



Department for  
Communities and  
Local Government

Our Ref: APP/B3410/A/13/2189989  
Your ref: 19078

Grant Stevenson  
Barton Willmore  
Regent House  
Princes Gate Buildings  
2-6 Homer Road  
Solihull  
West Midlands  
B91 3QQ

03 October 2013

Dear Sir,

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78  
APPEAL BY ST MODWEN  
AT LAND SOUTH OF LICHFIELD ROAD, BRANSTON, BURTON UPON TRENT,  
STAFFORDSHIRE (APPLICATION REF: P/2011/01243/JPM)**

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Inspector, Terry G Phillimore MA MCD MRTPI, who held a public local inquiry on 4 days between 14 May and 21 May 2013 into your clients' appeal for non-determination of an application by East Staffordshire Borough Council (the Council) for a mixed use redevelopment comprising: site clearance and remediation works including the demolition of existing buildings and structures; up to 660 dwellings (Use Class C3); up to 71,533 sq. metres of employment floorspace (Use Classes B2 and B8); a local centre providing up to 600 sq. metres of floorspace (Use Classes A1, A2, A3, A4 and A5) together with associated car parking, servicing, landscaping, public realm works and works to the highway; public open space; sports and recreation facilities; structural landscaping; re-profiling of the River Trent and Tatenhill Brook and provision of drainage ponds and flood alleviation works; and internal highway network to include the provision of access junctions to the A38 and Main Street at land South of Lichfield Road, Branston, Burton upon Trent, Staffordshire, in accordance with application reference P/2011/01243/JPM, dated 24 October 2011.
2. On 16 January 2013 the appeal was recovered for the Secretary of State's determination, in pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act 1990 because it involves a proposal for residential development of over 150 units, and is on a site of more than 5 hectares, which would have a significant impact on the Government's objective to

secure a better balance between housing demand and supply, and create high quality, sustainable, mixed and inclusive communities.

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

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

### **Procedural Matters**

4. The application for costs made by your client at the Inquiry (IR1) is the subject of a separate decision letter, also being issued today by the Secretary of State.
5. The Secretary of State notes that, following submission of the appeal, a revised set of plans was prepared, which made minor changes to the site boundary and contained more detail on the proposed access arrangement, and that these were circulated by the appellant to all local residents and interested bodies inviting comments before the close of the Inquiry (IR3). Given that the Inspector has taken account of the responses received within his report and that no objections to them being taken into account were raised by any party, the Secretary of State agrees with the Inspector, that no interest would be prejudiced (IR3). He has, therefore, determined the appeal on the basis of these revised plans (IR3).
6. The Secretary of State notes that the Council on 28 September 2011 issued a screening opinion under the Town and Country Planning (Environmental Impact Assessment) Regulations 2011 that an environmental statement was not required for the proposed development and that, consistent with this, a direction was issued on 27 March 2013, on his behalf, that the proposal is not EIA development (IR4).
7. The Secretary of State notes that on 18 March 2013 the Council resolved that, had the appeal not been made, permission would have been refused on the grounds of the impact on highway safety, both during construction, and following the completion of the development, and the associated impact this increase in traffic will have on residential amenity (IR5)

### **Matters arising after the Inquiry**

8. The Secretary of State is aware that on 8 July 2013, after the Inquiry had closed and the Inspector's report had been submitted to him for determination, the Council granted outline planning permission for redevelopment of the appeal site (ref: P/2011/00432) for a development scheme of similar description to the appeal proposal. He is also aware that as a result of the Council resolving to grant a number of planning permissions on 8 July 2013, as well as refreshing their housing requirement, the Council now contend to have a 5 year supply of deliverable housing land.

### **Policy considerations**

9. In deciding this appeal, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that proposals

be determined in accordance with the development plan unless material considerations indicate otherwise. In this case, following the revocation of the Regional Spatial Strategy for the West Midlands (RSS) and the saved policies of the Staffordshire and Stoke-on-Trent Structure Plan 1996-2011 (2001) on 20 May 2013, the development plan now consists of the saved policies of the East Staffordshire Local Plan (July 2006) (LP) (IR29-30). The Secretary of State agrees with the Inspector that the policies relevant to the appeal are those described by him at IR32 to 45 and recognises that the policies summarised by the Inspector at IR46 to 60 have been revoked and, therefore, no longer have any weight in the determination of this appeal.

10. 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; The Planning System: General Principles; Circular 11/95: *Use of Conditions in Planning Permission*; the Community Infrastructure Levy (CIL) Regulations 2010 as amended; The East Staffordshire Design Guide (2008); The Open Space Supplementary Planning Document (2010); and The Housing Choice Supplementary Planning Document (2010).
11. The Secretary of State has also had regard to the emerging East Staffordshire Local Plan (IR61-72), which is scheduled to be adopted in December 2014. For the reasons given at IR284, he agrees with the Inspector that whilst the emerging Plan is a material consideration it can only be afforded limited weight in his decision. The Draft Land South of Branston Development Brief forms part of the evidence base for the emerging Local Plan (IR77). Given its draft status, like the emerging Local Plan, the Secretary of State considers that it can be afforded only limited weight in his decision.
12. In determining this appeal, the Secretary of State has had regard to the statutory duty to pay special attention to the desirability of preserving and enhancing the character or appearance of the Walton on Trent Conservation Area, as required by section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990.

### **Main issues**

13. The Secretary of State agrees with the Inspector that the main considerations regarding this appeal are those identified at IR275.

### The Adopted and Emerging Development Plan

#### *Adopted development plan*

14. The Secretary of State agrees with the Inspector that, for the reasons given at IR276 to 282, the proposal has a broad accordance with the adopted development plan, including support for the principle of the development (IR283), which is agreed by the main parties (IR84).
15. The Secretary of State has paid special attention to the desirability of preserving and enhancing the character or appearance of the Walton on Trent Conservation Area. Like the Inspector, he considers the proposals acceptability to include the potential impact on the Conservation Area (IR282).

### *Emerging development plan*

16. The Secretary of State notes that the appeal site lies within an area identified in the emerging plan as suitable for the delivery of large scale housing and employment development and that this option was considered the most sustainable and would best deliver the preferred strategy (IR285). He further notes that the parties agree that the proposal is entirely consistent with the Council's emerging strategy and vision for the future development of the Borough and that it would deliver a significant amount of growth assigned to Burton upon Trent (IR285). He has also taken into account that no conflicts between the proposal and the emerging plan have been cited (IR286).

### National Planning Policy

#### *Sustainable development*

17. The Secretary of State notes that it is agreed between the parties that the site is in a sustainable location (IR84) and that the Council concedes that, in accordance with the framework, the appellant is entitled to a favourable presumption. He also notes that the site forms part of the Council's emerging strategy which is identified as being the most suitable, and the location is agreed to be a sustainable one (IR287).

#### *Housing land supply*

18. The Secretary of State has carefully considered the Inspector's analysis and conclusions on the Council's housing land supply (IR288-295) and notes that, on the evidence available to the Inspector, there is a serious shortfall in the 5 year housing land supply in the Borough (IR294). However, like the Inspector, he considers that, given the location of the site within the development boundary in the Local Plan, the acceptability of the proposal in principle does not depend on identification of this shortfall (IR294).

19. The Secretary of State notes that there was agreement at the inquiry that, having regard to paragraph 49 of the Framework, the Local Plan is not up-to-date with respect of the supply of housing since a 5 year supply could not be demonstrated. He agrees with the Inspector that this lends support to the use of a greenfield site notwithstanding the approach of policy H2 to prioritise the development of previously developed land (IR294). He also notes the Inspector's view that the scale of the shortfall indicated by the available evidence weighs strongly in favour of the proposal (IR294).

#### *Economic benefits*

20. The Secretary of State agrees with the Inspector that the proposal represents a substantial investment opportunity, and the potential economic benefits including for employment, weigh heavily in the proposal's favour (IR297).

### Effect on Highway Conditions

21. The Secretary of state agrees with the Inspector for the reasons given at IR298-300 that the main dispute regarding the effect on highway conditions are the appropriate triggers for implementation of the highway works, including with respect to construction impact (IR301). After careful consideration of the

Inspector's discussion regarding the appropriate triggers (IR301-306), the Secretary of State agrees with the Inspector, for the reasons given by him at IR303-306 that a restriction of 150 dwellings is justified (IR306). Like the Inspector, he considers this justification does not extend to the Council's suggested limit of 60 dwellings, which he too considers would be unduly onerous and not reasonable and necessary (IR306). He further agrees with the Inspector that with the conditions and obligations as discussed at IR308-327, the proposal complies with the transport policies of the Local Plan, including T1, and that there would be no significant breach of policy BE1 (IR307).

### Conditions

22. The Secretary of State has considered the proposed conditions and the Inspector's comments at IR308-319. He is satisfied that the conditions proposed by the Inspector and set out at Annex A to this letter are reasonable, necessary and comply with the provisions of Circular 11/95.

### Obligation

23. The Secretary of State has considered the Section 106 Agreement submitted by the parties and the Inspector's comments at IR320-326. He agrees with the Inspector that the contributions and obligations secured 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; and can therefore be considered to be compliant with CIL Regulation 122.

### **Overall Conclusions**

24. Like the Inspector, the Secretary of State considers that the proposal, notwithstanding the Council's contention that they are now able to demonstrate a 5 year supply of deliverable housing, is in accordance with the development plan and emerging local policy, and would deliver a number of substantial benefits, which weigh heavily in support of the proposal and which are supported by Government policy. For the reasons given at IR327, he agrees with the Inspector that the proposal can be regarded as a sustainable development, and under the Framework there is a presumption in favour of granting permission (IR327).

### **Formal Decision**

25. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. He hereby allows your client's appeal and grants planning permission for a mixed use redevelopment comprising: site clearance and remediation works including the demolition of existing buildings and structures; up to 660 dwellings (Use Class C3); up to 71,533 sq. metres of employment floorspace (Use Classes B2 and B8); a local centre providing up to 600 sq. metres of floorspace (Use Classes A1, A2, A3, A4 and A5) together with associated car parking, servicing, landscaping, public realm works and works to the highway; public open space; sports and recreation facilities; structural landscaping; re-profiling of the River Trent and Tatenhill Brook and provision of drainage ponds and flood alleviation works; and internal highway network to include the provision of access junctions to the A38 and Main Street at land South of Lichfield Road, Branston, Burton upon Trent, Staffordshire, in

accordance with application reference P/2011/01243/JPM, dated 24 October 2011, subject to the conditions listed in Annex A to this letter.

26. 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.
27. 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.
28. This letter serves as the Secretary of State's statement under regulation 21(2) of the Town and Country (Environmental Impact Assessment) (England and Wales) Regulations 1999.

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

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

Yours faithfully

**Lindsay Speed**

Authorised by Secretary of State to sign in that behalf

**Conditions****Time Limits**

- 1) No phase of development (as referred to in condition 5) shall be commenced until full details of the layout, scale and appearance of the building(s) to be erected, and the landscaping of the site (hereinafter called "the reserved matters") for that phase have been submitted to and approved in writing by the Local Planning Authority. The development shall not be carried out otherwise than in accordance with the approved details.
- 2) Application(s) for the approval of the reserved matters for the first 150 dwellings hereby permitted shall be made to the Local Planning Authority no later than 2 years from the date of this permission. The first 150 dwellings hereby permitted shall be begun not later than 2 years from the date of approval of the last of the reserved matters to be approved in respect of that phase.
- 3) Application(s) for the approval of the reserved matters for all remaining residential development hereby permitted shall be made to the Local Planning Authority not later than 5 years from the date of this permission. All remaining residential development hereby permitted shall be begun not later than 2 years from the date of approval of the last of the reserved matters to be approved.
- 4) Application(s) for the approval of reserved matters for all other development hereby permitted shall be made to the Local Planning Authority not later than 7 years from the date of this permission. All plots of development hereby permitted shall be begun not later than 2 years from the date of approval of the last of the reserved matters to be approved.
- 5) No development shall take place until details of the phasing of the site have been submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be completed in accordance with the approved phasing plan.

**Design, Open Space and Landscaping**

- 6) No phase of development shall take place until samples and details of all materials to be used externally for that phase of the development have been submitted to and approved in writing by the Local Planning Authority and the development shall only be carried out using the agreed materials.
- 7) No phase of development shall take place until details of walling and fencing to be used for both public (including the railway line) and private boundary treatments for that phase of the development where relevant have been submitted to and approved in writing by the Local Planning Authority. The development shall only be carried out using the agreed boundary treatments, which shall be completed prior to the first occupation of the dwelling in that phase to which it relates, or the first use of the open space in that phase to which it relates, or in accordance with a timetable agreed in writing with the Local Planning Authority.

- 8) All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding season following the occupation of any of the buildings in the phase to which it relates, or the completion of that phase of the development, whichever is the sooner; and any trees or plants which within a period of 5 years from the completion of the phase of development die, are removed, or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species unless the Local Planning Authority gives written consent to any variation.
- 9) Each reserved matters submission shall include a statement demonstrating substantial compliance with the principles of the submitted Design and Access Statement (October 2011) for that phase and the development of that phase shall only be carried out in accordance with the statement.
- 10) No phase of development shall take place until an open space strategy related to that phase of the development, and including the following details where relevant, has been submitted to and approved in writing by the Local Planning Authority:
  - a) equipment to children's play areas;
  - b) details of the pavilion and associated works at Clays Lane, or the alternative provision on site;
  - c) details of the linkages to the Trent Valley Footpath, and to the existing railway bridge;
  - d) details of all woodland planting;
  - e) details of short and long term maintenance management plans of all areas of open space;
  - f) details of all hard landscaping, including surfacing of roads, footpaths, car parking areas and courtyards.

The development shall thereafter be completed in accordance with the approved details prior to the first occupation of any of the phase to which the works relate, or in accordance with a timetable agreed in writing with the Local Planning Authority.

### **Sustainability**

- 11) No phase of development shall take place until a Site Waste Management Plan for that phase has been submitted to and approved in writing by the Local Planning Authority. The development shall only be carried out in accordance with the approved Site Waste Management Plans.

### **Contamination, Pollution and Noise**

- 12) No phase of development shall take place until a contaminated land assessment and associated remedial and/or mitigation strategy, together with a timetable of works for that phase, has been submitted to and approved in writing by the Local Planning Authority and the measures approved in that scheme shall be fully implemented in accordance with the approved timetable. The scheme shall include all of the following measures unless the Local Planning Authority dispenses with any such requirement specifically in writing:



- a) The contaminated land assessment shall include a desk study to be submitted to the Local Planning Authority for approval. The desk study shall detail the history of the site uses and propose a site investigation strategy, if required, based on the relevant information discovered by the desk study. The strategy shall be approved by the Local Planning Authority prior to any further investigations commencing on site. The study shall include an analysis regime of the particle size distribution of the fly ash, and the variability across the site should be recorded and used to inform the measures relating to dust control (i.e. the proposed control measures should be appropriate to dust size fractions present).
  - b) The site investigation, including relevant soil, soil gas, surface and groundwater sampling, shall be carried out by a suitably qualified and accredited consultant/contractor in accordance with a Quality Assured sampling and analysis methodology.
  - c) A site investigation report detailing all investigative works and sampling on site, together with the results of analysis, risk assessment to any receptors and a proposed remediation and/or mitigation strategy shall be submitted to and approved in writing by the Local Planning Authority prior to any remediation commencing on site.
  - d) Approved remediation and/or mitigation works for that phase shall be carried out in full on site under a quality assurance scheme to demonstrate compliance with the proposed methodology and best practice guidance. If during the works contamination is encountered which has not previously been identified then the additional contamination shall be fully assessed and an appropriate remediation/mitigation scheme shall be submitted to and approved in writing by the Local Planning Authority.
  - e) Upon completion of the works a Remediation/Mitigation Validation Report for that phase shall be submitted to and approved in writing by the Local Planning Authority. The report shall include details of the proposed remediation and/or mitigation works and quality assurance certificates to show that the works have been carried out in full in accordance with the approved methodology.
- 13) Any soil to be imported to the site shall first be chemically analysed for contaminants at a frequency of 1 sample per 100 cubic metres, with the results submitted to and approved in writing by the Local Planning Authority prior to the soil being installed. Only soil that has been approved in writing by the Local Planning Authority shall be imported to the site.
  - 14) No phase of development shall take place until it can either be demonstrated that the phase is not affected by landfill gas or it shall be confirmed that the building(s) will be constructed to the standards specified within BRE Report 212 (Construction of new buildings on gas contaminated land), with the relevant details submitted to and approved in writing by the Local Planning Authority. The building(s) shall only be constructed in accordance with the approved details.
  - 15) No phase of development shall take place until a scheme of dust prevention and mitigation measures for that phase has been submitted to and agreed in writing by the Local Planning Authority. The scheme should be in substantial accordance with the principles and recommendations of the 'Control of dust and emissions from construction and demolition – Best

Practice Guide' (London Councils 2006) and the 'Control of dust from construction and demolition activities' (Building Research Establishment 2003) or similar documentation. The scheme shall assume the site as 'high risk' as defined in the London Councils guidance by virtue of its scale, number of proposed properties and potential for dust, and identify mitigation measures accordingly, with particular consideration given to the control of Pulverised Fuel Ash. The development shall thereafter be completed in accordance with the approved dust prevention and mitigation measures.

- 16) No phase of development shall take place until a Noise and Vibration Impact Assessment has been submitted to and approved in writing by the Local Planning Authority for that phase of development to which it relates, including details of any mitigation measures required in relation to noise and vibration required during construction. The development shall be completed in accordance with the approved mitigation measures.
- 17) No phase of development shall take place until a Noise Impact Assessment has been submitted to and approved in writing by the Local Planning Authority for that phase of development to which it relates, which shall include the following where relevant to that phase:
  - a) details of noise mitigation to all proposed dwellings;
  - b) details of a noise mitigation scheme for the proposed access off Acacia Lane to minimise any potential impact of traffic noise to existing residential occupiers on Hollyhock Way;
  - c) details of Noise Bund and Acoustic Fence (which shall be designed to ensure that there is no reflection noise from the A38 to adjoining properties);
  - d) details of noise mitigation measures to be included in each of the B2/B8 units to include details of fencing to adjoining residential properties;
  - e) submission of revised noise assessments should land levels change during any phase of the development.

The development shall only be implemented in accordance with the approved mitigation measures which thereafter shall be permanently retained.

- 18) The A5 use hereby permitted shall not be open to customers outside the hours of 07:00 to 23:30 Mondays to Saturdays, and 07:00 to 23:00 Sundays.
- 19) No deliveries shall be taken at or despatched from the Local Centre hereby permitted outside the hours of 07:00 to 19:00 Mondays to Saturdays, or at any time on Sundays, Bank or Public Holidays.
- 20) No development shall take place on the A5 unit hereby permitted until full details of a mechanical ventilation system for the kitchen have been submitted to and approved in writing by the Local Planning Authority. The ventilation system shall be implemented in full in accordance with the approved details prior to the first use of the premises as a takeaway.
- 21) No construction work on the site shall be undertaken outside of the hours of 07:30 to 19:00 Mondays to Fridays, and 08:00 to 14:00 on Saturdays, with no working on Sundays or Bank Holidays unless otherwise first agreed in writing by the Local Planning Authority.

## Flood Risk and Drainage

22) The development hereby permitted shall only be carried out in accordance with the submitted Flood Risk Assessment (FRA) and Drainage Strategy, reference PJF116/21/R001 Version 01, dated October 2011, undertaken by Halcrow. No phase of development shall commence until a final detailed scheme for each of the following mitigation measures detailed within the Flood Risk Assessment where relevant for that phase have been submitted to and approved in writing by the Local Planning Authority.

- a) Improvement of the existing Branston Surface Water Pumping Station, if deemed necessary.
- b) Construction of a replacement outfall culvert and flap valve discharging to the Tatenhill Brook.
- c) Either make redundant the existing culvert and replace with new in an alternative location to be agreed, or reline the existing culvert.
- d) Diversion of the Tatenhill Brook upstream of the existing outfall point beneath the railway by the Holyhock Estate to a new location as identified in Appendix A of the Flood Risk Assessment (OS NGR 422040,320326).
- e) Provision of the approved flood barrier (infilling of the existing channel) immediately downstream of the proposed diversion point of the Tatenhill Brook on the west side of the railway.
- f) Provision of the approved flood embankment located around the existing properties on the eastern side of the A38.
- g) Creation of a backwater on the redundant channel section of the Tatenhill Brook resulting from the proposed new outfall. The backwater shall extend from the proposed flood barrier to the existing outfall beneath the railway at the northern end of the site.
- h) Construction of raised embankment across the line of the Tatenhill Brook.
- i) Proposed culvert to the Tatenhill Brook on the line of the proposed road/embankment.
- j) Provision of flood plain compensatory works for all changes to land located on the west side of the railway (as detailed on page 16 of the Flood Risk Assessment) up to the 1 in 100 year standard.
- k) Proposed woodland planting and river braiding as identified on the Application Master Plan Drawing Number 44(rg) Rev K.
- l) Proposed woodland structural planting alongside the Tatenhill Brook, on the west side of the railway.

Each scheme shall be fully implemented and subsequently maintained in accordance with the timing/phasing arrangements embodied within the scheme or within any other period as may subsequently be agreed in writing by the Local Planning Authority.

23) No phase of development which includes dwellings shall take place until details of finished floor levels of all dwellings in that phase, which shall be set 600mm above the 1 in 100 year flood level plus the appropriate allowance for climate change, has been submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be completed in accordance with the approved details.

24) No phase of development shall take place until a foul and surface water drainage scheme for that phase, based on sustainable drainage principles and

an assessment of the hydrological and hydro geological context of the development, has been submitted to and approved in writing by the local planning authority. The development shall subsequently be implemented in accordance with the approved foul and surface water drainage details.

## **Ecology**

- 25) Occupation of more than 150 dwellings or any part of the Class B2/B8 development shall not take place until such time as a scheme for the provision and management of the proposed landscape and wildlife corridor linking Branston Water Park with the River Trent, including a timetable for its implementation, has been submitted to and agreed in writing by the Local Planning Authority. Thereafter the development shall be carried out in accordance with the approved scheme. The scheme shall include:
- a) plans showing the extent and layout of the wildlife corridor;
  - b) details of the planting scheme (for example, native species);
  - c) details demonstrating how the wildlife corridor will be protected during development and managed/maintained over the longer term;
  - d) details of any footpaths etc.
- 26) No phase of development shall be commenced until ecological update survey checks for Badgers and Otters, and a scheme for the provision of bat and bird boxes, has been submitted to and approved in writing by the Local Planning Authority for that phase. The development shall be completed in accordance with the approved details and any mitigation measures outlined within the approved ecological surveys.
- 27) No trees or hedgerow shall be removed during the bird nesting season (March to July inclusive) unless it can be demonstrated through the submission of a method statement, prepared by a qualified ecologist and submitted to and agreed in writing by the Local Planning Authority, that breeding birds would not be affected by the works. The approved method statement shall be fully adhered to.
- 28) Occupation of more than 150 dwellings shall not take place until details of habitat creation measures for the land to the east of the railway, including 33ha of open grassland/wetland and details of the protection measures for existing ponds, including a timetable for implementation, have been submitted to and approved in writing by the Local Planning Authority. The habitat creation shall thereafter be completed in accordance with the approved details and retained as such for the life of the development.
- 29) No phase of development shall take place until a long term Ecological Management Plan for that phase, to include the management of important habitats, has been submitted to and approved in writing by the Local Planning Authority. The areas of open space/habitats shall thereafter be retained in accordance with the Ecological Management Plan for the life of the development.

