



**Claim Form
(CPR Part 8)**

In the High Court of Justice
Queen's Bench Division
Planning Court

Claim no.	CO/352/2015
Fee Account no.	

Claimant
Burton & South Derbyshire College
Lichfield Street,
Burton on Trent
Staffordshire, DE14 3RL

(ref: Karen Procter: Vice Principal Corporate Services)



Defendant(s)
Secretary of State for Communities & Local Government
2 Marsham Street
London
SW1P 4DF

Does your claim include any issues under the Human Rights Act 1998? Yes No

Details of claim (see also overleaf)

Please see attached Statement of Facts and Grounds.

Defendant's
name and
address

Sec of State for Communities
& Local Government
2 Marsham Street
London, SW1P 4DF

Richard Watson (Ref:
APP/B3410/A/I3/2209697)

Court fee	400.00
Legal representative's costs	
Issue date	23/1/2015

Claim no.

Details of claim (continued)


Statement of Truth

~~XXXXXX~~ (The Claimant believes) that the facts stated in these particulars of claim are true.

* I am duly authorised by the claimant to sign this statement.

Full name David Anthony Brammer

Name of claimant's legal representative's firm SGH Martineau LLP

signed 
~~XXXXXXXXXXXXXXXXXXXX~~
(Claimant's legal representative)

position or office held Partner
(if signing on behalf of firm or company)

**delete as appropriate*

SGH Martineau LLP
1 Colmore Square
Birmingham
B4 6AA

721090 Birmingham 43
0870 763 1000

Ref: DDB/PME/BU664.350

Claimant's or claimant's legal representative's address to which documents should be sent if different from overleaf. If you are prepared to accept service by DX, fax or e-mail, please add details.

Claim No.: _____

IN THE HIGH COURT OF JUSTICE

QUEEN'S BENCH DIVISION

PLANNING COURT

SECTION 288 OF THE TOWN AND COUNTRY PLANNING ACT 1990

BETWEEN:

BURTON AND SOUTH DERBYSHIRE COLLEGE

Claimant

- and -

SECRETARY OF STATE
FOR COMMUNITIES AND LOCAL GOVERNMENT

Defendant

- and -

EAST STAFFORDSHIRE BOROUGH COUNCIL

First Interested Party

ROLLESTON ON DOVE PARISH COUNCIL

Second Interested Party

STATEMENT OF FACTS AND GROUNDS

IRx - denotes the relevant paragraph in the Inspector's report

DLx – denotes the relevant paragraph in the Secretary of State's Decision Letter

Introduction:

1. This is a statutory challenge made pursuant to Section 288 of the Town and Country Planning Act 1990 ("the 1990 Act") to quash the decision of the Defendant Secretary of State to dismiss the Claimant's appeal under s. 78 of the 1990 Act against the First Interested Party's refusal to grant planning permission for residential development on Land South of Forest School Street, Rolleston on Dove, Near Burton on Trent, Staffordshire (Planning Inspectorate Appeal reference number APP/B3410/A/13/2209697).
2. The Secretary of State dismissed the appeal, contrary to the recommendation of his appointed Inspector, on the principle basis that the appeal proposal would have a potentially prejudicial effect on the outcome of the Neighbourhood Plan making process (DL29). This is despite having concluded that the appeal proposal would not be in direct conflict with any of the policies in the Neighbourhood Plan (DL23).
3. The Claim is brought under Section 288(1)(b) on the basis that the decision is not within the powers of the 1990 Act and that the relevant requirements have not been complied with, to the substantial prejudice of the Claimant. The Claimant is a person aggrieved for the purposes of s. 288.
4. The Claimant identifies fourteen errors of law in respect of the Secretary of State's decision:

Ground 1: The Defendant erred in law in having refused permission for the appeal proposal on the basis of "the potential prejudicial effect" on the outcome of the Neighbourhood Plan-making process despite,

- concluding the Rolleston on Dove Neighbourhood Plan (NP) was at an advance stage;
- accepted there was no direct conflict with any policies in the Neighbourhood Plan;
- the Independent Examiner of the NP had clearly recommended that the policies that might give rise to a conflict between the appeal proposals and the NP be deleted;
- the Parish Council who had responsibility for the NP had made clear at the public inquiry that it was willing to accept the Examiners recommendations;
- the content of the NP, with the Examiners accepted modifications, was therefore the accepted form and content of the NP at the time the Secretary of State made his decision;

- the Defendant Secretary of State accepted the proposal was not in conflict with any policy in that modified form of the NP; and
- the expert planning witness for the Parish Council accepted in cross examination that the appeal proposal presented no significant conflict with the NP.

It was irrational to have refused permission for a proposal on the basis of the potential prejudicial effect to a Plan to which there was acknowledged to be no direct conflict with its policies. In addition or in the alternative, the reasoning was inadequate.

Ground 2: The Defendant erred in law in seeking to place “very substantial negative weight” on the potential prejudicial effect on the outcome of the Neighbourhood Plan-making process despite accepting all of the matters set out in the bullet points above and identifying no direct conflict with the policies of the NP in its agreed form. That was irrational and/or inadequately reasoned.

Ground 3: The Defendant failed to take account of an important relevant consideration, namely that the Parish Council’s witness at the inquiry accepted that to a significant degree the proposal was not in conflict with the NP, as proposed and accepted to be amended.

Ground 4: The Defendant erred in law in alleging the proposal would have a potentially prejudicial effect on the outcome of the plan-making process by concluding it was “not required to be incorporated as a strategic requirement,” when the site was explicitly identified as a strategic requirement in the submitted version of the strategic Local Plan (and remains so). The Defendant is just factually wrong. It is, was at the time of the Secretary of State’s decision, and remains required to be incorporated as a strategic requirement. A plainly relevant consideration was simply ignored in the Defendant’s consideration of the prematurity issue.

Ground 5: The Defendant erred in law in failing to take account of the fact that the agreed form of the NP was one in which there was no settlement boundary restricting new development to within that boundary and the number of new units proposed in the NP was expressly accepted not to be ceiling.

Ground 6: The Defendant erred in law in failing to take account of the fact that, as a consequence of his own planning policy and his acceptance of an absence of a five year supply of housing in the Borough, the housing policies of NP (not just the Local Plan) were out of date. He ignored a relevant consideration.

Ground 7: The Defendant erred in law because, having concluding that

- the proposal should be regarded as sustainable development,
- there was a substantial shortfall in the five year housing land supply,
- the potential housing gain was an important benefit,
- the potential housing gain was deliverable within five years (the period for which there was a substantial shortfall), and

- that this together with the other benefits carried substantial weight.

He then concluded the harm to the NP-making process would “significantly and demonstrably outweigh these benefits”, when he accepted there was no direct conflict with any policies in the NP. His approach was inadequately reasoned and/or irrational.

Ground 8: The Defendant failed to follow his own policy on the weight to be given to emerging development plans as set out in paragraph 216 of the NPPF. The NP was well advanced and even been through the full examination stage, with the Parish Council making clear it would incorporate the recommendations of the independent Examiner. Yet despite meeting each of the three criteria under paragraph 216, the Defendant gave the policies of the NP only limited weight. He failed to provide any or any adequate reasoning for his failure to follow his own guidance.

Ground 9: The Defendant erred in law in taking into account an irrelevant consideration, namely unresolved objections to the policies in the emerging NP. But the emerging NP had gone past the stage of unresolved because it had already been subject to independent examination and the Inspector had produced his report. By that stage any unresolved objections were irrelevant.

