



Department for  
Communities and  
Local Government

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Our Ref: APP/Q4625/13/2192128

Your Ref: BIR.3948

08 March 2016

Dear Sir,

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78  
APPEAL BY GALLAGHER ESTATES  
LOWBROOK FARM, LOWBROOK LANE, TIDBURY GREEN, SOLIHULL B90 1QS**

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Inspector, David Morgan BA MA (Con Studs IoAAS) MRTPI IHBC who carried out an inquiry held on various dates between 13 June 2013 and 16 September 2015 into your client's appeal against the decision of Solihull Metropolitan Borough Council ("the Council") to refuse planning permission for a development of a maximum of 200 dwellings, highway infrastructure, open space and associated works at Lowbrook Farm, Lowbrook Lane, Tidbury Green, Solihull, in accordance with application reference 2012/1627, dated 12 October 2012.
2. The appeal was recovered for the Secretary of State's determination by letter dated 18 April 2013 as it involves proposals for development of major importance having more than local significance.

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

3. The Inspector recommended 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 agrees with his recommendation. A copy of the Inspector's report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

**Procedural matters**

4. An application for a full award of costs was made by Gallagher Estates against the Council (IR9). This application is the subject of a separate decision letter.

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## **Matters arising during and after the Inquiry**

5. The Secretary of State has had regard to the correspondence set out in Annex A to this letter which was not seen by the Inspector. He has carefully considered these representations but, as they do not raise new matters that would affect his decision, he has not considered it necessary to circulate them to all parties. Copies of these representations can be made available on written request to the address at the foot of the first page of this letter.
6. Following a successful challenge to the Solihull Local Plan (SLP) and the subsequent rejection by the Court of Appeal of the Council's appeal against the Order of the High Court quashing those parts of the Local Plan relating to:
  - the housing land provision target (the target set by Policy P5, its justification, the housing trajectory and the five year housing land requirement); and
  - the exclusion of two sites at Tidbury Green from the Green Belt;the reopened inquiry considered the implications of the fact that these two sites do not form part of the development plan (IR10-12) and took account of the submissions made on that basis (IR13).

## **Planning Policy**

7. In deciding this appeal, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise. In this case the development plan consists of the Solihull Local Plan (SLP) adopted December 2013 (IR16).
8. Other material considerations which the Secretary of State has taken into account include the National Planning Policy Framework (the Framework), the associated planning practice guidance (the guidance) and the Community Infrastructure Levy (CIL) Regulations 2010 as amended.

## **Main Considerations**

9. The Secretary of State agrees that the main considerations are those outlined by the Inspector at IR200.

### *Sustainable development*

10. For the reasons given by the Inspector at IR201-205, the Secretary of State agrees that shortcomings in accessibility are effectively overcome through the obligations in the s106 agreement (IR203 and IR205). He notes that the Council did not cite sustainability grounds as a specific reason for refusal and that they have granted planning permission for housing on other sites in the vicinity with broadly similar characteristics (IR204). Overall, the Secretary of State agrees with the Inspector at IR205 that the proposal can be held to accord with policy P7 of the SLP and thus, on balance, can be considered sustainable for the purposes of paragraph 7 of the Framework. He therefore also agrees that it is appropriate to consider it against the key considerations set out in paragraph 14 of the Framework.

### *The effect on landscape character*

11. For the reasons given at IR206-208, the Secretary of State agrees with the Inspector that the appeal site is visually well contained and discrete in terms of its relationship with adjacent designated Green Belt land (IR206-208). The Secretary of State has then gone on to give careful consideration to the potential impact of the proposed scheme and the degree of harm which might ensue when measured

against policy P10 of the SLP (IR209-218). For the reasons given at IR210, the Secretary of State agrees with the Inspector that the sum of the impact in terms of landscape resource, character and visual amenity can be characterised as moderate when considered in the planning balance. He therefore also agrees with the Inspector's conclusion at IR211 that the development avoids definition as a "significant harmful effect" under policy P10; and he also agrees that the proposed conditions would fulfil the tripartite requirements of policy P10 to in part protect, enhance and restore elements of diverse landscape features.

12. In coming to this conclusion, the Secretary of State recognises that the proposed development would result in a significant increase to the size of Tidbury Green and a shift in the character of the area (IR212). However, for the reasons given at IR213, the Secretary of State agrees with the Inspector that there would also be positive outcomes and that there would be no conflict with policy P10.
13. Having carefully considered the Inspector's arguments at IR214-217, the Secretary of State agrees with him at IR218 that, bearing in mind the previous designation of the appeal site as safeguarded land (IR216), arguments over harm couched in terms applicable where Green Belt policy prevails are not appropriate, and the appeal proposals should be considered under the terms of policy P10 (see paragraph 11 above).

#### *Housing supply situation within the borough*

14. The Secretary of State has carefully considered the Inspector's analysis of housing requirement at IR219-223 and housing supply at IR224-229 and, for the reasons given, agrees with his conclusion that, even taking the most optimistic terms presented by the Council, supply was only sustainable until the third quarter of 2015 (IR263) which has clearly now passed. The Secretary of State therefore concludes that the Council cannot identify a five year housing land supply.

#### *Policy status of the site in light of judgments of the Courts to remove it from Green Belt*

15. For the reasons given at IR230-232, the Secretary of State agrees with the Inspector at IR232 that, following the court order referred to in paragraph 6 above, the status of the site reverts to open countryside and is thus subject to relevant local and national policy considerations - policy P10 of the SLP and paragraph 49 of the Framework.

#### *Effects of the proposed development on highway safety*

16. For the reasons given at IR233, the Secretary of State agrees with the Inspector that, with mitigation measures in place and on the basis of the evidence presented at the Inquiry, there would be no material increase of risk to the safety of all classes of highway users on the site or within its environs.

#### *Need for affordable housing within the Borough*

17. The Secretary of State agrees with the Inspector at IR234-235 that the low level of delivery of affordable housing is a very serious problem in the borough, so that the provision of 80 affordable dwellings should be afforded substantial weight in the planning balance.

#### *Conditions*

18. The Secretary of State has considered the suggested conditions set out at Schedule 1 to the IR and the Inspector's comments on them at IR236-243. He agrees with the Inspector that the conditions as set out at Annex B to this letter are reasonable and necessary and meet the tests of the Framework and the guidance.

## *Obligations*

19. The Secretary of State has considered the Inspector's comments at IR198 and IR244-247 in respect of the obligations pursuant to s106 of the Town and Country Planning Act 1990 submitted in a signed Unilateral Undertaking dated 6 September 2013. In making his decision on this case, the Secretary of State has taken into account the provisions in the Unilateral Undertaking and finds that its provisions, which relate to affordable housing, public open space and contributions to enhance public transport and sustainable modes of travel, all accord with Paragraph 204 of the Framework and meet the tests in the CIL Regulations 2010 as amended.

## *Consideration of the development against the policies of the Framework*

20. The Secretary of State has carefully considered the Inspector's findings at IR248-257 and like him, finds that the presumption in favour of sustainable development in paragraph 14 of the framework is invoked through the inability of the Council to demonstrate a five year supply of housing (IR252) – which he notes is agreed by the appellant and Council (IR254). In considering the appeal against this, and for the reasons given at IR255-257, the Secretary of State agrees with the Inspector's conclusion at IR257 that the impact on landscape and settlement character, identified as limited in the planning balance, does not significantly or demonstrably outweigh the benefits of bringing forward sustainable market and affordable housing now, as both merit substantial weight being apportioned to them in favour of development.

## **Planning balance and overall conclusions**

21. The Secretary of State has considered the Inspector's overall conclusions at IR258-269. For the reasons given above the Secretary of State finds that there is no conflict with policy P10 of the SLP and that, in accordance with paragraph 14 of the Framework, the finding that the development proposal is sustainable development in accordance with the development plan lends great weight in favour of allowing the appeal. Further significant weight in favour of the appeal derives from the provision of affordable housing.

22. Against this, the Secretary of State acknowledges that even though the site has a good degree of visual enclosure, the character of the settlement and so its relationship with its rural context will be perceptibly altered. He concludes that the degree of alteration would not be sufficient to constitute significant harm, but he nevertheless gives it limited weight against the appeal. The development would inevitably lead to an increase in traffic but the Secretary of State is satisfied that, through the mitigation provided by obligations, the overall effect in the balance would be neutral. Furthermore, on the basis of the evidence he has seen, he is satisfied that local concerns over the cumulative effect of recently approved development in the area warrant only limited weight.

23. Overall, therefore, the Secretary of State concludes that the appeal proposals accord with the development plan whilst the Council's policies for the supply of housing are out of date. He is satisfied that the adverse impacts of allowing the appeal do not significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole, and concludes that the appeal should be approved as there are no material considerations of sufficient weight to justify a decision otherwise.

## **Formal Decision**

24. 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 development of a maximum of 200 dwellings, highway infrastructure, open space and associated works at Lowbrook Farm, Lowbrook Lane, Tidbury Green, Solihull, in accordance with application reference 2012/1627, dated 12 October 2012, subject to conditions at Annex B to this letter.
25. 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.
26. This letter does not convey any approval or consent which may be required under any enactment, bye-law, order or regulation other than section 57 of the Town and Country Planning Act 1990.

## **Right to challenge the decision**

27. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged. This must be done by making an application to the High Court within six weeks from the date of this letter for leave to bring a statutory review under section 288 of the Town and Country Planning Act 1990.
28. A copy of this letter has been sent to Solihull Metropolitan Borough Council. A notification email/letter has been sent to all other parties who asked to be informed of the decision.

Yours faithfully

*Jean Nowak*

**Authorised by Secretary of State to sign in that behalf**

## Annex A: Correspondence not seen by the Inspector

Phil Thurston	23 September 2013
Nick & Lisa Jobins	21 October 2015
Cllr Ken Hawkins MA	29 October 2015
Rt Hon Caroline Spelman MP	25 August 2015, 22 October 2015, 22 January 2016
Charlotte Kirby, Tidbury Green Parish Council	21 January 2016
Rt Hon Sajid Javid MP	22 January 2016

## **Annex B: Conditions.**

1. The development hereby permitted shall not be carried out except in general accordance with the details shown on the submitted plans, numbers: BIR.3948\_04J; BIR.3948\_14A; BIR.3948\_16; BIR.3948\_17.
2. Approval of the details of (a) appearance; (b) landscaping; (c) layout; and (d) scale (hereinafter called 'the reserved matters') shall be submitted to and approved in writing by the local planning authority before any development begins and the development shall be carried out as approved.
3. Application for approval of the reserved matters shall be made to the Local Planning Authority before the expiration of three years from the date of this permission.
4. The development hereby permitted shall be begun before the expiration of three years from the date of this permission or before the expiration of two years from the date of approval of the last of the reserved matters to be approved whichever is the later.
5. No dwelling construction shall be commenced until samples of all bricks, tiles and other materials to be used in the external elevations have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
6. Details of an external street lighting scheme shall be submitted to and approved in writing by the local planning authority and development shall be carried out in accordance with the approved details before the dwellings are occupied.
7. No development shall take place until the applicant, or their agents or successors in title, has secured the implementation of a programme of archaeological work, taking account of the threshing barn in particular, and in accordance with a written scheme of investigation which has been submitted by the applicant and approved in writing by the local planning authority.
8. No development approved by this planning permission shall take place until such time as a surface water and foul sewage drainage scheme has been submitted to, and approved in writing by, the local planning authority. The scheme shall be fully implemented and subsequently maintained, in accordance with the timing/ phasing arrangements embodied within the scheme, or within any period as may subsequently be agreed, in writing, by the local planning authority.
9. The development permitted by this planning permission shall be carried out in accordance with the approved Flood Risk Assessment (FRA) version 5, prepared by Halcrow, dated November 2012 and the following mitigation measures detailed within the FRA:
  - Provision of compensatory flood storage as shown on drawing no.GIA013-C040-104.
  - Finished floor levels are set no lower than 144m above Ordnance Datum (AOD).
10. The development shall not commence, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by the local planning authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for (i) the parking of vehicles of site operatives and visitors (ii) loading and unloading of plant and

materials (iii) storage of plant and materials used in constructing the development (iv) the erection and maintenance of security hoarding including decorative displays (v) details of haul routes into/from site (vi) wheel washing facilities (vii) measures to control the emission of dust and dirt during construction (viii) before and after carriageway surveys of Lowbrook Lane (ix) contact details for the appointed site agent that can be contacted in the event of any problems arising during construction activities.

11. The development shall not commence until details of an emergency/pedestrian/cycle access as shown on plan no. BIR.3948\_04J from Lowbrook Lane have been submitted to and approved by the local planning authority. Such details shall include a phasing plan for the implementation and availability of the access. The emergency/pedestrian/cycle access shall be implemented in accordance with the details and phasing plan approved and thereafter shall be maintained for vehicular access for the lifetime of the development.
12. Notwithstanding the draft residential travel plan submitted, the development shall not commence until a final residential travel plan has been submitted to and approved by the local planning authority. The final residential travel plan shall include details of the phased implementation of the plan, including details of (i) residential surveys, (ii) the role of the travel plan coordinator over the life of the plan (iii) the implementation of travel plan measures over the life of the plan. The residential travel plan shall cover a period of 5 years and include incentives to promote sustainable modes of transport.
13. Before the development begins a scheme (including a timetable for implementation) to secure at least 10% of the energy supply of the development from decentralised and renewable or low carbon energy sources shall be submitted to and approved in writing by the local planning authority. The approved scheme shall be implemented and retained as operational thereafter.
14. Prior to the commencement of work on site, all existing trees/hedges and large shrubs except those agreed for removal, shall be protected by barriers. Details of the type of fencing and its siting shall be submitted to and approved in writing by the local planning authority, thereafter the tree barriers shall be implemented and maintained on site as approved. The protected areas shall be kept free of all materials, equipment and building activity during the site development, and ground levels within the protected areas shall not be raised or lowered.
15. The development hereby approved shall not be occupied until full details of both hard and soft landscape works including a programme for their implementation have been submitted to and approved in writing by the local planning authority and these works shall be carried out as approved. These details shall include proposed finished levels or contours; means of enclosure; vehicle and pedestrian access and circulation areas; hard surfacing materials; minor artefacts and structures (e.g. furniture, play equipment, refuse); retained historic landscape features, including historic farm buildings, and proposals for restoration. Soft landscape works shall include planting plans; written specifications (including cultivation and other operations associated with plant and grass establishment); schedules of plants, noting species, plant sizes and proposed numbers/densities where appropriate; implementation programme.
16. If within a period of 5 years from the date of planting of any tree, that tree or any tree planted in replacement for it, is removed, uprooted, destroyed, dies or



becomes seriously damaged or defective, another tree of the same species and size as that originally planted shall be planted at the same place within the next planting season (October-March), unless the local planning authority gives its written consent to any variation.

17. Any tree, hedge or shrub scheduled for retention which is lost for any reason during development works, shall be replaced with a tree, hedge or shrub of a size and species to be agreed in writing with the local planning authority and planted during the first planting season after its loss.
18. No development shall take place on site until a Landscape and Ecology Management Plan has been submitted to and approved in writing by the local planning authority. All management activities shall be permitted in accordance with the approved details and timings of the Landscape and Ecology Management Plan, and informed by the approved Ecology and Landscape Management Principles (Halcrow 16th January 2013).
19. The development shall not commence until details of access into the site have been submitted to and approved by the local planning authority. Prior to occupation, access shall be implemented in accordance with the details approved under this condition and shall thereafter be maintained for the lifetime of the development.



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

**by David Morgan BA MA(T&CP) MA(Con Studs IoAAS) MRTPI IHBC**  
an Inspector appointed by the Secretary of State for Communities and Local Government

**Date: 1 December 2015**

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**Town and Country Planning Act 1990**

**Solihull Metropolitan Borough Council**

**Appeal by Gallagher Estates**

Inquiry held on 13 and 14 15 June and on the 6 and 9 of September 2013 and resumed on the 9 June 2015 and then again on the 15 and 16 September 2015.

Lowbrook Farm, Lowbrook Lane, Tidbury Green, Solihull B90 1QS

File Ref(s): APP/Q4625/13/2192128

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**File Ref: APP/Q4625/13/2192128**

**Lowbrook Farm, Lowbrook Lane, Tidbury Green, Solihull B90 1QS**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
- The appeal is made by Gallagher Estates against the decision of Solihull Metropolitan Borough Council.
- The application Ref 2012/1627, dated 12 October 2012, was refused by notice dated 31 January 2013.
- The proposal is for development of a maximum of 200 dwellings, highway infrastructure, open space and associated works.

**Summary of Recommendation:**

The appeal is allowed, and planning permission granted subject to conditions.

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**Procedural Matters**

1. 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.
2. The appeal was recovered for determination by the Secretary of State by letter, dated 18 April 2013, because the appeal involves proposals for development of major importance having more than local significance.
3. The Council refused the application for one reason as set out on the initial decision notice:

*"The proposed development would cause harm to the openness of the Green Belt and would result in the encroachment of the countryside and closing the gap between the settlements of Grimes Hill and Tidbury Green. The development would not accord with the function of the Green Belt whereby the harm to the Green Belt by reason of inappropriateness, and any other harm, is not clearly outweighed by other considerations. The proposed development is considered contrary to policy C1 and C2 of the Solihull UDP (SUDP) 2006 and to policy P17 of the Draft Local Plan and to the National Planning Policy Framework March 2012".*

4. However, citing an administrative error, the Council subsequently wrote to the appellant on the 14 March 2013, following the issuance of the formal decision notice on the 31 January 2013, advising that the reason for refusal should have been that appended to the committee report. This was again a single reason for refusal that states:

*"Both the adopted Unitary Development Plan (2006) and Draft Local Plan (2012) include policies that clearly seek to prevent development of the site by virtue of its safeguarded nature and Green Belt designation (respectively). The proposed development is of such a scale and location that it would have a detrimental impact on the purposes of including land in the Green Belt, which together with a harmful impact on landscape quality of the area, amount to significant harm which is not outweighed by the benefits of the development. The proposed development is therefore contrary to policies H2 and C8 of the adopted UDP (2006) and policies P17 and P10 of the Draft Local Plan and NPPF".*

5. It is clear that the Council, when drafting the committee report and determining the application, gave consideration to the policies of the development plan and to those of the emerging local plan. This is reflected both in the committee report, the initial decision notice reason for refusal and in the *corrected* version sent to the appellant less than six weeks after the dispatch of the formal notice. The occurrence of the administrative error resulting in the issuing of the wrong reason for refusal is certainly unfortunate and, on receipt, certainly must have caused a measure of confusion. This much is clear from a reading of the Grounds for Appeal (GoA), submitted on the day of the receipt of the decision notice on the 31 January 2013. However, the GoA makes clear reference to the committee report (with its attached reason for refusal) and representatives of the appellant were present at the meeting where the proposals were discussed. Moreover, the correction letter was sent some five weeks after the formal start date (7 February 2013), well ahead of any substantive preparation of proofs of evidence.
6. The appellant takes issue with the content of both versions, both in evidence and in relation to the costs application, principally in relation to the identification of harm to the Green Belt. Whilst it is certainly the case that this harm has greater emphasis in the decision notice version, the issue of harm to the Green Belt asserted by the Council is still significantly reflected in the reissued version. The appellant's concerns over the reliance on the Green Belt harm by the Council can equally reasonably be addressed through the consideration of the amended reason for refusal. It is on the basis of the latter reason that the substantive issues are considered in this report.
7. I made an accompanied site visit to the area as part of the Inquiry on the 14 June 2013, but I also visited the locality unaccompanied on the afternoon of 12 June 2013.
8. A unilateral undertaking facilitating the provision of affordable housing and financial contributions to local transport infrastructure and open space was presented at the Inquiry. These obligations are considered in relation to paragraph 204 of the National Planning Policy Framework and the regulatory tests of the Community Infrastructure Levy (CIL).
9. At the Inquiry an application for a full award of costs was made by Gallagher Estates against Solihull Metropolitan Borough Council (SMBC). This application is the subject of a separate Report.
10. Prior to the submission of the report to the Secretary of State SMBC adopted the Solihull Local Plan (SLP) in December 2013, formally placing the appeal site in the Green Belt. Following a successful challenge to elements of the plan in the High Court, on 30 April 2014, it was ordered that those parts of the SLP listed in the Schedule to the Order be treated as not adopted and remitted to the Planning Inspectorate for re-examination.<sup>1</sup> The relevant parts of the schedule for the purposes of this appeal are:

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<sup>1</sup> High Court ref: CO/17668/2013.

Within policy 5:

*'The Council will allocate sufficient land for 3,960 net additional homes to ensure sufficient housing land supply to deliver 11,000 additional homes in the period 2006-2028'.*

*'The annual housing land provision target is 500 net additional homes per year (2006 – 2028). A trajectory showing how this target will be delivered from all sources of housing land supply is included in the Strategic Housing Land Availability Assessment and will be subject to annual review'.*

Section 11.6.6:

*'The safeguarded land at Tidbury Green was removed from the Green Belt in the UDP 1997 for possible long-term needs. Following assessment in the Strategic Housing Land Availability Assessment this land is no longer considered suitable for development and is proposed to be returned to the Green Belt'.*

Proposals Map:

*'The land hatched on the attached plan is to be removed from the Green Belt notation on the proposals map'.*

11. On the 17 December 2014 the Court of Appeal rejected SMBC's appeal against the Order of the High Court<sup>2</sup> and allowed a cross appeal to the extent that it was ordered that:

*'... it is not necessary to quash the SLP; the right course is to remit it, rather those parts of it infected by legal error, to the Council requiring it to reconsider the proposed SLP in the light of the Court's judgement and to cure the illegalities in their preparation'.*

12. Both the formal adoption of the SLP and the decisions of the Courts have had a significant effect on the policy framework in which the proposals now need to be considered. This is self-evidently a different context to that which prevailed at the time of the initial determination of the application and the advent of the appeal. Saved policies H2, C1, C2 and C8 of the SUDP no longer exist, whilst policy P5 of the SLP has been very significantly modified to exclude the identified number of dwellings for delivery within the plan period. Moreover, with the land now removed from the Green Belt, policy P17 of the SLP can no longer be seen to apply. So, notwithstanding the reasons for refusal set out above [paras 3 & 4], the proposals need to be considered against the now formally adopted policy P10 of the SLP (referred to in draft form in the second reason for refusal), in terms of landscape impact and national policy in respect of all matters set out in the National Planning Policy Framework (henceforth referred to as 'the Framework') and National Planning Practice Guidance (PPG). All the submitted evidence of the parties has been reviewed in light of these events and considered below.
13. Following receipt of the judgement of the Court of Appeal a programme for the reopening of the Inquiry was agreed and the submission of further proofs of evidence from the main and other interested parties facilitated. Prior to the

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<sup>2</sup> Appeal court ref:CO176682013.

reopening of the Inquiry on the 9 June additional proofs in respect of housing land supply and related matters were received from the Council, the Parish Council and the appellant and a further new submission from the Campaign to Protect Rural England (CPRE) in respect of the policy status of the appeal site in light of its removal from the Green Belt<sup>3</sup>. On the reopening of the Inquiry on the 9 June, however, the Council advised that their housing land supply witness was unavailable and the Inquiry was duly adjourned. The Inquiry reopened on the 15 September 2015, prior to which a further proof of evidence on the SMBC housing requirement was submitted by the Council<sup>4</sup> and a bundle of documents submitted on behalf of the appellant<sup>5</sup>.

## **The Site and Surroundings**

14. The site comprises a number of enclosed fields located on the western edge of the settlement of Tidbury Green. It is bounded to the west by the meandering river Cole, to the north, beyond a dense planting belt, by the Tidbury Green Golf Course and to the south and east by the twin ribbons of residential development running along Lowbrook and Tilehouse Lanes. The site slopes gently down to the river from east to west and is visually compartmentalised by the field boundaries, evidently of some antiquity as they broadly follow those on the 1840 Tithe map. Today they are most strongly defined by linear stands of mature Oak trees which, together with the rich meadow beneath, give the site a distinctive pastoral character very much consistent with that of the wider area.
15. Again, as is evident from the map regression and the local Historic Environment Record, there has been a farmstead on the site for a very considerable time. Indeed, its extant remains still stand on the site, mainly defined by the former threshing barn which, judging by its roof carpentry and brickwork, probably dates from the late C18 or early C19, with other lesser structures also surviving.<sup>6</sup>

## **Planning Policy**

### *The Solihull Local Plan (SLP)*

16. Work commenced on this document in December 2011 and Examination in Public commenced in September 2012. The Inspector published his Interim Report in May 2013. The Plan was formally adopted by the Council in December 2013 with housing figures set out in Policy P5 anticipating 11,000 dwellings over the plan period (2006 – 2028). It is expressly this element of Policy P5 SLP listed in the Schedule to the Order that shall be determined as not adopted, though the other paragraphs remain.
17. Policy P10 states that: 'The Council recognises the importance of a healthy natural environment in its own right, and for the economic and social benefits it provides to the Borough. The full value and benefits of the natural environment will be taken into account in considering all development proposals, including the contribution to the green economy and the health of residents, and the potential for reducing the impacts of climate change. Joint working with neighbouring

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<sup>3</sup> PoE 1.5, 1.6, 2.6,2.7 and 2.8, IDCPRE 1.1-1.2 and ID 38, 39 and 40 respectively

<sup>4</sup> PoE 1.7.

<sup>5</sup> ID43-47.

<sup>6</sup> Figure 2, Archaeological Desk Based Assessment, October 2012 CgMS Consulting.

authorities will be supported, recognising the need for a landscape scale approach to the natural environment and conservation of biodiversity.

