



Department for  
Communities and  
Local Government

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Our Ref: APP/W3005/A/12/2179635  
Your Ref: RF/MillwardSkegbyApp/10

7 March 2013

Dear Sir,

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78  
APPEAL BY MSSRS MILLWARD, SHAW AND WEBSTER  
LAND OFF GILCROFT STREET / ST ANDREWS STREET, SKEGBY, SUTTON-IN-  
ASHFIELD, NG17 3EJ, AND VERE STREET, SUTTON-IN-ASHFIELD, NG17 4DS  
APPLICATION REF: V/2011/0503**

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Inspector, Julia Gregory BSc(Hons) BTP MRTPI MCMI, who held a public local inquiry on 4 days between 20 and 23 November 2012 into your clients' appeal against the refusal of Ashfield District Council ("the Council") to grant outline planning permission for residential development at land off Gilcroft Street/St Andrews Street, Skegby, Sutton in Ashfield NG17 3EJ and Vere Avenue, Sutton in Ashfield, NG17 4DS, in accordance with application ref: V/2011/0503.
2. On 18 October 2012, the appeal was recovered for the Secretary of State's determination, in pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act 1990, because it involves a proposal over 150 units on a site of more than 5 ha which would significantly impact on the Government's objective to secure a better balance between housing demand and supply and create high quality, sustainable mixed and inclusive communities.

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

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

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## **Procedural matters**

4. The Secretary of State agrees with the Inspector's conclusion (IR15) that no part of the proposals could be disaggregated from the whole and that a split decision would not be appropriate.

## **Policy considerations**

5. In deciding this appeal, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise. In this case, the development plan comprises the *East Midlands Regional Plan 2009 (RS)* and the *Ashfield Local Plan (LP)* adopted in 2002 for the period to 2011. The Secretary of State agrees with the Inspector (IR36) that the emerging *Ashfield Local Plan 2010-2023 preferred Approach September 2012* can be given little weight at this stage as there is no submission Local Plan and there are unresolved issues in representations.
6. The Localism Act 2011 provides for the abolition of Regional Strategies. However, until such time as the RSS is formally revoked by Order, the RSS remains part of the development plan and must be taken into account in determining this appeal.
7. Other material considerations which the Secretary of State has taken into account include the National Planning Policy Framework (The Framework); *Technical Guidance to the National Planning Policy Framework* (March 2012); Circular 11/1995: *Use of Conditions in Planning Permission*; the *Community Infrastructure Levy (CIL) Regulations 2010* as amended; and the Council's consultation draft *Strategic Housing Land Availability Assessment*.

## **Main issues**

8. The Secretary of State agrees with the Inspector that the main issues in this case are those referred to at IR120.

### Housing land supply

9. For the reasons given by the Inspector at IR124-125, the Secretary of State agrees with her conclusion that the Council does not have a 5 year supply of housing land and that the undersupply is significant and of substantial weight in considering this appeal. He also agrees that little weight can be given to the emerging local plan (IR 126) and that the scale and location of the housing proposed in the appeal scheme would not be so substantial as to raise issues best addressed in a local plan (IR 127). Furthermore, for the reasons given at IR128-131, the Secretary of State agrees with the Inspector that the appeal site could provide a substantial amount of housing that would be consistent with Government policy while providing a substantial area of parkland to maintain the separation between Skegby and Sutton-in-Ashfield.

### Character and appearance of the countryside

10. The Secretary of State agrees with the Inspector (IR132-133) that the development would not have a significant impact on the character of the landscape generally and that neither the impact of lighting nor of vehicular and pedestrian movement would be so significant as to be harmful to the character of the area. He also agrees with the

Inspector (IR134) that the land to be conveyed to the Council could be effectively managed and would provide better public access, including a formalised link to Skegby Hall Historic Park and Gardens.

11. For the reasons given at IR135-137, the Secretary of State agrees with the Inspector that, although the development could be accommodated into the area without undue effects on its character and appearance, it is unlikely that development in the way shown on any of the illustrative plans submitted to the inquiry could be achieved without significant and harmful effects on the character and appearance of the area. The Secretary of State therefore agrees with the Inspector that the number of dwellings should not be specified in the outline consent and that the illustrative plans should not be seen to preclude any subsequent reserved matters.

#### Quality of housing development

12. The Secretary of State agrees with the Inspector's conclusion at IR143 that, for the reasons given at IR138-142, there is no reason to suppose that details submitted pursuant to an outline permission could not represent a high quality housing development providing a good mix of housing including affordable housing that would be consistent with the Framework and provide good living conditions both for future residents and for the occupiers of neighbouring properties.

#### **Conditions and obligations**

13. The Secretary of State has also considered the Inspector's reasoning and conclusions on the Planning Obligations as set out at IR144-155, and he is satisfied that the conditions as proposed by the Inspector and set out at Annex A to this letter are reasonable, necessary and comply with Circular 11/95.
14. With regard to the Planning Obligation (IR156-163), the Secretary of State is satisfied that the provisions set out in the signed and sealed Unilateral Undertaking dated 6 December 2012 and submitted following the close of the inquiry reflect the discussions at the inquiry and can be considered to be compliant with CIL Regulation 122.

#### **Overall Conclusions**

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

#### **Formal Decision**

16. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendations. He hereby allows your clients' appeal and grants outline planning permission for residential development at land off Gilcroft Street/St Andrews Street, Skegby, Sutton in Ashfield NG17 3EJ and Vere Avenue, Sutton in Ashfield, NG17 4DS, in accordance with application ref: V/2011/0503.

17. An applicant for any consent, agreement or approval required by a condition of this permission for agreement of reserved matters has a statutory right of appeal to the Secretary of State if consent, agreement or approval is refused or granted conditionally or if the Local Planning Authority fail to give notice of their decision within the prescribed period.
18. This letter does not convey any approval or consent which may be required under any enactment, bye-law, order or regulation other than section 57 of the Town and Country Planning Act 1990.

**Right to challenge the decision**

19. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged by making an application to the High Court within six weeks from the date of this letter.
20. A copy of this letter has been sent to the Council. A notification e-mail / letter has been sent to all other parties who asked to be informed of the decision.

Yours faithfully

**JEAN NOWAK**

Authorised by Secretary of State to sign in that behalf

**CONDITIONS**

1. For those matters not reserved for later approval, the development hereby permitted shall be carried out in accordance with the following approved plans: Application site plan, 373:P:01 and NTT/1362/001/Rev P1.
2. Details of the appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the Local Planning Authority before any development begins and the development shall be carried out as approved.
3. Application for approval of the reserved matters shall be made to the local planning authority not later than three years from the date of this permission.
4. The development hereby permitted shall begin not later than two years from the date of approval of the last of the reserved matters to be approved.
5. Construction works shall only occur on the site between the hours of 08:00 and 18:00 Monday to Friday, 09:00 – 13:00 Saturdays and not at any time on Sundays or Bank Holidays.
6. The development shall not commence until a scheme of speed/traffic management measures has been submitted to and approved by the Council to reduce the potential for badger road casualties along the access road to the southern housing site adjacent to Vere Avenue. No dwelling on the southern housing site shall be first occupied until the road has been constructed incorporating the approved measures.
7. No development other than highway works within the red edge on the application site plan shall take place at any time within 3 metres of the boundary of Stanton Hill Meadows Site of Important Nature Conservation Local Wildlife Site (SINC 2/189).
8. The development shall not commence until a scheme for the future protection of Skegby disused Quarry (ii) Local Wildlife Site (SINC 5/55) has been submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be carried out strictly in accordance with the approved scheme.
9. Any grassland areas not forming part of the access road, but which are disturbed during the construction of the access road, shall be reinstated on completion of the access construction works in accordance with the detail set out in Section 6 Mitigation, Compensation & Further Survey Recommendations, Section 6.1.1 (vii) of the EMEC Ecological Assessment Report 2011.
10. Brick nesting boxes shall be incorporated into the residential properties to provide nesting opportunities for house sparrows and swifts. Prior to the commencement of development details of these boxes shall be submitted to the Local Planning Authority for approval and the approved measures shall be implemented and thereafter retained.
11. Access for bats shall be incorporated into the residential properties to provide roosting opportunities. Prior to the commencement of development details of such measures shall be submitted to the Local Planning Authority for approval and the approved measures shall be implemented and thereafter retained.
12. The development shall not commence until a survey of trees proposed to be removed has been submitted to and approved in writing by the Local Planning Authority establishing whether any of them provide bat roost potential and if so whether any do currently do support a bat roost. No removal of those trees nor any other physical interference with them shall take place until written approval has been given by the Local Planning Authority in respect of the proposed operations.
13. The development shall not commence until a Phase 1 habitat survey has been submitted to and approved in writing by the Local Planning Authority in respect of the application site

outlined in blue on the site plan. No dwelling shall be first occupied until any required mitigation measures have been fully implemented. Such measures shall thereafter be retained.

14. The development shall not commence until a protected species survey has been submitted to and approved in writing by the Local Planning Authority in respect of the impact of the development upon otter, water vole and white-clawed crayfish in streams 1 or 2 or within 5 metres of their banks. No dwelling shall be first occupied until any until any required mitigation measures have been fully implemented. Such measures shall thereafter be retained.
15. No dwelling on the site shall be first occupied until a kickabout area has been provided in a position, details of which shall first have been submitted to and approved in writing by the Local Planning Authority which may be partially or wholly within the land outlined in blue. Such a feature shall have an overall size of no less than 50m x 35m, to fit a pitch size of no less than 25m x 16.5m. This informal space shall be provided as a level grassed playing area with goalposts, seating and some planting.
16. There shall be no works to the Hedgerow to the east of the northern site shown in green on plan 3 in the Unilateral Undertaking dated 20 November 2012 without prior approval in writing from the Local Planning Authority.
17. No dwelling on the site shall be first occupied until a post and rail fence has been erected along both sides of the access road at no less than 1.5 metres in height with a design that shall first have been submitted to and agreed in writing by the Local Planning Authority.
18. Prior to the commencement of development full details of the proposed treatment of the sites internal and external boundaries and a phasing scheme for the implementation of the agreed boundary treatment shall be submitted to and approved in writing by the Local Planning Authority. Such approved details shall be implemented in accordance with the approved phasing scheme and thereafter retained.
19. Prior to the commencement of development, details shall be submitted and approved in writing by the Local Planning Authority in respect of details of parking, turning facilities, access widths and specifications, gradients, surfacing, street lighting, structures, visibility splays and highway drainage. These shall include design calculations and detailed construction drawings for the proposed highways works. The development shall be carried out in accordance with the approved details and the parking and turning areas retained for their specified purposes at all times.
20. The development hereby permitted shall not commence until drainage plans for the disposal of surface water and foul sewage have been submitted to and approved in writing by the Local Planning authority. The scheme shall be implemented in accordance with the approved details before the development is first brought into use. These shall include the use of Sustainable Urban Drainage Systems (SUDS). The development shall not commence until a SUDS Management Plan which shall have been submitted to and approved in writing by the Local Planning Authority.
21. At all times there will remain an unobstructed green corridor retained along the watercourse that runs north south to the east of the southern application site. At no time shall there be any development including fences, other garden features, land raising, or building within 8 metres of the top of the bank that forms the watercourse channel unless otherwise agreed in writing by the Local Planning Authority.
22. No development shall take place until samples of the materials and finishes to be used for the external elevations and roofs of the proposals have been submitted to and approved in writing by the Local Planning Authority. The approved details shall be implemented.
23. Prior to the commencement of development a Coal Mining Risk Assessment report shall be submitted to the Local Planning Authority for its written approval. Thereafter any operational

development on the site shall incorporate the construction and working methods that have been approved by the Council.

