



Department for
Communities and
Local Government

**S Thompson & A Willis
Signet Planning Ltd
Unit 26 Apex Business Village
Annitsford
Cramlington
Northumberland
NE23 7BF**

Our Ref: APP/W4515/A/12/2175554
Your Ref:

8 May 2013

Dear Sirs

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78
APPEAL BY BELLWAY HOMES (NORTH EAST) LTD
LAND AT WHITEHOUSE FARM, WEST MOOR, NEWCASTLE-UPON-TYNE
APPLICATION REF: 11/02337/FUL**

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Inspector, PJ Asquith MA(HONS) MA MRTPI, who held a public local inquiry between 16 and 23 October 2012 into your client's appeal against the refusal of North Tyneside Council ("the Council") to grant a hybrid planning application comprising a full application for an executive scheme of 366 dwellings incorporating landscaping, wildlife corridors, open space, access and highways, and an outline application for up to 465 square metres of ancillary commercial development (Use Classes A1/A2/A3/A4) in accordance with application ref: 11/02337/FUL, dated 20 April 2012.
2. On 17 May 2012, the appeal was recovered for the Secretary of State's determination, in pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act 1990, because it involves a proposal for residential development of over 150 units on a site of over 5 hectares (ha) which would significantly impact on the Government's objective to secure a better balance between housing demand and supply and create high quality, sustainable, mixed and inclusive communities.

Inspector's recommendation and summary of the decision

3. The Inspector, whose report is enclosed with this letter, recommended that the appeal be allowed and planning permission granted. For the reasons given in this letter, the Secretary of State agrees with the Inspector's overall recommendation and is minded to agree with his recommendation subject to the satisfactory resolution of the issues raised by the conditions recommended by the Inspector in Annex B of his Report (as set out in detail in paragraphs 23–24 below). All paragraph numbers, unless otherwise stated, refer to the Inspector's report (IR).

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Procedural matters

4. In reaching his decision, the Secretary of State has taken into account the Environmental Statement (ES) which was submitted under the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999. Like the Inspector (IR6–7) the Secretary of State is content that the ES complies with the above regulations and that sufficient information has been provided for him to assess the environmental impact of the proposals.
5. The Secretary of State notes that the administrative boundary of Newcastle City Council runs along the western edge of the adjoining A189 (IR14–16) and part of the highway proposals linked to the development fall within the City Council's jurisdiction. An identical application to that submitted to North Tyneside Council was submitted to Newcastle City Council and planning permission for these proposals has been granted subject to the conclusion of a Section 106 agreement.
6. The application for costs made by your client at the inquiry (IR1) is the subject of a decision letter which will be issued separately by the Secretary of State once he has made his final decision on this case.

Matters arising after the close of the Inquiry

7. Following the close of the inquiry the Secretary of State received representations from those persons listed at Annex A(i) to this letter. The Secretary of State has carefully considered these representations, but is satisfied that they do not raise any matters not considered at the inquiry.
8. The Secretary of State also received a letter dated 11 February 2013 from Mary Glendon MP drawing his attention to a number of other planning applications which she considered would increase the housing provision in the locality. The Secretary of State then wrote to interested parties on 4 March 2013 inviting comments on that representation. On 19 March 2013 the Secretary of State circulated the responses received, seeking further comments. A list of the responses is set out at Annex A(ii). The Secretary of State has carefully considered all these representations and is satisfied that they do not demonstrate any significant change to the housing supply figures considered at the inquiry.
9. Copies of all this correspondence may be obtained by written request to the address at the foot of the front page of this letter.

Policy Considerations

10. 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. Following the revocation of the Regional Spatial Strategy for the North East (RSS) on 15 April 2013, the development plan consists of the saved policies of the North Tyneside Unitary Development Plan (UDP) (2002). The Secretary of State does not consider that the revocation of the RSS raises any matters that would require him to refer back to the parties for further representations prior to reaching his decision on this appeal, and he is satisfied that no interests have thereby been prejudiced. The Secretary of State also notes (IR373) that the Council's Core

Strategy is at an early stage, and he agrees with the Inspector that little weight can be attached to it.

11. Other material considerations which the Secretary of State has taken into account include the National Planning Policy Framework (the Framework) (March 2012); Technical Guidance to the National Planning Policy Framework (March 2012); the Natural Environment and Rural Communities (NERC) Act 2006; the Conservation of Habitats and Species (Amendment Regulations) 2012 (the 2012 Regulations); Circular 11/1995: Use of Conditions in Planning Permission; and the Community Infrastructure Levy (CIL) Regulations 2010 as amended

Main issues

12. The Secretary of State agrees with the Inspector (IR 369) that the main issues are those listed at IR 44.

Whether the proposal would be compliant with development plan and national planning policies

13. The Secretary of State has taken into account the fact (IR371) that the site is designated as Safeguarded Land in policy E21/1 of the UDP as it lies between the Green Belt and the urban area; and that that policy requires such land to be maintained in its open state for at least the plan period. He therefore agrees with the Inspector (IR447) that the proposal would not comply with the UDP in that respect. The Secretary of State has also taken account of the fact (IR372) that a 500m wide swathe of the site also forms part of a wildlife corridor in respect of which UDP policy E12/6 is relevant, and this is considered further in paragraphs 16-19 and 22 below.

Safeguarded Land

14. For the reasons set out in IR374–381 the Secretary of State agrees with the Inspector that the terms of the Framework, the fact that the UDP is six years beyond its end date, and the timescale for the adoption of the Core Strategy as a first stage in preparing the Local Plan for the area can all be seen as arguments in favour of allowing development now on safeguarded land.

Housing Land Supply

15. For the reasons given at IR382-392, the Secretary of State agrees with the Inspector (IR393) that the Council's assessment of the 5-year housing land supply situation is reasonable with a relatively small shortfall in the supply of deliverable sites and that the approach to be adopted should be in accordance with paragraphs 14 and 49 of the Framework. He further agrees (IR394-396) that, given the absence of other executive housing within the locality and the substantial contribution through a Section 106 obligation for the provision of affordable housing within the Borough, the scheme would deliver new homes to create a stimulus to the economy and address an immediate housing need, thereby according in that respect with both the UDP and national policy.

Impact on Biodiversity

16. The Secretary of State agrees with the Inspector that, as set out at IR397, there has been an in-depth evaluation of the impact of the proposed scheme on biodiversity matters; and agreement between the main parties that the appeal proposal would have no significant effect on the nearby SSSI at Gosforth Park and no harmful impact on the adjacent Site of Local Conservation Interest at Killingworth Sidings. He further agrees (IR398) that, as stated in paragraph 11 above, a large part of the appeal site is designated within the UDP as a wildlife corridor, in which UDP Policy E12/6 seeks to protect biodiversity.
17. Having regard to his statutory duties (IR399-400), the beneficial enhancements and linkages which could be created (IR401-402) and the fact that Natural England (NE) has not objected to the scheme on the basis of the habitat creation and mitigation proposed (IR402), the Secretary of State agrees with the Inspector (IR404) that the main area of dispute between the parties regarding biodiversity is the impact on the farmland habitat and its role in supporting an associated ornithological interest.
18. Taking account of the issues discussed by the Inspector at IR405-408, and his reasoning, the Secretary of State agrees with his conclusion at IR409 that the degree of mitigation within the appeal site for the bird species of principal importance (to which IR404 refers) would be limited and there would remain an adverse residual impact on biodiversity (IR410) which, unless compensated for, would conflict with EDP Policy E12/6.
19. Having had regard to the issues and views reported by the Inspector at IR411-415, the Secretary of State agrees with his conclusion at IR416 that there is a realistic probability of securing compensatory offsets to overcome the residual adverse impact on biodiversity that would arise from the appeal development. The Secretary of State further agrees that this would need to be achieved through the imposition of a condition that is capable of realising the conservation compensation necessary to ensure compliance with UDP policy E12/6, the thrust of the Framework advice on biodiversity and the underpinning legislative background in the NERC Act and the 2012 Regulations. However, the Secretary of State has reservations about the terms of the condition proposed by the Inspector, as discussed further in paragraph 23 below.

Whether the Scheme Would Be a Sustainable Form of Development

20. For the reasons given at IR417–439), the Secretary of State agrees with the Inspector's conclusion at IR439 that, overall, when judged against the objectives set out in the Framework, the proposal would have acceptable sustainability credentials.

Other matters

21. The Secretary of State has carefully considered the matters discussed by the Inspector at IR440-443, and agrees with his conclusions.

Planning conditions

22. The Secretary of State agrees with the Inspector's reasoning and conclusions on conditions as set out at IR444, and is satisfied that the conditions recommended by the Inspector and set out in Annex A to the IR are reasonable and necessary and meet the tests of Circular 11/95. However, the Inspector also recommends three additional conditions which he sets out in Annex B to the IR, but which have not been agreed by the parties.
23. With regard to Condition 1 at Annex B to the IR, the Secretary of State considers that, before granting consent for the appeal proposals, he wishes to be satisfied that a scheme is in place that will overcome the residual adverse impact on biodiversity that would arise from the appeal development by securing compensatory offsets. However, he has serious reservations about the ability of the condition put forward by the Inspector to achieve its intended purpose. He does not consider that Condition 1 set out at Annex B to the IR meets the requirements of paragraph 206 of the Framework in terms of being "reasonable in all other respects", as it does not express clearly and precisely what is expected; and he considers that it would need considerable refinement to meet the requirements of Circular 11/95. Therefore, before reaching a conclusion on the scope for imposing a condition which would meet the aims of Condition 1 as set out in Annex B to the IR in a legally robust manner that is capable of implementation, and then proceeding to his final decision regarding this appeal, the Secretary of State now invites the appellants, the Council and the West Moor Residents' Association, in consultation with Natural England, to consider jointly the terms of an appropriate condition and to put an agreed text to him for consideration.
24. The Secretary of State is minded to impose conditions 2 and 3 at Annex B to the IR. However, as these have not been agreed by the parties, he wishes to ascertain their views on them before making a final decision.

Obligations

25. The Secretary of State has also considered the Inspector's reasoning and conclusions on the S106 Agreement at IR446. The Secretary of State agrees with the Inspector that the terms of the obligations in the Agreement are necessary and fairly and reasonably related to the development and that they are therefore in accordance with section 122 of the CIL Regulations and paragraph 204 of the Framework.

Overall Conclusions

26. The Secretary of State agrees with the Inspector's conclusions at IR447-455 that the appeal scheme would represent a sustainable form of development. Although the proposal would not comply with the UDP policy regarding safeguarded land, that policy is now out-of-date and there is an acknowledged, although not substantial, shortfall in the Council's 5-year supply of deliverable housing sites. There would be significant economic and financial benefits to the area, including assisting in housing delivery within the Borough and a likely positive impact for employment. It would not impact negatively on the appearance and character of the area, or on highway or drainage considerations, and the Inspector found no convincing evidence to suggest that the development would be harmful to the social cohesiveness or well-being of the existing community.

27. However, as identified in paragraphs 23 and 24 above, before reaching a final decision the Secretary of State considers that it is necessary for the parties to have an opportunity to agree a legally robust condition to insert in place of that recommended by the Inspector as Condition 1 at Annex B to the IR and to comment on the other two conditions proposed by the Inspector at Annex B. The Secretary of State proposes to allow four weeks from the date of this letter for this agreement to take place. He then intends to proceed to a final decision as soon as possible. It should be noted however, that he does not regard this letter as an invitation to any party to reopen any of the other issues discussed by the Inspector.
28. In view of the Secretary of State's proposal to allow 4 weeks for the receipt of an agreed draft revised condition for his further consideration, he considers that he will not now be in a position to reach a decision on this application by 9 May 2013. Therefore, in the exercise of the power conferred on him by paragraph 6(2) of Schedule 2 to the Planning and Compulsory Purchase Act 2004, he hereby gives notice that he has varied the timetable previously set and will now issue his decision on or before 26 June 2013.
29. A copy of this letter has been sent to North Tyneside Council, the West Moor Residents' Association and Natural England.

JEAN NOWAK

Authorised by Secretary of State to sign in that behalf

POST INQUIRY CORRESPONDENCE

Date	Correspondence
Annex A(i) – general correspondence	
12 October 2012	E & K Burnham
23 October 2012	Northumberland Railway Walks Society
2 November 2012	John Urquart
Annex A(ii) – correspondence relating to housing	
11 Feb 2013	Letter from Mary Glindon MP
4 March 2013	Letter from DCLG to parties circulating letter from Mary Glindon MP
15 March 2013	Letter from Signet Planning with enclosures
15 March 2013	Letter from North Tyneside Council
18 March 2013	Letter from West Moor Residents' Association
19 March 2013	Further letter from DCLG to parties circulating representations listed above
21 March 2013	Letter from Signet Planning saying no further comments.
25 March 2013	Letter from West Moor Residents' Association saying they do not wish to repeat previous arguments.

Conditions

1. The development to which the permission relates shall be carried out in complete accordance with the approved plans and specifications as set out below:

Environmental Statement Volume 1 – November 2011;
 Environmental Statement Volume 2 – November 2011;
 Environmental Statement Non-Technical Summary – November 2011;
 North Tyneside Council full planning application forms;
 North Tyneside Council outline planning application forms;
 Newcastle City Council full planning application forms;
 Newcastle City Council outline planning application forms;
 Letter correspondence to North Tyneside Council – dated 25th November 2011;
 Letter correspondence to Newcastle City Council – dated 25th November 2011;
 Letter correspondence to North Tyneside Council – dated 20th February 2012 (including attachments);
 Letter correspondence to North Tyneside Council – dated 5th March 2012 (including attachments);
 National Planning Policy Framework Compliance Statement;
 Planning Appeal Form and Grounds of Appeal;
 Planning Statement;
 Sustainability Statement;
 Statement of Community Involvement;
 Open Space Assessment;
 Affordable Housing Statement;
 Briefing Note relating to economic, social and environmental benefits of development at Whitehouse Farm;
 Design and Access Statement;
 Archaeological Desk Based Assessment;
 Archaeological Evaluation Report;
 Archaeological Geophysical Survey Report;
 Foul Network and Utilities Assessments;
 Flood Risk Assessment;
 Arboricultural Implications Assessment, Arboricultural Method Statement and Tree Protection Plan;
 Pre-Development Arboricultural Survey and Tree Constraints Plan;
 Transport Assessment;
 Transport Assessment Addendum;
 Travel Plan and Addendum

Site Location Plan	113-BEL-R-001
Site Plan as Proposed	113-BEL-R-100 Rev 6
Site Plan as Proposed Plots 1 – 40	113-BEL-R-101 Rev 3
Site Plan as Proposed Middle Section	113-BEL-R-102 Rev 3
Site Plan as Proposed Top Section	113-BEL-R-103 Rev 3
Site Plan as Proposed Commercial Option	113-BEL-R-104 Rev 3

Site Plan as Proposed Adoption Plan	113-BEL-R-105 Rev 2
Site Plan as Proposed House Type Style Plan	113-BEL-R-106 Rev 2
Apartment Block A Proposed Floor Plans	113-BEL-R-200 Rev A
Apartment Block A Proposed Elevations	113-BEL-R-201 Rev A
Apartment Block B Proposed Floor Plans	113-BEL-R-202
Apartment Block B Proposed Elevations	113-BEL-R-203
Apartment Block C Proposed Floor Plans	113-BEL-P-204
Apartment Block C Proposed Elevations	113-BEL-P-205
Apartment Block D Proposed Floor Plans	113-BEL-P-206 Rev 1
Apartment Block D Proposed Elevations	113-BEL-R-207 Rev 1
WHF 01 House Type	113-BEL-R-208 Rev A
WHF 02 House Type	113-BEL-R-209
WHF 03 House Type	113-BEL-R-210
WHF 04 House Type	113-BEL-R-211
WHF 04S House Type	113-BEL-R-212
WHF 05 House Type	113-BEL-R-213
WHF 06 House Type	113-BEL-R-214
WHF 07 House Type	113-BEL-R-215
WHF 08 House Type	113-BEL-R-216
WHF 09 House Type	113-BEL-R-217
WHF 10 House Type	113-BEL-R-218
WHF 11 House Type	113-BEL-R-219
WHF 11A House Type	113-BEL-R-220
WHF 11B House Type	113-BEL-R-221
WHF 11C House Type	113-BEL-R-222
WHF 01S House Type	113-BEL-R-223
WHF 03S House Type	113-BEL-R-224
WHF 12 House Type	113-BEL-R-225
WHF 13 House Type Floor Plans	113-BEL-R-226
WHF 13 House Type	113-BEL-R-227
WHF 14 House Type	113-BEL-R-228
WHF 15 House Type Floor Plans	113-BEL-R-229
WHF 15 House Type Elevations	113-BEL-R-230
WHF 16 House Type	113-BEL-R-231
WHF 17 House Type Plans	113-BEL-R-232
WHF 17 House Type Elevations	113-BEL-R-233
WHF 18 House Type Floor Plans	113-BEL-R-234
WHF 18 House Type Elevations	113-BEL-R-235
WHF 19 House Type Plans	113-BEL-R-236
WHF 19 House Type Elevations	113-BEL-R-237
WHF 20 House Type Plans	113-BEL-R-238
WHF 20 House Type Elevations	113-BEL-R-239
WHF 21 House Type Plans	113-BEL-R-240
WHF 21 House Type Elevations	113-BEL-R-241
WHF 22 House Type Plans	113-BEL-R-242

WHF 22 House Type Elevations	113-BEL-R-243
WHF 22 House Type Elevations 2	113-BEL-R-244
WHF 24 House Type Floor Plans	113-BEL-R-246
WHF 24 House Type Elevations	113-BEL-R-247
WHF 26 House Type Plans	113-BEL-R-250
WHF 26 House Type Elevations1	113-BEL-R-251
WHF 26 House Type Elevations2	113-BEL-R-252
WHF 27 House Type GF Plan	113-BEL-R-253
WHF 27 House Type FF Plan	113-BEL-R-254
WHF 27 House Type Elevations1	113-BEL-R-255
WHF 27 House Type Elevations2	113-BEL-R-256
WHF 28 House Type GF Plan	113-BEL-R-257
WHF 28 House Type FF Plan	113-BEL-R-258
WHF 28 House Type Elevations1	113-BEL-R-259
WHF 28 House Type Elevations2	113-BEL-R-260
WHF 23 House Type Plans	113-BEL-R-261
WHF 23 House Type Elevations1	113-BEL-R-262
WHF 23 House Type Elevations2	113-BEL-R-263
WHF 25 House Type Plans	113-BEL-R-264
WHF 25 House Type Elevations	113-BEL-R-265
WHF 04A House Type	113-BEL-R-266
WHF 04B House Type	113-BEL-R-267
WHF 11D House Type	113-BEL-R-268
WHF 12A House Type	113-BEL-R-269
WHF 12B House Type	113-BEL-R-270
WHF 01A House Type	113-BEL-R-271
WHF 03A House Type	113-BEL-R-272
Garage Details	113-BEL-R-300 Rev 2
Proposed Site Sections	113-BEL-R-400 Rev 2
Site Plan as Proposed Presentation	113-BEL-R-P01 Rev 3
Streetscenes	113-BEL-R-P02 Rev 3
Streetscenes 02	113-BEL-R-P04
Soft Landscape Strategy	652/01 Rev J
Boundary Treatment Strategy	652/02 Rev I
Indicative Boundary Treatment Types	652/03 Rev A
Landscape Strategy Indicative Sections	652/04 Rev B
Indicative Landscape Strategy	652/05 Rev D
Plant Schedules	
Comparison on Existing and Proposed Trees	756/01
Structural Proposals for Bridge Structures	3389-S-D-01

2. The detailed residential development hereby permitted shall be begun before the expiration of three years from the date of this permission.
3. The residential development hereby approved shall be undertaken only in accordance with the agreed phasing plan submitted within the Design and Access Statement.
4. No development shall take place until a scheme showing how the residential development hereby approved is to be protected against the possibility of landfill gas migrating from the

nearby former landfill site has been submitted to and approved in writing by the Local Planning Authority. Thereafter the development shall not take place other than in accordance with the details shown in such approved scheme, and those measures incorporated into the development shall thereafter be retained unless the Local Planning Authority otherwise agrees in writing.

5. The details of a scheme of site investigation for the residential development and assessment to test for the presence and likelihood of gas emissions from underground, including methane gas, shall be submitted to and agreed in writing by the Local Planning Authority prior to commencement of development.
6. The detailed design and construction of the residential development shall take account of the results of the site investigation and assessment agreed pursuant to condition No. 5 and also of the possibility of future gas emissions from underground, including methane gas. The method of construction shall reflect this possibility and incorporate all the measures shown in the assessment to be necessary and any other reasonable precautions so as to guard against such emissions having an adverse effect upon the development and/or the future users and occupiers thereof.
7. No part of the residential development shall be commenced until:-
 - a) A detailed site investigation has been carried out to establish:
 - i) If the site is contaminated;
 - ii) To assess the degree and nature of the contamination present, and whether significant risk is likely to arise to the residents and the public use of land;
 - iii) To determine the potential for the pollution of the water environment by contaminants and;
 - iv) The implication for residential development of the site and the quality of the residential environment for future occupiers.

Such detailed site investigation shall accord with a statement of method and extent which shall previously have been agreed in writing by the Local Planning Authority and

b) The results and conclusions of the detailed site investigations referred to in a) above have been submitted to and the conclusions approved in writing by the Local Planning Authority and

c) A scheme showing appropriate measures to prevent the pollution of the development hereby approved and to ensure an adequate quality of residential environment for future occupiers in the light of such results and approved conclusions has been submitted to and approved in writing by the Local Planning Authority.

Thereafter the residential development shall not be implemented otherwise than in accordance with the scheme referred to in (c) above.

8. The dwellings shall achieve a minimum of Code Level 3 in accordance with the requirements of the Code for Sustainable Homes: Technical Guide (or such national measure of sustainability for house design that replaces that scheme). No dwelling shall be occupied until a Final Code Certificate has been issued for it certifying that Code Level 3 has been achieved.
9. Notwithstanding any indication of materials for phase 1 which may have been given in the application, no residential development shall take place within phase 1 until a schedule and/or samples of the materials for the development and finishes and/or samples of all surfacing

materials for the development have been submitted to and approved in writing by the Local Planning Authority. Thereafter, the development in phase 1 shall not be carried out other than in accordance with the approved details.

10. Notwithstanding any indication of materials for phase 2 which may have been given in the application, no residential development shall take place within phase 2 until a schedule and/or samples of the materials for the development and finishes and/or samples of all surfacing materials for the development have been submitted to and approved in writing by the Local Planning Authority. Thereafter, the development in phase 2 shall not be carried out other than in accordance with the approved details.
11. Notwithstanding any indication of materials for phase 3 which may have been given in the application, no residential development shall take place within phase 3 until a schedule and/or samples of the materials for the development and finishes and/or samples of all surfacing materials for the development have been submitted to and approved in writing by the Local Planning Authority. Thereafter, the development in phase 3 shall not be carried out other than in accordance with the approved details.
12. Where the boundary of the site abuts land within the ownership of Network Rail, details of a trespass-proof fence shall be submitted to and approved in writing by the Local Planning Authority. The approved fence shall be installed prior to the first occupation of the site and thereafter retained.
13. Prior to the commencement of the residential development hereby approved, a timetable for the installation of the following highway works shall be submitted to and approved in writing by the Local Planning Authority. Thereafter the works shall be installed and operational in accordance with the agreed timetable.

- Provision of traffic signals at the junction of the A1056 Sandy Lane/A189 roundabout junction;
- Provision of signalised Pegasus crossing facilities south of the A1056 Sandy Lane/A189 junction;
- Provision of a signalised Pegasus crossing across the A189 south of the proposed site access;
- Provision of part-time traffic signals at the existing A188 Benton Lane/A189 Salters Lane/B1505 Benton Lane roundabout junction (West Moor roundabout).

14. Prior to the commencement of the residential development the following works shall be installed and operational:

- Provision of a new signalised roundabout junction at the proposed site access where it joins the A189.

15. Prior to completion/occupation of any residential unit the following works to Great Lime Road shall be undertaken and operational:

- Creation of the pedestrian/cycle route to the north of the Garden Centre access;
- Completion of a footway from the Gosforth Park racecourse entrance to the newly created pedestrian/cycle route;
- Construction of a mini-roundabout outside the Garden Centre and amendments to the boundary treatment to provide adequate visibility;
- Amendments to Traffic Regulation Orders, lighting, lining, drainage, surfacing and signage.

16. The residential development shall not begin until details of the adoptable estate roads and footways have been submitted to and approved in writing by the Local Planning Authority and

no dwelling shall be occupied until the estate roads which provide access to it from the existing highway have been laid out and constructed in accordance with the approved details.

17. No other part of the residential development shall begin until the new means of access has been sited and laid out in accordance with the approved drawing No JN0354-Dwg-0074G of the Addendum Transport Report.
18. Within six months of the new access being brought into use all other existing access points not incorporated in the residential development hereby permitted shall be stopped up by raising the existing dropped kerb/removing the existing bell-mouth and reinstating the footway verge and highway boundary to the same line, level and detail as the adjoining footway verge and highway boundary.
19. No part of the residential development shall be occupied until an area has been laid out within the site for residents' and visitors' vehicles to turn in accordance with the approved drawing No. 113-BEL-R100 REV06.
20. No residential development shall take place until details of traffic calming measures to 20mph have been submitted to and approved in writing by the Local Planning Authority. Thereafter, the development shall not be carried out other than in accordance with the approved details.
21. The scheme for parking, garaging and manoeuvring indicated on the approved residential plans for each phase shall be laid out prior to the initial occupation of that phase and these areas shall not thereafter be used for any other purpose.
22. Notwithstanding those details of the bridges already submitted, prior to commencement of the residential development, details of the final design for the two bridges hereby approved shall be submitted to and approved in writing by the Local Planning Authority. Thereafter the bridges shall be constructed only in accordance with the approved details.
23. The Travel Plan for the residential development as submitted shall be carried out as agreed with the Local Planning Authority. This shall include an undertaking to conduct travel surveys to monitor whether or not the Travel Plan targets are being met.
The measures included shall be as follows:
 - Provision of a shuttle bus between the site and Four Lane Ends interchange for a period of two years.
 - Provision of a car club based on site for use by new residents.
 - Provision of car clubs at Quorum and Cobalt Business Parks to offset vehicle trips relative to the development.
 - Welcome packs for new residents to promote walking & cycling routes and public transport.
 - Provision of a voucher for up to two, two-week free bus passes per dwelling.
24. No residential development shall take place until plans of the site showing the existing levels of the whole site and proposed ground levels and levels of thresholds and floor levels of all residential units have been submitted to and approved in writing by the Local Planning Authority. Such levels shall be shown in relation to a fixed and known datum point. Thereafter, the development shall not be carried out other than in accordance with the approved details.
25. Notwithstanding details shown on the plans hereby approved, the windows to be inserted in the eastern elevation of apartment block B shall be fixed shut up to a minimum height of 1.7 metres above finished floor level (without any opening mechanism) and glazed in obscure glass. The obscure glazing shall thereafter be retained.

26. Notwithstanding details shown on the plans hereby approved, the window to be inserted in the northern and eastern elevations of apartment blocks C and D shall be fixed shut up to a minimum height of 1.7 metres above finished floor level (without any opening mechanism) and glazed in obscure glass. The obscure glazing shall thereafter be retained.
27. Prior to the commencement of the residential development a detailed scheme to demonstrate protection from external noise within the bedrooms of the dwellings hereby approved shall be submitted to and approved in writing by the local planning authority. The scheme, which shall include ventilation details, shall show that between 23.00-07.00 $L_{Aeq,1hr}$ of 30dB and as far as practicable, $L_{Amax,1hr}$ of 45dB are not exceeded. The approved scheme shall be implemented for each dwelling before occupation and thereafter retained.
28. Prior to the occupation of the dwellings on the western and northern site boundary enclosed by the willow acoustic fencing as indicated on plan 'Boundary Treatment Strategy', the approved noise mitigation scheme for those properties as shown on figure 1, drawing No. 113-BEL-RO1 and drawing No. 652/02 rev I, shall be implemented in full and retained thereafter.
29. The residential development shall not begin until details of the disposal of surface water from the highway, footpaths and other hard surfaces have been submitted to and approved in writing by the Local Planning Authority and no dwelling shall be occupied until the works for the disposal of surface water have been constructed in accordance with the approved details. All surface water drainage to be discharged into any watercourse, surface water sewer or soakaway system from any hardstanding car parking areas comprising more than 50 parking spaces, or any hardstanding car parking areas over 800m², shall be passed through an oil interceptor. Roof water shall not pass through the interceptor.
30. No residential development shall take place until a detailed scheme for the disposal of foul sewage from the development hereby approved has been submitted to and approved in writing by the Local Planning Authority. Thereafter the development shall take place in accordance with the approved details.
31. No residential development shall take place until details of facilities to be provided for the storage of refuse at the properties have been submitted to and approved in writing by the Local Planning Authority. The facilities, which should also include the provision of wheeled refuse bins, shall be provided in accordance with the approved details, prior to the occupation of any part of the residential development, and the storage facilities shall thereafter be permanently retained.
32. Prior to works commencing to each phase of the residential development, a scheme for the provision of secure undercover cycle parking within that phase shall be submitted to and approved in writing by the Local Planning Authority. (This may include provision within associated garages where appropriate). Thereafter, this scheme shall be implemented in accordance with the approved details.
33. All builders' and contractors' compounds, site huts, and storage of plant and materials for the residential development shall be located in accordance with a scheme to be submitted to and approved in writing by the Local Planning Authority prior to any development taking place.
34. Access to the site for all builders' and contractors' vehicles for the residential development, including those delivering materials, shall be in accordance with a scheme to be submitted to and approved in writing by the Local Planning Authority prior to any residential development taking place.

35. Prior to the residential development commencing a detailed scheme to prevent the deposit of mud and other debris onto the highway and to suppress dust arising from construction activities shall be submitted to and approved in writing by the Local Planning Authority. Such a scheme shall include details of a) mechanical street cleaning brushes and b) the provision of water bowsers to be made available to spray working areas due to dry conditions. Thereafter development shall not be carried out other than in accordance with the approved details and the approved measures shall be retained on site for the duration of the works and used on all occasions when visible dust emissions are likely to be carried from the site such as during dry, windy conditions.
36. Prior to development commencing, a scheme indicating the proposed routing of heavy construction vehicles to and from the site and including details of signage to be provided at the site access and at locations along the specified route, shall be submitted to and agreed in writing by the Local Planning Authority. No residential development shall take place until signage has been provided in accordance with the agreed scheme and thereafter such signage shall be retained until construction works are completed.
37. The construction site subject of this approval shall not be operational and there shall be no construction, deliveries to, from or vehicle movements within the site outside the hours of 0800-1800 Monday - Friday and 0800-1400 Saturdays, with no working on Sundays or Bank Holidays.
38. Prior to commencement of the residential development, details of method statements and appropriate mitigation for great crested newt, water vole, badger, otter, bats and nesting birds shall be submitted to and approved in writing by the Local Planning Authority. Subsequently all works on site shall be undertaken in accordance with the approved statements and mitigation.

The method statements and appropriate mitigation shall include, but not be restricted to, the following measures:

In relation to bats, no trees to be removed unless checking surveys have confirmed roosts are absent. Fifty woodcrete-type bat boxes shall be provided to householders or provided in the southern wildlife corridor.

In relation to badgers and otters, checking surveys shall be undertaken prior to construction;

In relation to birds, any works on-site and vegetation clearance shall avoid the bird breeding season (March to August inclusive), unless a checking survey by an appropriately qualified ecologist has confirmed that no active nests are present immediately prior to works. In addition, a range of different types of bird boxes, 40 in total, shall be erected within and around the site.

In relation to great crested newts and water voles, checking surveys to be undertaken prior to construction and works to proceed to a method statement.

39. Prior to the provision of any boundary treatments to the residential properties, details of all mammal gaps shall be submitted to and approved in writing by the Local Planning Authority. Thereafter, the mammal gaps shall be provided in accordance with the approved details prior to the provision of the agreed boundary treatments and the occupation of the dwellings. The mammal gaps shall be retained thereafter.
40. Prior to the commencement of works to the Sustainable Urban Drainage System, details for the provision of hibernacula, and the timing of their installation, shall be submitted to and

approved in writing by the Local Planning Authority. The hibernacula shall be provided in accordance with the agreed details and timetable, and retained thereafter.

41. Prior to the commencement of development a lighting scheme shall be submitted to and approved in writing by the Local Planning Authority to demonstrate that light spillage from the development into the areas designed primarily for Sustainable Urban Drainage Systems and wildlife would not be detrimental to bats. Thereafter the lighting scheme shall be implemented and retained in accordance with the approved details.
42. Prior to commencement of the residential development, a method statement setting out measures to be taken to prevent contamination and pollution to watercourses and ground water sources shall be submitted to and agreed in writing by the Local Planning Authority. Thereafter the measures shall be undertaken in full and works on site shall only be in accordance with the approved method statement.
43. Notwithstanding details already submitted, prior to commencement of the residential development full details of the design, siting, layout, timing of installation and operation and future management of the Sustainable Urban Drainage System (SuDS), including details of water table levels and a method statement for the drainage and diversion of the existing watercourse on the eastern boundary into the SuDS, shall be submitted to and approved in writing by the Local Planning Authority. Thereafter the SuDS shall be installed and maintained only in accordance with the approved details.
44. Prior to commencement of development details of a wildlife route under the A189 and a timetable for its provision shall be submitted to and approved in writing by the Local Planning Authority. Thereafter the wildlife route shall be installed in accordance with the approved details and timings and retained.
45. No groundworks in relation to the residential development shall commence until a programme of archaeological fieldwalking has been completed. This shall be carried out in accordance with a specification which shall have been agreed with the Local Planning Authority. The developer shall arrange for the site to be ploughed, disc harrowed and left to weather for a period of two weeks, unless otherwise agreed by the Tyne and Wear Archaeologist, prior to the fieldwalking taking place.
46. The residential dwellings shall not be occupied/brought into use until the final report of the results of the archaeological fieldwalking undertaken in pursuance of the condition No. 45 has been submitted to and approved in writing by the Local Planning Authority.
47. All existing trees shall be retained, unless shown on the approved drawings as being removed. All existing trees, shrubs and other natural features not scheduled for removal shall be fully protected during the course of the residential site works and building operations in accordance with BS 5837: 2012 and drawing No. ARB/AE 491 TPP within the Pre-development Arboricultural Survey Tree Constraints Plan. No work shall commence on site within the relevant development phase until all trees, shrubs or features to be protected within that phase are fenced along a line to be agreed with the Local Planning Authority with fencing as detailed in the Arboricultural Implications Assessment and drawing No. ARB/AE 491 TPP. Fencing shall be maintained during the course of the works on site. No unauthorised access or placement of goods, fuels or chemicals, soils or other materials shall take place inside the fenced area. In the event that trees become damaged or otherwise defective during such period, the Local Planning Authority shall be notified as soon as reasonably practicable and remedial action agreed and implemented. In the event that any tree dies or is removed without the prior approval of the Local Planning Authority, it shall be replaced as soon as is reasonably practicable and, in any case, by not later than the end of the first available planting

season, with trees of such size, species and in such number and positions as may be agreed with the Local Planning Authority.

48. Details of any pruning works to retained trees on the residential site, around the boundary of the whole development and within the Sustainable Urban Drainage System areas shall be submitted to and agreed in writing by the Local Planning Authority prior to the necessary building operations and/or access, and shall be carried out in advance of other operations under the expert supervision of a suitably qualified arboricultural consultant. All works should comply with the relevant recommendations of BS 3998:2010 (Tree Work).
49. All existing hedges or hedgerows shall be retained, unless shown on the approved drawings as being removed (drawing No. ARB/AE 491 TPP). All hedges and hedgerows on or immediately adjoining the site shall be protected from damage for the duration of works on the site in accordance with British Standard BS 5837:2012. Any parts of hedges or hedgerows removed without the Local Planning Authority's approval or which die or become, in the opinion of the Local Planning Authority, seriously diseased or otherwise damaged within five years following contractual practical completion of the approved development (which shall have been notified in writing to the local Planning Authority) shall be replaced as soon as is reasonably practicable and, in any case, by not later than the end of the first available planting season, with plants of such size and species and in such positions as may be agreed with the Local Planning Authority.
50. Prior to the commencement of the residential development full details of the soft landscape proposals for the boundaries of the site (including details of the proposed planting to the highway verge to the A189), the wildlife corridors and Sustainable Urban Drainage System shall be submitted to and approved in writing by the Local Planning Authority. These details shall include, as appropriate:
- Written specifications including cultivation and other operations associated with plant and grass establishment;
 - Schedules of plants, noting species, planting sizes and proposed numbers/densities where appropriate;
 - Implementation timetables.

All planting, seeding or turfing shown in the approved details of landscaping for the southern wildlife corridor in the site shall be completed before the completion of the first residential plot of the first phase. All planting, seeding or turfing comprised in the approved details of landscaping for the central wildlife corridor and all perimeter planting for the site shall be completed before the completion of the fortieth residential plot of the first phase.

Any trees or plants which within a period of five years from the completion of the final development die, are removed or become seriously damaged or diseased, shall be replaced in the current or first planting season following their removal or failure with others of similar size and species, unless the Local Planning Authority first gives written approval to any variation.

51. No works or development within phase 1 of the approved residential scheme shall take place until full details of both hard and soft landscape proposals have been submitted to and approved in writing by the Local Planning Authority. These details shall include, as appropriate:
- Fully detailed planting plans;
 - Written specifications including cultivation and other operations associated with plant and grass establishment;
 - Schedules of plants, noting species, planting sizes and proposed numbers/densities where appropriate;

Implementation timetables.

52. No works or development within phase 2 of the approved residential scheme shall take place until full details of the soft landscape proposals have been submitted to and approved in writing by the Local Planning Authority. These details shall include, as appropriate:

Fully detailed planting plans;
Written specifications including cultivation and other operations associated with plant and grass establishment;
Schedules of plants, noting species, planting sizes and proposed numbers/densities where appropriate;
Implementation timetables.

53. No works or development within phase 3 of the approved residential scheme shall take place until full details of the soft landscape proposals have been submitted to and approved by the Local Planning Authority. These details shall include, as appropriate:

Fully detailed planting plans;
Written specifications including cultivation and other operations associated with plant and grass establishment;
Schedules of plants, noting species, planting sizes and proposed numbers/densities where appropriate;
Implementation timetables.

54. All planting, seeding or turfing contained in the approved details of landscaping for each residential phase shall be carried out in the first planting and seeding seasons following the completion of that phase, and any trees or plants which within a period of five years from the completion of the final development, die are removed or become seriously damaged or diseased, shall be replaced in the current or first planting season following their removal or failure with others of similar size and species, unless the Local Planning Authority first gives written approval to any variation.

55. Approval of the details of the layout, scale, appearance, access and landscaping of the commercial development on site, hereafter called the 'reserved matters' shall be obtained from the Local Planning Authority before any development is commenced.

56. Application for approval of reserved matters of the commercial development shall be made to the Local Planning Authority before the expiration of three years from the date of this permission.