Ground 10: The Defendant erred in law by refusing permission on the basis of prejudice to the NP due to the scale of the proposal, when there was no policy in the NP addressing the appropriate scale of development. He took into account an irrelevant consideration.

Ground 11: The Defendant erred in law by refusing permission on the basis of prejudice to the NP due to the scale of the proposal the site is identified in it's entirely as a proposed housing allocation in the emerging Local Plan. The Defendant made no mention of this pertinent fact whilst considering the scale of the proposal in DL23. He failed to take account of a relevant consideration.

Ground 12: The Defendant erred in law by failing to take account of a relevant consideration, namely the Claimant's evidence that, in the absence of an up to date adopted Local Plan, the appropriate housing requirement for Rolleston on Dove was over new homes in the period from 2012 to 2031. That was an important and relevant consideration (the subject of evidence from a specific expert witness called to the inquiry) in the context of the Defendant's decision to refuse permission for a scheme for 100 houses where he concluded the proposal was of an inappropriate scale.

Ground 13: The Defendant erred in law in taking into account an irrelevant consideration when seeking to refuse permission in part on the basis of the “wider potential implications for neighbourhood planning nationally. The Defendant is required to determine the application on its merits having regard to the policies of the Development Plan and any other material planning considerations. The wider implication for neighbourhood planning nationally are not relevant to the merits of the appeal scheme.

Ground 14: The Claimant alleges both actual bias or apparent bias on the part of the Defendant Secretary of State in respect of this decision, which should not have been

made by the Secretary of State in circumstances where he has a close personal relationship with one of the main objectors to the proposal.

Facts:

5. The Claimant is an educational teaching college. It applied for planning permission for residential development of its own land located south of Forest School Street, Rolleston on Dove, Staffordshire. The money the Claimant would secure through the uplift in land value arising from the grant of planning permission was to be reinvested in the College facilities. The Claimant is engaged in a major refurbishment and redevelopment of its facilities.
6. The application was made to East Staffordshire Borough Council ("the Borough Council"). The application was made on 24 May 2012, and sought outline planning permission for 120 new homes. The number of new homes applied for was reduced by means of an amendment to the application on 13 August 2012.
7. The application was prompted by the allocation of the site for housing development in the emerging Local Plan. This is the strategic plan for the area. The Local Plan is the responsibility of the Borough Council. The site was at the time of the decision, and remains, a proposed housing allocation for housing development in the emerging Local Plan.
8. The application was recommended for approval by the professional planning officers of the Council. Despite this, the application was refused by the Borough Council on 27 November 2013. The single reason for refusal alleged that the proposal was premature in light of the Rolleston on Dove Neighbourhood Plan "at its current stage". The Claimant then appealed against the refusal to the Secretary of State who appointed an independent Inspector to determine the appeal: Mr Terry G. Phillimore.
9. The NP was prepared by the Neighbourhood Development Plan Steering Group on behalf of the Rolleston on Dove Parish Council. The Submission Version was published in July 2013. Key component of the Plan relevant to the appeal proposal were as follows:
 - (i) **Policy H1: Housing Requirement**, sought to limit housing development in Rolleston on Dove to just 85 dwellings in the two decades period from 2012 to 2031. Along with existing commitments and windfall development, this results in the allocations of just two very small sites of just 11 dwellings (H5a) and 12 dwellings (H5b). The appeal site was self-evidently not one of these two sites

- (ii) **Policy OS1: Development Outside the Settlement Boundary**, sought to maintain the existing settlement boundary for the next 2 decades and prevent any new development from being built beyond it, save for two very small allocations. The appeal site is located beyond the existing and proposed (largely unchanged) settlement boundary.
 - (iii) **Policy OS2: Protection of Local Green Spaces of Community Value**, which sought to designate the appeal site as a local green space of community value. The policy sought to resist development of any such sites listed under this policy designation.
10. Each one of these policies would have had the effect of preventing the development of the appeal site or making it exceptionally difficult. Collectively, they were a serious impediment to any such development of the site.
11. Pursuant to the relevant legislative provisions in the 1990 Act and the Neighbourhood Planning (General) Regulations 2012, the NP was required to be subject to independent examination. The Borough Council appointed Christopher Edward Collison as the Examiner of the Submission Version of the NP. He considered the matter on the papers, having not been asked by any part to conduct any form of public hearing. He produced his report for the Borough Council in October 2013.
12. The Examiner found the Neighbourhood Plan should not proceed to a local referendum unless various significant amendments were made. These amendments were directly relevant to the Claimant's planning application. In particular the Examiner made clear that the following:
- (i) **Policy H1: Housing Requirement**, should be amended to ensure that the number of new homes built in the village should not be restricted to 85 and this figure should not be seen as any kind of ceiling;
 - (ii) **Policy OS1: Development Outside the Settlement Boundary**, should be deleted because the attempt to restrict development within the settlement boundary in its present position was in direct conflict with national planning policy in the Framework, including the need for plan making to positively seek opportunities to meet the development needs of their area.
 - (iii) **Policy OS2: Protection of Local Green Spaces of Community Value** should not be applied to the Claimant's appeal site because the Parish Council had not been able to show it fell within the definition of "demonstrably special" set out in

national planning policy. He also noted that Sport England objected to the Parish Council's proposed designation of the site.

13. The Examiner had therefore removed from the Neighbourhood Plan all of the policy constraints that would have prevented the grant of planning permission for the residential development on the Claimant's site. That meant there was no substantial conflict between the appeal proposal and the policies of the Neighbourhood Plan.
14. The appeal was heard by way of public inquiry on 4-6 March 2014.
15. The Parish Council appeared at the public inquiry, acting on behalf of the Neighbourhood Plan Steering Group. They were legally represented and called expert witnesses, including a professional planning witness.
16. At the start of the public inquiry, Counsel for the Claimant asked through the Inspector, whether the Parish Council had decided to accept the conclusion of the independent Examiner. The answer given was an unqualified "yes". This is recorded at IR224.
17. During his cross examination, the professional planning witness for the Parish Council accepted that to a significant degree the Claimant's appeal proposal would not be in conflict with the Neighbourhood Plan as proposed to be amended by the Examiners recommendations. This is recorded at IR229.
18. The Claimant called five witnesses which are recorded on page 41 of the IR. One of whom was an expert on housing need: Roland Bolton. In the absence of a recently adopted Local Plan, the Appellant called evidence on the appropriate level of new housing needed for Rolleston on Dove over the two decades intended to be covered by the policies of the NP. Housing need evidence is very common in any planning appeal for new housing where there is no recently adopted local plan setting out the housing requirement for the Borough or District. Mr Bolton produced a range housing need figures, but made clear the most relevant ones identified a need for at least 400 new homes in Rolleston in the period 2012 to 2031. That is nearly five times the level of 85 new homes proposed in the NP for the same period.
19. Immediately after the close of the public inquiry, the Defendant Secretary of State resolved to recover the appeal for his own determination. That is to say he did not wish the decision to be made by the Inspector, but wished to make the decision himself, albeit being reliant on the Inspector to produce a report summarising the

evidence, reaching conclusions and making a recommendation on whether to allow the appeal.

20. The Claimant's solicitors wrote to the Planning Inspectorate on 24 March 2014 stating that, amongst other things, that the Secretary of State should not determine the appeal, as he had a close personal relationship with the local MP, who was one of the main objectors to the proposal. The close relationship was evidenced by the fact the Secretary of State had been the local MP's best man at his wedding the preceding year. The letter made clear that in the circumstances, the decision should be made by another Minister, not the Secretary of State.
21. The Secretary of State issued his decision on the appeal proposals on 15 December 2014, refusing permission. This was contrary to recommendations of the Inspector who had recommended the appeal be allowed and planning permission be granted subject to conditions.