The Council will seek to protect, enhance and restore the diverse landscape features of the Borough and to create new woodlands and other characteristic habitats, so as to halt and where possible reverse the degrading of the Arden landscape and promote local distinctiveness. Development should take full account of national and local guidance on protecting and restoring the landscape and the areas in need of enhancement, including guidance relating to the countryside. Developers will be expected to incorporate measures to protect, enhance and restore the landscape, unless it is demonstrated that it is not feasible, disproportionate or unnecessary.

The Council will seek to conserve, enhance and restore biodiversity and geo-diversity, to create new native woodlands and other habitats and to protect, restore and enhance ancient woodland and green infrastructure assets across the Borough. Protection of ancient woodland, designated sites and priority habitats shall include the establishment of buffers to any new development. Development should be informed by the latest information on habitats and species, and take full account of national and local guidance on conserving biodiversity, opportunities for biodiversity enhancement and for improving and restoring the Borough's green infrastructure. When appropriate, development should seek to enhance accessibility to the natural environment, especially for disabled people.

The Council will protect areas of national and local importance for biodiversity and geo-diversity, where it is reasonable, proportionate and feasible to do so. Development likely to have an adverse affect on a Site of Special Scientific Interest, whether directly or indirectly, will be subject to special scrutiny and will be permitted only if the reasons for the development clearly outweigh the nature conservation value of the site and the national policy to safeguard such sites. Where development may have an adverse affect on a Site of Special Scientific Interest, developers will be expected to incorporate measures to enhance the condition of the site, unless it is demonstrated that it is not feasible.

Development likely to have an adverse affect on a Local Nature Reserve or a Local Wildlife or Geological Site will be permitted only if the reasons for the development clearly outweigh the nature conservation or geological value of the site and its contribution to wider biodiversity objectives. Where development would have an adverse effect on a site of local value, developers will be expected to incorporate measures to enhance the site or to restore the links between sites in accordance with the Green Infrastructure study, unless it is demonstrated that it is not feasible.

Outside designated sites, developers will be expected to take full account of the nature conservation or geological value, and the existence of any habitats or species included in the Local Biodiversity Action Plan, or sites in the Local Geological Action Plan. Developers will be required to undertake a full ecological survey and to deliver a net gain or enhancement to biodiversity, unless it is demonstrated that it is not appropriate or feasible. In considering the need for green space improvements associated with new development, developers should have regard for the standards and priorities in the Green Spaces Strategy in relation to accessible natural green space.

Where development is likely to have significant harmful effects on the natural environment, as a result of the development itself, or the cumulative impact of developments, developers must demonstrate that all possible alternatives that would result in less harm have been considered. Where development is permitted, appropriate mitigation of the impacts and compensation where relevant will be required to deliver a net gain in biodiversity, habitat creation, landscape character and local distinctiveness. Enhancements should be undertaken either on the site, or in its vicinity, but where it is demonstrated that this is not possible, offsetting in alternative strategic locations within the biodiversity or green infrastructure network, to deliver biodiversity or other objectives may be considered. Where appropriate, developers should demonstrate compliance with this policy through an ecological statement or by relevant information in the West Midlands Sustainability Checklist'.

#### *The former policies of the Solihull Unitary Development Plan 2006*

18. A significant part of the landscape evidence of both parties in respect of the effect of the development on landscape character draws on the development plan history in relation to this site. The specific policies of the former SUDP are H2, which relates to safeguarded land, C1 and C2, which related to Green Belt management (including provision for the management of safeguarded land) and C8, relating to landscape character. Although no longer part of the development plan, because of their relevance to the structure of the landscape evidence, they are appended in the **2<sup>nd</sup> Schedule** at the end of this report.

#### *Other policy documents referred in evidence*

##### *Landscape studies*

19. The Warwickshire Landscape Guidelines: Arden and the Solihull Metropolitan Borough Council's Countryside Strategy First Review 2010-2020 are both referred to in the Council's landscape evidence and both set out a broad landscape character assessment of the area in which the appeal site is situated.

##### *Landscape Institute guidance*

20. The third Edition of the Guidelines for Landscape and Visual Impact Assessment was published on the 3<sup>rd</sup> April 2013 by the Landscape Institute and the Institute of Environmental Management and Assessment. This publication is accepted by both parties as a framework for undertaking such assessment.

##### *The National Planning Policy Framework*

21. The National Planning Policy Framework (henceforth referred to as 'the Framework') sets out the Government's planning policies for England and how these are expected to be applied. It has at its heart the presumption in favour of sustainable development and this is articulated in paragraph 7, which states: 'There are three dimensions to sustainable development: economic, social and environmental. These dimensions give rise to the need for the planning system to perform a number of roles:

- **an economic role** – contributing to building a strong, responsive and competitive economy, by ensuring that sufficient land of the right type is available in the right places and at the right time to support growth and innovation; and by identifying and coordinating development



requirements, including the provision of infrastructure;

- **a social role** – supporting strong, vibrant and healthy communities, by providing the supply of housing required to meet the needs of present and future generations; and by creating a high quality built environment, with accessible local services that reflect the community’s needs and support its health, social and cultural well-being; and
- **an environmental role** – contributing to protecting and enhancing our natural, built and historic environment; and, as part of this, helping to improve biodiversity, use natural resources prudently, minimise waste and pollution, and mitigate and adapt to climate change including moving to a low carbon economy’.

22. This is further articulated in paragraph 14, which states that such a presumption should be seen as a ‘golden thread running through both plan-making and decision-taking.

For plan-making this means that:

- local planning authorities should positively seek opportunities to meet the development needs of their area;
- Local Plans should meet objectively assessed needs, with sufficient flexibility to adapt to rapid change, unless:
  - any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole; or
  - specific policies in this Framework indicate development should be restricted.

For decision-taking this means:

- approving development proposals that accord with the development plan without delay; and
- where the development plan is absent, silent or relevant policies are out-of-date, granting permission unless:
  - any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole; or
  - specific policies in this Framework indicate development should be restricted’.

23. Paragraph 17 of the Framework sets out a range of core planning principles which, inter alia, state that planning should ‘take account of the different roles and character of different areas, promoting the vitality of our main urban areas, protecting the Green Belts around them, recognising the intrinsic character and beauty of the countryside and supporting thriving rural communities within it’. The same paragraph continues, stating that planning should also ‘actively manage patterns of growth to make the fullest possible use of public transport, walking and cycling, and focus significant development in locations which are or can be made sustainable’.

24. Paragraph 47 of the Framework sets out to significantly boost the supply of housing, giving five directives to local planning authorities, which include using their evidence base to assess the full objectively assessed need of the market and affordable housing in the market area, identify and update annually a supply of specific deliverable sites sufficient to provide a five year supply of housing land, identify broad locations for growth going forward from 6-10 years and

where possible from 11-15 years, illustrate expected market delivery and set their own approach to housing density.

25. Paragraph 49 makes clear that housing applications should be considered in the context of the presumption in favour of sustainable development and that the 'relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a five-year supply of deliverable housing sites'.

### *National Planning Practice Guidance*

#### *On establishing housing need*

26. 015Reference ID: 2a-015-20140306 states:

'Household projections published by the Department for Communities and Local Government should provide the starting point estimate of overall housing need. The household projections are produced by applying projected household representative rates to the population projections published by the Office for National Statistics. Projected household representative rates are based on trends observed in Census and Labour Force Survey data.

The household projections are trend based, ie they provide the household levels and structures that would result if the assumptions based on previous demographic trends in the population and rates of household formation were to be realised in practice. They do not attempt to predict the impact that future government policies, changing economic circumstances or other factors might have on demographic behaviour.

The household projection-based estimate of housing need may require adjustment to reflect factors affecting local demography and household formation rates which are not captured in past trends. For example, formation rates may have been suppressed historically by under-supply and worsening affordability of housing. The assessment will therefore need to reflect the consequences of past under delivery of housing. As household projections do not reflect unmet housing need, local planning authorities should take a view based on available evidence of the extent to which household formation rates are or have been constrained by supply'.

#### *On the application of conditions*

27. paragraph: 003Reference ID: 21a-003-20140306 states:

'Paragraph 203 of the National Planning Policy Framework states "Local planning authorities should consider whether otherwise unacceptable development could be made acceptable through the use of conditions"

Paragraph 206 of the National Planning Policy Framework states "Planning conditions should only be imposed where they are:

1. necessary;
2. relevant to planning and;
3. to the development to be permitted;
4. enforceable;
5. precise and;
6. reasonable in all other respects.”

*Written Ministerial Statements and other correspondence*

28. The Ministerial Statement ‘a call to action on growth’ was published on the 23 March 2011<sup>7</sup>. This comprised a set of proposals to help rebuild Britain’s economy, indicating the planning system has a key role to play in this, by ensuring that the sustainable development needed to support economic growth is able to proceed as easily as possible.
29. On the 27 March 2015 the Minister of State for Housing and Planning wrote to the Chief Executive of the Planning Inspectorate with regard to landscape character and prematurity in planning decisions<sup>8</sup>. Amongst other matters, this letter emphasised that plans and decisions should take into account the different roles and character of different areas, and recognise the intrinsic character and beauty of the countryside – to ensure that development is suitable for the local context, making explicit reference to paragraph 17 of the Framework [21]. The letter also points out that the three strands of sustainable development identified at the heart of the Framework, (economic, social and environmental) asserting that ‘these roles should not be taken in isolation – the economic factors can secure higher social and environmental standards’.

**High Court judgements**

30. The appellant presented two High Court Judgements at the reconvening of the Inquiry; these are: *Anita Coleman and the Secretary of State for Communities and Local Government and North Devon District Council and RWE NPower Renewables Ltd (CO/12831/2012 and Hunston Properties Ltd and the SofS and St Albans C&DC. (Neutral citation no: 2013 EWHC2678 - claim no;CO/4686/2013)*.<sup>9</sup> A further three High Court Judgements were submitted by the appellant at the June and September sittings of the Inquiry that comprised Stroud District Council and the Secretary of State and Gladman Developments Ltd (CO/4082/2014), Odeby and Wigston Borough Council and The Secretary of State and Bloor Homes (CO/1359/2015), The Borough of Kings Lynn and West Norfolk and the Secretary of State and Elm Park Holdings Ltd (CO/914/2015).<sup>10</sup> The appellant also submitted the decision of the High Court in respect of the Solihull Local Plan and the judgement of the Court of Appeal in respect of the same<sup>11</sup>. The Campaign to

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<sup>7</sup> ID57.

<sup>8</sup> ID58.

<sup>9</sup> ID16 and ID17.

<sup>10</sup> ID45.

<sup>11</sup> High Court and Court of Appeal ref: CO/17668/2013.

Protect Rural England also made reference to two further High Court cases, Hearn and Broadland District Council 2012 (CO/3983/2011) and University of Bristol and North Somerset Council 2013 (CO/5259/2012)<sup>12</sup>.

### **Planning History**

31. The site has no planning history in the conventional development control sense, although two sites nearby within Bromsgrove District Council (BDC), Bleak House, Wythall and Selsdon Close are referred to as being of relevance to this case in the Statement of Common Ground (SoCG) and in evidence.<sup>13</sup> The appellant also makes reference to the longstanding planning policy history of the site as a safeguarded land site in the past iterations of the development plan in their evidence<sup>14</sup>.

### **The Proposals**

32. The proposals, submitted in the form of an outline application, are for a maximum of 200 dwellings with all matters reserved, save that of access, which is to be on broadly the same alignment as the existing, though necessarily upgraded to meet its intended purpose. An indicative masterplan and ancillary design information are presented in the Design and Access Statement (DAS) and these broadly illustrate housing covering approximately half the total site area and focused to its east and south. The remaining land is shown as open space and flood and water management areas. The existing and characteristic field boundary pattern and hedge oaks are to be retained and where appropriate reinforced through the landscape treatment of the site.

### **Other Agreed Facts**

33. The SoCG confirms that all appeal documents and plans, including those initially and subsequently submitted to the Council are agreed between the parties. It is also agreed that a Screening Opinion has been undertaken and, in accordance with 1999 and subsequent 2011 Regulations, the proposals do not constitute Environmental Impact Assessment development. It is agreed the developed site would not be at risk of flooding and that it is located outwith a floodplain. It is also agreed the proposals seek to increase the biodiversity of the site through green infrastructure provision. It is agreed there would be no harmful impacts on living conditions of adjacent occupiers. There is also agreement that the development responds to the existing neighbouring development as well as the edge of the rural setting of the site. The five character areas within the site help to reinforce character within it. The obligations of the section 106 unilateral undertaking are also agreed by both parties as acceptable.
34. It is also agreed between the main parties that the site narrowly misses the optimal walking distances to key services identified in relation to accessibility criteria set out in policy P7 of the Draft Solihull Local Plan (DSLPL). These stand at 800m walk to primary school, doctor's surgery and food shop, 400m from a bus stop and 800m from a railway station. The appeal site records a distance of 920m to primary school, 1100m from doctors, 1200m to a food store, 820m to

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<sup>12</sup> IDCPRE1.2

<sup>13</sup> ID3, SoCG paragraph 5.1.

<sup>14</sup> PoE2.1.

the railway station and 3100m to a bus stop. However, on balance, these issues of accessibility have been overcome as a result of the improvements to transport and access modes proposed and assured by the provisions of the unilateral undertaking (see below) to the extent that policy C7 of the SLP (now having the full force of adopted policy), which expects that "all new development should be focused in the most accessible locations and seek to enhance existing accessibility levels and promote ease of access" have been met.

35. The June 2015 Position Statement<sup>15</sup>, focuses on the land supply matters. This, aside from outlining remaining areas of clear difference between the parties, also identified matters agreed. These are:

- The presumption in favour of sustainable development in paragraph 14 is engaged in respect of this appeal on the grounds that a five year supply of deliverable housing sites cannot be identified (appellant's view) or, and in the appellant's view in addition, on the grounds that a five year supply of deliverable housing sites can be identified, but not maintained (Council's view).
- It is also agreed that there are no footnote 9 policies in the NPPF which restrict development on this site. It is agreed that permission should be granted on this site unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the NPPF taken as a whole.
- It is agreed that there is currently a shortfall in the provision of affordable housing. The EiP Inspector put this at 1,652 dwellings per annum in paragraph 105 of his report against a provision of 92 per annum. The appellant is of the view that the provision of affordable housing is a material consideration of significant weight to be added to the planning balance.
- It is agreed that the site is not within the Green Belt and there is no reason to refuse development on this site on Green Belt grounds.
- The site is now an unallocated site, upon which permission can be granted providing that the development satisfies the balancing exercise.
- If the site were to be developed then it would constitute a windfall site.

### **The Case for Solihull Metropolitan Borough Council**

36. In light of the judgement of the Courts and the removal of the appeal site from the Green Belt and the accession of the SLP and redundancy of the policies of the SUDP since the advent of the appeal, related evidence in respect of these matters has been omitted from the body of the report in the interest of brevity. However, where elements of the evidence, for example, those that are relevant to considerations of sustainability, formally addressed under the heading *Exceptional Circumstances for returning the appeal site to the Green Belt*, they are retained. For information and context however, the evidence in respect of

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<sup>15</sup> PoE3.1

the former policy considerations from both main parties are attached in the 3<sup>rd</sup> schedule attached to this report. The main points of evidence are as follows<sup>16</sup>.

*Sustainable development*

37. To assess which settlements were suitable for strategic growth, accessibility to services and facilities were studied. A summary site appraisal for each site is included in the Strategic Housing Land Availability Assessment (SHLAA) and is dealt with below. The settlements that meet the minimum accessibility criteria are the mature suburbs, the regeneration area and the villages of Dickens Heath, Cheswick Green, Knowle/Dorridge/Bentley Heath and Balsall Common. Tidbury Green did not meet the minimum accessibility criteria and has not therefore been identified for strategic growth. The appeal site is within a rural location and the spatial strategy for housing growth indicates that the provision of new housing in rural areas should be restricted to meeting local housing needs and/or supporting local services, with priority to reusing previously developed land.
38. The Council's SHLAA seeks to identify suitable sites with potential for housing in and around settlements, assess their potential and assess when they are likely to be developed. With this in mind the SHLAA, within its appendix appraises sites individually across the Borough. There is an appendix on Tidbury Green, and amongst other sites, the appeal site is assessed. Here the narrative acknowledges that the land contributes to the purposes of the Green Belt, safeguarding the countryside from encroachment and helping prevent coalescence between settlements. The conclusion states that the land will not be considered further for allocation for reasons of accessibility to local services and facilities which are poor from some parts of the site and for the reason that accessibility to GPs, secondary schools and employment by walking and cycling is along unsuitable routes. Although excluded from the Green Belt (at the time of writing this evidence), the development would impact on green belt functions and openness.
39. Accessibility has been a key test in determining sustainable patterns of housing growth, and the Council consider the minimum sustainable credentials of settlements in terms of their access to services. The approach is based on at least part of the settlement being within a 10 minute walking or public transport travelling time to main services including a doctor's surgery and shop selling fresh fruit and vegetables between the hours of 13:00-14:00 and a 10 minute walk to a primary school and a 15minute walk, cycle or public transport to a secondary school. In the assessment undertaken by the Council, the appeal site was found not to meet the minimum criteria: it has poor access to secondary schools and the village has no facilities of its own, with both its Post Office and garage now closed. These circumstances militate against Tidbury Green being considered suitable for strategic housing growth. It is important to emphasise that there is a difference between assessing a site for its suitability as a strategic housing land allocation within the Plan compared to the assessment of a development proposal seeking outline planning consent where accessibility cannot be argued as a potent reason for refusal. The proposed appeal site has a size and quantum of development that far exceeds local need and substantially

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<sup>16</sup> Based on PoE1.1-PoE1.7 and ID32.

expands the small rural settlement of Tidbury Green into the surrounding countryside.

#### *Planning history*

40. Development proposals at Land at Bleak House Farm, Station Road, Wythall Worcestershire, Land at Selsdon Close (Taylor Wimpey Cornfields Development) and Land off Norton Lane, Wythall, all within Bromsgrove District Council jurisdiction, are all relevant to the Council's case. All relate to the fragile gap between Grimes Hill on the west bank of the river Cole and the appeal site to the east, underpinning the sensitivity of this site and the risk of settlement coalescence that would entail should the appeal be allowed. The planning history described above depicts a growing settlement at Grimes Hill with significant development already completed at Selsdon Close and with significant development secured at Bleak House. The Selsdon Close development has a direct physical relationship to the appeal site as both are separated from one another by a narrow gap of green belt land, with houses at Selsdon Close clearly visible from the appeal site. The development of 200 houses proposed through this appeal scheme would cause a physical reduction in this gap.

#### *Housing land supply*

41. In light of the judgements of the Courts there is no full objective assessment of housing need for Solihull, as this is a matter for the wider housing market area. In the interim, the Council has tested the newly published DCLG Household Projection for Solihull in accordance with national policy and practice guidance. Demographic, economic and market signals evidence shows that the latest DCLG household projection is a good starting point for assessing Solihull's housing land supply pending the finalisation of the GBSLEP and BC Strategic Housing Needs Assessment and the SPRG. The DCLG 2012-based Household Projection is therefore a sound base for decision taking. The five year housing requirement for Solihull is therefore based on the (policy-off) target of 593 dwellings p.a. (2011-2031).
42. If the SPRG results in a (policy-on) housing provision target that is higher than the number of dwellings delivered from 2011, any shortfall will be taken into account in future five year housing land supply requirements. However, given the quantity of deliverable housing land supply in Solihull at this time and the strength of Solihull's housing market, the Council is of the view that the DCLG household projection of 593 dwellings p.a. is likely to be significantly exceeded over the next few years by around 200 dwelling p.a..

#### *Five Year Housing Land Provision Target*

43. Using the DCLG 2012-based household projection, and assuming that 750 dwellings will be completed (1<sup>st</sup> April 2014 – 31<sup>st</sup> March 2015), the five year housing land requirement at 1<sup>st</sup> April 2015 is 3,818. The NPPF requires the addition of a 5% buffer to ensure choice and competition in the market for land (20% where there has been a record of persistent under delivery - NPPF paragraph 47). There is no record of persistent under-delivery in Solihull and 5% was considered to be the appropriate buffer by the Inspector examining the Local Plan (Appendix 8, paragraph 103). The UDP Housing Land provision target (2001-2011) was exceeded, there has been a brief period of under-delivery for

three years against the DCLG Household projection (2011-2014) during a period of recession, demolition and clearance within the regeneration area and a shortfall in housing land supply pending the adoption of the Local Plan; but completions are expected to reach 750 net additional dwellings (2014-2015), exceeding the annual target based on the DCLG 2012-based household projection by 150 dwellings.

*Table 1 – Five Year Housing Requirement, 1<sup>st</sup> April 2015*

DCLG 2012-based Household Projection 2011 –2020 (593 households p.a. x 9 years)	5,337
+ Vacancies and second homes @ 1.19%	+64
<b>Dwelling Requirement 2011-2020</b>	<b>5,401</b>
- Net additional dwellings provided (2011-2014)	- 822
- Net additional dwellings provided (2014 – 2015, estimate)	- 750
Five Year Housing Requirement	3,829
+5% Buffer	+192
<b>Total Five Year Housing Requirement</b>	<b>4,021</b>

#### *Housing Land Supply*

44. The NPPG has recently been updated to clarify that the deliverability of sites is more appropriately tested through the Local Plan examination process. It is therefore inappropriate to reconsider the deliverability of sites included in a recently adopted development plan through a Section 78 appeal:

“The examination of Local Plans is intended to ensure that up-to-date housing requirements and the deliverability of sites to meet a five year supply will have been thoroughly considered and examined prior to adoption, in a way that cannot be replicated in the course of determining individual applications and appeals where only the applicant’s/appellant’s evidence is likely to be presented to contest an authority’s position.” (NPPG paragraph 3/033).

45. The Council monitors housing completions and land supply from 1st April – 31st March annually. The Council operates a live monitoring system with data on planning applications collected throughout the year. During April and May the data collected is validated against the planning applications system and every site that had the benefit of an extant planning permission during the previous monitoring year is visited to collect data on housing starts and completions. An updated housing land supply position statement is published soon after.
46. The annual housing land supply data for April 2015 is not yet available in its final form. However, data on planning applications approved during the year to date is



available and interim site visits to collect starts and completions data were carried out in September 2014. This enables a reliable estimate of housing land supply at 1<sup>st</sup> April 2015 to be made:

*Table 2 – Estimated Housing Deliverable Housing Land Supply, 1<sup>st</sup> April 2015*

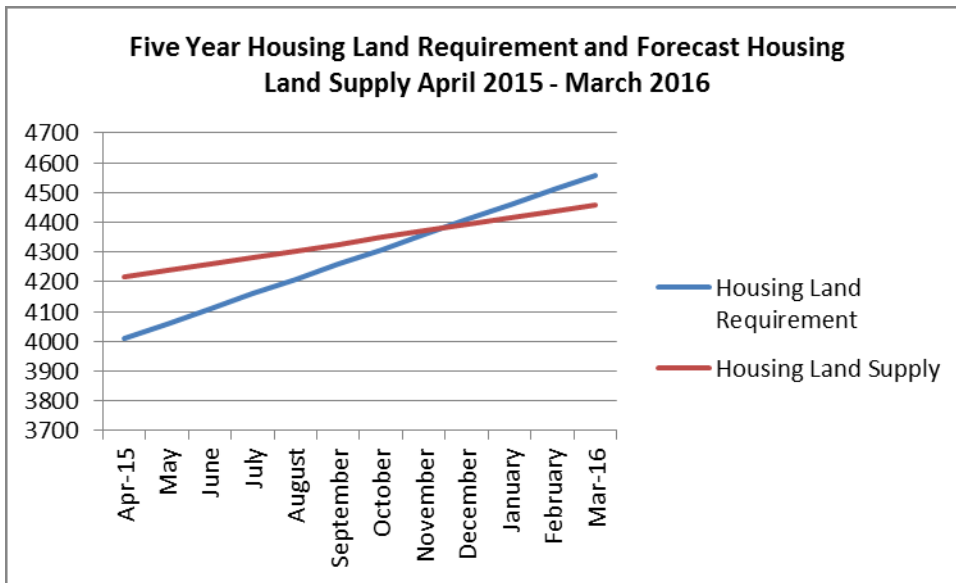
<b>Housing Land Supply Source</b>	<b>1<sup>st</sup> April 2015 Estimate</b>
With Planning Permission – started sites (979-402)	577*
With Planning Permission – not started sites (Sept.2014)	1,450
Allocated Local Plan Sites	1,250
North Solihull Business Plan Sites	173
SHLAA Sites	16
Windfall Sites	750
<b>TOTAL (4,765-402)</b>	<b>4,216</b>

\*Total 979 minus 402 (estimate of dwelling completions 1<sup>st</sup> October 2014 – 31<sup>st</sup> March 2015).

#### *Demonstrating and Maintaining a Five Year Supply of Deliverable Housing Land*

47. Comparing Tables 1 and 2 above, housing land supply is estimated to exceed the total five year requirement by 195 (4,216 – 4,021) dwellings. However, the NPPF (paragraph 47, 4<sup>th</sup> bullet) also requires the maintenance of a five year supply of deliverable housing land. To maintain a five year supply of deliverable housing land supply using the DCLG 2012-based household projection as the starting point, housing land supply needs to be topped up by approximately 600 dwellings p.a.. Housing land supply will be topped up by windfall housing supply, however Figure 1 shows that, assuming the current rate of windfall housing land supply, the Council will not be able to maintain a five year supply of deliverable housing land supply throughout the year. It is therefore necessary to assess whether the proposed development would result in significant and demonstrable harm in accordance with the NPPF paragraph 14).

*Maintaining a Five Year Supply of Deliverable Housing Land*



*Conclusion on housing land supply*

48. Evidence is provided that the DCLG 2012-based household projection is the appropriate starting point for assessing the five year housing land supply in current circumstances. The evidence demonstrates that there is currently a five year supply of deliverable housing sites with a small surplus. Unless additional sites come forward from later in the Plan period, or the current windfall housing land supply rate increases significantly, the five year supply of deliverable housing land is unlikely to be maintained and policies for the supply of housing will be considered out of date in accordance with the NPPF paragraph 49 and the provisions of NPPF paragraph 14 are engaged.