The development hereby permitted shall be begun before the expiration of two years from the date of approval of the last of the reserved matters to be approved and shall be carried out in accordance with the approved details.

57. The commercial development shall not take place without the supporting residential scheme.

58. No part of the commercial development shall be occupied until an area has been laid out within the site for visitors' vehicles to turn and that area shall not thereafter be used for any other purpose.

59. No commercial development shall take place until a detailed scheme for the disposal of foul sewage from the development hereby approved has been submitted to and approved in writing by the Local Planning Authority. Thereafter the development shall take place in accordance with the approved details.

60. The commercial development shall not begin until details of the disposal of surface water from the highway, footpaths and other hard surfaces have been submitted to and approved in writing by the Local Planning Authority and no building shall be brought into use until the works for the disposal of surface water have been constructed in accordance with the approved details.
61. No commercial development shall take place until details of facilities to be provided for the storage of refuse at the premises have been submitted to and approved in writing by the Local Planning Authority. The facilities, which should also include the provision of wheeled refuse bins, shall be provided in accordance with the approved details prior to the occupation of any part of the commercial development and thereafter permanently retained.
62. All builders' and contractors' compounds, site huts, and storage of plant and materials for the commercial development shall be located in accordance with a scheme to be submitted to and approved in writing by the Local Planning Authority prior to any development taking place.
63. Access to the site for all builders' and contractors' vehicles for the commercial development, including those delivering materials, shall be in accordance with a scheme to be submitted to and approved in writing by the Local Planning Authority prior to any commercial development taking place.
64. Prior to the commercial development commencing a detailed scheme to prevent the deposit of mud and other debris onto the highway and to suppress dust arising from construction activities shall be submitted to and approved in writing by the Local Planning Authority. Such a scheme shall include details of a) mechanical street cleaning brushes and b) the provision of water bowsers to be made available to spray working areas due to dry conditions. Thereafter development shall not be carried out other than in accordance with the approved details and the approved measures shall be retained on site for the duration of the works and used on all occasions when visible dust emissions are likely to be carried from the site, for example during dry, windy conditions.
65. Prior to any construction activities relating to the commercial development commencing, a scheme indicating the proposed routeing of heavy construction vehicles to and from the site and including details of signage to be provided at the site access and at locations along the specified route shall be submitted to and agreed in writing with the Local Planning Authority. No commercial development shall take place until signage has been provided in accordance with the agreed scheme and thereafter such signage shall be retained until construction works are completed.
66. Prior to works commencing on the commercial development, a scheme for the provision of secure undercover cycle parking shall be submitted to and approved in writing by the Local Planning Authority. Thereafter, this scheme shall be implemented in accordance with the approved details before the development is occupied.
67. No development shall take place for the commercial development until details of the height, position, design and materials of any chimney or extraction vent to be provided in connection with the development have been submitted to and approved in writing by the Local Planning Authority. Thereafter, the development shall not be carried out other than in accordance with the approved details.
68. No development of the commercial element shall take place until details of air ventilation systems have been submitted to and approved in writing by the Local Planning Authority. The scheme shall thereafter be implemented before the development is first occupied in accordance with the approved details and permanently retained and operated as such.

69. No commercial development shall take place until details of any refrigeration plant to be installed in connection with the development have been submitted to and approved in writing by the Local Planning Authority. The plant shall thereafter only be installed in accordance with the approved details and permanently retained and operated as such.
70. Prior to the occupation of the commercial development, details of the opening and delivery hours shall be submitted to and approved in writing by the Local Planning Authority. Thereafter the premises shall only operate in accordance with those approved hours.
71. No commercial development shall take place until details of an odour suppression system for the containment of odours have been submitted to and approved in writing by the Local Planning Authority. The scheme shall thereafter be implemented before any commercial use commences in accordance with the approved details and shall be permanently retained and operated.
72. The commercial construction site subject of this approval shall not be operational and there shall be no construction, deliveries to, from or vehicle movements within the site, outside the hours of 0800-1800 Monday - Friday and 0800-1400 Saturdays, with no working on Sundays or Bank Holidays.
73. No groundworks in relation to the commercial development shall commence until a programme of archaeological fieldwalking has been completed. This shall be carried out in accordance with a specification which shall have been agreed with the Local Planning Authority. The developer shall arrange for the site to be ploughed, disc harrowed and left to weather for a period of two weeks unless otherwise agreed by the Tyne and Wear Archaeologist, to allow the fieldwalking to take place.
74. The commercial building(s) shall not be occupied/brought into use until the final report of the results of the archaeological fieldwalking undertaken in pursuance of condition No. 73 has been submitted to and approved in writing by the Local Planning Authority.
75. No commercial development shall take place until plans of the site showing the existing levels of the site and proposed ground levels and levels of thresholds and floor levels of all buildings have been submitted to and approved in writing by the Local Planning Authority. Such levels shall be shown in relation to a fixed and known datum point. Thereafter, the development shall not be carried out other than in accordance with the approved details.
76. Prior to commencement of the commercial development, a method statement setting out measures to be taken to prevent contamination and pollution to watercourses and groundwater sources shall be submitted to and agreed in writing by the Local Planning Authority. Thereafter the measures shall be undertaken in full and works on site shall only be in accordance with the approved method statement.
77. All existing trees, shrubs and other natural features not scheduled for removal shall be fully protected during the course of the commercial site works and building operations in accordance with BS 5837:2012 and drawing No. ARB/AE 491 TPP within the Pre-development Arboricultural Survey Tree Constraints Plan. No work shall commence on site until all trees, shrubs or features to be protected are fenced along a line to be agreed with the Local Planning Authority with fencing as detailed in the Arboricultural Implications Assessment and drawing No. ARB/AE 491 TPP. Fencing shall be maintained during the course of the works on site. No unauthorised access or placement of goods, fuels or chemicals, soils or other materials shall take place inside the fenced area. In the event that trees become damaged or otherwise defective during such period, the Local Planning Authority shall be notified as soon as reasonably practicable and remedial action agreed and implemented. In

the event that any tree dies or is removed without the prior approval of the Local Planning Authority, it shall be replaced as soon as is reasonably practicable and, in any case, by not later than the end of the first available planting season, with trees of such size, species and in such number and positions as may be agreed by the Local Planning Authority.

78. Details of any pruning works to retained trees on the commercial site shall be submitted to and agreed in writing by the Local Planning Authority prior to the necessary building operations and/or access, and shall be carried out in advance of other operations under the expert supervision of a suitably qualified arboricultural consultant. All works shall comply with the relevant recommendations of BS 3998:2010 (Tree Work).
79. All existing hedges or hedgerows within the site of the commercial development shall be retained, unless shown on the approved drawings as being removed (drawing No. ARB/AE 491 TPP within the Pre-development Arboricultural Survey Tree Constraints Plan). All hedges and hedgerows on or immediately adjoining the site shall be protected from damage for the duration of works on the site in accordance with British Standard BS 5837:2012. Any parts of hedges or hedgerows removed without the Local Planning Authority's approval or which die or become, in the opinion of the Local Planning Authority, seriously diseased or otherwise damaged within five years following contractual practical completion of the approved development shall be replaced as soon as is reasonably practicable and, in any case, by not later than the end of the first available planting season, with plants of such size and species and in such positions as may be agreed with the Local Planning Authority.
80. No works for the commercial scheme shall take place until full details of both hard and soft landscape proposals have been submitted to and approved by the Local Planning Authority. These details shall include, as appropriate:
 - Fully detailed planting plans;
 - Written specifications including cultivation and other operations associated with plant and grass establishment;
 - Schedules of plants, noting species, planting sizes and proposed numbers/densities where appropriate;
 - Implementation timetables.
81. All planting, seeding or turfing comprised in the approved details of landscaping for the commercial development shall be carried out in the first planting and seeding seasons following the completion of that development. Any planting, seeding or turfing which within a period of five years from completion of the final development, die are removed or become seriously damaged or diseased, shall be replaced in the current or first planting season following their removal or failure with others of similar size and species, unless the Local Planning Authority first gives written approval to any variation.
82. No development for the commercial development shall commence until a detailed parking layout has been submitted to and approved in writing by the Local Planning Authority. Thereafter, this scheme shall be implemented in accordance with the approved details before the development is occupied and shall be retained for its proposed purpose.
83. No development shall take place until a scheme showing how the commercial development is to be protected against the possibility of landfill gas migrating from the nearby former landfill site, has been submitted to and approved in writing by the Local Planning Authority. Thereafter the development shall not take place other than in accordance with the details shown in such approved scheme, and those measures incorporated into the development shall thereafter be retained unless the Local Planning Authority otherwise agrees in writing.

84. The details of a scheme of site investigation for the commercial development and assessment to test for the presence and likelihood of gas emissions from underground, including methane gas, shall be submitted to and agreed in writing by the Local Planning Authority.
85. The detailed design and construction of the commercial development shall take account of the results of the site investigation and assessment agreed pursuant to condition No. 86. They shall also take account of the possibility of future gas emissions from underground, including methane gas. The method of construction shall reflect this possibility and incorporate all the measures shown in the assessment to be necessary and any other reasonable precautions so as to guard against such emissions having an adverse effect upon the development and/or the future users and occupiers thereof.
86. Prior to the occupation of the commercial development hereby approved all surface water to be discharged into any watercourse, surface water sewer or soakaway system from any hardstanding car parking areas comprising more than 50 parking spaces or any hardstanding car parking areas over 800m², shall be passed through an oil interceptor in accordance with a scheme to be submitted to and approved in writing by the Local Planning Authority. Roof water shall not pass through the interceptor.
87. No development of the commercial development shall take place until a schedule and/or samples of the materials for the development and finishes and/or samples of all surfacing materials for the development have been submitted to and approved in writing by the Local Planning Authority. Thereafter, the development shall not be carried out other than in accordance with the approved details.



Report to the Secretary of State for Communities and Local Government

by P J Asquith MA(Hons) MA MRTPI

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

Date: 18 December 2012

TOWN AND COUNTRY PLANNING ACT 1990 (AS AMENDED)

NORTH TYNESIDE COUNCIL

APPEAL BY BELLWAY HOMES (NORTH EAST) LTD

**REGARDING THE REFUSAL OF PLANNING PERMISSION FOR A
HYBRID PLANNING APPLICATION FOR AN EXECUTIVE SCHEME OF
366 DWELLINGS INCORPORATING LANDSCAPING, WILDLIFE
CORRIDORS, OPEN SPACE, ACCESS AND HIGHWAYS WORKS AND AN
OUTLINE APPLICATION FOR UP TO 465 SQUARE METRES OF
COMMERCIAL DEVELOPMENT (USE CLASSES A1, A2, A3, A4)**

At

**LAND AT WHITEHOUSE FARM, WEST MOOR, NEWCASTLE-UPON-
TYNE**

Inquiry held on 16-19 and 22-23 October 2012

Land at Whitehouse Farm, West Moor, Newcastle-upon-Tyne, NE12 7HA

File Ref: APP/W4515/A/12/2175554

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Abbreviations used in the Report

BAP	Biodiversity Action Plan
BH	Bellway Homes (North East) Ltd
CIL	Community Infrastructure Levy
DL	Decision Letter
DP	Development Plan
EA	Environment Agency
EB	Environment Bank
EIA	Environmental Impact Assessment
ES	Environmental Statement
HA	Highways Agency
IEEM	Institute of Ecology and Environmental Management
NCC	Newcastle City Council
NE	Natural England
NERC	Natural Environment and Rural Communities Act 2006
NHSN	Natural History Society of Northumbria
The Framework	National Planning Policy Framework
NTC	North Tyneside Council
p	Paragraph
p.a.	Per annum
pg	Page
PIN	Pre-Inquiry Note
POCS	Preferred Options Core Strategy
PPG	Planning Policy Guidance
PPS	Planning Policy Statement
PTAL	Public Transport Accessibility Level
RSS	Regional Spatial Strategy
SGL	Safeguarded Land
SHLAA	Strategic Housing Land Availability Assessment
SLCI	Site of Local Conservation Interest
SSSI	Site of Special Scientific Interest
SuDS	Sustainable Urban Drainage System
SoS	Secretary of State
UDP	North Tyneside Unitary Development Plan
WMRA	West Moor Residents' Association
XX	Cross-examination

File Ref: APP/W4515/A/12/2175554**Land at Whitehouse Farm, West Moor, Newcastle-upon-Tyne, NE12 7HA**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Bellway Homes (North East) Ltd against the decision of North Tyneside Council.
- The application Ref. 11/02337/FUL, dated 25 November 2011, was refused by notice dated 20 April 2012.
- The development as described is a hybrid planning application comprising a full application for an executive scheme of 366 dwellings incorporating landscaping, wildlife corridors, open space, access and highways, and an outline application for up to 465 square metres of ancillary commercial development (Use Classes A1/A2/A3/A4).

Summary of Recommendation: That the appeal be allowed and planning permission granted subject to conditions.**Procedural Matters**

1. At the Inquiry an application for costs was made by Bellway Homes (North East) Ltd against North Tyneside Council. This application is the subject of a separate Report.
2. The Secretary of State (SoS)¹ directed by letter dated 17 May 2012 that he shall determine this appeal. The reason for this is that the appeal involves a proposal for residential development of over 150 units on a site of over five hectares (ha) which would significantly impact on the Government's objective to secure a better balance between housing demand and supply and create high quality, sustainable, mixed and inclusive communities.
3. The main body of the appeal site is within the administrative boundary of North Tyneside Council (NTC). The administrative boundary of Newcastle City Council (NCC) runs along the western edge of the adjoining A189 and, as such, part of the highway proposals linked to the development fall within the City Council's jurisdiction². Consequently, an identical application to that submitted to NTC was submitted to the City Council. Planning permission for that element of the proposals within the City Council's jurisdiction has been approved subject to the conclusion of a Section 106 (S106) Agreement under the Town and Country Planning Act 1990 (as amended) relating to the dedication and adoption of land required for highway works and a transfer of responsibility for a section of the highway to NTC³. At the time of the Inquiry the S106 Agreement was in preparation but had not been concluded. The appellant, Bellway Homes (North East) Ltd (BH)⁴, undertook to forward a copy of the permission directly to the SoS once the S106 Agreement had been concluded.
4. The Inquiry sat for a total of six days. I undertook an unaccompanied site visit prior to the opening of the Inquiry to familiarize myself with the site and

¹ Abbreviations used in the Report are listed on the preceding page.

² CD23, p1.4

³ CD23, p1.16

⁴ Within the Report the acronym BH (Bellway Homes) is used to refer to the appellant company.

⁴ Rule 6(6) of the Town and Country Planning (Inquiries Procedure)(England) 2000

the locality in general and this included walking through the site on the public bridleway which crosses it. In addition, I carried out an accompanied site visit with representatives of the appellant, NTC and the West Moor Residents' Association (WMRA) (who appeared at the Inquiry as a Rule 6⁵ party) on 23 October 2012.

5. Within the Inquiry the appellant accepted the Council's suggestion that the use of the word 'ancillary' to describe the proposed outline commercial element of the proposal was inappropriate in the conventional planning context for the use of that term. BH agreed that the description of the development should be amended by the deletion of the word 'ancillary'.
6. An earlier application on the site for 267 executive dwellings (subsequently withdrawn) was accompanied by an Environmental Statement (ES) following the carrying out of Environmental Impact Assessment (EIA) of the proposed development⁶. A request for a Screening Opinion from NCC confirmed that that element of the proposals within its administrative boundary did not require EIA⁷. The present appeal application to NTC was supported by an EIA and the ES⁸ considered the increased quantum of proposed development against the same receptors considered under the original planning application. A covering letter with the application set out the view that the original Screening and Scoping Opinions remained valid for the increased development and when considered against the Town and Country Planning (Environmental Impact Assessment) Regulations 2011⁹.
7. The ES was accompanied by a non-technical summary¹⁰. Additionally, there was a suite of supporting statements relating to different aspects of the proposals¹¹. There is no dispute between the main parties as to the adequacy of the EIA and ES¹².
8. A signed S106 obligation¹³ was presented at the Inquiry, an earlier version having been discussed and Heads of Terms¹⁴ having been previously tabled. NTC produced a note relating to compliance of the obligation with the Community Infrastructure Levy (CIL) Regulations 2010¹⁵.
9. A full set of plans forming part of the application are listed in the Planning Statement of Common Ground (SoCG)¹⁶ although some very minor alterations to a number of plans have subsequently been introduced largely for the purpose of consistency¹⁷. NTC does not object to these revisions being

⁵ Rule 6(6) of the Town and Country Planning (Inquiries Procedure)(England) Rules 2000

⁶ Further details of the earlier proposal are contained in the Planning History section of this report.

⁷ CD23, p1.6

⁸ APPs1 & 2

⁹ CD23, p1.11 & 1.14

¹⁰ APP3

¹¹ APPs4 - 22

¹² BH/0/3, p6

¹³ BH/0/10

¹⁴ APP11

¹⁵ NTC/0/11

¹⁶ CD23, Appx 4

¹⁷ These are listed in the right-hand column within CD27

considered within the determination of the appeal. I have no reason to believe that substantial prejudice to any interests would arise from so doing.

10. A Pre-inquiry Note (PIN)¹⁸ was circulated to the main parties prior to the Inquiry to help in preparation and to try and ensure its expeditious organisation. By the parties complying with my requests this assisted in timetabling the Inquiry and helped to ensure its smooth running.

Reasons for Refusal

11. The application was refused for the following three reasons:
 - 1) *'The development will lead to traffic generation on the road network where there is insufficient capacity at existing junctions, and would be contrary to advice set out in NPPF¹⁹ (sic) and Policy H5 of the North Tyneside Unitary Development Plan (2002).'*
 - 2) *The proposal would have an unacceptable adverse impact upon the biodiversity of the designated Wildlife Corridor and Gosforth Park SSSI contrary to Policies E12/6 and E12/2 of the North Tyneside Unitary Development Plan 2002, and would not represent sustainable development of the site.*
 - 3) *The proposal would result in the loss of designated Safeguarded Land contrary to Policy E21/1 of the North Tyneside Unitary Development Plan 2002.'*
12. Following the submission of the appeal the Council undertook a review of its reasons for refusal. After clarification of information submitted by BH in relation to highway matters, the Council's Planning Committee resolved on 10 July 2012 to withdraw the part of refusal reason No. 2 relating to the impact of the development on the Gosforth Park SSSI and refusal No. 1 relating to highway matters²⁰. The Council's position was communicated to BH on 11 and 18 July 2012²¹.
13. As a consequence, the reasons for refusal presented to the Inquiry were:
 - 1) *'The proposal would have an unacceptable adverse impact upon the biodiversity of the designated Wildlife Corridor contrary to Policies (sic) E12/6 of the North Tyneside Unitary Development Plan 2002, and would not represent sustainable development of the site.*
 - 2) *The proposal would result in the loss of designated Safeguarded Land contrary to Policy E21/1 of the North Tyneside Unitary Development Plan 2002.'*²²

¹⁸ CD51

¹⁹ National Planning Policy Framework referred to hereafter as the Framework

²⁰ CD23, p1.19

²¹ CD23, Appx 3

²² CD23, p1.19

The Site and Surroundings

14. The appeal site extends to some 32 hectares and comprises predominantly arable farmland. It lies about 7km to the north-east of Newcastle city centre and is some 1.5km to the west of Killingworth town centre²³. The site is bounded by the A1056 (Killingworth Way) to the north and the dual carriageway of the A189 to the west. To the east the site is flanked by a narrow corridor of former railway track, known as Killingworth Sidings, now colonised predominantly by birch and rough grassland. This separates the site from the East Coast mainline railway. To its southern side the site is bounded by the rear gardens of dwellings which front the residential street of Whitecroft Road.
15. Occupying a position towards the centre of the site is a range of buildings associated with the original Whitehouse Farm and which are now residentially occupied. These dwellings and their curtilages are excluded from the site and are accessed from a private driveway from the B1505 (Killingworth Drive) to the south. A bridleway passes along the driveway before striking northwards through the appeal site and then dividing to the east, west and north. To the south of the private driveway is a roughly triangular area of grassed open land owned by NTC which includes a kick-about area and a number of mature trees.
16. Beyond the A189 to the west are Gosforth Park Garden Centre, Gosforth Park Racecourse and Nature Reserve. A Site of Special Scientific Interest (SSSI) lies about 625m to the south-west, within the Nature Reserve, separated from the appeal site by the dual carriageway. Beyond the East Coast railway line to the east is the Stephenson Industrial Estate. To the south of Whitecroft Road are further residential areas of West Moor whilst further to the south beyond the roundabout junction of the A189 and the A188 lie the Balliol and Quorum Business Parks.

Planning Policy

17. The Development Plan comprises the Regional Spatial Strategy for the North East²⁴ (RSS, 2008) and the saved policies of the North Tyneside Unitary Development Plan²⁵ (UDP, 2002). The RSS policies which the main parties consider relevant to the proposal are²⁶:
 - Policy 1 – North East Renaissance
 - Policy 2 – Sustainable Development
 - Policy 4 – Sequential Approach to Development
 - Policy 6 – Locational Strategy
 - Policy 7 – Connectivity and Accessibility
 - Policy 8 – Protecting and Enhancing the Environment

²³ The SoCG suggests the distance as being some 2.5km although I consider the linear distance to be closer to 1.5km.

²⁴ CD9

²⁵ CD8

²⁶ As agreed in the Planning SoCG, (CD23), p4.8

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- Policy 9 – Tyne & Wear City Region
 - Policy 24 – Delivering Sustainable Communities
 - Policy 28 – Gross and Net Dwelling Provision
 - Policy 29 – Delivering Managed Housing Supply
 - Policy 30 – Improving Inclusivity and Affordability
 - Policy 33 – Biodiversity and Geodiversity
 - Policy 38 – Sustainable Construction
 - Policy 54 – Parking and Travel Plans
18. The North Tyneside UDP was adopted in 2002, with its policies and proposals aimed at guiding development to 2006. Relevant policies were 'saved' by SoS direction in 2007²⁷.
19. The main parties consider the following saved policies to be of relevance²⁸:
- Policy E12/2 – Developments affecting Sites of Special Scientific Interest
 - Policy E12/4 – Developments affecting Sites of Local Conservation Interest (SLCIs)
 - Policy E12/6 – Developments affecting Wildlife Corridors
 - Policy E20 – Definition of Green Belt
 - Policy E21 – Definition of Areas of Safeguarded Land
 - Policy 21/1 – Criteria for Development and Safeguarded Land
 - Policy H1 – Provision of a Range and Choice of Housing
 - Policy H3 – Housing Allocations
 - Policy H5 – Criteria for Approval of Non-Allocated Housing Sites
 - Policy H8 – Affordable Housing
 - Policy H11 – Criteria for Determining Applications for Residential Development
 - Policy S10 – Criteria for Small Scale Convenience Shopping Provision
 - Policy DC4 – Criteria for Attachment of Planning Obligations
 - Policy DCPS14 – New Housing Estates
20. Within the UDP the appeal site is designated as Safeguarded Land (Policies E21 and E21/1)²⁹. A designated Wildlife Corridor of some 500m in width crosses the site east to west connecting Killingworth Moor with Gosforth Park

²⁷ CD23, Appx 6

²⁸ CD23, p4.12

²⁹ CD8, Proposals Map

(Policy E12/6)³⁰. What was designated as a Site of Nature Conservation Interest (SNCI) at Killingworth Sidings along the eastern boundary of the site has now been downgraded to a Site of Local Conservation Interest (Policy E12/4).

21. In light of the modified reasons for refusal, most of the discussion on UDP policies centred on Policies E12/6 and E21/1.
22. Policy E12/6³¹ prevents development which would adversely affect the contribution to biodiversity of an identified wildlife corridor unless no alternative site is reasonably available, or appropriate measures of mitigation of, or compensation for, all the adverse effects are secured, where appropriate through planning conditions or obligations. Any adverse effects should be minimised and any positive effects of a proposed development on the contribution to biodiversity of a wildlife corridor will be taken into account in the determination of applications.
23. Policy E21³² defines areas of Safeguarded Land (SGL) between the Green Belt and the urban area and indicates that this will be maintained in its open state for at least the plan period. Policy E21/1³³ proscribes development within Safeguarded Land unless it meets all of six specified criteria. These include the preservation of the open nature of the area especially where this forms important open breaks between or within built-up areas (criterion (i)) and no alternative site is reasonably available (criterion (vi)).
24. NTC is in the process of preparing a Core Strategy development plan document. A proposed revision to the Council's Local Development Scheme includes a timetable for the Core Strategy which indicates preparation of a Consultation Draft between October 2012 and May 2013, with likely adoption by September 2015³⁴. Consultation had earlier taken place on a Preferred Options Core Strategy (POCS) document and on Growth Options. Following a meeting on 26 July 2012 the Council resolved to note the report on the consultation on the POCS and Growth Options and await the submission of the Draft, together with views of the Cabinet and Overview and Scrutiny Committee, for consideration by the Council³⁵.
25. NTC determined the appeal application following the publication of the Framework. The officer's report to the relevant Committee makes clear that policies within what was at the time the recently-published guidance had been drawn to attention³⁶.

Planning History

26. There is limited relevant recent planning history. BH submitted a similar application to NTC for 267 executive dwellings together with an identical application to NCC in June 2011, as noted in paragraph 6 above. Following

³⁰ Ibid

³¹ CD8, pg44

³² CD8, pg53

³³ Ibid

³⁴ NTC/0/3

³⁵ CD23, p4.13-4.14

³⁶ CD1

discussions on various matters and an internal review of the proposed development by BH, these applications were withdrawn on 30 January 2012. A revised scheme - that now subject to this appeal - was submitted to both Councils on 25 November 2011³⁷.

The Proposals

27. The main element of the proposals is the provision of 366 'executive' dwellings for which full permission is sought together with the formation of an access onto the A189 where a new roundabout junction would be provided³⁸. Additionally, the proposals include an outline proposal for the provision of up to 465m² of commercial floorspace which would be sited close to the site entrance off the A189. All matters relating to the outline element are reserved.
28. Whilst the total site area amounts to over 32ha, the net developable area is some 22ha, providing an overall density in the region of 16.6 dwellings per hectare. The residential development would comprise a mix of house types and sizes, with 25 different styles and four apartment buildings. The majority of the dwellings would be of two storeys with some three-storey units at key focal points. The properties would range from two-bedroomed apartments to three-bedroomed semi-detached and terraced houses and three, four, four/five and five-bedroomed detached dwellings. The properties would be provided in differing character areas built to differing densities.
29. The proposed four-arm roundabout junction on the A189 would be signalised and would be the sole vehicular access into the site save for an emergency access only onto the A1056 on the northern site boundary. Whilst existing bridleway linkages through the site would be rerouted to accommodate the development's layout, they would continue to run through the site as an integral component of the scheme. There would be upgrades to the existing bridleways, the closure of the existing Network Rail crossing of the East Coast main line (supported by Network Rail), and improved road crossing facilities.
30. The scheme would include a wildlife corridor running east-west roughly central within the site. This would incorporate Sustainable Urban Drainage System (SuDS) ponds, which are integral to the drainage strategy of the proposal. A second wildlife corridor, including integral SuDS ponds, would be formed along the southern site boundary between the proposed housing development and existing residential curtilages of properties in Whitecroft Road. The two wildlife corridors would extend to almost 4.5ha. There would be a further 1.5ha of perimeter/buffer landscaping.
31. The development would be built out in three phases, probably extending over a 10-12 year period. The southern wildlife corridor and the entire perimeter planting would be provided prior to the completion of the first plot

³⁷ CD23, p1.7-1.12

³⁸ This summary is principally taken from the Planning SoCG (CD23, Section 3). More detailed description is within the Design and Access Statement (APP12). The configuration of the site and proposed layout is readily seen in the A3-sized compilation of application plans (BH/17).

and the central wildlife corridor would be established before the completion of plot 40 of the first phase³⁹.

32. Having regard to the commercial element of the overall scheme, parameters were set out in the Design and Access Statement⁴⁰. Two indicative layouts accompanied the application demonstrating how the site could be developed as a predominantly retail facility or as a public house⁴¹.

Other Agreed Matters

33. In addition to facts agreed between the main parties, as set out above, the following are some of the pertinent agreed matters as set out in the three SoCG⁴².
34. Having regard to housing land supply it is agreed that NTC does not currently have a deliverable 5-year housing land supply with or without the appeal site. In light of this it is further agreed that the appeal should be determined in accordance with paragraph 49 of the Framework. This states that '*relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a 5 year supply of deliverable housing sites.*'
35. The commercial element of the scheme would not have any adverse impacts upon any other designated centres identified in the UDP. The scale of the commercial element is sufficiently limited to ensure it would cater for a localised catchment and would not result in any significant trade draw from alternative facilities.
36. Residential amenity for both the occupants of the proposed dwellings and those existing within Whitecroft Road could be adequately ensured or safeguarded.
37. The design and layout of the proposal has been subject to consultation between the appellant, NTC and others. It has a Building for Life 'very good' rating as assessed by NTC's accredited Building for Life Assessor and it is agreed that the design of the scheme would be compliant with UDP Policy H11 and consistent with the requirements of RSS Policy 8. It is agreed that the landscape and visual effects of the proposal do not constitute a reason for refusal.
38. On the basis of a commitment to deliver the residential properties to Level 3 of the Code for Sustainable Homes, it is agreed the general building design, layout and accessibility of the proposals are consistent with the requirements of RSS Policy 38 and UDP Policy H11.
39. A Flood Risk Assessment was submitted as part of the application and neither the Environment Agency nor Northumbrian Water raise objections to the proposal. The parties agree that the proposal demonstrates how surface

³⁹ CD1, p2.8. See the phasing plan in the Design and Access Statement (APP12, pg53).

⁴⁰ APP12, p15.8-15.13

⁴¹ BH/6/1,

⁴² CDs23, 24 & 25. This is on the basis that suggested conditions and S106 obligation, which are discussed later in the Report, would ensure effective mitigation where required.

water would be dealt with and there would be no increased risk of flooding beyond the site boundary.

40. With appropriate conditions and mitigation there would be no significant harm to the nearby SSSI at Gosforth Park or the SLCI at Killingworth Sidings; the scheme would therefore be compliant with UDP Policies E12/2 and E12/4. Policy E12/6 requires confirmation that no alternative sites are available where development would adversely affect the contribution to biodiversity of a wildlife corridor. It is agreed that there are no substantial alternative allocated UDP sites available for the proposed development.
41. There are no outstanding highways matters, with the suggested conditions and the S106 obligation being able to achieve acceptable mitigation.
42. Having stated the above, there are third party objections relating to some of the above matters. The views of the main parties on these are included in the summary of their evidence and third party concerns are covered in the Conclusions.
43. In general, draft conditions⁴³ are agreed but these are considered in more detail prior to the Conclusions.

Main Issues

44. At the opening of the Inquiry the main issues identified and accepted by the main parties were :
 - Whether the proposal would be compliant with development plan and national planning policies particularly having regard to the requirement for a 5-year land supply of deliverable housing sites and the site's status as Safeguarded Land within the North Tyneside UDP.
 - The scheme's impact on biodiversity.
 - Whether the scheme would be a sustainable form of development.
45. In addition to the above, a number of other material considerations were aired at the Inquiry, particularly by WMRA as a Rule 6 party, and by other interested parties. These are addressed insofar as they are raised or remain relevant for other reasons.

THE CASE FOR THE APPELLANT (BELLWAY HOMES (NORTH EAST) LTD)

Introduction

46. Part of the highway works required to support the development lie within the administrative area of NCC. That Council resolved to approve that aspect of the proposal subject to a S106 obligation and conditions. At the time of the Inquiry the final decision had not been issued but the Council's resolution provides sufficient comfort as to the likelihood of permission being issued; it will be submitted separately to the SoS.

⁴³ NTC/0/8

47. It is worth reminding the SoS of the various duties he is faced with in the determination of the appeal. Apart from the obvious duties under Section 38(6) of Planning and Compulsory Purchase Act 2004 he will need to have regard to the recent revisions to Section 70 of the Town and Country Planning Act 1990 by Section 143 of Localism Act 2011 in respect of local finance considerations. In addition, he will need to have regard to the statutory duties under the legislation geared to nature conservation⁴⁴ and, in particular, the duties under the Conservation of Wild Birds Directive (2009/147/EC) which are translated into UK legislation primarily under the Natural Environment and Rural Communities (NERC) Act 2006. The transposition into UK law of the Directive was recently amended by the The Conservation of Habitats and Species (Amendment) Regulations 2012 but this does not have a material impact on the present case.
48. The appeal application relied upon the Screening and Scoping Opinions of an earlier withdrawn proposal in relation to the same site but in respect of a smaller number of dwellings (267). A full EIA was submitted with the application on 25 November 2011. No concern about the adequacy of the environmental information presently available is maintained.
49. The Council's officers presented the application to the Planning Committee on 17 April 2012 with a recommendation for approval. There were no unresolved objections from statutory consultees, including NCC, Natural England (NE), The Environment Agency (EA) or the Highways Agency (HA). The Report to Planning Committee⁴⁵ dealt with the issues pertinent to the decision in detail, with section 7 onwards dealing with the primary considerations material to the proposed development. Mr Verlander (for NTC) observed in cross-examination (XX) that the report was 'entirely reasonable'. The Planning Committee subsequently resolved to refuse planning permission, originally for three reasons but later reduced to two (as set out in paragraph 13 above).
50. The identification and scope of the main issues was agreed by the main parties at the opening of the Inquiry and these are addressed below. WMRA set out its main grounds of objection in opening⁴⁶. These were:
- (i) The application was premature pending the review of the Local Plan;
 - (ii) Safeguarded Land should only be released following that review;
 - (iii) The impact on the existing community by loss of open space;
 - (iv) The scale of the new community would overwhelm West Moor;
 - (v) The harm to the wildlife corridor and biodiversity.
51. Grounds ii) and v) coincide with the second and third main issues identified and grounds (iii) and (iv) are considered below under the first main issue. The

⁴⁴ See BH/4/1, p2.1.3

⁴⁵ CD1

⁴⁶ WMRA/0/1

prematurity argument (ground (i)) is dealt with under the second main issue. Other local objectors raise a wide range of topics, in particular Mr Carney (highways) and Mr Scanlan and Mrs Nicholson (flood risk) and these matters are covered under the first main issue.

Main Issues

a) Whether the proposal would represent a sustainable form of development

The need for housing

52. Paragraph 6 of the Framework confirms that the purpose of the planning system is to contribute to the achievement of sustainable development. The Framework adopts the UN General Assembly definition of sustainable development highlighting the five guiding principles. Paragraph 6 goes on to confirm that the policies in paragraph 18 to 219, taken as a whole, constitute the Government's view of what sustainable development in England means in practice for the planning system. These paragraphs cover a large range of issues many of which are in tension in the consideration of just about every significant development proposal. Paragraph 7 of the Framework advises that there are three dimensions to sustainable development: economic, social and environmental. It is maintained that the proposals would positively contribute to all three. Given the nature of the development, the primary national objectives supported by the scheme would be the social and economic roles. The environmental role is dealt with under the third main issue.
53. Mrs Manson, for the appellant, canvasses these issues comprehensively in section 5 of her proof⁴⁷. Her fundamental point, which appears to be agreed, is that meeting the full objectively-assessed needs for housing is an axiomatic requirement of sustainable development. She was pressed on the point in XX and confirmed her view that meeting the annual average RSS figure (also used in the draft CSPO) would be the primary objective.
54. Both regional and local policies require that a range and choice of housing in terms of size, type and location is made available. Although UDP Policy H1⁴⁸ primarily provided a framework to 2006, Mr Verlander confirmed in XX that the prescription to provide 'range and choice' remained valid and consistent with the objectives of the Framework.
55. It is agreed that NTC does not have a 5-year supply of deliverable housing sites⁴⁹. There is disagreement over the degree of shortfall⁵⁰. Both Mrs Manson and Mr Verlander (XX) confirm that the operation of the presumption in paragraph 49 of the Framework is engaged whatever the degree of shortfall. WMRA agrees this proposition and is a signatory to the SoCG on housing land supply. The Council's closing submissions seek to resile from the SoCG and it would be procedurally unfair to take this into account.

⁴⁷ BH/6/1

⁴⁸ CD8

⁴⁹ SoCG (CD25) and Housing Land Supply consultation document (CD12)

⁵⁰ Inspector's Note: Although not referred to in closing submissions, Mrs Manson's evidence suggests that the Council has a 2.78-year supply applying a 5% buffer or a 2.44-year supply with a 20% buffer (BH/6/1, p5.126-127)

56. All the principal parties therefore agree that the approach to consideration of matters is that set out at paragraph 14 of the Framework⁵¹. This approach to decision-making is a presumption in favour of sustainable development unless the adverse impacts would significantly and demonstrably outweigh the benefits. In a case where the presumption applies it is easy to overlook the need to assess the weight to be attached to the benefits as well as the adverse impacts.
57. Mrs Manson sets out the case on the need for new market and affordable housing in general and the need for executive housing in particular⁵². She highlights the contribution executive housing would make to the broader economic role. The Council did not challenge Mrs Manson's evidence on the latter point and, indeed, Mr Verlander accepted in XX that executive housing would provide such benefits. There was no serious challenge to the suggestion that there was no other site within NTC's area offering a similar housing product. Mr Verlander felt there may be some other smaller schemes offering executive housing but did not provide convincing evidence to refute the appellant's claim. Indeed, as he acknowledged in XX, his evidence did not consider the point in any detail.
58. Mrs Manson's evidence provides a review highlighting the link between executive housing and wider economic development⁵³: research shows the benefits of providing choice for an executive market are inextricably linked to the economic success of the region. Within the Tyne and Wear region there is a need to increase the amount of aspirational housing to address a shortfall and attract more mobile households, as identified in various studies⁵⁴. There are clear synergies and opportunities between providing executive housing and attracting further inward investment to the region with a range of high quality employment accommodation available at the nearby Quorum and Cobalt Business Parks⁵⁵. Recent ministerial announcements have emphasised the need to boost housing and kick-start the economy⁵⁶. A professional assessment of the market suggests that the proposal would attract demand both in current market conditions and would cater for unsatisfied demand as the economy and housing market improve and expand⁵⁷.
59. If the development proceeds the Council would be likely to receive over £5.6m in New Homes Bonus as part of the Government's attempt to promote an increase in house building. Additionally, the S106 obligation would result in a contribution of some £5.5m that could deliver up to 92 additional affordable homes when there has been a recent history of under-delivery of this form of housing⁵⁸. This in itself would result in a further sum of almost £800,000 of New Homes Bonus⁵⁹. The scheme could result in approximately 700 full-time equivalent jobs both directly in its construction and indirectly in the supply

⁵¹ See NTC/2/1 p6.64-6.65

⁵² BH/6/1, Section 5

⁵³ BH/6/1, p5.136-5.156

⁵⁴ Ibid, p5.146

⁵⁵ Ibid, p5.151

⁵⁶ BH/6/3, Appx 26

⁵⁷ BH/6/3, Appx 7

⁵⁸ CD25, p37-40

⁵⁹ Ibid, 5.157-5.159

chain, with what could be a further 19 full-time equivalent jobs being created within the commercial element of the scheme. Twelve new apprenticeships within the local area would be secured through the S106 obligation⁶⁰.