Statutory Provisions:

22. Section 70(2) of the 1990 Act requires that in determining applications and appeals regard must be had to ***'the development plan'***.
23. Section 38(6) of the Planning and Compulsory Purchase Act 2004 ('the 2004 Act'), requires that ***'if regard is to be had to the development plan... the determination must be made in accordance with the plan unless material considerations indicate otherwise.'***
24. Section 38(3)(b) and (c) provide that the 'development plan' is: ***'the development plan documents ... which have been adopted or approved' and 'the neighbourhood development plans which have been made.'***
25. Section 38A of the 2004 Act provides for the meaning and making of ***'a neighbourhood development plan'***.
26. Section 38A(3) of the 2004 Act applies Schedule 4B of the 1990 Act (making of Neighbourhood Development Orders) to the making of Neighbourhood Development Plans. By paragraph 8 thereof, the examiner appointed to examine the emerging neighbourhood plan must consider whether or not it meets the *'basic conditions'* set out in paragraph 8(2):

'(a) having regard to national policies and advice contained in guidance issues by the Secretary of State, it is appropriate to make the [plan];

...

(d) the making of the [plan] contributes to the achievement of sustainable development;

(e) the making of the [plan] is in general conformity with the strategic policies contained in the development plan...;

27. National policy on planning is contained in the National Planning Policy Framework published in March 2012 (hereinafter 'the NPPF'). In addition, in March 2014, the Government published national guidance in the 'Planning Practice Guidance' (hereinafter "PPG"). A draft of the PPG had been available from August 2013. The PPG was published on the last day of the inquiry and the Inspector requested the parties to submit comments to him concerning the impact of the PPG on their respective cases.

28. Paragraph 216 of the NPPF provides the policy on how to give weight to emerging development plans. It provides three criteria:

'From the day of publication, decision-takers may also give weight to relevant policies in emerging plans according to:

- The stage of preparation of the emerging plan (the more advanced the preparation, the greater the weight that may be given);***
- The extent to which there are unresolved objections to relevant policies (the less significant the unresolved objections, the greater the weight that may be given); and***
- The degree of consistency of the relevant policies in the emerging plan to the policies in this Framework (the closer the policies in the emerging plan to the policies in the Framework, the greater the weight that may be given).'***

29. The NPPF does not provide direct policy in respect of 'prematurity', and prior to the March 2014 PPG, reference was made to the surviving 'General Principles' guidance which had supported the previous government guidance Planning Policy Guidance Note (PPG)1. As of March 2014, this was cancelled and replaced with the adapted text of the new PPG: Chapter 21b, para. 014 (Reference ID 21b-014-20140306):

'In what circumstances might it be justifiable to refuse planning permission on the grounds of prematurity?

Annex 1 of the National Planning Policy Framework explains how weight may be given to policies in emerging plans. However, in the context of the Framework and in particular the presumption in favour of sustainable development – arguments that an application is premature are unlikely to justify a refusal of planning permission other than where it is clear that the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, taking the policies in the Framework and any other material considerations into account. Such circumstances are likely but not exclusively, to be limited to situations where both:

- a) The development proposed is so substantial, or its cumulative effect would be so significant, that to grant permission would undermine the plan-making process by predetermining decisions about scale, location or phasing of new development that are central to an emerging Local Plan or Neighbourhood Planning; and*
- b) The emerging plan is at an advanced stage but is not yet formally part of the development plan for the area.*

Refusal of planning permission on grounds of prematurity will seldom be justified where a draft Local Plan has yet to be submitted for examination, or in the case of a Neighbourhood Plan, before the end of the local planning authority publicity period. Where planning permission is refused on grounds of prematurity, the local planning authority will need to indicate clearly how the grant of planning permission for the development concerned would prejudice the outcome of the plan-making process."

30. PPG, Chapter 41 para. 007 (Reference ID 41-007-20140306) provides:

'What weight can be attached to an emerging neighbourhood plan when determining planning applications?

Planning applications are decided in accordance with the development plan unless material considerations indicate otherwise. An emerging neighbourhood plan may be a material consideration. Paragraph 216 of the National Planning Policy Framework sets out the weight that may be given to relevant policies. Whilst a referendum ensures that the community has the final say on whether the neighbourhood plan comes

into force, decision makers should respect evidence of local support prior to the referendum when seeking to apply weight to an emerging neighbourhood plan. The consultation statement submitted with the draft neighbourhood plan should reveal the quality and effectiveness of the consultation that has informed the plan process. And all representations on the proposals should have been submitted to the local planning authority by the close of the local planning authority's publicity period. It is for the decision maker in each case to determine what is a material consideration and what weight to give to it."

31. On the determination of planning applications, paragraph 14 of the NPPF provides:

'At the heart of the national Planning Policy Framework is a presumption in favour of sustainable development, which should be seen as a golden thread running through both plan-making and decision-taking.

...

For decision-taking this means:

- *Approving development proposals that accord with the development plan without delay; and*
- *Where the development plan is silent, absent 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 indicated development should be restricted.'**

(emphasis original)

32. Paragraph 49 of the NPPF provides that 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.

33. The Borough Council accepted in a Statement of Common Ground that it could not demonstrate the minimum five-year supply of deliverable housing sites for the Borough. This is recorded at the IR207. The Parish Council did not seek to argue

otherwise. Both Councils did not contest the fact that the relevant policies for the supply of housing were not up to date, and that the Local Plan is not up-to-date (IR210). It follows that all parties that the presumption in paragraph 14 of the NPPF applied.

Local Plan Policy

34. The Development Plan for the area covered by the appeal site comprises the East Staffordshire Local Plan, which was adopted in July 2006, as saved by Direction issued in 2009. The Local Plan covered the period 1996 to 2011.
35. Policy NE1 of the Local Plan seeks to prevent development outside development boundaries unless it cannot be reasonably located within them and is essential for the efficient working of the rural economy and other such similar and common exceptions (see IR12). The appeal proposal was contrary to this policy of the adopted Development Plan, but this policy was accepted by the Borough Council to be out of date and formed no basis of the reason for refusal or the Borough Council's case at the inquiry. Significantly, there was no alleged conflict with the adopted Development Plan.

Emerging Local Plan Policy

36. The Borough's replacement Pre-Submission Local Plan was published on 18 October 2013, with the consultation period ending on 29 November 2013. This emerging Local Plan seeks to provide 11,648 dwellings in the Borough over the plan period. Various allocations are proposed included the appeal site, described as "College Fields Site" and is shown for 100 units (IR17).

Decision of the Secretary of State:

37. The relevant extracts of the Defendant's decision are set out below:

"Policy Considerations

9. *In deciding this appeal, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004, which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise.*
10. *In this case, the development plan consists of the East Staffordshire Local Plan, adopted in July 2006, and as saved by Direction issued in 2009. The Local Plan covers the period 1996 to 2011. The Secretary of State agrees*

that the development plan policies most relevant to the appeal are those identified by the Inspector at IR12-15.