24. No development shall be permitted to commence on the site until an air quality assessment has been prepared in respect of the projected traffic increase at the Stoneyford Road junction and approved in writing by the Local Planning Authority. Thereafter any approved mitigation measures shall be implemented and thereafter retained.
25. Prior to the commencement of any works pursuant to this planning permission the applicant shall submit the following information to the Local Planning Authority for approval in writing:
  - (i) A desktop Study/Phase I report documenting the historical use(s) of the site and its immediate environs;
  - (ii) A site investigation/Phase II report where any previous use of the site indicates a potential contaminative use. The application/developer shall submit a Site Investigation/Phase II report documenting the characteristics of the ground at the site. The site investigation should establish the full extent, depth and cross section, nature and composition of the contamination. Ground gas monitoring and chemical analysis, identified as being appropriate by the desktop study, should be carried out in accordance with the current guidance using UKAS/MCERTS accredited methods. All technical data must be submitted to the Local Planning Authority;
  - (iii) A scheme of remedial works where the site investigation has identified the presence of significant levels of harmful ground gas and/or significant levels of chemical contamination. The scheme should include a remediation Statement and Risk Assessment Strategy to prevent any significant risk arising when the site is being developed or subsequently occupied. Any variation to the remediation Scheme shall be agreed in writing with the LPA in advance of and works being undertaken. All remediation should be carried out safely, ensuring that no significant risk(s) remain. The applicant shall have a contingency plan should the primary remediation of subsequent construction phase reveal any additional contamination. Where additional contamination is found the applicant shall immediately notify the Local Planning Authority and shall submit in writing, details of the contingency plan for written approval by the Local Planning Authority.
  - (iv) On completion of the remedial works and prior to the occupation/use of the development, the applicant shall submit to the Local Planning Authority: A Validation Report with confirmation that all remedial works have been completed and validated, in accordance with the agreed details.



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

by Julia Gregory BSc (Hons) BTP MRTPI MCMI

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

Date: 11 January 2013

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**TOWN AND COUNTRY PLANNING ACT 1990**

**ASHFIELD DISTRICT COUNCIL**

**LAND OFF GILCROFT STREET/ ST ANDREWS STREET, SKEGBY, SUTTON-IN-  
ASHFIELD NG17 3EJ AND VERE AVENUE, SUTTON-IN-ASHFIELD NG17 4DS**

**APPEAL BY**

**MESSRS MILLWARD, SHAW AND WEBSTER**

Inquiry opened on 20 November 2012

Land off Gilcroft Street/ St Andrews Street, Skegby, Sutton-in-Ashfield NG17 3EJ and Vere Avenue,  
Sutton-in-Ashfield NG17 4DS

File Ref: APP/W3005/A/12/2179635

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**File Ref: APP/W3005/A/12/2179635**

**Land off Gilcroft Street/ St Andrews Street, Skegby, Sutton-in-Ashfield  
NG17 3EJ and Vere Avenue, Sutton in Ashfield NG17 4DS**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
- The appeal is made by Messrs Millward, Shaw and Webster against the decision of Ashfield District Council.
- The application Ref V/2011/0503, dated 17 August 2011, was refused by notice dated 28 March 2012.
- The development proposed is residential development.

**Summary of Recommendation: The appeal be allowed, subject to the conditions in Annex A.**

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**ABBREVIATIONS**

|           |  |
|-----------|--|
| Framework | The National Planning Policy Framework 2012    |
| LP        | Ashfield Local Plan adopted November 2002      |
| LPPA      | Ashfield Local Plan Preferred Approach         |
| LVIA      | Landscape and Visual Impact Assessment         |
| PPS       | Planning Policy Statement                      |
| RS        | East Midlands Regional Plan 2009               |
| SHLAA     | Strategic Housing Land Availability Assessment |

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### **Recovery by the Secretary of State**

1. The Secretary of State recovered the appeal on 18 October 2012 and directed that he would determine the appeal himself. This is because the appeal involves proposals for residential development of over 150 units or on sites of over 5 hectares. This 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.

### **Procedural Matters**

2. The inquiry sat for 4 days on Tuesday 20 November, Wednesday 21 November, Thursday 22 November and Friday 23 November 2012. Interested parties were advised of the opening date of the Inquiry by letter dated 19 September 2012.<sup>1</sup>
3. An accompanied site inspection took place on Friday 23 November 2012. The site visit included Gilcroft Street, St Andrews Street and Hall Street. The appeal site was viewed from 47 Hall Street. The two sections of the application site, and the intervening land were inspected along with Skegby Hall Historic Park and Gardens, the Teversal Trail, Mansfield Road, Stoneyford Road, and Vere Avenue.
4. An unaccompanied visit was made later the same day to Stoneyford Road and Stamper Crescent play areas and sites HG1Ss and HG1St shown on the Ashfield Local Plan Preferred Approach September 2012 (LPPA) Proposals Map.<sup>2</sup> The route used to guide the site visit is shown on a plan submitted to the Inquiry.<sup>3</sup>
5. The spelling of the name *Millward* in the banner heading has been taken from the appeal form as it is spelt that way on most documentation, including the Unilateral Undertaking. It appears differently on the application form, which is in error.
6. The description of the proposal is taken from the planning application form. The reference in the decision notice to up to 230 dwellings is the figure used in the transport assessment. The Council wished to establish the maximum quantum of development to enable consideration of the infrastructure requirements and the environmental impacts of the scheme. This quantum of development was subsequently used as the basis for Unilateral Undertaking provisions. The figure of 167 dwellings noted on the application form is based on a theoretical density and is of little relevance.

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<sup>1</sup> DOC9

<sup>2</sup> DOC23

<sup>3</sup> DOC31

7. The main parties advised that the application illustrative layout plan ref 373:P:01:A in fact showed 235 dwellings.<sup>4</sup> In representations at the Inquiry, the appellants made clear that had the Council not requested a layout that none would have been submitted. The appellants asked for plan ref 373:P:01:C<sup>5</sup> to be taken into account in the appeal. This plan, showing 204 houses had been submitted to the Council shortly before the date of the Inquiry and has not been the subject of any consultation. There is also plan ref 373:P:01:B<sup>6</sup> that was submitted to the Council after the application was determined and has been subject of discussion with the Council. Neither of these plans had been subject of any public consultation and therefore the weight that can be attributed to them is limited.
8. In answer to an Inspectors question, the main parties considered that there would be no harm in reverting to the previous description of residential development, since the reserved matters, excluding access, would be for future determination. This would enable the Council to consider the details of layout when full details including sections of the site had been submitted, and would not prejudice any future conclusions on the acceptability of any details. I consider that this would be the appropriate course of action because of the potential for layouts to affect the character and appearance of the area.
9. At the Inquiry, in answer to an inspector question, the appellants confirmed that the planting annotations shown in areas A, B and C on the site plan entitled *The River Meden Valley Park* formed no part of the appeal proposal.<sup>7</sup>
10. The appellants had been preparing a Unilateral Undertaking in dialogue with the Council for some time before the opening of the Inquiry. A draft obligation was submitted at the opening of the Inquiry.<sup>8</sup> That Unilateral Undertaking was finally engrossed on 20 November 2012. It was subject to discussion at the Inquiry in respect of its compliance with Community Infrastructure Regulation 122. The Council submitted to the Inquiry a written justification for its provisions in respect of affordable housing, integrated transport provision, and improvements to a play area.<sup>9</sup> In addition, there was internal Council email correspondence pertinent to the provision of public open space.<sup>10</sup>
11. Following that discussion, the appellants solicitor on 23 November 2012 made hand written amendments as he was authorised to do.<sup>11</sup> The Council confirmed at the Inquiry that they had seen the title documents and had satisfied themselves in respect of those title documents that all those who had a relevant interest in the land were party to it. They also confirmed that, although not party to its provisions, they were not opposed to taking over land that would be transferred to them or the quantum or nature of the infrastructure provisions. It was established at the Inquiry that if the base number used to calculate the provisions could not be achieved that the likelihood would be that the subsequent

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<sup>4</sup> Plan E

<sup>5</sup> Plan G

<sup>6</sup> Plan F

<sup>7</sup> Plan A

<sup>8</sup> DOC2

<sup>9</sup> DOC25

<sup>10</sup> DOC26

<sup>11</sup> DOC7

application would be a full application with a revised linked S106 to ensure its legality.

12. The Council issued two decision notices, both dated 28 March 2012. In the second decision notice the Council sought to identify the correct relevant paragraphs in the Framework that were pertinent to reason for refusal 3 (five year housing land supply). This matter was the subject of a letter from the appellants dated 12 April 2012.<sup>12</sup>
13. The submission of further information, including the LDA Design Landscape and Visual Impact Assessment<sup>13</sup> and continued dialogue resulted in agreement that some objections could be overcome by suitable conditions. This has enabled the Council to dispose of reason for refusal No 4 in respect of the impact on the heritage asset Skegby Hall Historic Park and Gardens. This is because it was established that conditions and the Unilateral Undertaking would ensure that heritage asset was preserved.
14. Reason for refusal No 6, drainage and flood risk could be satisfactorily addressed by conditions. The Sherwood Forest Region is not a potential Special Protection Area, and therefore no Appropriate Assessment is warranted. The Council was satisfied that the provision of a substantial area of open space under the provision of the Unilateral Undertaking would satisfy the risk based approach advocated by Natural England and that reason for refusal No 7, impact on possible potential Sherwood Special Protection Area need not be pursued further. These matters were all discussed at the Inquiry and having considered the safeguards provided by the Unilateral Undertaking and conditions, I conclude that I have no reason to disagree with the Council on those matters.
15. At the inquiry, in answer to an inspector question, both parties concluded that no part of the proposals could be disaggregated from the whole and that a split decision would not be appropriate.