## **Highways**

- 30) No development shall take place until details of the following off-site highway works have been submitted to and approved in writing by the Local

Planning Authority, and the works shall thereafter be completed in accordance with the timescales outlined below:

- a) changes to junction priorities at Acacia Lane/Main Street prior the first use or occupation of any part of the development;
  - b) provision of car parking and completion of the urban design scheme on Main Street Branston at the junction with Acacia Lane substantially in accordance with drawing no 19078-39(rg) prior to the first use or occupation of any part of the development;
  - c) provision of a signal junction on the B5018 at the junction of Main Street Branston prior to the occupation of the 251st dwelling.
- 31) No phase of development shall take place until details of road construction, street lighting and drainage, including longitudinal sections and a satisfactory means of draining the roads to an acceptable drainage outfall, for that phase have been submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be completed in accordance with the approved details.
- 32) No reserved matters applications shall be submitted until a masterplan including the following details has been submitted to and approved in writing by the Local Planning Authority:
- a) design concept for the whole site, including identification of the accesses serving each phase and a timetable for delivery of the access points;
  - b) details of the proposed road hierarchy and street types;
  - c) a public transport route strategy, including a timeframe for implementation and infrastructure to be implemented;
  - d) details of the footpath and cycle network throughout the site;
  - e) integration of car parking and cycle parking.

All reserved matters submissions shall thereafter accord with the details/requirements of the approved masterplan, unless otherwise first agreed in writing by the Local Planning Authority.

- 33) No more than 342 dwellings nor any part of the B2/B8 development shall be occupied until a scheme of highways improvements at the A38 Branston Interchange has been submitted to and approved in writing by the Local Planning Authority and is fully implemented. The scheme of highway improvements shall accord with the Transport Assessment prepared by Halcrow dated August 2011 (or any update of this documentation which has been agreed in writing with the Highways Agency), which identifies the need for the following mitigation:
- a) southbound off slip widening;
  - b) signalisation of the remaining circulatory;
  - c) upgrade of the A5121/B5018 signal junction controller to Microprocessor Optimised Vehicle Actuation (MOVA).
- 34) The construction of the 151st dwelling or any part of the Class B2/B8 development shall not take place on the site until details of the left in/left out junction onto the A38 and the construction haul road have been submitted to and approved in writing by the LPA; the submitted information shall include the following:

- a) how the system interfaces with existing highway alignment, details of the carriageway marking and lane destinations;
  - b) full signage and lighting details;
  - c) confirmation of compliance with the Design Manual for Roads and bridges (DMRB) and Departmental Policies, or approved relaxations/departures from standards;
  - d) independent stage 1 and stage 2 road safety audits carried out in accordance with the current Design Manual for Roads and Bridges (DMRB) and related advice notes.
- 35) The left in/left out access onto the A38 and construction haul road shall thereafter be completed and fully operational prior to the construction of the 151st dwelling or any part of the Class B2/B8 development. Thereafter all construction traffic, with the exception of that associated with the construction of the local centre, shall only access the site via the A38 junction.
- 36) Prior to the first use of the left in/left out junction onto the A38 details of an automated system to monitor vehicle trips shall be submitted to and approved in writing by the Local Planning Authority and thereafter installed. The submitted details shall include the following:
- a) the monitoring equipment;
  - b) the monitoring locations;
  - c) how the system will be maintained;
  - d) commencement, length and frequency of monitoring periods;
  - e) how the data will be collected;
  - f) how the results of the monitoring will be reported and interpreted.

If the system of vehicle trip monitoring subsequently shows the use of the left in/left out access exceeds 370 vehicles at AM peak (08:00-09:00), and 458 vehicles PM peak (17:00-18:00), then within a 6 month period from identification of these thresholds being breached, remedial traffic management measures (such as additional Travel Plan measures to reduce vehicle movements; rat-running surveys and, if appropriate, deterrence methods to include additional traffic calming; and traffic signals on the site exit road, prior to the egress on to the A38, to limit volumes of traffic exiting the site to the A38 in the peak hour) to reduce the number of vehicles utilising the left in/left out access shall be agreed in writing by the Local Planning Authority. The remedial traffic management measures shall thereafter be implemented in accordance with timescales agreed in writing with the Local Planning Authority.

- 37) Prior to the construction of the link road connecting the employment uses with the residential uses a scheme for restricting northbound access through the site to buses and emergency vehicles only shall be submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be implemented in accordance with the approved details prior to the opening of the link road.
- 38) No phase of development shall take place until a construction management plan for that phase which shall include the following shall be submitted to and approved in writing by the Local Planning Authority:
- a) routing of construction vehicles, along with access arrangements for each phase of the development;

- b) timetable for implementation;
- c) turning and wheel washing facilities;
- d) measures to remove any mud or deleterious material deposited on the highway;
- e) schedule and timing of movements;
- f) during the term times for Rykneld Primary School, no deliveries of construction materials, to include delivery vehicles entering or leaving the site via Main Street, for the first 150 dwellings shall take place during the hours of 08:30 to 09:15 and 14:45 to 15:30 Monday to Friday;
- g) provisions for escorts of abnormal loads;
- h) temporary warning signs.

Thereafter the construction works shall be carried out in accordance with the approved details.

### **Approved Drawings**

- 39) The development hereby permitted shall be carried out substantially in accordance with the approved Application Master Plan (drawing no. 44(rg) Rev. K).
- 40) Access to the site shall be provided in accordance with the details shown on the approved access drawings numbered PJF116/0008 (left in/left out to the A38) and PJF116/013/120-P2 (Acacia Lane).



The Planning  
Inspectorate

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

by Terry G Phillimore MA MCD MRTPI

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

Date 4 July 2013

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TOWN AND COUNTRY PLANNING ACT 1990

EAST STAFFORDSHIRE BOROUGH COUNCIL

APPEAL MADE BY

ST MODWEN

Inquiry held on 14-16 & 21 May 2013; site visit made on 15 May 2013

**Land South of Lichfield Road, Branston, Burton upon Trent, Staffordshire**

File Ref: APP/B3410/A/13/2189989

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**File Ref: APP/B3410/A/13/2189989**

**Land South of Lichfield Road, Branston, Burton upon Trent, Staffordshire**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for outline planning permission.
- The appeal is made by St Modwen against East Staffordshire Borough Council.
- The application Ref P/2011/01243/JPM is dated 24 October 2011.
- The development proposed is a mixed use redevelopment comprising: site clearance and remediation works including the demolition of existing buildings and structures; up to 660 dwellings (Use Class C3); up to 71,533 sq. metres of employment floorspace (Use Classes B2 and B8); a local centre providing up to 600 sq. metres of floorspace (Use Classes A1, A2, A3, A4 and A5) together with associated car parking, servicing, landscaping, public realm works and works to the highway; public open space; sports and recreation facilities; structural landscaping; re-profiling of the River Trent and Tatenhill Brook and provision of drainage ponds and flood alleviation works; and internal highway network to include the provision of access junctions to the A38 and Main Street.

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

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**PROCEDURAL MATTERS**

1. At the inquiry an application for costs was made by the appellant against the Council. The costs application is the subject of a separate Report.
2. The appeal relates to an outline planning application with all matters of detail reserved for later approval other than means of access. Among other documents, the application was supported by a Design and Access Statement and a number of plans<sup>1</sup>.
3. Following submission of the appeal a revised set of plans was prepared<sup>2</sup>. The amendments comprise minor changes to the site boundary resulting in a very small reduction in the site area. In addition, the appellant has submitted a plan containing more detail on the proposed access arrangement<sup>3</sup>. This was circulated by the appellant to all local residents and interested bodies, inviting any comments to be sent to the Council prior to 17 May 2013, which was before the close of the inquiry<sup>4</sup>. The responses received<sup>5</sup> are taken into account in this Report. There is no change to the fundamental nature of the proposal in the amended plans, and neither the Council nor any other party has raised objection to them being taken into account. The Report deals with the scheme as revised, and it is considered that no interest would be prejudiced by determining the appeal on this basis.
4. The Council on 28 September 2011 issued a screening opinion under the Town and Country Planning (Environmental Impact Assessment) Regulations 2011 that an environmental statement was not required for the proposed development<sup>6</sup>.

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<sup>1</sup> Documents CDA.14 and CDA.7-CDA.10 respectively

<sup>2</sup> CDA.7a-CDA.10a

<sup>3</sup> CDA.12

<sup>4</sup> APP.5 para 3.4

<sup>5</sup> TP.7

<sup>6</sup> CDC.8

Consistent with this, on 27 March 2013 a direction was issued on behalf of the Secretary of State that the proposal is not EIA development<sup>7</sup>.

5. The appeal is on grounds of non-determination of the application. On 18 March 2013 the application was reported to the Council's Planning Applications Committee with a recommendation that permission would have been granted had the appeal not been made<sup>8</sup>. The resolution of the Committee was that permission would have been refused

*"on the grounds of the impact on highway safety, both during construction, and following the completion of development, and the associated impact this increase in traffic will have on residential amenity"*<sup>9</sup>.

## THE SITE AND SURROUNDINGS

6. The appeal site<sup>10</sup> is described in the Statement of Common Ground<sup>11</sup>. It is located on the south-west edge of the town of Burton upon Trent, with the town centre approximately 3.5km away<sup>12</sup>. This part of the built up area is known as Branston.
7. The site comprises in total some 68.95 hectares of land, formed of four parcels. Three of these are located together towards the south of Branston village, which is centred around Main Street. The separate fourth parcel lies to the north on Clays Lane.
8. The largest parcel of land, at 58.61 hectares forming the majority of the site, comprises a linear area of low-grade agricultural land between the A38 to the west and the railway line to the east. The northern edge of the parcel is bounded by residential and other properties on Main Street/Hollyhock Way/Woodbine Close. This part of the site can be accessed from Main Street and Acacia Lane within Branston, and it includes a vacant plot on the corner. Two other small groups of residential properties adjoin this part of the site; one next to the southern boundary and the other at the approximate mid-point of the west boundary near to where Tatenhill Brook enters the site. Both sets of properties are accessed directly off the A38.
9. This main parcel of the site was part of a larger area formerly used for gravel extraction. These areas have subsequently been filled with pulverised fuel ash (PFA) from the nearby Drakelow Power Station. The parcel is low lying and generally flat with few features of note. Tatenhill Brook crosses it and turns north along the eastern boundary to flow parallel to the railway line. Vegetation is limited, the majority being cleared as part of the gravel extraction works, but a line of mature trees screens the site from the A38. There are also areas of trees along the watercourse and adjacent to the eastern boundary with the railway line.
10. The second parcel of land lies to the east of the railway line. An undeveloped area between the line and the River Trent to the east is under the appellants'

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<sup>7</sup> CDC.9

<sup>8</sup> APP.3 Appendix 2

<sup>9</sup> CDF.1 para 1.6

<sup>10</sup> CDA.7a is the Boundary Plan

<sup>11</sup> CDF.1 section 4.0 Photographs are contained in CDA.28

<sup>12</sup> CDA.28 Figure 1 is a useful context plan

control. Agricultural fields lie to the south and the Riverside Inn and its associated car park to the north. Within this area two blocks totalling 9.94 hectares are included in the appeal site.

11. The third parcel of land of 1.7 hectares is located behind existing properties on the northern side of Main Street. To the south-east is a small group of retail premises, comprising local shops, a public house and car park. To the east and north this part of the site is encircled by the B5018/A5121, with an area of rough grassland to the west.
12. The final parcel is an existing recreation ground on the eastern side of Clays Lane. This is rectangular in shape, bound on three sides by residential properties and to the north by woodland. The recreation ground is owned by Branston Parish Council, and is of around 1.7 hectares.
13. Branston comprises approximately 1,700 homes, together with a range of local facilities including doctors' surgery, public houses, local convenience stores and a post office. Rykneld Primary School is approximately 250m from the appeal site, and Paget High School approximately 1000m away, located on Main Street and Burton Road respectively.
14. In the wider area, to the west of the A38 are Branston Water Park and the Gallow Bridge commercial area. The A38 connects Burton upon Trent to the wider region, with Derby to the north and Birmingham to the south.

## THE PROPOSAL

15. A description of the proposal is included in the Statement of Common Ground<sup>13</sup>, with supporting information contained in the Design and Access Statement, including development parameters<sup>14</sup>. The elements of the development are shown in the Application Master Plan and Illustrative Master Plan<sup>15</sup>.
16. The proposed land use budget is set out in the table below.

Land Use	Hectares	Percentage
Residential (Class C3)	22.12	32
Employment (Classes B2 & B8)	18.25	27
Local Centre (Classes A & C3)	0.35	Under 1
Open Space/Landscaping*	24.41	35
Highway Infrastructure	3.82	5
<b>TOTAL</b>	<b>68.95</b>	<b>100</b>

\* Approximately 47 hectares of additional open space/landscaping is proposed outside the application site but on land controlled by the appellant to the east of the railway line.

<sup>13</sup> CDF.1 section 2.0

<sup>14</sup> CDA.14

<sup>15</sup> CDA.8a and CDA.9a

## **Residential**

17. Residential development is proposed in the northern section of the site within the first and third parcels. In total up to 660 dwellings could be provided. A mix of dwelling types and sizes is proposed, with an indicative mix of 5% 2-bedroom apartments; 5% 2-bedroom houses; 45% 3-bedroom houses; and 45% 4/5-bedroom houses. The mix would vary across the residential part of the site.
18. The overall average density would be approximately 28 dwellings per hectare, excluding any dwellings provided within the mixed use local centre area. There would be three broad density bands, which respond to the distribution of facilities, the location of highways infrastructure and public transport routes, the disposition of open space and overall site context. The density bands proposed are: 35-40 dwellings per hectare close to the mixed use local centre and the centre of Branston village; 30-35 dwellings per hectare along the central spine road and central bus corridor; 20-25 dwellings per hectare along the landscape edge and green corridor.

## **Employment**

19. Employment development of up to 71,533 sq. metres of floorspace for Class B2 and B8 uses is proposed in the southern section of the first parcel.
20. It is indicated that a varied size of buildings could be provided in order to accommodate a range of market requirements, ranging from 372 sq. metres to 11,148 sq. metres in building footprint.

## **Local Centre**

21. A Local Centre is proposed to be set at the northern end of the first parcel, where the site meets Main Street. Around 600 sq. metres of retail floorspace (Classes A1, A2, A3, A4 and A5) is indicatively shown split into four units. In addition the Centre could accommodate residential units located above the retail floorspace, indicated as two 1-bedroom apartments and six 2-bedroom apartments.
22. The proposal would also provide a new car park set within a central square located adjacent to the edge of Main Street, as part of the existing centre<sup>16</sup>.

## **Open Space and Landscaping**

23. Land to the east of the railway line outside the site but under the control of the appellant is proposed to be set aside for public access and open space. Within this area new wildlife zones and scrub and woodland would be created, along with new footpath connections between the main areas of development and the open space, and also to the existing Trent Valley Way. Within this area east of the railway line the two areas making up the second parcel of the site would accommodate engineering work associated with flood protection, and improved access to the river by way of bank-top re-profiling to allow use of the river for recreation purposes.
24. A number of areas of public open space within the areas of built development are proposed. These are broken down as Equipped Areas of Play (0.1 hectare), Parks and Amenity Space (3.58 hectares), Allotments (0.47 hectare), Natural/Semi-

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<sup>16</sup> APP.8 Appendix 5

Natural Space (18.33 hectares), Outdoor Sports (1.7 hectare). The latter element is proposed within the fourth site parcel in the form of an improvement to the existing facilities at Clays Lane, or were agreement not to be reached with Branston Parish Council, by way of the alternative of 1.88 hectares of provision within the main site.

### **Highway Infrastructure**

25. The proposed highway infrastructure principally comprises two access points, one to the north of the site off Main Street/Acacia Lane, and one to the south by way of a direct link off the A38, with these joined within the site by a central spine road.
26. The access from Main Street/Acacia Lane would be restricted to residential traffic and buses only, with no HGVs or other commercial traffic associated with the employment floorspace allowed to travel north and exit the site from here. It is proposed to alter the Main Street/Acacia Lane junction in order to provide priority for vehicles leaving and entering the appeal site.
27. An existing access point to the site from the A38 would be upgraded to provide a left-in/left-out junction which would serve the employment area. This would be the only point of access/egress for HGVs and other commercial vehicles, but buses would be able to travel north and south along the spine roads and make use of both access points.
28. Off-site, the installation of traffic signals at the B5018/Main Street junction and improvement of the existing Branston and Barton Interchanges on the A38 would be provided for<sup>17</sup>.

### **PLANNING POLICY**

29. In the Statement of Common Ground<sup>18</sup> it is recorded that the Development Plan comprises the following:
  - Regional Spatial Strategy for the West Midlands (RSS), issued in January 2008
  - Saved Policies of the Staffordshire and Stoke-on-Trent Structure Plan 1996-2011, adopted in May 2001
  - Saved Policies of the East Staffordshire Local Plan, adopted July 2006.
30. On 20 May 2013, immediately before the close of the inquiry, the Order laid before Parliament on 24 April 2013 revoking the RSS and the Structure Plan came into effect, so that the Development Plan now comprises only the last of the above documents. For completeness, and to inform the references to the revoked parts of the Development Plan in the submitted evidence and application material, a brief summary of policies cited in the RSS and the Structure Plan as well as those in the Local Plan are set out below.

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<sup>17</sup> CDF.1 section 10.0; CDF.2

<sup>18</sup> CDF.1 section 6.0

## East Staffordshire Local Plan<sup>19</sup>

31. On adoption in 2006 the Plan was saved for a period of three years under the transitional arrangements set out in the Planning and Compulsory Purchase Act 2004. The Council subsequently received a Direction from the Secretary of State in July 2009 saving those policies which remain relevant until such time as they are replaced by the new Plan.
32. All of the land which is included within the appeal site is within the identified settlement boundary of Burton upon Trent on the Plan's proposals map<sup>20</sup>.
33. Policy CSP4 identifies Burton upon Trent and Uttoxeter as towns with scope for regeneration to assist economic recovery and diversification and to improve the physical environment. It confirms that the Local Plan emphasises locating new development in or close to the two towns during the Plan period.
34. Policy CSP5 indicates that where developments impose a burden on existing communities then developers will be expected to make provision for those burdens to be met. Provisions of the Local Transport Plan and the National Forest Strategy are identified as specific requirements to form part of negotiable infrastructural provision.
35. Policy NE14 sets out criteria for assessing the adequacy of planting schemes for sites within the National Forest boundary. Policy NE15 indicates that the implementation of planting and landscaping schemes for sites within the boundary will be secured by means of a condition or planning obligation or a combination of the two. Policy L2 generally seeks landscaping and greenspace in development schemes.
36. Policy BE1 sets out a number of detailed factors to which there will be regard in considering the design of new development. These include (h) adverse impacts on the immediate and general environment in terms of emissions and other impacts and any use of techniques or mechanisms to reduce those impacts.
37. Policy E1 indicates that the Council will ensure an adequate supply of employment land is available for development throughout the Plan period. This includes maximising the potential of the A38 and A50 transport corridors in suitable locations which do not undermine countryside protection policies and are easily accessible to public transport and existing infrastructure and facilities.
38. Policy E2 indicates that, at April 2005, the Council had 91 hectares of committed employment land. This included approximately 14 hectares on the appeal site, approved by planning permission reference OU/20180/004/PO<sup>21</sup>.
39. Policy H2 deals with large housing windfall sites, confirming that the release of sites will be managed by ensuring that previously developed sites are released before greenfield ones. Policy H6 considers housing design and density and indicates that applicants will be required to demonstrate how they have taken account of the need for good design by preparing a design statement. A net residential density of between 30 and 50 dwellings per hectare is encouraged for

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<sup>19</sup> CDB.6

<sup>20</sup> CDB.6a

<sup>21</sup> CDC.6

- the most efficient use of residential land. Policy H12 indicates that the inclusion of affordable housing will be sought on sites with a capacity of 25 or more dwellings.
40. Policy R14 confirms that the Council will approve the provision of local convenience retailing in existing, or proposed, residential areas where the scale of provision is to meet local needs.
  41. Under policy T1 development that would unacceptably harm the safety and efficient use of the highways network, or compromise the implementation of the Local Transport Plan Area Strategies, will not be permitted. Prior to new developments being permitted which would have a significant impact on the highway network but are otherwise acceptable, a condition will be made that no development shall be occupied or brought into use until highway works have been carried out. Agreements will be sought to provide undertakings to (a) make an appropriate contribution towards the cost of any necessary highway improvements; (b) provide a contribution towards the provision of public transport services, walking and cycling facilities arising as a result of the development, with the extent of what is required related in scale and kind to the development concerned; (c) prepare and implement a 'Green Travel Plan' encouraging alternative forms of transport from the private car.
  42. Policy T2 indicates that planning permission will not be granted for development which, by reason of its traffic generation or otherwise, would have a significant adverse impact on the trunk road network. Policy T3 goes on to provide specific guidance for proposals which may impact on the A38, including seeking contributions towards improvement where developments would have impact on traffic flows, requiring effective Green transport plans, and encouraging mixed-use development in the vicinity of the A38 to reduce the need for its use.
  43. Policy T6 sets out a series of criteria which should be considered in the design and layout of parking areas. Policy T7 sets out the Council's approach to the provision of car parking.
  44. Policy IMR1 provides a number of criteria for mixed use development proposals, as follows: (a) compliance with policy BE1 and other environmental policies in the Plan; (b) optimising the employment opportunities of the site, taking account of location, accessibility, and the quality and quantity of employment offered; (c) no loss of a strategically important employment site; (d) not creating a risk that housing provision would exceed the Structure Plan requirement or adversely affect the balance of housing provision in the Borough; (e) compliance with retail policies; (f) within the National Forest the inclusion of a level of planting that reflects that location; and (g) a Transport Assessment on a level commensurate with the proposal's scale, complexity and likely traffic generation.
  45. Policy IMR2 confirms that the Council will seek to enter Legal Agreements with developers to secure provisions to overcome any impacts associated with the proposed development.