11. *The Secretary of State has had regard to the Borough's replacement Pre-Submission Local Plan which was submitted to the Planning Inspectorate for examination on 9 April 2014. He has given particular consideration to the proposed strategic policies regarding the settlement hierarchy that identifies Rolleston on Dove as one of four Tier 1 Strategic Villages within the borough as outlined by the Inspector at IR17. As this emerging Local Plan is currently the subject of examination, therefore a way off adoption, the Secretary of State gives it limited weight.*
12. *The Secretary of State has had regard to the Rolleston on Dove Neighbourhood Plan (NP) as submitted in July 2013 and the report of the Independent Examiner of the NP published in October 2013. As identified by the Inspector at IR20-23, policies in the proposed NP of relevance to this site include H1 which provides for 85 net additional dwellings in the parish over the period 2012 to 2031. Policies OS1, OS2 and IN2 preclude development on the site in question. However, as noted by the Inspector at IR23, the Independent Examiner has recommended that these policies be modified to secure that the draft NP meets the basic conditions to be put forward to referendum.*
13. *The Secretary of State understands that at the time of the inquiry the Council were yet to take a decision on the NP proceeding to referendum and that this is still the case.*
14. *Other material considerations which the Secretary of State has taken into account include the National Planning Policy Framework (the Framework), the Planning Practice Guidance (the Guidance) and the written ministerial statement of 10 July 2014.*

Main issues

15. *The Secretary of State agrees with the Inspector that the main considerations in this appeal are those identified at IR203. The Development Plan, housing land supply position and sustainable development*

The Development Plan, housing land supply position and sustainable development

16. *The Secretary of State agrees with the Inspector at IR204 that the proposal is not in line with the current development plan as it lies outside of the settlement boundary of Rolleston on Dove.*
17. *Further to this the Secretary of State agrees, for the reasons set out by the Inspector at IR205-210, that there is a substantial shortfall in the five-year housing land supply. Therefore, pursuant to paragraph 49 of the Framework, the Council's relevant policies for the supply of housing should not be considered up-to-date. The Secretary of State considers this is an important consideration to be taken into account in the overall planning balance.*
18. *The Secretary of State agrees with the Inspector's conclusions given at IR211-214 that on the whole the proposal can be regarded as sustainable development, in accordance with the Framework. The potential housing gain, deliverable within five years, the support to local services from the incoming population and contribution to economic growth from construction jobs during the course of the development would all bring forward benefits to which the Secretary of State accords substantial weight.*

Prematurity

19. *The Secretary of State agrees with the Inspector at IR215-217 that prematurity is the sole objection raised by the council, and that the Guidance sets out the criteria whereby planning permission can be refused on the grounds of prematurity. This is only where the adverse effects of granting permission would significantly and demonstrably outweigh the benefits, taking the benefits and any other material considerations into account.*
20. *For the reasons given at IR218-221 the Secretary of State agrees with the Inspector that allowing the appeal would in effect prejudice the outcome of the site allocation of this land. However the emerging local plan carries only limited weight and like the Inspector at IR221 the Secretary of State does not believe that approving a development of this scale, at this site, would to a significant degree undermine the plan-making process by predetermining decisions about the scale, location or phasing of new development that are central to the emerging Local Plan.*

21. *The Secretary of State agrees with the Inspector's assessment of the conformity of the proposal against the emerging NP at IR222-225 and agrees that the NP has reached an advanced enough stage to meet the Guidance criterion on prematurity. The Secretary of State attributes little weight to the policies in the NP as suggested for submission to referendum following the Independent Examiners report. However, he notes the weight of support and engagement from the local community in the process of bringing this front runner neighbourhood plan to this advanced stage, as evidenced in the supporting material submitted during the Inquiry and as noted by the Inspector at IR231.*
22. *The Secretary of State agrees with the Inspector's findings regarding the conflicts and conformity between the emerging NP, emerging LP and the proposed development as assessed at IR226-231.*
23. *The Secretary of State disagrees with the Inspector at IR232 and considers that the effect of granting permission would undermine the neighbourhood plan-making process in this case. The Secretary of State gives significant weight to the opportunity which the neighbourhood plan process gives to local people to ensure they get the right types of development for their community. Although the development would not be in direct conflict with policies in the NP as suggested following the Examiner's Report, to allow this appeal in advance of the NP progressing to referendum would represent a large scale development that is not in a location that is explicitly provided for by the NP or required to be incorporated as a strategic requirement (IR228). Therefore, the appeal proposal undermines the neighbourhood plan-making process by predetermining decisions about the scale and location of new development central to the emerging NP. The Secretary of State assigns significant weight to the prematurity to the NP.*

.....

Overall balance and conclusion

26. *The Secretary of State considers that the proposal is in conflict with the development plan as a whole so that the terms of section 38(6) would justify refusal if there were no other material considerations. The Secretary of State accepts that there are material considerations to set against this including the lack of a 5 year housing land supply meaning that the relevant policies for the supply of housing should not be considered up-to-date. The contribution that*

the appeal proposal would make to increasing supply weighs substantively in favour of the appeal.

27. *The Secretary of State has applied paragraph 14 of the Framework and considers that the appeal should only be dismissed if 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.*
28. *The Secretary of State agrees with the Inspector that the potential housing gain would be an important benefit which, along with the other benefits including the increase in local population that would support local services and contribute to economic growth, carries substantial weight (IR249).*
29. *In view of Framework policy (paragraphs 183-185) that neighbourhood plans will be able to shape and direct sustainable development, and having had full regard to paragraph 216 of the Framework, the Secretary of State places very substantial negative weight on the potential prejudicial effect on the outcome of the plan-making process. In coming to this view, the Secretary of State has had regard to the advanced stage of the NP as it is at a stage which meets the guidance criterion on prematurity (IR225). The Secretary of State also has regard to unresolved objections to the policies in the emerging NP and agrees with the Inspector at IR226 that the NP has been prepared in conformity with the adopted Local Plan. Though the strategic allocation of the site in the emerging Local Plan is not included in the NP, the Independent Examiner found that with his suggested modifications the NP would meet the statutory requirements. Further, the Secretary of State agrees with the NP Independent Examiner and the Inspector at IR226 that there is consistency between the emerging NP and the policies in the Framework.*
30. *Although there is a degree of conflict between the emerging Local Plan and NP in relation to development in Rolleston on Dove, this is not something to be decided by appeal, but at the local planning authority level with collaboration with the Parish plan makers. The cumulative impact of approving this appeal premature to the emerging Local Plan and emerging NP, compounded by the wider potential implications for neighbourhood planning nationally, are deemed enough to clearly outweigh the stated benefits of the scheme. The Secretary of State disagrees with the Inspector's conclusions at IR252 and takes the view that the adverse impacts of granting permission on*

the appeal site would significantly and demonstrably outweigh the benefits of the proposal when assessed against the policies in the Framework taken as a whole so as to outweigh the presumption in favour of sustainable development.

GROUNDS:

Ground 1: The Defendant's refusal of permission for a proposal on the basis of the potential prejudicial effect to the NP when there was acknowledged to be no direct conflict with its policies was either irrational and/or inadequately reasoned.

38. Whilst it is acknowledged that weight is a matter for the decision maker, the Defendants approach is irrational. He refused permission for the appeal proposal on the basis of "the potential prejudicial effect" on the outcome of the Neighbourhood Plan-making process. But there is no conflict with the Neighbourhood Plan in the form it was accepted to be by both the Inspector and the Secretary of State.
39. For the purpose of his decision, the accepted form of the Neighbourhood Plan is explained at DL12 and IR23.
40. The Defendant accepted the Neighbourhood Plan (NP) was at an advance stage (DL 29).
41. He also accepted there was no direct conflict with any policies in the Neighbourhood Plan (DL 23)
42. The Independent Examiner of the NP had clearly recommended that the policies that might give rise to a conflict between the appeal proposals and the NP be deleted (IR223).
43. The Parish Council who had responsibility for the NP had made clear at the public inquiry that it was willing to accept the Examiners recommendations (IR224);
44. The content of the NP, with the Examiners accepted modifications, was therefore the accepted form and content of the NP at the time the Secretary of State made his decision (DL12)
45. The Defendant Secretary of State accepted the proposal was not in conflict with any policy in that modified form of the NP (DL23); and
46. The expert planning witness for the Parish Council accepted in cross examination that the appeal proposal presented no significant conflict with the NP (DL229).
47. Given the above facts it was irrational to have refused permission for a proposal on the basis of the potential prejudicial effect to a Plan to which there was acknowledged to be no direct conflict with its policies.