*The housing land requirement*

49. The Council’s evidence relates to the housing requirement against which five-year land supply (5YLS) should be calculated for the purpose of this appeal. It confirms the Council’s position that the correct figure is 611 net new dwellings per annum (dpa) over the period 2011-31 2011-31, derived from the 593 net new households per annum shown in the CLG 2012-based demographic projection. To demonstrate this, evidence is provided that updates and expands on Appendix 1 of the Council’s original Statement. The analysis responds to the appellant’s Rebuttal and his earlier evidence (mostly found in Appendix P of his February 2015 Update), taking account of recent evidence and precedent. That analysis demonstrates that:

- In relation to demographic analysis, the appellant has not provided any evidence that casts doubt on the CLG projection. Of the two alternative demographic projections that he has provided, the first is wholly invalid, because it does not use acceptable demographic techniques or a demographic model; the second, which does use a demographic model, produces virtually the same result as the CLG.

- As regards future employment, the appellant's criticism of the Council's analysis is unfounded, partly due to technical misunderstandings and partly because his assumptions on activity rates have been superseded by more recent evidence.
50. This evidence has been prepared in the context of paragraph 033 of the National Planning Practice Guidance (PPG), which makes it clear that it is for the Local Plan to determine the housing requirement. It is also guided by paragraph 030, which shows that, where the adopted plan does not provide an up-to-date housing provision target and any emerging plan does not carry sufficient weight there are two ways of determining the housing requirement used for 5YLS purposes:
- a) As a first choice the requirement should be based on the latest full assessment of housing need; but the weight given to such assessment should take account of two limitations: considered as a measure of need it has not been tested, and considered as a policy target it has not been moderated against any constraints.
  - b) If there is no such assessment the 5YLS requirement should be based on the household projections published by the Department of Communities and Local Government (CLG), but again the weight given to the projection should take account of the fact that they have not been tested or moderated.
51. In the case of Solihull, it is common ground that there are no relevant existing targets, either adopted or emerging. But a full assessment of the borough's own housing needs has been provided in Appendix 1 of the Council's June 2014 statement:
- As required by national policy and guidance, the assessment started from the latest CLG household projection, which was (and still is) the 2012-based release, published in February 2015.
  - Appendix 1 first tested the projection from a demographic perspective, using the findings of the Birmingham and Solihull Strategic Housing Need Study (SHNS). It concluded that the CLG projection was robust.
  - It then administered further tests, to consider whether the CLG-projected household numbers should be uplifted in the light of future employment or market signals. The CLG projection passed both tests, suggesting that no uplift was required.
52. Based on the above analysis, the Appendix found that 'the [CLG] 2012-based household projection of 593 households p.a. (2011-2031) is a robust starting point for assessing whether or not there is a five year supply of deliverable housing land in Solihull'. The main text of the Council statement carried forward that conclusion, saying that the CLG's 593 households per annum provided 'a sound basis for decision-taking'. But it also included a caveat, describing the number as 'interim', as opposed to a full assessment of housing need. As the reason for that caveat, the statement explained that Solihull's full need could not be determined in isolation, but only in the context of the Greater Birmingham housing market area. Planning authorities in the area were working together to determine how unmet need from the conurbation should be redistributed to other areas, and Solihull's full need could not be determined until that work was concluded.

53. In the Council's view the above caveat understates the weight that should be given to the Council's interim number. Recent appeal decisions at Evesham and Droitwich suggest that cross-boundary unmet need is not part of the objectively assessed need that five-year land supply should be judged against. Rather, if Solihull were to accommodate some of the conurbation's unmet need that would be a policy requirement, to be determined as part of the plan-making process. This makes sense, because Solihull's rightful share of that unmet need will be a planning judgment depending on policy objectives and on Solihull's supply constraints – which, as the PPG makes clear, has no bearing on objectively assessed need.
54. In summary, based on the best information currently available Solihull's OAN is for 593 new households p.a.. Solihull's plan target may be more than this assessed need, depending among other things on any cross-boundary unmet need it is to accommodate. But this possible uplift is irrelevant to five-year land supply. In the rest of this proof the stages of the needs assessment will be discussed in turn. Chapter 2 deals with the demographic starting point of the OAN calculation. Chapter 3 discusses whether that starting point should be adjusted to take account of future employment. The starting point as to whether the starting point should be adjusted to take account of market signals and other factors is not discussed, because on this issue the appellant has not provided any evidence that contradicts the Council's analysis.

#### *Future employment*

55. The Council's Appendix 1 tested the CLG 2012 projection to see if it would provide enough workers to match expected job growth. For it used the same method as the Strategic Housing Need Study carried out by Peter Brett Associates. The method is based on the Experian's Local Market Forecast (January 2015), which shows workplace jobs in the borough growing by 27,480 (1,374 jobs p.a., 25% growth in total) over the period 2011-31. The forecast assumes that population growth over the period is in line with the 2012-based SNPP, which, as noted earlier, underpins the CLG 2012 household projection. The forecast also estimates that, assuming the SNPP comes true for Solihull and surrounding areas, job growth in the borough over the period 2011-31 will not be constrained by labour supply. Accordingly, Appendix 1 concluded that there is no need to adjust the household projection upwards on account of future employment.
56. The appellant's Rebuttal asks for further detail of this analysis. It also refers to an alternative analysis of labour market alignment, using the Chelmer model, which is in Appendix P of the Update and comes to the contrary conclusion. I explain the Council's analysis in the next section and discuss the appellant's version in the following section.

#### *The Council's analysis*

##### *The Experian Forecast*

57. The Council's analysis of labour market alignment is taken from the Stage 3 of the Strategic Housing Need study. To provide this analysis we worked with the forecasters Experian, applying a method used in a number of earlier housing need studies. In the last few days that method and its results have been

endorsed by the Inspector examining the West Dorset, Weymouth and Portland Local Plan, as shown in paragraphs 49-54 of the Inspector's report.

58. Experian's Local Market Forecast is issued at quarterly intervals and predicts a range of economic variables for local authority areas, including the number of workplace jobs (called by Experian 'workforce jobs'), i.e. the jobs based in each area. In the econometric model that drives the local forecast, this number of workforce jobs is determined by both demand and supply factors:
- The demand for labour is the sum of two components:
    - Local demand comes from resident's purchases of local services such as retail, and depends partly on the population of each local authority and surrounding areas;
    - Wider demand – which for a single local authority is the larger component by far – is derived from UK and regional totals. To arrive at total jobs for the UK and the region, the forecast translates macroeconomic conditions into future output (GDP and GVA) by sector, and then output into jobs by sector. Within these totals, the share of each local authority is mainly driven by sector structure (an authority in which national growth sectors are well represented will grow faster) and relative sector performance (if an authority has seen fast growth in a sector relative to the national growth of that sector, that fast growth will continue in the future). This technique is known as shift-share and the base year from which it counts long-term trends is 1997.
  - The supply of labour is mainly determined by population growth in the local authority and surrounding areas to which it is linked by commuting flows. As noted earlier that population is assumed to be as predicted by the 2012-based SNPP.
59. The model tries to balance supply and demand through changes in economic activity rates, unemployment and commuting. Despite these adjustments there are areas where it predicts that labour supply will fall short of demand, so that job growth is constrained by labour supply. In these constrained areas, the jobs that cannot be filled are redistributed to places that have more supply capacity.
60. For Solihull Experian's standard forecast is helpful, because the ONS 2012 demographic projection, on which it is based, also underpins the Council's preferred demographic scenario, as discussed earlier. In other words, it aims to predict what will happen to job numbers in 2011-31 if population grows in line with that projection.
61. Thus, the housing needs assessment is based on a consistent view of the demographic and economic future. In this future, Experian's analysis predicts that labour supply will not constrain job growth in Solihull, or indeed across the Greater Birmingham housing market area. This suggests that from an economic perspective the Council's preferred demographic scenario is a good measure of objectively assessed housing need. There is no case for an uplift to ensure that labour supply keeps pace with economic opportunity, unless Solihull expects or aims for 'supergrowth' over and above the forecast – which already gives it the second fastest growth in the labour market area (the fastest-growth is in North Warwickshire, where absolute numbers are far lower).

62. However, if Solihull did expect or aim for job supergrowth, then population and housing could potentially become a constraint, and it may be that the assessment of housing need should be adjusted upwards. In Solihull there is one proposal which may lead to supergrowth – the UK Central scheme. As part of the Strategic Housing Need Study it is considered whether UK Central is likely to cause above trend housing need.

#### *UK Central*

63. The UK Central scheme aims to create major development in the area around the National Exhibition Centre, Birmingham Airport and proposed HS2 Interchange Station. The proposal is led by Solihull Council and is at an early stage. It is not part of the current development plan, but is expected to be taken forward through a plan review. The Cabinet on 16 April 2015 agreed in principle to seek infrastructure funding that would support major development to provide an estimated 9,286 net additional permanent jobs. The supporting officers' report does not specify the geography for which additionality has been estimated: it may be that the 9,286 jobs otherwise would not locate in Solihull, or alternatively they would not otherwise locate in the Greater Birmingham HMA. Commercial development would start in 2027 and continue until 2045.

64. Thus, on present plans the scheme will start providing space for new jobs in 2027, one year before the expiry of Solihull's current development plan (2028) and four years against the end date of the Council's housing need calculation (2031). If that space is completed and occupied at a uniform rate from 2027 to 2045, and if all the resulting jobs are net additional to the HMA, this would add 516 jobs per year and a total 2,064 jobs in Solihull or the HMA by 2031. These are best-case assumptions, because in practice delivery will probably be low in the early years as development ramps up, and some of the jobs at UK Central would otherwise be based elsewhere in Solihull or the HMA. But even on these optimistic assumptions the HS2 supergrowth would only increase Solihull's total job growth in 2011-31 from 25% to 27%.

65. Based on this analysis, at this stage the UK Central proposal does not warrant an adjustment to the Council's calculation on labour market alignment, mainly because the scheme would come to fruition very late in the period 2011-31.

66. Beyond 2031, if UK Central goes forward as currently planned housing need assessments *should* consider making adjustments for it - although the main impact is likely to be on the distribution of jobs within the HMA rather than the HMA total, and any shortage of workers in Solihull might be offset by a surplus in neighbouring areas.

67. Any re-assessment of housing need to accommodate UK Central, and any resulting changes to planning policy, are matters for the next Local Plan and future reviews. The issue has no bearing on five-year housing land supply at the present time.

#### *The appellant's analysis*

##### *The job-led household number*

68. To analyse labour market alignment, Appendix P of the Update has modelled a 'variation of the 2012-12 based SNPP with targeted labour force growth' that estimates the demographic implications of forecast increase in jobs. The

modelling starts from a Cambridge Econometrics forecast, which shows 18,900 additional workplace jobs (945 jobs p.a. 18% growth in total) Solihull over the period 2011-31 – considerably less than Experian's 27,480 jobs. The Chelmer model translates:

- i Workplace jobs into employed people (a smaller number, because some people ('double-jobbers') have more than one job);
- ii Workplace employed people into working residents, assuming that Solihull's commuting balance remains fixed at its 2011 level;
- iii Working residents into resident population (working and not working), using future activity rates taken from a 2011 paper by Kent County Council.

69. The resulting growth in resident population is above the 2012-based demographic projection – which like all demographic projections simply rolls forward past trends. The model estimates how many additional people are needed to fill the gap and converts these additional people into households. It concludes that to fill the forecast new jobs will need 20,166 net new households in Solihull over the period 2011-31, equal to 1,008 per annum. This of course is much more than the 600 or so households shown by trend-driven demographic projections (whether CLG 2012 or the Appendix P 'validation scenario').

### *Comparisons*

70. Thus, while Experian estimate that in annual terms 593 new households will be enough to support 1,374 new jobs, the appellant estimates that 1,008 new households will be needed to support 945 new jobs. The exact reasons for this disagreement cannot be traced, because there has been no access to the full detail of the Chelmer modelling. There are many detailed differences between the two calculations: for example the appellant takes many demographic assumptions from the 2010-based and interim 2011-based SNPPs, which when the Update was written were already disproved by the 2011 Census and superseded by the 2012-based release. It is likely the main cause of the disagreement is the translation of workplace jobs into resident population. In particular, there are two aspects of the modelling at Appendix P that are problematic.

71. Cambridge Econometrics (CE) can and does provide this kind of translation from workplace jobs to resident workers: at local level this kind of analysis is among the services it offers, and at national and regional levels activity rates, double-jobbing and so forth are part of its national and regional forecasts – to which local forecasts are controlled. But in this particular case it seems that CE was only asked for workplace job numbers, without modelling the demographic implications of those job numbers. If CE had provided this further modelling, the housing need implied by their job forecast would be very much lower. The second point is more specific: It is common ground that the future economic activity rates (participation rates) used by the appellant are lower than those used by Experian, and this accounts for much of the difference between the two scenarios. The appellant's Rebuttal highlights this: '*3.7 From Appendix A to [the Council's] Appendix 1, the economic activity rate for the 65+ age group increases by a staggering 147% over the period 2011-to 2031... this cannot be a credible figure.*'

72. One reason why the figure can be considered credible is the recent history of the over-65 activity rate in Solihull, which is shown in the Experian tables from 2004 onwards. In the seven years to 2011 Experian reports that the activity rate almost doubled, from 4.72% to 8.72%. This is obviously much faster annual growth than Experian forecasts for the future.

### *Economic activity rates*

#### *Kent County Council*

73. The modelling at Appendix P of the Update takes its assumed activity rates from a paper published by Kent County Council in 2011. Given that the ONS stopped forecasting activity rates in 2006, this paper was used by many analysts as the best available indication of future change in the rates. But it is no longer fit for that purpose, because in March 2014 it was replaced by an updated version.

74. The updated paper says:

*'We have compared Kent data from the 2011 Census to our current forecast of activity rates at 2011, which were based on applying growth rates from the ONS forecast (2006) to 2001 Census activity rates. This comparison shows:*

- The forecast for males has been fairly accurate for most age bands, except for the 16-24's, where the Census rates are lower than that forecast. This is reassuring and the difference in the 16-24's can be explained. The drop in activity rates among males aged 16-24 is likely to be a residual effect of the recession, which is still preventing some young people entering the labour market.*
- All female activity rates at 2011 have shown higher growth than previously forecast, with the exception of the 45 to 49 age band which showed a marginally lower rate than was previously forecast. The most likely reasons for the apparent widespread increases in females' activity rates at 2011 are:*
- A general underestimate of the increase in economic activity among females in the ONS (2006) forecasts.*
- A recession-driven outcome of increased female economic activity, in order to supplement the family income. Increases in activity rates for females specifically in the 60 to 64 age group are in response to the standardisation of the State Pension Age to 65 for both men and women.'*

75. Based on this evidence Kent County Council has updated its activity rate forecasts, mainly for women and older people. We have selected for display those groups for which the forecast shows the greatest change; these are also the groups most affected by the changes in State Pension age – which for men mean a shift from 65 to 68, and for women from 60 to 68. These groups are men over 65 and women over 60, although women 55-59 also show fast-rising activity rates – presumably because many of them aim to retire a few years ahead of the State Pension age. The activity rates shown are specific to Kent, but the proportional growth of those rates applies across the UK.

76. The activity rates forecast by Kent CC are not directly comparable to Experian's, partly because they relate to a finer-grained classification by age and sex. But the two forecasts are at one in expecting dramatically rising activity rates for older people, especially women, as the impact of rising State Pension ages takes hold.



77. From Kent CC's update analysis two conclusions are drawn:

- The activity rates used in the appellant's Appendix P are definitely too low, given the findings of the Census and the resulting update to the Kent CC forecast.
- Contrary to the view of the appellant's Rebuttal, in the light of that evidence there is nothing incredible about the dramatically increasing activity rates for older age groups that Experian forecasts.

#### *The variant scenario*

78. Although Kent CC has made upward revisions to its forecast activity rates, it still takes a more conservative view than Experian. To test the implications of this view, Experian were commissioned to undertake a variant forecast scenario based on those revised Kent CC rates. The variant assumes that activity rates, both for Solihull and the West Midlands as a whole, change in line with the 2014 Kent forecast. In other respects it retains Experian's January 2015 assumptions. Not surprisingly it shows considerably less job growth than the standard Experian scenario – approximately 19,000 new jobs in 2011-31, against 27,000 in the standard forecast. But in the variant forecast Solihull's job growth remains unconstrained by Solihull's population and labour supply, just as it was in the standard version. The reason why Solihull's economy remains unconstrained is that in the variant scenario demand as well as supply is lower than the standard version. With lower activity rates overall, the demand for labour is also lower, because with lower activity rates the whole region (and indeed the whole of the UK) generates less demand and has less productive capacity. Therefore in the variant forecast the whole regional and national economies are slightly scaled down and everyone is slightly poorer; arguably a poorer outcome, but unrelated to housing land supply in Solihull.

#### *Further evidence*

79. The view that older people's activity rates will rise dramatically is also supported by evidence from the Office for Budget Responsibility (OBR). In its Summer 2014 report the Office provided a forecast of UK employment rates, which are closely related to activity rates (the employment rate equals the activity rate minus the unemployment rate, which is a much smaller number). Again, the expectation is that rates for the older age groups will increase dramatically.

80. In this forecast, the employment rate for 60-64-year-old women goes from 33% to 55% in just five years, 2011-16, as the increase in State Pension Age takes effect; in later years the rate of change flattens. For women aged 65-69 the employment rate roughly doubles in 15 years, from 2011 to 2026. Since releasing its January 2015 forecast Experian has researched economic activity rates in more detail, using finer-grained demographic groups and the latest official data. The note shows how activity rates for older age groups have been increasing in the last few years and explains why this trend is expected to continue, driven by the rising State Pension Age and wider societal trends.

#### *Conclusion*

81. The Council and the appellant disagree on the alignment of jobs and housing:

- The Council, informed by Experian forecasts produced for the Strategic Housing Need Study, expects job growth of 1,374 p.a.. It considers that 593 new households p.a. will provide enough workers to support that growth, and consequently if 611 dwellings p.a. are provided job growth will not be constrained by insufficient labour supply.
- The appellant, informed by Cambridge Econometrics forecasts and its own Chelmer modelling, expects annual job growth of 945 p.a. and considers that this will require 1,008 new households p.a..

82. There are two main reasons for this disagreement. Firstly, the appellant's modelling of the links between jobs and housing is technically flawed. Secondly, the appellant's assumptions on future economic activity rates are unduly conservative: the Kent CC forecast on which these assumptions are based has been revised upwards in the light of the Census, and all the available evidence suggests that activity rates in the older age groups will rise faster. In summary, the evidence supports the Council's position. Therefore there is no justification for a 'future jobs' uplift to the demographically derived housing need of 611 dpa.

### *Summary*

83. The Council considers that 593 new households per annum, based on the CLG 2012 household projection, is the correct demographic starting point for calculating Solihull's OAN. The appellant has produced two alternative demographic projections. The first such projection, provided in the main text of the February 2015 Update, shows higher housing need at 735 dpa; but is technically worthless, partly because it is not based on a demographic model. The second, provided in Appendix P, does derive from a demographic model and produces virtually the same result as CLG 2012. Therefore the evidence confirms that the Council's demographic starting point of 593 new households p.a. is robust.
84. The next step in calculating the OAN is to test the demographic number against expected job growth. The Council and the appellant disagree on the alignment of jobs and housing.
85. There are two main reasons for this disagreement. The links between jobs and housing is technically flawed and assumptions on future economic activity rates are unduly conservative. Modelling what would happen to Solihull's economy if Kent CC's revised activity rates are correct shows that Solihull's job growth would still not be constrained by local population and labour supply.
86. In summary, the evidence supports the Council's position. Therefore there is no justification for a 'future jobs' uplift to the demographically derived housing need of 611 dpa. In line with the PPG, the final step in assessing housing need is to test the emerging number against market signals and other local factors. This analysis was provided in the Council's Appendix 1 and the appellant has not contradicted it.

### *Progress on Local Plan allocated sites*

87. The appellants have questioned the delivery of two allocated local plan sites; namely Blythe Valley Park and Powergen. Updates are provided in the following paragraphs to indicate that these sites will be deliverable.

### *Blythe Valley Park*

88. IM Properties purchased the site in December 2014. Since then they have been working on proposals for the development of the site in accordance with the SLP residential allocation. Their approach has been to develop a 'Vision Document' for the development and to submit this to the Council with an invitation it be endorsed. The purpose of the Vision Document is *"to stimulate interest in the evident development opportunities at BVP whilst simultaneously providing guidance on what form and nature development would be consistent with the objectives of IM Properties and SMBC. Its overarching purpose is to generate certainty over the approach needed to deliver a successful mixed use development."*

89. The Vision Document is being reported to the Cabinet Member for Managed Growth at his decision making session scheduled for 1st September 2015. In parallel to the preparation of the Vision Document, the applicants have been progressing with the preparation of studies etc (eg Transport Assessment and Environmental Statement) necessary to support the application with the intention that the application be submitted before the end of 2015.

### Powergen

90. In January 2015 the Council's Cabinet approved commercial terms between the three landowners with an interest in the site and delegated authority for a development agreement to be entered into. In June 2015 the developer, Shirley Advance, undertook the latest round of pre-application consultation on proposals it intends to submit. The proposals include provision for 260 units to be provided by the Extra Care Charitable Trust and a mix of residential development to be provided by a housing developer of some 56 houses and 57 apartments. Thus a total of 373 units will be provided. A planning application for the development was expected at the end of August 2015. The developers have indicated that planning permission is expected at the end of 2015 so that commencement of the development will take place in the first half of 2016. They have indicated that completion of the overall scheme will be during the course of 2018.

### C2 Uses

91. Where appropriate the Council's supply figures include those C2 uses that result in developments (such as 'Extra Care') where the unit concerned is self-contained and is provided in the expectation that it will be that resident's main residence. So C2 uses that relate to hospital type accommodation are excluded. In this respect the approach gains support from paragraph 3-037 – 20150320 of the PPG which states: 'Local planning authorities should count housing provided for older people, including residential institutions in Use Class C2, against their housing requirement'.

### *Landscape evidence*

92. The Appellant has conducted a visual and landscape appraisal of the site, having used amongst others the GLVIA as a base for its methodology. They conclude that the site is well visually contained, with visibility limited to only a variety of short distance views, many of which are only one field enclosure deep. It then

went on to describe a landscape and visual design and strategy which by identifying a suitable development envelope located on the eastern part of the site; retaining and enhancing the existing vegetation and creating additional vegetation infrastructure on site, taking into account visual containment and mitigation, renders the scale and nature of the development to be acceptable. However logical this approach may appear, as a result of an inconsistent application of the GLVIA principles and methodology, a number of shortcomings of the Appellant's Landscape and Visual Appraisal have been identified, such that the assessment undertaken is not comprehensive or able to justify its stated impacts and conclusions.

93. Shortcomings identified include: the Appraisal did not describe the development prior to the Landscape and Visual Impact Assessment. As a result, it conducted a landscape and visual appraisal of the site, without having in consideration the development itself. It therefore did not address the sensitivity, scale/magnitude and significance of landscape effects – the impact that 200 dwellings, as well as the proposed roads, lighting, fencing, ponds, etc., would have on the landscape character and landscape elements. It rather focused on the visual impact, when one of the core principles of a Landscape and Visual Impact Assessment is that both elements (the landscape and the visual amenity) need to be considered and assessed separately. It rather focused on the visual impact, when one of the core principles of a Landscape and Visual Impact Assessment is that both elements (the landscape and the visual amenity) need to be considered and assessed separately. It also did not consider the fact that a development which includes dwellings up to 12m high, roads, gardens, lighting, etc., will most likely be more visible from the surrounding viewpoints than the land itself, i.e. its fields and hedgerow trees. The Appellant's visual appraisal failed to consider the worst case scenario, i.e. winter views, when the vegetation screen is at its lowest.
94. The Appellant's visual appraisal failed to identify all important viewpoints/visual receptors, having left out one viewpoint at the Cornfields Development located opposite to the development, and surrounding properties at Tilehouse and Lowbrook Lane. Despite the fact that the Appellant's expert description of each view is broadly accurate, and although it correctly recognised that the site is visible from a variety of different short distance viewpoints, the appraisal failed to acknowledge the sensitivity of the visual receptors and the magnitude of change. Consequently, the Appellant's appraisal did not assess the significance of visual effects. The lag time before mitigation takes effect has not been applied the Appellant's expert assessment. Furthermore, the mitigation planting will introduce a detrimental change in Landscape Character. It is unclear what mitigation is proposed in relation to the landscape impacts such as loss of open fields or the other characteristic features of the Arden Pastures Landscape Type is dealt with. This is an area the Appellant's expert fails to address within his assessment. After having conducted my own Landscape and Visual Impact Assessment it is concluded that the proposed development will have on average a major adverse impact on the landscape elements, and will result in a major adverse change to the landscape character.
95. In terms of Visual Impact, short distance viewpoints of the development would suffer in general a major/moderate adverse visual impact – the proposals will cause a clearly noticeable change to the composition of the view, which has a detrimental effect on the landscape character and/or the visual amenity of the view. As such the proposed development is contrary to the Arden Pasture's

management and Landscape Guidelines as per the Warwickshire Landscape Guidelines (adopted by Solihull MBC as an SPG in November 1993). The proposed development is also contrary to the Solihull's Countryside Strategy accompanying Local Objectives for the Hockely Heath Parish Zone. The proposed scheme would introduce development into the countryside that would neither respect nor enhance its existing landscape character. One of the key landscape characteristics of the relevant Arden Pastures landscape types is a well-defined pattern of small fields, numerous hedgerow oaks and permanent pasture often grazed by horses. The changes to the local landform and the introduction of the various other elements and activities would not in my opinion respect or enhance the distinctive character or this particular landscape.