60. The context of current housing delivery needs to be borne in mind. Not only is there no similar product on offer within North Tyneside but also there has been a serious under-delivery of all market and affordable housing for almost the last five years⁶¹. The degree of shortfall is substantial and reveals a worrying trend suggesting the need for urgent action.
61. Mr Verlander, and Mr Price (for WMRA), referred to the recession as providing an important context in respect of the need to provide housing⁶²; the inference being that because of the current difficult economic climate it is not necessary to provide houses at the rate prescribed in the RSS. Such an approach is misplaced, however, as the primary function of housing policy is to meet objectively-assessed needs in full and not to mirror current economic performance. Whilst poor economic performance could have an indirect impact on need, for example if out-migration increased, it is not a tenable argument in present circumstances where the evidence suggests the opposite.
62. Mrs Manson's appendix 17 is a report from Nathaniel Lichfield and Partners (NLP) which identifies an appropriate housing requirement for North Tyneside, informed by demographic, economic and housing-based evidence⁶³. That evidence suggests the housing requirement set out within the RSS and the draft Core Strategy is not sufficient to meet household growth and other strategic and economic objectives, including job growth. The purpose of this evidence is not to seek to 'go behind' the agreed approach to assessing the 5-year housing land supply set out in the housing land supply SoCG. Mrs Manson agrees with the use of the RSS annual average figures. The NLP evidence does strongly suggest the need for increased growth and therefore adds to the weight of the appellant's broader housing case. It is not being suggested that the SoS should decide the level of growth. The report simply looks at the supply side and provides an indication of the direction of travel of population and economic growth; it does not set out to address environmental considerations.
63. The differences on housing land supply between Mrs Manson and Mr Verlander boiled down to four points. First, there is disagreement over the meaning of the phrase 'persistent under delivery'. All parties agree there is no current guidance on the topic. Essentially, Mr Verlander's reasoning follows the now-withdrawn Planning Inspectorate advice note⁶⁴. That advice did highlight the need to take account of all dwellings built since the beginning of the relevant period (in this case the RSS back to 2004). However, the fact that the advice has now been withdrawn potentially indicates a change of policy. Mrs Manson's approach has the benefit of keeping an eye on the primary policy

⁶⁰ BH/0/14, pg2

⁶¹ Completions data are set out in p15 of CD25 with a visual representation provided in the graph and bar chart on pg53 of BH/6/1.

⁶² NTC/2/4, p4.7 & WMRA/2/1, p80

⁶³ BH/6/3

⁶⁴ BH/6/3, Appx 14

objective to boost housing delivery⁶⁵. There has been significant under-delivery for almost five years⁶⁶. Given that the RSS requirement is expressed as an annual average and is not a ceiling, this shortfall should be regarded as a serious matter. To do otherwise would be complacent in the current economic circumstances. The purpose of the buffer tool within the Framework is to ensure choice and competition in the market for land and, as Mrs Manson points out, the operation of the Policy is simply to bring forward land from later phases. There is no material risk of over-provision. Without the urgent grant of planning permissions there is a much greater risk that the shortfall against annual requirements will continue to grow⁶⁷. More weight needs to be given to providing more housing now.

64. Secondly, a difference remains as to the appropriateness of including sites without planning permission. Mr Verlander relies upon some sites in the POCS and the Strategic Housing Land Availability Assessment (SHLAA). Mrs Manson opines that such sites cannot safely be regarded as available now (within the terms of footnote 11 to paragraph 47 of the Framework). She gains convincing support for her interpretation from two appeal decisions⁶⁸. Mr Verlander confirmed in XX that he was aware of no appeal decision which supported his approach. Mrs Manson's evidence on the point remained cogent in the face of XX. Her acceptance of a windfall allowance which includes potential sites from the same sources is not inconsistent with her principal approach⁶⁹. Mr Verlander still relies on the definition of availability and suitability within the Practice Guidance to Planning Policy Statement 4. But this is a completely different context and in the circumstances it is dangerous to refer to this document.
65. A curious, but telling, inconsistency is in Mr Verlander's reliance, in his 5-year assessment, on Station Road, East Benton⁷⁰ which is a safeguarded site, a reason he gives for justifying refusal of permission in this case.
66. Mrs Manson's point is given added force by her evidence of the Council's 'propensity to refuse' any significant greenfield schemes⁷¹.
67. The remaining two disputes relate to Smiths Dock and 'demolitions'. Neither point makes a material difference to the outcomes. The Council's position on Smiths Dock does rather stretch credulity. Much was made in XX of the requirement for '*clear evidence that schemes will not be implemented*' (footnote 11, paragraph 47 of the Framework). It was suggested that no evidence exists to support Mrs Manson's view. The site has had planning permission for 11 years⁷² and so far not a single home has been started. The site has had the benefit of permission through the boom years prior to the 2008 crash. This suggests a fairly solid evidential basis for her views. However, the most helpful piece of evidence to her case was the e-mail

⁶⁵ BH/6/1, p5.96-5.102

⁶⁶ BH/6/1, graph on pg53

⁶⁷ Ibid

⁶⁸ BH/6/3, Appx 15 & BH/0/4

⁶⁹ BH/6/3, Appx 15, p15 Wincanton appeal decision

⁷⁰ NTC/2/1, p6.21 & Table pg42, site ref: 72

⁷¹ BH/6/1, p5.119

⁷² NTC/0/7, p1.2

produced from the Project Implementation Manager of Places for People⁷³, Nigel Brewer. Earlier e-mails⁷⁴ were careful to avoid directly responding to the principal question being asked. When finally pushed, the best Mr Brewer could offer was that the Council's suggestions were no more than a 'possibility'. Given the obvious self interest in promoting the site the use of this ambivalent language seriously damages the Council's position that 80 units per year could be relied upon.

General Sustainability Credentials

68. Having established a clear need for market and affordable housing in general, and executive housing in particular, it is necessary to examine the site's sustainability credentials. The degree of need for housing is, however, an important context for considering these issues. The quantitative requirements of Policy H1 of the UDP expired in 2006 and despite the occurrence of the 2004 Act there is no immediate prospect of an adopted local plan⁷⁵. The latest advice from the Council suggests that the plan may be adopted by September 2015 (a period of nine years since the expiry of the housing policies in the UDP)⁷⁶. This is a poor performance by any standards. The issue is not whether the appeal site represents the most sustainable option of all candidate sites but rather whether it is a reasonable choice when judged against other potential locations in the round. The Framework advice in paragraph 34 on the location of development to minimise travel and maximise sustainable transport modes, taken together with paragraph 110 which directs development to land with the least environmental or amenity value, must be seen in this context.
69. The starting point for this exercise is a review of the adopted and emerging development plans including the most up-to-date evidence base. Mrs Manson and Mr Verlander agreed that in order for the site to have been allocated as Safeguarded Land (SGL) in the first place it had to be found to comply with Annex B of Planning Policy Guidance 2, *Green Belts* (PPG2)⁷⁷. In particular, the site was found to be: -
- 'Genuinely capable of development when needed, well integrated with existing development and well related to public transport and other existing and planned infrastructure, so promoting sustainable development...'*
70. Extracts from the UDP Inspector's report⁷⁸ give a sense of the nature of the exercise. Mr Verlander suggests that because of the date of the UDP the sustainability and environmental objectives may not have been fully taken into account. As the UDP itself and the Inspector's report confirm, such matters were central to the process at the time.
71. More recently, the Council's Preferred Options Core Strategy (POCS) identified the appeal site as a suitable housing location. Whilst it is agreed that

⁷³ NTC/0/4

⁷⁴ NTC/2/3, Appx I

⁷⁵ Local plan as in the Framework definition of the plan for the future development of the local area.

⁷⁶ NTC/0/3

⁷⁷ The relevant criteria are set out at p5.12 of NTC/2/1.

⁷⁸ CD18

little weight should attach to the emerging Core Strategy itself, the evidence base which informs it remains a useful starting point. In particular, the sustainability appraisal⁷⁹ and the site profiles document⁸⁰ provide an independent, systematic and transparent comparison of protagonist sites judged against 18 sustainability objectives, with a range of the Council's officers doing the work.

72. It is important to note that sustainability is not simply about proximity to a Metro station but requires a much broader analysis.
73. It was quite telling that Mr Verlander confirmed in XX that the information in his tables at paragraph 6.31 was drawn 99% from the Council's sustainability appraisal⁸¹. His comments were not based on his own assessments. Mr Verlander's tables simply took into account a very limited and selected number of issues looking at ecological constraints, open breaks, delivery and accessibility. No explanation was offered as to why most of the other 18 sustainability objectives were ignored. Little weight can attach to his evidence on the topic as the partisan selection of criteria renders the exercise utterly tendentious. Likewise, the XX of Mrs Manson dealt only with a narrow range of topics avoiding the broader balancing exercise which is an important part of any true appraisal.
74. In fairness to Mr Verlander, his conclusions from the table on page 49 are simply to suggest two propositions. First, that there are alternatives to the appeal site and that, secondly, he links the exercise back to UDP Policy E21 relating to SGL. It is important not to confuse the role that 'alternatives' play in these overlapping analyses. The attempt in XX of Mrs Manson to elide the different uses of the word 'alternative' was a valiant but mischievous attempt to obfuscate. She confirmed in re-examination that the use of the phrase 'no alternative site' in both Policies E12/6 and E21 were in different contexts. In the first context the appellant's case does not require an examination of that criterion. In the second, the development to which the alternative site criterion applies is not the comprehensive redevelopment intended to be proscribed but rather something much smaller, consistent with safeguarding the land for the longer-term.
75. Counsel's reference in XX to the ES chapter on alternatives was also misplaced. The duty to report on alternatives is contained within the EIA Regulations and arises in a completely different context. These references to 'alternatives' should not be confused with the altogether different issue of considering the site's general sustainability credentials against the much broader range of objectives. There is no prescription that one should look at alternatives.
76. BH also produced its own cogent evidence in respect of the site's broader sustainability credentials. Mrs Manson deals with the matter comprehensively⁸², including her Appendix 29, the WYG Comparative

⁷⁹ CD32

⁸⁰ CD34

⁸¹ NTC/2/1, pg42-48

⁸² BH/6/1, p5.226-5.229

Transport Sustainability Assessment⁸³. The Council criticised this work on the basis that not all sites are evaluated on the same basis. The revised unmitigated Public Transport Accessibility Level (PTAL) scores are set out in BH/0/11. The original work shows that the mitigated effects of the proposal place the site as a reasonable middle-ranking candidate compared with other POCS sites⁸⁴. The WYG Travel Emissions Assessment was glossed over in both Mr Verlander's rebuttal and in XX of Mrs Manson but this showed the site ranked 14th out of 24 sites studied⁸⁵.

77. The fact remains that the vast majority of trips from all residential development are by car. The journey to work is the largest component of such trips. The site is reasonably well located in this regard being close to major employment areas – 26 employment centres within 5km⁸⁶. These include the Balliol and Quorum Business Parks, the latter with the potential to double employment there to 8,000⁸⁷. A Travel Plan (TP) has been proposed which includes measures such as the introduction of executive car clubs, a shuttle bus to the Four Lane Ends Metro station via the Quorum Business Park, and a Travel Plan Co-ordinator to promote and implement the TP⁸⁸. Mr Verlander conceded in XX that omitting the point about the journey to work from any analysis was missing a big issue. Counsel for NTC refers to the fact that the proposed shuttle bus would only be provided for two years and there would be no guarantee of its viability and continuing operation thereafter. However, this matter has been discussed with the Council for a long time; there is a concluded Section 106 Agreement securing provision based on what the operating bus company asked for and this is what the Council has agreed.
78. Mr Gray and Dr Martin carried out their own review of alternative sites comparing the unmitigated impacts of each scheme. Given that Mr Verlander was careful to avoid damning the Council's own sustainability appraisal it is not surprising that their evidence was not materially challenged in its detail.
79. Mr Van Bedaf sets out a comprehensive review of the site's Design and Sustainability credentials from the construction and materials point of view⁸⁹. He confirmed that the appellant was willing to work to Code Level 3 of the Code for Sustainable Homes, a higher benchmark than is currently required by Building Regulations. Standard Assessment Procedure calculations for the house types confirm the clear sustainability credentials of the design of the properties⁹⁰.

Impacts on the Highway Network

80. Many local objectors maintain concerns about the sustainability of the scheme because of its impact on the highway network. In particular, Mr

⁸³ BH/6/3

⁸⁴ BH/6/3, Appx 29, p2.34

⁸⁵ BH/6/3, Appx 29, p3.14-3.18

⁸⁶ BH/6/3, Appx 29, Table 1 within internal Appx D

⁸⁷ BH/5/5, pg6

⁸⁸ BH/0/2

⁸⁹ BH/1/1, Section 9

⁹⁰ BH/1/3, Appx 17

Carney produced a detailed note⁹¹ and gave evidence of his concerns. Mr Jobey, for the appellant, produced comprehensive evidence updating his earlier transport assessment, including a note in response to Mr Carney's evidence which convincingly addressed the issues⁹². The SoCG on highway matters⁹³ confirms the views of the Highway Authority and the WMRA. The Highways Agency was also actively engaged in the application process and raised no objection. There would be net benefits from the scheme including improvements to the junctions of the A189/A1056 and the A189/A188⁹⁴.

Flood Risk and Water Quality

81. Many objectors also raised concerns about flood risk and water quality. Mr Scanlan produced a note at the Inquiry supplemented by a further response⁹⁵. Mr Elliott, for BH, provided comprehensive and well-reasoned evidence in his main proof and his rebuttals⁹⁶. Mrs Nicholson produced video evidence to the Inquiry of flood conditions at the bottom of her garden in the Whitehouse Burn⁹⁷ which Mr Elliott's rebuttal considers in detail⁹⁸. He points out that what is proposed for the site would actually reduce the flood risk exposure at the location shown on the video, and further downstream, because the new drainage system would introduce on-site attenuation that would account for significantly increasing rainfall that could result from climate change⁹⁹. Furthermore, Mr Elliott also indicated¹⁰⁰ that the current runoff rate was greater than that used in his assessment. Runoff presently is uncontrolled with no formal measures to intercept pollutants. The SuDS scheme could improve water quality draining from the site through a system to intercept pollutants¹⁰¹.

Social and Amenity Impacts

82. WMRA raised concerns about sustainability centring on the social dimension. Mr Price maintained objections on the basis that the development would physically dominate the existing village of West Moor and that local facilities may be overloaded¹⁰². He claimed that the latter may lead to disillusionment and progressive disengagement from the Association. Although Mrs Manson confirmed in XX that the local community was best placed to express its feelings on the topic, she did not concede that such feelings were based on valid planning objections. It is important to note that the drive towards neighbourhood planning in the Localism Act is not a populists' charter. Alongside the power to bring forward neighbourhood plans is the duty to meet fully the objectively-assessed needs of the community for housing.

⁹¹ Doc 1

⁹² BH/5/1 & BH/5/5

⁹³ CD24

⁹⁴ BH/5/1, p9.2

⁹⁵ Doc 5

⁹⁶ BH/3/1, BH/0/5 & BH/0/9

⁹⁷ Doc 8

⁹⁸ BH/0/9

⁹⁹ BH/3/1, p6.2

¹⁰⁰ Oral evidence

¹⁰¹ BH/3/1, p6.3

¹⁰² WMRA/2/1

83. Mr Price showed the extent of the existing village of West Moor¹⁰³ but this was expanded to the east during the course of the Inspector's questions. This change by someone so familiar with West Moor simply underlines the point that the village is in fact a suburb contiguous with the main urban area of Newcastle which has grown during the second half of the 20th century¹⁰⁴. It was particularly telling that Mr Price was unable to point to anywhere in the locality where the perception of physical dominance could be appreciated (XX). The WMRA repeatedly pointed out that it was not against all development and that it should not be regarded as a NIMBY¹⁰⁵ organisation. Despite these assurances the only sites that Mr Price promoted for development lay outside of West Moor.
84. The fact is that all prospective greenfield releases in the Council's area have met with vigorous opposition¹⁰⁶. If the feelings of local residents are to be given primacy in every case then development in the borough will be severely restricted.
85. Mrs Tatters produced some evidence in respect of the utilisation for the West Moor Community Centre as at the week commencing 19 October 2012¹⁰⁷. She claimed her evidence demonstrated that the Community Centre was at approximately 85% of capacity at peak times. She was unable to replicate that figure by reference to her Appendix 1. In fact, Appendix 1 tends to suggest that there is considerably more spare capacity available for most of the time. It is not clear whether the reference to peak times is intended to indicate short periods in the late afternoons. The total capacity for each activity is not provided and it is not possible therefore to validate the assertion although it is possible to see that the number of sessions increases in the late afternoons and evenings. The appellant did raise the prospect of a contribution to the Community Centre in accordance with the Council's SPD but this offer was not taken up by the Council.
86. The WMRA case on loss of open space is misconceived. The site is not designated as open space in the UDP or recognised in any other development plan document for these purposes. The site comprises large, actively-farmed agricultural fields with the only public access being via the bridleways. Although the bridleways are reasonably well used, they do not appear to be that popular¹⁰⁸. The site would become far more permeable to pedestrians if the development proceeds. The footpath network would be attractive, set in public open space. The journey across the A189 to Gosforth Park would become far easier with the proposed crossing improvements¹⁰⁹.

(b) Compliance with the Development Plan

87. The UDP was not adopted in accordance with the Planning and Compulsory Purchase Act 2004 and it is common ground that paragraph 214 of the

¹⁰³ WMRA/2/1, Appx 6

¹⁰⁴ BH/1/1, Section 4

¹⁰⁵ Not in My Back Yard

¹⁰⁶ CD33, bar chart, pg36 and CD35

¹⁰⁷ Doc 11

¹⁰⁸ BH/5/4

¹⁰⁹ See BH/5/1, p6.3 & 6.6

Framework is not applicable. Rather, the approach is to be found at paragraph 215 of the Framework where due weight should be given to relevant policies in existing plans according to their degree of consistency with the Framework.

88. Mrs Manson sets out a full analysis of the development plan background and status¹¹⁰. Both she and Mr Verlander (XX) agree that the proposals would be compliant with UDP Policy H1 by meeting the objective of ensuring '*that a range and choice of housing in terms of size, type and location is available....*'. This aspect of policy may be given significant weight as it is entirely consistent with the Framework in general, and paragraph 50 in particular, which seeks to procure '*a wide choice of quality homes....*'. Given the nature of the offer and the lack of alternatives to it within the borough, this is a matter which should be given considerable weight.
89. UDP Policy E21¹¹¹ is a standard policy safeguarding land originally under the auspices of Annex B of PPG2. The same policy is now to be found in the Framework and in principle, therefore, the approach to SGL remains valid. It is for this reason Mr Verlander suggests that full weight can be maintained to Policy E21 in the particular circumstances of this case. However, this approach commits the fallacy of confusing the generality of an approach with its specific application to an individual case. The advice in paragraph 85 of the Framework to provide safeguarded land is directed towards authorities when defining Green Belt boundaries in their plan process. Paragraph 82 makes clear that Green Belts are already established and thus the advice about SGL is prospective in nature. It does not say that existing safeguarded land should not be developed when the timing requires it.
90. The point is dealt with comprehensively by Mrs Manson¹¹² and she confirms that the weight to be attributed to the policy in this case is limited because it is out-of-date in respect of its individual allocations¹¹³. The UDP's housing policy extended to 2006 and it is common ground that the housing policies are, therefore, out-of-date in terms of the Framework. However, Mr Verlander suggests that Policy E21 is not a relevant policy for the supply of housing within the terms of paragraph 49 of the Framework. Mrs Manson disagrees and she is plainly right.
91. Apart from confusing a general class of policy with its individual and specific application Mr Verlander's approach flounders in the absence of any analysis of why harm would occur if the stock of SGL was diminished. Rather, his approach is simply to highlight that considerably more land is allocated as SGL than may need to be developed. This theme occurs in several places in his evidence but it is worth noting his careful use of language at paragraphs 6.32 and 6.33 of his proof¹¹⁴. Whilst he asserts '*that there are a substantial number of alternative sites with a potential for significant yields in terms of new housing units*' he is careful not to suggest that the diminution in the supply of safeguarded land is, in itself, harmful. In substance, Mr Verlander's case on E21 is a thinly disguised prematurity argument. This is not a tenable line of

¹¹⁰ BH/6/1, Section 5, p5.18 onwards

¹¹¹ CD8

¹¹² BH/6/1, Section 5, p5.66 onwards

¹¹³ BH/6/1, p5.72

¹¹⁴ NTC/2/1

reasoning in the circumstances of this case. No support for this approach can be found in the Officer's Report to Committee¹¹⁵ nor does Mr Verlander himself deal with the precepts of a prematurity argument to be found in *The Planning System: General Principles*¹¹⁶. It was confirmed that the Council was not presenting such a case.

92. The Council's approach becomes unreasonable when considering that it withdrew the same SGL point prior to the Inquiry in the West Monkseaton appeal case¹¹⁷ and some SGL sites remain in the Council's current claimed 5-year land supply. The Council does not expect an adopted plan until 2015. It is difficult to see how an argument can be sustained that permission should be refused for SGL reasons pending adoption whilst maintaining that sites affected by the same policy would come forward earlier.
93. The remaining key development plan policy is UDP Policy E12/6. This forms part of a suite of policies concerning nature conservation. Most of the agenda for such policies has been set by European Directives. The UDP confirms which of the directives were then in force¹¹⁸. Although the NERC Act 2006¹¹⁹ became law after the date of the UDP, its terms are consistent with the duty to conserve biodiversity under Section 40 and the obligation in Section 41(3)(a) to take 'reasonably practicable' steps.
94. Dr Martin and Mr Maxwell both agree that an 'adverse effect' for the purposes of the Policy would require a finding of significant harm pursuant to the terms of the Institute of Ecology and Environmental Management (IEEM) Guidelines¹²⁰. Mr Verlander accepted (in XX) that the use of the word 'or' at the end of criterion 1 meant that the criteria were to be read as alternatives. Both he and Mr Maxwell had seen them as 'ands'; they are wrong. Although PPS9 set out a sequential approach, it is agreed that the use of commas and the word 'or' in the first bullet of paragraph 118 of the Framework produces the same effect as to be found in Policy E12/6. The use of the word 'or' in paragraph 118 in combination with the commas indicates the use of a co-ordinating conjunction signifying alternatives. The wording of Policy E12/6, presciently anticipated the terms of the new Framework and, therefore, can be given significant weight.
95. The appellant's case is more fully canvassed under the third main issue but the approach is that there is no significant adverse effect having regard to the mitigation proposed on-site as part of the scheme.
96. Policy E12/6¹²¹ specifically confirms that the positive effects of a proposed development on the contribution to biodiversity must be taken into account when determining planning applications. Mr Maxwell agreed that such positive contributions could weigh against any harmful adverse effects.

¹¹⁵ CD1

¹¹⁶ Not provided as a CD

¹¹⁷ BH/6/3, Appx 11

¹¹⁸ CD8, p5.47

¹¹⁹ NTC/1/3, Appx 8

¹²⁰ NTC/1/3, Appx 12

¹²¹ CD8, pg44

97. It is acknowledged that regardless of the first limb of the Policy a second limb requires that *'in all cases any adverse effects of development shall be minimised'*. Such an approach is consistent with the duties under the NERC Act 2006. The duty to minimise, therefore, has to be seen in the context of the 'reasonable practicability' of such steps. Dr Martin's case, upon which the appellant relies, is that sufficient 'reasonably practicable' steps are taken within the scheme itself. However, if his advice is not accepted, compensation as outlined by Mrs Manson¹²² could be provided and would be a relevant matter to be balanced in terms of Policy E12/6.

(c) Impact on Biodiversity

98. There has been a thorough evaluation of the impact of the proposals on biodiversity. The issues were fully canvassed throughout the application process with statutory consultees becoming fully engaged. There has been evidence from Dr Martin (for the appellant), Mr Maxwell (for NTC) and Mr Littlewood (for WMRA). Although most of the case has centred upon an examination of the impacts on farmland birds, no one seriously challenges the fact that material benefits to some ecological interests would ensue if the scheme goes ahead.
99. Helpfully, there is no material dispute of the facts supporting the judgements of any of the witnesses (the loss of habitat for six farmland bird species, in particular Lapwing, is agreed). Ultimately, the differences between them relate to the relative weight that each gives to different facets, both positive and negative, in arriving at their final judgements. It is also agreed that a determination on the issues boils down to a matter of professional judgement. Although the IEEM guidelines¹²³ prescribe an approach which provides an objective frame of reference for such an assessment, in the end judgement is required in order to assess the significance of any impact and the balancing of significance of any benefit.
100. Dr Martin's evidence is comprehensive, well considered and balanced¹²⁴. His position remained highly cogent under XX. His evidence was described by Mr Urquhart as 'enthusiastic' which, given Mr Urquhart's objection¹²⁵, is a compliment. Dr Martin's advice to the Inquiry was exactly the same in scope and content to that given to the appellant directly beforehand.
101. His advice does not stand alone. Both Mr Verlander and Mr Maxwell agreed that they would expect the SoS to attach significant weight to the advice of Natural England. Both agreed that NE's response was fully considered, grappling with the issues properly. The appellant invites agreement with that view. Furthermore, the Council's own biodiversity officers raised no objection to the development. Their comments are set out in full in NTC's Officer's Report to Committee¹²⁶. Although the officer highlights potential for off-site mitigation at paragraph 4.9 and 4.10 of the report, he does not go on to advise the Council that such compensation is a necessary precondition to the

¹²² BH/6/3, Appx 32

¹²³ NTC/1/3, Appx 12

¹²⁴ BH/4/1

¹²⁵ Doc 6

¹²⁶ CD1, Appx 1, Section 4

grant of planning permission. He makes no finding of a significant residual harm which would lead to an adverse finding under Policy E12/6. This point is highlighted in paragraph 21.4 of the report where he comments '*though the Council's ecologist has expressed some concerns relating to the development, he has not indicated that the development would result in significant harm*'. A finding consistent with that approach is invited.

102. It is acknowledged that it would be open to a decision-maker outwith such a finding to, nonetheless, consider such steps as appear to be reasonably practicable to further the conservation of listed species (section 41(3)(a) NERC Act 2006)¹²⁷. It is in this context that the appellant offers a scheme of compensation as biodiversity offsetting along the lines of the document prepared by the Environment Bank, which provides details of how this could be secured by the grant of planning permission¹²⁸; because of the wording of the Act there may be a need to take all practicable steps, despite Dr Martin's views.
103. Mr Maxwell's concerns about the approach is an absence of information to allow a decision-maker sufficient comfort to impose the condition suggested by the Environment Bank. Such a line of argument is simply a sanctuary of convenience. Mr Maxwell had not himself investigated the possibilities of offsetting. His point was simply that there was not sufficient information to discharge the duty, said to rest upon the appellant, to meet the terms of Circular 11/95, *The Use of Conditions in Planning Permissions*. Such an obligation actually rests with the decision-maker. The advice on the topic is to be found in paragraph 40 of the Circular. The SoS's current policy is that such a condition could be imposed if there are at least reasonable prospects of the action in question being performed within the time limit imposed by the permission.
104. NTC's attempt in XX to suggest a divergence between UDP Policy E12/6 on conditions and Circular 11/95 was adventurous and was not pursued in closing submissions. Mrs Manson rightly repelled suggestions in XX and re-examination. NTC suggested that no condition could be imposed until there was detailed information before the SoS. However, Grampian conditions are designed precisely to deal with uncertainties; a recent decision by the SoS confirmed the appropriateness of imposing offsetting conditions on the basis of a Credit Scoping Report¹²⁹. In the present case the Environment Bank has produced an Offset Search Report as well as a Credit Scoping Report¹³⁰. It has also provided a template of a Conservation Bank Agreement and a Conservation Offset Purchase Agreement to illustrate how delivery could be secured by landowners/farmers/conservation bodies and the offset credits purchased by the developer¹³¹. If a specific site was earmarked the landowner would have a strong, almost ransom, bargaining position. The whole point is that the matrix approach provides scope for negotiating. Nonetheless, various options have been analysed for potential to provide suitable offsets, with

¹²⁷ CD43

¹²⁸ BH/6/3, Appx 32

¹²⁹ BH/0/8

¹³⁰ BH/6/3, Appx 32

¹³¹ BH/0/8, Appx 4

interest in the conservation funding potential offered by offsetting being expressed by the Blagdon Estate¹³². The Environment Bank has expressed confidence in the ability to deliver offset requirements and that there is a reasonable prospect of delivering a scheme¹³³.

105. The Council's officers were confident enough to suggest off-site compensation as a prospect. It is difficult to imagine that they would have suggested something which they believed had no reasonable prospect of being achieved. Mr Littlewood did likewise. Within the precepts of the approach there is no requirement to have a specifically-identified scheme.
106. Both Mr Maxwell and Mr Littlewood gave credible evidence on their approach to the assessment of significance¹³⁴. They placed greater weight than Dr Martin on the loss of habitat for farmland birds and less weight on the ecological advantages of the scheme. Whilst clearly they are entitled to their opinions, the following points reflect on their judgement.
107. First, neither Mr Maxwell nor Mr Littlewood offered a detailed analysis of their findings in the context of the IEEM Guidelines. Specific advice is given within the Guidelines on the assessment of whether impacts are ecologically significant. Key to the approach is the determination of the scale on which species or habitats are valued. All the farmland bird species in this case are valued at the UK level, for the most part being 'Red Listed'. Dr Martin explained the reasons for their listing related to changes in agricultural practice. He advised, and Mr Maxwell agreed in XX, that the UK Biodiversity Action Plan (BAP) does not proscribe the loss of agricultural land to development, or caution against it.
108. Dr Martin confirmed that both the species and the farmland habitat are common. Some similar impacts are likely to be experienced in the development of any farmland in the country. The ubiquitous nature of the species and habitat set the context for the judgements. Equally, as Dr Martin confirmed in re-examination, that same point made the prospect of offsetting relatively easy. He confirmed that the technical aspects of offsetting would involve relatively easy changes to farming management practices and, given the amount of such land available, makes the prospects of securing benefits realistic. The greater the amount of potential habit and the more straightforward the technical solution the less the need for specificity at the point of the decision to impose a condition. Mr Littlewood conceded in XX that his 'especial disappointment'¹³⁵ at the lack of offsetting would reverse in the event of it being conditioned.
109. Secondly, the context of the 'corridor' Policy E12/6 should be borne in mind. This is the primary level at which the species and habitats can be said to be protected locally. The origins of the corridor policy are to be found in the Nature Conservation Strategy¹³⁶. Mr Maxwell agreed that the aim relevant to

¹³² BH/6/3, Appx 32

¹³³ BH/0/8

¹³⁴ NTC/1/1 & WMRA/1/1

¹³⁵ WMRA/0/2

¹³⁶ CD20

¹³⁷ of the strategy. He also agreed the importance of distinguishing between 'existing' and 'potential' local wildlife corridors¹³⁸. The appeal site forms part of a 'potential' wildlife corridor shown in that strategy. The original draft UDP proposed to replicate the broken lines in the Nature Conservation Strategy with a series of green diamond shapes. Although the UDP Inspector found fault with that approach in terms of the geographic uncertainty that would ensue, there is no criticism of the difference between 'potential' and 'existing' corridors¹³⁹.

110. Although the content of the strategy has been derided due to the fact that it was produced in the mid 1980s, care needs to be taken with such criticism. First, the strategy was updated in the 1990s and was considered through the UDP process. The suggestion that the UDP process somehow failed to take account of environmental concerns is entirely misplaced. Secondly, there is no other evidence base to support Policy E12/6. Neither Mr Maxwell nor Mr Littlewood carried out their own review of the overall approach to wildlife corridors. If the Nature Conservation Strategy is indeed to be given little weight then this would simply serve to undermine the policy itself.

111. Dr Martin's point is that in designing the ecological package he had regard, from the outset, to address this issue of 'potential' for improvements to the wildlife corridor. Mr Maxwell agreed in XX that the function of the corridor was not to link areas of open farmland for the benefit of farmland birds. Indeed, Mr Littlewood confirmed that the principal purpose of the corridor was to provide habitats and linkages between Gosforth Park SSSI and Killingworth Lake. All the witnesses agreed that the corridor was currently severed by development including roads and a railway line. Farmland birds are the species most able to overcome these barriers. The species that would be able to take advantage of the proposal's package of improvements, including a wildlife tunnel link under the A189, are precisely the species for which the corridor provides the greatest 'potential'. Dr Martin ascribes greater weight to benefits than either Mr Maxwell or Mr Littlewood and the policy context strongly suggests that he is right to do so.

112. Finally, Dr Martin suggests that the difference between the 2011 and 2012 surveys relates to the unusual combination of factors that occurred in the autumn and winter of 2011 resulting in changed agricultural practices. Mr Maxwell and Mr Littlewood did not challenge Dr Martin's opinion but instead defended their position by suggesting that the appellant had not brought forward evidence of past agricultural practice and that there could be no certainty that better ecological or agricultural practices might not occur in the future. This turned out to be a bad point. Local people will know that the land has always been farmed for arable purposes with the farmer doing his best to obtain the best crop possible. Mr Hawkins, a local resident, confirmed that the land had indeed had crops taken from it for many years (XX). Given rising food and, therefore, grain prices, there is no reason to suspect that the land would not continue to be intensively farmed in the future especially if the prospects of development were clearly proscribed. Overall, findings consistent with Dr

¹³⁷ Ibid, pg8

¹³⁸ Ibid, pg24

¹³⁹ CD18, pg63

Martin's evidence are invited. Any conceivable residual concern could be compensated for by condition.

Overall Conclusions

113. The appellant submits that a grant of permission in this case would: -

- a) Be a determination in accordance with the up-to-date provisions of the development plan (UDP Policy H1) but contrary to the now out-of-date SGL designation of the site.
- b) Provide much needed market and affordable housing.
- c) Provide executive housing with its demonstrable economic spin-off benefits and other local financial benefits.
- d) Be sustainable development when judged against the broad range of objectives demanded by the Framework, including social and amenity considerations.
- e) Not cause significant harm to ecological interests having regard to UDP Policy E12/6 and statutory duty.
- f) Provide tangible improvements to the wildlife corridor overall.
- g) Provide significant improvements to water quality and the risk of flooding.
- h) Not cause harm to the highway network but rather would procure benefits.
- i) Not produce any other harm to interests of acknowledged importance sufficient to justify refusal of planning permission.

THE CASE FOR NORTH TYNESIDE COUNCIL

Introduction

114. The identification of the main issues at paragraph 44 of this report reflects the resolved position of the Council.

Impact on Biodiversity

Legal Tests

115. The Conservation of Habitats and Species (Amendment) Regulations 2012¹⁴⁰ require a competent authority to take such steps in the exercise of their functions as they consider appropriate to secure 'the objective' (see Regulation 9A(1)). The 'objective' is the preservation, maintenance and re-establishment of a sufficient diversity and area of habitat for wild birds in the UK, including by means of the upkeep, management and creation of such habitat (Regulation 9A(3)). This requirement applies to the determination of planning applications (Regulation 9A(4)).

¹⁴⁰ BH/4/3 Appx 15

116. Dr Martin agreed in XX that the legislation aims to preserve, maintain and re-establish habitat for wild birds.
117. The NERC Act¹⁴¹ places a duty on the SoS to have regard, so far as is consistent with the proper exercise of his functions, to the purpose of conserving biodiversity (Section 40(1)). Applying Section 41, the SoS must publish a list of the living organisms and types of habitat which are of principal importance for the purpose of conserving biodiversity. The SoS must take such steps as appear to be reasonably practicable to further the conservation of the species listed as being of principal importance.
118. It is agreed¹⁴² that the legislation aims to further the conservation of the wild birds listed to be of principal importance, so far as reasonably practicable.

Planning Policy

119. It is agreed¹⁴³ that the relevant planning policies have to be interpreted and applied in a manner which is consistent with the relevant legal requirements.

*The Unitary Development Plan*¹⁴⁴

120. It is agreed that the appeal site lies in a designated wildlife corridor. Accordingly UDP Policy E12/6 applies. The application of the Policy is agreed:¹⁴⁵
- (i) The contribution which the site makes to biodiversity must be assessed;
 - (ii) This is the 'current contribution';
 - (iii) The contribution to biodiversity of a site can be either as a habitat or as a corridor or both. The policy makes no distinction;
 - (iv) If there is a significant adverse impact, then *prima facie* the development should not be permitted;
 - (v) Development will not be permitted unless:
 - (1) No alternative site is reasonably available; or
 - (2) Appropriate measures of mitigation of, or compensation for, all the adverse effects are secured, where appropriate through planning conditions or obligations;
 - (vi) The developer can satisfy either criterion (1) or (2);
 - (vii) Criterion (1) requires a robust audit of alternative sites because the policy is trying to direct development away from the wildlife corridors;
 - (viii) It is for the developer to demonstrate compliance with the criterion (otherwise there is conflict with the policy);

¹⁴¹ NTC/1/3, Appx 4

¹⁴² XX of Dr Martin

¹⁴³ Ibid

¹⁴⁴ CD8

¹⁴⁵ XX of Dr Martin

- (ix) The policy requires mitigation/compensation for all adverse (ecological) impacts. 'All' refers to every ecological impact, where such mitigation or compensation is 'appropriate';
- (x) All the adverse impacts must be minimised. This is a mandatory requirement;
- (xi) If a significant adverse impact has not been mitigated or compensated (and it is appropriate for it to be) then it has not been minimised;
- (xii) If there is a failure to minimise a significant adverse impact, there is a failure to comply with the policy;
- (xiii) The SoS should take into account the positive effects of the development on biodiversity. Any positive impacts should be weighed against negative impacts;
- (xiv) If there are positive effects but negative effects which have not been minimised (because there has not been mitigation and/or compensation) there is still a failure to comply with the policy because the impacts have not been minimised.

The Framework

121. Paragraph 109 requires the planning system to contribute to and enhance the natural and local environment by (*inter-alia*):

- Minimising impacts on biodiversity and providing net gains in biodiversity where possible, contributing to the Government's commitment to halt the overall declining biodiversity, including by establishing coherent ecological networks that are more resilient to current and future pressures.

122. Paragraph 118 requires the local planning authority/SoS (when determining planning applications) to conserve and enhance biodiversity by applying the following principles:

- If significant harm resulting from a development cannot be avoided (through locating on an alternative site with less harmful impacts), adequately mitigated or, as a last resort, compensated for, then planning permission should be refused;
- Opportunities to incorporate biodiversity in and around developments should be encouraged.

123. It is agreed¹⁴⁶ that if a developer cannot avoid/mitigate/compensate for a significant adverse ecological impact, then planning permission should be refused. This is because development which has a significant adverse ecological impact (which has not been compensated) cannot constitute 'sustainable development' (for the purposes of the Framework).¹⁴⁷

¹⁴⁶ XX of Dr Martin

¹⁴⁷ Both Mrs Manson and Dr Martin agreed in XX

124. It is further agreed that the UDP and Framework are consistent (for the purposes of paragraph 215 of the Framework).¹⁴⁸

Main Ecological Issue

125. Both Mr Maxwell¹⁴⁹ for NTC and Dr Martin¹⁵⁰ for BH agree that the main ecological issue concerns the impact of the development on the farmland habitats and the associated ornithological interest¹⁵¹.