## **Regional Spatial Strategy for the West Midlands (RSS)<sup>22</sup>**

46. Outside the Major Urban Areas, the RSS identified a network of 'Other Large Settlements' and 'Strategic Centres', with Burton upon Trent falling in both categories.
47. Policy UR2 required that local authorities and other agencies should seek to improve prospects in local regeneration areas by bringing forward policies and programmes, with Burton upon Trent identified as one of 12 such areas in the Region.
48. Under policy CF2 strategic housing development beyond the Main Urban Areas should be in those locations which are capable of balanced and strategic growth, with policy CF3 setting out rates for provision of additional dwellings. Policy CF5 considered the delivery of affordable housing and mixed communities and provided guidance on assessing need and setting local requirements.
49. Policy PA6 required a range and choice of readily available employment sites to meet the needs of the regional economy to be provided and maintained.
50. Policy QE3 required that development plans should promote the creation of high quality built environments. Policy QE4 dealt with the provision of greenery, urban greenspace and public spaces, and confirmed that local authorities should undertake an assessment of local need and audits of local provision in order to develop strategies for the adequate provision of accessible, high quality greenspace.
51. Policy EN2 required that development plans should include measures to minimise energy demands from new development.
52. Policy T2 set out that local authorities and developers should work together to reduce the need to travel, especially by car. It provided a series of measures for reducing the length of journeys. Policy T3 confirmed that development plans should provide greater opportunities for walking and cycling. Policy T4 noted that local authorities and transport operators should work together to develop travel and transport strategies to increase the awareness of alternative travel choices and reduce levels of car use.
53. A Phase 2 Revision of the RSS<sup>23</sup> was commenced but not proceeded with.

## **The Staffordshire and Stoke-on-Trent Structure Plan<sup>24</sup>**

54. Policy D1 in the Structure Plan set out that sustainable forms and patterns of new development would be sought.
55. Policy D2 indicated that development should generally conserve and, where possible, improve the quality of life and the environment, with a number of measures set out to this effect.
56. Policy D3 identified the regeneration of urban areas as a fundamental requirement of a sustainable strategy, to be achieved by supporting initiatives

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<sup>22</sup> CDB.4

<sup>23</sup> CDB.14

<sup>24</sup> CDB.5

- which would enhance the image, create vitality and improve safety, comfort and environmental quality of urban areas. Local authorities should continue to bring forward schemes which achieve a number of key criteria, including assisting access to employment; encouraging new investment; reclaim and reuse derelict and contaminated land; improve the availability and quality of new housing; and create, protect and improve areas of wildlife value.
57. Policy D6 confirmed that the best and most versatile agricultural land would be protected from any form of development.
58. Policy D8 required that, where appropriate, development schemes should be accompanied by the provision of necessary on- and off-site infrastructure, community services, and/or mitigating measures.
59. Under Policy H4 provision should be made for sites suitable for a wide range of dwellings to meet differing and changing housing needs. Proposals for large residential schemes should include as wide a mix of dwelling types, sizes and affordability as possible to increase choice within the local area and reduce the likelihood of social exclusion.
60. Policy NC6 required that in considering or formulating proposals for development or land use change, planning authorities should ensure, wherever possible, that damage to important semi-natural habitats or other features or sites of significant nature conservation or geological value is avoided.

### **Emerging East Staffordshire Local Plan<sup>25</sup>**

61. The East Staffordshire Local Plan is under preparation. The Council consulted on Strategic Options for the Plan in Autumn 2011, and a Preferred Option was developed. This was published for consultation in July 2012, together with an Interim Sustainability Appraisal of the Preferred Option, and comments were invited for submission by 21 September 2012.
62. Chapter 5 of the emerging Plan confirms that five Spatial Options were considered by the Council and tested by the Sustainability Appraisal. Of these, Option 2 – urban extensions to Burton and Uttoxeter plus development in the villages, was identified as the most sustainable, and is the Preferred Option.
63. In considering the Preferred Spatial Strategy, four further options were considered by the Council. Option 2d – concentrating growth in the South of Burton and some development in Uttoxeter and strategic villages, was considered to be the most sustainable. This Option identifies an arc of land, which includes the appeal site, to the south and west of Burton for the delivery of housing and employment. Table 1 identifies the appeal site (Land South of Branston) together with Lawns Farm Sustainable Urban Extension as one of a number of sites which would best deliver the Preferred Strategy, with this location capable of providing 2,750 residential units and 20 hectares of new employment.
64. Paragraph 5.119 of the emerging Plan suggests that between 2012 and 2031 the Council will need to plan for 8,935 houses. This figure derives from the report 'Housing Requirement and Strategic Housing Market Assessment' (July 2012) by

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<sup>25</sup> CDB.12

GVA/Edge Analytics<sup>26</sup>. A review of these figures by GVA is being undertaken by the Council, to address objections submitted to the Preferred Option consultation in 2012 and in response to Census 2011 data releases and the Council's emerging employment strategy<sup>27</sup>. These figures were unavailable at the time of the inquiry, but will form part of the evidence base to support the next iteration of the Local Plan, due for publication in October.

65. Overarching Principle 1 sets out that, when considering development proposals, the Council will take a positive approach that reflects the presumption in favour of sustainable development contained in the National Planning Policy Framework. Policy SP1 confirms the principles of the Preferred Strategy, including the Strategic Allocation of the Land South of Branston and Lawns Farm site (referred to in the policy as 'Strategic Area - mixed use').
66. Policy SP3 requires high quality design for all development, in line with the Design Guide Supplementary Planning Document and the national place shaping agenda.
67. Policy SP5 indicates that planning permission will be granted for development where it will not cause significant harm to the safe and efficient use of the highways network, or significant harm to the environment adjacent to the highway network, or measures to satisfactorily prevent the harm occurring are implemented as part of the development. The policy also sets out a series of measures that larger developments will normally have to provide.
68. Policy SP6 seeks an overall gain for green infrastructure through the protection of and enhancement of existing assets and the creation of new multi-functional areas of green space. Policy SP7 sets out expectations for the provision of open space as part of new development.
69. Policy SP8 deals with the mix of housing to be provided on a site. Policy SP9 sets out the approach to securing the provision of affordable housing as part of new residential development. Policy SP11 requires a mix of employment uses on strategic sites.
70. Policy SP13 deals with proposals for new community facilities. Policy SP17 supports planting and landscaping. Policy SP18 sets out the approach to dealing with proposals in areas of flood risk. Policy SP20 contains measures to protect, maintain and enhance biodiversity and geodiversity.
71. Policy DP1 contains expectations with regard to the design of new development in the Borough. Policy DP3 provides more specific guidance on the design of new residential development.
72. Policy DP6 confirms that proposals for local convenience shopping will normally be granted where the scale of provision is to meet local needs only, the site is readily accessible on foot or by bicycle and where the proposal would, in all other respects, be compliant with the Design Guide and other relevant policies in the development plan.

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<sup>26</sup> CDD.5

<sup>27</sup> APP.3 Appendix 3

## Supplementary Planning Documents

73. The following Supplementary Planning Documents have been adopted by the Council.
74. The *Open Space SPD* (September 2010)<sup>28</sup> expands on Saved Local Plan policies relating to the provision of open space as part of new developments, the protection of existing open space and sports pitches and new planting as part of the National Forest.
75. The *Design Guide SPD* (September 2008)<sup>29</sup> promotes high quality design in new development across East Staffordshire. It explains the Council's approach to urban design in line with national planning policy, seeking to establish ground rules and encourage better practice.
76. The *Housing Choice SPD* (December 2010)<sup>30</sup> aims to ensure that new residential developments meet the housing needs and aspirations of the Borough.

## Draft Land South of Branston Development Brief<sup>31</sup>

77. A draft Development Brief has been prepared for the appeal site by the Council with input from the landowners. It was published by the Council for consultation in June 2011. The Brief provides a series of Development Principles to shape and guide a high quality development of the site. It is intended to be used by the Council as part of the evidence base for the emerging Local Plan and in the determination of any planning applications on the site.

## National Policy

78. The appeal application was submitted prior to the publication of the National Planning Policy Framework in March 2012. A subsequent Addendum to the Planning Statement in support of the application addressed the contents of the Framework in relation to the proposal<sup>32</sup>.
79. In addition to the Framework, relevant national policy is set out in 'The Planning System: General Principles' and Circular 11/95 'The Use of Conditions in Planning Permissions'. The advice in Manual for Streets and Manual for Streets 2 is also referred to in evidence.

## PLANNING HISTORY<sup>33</sup>

80. The site has been the subject of a number of planning applications. It was historically split into two parcels, with Tatenhill Brook forming the dividing line between these.
81. Outline planning permission was granted on 8 March 1993 for a maximum of 50 dwellings and B1, B2, B8 uses on the northern part of the site, with access from a new interchange on the A38 (reference OU/20679/001<sup>34</sup>). Reserved matters

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<sup>28</sup> CDB.9

<sup>29</sup> CDB.7

<sup>30</sup> CDB.8

<sup>31</sup> CDD.4

<sup>32</sup> CDA.55

<sup>33</sup> CDF.1 section 5.0

<sup>34</sup> CDC.1

for the residential element of this permission were approved in 1997 and 1998 (references RM/20679/005 and RM/20679/008<sup>35</sup>). The dwellings have since been built and occupied. The balance of the outline planning permission has been subject to a number of renewals, the most recent of which was in 2004 (reference PC/20679/019<sup>36</sup>). This permission expired on 5 August 2011.

82. Outline planning permission was granted on 4 February 1991 (reference OU/20180/001<sup>37</sup>) on land south of the Tatenhill Brook for B1, B2 and B8 development. A further outline planning permission (reference OU/20180/004<sup>38</sup>) was granted on 6 August 2004. This covered 13.27 hectares of land and included proposals for a grade separated junction off the A38. A Reserved Matters application pursuant to the 2004 outline permission was made in August 2007, but to date has not been determined by the Council.
83. The appellant has recently submitted a further planning application for the same development as the appeal scheme to the Council<sup>39</sup>. This re-submission has not yet been determined<sup>40</sup>.

### **AGREED MATTERS**

84. A number of areas of agreement set out in the Statement of Common Ground between the appellant, the Council and Staffordshire County Council<sup>41</sup> can be noted. In summary these are:
- 1) The principle of the development is acceptable, with the site located within the development boundary of Burton upon Trent.<sup>42</sup>
  - 2) Additional work is required to re-assess the housing requirement figure in the emerging Local Plan in the light of new information.<sup>43</sup>
  - 3) The proposal would deliver a mix of uses including community facilities which are accessible to the proposed new community, with a positive impact on the area.<sup>44</sup>
  - 4) Saved Local Plan policy H2 does not prevent the development of greenfield land and the reference to meeting the Structure Plan target is out of date.<sup>45</sup>
  - 5) The proposal is entirely consistent with the Council's emerging strategy and vision for the future development of the Borough and would deliver a significant amount of growth assigned to Burton upon Trent.<sup>46</sup>
  - 6) The level of open space provided is over and above that required by the Open Space SPD and also provides the necessary 30% National Forest provision.<sup>47</sup>

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<sup>35</sup> CDC.2 and CDC.3

<sup>36</sup> CDC.4

<sup>37</sup> CDC.5

<sup>38</sup> CDC.6

<sup>39</sup> APP.1 paras 2.15-2.17

<sup>40</sup> A target Committee date of 17 June was advised by Mr Sitch

<sup>41</sup> CDF.1

<sup>42</sup> CDF.1 paras 7.1 & 7.5

<sup>43</sup> CDF.1 para 7.10

<sup>44</sup> CDF.1 para 7.13

<sup>45</sup> CDF.1 para 7.15

<sup>46</sup> CDF.1 para 7.17

- 7) The illustrative principles for the Local Centre show an appropriate layout and would create a more formal village centre complementing existing retail units opposite, and improving pedestrian and vehicular relationships in this area.<sup>48</sup>
- 8) Subject to this element being completed in accordance with the detailing and character areas defined within the submitted Design and Access Statement, the proposal would be of sufficiently high quality.<sup>49</sup>
- 9) Subject to the provision of structural landscaping, the form of development in the employment area would be visually acceptable in this location.<sup>50</sup>
- 10) The proposal is capable of providing acceptable living conditions for both new and existing residents (except that traffic impact is a disputed matter, as dealt with in the cases below).<sup>51</sup>
- 11) The site is in a sustainable location and the development would provide improved local amenities and bus services to the benefit of existing and future residents, with the Travel Plan encouraging full use of sustainable means of transport.<sup>52</sup>
- 12) The area of the site to the west of the railway line falls predominantly in flood zone 2. Hydraulic modelling suggests that with agreed remediation works the development would not be at risk of flooding nor cause any increased risk to the surrounding area, and would reduce the risk of flooding to the A38.<sup>53</sup>
- 13) With appropriate mitigation to deal with contamination and dust, the development could be implemented without causing harm to human health.<sup>54</sup>
- 14) The development would result in substantial benefits for biodiversity, increase the diversity of habitats available and mitigate against the loss of habitats, having a long term positive impact.<sup>55</sup>
- 15) The proposal meets all necessary open space and leisure provision requirements, except for a small under provision of outdoor sports pitches if provided for off site, which is acceptable. Improved open space opportunities would be provided to the east of the railway.<sup>56</sup>
- 16) There is also agreement with respect to planning obligations, including on affordable housing and education<sup>57</sup>, which are dealt with below under the appropriate headings.

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<sup>47</sup> CDF.1 para 8.9

<sup>48</sup> CDF.1 para 8.10

<sup>49</sup> CDF.1 para 8.11

<sup>50</sup> CDF.1 para 8.12

<sup>51</sup> CDF.1 para 9.4

<sup>52</sup> CDF.1 para 10.12

<sup>53</sup> CDF.1 paras 11.2-11.5

<sup>54</sup> CDF.1 paras 12.3-12.6

<sup>55</sup> CDF.1 paras 13.2-13.4

<sup>56</sup> CDF.1 paras 14.2-14.6

<sup>57</sup> CDF.1 sections 15.0 & 16.0

85. There is a separate Statement of Common Ground on highways matters between the appellant and the County Council as local highway authority<sup>58</sup>. This sets out agreed matters relating to access arrangements and trigger points on mitigation.
86. The summaries of cases of the main parties now set out are based on the closing submissions<sup>59</sup> supplemented by the opening submissions<sup>60</sup> and written and oral evidence, with references given to relevant sources.

## THE CASE FOR ST MODWEN

### Introduction

87. The proposal is a mixed use development of the kind actively encouraged by the National Planning Policy Framework. It would deliver a substantial amount of employment floorspace in an area of recognised demand<sup>61</sup>. This is anticipated to be able to create a total of around 1,100 full time equivalent jobs<sup>62</sup>. The proposal would also deliver up to 660 new homes in a Borough which has been awarded Growth Point Status and does not have a five year housing land supply, with a significant shortfall. The proposal would also deliver a large amount of open space, particularly to the east of the railway line.
88. St Modwen is the largest redevelopment company in the UK, and is a major developer of employment floorspace<sup>63</sup>. This proposal represents a significant investment in the area and is a substantial economic development opportunity. It would deliver a wide range of economic benefits, which are uncontested<sup>64</sup>. In recent decisions the Secretary of State has made clear that weight should be given to the need to secure economic growth and employment and that this is further supported in the Framework<sup>65</sup>.
89. The site is identified as appropriate for mixed used development in the Council's emerging Local Plan<sup>66</sup>, and the proposal accords with the content of that Plan.
90. The professional planning officers of the Council recommended that planning permission be granted for the proposal<sup>67</sup>. No criticism was made by the Council's witness of the officer's report<sup>68</sup>. He also accepted that all of the development is to be welcomed.
91. St Modwen is very keen to implement the development of the site. Significant progress has already been made in respect of the new A38 junction<sup>69</sup>, which is required so that it can open up the development of the employment land. The same urgency applies to the housing development, with matters progressing fast on this<sup>70</sup>. Architects have already been commissioned to draw up the layout

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<sup>58</sup> CDF.2

<sup>59</sup> LPA.3 & APP.12

<sup>60</sup> LPA.2 & APP.10

<sup>61</sup> APP.3 Appendix 10

<sup>62</sup> APP.1 p16 Table 1

<sup>63</sup> APP.3 Appendix 9

<sup>64</sup> APP.3 Appendix 11

<sup>65</sup> For example CDE.4 para 31

<sup>66</sup> CDB.12 policy SP1

<sup>67</sup> APP.3 Appendix 2

<sup>68</sup> Cross-examination of Councillor Hall

<sup>69</sup> APP.6 paras 10.4-10.5; APP.8 Appendix 16

<sup>70</sup> APP.1 paras 6.13-6.14

plans for the reserved matters approval of much of the first phase of residential development<sup>71</sup>, and these plans have been the subject of meetings with officers. St Modwen now has a house building arm (St Modwen Homes), and there has also been discussion with Persimmon and Charles Church (both part of the same company) on the development of the site. Delivery of new homes should not be delayed by a need to await the Highway Agency's final approval of the A38 junction, but the appellant is willing to limit development to 150 dwellings until that access is opened.

92. Nearly all of the planning issues relating to the development are agreed between the parties, as recorded in the Statements of Common Ground<sup>72</sup>. Given the scale of the proposal, the issues between the parties are exceptionally narrow. The Council's non determination of the application has already created nearly a year's delay. In the context of the wording of paragraph 14 of the Framework and the various Ministerial Statements made in the last few years, the appellant is very hopeful that the Secretary of State will not compound the delay when there is so little in dispute.

### **Development Plan**

93. With the revocation of the West Midlands Regional Spatial Strategy and the saved policies of the Staffordshire and Stoke-on-Trent Structure Plan on 20 May 2013, the Development Plan thereafter comprises only the saved policies of the East Staffordshire Local Plan 2006.
94. Under paragraph 215 of the Framework, from 28 March 2013 due weight should be given to 'saved' policies in existing plans according to their degree of consistency with the Framework. The lack of a five-year housing land supply within East Staffordshire and the guidance at paragraph 49 of the Framework means that "*relevant policies for the supply of housing should not be considered up-to-date*". This matter has not been contested by the Council.
95. The Framework goes on to indicate that, in this situation, permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework or specific policies indicate development should be restricted (paragraph 14).
96. The professional officers of the Council recommended approval of the application on the basis there was no conflict with or departure from the Local Plan<sup>73</sup>. The only Local Plan policies identified by the Council's witness are BE1, T1 and T2<sup>74</sup>. The latter relates to the strategic road network, with which no conflict was alleged. Policies BE1 and T1 are considered below.
97. When considering the question of accordance with the development plan, it is necessary to look at the plan as a whole<sup>75</sup>. The appeal scheme accords with the

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<sup>71</sup> APP.5 para 8.4; Appendix 12; APP.11

<sup>72</sup> CDF.1 & CDF.2

<sup>73</sup> APP.3 Appendix 2 para 8.2.11

<sup>74</sup> LPA.1

<sup>75</sup> Sullivan J in R v Rochdale Metropolitan Borough Council ex parte Milne [2000] with respect to the provisions of Section 38(6) of the Planning and Compulsory Purchase Act 2004



- Local Plan<sup>76</sup> taken as a whole, allowing for the fact that development plan policies often seek to achieve competing objectives.
98. The site benefits from inclusion within the defined development boundary for Burton upon Trent and this confirms the principle of development for the site. The absence of a five year housing land supply strengthens the weight to be given to that boundary in this location.
99. The proposal accords with the Burton upon Trent regeneration objectives of policy CSP4 in terms of location, form of development through the creation of new housing and employment, and improvement of the environment.
100. With respect to policy CSP5, the proposal would bring with it many benefits, but the need to accommodate traffic will be seen by some as a burden on the community. To the extent that this is judged to be the case, the scheme would provide mitigation appropriate to the development, and this is accepted by the professional officers of the Council, the County Council's Highways and Education sections, and the Highways Agency. Indeed, no statutory consultees have raised an objection<sup>77</sup>. The Council's witness expressly welcomed the proposed improvements to Main Street, the car parking, the housing and jobs<sup>78</sup>. The proposal accords with policy CSP5.
101. In the context of policies NE14 and NE15 which deal with the National Forest, the proposal has full support from the Local Plan and is welcomed by the National Forest Company<sup>79</sup>.
102. It is accepted that policy BE1 is consistent with the Framework. The form of development is dealt with in some detail in the submitted Design and Access Statement<sup>80</sup>, and the principles it contains would be controlled by planning condition. In relation to criterion (h), it is not accepted that the proposal would give rise to '*adverse impacts*'. For the reasons given below, and with the mitigation agreed at the time of the Committee report, there is conformity with policy BE1.
103. Policy E1 supports the employment element of this mixed use scheme, including maximising the potential of the A38 transport corridor.
104. It is common ground that that policy H2 does not prevent the development of greenfield land<sup>81</sup>. Whilst it is not brownfield land the site shares many of the same characteristics, and has a low agricultural grade<sup>82</sup> because of the presence of pulverised fuel ash from infilling<sup>83</sup>. The reference in the policy to meeting the Structure Plan target is out of date. The policy was drafted in the context of the search sequence in PPG3. That policy has now been abandoned at the national level and there is no such previously developed land/greenfield search sequence

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<sup>76</sup> CDB.6

<sup>77</sup> APP.3 Appendix 2 section 4.0

<sup>78</sup> Cross-examination of Councillor Hall

<sup>79</sup> APP.3 Appendix 2 section 4.0

<sup>80</sup> CDA.14

<sup>81</sup> CDF.1 para 7.15

<sup>82</sup> CDA.54

<sup>83</sup> CDA.25

- in the Framework. The Secretary of State made his position clear on this matter in another appeal<sup>84</sup>.
105. The proposal accords with policy H6 in terms of the design and layout put forward. In relation to the housing densities element of the policy, this does not accord with the Framework, which removes the minimum density requirement. The Council has not suggested there is any conflict with this policy.
106. The proposal is in full accordance with policy H12 and the Council's Housing Choice SPD<sup>85</sup>, with the provision of 15% affordable housing. This would be secured by way of the Section 106 Agreement<sup>86</sup>, which was agreed by the Council's Housing Strategy Manager.
107. The proposal complies with policy R14 through provision of additional shopping facilities within an established retail centre of an appropriate scale adjoining existing shopping facilities, which would be readily accessible on foot and by bicycle.
108. The test in policy T1 on highways impact requires the Council to identify significant harm. No evidence of such harm has been given by the Council. The policy needs to be read in light of paragraph 32 of the Framework. The Council's witness alleges<sup>87</sup> that the cumulative impact of the development would be severe, but he presented no evidence to support that bare assertion. There are no statutory objections from the Local Highway Authority or the Highways Agency. No highways expert has supported the Council's position on this matter. Increased traffic does not correlate to increased highway safety problems<sup>88</sup>. The proposal would provide for necessary mitigation in a form and at a time agreed by the relevant statutory bodies. The Borough's Councillors failed to appreciate that the mitigation would represent an improvement over the present situation, a point accepted by the Council's witness at the inquiry<sup>89</sup>.
109. The proposal complies with policy T2 in that there are no statutory objections and there would be no significant adverse effect on the A38, which was also accepted by the Council's witness<sup>90</sup>.
110. With respect to policy T6, the proposal would provide additional much needed and welcome car parking to serve Main Street centre, especially at school drop off and pick up times. The design and layout of these areas would accord with the criteria in the policy. The proposal would also provide for parking at a level appropriate to the location of the site and the scale of development proposed, as required by policy T7.
111. Considerable work has been undertaken with the Council in relation to the provision of landscaping and greenspaces to ensure an appropriate quality and quantum would be delivered, including National Forest woodland planting, thus according with policy L2.