96. Paragraph 3.18 of the landscape evidence identifies the appropriate policy in the (then) emerging Solihull Local Plan. Thus policy P10 of the SLP was identified as being relevant to the determination of the appeal. This policy is now part of the adopted development plan and full weight must be given to it in the determination of this appeal. It is paragraph two of policy P10 that is particularly relevant to the appeal proposals. And it is upon this policy that the nature and extent of the significant harmful impacts demonstrated in the landscape proof receive their policy support. The adopted version of this part of the policy is exactly as to be found in the SLP 2012 Submission Document.

#### *Coalescence*

97. The appeal proposal would cause the merging of Grimes Hill with Tidbury Green. Further, in terms of the wider residential development of the site, this clearly represents inappropriate development causing harm to the openness of the Green Belt causing further urban sprawl beyond the defined settlement boundary of Tidbury Green. The proposal would also cause encroachment of significant built form into the open countryside. It would also not assist in preventing neighbouring towns merging together through the reduction of the strategically important gap between the administrative boundary of Solihull MBC and Bromsgrove DC.

#### *Planning summary*

98. The Council is mindful of the balancing exercise required under paragraph 14 of the NPPF applicable where the plan is out of date. Here, paragraph 14 is clear that a decision taker should grant planning permission unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits. The Council acknowledges that the appeal proposal would provide up to 200 new homes, and that 80 of these dwellings would be given to affordable housing. It is also acknowledged that the layout of development is acceptable and would secure a sense of place without harming the wider street scene. Open space and a children's play area would also be secured. However, the appeal proposal would cause demonstrable harm to the openness of this vulnerable part of the countryside and could lead to visual and physical coalescence between the settlements of Tidbury Green and Grimes Hill as well as have a harmful impact on the landscape quality of the area. In the Council's view this provides a significant and demonstrable harm that significantly outweighs the benefits.

## **The Case for Gallagher Estates**

99. The main points are as follows<sup>17</sup>.

### *Development plan policy*

100. Much of the substance of the previous submissions made on behalf of the appellant remains relevant but these are not repeated at length in this Amended Statement of Case. In particular, it remains the appellant's clear contention that the appeal proposals are in accordance with the development plan and the Framework considered as a whole, and in the context of the inability of the Council to demonstrate a 5 year supply of specific deliverable housing sites, the significant benefits of the scheme far outweigh any alleged harm.

101. In summary, this Amended Statement of Case sets out the Appellant's contention as to the material changes in circumstances since the closure of the Inquiry in September 2013:

- a) The development plan for the purposes of determining the appeal comprises the Solihull Local Plan, adopted 3rd December 2013, with the exception of those elements which, by virtue of the High Court and Court of Appeal judgments and the Court of Appeal Order dated 9 February 2015, are to be treated as not adopted.
- b) The adopted Local Plan replaced policies from the Solihull Unitary Development Plan, 2006 including, therefore, Policies H2 and C8 which are no longer of any relevance to the determination of the appeal.
- c) The implications of the Court of Appeal Order are:
  - i) The Lowbrook Farm appeal site is not in the Green Belt.
  - ii) There are no designations in the Local Plan which bear on the appeal site.
  - iii) There is no housing land requirement in the development plan for Solihull.
  - iv) The Council has not identified the full, objectively assessed need for housing in Solihull.
  - v) By virtue of the absence of a development plan housing requirement and no identified full, objectively assessed need for housing in Solihull, the Council cannot demonstrate a 5 year housing land supply.
  - vi) As a result of the Court of Appeal Order, the Local Plan is "silent" as to what the appropriate housing land requirement should be for the plan period.
  - vii) Policies for the supply of housing in the Local Plan are out of date in accordance with Paragraph 49 from the National Planning Policy Framework (the Framework).
  - viii) The relevant provisions of Paragraph 14 from the Framework are engaged, namely permission should be granted unless adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
  - ix) There are no specific policies in the Framework, including those identified in Footnote 9, which indicate development should be restricted.
  - x) In the absence of a development plan housing requirement, the full objectively assessed need for housing must be identified for the purposes of considering whether a 5 year supply of housing land can be demonstrated at appeal, in

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<sup>17</sup> Based on PoE2.1–PoE2.9 and ID33.

accordance with the *Hunston, South Northamptonshire and Solihull* judgements.

- xi) Relevant passages from Policy P5 from the Local Plan left unaffected by the Court of Appeal Order, indicate that it is appropriate to grant permission for the appeal proposals.
102. It is the Appellant's view that the full, objectively assessed need for housing in Solihull is 1,039 dwellings per annum. The appeal proposals are in accordance with the remaining parts of Policy P5, Policy P10 and the relevant provisions of Policy P17. The Appellant's case continues to be that the benefits of granting planning permission are not significantly and demonstrably outweighed by the adverse impacts of so doing and release of the site in circumstances where there is no 5 year housing land supply is consistent with Local Plan Policy P5 and the Framework considered as a whole.
103. On 3 December 2013 the Council adopted the Solihull Local Plan (the Local Plan).  
The effect of the adoption of the Local Plan was to replace all of the policies contained in the Solihull Unitary Development Plan 2006 with those now contained in the Local Plan. In addition, at the point of adoption the appeal site was placed in the Green Belt. On the adoption of the Local Plan in December 2013 those policies from the Unitary Development Plan 2006, previously cited by the Council in the Reason(s) for Refusal, cease to exist as part of the development plan. On 23 December 2013 the appellant (together with Lioncourt Homes Limited) lodged a claim with the High Court under Section 113 of the Planning and Compulsory Purchase Act 2004 against the Council's decision to adopt the Local Plan. The Hearing took place in the High Court on 14 and 15 April 2014, on 30 April 2014 Mr Justice Hickinbottom handed down his judgement, and subsequently on 15 May 2014 the High Court Order gave effect to his judgement.
104. The Order stipulated that those parts of the Local Plan relating to the housing land provision target (the targets set by Policy P5, its justification, the housing trajectory and 5 year housing land requirement) and the inclusion of two sites at Tidbury Green within the Green Belt, including the appeal site, are to be treated as not adopted and remitted back to the Planning Inspectorate for re-examination by a different Inspector.
105. In July 2014 Solihull Council was granted permission to appeal against the High Court Judgement, and the Hearing took place on 25 November 2014. The Court of Appeal handed down its judgement on 17 December 2014 dismissing the Council's appeal. A cross-appeal by the appellants and Lioncourt Homes was successful in amending the provisions of the High Court Order such that those parts of the Local Plan that are to be treated as not adopted are remitted back to the Council for re-consideration rather than the Planning Inspectorate.
106. Notwithstanding the views expressed below as to policies for the supply of housing being out-of-date, the parts of Policy P5 – Provision of Land for Housing – in the Local Plan which remain unaffected by the Court Order include the final paragraph, which states "*New housing will be supported on unidentified sites in accessible locations where they contribute towards meeting identified boroughwide housing needs and towards enhancing local character and distinctiveness.*" This is further explored in paragraph 8.4.3 in the Local Plan which, in referring to the then housing requirement states: "*This can be delivered*

*through sites with planning permission, suitable deliverable sites identified within the Strategic Housing Land Availability Assessment, sites within the North Solihull Regeneration area, broad location sites proposed for allocation by this policy and unidentified sites, predominantly within South Solihull” (emphasis added).*

107. This last category refers to the windfall housing land supply of 2,400 dwellings assumed in Fig. 14 - Solihull Housing Land Supply 2006-2028 from the Local Plan. In the current planning policy position, the Lowbrook Farm appeal site is a suitable and deliverable windfall site with no policy constraints preventing permission being granted to assist in meeting the challenging target for this source of supply. Allowing the appeal in accordance with the presumption in favour of sustainable development would also accord with Policy P5 in relation to windfall sites. In relation to other policies from the Local Plan which remain following the litigation, the Council refused planning permission on the basis of impact on countryside/Green Belt (Policy P17) and on the natural environment/landscape (Policy P10). The Council advanced what were then draft Policies P10 – Natural Environment and P17 – Countryside and Green Belt from the Local Plan at the Inquiry as part of its case.
108. Policy P10 was considered in some detail in relation to landscape matters, and the appellant remains firmly of the view that, to the extent that any harm has been demonstrated, it falls very far short of significantly and demonstrably outweighing the substantial benefits of the scheme, including in relation to meeting market and affordable housing needs. The Inspector has before him all of the evidence from both parties necessary to inform his recommendation on this matter. In relation to Policy P17, those provisions relating to the Green Belt are of no relevance to the determination of the appeal as the decision to place the site back in the Green Belt has been found to be unlawful. The other part of Policy P17 concerns Best and Most Versatile agricultural land and no case was advanced at the Inquiry, or since, by the Council on this matter.
109. It is also important to note that, as a consequence of the adoption of the Local Plan and the implications of the Court of Appeal Order (February 2015), there are no designations affecting the appeal site, including any that are referred to in Footnote 9 to the Framework.

#### *Five year land supply*

110. It remains the appellant’s clear contention that the Council cannot demonstrate a 5 year supply of specific, deliverable housing sites as required by paragraph 47 of the Framework. The basis for this is set out below in relation to three factors, each of which, individually, clearly establishes that the Council cannot demonstrate a 5 year housing supply. Firstly, the Inspector is respectfully invited to refer to the Opinion prepared by Jeremy Cahill QC and Satnam Choongh, at paragraphs 9 and 10, where reference is made to the lack of a full, objective assessment of needs (OAN) in relation to housing in Solihull, as clearly established in the Judgments of both Mr J Hickinbottom in the High Court and Lord Justice Laws in the Court of Appeal. In the present circumstances it is apparent that the Council remains ignorant as to the full OAN for Solihull. The conclusions in respect of the Inspector in the *Fairford* appeal decision (PINS Ref. 2213318) are of relevance where, at paragraph 27 he states: *“The Council accepts that it does not have an OAN. The figures it has produced for housing requirement do not represent the OAN for the district, and do not take account of*



*employment considerations or market signals, as required by the PPG. Consequently, in the absence of an OAN I conclude that the Council is unable to demonstrate a five-year supply of deliverable housing sites."*

111. The *Fairford* appeal decision also clearly sets out at paragraphs 19 and 20 that the full OAN must, in accordance with the requirements of the Framework and PPG, include factors beyond simply utilising raw household projections. At paragraphs 2a-018 to 02a-020 the PPG sets out how employment trends and market signals should be taken account of in arriving at a full OAN. In the appellants view, this adds considerable weight to the contention that the use solely of household projections, as advanced by the Council, can only be a starting point in deriving the full OAN. Secondly, paragraphs 12 and 13 from the Opinion also point out that alternatively (or additionally), because of the absence from the Local Plan of policies that set a housing requirement for Solihull, the plan is "silent" on this important matter and this factor alone triggers the presumption in favour of granting permission set out in the second bullet of the decision-taking limb of paragraph 14 from the Framework.

112. Lastly, the appellant has instructed Pegasus to undertake a revised, Framework and PPG-compliant full OAN for Solihull. Following the Court of Appeal judgment in *City and District Council of St Albans v Hunston Properties Limited and the Secretary of State for Communities and Local Government [2013] EWCA Civ 1610 ("Hunston")* in circumstances where there is no development plan requirement in place, the lawful way in which decision makers should approach determining a housing requirement for the purposes of understanding the five year housing land supply position is now clear. Sir David Keene, giving the only substantive judgment in *Hunston*, stated in paragraph 26 that the Inspector was: "*....mistaken to use a figure for housing requirements below the full objectively assessed needs figure until such time as the Local Plan process came up with a constrained figure*".

113. The Court of Appeal decision in *Hunston* was considered further in *South Northamptonshire District Council v Secretary of State for Communities and Local Government & Barwood Land and Development Ltd [2014] EWHC 573 (Admin)*. Mr J Ouseley said:

*"30. In my judgment the crucial point to take from the Hunston case is how to interpret paragraph 47 (i) of the NPPF, relating the requirement for a full objective assessment of housing needs in the housing market area to the subsequent qualification that that be done so far as is consistent with the policies in the Framework, before the Local Plan is produced, reconciling or balancing the two aims.*

*31. Before that happens through the Local Plan, the full objectively assessed housing needs of the area are not subject to the constraints of policy. Those constraints fall for consideration later on in the development control decision-making process, as the Court of Appeal pointed out; for example in a Green Belt case, the question will be whether a shortfall of housing land supply against those fully assessed needs constitutes very special circumstances so as to permit inappropriate development in the Green Belt. The question is not whether the Green Belt constrains the assessment, but whether the Green Belt constrains meeting the needs assessed. Once the Local Plan is adopted, it is the constrained needs in the Plan which are to be met.*

*32. A revoked RSS is not a basis for the application of a constraint policy to the assessment of housing needs, because it has been revoked and cannot be part of the Development Plan. The same would be true of an out of date Local Plan which did not set out the current full objectively assessed needs. Until the full, objectively assessed needs are qualified by the policies of an up to date Local Plan, they are the needs which go into the balance against any NPPF policies. It is at that stage that constraints or otherwise may apply. It may be problematic in its application, but that is how paragraph 47 works."*

114. The *Hunston* decision was also followed by Mr J Hickinbottom in the judgment in *Gallagher Estates & Lioncourt Homes Ltd v Solihull Metropolitan Borough Council* [2014] EWHC 1283 (Admin) dated 30 April 2014. Paragraph 88 of the judgment sets out that, following *Hunston* a number of points are now clear. Two relate to development control decision-taking:

*"i) Although the first bullet point of paragraph 47 directly concerns planmaking, it is implicit that a local planning authority must ensure that it meets the full, objectively assessed needs for market and affordable housing in the housing market, as far as consistent with the policies set out in the NPPF, even when considering development control decisions.*

*ii) Where there is no Local Plan, then the housing requirement for local authority for the purposes of paragraph 47 is the full objectively assessed need."*

115. It is now clear that, absent a development plan requirement, the housing requirement that must be used in a decision-taking context to determine whether the Council can demonstrate a five year supply of specific deliverable housing sites in accordance with paragraph 47 from the Framework, including at this appeal, is the full OAN for housing. Pegasus has undertaken further modelling utilising the most up to date population and employment projections, using the Chelmer Model to generate a full OAN over the period 2011-31. The 2011-31 period is considered the most appropriate against which to assess the 5 year housing land supply position, using the 2011 census data as a starting point. This accords with the approach being adopted in Housing Needs Study for the wider Greater Birmingham and Solihull LEP area, which the Council is party to and has indicated it is relying on to derive an OAN of housing need and a requirement figure for the Borough at some point in the future.

116. The conclusion of the work undertaken by Pegasus on behalf of the appellant is that the full OAN for Solihull over the period 2011-31 is 1,039 dwellings per annum. Pegasus has also been examining the assumptions the Council makes with regard to the supply of housing sites and does not agree with the Council's conclusions in this regard. It also remains the appellant's clear view that the correct buffer to apply in Solihull is 20%, the Council having a record of persistent under delivery of housing. The appellant therefore concludes that an appropriate assessment of housing supply, when measured against the correct OAN for Solihull, clearly establishes beyond any reasonable doubt that the Council cannot demonstrate a 5 year supply of specific deliverable housing sites as required by the Framework.

## *Conclusions*

117. The appellant notes with appreciation the intentions of the Inspector to expedite his report to the Secretary of State. The opinion from Jeremy Cahill QC and Satnam Choongh has previously referred to the chronology of the appeal, which was given a start date of 7th February 2013. The Inspector will, therefore, be aware of the circumstances which have led to the delay in the determination of the appeal. The appellant has also noted the Council's Statement of Case with regard to the appeal Ref. APP/Q4625/A/14/2220892, at Tidbury Green Farm, Fulford Hall Road, Solihull. This site is the other Tidbury Green site which was unlawfully placed in the Green Belt by the Council and to which the Court of Appeal Order (February 2015) refers. The appellant expects the Council's position on its appeal will be consistent with the approach adopted at Tidbury Green Farm.
118. The starting point for the determination of the appeal is the development plan, which comprises the Solihull Local Plan December 2013, with the exception of those parts to be treated as not adopted in accordance with the Court of Appeal Order February 2015. This change in circumstances since the Inquiry closed has the effect of strengthening the appellant's case that the appeal proposals should be granted planning permission. The Lowbrook Farm site is not in the Green Belt and there are no designations or policies which apply specifically to the site, including those identified in Footnote 9 to the Framework. It remains the appellant's contention that the appeal proposals are in accordance with the development plan, including in relation to the remaining parts of Policy P5, Policy P10 and the relevant parts of Policy P17.
119. It is clear that the Council cannot demonstrate a 5 year supply of specific, deliverable housing sites as required by paragraph 47 of the Framework. Following the litigation concerning the Solihull Local Plan, there is no development plan housing requirement for the Borough. In these circumstances, for the purposes of determining at appeal whether a 5 year supply of housing exists, the legal position is clear that the requirement must be the full OAN for housing. The Council has not made a full OAN, as set out in both the High Court and Court of Appeal judgments, and it cannot therefore demonstrate a 5 year supply of housing sites. This renders policies for the supply of housing out of date in accordance with paragraph 49 of the Framework and engages the second bullet of the decision-taking limb of paragraph 14.
120. Furthermore, in the absence of any housing requirement in the Solihull Local Plan, the plan is "silent" in accordance with paragraph 14 of the Framework, which also triggers the presumption in favour of granting permission as set out in the second bullet of the paragraph. Finally, the appellant has procured modelling work through the use of the Chelmer Model to derive a Framework and PPG compliant full OAN for housing in Solihull. Over the period 2011-31, the full OAN for housing is 1,039 dwellings per annum. The appellant has also sought to review the assumptions the Council makes as to the 5 year supply of specific, deliverable housing sites and concludes these over-state the supply. This leads to a clear conclusion that the Council cannot demonstrate a 5 year supply of housing.
121. The benefits associated with the grant of planning permission, especially in relation to meeting housing needs, including affordable housing, overwhelmingly

outweigh any alleged harm. The appellant respectfully asks the Inspector to recommend to the Secretary of State the grant of permission, and for him to grant that permission.

*Updated five year housing land supply position using LPA March 2015 data*

122. In order to assist the Inspector at the reconvened inquiry, the appellants have updated Tables 2, 3 and 4 provided in the Housing Land Availability 2015 Update to incorporate the LPA March 2015 supply data. The methodology used in the 2015 Update has been maintained and assumptions adjusted where appropriate. Any differences are annotated below. It should be noted that the LPA March 2015 data is not a complete set of data as it includes assumptions for completions between beginning of September 2014 and end of March 2015. The LPA has assumed that a total of 750 dwellings will be completed in the latest monitoring year. It is considered that this level of completions is rather ambitious given that in the three previous years combined 753 dwellings were delivered. In addition, it is the Appellant's understanding that the planning permissions include a number of units that are identified as C2 use class. For the reasons set out in evidence, these units should not be incorporated in the supply. For the purpose of providing comparable tables, the LPA data has been used, however, as identified above the robustness of the data is questioned.

*Permissions*

123. Consistent with the methodology previously identified in the Appellant's 2015 Update, all C2 permissions that could be identified have been removed from the figures included within the Appellant's supply (-49 sites with permission started and -141 sites with permission not started).

*Local plan sites*

124. As previously identified by the Appellant's, concern is expressed that two Local Plan sites have rather optimistic delivery assumptions in light of their circumstances. Maintaining assumptions set out in 2015 Update, the dwellings deducted have increased given that the five year period has moved on one year.

125. In terms of Blythe Valley, it is assumed 50 units will be delivered in 2017/2018 with 100 dwellings per annum thereafter, which totals 250 dwelling completions in the five year period. Therefore, 100 units are to be deducted from the supply. In terms of the Powergen site, given that no planning permission has yet been forthcoming, the original assumption of 150 dwellings in the five year period is considered to be accurate. Therefore, 250 dwellings are to be deducted from the supply. Similar arguments can be made for discounting by 10% on the North Solihull Regeneration Business Plan sites and for the SHLAA sites.

*Windfall sites*

126. As set out in previous evidence of the Appellant and the more recent Rebuttal Statement, the LPA has double counted the number of windfalls likely to come forward in the five year period with 661 windfall dwellings included within the permissions as well as a 750 windfall allowance. In light of this duplication, the 661 windfall permissions have been deducted from the 750 windfall allowance, leaving a residual figure of 89 and therefore total windfalls in the five year period do not exceed 750 dwellings.

127. Based on the latest three different approaches to the full, objectively assessed need figure as the requirement figure, in respect of the Pegasus supply figure, there is between a 1.65 and 2.45 years supply with a 20% buffer. Using the Local Authority supply figures and applying the 20% buffer properly, the supply situation improves to between a 4.59 and 4.48 years supply. With these figures adjusted to account for identified deductions, this number falls to between 4.48 and 4.37. In all cases, however, there is always less than a five year supply available and in the greater number of scenarios it is significant<sup>18</sup>.

*Rebutting the Council's five year land supply position*

128. It is the view of the Appellant the Council cannot demonstrate a five year land supply of housing and therefore in accordance with paragraph 49 of the NPPF relevant policies for the supply of housing should not be considered up to date. In addition, it is also the Appellant's view that the Development Plan (DP), which includes the Solihull Local Plan, remains silent by virtue of there not being a dwelling requirement within the adopted Local Plan. This approach is supported by a number of legal judgments, including:

- Woodcock Holdings Limited vs SOS for CLG and Mid-Sussex District Council (Rebuttal Appendix 1);
- Gallagher Homes and Lioncourt Homes vs Solihull MBC, High Court (2015 Update Appendix B/ 2) and Appeal Court (Rebuttal Appendix 2);
- Hunston Properties vs SOS for CLG and St Albans City and District Council High Court (contained within evidence and replicated for convenience in Rebuttal Appendix 3); and
- Hunston Properties vs SOS for CLG and St Albans City and District Council Appeal Court (contained within evidence and replicated for convenience in Rebuttal Appendix 4).

*Planning Policy Background*

129. To determine the full, objectively assessed need for housing, both Satnam Millennium Limited vs Warrington Borough Council (Rebuttal Appendix 5) and Stratford on Avon Core Strategy Inspector's Interim Conclusions (Rebuttal Appendix 6) demonstrate that it is for LPAs to have a clear understanding of housing needs in their area. Given that the full, objectively assessed needs of an area are not to be influenced by policies or aspirations nor *constrained by limitations imposed by the supply of land for new development* (PPG ID2a paragraph 4), it is considered it can be identified for Solihull in isolation of the wider HMA including Birmingham. Indeed the findings of the Courts in relation to the Solihull Local Plan have made clear the importance for Solihull of deriving a full, objectively assessed need for housing.

130. The Council assert in their Statement that at this point in time the 2012 based household projections are the correct figure against which to assess housing land supply. However, it is clear from the guidance that the household projections are the starting point. This is further supported in the decision of the Inspector at Aston Clinton (included as Appendix U/21), which set out clearly in paragraphs 30 to 40 his reasons for concluding that an assessment of the 5 year housing land supply based on DCLG household projections, which in their 'raw' form are

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<sup>18</sup> Mr Bateman's updated table 1-3, ID34.

only a first step to deriving the full OAN, should carry only limited weight. He also confirms the PPG states that adjustments to the projections may need to be made to take account of the extent to which past under-delivery has suppressed demand, changes in household formation rates, employment trends and market signals. The 2012 Based Subnational Household Projections are therefore not the correct figure on which to calculate the five year land supply position.

131. It is agreed that the 2012 Based Subnational Household Projections are to be used as the starting point. The Council's figure of 11,861 between 2011 and 2031 (593 households per annum) with Scenario 1 of the Chelmer Modelling (Appendix P/ 16) has a broadly consistent starting point of 11,734 (588 dwellings per annum) upon which further assumptions, particularly relating to employment growth projections, need to be tested. The reason for the difference in figures is that, due to the household projection data being unavailable at the time, 2011 Based household representation rates (with suitable adjustments) were applied identifying lower household growth. If the new 2012 Based household representation rates were to be included in the model, the household and dwelling requirements arising from Scenario 1 and 2 of the Chelmer Report would be greater.
132. Comments in response to demographic, employment trends and market signals are addressed in response to Appendix 1 to the Council's Statement below. The five year land supply position is set out within Table 1. There are a number of concerns with the figures in and methodology of this table. In order to convert household growth to dwellings it is appropriate to include an allowance for vacant dwellings and second homes. The Council choose a figure of 1.19%, which is suggested to be based on Council Tax records. This is not a credible or realistic figure. In addition, the Strategic Housing Needs Study at paragraph 3.41 assumes a 3% vacancy and second homes rate. The Chelmer Modelling report (Appendix P/ 16) at paragraph 4.16 explains why a figure of 3% has been used by the Appellants.
133. Contrary to the Council's position on the appropriate five year housing land supply buffer, the Appellant believes that 20% should be applied for the reasons set out within the 2015 Updated Evidence.
134. In respect of the housing land supply, Appendix 4 sets out the Council's assumptions. The Appellant's view of the situation is set out in evidence. Replacement land supply tables provided to the inquiry set out the latest position based on the Council's figures. In addition, it is noted that Tables A and B of Appendix 4 both contain sites with C2 permissions. With regard to a discount for non-implementation, paragraph 1.6 of Appendix 4 argues that the 5% buffer addresses the possibility of any under provision. This is wrong. The 5% buffer is in addition to the requirement to ensure choice and competition in the market for land, which is not the same as ensuring a robust supply of housing by including a prudent assumption about non-implementation. The Council's supply assumptions rely upon 100% delivery of all sites with permission, including those that have not started, and allocated Local Plan sites without permission.
135. Concerns remain about the delivery of the two allocated Local Plan sites identified in the 2015 Updated Evidence and note that the owner of Site 10 Blythe Valley, IM Properties, is not a housebuilder, contrary to the Council's Table

C. Replacement tables have been provided to the Inquiry updating the Appellant's and LPA position on the deliverability of sites.