Survey Results

126. It is agreed that three breeding bird surveys have been undertaken. E3 Ecology has undertaken two surveys for the appellant (in 2011 and 2012). The Natural History Society of Northumbria (NHSN) undertook a survey in 2012¹⁵². It is agreed¹⁵³ that there is no criticism of any survey methodology by any of the ecologists. On the contrary, Dr Martin considers the findings of the surveys to be 'similar'¹⁵⁴.

127. It is agreed¹⁵⁵ that the development would result in the loss of 29.25ha of arable land. This is a direct and permanent impact on the habitat. It is further agreed¹⁵⁶ that the arable farmland supports six relevant bird species:

- Skylark;
- Lapwing;
- Reed bunting;
- Yellowhammer
- Grey partridge;
- Starling.

128. All are wild bird species of principal importance (for the purposes of the NERC Act). All are on the Red List (save the reed bunting which is on the Amber List). It is agreed¹⁵⁷ that the wild bird species would be impacted as follows:

- *Skylark* - the farmland habitat supported three breeding territories in 2011 and nine breeding territories in 2012, which would be lost completely if planning permission is granted. No suitable habitat would remain within the scheme boundary for this species. The habitat also recorded supporting 31 skylarks using the site for winter foraging, demonstrating that the site provides a valuable food resource for

¹⁴⁸ Ibid

¹⁴⁹ NTC/1/1, p5.2

¹⁵⁰ BH/4/1, p7.2.12

¹⁵¹ XX of Dr Martin

¹⁵² WMRA/1/1, p40

¹⁵³ XX of Dr Martin

¹⁵⁴ BH/4/1, p7.7.1

¹⁵⁵ XX of Dr Martin

¹⁵⁶ Ibid

¹⁵⁷ Ibid

wintering birds. The loss of these breeding territories and the associated summer and winter foraging resource is a direct and permanent impact upon the species, which would not be able to use the site post-construction;

- *Lapwing* - the farmland supported one breeding territory in 2011 and five breeding territories in 2012, which would be lost completely if planning permission is granted. The number of lapwings is of borough conservation value, as over 1% of the breeding pairs in the borough are likely to have been present. No suitable habitat would remain within the scheme boundary for this species. The loss of these breeding territories and the associated summer foraging resource is a direct and permanent impact upon this species, which would not be able to use the site post-construction;
- *Reed bunting* - in 2012 three of the four breeding territories recorded on the appeal site were in the open areas of the site in habitats that would be lost completely. Further, the habitats were recorded as supporting 28 reed bunting using the site for winter foraging, demonstrating that the site provides a valuable food resource for wintering birds. The loss of these breeding territories and the associated summer and winter foraging resource is a direct and permanent impact upon the species, which would not be able to use the site post-construction;
- *Yellowhammer* – three breeding territories were recorded in 2012 within the open areas of the site but in habitats (hedgerows) that should remain within the site or on the periphery post-construction. However, the habitats were also recorded as supporting 36 yellowhammers using the site for winter foraging, demonstrating that the site provides a valuable food resource adjacent to the hedgerows for wintering birds. The loss of the summer and winter foraging resources is a direct and permanent impact upon the species;
- *Grey partridge* - this species is recorded as non-breeding (in 2011). In 2012 a single breeding territory was recorded as present within the open arable area of the site. The species was also recorded as using the site for winter foraging in both surveys. The loss of the breeding territory and the associated summer and winter foraging resource is a direct and permanent impact upon the species, which would not be able to use the site post-construction;
- *Starling* - this species was recorded twice by the NHSN in 2012, in flocks of at least 15 and 25 respectively. They were recorded as post-breeding flocks and also birds collecting food and returning to nests on adjacent sites, particularly on the open grassland area.

129. These impacts affect birds on the Red and Amber Lists which currently are under threat. Birds on the Red List are subject to (at least) one of the following factors:¹⁵⁸

- Globally threatened;

¹⁵⁸ NTC/1/1, p5.13

- Historical population decline in the UK between 1800 and 1995;
- Severe (at least 50%) decline in UK breeding population over the last 25 years;
- Severe (at least 50%) contraction of UK breeding range over the last 25 years.

130. In particular:¹⁵⁹

- The *skylark* population has fallen by 53% between 1970 and 2004;
- The *lapwing* population has fallen by 49% in England and Wales (between 1987 and 1998) and since 1960 numbers have dropped by 80%;
- The UK *grey partridge* population fell by 82% between 1970 and 1998¹⁶⁰.

131. The appellant contends that the reduction in numbers of the six species has been caused by a change in agricultural practices; accordingly, the UK BAP has no proscription on housing development. However, as Dr Martin conceded in XX, this point is specious. Farmland birds are in decline because of three main factors¹⁶¹:

- (a) Loss of winter food;
- (b) Loss of food for chicks;
- (c) Loss of nesting sites.

132. Changes in farmland management have been responsible for the sharp reduction in farmland bird species numbers as they impact on the three main factors. However, as Dr Martin conceded in XX, it is entirely academic to the relevant species whether the loss of winter food/loss of food for chicks/loss of nesting sites is caused by housing development or a change in agricultural practices. The impact of the development will be as equally damaging as changes in agricultural practices. Accordingly, as the UK BAP condemns changes in agricultural practices (as a result of the impact on the three factors), it must equally condemn housing development on farmland which would have the same impacts.

Significance of the Impact

133. The significance of the impact is agreed. Dr Martin considers¹⁶² that:

- During the winter period 2011/2012, the area of arable land provided a good food resource within the site and attracted 'good numbers' of skylark (peak count 31), yellowhammer (peak count 36) and reed bunting (peak count 28);

¹⁵⁹ Ibid, p5.4

¹⁶⁰ Ibid

¹⁶¹ BH/4/3, Appx 10

¹⁶² BH/4/1, p5.1.3

- For the winter period 2011/2012 the site therefore is considered to be of up to 'district bird value' (supporting a significant number of these UK BAP species in comparison with other sites surveyed in North Tyneside).
134. This is consistent with the professional judgements of Messrs Maxwell (for NTC) and Littlewood (for the NHSN).
135. However, Dr Martin (ultimately) considered the site to be of only parish level conservation value¹⁶³ not on the basis of its current contribution to biodiversity but rather on the basis of its potential future condition. However, in XX, he agreed that:
- The Policy requires an assessment of the site's 'current contribution' to biodiversity;
 - No surveys were taken before 2011;
 - There is no evidence about agricultural practices which took place prior to 2011 (especially regarding the availability of ecological stewardship grants - save for that given by Mr Littlewood).
136. Accordingly, Dr Martin simply does not know about the condition of the site before 2011. Further, he does not know how often wet weather has prevented cropping in the past. The site is currently owned by BH, which has no incentive to encourage biodiversity. The site is let on an annual basis to a farmer who farms the land intensively and commercially for profit. On this basis there can be no suggestion that the condition of the land may change in the future as a result of a change in land use. Dr Martin nonetheless contends that the value of the site for biodiversity may change in the future because of:
- (a) Drier weather;
 - (b) The installation of drainage¹⁶⁴;
 - (c) The availability of an agricultural grant regime.
137. However, Dr Martin has no evidence whatsoever to support his assertion that with 'more typical agricultural management' the site would be considered (in the future) to be of parish level conservation value. In particular:
- Dr Martin did not know how often wet weather has prevented cropping in the past;
 - He does not know how often wet weather would prevent cropping in the future;
 - He has merely assumed that the site was too wet to cultivate (he has not actually spoken to the farmer).
138. So whilst Dr Martin considers that there is 'a prospect' that drainage may be installed on the site, which would lead to the site being cropped in the future, he agreed in XX that:
- He did not know what the farmer wanted to do in the future;

¹⁶³ See definitions in BH/4/3, Appx 1

¹⁶⁴ BH/4/1, p5.1.6

- There is no assessment of the cost of the drainage;
- There is no assessment of whether the installation is viable and/or over what period;
- There is no information on whether the farmer would be prepared to take the commercial risk;
- He did not know whether the farmer wants a 10-year tenancy.

139. Accordingly, whilst Dr Martin considers that the installation of drainage is likely to happen in the future¹⁶⁵, he has absolutely no evidence on which to base that judgement. Indeed, it is equally likely that the farmer (as he has in the past) would obtain a stewardship grant to encourage biodiversity on the site, in which case the contribution the appeal site makes to biodiversity would increase. However, (being fair), there is an absence of evidence on:

- The availability of grants;
- The money that the farmer may receive;
- Whether the farmer has enthusiasm for such a scheme.

140. In the light of such concessions, Dr Martin agreed in XX that the correct approach was for the SoS to determine the application on the basis of the survey evidence in accordance with the policy. In such circumstances, it is common ground that the site should be considered to be of district bird value, supporting a significant number of UK BAP wild bird species.

141. Indeed, Dr Martin's contrary approach (in his written evidence) would be contrary to planning policy and public policy, as he conceded. Landowners should not be given an incentive to harm ecology in the future. Encouraging (through decision-making) a landowner to reduce the ecological value of the site in the future is contrary to the legal and planning policy tests. Indeed, he conceded that, were such an argument to be endorsed, every landowner would deploy it, thereby reducing the protection for biodiversity by lowering the policy hurdle.

Assessment of Significance

142. NTC considers the direct and permanent impacts to six bird species of principal importance for conservation, listed on the UK BAP, under threat (Red and Amber listed) and of district importance, is significant, applying IEEM Guidelines. The impact (unmitigated) is therefore considered to be significant and adverse (for the purposes of UDP Policy E12/6 and paragraph 118 of the Framework.¹⁶⁶

143. In assessing the significance of the impact to biodiversity, the Appellant relies on a matrix¹⁶⁷. NTC is critical of this approach. Mr Maxwell does not consider the matrix approach to be good practice. The matrix relied on tends

¹⁶⁵ Re-examination of Dr Martin

¹⁶⁶ See NTC/1/1, p5.8 & 5.12

¹⁶⁷ APP1 - ES, Volume 1, pg35

to place negative impacts on a feature of local value into a low significance category, almost inevitably downplaying local values for biodiversity.¹⁶⁸

144. The IEEM Guidelines specifically highlight a difficulty with the application of the matrix approach:

'4.53 Using a wholly subjective link between a value and magnitude, matrices generally assign different levels of significance to various cells in the matrix. Decision-makers using the results from such a matrix then have to distinguish between, for example, an input of "medium significance" against one of "low significance" without any guidance other than an intuitive understanding of these terms which are inevitably subject to individual interpretation.

4.54 This type of matrix tends always to place negative impacts on a feature of local value into a low significance category. This can downplay local values for biodiversity. A check should be made of planning policies to ascertain whether special provisions have been made for protecting such resources...'

145. The IEEM Guidelines articulate a generic limitation in this methodology. Further, this general limitation applies specifically to the manner in which Dr Martin has applied the methodology of this particular ES.
146. In the ES, a high magnitude of effect is defined as *'Total loss or major/substantial alteration to key elements/features of the baseline (pre-development) conditions such that the post-development character/composition/attributes will be fundamentally changed'*¹⁶⁹.
147. In XX, Dr Martin conceded that the development would result in the total loss of 29.25ha of arable land: the post-development character of the arable land would, therefore, be fundamentally changed. On that basis, applying the definition in the ES, the development would have a high magnitude of potential effect. Despite this, the ES (and Dr Martin in reliance on it) considers there would be a low magnitude of effect. 'Low' is defined as *'a minor shift away from baseline conditions. Change arising from the loss/alteration will be discernible/detectable but not material. The underlying character/composition/attributes of the baseline condition will be similar to the pre-development circumstances/situation'*¹⁷⁰. However, Dr Martin does not consider that there would be a minor shift away from the baseline condition.
148. Accordingly, the only conclusion to draw is that he has failed to apply the definitions in the ES. Mr Maxwell (applying Dr Martin's methodology) concludes that the magnitude of potential effect is 'high'. Had Dr Martin followed his own methodology he would have concluded also that the magnitude of effect is high.
149. Dr Martin's apparent explanation is that the effect on the wild birds is reduced because the site represents only 4.4% of the farmland within a 3km

¹⁶⁸ See IEEM Guidelines at 4.31 and NTC/1/1, p5.8

¹⁶⁹ APP1, Table 6.1, pg35

¹⁷⁰ Ibid

radius of the site. However, there is no transparent explanation of why 3km has been chosen. If 2km is chosen, the impact is considerably higher.¹⁷¹ Further, the ecological value of the other farmland sites has not been assessed. If (consistent with his theme that agricultural practices are threatening birds) it may be that the other sites contribute nothing to biodiversity. Finally, the fact that there may be other farmland in the area does not actually reduce the physical impacts on the birds on the appeal site. The impact to the species is the same whether this is the only site or one of many. Had Dr Martin's methodology addressed this point (transparently or at all) the impact would not have been reduced in this manner.

150. A 'high' sensitivity of receptor is defined as: '*The receptor/resource has little ability to absorb change without fundamentally altering its present character and/or is of high ecological value or is of international, national or regional ecological importance*'¹⁷².
151. Dr Martin conceded that the arable farmland has no ability to absorb the proposed change without fundamentally altering its present character. Accordingly, the arable farmland fell within the definition of high sensitivity. However, it is agreed that (on the basis of the 2012 survey data) the site is of district importance (and therefore of medium sensitivity). The appeal site therefore falls within both the definition of high and medium sensitivity. In XX, Dr Martin could not explain how the ES resolves this tension (either transparently or at all). In particular, he could not explain whether the lower or higher sensitivity should apply. Consistent with the legal and planning policy tests, which seek to protect and enhance the bird species of principal importance, the higher sensitivity should apply.
152. The application of the ES methodology (especially the relevant definitions) is not academic. A high magnitude of change on a high sensitivity receptor results in a major significance of effect. Alternatively, a high magnitude of change with a medium sensitivity of receptor results in a major/moderate significance of effect. Either way, the effect is 'significant' for the purposes of the IEEM Guidelines. Applying the ES methodology, Mr Maxwell concludes that the impact would be significant and adverse (which supports his professional opinion). Had Dr Martin followed his own methodology, on the basis of his oral evidence, he should and would have reached the same conclusion.
153. Accordingly, on the basis of the evidence, the SoS should conclude that the impact on the arable land habitat and associated species of principal importance is significant and adverse for the purposes of Policy E12/6 and paragraph 118 of the Framework.

Mitigation

154. There is no mitigation for the loss of 29.2ha of arable land. Further, NTC (supported by WMRA and their ecologists) submits that there is no material mitigation for the associated wild birds.

¹⁷¹ See WMRA/1/1, p26 – 18% of farmland

¹⁷² APP1, Table 6.2, pg35

155. The appellant has suggested that there would be mitigation for reed bunting and yellowhammer. Some 0.34ha of reeds is proposed to be established for the reed bunting. However, this is a fraction of the loss of the arable land and no assessment is provided as to the positive impacts it may deliver. Bird feeders may be provided in gardens. However, the appellant has no control over this and there is no assessment as to the likelihood/benefit to yellowhammers. Accordingly, in XX, Dr Martin candidly conceded: *'the developer takes the loss of farmland birds on the chin.'*
156. In all the circumstances, therefore, there is no on-site mitigation for the farmland bird species. This is a conclusion independently reached by Derek Hilton-Brown (ecologist for NTC), Mr Maxwell, and Mr Littlewood (for WMRA). In the absence of any on-site mitigation, the residual impact remains significant and adverse.

Compensation

157. In his consultation response, Derek Hilton-Brown specifically considered that there was a requirement for off-site compensation, as a result of the adverse impact on farmland birds¹⁷³. He considered that the developer should consider off-site mitigation at three sites. If, on investigation, such sites were unsuitable, it was stated that the developer would have to find alternative sites. Accordingly, Dr Martin agreed that NTC's ecologist considered:
- There was a significant adverse impact on the farmland birds;
 - That adverse impact could be compensated;
 - That adverse impact should be compensated;
 - It was for the developer to address the adverse impact by compensation.
158. Notwithstanding the express recommendation of NTC's ecologist,¹⁷⁴ BH did nothing to provide off-site compensation, prior to the determination by the Council.
159. The appellant's case has been that the provision of off-site compensation:
- (i) Was not necessary (in the terms of Circular 11/95); but
 - (ii) If it was necessary, it can be addressed by way of a negatively-worded Grampian condition.
160. This was not the appellant's approach before the planning committee. In September 2012, BH commissioned a new piece of work (from The Environment Bank) which purports to provide appropriate off-site compensation.

¹⁷³ CD1, Appx 1 p4.9. Inspector's note: Although the report refers to off-site mitigation it is more accurate to describe this as a requirement for off-site compensation.

Issue 1: Is off-site compensation necessary?

161. Dr Martin's professional judgement is that the positive impacts of the ecological mitigation (to other species) outweigh the negative impacts on the six species of principal importance. His professional opinion is at odds with the professional opinion of Messrs Littlewood and Maxwell¹⁷⁵ and the Council ecologist. Further, his approach is contrary to the agreed interpretation of UDP Policy E12/6, which requires all adverse effects to be minimised where appropriate.
162. It is common ground that off-site compensation is (potentially) deliverable. Accordingly, the failure to provide it (or address it adequately in the evidence) is a clear failure to minimise the adverse ecological impacts of the development. Applying the policy (on the agreed basis) means that off-site compensation is 'necessary'.
163. Further or alternatively, the appellant's own evidence robustly demonstrates that off-site compensation is required.
164. Biodiversity offsets are conservation activities designed to deliver biodiversity benefits in compensation for losses in a measurable way. Metrics are combinations of measurements that provide an assessment of the biodiversity value of a site. The metric allows the biodiversity impact of a development to be quantified so that the offset requirement, and the value of the compensatory action, can be clearly defined¹⁷⁶. Accordingly, it is considered that (on the basis of the technical paper) an offset requirement only arises where there is a residual adverse ecological impact. This is self-evident: there is no need for compensation to be provided where the ecological impact is neutral or positive.
165. Indeed, the Environment Bank (EB) report says this in terms:

'Biodiversity offsets are conservation activities designed to deliver biodiversity benefits in one place, to compensate for losses in another, in a measurable way'.¹⁷⁷ (emphasis added)

'If a developer and LPA recognise that a development, despite implementation of achievable on-site mitigation measures, still has some net residual impact on the environment... then the developer may purchase "conservation credits" that offset this damage. The monies paid to buy the conservation credits are then used to fund long-term environmental management, which delivers biodiversity gain at "receptor" sites everywhere.'

166. Despite Dr Martin's assertions to the contrary in his oral evidence, such passages (as he readily conceded when he engaged with the question) demonstrate that the requirement to purchase conservation credits only arises

¹⁷⁴ It is accepted that this suggestion did not crystallise into an express reason for refusal.

¹⁷⁵ WMRA/1/1 & NTC/1/1, p5.20

¹⁷⁶ See Technical Paper p7 and 9 within BH/6/3, Appx 32

¹⁷⁷ BH/6/3, Appx 32, p4

where there is a net adverse residual impact. If (as Dr Martin asserts) there was a neutral or positive ecological impact there would be no requirement for offset credits. To the extent that the latest EB letter¹⁷⁸ asserts something different, it is inconsistent with the EB report, to which greater weight must attach.

167. In this case, the EB derived a requirement for a total of 122.5 conservation credits. This requirement specifically takes into account credits created from providing habitat through on-site mitigation¹⁷⁹. The total is derived as follows:

- Direct impact credits - 126.8; plus
- Indirect impact credits - 18; less
- Credits created from providing habitat on site - 22.3;
- Total - 122.5

168. This is not a 'top-down' approach, addressing a notional national biodiversity interest. It is a site-specific and development-specific assessment. The EB (apparently expert in the application of the Technical Paper) derives a requirement for off-site compensation comprising between 14.3 and 32.1ha, together with 105m of hedgerow once proposed plans for on-site habitat creation have been accounted for¹⁸⁰. Of the 32ha, 10ha of grassland should be suitable for lapwing. Again, the requirement for compensation is not only development-specific but species (on the site) specific.

169. In XX, Dr Martin conceded that this was a requirement for 'substantial' off-site compensation. It must follow, therefore, that the residual adverse impact is also 'substantial'. This is entirely in accordance with the evidence of NTC and WMRA that the net residual impact would be significant and adverse.

170. The inescapable conclusion to be drawn from the EB report is that there is a significant adverse residual impact. The professed ecological benefits clearly come nowhere near offsetting the adverse impacts on the Red and Amber List bird species of principal importance. Dr Martin's contention (to the contrary) is not only inconsistent with the professional judgements of Messrs Maxwell and Littlewood it is inconsistent with the appellant's own independently-commissioned assessment. In this regard, Dr Martin is a lone voice and is, indisputably, wrong.

171. It is therefore considered that (even on the basis of the appellant's own evidence) off-site compensation is 'necessary' (in the terms of Circular 11/95) to address the significant net residual ecological impacts.

Issue 2: Can the imposition of a condition deliver adequate compensation?

172. The appellant's evidence on this point is wholly inadequate, such that the SoS cannot conclude that a condition can secure adequate compensation. This is because the appellant (for reasons known only by itself) refused to engage in the provision of compensation until less than one month before the opening

¹⁷⁸ BH/0/8

¹⁷⁹ BH/6/3, Appx 32, p18 and Tables 2A - 2D

¹⁸⁰ Ibid, p19

of the Inquiry. As a result of the short time period, the evidence is wholly inadequate.

173. The EB asserts¹⁸¹ that it is confident that an offset could be secured if requested. It is firmly submitted that such a conclusion is not supported by any (or any adequate) evidence. On the contrary, to the extent that there is evidence, it contradicts the assertions of the EB.

174. EB invited expressions of interest from a variety of landowners. The landowners registered a 'no obligation, commitment-free' expression of interest.¹⁸² In the light of such expressions of interest, site visits were made to only two properties:

- (b) Blagdon Estate; and
- (c) Weetslade Country Park.

175. In the light of the results¹⁸³ the SoS has been provided with no evidence on the following (which Mrs Manson agreed):

- a. How the scheme would work (either for the landowner or the developer);
- b. The cost (to either the developer or the landowner);
- c. The nature of the agreement with the landowner;
- d. The length of the management plan;
- e. The current ecological condition of the site¹⁸⁴;
- f. The proposed works of ecological benefit;
- g. The beneficial impact of the proposed works to the relevant species;
- h. Whether such compensation would be adequate to offset the identified adverse impacts.

176. Such criticisms of the evidence are not cosmetic. They are fundamental to assessing the adequacy of the compensation. If the ecological condition of the sites or the proposed works of compensation are unknown, it is impossible to reach a conclusion on whether such works would be beneficial and/or offset the accepted adverse impacts (as Mrs Manson accepted). Indeed, the Technical Paper requires that offsetting should expand and restore habitats, not merely protect the extent and condition of what is already there¹⁸⁵. Further, offsetting should be transparent¹⁸⁶. The scheme (as currently formulated) fails both fundamental requirements of the Technical Paper.

177. Furthermore, the Technical Paper specifically requires a comparison between the current condition of the land and a target future condition¹⁸⁷.

¹⁸¹ BH/0/8

¹⁸² XX of Mrs Manson

¹⁸³ BH/6/3, Appx 32, pg23 et seq

¹⁸⁴ Ibid, especially p27 & 28

¹⁸⁵ BH/6/3, Appx 32, Biodiversity Offsetting Pilots Technical Paper: the metric for the biodiversity offsetting pilot in England – attached as Appx 1

¹⁸⁶ Ibid

¹⁸⁷ Ibid, p29 & 38

178. Despite expressions of interest, no landowners have signed up to the compensation scheme. Given the total lack of evidence available to them and/or any clear articulation of how the compensation scheme would work, this is hardly surprising. Nonetheless, it is fundamental to a consideration of whether compensation is deliverable. The Technical Paper addresses dealing with risk¹⁸⁸. Where risks cannot be mitigated, some form of insurance is likely to be needed. However, no scheme of insurance is provided by the developer, contrary to paragraph 46.
179. Risk can be addressed by a multiplier. The multiplier used in this case is 1.5, suggesting a medium risk of non-delivery. However, the technical paper specifically acknowledges that, if the worst case risk is realised i.e. the restoration or expansion fails to deliver, a multiplier will not solve the problem¹⁸⁹.
180. Such criticisms are not generic criticisms of the approach. Rather they are specific criticisms of the evidence presented by the appellant on the specific sites. The Blagdon Estate has simply not been the subject of any ecological assessment at all¹⁹⁰. The same criticism would appear to apply to Weetslade Country Park. Indeed, to the extent that consideration has been given to Weetslade Country Park, the evidence (from the Wildlife Trust which manages the site) suggests that, as a choice for compensation, it is 'dreadful'¹⁹¹.
181. Accordingly, there is simply no evidence on which it can be concluded that the identified residual adverse impacts can be addressed by a condition.
182. The appellant relies on the SoS decision at Linslade Meadow¹⁹². However, in that case, the local planning authority considered that the imposition of a condition was suitable. The basis for the authority's compromise is not known¹⁹³. The above points were not taken by the authority and were not, therefore, resolved by the SoS. The decision letter simply does not assist in the resolution of this issue. It is not, therefore, a material consideration to which any material weight can attach.
183. The situation is not comparable to addressing affordable housing¹⁹⁴. There are no specific legal tests which apply to the delivery of affordable housing (comparable to the NERC Act and Wild Birds Directive). As agreed, the SoS must (applying the relevant legal tests):

- (a) Preserve, maintain and re-establish the habitat of wild birds; and
- (b) Take such steps as appear to be reasonably practicable to further the conservation of the species listed as being of principal importance.

¹⁸⁸ Ibid, p45-46

¹⁸⁹ Ibid, p54

¹⁹⁰ BH/6/3, Appx 32, p27 & 28

¹⁹¹ NTC/0/2

¹⁹² BH/0/8, Appx 1

¹⁹³ XX of Mrs Manson

¹⁹⁴ Mrs Manson, re-examination

184. The legal tests require the SoS to engage with the impact of the development at the time the decision is taken. The appellant suggests the impact can be addressed by a negatively-worded condition, when the SoS has (literally) no detail on the compensation scheme which may be produced. The adequacy of the compensation scheme is then to be negotiated in the discharge of the condition. This is not an application or discharge of the legal requirement by the SoS because the SoS has no evidence on which to form a judgment. Rather, the appellant's approach requires the SoS to abrogate responsibility for the discharge of the legal duty to (one assumes) the Council's ecologist. Such an approach is not in accordance with the relevant statutes and is unlawful. The SoS did not engage with this point at Linslade Meadow because it was not raised in the evidence and the NERC Act and Habitat Regulations were not engaged. The point must therefore be addressed in this decision.
185. In all the circumstances, therefore, there would be a significant residual adverse impact on biodiversity. Compensation is necessary. However, the appellant has failed to demonstrate that the impact can be compensated off-site. Accordingly, there is a failure to comply with the Habitat Regulations, the NERC Act, UDP Policy E12/6 and paragraphs 109 and 118 of the Framework.

Accessibility/sustainability

186. It is common ground¹⁹⁵ that the development would generate 'significant movements' such that paragraph 34 of the Framework applies. It is further agreed that the Policy contains two (separate) tests:¹⁹⁶
- a) The development should be located where the need to travel will be minimised;
 - b) The development should be located where the use of sustainable modes can be maximised.
187. NTC's case is that the proposed development fails both tests and cannot, therefore, be considered to constitute 'sustainable development' (for the purposes of the Framework).

a) Located where the need to travel will be minimised

188. Mr Jobey for BH agreed in XX that the purpose of the Policy was to influence the location of development. To support its case (that the location of the appeal site would minimise the need to travel) the appellant produced the WYG comparative transport assessment¹⁹⁷. NTC considers that the assessment strongly supports its position that the appeal site is not in an accessible/sustainable location.

¹⁹⁵ XX of Mr Jobey

¹⁹⁶ Ibid

¹⁹⁷ BH/6/3, Appx 29

189. Unmitigated, the site scores 0.00 PTAL¹⁹⁸. This is the lowest conceivable score and demonstrates that the site is (jointly) in the least accessible location in the borough. There are 20 sites which are in a more accessible location than the appeal site. Its location clearly does not minimise the need to travel because it lies:

- 8km from the nearest heavy-rail station (Cramlington);
- 3.3 to 3.75km away from the nearest Metro (Four Lane Ends);
- More than 1km away from the nearest bus stop.

190. Even comparing the site (with mitigation) to sites (without mitigation) there are still three POCS sites, seven rejected POCS sites, and two Area Action Plan sites which are considerably more accessible and which could deliver a significant number of units.

191. Accordingly, the only reasonable conclusion to draw on the evidence is that the development has not been sited so as minimise the need to travel. On the contrary, the site has been chosen because BH bought the site 40 years ago. There is a clear failure to comply with paragraph 34 of the Framework.

b) Sustainable Modes can be Maximised

192. Given the abject accessibility of the appeal site and the distance to existing public transport, it must be concluded that the development has not been located where sustainable modes have been maximised.

193. In a bid to address the accessibility issues, the appellant has produced a Travel Plan¹⁹⁹. Bus stops are proposed at the site entrance but not into the site. An in-principle agreement has been reached (but not concluded) with Arriva to stop the X5/X6 bus service, which runs half-hourly between Cramlington and Newcastle. Only 51 units (half of phase 1) would be within 400m of the bus stop. Accordingly, applying the Institute of Highways and Transportation (IHT) Guidelines²⁰⁰, the bus would not be accessible to 315 units and Arriva has refused to provide any more stops. The site is not, therefore, accessible by heavy-rail, Metro or bus. Sustainable modes have not been maximised by the choice of development location.

194. The appellant has therefore proposed a shuttle bus in the Travel Plan (TP). The shuttle bus is intended to start on completion of the 50th unit i.e. when units more than 400m away from the bus stops are occupied.²⁰¹ The shuttle bus is provided for two years. At a build-out rate of 30 dwellings per annum (p.a.), 110 units could have been completed by the time the shuttle ceases. Accordingly, Phases 2 and 3²⁰² would never have access to the shuttle bus. Phase 1 units would have access for two years.

¹⁹⁸ See BH/0/11

¹⁹⁹ BH/0/2

²⁰⁰ NTC/2/4, Appx B

²⁰¹ Travel Plan, BH/0/2, Appx P

²⁰² APP12, Section 13

195. The shuttle bus would only continue thereafter if it is viable. On the figures, ARUP (for NTC) do not consider that it is viable – it would cost more than £100,000 p.a. to run. There is simply no evidence which supports the proposition that it could run viably after the two years and so the appeal must be determined on the basis that it would cease. On this basis, the shuttle bus does not materially improve the accessibility of the site.
196. Whilst NTC has (without prejudice to its contention that the site is inaccessible and unsustainable) engaged in negotiating the terms of the TP, its position is that the TP (whatever its terms) simply cannot make this site accessible to sustainable modes. The development is therefore contrary to paragraph 34 of the Framework.
197. The IHT Guidelines establish desirable and acceptable walking distances. It is submitted that (as at many other Inquiries) the Guidelines should be afforded significant weight and used to consider the accessibility of the site by foot. These acceptable/desirable distances are less than the 2km walk envelope used in the appellant's accessibility assessment²⁰³.
198. The TP demonstrates that the appeal site is not within an acceptable walking distance of:²⁰⁴
- A Pre-school (1.6km);
 - A Primary school (1.6km);
 - A Secondary school (more than 1.6km);
 - Top-up retail (1.25km).
199. There are only five employment opportunities (and not locations which generate significant levels of executive employment) within 1.6km of the site.
200. There are a number of services and facilities within a 5km cycle. However, the local road network is such that it is not considered to be an attractive option for cycling. A judgement is required.
201. In all the circumstances, therefore, it is submitted that the site would be accessed by the private car. Indeed, the developer has equipped the executive housing with four spaces per dwelling to facilitate high car ownership and access by the car. Such a result is the antithesis of longstanding Government policy and there is a clear failure to comply with paragraph 34 of the Framework:
- a. The development has not been located where the need to travel will be minimised;
 - b. The development has not been located where the use of sustainable modes can be maximised.

²⁰³ BH/6/3, Appx 29, p2.6

Safeguarded Land

202. The UDP was adopted in March 2002 under the Town and Country Planning Act 1990. The UDP runs to 2006 and it would have been replaced before 2006, but for the enactment of the Planning and Compulsory Purchase Act 2004, which introduced a new regime for the adoption of development plans²⁰⁵.

203. The UDP was adopted when PPG2 was extant national guidance. Paragraphs 2.12 and Annex B of PPG2 provided guidance on safeguarded land (SGL).²⁰⁶ Paragraph B2 of Annex B provides that SGL should be '*genuinely capable of development when needed*'. However, paragraphs B5 and B6 (development control policies) require UDP policies:

- To make clear that the land is not allocated for development;
- To keep SGL free of development until it is required to meet '*possible longer term development needs*';
- To protect valuable landscape features (see also UDP Policy E12/6);
- To provide that planning permission for the permanent development of SGL should only be granted following a UDP review. Making SGL available for permanent development in other circumstances would be a departure from the Plan.

204. As Mr Gray and Mrs Manson for the appellant agreed: it was NTC's evidence to the UDP Examination in Public that:²⁰⁷

- The appeal site had been designated as Protected Open Land in an earlier version of the UDP;
- The Protected Open Land designation was replaced by the SGL designation;
- Safeguarding land does not mean that it is inevitable that it will be developed;
- Enough safeguarded land is identified to allow a real choice to be made between alternative locations for development beyond 2006, which cannot be accommodated in the existing urban areas;
- 698ha of land is safeguarded;
- By contrast, only 248ha of housing land was envisaged as being required to 2021;²⁰⁸
- There is therefore enough safeguarded land for a real choice to be made.

205. Accordingly, it is common ground²⁰⁹ that the purpose of the SGL policy is to provide a range and choice of sites to meet possible development needs after 2006. Indeed, the UDP Inspector states this expressly²¹⁰:

²⁰⁴ BH/0/2, Tables 6.1-6.3

²⁰⁵ Agreed in XX of Mrs Manson

²⁰⁶ NTC/2/3, Appx A

²⁰⁷ See CD19, B066, p4.9

²⁰⁸ See CD19, B028 p21

²⁰⁹ XX of Mrs Manson

'I would wish however to stress that safeguarding under Policy E21 does not necessarily imply that the land should or will be developed. It is essentially a device to ensure that at the Review of the UDP a number of options will be available for possible allocation at that time, depending upon the chosen strategy and the amount of land identified as being needed for allocation.' (emphasis added)

206. Accordingly, the appellant's reliance on the safeguarding of the site in the UDP as demonstrating the site's suitability for development is wholly misplaced. Furthermore, whilst the appeal site was designated as a wildlife corridor, there was no adequate ecological survey of the biodiversity of the site, prior to the site's designation as SGL²¹¹. The safeguarded land designation cannot, therefore, be seen as any endorsement of the suitability of the site for development.
207. In the light of that background, Mr Gray and Mrs Manson agreed the application and interpretation of Policy E21/1²¹². Development within SGL will not be permitted unless six criteria are met. The criteria are cumulative and all must be satisfied for there to be compliance with the Policy. NTC considers that there is conflict with criteria (i) and (vi).
208. Criterion (i) seeks to preserve the open nature of SGL, especially where this forms an important open break between or within a built-up area. It is agreed that 'open nature' in this Policy means freedom from built development.²¹³ Criterion (vi) requires the developer to demonstrate that there is no alternative site which is reasonably available.

Impact on the open nature of the appeal site

209. It is agreed that the development would have an adverse impact on the open nature of the appeal site and that there is, therefore, a conflict with Policy E21/1(i). This concession was properly made (for the first time) in the XX of Mr Gray.²¹⁴ However, nowhere (in the ES or written evidence) does the appellant acknowledge that there is a conflict with the development plan.
210. The ES provides a Landscape and Visual Impact Assessment²¹⁵. From four locations there would be a landscape change of high magnitude.²¹⁶ Such a magnitude of change is defined as '*a change in landscape quality and character that is major in scale extent and duration*', which involves the loss of key characteristics. The visual impact would be significantly adverse from at least four viewpoints.²¹⁷ Accordingly, the ES concludes²¹⁸ that the

²¹⁰ CD18, pg86, p268

²¹¹ CD18, p105-114

²¹² CD8, pg53

²¹³ XX of Mr Gray

²¹⁴ Mrs Manson could not remember the concession being made. However, NTC considers that this means that she has taken no account of the concession in forming her planning judgements.

²¹⁵ APP1, Chapter 7

²¹⁶ Ibid, pg131

²¹⁷ Ibid, p132

development would change the landscape and visual baseline permanently, introducing an additional residential area with urban elements in the existing character area. There would be '*a change from an open rural vista to a housing development*'²¹⁹.

211. In XX, Mr Gray conceded (for the first time) that '*it was beyond dispute that the development will not preserve the open nature of the site*'. Accordingly, he expressly conceded that there was a conflict with UDP Policy E21/1. There is, therefore, a clear conflict with the development plan.

Housing land supply

212. The delivery of housing in the borough has been good. The RSS period runs from 2004 to 2021. NTC is currently 592 units ahead of the RSS annual average rate of provision²²⁰.

213. NTC does not have a 5-year supply of deliverable sites. However, the shortfall is small²²¹. The key conclusions to be drawn from the assessment of the Council's land supply are:²²²

- Based on a cautious set of assumptions, NTC has a 4.7-year supply (94% of the RSS target);
- Based on a cautious set of assumptions, NTC has a 4.5-year supply (90% of the RSS target + 5% buffer).

214. Accordingly, there is a current 288 unit deficit to be placed against a current exceedance of 592 units.

215. This assessment is not agreed. The appellant advances a number of criticisms of the Council's assessment. However, Mrs Manson does not consider that the criticisms are material to the outcome of the decision²²³.

(i) The Target

216. The agreed target is the RSS target²²⁴. For 2011 to 2025, the target is 500 units p.a.

217. This is the same target as advanced in the draft Core Strategy. Mrs Manson for BH and Mr Verlander for NTC consider that only very limited weight can

²¹⁸ Ibid, p7.8.1

²¹⁹ Ibid, p7.8.8

²²⁰ SoCG on 5-year housing land supply, CD25, Tables at p15

²²¹ See CD12

²²² NTC/2/1, p6.107

²²³ XX of Mrs Manson

²²⁴ SoCG, CD25, p8

attach to the draft Core Strategy. Accordingly, the draft Core Strategy target (and its status in the light of the resolved position of NTC) is irrelevant.

218. Notwithstanding the agreement of the applicable housing target, the appellant has produced a report from NLP, the purpose of which is to '*identify an appropriate housing requirement for North Tyneside*'.²²⁵

219. The report takes account of demographic, economic and housing factors. It fails to take account of environmental factors (such as landscape and visual impact, highway constraints, infrastructure constraints, ecology constraints etc) which are agreed to be 'fundamental' to resolving the appropriate housing requirement for North Tyneside (applying paragraph 152 of the Framework). In XX, Mrs Manson did not dispute:

- The report takes no account of environmental factors;
- It is inconsistent with the Framework;
- It is directed to the draft Core Strategy housing target;
- The draft Core Strategy housing target is not an issue before the SoS;
- There is no evidence from NTC addressing the relevant factors to be considered in resolving the appropriate Core Strategy housing figure;
- The SoS should, therefore, refuse to consider what is the appropriate housing figure for North Tyneside.