Ground 2: The Defendant erred in law in seeking to place “very substantial negative weight” on the potential prejudicial effect on the outcome of the Neighbourhood Plan-making process despite accepting all of the matters set out in the bullet points above and identifying no direct conflict with the policies of the NP in its agreed form. That was irrational.

48. The Defendant refused permission on the basis that he placed very substantial negative weight” on the potential prejudicial effect on the outcome of the Neighbourhood Plan-making process. But in light of the fact the Plan was at an advanced stage and there was no conflict with any of the identified policies, there was nothing to prejudice. The Examiner had carefully ensured that the Neighbourhood Plan would not prevent the development of the appeal site for development. He had removed the policy seeking to restrict new development to within the settlement boundary, removed the ceiling on the amount of development permitted at Rolleston on Dove and removed the Local Green Space designation. The Parish Council which was responsible for the NP confirmed to the Inspector that they accepted the NP Examiner’s recommendations, without qualification. The Parish Council’s witness accepted there would be no significant conflict with the NP as proposed to be amended. The idea that there would be a prejudicial effect on the outcome of the NP-making process to which “very substantial negative weight” should be attached was irrational.

Ground 3: The Defendant failed to take account of an important relevant consideration, namely that the Parish Council’s witness at the inquiry accepted that to a significant degree the proposal was not in conflict with the NP, as proposed and accepted to be amended.

49. The development and progress of the NP is the responsibility of the Parish Council. The Parish Council attended the inquiry. It was legally represented and presented professional planning evidence through an expert witness. As the Inspector records at IR229, that witness accepted that to a significant degree the appeal proposal would not be in conflict with the NP as proposed to be amended.

“Nevertheless, the reference to 85 units in policy H1 as modified would expressly not be a maximum limit, and therefore there would be no breach of the policy in that respect. There would also be no policy precluding the residential development of the appeal site. On this basis the Parish Council’s witness at the inquiry accepted that the proposal to a significant degree would not be in conflict with the NP as proposed to be amended.” (IR229, page 33)

50. Despite the pivotal role the Parish Council, this critically important concession is not mentioned at all by the Defendant. It was an obviously relevant consideration which has been ignored.
51. The absence of any mention of this critically important concession is even more surprising given the Inspector had earlier recorded the fact the Parish Council made clear its intention that the recommended modifications would be incorporated into the revised version of the NP (IR224).

Ground 4: The Defendant erred in law in alleging the proposal would have a potentially prejudicial effect on the outcome of the plan-making process by concluding it was “not required to be incorporated as a strategic requirement,” when the site was explicitly identified as a strategic requirement in the submitted version of the strategic Local Plan (and remains so). T

52. The entirety of appeal site is a specific allocation in the emerging Local Plan. This was explained in the IR17. At that stage the Plan (and the allocation) was in the Pre-Submission version of the Local Plan.
53. At the time of the Defendant’s decision, the Emerging Local Plan had been submitted to the Secretary of State and is presently in the process of being considered by a Local Plan Inspector.
54. The Defendant is simply factually wrong in concluding the appeal site is “**not required to be incorporated as a strategic requirement.**” That is precisely what is required for. The Local Plan may not have been adopted, but it is factually wrong to assume it is not required to be incorporated as a strategic requirement.

Ground 5: The Defendant erred in law in failing to take account of the fact that the agreed form of the NP was one in which there was no settlement boundary restricting new development to within that boundary and the number of new units proposed in the NP was expressly accepted not to be ceiling.

55. Through the NP, the Parish Council had sought to impose very restrictive policies designed to prevent residential development around Rolleston on Dove. These were policies H1 and OS1 of the NP.
 - **Policy H1: Housing Requirement**, sought to deliver only 85 net additional dwellings over the 19 year plan period from 2012 to 2031.
 - **Policy OS1: Development Outside the Settlement Boundary**, was explicit that “*[o]utside the built-up area boundaries, development or redevelopment will not be permitted with the exception of sites that have planning permission or are allocated in Policy H5 of this plan.*” Policy H5 allocated the two sites H5a and H5b for just 11 and 12 houses respectively.
56. The NP Examiner recommended that the NP could not progress to referendum unless these two policies (and OS2 – the Local Green Space designation) were modified. He felt Policy H1 needed to be modified so as to prevent the figure of 85 in being seen as any kind of ceiling or restriction on the amount of new development to be permitted. He made clear Policy OS1 was to be deleted in its entirety. Again, the Parish Council had made clear it accepted the Examiners recommendation and the proposed modification (IR224).
57. In his decision letter, the Defendant acknowledged the policies were to be modified. But went no further. In particular he failed to consider adequately or at all the implications of the modifications which removed the restriction on new built

development on the edge of Rolleston on Dove. That was highly pertinent to his decision in respect of the appeal site, which is located on the edge of Rolleston on Dove.

Ground 6: The Defendant erred in law in failing to take account of the fact that, as a consequence of his own planning policy and his acceptance of an absence of a five year supply of housing in the Borough, the housing policies of NP (not just the Local Plan) were out of date. He ignored a relevant consideration.

58. At the inquiry, the Borough Council accepted it could not demonstrate a five-year housing land supply (IR207). That meant that according to paragraph 49 of the NPPF, the policies for the supply of housing were not up to date. In any planning appeal this is a significant issue because of the need to primarily determine any application (and appeal) on the basis of the policies in the Development Plan.
59. The Defendant acknowledged that this important concession in respect of the Borough Council. But he made no attempt to acknowledge it in respect of the Neighbourhood Plan. The absence of a five year supply meant that the policies relating to the supply of housing in the NP were also not up to date. It is accepted that the NP has not yet been adopted. But even as an emerging development plan, it was plainly pertinent to know whether its policies concerned with the supply of housing were to be judged out of date, especially when the appeal was refused solely on the basis of the NP.
60. The Defendant failed to take account of an important material consideration.

Ground 7: The Defendant's conclusion that the harm to the NP-making process would "significantly and demonstrably outweigh these benefits", when he accepted there was no direct conflict with any policies in the NP was inadequately reasoned and/or irrational.

61. The Defendant's decision is largely predicated on the conclusion that in allowing the appeal the harm to the NP-making process would "significantly and demonstrably outweigh these benefits."
62. The test of the identified harm (or adverse effects) needing to "significantly and demonstrably outweigh the benefits" was the appropriate test to apply given the appropriate application of paragraph 14 of the NPPF and paragraph 11 of the PPG.
63. In considering this test, the Defendant was required to consider the benefits of the proposal. This he did: He acknowledged that,
- (i) The development should be regarded as sustainable development (DL18),
 - (ii) there was a substantial shortfall in the five year housing land supply (DL17)
 - (iii) the potential housing gain was an important benefit (DL28)

- (iv) the potential housing gain was deliverable within five years (the period for which there was a substantial shortfall (DL18)
- (v) that this together with the other benefits carried substantial weight (DL18).