136. With regard to windfall sites, the argument remains that the inclusion in the five year land supply of 750 dwellings, 5 years at 150 per annum, is double counting those windfall sites already with planning permission. Table F from the Council's Appendix 4 notes that planning permission for 793 dwellings has been granted since 1 April 2012, and these must be included in the supply categories of the sites with permission in Table 1 from Appendix 4. On the basis of windfall completions from Table F of 122 net dwellings, this would leave 673 windfall dwellings with permission, either started or not started, included in Table 1. If the 750 windfall allowance is then added to this, as the Council do, the total number of dwellings assumed from windfall sites is 1,423. When totalling and comparing deliverable windfall sites in Tables A, Sites with Planning Permission – Started, and B, Sites with Planning Permission – Not Started, a total of 65 and 596 are obtained, which totals 661 and therefore broadly tallies with the residual figure of 673 identified from Table F. These permissions should be deducted from the windfall allowance accordingly.

#### *Appendix A*

137. Relating to demography, section 2 appears to attempt to cast some doubt on the appropriateness of using the most up-to-date CLG 2012 based household projections as the demographic starting point for an assessment of the full OAN in Solihull. This is based primarily on a contrast between ten and five year net migration trends in relation to Solihull. No evidence has been produced as to the components of in and out migration in Solihull nor is there analysis to explain the differences between longer and shorter term trends and therefore it is appropriate and insufficient to cast doubt on the appropriateness of the 2012 based household projections.

138. Relating to employment trends, projecting job growth and the growth in labour force, which would arise from the demographic starting point projections, is a critically important component of deriving the full, objectively assessed need for housing in Solihull. This principle is established within PPG ID2a at paragraph 18, which outlines that "*plan makers should make an assessment of the likely change in job numbers based on past trends and/ or economic forecasts as appropriate*". 3.3 Inspectors' Reports of Examinations into the Cheshire East Emerging Local Plan (Rebuttal Appendix 7) and Stratford on Avon Local Plan (Rebuttal Appendix 6) demonstrate this important element in identifying the full, objectively assessed need. At the request of the Inspectors additional work has been completed (Cheshire East Housing Development Study 2015, Rebuttal Appendix 8 commissioned in order to address provision of housing for the purpose of meeting job growth projections. The Chelmer Modelling work (Appendix P/ 16) includes a scenario, which tests projected job growth from a reliable independent projection and is supported by full and detailed evidence as to the methodology employed and the assumptions relied upon in the projection.

139. The Council has provided virtually no evidence to support its claim that there is no need for an upward adjustment to the demographic starting point to reflect jobs growth forecasts in Solihull. The only evidence produced is a table, Appendix A from Appendix 1, which is an extract from an Experian Economic Forecast as part of the Strategic Housing Needs Study being undertaken by PBA. Paragraph

3.2 from Appendix 1 alleges that Appendix A supports the contention that an uplift to the demographic starting point is not required as "*workplace employment 'workplace jobs' and jobs demand*" is in balance. Notably, on the face of figures provided in Appendix A this is not in fact the case.

140. The submission of Appendix A to Appendix 1, without any supporting information, cannot amount to evidence to support the Council's assertion that an uplift to the demographic starting point figure is not needed. No explanation as to the methodology employed in the forecast and the assumptions which underlie it is provided. Nor explanation of definitions of the key components in the forecast and how these are supposed to be reconciled is included. Given this inadequate evidence, no weight can be afforded to the Council's claim about the use of the demographic starting point projection as proxy for the full, objectively assessed need.
141. The anticipated change in economic activity rates identified in Appendix A, in particular for the 65+ age group is striking and is in marked contrast to the evidence based approach to adjusting activity rates set out in Appendix P/ 16 of the Appellant. From Appendix A to Appendix 1, the economic activity rate for the 65+ age group increases by a staggering 147% over the period of 2011 to 2031. This means the labour force from the 65+ age group, given the population structure of Solihull, increases by 256% over the period of 2011 to 2031 and provides 8,900 extra workers. These cannot be credible figures. When comparing the activity rates derived from the Kent County Council methodology, utilised in the Scenario 1 from the Chelmer Modelling report (Appendix P/ 16), an increase in the labour force of 3,451 arises over the plan period 2011 to 2031. In contrast, the Council's Appendix A to Appendix 1 shows an increase in labour force over the same period of 16,200. It should be noted that the Appellant's approach to activity rates is one supported by PBA, including in evidence at an appeal.
142. To conclude on employment trends, the approach activity rates adopted by the Appellant, as set out in evidence, are robust. There is no evidence to support the activity rates assumed in the Experian forecast, and on this important point alone, no weight can be attributed to this table. Therefore, the Council's assertion that there is no justification for an uplift to the demographic starting point, is completely unfounded and unsupported by any credible evidence. In relation to market signals, evidence has been presented by both parties and the extent to which an uplift is required is also set out. It is concluded by the Appellant in Appendix P/ 16 that an uplift beyond that necessary to meet job growth is not required, as such an uplift will also address market signals, which point to a disparity between demand for and supply of housing, and the persistent shortage of affordable housing in Solihull.

### *Conclusions*

143. As identified within evidence and reaffirmed above:

- there is no Development Plan figure for housing provision, therefore paragraph 14 of the Framework applies;
- the full, objectively assessed need must be found for SMBC;



- the full, objectively assessed need must start with the 2012 Based Household Projections but then have regard to other factors importantly including economic growth;
- based on the correct full, objectively assessed need there is no five year supply and accordingly paragraph 14 applies;
- whilst SMBC accepts that paragraph 14 applies albeit the appellants do not agree with the process followed by the council to arrive at that conclusion, accordingly both parties agree that there is a presumption that planning permission should be granted unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits

144. In addition to the Rebuttal Appendices identified above, the appellant would like to introduce the following as an inquiry document in support of their landscape effect evidence:

Gladman vs SOS for CLG and Stroud District Council (Rebuttal Appendix 9).

*The Development Plan and the NPPF*

145. Where a Local Planning Authority cannot demonstrate an up to date 5 year supply of deliverable sites then paragraph 49 states that relevant policies for the supply of housing should not be considered to be up to date and in those circumstances paragraph 14 states that permission should be granted unless there is a specific reason which restricts development. Also of relevance is the March 2011 Ministerial Statement which plans for growth and supports the provision of housing.
146. In respect of the NPPF the proposed development firstly accords with the development plan, therefore the first bullet point of the decision making section of paragraph 14 applies and the site should be granted permission without delay.
147. Notwithstanding this point, the Authority do not have a five year supply of housing and even if the site was not considered to be in accordance with the development plan, under paragraph 49 where there is less than a five year supply the relevant housing policies are to be considered to be out of date. Here the development would be considered against the second bullet point of the decision taking section of Paragraph 14 and the development accords with the requirements of this paragraph. The development also meets the three dimensions of sustainable development set out in the NPPF.
148. The material considerations which in the planning balance weigh in favour of the appeal proposals are:
- The exclusion of the site from the Green Belt.
  - Paragraph 14 of the NPPF sets out that development proposals in accord with the development plan should be approved without delay.
  - In addition, Paragraph 49 of the NPPF is clear that where there is a lack of a five year supply of housing land, as exists here, then relevant policies for the supply of housing should not be considered up to date.
  - Where policies are not up to date then paragraph 14 of the NPPF also states that planning permission should be granted unless the impacts significantly and demonstrably outweigh the benefits.
  - The explicit former safeguarding of the site for release beyond 2011.
  - The acceptance by the Authority in 1993, in proposing this site as suitable, that it would have minimal impact on the Green Belt.

- The Acceptance on three occasions by Inspectors that the site was suitable for development as a long term housing site.
- The consideration when the site was allocated as safeguarded land, that it was genuinely capable of development, was located where development would result in an efficient use of land, was well integrated with existing development, well related to public transport and promoted sustainable development (in accordance with the requirements in PPG2).
- That the site does not adversely impact on landscape quality.
- The encouragement within the March 2011 Ministerial Statement and the NPPF for LA's to grant permission for housing to encourage economic growth.
- The lack of any constraint that cannot be accommodated by S106 obligations that would prohibit development now.
- The need to utilise land excluded from the Green Belt before Green Belt land.
- The need for additional houses to be provided into the future.
- The lack of availability for housing on existing brownfield sites that requires the release of greenfield land.
- The need to locate new development at sustainable locations and the fact that the appeal site is a sustainable location.
- The high requirement for affordable housing.
- Taking account of the General Principles document, paragraphs 17 to 19, the fact that the release of this site would not prejudice the emerging draft Local Plan.

#### *Affordable Housing*

149. There is a significant under provision of affordable housing against the established need figure and an urgent need to provide affordable housing in Solihull. Given the continuing shortfall in affordable housing provision in Solihull, the provision of this affordable housing is a clear material consideration of weight that mitigates in favour of the site being granted planning permission.

#### *Agreement Requirements*

150. The appeal proposals seek to make full provision for those elements that are reasonably related to the proposed development.

#### *Other Material Considerations*

151. It is not considered that there are any issues that have been raised by local residents or other objectors that create material considerations that would indicate that permission should not be forthcoming on this site.
152. The proposal accords with the development plan and therefore should be granted without delay. Notwithstanding this point in a consideration of the overall balance relating to planning issues on this site, there is not a five year supply, the related housing policies are not to be considered to be up to date and therefore permission should be granted in accordance with paragraph 14 of the NPPF, there being no adverse impacts that significantly and demonstrably outweigh the benefits of the appeal proposals. The appellant believes planning permission should be granted for this development.

#### *Planning History*

153. The site that is subject to this Appeal has a longstanding planning history, which extends back through the UDP process, where the site was assessed both

in terms of Green Belt Functionality, and its suitability for residential development. This history has consistently concluded that the site retains good development potential, and that the site would have, where development is concerned, good Green Belt boundaries, would have minimal impact on the Green Belt and that, although it is close to Wythall/Grimes Hill, the railway line and river (Cole, together with its floodplain) separate the settlements. This principle gives rise to a 'development pedigree' on the site that cannot be ignored, and one that must be considered as material in the consideration of the acceptability of this development proposal in landscape and visual terms. Consequently, development on this site is not, in principle, being 'tested' for the first time.

#### *Reasons for Refusal*

154. On the refusal notice, Solihull MBC issued a single reason for refusal in respect of the development proposals. This reason did not make specific reference to landscape and visual matters. Thereafter, a second reason, differently worded, was put forward (which made reference to wording in the Planning Committee Report), that did make reference to landscape and visual matters, or ramifications thereof. Therefore, the landscape evidence has addressed both the original reason for refusal, together with issues raised thereafter.

#### *Likely Landscape and Visual Effects*

155. The likely landscape effects of the proposed development have been assessed, both in terms of the landscape resources on the site itself, and the landscape character of both the site and its wider context. In order to do this, response has been made to comments made by Solihull MBC in respect of the original appraisal, and the extent of the baseline information provided. The methodology used relates both to the second and third editions of the Guidelines for Landscape and Visual Assessment. It is transparent, objective and thorough. It concludes that there will be no significant effects in terms of landscape resources and character, as did the previous landscape appraisal submitted with the outline application. Similarly, the likely effects of the proposed development on the visual amenity of the site and its context have been assessed. Again, following recognised methodology and guidance, it concludes that there will be no significant effects in terms of visual amenity, as did the previous visual appraisal submitted with the outline application. Taking both these elements together, it has to be the case that there are no significant landscape and visual effects. This is what was concluded by previous UDP Inspectors; if they had not drawn such conclusions, the site would not have been safeguarded in the first place for future development needs, because development of it would have been unacceptable in landscape and visual terms, together with related matters such as Green Belt impact.

#### *Overall Harm*

156. Integral to this assessment has been the consideration of the relevant planning policies, the perceived 'gap' between the settlements of Tidbury Green and Wythall and relevant initiatives including Green Infrastructure and Solihull's Countryside Strategy. The landscape and visually led approach to the development has ensured that the proposals that offended neither the no longer existing SUDP Policy C2 in respect of development conspicuous from the Green Belt, Policy C8 in respect of landscape quality nor, more importantly, the now

adopted Policy P10 of the SLP, in respect of the natural environment. Allied to this, the form and scale of the development respect the perceived 'gap' between Wythall and Tidbury Green which is important in landscape and visual terms and aligns with Solihull MBC's Green Infrastructure and Countryside Strategy initiatives and objectives respectively.

157. The site that is the subject of this Appeal has been the subject of a longstanding planning history. That history supports the development of this site, in principle. In both the original and amended refusal notices, Solihull MBC have ignored this longstanding history which has established: the suitability of the site for (residential) development, its acceptability within the Green Belt context that surrounds it (but of which it is not a part) and its acceptability in terms of adjacent existing and proposed development, with respect to a 'gap' between settlements, and coalescence.
158. Both the Officers' Report, and the Reasons for Refusal have chosen to ignore this development plan pedigree in their assessment of the acceptability of the development proposals, and in doing so have ignored the process and conclusions put in place by the UDP Inspector's separate reports, together with the Council's own reports, that have culminated in the development plan status the site had enjoyed. Issues such as urbanisation and landscape change on this site are inevitable, however these points have been regarded as acceptable on this site through the development plan process, and history cannot be changed.
159. In the context of Solihull MBC having no 5 year housing supply, with reference to the NPPF, and particularly to the presumption in favour of sustainable development, paragraph 7 sets out the three dimensions to sustainable development, where the planning system must perform a number of roles: economic, social and environmental. The landscape evidence is concerned with aspects of the environmental role. In the context of the planning history of the site and the long standing acceptability for residential development thereon, it is demonstrated that there are not likely to be any significant landscape and visual effects, indeed there are likely to be a number of benefits associated with accessibility, open space, biodiversity and associated management. Consequently the environmental role set out in The Framework has been considered and fulfilled in contribution to the overall planning balance.
160. Although now not forming part of the evidence on which the report is presented, for completeness and greater understanding, extracts of the Council's and appellant's evidence as it was presented prior to the outcome of the judgements of the Courts are included in the **3<sup>rd</sup> Schedule** at the end of the decision.

**Mr Peter Seddon, Chair and Mrs Charlotte Kirby, Clerk to Tidbury Green Parish Council**

161. The Parish Council's objections are principally twofold: firstly, the appeal site is in an unsustainable location and, secondly, the proposals are out of scale and character with the locality.
162. The proposals are located in a settlement that offers little by way of services and facilities, such a conclusion is supported by the Council's 2009 Settlements Study that informed the selection of potential development sites in the emerging Solihull Local Plan (SLP). This study builds a profile of settlements based on

socio-economic factors. It assesses the sustainability of 22 settlements in the borough and asks whether each has enough facilities to sustain its residents' every day needs without the need for travel. Tidbury Green was assessed against these criteria to determine its acceptability or otherwise as a location for future housing development. Based on the scale and range of services available, Tidbury Green scored just 3 points out of a possible 140. This is the lowest score of any of the 22 settlements assessed. With regard to public transport, of the 22 settlements assessed only two, including Tidbury Green, fall into the worst category of 'very poorly served by public transport'.

163. Whytall railway station is the closest to Lowbrook Farm, but lacks any car parking, whilst Whitlocks End Station does offer parking, this is a mile distant from the site and is already over subscribed; in both cases services generally run at only one per hour with additional trains at peak times. In respect of facilities, dispersed throughout Tidbury Green, there are 2 churches, a sports and social club, a car dealership and workshop, restaurant, primary school, village hall and craft centre; there are no shops or employment. The Settlement Study provides compelling evidence that the village is poorly served by public transport, unsurprisingly meaning that the number of people travelling to work by local transport is the joint lowest in the borough and forms the basis for why there are no housing allocations proposed for Tidbury in the emerging SLP. As such the proposals are contrary to paragraph 17 of the National Planning Policy Framework.
164. The 2011 Census shows there are 432 dwellings in the Tidbury Green wider area, dispersed across the countryside rather than contained in a small settlement. The core settlement is made up of 285 dwellings. The proposals, if allowed, would result in a 70% increase in dwellings within the settlement. After decades of small incremental development this massive leap would overwhelm the settlement and community and change the character of the area beyond recognition. The impact would be devastating as it is not an extension to the settlement as such, but a development in its own right. Moreover, the development brings nothing by way of new services or facilities and any monetary contribution is unlikely to change the balance of public transport versus the private car. Compounding the problem is the density and scale of the development proposed, which is not consistent with the existing settlement pattern. The Framework has at its heart the presumption in favour of sustainable development. That presumption, as set out in paragraph 14 does not apply in this case.<sup>19</sup>
165. The later submissions go on to state that one issue that has not changed is the strength of local opinion against this proposal. Tidbury Green Parish Council act on behalf of 1130 residents of the Parish and continues to have regular contact and meetings with residents on planning issues and this scheme particularly. Meetings are well attended and the overwhelming view is opposition for the reasons that have already been presented. Despite the length of time that has passed since this application was made, it continues to be in the forefront of residents' minds.

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<sup>19</sup> ID31.

166. With regard to the Court Order, it is now confirmed the site has no designation. It is not Green Belt and it is not safeguarded land. It now reverts back to the Council for reconsideration and whilst the judgement finds the reasons the Council put forward for including the land in Green Belt did not amount to 'exceptional circumstances' that is not to say 'exceptional circumstances' do not exist and re-consideration may demonstrate exceptional circumstances that result in a different outcome. Furthermore, the Parish Council would like to reiterate their concern in respect of the lack of designation of the site, in particular the fact that the site is not covered by any designation Green Belt or otherwise, does not mean it is suitable for development and irrespective of the lack of designation it is necessary to consider whether the proposals constitute sustainable development having regard to the policies of the NPPF and the guidance in the PPG. For the reasons already given by the Parish Council there is sound evidence to demonstrate that the proposals are not for a sustainable form of development.
167. The appeal is still to be determined in accordance with the development plan unless material considerations indicate otherwise. The development plan is now silent as the site has no designation. In respect of the development plan as a whole, there is conflict with Policy P7 as set out below. The NPPF is a material consideration and the Parish Council have already stated the reasons why the proposal is not sustainable development, in particular the lack of accessibility to local services and facilities.
168. Local Plan Policy P7 Accessibility and Ease of Access is now adopted policy as the Plan was adopted in December 2013 after the close of the Inquiry. It now carries full weight. The Parish Council considers the proposal conflicts with this policy as there are no services and facilities within the stated distances (e.g. Whitlocks End Train Station, that offers three trains per hour to Birmingham, is 1.7Km, Wythall Train Station that offers one train per hour and no car park, is 820m, and the nearest convenience food store is 1.2km, from the site). This is sought to be mitigated by a financial contribution towards a peak hour bus service on Lowbrook Lane for a period of five years. However, this does not overcome conflict with Policy P7 as this requires a high frequency bus service (15 minutes or better). Currently the bus service is hourly.
169. An issue as time has moved on is the significant number of planning permissions granted in the vicinity of Tidbury Green in both Solihull Borough and Bromsgrove District since the close of the Inquiry in June 2013. There has been no assessment of cumulative impact on the highways or infrastructure. The following table shows the position and the locations are identified on the enclosed plan 7026-600.
170. It can be seen that before the Inquiry in June 2013 permissions were given at Griffins Lane, Selsdon Close and Bleak House Farm amounting to 277 dwellings. Since June 2013, permissions have been given at Dickens Heath Road, Braggs Farm Lane, Aqueduct Road and Mount Diary Farm for 621 dwellings. In addition to this, further development is allocated in the now adopted Local Plan for Blythe Valley for 600 dwellings. If permission were granted for this proposal at

Lowbrook Farm and that at Tidbury Green Farm, there would be a further 390 dwellings.<sup>20</sup>

### **Councillor Mr Kenneth Hawkins**

171. The Blythe Ward, in which the appeal site lies, is already allocated to take between 800 and 1000 new homes in the emerging Solihull Local Plan which in itself reflects a sustained pressure for increased housing provision within the borough. This emerging plan returns the Lowbrook Farm site to the Green belt, a move supported by elected councillors. This application (and now appeal) flies in the face of the detailed and fair local plan and the Parish Council urges that any review of future housing needs is undertaken through a review of such needs when the Local Plan is updated.<sup>21</sup>

### **Mrs Lisa Jobins**

172. Tidbury Green offers an attractive semi-rural environment in which to bring up a family. However, it lacks a GP surgery, a dentist, a shop, a pub, a post office, a takeaway, a decent bus service, a train to the nearest town, employment opportunities or dual carriageways. It does offer a primary school, a garage, narrow lanes without footpaths, an abundance of natural beauty and wildlife. The impact of the appeal proposal on the area will be considerable, local people fearing the development will turn the area into an auto-dependent suburb. Walking will become dangerous and the local road network overburdened. The impact on the infrastructure of Dickens Heath will be huge. This development is unsustainable and unwelcome.<sup>22</sup> Mrs Jobins goes on in her subsequent submission to state (the) Local Plan system is surely the correct and reasonable vehicle for the allocation of future development sites, allowing for the democratic process to proceed with the full input of local residents, an approach supported by paragraph 150 of the Framework. In addition, other planning permissions in the vicinity of Dickens Heath should be considered cumulatively and should add weight to previous objections.<sup>23</sup>

### **The Campaign to Protect Rural England (Warwickshire)**

173. The application should be determined in accordance with the development plan in force for the area unless material considerations indicate otherwise (Planning & Compulsory Purchase Act 2004, S38(6)).

174. The application site at Lowbrook Farm is not currently in the Green Belt. This is because the Schedule attached to the Order of the High Court (April 2014) in Gallagher Estates & Lioncourt Homes v Solihull MBC (CO/17668/2013) has remitted the alteration of the Green Belt boundary and inclusion of the land in the Green Belt back to in effect the 'pre-submission stage' of the Local Plan. A new submission of the parts of the Plan remitted as listed in the Schedule is to follow, including a further Examination, followed by a new adoption stage. The Order (page 4 para (ix)) states "The land hatched on the attached plan is to be

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<sup>20</sup> ID40.

<sup>21</sup> RF letter of objection and oral presentation at the Inquiry.

<sup>22</sup> ID30.

<sup>23</sup> ID54.

- removed from Green Belt notation on the proposals map". One of the two areas so annotated is co-terminous with the current Lowbrook Farm Appeal site.
175. The Secretary of State in his decision on the Appeal will need to determine what is the development plan in force for the area of land indicated on this plan (page 10 of the Schedule).
176. On adoption in December 2013 the Solihull Local Plan (SLP) replaced the saved policies of the Solihull Unitary Development Plan 2006 (the UDP) as the development plan for the whole of the Borough. But the effect of remitting certain matters and two specific locations (Lowbrook Farm and Tidbury Green Farm) to the Council for review and resubmission to Examination is to make the SLP December 2013 no longer the development plan for those two specific areas of land within the Borough until there has been resubmission, Examination and a new adoption.
177. An area of land cannot have no development plan at all in force. It is necessary to determine what is currently the development plan for that identified area of land. The remission of certain matters and policy for those areas of land puts the Solihull Local Plan back to the 'pre-submission' stage for those matters and areas of land. At the previous stage of 'pre-submission' in 2011-12, the development plan for these areas of land was the Solihull UDP (Policy H2 and Proposal H2/1). During the remission period, the development plan for these areas of land is again these site-specific Solihull UDP Policies.
178. CPRE Warwickshire submit that this is the only way that 'the development plan' for the areas of land specifically remitted to pre-submission stage can be defined. The power to remit (as has happened in the case of *Gallagher Estates & Lioncourt Homes v Solihull MBC*) was only established by the 2008 Planning Act, so there is no case law which can be drawn on to demonstrate any conclusion other than this.
179. The case of *Hearn v Broadland District Council* 2012 (CO/3983/2011)<sup>24</sup> is the main previous example where policies for specific area of land were remitted by a Judgment on the Local Plan – in that case the Greater Norwich Joint Core Strategy. In the case of that Plan, specific policies for the proposed 'North East Growth Triangle' were remitted by the High Court and an Order similar to that issued in the case of *Gallagher v Secretary of State and Solihull MBC* was issued by the Judge. The period of remission ran from April 2012 when the Order was signed and issued, until January 2014. The revised resubmitted Policies were submitted, public responses were made, the Policies were taken to Examination, and they were adopted in January 2014.
180. The writer of the CPRE submission was in touch with parties involved in the case of *Hearn v Broadland District Council* during the period when the details of the remission of certain policies was being negotiated. He was therefore able in 2015 to ask Broadland District Council officers for information on how that authority handled planning applications and the development plan status of the area involved, during the period of remission of certain policies.

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<sup>24</sup> IDCPRE1.2



181. Correspondence between CPRE Warwickshire and the Spatial Planning Manager at Broadland District Council on 31 March-1 April 2015 was attached to his submission. This correspondence was presented to the Tidbury Green Farm Appeal in April 2015. Attention is drawn to the following two paragraphs in Broadland's advice about its interpretation of the weight to be given to the Policies that had been remitted:

At remission, the remitted part of the JCS (ie relating to the Broadland part of the NPA) was effectively "put back" to the pre-submission stage – so it was not part of the development plan but a material consideration with the weight that could be given to it limited by the objections to it.

So, for a planning application regard would be had to the elements of the development plan as the main consideration, together with any other material considerations including the remitted part of the JCS but with reduced weight because of the objections.

182. The policies that have been remitted in respect of the Solihull Local Plan are in CPRE Warwickshire's submission at the pre-submission stage and are material considerations with the weight given to them related to the stage they have reached.

183. Support for the position taken by Broadland District Council is found in the other High Court judgment since the 2008 Planning Act came into force. This is the case of University of Bristol v North Somerset Council 2013 (CO/5259/2012)<sup>25</sup> where a set of Policies was remitted. The main Judgment in that case need not be referred to. However the Addendum Judgment (also sent to PINS on 13 May 2013 for this Appeal) is material since the Judge there sets out the reasons for remitting Policies (rather than quashing) and the status of the Policies during the remission period. She states that the policies remitted can still be accorded appropriate weight in any decision-making. (See paras 20-25).

