constructed in accordance with the approved details before first occupation of the development.
- 12) No development shall take place until full details of the following off site highway works have been submitted to and approved in writing by the Local Planning Authority: a) Provision of a footway between the site access and the U3067; b) Traffic Management scheme on Fisherwick Road; and c) Canal towpath upgrade. No dwelling shall be occupied until the proposed off-site works have been carried out in full.
- 13) Before the development hereby approved is commenced, a Construction Management Plan/Method Statement shall be submitted to and approved in

writing by the Local Planning Authority. The Construction Management Plan shall include the following:

- a. Provision of parking for parking of vehicles of site operatives and visitors;
- b. Construction traffic access;
- c. Loading and unloading of plant and materials;
- d. Storage of plant and materials;
- e. Hours of operation;
- f. Method of prevention of mud being carried onto the highway;
- g. Pedestrian and cyclist protection;
- h. Proposed temporary traffic restrictions; and
- i. Arrangements for turning vehicles.

The approved Construction Management Plan shall thereafter be implemented prior to any works commencing on the site and shall be adhered to throughout the entire construction period.

- 14) Before any of the dwellings hereby approved are first occupied, details of all proposed boundary treatments shall be submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be undertaken in accordance with the approved details prior to the occupation of the dwellings the respective boundary treatment is to serve.
- 15) The development hereby approved shall be carried out in full accordance with the mitigation and compensation measures outlined within the Ecological Assessment (1783_R01b_LW_RW) and Biodiversity Mitigation Report (1783_R04a) prepared by Tyler Grange.
- 16) The Reserved Matters to be submitted pursuant to condition 1, shall include details of tree/hedge protection measures in accordance with BS 5837:2012 shall be submitted to and approved in writing by the Local Planning Authority. The agreed tree/hedge protection measures shall be put in place prior to any construction works commencing and be retained for the duration of construction works, including any demolition and/or site clearance works, unless otherwise agreed in writing by the Local Planning Authority. No fires, excavation, change in levels, storage of materials, vehicles or plant, cement or cement mixing, discharge of liquids, site facilities or passage of vehicles, plant or pedestrians, shall occur within the protected areas. The approved scheme shall be kept in place until all parts of the development have been completed, and all equipment; machinery and surplus materials have been removed from the site.
- 17) Any tree, hedge or shrub planted as part of the approved landscape and planting scheme (or replacement tree/hedge) on the site and which dies or is lost through any cause during a period of 5 years from the date of first planting shall be replaced in the next planting season with others of a similar size and species.
- 18) No development shall take place until a scheme of visibility improvements for the junction between Fisherwick Road/U3067 has been submitted to and approved in writing by the Local Planning Authority. The approved works shall be completed prior to first occupation of the development.



RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT

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

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

SECTION 1: PLANNING APPEALS AND CALLED-IN PLANNING APPLICATIONS

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

Challenges under Section 288 of the TCP Act

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

SECTION 2: ENFORCEMENT APPEALS

Challenges under Section 289 of the TCP Act

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

SECTION 3: AWARDS OF COSTS

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

SECTION 4: INSPECTION OF DOCUMENTS

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