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<sup>84</sup> CDE.5 paras 14 and 17

<sup>85</sup> CDB.8

<sup>86</sup> CDF.6

<sup>87</sup> LPA.1

<sup>88</sup> APP.6 para 9.10

<sup>89</sup> Cross-examination of Councillor Hall

<sup>90</sup> Cross-examination of Councillor Hall

## The Framework

112. Given that the Local Plan is time expired, the guidance in the Framework has particular significance for the appeal, especially in terms of meeting the need for new employment land and housing. The proposal responds positively to its principles of growth and the presumption in favour of sustainable development<sup>91</sup>.
113. As noted above, the relevant policies relating to housing supply in the Local Plan are plainly out of date. As such planning permission should be granted when the proposal is assessed against the Framework as a whole. None of the identified exceptions<sup>92</sup> to the presumption in favour of sustainable development apply in this case.
114. Other than bare assertion, the Council has not provided evidence to substantiate its claim of adverse harm, and in any case this perceived harm is demonstrably outweighed by the benefits the scheme would deliver. These benefits such as new homes and jobs, and additional car parking to serve Main Street, were confirmed by its witness to be welcomed<sup>93</sup>. There would be gains across the full range of economic, social and environmental aspects of sustainable development in full accordance with paragraphs 7, 8 and 9 of the Framework<sup>94</sup>. The proposal complies with the 12 principles set out at paragraph 17, in particular through securing high quality design, a mixed use development, and the fullest possible use of public transport, walking and cycling.
115. The mixed use nature of the proposal fully responds to the Government's commitment to securing economic growth in order to create jobs and prosperity at paragraphs 18-21.
116. Careful consideration has been given to the approach to sustainable transport as sought by paragraph 29. In accordance with paragraph 32 a Transport Assessment<sup>95</sup> has been submitted, and discussed both at a pre-application and post-submission stages with the relevant statutory consultees. Safe and suitable accesses and appropriate mitigation as necessary would be provided. The Council has presented no expert evidence to demonstrate that the development would give rise to '*severe impacts*'. The Travel Plan proposed as part of the Section 106 Agreement<sup>96</sup> is in full accordance with paragraph 36.
117. Paragraph 47 recognises the need to '*boost significantly*' the supply of new housing. The Council has accepted in writing that it is not in a position to demonstrate a five year housing land supply and does not expect this position to change<sup>97</sup>. Its witness claimed that there was no authority for the officer to have made that statement<sup>98</sup>. However, it was plainly made in trying to save the Council costs in respect of arguing that it had a five year supply of housing land when it does not. By presenting no evidence on the matter, the officers have significantly assisted in reducing the time required to conduct the inquiry and

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<sup>91</sup> Ministerial forward and para 14

<sup>92</sup> Footnote 9 of NPPF

<sup>93</sup> Cross-examination of Councillor Hall

<sup>94</sup> APP.1 para 11.4

<sup>95</sup> CDA.15; CDA.56

<sup>96</sup> CDA.18 & CDF.6

<sup>97</sup> APP.3 Appendix 4

<sup>98</sup> Cross-examination of Councillor Hall

- potentially saved the Council considerable expense in so doing due to the vulnerability to a costs award for all the work involved<sup>99</sup>.
118. The Council accepts that the housing requirement for the Borough is more in line with the West Midlands Regional Spatial Strategy Phase 2 Revision Panel Report figure of 13,000 new dwellings over a 20 year period, although this covered the period 2006 to 2026<sup>100</sup>. That is agreed<sup>101</sup>. With abolition of the RSS there will be no further progress with the draft Revision. However, it is not the document itself which is important but the evidence base which supported the figures. This was subject to independent scrutiny by a panel of experts.
119. The appellant's position is that the correct housing requirement can be found in either the WMRSS Phase 2 Revision or Barton Willmore's Open House Report<sup>102</sup>. The latter suggests a figure of 10,500 for the period from 2012 to 2031<sup>103</sup>. These alternatives represent full and objective assessments of need. The former has the benefit of independent testing by a Panel of experts, whilst the latter is based on more up to date household projections (DCLG 2008). The lower of the two figures, which is that set out in Open House report, should be adopted if a decision between the two is to be made<sup>104</sup>.
120. The requirement figure in the Council's Preferred Option document of 8,935 dwellings<sup>105</sup> is not credible. This figure can be readily rejected since the Council has indicated that it will not be adopted and GVA have been instructed to revisit the figures<sup>106</sup>. That work has not been made available to the inquiry, but knowing that officers believe the requirement should be closer to the draft RSS Review<sup>107</sup> makes it plain that both the 13,000 and 10,500 figures are far more appropriate and realistic.
121. The Council has not sought to rely on the latest 2011 household projections. The problem these present is that they only address a 10 year period and therefore are of limited value in the context of a housing requirement looking to 2031. It is not necessary to explore other criticisms of these figures since they did not form part of the evidence before the inquiry.
122. The Council has a record of persistent under delivery of housing and a buffer of 20% should be applied<sup>108</sup>. This evidence is not contested.
123. The Appellant's evidence uses the Sedgefield method of addressing the historic shortfall. In three cases the Secretary of State has adopted that as the preferred approach<sup>109</sup>, and the Council has not contested it.
124. In the context of paragraph 48 and windfalls the appellant's assessment has taken a reasonable approach, having allowed for deliveries in years 3, 4 and 5<sup>110</sup>.

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<sup>99</sup> For example see APP.14

<sup>100</sup> APP.1 para 9.2

<sup>101</sup> APP.1 sections 9.0 & 10.0

<sup>102</sup> APP.1 para 10.9

<sup>103</sup> APP.1 Table 2 p22

<sup>104</sup> Evidence in chief of Mr Sitch, consistent with CDE.1 para 13.17

<sup>105</sup> CDB.12

<sup>106</sup> APP.3 Appendix 3

<sup>107</sup> APP.3 Appendix 4

<sup>108</sup> APP.1 paras 9.28-37

<sup>109</sup> APP.4 Appendices 29, 30 & 31(para 36)

- In years 1 and 2 such sites should already have been identified and secured permission.
125. Significantly, paragraph 49 is engaged. The Council has confirmed in writing that it does not have a five year housing land supply<sup>111</sup>. The claim of its witness to the contrary<sup>112</sup> was unsupported by any tangible or meaningful evidence and created confusion. He was completely unable to assist the inquiry with key elements of the calculation such as the application of a buffer or the appropriate method of dealing with the shortfall. Little weight should be attached to his belief that the figure of 6.02 years which appeared in the March 2013 Committee Report on the application<sup>113</sup> still stands.
126. The relevant policies for the supply of housing should not be considered to be up to date. Significant weight should be attached to the absence of a five year land supply and the sheer scale of this shortfall. This ranges from 0.85 years (based on the draft RSS Review) to 1.41 years (Open House) based on sites with planning permission<sup>114</sup>. Relying only on such sites is the safest way not to overstate the supply. However, it is accepted that footnote 11 of the Framework suggests that other sources of supply should also be looked at, and this has also been done. If all sources of supply are considered, including windfalls and other sites the Council would seek to rely upon, then the supply increases to a range from 1.79 years (draft RSS Review) to 2.03 years (Open House). These figures are based on: Barton Willmore's discounting of the supply to reflect accurate lead in times and delivery rates, which are again uncontested; the application of a 20% buffer; and adoption of the Sedgefield method of dealing with the accumulated historic shortfall.
127. Numerous decisions of the Secretary of State have demonstrated that a shortfall is a matter to which significant weight should be given. The overall scale of the shortfall must be relevant to the weight it is accorded, with weight increasing with its size and seriousness<sup>115</sup>. Based on the uncontested figures set out above, the shortfall in East Staffordshire can be described as a crisis<sup>116</sup>. Officers at least appear to recognise that there is a very serious problem in the supply of new homes, even if the Councillors as demonstrated by the evidence of the Council's witness do not seem willing to do so.
128. The proposal accords with paragraph 50 on the delivery of a wide choice of quality homes, including affordable housing in compliance with the Council's policies<sup>117</sup>. The submitted Design and Access Statement<sup>118</sup> sets out the principles for delivering a high quality design and layout in full accordance with paragraphs 56-58.
129. The proposal provides for public open space, including play space, and the opportunity for enhancements to existing facilities, together with additional retail
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<sup>110</sup> APP.1 paras 9.42-44

<sup>111</sup> APP.3 Appendix 4

<sup>112</sup> Cross-examination of Councillor Hall

<sup>113</sup> APP.3 Appendix 2 para 8.2.7; APP.4 Appendix 26

<sup>114</sup> APP.1 pp 43-44

<sup>115</sup> For example CDE.6 para 40 (IR para 105)

<sup>116</sup> Evidence in chief of Mr Sitch

<sup>117</sup> APP.1 paras 11.17-20

<sup>118</sup> CDA.14

space and significant recreational space (to the east of the railway line)<sup>119</sup>. It thus responds positively to the promotion of healthy communities at paragraphs 69 and 70.

130. Agreement has been reached with the Environment Agency and Severn Trent Water<sup>120</sup> in relation to the location and delivery of the development. The site is included in the emerging Local Plan as the Preferred Option, and the evidence base for this considers flood risk, including the sequential test, in accordance with paragraphs 100-101. The application was supported by a Flood Risk Assessment which also considered the sequential test<sup>121</sup>. In the context of paragraph 103, the flooding and drainage strategy would provide for significant improvements in the local area including the A38.
131. The proposal accords with paragraph 118 through assessment and the carrying out of appropriate Ecological Surveys<sup>122</sup>, and no objection has been raised by Natural England or Staffordshire Wildlife Trust<sup>123</sup>. Updated ecological evidence has been provided<sup>124</sup> to ensure that all the necessary information is available.
132. Reference has been made to the inclusion of the main site within a Minerals Consultation Area, and this has been dealt with<sup>125</sup> in relation to paragraph 142 of the Framework. Staffordshire County Council raised no objection to the proposal<sup>126</sup>.
133. Paragraphs 158-161 of the Framework address the evidence base for Local Plans. The appellant has sought to provide up to date and relevant evidence to support the proposal in respect of both housing need<sup>127</sup> and the need for employment floorspace<sup>128</sup>.
134. With respect to pre-application engagement and front loading (paragraph 188), this has been significant between the appellant and the professional officers of the Council, the County Council, the Highways Agency, the Environment Agency and Staffordshire Wildlife Trust. The inquiry was not troubled by all of the work involved on these matters, but it is right to record that the appellant has devoted significant time and resources in progressing this large scale proposal to a stage when it might start to deliver development and economic growth.
135. Draft planning conditions and the obligations set out in the Section 106 Agreement have been the subject of considerable discussion with relevant officers and statutory consultees to meet the relevant tests, set out at paragraphs 204-206 and the CIL Regulations.

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<sup>119</sup> APP.1 paras 11.27-29

<sup>120</sup> APP.2 Appendix 2 section 4.0

<sup>121</sup> CDA.23; CDA.24; APP.5 Appendix 6

<sup>122</sup> CDA.32-38

<sup>123</sup> APP.3 Appendix 2 section 4.0

<sup>124</sup> CDA.57

<sup>125</sup> APP.5 p11 and Appendix 8

<sup>126</sup> APP.3 Appendix 2 section 4.0

<sup>127</sup> APP.4 Appendix 38

<sup>128</sup> APP.3 Appendix 10

## The Emerging East Staffordshire Local Plan

136. The emerging Local Plan<sup>129</sup> has not yet been submitted or tested through an Independent Examination and there are outstanding objections (both in terms of the overall level of housing provision and the approach to the distribution of housing) which are yet to be reviewed or resolved. In accordance with the provisions of the Framework and The Planning System: General Principles (paragraph 18), the emerging Plan therefore has limited weight. However, it is material consideration, particularly in the absence of any up to date Local Plan or LDF addressing the present needs of the Borough in terms of the adequate provision of housing and employment. The proposal responds positively to the priorities identified in the Plan on these matters.
137. The proposal accords with a number of the Strategic Objectives of the emerging Plan, including cohesive communities (objective 1), housing choice (objective 3), accessibility and transport infrastructure (objective 4), economic diversification (objective 8), flood risk (objective 11), and prudent use of resources (objective 12).
138. As well as benefitting from being within the settlement boundary, the appeal site is within a proposed urban extension to Burton forming part of Option 2, which has been identified as the most sustainable. Option 2d, again the most sustainable, identifies an arc of land (Land South of Branston), including the appeal site, to the south and west of Burton for the delivery of housing and employment, providing a broad figure of 2,750 new homes and 20 hectares of new employment provision for this area<sup>130</sup>.
139. Paragraph 5.132 considers the draft strategic allocation and the proposal responds positively to each of these matters.
140. As set out in Overarching Principle 1, the proposal is an application that accords with the draft Plan and should be approved without delay.
141. The proposal complies with policy SP3 through the delivery of high quality design, as explained in the Design and Access Statement<sup>131</sup> which has regard to the East Staffordshire Design Guide SPD<sup>132</sup>. This view is shared by the professional officers of the Council<sup>133</sup>.
142. With the mitigation proposed, the scheme would not cause significant harm to the safe and efficient use of the highway network or the environment adjacent to the highway network under policy SP5. That is a view shared by the professional officers of the Council, Staffordshire County Council and the Highways Agency<sup>134</sup>.
143. Policy SP6 is fully complied with through significant gains in green infrastructure for the new residents and existing wider community. This is agreed by the professional officers of the Council<sup>135</sup>, the National Forest Company

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<sup>129</sup> CDB.12

<sup>130</sup> Table 5.1, confirmed in policy SP1

<sup>131</sup> CDA.14

<sup>132</sup> CDB.7

<sup>133</sup> APP.3 Appendix 2 para 8.3.9

<sup>134</sup> APP.3 Appendix 2

<sup>135</sup> APP.3 Appendix 2 paras 8.8.3 and 8.9.2

- and the Ramblers Association<sup>136</sup>. The proposal also includes appropriate open space both quantitatively and qualitatively, including provision for maintenance, in accordance with policy SP7.
144. The mix of housing proposed across the development accords with policy SP8, and the provision of affordable housing complies with policy SP9 and the Housing Choice SPD<sup>137</sup>. As noted above, the delivery of the affordable housing is supported by the Housing Strategy Manager<sup>138</sup>.
145. The significant provision of Class B2 and Class B8 employment land complies with policy SP11.
146. The proposed enhanced leisure facilities at Clays Lane and the financial contribution to changing facilities at Shobnall Leisure Centre, which would be available to both the new residents and wider community, comply with policy SP13.
147. Through the proposed woodland planting, the proposal would contribute to the National Forest in accordance with policy SP17.
148. In respect of policy SP18 on flooding, the Environment Agency has no objections to the proposal<sup>139</sup>, and delivery of the drainage strategy would be dealt with by way of agreed conditions<sup>140</sup>.
149. The provisions of policy SP20 are complied with in terms of the protection, maintenance and enhancement of biodiversity and geodiversity in the Borough. This view is shared by Staffordshire Wildlife Trust<sup>141</sup>. There are no national, regional or local biodiversity or geological designations.
150. The proposal responds positively to the design considerations set out at policies DP1 and DP3.
151. The provision of additional shopping facilities within an established retail centre of an appropriate scale and adjoining existing shopping facilities, readily accessible on foot and by bicycle, would comply with policy DP6.
152. The proposal is in full accordance with the Council's Supplementary Planning Documents dealing with open space, design and housing choice<sup>142</sup>. The Council does not contest this.
153. The Council did have in place a Greenfield Policy Release Statement<sup>143</sup>. That Policy Statement, to the extent that it sought to control the development and release of land, was contrary to Regulations 4 and 5 of the Town and Country Planning Regulations 2012 and therefore unlawful. Under these Regulations all such policies should only be found in Local Plans. This caused delay in progressing the application, leading to submission of the appeal.

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<sup>136</sup> APP.3 Appendix 2 section 4.0

<sup>137</sup> CDB.8

<sup>138</sup> APP.3 Appendix 2 section 4.0

<sup>139</sup> APP.3 Appendix 2 section 4.0

<sup>140</sup> CDF.7

<sup>141</sup> APP.3 Appendix 2 section 4.0

<sup>142</sup> CDB.7, CDB.8, CDB.9

<sup>143</sup> CDB.11



## The Council's Case Against the Proposal

154. The Council's written case against the proposal proceeds on the very narrow basis that the whole development, save for the land North of Main Street, should be refused permission unless the appellant agrees not to use Main Street for construction traffic and development traffic<sup>144</sup>. This is despite the fact that all the amenities in the local area would be accessed via Main Street, including the proposed expansion of the local centre and, as agreed with the Local Education Authority<sup>145</sup>, the expansion of the Rykneld Primary School.
155. In cross-examination the Council's witness accepted that it would be implausible to seek to restrict development traffic from gaining access to the site from the north<sup>146</sup>. With no evidence to support his case on highway safety and amenity grounds, this was the only answer he could give. However, it entirely undermines the Council's reason for seeking refusal of the proposal.
156. It is accepted that the emerging Local Plan makes clear that *"Depending on the scale and mix of development uses, there may be highways and access impacts which would need to be comprehensively managed and mitigated"*<sup>147</sup>. Nevertheless, the Council needed evidence to support its position.
157. The evidence on this matter begins with the mitigation and improvement measures which the appellant investigated and has offered as part of the proposal. In particular, the appellant has<sup>148</sup>:
- a) entered into lengthy and detailed negotiations with the Highways Agency to secure an access from the A38 Trunk Road, despite there being general resistance from the Agency to the provision of new junctions;
  - b) secured the agreement of the Agency for that access;
  - c) agreed to ensure that this would be the primary access into the employment land, locating all the employment land south of the access;
  - d) agreed to a scheme which would allow that access and egress to be used by the residential development as well;
  - e) originally agreed to limit the number of houses to be built to 342 dwellings until such time as the new junction on the A38 had been designed, built and is open to traffic;
  - f) incorporated a bus gate separating the residential and employment traffic;
  - g) agreed to a construction traffic management scheme which amongst other things would address the routing of construction traffic<sup>149</sup>;
  - h) redesigned Main Street in line with the guidance for Manual for Streets and Manual for Streets 2 including the introduction of a 20 mph speed limit and a pedestrian crossing<sup>150</sup>;

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<sup>144</sup> LPA.1

<sup>145</sup> APP.3 Appendix 2 section 4.0

<sup>146</sup> Cross-examination of Councillor Hall

<sup>147</sup> CDB.12 para 5.132

<sup>148</sup> APP.6 pp13-16, 27-29

<sup>149</sup> APP.6 pp23-25

- i) agreed to the provision of 51 off road car parking spaces at the new local centre (plus an additional 25 space to the rear for staff)<sup>151</sup>, which would alleviate existing parking problems associated with school pick up and drop off times, as agreed by the Council's witness<sup>152</sup>;
  - j) agreed to provide a signal junction on the B5018 at the junction of Main Street<sup>153</sup>.
158. These measures led the professional highway engineers of the County Council to recommend that the scheme be approved<sup>154</sup>. There was also no objection from the Council's environmental health department<sup>155</sup>. It is important to appreciate that all of the above was on offer at the time the Committee made its decision.
159. In terms of the evidence available to support the Council's position it has been established<sup>156</sup> that the Councillors had:
- a) no evidence to show that the proposed access arrangements, subject to the mitigation measures identified above, were unacceptable;
  - b) no evidence that the proposed access arrangements would be anything other than appropriate and safe;
  - c) no professional technical evidence on the highway matters whatsoever;
  - d) no evidence from the environmental health department to show any harm to amenity in respect of noise which could not be addressed by way of appropriate conditions<sup>157</sup>;
  - e) no evidence of any other adverse impact on amenity, such as unacceptable vibration.
160. Remarkably that remained the situation at the end of the inquiry. The Council's witness quite properly accepted that the Council did not have any evidence on road design, road capacity, accidents, noise or any other matter that might substantiate grounds for refusing the proposal relating to safety or amenity issues<sup>158</sup>.
161. The Council's evidence amounts to no more than a bare assertion that an increase in traffic would lead to harm to amenity and safety. However, as already noted above, there is no direct relationship between an increase in traffic and an increase in accidents. The measures associated with the proposal are specifically aimed at improving road safety in Branston, particularly on Main Street<sup>159</sup>. With respect to amenity, the appellant's uncontested acoustics

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<sup>150</sup> APP.6 paras 9.13-15; APP.8 Appendix 5

<sup>151</sup> APP.6 para 9.12; APP.8 Appendix 5

<sup>152</sup> Cross-examination of Councillor Hall

<sup>153</sup> CDA.41-50

<sup>154</sup> APP.8 Appendix 1; CDF.2

<sup>155</sup> APP.3 Appendix 2 section 4.0

<sup>156</sup> Cross-examination of Councillor Hall

<sup>157</sup> APP.5 Appendix 4

<sup>158</sup> Cross-examination of Councillor Hall

<sup>159</sup> APP.6 para 9.10

- evidence is that the increase in traffic would also have a negligible noise impact on residents at Main Street and Hollyhock Way<sup>160</sup>.
162. It was established that the Council did try to obtain evidence from a number of highway engineers to support its case<sup>161</sup>. A variety of different reasons were given as to why this was not followed up, with suggestions that some consultants were not prepared to support the case, whilst others felt there was insufficient time at the point when they were contacted. Cost appeared to be one factor for ruling out one individual. However, that is not a legitimate basis for not providing the necessary evidence to support the case presented. The fact that the Council did approach highway consultants demonstrates that it knew of the need to obtain evidence from such an expert in order to substantiate its case.
163. It is no answer to say that all mitigation measures for a 660 dwellings scheme should be brought forward from day one because it is always desirable to have safety measures introduced at the earliest possible stage. There is no such test in the adopted or emerging Development Plan nor in the Framework. Moreover, there is no evidence to demonstrate why that is either necessary or reasonable.
164. It is agreed that the re-prioritising of flow on Main Street and the urban design scheme should be carried out prior to first occupation. However, with respect to the junction of Main Street and the B5018, the threshold trigger of 251 units for the signalisation is dictated by highway capacity and agreed by the relevant statutory consultee<sup>162</sup>.
165. In terms of the threshold of no more than 342 dwellings to be built before the A38 access is opened, the appellant's transport consultant (Halcrow) undertook various capacity assessments of the A38 Branston Interchange to establish the number of residential dwellings that could be accommodated before mitigation is required. The 'interim' arrangement was originally tested with 360 dwellings<sup>163</sup>. Following a review by the Highways Agency's consultant (JNP) this was then revised down to 342 dwellings<sup>164</sup>. That figure was identified in the Highways Agency's formal response on the original application<sup>165</sup>, as well as the resubmitted application response dated May 2013<sup>166</sup>. The Highways Agency's suggested planning condition 4 requires that "*No more than 342 dwellings, and no part of the B2, B8 or related commercial development hereby approved within the site shall be occupied until the new left in/left out access off the A38, as defined under condition 2 above has been completed to the written satisfaction of the local planning authority in consultation with the Highways Agency*"<sup>167</sup>.
166. The appellant is now prepared to offer setting the threshold at a maximum of 150 units in respect of use of Main Street by construction traffic<sup>168</sup>. This offer

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<sup>160</sup> APP.5 Appendix 5

<sup>161</sup> Cross-examination of Councillor Hall, with subsequent clarification that the Council had not sought any expert evidence on noise or vibration

<sup>162</sup> CDF.2; APP.6 para 9.9

<sup>163</sup> CDA.56 Appendix 8

<sup>164</sup> CDA.56 Appendices 10 & 11

<sup>165</sup> APP.8 Appendix 2

<sup>166</sup> CDD.14 (response on the re-submitted application referred to under Planning History above)

<sup>167</sup> APP.8 Appendix 2

<sup>168</sup> APP.6 para 10.9; APP.5 paras 3.2-3; APP.11

was made not on the basis of the highway or noise evidence<sup>169</sup>, but as part of the resubmission of the planning application in an attempt to avoid the expense of the inquiry. That has not been possible because the Council has refused to take the matter back to Committee. However, having made the offer with the new application, the appellant also makes it in respect of the appeal proposal. While the Council does not regard a 150 dwelling threshold as overcoming its objection, its witness indicated a willingness to accept 60 dwellings prior to the link<sup>170</sup>. The argument is therefore in effect over 90 dwellings. This number of dwellings would on average give rise to 2 construction vehicles movements per hour<sup>171</sup>. These movements would be unlikely to take place on an even basis, but this would mean that there would be fewer vehicles at other times. It is difficult to see how this could be objectionable when some 300/peak hour movements is acceptable with the development<sup>172</sup>, especially when it would be on a temporary basis. The proposed 150 limit is a very generous offer.