220. Indeed, Mrs Manson specifically stated in XX that she was not asking the SoS to consider the NLP report. Its production is, therefore, mystifying. Accordingly, no weight can or should attach to the NLP report.

(ii) Demolitions

221. Mrs Manson considers²²⁶ NTC is incorrect to add in demolitions into the residual housing target. If correct, the effect is to increase the amount of housing land which the LPA can demonstrate is deliverable.

222. Without prejudice to his primary case, Mr Verlander has calculated that NTC has a 5.88-year supply of sites excluding demolitions.²²⁷

223. The resolution of this issue does, therefore, have potentially significant consequences because NTC can demonstrate a 5-year supply of deliverable sites.

(iii) Persistent Under-delivery

224. The purpose of the 5%/20% buffer is to ensure choice and competition in the housing market (paragraph 47 of the Framework). The buffer seeks to bring forward housing (to be delivered in the later phases of the RSS period)

²²⁵ BH/6/3, Appx 17, p1.1

²²⁶ BH/6/1, p5.111

²²⁷ See supply scenario 3 in NTC/2/4, Table 5

into the earlier phases. The overall amount of housing to be delivered does not increase.

225. Applying paragraph 47 of the Framework local planning authorities should boost significantly the supply of housing by using their evidence base to ensure that they meet the full, objectively-assessed needs for market and affordable housing. The agreed evidence base is that underpinning the RSS. Accordingly, Mrs Manson agreed that it is necessary to monitor housing delivery against the RSS target to see if the needs of the housing market are being met.
226. The level of completions since 2004/5 is agreed²²⁸. Monitoring the delivery of housing against the RSS annual average rate of provision demonstrates:
- Housing delivery exceeds the RSS target by 592 (more than one year's supply);
 - Against the RSS target, there is no under-delivery;
 - If there is no under-delivery (as a matter of fact) there cannot be 'persistent' under-delivery;
 - In 2007/8, NTC was 1,056 ahead of the RSS target;
 - NTC has not treated the RSS annual average rate of provision as a 'ceiling' (as advanced by Mrs Manson).
227. NTC has had four years of significant surplus followed by four years of modest deficit leaving it in a healthy surplus. The Council delivered a significant amount of housing in the early phases of the RSS period. It is not surprising that (given the +1000 unit surplus in 2007/8, coupled with the housing recession from September 2008) there has been more modest housing delivery in the last four years. But, as Mrs Manson conceded, if the question is asked: has the Council met the objectively-assessed needs of the market (objectively-assessed by RSS), the answer is 'yes'.
228. On this basis, Mrs Manson's proposition that housing from later phases of the plan needs to be brought forward to meet a persistent under-delivery, when the Council is 592 units in excess of the housing requirement, is perverse. The 5% buffer should apply and the contrary proposition is unarguable.

(iv) Smith's Dock

229. Mrs Manson conceded in XX that she produced no evidence to demonstrate that Smith's Dock is not deliverable. Accordingly, her contention that it should be excluded from the 5-year land supply must fail.
230. The site has planning permission. Mrs Manson agreed that (applying footnote 11 to paragraph 47 of the Framework) the site should be considered deliverable until permission expires unless there is 'clear evidence that schemes will not be implemented within 5 years'.
231. In the light of the evidence adduced, Mrs Manson agreed:²²⁹

²²⁸ See CD12, Table 3

- The landowner considers the site to be 'deliverable';
- There is an extant planning permission. There is also a revised scheme which NTC has resolved to approve subject to a S106 obligation;
- The developer has invested heavily in the site;
- The developer has remediated the site, undertaken earthworks, installed sewers and all other services;
- Constructed roads and lighting and associated works;
- The developer will want a return on investment quickly;
- There is a clear incentive to deliver this 'oven ready' site.

232. Contrary to the re-examination of Mrs Manson, the build-rate of 80 units p.a. has come from the developer, not NTC. The Council (it is agreed) has not taken the figure at face value but has (on two occasions) asked the developer to provide an explanation for the higher build-rate i.e. the build-rate of 80 units p.a. The developer (who it is assumed is familiar with the terms of national guidance on deliverability) has provided an explanation (regarding flexible tenures etc) which justifies the build-rate. It is quite clear that the developer considers their build-rate to be achievable. Further, Mrs Manson has no evidence to set against this, whether in terms of viability, market demand or anything else. In all the circumstances, therefore, she was right to concede in XX, on the basis of the evidence, that Smith's Dock should be included in the assessment.

(v) Sites Without Planning Permission

233. The appellant's approach is to exclude any site without planning permission from the 5-year supply. This is considered to be a too crude an approach.

234. If a site benefits from an extant planning permission, then it benefits from the presumption that it is deliverable (see second sentence in footnote 11 to paragraph 47 of the Framework). If a site does not have a planning permission its deliverability falls to be determined against the first sentence of footnote 11. No other interpretation of the footnote is possible (and Mrs Manson's refusal to accept this proposition is unreasonable). The footnote considers a site without planning permission to be deliverable if it is suitable, viable and available and, thereby, able to make a contribution in five years. If a site meets these criteria (with or without planning permission) it is deliverable. It does not follow axiomatically that a site without planning permission cannot deliver housing in five years. An evidence-based judgement is required based on a definition of 'availability', which has not been the subject of any criticism.²³⁰ This is the approach of NTC and is clearly preferable to the appellant's approach as it engages with the evidence available on a site-by-site basis.

²²⁹ CD12, Appx 3, NTC/2/3, Appx I & NTC/0/4

²³⁰ See NTC/2/4. Whilst BH's Counsel criticised the derivation of the definition, he did not criticise it as a definition because (reading it) it is entirely appropriate.

235. The Inspectors' decisions (Wincanton and Chapel-en-le-Frith²³¹) are not binding on the SoS and, to the extent that they are counter to the above approach, the SoS is entitled to disagree with them on the basis that they are wrong.
236. However, the Inspector at Wincanton does not exclude all sites without planning permission (as Mrs Manson advanced). The Inspector makes an allowance for windfalls. Windfalls are defined (in the Framework) as sites which are not allocated in the local plan. By definition, they do not have planning permission, which Mrs Manson agreed. Accordingly, the Framework does not exclude all sites without planning permission from the 5-year supply. The appellant's approach is unanswerably flawed.
237. The Council's 5-year Housing Land Supply consultation document²³² addresses (section B) sites without planning permission in three categories. In XX, Mrs Manson agreed that all three categories are windfall sites and could be included in the windfall allowance. However, she conceded that (on her approach) such sites could never form part of the windfall allowance because she had excluded them because they did not have planning permission. Her approach is therefore flawed and (notwithstanding her re-examination response) artificially restricts the windfall allowance. If the windfall allowance was to be recalculated (including potential housing allocations and other deliverable SHLAA sites) the windfall allowance would undoubtedly increase.
238. Therefore: sites without planning permission can be included in the 5-year supply provided they meet the tests in footnote 11; and, if that is wrong, they can form part of the windfall allowance – they cannot simply be ignored or the land supply is artificially restricted. In this regard, the approach of NTC's 5-year Housing Land Supply document²³³ is entirely in accordance with Framework paragraphs 47 and 48.

Conclusion on Land Supply

239. NTC's 5-year Housing Land Supply consultation document is an accurate assessment of the land supply position. The Council has a substantial surplus against the RSS (over one year's supply). The land supply is only 288 units short of a 5-year supply and (if demolitions are excluded) there is a 5-year supply.

Availability of Alternative Sites

240. It is agreed that the UDP seeks to direct development away from SGL and wildlife corridors. It is for this reason that Policies E12/6 and E21/1 require an applicant for planning permission to demonstrate that no alternative site is reasonably available. As Dr Martin and Mrs Manson accepted, the policies are trying to influence the choice and location of development sites.

²³¹ BH/6/3, Appx 15 & BH/0/4 respectively

²³² CD12

²³³ See CD12, p3.15 & 3.19

241. BH purchased the site more than 40 years ago. It has clearly been a longstanding development aspiration of the company. There was no consideration of alternatives prior to the formulation of this planning application²³⁴. There has been, therefore, a clear failure to comply with Policies E12/6(i) and E21/1(vi).
242. Chapter 5 of the ES²³⁵ identifies that two factors influenced the choice of the appeal site for development:
- The site is identified as SGL in the UDP;
 - The consultation process.
243. The site is identified as SGL in the UDP. However, the Policy designating the site specifically requires the assessment of alternative development sites. Refusing to consider alternatives because the site is SGL is, therefore, perverse and robs the policy of any meaning. Further, it is contrary to the purpose of the SGL policy which is seeking a range and choice of development sites to be considered at the next round of plan-making. If a developer is to advance a proposal in advance of the Local Development Framework, then there must be an assessment of alternative sites, in accordance with the policy, to ensure that the appropriate choices are being made.
244. Mrs Manson did not know to what 'consultation process' the ES was referring. The pre-application consultation process²³⁶ resulted in overwhelming opposition and demonstrated that this was not an appropriate development site. To the extent that it is a reference to the Sustainability Assessment underpinning the POCS²³⁷, such reliance is wholly misplaced. No weight/very limited weight can be attached to the POCS's identification of the appeal site (applying paragraph 216 of the Framework) because:
- The Sustainability Assessment did not consider the ecological impacts of developing the site. In particular, it did not consider the impact on wild birds, which is the Council's specific concern in the light of the ecological surveys;
 - The Core Strategy is at a very early stage (preferred options);
 - NTC has no resolved intention to progress this version of the Core Strategy;
 - The identification of the appeal site as a key site was the subject of significant opposition;
 - Such objections have not been resolved;
 - There was a large number of objection sites promoted;
 - As one cannot know (in advance of the Examination in Public) how the objections will be resolved and whether the appeal site or other sites will

²³⁴ Inspector's note: Chapter 5 of the ES notes that the POCS, supported by a Sustainability Appraisal, confirms the sustainability of the appeal site and its suitability for executive residential development. With regard to the adopted and emerging development plan there is not considered to be any requirement to consider alternative sites for development.

²³⁵ APP1

²³⁶ See APP7, Statement of Community Involvement

²³⁷ CD32

ultimately be included, the future content of the Core Strategy is entirely uncertain.

245. In order to support its case (that there is no alternative site which is reasonably available), the appellant has produced three comparative assessments. The assessments are all *ex post facto* justifications of BH's decision to develop a site which it has owned for 40 years.²³⁸ This approach is the antithesis of the one advanced by the UDP policies. The assessments have been produced in the last two months and were not part of the evidence before the Council's Planning Committee:

- A comparative landscape assessment (August 2012)²³⁹;
- A comparative ecological assessment (August 2012)²⁴⁰;
- A comparative transport assessment (September 2012)²⁴¹.

246. On the basis of the oral evidence of the appellant's witnesses alone, the appellant has failed to demonstrate that there is no reasonably available alternative site. On the contrary, the comparative assessments demonstrate, as advanced by NTC²⁴², that there are a number of alternative sites which could address any need for housing.

Landscape and Visual Comparative Assessment

247. Mr Gray undertook a 'broad level' comparative landscape and visual assessment of alternative sites.²⁴³ This assessment is flawed:

- There is no defined methodology;
- There is no definition of the terms employed to distinguish sites;
- The assessment therefore lacks any transparency and, thereby, credibility.

248. Having considered formal landscape designations, the assessment²⁴⁴ identifies the following generic 'weaknesses' of the other sites:

- A change in character from open arable land [ref 068, 113, 075, 108/74];
- Overlooked by existing residential areas [e.g. ref 068]
- Development on Greenfield Land [e.g. 068];
- Site is used for recreation – cycling, horse-riding and walking [113];
- Site is overlooked by roads [075];
- Loss of established field boundaries and ecological benefits [075];
- Overlooked by sensitive receptors – bridleway, roads, rail and residents [57];
- Noise from adjacent roads [107, 36];

²³⁸ Examination-in-Chief of Mrs Manson

²³⁹ BH/2/3, Appx 11

²⁴⁰ BH/4/3, Appx 8

²⁴¹ BH/6/3, Appx 29

²⁴² See NTC/2/1 & NTC/2/4

²⁴³ See BH/2/1 & BH/2/3, Appx 11

²⁴⁴ BH/2/3, Appx 11. The references in the following bullet points refer to the site references within the Appendix.

- Interruption of the wildlife corridor [067 and 102].

249. In the light of his comparative assessment, Mr Gray conceded in XX that:

- All of the generic criticisms apply directly to the appeal site;
- The criticisms can and would be addressed by mitigation;
- Mitigation on the appeal site is fundamental to the acceptability of the development; however:
- He had taken no account of any potential mitigation which could take place on the alternative sites (save refs 288 and 094);
- He was comparing the mitigated impact of development on the appeal site with the unmitigated impact of development on the alternative sites;
- You would have to compare the mitigated impacts of both for the assessment to be robust.

250. Nonetheless, even adopting the methodology which significantly favoured development on the appeal site, Mr Gray conceded that his comparative assessment actually demonstrated that:

- 'The results of the study would not rule out any site for future potential development'²⁴⁵;
- There are reasonable alternatives to development on the appeal site (in XX).

Comparative Ecological Assessment

251. Dr Martin has produced his own comparative ecological assessment²⁴⁶ and contributed to Mr Gray's assessment. Dr Martin does not 'attach a great deal of weight' to Mr Gray's ecological assessment, although the assessment does:

- Identify 13 sites in the borough which are not the subject of any ecological designation at all or are close to a site with such a designation;
- Identify that only two of the alternative sites are also wildlife corridors.

252. Dr Martin's assessment suffers from the same flaws as that of Mr Gray:

- There is no defined methodology;
- There is no definition of the terms employed to distinguish sites;
- The assessment therefore lacks any transparency and, thereby, credibility.

253. Dr Martin compares the unmitigated effect of development on the appeal site against the unmitigated impact of development on the other sites. It is significant that his assessment demonstrates that there are a number of alternative sites where development (unmitigated) would be less harmful to biodiversity than the appeal site. Indeed, Dr Martin concedes:

²⁴⁵ BH/2/1, p9.4

²⁴⁶ BH/4/3, Appx 8

- Whitehouse Farm 'tends to be in the lower third of potential sites';²⁴⁷
- Whitehouse Farm tends to 'score more poorly' than the other sites;²⁴⁸

254. The main reason why the appeal site would not score even more poorly is that Dr Martin considers that sites within 5km of the coast would have an impact on the Special Protection Area (a habitat comprising mainly rocky outcrops and intertidal areas). There is no evidence or assessment underpinning Dr Martin's 'intuitive' judgement. It is not accepted by the Council²⁴⁹. It is far too crude a judgment to consider that the residents of housing sites within 5km of the coast will have a propensity to visit the sensitive areas of the SPA, such that there will be a material impact on the species of acknowledged importance, whilst those living more than 5km away will have no such impact. The judgement is not robust and it can, therefore, be concluded that the appeal site would perform even more poorly in comparison to the alternative sites.

255. In any event, Dr Martin specifically conceded in XX that his assessment demonstrates that there are reasonable alternatives.

256. In all the circumstances, therefore:

- The appellant has failed to demonstrate that there are no reasonably available alternative sites;
- The appellant's evidence demonstrates that there are reasonably available alternative sites;
- There is a clear conflict with UDP Policy E12/6(i); and
- There is a clear conflict with UDP Policy E21/1(vi).

Prematurity

257. The appellant has sought to miscast the consideration of alternative sites as a prematurity argument. Guidance on prematurity is contained in paragraphs 17-19 of *The Planning System: General Principles*. In XX, Mrs Manson conceded that it was no part of the Council's case to argue that the grant of planning permission would harm the future scale, location and phasing of development in the Core Strategy or associated development plan documents. NTC is simply not relying on prematurity.

258. Rather, a consideration of alternative sites is a specific agreed policy requirement, which the appellant has sought to discharge through its comparative assessments. Development on the appeal site is unacceptable (for the reasons set out above). The comparative assessments (supported by the evidence of Mr Verlander) demonstrate that any need for additional housing in the borough can be accommodated on other sites which would have less harmful impacts in terms of ecology, landscape and visual impact, and accessibility/sustainability.

²⁴⁷ BH/4/1, p7.3.5

²⁴⁸ Ibid

²⁴⁹ Mr Maxwell, Examination in Chief

Compliance with planning policy

259. The foregoing demonstrates that:

- The site lies in a wildlife corridor. There is a significant adverse impact on wild birds which has not been minimised, mitigated or compensated. Reasonable alternative sites exist. There is thereby a failure to comply with UDP Policy E12/6;
- The site is safeguarded land. The development fails to preserve the open nature of the site. Reasonable alternatives are available. There is a conflict with UDP Policy E21/1(i) and (vi);
- There is an agreed failure to comply with the development plan;
- Policy E12/6 is consistent with paragraphs 109 and 118 of the Framework;
- The development has not been sited to minimise the need to travel or to maximise the use of sustainable modes. There is a failure to comply with paragraph 34 of the Framework.

260. The UDP was saved in 2007. In saving the UDP, the SoS was satisfied that the policies complied with national guidance²⁵⁰. However, weight should be given to national policy which post-dates the UDP.

261. The Framework at paragraph 47 seeks to boost significantly the supply of housing to meet the objectively-assessed needs of the area. As NTC is currently 592 units ahead of the RSS requirement, it is (as agreed by Mrs Manson) meeting the objectively-assessed needs. Importantly, the Framework only seeks to boost housing supply 'as far as is consistent with the policies set out in this Framework' (emphasis added). Mrs Manson conceded that paragraphs 34 and 118 were 'policies in the Framework'. Accordingly, it is agreed that if, as NTC considers, there is conflict with paragraph(s) 34 and/or 118, then paragraph 47 provides no support for the development.

262. Paragraph 14 of the Framework applies:

- It is agreed that there is a conflict with the development plan, so there is no need to grant permission 'without delay': the first bullet point does not apply;
- It is agreed that the housing policies of the UDP (save Policy H1) are out of date, such that the default position in paragraph 14 applies;²⁵¹
However:
- Mrs Manson agreed that paragraphs 34 and 118 are specific policies in the Framework which indicate development should be restricted. NTC's case is, therefore, that applying paragraph 14 planning permission should be refused; Further or alternatively:
- The adverse ecological and accessibility impacts significantly and demonstrably outweigh the agreed benefits.²⁵²

²⁵⁰ Section 9 of the former PPS12 referred.

²⁵¹ The debate about whether Policy E21/1 is consistent with paragraph 85 and is a policy for the delivery of housing becomes utterly sterile.

263. Paragraphs 34 and 118 of the Framework post-date the *Plan for Growth and Planning for Growth*. Where the expression 'planning permission should be refused' is used (in paragraph 118), this imperative is taking specific account of the need for economic growth and for new housing (as Mrs Manson agreed). Accordingly, where there is a conflict with paragraph 118, the need for housing is not a consideration which can outweigh it. This is because (as Mrs Manson agreed) a development which is in conflict with paragraphs 34 and 118 is not 'sustainable development'.

264. Accordingly, the development fails to comply with the Framework.

Conclusion

265. In all the circumstances, therefore, the proposal fails to comply with policies in the development plan. Indeed, this is conceded. Furthermore, there are no material considerations which outweigh the non-compliance with the development plan; planning permission should be refused.

WEST MOOR RESIDENTS' ASSOCIATION (WMRA)

266. WMRA maintains its objections to the scheme for 366 houses, whether executive or otherwise.

267. It stands square with the Council on general issues such as the 5-year land supply and the harm to biodiversity which would result. The Association's main grounds of objection are –

- (i) the application is premature pending the Local Plan review
- (ii) safeguarded land should only be released following that review
- (iii) the impact on the existing community by loss of open space
- (iv) the scale of the new community would overwhelm West Moor
- (v) the harm to the wildlife corridor and biodiversity

The Association

268. This is a long-established residents' association created in 1970 to improve the lives of local residents, create opportunities for local people and provide a community centre. The current membership is 700 households from West Moor, Killingworth, Camperdown, Burradon and Weetslade.

269. It must be stressed that the Association is proactive and not against all development. Further, it was not simply set up to stop this scheme. Its role in this case is as a facilitator for residents to properly understand the scheme and express their views to the Council and now to the SoS. The Association held meetings prior to the appellant's public exhibitions in order to determine the general attitude of the community to the proposal and to ascertain any specific issues arising and questions that might need to be explored with BH.

²⁵² The benefits are set out in the evidence and SoCG.

Further meetings and consultation took place and the Association asked open questions, invited detailed responses on issues and allowed all residents to state their individual views.

The Association's Case

270. WMRA attended the Inquiry as a representative of genuinely-held local views on material planning considerations. Its case did not rely on matters which should not properly be placed before the SoS. The evidence has demonstrated the depth of local feeling both in the levels of attendance and the passion of people's objections.
271. The Framework does highlight the increasingly important role of local people in the planning process. It is one of this Government's core planning principles as set out in paragraph 17 that decision-making should involve 'empowering local people to shape their surroundings'.
272. Secondly, paragraph 7 of the Framework expects the planning system to have a social role as one of the three dimensions of sustainable development. West Moor is a vibrant, healthy community and new development should not harm or diminish its sustainability. The local people see this scheme as doing just that.
273. Thirdly, WMRA is firmly of the view that housing land supply should be planned and delivered in a comprehensive way. The Association wishes to engage pro-actively with the emerging local plan process, which will set future targets and allocate land, and have a voice in local schemes which impact on the community. This scheme was brought to the table as a *fait accompli* with no attempt at meaningful consultation. It is not the role for local communities that the Framework promises.

Land Supply

274. The situation in North Tyneside is that housing land supply for the period 2004-2011 is +592 when compared to the RSS figure which is the agreed benchmark²⁵³. There has been significant over-supply in the earlier years of the RSS and lower delivery in later years, coinciding with the recession.
275. As a matter of fact for the period 2004-2011 there is over-supply and it is only in the last four years the average annual rate of completions has dropped below the RSS target. On the issue of delivery, the evidence of Mr Verlander (for NTC) that there is no under-delivery, let alone a persistent under-delivery, should be accepted. It was plain that Mrs Manson (for BH) had difficulty maintaining her position²⁵⁴. The appropriate buffer, in terms of the Framework, should therefore be +5%.
276. It is agreed that the Council does not have a 5-year supply, but its figures show a 4.7-year supply of the RSS residual target and a 4.5-year supply with

²⁵³ CD25, SoCG on 5-year housing land supply, p15

²⁵⁴ XX by NTC of Mrs Manson

the buffer²⁵⁵. The trajectory also shows an increasing trend of deliveries for 2011/12.

277. WMRA has not put forward its own housing figures. This is properly the role of the Council and, in any event, is a resource issue. But it is in that context that the Association considers there is no requirement to bring forward this site at this point in time. The Framework does not promote growth at any cost, or the boosting of supply at any cost, but only within a properly planned policy framework to meet identified need.

278. The apparent lack of agreement on the 5-year land supply shows the need for this issue to be assessed in the round at an examination of the emerging Local Plan. A substantial amount of time at the Inquiry was taken up with recently written reports which seek to justify this site in the context of the emerging land supply and competing sites. All of the comparative exercises were, to some extent, comparing highly polished apples with gnarled, windfallen pears.

279. This is an important issue for WMRA as it maintains the sustainability argument is not made out, the scheme does not accord with the development plan, and the presumption in favour of sustainable development does not engage.

280. Having regard to paragraph 14 of the Framework, the whole rationale of process is the balancing exercise of the adverse impacts against the benefits of this scheme.

Safeguarded Land

281. The Association's case is that this land was safeguarded in the UDP in 2001 and the appropriate forum to decide whether to release it for development should be a Local Plan review. The advice on safeguarding land in 2001, as set out in Annex B of PPG2²⁵⁶, has been rolled forward into the Framework and is in similar terms. Paragraph B6 stated that '*development plan policies should provide that planning permission for the permanent development of SGL should only be granted following a local plan or UDP review*'.

282. There is no policy vacuum and the appellant's case that paragraph 85 of the Framework only applies to new green belt boundaries does not bear scrutiny.

283. One has simply to look at UDP Policy E21, which is in proscriptive terms. Development of SGL *will not be permitted* unless it meets all of the six criteria. This Policy is consistent with the Framework and therefore carries significant weight.

284. Criterion 6 of Policy E21 also indicates that decisions on the development of SGL should be taken in the context of a comparison with alternative sites.

285. These are important points because the Local Plan review will be on a borough-wide basis and this is the forum for local people to engage with the

²⁵⁵ NTC/2/1, p6.107

²⁵⁶ CD14

future of their community and the borough as a whole. WMRA feels this level of new development is being foisted on it at a point in time when there are major changes in the national planning system which should be properly addressed at the local level. On the Council's figures there is no compelling land supply argument to release the land now.

Sustainability

286. The Association understands and accepts that new development will take place in and around West Moor. But the golden thread of sustainability which runs through the Framework applies to the existing community and its needs and not simply to new proposals, as was agreed by Mrs Manson.
287. West Moor is a healthy and sustainable community where people work hard to maintain that community engagement. They are involved in the planning process not simply to object to planning applications but to proactively identify opportunities in the area.
288. The evidence given by the Association and the individuals of West Moor paints a picture of a vibrant community which feels that this development would have a substantial impact on them. Local people have described the community spirit which is frankly in this day and age quite remarkable. They are best placed to assess the impact on them and they have provided evidence of the significant loss of the last accessible piece of countryside with its much cherished biodiversity value, and the loss of social identity, in passionate terms.
289. The appellant has led no evidence to the contrary and has not challenged this evidence by way of XX. In fact, on the one issue that was challenged, the extent of use of the site, Mrs Manson agreed BH's evidence is not representative.
290. Most importantly, the Framework advises that the impact on this community is a material consideration of weight. The planning system is now expected to play an important role in facilitating social interaction and creating, and maintaining, healthy communities²⁵⁷; this is the social dimension of sustainability which decision-makers have to grapple with.
291. The scheme is contrary to the development plan and not, therefore, sustainable. Any decision to develop this safeguarded land should be through the Local Plan process on a level playing field with other sites and other areas of SGL.

Impact on Biodiversity

292. The site is currently farmland which hosts a substantial wildlife corridor. There are many and varied species including some of principal importance for nature conservation under the NERC Act 2006 and listed on the UK BAP. It is accepted the scheme would displace all species of open farmland birds with no

²⁵⁷ Framework, p69

mitigation or compensation. This is contrary to paragraph 118 of the Framework.

293. Dr Martin's position for BH is one of trading not apples and pears but birds and mammals. The appellant is well aware that there is a residual loss of habitat. But to say it would be replaced with different habitats for species which are not even in the area is a curious proposition. The reason some birds are on the Red List is not because they are rare but because their numbers are declining. To accept complete destruction of their habitat, even with mitigation for other species, would defeat the clear objective of the designation.
294. In assessing the extent to which the on-site mitigation would enhance biodiversity the evidence of Mr Littlewood²⁵⁸ is to be preferred, representing the views of expert naturalists who have watched wildlife in this area for years and who have relevant experience of farmland birds and wildlife corridors.
295. Dr Martin's general evidence overstates the value of the small area of heavily disturbed natural habitat that would be created in the middle of a housing estate and the 'excellent' habitat for otters, Soprano Pipestrelle and Daubenton's Bats was, in reality, accepted to be not as good as the present situation. Context is very important. It is agreed that mitigation, such as bird feeders and bells on cats, is beyond the control of the appellant and therefore should not be given serious consideration.
296. The offsetting mitigation proposal is quite simply untenable. There are so many unknowns the SoS could not begin to understand what was being offered, whether it would work, whether it would mitigate or whether it was enforceable. Given this is a completely new concept he cannot be satisfied that a scheme designed after the event would be adequate mitigation. The local residents have experienced promises of mitigation on other sites which have not materialised.

The Balancing Exercise

297. The Association would want the SoS to have at the front of his mind the following words –

*'This is another important milestone in the Government's historic mission to transfer power from the hands of unelected bodies and put it in the hands of people and communities... These reforms go a step further and make it clear that local communities have the responsibility and the power to decide the look and feel of the places they love.'*²⁵⁹

298. In the end it is agreed that this case is one of balance in terms of paragraph 14 of the Framework. The scheme is not sustainable, as the Council's evidence demonstrates in terms of accessibility and alternative sites, and as WMRA's evidence shows in terms of the harm it would cause to the healthy

²⁵⁸ WMRA/1/1

²⁵⁹ The SoS on publication of the Framework

and vibrant community of West Moor. Secondly, the harm to biodiversity is contrary to UDP Policy E12/6 as the measures for both on-site mitigation and offsetting are inadequate. The economic benefits of this scheme would simply not outweigh that harm.

299. The relevant development plan policies are consistent with the Framework and still carry significant weight. Further, the development of SGL in the absence of a proper plan review, and residual harm to biodiversity, are contrary to the specific advice in the Framework on conserving the natural environment and Green Belt.
300. The Association, as a representative of the local community, therefore requests dismissal of the appeal.

OTHER ORAL SUBMISSIONS TO THE INQUIRY

301. **Hilary English** has been a long-term resident in the area. Whilst the buildings at Whitehouse Farm are now private houses the collection still looks like a farm and the surrounding fields are much cherished by walkers. The site provides a marvellous wildlife area, is a 'stress-buster' for local people and is a last bastion of open space; whilst Gosforth Park is close, one can only walk amongst trees and is not safe for women and dog-walkers.
302. **Trish McCaffry** urges that the bird habitats on the site are not destroyed. This is part of our heritage and shouldn't be killed off by bricks and mortar.
303. **Lilian Gillooly** has lived in West Moor for 50 years. It has been surrounded by new building and the land at Whitehouse Farm is the only piece of green countryside left. As it functions as a wildlife corridor to Gosforth Park it should be left alone. The Whitehouse Burn floods after heavy rain and there is concern as to what it would be like if development took place.
304. **Aldred Jenkins** has lived in the area for 30 years. He visits the Whitehouse Farm site two or three times a day, which provides mental refreshment. The site is easy to walk to for West Moor residents and the land provides a great social facility and resource for the people of the area. There is a world shortage of food and if development takes place there would be no ability to harvest food from the land.
305. **Kathleen Stewart** has lived in Whitecroft Road for 23 years and gets pleasure from the ability to look over the fields on the site and see dogs, horses, children and walkers. She is very concerned as to what she would do if this pleasure was removed. The site has all manner of endangered species. The population is falling, calling into question the need for housing of the type proposed. There are lots of brownfield land sites not in use which could be developed and there is a need for housing for people who can't afford it.
306. **Joe Neatrou** works at Long Benton and walks through the area. It is the only place to go for a walk in the locality. It provides a perfect sanctuary and one sees all manner of wildlife. This green space would be ruined by the development.

307. **Jim Lander**. The building of the A189 was to provide quick access from east Northumberland and help traffic avoid towns and villages. Building close to it would result in further pressure for development which would override the purpose of the road's provision in the first place.
308. **Marie Stirzaker**²⁶⁰. The scale of development would destroy the existing community and spoil the area for current residents. It would probably create twice the amount of traffic on the A189, which is already congested in the mornings, as are Sandy Lane and Great Lime Road. The flow of traffic would be slower and cause unhealthy levels of air and noise pollution, making West Moor an unpleasant place in which to live. The proposal would destroy wildlife and green space currently enjoyed by residents when other green areas have already been lost. There are alternative brownfield sites on which planning permission has been granted for 3,000 houses since 2008 yet why has construction not gone ahead? Building there could take place without spoiling the environment.
309. The tenancy agreement between BH and the farmer for the Whitehouse Farm land is one year thereby not allowing the farmer to plan crop rotation which could result in greater biodiversity. If there is a drainage problem why not plant more trees?
310. **Paul Carney**²⁶¹ whilst having no experience of traffic matters has studied BH's Transport Assessment (TA) and considers it to be seriously flawed. There is disappointment that NTC has not cited traffic and congestion as a concern.
311. There are already very high Ratio Flow Capacities (RFC) at nearby junctions on the road network and the TA reveals that even with proposed mitigation these would be exacerbated and that the RFCs in 2021 with development would be higher than without it; the figures suggest that the development would bring additional traffic problems that the developer's mitigation would not solve. Delays are experienced on a day-to-day basis although there is no consistency with some days worse than others. This suggests traffic counting on one day only, as BH has done, is unsafe. Department of Transport data for traffic on major roads in North Tyneside show a different scenario to that painted by BH, with traffic higher now than it has ever been and that it is on the rise, again suggesting BH's data are unsafe and cannot be relied upon.
312. The LTP3 Transport Plan and the TA accept that improvements to the Northern Gateway are not forthcoming. This vital arterial route was already operating considerably in excess of its limit in 2009. With committed development close by, and further afield, this could mean that traffic could become gridlocked at peak times, despite BH's proposed mitigation. Without the Northern Gateway upgrade (and perhaps even with it) the proposal should not go ahead because of its close proximity to major transport routes.
313. The TA data suggest that 76% of trips generated by the development would be by car, which is almost 12% higher than the county average and clearly indicative that Whitehouse Farm would be a car-dependent site. Those travelling by public transport would be some 4% whereas the county average

²⁶⁰ Doc 2

²⁶¹ Doc 1

is 20.5%. A successful Travel Plan is relied upon to mitigate the effects of the development at a number of nearby key junctions. The measures proposed fall short of what is needed, are unproven to work in the area and even if successful would do little to alleviate the increased congestion. Question marks over the long-term viability of soft mitigation measures, such as car clubs and bus services, and inconsistent data, strongly suggest that the development would increase the traffic misery that is currently endured. The scheme should be rejected on transport grounds.

314. **Gordon Stephenson**²⁶² has lived in West Moor all his life and has visited the Whitehouse Farm land for over 40 years. He has recorded over 40 different bird species, 11 of which are on the RSPB's Red List of birds in severe decline, with a further 17 on its Amber List. He has had several encounters with foxes, stoats, weasels and roe deer and disagrees that the site is a poor one for wildlife.
315. The proposal would put an extra 1,000 cars onto an already busy road system, with neighbouring roads regularly grinding to a halt. Building on the site and covering it with concrete would increase the risk of flooding elsewhere in West Moor and South Gosforth. There has been a tremendous amount of development in West Moor over the past 40 years; opposition is not to 'building in my back yard' but rather it is on the basis that residents want a little bit of backyard left.
316. **Carri Nicholson**²⁶³ lives in a property backing onto the site. She is concerned about the potential flood risk to existing properties in West Moor. Within the last year there have been three occasions of flooding of the Whitehouse Burn (photographs and video refer). Whilst water may not have entered houses it has affected the curtilage of dwellings backing onto the site through which the stream passes and where residents have invested a lot of money. High intensity rainfall is likely to become more common in coming years. What is the baseline for statistical records for assessing a 1:100 year event? If previous years are used this does not reflect the proper position today.
317. There is concern about flooding further down the catchment. By losing the soakaway capability of the fields within the appeal site through development on them this could have a severe impact for flooding of properties in Whitcroft Road. Whilst there might be control over the hard-surfacing of front gardens there is no legislation to prevent paving over back gardens which could significantly contribute to additional runoff.
318. Concerns about the proposal's impact on biodiversity are not assuaged by the appellant's evidence. There would be a net loss to the district which can't be compensated by buying land in Newcastle or elsewhere in Northumberland. The site in its entirety provides an important wildlife corridor.
319. If, as stated in the appellant's evidence, there is to be more maintenance of ditches within the site then this would suggest that they would be less likely to be attractive to, and used by, wildlife.

²⁶² Doc 3

²⁶³ See Doc 7 (photographs) and Doc 8 (video) of Whitehouse Burn

320. **Gordon Hawkins**²⁶⁴ objects to the proposal. A previous Inspector said in 2005 that the expanse of open land performs several important functions, bringing an element of the countryside into the built-up area and providing an important physical and visual separation of Killingworth to the east and Gosforth and Wideopen to the west. The proposal would destroy views of the countryside and would be another sprawling housing development changing the countryside to urban development.
321. The proposal, which would be car-dependent, would increase present noise levels significantly. His main concern is safety. If built, the scheme would have limited recreational facilities. The site is bounded by busy roads and to one side by a mainline railway which would pose a risk of terrible accidents if children stray onto the line. There is concern also for the safety of pedestrians crossing the busy A189.
322. **Dave Scanlan**²⁶⁵ having twice suffered as a result of unprecedented flooding events in 2012 is concerned about BH's Flood Risk Assessment. The overall site drainage strategy is very unclear. The FRA makes little mention of surface water yet there is a significant risk of surface water flooding on the site. He is unconvinced that sufficient on-site storage has been provided, there is no mention of 'paving creep', and culverting (even for just short sections of road crossings) is not adequate. The assessment process hasn't included consideration for off-site mitigation of flooding and he is unconvinced that a long-term maintenance agreement is in place for vegetation management, clearing and de-silting.
323. Whilst Sustainable Urban Drainage Systems (SuDS) may be more sustainable, they still cannot be relied on to contain all flooding situations. There is very little recorded evidence of SuDS' performance in extreme events. There is concern that the plans direct flows to the stream adjoining gardens, risking further flooding to these. It is also of concern that BH's run-off rates under-estimate the extent of surface water particularly nearest homes in Whitecroft Road. The location of SuDS is at the southern edge of the site on an incline close to an area of private land that is prone to severe flooding. Not only does the SuDS seem to be poorly designed and located but the development is likely to divert extreme flooding towards existing homes.
324. The proposed scheme appears to be artificially draining flood water into the burn at the rear of dwellings in Whitecroft Road, which is within private property where it would cause damage and would be illegal.
325. Large areas of semi-permanent bodies of water in the fields suggest drainage by groundwater discharge may be restricted. A large housing development may alter the hydrological balance of the land and the increase in impermeable surfaces could reduce the storage capacity of soils, causing the watertable to rise during rain. This could pass hydrological issues downstream to the Ouseburn where there is frequently major flooding.
326. Whilst flooding within the existing highway may not be the developer's responsibility, that which occurred in June and September 2012 blocked off

²⁶⁴ Doc 4

²⁶⁵ Doc 5

what would be the vehicular entrance to the site and congestion also blocked what would be the emergency exit.