184. Should the Secretary of State nevertheless determine that there is at present *no development plan at all in force* for the area of land identified in the Schedule attached to the High Court's Order of April 2014, he will instead need to refer to the finding of the Judge in the High Court (supported in the Court of Appeal). The Judge found that Solihull Council and the Inspector had not shown 'exceptional circumstances' to change the boundary of the Green Belt and to change the status of the land identified in the Schedule to Green Belt, from the status that it had in the 2006 Unitary Development Plan.

185. Therefore, the effect of the two Judgments in Gallagher v Secretary of State and Solihull MBC is to leave the status of the application site land at Lowbrook Farm land (and at the similar nearby site at Tidbury Green Farm) as it was in the 2006 UDP. The High Court judgment covers the subject of Green Belt at paras 109-137. The Court of Appeal Judgment covers the same ground more briefly, at paras 28-37, largely quoting from the High Court judgment.

186. The key conclusion of the Judge in the High Court is at para 135:

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<sup>25</sup> Ibid.

I am persuaded by Mr Lockhart-Mummery that the Inspector, unfortunately, did not adopt the correct approach to the proposed revision of the Green Belt boundary to include the Sites, which had previously been white, unallocated land. He performed an exercise of simply balancing the various current policy factors, and, using his planning judgement, concluding that it was unlikely that either of these two sites would, under current policies, likely to be found suitable for development. That, in his judgment, may now be so: but that falls very far short of the stringent test for exceptional circumstances that any revision of the Green Belt boundary must satisfy. There is nothing in this case that suggests that any of the assumptions upon which the Green Belt boundary was set has proved unfounded, nor has anything occurred since the Green Belt boundary was set that might justify the redefinition of the boundary.

187. The Court of Appeal quotes this at para 32.

188. The High Court Judgment however has mis-stated the designation of the two areas of land remitted (called 'Sites' in para 135 of the Judgment.) It is not correct to say that they 'had previously been white, unallocated land'. Firstly, 'white land' is not a planning term recognised for decision-making – it does not appear in the NPPF, in either the text or the glossary. But more importantly, the status of the land was as is described elsewhere in the Judgment: it was *safeguarded land to which policies applicable to the Green Belt will be applied until such time as a decision is made on its long-term future*. It was not 'white, unallocated land'.

189. Both Courts in Gallagher concluded that exceptional circumstances had not been demonstrated to change the allocation of the land from that set out in the previous Plan, namely the 2006 UDP.

190. Taking this in detail, under Saved Policy H2 of the UDP, Proposal H2/1(a), and the 2006 UDP Proposals Map, Lowbrook Farm is a "site identified to meet long-term housing needs". It is an area excluded from the Green Belt for this purpose, where strong development control measures are to apply limiting any development on the land to uses which would be allowed in the Green Belt and which would not prejudice the long-term use of the land for housing. The possible future use of the land for housing is to be determined through subsequent Plan reviews and through the process of Plan, Monitor and Manage. (UDP 2006 Policy H2)

191. Para 3.2.3 of the UDP is supporting text to the Policy. It states that Government guidance indicates that where land has been omitted from the Green Belt to meet potential long-term housing needs, it should be protected in the meantime by strong development control policies. Applying the Policy to the Lowbrook Farm site H2/1(a), it is the Council's intention that, until such time as the site might be required, it will be protected with the same level of controls as apply in the Green Belt.

192. The National Planning Policy Framework has not changed national planning policy for 'safeguarded land' from that applying at the time of the adoption of the UDP in 2006 or the saving of its policies in 2009. The NPPF at para 85 sets out policies for safeguarded land, to which UDP Policy H2 and Proposal H2/1 are similar, and with which they thus comply.

193. The effect of the Court Judgments is thus to leave the policies of the UDP applicable to Lowbrook Farm, whether or not they are defined as the development plan for the land the subject of the appeal.

194. CPRE Warwickshire therefore submits that the Secretary of State should therefore conclude in making his decision on the Appeal that:

The development plan for the specific areas of land remitted for resubmission reverts to the Solihull UDP 2006 (Saved site-specific policies), until such time as new policies covering those areas of land are adopted. This is UDP Policy H2 and Proposal H2/1(a) and (b)

If there is deemed to be no development plan at all in force for the part of the appeal site not within the Green Belt, the effect of the Court Judgments is to leave the content of UDP Policies H2 and Proposal H2/1 applicable to it and the prime material consideration for determining applications on that land

The Policy in the Solihull Local Plan 2013 which applies to the specific areas of land remitted for resubmission are material considerations with the weight to be given to it as a policy at pre-submission stage. This is the policy to revise the Green Belt boundary at Lowbrook Farm and Tidbury Green Farm. It would have the effect that the land at Lowbrook Farm would be included in the Green Belt.

### **Written representations at application stage**

195. There were no objections from statutory consultees though there was an objection to the development by Bromsgrove District Council on the basis of the threat of settlement coalescence. There were over 60 letters of objection from interested parties, including Caroline Spelman MP. Many raised concerns over encroachment on the countryside, the unsustainability of the location and the adverse impact on wildlife, the road network and the balance of the existing community. There were also two letters in support of the proposals.<sup>26</sup>

### **Written representations made at appeal stage**

196. A further eight letters of objection were received at appeal stage essentially reiterating the objections already raised. A further letter from the Rt. Hon. Caroline Spelman MP was also received dated the 5 June 2015<sup>27</sup> and a total of three further submissions from the Tidbury Green Parish Council (February and June 2015) have been received<sup>28</sup>.

### **Conditions and Obligations**

#### *Conditions*

197. There was a measure of agreement between the Council and the appellant concerning suggested conditions in the event that the appeal was to succeed and planning permission to be granted.<sup>29</sup> These discussions had regard to guidance

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<sup>26</sup> Questionnaire submissions, Solihull Metropolitan Borough Council.

<sup>27</sup> ID37.

<sup>28</sup> ID38, ID39 & ID40.

<sup>29</sup> poE3.1.

set out in the Planning Practice Guide. Possible conditions are dealt with in more detail in the Conclusions to this report.

### *Obligations*

198. An obligation pursuant to section 106 of the 1990 Act was submitted in draft at the opening of the Inquiry with a signed and dated copy presented at its resumption. The contents of the undertaking, on which there is agreement between the Council and the Appellant in the SoCG, includes provision for 80 affordable housing units split between 65% social rented and 35% intermediate tenures, commuted sum contributions for 10 year maintenance of public open space, a contribution of £250,000 to improvements to the S7 bus service for a period of five years, a contribution of £90,000 to improvements to Wythall railway station and a contribution of £35,000 for the installation of a pedestrian crossing at the Fulford Hall Road/Tilehouse Lane/Dickens Heath Road junction. The Council also confirmed at the Inquiry that no contributions towards education provision were being sought as sufficient capacity already existed in the area.

## **Inspector's Conclusions**

### *Preliminary matters*

199. The following conclusions are based on the evidence given at the Inquiry, the written representations and my inspection of the site and its surroundings. In this section the figures in parenthesis [ ] at the end of paragraphs indicate source paragraphs from this report.

### *Planning and policy considerations*

200. In the absence of any matters set out, about which the Secretary of State particularly wishes to be informed for the purposes of considering this appeal, the evidence indicates that the main considerations are:

- (1) Whether the proposals constitute sustainable development.
- (2) Whether the proposed development, in light of the landscape appraisals undertaken by both parties, would have a significant harmful effect on the landscape character of the area, including the erosion of the integrity of settlements.
- (3) The housing land supply situation within the Borough with regard to the requirement in light of the judgements of the Courts and to the delivery of housing sites within the borough.
- (4) The policy status of the appeal site in light of the judgements of the Courts to remove it from the Green Belt.
- (5) The effects of the proposed development on highway safety.
- (6) Whether there is a need for affordable housing within the Borough.
- (7) Whether any permission should be subject to any conditions or obligations and, if so, the form that these should take.
- (8) Consideration of the proposed development against the policies of the *National Planning Policy Framework*.

(9) Overall conclusions.

*Sustainable development*

201. At the determination of the planning application and at the outset of the appeal proceedings the Council maintained that the basis for designating the appeal site as Green Belt land in the then emerging local plan was that, within the broader strategic context of focusing growth in the main urban area, the site no longer met the accessibility criteria that would qualify it for future development. These arguments form the basis of the “exceptional circumstances” that justified the revision to the Green Belt boundary. Tidbury Green (and therefore the appeal site) did not meet the minimum accessibility criteria for strategic growth identification [37-39]. This is underscored by policy P7 of the SLP which sets out such criteria and this is acknowledged in the SoCG which also confirms the shortfall distances between the site and key services [34]. These arguments over the sustainable location of the site are reinforced and reiterated by the constituency MP, the Ward Councillor, the Chair of the Parish Council and local residents [160-171].
202. The arguments in relation to very special circumstances and Green Belt designation have, with the judgements of the Courts, fallen away, and the Council make no reference to a breach of the then draft policy P7 of the SLP in their reasons for refusal [3-4]. They also accept that sustainability is not a matter in dispute in the June position statement [35]. However, in light of the representations of the Parish Council and local residents, and mindful of the requirements of both paragraphs 7 and 14 of the Framework and policy P7, it is necessary to consider whether the proposals constitute sustainable development.
203. The Council accept, notwithstanding the failure of the site to meet the letter of the strategic growth criteria, and as the SoCG acknowledges, that these shortcomings in accessibility (defining the sustainable or non-sustainable location of the site) are effectively overcome through the obligations of the section 106 agreement, which make significant contributions towards transport infrastructure provision [34 & 39]. Moreover, as the appellant points out without substantive challenge from the Council, the appeal site assessment of ‘medium’ in the Solihull Strategic Housing Land Availability Assessment (SHLAA), compares reasonably favourably with other sites such as Cheswick Green, Meriden and Blythe Valley Park, also assessed in the SHLAA. Decisively, the Council also accept in evidence [39] that ‘It is important to emphasise that there is a difference between assessing a site for its suitability as a strategic housing land allocation within the Plan compared to the assessment of a development proposal seeking outline planning consent where accessibility cannot be argued as a potent reason for refusal’. These combined factors reflect the absence of a specific reason for refusal on sustainability grounds, through a breach of the then draft policy P7 on either decision notice, or indeed in the form of subsequent submissions to the Inquiry in respect of the now adopted policy.
204. Moreover (and accepting that the detail of each of the sites identified by the Parish Council in their submissions to the Inquiry are not presented) [168] there are a significant number of sites (at least four) in the vicinity of the appeal site which have been granted planning permission for housing development since the refusal of the current appeal proposals. Whilst material differences will no doubt be discerned in the detail of each case, their broader locational similarity with the

appeal site suggests arguments on sustainability are at the least finely balanced in the area.

205. The concerns of local residents and their representatives are measured and cogently made. However, they do not, in the main, pay full regard to the countervailing mitigation of the considerable financial contributions, specifically those with regard to public transport infrastructure, facilitated by the unilateral undertaking (fully acknowledged by the Council in their evidence and in the SoCG). Neither are potential benefits to the local community, such as consolidating a local catchment for the primary school and potentially incentivising investment in local facilities to the enlarged community, recognised. These social benefits, including the provision of market and affordable housing, in conjunction with environmental benefits identified in the SoCG [33] and the wider positive economic outputs of the development, may reasonably be considered 'local circumstances' identified in policy P7, that justify a departure from the letter of the criteria. Accordingly the proposal can be held to accord with policy P7 of the SLP. On the same basis, the proposed development may, on balance, be considered sustainable for the purposes of paragraph 7 of the Framework. It is therefore appropriate to consider it against the key considerations set out in paragraph 14 of the same.

*The effect of the development on the landscape character of the area, including on the spatial integrity of settlements.*

206. The visual impact of the development on the appeal site and its landscape context have been assessed by both parties through the lens of the third Edition of the Guidelines for Landscape and Visual Impact Assessment (GLVIA) [92-96 & 155-159]. There is disagreement over the specific methodologies applied and the necessary scope and extent of the cover of each assessment, the Council specifically identifying shortcomings in the appellant's initial approach at application stage. These differences can in part be attributed to a systemic difference of approach to the consideration of the site under the terms of former SUDP policy H2. The appellant's approach is predicated on the long-held consideration of the site as safeguarded land identified for long-term housing need, where landscape considerations have equally been long-held considerations informing a judgement on the acceptability of the principle of developing the site for this purpose at some stage in the future [157]. The Council, on the other hand, offer no such acknowledgement, asserting no such principle of housing development being established under policy H2, thus necessitating a de novo approach to the assessment of the site [92-96].

207. That all said, the result of the evaluations by both parties, in addition to the important evidence garnered from the two site visits, does furnish a comprehensive platform on which to assess the visual impact, and so degree of harm, if any, the development may cause. The GLVIA approach is not a prescriptive doctrine but, as the name infers, is guidance to be interpreted by the professional in the circumstances of any given case; a difference of approach or emphasis is not of itself a basis for limiting weight to any conclusions drawn.

208. The level of landscape and environmental consideration to the historic designation of the site as safeguarded land through the former SUDP policy H2, under the aegis of the criteria of Annex B of PPG2, the Warwickshire Landscape Guidelines produced in 1993 and the Council's own site-based analysis in the

2003 Committee Report<sup>30</sup>, cannot be simply disregarded when considering the appeal site for a residential development. This sequence of judgements identifies the site as being visually well-contained and discrete in terms of its relationship with designated adjacent Green Belt land. Such a conclusion strongly suggests that the scope of any landscape impacts in relation to this proposal will, to some extent, be framed by such considerations, and calibrated accordingly.

209. That is not to say that the proposed development would have no impact, or that that impact would not amount to a degree of harm when assessed against policy P10 of the SLP. The areas of pasture filling out the matrix of field boundaries on the eastern part of the site will be given over to the main body of residential development, some of this being potentially quite substantial if the parameters set out in the Design and Access Statement are to be applied to detailed reserved matters. This built element will be supplemented by the highway infrastructure and an inevitable degree of domestic formality.
210. Moreover, this ensemble will be visible in limited, though reasonably significant views, specifically the site entrance to Lowbrook Lane, from the railway station platform at Wytall, from points on the line itself when viewed from the train, and also from the Cornfields development at Grimeshill on the western bank of the River Cole beyond the railway line. Seen from these points the development would visually encroach upon the pastoral landscape character of the site and its context. However, because of the limited number of opportunities to view the site (reflecting its degree of visual containment) the approach to concentrating the development to the east at its juxtaposition with the existing ribbons of development along Lowbrook Lane and Tilehouse Lane, the degree to which the extensive mature hedging will be retained and supplemented (enhancing it over time), mean this degree of erosion will be limited, and the effect in terms of landscape resource, character and visual amenity would be relatively modest. Accordingly, the sum of this impact can be characterised as moderate when considered in the planning balance.
211. Such a conclusion on the impact, or effect, of the development avoids definition as a 'significant harmful effect' under the terms of the last paragraph of policy P10, which in such circumstances necessitates consideration of alternative approaches. Moreover, with the landscape and habitat mitigation and enhancement packages proposed and agreed by the Council in the SoCG [33] and fulfilled through compliance with conditions, the erosion of landscape character can be held to be offset, fulfilling the tripartite requirements of the second paragraph of policy P10 to in part protect, enhance and restore elements of diverse landscape features.
212. The proposed development will result in a significant increase to the size Tidbury Green by approximately 70% according to the Parish Council [163]. The settlement is characterised by small linear strands and knots of development set amid fields bounded by mature hedges. The development of 200 homes in depth behind this linear development certainly suggests a significant shift in the form and nature of the settlement. However, as has been considered above, in terms of appearance, because of the degree of enclosure the site is afforded, there would be little tangible sense of this from the bordering lanes, although residents

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<sup>30</sup> Ibid, Appendix 42 PoE2.1.

- of the properties on these roads would be able to discern it from their rear gardens. Having said that, there would, as local residents attest, be a significant shift in the character of the area as a result of an increase in vehicular movement to and from the site and a corresponding increase in the level of human activity associated with its occupation.
213. Insofar as the local distinctiveness of the area is defined by relatively sparsely populated and dispersed settlement characteristics, the development would have an impact upon it, perceptibly changing that distinctiveness. Though an impact significant to local people, it is not necessarily true that such effects, or changes, can all be determined as adverse. Increased support for local services such as the school and increased community engagement of residents may both be considered positive outcomes of the change. Whilst acknowledging these sensitivities, such nuances of character are well beyond the broad, landscape character-based requirements of policy P10, with which there is no conflict in this regard.
214. At the determination of the planning application and at the outset of the appeal proceedings the Council's arguments in respect of this issue are framed expressly within the context of Green Belt terminology; on the basis of the intention within the DSLP and subsequently the adopted SLP to incorporate the site into the Green Belt and then to apply the constraint policies consonant with that designation. It also reflected consideration of the last clause of the now extinct policy C2 of the former SUDP which stated "Development within or conspicuous from the Green Belt must not harm the visual amenities of the Green Belt by reason of siting, materials or design" [5 Annex 2].
215. Such terminology seemed to confirm at the time, in the mind of the Council and others, that the site lay within the Green Belt. In light of the judgements of the Courts to remove the land from the Green Belt following the adoption of the SLP, it is not. The application of such descriptions of perceived impacts (harm to openness and the merging together of settlements) in light of this outcome is therefore misleading and inappropriate.
216. Moreover, such arguments that the proposals would result in the coalescence of the settlements of Tidbury Green and Grimes Hill, increasing urban sprawl and encroachment on the open countryside, forwent any consideration of the then designation, and the detailed consideration that prefiguring it, of the site as safeguarded land. The tests against the criteria in Annex B of the now superseded PPG2 applied to development plan designation and in the Council's own Committee-approved assessment, all indicate that the site, as safeguarded land, had the in-principle capacity to accommodate development without harm to the attributes of the designated Green Belt. The same approach was applied in relation to the Selsdon Close/Cornfields/WYT15 development on the west side of the railway line opposite the appeal site, located within Bromsgrove District Council. This site too was a long term reserved site for housing, the designation of which was known when the appeal site was so designated in 2006.
217. The Council's position, on both counts, fails to acknowledge that the integrity of the Green Belt could be secured and maintained with potentially both sites (and indeed other safeguarded sites) brought forward for residential development. This plan-led or conceptual position is in fact borne-out by visual analysis on the ground; the formative opinion that the site has a good measure



of enclosure, and can only be seen in the wider context from limited perspectives is supported by the landscape evidence [92-96 & 155-159] and indeed through first-hand appraisal of the site during the site visits. Whilst the Council refer to the dismissal of the appeal on land at Norton Lane, Wythall to indicate a successful approach to the prevention of coalescence within the sensitive zone of the appeal site, this was for the defence of Green Belt land, not safeguarded land. The difference here is self evident, and this appeal as some form of precedent weighing against the current appeal merits only very limited weight.<sup>31</sup>

218. In the current circumstances it follows that any such arguments over harm, couched in terms of openness, increased urban sprawl and merging of settlements, are not appropriate. However, they may reasonably be considered under the terms of policy P10 of the SLP and on the basis of the reasoning set out above the appeal proposals avoid definition as a 'significant harmful effect' and in broad terms, whilst engendering a perceptible measure of change, accord with the objectives of policy P10. For the same reasons they would be consistent with the guidance set out in the Arden Pasture's management and Landscape Guidelines as per the Warwickshire Landscape Guidelines (adopted by Solihull MBC as an SPG in November 1993) and the Solihull Countryside Strategy accompanying Local Objectives for the Hockely Heath Parish Zone.

#### *The housing land supply situation within the Borough*

#### *The housing requirement*

219. In the light of the judgement of the Courts and their attendant orders, inter alia, remitting the number of homes element of policy P5 back to the Council for reconsideration, there is no full objectively assessed need (FOAN) for housing within the borough. Both main parties agree that in these circumstances, and in accordance with the requirements of the PPG, the appropriate starting point for identifying the FOAN for the housing market area should be the 2012 Based Subnational Household Projections published by the Department for Communities and Local Government (DCLG) [41, 131]. However, the anticipation within the guidance that 'household projection-based estimate(s) of housing need may require adjustment to reflect factors affecting local demography...' is the starting point for a considerable divergence between the parties as to whether the initial numbers are able to furnish a robust assessment of FOAN.

220. The Council state that their starting number of 593 households per annum, based on their analysis, was a robust starting point, indicating it was a 'sound basis for decision-making'[41 and 51]. This was however tempered by the caution that this was an 'interim' rather than 'full' assessment of need for the borough as this could not be determined in isolation. With a revised 3% (up from the initial 1.19%) vacancy/second home allowance, this yields 611 dpa, taking the total requirement to 4,124 for the 5 year supply period. These starting annual numbers are tested against employment growth projections and anticipated economic activity rates by both parties. The appellant models two scenarios factoring both considerations, the first establishing with the Chelmer-based method that yields a projected 605 dpa, close to the Council's number, the second, adopting a Cambridge Econometrics (CE) approach, yields a much higher 1,040 dpa total.

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<sup>31</sup> Appeal Ref: APP/P1805/A/11/2150938 Appendix 14 Palmer PoE1.1.

221. The first factor affecting the difference between the two former numbers and the latter touches on the demographically arcane; the evidence suggests that the CE model applied workplace job numbers, without modelling the demographic implications of those job numbers, thus not establishing the full relationship between job forecast and housing need. The second factor is more straightforward: there is a considerable difference of opinion between the two parties regarding future economic activity rates, also affecting the outcomes of each scenario and indeed this accounts for much of the difference between the parties [70].
222. The basis for the support in rapid and sustained increases in activity rates amongst older sectors of the population (in turn underpinning the argument that future job growth in Solihull is not constrained by labour supply) has persuasive evidential support [68 – 82]. The projected 147% increase in the economic activity rate of the 65+ age group over the 2011 – 2031 plan period, on the face of it appears challenge, but is supported by the analysis of the Council and Office for Budget Responsibility modelling. The latter indicates employment trends for women age 60 – 64 goes from 33% to 55% in just five years, reflecting the increase in State Pension Age; for women age 65 – 69 the employment rate roughly doubles in 15 years from 2011 to 2026 [79].
223. The PPG anticipates that factors such as employment trends and activity rates may require modification and uplifting of the DCLG housing projection assessment. However, it does not automatically follow that, having undertaken analysis of such considerations, the outcome will necessarily require this. On the basis of the evidence here, and at this time, the Council's number of 611 dpa as a housing requirement stands up to scrutiny, and can be treated as robust. The Appellant's criticism-free Chelmer-based modelling, arriving at a not dissimilar 605dpa, adds a measure of assurance to this conclusion. That said, the Council accept that this position is an interim one, and although the appellant's other alternative approach to the calculation has, in the specifics of this case, not been convincing, questions must remain over the longevity of this position.

### *Housing supply*

224. The Council's stated position in respect of meeting their identified housing requirement as of May 2015 is clear. With a 5% buffer added to the base number in accordance with paragraph 47 of the Framework, with an accurately anticipated windfall contribution and no discount for under-delivery over the period, the Council was able to demonstrate a 5 year supply of housing land. However, this was by a slim margin; in closing the Council accepted that they exceeded the requirement target, albeit by the small margin of 66 dwellings<sup>32</sup>. Having stated as much, they also accepted that this position could not be maintained throughout the reporting year (April 2015 – March 2016) if additional sites from within the plan period did not come forward and, importantly, if the current windfall land supply rate did not increase significantly [48]. Indeed, the graph submitted with the evidence [47 – 48] makes clear that the point at which the projected supply can no longer meet the requirement will occur in the third quarter of the year, at the end of November 2015. So, at the time of writing (November 2015), under the most auspicious circumstances, the continued

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<sup>32</sup> ID52. Council's closings.

delivery of land and sites to meet supply, is very fragile. If the Council's supply position were vulnerable to any demonstrable downward revision, then, even at this point, such a supply of housing land could no longer be demonstrated.

225. Historically the Council have maintained, and been supported in demonstrating, that the requirement for a buffer of housing land supply to ensure the continuance of that supply in accordance with paragraph 47 of the Framework should be set at 5% [43]. This is mainly predicated on the conclusions of the SLP Planning Inspector who included this percentage allowance in his report. Moreover, this has been supported by a further Inspector at the Lays Lane appeal<sup>33</sup>. However, both Inspectors, and the Council, felt confident in such a conclusion in a planning world pre-existing the judgements of the High Court and Court of Appeal in respect of this site and the SLP. Until the housing numbers were remitted by the judgements, annual housing number expectations had been at 500 dpa, more than a hundred units below that now accepted as necessary by the Council in their own evidence. Whilst a hard truth, it is a matter of fact that with the annual housing number now agreed at 611 dpa, and with the plan period proper commencing in 2011, delivery has been below the annual expectations in every year subsequently, with a total shortfall of 1437 units. With the calculating period commencing from 2006, as the appellant suggests in closing<sup>34</sup>, this extends to seven of the last eight years.
226. By either assessment, and on these terms, this should reasonably be considered persistent, though partly unknown, under-delivery. In the context of paragraph 47 therefore, a 20% buffer should be applied. Given the margins of the supply situation accepted above [187], applying the 20% buffer to the equation clearly takes the supply below the 5 year threshold.
227. The Council preclude any allowance for development sites not coming forward in accordance with expectation, both in terms of time and numbers. Such an approach plainly takes no account of the circumstances now relating to the Powergen site identified by the Council as playing a significant role in maintaining supply in accordance with expectations [90]. In evidence the Council anticipated the submission of a planning application for the site in late August, grant of consent by the end of 2015 and commencement in the first half of 2016 with the expectation of the delivery of 400 units. At the time of the last sitting of the Inquiry in September no planning application had been received and the headline number had fallen from 400 to 373. Moreover, the indication that 260 units would be provided for Extra Care, which, it is understood, can incorporate both C2 and C3 uses within its ambit, also suggest some of these units may be excluded from the final housing calculation.
228. The Powergen site serves as an example that not all sites will come forward to expectations; the same cautionary principle may be applied to the Blythe Valley Park site also referred to by the Council but as yet some way off the benefit of a firm housing proposal [88]. This in turn serves to support the appellant's view that it is reasonable to apply a 10% discount to sites identified for delivery; an approach supported elsewhere. Although not supported by Inspector Trask in the Lays Lane appeal decision,<sup>35</sup> it was by Inspector Graham in her decision in

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<sup>33</sup> Lays Lane appeal ref: APP/Q4625/A/12/2169840

<sup>34</sup> ID53 Appellant's closings.