167. It is clear that the Council's evidence does not demonstrate why it is necessary or reasonable for the threshold to be set at any level, let alone at 150 dwellings. Those are the relevant tests in terms of a condition incorporating such a threshold. The 342 figure for development traffic is a threshold set and justified by the transport evidence and the consultation response from the Highways Agency. The 150 figure if incorporated in a condition would therefore need to be justified as necessary and reasonable.

168. Even if the evidence demonstrated there was a clear need to install all the mitigation from day one and that all construction traffic should use the A38 access from the commencement of development, the alleged dis-benefits would then need to be balanced with all the positive aspects of the proposal. There is no evidence that the Councillors did this<sup>173</sup>. The point is compounded by the continued refusal of the Council's witness to believe that the Council does not have a five year supply of housing land<sup>174</sup>. The shortfall is a material consideration to which significant weight should be attached, as made clear by the Secretary of State in recent decisions.

### **Other Matters**

169. Expert responses have been provided to third party concerns relating to noise, flooding and contamination<sup>175</sup>.

170. Criticisms made of the relative sustainability of the development by comparison with another proposed housing development site<sup>176</sup> are not fair or accurate, and are not accepted<sup>177</sup>. The potential impact of the proposal on the Walton on Trent Conservation Area was considered in the submitted Landscape

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<sup>169</sup> Evidence in chief of Mr Spencer

<sup>170</sup> Cross-examination of Councillor Hall (i.e. comprising the development north of Main Street)

<sup>171</sup> Calculated from APP.9 Appendix 1 which gives 24.6 peak 2-way average trips per day

<sup>172</sup> APP.6 para 9.11

<sup>173</sup> LPA.1

<sup>174</sup> Cross-examination of Councillor Hall

<sup>175</sup> APP.5 Appendices 5-10

<sup>176</sup> INSP/1 Hallam Land Management representation

<sup>177</sup> APP.5 section 6.0

and Visual Assessment<sup>178</sup> and found to be acceptable, which was agreed in the officer report<sup>179</sup>.

### **Conclusion**

171. The appeal should be allowed.

### **THE CASE FOR EAST STAFFORDSHIRE BOROUGH COUNCIL**

172. It is agreed that the proposed development is acceptable in principle, in accordance with the Council's preferred spatial strategy in the emerging Local Plan<sup>180</sup>. The site also has the benefit of previous planning permission for residential development<sup>181</sup>.

173. There would be a number of significant benefits with the proposed development, including the provision of much needed market and affordable housing, public open space, the New Homes Bonus and employment land<sup>182</sup>. In these respects it accords with Government policy, and this weighs heavily in the proposal's favour in the planning balance.

174. As of January 2013 the Council was able to demonstrate a 5 year housing land supply<sup>183</sup>. At present, following an independent appraisal, it is in the process of considering and updating its housing requirement figures<sup>184</sup>. It takes a neutral position on this discrete issue, not advancing a positive case on housing land supply nor disputing the appellant's housing requirement figures<sup>185</sup>.

175. In accordance with the Framework the appellant is entitled to a favourable presumption. With respect to paragraph 47 of the Framework the development plan is out of date.

176. There is a detailed and extensive Statement of Common Ground<sup>186</sup>. The dispute between the Council and the appellant is very narrow. The Council advances a case based on its single reason for refusal in respect of highway safety. It is recognised that, to succeed, significant and demonstrable harm to highway safety must be shown, in accordance with paragraph 14 of the Framework.

177. Since the appeal was lodged the appellant has altered the highway scheme in material respects with a view to addressing the Council's concerns<sup>187</sup>. The scheme is now less unacceptable than that which was before the Planning Committee<sup>188</sup>. Notwithstanding these changes, the proposal remains unacceptable.

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<sup>178</sup> CDA.28

<sup>179</sup> APP.3 Appendix 2; APP.5 p11

<sup>180</sup> CDB.12

<sup>181</sup> CDC.1-CDC.6

<sup>182</sup> APP.1 section 11.0

<sup>183</sup> APP.4 Appendix 26

<sup>184</sup> APP.3 Appendices 3 & 4

<sup>185</sup> CDD.12

<sup>186</sup> CDF.1

<sup>187</sup> APP.5; APP.9

<sup>188</sup> APP.3 Appendix 2

178. The Council does not rely on expert highway engineering evidence. However, its evidence given by a Councillor<sup>189</sup> does not take issue with the methodology or evidence base of the Transport Assessment<sup>190</sup>, which is common ground<sup>191</sup>. Based on the agreed quantitative data the Council draws different conclusions to those of the appellant. This is a matter of judgment on which the Committee, with wide personal experience of the roads in question, was in a good position to reach a reasonable and well-informed decision.

179. There are three principal areas of concern about the proposal which, whether taken individually or accumulatively, would cause significant and demonstrable harm to the interests of the public highway. These are considered in turn.

### **The Late Trigger of the Mitigation Measures**

180. It is obvious that the appeal development would be unacceptable in the absence of the proposed highway mitigation. If it were not, the appellant would not have gone to the effort and expense of devising the scheme, and the attendant agreed conditions<sup>192</sup> would fail the legal test of necessity. It was surprising that the appellant's highway witness in cross-examination was unable to agree this point<sup>193</sup>.

181. The appellant has offered the following elements of mitigation<sup>194</sup>:

- a) The A38 left in/out junction to be provided upon occupation of the 151st house<sup>195</sup>. At the application stage this was to be provided by the occupation of the 342nd dwelling. The difference between the 2 triggers is some 2½ years<sup>196</sup>.
- b) The signal junction at the junction of Main Street and B5018 to be provided upon occupation of the 251st house.
- c) The urban design scheme at the junction of Main Street and Acacia Lane to be provided upon occupation of the 251st house<sup>197</sup>.

182. Despite the fact that the issue of the triggers is one of the Council's principal concerns, the appellant has failed to advance any technical explanation as to why it settled upon the triggers that it did. The appellant's highway witness was only able to suggest that the triggers emanated following discussions with the Highways Agency and Staffordshire County Council<sup>198</sup>. Whilst any trigger is innately arbitrary, the appellant would have a far stronger case if it could offer a technical, or indeed any reasoned, justification for the triggers selected. This hole in the centre of the appellant's case is troubling.

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<sup>189</sup> Councillor Hall; LPA.1

<sup>190</sup> CDA.15

<sup>191</sup> CDF.1

<sup>192</sup> CDF.7

<sup>193</sup> Cross-examination of Mr Spencer

<sup>194</sup> APP.6; APP.9

<sup>195</sup> APP.9 para 2.12

<sup>196</sup> APP.9 Appendix 1 (period calculated on basis of construction of around 80 dwellings per annum)

<sup>197</sup> As set out in the originally agreed conditions (CDF.4); in the final version (CDF.7) this was revised to completion of the scheme prior to first occupation

<sup>198</sup> Cross-examination of Mr Spencer

183. During the course of the inquiry the Inspector raised the possibility that the decision maker could impose a condition requiring that the junction onto the A38 be provided by the occupation of the 1st house<sup>199</sup>. If the Secretary of State is minded to allow the appeal, the Council wholeheartedly supports the imposition of this condition. The appellant avers that there is no justification for this. However, the reason why it is necessary and desirable is obvious. The risks and disruption caused for a period of at least 2 years whilst all the construction traffic, together with the traffic generated by the occupation of the dwellings, accesses the site via Main Street would be avoidable. The appellant's highway witness agreed<sup>200</sup> that if the build out of the appeal site did not proceed as smoothly as anticipated (i.e. at 80 houses per year<sup>201</sup>), the period could be greater than just over 2 years. The proposal is not a small scheme but a substantial piece of development.
184. The imposition of such a condition is supported by policy T1 of the Local Plan<sup>202</sup>. This states expressly: "*Prior to new developments being permitted where development proposals would have a significant impact on the highway network but are otherwise acceptable, a condition will be made that no development shall be occupied or brought into use until the highway works have been carried out*". This advice forms part of the development plan. It is unambiguous, clear and without qualification. Both of the appellant's witnesses agreed that if the appeal proposal is judged to have a significant impact on the highway network but is otherwise acceptable it does not comply with this aspect of the policy<sup>203</sup>. The imposition of such a condition would remedy this deficiency and sit comfortably with the guidance in the development plan.
185. In an answer given only after repeated questioning, the appellant's highway witness agreed that he could not offer any cogent highway safety reason for opposing an earlier trigger<sup>204</sup>.
186. The appellant's advocate intimated that a condition requiring provision of the A38 junction prior to occupation of the first dwelling would be unacceptable as it could reduce the quantum of houses delivered in the 5 years, therefore hindering the other benefits of the proposal. No evidence has been presented to substantiate the assertion. A comment made by an advocate is not evidence and cannot be relied upon when reaching the decision. If the appellant wanted to adduce evidence to justify why it alighted on a particular trigger it could have done so, but has not.

### **Impact of Construction Traffic**

187. An adverse impact of construction for a finite period of time is an expected and inevitable consequence of granting planning permission for any large scale piece of development. Normally this inconvenience and disturbance would not form a cogent ground for resisting the grant of permission. However, this proposal is for a 660 house development which is to be built out by 2 house-builders at the

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<sup>199</sup> Inspector's questions to Mr Sitch

<sup>200</sup> Cross-examination of Mr Spencer

<sup>201</sup> APP.9 Appendix 1

<sup>202</sup> CDB.6

<sup>203</sup> Cross-examination of Mr Sitch and Mr Spencer

<sup>204</sup> Cross-examination of Mr Spencer

same time as the construction of a large area of employment land<sup>205</sup>. The appellant's highway witness agreed that the level of construction traffic would be likely to continue for at least 8 years (and this period could be greater if the construction of the site takes longer than anticipated)<sup>206</sup>.

188. Whilst restrictions could be placed on delivery times for construction traffic to avoid conflict with school traffic, there is no alternative route into the site prior to provision of the A38 link other than to use Main Street and Acacia Lane. This would necessitate all construction movements linked to the site, including site operatives coming to work, deliveries, heavy machinery and all visitors, passing through the centre of the village near to existing retail units, residential properties and the health centre. This is not a typical construction site, and the number of vehicular movements associated with the development would be significantly higher given the made up-nature of the land, such that a capping layer of up to 600mm would be needed over the vast majority of the site. The appellant's information suggests that annually this would result in an additional 333 HGV journeys for a seven year period<sup>207</sup>, which is a significant number of journeys through the local highway network and the village centre. Added to these would be movements from deliveries and arrivals of site operatives. Construction traffic would have a significant impact on the amenities of existing residents of the village. The increased vehicular movements would be damaging to the general environment and result in increased noise, dust, vibration and general nuisance to existing residents, business owners and visitors. This would result in an unacceptable impact on the amenities of existing residents in the locality.<sup>208</sup>
189. The appellant's figures show over 24 construction movements in and out of the site per day<sup>209</sup>. The actual number of journeys could well be higher, and is unknown. It would not be a hallmark of good planning to proceed on the most optimistic of forecasts and assume that the level of traffic would not exceed this figure on occasion. The Council's witness agreed that, expressed as the equivalent of a mere 2 lorry trips per hour, this is a limited number<sup>210</sup>. However, the arithmetic approach of dividing the number of trips evenly over an 8 hour period is not particularly helpful or representative of the likely effect, and it would be surprising if such a symmetrical pattern were to occur in reality. It can be anticipated that trips would cluster, despite the absence of evidence on the likely temporal distribution of construction traffic.
190. It is unsatisfactory that the appellant's Transport Assessment<sup>211</sup> did not assess the likely level of construction traffic in any accurate or meaningful way. No good reason has been advanced why it chose not to, other than a generic assertion that Transport Assessments generally do not do so on the basis that the level of construction traffic will never exceed the number of journeys generated by occupied dwellings<sup>212</sup>. In these circumstances, only the appellant is

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<sup>205</sup> APP.1 para 6.14

<sup>206</sup> Cross-examination of Mr Spencer

<sup>207</sup> CDA.56 Appendix 9

<sup>208</sup> LPA.1 paras 2.5-2.7

<sup>209</sup> APP.9 Appendix 1

<sup>210</sup> Cross-examination of Councillor Hall

<sup>211</sup> CDA.15

<sup>212</sup> APP.9 paras 2.16-2.17



to blame if the Council, reliant on the precautionary principle, opposed the scheme because of its concerns that the level of construction traffic would be likely to be unacceptable. The first time that the appellant gave an accurate assessment of the level of construction traffic was in its rebuttal evidence submitted shortly before the inquiry opened<sup>213</sup>. As agreed by the appellant's highway witness, the estimate of construction traffic trips given now is different to that found in the Transport Assessment<sup>214</sup>. In the light of this change it seems that the Council has been proved right not to accept the Transport Assessment at face value on this point when it considered the application.

191. It is likely that the inevitable problems from the construction traffic would be most pronounced during the first 2 years of the build-out of the residential part of the site, as all the construction traffic would have to access via Main Street. This is a direct and unavoidable consequence of the appellant choosing to trigger the junction onto the A38 by the occupation of the 151st house. Were the appellant willing to bring the trigger forward, for example to the 60th house as suggested by the Council's witness<sup>215</sup>, this matter could be satisfactorily resolved.

### **Junction at Main Street/B5018**

192. This is a difficult junction which occupies a sensitive location next to Rykneld Primary School. Traffic enters the junction at three places. A pedestrian refuge is located at its centre which allows pedestrians (including many children) to gain access to the School. The presence of the pedestrian refuge could cause confusion to drivers unfamiliar with the junction. A local resident provided evidence at the inquiry of a near miss from a vehicle involving a child crossing Main Street near to the Scout hut<sup>216</sup>.
193. The appellant's highway witness accepted that, were the appeal to succeed, there would be a significant increase not only in the number of vehicles passing through the junction but also the number of pedestrians seeking to cross the road at this point<sup>217</sup>. This is because the development would provide for an expansion of pupil numbers at the Primary School<sup>218</sup>. This position would continue for over 3 years before the intended signal junction is provided (on the occupation of the 251st dwelling).
194. The degree of harm to highway safety would be increased by the fact that there is a substantial overlap between the school pick-up and drop-off times and the peak periods of traffic generation that there would be from the appeal site. The appellant's assessment proceeded on the basis that there would be an overlap in the morning but not in the afternoon<sup>219</sup>. In light of the evidence of residents it seems that this assumption was misplaced and optimistic. An unknown number of children attend an after-school club on Main Street which operates on every weekday up to 6pm. This appears to have come as a surprise

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<sup>213</sup> APP.9 para 2.6 & Appendix 1

<sup>214</sup> Cross-examination of Mr Spencer

<sup>215</sup> Cross-examination of Councillor Hall

<sup>216</sup> Evidence in chief of Ms Hipkiss

<sup>217</sup> Cross-examination of Mr Spencer

<sup>218</sup> CDF.6; APP.1 para 11.26

<sup>219</sup> APP.6 para 9.9

to the appellant, since its highway witness had assumed that all children are picked up between 3-3.30pm without checking with the school whether this is the case. He agreed that it is likely that there would be a greater afternoon overlap of traffic than he has allowed for in his assessment, albeit he contended that it is unlikely the impact would be material<sup>220</sup>.

195. He also confirmed his assumption that the vast majority of children living in the dwellings on the appeal site would walk to school<sup>221</sup>. Whilst it is common ground that the appeal site falls within the IHT guidance on the desirable distance for walking<sup>222</sup>, the extent that children would actually be likely to walk to school is a different matter. It seems probable that the assumption is overly optimistic. For all the familiar reasons (car pooling, lateness, inclement weather, disability, parents seeking to double up the school drop-off with going to work or doing the shopping) it is inherently unlikely that the vast majority of children would walk to school. If it is agreed that the assumption is overly optimistic, it follows as a matter of common sense that the additional number of car parking spaces that would be available around the school from the development (which the Council agrees forms a significant benefit) would not be free to be used by non-appeal site local residents.
196. The appellant seeks to address the Council's concern through the provision of signals at the junction. This is welcome, but would not be provided at the outset of the development. For reasons which remain unexplained, this important element of mitigation would only be triggered by the occupation of the 251st dwelling. Accordingly, the build-out and occupation of the site would carry on for over 3 years before the mitigation kicks in. During this period, at the very least, it is likely that there would be significant and demonstrable harm caused at this sensitive and vulnerable part of the highway network.

## Conclusion

197. The proposal contravenes Local Plan policy T1. This is a policy of the development plan which is consistent with the Framework and should be afforded due weight.
198. Further, the proposal does not sit comfortably with important aspects of the Framework. In particular, one of its core planning principles is that planning should always seek "*a good standard of amenity for all existing and future occupants of land and buildings*" (paragraph 17). It goes on to say that decisions should aim to ensure that developments will "*add to the overall quality of the area, not just for the short term but over the lifetime of the development*" (paragraph 58).
199. The appeal proposal conflicts with the development plan and it is likely that significant and demonstrable harm would be caused to the highway network. This outweighs the undoubted manifold and substantial benefits of the scheme, and the appeal should be dismissed.

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<sup>220</sup> Cross-examination of Mr Spencer; APP.6 paras 5.8. 9.5-9.8

<sup>221</sup> Cross-examination of Mr Spencer; APP.9 para 2.9

<sup>222</sup> APP.5 Appendix 7

## THE CASES FOR OTHER PARTIES WHO GAVE EVIDENCE AT THE INQUIRY

### Councillor Michael Bowering<sup>223</sup>

200. Councillor Bowering is a local ward member and on the Planning Committee of East Staffordshire Borough Council.
201. The planning histories of the 4 sites making up the application go back over 20 years. One is owned by the Parish Council, and the proposal for this area just appears to be an inducement to the community, which it has not been taken in by.
202. In an application on the site in 2004 for up to 350 homes and employment it was admitted by the developer that a flyover type interchange on the A38 was needed to complete the development in a safe manner. A contribution of £15m towards this scheme from Advantage West Midlands was then diverted elsewhere.
203. The proposed retail units on Main Street would threaten the integrity of the existing shops and should not be allowed. What is needed here is a formal car park, possibly with affordable housing.
204. National Forest welcomes the proposal but tree planting on the flood plain would eventually displace flood capacity.
205. Staffordshire County Council has no objections, but it appears that an inducement has been negotiated which is massively over and above the standard contribution to education.
206. The lack of a highways objection by Staffordshire County Council reflects a desktop exercise rather than site visits. It has failed to take full consideration of construction traffic, including the mitigation capping layer which is not a normal construction requirement.
207. No account has been given to the very young, the very old and the unsteady as they try to cross the road to the health centre. Transforming streets which have to fulfil a complex variety of functions requires a careful and multi-disciplinary approach, not just the pursuit of profits, which would generate huge conflicts. Pedestrian needs are completely ignored in the proposal.
208. A graded inter-change on the A38 to allow for access and egress is needed before any other work commences. This junction should be the only way to and from the site before, during and after construction, with a footpath link to Main Street.
209. A May 2012 survey shows that during the AM peak this area of greater Burton was the only one with a worsening in traffic conditions, and one of only 2 areas showing a worsening in the PM peak<sup>224</sup>.
210. The pub car park is used for deliveries before opening times, and parking should not be encouraged on private land or yellow lines. Existing local road conditions are shown in photographs<sup>225</sup>.

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<sup>223</sup> TP.1

<sup>224</sup> TP.3

211. The scout hut relies on the same parking areas as are used at school times. The pre-school play group on most days does not have the same start and finish times as the school. The after school club meets five days a week. The scout group has over 80 young members, with sessions on most evenings.

**Maria Hipkiss**<sup>226</sup>

212. Ms Hipkiss is a local resident. Her husband is a structural engineer.

213. The site is flood plain and should not be built on. Projections of future climate change involving more frequent short duration, high intensity rainfall and more periods of long duration rainfall should not be ignored. In November 2000 the area of the proposal was flooded extensively. Water went across both carriageways of the A38, the land beside the River Trent was totally flooded and water went under the railway. The A38 also had to be closed on 2 occasions in 2012 due to flooding, one time for 2 days which created massive traffic issues. The land should remain as the soak area for the next flood. Building on the designated flood plain would put the town under a very high risk of even more flooding. At a public meeting it appeared that the appellant's expert was not aware of the amount of local flooding.

214. The proposal to bring all of the traffic onto Main Street through the estate beside the doctors' surgery would be totally unworkable. There are existing conflicts between residents' cars and car parking for the doctors' surgery. The previous proposal for the land included a proper intersection off the A38. Now the vehicles of the proposed houses would have to come through Branston village. This would put everyone at risk from accidents and pollution. A second access at the Gate Inn has been dropped. Personal experience of a recent near accident shows that not all incidents are reported. Even after school time there are a lot of pedestrians with young children from scouts, guides and play groups, and the road can be very dangerous.

215. The land is of natural beauty, as part of the National Forest with rare plants and birds. Green areas of land should be protected. There are a lot of empty commercial units already available in the Borough, and it is not necessary to build more.

216. Construction would have a traffic impact, and create dust and noise, including from piling. As a landfill site there are worries that dampening down would not work and there would be a health impact.

**Judith Etheridge**

217. Ms Etheridge is a local resident.

218. No local residents want the development. The access would lead to 900 extra vehicles. Bus routes would be diverted. Danger would be created next to the infant school. The road is not wide enough for buses and cars. Satellite navigation would lead lorries into the village. There are already local parking problems. There would be two construction vehicles per hour, and it only takes one to kill.

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<sup>225</sup> TP.2

<sup>226</sup> INSP/1

219. There are concerns about the disturbance of PFA and the effects there would be on wildlife and flooding.
220. There would be a noise impact. Noise surveys were undertaken during half term, which is a quieter time. It is questioned who would pay for the disruption. The Council and the developers are too close. Branston should stay as a village.