64. The Defendant then concluded the harm to the NP-making process would “significantly and demonstrably outweigh these benefits”. But he did having also concluded that the development would not be in direct conflict with any policies in the NP as suggested following the Examiner’s report. The whole purpose of having Development Plans is to ensure that decisions are made objectively on the basis of clearly worded policies. If there is no conflict with any policies in a Plan (as here) there is no logical basis for saying there is harm to that Plan: i.e. the NP. The Defendant’s decision was irrational, particularly given his conclusion (required as a result of the policies of the NPPF) that the harm significant and demonstrably outweigh the significant and substantial benefits of the scheme. In the alternative his conclusion was inadequately reasoned.

Ground 8: The Defendant failed to follow his own policy on the weight to be given to emerging development plans as set out in paragraph 216 of the NPPF.

65. The NP was accepted by the Defendant to be well advanced. It had proceeded through the draft stage, the consultation stage, the submission stage and the examination stage. The Examiner had considered all the objections and reported on those objections, publishing his report in October 2013. His consideration of the objections had therefore finished. The Parish Council had even confirmed that it was intending to accept those modifications and wished it to proceed to referendum. It was in true at a very advanced stage, with only the referendum remaining. Given it was said to have been produced on behalf of the community, there is little prospect it will not be approved through that process.
66. The Defendant has a policy on the weight to be given to emerging Development Plan policies. It is set out in paragraph 216 of the NPPF, and is recited above. The policy required consideration of three criteria. As regards those criteria, he proposal was
- (i) at a very advanced of preparation (in fact largely concluded);
 - (ii) the unresolved objections to all policies had been considered and addressed by the Examiner in his report;
 - (iii) both the NP Examiner (IR224) and the appeal Inspector (IR226) had concluded that the NP (as amended) was consistent with the emerging Local Plan and the NPPF.
 - (iv) The Defendant himself concluded that the NP was consistent with NPPF (DL29)
67. Following the logic of his own policy, the Defendant should have given the policies of the NP significant weight. Yet in DL21 the Secretary of State gave the policies of the

NP limited weight. That was irrational and/or he provided no or inadequate reasons for his failure to follow his own policy.

Ground 9: The Defendant erred in law in taking into account an irrelevant consideration, namely unresolved objections to the policies in the emerging NP. But the emerging NP had gone past the stage of unresolved because it had already been subject to independent examination and the Inspector had produced his report. By that stage any unresolved objections were irrelevant.

68. In reaching his decision, the Defendant took account of unresolved objections (DL29). Given consideration of the NP had progressed beyond the Examination Stage it is unclear what outstanding objections the Secretary of State had in mind. He does not say. Paragraph 29 of the DL refers to paragraphs IR225 and IR226. But these do not identify any outstanding objections. The Defendant has taken into account an irrelevant consideration, which is pertinent to the weight he has given to the policies of the NP.

Ground 10: The Defendant erred in law by refusing permission on the basis of prejudice to the NP due to the scale of the proposal, when there was no policy in the NP addressing the appropriate scale of development. He took into account an irrelevant consideration.

69. In the first instance the Defendant was required to consider the Development Plan. He was also required to consider the emerging Development Plan, in the form of both the NP and the emerging Local Plan. The former contains no policies relating to the scale of acceptable development (unlike other "front runner" neighbourhood plans such as Thame and Tattenhall).

70. There was no policy basis for refusing the proposal on grounds of scale based on prejudice to the Neighbourhood Plan. The Defendant took into account an irrelevant consideration.

Ground 11: The Defendant erred in law by refusing permission on the basis of prejudice to the NP due to the scale of the proposal the site is identified in its entirety as a proposed housing allocation in the emerging Local Plan. The Defendant made no mention of this pertinent fact whilst considering the scale of the proposal in DL23. He failed to take account of a relevant consideration.

71. In considering the scale of the proposal and whether it would prejudice the NP process, the Defendant made no mention of the fact that the appeal site in its entirety was identified as a suitable housing site in the emerging Local Plan. This is very surprising. He failed to take account of a relevant consideration.

Ground 12: The Defendant erred in law by failing to take account of a relevant consideration, namely the Claimant's evidence that, in the absence of an up to date adopted Local Plan, the appropriate housing requirement for Rolleston on Dove was over new homes in the period from 2012 to 2031. That was an important and relevant consideration (the subject of evidence from a specific expert witness called to the inquiry) in the context of the Defendant's decision to refuse permission for a scheme for 100 houses where he concluded the proposal was of an inappropriate scale.

72. The Defendant's refusal of permission had specific regard to the scale. The scale of housing proposals appropriate for Rolleston on Dove inevitably relates to the level of local need. The appropriate scale of housing development for a settlement is normally settled by means of a Local Plan and any consequential housing allocations. In the absence of an up to date Local Plan, the quantum of development proposed for Rolleston on Dove was yet to be determined. An appellant is therefore entitled to produce evidence on the level of housing need.
73. The Appellant did this through the evidence of Roland Bolton. He identified a need for over 400 new houses during the RONDP plan period (2012 – 2032). The Defendant made no mention of this evidence which was pertinent to a decision to refuse a proposal for 100 houses on the grounds it was of a size that prejudiced the NP. The Defendant completely ignored a relevant consideration.

Ground 13: The Defendant erred in law in taking into account an irrelevant consideration when seeking to refuse permission in part on the basis of the "wider potential implications for neighbourhood planning nationally.

74. The Defendant is required to determine the application on its merits having regard to the policies of the Development Plan and any other material planning considerations.
75. The wider implications for neighbourhood planning nationally are not relevant to the merits of the appeal scheme.
76. The Defendant took account of an irrelevant consideration.

Ground 14: The Claimant alleges both actual bias or apparent bias on the part of the Defendant Secretary of State in respect of this decision.

77. One of the main objectors to the proposal is the local MP, the Right Honourable Andrew Griffiths MP. He has been vigorously involved in objecting to the appeal scheme.
78. Mr Griffiths has a close personal relationship with the Defendant. The Defendant was the Best Man at Mr Griffiths' wedding in 2013.

79. The decision was recovered by the Defendant (at the specific request of Mr Griffiths), shortly after the close of the public inquiry. On 24 March 2014, the Claimant's solicitors wrote to the Defendant (via PINS) to request that the Defendant did not make the decision in this case. The letter was acknowledged shortly thereafter.

80. The Defendant did not response to the concern and proceeded to make the decision.

81. Being a close personal friend of one of the key objectors, he should not have done so. The decision was bias, or in the alternative, there is apparent bias.

82. For each and all of the above Grounds, the Defendant erred in law.

23 January 2015

CHRISTOPHER YOUNG

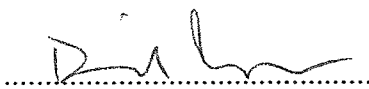
NO5 CHAMBERS

BIRMINGHAM – BRISTOL – LONDON – EAST MIDLANDS

Statement of Truth

The Claimant believes that the facts stated in these details of claim accompanying its CPR Part 8 claim form are true

I am duly authorised by the Claimant to sign this statement.