### **The Site and Surroundings**

16. The site lies between Skegby, Stanton Hill and Sutton-in-Ashfield. It comprises two individual parcels of agricultural land with a total area of some 7.4ha as shown on the site plan.<sup>14</sup> The northern section lies to the south of the end of Gilcroft Street and St Andrews Street, and to the rear of Nos 41 to 55 Hall Street. Its eastern boundary adjoins land now within the curtilage of Skegby Hall Historic Park and Gardens. This estate is owned by the Council.
17. To the south of this parcel of land is land comprising the valley bottom and tributary stream of the River Meden and an overgrown and disused stone quarry which is also within the appellants' control. The application site includes the line of the river. The access road, edged in red, that would serve the southern site, runs through the blue edged land from Stoneyford Road to the southern parcel of land.
18. That access way is partially paved where it is close to Stoneyford Road. It is asserted by the appellants that it is an old field road, but for most of its length it

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<sup>12</sup> DOC5

<sup>13</sup> INQ/APP/11

<sup>14</sup> Site plan

is overgrown such that its route cannot be determined on the ground. The southern parcel of land adjoins Vere Avenue to the south and Quarrydale School playing fields to the west. Undeveloped land lies adjacent to the other boundaries.

19. A key feature of the combined appeal and other land is its varied, and, in parts, steeply sloping topography, with land falling steeply downwards towards the river. The river is bordered by established trees and there are other trees and hedgerows to field boundaries. Two sheets of topographical survey April 2011 were submitted with the application.<sup>15</sup>
20. The two parcels of land form part of the wider 17.9ha of land in the control of the appellants. Land not within the application site but in the control of the appellants is integral to the application since the Unilateral Undertaking relates to it. There are some informal paths across the land but there are no public footpaths on the land. The Teversal Leisure Trail lies to the east.
21. The northern site is mapped as sub grade 3b under the Agricultural Land Classification carried out by ADAS in a report July 2011.<sup>16</sup> This is due to the presence of limestone at shallow depths and moderate slopes in the south.
22. Photographs of the site are contained in the Landscape and Visual Impact Assessment (LVIA)<sup>17</sup>, Addendum to LDA LVIA<sup>18</sup>, and Melanie Wheelwright's proof<sup>19</sup>. There is an aerial photograph and various location plans in relation to sustainability within the Transport Assessment.<sup>20</sup>

### **Planning Policy**

23. The development plan comprises the East Midlands Regional Plan 2009 (RS) and the saved policies of the Ashfield Local Plan Review adopted November 2002 (LP). In answer to an inspector question the Council confirmed that the RS has the 20 year plan period of 2006 to 2026. RS policy 13a specifies that Ashfield District should make provision for 11,200 homes during that plan period. This would result in an annual apportionment from 2006 of 560 dwellings. 180 of these dwellings would be provided within or adjoining Hucknall. This would leave an annual apportionment of housing for the rest of the District of 380 dwellings.<sup>21</sup>
24. The RS seeks to promote biodiversity and reduce the causes of climate change. Policy 2 promotes better design, policy 26 seeks to protect and enhance the regions natural and cultural heritage. Policy 31 sets priorities for the management and enhancement of the regions landscape.<sup>22</sup> It is the Government's stated intention to revoke the RS. Nevertheless, until that happens, it remains part of the Development Plan.

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<sup>15</sup> Topographical survey TCS/IBA/089-1 and 2

<sup>16</sup> INQ/APP/8

<sup>17</sup> INQ/APP/11

<sup>18</sup> INQ/APP/17

<sup>19</sup> INQ/LPA/2

<sup>20</sup> INQ/APP/2

<sup>21</sup> DOC16

<sup>22</sup> INQ/LPA/3

25. It was confirmed at the Inquiry by the Council in answer to an Inspector question, that the LP plan period was 2001 to 2011. The plan was adopted before the RS was adopted. The most relevant LP policies are ST4, EV2, EV4, EV6, EV14 and HG5 which were provided with the appeal questionnaire.<sup>23</sup> These policies were saved by direction from the Secretary of State dated 21 September 2007.<sup>24</sup>
26. The proposals map north sheet<sup>25</sup> and south sheet<sup>26</sup> were submitted at the Inquiry. The appeal site is shown on the north sheet. It is shown to be located outside the main urban area boundary.
27. ST4 seeks to protect from development areas outside main urban areas and named settlements. EV2 specifies that in the countryside, permission will be given for appropriate development as listed in the policy. This does not include major housing development. It also seeks to protect the character and openness of the countryside.
28. EV4 specifies that development that does not adversely affect the character and quality of mature landscape areas will be permitted. The appeal land is part of Skegby Bottoms Mature Landscape Area. The area lies within NC08 River Meden Valley as defined in the Greater Nottingham Landscape Character Assessment 2009.<sup>27</sup> Amongst other matters, that assessment identifies that increasing urban influences weaken the character to the south of the area. It seeks to ensure that any new development avoids high ground at valley sides to reduce its visibility.
29. Ashfield District Council Green Infrastructure and Biodiversity Strategy 2010-2021<sup>28</sup> seeks to provide a network of green spaces. It identifies as a key opportunity securing an accessible green link from Skegby Hall Gardens and Brierley Forest Park through Skegby Quarry/Stanton Hill Grasslands in respect of G1-23 Skegby-Huthwaite.
30. Policy EV6, amongst other matters, seeks to protect local nature reserves and sites of importance for nature conservation. Land relevant to the application contains the Skegby disused quarry and the Stanton Hill grasslands.<sup>29</sup> These are non-statutory locally designated nature conservation sites.
31. EV14 identifies that development will not be permitted where it would adversely affect historic parks and gardens. These include Skegby Hall Historic Park and Gardens which is a designated heritage asset. Skegby Hall is a Grade II listed building. It lies to the east of the northern section of the application site. HG5 sets design criteria for residential development.
32. The application was determined the day after the publication of the National Planning Policy Framework (the Framework). The Council has produced a spreadsheet to indicate consistency between the relevant LP policies and the

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<sup>23</sup> INQ/LPA/1

<sup>24</sup> DOC11 and DOC12

<sup>25</sup> DOC17

<sup>26</sup> DOC18

<sup>27</sup> INQ/LPA/1 and INQ/LPA/2 and DOC14

<sup>28</sup> Appendix 6 INQ/LPA/2

<sup>29</sup> DOC13

- Framework.<sup>30</sup> Both main parties submitted extracts from the Framework. This document supersedes various Planning Policy Statements (PPS) and Planning Policy Guidance Notes including PPS3: *Housing*.<sup>31</sup>
33. One of the core planning principles of the Framework is to proactively drive and support sustainable economic development to deliver amongst other things the homes that the country needs. It seeks to boost significantly the supply of housing. Paragraph 49 specifies that 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 a five-year supply of housing cannot be demonstrated.
34. Paragraph 14 states that at the heart of the Framework is a presumption in favour of sustainable development, which should be seen as a golden thread running through both plan making and decision taking. It sets out what this means for decision taking. Paragraph 52 indicates that the supply of new homes can sometimes be best achieved through planning large scale development, such as new settlements or extensions to existing villages and towns that follow the principles of Garden Cities.
35. Paragraph 216 identifies the weight to be attached to emerging LPs. This is based on the stage of preparation, whether there are significant unresolved objections, and consistency with the Framework.
36. There is an emerging Local Plan. This is the Ashfield Local Plan 2010-2023 Preferred Approach September 2012.<sup>32</sup> The proposals map<sup>33</sup> and sustainability report<sup>34</sup> were submitted to the Inquiry. The proposals map shows housing allocations on land currently countryside or Green Belt. The application site is not allocated for housing in that plan. It is proposed to remain as countryside, where the landscape character identified in the Landscape Character Assessment would inform development. There is no submission Local Plan and there are unresolved issues in representations.
37. The annual monitoring report<sup>35</sup> and the Housing Land Monitoring Report April 2012<sup>36</sup> shows the housing land supply for the District.
38. As part of preparation for the plan the Council has prepared a Strategic Housing Land Availability Assessment (SHLAA).<sup>37</sup> This was published as a draft for consultation in June 2012. This was prepared in accordance with a draft methodology dated March 2008.<sup>38</sup> It identifies the two parts of the appeal site under references S324 and S70.

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<sup>30</sup> DOC19

<sup>31</sup> DOC3

<sup>32</sup> INQ/LPA/2, 3 and 4

<sup>33</sup> DOC23

<sup>34</sup> DOC22

<sup>35</sup> Appendix 6 INQ/LPA/3

<sup>36</sup> Appendix 8 INQ/LPA/3

<sup>37</sup> DOC20a-d

<sup>38</sup> DOC21

39. The Council adopted an Affordable Housing Supplementary Planning Document in July 2009.<sup>39</sup> It is used by the Council to assist them in negotiations for affordable housing provision.
40. The Council has an adopted Green Spaces Strategy which sets the standards for accessibility of greenspace, play space and facilities and for sport facilities.<sup>40</sup>
41. *Making Play Matter in Ashfield 2007-2012* is a strategy to shape the future of children and young peoples play and adventure across Ashfield.<sup>41</sup>
42. Some individual representations refer to the effect of the development on the Green Belt. It was confirmed by the Council at the Inquiry, in answer to an inspector question, that the appeal site has never been part of the Green Belt and that there is no Green Belt land nearby. Green Belt is shown on the proposals map.<sup>42</sup>
43. The Council referred to the County Council's Design Guide for Road Lighting Columns and Brackets.<sup>43</sup> The County Council would require installation to be to this standard if the highways were to be adopted.
44. Building for Life 12 makes recommendations for creating places with a locally inspired or otherwise distinctive character.<sup>44</sup>

### **Environmental Assessment**

45. A screening under the 2011 Regulations has been carried out. It has been directed by the Secretary of State that the development is not Environmental Impact Assessment (EIA) development.

### **Planning History**

46. There have been three previous unsuccessful planning applications for residential development on parts of the site. These were made in 1978, 1992 and 1995. They did not include the measures proposed in the appeal scheme and no plan details were provided to the Inquiry.

### **The Proposals**

47. The application is in outline with all matters reserved apart from the access. There would be two vehicular accesses to the northern site. These would be from the end of Gilcroft Street and from the end of St Andrews Street. Although there are illustrative details of road layouts to the northern site, these are not for consideration.
48. The access to the southern site would be from the B6028 Stoneyford Road. The access is shown on plan reference NTT/1362/001/ Rev P1. The plan is contained within the Transport Assessment submitted with the application.