**Alderman Fred Smith**<sup>227</sup>

221. Alderman Smith represents Branston Parish Council.
222. There would be danger to public safety from airborne flyash particles, and possible disturbance of asbestos. Serious chest and lung disease could be caused. Photographs show that PFA cannot be controlled<sup>228</sup>.
223. The access and exit for the site through the very narrow Main Street would cause Old Road and Church Road to become an escape route if tail backs occurred due to traffic lights. Restrictive practices which affect residents should not be put in place just to help an unwanted development. Quality of life would be affected by noise, traffic fumes and volume of traffic. There is already traffic congestion in particular from school runners and added population from previous developments<sup>229</sup>. Main Street shopping area cannot take any more parking since there are already parking problems for most of the day. Traffic increases generated by 650 dwellings would create a danger to users of the post office and doctors' practice, both of which are situated next to the proposed exit and add to log jamming.
224. Branston Parish Council has already tried to solve village congestion by suggesting that the overpopulated school should move to a new site. The feasibility of this is being explored in the neighbourhood plan. Nothing should be determined until the Parish Council has submitted its plan.
225. The development would be a 10 or 20 year project, and pile driving and construction traffic noise would be horrendous, adding to the continual noise from the A38.
226. The fly ash dump should be capped and become part of the national forest, complementing the tourist trail along the A38 corridor.
227. Developers have had opportunities to build on the land since the 1980s and have not succeeded. Arguments made before are repeated now.
228. There is little faith in the assessment by highways officers, which uses the developer's information and old census data. The Environment Agency does not have accurate flooding information. There has always been flooding on the land and on the A38. For residents' safety it would be unacceptable for the proposal to go ahead.

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<sup>227</sup> TP.4

<sup>228</sup> TP.5

<sup>229</sup> TP.6

## WRITTEN REPRESENTATIONS

### Representations Made at Appeal Stage<sup>230</sup>

#### *Hallam Land Management Ltd*

229. Hallam Land Management Ltd originally had Rule 6 status for the inquiry, but subsequently relinquished this and made a written submission.
230. Hallam Land Management Ltd is promoting a large mixed use development on land off Beamhill Road (Upper Outwoods), on the north western side of Burton upon Trent. A non-determination appeal on this proposal (ref APP/B3410/A/13/2192783) is due to be considered by way of a public inquiry commencing on 30 July 2013<sup>231</sup>.
231. While there are certain reservations about the merits of the current appeal proposal, no need is seen to raise formal objections to it on the basis of there being a clear need for more housing in the Borough. However, any decision should only be made with the benefit of a full understanding of the context of the current strategic planning situation in the Borough and the town of Burton upon Trent. In particular this includes the existence of other potential large housing sites which are not subject to the same constraints or share them to a lesser degree and are capable of delivering housing either as an alternative or in addition to the current site. The Upper Outwoods site is such a proposal.
232. Six main housing development sites are currently being promoted around the town. A comparative sustainability appraisal has been carried out of these.
233. Upper Outwoods was one of the key sites identified as part of the options consultation for the emerging Core Strategy. A consultation has been undertaken and a Masterplan produced. Upper Outwoods was the only site to appear in all 3 options at pre-publication stage as part of large greenfield releases. However, it was not selected in the final preferred option in 2012, and a representation has been submitted on this point.
234. Slippage has affected the Core Strategy. There is no up to date published timetable for production of the Local Plan. Housing requirements are likely to require 3 main sites around Burton to meet the forecast need. In the interim, individual applications and appeals will need to be determined on their individual merits in the context of NPPF advice. The robustness of the housing requirement assessment supporting the preferred option is strongly questioned. The main objective must be to maintain a flow of sites to meet Government objectives of economic growth and delivery of more housing. Refusal of the Upper Outwoods proposal on prematurity grounds would not be justified because of the unacceptable further delay which this would impose in determining the future use of the land in question.
235. On a preliminary view, St Modwen's assessment that there is only slightly in excess of a 2 year supply of housing land in the Borough and that a 20% buffer should be applied is supported. The Council's position on this matter has been variable.

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<sup>230</sup> Representations in folder INSP.1

<sup>231</sup> The current appeal Inspector has been appointed to hold this

236. The Upper Outwoods development would be sustainable. It has clear sustainability advantages over the other candidate housing sites. It is also not constrained by the need for the delivery of major infrastructure before housing completions could be achieved. Its release should not be impeded by the prior release of less suitable sites.

### **Marstons PLC**

237. Marstons PLC originally had Rule 6 status for the inquiry, but subsequently relinquished this and made a written submission.

238. The Council's position has changed as it is no longer contending that it has a five year housing land supply.

239. Marstons PLC is promoting a residential development at Forest Road, Burton upon Trent. This is one of four residential appeals currently in progress (including the current appeal). It is clear given the geography of the town that the location of new development is limited by the flood plain of the River Trent and that housing development needed to provide sufficient land for the next five years and for the remainder of the plan period will have to be located on any remaining viable land within the defined urban area and adjacent to the existing urban area by new extensions. Such extensions beyond the existing defined urban area can only be accommodated to the west and north of that area.

240. The Forest Road site is available in the event of permission being granted, and able to contribute to the housing land supply in the 5 year period.

### **Others**

241. Branston Parish Council objects on grounds of traffic congestion, flooding and health (PFA), as detailed by Alderman Smith at the inquiry.

242. There are around a further 3 individual written representations on the appeal which contain objections to the proposal. These are largely on the grounds covered in the cases made by third parties who gave evidence at the inquiry, as set out above.

243. In addition, there are 9 individual letters<sup>232</sup> sent to the Council in response to the appellant's consultation on the more detailed Acacia Lane access plan<sup>233</sup>. These generally repeat earlier objections, including on highways impact.

### **Representations Made at Application Stage**

244. The representations received by the Council as a result of its consultation on the planning application were attached to its appeal questionnaire and summarised in the Committee report of 18 March 2013<sup>234</sup>. The report records that in total **139 single letters of objection** were received. The report sets out a full analysis of the concerns raised in the objections. They generally are on grounds repeated by third parties at appeal stage, covering mainly the following matters: principle of development, contaminated land, highway safety, flood risk, ecology, education. In addition, a detailed representation was received from the **Branston Action Group** raising similar points.

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<sup>232</sup> TP.7

<sup>233</sup> APP.5 para 3.4

<sup>234</sup> APP.4 Appendix 2 Section 4.0

245. The report also sets out the responses from consultative bodies to the application. The comments of those which have not made appeal representations can be briefly summarised as follows.
246. **Severn Trent Water Ltd** had no objection subject to a condition relating to foul and surface water drainage.
247. The **National Forest Company** welcomed the contribution to the National Forest and considered that the level of open space, landscaping, woodland planting and public realm works would meet requirements.
248. **E.ON UK** raised concern that the development would impact on water supply to the site of the proposed Drakelow Power Station.
249. **Sport England** withdrew an initial objection relating to sports provision due to there being no direct loss of any playing fields.
250. **Ramblers** supported the scheme, welcoming the proposed provision of public open space and the linkages to existing rights of way.
251. **South Derbyshire District Council** objected on grounds of possible adverse impact on the Walton on Trent Conservation Area and St Lawrence's Church, with concern that these features are not considered in the Landscape and Visual Assessment.
252. The **Environment Agency** raised no objection but recommended conditions covering flood protection, drainage, contaminated land, and management of the landscape and wildlife corridor.
253. **Natural England** had no objections and confirmed that it is satisfied legally protected species would not be adversely affected.
254. **Network Rail** had no objections but required conditions on boundary fencing and soundproofing, and consideration of lighting and landscaping adjoining the railway line.
255. The **Highways Agency** directed that any permission granted be subject to conditions and obligations (dealt with below).
256. The **Woodland Trust** supported the scheme.
257. **Staffordshire Wildlife Trust** raised no objections and suggested conditions on species and habitats.
258. **Roads Policing** supported the proposed access onto the A38.
259. **Staffordshire County Council Highways** had no objections subject to conditions and obligations (dealt with below). **Staffordshire County Council Education** had no objections, and advised on negotiations of planning obligations. **Staffordshire County Council Waste and Minerals Planning** had no objection but advised on the need for a site Waste Management Plan.
260. The Council's **Heath and Environment Services** raised no objections subject to conditions on contaminated land, pollution and noise mitigation. The **Housing Strategy Manager** gave advice on securing affordable housing and on dwelling mix.
261. It was also recorded in the report that **English Heritage**, **British Waterways** and the **Police Architectural Liaison Officer** raised no objections.



## CONDITIONS

262. A set of suggested planning conditions in the event of the appeal being allowed was put forward at the inquiry. These were discussed, and a number of changes were subsequently prepared<sup>235</sup>. The conditions were agreed between the main parties, other than the differences relating to the phasing of highways works as dealt with in the above cases. Alternative versions of three conditions were included to reflect this.
263. The Highways Agency provided further information relating to the suggested condition on monitoring of traffic on the proposed new A38 link<sup>236</sup>.

## PLANNING OBLIGATIONS

264. The submitted legal agreement<sup>237</sup> is between Branston Properties Limited and St Modwen Developments Limited (the owners), East Staffordshire Borough Council, and Staffordshire County Council. The planning obligations contained in its Schedules are as follows.
265. Schedule 1 sets out a number of general obligations relating to giving notice of commencement and occupation.
266. Schedule 2 deals with affordable housing. This is to be provided equivalent to 15% of the dwellings across the development, with scope for this to vary between phases, either on site or by payment in lieu. Clauses contain requirements relating to construction standards and occupation. Arrangements are set out for future control of specific tenure types covering discounted sale, rent to shared ownership, rented social, and shared ownership units. There are also provisions for protection of mortgagees and variation of restrictions.
267. Schedule 3 contains obligations on implementation of a scheme for National Forest landscaping and planting. Schedule 4 similarly deals with an on-site open space and landscaping scheme, including open spaces, play areas and play equipment and arrangements for future transfer.
268. Schedule 5 sets out provision for payment of £40,000 index linked to Sport England for works at Shobnall Leisure Centre, and the alternatives of improvement works including a new pavilion and sports pitch at Clays Lane or additional open space within the development.
269. Schedule 6 deals with education. This provides for payment of a sum of £698,124 index linked towards secondary education, and the alternatives for primary education of improvements including additional space at Rykneld Primary School or a new one form entry primary school on the site<sup>238</sup>. Clauses deal with phasing of development relating to the obligations.
270. Schedule 7 covers transport obligations. These include payment of a sum totalling £688,424 index linked to the County Council, phased by instalments relating to number of dwellings occupied. There is also provision for a bus service link to Burton upon Trent town centre, together with bus vouchers to a maximum value of £50,000 total to residents. Uses are specified for the highways payment relating to implementation of the Burton Integrated Transport

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<sup>235</sup> CDF.7

<sup>236</sup> CDD.15 (provided in response to Inspector's request for further details and justification on the condition)

<sup>237</sup> CDF.6

<sup>238</sup> APP.1 para 11.26

Strategy. Schedule 8 sets out arrangements to secure a Travel Plan, including payment of £10,700 index linked for monitoring and review of this. Schedule 9 relates to payment of a sum, to be agreed, to cover the cost of a highway scheme involving the A38 junction, and a programme for payment of this.

271. Introductory clauses deal with definitions and interpretation, with agreement under Clause 5.2 that the obligations shall not apply and shall not be enforceable by the Council if in the decision made on the appeal the obligations or any of them are found to be unnecessary or otherwise fail to meet the tests in Regulation 122 of the Community Infrastructure Levy Regulations 2010.
272. The County Council has provided evidence in support of the planning obligations to which it is a party. With respect to the education obligations, this was prepared as a proof of evidence but the County Council chose subsequently to rely on it as a written submission<sup>239</sup>. The statement makes reference to Government policy, the tests of Regulation 122, the County Council's Education Planning Obligations Policy<sup>240</sup> and the emerging East Staffordshire Local Plan<sup>241</sup>. In this context it is explained why additional school places are considered necessary to accommodate the children that would be generated by the proposed residential development, having regard to the education duties of the local authority and expected available school spaces. The methodology for calculating the secondary education contribution is explained, reflecting building costs and anticipated pupil yield from the development. For primary provision the expected number of additional pupils requiring either an expansion of the existing local primary school or a new on-site school is similarly addressed.
273. With respect to the highways obligations, the County Council provided a note relating to the highway sum in Schedule 7 of the Agreement<sup>242</sup>. The note again makes reference to Government policy, Regulation 122, and local policy, including the Staffordshire Local Transport Plan 2011<sup>243</sup>. An East Staffordshire Borough Integrated Transport Strategy 2011-2026<sup>244</sup> has been prepared and been through a consultation process. It sets out to deliver the vision of the Local Transport Plan, identifying key community and key strategic issues. Reference is made to the traffic model developed for Burton upon Trent, which takes account of anticipated growth (and was used to assess the appeal development<sup>245</sup>). The approach focuses upon reducing the potential for traffic generation at source and making best use of existing transportation infrastructure before considering the need for new highway to accommodate residual traffic. Four stages have been developed and costed at around £14m to be apportioned between all the proposed developments in the Burton area, although highway improvements to accommodate residual traffic would be made site specific. For the appeal scheme, the financial contribution of £688,424 would be additional to the site specific mitigation, and be put towards the Integrated Transport Strategy targeted to Branston Ward. For the ward this would include: personalised travel planning; increasing frequency of bus services; public transport information and

<sup>239</sup> SCC.1

<sup>240</sup> SCC.1 Appendix SCC/2

<sup>241</sup> CDB.12

<sup>242</sup> SCC.2 (provided in response Inspector's questioning of Mr Spencer. A County Council representative attended a session of the inquiry at which this was discussed)

<sup>243</sup> CDB.13

<sup>244</sup> SCC.2 Appendix A

<sup>245</sup> APP.6 paras 5.10-5.19; section 6.0

marketing; real time passenger information; improving the walking/cycling connections from the ward linking into those proposed by the developer; improvement to the Wellington Road/Second Avenue/Parkway roundabout. The sum is arrived at by feeding the quantum of development covering all the proposed uses into the model. Information is given on the total across each stage of the Transport strategy, the estimated costs within the ward, and the costs proportioned to the appeal site.

## CONCLUSIONS

274. 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.

### Main Considerations

275. Having regard to the Council's putative reason for refusal of the application [5], the relevant policy context and the evidence to the inquiry, the main considerations that need to be addressed are as follows:

- i) whether the proposal is in accordance with the adopted and emerging development plan;
- ii) whether and to what degree the proposal is supported by national planning policy;
- iii) the effect the development would have on highway conditions with respect to safety and amenity;
- iv) whether any permission should be subject to planning conditions and planning obligations and the likely effectiveness of these with respect to the mitigation of impacts.

### (i) The Adopted and Emerging Development Plan

#### *Adopted development plan*

276. The West Midlands Regional Spatial Strategy and the saved policies of the Staffordshire and Stoke-on-Trent Structure Plan were revoked on 20 May 2013. As a result the development plan comprises only the saved policies of the East Staffordshire Local Plan 2006. [29,30,93]

277. The whole of the appeal site is within the settlement boundary of Burton upon Trent as identified on the Proposals Map of the Local Plan. Although previously used for quarrying the site has since been filled and is now in low grade agricultural use, and it is of the nature of a greenfield site. Policy H2 gives priority to the development of previously developed sites over greenfield ones in large housing developments, but does not prevent the development of greenfield land to meet development needs. The Local Plan emphasises locating new development in or close to the two towns of Burton upon Trent and Uttoxeter, while policy CSP4 identifies Burton upon Trent and Uttoxeter as towns with scope for regeneration to assist economic recovery and diversification and to improve the physical environment. The proposed large-scale mixed use development of the appeal site, which would bring a range of economic benefits, would be consistent with these aims. These points support the agreement of the main parties that the principle of the development can be regarded as acceptable. [8,9,32,33,39,84<sup>(1)(3)(4)</sup>,87,88,96,98,104,172,173]

278. The provision of employment development in this location adjacent to the A38 corridor is consistent with policy E1, with this site already an employment land commitment in policy E2 [37,38,103]. The provision of new local convenience retailing to serve the existing and proposed new residential catchment area is in accordance with policy R14 [40,84<sup>(7)(10)</sup>,107,203].

279. More generally on mixed use development, policy IMR1 contains a number of criteria. That on compliance with policy BE1 under (a) is dealt with below. Criteria (b) and (c) on maximising employment opportunities and there being no loss of a strategically important employment site, and (e) on compliance with retail policies, are met by the commercial content of the proposal. The reference in (d) to not exceeding the Structure Plan requirement is superseded by revocation of the Structure Plan, and there is no evidence that the balance of housing provision in the Borough would be adversely affected. As required by criterion (f) the proposal includes planting commensurate with the National Forest location, and consistent with (g) a Transport Assessment has been submitted. [23,44,84,111,116,247]
280. The Local Plan contains a suite of policies dealing with development management matters [34-45]. The appeal proposal is an outline planning application with all matters reserved other than means of access, but is supported by a Design and Access statement and a number of specialist reports [2]. Detailed considerations including in relation to environmental and infrastructure impact are dealt with by way of agreed draft conditions and planning obligations [84,262-273]. Where third parties have raised objections on these points, these are addressed below under the consideration of conditions and obligations. As agreed between the main parties, the proposal complies with the requirements of policies CSP5 and IMR2 (planning obligations), policy H6 on good design of housing, policies NE14, NE15 and L2 on planting and landscaping, policy H12 on affordable housing (with 15 % provision included), and policies T6 and T7 on car parking and layout [84,100-111].
281. The overall average density of the proposal at 28 dwellings per hectare is below the expectation of a range of 30-50 of policy H6. The National Planning Policy Framework indicates that local authorities should set out their own approach to housing density to reflect local circumstances. In this case the variation in density across the site responds to the local context, and no objection to the proposal on this ground has been raised by the Council. [18,39,105]
282. Policy BE1 deals with design. With respect to the factors it contains, these mostly cover the development management matters dealt with by other policies as already considered, and which could be controlled through the reserved matters, conditions and obligations. The principles of the scheme as set out in the degree of detail available at this stage are broadly acceptable. This includes with respect to potential impact on the Walton on Trent Conservation Area. The only point at issue between the main parties is factor (h) with respect to adverse impacts on the environment in terms of emissions and other impacts. This arises from the Council's objection to the proposal in highways terms. Policies of the Local Plan on transport and highways (T2, T3, T6 and T7) are also relevant to this, and the accordancy of the proposal with these is assessed under the consideration of highways impact below. [36,42,43,84,96,102,170,251]
283. Overall the proposal has a broad accordancy with the adopted development plan, including support for the principle of the development [97]. A final assessment of the degree of compliance will be made in my overall conclusion after the areas in dispute have been considered.

### ***Emerging development plan***

284. The replacement East Staffordshire Local Plan has reached Preferred Option stage, and has not yet been submitted for testing. There are unresolved objections in relation to the important matters of the overall level of housing provision and the approach to the distribution of housing. The final form of the Plan is therefore uncertain. Having regard to the advice of the Framework and The Planning System: General Principles (paragraph 18), the emerging Plan is a material consideration but has limited weight. [61,136,233,234]
285. The appeal site lies within an area identified in the emerging Plan as suitable for the delivery of large scale housing and employment development. Under sustainability testing as part of the Plan's preparation this is an option which is considered to be the most sustainable and would best deliver the Preferred Strategy. It is an agreed matter that the proposal is entirely consistent with the Council's emerging strategy and vision for the future development of the Borough and would deliver a significant amount of growth assigned to Burton upon Trent. [63,65,84<sup>(5)</sup>,89,136-140,172]
286. Policies in the emerging Plan on many aspects of mixed use development and development management carry through the requirements of the adopted Local Plan. The proposal accords with these. No conflicts between the proposal and the emerging plan have been cited. [66-72,84,141-151]

### **(ii) National Planning Policy**

#### ***Sustainable development***

287. The National Planning Policy Framework contains a presumption in favour of sustainable development. It indicates that the policies in its paragraphs 18 to 219, taken as a whole, constitute the meaning of sustainable development. These policies cover a number of the matters which remain to be addressed below, and therefore a final assessment of whether the proposal is sustainable development is again reserved to my overall conclusion. However, the Council concedes that, in accordance with the Framework, the appellant is entitled to a favourable presumption. The site forms part of its emerging strategy which is identified as being the most sustainable, and the location is agreed to be a sustainable one [84<sup>(11)</sup>,172]. Representations by the proposer of another potential housing site about relative sustainability do not establish that the current proposal cannot be regarded as sustainable [114,170,236].

#### ***Housing land supply***

288. The Framework requires local planning authorities to identify and update annually a supply of specific deliverable sites sufficient to provide 5 years worth of housing against their housing requirements with an additional buffer of 5% (moved forward from later in the plan period) to ensure choice and competition in the market for land. The Framework indicates that the buffer should be increased to 20% where there has been a record of persistent under delivery of housing.
289. The Council's recorded assessment of its position in January 2013 was that it was able to demonstrate a 5 year housing supply, with a calculation of the period at 6.02 years. However, following an independent appraisal of its housing requirement figure as contained in the emerging Local Plan Preferred Option, it is

- currently in the process of considering and updating this figure. At the inquiry it was advised for the Council that it took a neutral position on this issue, and it neither advanced a positive case on housing land supply nor disputed the appellant's housing requirement figures. In this context little weight can be attached to the belief expressed by its witness at the inquiry that the Council still has a 5 year supply. This was not relied on in submissions, and the Council put forward no evidence on this matter. [64,84<sup>(2)</sup>,117,125,174]
290. Paragraph 5.119 of the emerging Plan suggests that between 2012 and 2031 the Council will need to plan for 8,935 houses. The review of this figure remains under progress, and will not be available until as part of the evidence base for the next iteration of the Local Plan due to emerge in October. However, it appears to be agreed that the Council accepts that the housing requirement for the Borough should be more in line with the RSS Phase II Review Panel recommended figure of 13,000 new dwellings over a 20 year period, although this covered the period 2006 to 2026. The appellant's own analysis (Open House) suggests a requirement figure of 10,500 dwellings for the period from 2012 to 2031, based on 2008 household projections. [64,118-121]
291. The Framework requires that local planning authorities use their evidence base to ensure that the Local Plan meets the full, objectively assessed needs for market and affordable housing in the housing market area, as far as is consistent with policies in the Framework. The evidence suggests that the figures of 10,500 and 13,000 dwellings are more representative than the Preferred Option figure of a full and objective assessment of need in East Staffordshire, the former having the benefit of independent testing by a Panel of experts, whilst the latter is based on more up to date household projections (DCLG 2008). No evidence based on the 2011 household projections was put to the inquiry. [118-121]
292. The only calculation of the current housing land supply position before the inquiry using these requirement figures is that of the appellant. This sets out that the Council has a record of persistent under delivery of housing and therefore a buffer of 20% should be applied, and that the shortfall should be added to the 5 year requirement (referred to as the Sedgefield method) rather than added to the whole of the remaining plan period. No challenge was made to these assumptions contained in the appellant's analysis, which appear to be reasonably robust and credible, and reflect the approach followed in recent decisions by the Secretary of State. [122,123]
293. The 5 year supply calculated from these figures ranges from 0.85 years (using the RSS Review figure) to 1.41 years (using the Open House figure) based just on sites with planning permission, and applying a discount on lead in times and delivery rates, which again are uncontested. With additional sources of supply taken into account, including some allowance for windfalls and other sites the Council would seek to rely upon, then the supply increases to between 1.79 years (RSS Review) to 2.03 years (Open House). [124-126,235]
294. The available evidence therefore suggests that there is a serious shortfall in the 5 year housing land supply in the Borough. Given the location of the site within the development boundary in the Local Plan, the acceptability of the proposal in principle does not depend on identification of this shortfall. However, there is agreement that, having regard to paragraph 49 of the Framework, the Local Plan is not up-to-date with respect to the supply of housing since a five-year supply cannot be demonstrated. This lends support to the use of a

greenfield site notwithstanding the approach of policy H2 of priority for previously developed land. In addition, the scale of the indicated shortfall weighs strongly in favour of the proposal in the event of a balancing of benefits with harmful outcome from the development. [126-127]

295. There are proposals for large-scale housing development on other sites on the edge of Burton upon Trent which are the subject of current appeals. However, no case has been made that a determination of the current proposal should be delayed pending these, or that the proposals should be considered concurrently. With the indicated scale of housing land shortfall there appears to be no reason to conclude otherwise. [230-236,239-240]

### ***Economic benefits***

296. The Framework sets out commitments to securing economic growth in order to create jobs and prosperity, and to ensuring that the planning system does everything it can to support sustainable economic growth. It indicates that significant weight should be placed on the need to support economic growth through the planning system.