327. **John Urquhart**²⁶⁶ is a founder member of Save Gosforth Wildlife (SGW)²⁶⁷ which has worked with WMRA in light of concerns regarding the proposal. SGW is concerned with any development threat to land surrounding Gosforth Nature Reserve.
328. It is not seen how discussions about biodiversity offsetting are relevant to the present case. The idea of offsetting is being piloted in six areas of England none of which are in the North East. Since the pilot studies are not reporting back until April 2014 and the ramifications of offsetting are not yet fully explored, any discussion of biodiversity swaps is premature and irrelevant.
329. Reasonable access to biodiversity is particularly relevant at a time of recession when access to the countryside for many may be more difficult. The idea that North Tyneside and other neighbouring Tyne and Wear authority areas should become one urban sprawl, with Northumberland as the Green Belt, is outmoded, patronising and socially divisive.
330. The promise that birds would visit gardens within the development ignores the likely incidence of the keeping of domestic cats which kill a significant number of birds each year.
331. Many suspect an association between increased flooding and climate change due to global warming. Whatever this association, there is a need to be prepared for increased flash-flooding. The effect of flooding in north Newcastle along the Ouseburn corridor has already been exacerbated because of the mixed foul and surface water system. An increased flood contribution via the Whitehouse Burn because of increased runoff from the appeal site can only add to the problem.
332. North Tyneside's Climate Change Strategy²⁶⁸ encourages the Local Development Framework to set a minimum target of 10% energy use from on-site renewable technology in all new developments. It appears from the plans that the use of solar panels is not an integral feature of the scheme and landscaping could in any event provide shading that would make them non-viable. A properly designed layout could result in a significant contribution to renewable energy from each household.
333. The reinvigoration of the carbon principle may be the key to deciding the relative merits of different sites in different areas. Carbon impact assessment is missing from the scheme. The carbon footprint of activities such as driving, increased carbon emissions because of traffic congestion, and the activities of future residents because of their relatively remote location away from mainstream public transport should be considered. This should be seen alongside increased car journeys by existing West Moor residents to compensate for the loss of an amenity at Whitehouse Farm. From a climate change point of view the micro-analysis at local authority level has to be seen

²⁶⁶ Doc 6

²⁶⁷ See SGW 1–3 attached to Doc 6 describing its activities. SGW 7 is absent.

²⁶⁸ Extract at SGW 11 attached to Doc 6.

as just a building block in the macro-analysis of the impact of new development. There would be a loss of agricultural production from the site at a time when food security is moving up the ladder of potential threat to the nation.

334. In summary, the three main objections to the proposal are reduction in biodiversity, the unnecessary negative impact on sustainability and loss of public amenity. The other factors mentioned – predation by cats, effects of flash flooding downstream of the site, the carbon Policy of NTC and the national implications of the loss of agricultural land for food production - also need to be taken into account. If developed, the scheme will be judged in a few years as inappropriate with the wrong type of housing in the wrong place.
335. **Nigel Moor**. His concern is that we are stewards of the world and should be living in harmony with it. What needs to be left behind is a good inheritance for the future. If we don't say 'no' to building on open agricultural land our quality of life will be undermined. Young people cannot thrive without access to greenery and open space.
336. **Ann Johnson**²⁶⁹. Her main concern is the traffic problem that would be associated with the development. Because of the development that has taken place in West Moor over the past few years traffic, especially a peak times, is very heavy and even a small incident can cause tailbacks. With other housing developments underway in the area, and when the Quorum Business Park is fully occupied, there would be increases in traffic and congestion.
337. Doubling the size of West Moor through the proposed development would affect its community spirit that has built up over many years.
338. **Pamela Tatters**²⁷⁰. West Moor has long been acknowledged for its strong and proactive community spirit. This has been developed and nurtured over a long period encouraging individuals to be active members of the community, all working together towards a common goal of improving the lives of local residents. This community spirit resulted in being able to work with the Council in negotiating the building of a new community centre, the only one in the borough run entirely by local residents. This now forms the heart of the community and from its opening in 2007 numbers have steadily increased so that at peak times it is at approximately 85% capacity with over 1,600 people using it every week.
339. The proposed development would stretch volunteering resources and, if new residents of the proposal wanted to join, saturation point may be reached and people may well be turned away or be unable to access the activities they want. This could result in bad feeling and resentment. If new residents didn't choose to get involved they would be isolated in a dormitory estate.
340. Consultation by its definition means to consult/discuss before making a decision. The process the community went through in respect of the proposal was not consultation but a predetermined intention of what had already been decided.

²⁶⁹ Doc 10

²⁷⁰ Doc 11

341. The benefits of having access to the countryside just a few minutes from home are immeasurable. There is a feeling of complete relaxation and positive mental health whilst cycling on the bridleways through the Whitehouse Farm site. This would simply not be the same if the current bridleway is replaced with one that cuts through a housing estate and is crossed by three roads. The bridleways have been neglected of late by the tenant farmer.
342. The likely presence of cats within the development would be devastating for wildlife because of predation; a report suggests nearly 26% of households have at least one cat. This could mean about 90 cats within the development resulting in the possibility of some 20,000 birds, mammals and amphibians being killed over a ten-year period, thereby making a mockery of the proposed wildlife corridor.
343. **Bill Balmer** has lived in the area for 65 years and used to help out at Whitehouse Farm. Subsidence from Killingworth or West Moor collieries is starting to advance across the site. Lapwings like short grass and sown fields and the land is perfect for them²⁷¹. No account seems to have been taken of the winter passage of birds which use the site.

WRITTEN REPRESENTATIONS²⁷²

344. Most of the written representations in respect of the appeal, all of which object to the proposal, cover points already referred to above. The gist of the representations is set out below.
345. The **Natural History Society of Northumbria** has been involved with the application since January 2011 and discussions have been held to highlight the adverse impacts of the scheme and to suggest ways that it could be improved. Further ecological information from the site has been gathered since April 2012. Two bird surveys were conducted during the spring to compare with the EIA that was carried out. As a result, it is considered the EIA does not accurately reflect the wildlife found on the site. The surveys indicate that the site is more valuable for bird species of conservation concern (and breeding birds generally) than the EIA suggests.
346. It is the Society's view that the site should not be developed because of the loss of farmland and other open sites in the surrounding area over recent decades and because of the proximity to Newcastle's most important wildlife site, Gosforth Park Nature Reserve SSSI. This habitat loss has reached a critical point and any further losses would have irreversible impacts on the remaining wildlife and the nature reserve.
347. The site constitutes 33% of the remaining farmland within a 2km radius of the nature reserve. It is impossible to mitigate for the loss of open field habitat on-site. The on-site mitigation is insufficient to compensate for the loss of species of conservation concern. Despite the Society's best efforts to persuade the appellant, BH has not offered any off-site mitigation for the loss of wildlife. The scheme would not meet local or national planning policies for

²⁷¹ See Doc 9

²⁷² These are contained within Doc 12

biodiversity and sustainability such as set out in paragraph 118 of the Framework.

348. **Other representations.** There would be a loss of wildlife and the wildlife corridor which exists would be severely disrupted by the development. Once construction starts all wildlife would be dispersed and once disturbed would not return. No meaningful sanctuary can be created on a housing development of 366 houses. Use by wildlife of the proposed corridors would be minimal whilst construction is ongoing and many species would never return. The proposal would breach both sections 40 and 41 of the NERC Act 2006.
349. There would be a loss of various habitats listed within the North Tyneside and UK BAPs. Anecdotal and photographic evidence suggests that there was a far richer biodiversity on the site before the ploughing out of field margins and heavy brashing of hedgerows in 2008. Issues of security of tenure for the tenant farmer have meant that that he has not been in a position to apply for stewardship agreements with NE relating to the protection of key species and habitats.
350. Congestion on surrounding roads would be unacceptable with little improvement proposed by the appellant. There would be an impact on air quality, noise and light pollution.
351. There are ample brownfield sites which can and should be used before this site.
352. NTC has rightly listened to public opinion in rejecting the scheme.
353. West Moor has lost a lot of open space over recent years to development. Village identities are being lost. West Moor has already suffered from the development of the Balliol and Quorum Business Parks to the south and is in danger of being absorbed by both Forest Hall and Killingworth. The development, which would be equal in size to the existing village of West Moor, would have a negative impact on West Moor and the quality of life for those living there with no economic benefit. It would result in an urban sprawl where its residents would be dislocated from the main community and isolated from an established and thriving village. Not only would the proposal spoil the geography of West Moor it would also destroy the unique community atmosphere. Even if the proposal was to attract a pub/restaurant within the commercial element of the site it would be unlikely to act as a focal point for the West Moor community or be used by existing and new residents alike.
354. There is little evidence that building executive houses attracts inward investment or facilitates the creation of jobs outside the construction industry.
355. The area is very popular not only with residents of West Moor but also with people from surrounding areas and is used for walking, cycling, horse riding, running, bird watching and dog walking. It should be safeguarded and kept available for the community in years to come. The open space has benefits for health and well-being. The development would not improve the conditions for those who live within West Moor and would rob the community of this well-liked and used open space. Other open spaces such as golf courses, the Newcastle racecourse and Gosforth Park Nature Reserve are neither open nor

available without either membership or entry payment and the crossing of the A189.

356. The land is used for production of crops and in a time of food shortages and disastrous global food production this is an important consideration. It seems madness to take productive agricultural land out of the equation and replace it with housing. Whilst it might only be lower grade agricultural land, if proper drainage was to be installed the land classification would change for the better and the land would become more productive and make a greater contribution to UK long-term food security: it has never been in BH's interest as landowner to invest in drainage or other improvements as this would weaken the case for housing.
357. The site is bounded by heavily-used roads, a mainline railway and beyond this an often noisy industrial estate, as well as suffering from aircraft noise from Newcastle Airport. It is not in the catchment area for outstanding primary schools and is not well linked by public transport to independent schooling. The development would be of higher density than other areas such as Darras Hall. As such, it is difficult to see the site being attractive for 'executives' or being able to compete for this sector of the market with other developments. If permission is granted there could be pressure to change the plans and increase the housing density, eroding the worth of any wildlife corridor and resulting in 'housing designed for nowhere and found everywhere'.
358. The need for executive homes is neither definite nor significant. A Travel Plan promoting car clubs and public transport is realistically a non-starter for executives.
359. The designs of the proposed houses neither reflect a sense of place nor are in keeping with the surroundings. They cannot be described as being good designs. There would be a loss of privacy for those residents backing onto the site.
360. The use of SuDS would not contain the risk of flooding which is now being experienced and building on the land would only add to present problems. The A189 close to the proposed site entrance has been closed on three separate occasions to all traffic as a result of flooding. To add more water from the development would make the situation worse.
361. Whatever the benefits in monetary terms that might accrue to the Council if the development goes ahead this would be insignificant compared to the enormous loss of this precious open land.
362. Development over ten years would result in prolonged dust pollution and disruption. There could be pressure on school places and medical facilities.

CONDITIONS

363. A list of conditions that should be imposed if planning permission is to be granted has been produced following discussion between BH and NTC²⁷³. The wording of the conditions has been agreed between the Council and the

²⁷³ The final list is at NTC/0/8

appellant. Reasons for the imposition of the conditions accompany them. I have considered these in light of advice within Circular 11/95, *The Use of Conditions in Planning Permissions* and have made some minor changes in wording for consistency and clarity and amalgamated some wording to avoid repetition. Given the number of conditions suggested, I have also grouped them for ease of reference. These are set out in Annex A. Suggested condition No. 81 within NTC/0/8, relating to landscaping for the commercial development, has not been included within Annex A as this relates to a 'reserved matter' covered by the condition requiring submission of landscaping details.

364. The need for the conditions as set out in NTC/0/8 is agreed between BH and NTC save for condition Nos. 89, 91 and 92 (wrongly numbered as 93), which are separately listed at Annex B. Condition No. 89 (condition No. 1 in Annex B) relates to the requirement for the agreement and implementation of an offsetting scheme. The appellant considers that this would be required only in the event that the SoS decided that the proposed overall on-site mitigation in respect of biodiversity was inadequate. The wording of the condition is agreed by the Council on a without prejudice basis to its case that the uncertainties and lack of detail of how an offsetting scheme would work or could be implemented make such a condition unacceptable.

365. Condition Nos. 91 and 92 (condition Nos. 2 and 3 in Annex B) relate to the provision of at least 10% of the energy supply for both the residential and commercial elements of the scheme being secured from decentralised and renewable or low carbon energy sources. These conditions were added to the list in light of reference by a third party (John Urquhart). The appellant considers that, in relation to housing, such a condition is unnecessary bearing in mind the condition (No. 48 in NTC/0/8, No. 8 in Annex A) which requires the dwellings on the site to achieve, as a minimum, Code Level 3 of the Code for Sustainable Homes. Furthermore, there would be a commitment to achieving a 'fabric first' approach to dwelling construction, placing a greater emphasis on the thermal performance of a dwelling's envelope and being less reliant on renewable technology²⁷⁴.

SECTION 106 OBLIGATION²⁷⁵

366. A signed and sealed planning obligation deed, dated 22 October 2012, between NTC, NCC and BH was presented. It provides the following:

- In lieu of the on-site provision of affordable housing a phased payment of £5,520,000 is to be made to NTC (representing the equivalent of a 25% proportion of housing on the site) for the purpose of providing affordable housing within the borough.
- Various financial contributions towards local health care service provision, neighbourhood parks, allotment improvement/extension or provision, equipped children's play space, sports pitch upgrading or provision, improvement and/or upgrading of swimming facilities at Lakeside Swimming

²⁷⁴ BH/1/1, p9.12

²⁷⁵ BH/0/10

Pool and Leisure Centre, provision of education facilities, and the purchasing or replenishing of stock or re-furnishing and/or equipping of local libraries.

- A financial contribution to the City Council for the strategic redevelopment of the Haddrick Mill Junction.
- The carrying out of the development in accordance with sustainable travel initiatives set out in the Travel Plan accompanying the application.
- The carrying out of the development in accordance with a Management Plan on Habitats and Sustainable Urban Drainage relating to wildlife and ecology corridors, landscaping and sustainable urban drainage systems which is to be first approved by NTC. There would be the provision of financial contributions to NTC to facilitate ecology and wildlife management objectives. These would involve initiatives to control grey squirrel in Gosforth Park Nature Reserve, improvements/enhancements of the Nature Reserve, the provision of education packs for new residents to raise awareness and give advice about how and why to discourage grey squirrels²⁷⁶, and a contribution to the Natural History Society of Northumbria Membership Fund for each household in the development. In addition, there would be financial contributions to NTC for management and improvement initiatives for the Killingworth Sidings SLCI adjacent to the site and for procuring works for the improvement/diversion of Whitehouse Burn²⁷⁷.
- A financial contribution to the City Council for air quality monitoring.
- A financial contribution to NTC for the upkeep and maintenance of the two bridges to be constructed as part of the estate road layout.

367. The parties are content that all aspects of the deed would accord with the principles of the CIL Regulations 2010. Detailed justification for the various obligations is set out in NTC's CIL compliance statement²⁷⁸.

²⁷⁶ Gosforth Park supports the last English population of red squirrels in an urban environment. Grey squirrels are dominant competitors with them contributing to their demise. See ES, p6.3.22 (App1)

²⁷⁷ Referred to in the obligation as Whitecroft Stream

²⁷⁸ NTC/0/11

CONCLUSIONS

368. The references in square brackets refer to earlier paragraph numbers in the report of relevance to these conclusions.
369. The conclusions are structured around the main issues identified at the Inquiry and set out at paragraph 44 of this report. In considering these and other matters raised I have had regard to the Environmental Statement (ES), which accompanied the application, together with the additional environmental information and evidence produced in the context of the Inquiry. No party has expressed concern about the adequacy of the totality of the environmental information and I have no reason to question its comprehensiveness. [48]

Main Issues

1) Whether the proposal would be compliant with development plan and national planning policies particularly having regard to the requirement for a 5-year land supply of deliverable housing sites and the site's status as Safeguarded Land within the North Tyneside UDP.

370. The North Tyneside Unitary Development Plan (UDP), adopted in 2002, and the Regional Spatial Strategy for the North East, 2008, (RSS) comprise the development plan for the area. The parties have referred to a suite of policies of both these plans considered to be relevant. Nonetheless, there are two policies of the UDP (E21/1 and E12/6) of primary relevance to the consideration of the proposal and which are referred to within the Council's modified reason for refusal. [17, 21-23]
371. First, the site is designated as Safeguarded Land (SGL) to which Policy E21/1 refers. This policy indicates how development proposals within SGL will be viewed. It flows from Policy E21, which defines SGL between the Green Belt and the urban area and indicates that SGL will be maintained in its open state for at least the plan period. The plan period ran until 2006 although the policy was saved by direction in 2007. [13, 17-21, 23]
372. Secondly, a 500m wide swathe of the site also forms part of a wildlife corridor in respect of which Policy E12/6 is relevant. This latter policy is considered in relation to the main issue in respect of biodiversity below. [19-22]
373. The Council (NTC) is in the process of preparing a Local Plan but this is at a very early stage, with a Core Strategy consultation draft in the course of preparation and adoption unlikely until the autumn of 2015. Consultation has taken place on a Preferred Options Core Strategy (POCS) document and on Growth Options. The POCS identifies the site as suitable for the delivery of executive housing. However, in view of the Council's decision to await the production of a consultation draft of a Core Strategy little, if any, weight should attach to the POCS, an agreed position between the appellant (BH) and NTC. [24, 71, 217, 244]

Safeguarded Land

374. In accordance with paragraph 215 of the National Planning Policy Framework (the Framework) due weight should be given to relevant policies in

existing plans according to their degree of consistency with the Framework. Policy E21 was formulated when Planning Policy Guidance 2 (PPG2) *Green Belts* was in force and reflects advice in its Annex B. This advice has been rolled forward within the Framework in similar terms and therefore the general approach remains valid. The policy indicates that SGL will be maintained in its open state for at least the plan period. It is now six years beyond the end date of the UDP period. The purpose of SGL was, and remains, the identification of land between the Green Belt and the urban area to meet longer-term development needs stretching beyond the plan period. [89]

375. Annex B of PPG2 made clear that development plan policies should provide that planning permission for the permanent development of SGL should only be granted following a plan review which proposes the development of particular areas of safeguarded land. This is clearly reflected in the Inspector's report following the Inquiry into objections to the Deposit Draft of the UDP. The Framework re-iterates this although it appears in paragraph 85, which places it within the context of the definition of Green Belt boundaries. In my view this does not proscribe the consideration of a development proposal on SGL outwith a Local Plan review where the Green Belt boundary has already been established and a considerable period has elapsed since the end of the plan period. [89, 203, 281]
376. BH argues that Policy E21 is out-of-date because the plan period extended only to 2006 and also because of the lack of any saved policies which would facilitate housing delivery to meet the requirements of the Framework. Nonetheless, this policy and Policy E21/1, dealing with development proposals on SGL, having been saved, remain part of the development plan. The latter policy contains six criteria all of which have to be satisfied for development to be permitted on SGL; NTC considers that it fails criteria (i) and (vi). [113, 207]
377. The proposal would clearly radically transform the present open agricultural landscape replacing it with one of predominantly residential character. The open nature of the site would not be preserved and, as such, there would be conflict with criterion (i). Criterion (vi) requires that there be no alternative site reasonably available. The appeal site has been in the appellant's ownership for some 40 years and no doubt has been a longstanding development aspiration. It is apparent that there was no attempt to assess alternatives prior to the submission of the appeal application. The appellant considered that, having regard to the background of the safeguarding of the land, and particularly paragraph B2 of Annex B to PPG2, the site was assessed as being genuinely capable of development when needed. [69, 208-211, 241]
378. Within the context of the Inquiry various comparative assessments have been carried out by BH to look at the site alongside others. These *ex post facto* assessments serve to indicate that there appear to be alternative reasonably available sites. However, I have some sympathy with the appellant's view that the intention of the 'no alternative site' criterion is not aimed at proscribing comprehensive development, as such, but rather its focus is on preventing smaller-scale development consistent with safeguarding the land for the longer-term; Policy E21/1 follows Policy E21 which seeks to safeguard land in its open state for *at least the plan period*. Policy E21/1 clearly envisages that some development may be acceptable on SGL providing the fundamental openness of the land is maintained. Nonetheless, on its face,

the proposal would conflict with criterion (vi) and, overall, the proposal would be contrary to Policy E21/1. [74, 240-250, 259]

379. The Council's opposition to the proposal on the basis of conflict with SGL policy does, however, need to be seen within the context of what appears to be a somewhat inconsistent approach. BH points to the appeal decision at West Monkseaton where a proposal for a 220 dwelling development was refused as, amongst other reasons, it would involve the loss of SGL, yet prior to the Inquiry into that appeal the Council withdrew this particular reason. Furthermore, some SGL sites remain in NTC's claimed 5-year housing land supply. [65, 92, 89]
380. Both NTC and West Moor Residents' Association (WMRA) consider the proper forum for the consideration of the suitability of the site for residential development is the plan-making process of the Local Development Framework. It is not, however, argued by either NTC or WMRA that the proposal would be premature within the context of the still extant guidance in *The Planning System: General Principles*. There is no suggestion that, having regard to the present 698ha of safeguarded land within the borough, the grant of permission on the 32ha appeal site would harm the future scale, location and phasing of development within a future Local Plan. [50, 203, 281]
381. WMRA considers that as the production of the Local Plan will be on a borough-wide basis this would provide the forum for local people to engage in the shaping of their community and the borough as a whole; it would allow the opportunity for a full comparative assessment of sites and would accord with the Government's intentions in respect of localism. Against this has to be considered the advantages of allowing development now when seen alongside the background of the out-of-date UDP, now six years beyond its end date and the timescale for the adoption of the Local Plan for the area which is still likely to be nearly three years away. [201, 285]
- Housing land supply*
382. It is an agreed position that the Council does not have a 5-year supply of deliverable housing sites as required by paragraph 47 of the Framework. Whilst there is disagreement over the degree of this shortfall it is also agreed between NTC and BH that, given this shortfall, the operation of the presumption in paragraph 49 of the Framework is engaged; housing applications should be considered in the context of the presumption in favour of sustainable development. Relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a five-year supply of deliverable housing sites. [34, 55, 213]
383. It is further agreed that, in light of the above, the approach to decision-taking is that set out in paragraph 14 of the Framework; where relevant policies of the plan are out-of-date permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole. [56]
384. It is agreed that the most up-to-date development plan housing requirement for North Tyneside is that within the RSS. Policy 28 provides for an average annual net addition to the housing stock for the years 2004-2021.

On this basis, since 2004 provision within the borough is currently some 592 units in advance of the average annual rate of provision (500 units per annum). The Council's evidence suggests that against the 5-year supply requirement, and based on various assumptions, it has about a 4.5-year supply, this being 90% of the RSS target with a 5% buffer. On the other hand, the appellant's evidence suggests that the supply ranges from 2.44 to 2.78 years' supply dependent upon whether a 20% or a 5% buffer is applied. The differences between these figures derive from the various assumptions made. [55, 212, 216]

385. Part of BH's approach on the issue in assessing deliverable supply is to exclude from the calculation any site without planning permission. Footnote 11 to paragraph 47 of the Framework provides advice on what is to be considered deliverable. If a site has an extant planning permission then it benefits from the presumption that it is deliverable (unless there is clear evidence that schemes will not be implemented in five years). If a site does not have planning permission then its deliverability falls to be determined against the first sentence of footnote 11; if a site is considered to be suitably located, available, achievable with a realistic prospect that development would be delivered within five years, and the development would be viable, then it should be considered deliverable. [63, 64, 230]
386. Providing there is an evidence-based assessment of sites taking the above factors into account, I do not consider it follows that only sites with planning permission should be considered deliverable. The Framework at paragraph 48 specifically suggests an allowance for windfall sites can be made in a local planning authority's 5-year supply if there is compelling evidence that such sites have consistently become available and will continue to provide a reliable source of supply. By definition, such sites do not have planning permission. As such, the Framework does not appear to exclude all sites without planning permission from the 5-year supply and this would seem to support the Council's interpretation of the first sentence of footnote 11. [64, 234-238]
387. The Framework requires the addition of a buffer to be added to the supply of specific deliverable sites to ensure choice and competition in the market for land. The buffer seeks to bring forward into earlier phases of a plan period housing that would be delivered later in the plan period; the overall amount of housing to be delivered does not increase. Whether this buffer should be 5% or 20% is dependent on whether an authority has a record of persistent under-delivery of housing. There is currently no guidance as to what constitutes 'persistent under-delivery' but BH considers the 20% buffer should be applied on the basis of under-delivery over the past four years. This is particularly bearing in mind the need to ensure a significant increase in the nation's housing supply to assist economic recovery, as made clear in the Framework. [63, 224, 226-228]
388. As further support for its contention that sufficient provision needs to be made for housing now, BH has referred to a report by Nathaniel Lichfield and Partners. The purpose of this was to identify an appropriate housing requirement for North Tyneside informed by demographic, economic and housing-based evidence. Whilst not intended to subvert the agreed approach to assessing land supply, this report suggests a 'direction of travel' pointing to the need for increased growth and greater housing provision. However, amongst other matters, this is directed towards the draft Core Strategy

housing target. The very early stage reached in its preparation indicates that little if any weight should be accorded to the draft Core Strategy. Further, it was accepted by BH's planning witness that she was not asking that this report be considered by the SoS. [62, 218-220]

389. The level of housing completions set against the RSS annual target since 2004/5 is agreed. To date, delivery exceeds the RSS target by 592 units, representing more than one year's supply. This balance is made up from the annual targets being exceeded during the first four years whilst not being met in the immediate past four. The RSS requirement is an annual average rather than a ceiling. The recent more modest provision and under-delivery have been at a time of general economic and housing recession. This is likely to have been a major influencing factor in delivery. The appellant's planning witness conceded that the Council has met the objectively-assessed needs of the market over the period having regard to the RSS requirement. On the above basis, it is more reasonable to assume that, as the Council has done in its Strategic Housing Land Availability Assessment (SHLAA), the level of buffer to be added to the 5-year deliverable supply should be 5% rather than 20%. [60, 61, 63, 212, 214, 226, 228, 261, 274, 275]
390. A further area of dispute is the inclusion within the land availability figures of the Smith's Dock site in North Shields. The site has benefited from planning permission for 11 years and whilst no housing has yet been provided, the site has been remediated, roads, lighting and associated works have been carried out, and it is effectively 'oven-ready'. Attempts during the Inquiry to ascertain whether the developer was in a position to confirm that a projected build-out rate of 80 units p.a. would be achieved, and when a start might be made, did not elicit an unequivocal response. Nevertheless, as conceded by BH, there is no evidence to suggest the site is not deliverable and certainly no clear evidence that the scheme would not be implemented within five years. On balance, I consider it appropriate that this site should not be excluded from the 5-year deliverable housing land figures. [67, 229-232]
391. The Council's SHLAA has been produced taking the Framework into account and is an up-to-date document. It addresses categories of sites without planning permission – potential housing allocations such as those put forward within the POCS and Area Action Plans Preferred Options, other deliverable sites identified for possible inclusion in the plan, and windfall sites (those which have not been specifically identified as available in the Local Plan process). BH's planning witness agreed all three categories of sites without planning permission are windfall sites and could be included in the windfall allowance. However, her approach had been to exclude the first two categories of site because they did not have planning permission. [237]
392. BH suggests that it is incorrect to add a figure for demolitions, as the Council has done, into the residual housing target as it considers the RSS figures already make an allowance for this. However, if this approach is correct it would appear to reduce the residual target to be met. This would thereby increase the amount of housing land that is demonstrated to be deliverable, even to the extent that it could be shown that there is more than a 5-year supply within the borough on the basis of the calculations of the Council's planning witness. Having said this, the Council does not seek to

resile from the agreed position that there is a slight shortfall in the 5-year deliverable figure. [221-223, 239]

393. From the foregoing, I consider the Council's assessment of the 5-year housing land supply situation, as set out in its recent SHLAA, to be reasonable. It confirms a relatively small shortfall in the supply of deliverable sites over this period. There is agreement that the UDP housing policies, save for Policy H1, are out-of-date. The approach to be adopted in accordance with paragraphs 14 and 49 of the Framework does not therefore alter. [262]

394. UDP Policy H1 aims to ensure a range and choice of housing in terms of size, type and location is available throughout the plan period to take account of the needs of all sectors of the borough's population. This remains a valid consideration consistent with the objectives of the Framework. Given the nature of the proposal and the absence of other meaningful provision of executive housing within the locality, together with the considerable financial contribution through the Section 106 obligation for the provision of affordable housing within the borough, the scheme would accord with this aspect of both the UDP and national policy. [54, 58-59]

395. Housing land supply calculation is not an exact science. However, if the evidence and assumptions of NTC are to be preferred, the quantum of shortfall in terms of a 5-year supply of deliverable housing sites does not appear to be as great as that which BH makes out. This, to a degree, would question whether it is an imperative to secure additional housing provision on the appeal site now. On the other hand, allowing the proposal would, on the likely build-out rate of 30 units per annum, secure a further 150 units within the 5-year deliverable housing land supply and assist in making up what is a presently an acknowledged failure to achieve this. [31]

396. Furthermore, the S106 obligation provides a substantial sum towards the provision of affordable housing within the borough at a time when there has been a significant under-delivery of this form of provision. Whichever figures are to be preferred it does not alter the accepted position that a 5-year supply is not being currently met and that paragraph 49 of the Framework is engaged. This has to be seen within the context of avowed Government policy, both within the Framework and having regard to recent ministerial statements, that the housing market should deliver new homes to create a stimulus to the economy and address an immediate housing need. [58-60, 239]

2) The Scheme's impact on biodiversity

397. As part of the application process and within the context of the appeal there has been an in-depth evaluation of the impact of the proposed scheme on biodiversity. There is agreement between the main parties that the proposal would have no significant effect on the nearby SSSI at Gosforth Park and hence this is why the Council modified its reason for refusal to exclude reference to this. There is further agreement that there would be no harmful impact on the adjacent Site of Local Conservation Interest at Killingworth Sidings. [12, 40]

398. A large part of the appeal site is designated within the UDP as a wildlife corridor. Policy E12/6 seeks to protect the biodiversity of such corridors. Development that would adversely affect a corridor's contribution to

biodiversity will not be permitted under the policy unless, in accordance with criterion (ii), appropriate measures of mitigation of, or compensation for, all the adverse effects are secured. It is against this criterion rather than criterion (i), requiring the demonstration that no alternative sites are available, that the appellant seeks to show compliance; only one of the criteria needs to be satisfied. [22, 94, 120]

399. This policy has to be interpreted and applied in a manner which is consistent with relevant legal requirements relating to biodiversity and protection of wildlife. The Natural Environment and Rural Communities (NERC) Act 2006 places a duty on the SoS to have regard to the purpose of conserving biodiversity, so far as is consistent with the proper exercise of his functions. Under this Act lists of organisms and types of habitat which are of principal importance for the purpose of conserving biodiversity have to be published. There is an obligation to take reasonably practicable steps to conserve biodiversity. [47, 117]

400. The Conservation of Habitats and Species (Amendment Regulations) 2012 amended the transposition into UK law of the Conservation of Wild Birds Directive. The Regulations require a competent authority to secure the objective of the preservation, maintenance and re-establishment of a sufficient diversity and area of habitat for wild birds in the UK. This is applicable in the determination of planning applications. [47, 115]

401. Two open corridors which would incorporate Sustainable Urban Drainage Systems (SuDS), one centrally situated within the site and one along its southern edge, would continue to create wildlife links from east to west. There is little dispute between the main parties that, subject to the imposition of appropriate conditions and through the operation of mitigation measures secured through the S106 Agreement, these would serve to secure the continuing linkage function of the corridor for wildlife species that use it for moving through the landscape. [30, 98]

402. There could be potential beneficial enhancement for some species that are not currently catered for on the site such as otters, bats and, potentially, great crested newts. The provision of a wildlife route underneath the A189 would assist the movement of terrestrially-based species by linking the site more readily to Gosforth Park from which it is currently severed by the road. Natural England (NE) has not objected to the scheme on the basis of the habitat creation and mitigation proposed. The appellant considers the totality of the habitat provision and suggested mitigation measures would be positively beneficial overall in terms of biodiversity. [49, 101, 111]

403. There has been some concern expressed by third parties that the functioning of the proposed open corridors through the site would be compromised by, initially, construction works and thereafter the proximity of development to the corridors. The corridors would be established in the very early stages of the development allowing scope for their establishment. Neither NE nor the Council has expressed concern as to their functionality subject to the suggested suite of conditions and control that could be achieved through management secured through the S106 Agreement. [49, 98, 101, 348]

404. The agreed main area of dispute between the parties regarding biodiversity is the impact on the farmland habitat and its role in supporting an associated

ornithological interest. The Council's case does not seek to address the benefits to biodiversity that could result from the scheme but focuses on this impact. There is agreement that five species of wild birds which are 'Red Listed' and a sixth - the reed bunting - on the Amber List, which are of principal importance (in terms of the NERC Act), would be affected by the proposal through the loss of breeding and/or foraging resource. In terms of significance of impact there is a measure of consistency between the ecological witnesses for NTC, BH and WMRA; during the winter period 2011/2012 the arable area provided a valuable food resource attracting good numbers of skylark, yellowhammer and reed bunting. For this period the site was considered to be up to 'district bird value', supporting a significant number of these UK Biodiversity Action Plan (BAP) species in comparison with other sites surveyed in North Tyneside. [99, 111, 125, 128, 133, 292, 294]

405. In the absence of the proposed development there must be some uncertainty as to the future stewardship of the land – whether it might be more intensively farmed and improved, for example by drainage, or whether grant assistance might be sought by the farmer to enhance biodiversity. This could influence its value for biodiversity. In light of this, BH's ecology witness accepted that the site should be considered on the basis of the survey evidence and its current contribution that it is of district value, supporting a significant number of UK BAP wild bird species. However, his view was that the increase in bird numbers between the surveys was probably as a result of changed agricultural practices as a result of the particular weather over the autumn and winter of 2011 and the opportunistic use by birds of the resulting ground conditions and crop growth. Further, BH's witness viewed the positive impacts of ecological mitigation to other wildlife species as outweighing the negative impacts on the six bird species of principal importance. [112, 138, 139, 345]
406. NTC criticises the application of a matrix approach to the assessment of significance in the ES and which considered the impact on open farmland birds to be 'moderate/minor'. This criticism follows from the Institute of Ecology and Environmental Management Guidelines that highlight difficulties with the application of the matrix approach. Much will depend upon individual interpretation and judgement as to its application. Part of the reason for the initial assessment of a low magnitude of effect is that loss of the site would represent only about 4.4% of farmland within a 3km radius of the site. However, there is no clear transparency as to why this distance was chosen and within a 2km radius the percentage of loss rises appreciably. The proposal would result in the total loss of some 29.25ha of arable land. Its present character would be fundamentally changed. There would be a loss of winter food, food for chicks and a loss of nesting sites. [99, 131, 143-149, 153, 347]
407. On the basis of the 2012 bird surveys – which post-date the ES and the advice of NE - there is agreement that the site is of district importance for farmland birds and therefore could be assessed as of medium sensitivity. I consider it more reasonable in these circumstances to conclude that the impact on birds of principal importance for conservation would be greater than the 'moderate/minor' that the ES predicts. Within the context of discussion of the possible need for off-site compensation for the identified farmland birds (discussed in paragraphs 411-416 below) the appellant's ecology witness conceded that the degree of compensatory habitat that might be needed could

be substantial. This suggests that the residual adverse effect on these birds from the loss of habitat at the site would also be substantial. [140, 151, 411-415]

408. Irrespective of the precise definition of impact and significance there is acceptance on behalf of the appellant that the proposal would have an adverse effect on these birds. If the impact was to be significantly harmful then paragraph 118 of the Framework would be relevant. This aims to conserve and enhance biodiversity by applying the principle that if such harm would arise it should be adequately mitigated or compensated for. Refusal of planning permission should follow if this cannot be achieved. Even if the level of impact was not of such magnitude, UDP Policy E12/6 requires appropriate measures to be secured for mitigation of, or compensation for, all adverse effects. [155]
409. The degree of mitigation within the site for the bird species of principal importance would be limited. Some 0.34ha of reed planting is proposed which would be of benefit to reed bunting. It is suggested that bird feeders within gardens would assist the yellowhammer population although there could be no control over how these might actually be provided since this would be dependent on individual householders. Domestic cat predation, which could potentially be significant for birds and other wildlife species, could also diminish the effectiveness of mitigation. Boundary tree and shrub planting, and that within the two corridors, could provide varied habitats attractive to other bird species but would be of little, if any, benefit to the farmland species of importance, particularly ground-nesting species such as skylark and lapwing. [155, 330, 342]
410. In the absence of mitigation for all the farmland bird species of importance there would remain an adverse residual impact on biodiversity. Unless compensated for this would suggest that there would be conflict with UDP Policy E12/6. Additionally, Section 41(3)(a) of the NERC Act 2006 requires consideration of such steps as appear reasonably practicable to further the conservation of listed species. [47, 102, 117, 155]
411. The position of the appellant's ecology witness that the positive impacts of the ecological mitigation outweigh the negative impacts on the farmland birds of principal importance is not shared by the witnesses for NTC and WMRA. NTC's own ecological advisor also considered, when consulted on the application, that there was a need for off-site compensation. However, only within the context of the appeal has the question of whether such compensation could be provided been addressed by BH. [101, 157, 158]
412. What has been considered are offsets designed to deliver biodiversity benefits in one place to compensate for losses in another in a measurable way. The concept of offsetting in this country is relatively new, having been introduced in the Natural Environment White Paper in June 2011, and pilots are currently being run by Defra. Metrics - combinations of measurements - are used that together provide an assessment of the biodiversity value of a particular area. The biodiversity impact of development can be quantified so that the offset requirement, and the value of compensatory action, can be clearly defined. If, despite on-site mitigation, a development would still have some net residual impact on the environment, the developer of the site may purchase 'conservation credits' to offset the damage; the monies paid to buy the conservation credits are then used to fund long-term environmental

management, which delivers biodiversity at the chosen receptor site. [102, 104, 164]

413. BH commissioned the Environment Bank Ltd, the UK's national broker in biodiversity offsets, to undertake an Offset Search to outline potential offset site options for meeting compensation requirements. A Credit Scoping Report was also produced. The Offset Search suggests that, taking into account on-site habitat creation, between 14.3 and 32.1ha, together with 105m of hedgerow, would be required at an offset site. [104, 168]
414. NTC criticises the assessment undertaken on the basis of lack of detailed evidence as to how any offsetting regime could work. Whilst there may be no specifics, BH considers that the use of a negatively-worded Grampian style condition (the wording of which is at condition No. 1 within Annex B to this report) would provide an acceptable mechanism for securing the off-site compensation. The imposition of such a condition would be acceptable if there were at least reasonable prospects of the action in question being performed within the time limit imposed by a permission. This is a view shared by the Environment Bank. [103, 172-185]
415. The technical aspects of offsetting relating to farmland birds would be likely to involve relatively easy changes to farmland management practices. The amount of arable farmland would suggest that despite the current lack of detail, the securing of benefits would be realistic. Whilst it is the case that no detailed ecological assessment has been undertaken at the Blagdon Estate, referred to within the Offset Search, the estate owners there have expressed interest in the conservation funding potential that biodiversity offsetting offers. The Environment Bank believes there is significant scope to use offsetting on the sites the Offset Search suggested and more work would be undertaken to identify more sites. [104, 108]
416. On balance, I consider there is a realistic probability of securing compensatory offsets to overcome the residual adverse impact that would arise from the development. The imposition of a condition along the lines of that suggested would be capable of realising the conservation compensation necessary to ensure compliance with UDP Policy E12/6, the thrust of the Framework advice on biodiversity and the underpinning legislative background in the NERC Act 2006 and the Conservation of Habitats and Species (Amendment Regulations) 2012. [103]

3) Whether the scheme would be a sustainable form of development

417. As made clear by paragraph 6 of the Framework, the purpose of the planning system is to contribute to the achievement of sustainable development. There are economic, social and environmental dimensions to sustainable development which should be considered in the round in the assessment of development proposals.
418. NTC has sought to challenge the sustainability credentials of the proposal on the basis of its accessibility and ability to maximise the use of sustainable modes of transport. This flows from paragraph 34 of the Framework which seeks to ensure development which would generate significant movement is located where the need to travel will be minimised and the use of sustainable modes of transport will be maximised. In turn, this reflects a core planning

principle of the Framework which is to actively manage patterns of growth to make the fullest use of public transport, walking and cycling, and to focus significant development in locations which are, or can be, made sustainable. [52, 68, 186-201]

419. The 366 dwellings and associated commercial development would generate significant movement. The fact that the site comprises SGL within the UDP is indicative that it must have been assessed and designated having regard to advice within Annex B of PPG2. This required safeguarded land to be located where future development would be an efficient use of land, well integrated with existing development and well related to public transport and other planned infrastructure, so promoting sustainable development. More recently, the Council's POCS identified the site as a suitable housing location. Although little if any weight should attach to this document, it was underpinned by an evidence base that considered various potential sites against a range of sustainability criteria. [69-71]
420. Whilst NTC has sought to draw comparison with other sites that may deliver substantial volumes of housing in terms of sustainability, the exercise should not be one of comparison of alternatives. It is simply a matter of whether the sustainability credentials of the site itself are acceptable, there being no requirement for a comparative analysis. [75]
421. Nonetheless, within the context of the appeal, using the methodology of Public Transport Accessibility Levels (PTALs), the appellant undertook an accessibility study. Without mitigation the site would be jointly the least accessible in comparison with sites identified in the POCS, in Area Action Plans and those carried forward from the SHLAA. With mitigation, it is a middle-ranking site in terms of accessibility compared with other POCS sites, achieving a moderate accessibility score for walking, cycling and public transport. Similarly, in terms of CO₂ vehicle emissions it would rank as 14th of the 24 sites assessed. [76, 189]
422. Its distance from the nearest Tyne and Wear Metro station (3.3km-3.75km) and heavy-rail station (about 8km) would suggest that these travel options would not be accessed by future residents on foot. These would, however, be reasonable cycling distances to allow onward travel by these means. Assessment of the site against distances from facilities as suggested in the Institute of Highways and Transportation (IHT) Guidelines, a commonly used assessment tool, would indicate that it does not lie within acceptable walking distance of schools and shopping facilities. The acceptable/desirable walking distances in the IHT Guidelines are less than the 2km acceptable walking distance used in the appellant's accessibility assessment and in my view are more realistic in evaluating the likely propensity for trips to be made on foot. [189, 193, 197, 198]
423. On the other hand, the presence of bridleways passing through the site and linking to the wider area and open countryside would offer residents the opportunity for recreational access particularly on foot and bicycle. Also, should it be decided that the commercial element of the scheme be developed as a retail outlet or outlets, this would provide a convenient, close-at-hand facility for residents of the development. This could potentially reduce the number or length of journeys that might otherwise have been made by car to more distant facilities. [27]

424. To improve the site's sustainability credentials the proposed Travel Plan (TP), whose implementation would be secured by condition, puts forward various measures to address accessibility. The TP notes the in-principle agreement to divert the X5/X6 Cramlington to Newcastle bus service along the A189, with stops being provided close to the site entrance. However, distance from the majority of dwellings would be beyond IHT guidelines for walk distance to a bus stop. A shuttle bus service is proposed that would connect the site via the Quorum Business Park with the Four Lane Ends Transport Interchange where there would be access to the Metro service. This would be subsidised only for two years with the service likely to continue thereafter only if viable. Given the projected build-out rate of the housing scheme there would be no guarantee that the majority of residents would have access to this service if it proved not to be viable. [77, 193, 194, 358]
425. Other TP initiatives include the introduction of an executive car club at the site and at the Quorum and Cobalt Business Parks, and the appointment of a Travel Plan Co-ordinator to promote, implement and monitor the TP. Such initiatives are likely to make some, but relatively limited, impacts on offering choice of travel mode and reducing that by private car. [77]
426. Journey to work is one of the largest travel components and the relationship of the site to potential employment sources within relatively short distances could be a major factor in reducing car use and mileage. The site is relatively well placed in relation to potential sources of employment. Although NTC suggests that there are only five sites providing employment opportunities within 1.6km of the site, there are numerous industrial estates, office parks and employment centres within 5km. These include the Balliol and Quorum Business Parks (within 3km), the latter projected to potentially double the number of jobs there from the current 4,000, and which would offer the possibility of access by bicycle and (for some) the proposed shuttle bus. [77, 199]
427. It is clear that the desire to develop the site has been a long-term aspiration of BH, having been in its ownership for some 40 years. At the point of purchase questions of sustainability/accessibility would have been unlikely to have been as prominent as they are today. Within the context of the present application the site's development arises out of this historic background rather than from any comparative evaluation against present accessibility/sustainability considerations. [191]
428. Overall, in terms of accessibility, the proposal would neither be located where the need to travel would be minimised nor would it be located where the use of sustainable modes of transport could be realistically maximised. Nonetheless, with the mitigation secured through the implementation of the various components of the TP, and the site's general location, the development would not have significantly poor accessibility characteristics. Furthermore, having regard to advice in paragraph 34 of the Framework, the above requirements have to also take account of other guidance set out within the Framework. This includes paragraph 110 suggesting (albeit in the context of plan preparation) that land with the least environmental and amenity value should be allocated; the question of sustainability has to be viewed having regard to all its facets.