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<sup>39</sup> DOC27

<sup>40</sup> DOC28

<sup>41</sup> DOC29

<sup>42</sup> Doc17 and 18

<sup>43</sup> DOC30

<sup>44</sup> Appendix 1 INQ/APP/4



49. The access would have visibility splays of 2.4m by 136m in one direction and 2.4m by 95m in the other direction. These are contained within public highway land. The siting of the access road connecting the housing on the southern site to Stoneyford Road is to be determined and is part of the proposal since it is outlined in red on the application plan. It would run through land outlined in blue. The layout of housing development on the southern site is not for consideration. Nevertheless, there was nothing in principle to prevent a pedestrian access link being achieved to Vere Avenue to the south.
50. In addition to the Transport Assessment already referred to, the application was accompanied by a design and access statement<sup>45</sup>, affordable housing statement<sup>46</sup>, heads of terms for section 106 agreement<sup>47</sup>, travel plan<sup>48</sup>, Site drainage assessment<sup>49</sup>, arboricultural report<sup>50</sup>, ecological assessment report<sup>51</sup>, along with addendum<sup>52</sup>, and agricultural land quality report.<sup>53</sup>
51. Through the means of the Unilateral Undertaking dated 20 November 2012, the appellants would seek to transfer ownership of the land between the north and the south areas to the Council and to provide footpath links including two footbridges over the stream. This would link Brierley Forest Park in the west to Skegby Hall Historic Park and Gardens in the east.
52. In addition, it would make provision for creation of a management plan for recreational and drainage land and financial contributions towards the upkeep of recreational land. It would make financial contributions for integrated transport provision, for planting of new hedgerows along the access road to the southern site, for access to Skegby Hall Historic Park and Gardens and for play equipment at Stoneyford Road recreation area and its maintenance. It would also make provision for 10% affordable housing, 75% of which would be by way of social rented housing. Public open space and a kickabout area would also be provided along with a contribution towards its maintenance.

### **Statement of Common Ground**

53. A statement of common ground dated 24 September 2012 was submitted before the Inquiry and was agreed by the main parties. This includes a description of the site and of the area more broadly. It includes details of the previous planning history. In respect of planning policy it identifies the relevant parts and policies of the development plan. It establishes the housing land supply requirements that will form the basis for future housing allocations. It identifies the assessments and reports submitted.
54. The areas of disagreement were established in the Statement of Common Ground. These are the appropriateness of meeting some of the council's housing requirement in this location against a background of a 3.5 year housing land

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<sup>45</sup> INQ/APP/1

<sup>46</sup> INQ/APP/9

<sup>47</sup> INQ/APP/10

<sup>48</sup> INQ/APP/3

<sup>49</sup> INQ/APP/4

<sup>50</sup> INQ/APP/7

<sup>51</sup> INQ/APP/5

<sup>52</sup> INQ/APP/6

<sup>53</sup> INQ/APP/8

supply in Kirkby and Sutton, and evolving planning policy; the impact of the development on area NC08 in the Nottingham Landscape Character Assessment; and issues relating to the density and layout of the housing.

55. Although the Council's list of conditions was attached to the Statement, and was subsequently supplied separately<sup>54</sup> it was not agreed by the appellants at that time as they had insufficient time to consider it. The Unilateral Undertaking was also unresolved prior to the Inquiry. Nevertheless, all these matters were discussed at the Inquiry.

### **The appellants' case**

56. The material points of the appellants' case are contained within Mr Fletcher<sup>55</sup> and Mr Baly's<sup>56</sup> proofs of evidence and appendices, Mr Baly's Addendum to LDA's Landscape and Visual Impact Assessment<sup>57</sup>, the LDA Design report<sup>58</sup> and the opening<sup>59</sup> and closing<sup>60</sup> statements of Mr Buttler.
57. The site is located in the urban fringe, in a sustainable location.<sup>61</sup> It offers good links for pedestrians and cyclists and good opportunities for bus travel.<sup>62</sup> It is within 10 minutes' walk of a primary school, GP, bus stop and cash machine/post office and within 30 minutes by public transport of a secondary school, further education, supermarket, retail area, hospital and employment.<sup>63</sup> Through this scheme, residents would have high quality open space on their doorsteps.
58. The crux of the refusal was the Council's objection to housing development in the countryside. That objection relied upon out-of-date local plan policies and, the Council failed to apply the presumption in favour of sustainable development mandated by the Framework. Whilst any loss of countryside is regrettable, it is inevitable in this housing market area, given the Council's failure, by a considerable margin, to have identified a 5-year supply of housing. The Council's draft allocation policies are at the earliest stage and can carry no real weight.
59. It comes as no surprise when building houses in the countryside that this has an adverse impact on the landscape. The question is whether that is material in planning terms and is so significant as to outweigh the benefit of meeting housing need (and any other benefits). The only landscape assessments that have been carried out by LDA Design in March 2012 and by John Baly in October 2012 clearly show that the impact on the landscape is not material.
60. As well as providing much needed housing, the scheme brings additional benefits, to be secured by the Appellants' S106 undertaking, which has been approved by the Council. First, it will transfer the most attractive and mature part of the valley, the part of the site of the highest landscape and ecological

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<sup>54</sup> INQ/LPA/6

<sup>55</sup> INQ/APP/12 and 13

<sup>56</sup> INQ/APP/15

<sup>57</sup> INQ/APP/17

<sup>58</sup> INQ/APP/11

<sup>59</sup> DOC1

<sup>60</sup> DOC8

<sup>61</sup> DOC20a-d

<sup>62</sup> Paragraph 3.6 INQ/APP/3

<sup>63</sup> DOC20a-d

- value into public control for the benefit of the local community. Second, the scheme will realise the Council's long-held aim to join up its Green Network, linking the Brierley Forest and the Teversal Trail, through the dedication of a new footpath and the creation of a footbridge, and improving access to adjacent Skegby Hall Park and Gardens. Third, it will provide a new football area of 50x30m, for the benefit of young people from the existing and proposed housing areas.
61. It is common ground that this site would make a valuable contribution towards the serious shortfall in housing in this housing market area. It would do so at a location which the SHLAA, part of the evidence base for the Council's emerging local plan, identifies as a sustainable location and, at a location that is more sustainable than other potential locations for housing. It would give residents immediate access to high quality public open space, maintained at the cost of the developer.
  62. It would reduce the need to build on the Green Belt. It would bring valuable public benefits, including the protection of the most valuable parts of the landscape and public enjoyment of the land, through a transfer of the blue land into public ownership, and the creation of a public footpath, together with footbridges.
  63. During the inquiry, the concessions made by the Council's witnesses have significantly reduced the matters in issue. There are no other issues of substance. The concerns of residents were addressed at the statutory consultation stage. Highway safety was fully considered by the Highway Authority. Drainage and flood risk was fully considered by the Environment Agency and Severn Trent Water. There were no ecological objections, given the consultation responses of Nottinghamshire Wildlife Trust and Natural England.
  64. At the inquiry, the Council queried the financial viability and deliverability of the scheme. As Mr Fletcher explained, the Appellant has costed the scheme and has no concerns about the financial viability of the scheme and there is a contract which requires the sale of the site to a developer within 6 months of permission being granted, irrespective of market conditions.
  65. Reason 1 asserted that the proposed development would constitute inappropriate development in the countryside pursuant to the restrictive local plan policies. Reason 1 raised two landscape matters: (a) the landscape impact of the access road and (b) the narrowing of the green break between Skegby, Stanton Hill and Sutton.
  66. Reason 2 alleged that the development would be detrimental to the character and quality of the designated landscape. The only designated landscape in question was area NC08 of the Greater Nottingham Character Assessment. The Council accepted the analysis of LDA Design and therefore agreed with the Appellant's landscape architect, Mr Baly.
  67. The only policies cited by reason 1 were local plan policies ST4 (the general restraint policy) and EV2 (the countryside restraint policy). However, those policies were out-of-date. In asking whether the development was inappropriate development within the meaning of EV2, the Council had applied the wrong test.

68. Under the Framework paragraph 49, relevant policies for the supply of housing cannot be considered up-to-date if the Council cannot demonstrate a 5-year housing land supply. The Council does not have a 5-year housing land supply, as described under paragraph 47. Applying the Council's figures, based on a need of 370 dwellings pa for the district excluding Hucknall, there is a 3½ year supply.
69. That figure for housing need has not been independently examined. Applying the figure in the RS, there is an annual need of 380 dwellings pa. This reduced the housing land supply to around 3 years. On any view, and whether or not the RS is in force at the time of the Secretary of State's decision on this appeal, it is clear that housing land supply in this housing market area falls far short of the Government's requirement. The houses offered by the appeal site would make a valuable contribution towards meeting that shortfall.
70. Policies ST4 and EV2 are out of date and cannot be relied upon to refuse permission. The correct test was that set out in the Framework paragraph 14. Permission should be granted unless there were adverse impacts which were significant and demonstrable, and those impacts outweighed the benefits of the development, which would include the contribution towards meeting housing needs and any other benefits by a significant margin.
71. This was not doubted in the Gloucestershire appeal<sup>64</sup>, where the test was different, because the site was in the Green Belt nor in the Bracknell appeal,<sup>65</sup> where the Inspector in effect found that any benefits of the proposal were clearly outweighed by the significant and demonstrable harm to the character and appearance of the area. As Mr Fletcher's examples show<sup>66</sup> the Framework paragraph 14 test has been applied consistently by the Secretary of State.
72. Insofar as the Council's emerging local plan suggests that this site is unsuitable for housing development, only the least possible weight could be attached to that suggestion because of the early stage of the emerging plan and the unresolved objections to the locations proposed for housing development.
73. The Council cannot sustain its landscape objections. There is no reason for refusal based on loss of views. The reason for refusal was the impact on the character of the landscape. The site is part of an offshoot of NC08, a part which is more urban in feel than the rest. The SHLAA calls it urban fringe. That landscape area is of moderate quality and of medium sensitivity. The Council accepted the LVIA, agreed that the landscape impact of the housing and the access road was moderate adverse and accepted that the moderate adverse effect of the proposal on landscape character was not a significant adverse impact and was not material in planning terms.
74. The access road would have an adverse impact, and, indeed, were access possible off Vere Avenue, that would no doubt be preferable. However, it was common ground that this adverse impact, taken together with all other adverse landscape impacts of the scheme, was not material in planning terms.