297. The proposal represents a substantial investment opportunity, and the potential economic benefits including for employment are not in dispute. These benefits also weigh heavily in the proposal's favour. [87,88,173,199,215]

### **(iii) Effect on Highway Conditions**

298. Access to the main development is intended to be provided from 2 points. These are by way of Main Street to the north and from an upgraded link to the A38 to the south. In conjunction with the completed scheme there would be a change to the Acacia Lane/Main Street junction in order to provide priority for vehicles entering and leaving the appeal site; redesign of Main Street incorporating a lower speed limit, pedestrian facilities and car parking; and a new traffic light controlled junction where Main Street meets the B5018. The new A38 link would be the only means of access to the site for employment traffic, with a control that would allow buses to pass through to the north access. The proposed mitigation also includes upgrading works to the existing A38 Branston and Burton interchanges. [3,25-28,157,270]

299. The principle of all these proposals has been agreed by the relevant statutory highway authorities, and their implementation could be secured by way of planning conditions and obligations [108,157,158,164,165,255,259,262,270,273]. The Council agrees that additional parking as part of the Local Centre scheme on Main Street would be beneficial in helping to relieve existing parking congestion, in particular at school times [22,100,110,114,157,195,210]. The design scheme here is proposed to follow Manual for Streets advice, and could be expected to improve pedestrian conditions in this location [157,161,207].

300. The Council's recorded resolution for objecting to the proposal cited concern about traffic from the completed development [5]. However, it agreed at the inquiry that the incorporation of a vehicular access to the residential development from north of the site is acceptable. There is no technical highways evidence to indicate that this proposed access arrangement would be inadequate to cope with the traffic likely to be generated. The noise evidence confirms that there would also be no material adverse effect on the amenity of occupiers of existing residential properties in the vicinity of the Main Street access, having regard to



the further details of the access now provided and subject to securing mitigation works through condition. All of these final arrangements meet policy requirements, including policies T1, T6, T7 and BE1. In addition, the Framework advises that development should only be prevented or refused on transport grounds where the residual cumulative impacts are severe. [102,108-110,154,155,158-162, 206,214,218,220,223]

301. This leaves the main dispute as dealt with at the inquiry as being in relation to the appropriate triggers for implementation of the highways works, including with respect to construction impact. Policy T1 of the Local Plan provides for the use of planning conditions to render schemes acceptable by way of the carrying out of works to avoid a significant impact on the highway network. The potential scope for such conditions in this case is wide ranging, and at one extreme could preclude any residential development on the main site prior to provision of a direct link to the A38 such that this could be used for all construction traffic. Given the potential to impose a condition of this nature, the concern raised by the Council does not constitute a ground that could warrant the withholding of planning permission. The appellant's objection to such a degree of restriction is in terms of the effect on the delivery of housing rather than the principle. Having regard to the advice in 11/95, any condition needs to be justified as necessary and reasonable. [41,163,168,180,183-186]

302. The triggers agreed by the appellant with the relevant highway authorities are:

- no more than 342 dwellings and no part of the employment development to be occupied before implementation of the Branston Interchange improvements;
- no more than 342 dwellings and no part of the employment development to be occupied before completion of the new A38 site access;
- no more than 250 dwellings to be occupied before upgrading of the B5018/Main Street junction to a signal controlled junction;
- no development to be occupied before a change in priority of the Main Street/Acacia Lane junction and implementation of the urban design scheme. [157,164,181,255,259]

303. These thresholds are based on capacity and safety assessment by the relevant statutory highway authorities with respect to development traffic. There is no technical or expert evidence to suggest that the conclusions of the assessment are incorrect, and little weight can be given to contrary assertions, despite the value that local knowledge can have in planning matters. The proposal would lead to a significant increase in the number of vehicles using the Main Street/B5018 junction and pedestrians crossing the road here, including to reach the Primary School. The agreed trigger would be likely to involve a period of some 3 years before the junction is signalised. Overlaps between the timing of peak development generated traffic and that associated with the School and other local facilities could be expected to occur. Nevertheless, there is no expert safety evidence to warrant an earlier requirement for the provision of signals, or to demonstrate that significant highways harm would be caused by an absence of these prior to the agreed trigger point. [158-161,164,178,182,192-196,209-211,214]

304. Construction traffic was not specifically considered in the Transport Assessment, reflecting a conventional approach that the worst case impact would involve generation from the occupied completed development. Updated information indicates that the first phase of development could generate some 24.6 construction vehicle trips (2-way movements) per day, averaging around 2-3 per hour. There is no evidence to support the assertion that the number could be higher. While it is likely that movements would be bunched, and therefore of greater frequency at certain times, they would correspondingly be less frequent at other times. By comparison with development traffic such flows would be relatively limited in number. There is scope by way of a condition on construction management to ensure control over the routing of construction vehicles and also avoid movements coinciding with peak school hours. [165-167,189,190]
305. The Council's position at the inquiry was that the construction of no more than 60 houses (corresponding to the part of the development north of Main Street) should be allowed before provision of the A38 link, such that all construction traffic would thereafter use that route. The appellant has now offered a limit of 150 houses before this point (rather than the 342 dwellings agreed with the Highways Agency). The difference between the parties on this matter is therefore relatively small. [165,166,177,189-191,208]
306. There is no technical traffic evidence to suggest that a limit of less than 342 dwellings is warranted under policy T1 by way of there otherwise being a significant impact on the highway network. Nevertheless, the passage of construction related vehicles through local roads can have an adverse effect on the perceived environmental quality of an area. This subjective amenity impact, although difficult to quantify, is commonly seen as a burden of new development, and requires a balance between conflicting objectives. The appellant's suggested limit of 150 dwellings would enable the delivery of new housing on the site during the time needed to secure provision of the access without giving rise to an undue construction traffic burden, and therefore in that respect would be reasonable. With regard to the necessity for such a limit, while it might be that permission would not be refused without it, the Circular implies that a condition can otherwise be imposed if there is special and precise justification. In this case a restriction of 150 dwellings would tackle the specific matter of the local amenity impact of construction vehicles, and in particular avoid a prolonging of this when a reasonable alternative could be anticipated to be available, and ensure that construction vehicles for the residential development cease taking a less desirable route as soon as this could practically be achieved. Although finely balanced, I consider that on this basis that there is adequate need for a restriction at this level, and this is therefore justified. Conversely, such justification does not extend to the Council's suggested limit of 60 dwellings, which would be unduly onerous and not reasonable and necessary. [91,100,167,168,183-191,216,225]
307. With the conditions and obligations as discussed, the proposal complies with the transport policies of the Local Plan, including T1, and there would be no significant breach of policy BE1. [102,108-110,184,197-199]

## **(iv) Conditions and Obligations**

### ***Conditions***

308. Conditions to be imposed on a grant of permission were largely agreed between the main parties, other than highways works phasing conditions reflecting the differing positions on this matter [262]. The conditions fall to be considered against the advice in Circular 11/95. Taking into account that advice and the views expressed on the proposed conditions, and the above conclusions, a set of amended conditions that are recommended in the event of the appeal being allowed is included in an Annex.

309. I have made a number of minor detailed changes to the suggested conditions to improve the wording. I now set out the justification for the conditions, including where relevant the infrastructure needs that they are intended to address, and the likely success in doing so, under the headings of the groups into which the recommended conditions are arranged.

### ***Time Limits***

310. Appropriate timescale conditions are required to reflect the outline nature of the application and the need for subsequent approval of reserved matters. The development is expected to be implemented on a phased basis, with the phases subject to approval under condition 5. The time periods are reasonable given the scale of the proposal, providing for the early delivery of housing while allowing more flexibility for the employment development.

### ***Design, Open Space and Landscaping***

311. These are important elements of the development in ensuring that it achieves an appropriate quality and linkages with the surrounding area, including with respect to the principles contained in the Design and Access Statement. Although covered by the reserved matters, a number of requirements need to be incorporated whatever the final details. The inclusion in condition 7 on boundary treatments of reference to the railway line deals with the point raised by Network Rail [254]. Condition 10 allows for the alternatives of upgrading sports facilities at Clays Lane or providing for this on the main site [24].

### ***Sustainability***

312. A requirement for waste management plans addresses a point made by the County Council, and would help minimise waste generation in line with sustainable development objectives [259].

### ***Contamination, Pollution and Noise***

313. The site has in the past been infilled with pulverised fuel ash (PFA). While there is agreement between the main parties on this matter, there is understandable concern raised by third parties about the suitability of the site for residential development and possible contamination effects on the surrounding area from disturbance through construction works including from dust. Specialist reports were submitted with the application, and the matter has been considered by the Environment Agency and the Council's Environmental Health section. They have raised no objection to the proposal on this ground subject to the imposition of conditions on detailed investigation, assessment and remediation works. The suggested conditions reflect this approach, and the advice in the Framework. In the circumstances these conditions would be capable of dealing

satisfactorily with potential contamination issues, and are necessary to ensure this. [9,84<sup>(13)</sup>,92,169,176,216,219,222,226,241-244,252,260]

314. With regard to noise, conditions are needed both to deal with construction impact and the environment of new and existing dwellings with the development in place to safeguard living conditions. Restrictions on hours of the A5 use and of deliveries to the local centre are needed to protect amenity.

#### *Flood Risk and Drainage*

315. Flood risk is a further matter where there is agreement between the main parties but concerns held by third parties. There has again been assessment by the Environment Agency, including consideration of the submitted Flood Risk Assessment and drainage strategy. The site lies within Flood Zone 2 and part within Zone 3, and there is clear evidence of past flooding, including with effects on the A38. Evidence on the sequential test has been provided, including identification of the site through the emerging Local Plan. A number of works have been put forward, and the Environment Agency is satisfied that with these in place the development would be safe and flood risk overall would be reduced, meeting the exception test. With conditions to ensure this, and the provision of a sustainable drainage scheme, the technical evidence suggests that flood risk is not a reason to resist the proposal. [23,84(12),92,130,148,169,176,204,213,219,228,241-244,246,248,252]

#### *Ecology*

316. Relevant ecological surveys were submitted with the application, supplemented by an additional report. It is agreed that the proposal would provide substantial biodiversity benefits with respect to habitats, and it is supported by relevant consultees. Conditions are needed to secure these benefits, offsetting any harm, and limit the impact of the development works. [23,84<sup>(14)</sup>,92,111,131,176,215,219,241-244,247,252,253,256,257]

#### *Highways*

317. Conditions on the implementation of highway works and the phasing of these are needed to reflect the above conclusions, including on construction impact.
318. Condition 36 suggested by the Highways Agency deals with monitoring of traffic using the new A38 link and remediation in the event of thresholds being breached. I raised doubts about the precision and enforceability of the original version of this condition. In response additional details were provided by the Highways Agency on potential remedial measures, and these have been added to the condition. Approval of such details as required by the condition should lie just with the local planning authority, although no doubt it would wish to consult the Highways Agency. Assuming a reasonable application of the condition in considering such details, including with respect to the likely effectiveness, on balance I consider that it is appropriately framed in meeting the intended purpose of safeguarding highway conditions. [263]

#### *Approved drawings*

319. Conditions referring to the Masterplan and Access plans are needed to ensure that the development accords with the submitted and assessed details.

## ***Obligations***

320. The Framework sets out policy tests for the seeking of planning obligations, and there are similar statutory tests contained in Regulation 122 of the Community Infrastructure Levy Regulations (2010) which must be met for obligations to be given weight. Policies CSP5 and IMR2 of the Local Plan on dealing with the impacts of development, together with the expectations of the Council's supplementary planning documents and the Staffordshire Local Transport Plan, are also relevant [34,45,74-76,84,135,273]. The submitted obligations have been considered in the light of these requirements and the joint evidence put forward in support of them.
321. The obligation on affordable housing responds to the requirements of policy H12 of the Local Plan, the Housing Choice Supplementary Planning Document and local needs. The arrangements on the nature of the provision and the securing of this are appropriately addressed. [266]
322. Requirements relating to the National Forest are contained in policies NE14 and NE15 of the Local Plan, and the obligation relating to the Forest would ensure that planting would be carried out in accordance with these. The open space, landscaping and recreation obligations would provide for needs likely to be generated by the development in response to the Open Space Supplementary Planning Document, including arrangements for future management of facilities. The alternatives of sports facility improvements at Clays Lane or within the site are appropriately dealt with. [201,267,268]
323. The secondary education contribution addresses school needs that would arise from residents of the development and would need to be catered for. The basis for assessing the shortfall in places and calculating the contribution has been properly explained. Similarly, the need for additional primary school provision has been justified, with the options of expansion of the existing local school or a new school on the appeal site allowed for as alternatives. [205,269,272]
324. The transport obligations relating to bus services and a travel plan are warranted in the interests of sustainable development. I had initial reservations regarding the highway sum of £688,424 payable to the County Council for various measures in the Branston area in terms of the extent to which this appears to be directed towards dealing with existing transport pressures rather than addressing needs that would need to be met as a result of the development. However, the additional justification provided by the County Council explains that the transport model against which the impact of the scheme has been assessed assumes that these measures needed to deal with anticipated future growth in Burton will be carried out, and are thus part of the context of acceptability of the proposal. In addition the contribution is proportionate to the scale of the development in relation to the overall level of growth sought to be accommodated by the Burton Integrated Transport Strategy. Within the context of the Local Transport Plan 2011, and having regard to Local Plan policies T1 and T2, I am therefore reasonably satisfied that the obligation is justified. [270,273]
325. The Highways Agency contribution would provide for funding of the A38 Barton junction works made necessary by the development, and accords with Local Plan policy T3. [270]

326. All of the above obligations meet the tests of being necessary, directly related to the development and fairly and reasonably related to it, and therefore can be given weight in support of the proposal. [84,135]

### **OVERALL CONCLUSION**

327. The proposal, with appropriate mitigation by way of conditions and obligations, is in overall accordance with the development plan, and also with emerging local policy. It would deliver a number of substantial benefits, including market and affordable housing, public open space and employment opportunities. These factors, and the evidence of a serious shortfall in housing land supply in the Borough, weigh heavily in support of the proposal in terms of Government policy. Concerns raised about highways impact do not warrant resisting the proposal given the scope for mitigation of this, and the effects of construction traffic can be controlled within reasonable limits. Overall the proposal can be regarded as a sustainable development, and under the Framework there is a presumption in favour of granting permission.

### **RECOMMENDATION**

328. That the appeal be allowed and planning permission be granted subject to the conditions set out in the attached Annex.

*T G Phillimore*

INSPECTOR

## **ANNEX: RECOMMENDED CONDITIONS**

### **Time Limits**

- 1) No phase of development (as referred to in condition 5) shall be commenced until full details of the layout, scale and appearance of the building(s) to be erected, and the landscaping of the site (hereinafter called "the reserved matters") for that phase have been submitted to and approved in writing by the Local Planning Authority. The development shall not be carried out otherwise than in accordance with the approved details.
- 2) Application(s) for the approval of the reserved matters for the first 150 dwellings hereby permitted shall be made to the Local Planning Authority no later than 2 years from the date of this permission. The first 150 dwellings hereby permitted shall be begun not later than 2 years from the date of approval of the last of the reserved matters to be approved in respect of that phase.
- 3) Application(s) for the approval of the reserved matters for all remaining residential development hereby permitted shall be made to the Local Planning Authority not later than 5 years from the date of this permission. All remaining residential development hereby permitted shall be begun not later than 2 years from the date of approval of the last of the reserved matters to be approved.
- 4) Application(s) for the approval of reserved matters for all other development hereby permitted shall be made to the Local Planning Authority not later than 7 years from the date of this permission. All plots of development hereby permitted shall be begun not later than 2 years from the date of approval of the last of the reserved matters to be approved.
- 5) No development shall take place until details of the phasing of the site have been submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be completed in accordance with the approved phasing plan.

### **Design, Open Space and Landscaping**

- 6) No phase of development shall take place until samples and details of all materials to be used externally for that phase of the development have been submitted to and approved in writing by the Local Planning Authority and the development shall only be carried out using the agreed materials.
- 7) No phase of development shall take place until details of walling and fencing to be used for both public (including the railway line) and private boundary treatments for that phase of the development where relevant have been submitted to and approved in writing by the Local Planning Authority. The development shall only be carried out using the agreed boundary treatments, which shall be completed prior to the first occupation of the dwelling in that phase to which it relates, or the first use of the open space in that phase to which it relates, or in accordance with a timetable agreed in writing with the Local Planning Authority.
- 8) All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding season following the occupation of any of the buildings in the phase to which it relates, or the completion of that phase of the development, whichever is the sooner;

and any trees or plants which within a period of 5 years from the completion of the phase of development die, are removed, or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species unless the Local Planning Authority gives written consent to any variation.

- 9) Each reserved matters submission shall include a statement demonstrating substantial compliance with the principles of the submitted Design and Access Statement (October 2011) for that phase and the development of that phase shall only be carried out in accordance with the statement.
- 10) No phase of development shall take place until an open space strategy related to that phase of the development, and including the following details where relevant, has been submitted to and approved in writing by the Local Planning Authority:
- a) equipment to children's play areas;
  - b) details of the pavilion and associated works at Clays Lane, or the alternative provision on site;
  - c) details of the linkages to the Trent Valley Footpath, and to the existing railway bridge;
  - d) details of all woodland planting;
  - e) details of short and long term maintenance management plans of all areas of open space;
  - f) details of all hard landscaping, including surfacing of roads, footpaths, car parking areas and courtyards.

The development shall thereafter be completed in accordance with the approved details prior to the first occupation of any of the phase to which the works relate, or in accordance with a timetable agreed in writing with the Local Planning Authority.

### **Sustainability**

- 11) No phase of development shall take place until a Site Waste Management Plan for that phase has been submitted to and approved in writing by the Local Planning Authority. The development shall only be carried out in accordance with the approved Site Waste Management Plans.

### **Contamination, Pollution and Noise**

- 12) No phase of development shall take place until a contaminated land assessment and associated remedial and/or mitigation strategy, together with a timetable of works for that phase, has been submitted to and approved in writing by the Local Planning Authority and the measures approved in that scheme shall be fully implemented in accordance with the approved timetable. The scheme shall include all of the following measures unless the Local Planning Authority dispenses with any such requirement specifically in writing:
- a) The contaminated land assessment shall include a desk study to be submitted to the Local Planning Authority for approval. The desk study shall detail the history of the site uses and propose a site investigation strategy, if required, based on the relevant information discovered by the desk study. The strategy shall be approved by the Local Planning Authority prior to any further investigations commencing on site. The study shall include an



- analysis regime of the particle size distribution of the fly ash, and the variability across the site should be recorded and used to inform the measures relating to dust control (i.e. the proposed control measures should be appropriate to dust size fractions present).
- b) The site investigation, including relevant soil, soil gas, surface and groundwater sampling, shall be carried out by a suitably qualified and accredited consultant/contractor in accordance with a Quality Assured sampling and analysis methodology.
  - c) A site investigation report detailing all investigative works and sampling on site, together with the results of analysis, risk assessment to any receptors and a proposed remediation and/or mitigation strategy shall be submitted to and approved in writing by the Local Planning Authority prior to any remediation commencing on site.
  - d) Approved remediation and/or mitigation works for that phase shall be carried out in full on site under a quality assurance scheme to demonstrate compliance with the proposed methodology and best practice guidance. If during the works contamination is encountered which has not previously been identified then the additional contamination shall be fully assessed and an appropriate remediation/mitigation scheme shall be submitted to and approved in writing by the Local Planning Authority.
  - e) Upon completion of the works a Remediation/Mitigation Validation Report for that phase shall be submitted to and approved in writing by the Local Planning Authority. The report shall include details of the proposed remediation and/or mitigation works and quality assurance certificates to show that the works have been carried out in full in accordance with the approved methodology.
- 13) Any soil to be imported to the site shall first be chemically analysed for contaminants at a frequency of 1 sample per 100 cubic metres, with the results submitted to and approved in writing by the Local Planning Authority prior to the soil being installed. Only soil that has been approved in writing by the Local Planning Authority shall be imported to the site.
- 14) No phase of development shall take place until it can either be demonstrated that the phase is not affected by landfill gas or it shall be confirmed that the building(s) will be constructed to the standards specified within BRE Report 212 (Construction of new buildings on gas contaminated land), with the relevant details submitted to and approved in writing by the Local Planning Authority. The building(s) shall only be constructed in accordance with the approved details.
- 15) No phase of development shall take place until a scheme of dust prevention and mitigation measures for that phase has been submitted to and agreed in writing by the Local Planning Authority. The scheme should be in substantial accordance with the principles and recommendations of the 'Control of dust and emissions from construction and demolition – Best Practice Guide' (London Councils 2006) and the 'Control of dust from construction and demolition activities' (Building Research Establishment 2003) or similar documentation. The scheme shall assume the site as 'high risk' as defined in the London Councils guidance by virtue of its scale, number of proposed properties and potential for dust, and identify mitigation measures accordingly, with particular consideration given to the control of Pulverised Fuel Ash. The development

shall thereafter be completed in accordance with the approved dust prevention and mitigation measures.