429. The Council takes no issue with the overall design and layout of the proposal. It would be of relatively low density, reflecting the type of accommodation proposed and providing a well-balanced mix of housing types of high specification. Almost 20% of the site would be given over to the provision of wildlife corridors and perimeter planting. It is agreed that the scheme would be compliant with UDP Policy H11 (considerations to be taken into account in determining applications for residential development) and RSS Policy 8 (protection and enhancement of the environment). There is no specific objection to the small commercial element of the scheme. Despite concerns expressed by some residents who back onto the site, there is no reason to question the Council's assessment that there would be no material detriment to their amenity in respect of matters such as loss of privacy. [30, 35, 37, 359]
430. There is a commitment (secured by way of condition) to delivering the residential development to Level 3 of the Code for Sustainable Homes, a higher benchmark than currently required by Building Regulations. Standard Assessment Procedure calculations further demonstrate the ability to achieve sustainable constructional characteristics of the dwellings for their lifetime. There would be consistency with UDP Policy H11 and RSS Policy 38 (relating to sustainable construction) in this regard. [38, 79, 365]
431. There has been no meaningful challenge to the synergies and opportunities between providing executive housing, attracting inward investment to the region and the contribution that would be made to broader economic objectives. There is a need to increase the amount of aspirational housing to address a shortfall and attract more mobile households. No similar form of executive housing is on offer within the borough. There is acceptance that the proposal would comply with the continuing relevance of the thrust of UDP Policy H1 in that it would help in the provision of a range and choice of housing in terms of size and type. Despite doubt cast by a local resident on the likely attractiveness to the executive market, professional assessment suggests that it would attract demand both now and into the future as the economy and housing market pick up. [54, 57, 58, 88, 354]
432. The New Homes Bonus is designed to create an effective fiscal incentive to encourage local authorities to facilitate housing growth, housing being viewed as central to economic success. The proposal would attract a considerable receipt of over £6m for the Council in New Homes Bonus. Through the mechanism of the S106 Agreement an affordable homes contribution could secure the provision of some additional 92 affordable homes within the borough. The Agreement would also secure the provision of 12 new apprenticeships within the area. Coupled with this it is suggested, with no substantive evidence to the contrary, that the proposal could result in up to 700 full-time equivalent jobs both directly in its construction and indirectly in the supply chain. A further 19 full-time jobs could be created within the commercial element of the scheme. The proposal would therefore perform a significant role in supporting the local and regional economy. [59]
433. The development would result in the complete transformation and loss of an area of open, actively-farmed land which is clearly valued by many in its present state for its recreational and wildlife resource. Public access over the land is only along the bridleways which cross the land and it is apparent that

these are used for walking, cycling, running and horse riding. The bridleways provide the opportunity for enjoying the nature of the agricultural land at close quarters and in a location well placed in relation to some existing residential neighbourhoods. [341, 355]

434. However, the land is not designated as open space within the UDP or in any other development plan document. The open nature of the site would change but it is already viewed and perceived within the context of the urban elements of two busy roads, a mainline railway with an industrial estate beyond, and housing to a fourth side. Access would be maintained through the retention of an upgraded bridleway network, which would continue to provide access to open countryside albeit that this would be further afield and passage to it would be through a landscaped residential estate. Access to Gosforth Park to the west would become easier with the proposed crossing improvements of the A189 and there would be a general enhancement of the access network through the area even though the nature of the environment through which it passes would be radically altered. [86, 301, 303-306, 335]
435. The social dimension of sustainable development requires the planning system to play an important role in supporting strong, vibrant and healthy communities. The evidence from residents, both oral and written, suggests that there is a strong and vibrant community spirit within West Moor. There is concern that the proposal would serve to undermine this not only through the loss of accessible open countryside but also by creating a loss of social identity. There is concern also that the location, size and nature of the residential development would set it apart from the rest of West Moor and would not be well integrated with it. [287, 288, 290]
436. Whilst not doubting the sincerely-held views of local residents who made representations and attended the Inquiry as to the present strength of identity and social cohesion of West Moor, in physical terms the settlement is not a distinct entity with any particular defining character. It is contiguous with Killingworth to the east and Forest Hall to the south-east. The settlement has grown through successive bouts of development mostly during the second half of the 20th century. The present scheme, although large in area in relation to West Moor, would be an adjunct to it that would not unacceptably detract from its present appearance or character. I do not consider the development would dominate West Moor nor would it be reasonably perceived to dominate. [83, 84, 353]
437. The phasing of the development, with a likely 10-12 year period for completion, would result in a relatively slow accumulation of additional resident population. This could assist in ensuring the gradual social integration of new residents within the existing community and the ability of facilities, such as the well-used community centre, and other services, to adapt and respond appropriately. Whilst acknowledging the expressed doubts and concerns of local residents in respect of this particular aspect, there is no convincing evidence to suggest that the existing community would be significantly overwhelmed, materially harmed or disadvantaged by the proposal. [85, 288, 290]
438. In addition to the local aspect, in terms of the social dimension of sustainable development the Framework specifically indicates the need for local authorities to boost significantly the supply of housing in order to meet

the needs of both present and future generations. Against the background of a shortfall in current supply of both general and affordable housing within the borough, the site's contribution on this front has to be borne in mind. [88]

439. Judging the proposal against the range of objectives as set out in the Framework the proposal would have acceptable sustainability credentials. The economic advantages that would result from the scheme's implementation would outweigh what disadvantages there may be of the site's location in respect of accessibility.

Other matters

440. Concern about the highway and traffic implications of the proposal has been raised by a number of objectors, particularly fears that it would exacerbate conditions on what many perceive as an already congested local highway network. NTC has modified its original position in refusing the proposal on highway grounds in light of the further information provided by BH. It has not sought to challenge the scheme on highway grounds. [12, 41]
441. The Statement of Common Ground on highways matters confirms that, in the light of formal Transport Assessment and supplementary data, NTC and Newcastle City Council, together with the Highways Agency, have agreed the acceptability of the development. This is on the basis of the mitigation proposed in terms of highway improvements and the operation of the TP that would be secured through the imposition of conditions and the Section 106 Agreements between BH and the two councils. Despite the objections from one resident, Mr Carney, whose concerns were addressed in detail at the Inquiry by BH's transport witness, there is no reason to suppose that with the implementation of the proposed mitigation the proposal would result in adverse highway impacts. To the contrary, there could be net benefits. [11-13, 41, 80, 310-313, 315, 336]
442. Concerns by local residents have been expressed relating to flood risk and water quality. Particularly for those residents in Whitecroft Road who back onto the appeal site and through whose gardens the Whitehouse Burn flows, and which has caused localised flooding of rear parts of gardens, these concerns are understandable. Nonetheless, BH's evidence is convincing. It suggests that the detailed drainage measures that would be incorporated within the scheme for attenuation within the SuDS ponds could reduce the risk of exposure to flooding. This would be both within the immediate area as well further down the catchment. Water quality would also be likely to be improved. Neither the Environment Agency nor Northumbrian Water have raised objections. Despite the concerns raised, the evidence on behalf of the appellant, together with measures that would be secured through the imposition of conditions relating to the implementation of a drainage scheme, suggests that the proposal would have no unacceptable hydrological consequences. [39, 81, 316, 317, 322-326, 331, 334, 360]
443. Loss of productive agricultural land and its implications for national food security has been raised by several objectors. The land is not of high grade, this is not a matter raised by NTC and there are no relevant planning policies which seek to protect such sites on this basis. The quantum of agricultural land loss is not such that this is a significant constraining issue. [304, 356]

Planning conditions and obligation

444. The planning conditions suggested by NTC and agreed with BH, and in respect of which, where necessary, I have made minor alterations for clarity, consistency and more ready compliance with advice in Circular 11/95, are set out in Annex A. They have been referred to in paragraph 363 above. These are relevant, necessary to make the development acceptable and otherwise comply with the tests in the Circular. They are recommended should the SoS decide that planning permission be granted.
445. In addition, in light of my conclusions regarding biodiversity, condition No. 1 within Annex B should also be imposed. This requires the agreement and implementation of an offsetting scheme to compensate for impact on farmland birds species. Condition No. 2 within Annex B seeks to secure at least 10% of the energy supply for the dwellings from decentralised and renewable or low carbon energy sources. In light of other sustainability measures, such as a requirement to achieve a minimum Code Level 3 of the Code for Sustainable Homes, I do not consider this to be a necessary condition. However, in the absence of a similar condition relating to the construction of the commercial element of the proposal, condition No. 3 of Annex B would be acceptable to assist in reducing the development's carbon footprint.
446. There is a S106 planning obligation in the form of an agreement. It includes a variety of provisions and these are set out in paragraph 366 above. Some of these have been referred to in previous sections of these conclusions. They are required to mitigate adverse impacts, meet the needs of the proposal and allow the scheme to go ahead. I have had regard to the obligation in the light of the statutory tests within Regulation 122 of the Community Infrastructure Levy (CIL) Regulations 2010. These state that a planning obligation may only constitute a reason for granting planning permission if it is necessary to make the development acceptable in planning terms, is directly related to the development and is fairly and reasonably related in scale and kind to the development. There is no disagreement between NTC and BH that the obligation is CIL-compliant. From the evidence provided I concur.

Overall Conclusions and the planning balance

447. The proposal would not comply with UDP Policy E21/1 relating to safeguarded land, an agreed position between the three main parties at the Inquiry. The policy flows from Policy E21 which seeks to maintain the open state of safeguarded land for at least the plan period. Whilst Policy E21/1 has been saved and remains part of the development plan, it is now out-of-date, the UDP being some six years beyond its end date.
448. Mitigation is proposed within the site in respect of biodiversity and there would be some beneficial impact for some species as a result of provision of the two open corridors running through the site. However, this would not be sufficient in its own right to provide mitigation for the impact on a number of wild bird species of principal importance (for the purposes of the NERC Act) through the loss of farmland habitat that would result. Compensation in this regard in the form of biodiversity offsetting is suggested. Although there are no firm proposals as to how or where this would be secured, there is sufficient evidence to suggest the probability that this could be successfully achieved. The imposition of a Grampian-type condition would secure this. With such a

condition in place the proposal would not conflict with UDP Policy E12/6 relating to protection of designated wildlife corridors, part of the appeal site being so designated.

449. There would be accord with the legislative framework aimed at the protection of biodiversity and the requirement to take such steps as appear reasonably practicable to further the conservation of listed species. There would be no conflict with paragraph 118 of the Framework. By reason of the nature of the proposal there would be no conflict with any other development plan policies.
450. The granting of permission now would deny the opportunity for the appeal site to be assessed alongside others within the Local Plan-making process. However, the Council has been tardy in its progress of a development plan for its area and the prospect of a formally-adopted plan is still some time off. It is not suggested the scheme should be rejected on grounds of prematurity. The Framework at paragraph 14 indicates that the presumption in favour of sustainable development is the golden thread running through decision-taking. Where relevant policies of the development plan are out-of-date permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole.
451. There is an acknowledged shortfall in the Council's 5-year supply of deliverable housing sites although this is not substantial and in terms of the annual average supply figure within the RSS the provision over the past eight years is being met. Nonetheless, in the absence of a 5-year supply paragraph 49 of the Framework indicates that relevant policies for the supply of housing should not be considered up-to-date and housing applications should be considered in the context of the presumption in favour of sustainable development. It is accepted that the UDP housing policies are out-of-date, save for Policy H1 relating to the provision of a range and choice of housing and with which the proposal would positively accord. The scheme would make a positive contribution to boosting the borough's supply of housing.
452. The proposal would not be on a site that would minimise the need to travel or would allow the maximization of the use of sustainable transport modes. Nonetheless, its location, and the measures proposed to engender choice of travel and to promote modal shift away from the private car, would ensure the development would not have significantly poor accessibility characteristics. In this regard the scheme may be said to not strictly comply with advice within paragraph 34 of the Framework. However, the proposal should be judged against the range of factors set out within the Framework that together provide the view as to what constitutes sustainable development.
453. The proposal would assist in housing delivery within the borough, including the provision through the mechanism of the S106 Agreement of a considerable quantum of affordable housing. There would be significant economic and financial benefits to the area including likely positive impacts for employment. Through the detailing of the scheme and control exercised by the imposition of appropriate conditions, and the obligations within the S106 Agreement, the scheme would result in a high quality development.

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454. The scheme would not negatively impact on the appearance and character of the area, highway or drainage considerations and there is no convincing evidence to suggest the development would be harmful to the social cohesiveness or well-being of the existing community. Assessed in the round, the proposal would be a sustainable form of development.
455. The loss of the open land and allowing of development outwith the plan-making forum might be considered by some to be drawbacks of the proposal. Nevertheless, in light of paragraph 14 of the Framework the benefits of the scheme would not be significantly or demonstrably outweighed by any adverse impacts. The benefits outweigh conflict with the one out-of-date development plan policy with which the scheme would conflict. Accordingly, the planning balance should be in favour of the scheme such that planning permission should be granted.

RECOMMENDATION

456. I recommend that the appeal be allowed and planning permission granted subject to the conditions set out in Annex A and condition Nos. 1 and 3 of Annex B.

P J Asquith

INSPECTOR

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Chair, WMRA Planning and Development

INTERESTED PERSONS

Hilary English	Local resident
Trish McCaffry	Local resident
Lilian Gillooly	Local resident
Aldred Jenkins	Local resident
Kathleen Stewart	Local resident
Joe Neatrou	Local resident
Jim Lander	Local resident
Marie Stirzaker	Local resident
Paul Carney	Local resident
Gordon Stephenson	Local resident
Carri Nicholson	Local resident
Gordon Hawkins	Local resident
Dave Scanlan	Local resident
John Urquhart	Save Gosforth Wildlife
Nigel Moor	Local resident
Ann Johnson	Local resident
Pamela Tatters	Local resident
Bill Balmer	Local resident

DOCUMENTS

Appellant (Bellway Homes)

BH/0/1 Draft Section 106 Agreement
BH/0/2 Travel Plan
BH/0/3 Opening statement
BH/0/4 High Peak appeal decision (PINS Ref: 2159038)
BH/0/5 Matthew Elliott rebuttal of Dave Scanlan evidence

BH/0/6 Key wildlife corridor dimensions plan (Plan Ref: 113-BEL-R501)
BH/0/7 Missing plans requested during the Inquiry
BH/0/8 Environment Bank letter of 22 October 2012 and attached documents
BH/0/9 Matthew Elliott's response to the video evidence of Mrs Nicholson
BH/0/10 Signed and sealed Section 106 Agreement
BH/0/11 Without mitigation PTAL scores
BH/0/12 NTC Strategic Housing Market Assessment 2009 extracts
BH/0/13 Costs application
BH/0/14 Job creation and New Homes Bonus note
BH/0/15 New Homes Bonus : final scheme design (CLG)
BH/0/16 Closing Submissions
BH/0/17 A3-sized compilation of application plans

BH/1/1 C Van Bedaf's proof of evidence
BH/1/2 C Van Bedaf's summary proof
BH/1/3 C Van Bedaf's appendices
BH/1/4 C Van Bedaf's Building for Life 12 Review

BH/2/1 D Gray's proof of evidence
BH/2/2 D Gray's summary proof
BH/2/3 D Gray's appendices

BH/3/1 M Elliott's proof of evidence
BH/3/2 M Elliott's summary proof
BH/3/3 M Elliott's appendices

BH/4/1 A Martin's proof of evidence
BH/4/2 A Martin's summary proof
BH/4/3 A Martin's appendices
BH/4/4 A Martin's draft SuDS Management Plan

BH/5/1 S Jobey's proof of evidence
BH/5/2 S Jobey's summary proof
BH/5/3 S Jobey's appendices
BH/5/4 S Jobey's Public Rights of Way usage data
BH/5/5 S Jobey's rebuttal to Mr Carney's evidence

BH/6/1 S Manson's proof of evidence
BH/6/2 S Manson's summary proof
BH/6/3 S Manson's appendices

Local Planning Authority (North Tyneside Council)

NTC/0/1 Public notice and notification letter for the Inquiry
NTC/0/2 E-mail from Northumberland Wildlife Trust (12 October 2012)
NTC/0/3 E-mail regarding the timetable for the Core Strategy (2 October 2012)
NTC/0/4 E-mail from People for Places (18 October 2012)
NTC/0/5 Arup response on walking distances
NTC/0/6 Draft conditions
NTC/0/7 Extract of the Smith's Dock report
NTC/0/8 Final list of draft conditions
NTC/0/9 Closing submissions

NTC/0/10 Response to the appellant's costs application
 NTC/0/11 Community Infrastructure Levy Regulations 2010 Compliance Statement

NTC/1/1 F Maxwell's proof of evidence
 NTC/1/2 F Maxwell's summary proof
 NTC/1/3 F Maxwell's appendices

NTC/2/1 M Verlander's proof of evidence
 NTC/2/2 M Verlander's summary proof
 NTC/2/3 M Verlander's appendices
 NTC/2/4 M Verlander's rebuttal proof

West Moor Residents' Association

WMRA/0/1 Opening statement
 WMRA/0/2 Natural History Society of Northumberland letter to North Tyneside
 Council of 6 February 2012
 WMRA/0/3 North Tyneside Biodiversity Action Plan
 WMRA/0/4 WMRA response to North Tyneside's Core Strategy
 WMRA/0/5 Core Strategy Preferred Options Consultation 2010, Schedule of
 Responses
 WMRA/0/6 Closing submissions
 WMRA/1/1 J Littlewood's proof of evidence and attached appendices
 WMRA/2/1 N Price's proof of evidence and attached appendices

Core Documents (CDs)

CD1 NTC Committee Report and Minutes, April 2012
 CD2 NTC decision notice, 20 April 2012
 CD3 NTC Committee Report and Minutes, March 2012
 CD4 NTC EIA Screening Opinion, 7 April 2011 and Newcastle City Council EIA
 response e-mail, 14 April 2011
 CD5 NTC EIA Scoping Opinion 10 June 2011
 CD6 NTC letter regarding revised reasons for refusal, 11 July 2012
 CD7 NTC letter regarding revised reasons for refusal, 18 July 2012
 CD8 NTC Unitary Development Plan (relevant Policy extracts and Proposals
 Map)
 CD9 North East RSS (relevant Policy extracts)
 CD10 NTC Preferred Options Core Strategy
 CD11 NTC Housing Growth Options Study document and consultation leaflet
 October 2011
 CD12 NTC 5-year Housing Land Supply consultation document (September
 2012)
 CD13 DfT Guidance on Transport Assessments (March 2007)
 CD14 PPG2: Green Belts (2001)
 CD15 THE FRAMEWORK Technical Guidance (March 2012)
 CD16 HCA Design Quality Reviewer
 CD17 CABE Building for Life Standard
 CD18 UDP Inspector's Report 2001 (extracts)

CD19	Various UDP Inquiry documents
CD20	Tyne and Wear Nature Conservation Strategy 1988
CD21	Strategic Housing Market Assessments: Practice Guidance – Version 2 (August 2007)
CD22	NTC Issues and Options Core Strategy
CD23	Statement of Common Ground (General Planning Matters)
CD24	Statement of Common Ground (Highways)
CD25	Statement of Common Ground (5-year housing land supply)
CD26	PPG13: Transport (2011 update)
CD27	List of planning application documents submitted with the appeal
CD28	NTC Core Strategy Issues & Options Sustainability Appraisal (2006)
CD29	NTC LDD8: Planning Obligations SPD (2009)
CD30	NTC LDD11: Design Quality SPD (2010)
CD31	NTC LDD12: Transport & Highways SPD (2010) (Extracts)
CD32	NTC Preferred Options Core Strategy Sustainability Appraisal (2010)
CD33	NTC Preferred Options Core Strategy Report of Consultation (2010)
CD34	NTC Preferred Options Core Strategy: Key Housing Sites: Site Profiles (2010)
CD35	NTC Core Strategy Preferred Options: Further consultation on growth options, October 2011: Report of Consultation
CD36	NTC Strategic Housing Market Assessment Update 2011
CD37	NTC Strategic Housing Land Availability Assessment 2011 (extracts)
CD38	E3: An Ornithological Winter Walkthrough and 2012 Breeding Bird Survey Report (July 2012)
CD39	E3: Ecology Survey: Great Crested Newts, June 2012
CD40	E3: Ecology Survey: Bats 2012 update
CD41	Gosforth Park SSSI Citation (1987)
CD42	Guidance on the maintenance of landscape connectivity features of major importance for wild flora and fauna; IEEP 2007
CD43	Natural Environment & Rural Communities Act 2006
CD44	Circular 06/05: Biodiversity and Geological Conservation (2005)
CD45	PPS3: Housing (2011 update)
CD46	NTC Sustainable Communities Strategy
CD47	Design Manual for Roads and Bridges: Volume 11, Section 3, Part 8 (Pedestrians, cyclists, equestrians and community effects)
CD48	NTC Local Investment Plan 2010 – 2030 (extracts)
CD49	Natural History Society Wildlife Surveys (June 2012)
CD50	NTC SHLAA extract, 2009

Documents supporting the application

APP1	Environmental Statement Volume 1 – November 2011
APP2	Environmental Statement Volume 2 – November 2011
APP3	Environmental Statement Non-Technical Summary – November 2011
APP4	National Planning Policy Framework Compliance Statement
APP5	Planning Statement
APP6	Sustainability Statement
APP7	Statement of Community Involvement
APP8	Open Space Assessment
APP9	Affordable Housing Statement

APP10	Briefing Note relating to economic, social and environmental benefits of the development
APP11	Section 106 Heads of Terms
APP12	Design and Access Statement
APP13	Archaeological Desk-based Evaluation
APP14	Archaeological Evaluation Report
APP15	Archaeological Geophysical Survey Report
APP16	Foul Network and Utilities Assessments
APP17	Flood Risk Assessment
APP18	Arboricultural Implications Assessment, Arboricultural Method Statement and Tree Protection Plan
APP19	Pre-development Arboricultural Survey and Tree Constraints Plan
APP20	Transport Assessment
APP21	Transport Assessment Addendum
APP22	Travel Plan

Other Documents (handed in at the Inquiry)

1. Paul Carney statement
2. Marie and David Stirzaker statements
3. George Stephenson statement
4. Gordon Hawkins statement
5. Dave Scanlan statement and further notes
6. John Urquhart statement
7. Carri Nicholson photographs
8. Carri Nicholson video
9. Bill Balmer information on Lapwings
10. Ann Johnson statement
11. Pamela Tatters statement and attachments
12. Bundle of other written representations in respect of the appeal, sequentially numbered

ANNEX A**List of suggested conditions in the event of planning permission being granted*****General***

- 1) The development to which the permission relates shall be carried out in complete accordance with the approved plans and specifications as set out below:

Environmental Statement Volume 1 – November 2011;
 Environmental Statement Volume 2 – November 2011;
 Environmental Statement Non-Technical Summary – November 2011;
 North Tyneside Council full planning application forms;
 North Tyneside Council outline planning application forms;
 Newcastle City Council full planning application forms;
 Newcastle City Council outline planning application forms;
 Letter correspondence to North Tyneside Council – dated 25th November 2011;
 Letter correspondence to Newcastle City Council – dated 25th November 2011;
 Letter correspondence to North Tyneside Council – dated 20th February 2012 (including attachments);
 Letter correspondence to North Tyneside Council – dated 5th March 2012 (including attachments);
 National Planning Policy Framework Compliance Statement;
 Planning Appeal Form and Grounds of Appeal;
 Planning Statement;
 Sustainability Statement;
 Statement of Community Involvement;
 Open Space Assessment;
 Affordable Housing Statement;
 Briefing Note relating to economic, social and environmental benefits of development at Whitehouse Farm;
 Design and Access Statement;
 Archaeological Desk Based Assessment;
 Archaeological Evaluation Report;
 Archaeological Geophysical Survey Report;
 Foul Network and Utilities Assessments;
 Flood Risk Assessment;
 Arboricultural Implications Assessment, Arboricultural Method Statement and Tree Protection Plan;
 Pre-Development Arboricultural Survey and Tree Constraints Plan;
 Transport Assessment;
 Transport Assessment Addendum;
 Travel Plan and Addendum

Site Location Plan	113-BEL-R-001
Site Plan as Proposed	113-BEL-R-100 Rev 6

Site Plan as Proposed Plots 1 – 40	113-BEL-R-101 Rev 3
Site Plan as Proposed Middle Section	113-BEL-R-102 Rev 3
Site Plan as Proposed Top Section	113-BEL-R-103 Rev 3
Site Plan as Proposed Commercial Option	113-BEL-R-104 Rev 3
Site Plan as Proposed Adoption Plan	113-BEL-R-105 Rev 2
Site Plan as Proposed House Type Style Plan	113-BEL-R-106 Rev 2
Apartment Block A Proposed Floor Plans	113-BEL-R-200 Rev A
Apartment Block A Proposed Elevations	113-BEL-R-201 Rev A
Apartment Block B Proposed Floor Plans	113-BEL-R-202
Apartment Block B Proposed Elevations	113-BEL-R-203
Apartment Block C Proposed Floor Plans	113-BEL-P-204
Apartment Block C Proposed Elevations	113-BEL-P-205
Apartment Block D Proposed Floor Plans	113-BEL-P-206 Rev 1
Apartment Block D Proposed Elevations	113-BEL-R-207 Rev 1
WHF 01 House Type	113-BEL-R-208 Rev A
WHF 02 House Type	113-BEL-R-209
WHF 03 House Type	113-BEL-R-210
WHF 04 House Type	113-BEL-R-211
WHF 04S House Type	113-BEL-R-212
WHF 05 House Type	113-BEL-R-213
WHF 06 House Type	113-BEL-R-214
WHF 07 House Type	113-BEL-R-215
WHF 08 House Type	113-BEL-R-216
WHF 09 House Type	113-BEL-R-217
WHF 10 House Type	113-BEL-R-218
WHF 11 House Type	113-BEL-R-219
WHF 11A House Type	113-BEL-R-220
WHF 11B House Type	113-BEL-R-221
WHF 11C House Type	113-BEL-R-222
WHF 01S House Type	113-BEL-R-223
WHF 03S House Type	113-BEL-R-224
WHF 12 House Type	113-BEL-R-225
WHF 13 House Type Floor Plans	113-BEL-R-226
WHF 13 House Type	113-BEL-R-227
WHF 14 House Type	113-BEL-R-228
WHF 15 House Type Floor Plans	113-BEL-R-229

WHF 15 House Type Elevations	113-BEL-R-230
WHF 16 House Type	113-BEL-R-231
WHF 17 House Type Plans	113-BEL-R-232
WHF 17 House Type Elevations	113-BEL-R-233
WHF 18 House Type Floor Plans	113-BEL-R-234
WHF 18 House Type Elevations	113-BEL-R-235
WHF 19 House Type Plans	113-BEL-R-236
WHF 19 House Type Elevations	113-BEL-R-237
WHF 20 House Type Plans	113-BEL-R-238
WHF 20 House Type Elevations	113-BEL-R-239
WHF 21 House Type Plans	113-BEL-R-240
WHF 21 House Type Elevations	113-BEL-R-241
WHF 22 House Type Plans	113-BEL-R-242
WHF 22 House Type Elevations	113-BEL-R-243
WHF 22 House Type Elevations 2	113-BEL-R-244
WHF 24 House Type Floor Plans	113-BEL-R-246
WHF 24 House Type Elevations	113-BEL-R-247
WHF 26 House Type Plans	113-BEL-R-250
WHF 26 House Type Elevations 1	113-BEL-R-251
WHF 26 House Type Elevations 2	113-BEL-R-252
WHF 27 House Type GF Plan	113-BEL-R-253
WHF 27 House Type FF Plan	113-BEL-R-254
WHF 27 House Type Elevations 1	113-BEL-R-255
WHF 27 House Type Elevations 2	113-BEL-R-256
WHF 28 House Type GF Plan	113-BEL-R-257
WHF 28 House Type FF Plan	113-BEL-R-258
WHF 28 House Type Elevations 1	113-BEL-R-259
WHF 28 House Type Elevations 2	113-BEL-R-260
WHF 23 House Type Plans	113-BEL-R-261
WHF 23 House Type Elevations 1	113-BEL-R-262
WHF 23 House Type Elevations 2	113-BEL-R-263
WHF 25 House Type Plans	113-BEL-R-264
WHF 25 House Type	113-BEL-R-265

Elevations

WHF 04A House Type	113-BEL-R-266
WHF 04B House Type	113-BEL-R-267
WHF 11D House Type	113-BEL-R-268
WHF 12A House Type	113-BEL-R-269
WHF 12B House Type	113-BEL-R-270
WHF 01A House Type	113-BEL-R-271
WHF 03A House Type	113-BEL-R-272
Garage Details	113-BEL-R-300 Rev 2
Proposed Site Sections	113-BEL-R-400 Rev 2
Site Plan as Proposed Presentation	113-BEL-R-P01 Rev :
Streetscenes	113-BEL-R-P02 Rev :
Streetscenes 02	113-BEL-R-P04
Soft Landscape Strategy	652/01 Rev J
Boundary Treatment Strategy	652/02 Rev I
Indicative Boundary	652/03 Rev A
Treatment Types	
Landscape Strategy Indicative Sections	652/04 Rev B
Indicative Landscape Strategy	652/05 Rev D
Plant Schedules	
Comparison on Existing and Proposed Trees	756/01
Structural Proposals for Bridge Structures	3389-S-D-01

Reason: For the avoidance of doubt and in the interests of proper planning.

General conditions relating to the residential development

- 2) The detailed residential development hereby permitted shall be begun before the expiration of three years from the date of this permission.

Reason: To comply with the requirements of Section 91 of the Town and Country Planning Act 1990.

- 3) The residential development hereby approved shall be undertaken only in accordance with the agreed phasing plan submitted within the Design and Access Statement.

Reason: To ensure the approved works and planting are undertaken at an appropriate time having regard to Policy E12 of the North Tyneside Unitary Development Plan 2002.

- 4) No development shall take place until a scheme showing how the residential development hereby approved is to be protected against the possibility of landfill gas migrating from the nearby former landfill site has been submitted to and approved in writing by the Local Planning Authority. Thereafter the

development shall not take place other than in accordance with the details shown in such approved scheme, and those measures incorporated into the development shall thereafter be retained unless the Local Planning Authority otherwise agrees in writing.

Reason: To ensure that the details of the development are satisfactory to prevent the adverse effects of landfill gas which may migrate from a former landfill site having regard to Policy E3 of the North Tyneside Unitary Development Plan 2002.

- 5) The details of a scheme of site investigation for the residential development and assessment to test for the presence and likelihood of gas emissions from underground, including methane gas, shall be submitted to and agreed in writing by the Local Planning Authority prior to commencement of development.

Reason: To check for gas emissions from underground sources and ensure that the details of the development are satisfactory to prevent the adverse effects of underground gas emissions having regard to Policy E3 of the North Tyneside Unitary Development Plan 2002.

- 6) The detailed design and construction of the residential development shall take account of the results of the site investigation and assessment agreed pursuant to condition No. 5 and also of the possibility of future gas emissions from underground, including methane gas. The method of construction shall reflect this possibility and incorporate all the measures shown in the assessment to be necessary and any other reasonable precautions so as to guard against such emissions having an adverse effect upon the development and/or the future users and occupiers thereof.

Reason: In order to safeguard the development and the occupants thereof from possible future gas emissions from underground having regard to Policy E3 of the North Tyneside Unitary Development Plan 2002.

- 7) No part of the residential development shall be commenced until: -

a) A detailed site investigation has been carried out to establish:

- i) If the site is contaminated;
- ii) To assess the degree and nature of the contamination present, and whether significant risk is likely to arise to the residents and the public use of land;
- iii) To determine the potential for the pollution of the water environment by contaminants and;
- iv) The implication for residential development of the site and the quality of the residential environment for future occupiers.

Such detailed site investigation shall accord with a statement of method and extent which shall previously have been agreed in writing by the Local Planning Authority and

b) The results and conclusions of the detailed site investigations referred to in a) above have been submitted to and the conclusions approved in writing by the Local Planning Authority and

c) A scheme showing appropriate measures to prevent the pollution of the development hereby approved and to ensure an adequate quality of residential environment for future occupiers in the light of such results and approved conclusions has been submitted to and approved in writing by the Local Planning Authority.

Thereafter the residential development shall not be implemented otherwise than in accordance with the scheme referred to in (c) above.

Reason: To ensure that the potential contamination of this site is properly investigated and its implication for the development approved fully taken into account having regard to Policy E3 of the North Tyneside Unitary Development Plan 2002.

- 8) The dwellings shall achieve a minimum of Code Level 3 in accordance with the requirements of the Code for Sustainable Homes: Technical Guide (or such national measure of sustainability for house design that replaces that scheme). No dwelling shall be occupied until a Final Code Certificate has been issued for it certifying that Code Level 3 has been achieved.

Reason: In order to achieve high energy efficiency and minimise consumption having regard to Policy 38 of the North East England Regional Spatial Strategy (2008) and Policy E2 of the North Tyneside Unitary Development Plan 2002.

- 9) Notwithstanding any indication of materials for phase 1 which may have been given in the application, no residential development shall take place within phase 1 until a schedule and/or samples of the materials for the development and finishes and/or samples of all surfacing materials for the development have been submitted to and approved in writing by the Local Planning Authority. Thereafter, the development in phase 1 shall not be carried out other than in accordance with the approved details.

Reason: To secure a satisfactory appearance having regard to Policy H11 of the North Tyneside Unitary Development Plan 2002.

- 10) Notwithstanding any indication of materials for phase 2 which may have been given in the application, no residential development shall take place within phase 2 until a schedule and/or samples of the materials for the development and finishes and/or samples of all surfacing materials for the development have been submitted to and approved in writing by the Local Planning Authority. Thereafter, the development in phase 2 shall not be carried out other than in accordance with the approved details.

Reason: To secure a satisfactory appearance having regard to Policy H11 of the North Tyneside Unitary Development Plan 2002.