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<sup>64</sup> INQ/LPA/3 appendix 11

<sup>65</sup> DOC15

<sup>66</sup> INQ/APP/13

75. As to the value of the site as a green break, the Council offered no specific evidence. The proposal would leave and protect in perpetuity a green break between Skegby and Sutton that was a much clearer green break than that immediately to the east of the site where the settlements are divided only by the B6014. There can be no in principle objection to the reduction of a green break, given the Council's proposal to allocate a number of sites which are designated in the proposed LPPA as green breaks, for example, HGSi, HGSs and HG1St and which would lead to a more significant loss of green break than at the appeal site, in particular, HG1St.
76. Furthermore, without the contribution this scheme would make to meeting housing need, the Council will have to bring forward Green Belt sites, the protection of which the Government values materially higher than countryside sites. The proposal would yield benefits. It was an important and longstanding objective of the Council to link Skegby and Healdswood with the open space network to the west and recreational trails into Derbyshire (corridor G1-23 Skegby to Huthwaite) pursuant to its Green Infrastructure and Biodiversity Strategy. This scheme would realise that objective.
77. No weight at all can be attached to any speculation that public rights of way might already exist because the definitive map is conclusive evidence of this, and shows none. The evidence of the owner and the tenant farmer<sup>67</sup> underscore this. The most significant features of the landscape would be retained by the scheme and would be retained in perpetuity. Public access achieved through public ownership would be valuable. The scheme would generate a medium beneficial impact on trees and hedgerows in the longer term.
78. Quality of design and its impact on the visual amenity of surrounding residents/future residents, sufficiency of information to assess the proposal and effects on hedgerows were not issues in this appeal at all. It was accepted that the LVIA was sufficient to assess landscape impact. There was detail of the junction layout plan contained in the Transport Assessment. The Council's trees and hedgerows officer had no concerns about any impact on hedgerows and hedgerows could be properly protected at the reserved matters stage. Natural England and Nottinghamshire Wildlife Trust had been consulted and did not object to the scheme on ecological grounds. The scheme would safeguard the SINC.
79. Under PPS3<sup>68</sup>, the test to be applied in the absence of a 5-year housing supply was set out under paragraphs 71 and 69. This was a different, less permissive, test than the Framework paragraph 14.
80. Draft reason 3 in the committee report expressly cited paragraphs 71 and 69 of PPS 3 and transposed the wording of that test. Reason 3 in the issued decision replaced the citation of PPS 3 with a citation of the Framework, but retained the wording of the PPS3 test. Reason 3 therefore applied the wrong test.
81. The draft allocations were first published in September 2012, meaning that this part of the draft plan was at the earliest possible stage of preparation. The publication draft is not due until April 2013, the examination is not due until

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<sup>67</sup> Appendices 1 and 2 INQ/APP/13

<sup>68</sup> DOC3

October 2013 and, on a best case scenario, adoption is not scheduled until April 2014. The consultation (including on the draft allocations) closed on 9 November 2012 and the Council has not analysed the 600 representations received, which means that the scale and cogency of the objections is unknown and all objections remain unresolved. In light of Framework paragraph 216, the draft allocations could only be given the lowest possible weight. In those circumstances, it is impossible to see how reason for refusal 3 can stand.

82. Given that no real weight can be attached to the draft allocations, there is no beauty contest with alternative sites. But it may be noted that the evidence base for the draft allocations is highly suspect. It is impossible to see why sites HG1Si, HG1Ss and HG1St, which constitute far more substantial incursions into the countryside, should score a neutral environment and landscape impact, but the southern part of the appeal site should score -2. This assessment was carried out by a junior member of the planning team. The allocations document was a working document which stood to be revised.
83. Further, in light of the information submitted with the application, it appears that upon reconsideration, this scheme would score substantially higher and would meet the threshold for allocation, currently a score of 0 or above. The northern part of the site should have scored at least 4 points higher (in relation to health, heritage and transport) which would give it an overall score of at least +2. Further, the "justification for the scoring" for the southern site was said to be highway constraints and loss of quality soil, neither of which can stand in light of the information submitted with this application.
84. The Council's concerns about design at the outline stage had been whether it was possible, in principle, satisfactorily to achieve the proposed density on the appeal site. In light of drawing 373:P:01 rev C, a satisfactory design for at least 204 houses could in principle be achieved.
85. That left only the design of the access road, which is an insubstantial issue. The route is an old farm track, so as to minimise the ecological impact of the access road. By the s106 Unilateral Undertaking, the Appellants have agreed to screen the road with hedgerows.
86. There were two concerns about the design of the access road. First, that it would make pedestrians feel unsafe. Second, that it was not financially viable. As to the first point pedestrians on the southern part of the site wishing to access local services would use the more direct Vere Avenue entrance. Further, the length of the access road would not matter to motorists. It follows that the suitability of the access road for pedestrians is of no real significance. Further, any concerns about the suitability of the access road for pedestrians could be addressed at the reserved matters stage, by ensuring that pedestrians were channelled through the Vere Avenue access.
87. As to the second point, the Council had no evidence to suggest that the scheme was not financially viable. This is a matter for the developer and, the appellants has assessed the scheme to be financially viable.
88. The land to be transferred to the Council under the s106 Unilateral Undertaking includes two "fingers" of land in the northern part of the site. If the scheme is pursued through the reserved matters procedure, the scheme would have to be designed around those fingers. That does not bear on the acceptability of this

proposal because the developer would have to submit a satisfactory design in order to secure reserved matters approval. Alternatively, a developer might submit a fresh full application and s106 Unilateral Undertaking, relying on the principle of development having been established by the Secretary of State's determination in this appeal.

89. This scheme will bring valuable benefits, including a valuable contribution towards meeting the serious shortfall in housing land supply in this area. There would no significant adverse impacts. Accordingly, applying the presumption in favour of sustainable development under the Framework, this appeal should be allowed.

### **The Case for the Council**

90. The material points of the Council's case are contained within the proofs of evidence and appendices of Melanie Wheelwright<sup>69</sup>, Lisa Furness<sup>70</sup> and Beverley Alderton-Sambrook<sup>71</sup> and their closing statement.<sup>72</sup> It was established at the Inquiry that appendix 11 of Lisa Furness' proof should contain appeal decision reference APP/R0335/A/12/2168199, 20 Roughgrove Copse, Binfield, Bracknell.<sup>73</sup>
91. The Council maintains the basis of the reasons for refusal that have been the subject of this appeal. The Council made its decision on the application on the basis of the information before it at that time. Furthermore, it is demonstrated by the minutes of the Planning Committee that the Council also considered the newly introduced Framework at that meeting.<sup>74</sup>
92. All of the evidence presented at this appeal with regard to landscape and visual impact assessment has either been submitted post publication of the Planning Committee Agenda or after the issue of the planning decision. That information has not had the benefit of public consultation or stakeholder engagement so should be omitted from consideration at this appeal. The Council constitution does not allow for late information to be considered by the Committee.<sup>75</sup>
93. The landscape architect for the appellants acknowledged that for sections of the site it would have been desirable to ascertain its impact on the landscape. He was not confident that the plan for the central area of recreational open space achieved the most appropriate use of the land in landscape terms and would have liked earlier involvement.
94. The Council made numerous requests for further information and this was not supplied at all or not supplied in a timely manner.
95. The appellants have indicated that little weight should be attached to the emerging Local Plan document or its supporting information yet has relied heavily on these documents for a comparison of this site with others. Whilst the appellants will be aware of the detail of their own site, they do not have the same

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<sup>69</sup> INQ/LPA/2

<sup>70</sup> INQ/LPA/3

<sup>71</sup> INQ/LPA/4

<sup>72</sup> DOC32

<sup>73</sup> DOC15

<sup>74</sup> DOC4

<sup>75</sup> DOC10

- understanding of the context of other sites in the Local Plan Preferred Approach or how they have been derived. It is wrong to assume that the provision of housing on the appeal site will save Green Belt land elsewhere in the District from allocation.
96. A great deal of work has been undertaken to investigate sites that can be brought forward in a timely way whilst allowing communities the opportunity to develop further. Sites have been investigated with area committees to establish appropriate locations on the basis of a wide variety of factors, including supporting the rural economy, maintaining services, considering economic objectives along the Mansfield to Ashfield Regeneration Route and the A38 and supporting local infrastructure as well as other social, economic and environmental factors that underpin the Sustainability Appraisal.
97. The Council has agreed a revised level of housing growth for the Kirkby-Sutton Area 2010-2023, further to the population and Household Forecasts Study undertaken by Edge Analytics Consultants commissioned by Nottinghamshire and Derbyshire County Councils completed in October 2011. Although there is less than a 5 year housing land supply, that is being addressed in the emerging LPPA. Proposed sites have been subject to a sustainability appraisal. They were assessed as the most sustainable. The appeal site has been assessed as less sustainable in the Sustainability Appraisal. The proposed trajectory includes a 5% buffer. Although similar appeals have been allowed on appeal, each proposal should be considered on its individual merits.
98. The appellants claim that the site is sustainable and yet no information has been presented with regard to actual distances from local services and facilities for future occupiers of the southern appeal site. The Council has discussed the reality of such accessibility and how this is likely to place emphasis on the use of the unnecessarily long access road resulting in the unsustainable reliance upon the private motor vehicle and the potential for anti-social behaviour activities that could occur along such an isolated route.
99. There are a number of areas that form green wedges between built up areas. Paragraph 3.11 of the LP identifies the area between Stanton Hill/Skegby and Sutton-in-Ashfield at Skegby Bottoms as being one of the most important of these. The emerging LPPA maintains the countryside boundaries in this area.
100. By his own admission, the Landscape Architect expert witness for the appellants considers there to be some degree of adverse impact arising from the location of the access road through the Site of Nature Conservation Interest.
101. This appeal should be viewed on the basis of whether at the time of determination the Council had sufficient information and also whether it has been clearly demonstrated that this site can be delivered in the 5 year period, since it is the appellants' contention that this site is required to meet the 5 year land supply. Indeed the appellants have not shared any viability information to reassure the Council that this development is viable and that the unilateral undertaking can be delivered in current market conditions.
102. In conclusion, this application has been submitted without all the necessary information to make an informed decision.



103. The site comprises an attractive farmland valley with linking hedgerows. The development would weaken the strength of landscape character not enhance it. It would narrow the green break between existing housing which would not be consistent with LP policies ST4 and EV2. The development would be visible from a number of viewpoints, being located on high ground. It would not ensure that any new development avoided the high ground at valley sides.
104. The Vere Avenue housing would not enhance the river valley character as it would reduce the green wedge between existing housing and would obstruct longer distance views. It would therefore be contrary to EV4Rn Mature Landscape Areas. The housing would impact on the area of open space. The development will have an adverse impact of major significance on viewpoints within the proposal site. New areas of open space and new planting cannot take away from the magnitude of predicted impacts.
105. The access road from Stoneyford Road, along with its associated vehicular and pedestrian traffic and lighting would create an intrusive element weakening its farmland character. It will introduce hard surfacing and highway lighting, running through a green wedge. There will be pedestrian and vehicular activity adversely affecting the character of the area. The Framework supports the protection of valued landscapes.
106. There has been no assessment as to how the proposal will incorporate measures to reduce crime and the fear of crime. The long access would be isolated with little surveillance and would not promote a feeling of safety.

## **Case for residents and others who appeared at the Inquiry**

### *Case for Cllr Margaret Ann Patrick*

107. As both a District Ward Councillor and as a local resident Cllr Patrick was concerned about the development constraints. She had major concerns about highway safety and traffic. The access to the southern site would be close to a public house where customers park on the highway. That access would not be environmentally friendly and residents would have to walk a long way along it. There may be more crime as a result of its length and lack of lighting. There are not enough schools or buses locally. There is a lack of detail which causes concerns about design, flooding and drainage. More sustainable sites have already been identified. There is a suggested heritage plan for Skegby Hall.

### *Case for Patrick Clarke*

108. Mr Clarke lives in Hall Street which backs onto the northern site. He was opposed to the development. Significant on-street parking in Gilcroft Street and St Andrews Street on both sides of the road would restrict access. The grading of the streets make it difficult for snow ploughs to access. There would be highway safety issues in Mansfield Road. There are inadequate schools and doctors. The development would merge settlements, and would reduce views of the open field and valley. Access would be restricted to land to the east. The Skylark has started nesting again on the site which is a red listed bird. This development would add to pre-existing drainage problems.