- 16) No phase of development shall take place until a Noise and Vibration Impact Assessment has been submitted to and approved in writing by the Local Planning Authority for that phase of development to which it relates, including details of any mitigation measures required in relation to noise and vibration required during construction. The development shall be completed in accordance with the approved mitigation measures.
- 17) No phase of development shall take place until a Noise Impact Assessment has been submitted to and approved in writing by the Local Planning Authority for that phase of development to which it relates, which shall include the following where relevant to that phase:
- a) details of noise mitigation to all proposed dwellings;
  - b) details of a noise mitigation scheme for the proposed access off Acacia Lane to minimise any potential impact of traffic noise to existing residential occupiers on Hollyhock Way;
  - c) details of Noise Bund and Acoustic Fence (which shall be designed to ensure that there is no reflection noise from the A38 to adjoining properties);
  - d) details of noise mitigation measures to be included in each of the B2/B8 units to include details of fencing to adjoining residential properties;
  - e) submission of revised noise assessments should land levels change during any phase of the development.

The development shall only be implemented in accordance with the approved mitigation measures which thereafter shall be permanently retained.

- 18) The A5 use hereby permitted shall not be open to customers outside the hours of 07:00 to 23:30 Mondays to Saturdays, and 07:00 to 23:00 Sundays.
- 19) No deliveries shall be taken at or despatched from the Local Centre hereby permitted outside the hours of 07:00 to 19:00 Mondays to Saturdays, or at any time on Sundays, Bank or Public Holidays.
- 20) No development shall take place on the A5 unit hereby permitted until full details of a mechanical ventilation system for the kitchen have been submitted to and approved in writing by the Local Planning Authority. The ventilation system shall be implemented in full in accordance with the approved details prior to the first use of the premises as a takeaway.
- 21) No construction work on the site shall be undertaken outside of the hours of 07:30 to 19:00 Mondays to Fridays, and 08:00 to 14:00 on Saturdays, with no working on Sundays or Bank Holidays unless otherwise first agreed in writing by the Local Planning Authority.

### **Flood Risk and Drainage**

- 22) The development hereby permitted shall only be carried out in accordance with the submitted Flood Risk Assessment (FRA) and Drainage Strategy, reference PJF116/21/R001 Version 01, dated October 2011, undertaken by Halcrow. No phase of development shall commence until a final detailed scheme for each of the following mitigation measures detailed within the Flood Risk Assessment where relevant for that phase have been submitted to and approved in writing by the Local Planning Authority.

- a) Improvement of the existing Branston Surface Water Pumping Station, if deemed necessary.
- b) Construction of a replacement outfall culvert and flap valve discharging to the Tatenhill Brook.
- c) Either make redundant the existing culvert and replace with new in an alternative location to be agreed, or reline the existing culvert.
- d) Diversion of the Tatenhill Brook upstream of the existing outfall point beneath the railway by the Holyhock Estate to a new location as identified in Appendix A of the Flood Risk Assessment (OS NGR 422040,320326).
- e) Provision of the approved flood barrier (infilling of the existing channel) immediately downstream of the proposed diversion point of the Tatenhill Brook on the west side of the railway.
- f) Provision of the approved flood embankment located around the existing properties on the eastern side of the A38.
- g) Creation of a backwater on the redundant channel section of the Tatenhill Brook resulting from the proposed new outfall. The backwater shall extend from the proposed flood barrier to the existing outfall beneath the railway at the northern end of the site.
- h) Construction of raised embankment across the line of the Tatenhill Brook.
- i) Proposed culvert to the Tatenhill Brook on the line of the proposed road/embankment.
- j) Provision of flood plain compensatory works for all changes to land located on the west side of the railway (as detailed on page 16 of the Flood Risk Assessment) up to the 1 in 100 year standard.
- k) Proposed woodland planting and river braiding as identified on the Application Master Plan Drawing Number 44(rg) Rev K.
- l) Proposed woodland structural planting alongside the Tatenhill Brook, on the west side of the railway.

Each scheme shall be fully implemented and subsequently maintained in accordance with the timing/phasing arrangements embodied within the scheme or within any other period as may subsequently be agreed in writing by the Local Planning Authority.

- 23) No phase of development which includes dwellings shall take place until details of finished floor levels of all dwellings in that phase, which shall be set 600mm above the 1 in 100 year flood level plus the appropriate allowance for climate change, has been submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be completed in accordance with the approved details.
- 24) No phase of development shall take place until a foul and surface water drainage scheme for that phase, based on sustainable drainage principles and an assessment of the hydrological and hydro geological context of the development, has been submitted to and approved in writing by the local planning authority. The development shall subsequently be implemented in accordance with the approved foul and surface water drainage details.

## **Ecology**

- 25) Occupation of more than 150 dwellings or any part of the Class B2/B8 development shall not take place until such time as a scheme for the provision and management of the proposed landscape and wildlife corridor linking Branston Water Park with the River Trent, including a timetable for its

implementation, has been submitted to and agreed in writing by the Local Planning Authority. Thereafter the development shall be carried out in accordance with the approved scheme. The scheme shall include:

- a) plans showing the extent and layout of the wildlife corridor;
  - b) details of the planting scheme (for example, native species);
  - c) details demonstrating how the wildlife corridor will be protected during development and managed/maintained over the longer term;
  - d) details of any footpaths etc.
- 26) No phase of development shall be commenced until ecological update survey checks for Badgers and Otters, and a scheme for the provision of bat and bird boxes, has been submitted to and approved in writing by the Local Planning Authority for that phase. The development shall be completed in accordance with the approved details and any mitigation measures outlined within the approved ecological surveys.
- 27) No trees or hedgerow shall be removed during the bird nesting season (March to July inclusive) unless it can be demonstrated through the submission of a method statement, prepared by a qualified ecologist and submitted to and agreed in writing by the Local Planning Authority, that breeding birds would not be affected by the works. The approved method statement shall be fully adhered to.
- 28) Occupation of more than 150 dwellings shall not take place until details of habitat creation measures for the land to the east of the railway, including 33ha of open grassland/wetland and details of the protection measures for existing ponds, including a timetable for implementation, have been submitted to and approved in writing by the Local Planning Authority. The habitat creation shall thereafter be completed in accordance with the approved details and retained as such for the life of the development.
- 29) No phase of development shall take place until a long term Ecological Management Plan for that phase, to include the management of important habitats, has been submitted to and approved in writing by the Local Planning Authority. The areas of open space/habitats shall thereafter be retained in accordance with the Ecological Management Plan for the life of the development.

## Highways

- 30) No development shall take place until details of the following off-site highway works have been submitted to and approved in writing by the Local Planning Authority, and the works shall thereafter be completed in accordance with the timescales outlined below:
- a) changes to junction priorities at Acacia Lane/Main Street prior the first use or occupation of any part of the development;
  - b) provision of car parking and completion of the urban design scheme on Main Street Branston at the junction with Acacia Lane substantially in accordance with drawing no 19078-39(rg) prior to the first use or occupation of any part of the development;
  - c) provision of a signal junction on the B5018 at the junction of Main Street Branston prior to the occupation of the 251st dwelling.
- 31) No phase of development shall take place until details of road construction, street lighting and drainage, including longitudinal sections and a satisfactory

means of draining the roads to an acceptable drainage outfall, for that phase have been submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be completed in accordance with the approved details.

- 32) No reserved matters applications shall be submitted until a masterplan including the following details has been submitted to and approved in writing by the Local Planning Authority:
- a) design concept for the whole site, including identification of the accesses serving each phase and a timetable for delivery of the access points;
  - b) details of the proposed road hierarchy and street types;
  - c) a public transport route strategy, including a timeframe for implementation and infrastructure to be implemented;
  - d) details of the footpath and cycle network throughout the site;
  - e) integration of car parking and cycle parking.

All reserved matters submissions shall thereafter accord with the details/requirements of the approved masterplan, unless otherwise first agreed in writing by the Local Planning Authority.

- 33) No more than 342 dwellings nor any part of the B2/B8 development shall be occupied until a scheme of highways improvements at the A38 Branston Interchange has been submitted to and approved in writing by the Local Planning Authority and is fully implemented. The scheme of highway improvements shall accord with the Transport Assessment prepared by Halcrow dated August 2011 (or any update of this documentation which has been agreed in writing with the Highways Agency), which identifies the need for the following mitigation:

- a) southbound off slip widening;
- b) signalisation of the remaining circulatory;
- c) upgrade of the A5121/B5018 signal junction controller to Microprocessor Optimised Vehicle Actuation (MOVA).

- 34) The construction of the 151st dwelling or any part of the Class B2/B8 development shall not take place on the site until details of the left in/left out junction onto the A38 and the construction haul road have been submitted to and approved in writing by the LPA; the submitted information shall include the following:

- a) how the system interfaces with existing highway alignment, details of the carriageway marking and lane destinations;
- b) full signage and lighting details;
- c) confirmation of compliance with the Design Manual for Roads and bridges (DMRB) and Departmental Policies, or approved relaxations/departures from standards;
- d) independent stage 1 and stage 2 road safety audits carried out in accordance with the current Design Manual for Roads and Bridges (DMRB) and related advice notes.

- 35) The left in/left out access onto the A38 and construction haul road shall thereafter be completed and fully operational prior to the construction of the 151st dwelling or any part of the Class B2/B8 development. Thereafter all construction traffic, with the exception of that associated with the construction of the local centre, shall only access the site via the A38 junction.

36) Prior to the first use of the left in/left out junction onto the A38 details of an automated system to monitor vehicle trips shall be submitted to and approved in writing by the Local Planning Authority and thereafter installed. The submitted details shall include the following:

- a) the monitoring equipment;
- b) the monitoring locations;
- c) how the system will be maintained;
- d) commencement, length and frequency of monitoring periods;
- e) how the data will be collected;
- f) how the results of the monitoring will be reported and interpreted.

If the system of vehicle trip monitoring subsequently shows the use of the left in/left out access exceeds 370 vehicles at AM peak (08:00-09:00), and 458 vehicles PM peak (17:00-18:00), then within a 6 month period from identification of these thresholds being breached, remedial traffic management measures (such as additional Travel Plan measures to reduce vehicle movements; rat-running surveys and, if appropriate, deterrence methods to include additional traffic calming; and traffic signals on the site exit road, prior to the egress on to the A38, to limit volumes of traffic exiting the site to the A38 in the peak hour) to reduce the number of vehicles utilising the left in/left out access shall be agreed in writing by the Local Planning Authority. The remedial traffic management measures shall thereafter be implemented in accordance with timescales agreed in writing with the Local Planning Authority.

37) Prior to the construction of the link road connecting the employment uses with the residential uses a scheme for restricting northbound access through the site to buses and emergency vehicles only shall be submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be implemented in accordance with the approved details prior to the opening of the link road.

38) No phase of development shall take place until a construction management plan for that phase which shall include the following shall be submitted to and approved in writing by the Local Planning Authority:

- a) routing of construction vehicles, along with access arrangements for each phase of the development;
- b) timetable for implementation;
- c) turning and wheel washing facilities;
- d) measures to remove any mud or deleterious material deposited on the highway;
- e) schedule and timing of movements;
- f) during the term times for Rykneld Primary School, no deliveries of construction materials, to include delivery vehicles entering or leaving the site via Main Street, for the first 150 dwellings shall take place during the hours of 08:30 to 09:15 and 14:45 to 15:30 Monday to Friday;
- g) provisions for escorts of abnormal loads;
- h) temporary warning signs.

Thereafter the construction works shall be carried out in accordance with the approved details.

### **Approved Drawings**

- 39) The development hereby permitted shall be carried out substantially in accordance with the approved Application Master Plan (drawing no. 44(rg) Rev. K).
- 40) Access to the site shall be provided in accordance with the details shown on the approved access drawings numbered PJF116/0008 (left in/left out to the A38) and PJF116/013/120-P2 (Acacia Lane).

## APPEARANCES

### FOR THE LOCAL PLANNING AUTHORITY:

Jack Smyth of Counsel	Instructed by Sherrie Grant, Solicitor, East Staffordshire Borough Council
He called:	
Councillor Greg Hall	Member of East Staffordshire Borough Council, Chairman of Planning Applications Committee
James Malkin	Planner, East Staffordshire Borough Council (At conditions and planning obligations sessions)

### FOR THE APPELLANT:

Christopher Young of Counsel	Instructed by Mark Sitch, Barton Willmore LLP
He called:	
Mark Sitch BSc(Hons) DipTP MRTPI	Senior Planning Partner, Barton Willmore LLP
Peter Spencer BSc(Hons) CMILT MIHT	Associate Director, Halcrow Group Ltd

### FOR STAFFORDSHIRE COUNTY COUNCIL:

Geoffrey Evenson FIHE IENG	Senor Engineer, Local Development Projects (At planning obligations session)
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### INTERESTED PERSONS:

Councillor Michael Bowering	Member of East Staffordshire Borough Council and Planning Applications Committee
Maria Hipkiss	Local resident
Judith Etheridge	Local resident
Alderman Fred Smith	Branston Parish Council

## CORE DOCUMENTS

	<b>Planning Application Core Documents</b>
CDA.1	Application Covering Letter
CDA.2	Application Form
CDA.3	Description of Development
CDA.4	Notice 1 and Covering Letter
CDA.5	Notice 1 to Agricultural Tenant
CDA.6	Schedule of Owners
CDA.7	19078-06(rg)J - Boundary Plan
CDA.7a	19078-06(rg)L - Boundary Plan
CDA.8	19078-44(rg)G - Application Master Plan



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CDA.8a	19078-44(rg)K - Application Master Plan
CDA.9	19078-28(rg)J - Illustrative Master Plan
CDA.9a	19078-28(rg)K - Illustrative Master Plan
CDA.10	19078-05(rg)K - Areas Plan A2 with table
CDA.10a	19078-05(rg)L - Areas Plan A2 with table
CDA.11	PJF116-0008 – Access off A38
CDA.12	PJF116/013/120-P2 – Access from Acacia Lane
CDA.13	Planning Statement
CDA.14	Design and Access Statement – October 2011
CDA.15	Final Transport Assessment V001B August 2011
CDA.15a	Transport Assessment Appendices
CDA.16	Transport Assessment Verification Form
CDA.17	Framework Travel Plan 1.A.2.
CDA.18	Travel Plan
CDA.19	Statement of Community Involvement
CDA.20	Air Quality Assessment – August 2011
CDA.21	Extended Phase 1 Habitat Survey – November 2010
CDA.22	Ecological Surveys – August 2011
CDA.23	Flood Risk Assessment & Drainage Strategy – August 2011
CDA.24	Sequential Test Extract from Flood Risk & Drainage Strategy
CDA.25	Geo-environmental Planning Statement – July 2011
CDA.26	Phase 1 Geo-Environmental Audit – July 2011
CDA.27	Phase 1 Geo-Environmental Audit North of Main Street – August 2011
CDA.28	Landscape and Visual Appraisal – September 2011
CDA.29	Noise Impact Assessment
CDA.30	Noise and Vibration Assessment
CDA.31	BS5837 Arboricultural Survey August 2011
CDA.32	Bean's Covert Biodiversity Alert Survey
CDA.33	Branston – Semi Improved Grasslands
CDA.34	Clays Lane Branston – Extended Phase 1 Survey June 2012
CDA.35	Gallowbridge Biodiversity Alert Site Survey
CDA.36	Breeding Bird Locations
CDA.37	Ponds Surveyed for Great Crested Newts in 2011
CDA.38	Riverside Hotel Grounds Biodiversity Alert Site Survey
CDA.39	Halcrow response to JMP HA (e-mail)
CDA.40	Halcrow Technical Note dated 16th January 2012
CDA.41	PJF116/P013/116 - Option 1 General Arrangement
CDA.42	PJF116/P013/117 - Option 1 Vehicle Tracking
CDA.43	PJF116/P013/118 - Option 1 Existing 70m Forward Visibility
CDA.44	PJF116/P013/119 - Option 1 Cross Sections A-A & B-B
CDA.45	PJF116/P013/120 - Option 1 Cross Section C-C
CDA.46	PJF116/P013/121 - Option 2 General Arrangement
CDA.47	PJF116/P013/122 - Option 2 Vehicle Tracking
CDA.48	PJF116/P013/123 - Option 2 Existing 70m Forward Visibility
CDA.49	PJF116/P013/124 - Option 2 Cross Sections A-A & B-B
CDA.50	PJF116/P013/125 - Option 2 Cross Section C-C
CDA.51	Public Transport Strategy Technical Note dated 16 June 2012
CDA.52	Halcrow Technical Note dated 15th December 2011
CDA.53	Halcrow Technical Notes dated 9th and 20th February 2012
CDA.54	Branston Agricultural Use and Quality Report June 2012
CDA.55	Planning Statement Addendum June 2012
CDA.56	Transport Statement Addendum April 2013

CDA.57 Ecological Assessment by Ecology Solutions Ltd May 2013

**Planning Policy Core Documents**

CDB.1 The National Planning Policy Framework  
CDB.2 Technical Guidance Note to the National Planning Policy Framework  
CDB.3 The Planning System General Principles  
CDB.4 Regional Spatial Strategy for the West Midlands  
CDB.5 Saved Policies of the Staffordshire & Stoke-on-Trent Structure Plan  
CDB.6 Saved Policies of the East Staffordshire Local Plan  
CDB.6a Proposals Map Inset No. 1 to East Staffordshire Local Plan  
CDB.7 East Staffordshire Design Guide Supplementary Planning Document  
CDB.8 East Staffordshire Housing Choice Supplementary Planning Document  
CDB.9 East Staffordshire Open Space Supplementary Planning Document  
CDB.10 East Staffordshire Parking Standards Supplementary Planning Guidance  
CDB.11 East Staffordshire Greenfield Land Release Policy Statement  
CDB.12 East Staffordshire Local Plan Preferred Option – July 2012  
CDB.13 Staffordshire Local Transport Plan - 2011 Strategy Plan  
CDB.14 Regional Spatial Strategy for the West Midlands Phase Two Revision – Submission Draft December 2011

**Planning History Core Documents**

CDC.1 Outline Planning Permission reference OU/20679/001  
CDC.2 Reserved Matters Approval reference RM/20679/005  
CDC.3 Reserved Matters Approval reference RM/20679/008  
CDC.4 Outline Planning Permission reference PC/20679/019  
CDC.5 Outline Planning Permission reference OU/20180/01  
CDC.6 Outline Planning Permission reference OU/20180/004  
CDC.7 ESBC Screening Opinion dated 13th May 2011  
CDC.8 ESBC Screening Opinion dated 28th September 2011  
CDC.9 Secretary of State's Screening Direction dated 27th March 2013

**Other Core Documents**

CDD.1 Department for Transport – Guidance for Transport Assessments - March 2007  
CDD.2 Manual for Streets  
CDD.3 Manual for Streets 2  
CDD.4 East Staffordshire Draft Land South of Branston Development Brief - June 2011  
CDD.5 East Staffordshire Housing Requirements and Housing Market Assessment – July 2012  
CDD.6 East Staffordshire Strategic Housing Land Availability Assessment 2012  
CDD.7 ESBC 5-Year Housing Land Supply Update – January 2013  
CDD.8 Advice on Future Employment Land in East Staffordshire – August 2009  
CDD.9 Interim Sustainability Appraisal of the East Staffordshire Local Plan Preferred Option – July 2012  
CDD.10 Circular 11/95 – Planning Conditions  
CDD.11 Circular 05/05 – Planning Obligations  
CDD.12 Letter from East Staffordshire Borough Council to the Planning Inspectorate dated 10 May 2013  
CDD.13 Consultation response from Staffordshire County Council dated 1 May

- 2013 in respect of the resubmitted planning application.
- CDD.14 Consultation response from the Highways Agency dated 7 May 2013 in respect of the resubmitted planning application.
- CDD.15 Email from the Highways Agency dated 16 May 2013 regarding remedial traffic measures

**Secretary of State Appeal Decision Core Documents**

- CDE.1 APP/F1610/A/12/2173305 – Land to the South of Berrells Road and the West of Bath Road, Tetbury
- CDE.2 APP/Y3940/A/11/2166277 – Ridgeway Farm, Swindon
- CDE.3 APP/F1610/A/11/2165778 – Highfield Farm, Tetbury
- CDE.4 APP/G1630/A/11/2146206 and APP/G1630/A/11/2148635 – Homelands Farm, Bishop's Cleeve and Land at Deans Farm, Bishop's Cleeve, Gloucestershire.
- CDE.5 APP/U4320/A/11/2157433 – Land at Burgess Farm, Worsley
- CDE.6 APP/R0660/A/10/2141564 – Land off Abbey Road and Middlewich Road, Sandbach
- CDE.7 APP/R0660/A/10/2140255 and APP/R0660/A/10/2143265 – Land East of Marriott Road/Anvil Close/Forge Fields and South of Hind Heath Road, Sandbach and Land South of Hind Heath Road between Wheelock and Ettiley Heath, Sandbach

**Joint Core Documents**

- CDF.1 Statement of Common Ground between the St Modwen, East Staffordshire Borough Council and Staffordshire County Council
- CDF.2 Statement of Common Ground between St Modwen and Staffordshire County Council (highways/transport issues)
- CDF.3 Draft s106 Agreement
- CDF.4 Amended conditions
- CDF.5 Amended conditions with tracked changes
- CDF.6 S106 Agreement dated 16 May 2013
- CDF.7 Further amended conditions
- CDF.8 Further amended conditions with tracked changes

**INQUIRY EVIDENCE AND SUBMISSIONS – LOCAL PLANNING AUTHORITY**

- LPA.1 Councillor Hall's proof
- LPA.2 Council's opening submissions
- LPA.3 Council's closing submissions
- LPA.4 Council's response to appellant's costs application

**INQUIRY EVIDENCE AND SUBMISSIONS – APPELLANT**

- APP.1 Mr Sitch's proof
- APP.2 Mr Sitch's summary
- APP.3 Mr Sitch's Appendices Volume 1
- APP.4 Mr Sitch's Appendices Volume 2
- APP.5 Mr Sitch's Rebuttal Statement and Appendices
- APP.6 Mr Spencer's proof
- APP.7 Mr Spencer's summary
- APP.8 Mr Spencer's Appendices
- APP.9 Mr Spencer's Rebuttal Statement and Appendix

APP.10	Appellant's opening submissions
APP.11	Plan of first 150 dwellings location 1153-04
APP.12	Appellant's closing submissions
APP.13	Appellant's costs application
APP.14	Costs Decision APP/F1610/A/12/2173305
APP.15	Appeal Decision APP/K6920/A/10/2126298
APP.16	Costs Decision APP/K6920/A/10/2126298
APP.17	Response to the additional third party comments received

### **INQUIRY EVIDENCE AND SUBMISSIONS – STAFFORDSHIRE COUNTY COUNCIL**

SCC.1	Proof and Appendices of Andrew Marsden (treated as a written submission)
SCC.2	Explanatory Note relating to the Highway Planning Obligation

### **INQUIRY EVIDENCE AND SUBMISSIONS – THIRD PARTIES**

TP.1	Councillor Bowering's statement
TP.2	Councillor Bowering's 4 photos
TP.3	Councillor Bowering's traffic survey plan
TP.4	Alderman Smith's statement
TP.5	Alderman Smith's 7 photos
TP.6	Alderman Smith's newspaper article
TP.7	Third party consultation responses in relation to the further detail for the Acacia Lane access

### **INSPECTOR'S DOCUMENTS**

INSP.1	Folder of appeal representations
INSP.2	Council's notification letter



## 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.