<sup>35</sup> Ibid.

relation to Moat House Farm, also within Solihull Metropolitan Borough<sup>36</sup>. On balance therefore, and particularly in light of the Powergen example, it is reasonable to apply a 10% discount to housing sites to account for a measure of under-delivery. Manifestly, in so doing here, this takes the land supply further still below the already diminished critical figure of five years required by the Framework.

229. The Council are themselves clearly concerned about the level of windfall site delivery in relation to supply. Indeed, the very fragility of maintaining the supply through the third quarter of 2015 is focused in part on this point; they accept that unless 'the current windfall housing land supply rate increases significantly, the five year supply of deliverable housing land is unlikely to be maintained...' [48]. Such a conclusion is reflected in the appellant's evidence, which argues cogently that with a total of 655<sup>37</sup> dwellings included with the total supply number, as well as an anticipated total of 750 windfall dwellings over the five year period (150 per year), the Council has in effect 'double counted' on these numbers. Although it is possible that the number of windfall permissions could rise to higher levels later in the supply period, the Council's current scepticism in this regard appears justified, and the appellant's criticisms worthy of consideration. Even if the shortfall on windfall sites proved to be exaggerated, *any* residual shortfall amount would further reduce the supply, taking it further still below the already breached five year threshold.

*The policy status of the appeal site in light of the judgements of the Courts to remove it from the Green Belt.*

230. The essence of the argument advanced by the CPRE Warwickshire is that in the light of the Court Judgements relating to the appeal site the policy status of the land should revert to the 'pre-submission stage' of the SLP in 2011-2012. Moreover, in light of this, the then prevailing policies of the SUDP 2006 (H2, C2, C3 and C8) should apply to it, the basis of this position, it is argued, being supported by two court cases presented in evidence [173 & 178]. However, both judgements cited, and their respective Orders, relate to the stages of the plan preparation that each of the remitted plans was obliged to return. In neither case was it determined that the previously extant plan be resurrected as a result of these remissions.

231. It is a matter of fact that the policies of the SUDP which formerly related to land the subject of this appeal, as CPRE accept, have all been replaced by those of the SLP [175]. It follows therefore, notwithstanding the absence of a revision to the proposals map, that the land, by fact and default reverts to open countryside, thus being subject to relevant local and national policy considerations, in other words to policy P10 of the SLP and paragraph 17 of the Framework. This circumstance is reflected in the vigorous defence of the appeal by the council under the terms of both, and the equally robust challenge to this position by the appellant under the same terms. There is no material basis therefore to conclude, either from the evidence or the judgements of the Courts, that anything but limited weight can be afforded to the conclusions of CPRE in this case.

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<sup>36</sup> Appeal Ref: APP/Q4625/A/11/2157515 PoE 2.7 Appendix Q

<sup>37</sup> This number was corrected from the 661 figure during the Inquiry.

232. Moreover, asserting that weight be given to policy H2 of the former SUDP would have little purpose in light of the conclusions reached in relation to housing land supply set out above. Not only is the policy now long time-expired (anticipating safeguarding the land until 2011) but also, as a policy relevant to the supply of housing, it is rendered not up-to-date as a consequence of the absence of a five year supply of housing land in relation to paragraph 49 of the Framework.

*The effects of the proposed development on highway safety*

233. Concerns over highway safety often attend major development and this is reflected in local opinion [121]. However, such concerns are not shared by the Council or the highway authority and are mitigated by the financial contributions secured through obligation to improve pedestrian infrastructure in the near environs of the site [197]. Moreover, there is no evidence of any cumulative impacts of other developments in the vicinity having a material bearing on this case. With the mitigation measures in place and on the basis of the evidence presented at the Inquiry, there would be no material increase of risk to the safety of all classes of highway users on the site or indeed within its environs.

*Whether there is a need for affordable housing within the Borough*

234. The Council acknowledge the provision of 80 affordable dwellings in their evidence and agreement on this provision is confirmed in the June position Statement [35]. Neither do the Council challenge the affordable housing position in the borough set out by the appellant [149]. The current position is acknowledged in the DSLP, where it is accepted that the delivery of affordable housing is a very serious problem in the borough. It is also unchallenged that the Council's own affordable housing supply data asserts the "affordable housing need is exceptionally high as Solihull has one of the most severe affordability problems in the West Midlands Region". This equates, as the June Position Statement sets out, to a need for 1,652 dwellings per annum (dpa), with completions running over a five year period of around 92 dpa. The proposals facilitating 80 units of mixed tenure would make a sizable contribution to meeting that demand.

235. The Council's Supplementary Planning Document 'Meeting Housing Needs' (including affordable housing)<sup>38</sup>, submitted at the June 2015 sitting of the Inquiry, indicates the annual assessment of need identified in the Council's Strategic Housing Market Assessment (SHMA), expressed in the requirement for dwellings, accounting for the current backlog, presently stands at 1,182 per annum. Even taking the lower figure as a consideration, the provision of 80 affordable dwellings may be afforded substantial weight in the planning balance.

*Whether any permission should be subject to any conditions or obligations and, if so, the form that these should take*

*Conditions*

236. The need for conditions and their wording should properly be considered in the light of the advice contained in the relevant section of the Planning Practice

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<sup>38</sup> ID42.

Guidance. The Condition numbers in this section refer to the Schedule of Conditions attached to this report.

237. Otherwise than as set out in any decision and conditions, it would be necessary that the development shall be carried out in accordance with the approved plans, for the avoidance of doubt and in the interests of proper planning (Condition 1). Approval of details of appearance, landscaping, layout and scale is necessary pursuant to the relevant articles of the General Development Procedure Order 2006 in respect of outline applications (condition 2) whilst approval of these matters is required pursuant to Section 92 of the Act (condition 3) and it is also necessary the development is commenced within three years of this permission or two years of the approval of the reserved matters, whichever is the sooner in order Section 92 of the Act is complied with (condition 4). Ensuring that materials used in the construction of the dwellings are of an appropriate quality is necessary to ensure a satisfactory appearance to the development (Condition 5). It is also necessary that details of the street lighting scheme for the site are secured to safeguard living conditions of adjacent occupiers and rural landscape character (condition 6).
238. It is necessary, given the archaeological potential of the site, that a scheme of archaeological investigation is secured, to safeguard any such remains that may otherwise be harmed as a result of the development (Condition 7). It is also necessary that a scheme for the appropriate disposal of foul and surface water is secured for the site to ensure the site is furnished with a satisfactory means of comprehensive drainage measures to reduce flood risk and ground water contamination in accordance with development plan policy (condition 8). For clearly associated reasons, specifically to prevent flooding elsewhere and to reduce flood risk on the site, it is also necessary that the development be carried out in accordance with the approved Flood Risk Assessment incorporating measures for compensatory flood storage and minimum floor levels for development (condition 9). It is also appropriate that a Construction Management Plan is in place during the course of the construction of the development in order to ensure the safety of highway users and the living conditions of adjacent occupiers (Condition 10).
239. It is also necessary that details of the emergency/pedestrian/cycle exit from Lowbrook Lane are secured prior to development commencing in order to safeguard the safety of highway users on the site and in the locality (condition 11). Notwithstanding the submission of a draft residential travel plan submitted with the appeal documents, the submission of a finalized plan is necessary both with regard to highway safety and the need to encourage sustainable modes of travel (condition 12). It is also necessary that all of the dwellings on the site achieve have the capability to mitigate the cumulative effect of the development on climate change; for this reason it is necessary that at least 10% of the energy supply of the development is secured from decentralised and renewable sources through an approved scheme (condition 13). Given the importance of the existing landscape features on the site it is necessary that all existing hedges, trees and large shrubs to be retained on the site are protected during the course of the construction of the development through the submission of details of all protective fencing and its siting on the site, to ensure their wellbeing during this period (condition 14).

240. Notwithstanding the submission of reserved matters in relation to landscape, it is necessary that a detailed scheme for the hard and soft landscaping of the site is secured prior to the first occupation of the development in order that the effect of the development on the character of the countryside is minimised and that opportunities to enhance that character are optimised (condition 15). To ensure the success of this component of the scheme it is necessary that in the event of loss or damage to any of the above tree planting occurring any such tree, shrub or element of hedging is replaced within a five year period (condition 16). For the same reasons, it is necessary that in the event of any retained tree, shrub or section of hedge is lost during the course of construction; it is replaced by that of similar type (condition 1). It is also necessary that a detailed Landscape and Ecological Management Plan is secured to ensure the minimisation of any disturbance to existing vegetation and wildlife on the site (condition 18). Finally and notwithstanding the details hereby approved in respect of access to the site, it is necessary that full details of this access are secured prior to commencement of the development in the interests of highway safety (condition 19).
241. At the resumption of the Inquiry in June 2015 the Council proposed a further condition requiring that through the submission of reserved matters, the mix of housing be provided in accordance with the Council's adopted Supplementary Planning Document 'Meeting Housing Needs (including affordable housing) 2014'. The SPD is in place but, as it is understood, its application will be flexible and informed by annual iterations of the Council's Strategic Housing Market Assessment (SHMA). Considerations of the appropriate mix of housing types on the site, informed by the current SHMA and the application of the SPD can be appropriately considered at the submission of reserved matters stage. It is not considered appropriate, or in accordance with the guidance on the application of conditions set out in the PPG, to require the application of such a condition at the consideration of this outline stage. It is recommended therefore that such a condition is not attached, should the Secretary of State concur with the recommendation of the report.
242. Condition 13 on the schedule of conditions attached to the June Position Statement<sup>39</sup>sought compliance with Level 3 of the Code for Sustainable Homes. In light of the Written Ministerial Statement in March 2015 in respect of Housing Standards and the end of transitional arrangements in October of this year, after consultation with both parties, this condition has been deleted from the schedule.
243. The conditions set out in the Schedule of Conditions attached to this report would be necessary to mitigate the impact of the proposed development. They would reasonably relate to the proposed development and would appropriately address some of the issues raised by other parties.

### *Obligations*

244. 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 (CIL) Regulations (2010) which must be met for obligations to be given weight. There are also relevant development plan policies, including policies P4 (affordable housing), P8 (promoting green travel) P20 (new and improved open space) and P21 (developer obligations). The submitted

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<sup>39</sup> PoE3.1.

obligations have been considered in the light of these requirements and the joint evidence put forward in support of them.

245. The obligation makes provision for 80 affordable housing units split between 65% social rented and 35% intermediate tenures. Such a contribution accords with policy P4 of the SLP, has the support of the Council in terms of numbers and mix and in light of the established and acute need for such provision in the borough it would make a meaningful contribution to meeting that need. Such a contribution would also accord with paragraph 204 of the Framework and therefore may be apportioned very substantial weight in support of the proposals.
246. A second obligation facilitates a commuted sum for 10 year maintenance of public open space which will be facilitated within the development, through the submission of reserved matters. The provision of this space is important both to the wellbeing of future occupiers and setting the landscape context to the built component of the development. Ensuring its continued provision well into the occupation phase and managing it to maturity is of equal importance. The contribution will facilitate this, in accordance with policy and with the support of the Council with regard to its proportionality. On this basis it would be in conformity with the regulatory requirements and may be taken into account.
247. Financial contributions to enhance public transport services and sustainable modes of travel are critical to overcoming concerns over the locational sustainability of the proposed development. The contribution of £250,000 towards improvements to the S7 bus service for a period of five years, the contribution of £90,000 towards improvements to Wythall railway station and the contribution of £35,000 for the installation of a pedestrian crossing at the Fulford Hall Road/Tilehouse Lane/Dickens Heath Road junction all serve to both overcome the identified deficiencies, making the development acceptable in these terms, are considered proportionate and are manifestly directly related to the development. Each of them are therefore in conformity with the regulatory requirements of the CIL. No indication was made at the Inquiry that such contributions did not meet Regulation 123 of the Community Infrastructure Regulations so they too may be taken into account.

*Consideration of the development against the policies of the National Planning Policy Framework*

248. For the reasons set out above, it has been established that there would be no significant harmful effect on the landscape character of the area, and thus no material conflict with policy P10 of the SLP. The development (having been determined as sustainable in the context of paragraph 7 of the Framework), accords with the first element of the paragraph, which indicates approval without delay.
249. However, if a contrary conclusion were to be drawn, and conflict with policy P10 identified, paragraph 14 requires that where if the development plan is absent, silent or out of date, planning permission should be granted unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits of the scheme.
250. The Council argue that the SLP is far from silent when it comes to policies relevant to the determination of this case. They point specifically to policy P10,



the very fulcrum on which their case turns, as speaking loudly in respect of this case. The appellant however argues the plan is indeed silent insofar as there is no identified housing number, or indeed an assessment of FOAN to underpin it. The latter's argument is well made; indeed, the Council accepted in cross-examination<sup>40</sup> that FOAN was relevant to the resolution of the appeal, was not to be found within the remitted version of the SLP and that it was therefore 'missing' from the development plan. It is therefore reasonable to conclude the SLP is 'silent' in respect of the housing requirement for the Borough.

251. Both parties refer to a number of judgements from the Courts [30] in respect of this matter and these are directed at interpreting the meaning and purpose of the fourth bullet point of paragraph 14 for the purposes of this appeal. It is understood it is for the Courts to interpret policy. However, when the fourth bullet point of paragraph 14 is read as a whole, and the term 'silence' interpreted in like manner with 'out-of-date', it is reasonable to conclude that the absence of a specific policy (especially a housing policy so central to the consideration of the case), can constitute 'silence'. The logic of this is that it is an approach consistent with consideration of the out-of-datedness of a development plan being triggered by the absence of a five year supply of housing land, thus rendering relevant housing policies out-of-date, as determined by paragraph 49 of the Framework. So a singular matter of silence (in relation to policy), notwithstanding the audibility of other policies of the development plan in respect of other matters, may reasonably be the basis on which the fourth bullet point of paragraph 14 is invoked in this case.

252. Even if this view were to be considered wrong, paragraph 14 is invoked through an inability of the Council to demonstrate a five year supply of housing, thus rendering the policies relevant to its supply (in this case specifically policy P5) not up-to-date, again in accordance with paragraph 49 of the Framework. Although policy P5 has been truncated by the remittance of the housing number back to the Council, the remaining paragraphs 2 and 3 continue to be relevant to the consideration of housing development within the Borough, and therefore come within the ambit of the paragraph 49 consideration.

253. The overwhelming evidence points to the Council not having a five year supply of housing land in accordance with paragraph 47 of the Framework. Even in the most optimistic terms presented by the Council, who indicating in closings that as of April 2015 a surplus of only 66 dpa could be demonstrated,<sup>41</sup> this supply was only sustainable until the third quarter of 2015; the point which we have now reached. Moreover, the evidence of the appellant very persuasively suggests that with a 20% buffer reflecting persistent under-delivery added, a 10% discount for non-implementation applied, and a downward review of windfall site expectations, the Council's supply number falls very considerably below the five year threshold anticipated by the Framework.

254. Notwithstanding the above, it should also be remembered that both main parties (though not all members of the public attending the Inquiry) agree that for the purposes of this appeal, paragraph 14 is, as a matter of fact, engaged [35].

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<sup>40</sup> ID53 , appellant's closing page 9.

<sup>41</sup> ID42.

255. The development proposals may reasonably be considered sustainable development, so according with the definition set out in paragraph 7 of the Framework. They would bring forward market housing in an authority where there is a demonstrable shortfall in housing land. In this context, and the expectations of paragraph 47 of the Framework which anticipates a significant boost to housing supply, this benefit must be afforded substantial weight. Moreover, the proposals comprise a significant proportion of affordable housing of appropriate tenure and type, again in an area where there is an acknowledged very significant, if not chronic shortfall. This outcome too merits substantial weight being afforded to it.
256. There would be no risk of the development resulting in the coalescence of adjacent settlements as, in essence the broad structural relationship of Green Belt and existing and former safeguarded sites is well established, and indeed not challenged by these proposals. There would be no significant adverse impact on highway safety, a broad schedule of conditions would facilitate an appropriate degree of control over all details of the development and the unilateral undertaking facilitating financial contributions to transport infrastructure (inter alia) would fully mitigate associated adverse impacts of the development, rendering them acceptable in planning terms.
257. Taking account of paragraph 17 of the Framework, and the Minister for Housing and Planning's advocacy of the need to take account of the differing roles and character of different areas, the impact on landscape and settlement character, identified as limited in the planning balance, does not significantly or demonstrably outweigh the benefits of bringing forward sustainable market and affordable housing now, both of which merit substantial weight being apportioned them in favour of the development. On this basis, and in relation to the third and fourth bullet points of paragraph 14, the proposals accord with the key aim of the Framework.

### *Overall Conclusions*

258. This is a complex case with a wide range of issues generating a significant degree of local interest. These issues have been, and continue to be, considered in a local development plan context which can reasonably be described as being in a state of flux, and one where the National Planning Policy Framework is extensively engaged. Local opinion is well organised, articulately presented, and set authoritatively in the context of the ongoing local development plan review process. It remains clear however that such opinion, in the wider current context, has to be set and considered within the broader strategic district-wide planning and socio-economic picture.
259. The starting point for consideration of the proposals is the development plan, which in this case is the SLP. The singular policy on which the Council now rely is P10 Natural Environment. This policy covers a wide range of environmental considerations; in the context of this appeal, the relevant element of the policy seeks to 'protect, enhance and restore the diverse landscape features of the Borough.....', concluding that 'Where development is likely to have significant harmful effects on the natural environment, as a result of the development itself, or the cumulative impact of developments, developers must demonstrate that all possible alternatives that would result in less harm have been considered'.
260. Considerations of the magnitude of the effect of this proposed development on

this site cannot be separated from its long and deeply considered assessment as a site capable of accommodating future residential development without significant harm to its landscape or Green Belt context. The fact that the implementation of this expectation would always engender a measure of change, even moderate harm to landscape character, must have always been tacitly accepted. There would be a measurable effect to the character and appearance of the surrounding countryside as a result of this development. Insofar as this would engender a change, at least on part of the site, from open fields to residential development, this could even be construed as very moderate harm. However, this would not, for all the reasons set out above, constitute a 'significant harmful effect' necessary to signify conflict with policy P10 of the SLP. Moreover, even accounting for a very moderate degree of harm, this can be held to be mitigated, as the main parties agree, by the benefits to biodiversity and some landscape features brought forward by the proposals. On balance therefore, there is no conflict with policy P10 of the SLP and consequently, in accordance with paragraph 14, this development proposal, being deemed sustainable and in accord with the development plan, my view is that it should be approved.

261. Moreover, the circumstances of this site (and the other land formally remitted to the Council following the judgement of the Courts), first considered at appeal as safeguarded land, then Green Belt land and then finally considered as open countryside, must, by any standards be considered unique. Such a conclusion in these circumstances cannot be seen as a form of precedent risking the wider defensibility of policy P10 of the SLP, nor indeed other windfall site proposals locally or beyond.
262. Even if such an interpretation were not to find favour and a material degree of harm identified to landscape character found, the proposals would have to fall to be considered against the fourth bullet of paragraph 14, where, if the development plan is absent, silent or out of date, planning permission should be granted unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits of the scheme.
263. The overwhelming evidence points to the Council not having a five year supply of housing land in accordance with paragraph 47 of the Framework. Even in the most optimistic terms presented by the Council, by its own admission, supply was only sustainable until the third quarter of 2015; the point at which we have now reached.
264. Nearly all development engenders change and in the case of this proposal a number of clearly compartmentalised fields will be given over to residential housing development and the prevailing rural character of at least part of the site inevitably eroded. However, the site has a good degree of visual enclosure and is broadly discrete in relation to its Green Belt context; this consideration has been extensively tested in the formal designation of the site as safeguarded land on repeated occasions. Nevertheless, the development will be discernable from limited viewpoints and, as local people cogently argue, the character of the settlement and so its relationship with its rural context, will be perceptibly altered. However, for the reasons set out above, this degree of *alteration* would not be of a magnitude such to constitute 'a significant harmful effect', thus avoiding conflict with policy P10 of the SLP.
265. Whilst the development would inevitably lead to an increase in vehicular

activity in the vicinity of the site, the level of increase would be mitigated by the provisions of the unilateral undertaking. Moreover, there is no evidence that such increased activity would result in any increased risk to highway users and no such concerns are expressed either by the Council or highway authority. Effect in this regard may therefore be considered neutral in the planning balance.

266. Local people and the Parish Council express concerns over the cumulative effect of recently approved development in the vicinity of the appeal site on the functionality and safety of the highway network. However, no substantive technical evidence has been presented, either incrementally from these cases, or collectively, to suggest any such concerns can be afforded anything other than limited weight.
267. Conditions attached to a permission would effectively control the detail of the development whilst the obligations of the unilateral undertaking would fully mitigate any other related harm, rendering the development acceptable in planning terms.
268. The proposed development may be considered sustainable as defined by the Framework. It would also accord with the policies of the development plan as a whole. Moreover it would deliver market and affordable housing, (and local environmental benefits) in accordance with paragraphs 17 and 47 of the Framework in a Borough where there is a pressing need for both. With no other material adverse impacts identified, and with other considerations appropriately mitigated and controlled through unilateral undertaking, reserved matters and conditions, the modest landscape impacts acknowledged would not significantly and demonstrably outweigh the very considerable benefits of bringing forward market and affordable housing now on land not significantly constrained by Green Belt designation.
269. All other matters raised in evidence have been taken into account, but there is nothing to outweigh the main considerations that lead to the conclusion that the appeal should be allowed.

### **Recommendation**

270. It is recommended that the appeal be allowed, and planning permission be granted for development of a maximum of 200 dwellings, highway infrastructure, open space and associated works at Lowbrook Farm, Lowbrook Lane, Tidbury Green, Solihull B90 1QS, subject to the conditions set out in the attached Schedule of Conditions.

*David Morgan*

**Inspector**

## **Schedule 1**

### **Conditions**

1. The development hereby permitted shall not be carried out except in general accordance with the details shown on the submitted plans, numbers: BIR.3948\_04J; BIR.3948\_14A; BIR.3948\_16; BIR.3948\_17.
2. Approval of the details of (a) appearance); (b) landscaping; (c) layout; and (d) scale (hereinafter called 'the reserved matters') shall be submitted to and approved in writing by the local planning authority before any development begins and the development shall be carried out as approved.
3. Application for approval of the reserved matters shall be made to the Local Planning Authority before the expiration of three years from the date of this permission.
4. The development hereby permitted shall be begun before the expiration of three years from the date of this permission or before the expiration of two years from the date of approval of the last of the reserved matters to be approved whichever is the later.
5. No dwelling construction shall be commenced until samples of all bricks, tiles and other materials to be used in the external elevations have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
6. Details of an external street lighting scheme shall be submitted to and approved in writing by the local planning authority and development shall be carried out in accordance with the approved details before the dwellings are occupied.
7. No development shall take place until the applicant, or their agents or successors in title, has secured the implementation of a programme of archaeological work, taking account of the threshing barn in particular, and in accordance with a written scheme of investigation which has been submitted by the applicant and approved in writing by the local planning authority.
8. No development approved by this planning permission shall take place until such time as a surface water and foul sewage drainage scheme has been submitted to, and approved in writing by, the local planning authority. The scheme shall be fully implemented and subsequently maintained, in accordance with the timing/ phasing arrangements embodied within the scheme, or within any period as may subsequently be agreed, in writing, by the local planning authority.
9. The development permitted by this planning permission shall be carried out in accordance with the approved Flood Risk Assessment (FRA) version 5, prepared by Halcrow, dated November 2012 and the following mitigation measures detailed within the FRA:

1. Provision of compensatory flood storage as shown on drawing no.GIA013-C040-104.
  2. Finished floor levels are set no lower than 144m above Ordnance Datum (AOD).
10. The development shall not commence, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by the local planning authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for (i) the parking of vehicles of site operatives and visitors (ii) loading and unloading of plant and materials (iii) storage of plant and materials used in constructing the development (iv) the erection and maintenance of security hoarding including decorative displays (v) details of haul routes into/from site (vi) wheel washing facilities (vii) measures to control the emission of dust and dirt during construction (viii) before and after carriageway surveys of Lowbrook Lane (ix) contact details for the appointed site agent that can be contacted in the event of any problems arising during construction activities.
  11. The development shall not commence until details of an emergency/pedestrian/cycle access as shown on plan no.BIR.3948\_04J from Lowbrook Lane have been submitted to and approved by the local planning authority. Such details shall include a phasing plan for the implementation and availability of the access. The emergency/pedestrian/cycle access shall be implemented in accordance with the details and phasing plan approved and thereafter shall be maintained for vehicular access for the lifetime of the development.
  12. Notwithstanding the draft residential travel plan submitted, the development shall not commence until a final residential travel plan has been submitted to and approved by the local planning authority. The final residential travel plan shall include details of the phased implementation of the plan, including details of (i) residential surveys, (ii) the role of the travel plan coordinator over the life of the plan (iii) the implementation of travel plan measures over the life of the plan. The residential travel plan shall cover a period of 5 years and include incentives to promote sustainable modes of transport.
  13. Before the development begins a scheme (including a timetable for implementation) to secure at least 10% of the energy supply of the development from decentralised and renewable or low carbon energy sources shall be submitted to and approved in writing by the local planning authority. The approved scheme shall be implemented and retained as operational thereafter.
  14. Prior to the commencement of work on site, all existing trees/hedges and large shrubs except those agreed for removal, shall be protected by barriers. Details of the type of fencing and its siting shall be submitted to and approved in writing by the local planning authority, thereafter the tree barriers shall be implemented and maintained on site as approved. The protected areas shall be kept free of all materials, equipment and building activity during the site development, and ground levels within the protected areas shall not be raised or lowered.