### *Case for Debra Clarke*

109. Debra Clarke lives in Hall Street backing onto the northern site. She has lived there for some 30 years and has been very happy living there. She was opposed to the development. She was concerned about development at the rear blocking views from her house, the siting of garages and three storey properties being erected on the land. There have been 9 recent accidents and two road deaths in Mansfield Road and the accesses are inadequate when it snows.

### *Case for Ronald Payton*

110. Mr Payton lives in Mansfield Road and spoke on his own behalf and on behalf of neighbours. He is opposed to the development. He is concerned about surface water drainage from the site causing the culvert near his property to overflow and cause flooding. The drainage strategy is incorrect and inadequate. He doubts whether the SUDS will operate satisfactorily. There is no capacity downstream to cope in times of high rainfall. There will be an intolerable burden on the foul sewerage system.

### *Case for Cllr Jason Zadrozny*

111. As District Ward Councillor and as a County Councillor he was opposed to the development. He had called for the application to be considered by the planning Committee. The application had a significant lack of information and that information was still patchy. There was unanimous opposition to it across the political divide at the Committee Meeting. The access was inadequate to Mansfield Road. The Council had paid for two gritting bins.

112. The development would not be sustainable. The links to public transport are poor. There is no Post Office or primary school in 10 minutes walk. Children would have to cross the main road. The football pitch would be isolated. There are already plenty of parks and footpaths in the area. There are informal paths over the site which have been there for over 20 years in any event. The provision of open space would not mitigate for the loss of the open area and its development with a significant amount of housing.
113. There are significant ecological implications. It is unreasonable to expect the Council to maintain the watercourse. There are significant drainage issues with a number of properties flooded locally.
114. The saved LP policies have been ratified by the Council. The Council considers the plan accords with the Framework. The developer has not demonstrated the special circumstances necessary for the development. It is countryside. There has been significant progress in identifying land for housing in the LPPA. The Mill Lane Huthwaite appeal<sup>76</sup> referred to by the appellant was allowed before the Council made that progress, and provided community benefits.

### **Written Representations**

115. From the committee report, 179 letters of objection were initially received by the Council along with a petition containing 336 signatures opposing the development. A further 9 letters were received on re-consultation. There was also a letter of objection from the Sutton North Labour Party. The objections centre around concerns about the impact on the countryside, mature landscape area and hedgerows, the effect on traffic and highway safety, the effect on fauna and flora, the effect on flooding and drainage, and the impact on local infrastructure.
116. In addition to these representations made at application stage which were submitted with the questionnaire, 3 letters were received subsequent to the appeal opposing the development. The representations reflect matters already raised in this report including that the site is a mature landscape area that lies within the countryside and is not allocated for housing. It would merge Skegby with Sutton-in-Ashfield. Housing in the area is adequate, it would harm flora and fauna and would harm drainage. It would lead to heavier traffic locally and there would be unsatisfactory access.

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<sup>76</sup> DOC24 and appendix 9 INQ/APP/13

## Conclusions

117. The numbers in square brackets in this section are references to previous paragraphs in the Report which are particularly relied upon in reaching the conclusions.

### *Preliminary matters*

118. The application is in outline with only access to be considered. The number of dwellings would be identified in a subsequent application. All of the layout plans merely show illustrative layouts, which are not to be considered at this stage. The appellants made clear at the Inquiry that it was their intention to dispose of the site if planning permission was granted, and that the status of these plans was indicative. [6, 7, 8, 47, 48, 64]

119. The various landscape assessments submitted by the appellants are useful to the consideration of the appeal. I consider that they are in the nature of reports that are commonly submitted at appeal stage and that the Council and other parties have had fair opportunity to consider their contents. They should therefore be taken into account in the determination of the appeal.[92, 101]

### *Introduction*

120. Having considered all the evidence and the Council's reasons for refusing the application, and given the matters on which the Secretary of State particularly wishes to be informed, I consider that there are three main issues. These are whether the development complies with local and national planning policy in respect of housing land supply; the effect of the development on the character and appearance of the countryside; and whether the development would provide a high quality housing development, providing good living conditions for future residents and the occupiers of neighbouring properties that would be consistent with the Framework. [1, 54]

121. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that proposals be determined in accordance with the development plan, unless material considerations indicate otherwise. I consider that the policies already referred to are the most relevant to the consideration of the appeal. [23-31]

122. The intention to revoke the RS can be attributed limited weight at present because no order has been made. [23-25]

123. Of national planning policy, I consider the Framework to be the most relevant. This is an up to date expression of Government Policy. PPS3 has been superseded and therefore its provisions are no longer relevant.[32-34]

### *Housing land supply*

124. The RS sets the housing targets for the housing market area until 2026 in policy 13A. The appeal site is within the rest of the District housing market area in that plan. This excludes the Hucknall area.[23]

125. The RS was adopted later than the LP. The LP contains allocations for housing. Nevertheless, it is time expired, as its plan period covered only until 2011. Furthermore, it is not up-to-date because the Council cannot demonstrate a five year supply of deliverable housing sites as required by the Framework, paragraph

49. It is common ground that the Council does not have a 5 year housing land supply. The undersupply is significant and is of substantial weight in the consideration of this appeal.[25, 33, 37, 54, 68]
126. The weight that can be attributed to the emerging plan is limited. This is because no submission document has been published. Also, there were some 600 representations in respect of the Council's consultation on its LPPA. These representations have not been considered by the Council. Since its weight is limited, little weight can be attached to the quantum of development proposed per annum, any of the allocations within the plan, or the sustainability appraisal of its allocations. The plan has yet to be published, examined or found to be sound. This approach follows the advice on paragraph 216 of the Framework.[35, 36, 69]
127. The Council has sought to argue that the appeal is premature in the light of the forthcoming LPPA. However the scale and location of the housing would not be so substantial that it would raise issues that would be best addressed in a LP. To delay determination would frustrate the Government's efforts to boost significantly the supply of housing. The Government has urged Councils to have up to date plans in place to guide development. The Council has no such plan.[97, 81, 82]
128. The appeal site lies outside of the defined settlement limits in the LP where Policy ST4 and EV2 seeks to strictly control development. However, these relevant parts of the LP are out of date. The Council has by its preferred approach acknowledged that it will have to extend settlement boundaries into the countryside in order to provide for its housing requirements to comply with the RS, or whatever may supersede it to set housing requirements for the housing market area.[36, 70, 71]
129. The Council has sought to prevent the merging of settlements in its LP by the definition of settlement limits. Nevertheless, this is not a policy specification and the appeal site is not Green Belt where such a consideration would have greater weight. [42, 62, 67]
130. The development would erode the edges of the two settlements. However, the housing would be located directly adjacent to the settlement boundary. By the provision of a substantial area of parkland between the two areas of housing, it would, in perpetuity, retain the separation between Skegby and Sutton-in-Ashfield. The Framework suggests that extensions to settlements may be suitable. The development would comply with the Government's exhortation to Local Authorities to boost significantly the supply of housing. [33, 34, 62, 75]
131. The development, subject to considerations about the effect on the character and appearance of the area, could provide a substantial amount of housing that would be consistent with Government policy. This would help the Council to comply with the RS housing requirements and its own lower housing requirement. There is no evidence that the development would not be deliverable or viable. Affordable housing would also be provided and it could provide a mix of housing to reflect demographic trends and local demand. [23, 61, 64, 101]

*Character and appearance of the countryside*

132. Although the land is within the countryside, it is best described as urban fringe. LP policy EV4 seeks to protect the character of this area. Although part of the Mature Landscape Area it nevertheless is described as having moderate strength of character, with increasing urban influences that weaken its character in Greater Nottingham Landscape Assessment. The land is not subject to any national landscape designation. Because the two areas of housing are extensions to existing housing that would be set well away from main roads, the development would not have a significant impact on the character of the landscape generally.[28, 73, 75]
133. The access to the southern site would be effectively screened by hedgerows. These hedgerows would not screen any tall lighting columns that would at night be illuminated and that would have an urbanising effect. However, there is floodlighting at the neighbouring Quarrydale School and so the illumination and columns should be seen in that context. For that reason, I consider that they would not be harmful to the character and appearance of the area. The vehicular and pedestrian movement along the road would not be so significant as to harm the character of the area.[18, 74, 85, 105]
134. The land to be conveyed to the Council is that which has the most character, with its meandering tributary to the River Meden. This could be effectively managed and there could be tree planting. There would be better public access and a formalised link to Skegby Hall Historic Park and Gardens.[51, 52, 57, 60]
135. The development could however have a significant impact on views from the public footpath to the east and from the central area of public open space. Where the southern part of the development comes close to the stream, even if as suggested in a condition to enable access to the stream, there were to be a strip of land left open, without sensitive treatment, it is unlikely that development in the way illustrated on any of the plans submitted could be achieved without significant and harmful effects on the character and appearance of the area.[93, 103, 104]
136. In addition a harsh boundary to the housing development on the northern section, and the kickabout area, which would require significant alteration to levels if sited outside the main housing area, would be harmful to the character and appearance of the countryside. For this reason, I consider that, if planning permission is granted, that the number of dwellings should not be specified. This is also the reason why the illustrative plans should not be seen to prejudge any subsequent reserved matters. [103, 104]
137. The reserved matters would then determine the siting of the kickabout area, how close development should come to the boundaries based on the detailed layout, density, scale and design of the dwellings, along with levels and how the landscaping was treated. The Unilateral Undertaking does not restrict the kickabout area to the position shown on any of the plans. Subject to sensitive treatment of these issues, I consider that the development could be satisfactorily accommodated into the area without undue effects on the character and appearance of the area.[88, 107, 108, 109]

#### *Quality of housing development*

138. As the application is in outline with all matters reserved except for access, the design, layout and mix of housing are yet to be determined. The access to both

- sites is considered by the highway authority to be acceptable. The southern access road can provide adequate visibility to Stoneyford Road within the highway boundary. [63]
139. Although there have been personal injury traffic accidents in Mansfield Road and Stoneyford Road, there is no reason to consider that these dwellings would significantly add to the current risks. The application was accompanied by a transport assessment and travel plan, and provision has been made for measures to encourage a modal shift in the means of transport.[50, 52, 63, 107, 108, 116]
140. Although the road to the southern site would have little natural surveillance, the Council would encourage access to the open space, and the use of the access could be viewed to be a relatively short pleasant country walk valued by residents rather than a threatening experience. In the alternative, there is no reason why pedestrians could not use Vere Avenue to reach Stoneyford Road. The open space would provide a pleasant area for recreation for both existing and future residents. More formalised access would be provided to Skegby Hall Historic Park and Gardens.[86, 105, 106]
141. The two sites would be close to existing housing. Although the valued views from some existing dwellings would be impeded by new housing, that new housing need not be unreasonably intrusive on outlook. The relationship to existing properties would be subject to control at reserved matters stage.[109, 115]
142. The northern site would have good accessibility to Skegby and Stanton Hill. The southern site would be on the edge of Sutton-in-Ashfield. There are local bus routes and services nearby. Both sites have been assessed as part of the SHLAA and found to be possibly suitable for housing if policy changed. Nevertheless, the scoring in the Sustainability Appraisal that accompanies the preferred approach has been subject to representations and has not been tested. [82]
143. I am satisfied that the development would provide a good mix of housing including affordable housing. There is no reason to suppose that details submitted pursuant to an outline permission would not represent high quality housing development, providing good living conditions for future residents and the occupiers of neighbouring properties that would be consistent with the Framework.