Signed 

Full name: David Anthony Brammer

Position: Solicitor/ Partner

Claim No.: _____

IN THE HIGH COURT OF JUSTICE

QUEEN'S BENCH DIVISION

PLANNING COURT

SECTION 288 OF THE TOWN AND
COUNTRY PLANNING ACT 1990

Between:

Claimant

- and -

SECRETARY OF STATE FOR
COMMUNITIES AND LOCAL
GOVERNMENT

Defendant

- and -

EAST STAFFORDSHIRE
BOROUGH COUNCIL

First Interested Party

-

ROLLESTON ON DOVE PARISH
COUNCIL

Second Interested Party

STATEMENT OF FACTS AND
GROUNDS

SGH Martineu LLP

Birmingham

1. Claimant
2. David Anthony Brammer
3. First
4. DAB1
5. 23.01.15

CLAIM NO:

**IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
BIRMINGHAM DISTRICT REGISTRY
PLANNING COURT**

**IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW
BETWEEN:**

BURTON AND SOUTH DERBYSHIRE COLLEGE

Claimant

And

SECRETARY OF STATE FOR COMMUNITIES AND LOCAL GOVERNMENT

Defendant

And

EAST STAFFORDSHIRE BOROUGH COUNCIL

First Interested Party

And

ROLLESTON ON DOVE PARISH COUNCIL

Second Interested Party

WITNESS STATEMENT OF DAVID ANTHONY BRAMMER

I, **DAVID ANTHONY BRAMMER**, Partner in the firm of SGH Martineau LLP of No.1 Colmore Square, Birmingham, B4 6AA will SAY AS FOLLOWS:

1. I am a solicitor and Legal Associate of the RTPI. My firm has the conduct of these proceedings on behalf of the Claimant, Burton and South Derbyshire College ("the College").
2. I believe that the contents of this witness statement are true. Unless I say otherwise, it is within my own knowledge that the contents are true. Elsewhere the contents are true to the best of my knowledge, information and belief.
3. I attach to this statement a bundle of documents marked "Exhibit DAB1". Unless stated otherwise, references to page numbers refer to pages within Exhibit DAB1.
4. I make this witness statement in support of the Claimant's claim for judicial review of the decision made by the Secretary of State for Communities and Local Government ("Secretary of State") dated 15 December 2014.
5. A copy of the Secretary of State's decision letter ("Decision") is attached at pages 1 - **6** of DAB1. The Decision was made following a report and recommendation made by the Secretary of State's Inspector, Mr Terry G Phillimore ("Inspector"). A copy of the Inspector's Report and Recommendation dated 9 May 2014 is at pages **7** to **42** of DAB1.

1. Claimant
2. David Anthony Brammer
3. First
4. DAB1
5. 23.01.15

6. Following receipt of the Decision and in accordance with the Pre-Action Protocol for Judicial Review, the College wrote to the Defendant on 16th January 2015. A copy of this letter is attached at pages ⁵³⁻⁵⁸ of DAB1.

INTRODUCTION

7. My evidence addresses the background to the planning appeal from the College's perspective, including the decision to dispose of the Site (the former College playing fields in Rolleston) for housing development and the funding issues which flow from that decision.
8. I have been involved with this matter since May 2013 on behalf of the College, which has involved close liaison with the College officers and other external advisers.
9. The College has been working towards obtaining planning consent for residential development on the College's former playing fields site at Rolleston since 1997 and detailed evidence was submitted to the public inquiry in March 2014 by its planning consultant, Mr Peter Diffey of Peter Diffey Associates which described these processes.
10. Mr Diffey was the College's planning advisor until he retired on 31 December 2014 and the College has since appointed Mr David Green of Delta Planning as its planning consultant in relation to the Appeal and other matters. I have worked closely with both in my capacity advising the College in relation to planning law issues.
11. The planning processes involved included submitting comments on the East Staffordshire Borough Council's consultation on strategic options in the Local Plan relating to future population growth and subsequent housing need throughout the Borough. The consultation documents included a number of options all of which included the College's land at Rolleston on Dove (the former playing fields) allocated for housing. All of Mr Diffey's proposals were submitted on behalf of and endorsed by the College.
12. Within this statement I also provide some further context to how the Site is treated in the relevant Local and Neighbourhood Plans.

THE COLLEGE AND ITS RECENT HISTORY

13. The College also submitted evidence to the public inquiry from Mrs Karen Procter, who is the Vice Principal of the College with responsibility for Finance & Estates. Her evidence explained that the College is a General Further Education College incorporated under the Further and Higher Education Act 1992. The Further and Higher Education Act 1992 is a publically available document.

1. Claimant
2. David Anthony Brammer
3. First
4. DAB1
5. 23.01.15

14. The College operates as an independent legal body (an exempt charity) regulated by the Corporation Instrument and Articles of Government. The College is required to comply with the Skills Funding Agency's Financial Memorandum.
15. As an exempt charity and a body which receives public money the Instrument and Articles of Government place a number of minimum requirements upon the College Corporation in order to make sure that it conducts its business and manages its estate and resources in a responsible way.
16. Upon incorporation in 1992, the College inherited two sites from Staffordshire County Council: the main campus is in Burton upon Trent town centre, which comprises buildings constructed from 1955 onwards and a separate campus in Rolleston on Dove which includes the Site that is the subject of the planning appeal. The College operated on both campus sites until July 2002 when the site of the former College building in Rolleston on Dove was sold although the College retained ownership of the adjacent former playing fields.
17. The planning application concerned the development of the remaining land at Rolleston which had previously been used as playing fields, although the land is private and has been unused for more than 10 years. [In 2002/3 the College sports facilities were relocated to a more appropriate site for College use where the public would have greater access to facilities.
18. In 2011, the College commenced the process of submitting an application for housing on the Rolleston site. The College held an initial public consultation meeting with the residents of Rolleston on Dove on 16 April 2012.
19. The application was made to East Staffordshire Borough Council ("the Borough Council"). The application was made on 24 May 2012, and sought outline planning permission for 120 new homes. The number of new homes applied for was reduced to 100 homes by means of an amendment to the application on 13 August 2012.

PLANNING POLICY CONTEXT

Local Plan

20. The College's site at Rolleston has been consistently identified by the Borough Council as a development option in its new draft Local Plan from the early 'strategic options' document published for consultation in 2011 to the Pre-Submission Local Plan submitted for Examination to the Secretary of State in April 2014. Relevant extracts from the East Staffordshire Borough Council Pre Submission Local Plan dated October 2013 ("the Local Plan") are attached at 59 to 69 of DAB1.
21. The history of the allocation can be summarised as follows:

- Strategic Options August 2011 - This document identified three broad strategic options related to different possible approaches to the location of greenfield development required to meet the development requirements of the Borough. The College Sports Field site was identified under each of the three options as a possible housing allocation, albeit delivering a different level of housing (Option 1 for 100 dwellings; Option 2 for 150 dwellings and Option 3 for 50 dwellings).
 - Preferred Options July 2012 – This document identified the College Sports Field site as the preferred housing site in Rolleston-on-Dove with a potential allocation for 100 dwellings.
 - Pre-Submission Local Plan October 2013 – Strategic Policy 4 of the Pre-Submission plan allocated the College Sports Field site for 100 dwellings.
 - Submission Local Plan April 2014 – The Submission version of the plan confirmed the site’s allocation for 100 dwellings. This is detailed further below.
22. The submitted Local Plan identifies Rolleston as a Tier 1 Village under ‘Strategic Policy 2: A strong network of settlements’. It states that Tier 1 Villages should meet rural needs by providing a good range of facilities and services to their own populations and a wider rural catchment. With regard to housing, they are required to provide some housing to meet the wider needs of the Borough Council.
23. The College Field site is specifically allocated as a strategic housing site for 100 dwellings under ‘Strategic Policy 4: Distribution of Housing Growth 2012-2031’. Strategic Policy 4 also makes an allowance for a further 25 dwellings to come forward on windfall sites.
24. The examination of the Local Plan commenced in October 2014. Following the first examination sessions, the Inspector published his interim findings in November 2014. Whilst he did not find fault with the Local Plan’s overall spatial strategy, he requested further work on the Sustainability Appraisal, housing needs and site selection and with regard to the affordable housing policy. A copy of the Inspector’s Interim Findings dated 11 November 2014 is attached at pages 10 to 17 of DAB1.
25. In response to the Inspector’s initial findings, the Borough Council updated its Sustainability Appraisal (SA). The revised SA, published on the 18th December 2014, does not make any amendments to the site’s assessment retaining it as the most sustainable development option in Rolleston.
26. Following the completion of the additional work by the Borough Council, it is anticipated that the Examination will recommence in March 2015.