- 11) Notwithstanding any indication of materials for phase 3 which may have been given in the application, no residential development shall take place within

phase 3 until a schedule and/or samples of the materials for the development and finishes and/or samples of all surfacing materials for the development have been submitted to and approved in writing by the Local Planning Authority. Thereafter, the development in phase 3 shall not be carried out other than in accordance with the approved details.

Reason: To secure a satisfactory appearance having regard to Policy H11 of the North Tyneside Unitary Development Plan 2002.

- 12) Where the boundary of the site abuts land within the ownership of Network Rail, details of a trespass-proof fence shall be submitted to and approved in writing by the Local Planning Authority. The approved fence shall be installed prior to the first occupation of the site and thereafter retained.

Reason: In the interest of public safety.

- 13) Prior to the commencement of the residential development hereby approved, a timetable for the installation of the following highway works shall be submitted to and approved in writing by the Local Planning Authority. Thereafter the works shall be installed and operational in accordance with the agreed timetable.

Provision of traffic signals at the junction of the A1056 Sandy Lane/A189 roundabout junction;
 Provision of signalised Pegasus crossing facilities south of the A1056 Sandy Lane/A189 junction;
 Provision of a signalised Pegasus crossing across the A189 south of the proposed site access;
 Provision of part-time traffic signals at the existing A188 Benton Lane/A189 Salters Lane/B1505 Benton Lane roundabout junction (West Moor roundabout).

Reason: In the interest of highway safety and having regard to Policy H11 of North Tyneside Unitary Development Plan (2002).

- 14) Prior to the commencement of the residential development the following works shall be installed and operational:

Provision of a new signalised roundabout junction at the proposed site access where it joins the A189.

Reason: In the interest of highway safety and having regard to Policy H11 of North Tyneside Unitary Development Plan (2002).

- 15) Prior to completion/occupation of any residential unit the following works to Great Lime Road shall be undertaken and operational:

Creation of the pedestrian/cycle route to the north of the Garden Centre access;
 Completion of a footway from the Gosforth Park racecourse entrance to the newly created pedestrian/cycle route;

Construction of a mini-roundabout outside the Garden Centre and amendments to the boundary treatment to provide adequate visibility; Amendments to Traffic Regulation Orders, lighting, lining, drainage, surfacing and signage.

Reason: In the interest of highway safety and having regard to Policy H11 of North Tyneside Unitary Development Plan (2002).

- 16) The residential development shall not begin until details of the adoptable estate roads and footways have been submitted to and approved in writing by the Local Planning Authority and no dwelling shall be occupied until the estate roads which provide access to it from the existing highway have been laid out and constructed in accordance with the approved details.

Reason: In order to minimise danger, obstruction and inconvenience to users of the highway and of the access having regard to Policy H11 of the North Tyneside Unitary Development Plan 2002.

- 17) No other part of the residential development shall begin until the new means of access has been sited and laid out in accordance with the approved drawing No JN0354-Dwg-0074G of the Addendum Transport Report.

Reason: In order to minimise danger, obstruction and inconvenience to users of the highway and of the access having regard to Policy H11 of the North Tyneside Unitary Development Plan 2002.

- 18) Within six months of the new access being brought into use all other existing access points not incorporated in the residential development hereby permitted shall be stopped up by raising the existing dropped kerb/removing the existing bell-mouth and reinstating the footway verge and highway boundary to the same line, level and detail as the adjoining footway verge and highway boundary.

Reason: To limit the number of access points along the site boundary for the safety and convenience of highway users having regard to Policy H11 of the North Tyneside Unitary Development Plan 2002.

- 19) No part of the residential development shall be occupied until an area has been laid out within the site for residents' and visitors' vehicles to turn in accordance with the approved drawing No. 113-BEL-R100 REV06.

Reason: To enable vehicles to draw off and turn clear of the highway thereby avoiding the need to reverse onto the public highway having regard to Policy H11 of the North Tyneside Unitary Development Plan 2002.

- 20) No residential development shall take place until details of traffic calming measures to 20mph have been submitted to and approved in writing by the Local Planning Authority. Thereafter, the development shall not be carried out other than in accordance with the approved details.

Reason: To enable the Local Planning Authority to retain control over the provision of traffic calming to secure a satisfactory standard of development

and in the interests of highway and pedestrian safety having regard to Policy H11 of the North Tyneside Unitary Development Plan 2002.

- 21) The scheme for parking, garaging and manoeuvring indicated on the approved residential plans for each phase shall be laid out prior to the initial occupation of that phase and these areas shall not thereafter be used for any other purpose.

Reason: To enable vehicles to draw off, park and turn clear of the highway to minimise danger, obstruction and inconvenience to users of the adjoining highway having regard to Policy H11 of the North Tyneside Unitary Development Plan 2002.

- 22) Notwithstanding those details of the bridges already submitted, prior to commencement of the residential development, details of the final design for the two bridges hereby approved shall be submitted to and approved in writing by the Local Planning Authority. Thereafter the bridges shall be constructed only in accordance with the approved details.

Reason: In the interest of biodiversity and highway safety and having regard to Policies E12/6 and T9 of the North Tyneside Unitary Development Plan (2002).

- 23) The Travel Plan for the residential development as submitted shall be carried out as agreed with the Local Planning Authority. This shall include an undertaking to conduct travel surveys to monitor whether or not the Travel Plan targets are being met.

The measures included shall be as follows:

Provision of a shuttle bus between the site and Four Lane Ends interchange for a period of two years.

Provision of a car club based on site for use by new residents.

Provision of car clubs at Quorum and Cobalt Business Parks to offset vehicle trips relative to the development.

Welcome packs for new residents to promote walking & cycling routes and public transport.

Provision of a voucher for up to two, two-week free bus passes per dwelling.

Reason: To accord with Government advice and having regard to Policy T9 of the North Tyneside Unitary Development Plan 2002.

- 24) No residential development shall take place until plans of the site showing the existing levels of the whole site and proposed ground levels and levels of thresholds and floor levels of all residential units have been submitted to and approved in writing by the Local Planning Authority. Such levels shall be shown in relation to a fixed and known datum point. Thereafter, the development shall not be carried out other than in accordance with the approved details.

Reason: To ensure that the work is carried out at suitable levels in relation to adjoining properties and highways, having regard to amenity, biodiversity

access, highway and drainage requirements and having regard to Policies H11 and E12 of the North Tyneside Unitary Development Plan 2002.

- 25) Notwithstanding details shown on the plans hereby approved, the windows to be inserted in the eastern elevation of apartment block B shall be fixed shut up to a minimum height of 1.7 metres above finished floor level (without any opening mechanism) and glazed in obscure glass. The obscure glazing shall thereafter be retained.

Reason: In the interests of the amenity of neighbouring occupiers having regard to Policy H11 of the North Tyneside Unitary Development Plan 2002.

- 26) Notwithstanding details shown on the plans hereby approved, the window to be inserted in the northern and eastern elevations of apartment blocks C and D shall be fixed shut up to a minimum height of 1.7 metres above finished floor level (without any opening mechanism) and glazed in obscure glass. The obscure glazing shall thereafter be retained.

Reason: In the interests of the amenity of neighbouring occupiers having regard to Policy H11 of the North Tyneside Unitary Development Plan 2002.

- 27) Prior to the commencement of the residential development a detailed scheme to demonstrate protection from external noise within the bedrooms of the dwellings hereby approved shall be submitted to and approved in writing by the local planning authority. The scheme, which shall include ventilation details, shall show that between 23.00-07.00 $L_{Aeq,1hr}$ of 30dB and as far as practicable, $L_{Amax,1hr}$ of 45dB are not exceeded. The approved scheme shall be implemented for each dwelling before occupation and thereafter retained.

Reason: To protect the amenity of future occupiers and having regard to Policy H11 of the North Tyneside Unitary Development 2002.

- 28) Prior to the occupation of the dwellings on the western and northern site boundary enclosed by the willow acoustic fencing as indicated on plan 'Boundary Treatment Strategy', the approved noise mitigation scheme for those properties as shown on figure 1, drawing No. 113-BEL-RO1 and drawing No. 652/02 rev I, shall be implemented in full and retained thereafter.

Reason: To protect the amenity of future occupiers and having regard to Policy H11 of the North Tyneside Unitary Development 2002.

Drainage

- 29) The residential development shall not begin until details of the disposal of surface water from the highway, footpaths and other hard surfaces have been submitted to and approved in writing by the Local Planning Authority and no dwelling shall be occupied until the works for the disposal of surface water have been constructed in accordance with the approved details. All surface water drainage to be discharged into any watercourse, surface water sewer or soakaway system from any hardstanding car parking areas comprising more

than 50 parking spaces, or any hardstanding car parking areas over 800m², shall be passed through an oil interceptor. Roof water shall not pass through the interceptor.

Reason: To provide a satisfactory means of surface water drainage having regard to Policy H11 of the North Tyneside Unitary Development Plan 2002.

- 30) No residential development shall take place until a detailed scheme for the disposal of foul sewage from the development hereby approved has been submitted to and approved in writing by the Local Planning Authority. Thereafter the development shall take place in accordance with the approved details.

Reason: To ensure a satisfactory means of drainage in the interests of minimising environmental pollution having regard to Policy H11 of the North Tyneside Unitary Development Plan 2002.

- 31) No residential development shall take place until details of facilities to be provided for the storage of refuse at the properties have been submitted to and approved in writing by the Local Planning Authority. The facilities, which should also include the provision of wheeled refuse bins, shall be provided in accordance with the approved details, prior to the occupation of any part of the residential development, and the storage facilities shall thereafter be permanently retained.

Reason: In order to safeguard the amenities of the area having regard to Policy H11 of the North Tyneside Unitary Development Plan 2002.

- 32) Prior to works commencing to each phase of the residential development, a scheme for the provision of secure undercover cycle parking within that phase shall be submitted to and approved in writing by the Local Planning Authority. (This may include provision within associated garages where appropriate). Thereafter, this scheme shall be implemented in accordance with the approved details.

Reason: In the interests of highway safety and having regard to Policy H11 of the North Tyneside Unitary Development Plan 2002.

Construction

- 33) All builders' and contractors' compounds, site huts, and storage of plant and materials for the residential development shall be located in accordance with a scheme to be submitted to and approved in writing by the Local Planning Authority prior to any development taking place.

Reason: In the interests of the amenity of neighbouring residents and having regard to Policy H11 of the North Tyneside Unitary Development Plan 2002.

- 34) Access to the site for all builders' and contractors' vehicles for the residential development, including those delivering materials, shall be in accordance with

a scheme to be submitted to and approved in writing by the Local Planning Authority prior to any residential development taking place.

Reason: In the interests of the amenity of neighbouring residents and road traffic and pedestrian safety having regard to Policy H11 of the North Tyneside Unitary Development Plan 2002.

- 35) Prior to the residential development commencing a detailed scheme to prevent the deposit of mud and other debris onto the highway and to suppress dust arising from construction activities shall be submitted to and approved in writing by the Local Planning Authority. Such a scheme shall include details of a) mechanical street cleaning brushes and b) the provision of water bowsers to be made available to spray working areas due to dry conditions. Thereafter development shall not be carried out other than in accordance with the approved details and the approved measures shall be retained on site for the duration of the works and used on all occasions when visible dust emissions are likely to be carried from the site such as during dry, windy conditions.

Reason: To safeguard the occupiers of surrounding properties and users of the public highway from any discomfort or loss of amenity arising from construction activities on the site and having regard to Policy H13 of the North Tyneside Unitary Development Plan 2002.

- 36) Prior to development commencing, a scheme indicating the proposed routing of heavy construction vehicles to and from the site and including details of signage to be provided at the site access and at locations along the specified route, shall be submitted to and agreed in writing by the Local Planning Authority. No residential development shall take place until signage has been provided in accordance with the agreed scheme and thereafter such signage shall be retained until construction works are completed.

Reason: In the interests of safeguarding the amenities of local residents and to minimise danger and inconvenience to highway users having regard to Policy H13 of the North Tyneside Unitary Development Plan 2002.

- 37) The construction site subject of this approval shall not be operational and there shall be no construction, deliveries to, from or vehicle movements within the site outside the hours of 0800-1800 Monday - Friday and 0800-1400 Saturdays, with no working on Sundays or Bank Holidays.

Reason: To safeguard the amenity of nearby residents having regard to Policy E3 of the North Tyneside Unitary Development Plan 2002.

Biodiversity

- 38) Prior to commencement of the residential development, details of method statements and appropriate mitigation for great crested newt, water vole, badger, otter, bats and nesting birds shall be submitted to and approved in writing by the Local Planning Authority. Subsequently all works on site shall be undertaken in accordance with the approved statements and mitigation.

The method statements and appropriate mitigation shall include, but not be restricted to, the following measures:

In relation to bats, no trees to be removed unless checking surveys have confirmed roosts are absent. Fifty woodcrete-type bat boxes shall be provided to householders or provided in the southern wildlife corridor.

In relation to badgers and otters, checking surveys shall be undertaken prior to construction;

In relation to birds, any works on-site and vegetation clearance shall avoid the bird breeding season (March to August inclusive), unless a checking survey by an appropriately qualified ecologist has confirmed that no active nests are present immediately prior to works. In addition, a range of different types of bird boxes, 40 in total, shall be erected within and around the site.

In relation to great crested newts and water voles, checking surveys to be undertaken prior to construction and works to proceed to a method statement.

Reason: To enable the Local Planning Authority to encourage biodiversity and having regard to Policy E12 of the North Tyneside Unitary Development Plan 2002.

- 39) Prior to the provision of any boundary treatments to the residential properties, details of all mammal gaps shall be submitted to and approved in writing by the Local Planning Authority. Thereafter, the mammal gaps shall be provided in accordance with the approved details prior to the provision of the agreed boundary treatments and the occupation of the dwellings. The mammal gaps shall be retained thereafter.

Reason: To enable the Local Planning Authority to encourage biodiversity and having regard to Policy E12 of the North Tyneside Unitary Development Plan 2002.

- 40) Prior to the commencement of works to the Sustainable Urban Drainage System, details for the provision of hibernacula, and the timing of their installation, shall be submitted to and approved in writing by the Local Planning Authority. The hibernacula shall be provided in accordance with the agreed details and timetable, and retained thereafter.

Reason: To enable the Local Planning Authority to encourage suitable wildlife habitat and having regard to Policy E12 of the North Tyneside Unitary Development Plan 2002.

- 41) Prior to the commencement of development a lighting scheme shall be submitted to and approved in writing by the Local Planning Authority to demonstrate that light spillage from the development into the areas designed primarily for Sustainable Urban Drainage Systems and wildlife would not be detrimental to bats. Thereafter the lighting scheme shall be implemented and retained in accordance with the approved details.

Reason: To protect the habitat for bats.

- 42) Prior to commencement of the residential development, a method statement setting out measures to be taken to prevent contamination and pollution to

watercourses and ground water sources shall be submitted to and agreed in writing by the Local Planning Authority. Thereafter the measures shall be undertaken in full and works on site shall only be in accordance with the approved method statement.

Reason: In the interest of biodiversity and having regard to Policies E12/2 and E12/6 of the North Tyneside Unitary Development Plan (2002).

- 43) Notwithstanding details already submitted, prior to commencement of the residential development full details of the design, siting, layout, timing of installation and operation and future management of the Sustainable Urban Drainage System (SuDS), including details of water table levels and a method statement for the drainage and diversion of the existing watercourse on the eastern boundary into the SuDS, shall be submitted to and approved in writing by the Local Planning Authority. Thereafter the SuDS shall be installed and maintained only in accordance with the approved details.

Reason: In the interest of biodiversity, air safety and having regard to Policies E12/2 and E12/6 of the North Tyneside Unitary Development Plan (2002).

- 44) Prior to commencement of development details of a wildlife route under the A189 and a timetable for its provision shall be submitted to and approved in writing by the Local Planning Authority. Thereafter the wildlife route shall be installed in accordance with the approved details and timings and retained.

Reason: In the interest of biodiversity and having regard to Policy E12 of the North Tyneside Unitary Development plan (2002).

Archaeology

- 45) No groundworks in relation to the residential development shall commence until a programme of archaeological fieldwalking has been completed. This shall be carried out in accordance with a specification which shall have been agreed with the Local Planning Authority. The developer shall arrange for the site to be ploughed, disc harrowed and left to weather for a period of two weeks, unless otherwise agreed by the Tyne and Wear Archaeologist, prior to the fieldwalking taking place.

Reason: The site is located within an area identified as being of potential archaeological interest. The investigation is required to ensure that any archaeological remains on the site can be preserved wherever possible and recorded, in accordance with Policy E19/6 of the North Tyneside Unitary Development Plan 2002.

- 46) The residential dwellings shall not be occupied/brought into use until the final report of the results of the archaeological fieldwalking undertaken in pursuance of the condition No. 45 has been submitted to and approved in writing by the Local Planning Authority.

Reason: The site is located within an area identified as being of potential archaeological interest. The investigation is required to ensure that any archaeological remains on the site can be preserved wherever possible and

recorded, in accordance with Policy E19/6 of the North Tyneside Unitary Development Plan 2002.

Landscaping/Trees

- 47) All existing trees shall be retained, unless shown on the approved drawings as being removed. All existing trees, shrubs and other natural features not scheduled for removal shall be fully protected during the course of the residential site works and building operations in accordance with BS 5837: 2012 and drawing No. ARB/AE 491 TPP within the Pre-development Arboricultural Survey Tree Constraints Plan. No work shall commence on site within the relevant development phase until all trees, shrubs or features to be protected within that phase are fenced along a line to be agreed with the Local Planning Authority with fencing as detailed in the Arboricultural Implications Assessment and drawing No. ARB/AE 491 TPP. Fencing shall be maintained during the course of the works on site. No unauthorised access or placement of goods, fuels or chemicals, soils or other materials shall take place inside the fenced area. In the event that trees become damaged or otherwise defective during such period, the Local Planning Authority shall be notified as soon as reasonably practicable and remedial action agreed and implemented. In the event that any tree dies or is removed without the prior approval of the Local Planning Authority, it shall be replaced as soon as is reasonably practicable and, in any case, by not later than the end of the first available planting season, with trees of such size, species and in such number and positions as may be agreed with the Local Planning Authority.

Reason: In the interest of visual amenity and biodiversity and having regard to Policies H11 and E12 of the North Tyneside Unitary Development Plan 2002.

- 48) Details of any pruning works to retained trees on the residential site, around the boundary of the whole development and within the Sustainable Urban Drainage System areas shall be submitted to and agreed in writing by the Local Planning Authority prior to the necessary building operations and/or access, and shall be carried out in advance of other operations under the expert supervision of a suitably qualified arboricultural consultant. All works should comply with the relevant recommendations of BS 3998:2010 (Tree Work).

Reason: In the interest of visual amenity and biodiversity and having regard to Policies H11 and E12 of the North Tyneside Unitary Development Plan 2002.

- 49) All existing hedges or hedgerows shall be retained, unless shown on the approved drawings as being removed (drawing No. ARB/AE 491 TPP). All hedges and hedgerows on or immediately adjoining the site shall be protected from damage for the duration of works on the site in accordance with British Standard BS 5837:2012. Any parts of hedges or hedgerows removed without the Local Planning Authority's approval or which die or become, in the opinion of the Local Planning Authority, seriously diseased or otherwise damaged within five years following contractual practical completion of the approved development (which shall have been notified in writing to the local Planning Authority) shall be replaced as soon as is reasonably practicable and, in any case, by not later than the end of the first available planting season, with

plants of such size and species and in such positions as may be agreed with the Local Planning Authority.

Reason: In the interest of visual amenity and biodiversity and having regard to Policies H11 and E12 of the North Tyneside Unitary Development Plan 2002.

- 50) Prior to the commencement of the residential development full details of the soft landscape proposals for the boundaries of the site (including details of the proposed planting to the highway verge to the A189), the wildlife corridors and Sustainable Urban Drainage System shall be submitted to and approved in writing by the Local Planning Authority. These details shall include, as appropriate:

Written specifications including cultivation and other operations associated with plant and grass establishment;

Schedules of plants, noting species, planting sizes and proposed numbers/densities where appropriate;

Implementation timetables.

All planting, seeding or turfing shown in the approved details of landscaping for the southern wildlife corridor in the site shall be completed before the completion of the first residential plot of the first phase. All planting, seeding or turfing comprised in the approved details of landscaping for the central wildlife corridor and all perimeter planting for the site shall be completed before the completion of the fortieth residential plot of the first phase.

Any trees or plants which within a period of five years from the completion of the final development die, are removed or become seriously damaged or diseased, shall be replaced in the current or first planting season following their removal or failure with others of similar size and species, unless the Local Planning Authority first gives written approval to any variation.

Reason: In the interest of the visual amenity of the area and having regard to Policy DCPS6 of the North Tyneside Unitary Development Plan 2002.

- 51) No works or development within phase 1 of the approved residential scheme shall take place until full details of both hard and soft landscape proposals have been submitted to and approved in writing by the Local Planning Authority. These details shall include, as appropriate:

Fully detailed planting plans;

Written specifications including cultivation and other operations associated with plant and grass establishment;

Schedules of plants, noting species, planting sizes and proposed numbers/densities where appropriate;

Implementation timetables.

Reason: In the interest of the visual amenity of the area and having regard to Policy DCPS6 of the North Tyneside Unitary Development Plan 2002.

- 52) No works or development within phase 2 of the approved residential scheme shall take place until full details of the soft landscape proposals have been

submitted to and approved in writing by the Local Planning Authority. These details shall include, as appropriate:

Fully detailed planting plans;
Written specifications including cultivation and other operations associated with plant and grass establishment;
Schedules of plants, noting species, planting sizes and proposed numbers/densities where appropriate;
Implementation timetables.

Reason: In the interest of the visual amenity of the area and having regard to Policy DCPS6 of the North Tyneside Unitary Development Plan 2002.

- 53) No works or development within phase 3 of the approved residential scheme shall take place until full details of the soft landscape proposals have been submitted to and approved by the Local Planning Authority. These details shall include, as appropriate:

Fully detailed planting plans;
Written specifications including cultivation and other operations associated with plant and grass establishment;
Schedules of plants, noting species, planting sizes and proposed numbers / densities where appropriate;
Implementation timetables.

Reason: In the interest of the visual amenity of the area and having regard to Policy DCPS6 of the North Tyneside Unitary Development Plan 2002.

- 54) All planting, seeding or turfing contained in the approved details of landscaping for each residential phase shall be carried out in the first planting and seeding seasons following the completion of that phase, and any trees or plants which within a period of five years from the completion of the final development, die are removed or become seriously damaged or diseased, shall be replaced in the current or first planting season following their removal or failure with others of similar size and species, unless the Local Planning Authority first gives written approval to any variation.

Reason: In the interests of amenity and to ensure a satisfactory standard of landscaping having regard to Policy DCPS6 of the North Tyneside Unitary Development Plan 2002.

Commercial Development

- 55) Approval of the details of the layout, scale, appearance, access and landscaping of the commercial development on site, hereafter called the 'reserved matters' shall be obtained from the Local Planning Authority before any development is commenced.

Reason: The application for the commercial element of the proposal is expressed to be an outline application only.

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- 56) Application for approval of reserved matters of the commercial development shall be made to the Local Planning Authority before the expiration of three years from the date of this permission.

The development hereby permitted shall be begun before the expiration of two years from the date of approval of the last of the reserved matters to be approved and shall be carried out in accordance with the approved details.

Reason: To comply with the requirements of Section 92 of the Town and Country Planning Act 1990.

- 57) The commercial development shall not take place without the supporting residential scheme.

Reason: The commercial element on its own would represent an isolated development out of character within the surrounding area and would be contrary to Policies S10 and E21 of the North Tyneside Unitary Development Plan 2002.

- 58) No part of the commercial development shall be occupied until an area has been laid out within the site for visitors' vehicles to turn and that area shall not thereafter be used for any other purpose.

Reason: To enable vehicles to draw off and turn clear of the highway thereby avoiding the need to reverse onto the public highway having regard to Policy S10 of the North Tyneside Unitary Development Plan 2002.

- 59) No commercial development shall take place until a detailed scheme for the disposal of foul sewage from the development hereby approved has been submitted to and approved in writing by the Local Planning Authority. Thereafter the development shall take place in accordance with the approved details.

Reason: To ensure a satisfactory means of drainage in the interests of minimising environmental pollution having regard to Policy S10 of the North Tyneside Unitary Development Plan 2002.

- 60) The commercial development shall not begin until details of the disposal of surface water from the highway, footpaths and other hard surfaces have been submitted to and approved in writing by the Local Planning Authority and no building shall be brought into use until the works for the disposal of surface water have been constructed in accordance with the approved details.

Reason: To provide a satisfactory means of surface water drainage having regard to Policy S10 of the North Tyneside Unitary Development Plan 2002.

- 61) No commercial development shall take place until details of facilities to be provided for the storage of refuse at the premises have been submitted to and approved in writing by the Local Planning Authority. The facilities, which should also include the provision of wheeled refuse bins, shall be provided in accordance with the approved details prior to the occupation of any part of the commercial development and thereafter permanently retained.

Reason: In order to safeguard the amenities of the area having regard to Policy S10 of the North Tyneside Unitary Development Plan 2002.

- 62) All builders' and contractors' compounds, site huts, and storage of plant and materials for the commercial development shall be located in accordance with a scheme to be submitted to and approved in writing by the Local Planning Authority prior to any development taking place.

Reason: In the interests of the amenity of neighbouring residents having regard to Policy H13 of the North Tyneside Unitary Development Plan 2002.

- 63) Access to the site for all builders' and contractors' vehicles for the commercial development, including those delivering materials, shall be in accordance with a scheme to be submitted to and approved in writing by the Local Planning Authority prior to any commercial development taking place.

Reason: In the interests of the amenity of neighbouring residents and road traffic and pedestrian safety having regard to Policy H13 of the North Tyneside Unitary Development Plan 2002

- 64) Prior to the commercial development commencing a detailed scheme to prevent the deposit of mud and other debris onto the highway and to suppress dust arising from construction activities shall be submitted to and approved in writing by the Local Planning Authority. Such a scheme shall include details of a) mechanical street cleaning brushes and b) the provision of water bowsers to be made available to spray working areas due to dry conditions. Thereafter development shall not be carried out other than in accordance with the approved details and the approved measures shall be retained on site for the duration of the works and used on all occasions when visible dust emissions are likely to be carried from the site, for example during dry, windy conditions.

Reason: To safeguard the occupiers of surrounding properties and users of the public highway from any discomfort or loss of amenity arising from construction activities on the site and having regard to Policy H13 of the North Tyneside Unitary Development Plan 2002.

- 65) Prior to any construction activities relating to the commercial development commencing, a scheme indicating the proposed routing of heavy construction vehicles to and from the site and including details of signage to be provided at the site access and at locations along the specified route shall be submitted to and agreed in writing with the Local Planning Authority. No commercial development shall take place until signage has been provided in accordance with the agreed scheme and thereafter such signage shall be retained until construction works are completed.

Reason: In the interests of safeguarding the amenities of local residents and to minimise danger and inconvenience to highway users having regard to Policy H13 of the North Tyneside Unitary Development Plan 2002.

- 66) Prior to works commencing on the commercial development, a scheme for the provision of secure undercover cycle parking shall be submitted to and

approved in writing by the Local Planning Authority. Thereafter, this scheme shall be implemented in accordance with the approved details before the development is occupied.

Reason: In the interests of highway safety and having regard to Policy T9 of the North Tyneside Unitary Development Plan 2002.

- 67) No development shall take place for the commercial development until details of the height, position, design and materials of any chimney or extraction vent to be provided in connection with the development have been submitted to and approved in writing by the Local Planning Authority. Thereafter, the development shall not be carried out other than in accordance with the approved details.

Reason: In order to safeguard the amenities of adjoining properties having regard to Policy H13 of the North Tyneside Unitary Development Plan 2002.

- 68) No development of the commercial element shall take place until details of air ventilation systems have been submitted to and approved in writing by the Local Planning Authority. The scheme shall thereafter be implemented before the development is first occupied in accordance with the approved details and permanently retained and operated as such.

Reason: To protect the amenities of the occupiers of residential accommodation in the vicinity having regard to Policy H13 of the North Tyneside Unitary Development Plan 2002.

- 69) No commercial development shall take place until details of any refrigeration plant to be installed in connection with the development have been submitted to and approved in writing by the Local Planning Authority. The plant shall thereafter only be installed in accordance with the approved details and permanently retained and operated as such.

Reason: To protect the amenities of the occupiers of residential accommodation in the vicinity having regard to Policy H13 of the North Tyneside Unitary Development Plan 2002.

- 70) Prior to the occupation of the commercial development, details of the opening and delivery hours shall be submitted to and approved in writing by the Local Planning Authority. Thereafter the premises shall only operate in accordance with those approved hours.

Reason: In the interest of local amenity and having regard to Policy H13 of the North Tyneside Unitary Development Plan 2002.

- 71) No commercial development shall take place until details of an odour suppression system for the containment of odours have been submitted to and approved in writing by the Local Planning Authority. The scheme shall thereafter be implemented before any commercial use commences in accordance with the approved details and shall be permanently retained and operated.

Reason: To protect the amenities of the occupiers of residential accommodation in the vicinity having regard to Policy H13 of the North Tyneside Unitary Development Plan 2002.

- 72) The commercial construction site subject of this approval shall not be operational and there shall be no construction, deliveries to, from or vehicle movements within the site, outside the hours of 0800-1800 Monday - Friday and 0800-1400 Saturdays, with no working on Sundays or Bank Holidays.

Reason: To safeguard the amenity of nearby residents having regard to Policy E3 of the North Tyneside Unitary Development Plan 2002.

- 73) No groundworks in relation to the commercial development shall commence until a programme of archaeological fieldwalking has been completed. This shall be carried out in accordance with a specification which shall have been agreed with the Local Planning Authority. The developer shall arrange for the site to be ploughed, disc harrowed and left to weather for a period of two weeks unless otherwise agreed by the Tyne and Wear Archaeologist, to allow the fieldwalking to take place.

Reason: The site is located within an area identified as being of potential archaeological interest. The investigation is required to ensure that any archaeological remains on the site can be preserved wherever possible and recorded, in accordance with Policy E19/6 of the North Tyneside Unitary Development Plan 2002.

- 74) The commercial building(s) shall not be occupied/brought into use until the final report of the results of the archaeological fieldwalking undertaken in pursuance of condition No. 73 has been submitted to and approved in writing by the Local Planning Authority.

Reason: The site is located within an area identified as being of potential archaeological interest. The investigation is required to ensure that any archaeological remains on the site can be preserved wherever possible and recorded, in accordance with Policy E19/6 of the North Tyneside Unitary Development Plan 2002.

- 75) No commercial development shall take place until plans of the site showing the existing levels of the site and proposed ground levels and levels of thresholds and floor levels of all buildings have been submitted to and approved in writing by the Local Planning Authority. Such levels shall be shown in relation to a fixed and known datum point. Thereafter, the development shall not be carried out other than in accordance with the approved details.

Reason: To ensure that the work is carried out at suitable levels in relation to adjoining properties and highways, having regard to amenity, biodiversity, access, highway and drainage requirements having regard to Policy E12 of the North Tyneside Unitary Development Plan 2002.

- 76) Prior to commencement of the commercial development, a method statement setting out measures to be taken to prevent contamination and pollution to

watercourses and groundwater sources shall be submitted to and agreed in writing by the Local Planning Authority. Thereafter the measures shall be undertaken in full and works on site shall only be in accordance with the approved method statement.

Reason: In the interest of biodiversity and having regard to Policies E12/2 and E12/6 of the North Tyneside Unitary Development Plan 2002.

- 77) All existing trees, shrubs and other natural features not scheduled for removal shall be fully protected during the course of the commercial site works and building operations in accordance with BS 5837:2012 and drawing No. ARB/AE 491 TPP within the Pre-development Arboricultural Survey Tree Constraints Plan. No work shall commence on site until all trees, shrubs or features to be protected are fenced along a line to be agreed with the Local Planning Authority with fencing as detailed in the Arboricultural Implications Assessment and drawing No. ARB/AE 491 TPP. Fencing shall be maintained during the course of the works on site. No unauthorised access or placement of goods, fuels or chemicals, soils or other materials shall take place inside the fenced area. In the event that trees become damaged or otherwise defective during such period, the Local Planning Authority shall be notified as soon as reasonably practicable and remedial action agreed and implemented. In the event that any tree dies or is removed without the prior approval of the Local Planning Authority, it shall be replaced as soon as is reasonably practicable and, in any case, by not later than the end of the first available planting season, with trees of such size, species and in such number and positions as may be agreed by the Local Planning Authority.

Reason: In the interest of visual amenity and biodiversity and having regard to Policies H13 and E12 of the North Tyneside Unitary Development Plan 2002.

- 78) Details of any pruning works to retained trees on the commercial site shall be submitted to and agreed in writing by the Local Planning Authority prior to the necessary building operations and/or access, and shall be carried out in advance of other operations under the expert supervision of a suitably qualified arboricultural consultant. All works shall comply with the relevant recommendations of BS 3998:2010 (Tree Work).

Reason: In the interest of visual amenity and biodiversity and having regard to Policies H13 and E12 of the North Tyneside Unitary Development Plan 2002.

- 79) All existing hedges or hedgerows within the site of the commercial development shall be retained, unless shown on the approved drawings as being removed (drawing No. ARB/AE 491 TPP within the Pre-development Arboricultural Survey Tree Constraints Plan). All hedges and hedgerows on or immediately adjoining the site shall be protected from damage for the duration of works on the site in accordance with British Standard BS 5837:2012. Any parts of hedges or hedgerows removed without the Local Planning Authority's approval or which die or become, in the opinion of the Local Planning Authority, seriously diseased or otherwise damaged within five years following contractual practical completion of the approved development shall be replaced as soon as is reasonably practicable and, in any case, by not later than the end of the first available planting season, with plants of such size and

species and in such positions as may be agreed with the Local Planning Authority.

Reason: In the interest of visual amenity and biodiversity and having regard to Policies H13 and E12 of the North Tyneside Unitary Development Plan 2002.

- 80) No works for the commercial scheme shall take place until full details of both hard and soft landscape proposals have been submitted to and approved by the Local Planning Authority. These details shall include, as appropriate:

Fully detailed planting plans;

Written specifications including cultivation and other operations associated with plant and grass establishment;

Schedules of plants, noting species, planting sizes and proposed numbers/densities where appropriate;

Implementation timetables.

Reason: In the interest of the visual amenity of the area and having regard to Policy DCPS6 of the North Tyneside Unitary Development Plan 2002.

- 81) All planting, seeding or turfing comprised in the approved details of landscaping for the commercial development shall be carried out in the first planting and seeding seasons following the completion of that development. Any planting, seeding or turfing which within a period of five years from completion of the final development, die are removed or become seriously damaged or diseased, shall be replaced in the current or first planting season following their removal or failure with others of similar size and species, unless the Local Planning Authority first gives written approval to any variation.

Reason: In the interests of amenity and to ensure a satisfactory standard of landscaping having regard to Policy DCPS6 of the North Tyneside Unitary Development Plan 2002.

- 82) No development for the commercial development shall commence until a detailed parking layout has been submitted to and approved in writing by the Local Planning Authority. Thereafter, this scheme shall be implemented in accordance with the approved details before the development is occupied and shall be retained for its proposed purpose.

Reason: In the interests of highway safety.

- 83) No development shall take place until a scheme showing how the commercial development is to be protected against the possibility of landfill gas migrating from the nearby former landfill site, has been submitted to and approved in writing by the Local Planning Authority. Thereafter the development shall not take place other than in accordance with the details shown in such approved scheme, and those measures incorporated into the development shall thereafter be retained unless the Local Planning Authority otherwise agrees in writing.

Reason: To ensure that the details of the development are satisfactory to prevent the adverse effects of landfill gas which may migrate from a former

landfill site having regard to Policy E3 of the North Tyneside Unitary Development Plan 2002.

- 84) The details of a scheme of site investigation for the commercial development and assessment to test for the presence and likelihood of gas emissions from underground, including methane gas, shall be submitted to and agreed in writing by the Local Planning Authority.

Reason: To check for gas emissions from underground sources and ensure that the details of the development are satisfactory to prevent the adverse effects of underground gas emissions having regard to Policy E3 of the North Tyneside Unitary Development Plan 2002.

- 85) The detailed design and construction of the commercial development shall take account of the results of the site investigation and assessment agreed pursuant to condition No. 86. They shall also take account of the possibility of future gas emissions from underground, including methane gas. The method of construction shall reflect this possibility and incorporate all the measures shown in the assessment to be necessary and any other reasonable precautions so as to guard against such emissions having an adverse effect upon the development and/or the future users and occupiers thereof.

Reason: In order to safeguard the development and/or the users thereof from possible future gas emissions from underground having regard to Policy E3 of the North Tyneside Unitary Development Plan 2002.

- 86) Prior to the occupation of the commercial development hereby approved all surface water to be discharged into any watercourse, surface water sewer or soakaway system from any hardstanding car parking areas comprising more than 50 parking spaces or any hardstanding car parking areas over 800m², shall be passed through an oil interceptor in accordance with a scheme to be submitted to and approved in writing by the Local Planning Authority. Roof water shall not pass through the interceptor.

Reason: In the interest of biodiversity and having regard to Policies E12/2 and E12/6 of the North Tyneside Unitary Development Plan 2002.

- 87) No development of the commercial development shall take place until a schedule and/or samples of the materials for the development and finishes and/or samples of all surfacing materials for the development have been submitted to and approved in writing by the Local Planning Authority. Thereafter, the development shall not be carried out other than in accordance with the approved details.

Reason: To secure a satisfactory appearance having regard to Policy H11 of the North Tyneside Unitary Development Plan 2002.

ANNEX B**List of additional conditions not agreed by the parties**

- 1) Prior to the commencement of development a scheme for the offsetting of ecosystem services and/or biodiversity impacts at the site shall be submitted to the Local Planning Authority. The offsetting scheme shall include:
1. The identification of receptor site(s);
 2. Details of the offset requirements of the development in accordance with the recognised offsetting metrics standard;
 3. The provision of contractual terms to secure the delivery of the offsetting measures; and
 4. A management and monitoring plan (to include for the provision and maintenance of such offsetting measures for not less than 25 years from the date of this permission).

The development shall not commence until the Local Planning Authority has approved the scheme in writing. The applicant shall secure and implement such offsetting measures in accordance with the requirements of the approved scheme.

- 2) At least 10% of the energy supply for the residential development shall be secured from decentralised and renewable or low carbon energy sources. Details and a timetable of how this is to be achieved, including details of physical works on site, shall be submitted to and approved in writing by the Local Planning Authority. The approved details shall be implemented in accordance with the approved timetable and retained as operational thereafter, unless otherwise agreed in writing by the Local Planning Authority.

Reason: To assist in reducing the carbon footprint of the development.

- 3) At least 10% of the energy supply of the commercial development shall be secured from decentralised and renewable or low carbon energy sources. Details and a timetable of how this is to be achieved, including details of physical works on site, shall be submitted to and approved in writing by the Local Planning Authority. The approved details shall be implemented in accordance with the approved timetable and retained as operational thereafter, unless otherwise agreed in writing by the Local Planning Authority.

Reason: To assist in reducing the carbon footprint of the development.