15. The development hereby approved shall not be occupied until full details of both hard and soft landscape works including a programme for their implementation have been submitted to and approved in writing by the local planning authority and these works shall be carried out as approved. These details shall include proposed finished levels or contours; means of enclosure; vehicle and pedestrian access and circulation areas; hard surfacing materials; minor artefacts and structures (e.g. furniture, play equipment, refuse); retained historic landscape features, including historic farm buildings, and proposals for restoration. Soft landscape works shall include planting plans; written specifications (including cultivation and other operations associated with plant and grass establishment); schedules of plants, noting species, plant sizes and proposed numbers/densities where appropriate; implementation programme.
16. If within a period of 5 years from the date of planting of any tree, that tree or any tree planted in replacement for it, is removed, uprooted, destroyed, dies or becomes seriously damaged or defective, another tree of the same species and size as that originally planted shall be planted at the same place within the next planting season (October-March), unless the local planning authority gives its written consent to any variation.
17. Any tree, hedge or shrub scheduled for retention which is lost for any reason during development works, shall be replaced with a tree, hedge or shrub of a size and species to be agreed in writing with the local planning authority and planted during the first planting season after its loss.
18. No development shall take place on site until a Landscape and Ecology Management Plan has been submitted to and approved in writing by the local planning authority. All management activities shall be permitted in accordance with the approved details and timings of the Landscape and Ecology Management Plan, and informed by the approved Ecology and Landscape Management Principles (Halcrow 16<sup>th</sup> January 2013).
19. The development shall not commence until details of access into the site have been submitted to and approved by the local planning authority. Prior to occupation, access shall be implemented in accordance with the details approved under this condition and shall thereafter be maintained for the lifetime of the development.

## Schedule 2

### Former policies of the Solihull Unitary Development Plan

1. The development plan for the area pertaining at the time of the determination of the application by the Council comprised the saved policies of the Solihull Unitary Development Plan 2006 (SUDP), the policies of which were saved through the direction of the Secretary of State in January 2009<sup>42</sup>. The plan period anticipated for the plan was between 2001 and 2011.
2. Policy H2 fell under the heading "Provision of Safeguarded Land (for Long-Term Housing Needs)". Its purpose being to facilitate the identification of sites to help meet long-term (i.e. post 2011) housing needs. It went on to state that in areas excluded from the Green Belt for this purpose strong development control measures would apply limiting any development on the land only to uses allowed in the GB (as per policy C2) and those not prejudicing long term use of the site for housing. It concluded the possible future designation of the land for housing would be determined through the subsequent review of the development plan.
3. Policy C8 stated that the Council would seek to safeguard the countryside in the Borough by protecting and enhancing its landscape and historic character and quality, retaining or seeking the restoration of its diverse landscape features and maintaining local distinctiveness. Development in the countryside would be permitted only if it respected or enhanced the distinctive character of the landscape.
4. Policy C1 stated that the Council re-affirmed the designation of a Green Belt in the Borough, the boundaries of which were shown on the Proposals Map. In defining Green Belt boundaries, account had been taken of the need to relate the housing proposals to a longer time scale than that of the Plan.
5. Policy C2 stated that the Council would not permit development in the Green Belt, except in very special circumstances, for purposes other than:
  - (i) The construction of new buildings or the change of use of existing buildings for the purposes of agriculture, forestry or cemeteries;
  - (ii) Development for the purposes of outdoor sport and recreation, including essential built development that maintains openness and does not conflict with the purposes of including land in the Green Belt, and is consistent with the countryside and sport, recreation, leisure and arts policies of the Plan;
  - (iii) Redevelopment for housing or the development of new housing in the form of limited infilling within the built-up area of the settlements of Chadwick End, Cheswick Green and Tidbury Green providing this would not have an adverse effect on the character of the settlements. Limited infilling shall be interpreted as the filling of a small gap within an otherwise built-up frontage with not more than two dwellings;

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<sup>42</sup> PoE1/1, Mr Palmers Appendix 5 p 60.



- (iv) The replacement or limited extension of existing residential properties, providing that any replacement dwelling is not materially larger than the original, and that extensions to any dwelling outside an established settlement do not harm the character of the Green Belt;
- (v) The re-use of buildings providing that the new use, and any associated use of land surrounding the building, do not conflict with, nor have a materially greater impact on, the openness of the GB and the purposes of including land in it; that the form, bulk and general design of the buildings are in keeping with their surroundings and; that the buildings are of permanent and substantial construction and are capable of conversion without major reconstruction;
- (vi) Proposals for the management of waste, consistent with waste management policies of the Plan, providing they maintain openness and do not conflict with the purposes of including land in the Green Belt;
- (vii) Proposals for the search and extraction of minerals, consistent with the minerals policies of the Plan; and
- (viii) Proposals for park and ride schemes that comply with the criteria in PPG2 and Annex E of PPG13. Development within or conspicuous from the Green Belt must not harm the visual amenities of the Green Belt by reason of siting, materials or design.

### **Schedule 3**

#### **Evidence of both main parties relevant to former development plan policy and Green Belt considerations**

##### **Solihull Metropolitan Borough Council evidence**

###### *Exceptional Circumstances for returning the appeal site to the Green Belt*

1. Paragraph 83 of the NPPF stipulates that Green Belt boundaries, once established should only be altered in exceptional circumstances, through the preparation of the Local Plan; the context for these is as follows.
2. To fulfil the requirement of Policy H2, safeguarded sites have been revisited during the process of reviewing the existing UDP. This need for review was a clear pre-requisite to Policy H2, set in place by the Inspector's Report April 2005 into the Solihull UDP First Review 2001-2011 paragraph 3.128. Here the Inspector stated that an urgent review of the suitability of long term housing sites should be undertaken. The resultant Solihull Draft Local Plan sets out the long-term spatial vision for how the Borough's towns, villages and countryside will develop and change over the Plan period (2011-2028), as well as a strategy for the delivery of this vision for promoting, distributing and delivering sustainable development and growth.
3. The resultant Solihull Draft Local Plan sets out the long-term spatial vision for how the Borough's towns, villages and countryside will develop and change over the Plan period (2011-2028), as well as a strategy for the delivery of this vision for promoting, distributing and delivering sustainable development and growth. To inform the development of the Draft Local Plan, a substantial evidence base has been prepared that explains and informs decisions made by the Council. The evidence base has now been scrutinised and tested through the examination basis.

###### *The development plan (planning matters)*

4. Under Section 54A of the TCPA 1990 and Section 38(6) of PCPA 2004, the starting point for consideration of this application is the Development Plan. Clearly, all decisions should be made in accordance with the Plan unless material considerations indicate otherwise. This proposal has been refused for reasons relating to Green Belt, and the functions the land fulfils both in terms of visual and physical separation between the site and the neighbouring settlement Grimes Hill at Bromsgrove District Council. The Council is firmly of the view that it is contrary to the Development Plan in respect of several important considerations. They are also in conflict with policies of the DSLP in respect of the Green Belt which may also be afforded considerable weight in light of the stage of the development to which the plan has reached.<sup>43</sup>

###### *Saved Policy H2 of the Unitary Development Plan*

5. The appeal site is currently identified as 'Safeguarded Land' in accordance with Policy H2, which identifies potential sites to help meet long term needs. The policy concludes with the statement "The possible future designation of the

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<sup>43</sup> Policy Context, Palmer's proof PoE1.1 page19.

land for housing will be determined through subsequent reviews of the Unitary Development Plan". This is emphasised to draw to the Inspector's attention to the statement that the site is not currently designated for housing. Green Belt policy therefore currently applies to the site. The purpose of the policy is therefore to provide for a possible future designation of a site for housing, which would be assessed in detail at the appropriate time, i.e. during a review of the UDP. Moreover, such an approach to safeguarded land set out in H2 remains consistent with the expectations of the Framework set out in paragraph 85. The appeal site has been reviewed as part of the Draft Local Plan process. Details of this review are set out below, the Council's conclusion is that the site should be returned to the Green Belt on the basis of exceptional circumstances.

6. Paragraph 49 of the NPPF states that relevant policies within a development (plan<sup>44</sup>) cannot be considered up to date if the local planning authority cannot demonstrate a five-year supply of deliverable housing sites.
7. Inspectors considering recent appeals on safeguarded land at Moat House Farm, Marston Green and Leys Lane Meriden found that the Council cannot demonstrate a five-year supply of deliverable sites and gave this issue significant weight and allowed the appeals. Copies of both appeal decisions can be found in the appendices to the Council's planning evidence. The Council will not be in a position to demonstrate a five year housing supply until the Local Plan is adopted. However, the draft Local Plan has now reached an advanced stage and the recent release of the Inspector's Interim Report dated 5th April 2013 indicates that the Local Plan is sound in principle. From this, it can be concluded that there is now greater certainty of achieving five years housing land supply. Previous Inspectors have made no allowance for the Draft Local Plan sites in the five year housing land supply calculation on the grounds that there is no guarantee of adoption, but clearly that is not the case now because of the Inspector's interim report and the advanced stage that the Local Plan has reached as referred to earlier in this proof.
8. Paragraph 14 of the NPPF applies which requires decision makers in cases where the development plan is out of date to grant permission unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework or where specific policies in the Framework indicate development should be restricted such as sites within land designated as Green Belt. In the meantime, Policy H2 seeks to limit any development to only that similar to that allowed in the Green Belt. The Solihull Draft Local Plan is also material to the determination of this appeal and given its advanced stage carries weight. Accordingly, the appeal proposal has been considered in the context of Policy H2 of the Solihull UDP and to the Green Belt designation proposed through the Solihull Draft Local Plan. Policy H2 of the Solihull UDP makes clear that any future housing allocation will only take place through subsequent reviews of the development plan. In doing so, the policy is consistent with the Inspector's report on the Inquiry into Objections to the plan, where the Inquiry took place in May to September 2004. At paragraph 3.150 the Inspector makes clear that review of Policy H2 is necessary to see if there is a possibility that safeguarded sites will

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<sup>44</sup> Inspector's correction.

be required for housing use. Part of this review will include an assessment of the strategy for housing allocations.

### *Housing land supply*

9. The appellant contends that the Council cannot currently demonstrate five years housing land supply and that this points to the grant of planning permission (NPPF paragraph 49). The Inspector considering a recent appeal at Leys Lane, Meriden (ref: APP/Q4625/A/12/21659840) found that the Council could not currently demonstrate a five years housing land supply, concluding that supply was likely to be in the order of half to two-thirds of the borough-wide target (paragraph 32). Her conclusion was principally on the basis that she did not consider Draft Local Plan sites to be deliverable and excluded their contribution to housing land supply because there was no guarantee that they would be in the final version of the Local Plan which would not be adopted until 2013.

### *Housing land requirement*

10. This position has since advanced with the Draft Local Plan nearing adoption. NPPF states that decision-takers may give weight to relevant policies in emerging plans and that the more advanced their preparation, the greater the weight that may be given; the less significant the unresolved objections, the greater the weight that may be given. (paragraph 216). Once the Local Plan is adopted the Council will be in a position to demonstrate five years housing land supply as follows:
11. The Inspector's Interim Report to the Local Plan at paragraph 10 acknowledges that the SHMA has met the requirements of the NPPF and states that the proposed housing figure in the Solihull Local Plan of 11,000 net additional dwellings 2006-2018 not only fully meets the "natural increase" needs of the Borough's population, but also takes account of the necessary element of migration associated with the regional urban renaissance strategy. Total deliverable housing land supply sites are established at 4,196, with Policy H5 of the DLP including a mechanism to release additional housing sites from later phases if supply falls below five years. However, Irrespective of the housing land supply position, Paragraph 14 of the NPPF is a presumption in favour of sustainable development and there are other demonstrable and significant factors in this appeal.

## **The Appellant**

1. The RS has now been revoked, there are policies in the Unitary Development Plan regarding housing land requirements but these policies are out of date, therefore housing supply needs to take account of the policy set out in the NPPF and the most up to date information that is available.
2. In respect of national guidance the NPPF sets out information in respect of the calculation of housing requirements and also sets out the need to boost significantly the supply of housing and ensure that the full objectively assessed needs for market and affordable housing are met in the area. In considering the supply of land sites have to be deliverable and developable. Specific deliverable sites have to be shown for 5 years together with developable sites for a further 5 years and where possible for years 11 to 15. In addition a

buffer of 5% needs to be provided, or a buffer of 20% where there has been a record of persistent under delivery of housing.

3. Where a Local Planning Authority cannot demonstrate an up to date 5 year supply of deliverable sites then paragraph 49 states that relevant policies for the supply of housing should not be considered to be up to date and in those circumstances paragraph 14 states that permission should be granted unless there is a specific reason which restricts development. Also of relevance is the March 2011 Ministerial Statement which plans for growth and supports the provision of housing.
4. Whilst not part of the development plan, the most recent tested housing figures are those contained within the *Phase 2 Revision for the West Midlands RS Panel Report*. The figures therefore contained within the Panel Report remain the most recent objectively assessed figures available, although there have been more recent household and population projections since these were published. The figures in this plan are of weight and are the starting point in the consideration of housing supply.
5. The *Solihull Unitary Development Plan* only contains housing policies that deal with the situation up to 2011. In accordance with paragraph 215 of the NPPF there is no consistency with regard to housing policies with the NPPF. The policies that seek to deal with housing and the restraint of housing are of no weight in the determination of this appeal. The *Draft Solihull Local Plan* has not been submitted to the Secretary of State and is still subject to very significant unresolved objections relating to both the legality and the soundness of the plan. It can therefore be afforded little weight.

#### *The Development Plan and the NPPF*

6. It is clear that the development accords with relevant saved policies in the Solihull Unitary Development Plan, including Policy H2 (because the plan clearly envisaged the potential use of this site beyond 2011 and the proposed development is to meet housing needs beyond the expiry date of the plan of 2011).
7. Notwithstanding this point Policy H2 is no longer relevant because under paragraph 49 of the NPPF, given the fact that the Authority has conceded that there is not a five year supply, the policy is to be regarded as being out of date.
8. The decision notice referred to policies C1 and C2, which the Authority sought to distance themselves from in the subsequent letter. In essence my evidence shows that the site is not and has never been in the Green Belt, that it was considered suitable by the Authority in 1993 as being allocated for long term development, because it had minimal impact on the Green Belt. It was also considered suitable for development and appropriate to be safeguarded by previous Inspectors who considered the site in accordance with policy in PPG2, which requires the site to be genuinely capable of development when needed. Lastly the development would not harm the visual amenities of the Green Belt.
9. The subsequent letter with the suggested replacement reason for refusal referred to Policy H2, which as I have already noted we do not offend and Policy C8. This is a landscape policy and is dealt with by Mr Peachey in detail.

It is, however, clear that impact on landscape quality was not considered a bar to the development of this site by both the Authority in 1993 and by previous Inspectors. The development does not therefore offend this policy either.

10. In respect of the emerging Plan, the policies are of little weight in the consideration of this appeal. The plan seeks to put the site into the Green Belt although it has not demonstrated exceptional circumstances necessary to do this. There are fundamental objections to both the residential and Green Belt policies of the plan and in particular to the legality of the plan and its soundness because it does not meet the requirements in respect of the Duty to Cooperate and it does not properly consider the housing requirements of Solihull in accordance with the NPPF. If the plan were to be adopted as currently proposed it will be challenged. Final resolution of these fundamental objections therefore is still some way off.
11. In respect of the NPPF the proposed development firstly accords with the development plan, therefore the first bullet point of the decision making section of paragraph 14 applies and the site should be granted permission without delay.
12. Notwithstanding this point, the Authority admit they have not got a five year supply of housing and even if the site was not considered to be in accordance with the development plan, under paragraph 49 where there is less than a five year supply the relevant housing policies are to be considered to be out of date. Here the development would be considered against the second bullet point of the decision taking section of Paragraph 14 and the development accords with the requirements of this paragraph. The development also meets the three dimensions of sustainable development set out in the NPPF.
13. The material considerations which in the planning balance weigh in favour of the appeal proposals are:
  - The exclusion of the site from the Green Belt.
  - The fact that the development accords with relevant saved policies in the Solihull UDP that are not out of date.
  - Paragraph 14 of the NPPF sets out that development proposals in accord with the development plan should be approved without delay.
  - In addition, Paragraph 49 of the NPPF is clear that where there is a lack of a five year supply of housing land, as exists here, then relevant policies for the supply of housing should not be considered up to date.
  - Where policies are not up to date then paragraph 14 of the NPPF also states that planning permission should be granted unless the impacts significantly and demonstrably outweigh the benefits.
  - The explicit safeguarding of the site for release beyond 2011.
  - The acceptance by the Authority in 1993 in proposing this site as suitable that it would have minimal impact on the Green Belt.
  - The Acceptance on three occasions by Inspectors that the site was suitable for development as a long term housing site.
  - The consideration when the site was allocated as safeguarded land, that it was genuinely capable of development, was located where development would result in an efficient use of land, was well integrated with existing development, well related to public transport and promoted sustainable development (in accordance with the requirements in PPG2).

- The fact that irrespective of housing supply issues there are no up-to-date development plan policies relating to housing.
- That the site does not adversely impact on landscape quality.
- The encouragement within the March 2011 Ministerial Statement and the NPPF for LA's to grant permission for housing to encourage economic growth.
- The lack of any constraint that cannot be accommodated by S106 obligations that would prohibit development now.
- The need to utilise land excluded from the Green Belt before Green Belt land.
- The need for additional houses to be provided into the future.
- The lack of availability for housing on existing brownfield sites that requires the release of greenfield land.
- The need to locate new development at sustainable locations and the fact that the appeal site is a sustainable location.
- The high requirement for affordable housing.
- Taking account of the General Principles document, paragraphs 17 to 19, the fact that the release of this site would not prejudice the emerging draft Local Plan.

### *Supply of Housing Land*

14. The Local authority acknowledges that they cannot show a five year supply of housing land. The tables in the detailed Appendix of the appellant indicate a number of ways of calculating housing supply based on housing requirement figures using policy advice and based on the most up to date information. In respect of the appellant's supply figure, there is between 0.76 to 1.71 years supply. Taking account of a 5% buffer the years supply changes to between 0.73 years to 1.63 years. Lastly taking account of a 20% buffer the years supply changes to between 0.63 years to 1.43 years. Utilising the believed Local Authority view of supply, the years supply situation improves to between 1.48 to 3.31 years supply. Taking account of a 5% buffer the years supply changes to between 1.4 years to 3.15 years. Lastly taking account of a 20% buffer the years supply changes to between 1.23 years to 2.77 years. The NPPF is clear that where there is not a five year supply of housing land the policies should not be considered to be up to date. In those circumstances planning permission should be granted provided that the development is not restricted by other policies in the NPPF. Moreover, the Hunston decision asserts that such analysis be undertaken in respect of all decisions in respect of development in this context [28].

## APPEARANCES

### FOR THE LOCAL PLANNING AUTHORITY:

Ms Nadia Sharif

No. 5 Chambers, Birmingham

Instructed by Mr P Lloyd-Williams, Metropolitan Borough of Solihull Council (MBSC) Solicitor and subsequently Mr Andrew Kinsley SMBC Solicitor

She called

Mr Gary Palmer PG Dip TP MRTPI

MBSC

Ms Raquel Leonardo BSc MSc CMLI

MBDC

Ms Christina Howick, MA (Oxon) MSc URP

Peter Brett Associates

### FOR THE APPELLANT:

Mr Jeremy Cahill QC

No. 5 Chambers, Birmingham

Instructed by Mr A Bateman, Pegasus

He called

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### INTERESTED PERSONS:

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(Chair Tidbury Green Parish  
Council)

36 Lowbrook Lane, Tidbury Green B9 1QS

Ms Lisa Jobins

57 Lowbrook Lane, Tidbury Green B9 0QR

Councillor Mr K Hawkins

3 Frigate Close, Solihull B90 4XU



Councillor Christopher Farr

94 Lowbrook Lane, Tidbury Green B90 1QS

Councillor Doreen Wright

34 Burchy Close, Dickens Heath, Shirley B90 1QL

### **Proofs of Evidence (PoE) and Written Representations (WR)**

#### **Solihull Metropolitan Borough Council**

PoE1.1	Mr Palmer's Proof and 14 Appendices
PoE1.2	Rebuttal to Mr Bateman's housing land supply Appendix and Response Regarding 'Solihull's Housing Requirement'
PoE1.3	Note on Housing Land Provision Targets and Housing Land Supply
PoE1.4	Ms Leonardo's Proof and 12 Appendices
PoE1.5	Ms Laura Batts Proof on 5 year land supply (June 2015)
PoE1.6	Update statement Garry Palmer (August 2015)
PoE1.7	Housing land requirement Proof, Ms Christina Howick (August 2015)

#### **Appellant**

PoE2.1	Mr Bateman's Proof and 66 Appendices
PoE2.2	Mr Bateman's Supplementary Proof 'Solihull's Housing Requirement'
PoES2.3	Mr Peachey's Proof and 6 Appendices
PoE2.4	Statement of Common Ground - duplicate of ID3
PoE2.5	Mr Bateman's Housing Land Availability 2015 Update (February 2015)
PoE2.6	Mr Bateman's Rebuttal to LPA Evidence (February 2015)
PoE2.7	Mr Bateman's Amended Statement of Case (February 2015)
PoE2.8	Mr Bateman's Appellant's Updated Five Year Land Supply Position (With March 2015 Data) (June 2015)
PoE2.9	Mr Bateman's letter of 4 July 2015 On Five Year Land Supply (including Droitwich Spa Appeal Report ref: APP/H1840/A/13/2199085)
PoE3.1	Position Statement June 2015 (agreed by both parties)

#### **Other representations**

Written representations to the Council at the application stage attached to Questionnaire (Q1).

Third party written representations about appeal in Red folder (RF).

Submissions made by the Campaign to Protect Rural England (CPRE) in relation to the June/September 2015 sitting are referred to as:

IDCPRE1.1

IDCPRE1.2 (including High Court judgements Hearn v Broadland District Council 2012 (CO/3983/2011 and University of Bristol and North Somerset Council (CO/529/2012)

### **Documents submitted at the Inquiry**

- ID1 Appearances – appellant
- ID2 Statement of Common Ground
- ID3 Examination of plan doc – Council
- ID4 Note on 5 YLS - Council
- ID5 Examination Library – Council
- ID6 Signed and dated unilateral undertaking - Appellant
- ID7 Letter from Ms Roberts on LP timetable
- ID8 Figure 6 Long sections through site – Appellant
- ID9 Draft Solihull Local Plan - Council
- ID10 Rushwick appeal decision
- ID11 Moira Road appeal decision
- ID12 Gretten Road appeal decision
- ID13 Uppingham Road appeal decision
- ID14 Opening submissions – Appellant
- ID15 Opening submissions – Council
- ID16 The Planning System: General Principles - Appellant
- ID17 SUDP Proposals map - Council
- ID18 Anita Coleman High Court Judgement
- ID19 Hunston Properties High Court Judgement
- ID20 Solihull Unitary Development Plan 2006 List of local facilities
- ID21 Council note on education contributions
- ID22 Written Submission Ms Lisa Jobins
- ID23 Written Submission Mr Seddon and Tidbury Green Parish Council
- ID24 Bromsgrove proposals map extract
- ID25 Closing submissions – Council X1
- ID26 Closing submissions – Appellant X1
- ID27 Costs application – appellant
- ID28 Costs response – Council
- ID29 Letter Of notification of Inquiry 9 June 2015 – Council
- ID30 Letter from Rt. Hon. Caroline Spelman MP 5 June 2015
- ID31 Written submissions Of Mrs Kirby on behalf of Tidbury Green Parish Council
- ID32 Additional submissions - Appellant
- ID33 Notification of reopening of Inquiry
- ID34 Comments on main modifications to SLP - Appellants
- ID35 Meeting Housing Need Supplementary Planning Document July 2014 - Council
- ID36 Mr Bateman’s updated Table 1 – 3 on housing land supply
- ID37 Inspectors findings, Warwick District Local Plan – Appellant
- ID38 Borough of Kings Lynn and West Norfolk and Secretary of State and Elm Park Holdings Ltd (CO/914/2015) – Appellant

- ID39 Oadby and Wigston Borough Council and Secretary of State and Bloor Homes – Appellant
- ID40 Article, 'Making sense of new English household projections' – Town and Country Planning April 2015 – Appellant
- ID41 Solihull Local Plan 2013 - Council
- ID42 Greater Birmingham and Solihull LEP Black Country Local Authorities Strategic Housing Needs Study Stage 3 Report Peter Brett Associates August 2015 – Appellant
- ID43 Appeal Decision APP/W0340/A/14/2228089 Firelands Farm, Reading - Appellant
- ID44 Council's newspaper advertisement of Inquiry (September 2015)
- ID45 Closing submissions – Council
- ID46 Closing submissions – Appellant
- ID47 Closing Statement – Mrs L Jobins
- ID48 Additional response by Council on Appellant's costs application – Council
- ID49 Response to Council's additional costs statement – Appellant
- ID50 Ministerial Statement 'A call to action on growth' (March 2011)
- ID51 Minister's letter to the Chief Executive of PINS (March 2015)



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

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

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

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

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

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

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

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

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

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

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

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

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

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