## Conditions

144. Various conditions were suggested prior to the Inquiry which were discussed at the inquiry. The conditions are set out in the Council's statement and were discussed at the Inquiry. The revised conditions subsequent to that discussion are included at Annex A. These reflect the discussion. I have considered the conditions against the advice in DOE Circular 11/95: *The Use of Conditions in Planning Permissions*.
145. In accordance with the advice in DCLG: *Greater Flexibility for Planning Permissions*, I have added a condition that requires the development, other than that subject to reserved matters approvals, to be carried out in accordance with the approved plans. I have deleted the separate condition in respect of landscaping as that is a reserved matter.

146. The Council had omitted to recommend model time conditions for submission of reserved matters and implementation of the permission and so these have been added. Many of the conditions are overly detailed given that the proposal is in outline. Because of this I have made amendments, simplified and deleted conditions. The conditions in annex A are required in the interests of proper development if planning permission is granted.
147. I have deleted the Council's recommended condition that would remove permitted development rights for extensions. As detailed plans are not for consideration, and if no numbers of dwellings are approved, there are no exceptional circumstances that would justify the removal of such permitted development rights.
148. It is unnecessary to specify that the access road should follow the track since this access line is shown within the red line. In addition to conditions governing outline applications, in the interests of the character and appearance of the area, details of boundary treatment, hedgerow protection and construction materials should be submitted to and approved by the Council.
149. A condition is required to control the hours of construction works on site in the interests of neighbours' living conditions.
150. Various conditions are required in the interests of highway safety. A condition is required to manage vehicular speed on the access road to the southern site to prevent badger road casualties. As the visibility splays are all within the public highway it is not necessary to protect them from encroachment by condition. Details of highway, parking and turning areas should be required to provide satisfactory highway conditions. A post and rail fence would prevent any horses grazing on land transferred to the Council from straying onto the highway.
151. Several conditions are required in the interests of maintaining the ecological diversity of the adjacent local wildlife sites. A site management plan is unnecessary for the area outlined in blue since this land would be conveyed to the Council. Bat and bird nesting boxes are to be incorporated into the dwellings to enhance populations of birds of conservation concern and bat populations locally. Trees should be surveyed for bats to minimise any impact. A protected species survey would be prudent to ensure the protection of relevant species.
152. As the footbridges, vehicular entrance through the hedge boundary with Skegby Hall Gardens and repositioning of the footpath are all included in the Unilateral Undertaking, conditions are not necessary. A kickabout area should be provided to ensure adequate play provision for future residents. It would be for the Council to agree its siting and they would therefore have control of the impact of that provision on the character and appearance of the area.
153. There have been substantial concerns raised about surface water drainage, by residents, by the Council, Severn Trent Water, and by the Environment Agency. Whilst there are concerns about drainage and flooding, and no doubt substantial work on these matters will be necessary to ensure that provision is satisfactory, the drainage conditions suggested, including the amendment suggested by the appellants seem unnecessarily detailed. As the Council would have control on what details it approved, a simple condition requiring the submission, approval and implementation of drainage schemes for foul and surface water drainage would suffice.



154. Access may be required for works to the stream adjacent to the southern site and therefore a strip of land is required to enable that to happen easily. Because surface water drainage is to be approved by the Council, it would be unnecessary to specify that surface water drainage shall not discharge to the highway carriageway.
155. As the site lies within a coal mining area, a risk assessment needs to be submitted. An air quality report is required in the interests of future residents living conditions. The site needs to be checked for contamination, also in the interests of future residents living conditions.

### **Unilateral Undertaking**

156. There are two errors in the first schedule of the Unilateral Undertaking that were not brought to my attention at the Inquiry. Paragraphs 3 and 4 should both refer to paragraph 4 of the third schedule not paragraph 5. These are minor typographical errors that the Secretary of State could ask to be corrected by the appellants if he is minded to allow the appeal. At the same time, the handwritten amendments could be incorporated into the document. [11]
157. The affordable housing provisions comply with the Framework and the Council's Affordable Housing Supplementary Planning Document. [10, 39] The Integrated Transport financial contribution would support the provision of viable infrastructure to support sustainable development as recommended by the Framework. LP policy TR6 supports the provision. The County Council has identified items to support a modal shift towards the use of public transport, cycling and walking, for which they have provided estimated costs. This is a reasonable and justified contribution. [10]
158. The provision of public open space, footpath connections, footbridges and links to Skegby Hall Historic Park and Gardens is integral to the scheme. It is justified both to maintain the gap between settlements, and to provide a high quality open space linking to existing open space. This would accord with the Green Infrastructure and Biodiversity Strategy. It would also help to protect sites of importance for nature conservation, and to protect the setting of Skegby Hall Historic Park and Gardens. It would provide a large area of greenspace that would have merit in relieving pressure on the Sherwood Forest Area even though that is not a Potential Special Protection Area. [13, 14, 40, 51, 52, 60, 62, 76]
159. The financial contribution towards maintenance of the open space, based on the anticipated cost for 15 years is justified to prevent it being a drain on the public purse. The hedgerow planting would help to merge the access into the landscape, and is based on the cost of its provision. The management of the land has also been costed by the Council and that assessment has been used by the appellant.
160. The cost of provision of improvements to play space at Stoneyford Road is based on actual costs. The provision is based on LP policy HG4 and is supported by the Ashfield Play Strategy. In addition, a kickabout area would be required. Although there is also informal public open space shown within the housing areas, this would not tie the Council's hands in determining reserved matters, since this is a Unilateral Undertaking by the appellants. The Council confirmed that other layouts with a fresh obligation could be acceptable, so long as the quantum proposed was the same. [10, 40, 41, 52, 60]

161. I was advised at the Inquiry that the Council's costs were agreed by the appellants based on the cost of officer time taken by the Council to assist the developer in formulating the provisions of the Unilateral Undertaking. Given the detailed responses required I consider that it is not an unreasonable provision.
162. As previously specified the provisions of the Unilateral Undertaking are based on 230 dwellings. I am satisfied from the representations made that the provisions fulfil the requirements of Regulation 122 of the CIL Regulations, and the tests of the Circular 05/2005: *Planning Obligations* if the reserved matters amount to that quantum of development. They are necessary to make the development acceptable in planning terms, directly related to the development, and fairly and reasonably related in scale and kind to the development. The Unilateral Undertaking should therefore be taken into account into account in this decision.
163. There is a necessity clause in the Unilateral Undertaking which would ensure that if any of its provisions were found to be illegal, unlawful, void or unenforceable that it would be severed from the deed. In addition, if subsequent details were to be for a different number of dwellings, which would have implications for the unilateral undertaking, a full application with a revised obligation could be required to satisfy the requirements of the CIL Regulations.  
[11, 88]

### **Conclusion and Recommendation**

164. The relevant LP policies are out of date. The development would bring substantial benefits in respect of the provision of housing and public open space with footpath links in a sustainable location. The adverse impacts of granting planning permission would not significantly and demonstrably outweigh the benefits when assessed against the Framework taken as a whole. This conclusion is consistent with that of the Secretary of State in other appeals referred to in representations.
165. Having regard to all my findings, I recommend that the appeal be allowed. If the Secretary of State is minded to agree with my recommendation, Annex A lists the conditions that I consider should be attached to any permission granted.

*Julia Gregory*

INSPECTOR

## APPEARANCES

### FOR THE LOCAL PLANNING AUTHORITY:

|  |   |
|--|---|
| Beverley Alderton-Sambrook<br>and Christine Sarris | Major Projects Manager<br>Corporate Manager, Planning and Building<br>Control |
| They called  |   |
| Melanie Wheelwright                                | Landscape Architect   |
| Lisa Furness                                       | Policy Planner  |
| Beverley Alderton-<br>Sambrook                     | Major Projects Manager  |

### FOR THE APPELLANT:

|                     |  |
|---------------------|--|
| Christopher Buttler | Of Counsel                                 |
| He called           |  |
| Robert Fletcher     | Partner, Ian Baseley Associates            |
| John Francis Baly   | Consultant, Ian Stemp Landscape Architects |

### INTERESTED PERSONS:

|                           |   |
|---------------------------|---|
| Cllr Margaret Ann Patrick | District Councillor for Sutton in Ashfield North                          |
| Patrick Clarke            | Local resident  |
| Debra Clarke              | Local resident  |
| Ron Payton                | Local resident  |
| Cllr Jason Zadrozny       | District Councillor for Sutton in Ashfield North and<br>County Councillor |

## The appellants' documents

|            |  |
|------------|--|
| INQ/APP/1  | Design and Access statement  |
| INQ/APP/2  | Transport Assessment, includes Plan NTT/1362/001 Rev P1  |
| INQ/APP/3  | Travel Plan  |
| INQ/APP/4  | Site Drainage Assessment   |
| INQ/APP/5  | Ecological Report  |
| INQ/APP/6  | Addendum to Ecological Assessment  |
| INQ/APP/7  | Arboricultural Survey  |
| INQ/APP/8  | Agricultural Land classification report  |
| INQ/APP/9  | Affordable Housing Statement   |
| INQ/APP/10 | Heads of Terms for Section 106 Agreement   |
| INQ/APP/11 | LDA Landscape and Visual Impact Assessment   |
| INQ/APP/12 | Robert Fletcher's proof of evidence  |
| INQ/APP/13 | Robert Fletchers appendices  |
| INQ/APP/14 | Summary statement of Robert Fletcher   |
| INQ/APP/15 | John Francis Baly's proof of evidence and appendix   |
| INQ/APP/16 | John Francis Baly's summary  |
| INQ/APP/17 | Addendum to LDA Design's Landscape and Visual Impact<br>assessment produced by John Francis Baly |

## The Council's documents

|           |   |
|-----------|---|
| INQ/LPA/1 | Questionnaire documents                                       |
| INQ/LPA/2 | Melanie Wheelwright's proof of evidence and appendices        |
| INQ/LPA/3 | Lisa Furness's proof of evidence and appendices               |
| INQ/LPA/4 | Beverley Alderton-Sambrook's proof of evidence and appendices |
| INQ/LPA/5 | Draft Unilateral Undertaking                                  |
| INQ/LPA/6 | List of conditions and informatives                           |

## DOCUMENTS SUBMITTED AT THE INQUIRY

### *Appellants' documents*

|      |  |
|------|--|
| DOC1 | Appellants' opening statement  |
| DOC2 | Draft Unilateral Undertaking   |
| DOC3 | Extract from superseded Planning Policy Statement 3: Housing June 2010   |
| DOC4 | Planning Committee Minute 28 March 2012  |
| DOC5 | Letter from Robert Fletcher to John Glass, Principal Planning Officer, Ashfield District Council dated 12 April 2012 |
| DOC6 | Revised drainage condition   |
| DOC7 | Unilateral Undertaking dated 20 November 2012 with written amendments 23 November 2012                               |
| DOC8 | Appellants' closing submissions  |

### *Council's documents*

|          |  |
|----------|--|
| DOC9     | Notification of inquiry letter dated 19 September 2012   |
| DOC10    | Extract from Council Constitution  |
| DOC11    | Letter from Government Office for the East Midlands enclosing saving direction for Ashfield Local Plan Review Policies dated 21 September 2007 |
| DOC12    | Saving Direction with erratum to LP policy EV2   |
| DOC13    | Local Wildlife sites   |
| DOC14    | Extract from Greater Nottingham Landscape Character Assessment- NC08 River Meden Valley  |
| DOC15    | Appeal decision APP/R0335/A/12/2168199 –Appendix 11 to Lisa Furness' proof of evidence   |
| DOC16    | RS policy 13a  |
| DOC17    | LP Proposals Map – North sheet   |
| DOC18    | LP proposals map - South sheet   |
| DOC19    | Spreadsheet analysing LP policies for consistency with the Framework   |
| DOC20a-d | Nottingham Outer Strategic Housing Land Availability Assessment 2012 review Draft for consultation June 2012 (4 volumes)                       |
| DOC21    | Strategic Housing Land Availability Assessment Draft Methodology March 2008  |
| DOC22    | A Sustainability Appraisal for the Local Plan Preferred Approach September 2012  |
| DOC23    | LPPA Proposals Map - north and south sheets combined   |
| DOC24    | Mill Lane site plan  |

|       |   |
|-------|---|
| DOC25 | Justification for Unilateral Undertaking provisions   |
| DOC26 | E mail exchange between E de Coverly and B Alderton-Sambrook dated 6 November 2012 in relation to transfer of land to the Council |
| DOC27 | Affordable Housing Supplementary Planning Document  |
| DOC28 | Extract from Green Spaces Strategy (Adopted)  |
| DOC29 | Making Play matter in Ashfield 2007-2012  |
| DOC30 | Extract from County Council Design Guide for street lighting  |
| DOC31 | Site visit route map  |
| DOC32 | Council's Closing statement   |

## **PLANS**

- A Application site plan
- B Topographical Survey TCS/IBA/089-1- Application plan
- C Topographical Survey TCS/IBA/089-2- Application plan
- D 373:P:01 Application plan
- E 373:P:01A Submitted before determination but not taken into account by the Council
- F 373:P:01B Submitted to Council post determination and to the Inspector at the Inquiry
- G 373:P:01C Submitted to Council post determination (14 November 2012) and to the Inspector at the Inquiry

## **Annex A - Suggested Conditions**

- 1) For those matters not reserved for later approval, the development hereby permitted shall be carried out in accordance with the following approved plans: Application site plan, 373:P:01 and NTT/1362/001/Rev P1.
- 2) Details of the appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the Local Planning Authority before any development begins and the development shall be carried out as approved.
- 3) Application for approval of the reserved matters shall be made to the local planning authority not later than three years from the date of this permission.
- 4) The development hereby permitted shall begin not later than two years from the date of approval of the last of the reserved matters to be approved.
- 5) Construction works shall only occur on the site between the hours of 08:00 and 18:00 Monday to Friday, 09:00 – 13:00 Saturdays and not at any time on Sundays or Bank Holidays.
- 6) The development shall not commence until a scheme of speed/traffic management measures has been submitted to and approved by the Council to reduce the potential for badger road casualties along the access road to the southern housing site adjacent to Vere Avenue. No dwelling on the southern housing site shall be first occupied until the road has been constructed incorporating the approved measures.
- 7) No development other than highway works within the red edge on the application site plan shall take place at any time within 3 metres of the boundary of Stanton Hill Meadows Site of Important Nature Conservation Local Wildlife Site (SINC 2/189).
- 8) The development shall not commence until a scheme for the future protection of Skegby disused Quarry (ii) Local Wildlife Site (SINC 5/55) has been submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be carried out strictly in accordance with the approved scheme.
- 9) Any grassland areas not forming part of the access road, but which are disturbed during the construction of the access road, shall be reinstated on completion of the access construction works in accordance with the detail set out in Section 6 Mitigation, Compensation & Further Survey Recommendations, Section 6.1.1 (vii) of the EMEC Ecological Assessment Report 2011.
- 10) Brick nesting boxes shall be incorporated into the residential properties to provide nesting opportunities for house sparrows and swifts. Prior to the commencement of development details of these boxes shall be submitted to the Local Planning Authority for approval and the approved measures shall be implemented and thereafter retained.
- 11) Access for bats shall be incorporated into the residential properties to provide roosting opportunities. Prior to the commencement of development details of such measures shall be submitted to the Local Planning Authority

- for approval and the approved measures shall be implemented and thereafter retained.
- 12) The development shall not commence until a survey of trees proposed to be removed has been submitted to and approved in writing by the Local Planning Authority establishing whether any of them provide bat roost potential and if so whether any do currently do support a bat roost. No removal of those trees nor any other physical interference with them shall take place until written approval has been given by the Local Planning Authority in respect of the proposed operations.
  - 13) The development shall not commence until a Phase 1 habitat survey has been submitted to and approved in writing by the Local Planning Authority in respect of the application site outlined in blue on the site plan. No dwelling shall be first occupied until any required mitigation measures have been fully implemented. Such measures shall thereafter be retained.
  - 14) The development shall not commence until a protected species survey has been submitted to and approved in writing by the Local Planning Authority in respect of the impact of the development upon otter, water vole and white-clawed crayfish in streams 1 or 2 or within 5 metres of their banks. No dwelling shall be first occupied until any until any required mitigation measures have been fully implemented. Such measures shall thereafter be retained.
  - 15) No dwelling on the site shall be first occupied until a kickabout area has been provided in a position, details of which shall first have been submitted to and approved in writing by the Local Planning Authority which may be partially or wholly within the land outlined in blue. Such a feature shall have an overall size of no less than 50m x 35m, to fit a pitch size of no less than 25m x 16.5m. This informal space shall be provided as a level grassed playing area with goalposts, seating and some planting.
  - 16) There shall be no works to the Hedgerow to the east of the northern site shown in green on plan 3 in the Unilateral Undertaking dated 20 November 2012 without prior approval in writing from the Local Planning Authority.
  - 17) No dwelling on the site shall be first occupied until a post and rail fence has been erected along both sides of the access road at no less than 1.5 metres in height with a design that shall first have been submitted to and agreed in writing by the Local Planning Authority.
  - 18) Prior to the commencement of development full details of the proposed treatment of the sites internal and external boundaries and a phasing scheme for the implementation of the agreed boundary treatment shall be submitted to and approved in writing by the Local Planning Authority. Such approved details shall be implemented in accordance with the approved phasing scheme and thereafter retained.
  - 19) Prior to the commencement of development, details shall be submitted and approved in writing by the Local Planning Authority in respect of details of parking, turning facilities, access widths and specifications, gradients, surfacing, street lighting, structures, visibility splays and highway drainage. These shall include design calculations and detailed construction drawings for the proposed highways works. The development shall be carried out in

accordance with the approved details and the parking and turning areas retained for their specified purposes at all times..

- 20) The development hereby permitted shall not commence until drainage plans for the disposal of surface water and foul sewage have been submitted to and approved in writing by the Local Planning authority. The scheme shall be implemented in accordance with the approved details before the development is first brought into use. These shall include the use of Sustainable Urban Drainage Systems (SUDS). The development shall not commence until a SUDS Management Plan which shall have been submitted to and approved in writing by the Local Planning Authority.
- 21) At all times there will remain an unobstructed green corridor retained along the watercourse that runs north south to the east of the southern application site. At no time shall there be any development including fences, other garden features, land raising, or building within 8 metres of the top of the bank that forms the watercourse channel unless otherwise agreed in writing by the Local Planning Authority.
- 22) No development shall take place until samples of the materials and finishes to be used for the external elevations and roofs of the proposals have been submitted to and approved in writing by the Local Planning Authority. The approved details shall be implemented.
- 23) Prior to the commencement of development a Coal Mining Risk Assessment report shall be submitted to the Local Planning Authority for its written approval. Thereafter any operational development on the site shall incorporate the construction and working methods that have been approved by the Council.
- 24) No development shall be permitted to commence on the site until an air quality assessment has been prepared in respect of the projected traffic increase at the Stoneyford Road junction and approved in writing by the Local Planning Authority. Thereafter any approved mitigation measures shall be implemented and thereafter retained.
- 25) Prior to the commencement of any works pursuant to this planning permission the applicant shall submit the following information to the Local Planning Authority for approval in writing: (i) A desktop Study/Phase I report documenting the historical use(s) of the site and its immediate environs; (ii) A site investigation/Phase II report where any previous use of the site indicates a potential contaminative use. The application/developer shall submit a Site Investigation/Phase II report documenting the characteristics of the ground at the site. The site investigation should establish the full extent, depth and cross section, nature and composition of the contamination. Ground gas monitoring and chemical analysis, identified as being appropriate by the desktop study, should be carried out in accordance with the current guidance using UKAS/MCERTS accredited methods. All technical data must be submitted to the Local Planning Authority; (iii) A scheme of remedial works where the site investigation has identified the presence of significant levels of harmful ground gas and/or significant levels of chemical contamination. The scheme should include a remediation Statement and Risk Assessment Strategy to prevent any significant risk arising when the site is being developed or subsequently occupied. Any variation to the remediation



Scheme shall be agreed in writing with the LPA in advance of and works being undertaken. All remediation should be carried out safely, ensuring that no significant risk(s) remain. The applicant shall have a contingency plan should the primary remediation of subsequent construction phase reveal any additional contamination. Where additional contamination is found the applicant shall immediately notify the Local Planning Authority and shall submit in writing, details of the contingency plan for written approval by the Local Planning Authority. On completion of the remedial works and prior to the occupation/use of the development, the applicant shall submit to the Local Planning Authority: iv) A Validation Report with confirmation that all remedial works have been completed and validated, in accordance with the agreed details.



## Department for Communities and Local Government

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

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

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

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

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

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

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

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

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

#### **SECTION 3: INSPECTION OF DOCUMENTS**

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

***<https://www.gov.uk/government/organisations/department-for-communities-and-local-government>***