Neighbourhood Plan

27. Preparation of the Rolleston Neighbourhood Plan commenced during 2011 when a Neighbourhood Plan Steering Group was set up. Rolleston was officially designated a Neighbourhood Plan Area in December 2012. A copy of the Neighbourhood Plan is attached at pages ~~78-133~~ 78-133 of DAB1.
28. The Neighbourhood Plan Steering Group carried out a number of consultations with the local community including a series of meetings, completion of a Neighbourhood Plan Questionnaire in 2012 and consultation on the Pre-Submission Plan in February/March 2013. The College brought the College Sports Field site to the Neighbourhood Plan Steering Group's attention, but the Steering Group took the decision not to include the site within its Neighbourhood Plan despite it being identified as a strategic allocation in the emerging Local Plan.
29. The Neighbourhood Plan Steering Group submitted the Neighbourhood Plan to East Staffordshire Borough Council in July 2013. Formal consultation on the Neighbourhood Plan was carried out from 23 July to 4 September 2013.
30. Chapter 4 of the submitted Neighbourhood Plan considers the amount, location, type and phasing of housing development over the plan period. It states at Paragraph 4.4 that the approach to identifying housing requirements has been to use population projections for the Borough where appropriate and to combine it with the consideration of the capacity of the key infrastructure which serves the village (primary school and GP health services). Paragraph 4.16 further states that the capacity of key services to absorb further growth has been paramount to identifying the housing requirement.
31. Policy H1 of the submitted Plan identifies a housing requirement of 85 dwellings, of which 49 dwellings are still to be delivered through allocations and windfall developments. The policy text states:
- "In the parish of Rolleston on Dove, 85 net additional dwellings will be delivered over the plan period 2012 to 2031. Along with sites already in the planning pipeline, these dwellings will be delivered on the allocated sites identified in Policy H4 and through small-scale development on windfall sites."*
32. Two housing sites are allocated at Policy H5a and Policy H5b of the submitted Neighbourhood Plan as follows:
- Policy H5a: Land at Knowles Hill – site allocated for 12 dwellings
 - Policy H5b: Land at Shotwood Close – allocation for 12 dwellings
33. Chapter 6 of the submitted plan sets out a number of policies in respect of open space. Figure 6.1 of the Neighbourhood Plan identifies a settlement boundary which is tightly

drawn around the existing village of Rolleston and excludes the College Sports Field Site.

34. Policy OS1 seeks to restrict development outside the identified settlement boundary. It states:

"The boundaries of the built-up area of Rolleston on Dove are defined on the map in Figure 6.1. Development or redevelopment will be permitted within the built-up area boundaries, subject to the other policies in this plan and those of East Staffordshire Borough Council. Outside the built up area boundaries, development or redevelopment will not be permitted with the exception of sites that have planning permission or are allocated in Policy H5 of this plan. In particular, there is a clear presumption against development which serves to reduce the green gap between Rolleston on Dove village and the settlements of Horninglow and Stretton."

35. The submitted Neighbourhood Plan also included Policy OS2 which identified a number of green spaces of community value, where development on all or part would be strongly resisted. The College Sports Field site was identified as one of the green spaces of community value.

36. Policy IN2 set out a list of sports and leisure facilities to be provided in the village including the return of the College Sports Field site to an operational sports ground.

37. Following the consultation period on the Draft Neighbourhood Plan, the plan was considered by an Independent Examiner ("Examiner") by way of written representations. The Examiner's Report was published in October 2013. A copy of the Examiner's Report is attached at pages 134 - 163 of DAB1.

38. The Examiner recommended a number of modifications to the Neighbourhood Plan which he considered to be necessary to ensure that the Neighbourhood Plan meets the 'basic conditions' required by the Regulations. A key point the Examiner identified was that the Neighbourhood Plan has been progressed in the absence of an adopted strategic housing requirement for the Borough and that it therefore only assesses local (village) housing needs.

39. A number of the recommended modifications are of direct relevance to the College's site at Rolleston and include:

- Wording changes to 'Policy H1: Housing Requirement' to make it clear that the 85 dwellings specified in the policy should not be viewed as a ceiling to development in the village. Policy H1, as modified by the Examiner's Report, now states that:

1. Claimant
2. David Anthony Brammer
3. First
4. DAB1
5. 23.01.15

“An assessed housing requirement of 85 dwellings will be met over the plan period 2012 to 2031 on the sites identified in Policies H5a and H5b, and on windfall sites, and on sites already granted planning permission. The housing requirement does not represent a ceiling on development and will be objectively assessed through independent review at five year intervals throughout the plan period. Such reviews may lead to additional housing land allocations.”

- Deletion of ‘Policy OS1: Development outside the settlement boundary’. The Examiner considered that the restriction on development arising from the implementation of this policy would not have been in line with national policy which promotes sustainable development.
 - Deletion of the College’s site from the list of local green spaces of community value. The Examiner considered that the site did not have any particular merits to warrant this designation, and also that Sport England had opposed the site’s designation.
 - Deletion of ‘Policy IN2: Provision of Sports and Leisure Facilities’ as the Examiner considered this policy to be aspirational with no certainty of delivery. Policy IN2 of the Draft Neighbourhood Plan had sought the return of the College Sports Field site to an operational sports ground.
40. Following receipt of the Examiner’s Report the Neighbourhood Plan has not been submitted for referendum by the Borough Council due to concerns over its compatibility with the submission draft Local Plan.

The Public Inquiry

41. The public inquiry into the College’s appeal under section 78 of the Town and Country Planning Act 1990 took place before the independent inspector in Burton between 4 and 6 March 2014.
42. The parties involved were the Borough Council as the local planning authority represented by Mr Graham Machin of Counsel, the College as appellant, represented by Mr Christopher Young of Counsel and Rolleston on Dove Parish Council, represented by Mr Freddie Humphreys of Counsel. Three Interested Parties, also spoke at the inquiry: Mr Frank Bather of East Staffordshire Sports Council; Mr Simon Anderson appearing as a local resident and Parish Councillor; and Mr Barry Edwards as the (then) Chairman of the Rolleston on Dove Neighbourhood Plan Steering Group

1. Claimant
2. David Anthony Brammer
3. First
4. DAB1
5. 23.01.15

43. Mr Roland Bolton, a Senior Director and Head of the Strategic Planning Function of DLP Planning, submitted a proof of evidence on behalf of the College to the public inquiry in relation to the Objectively Assessed Need for housing in East Staffordshire. A copy of Mr Bolton's Proof of Evidence is attached at pages ~~164~~^{164 to 204} of DAB1.
44. The witness for the Parish Council at the Public Inquiry, Mr Chris Bowden, a Director of Navigus Planning Limited, accepted in cross examination that the appeal proposal presented no significant conflict with the neighbourhood plan in its present form as suggested to be modified by the Examiner's recommendation. At the start of the inquiry Mr Young has asked, through the Inspector, whether the Parish Council were proposing to accept the Examiner's recommendation. The Parish Council made clear they were proposing to accept the Modifications and this is recorded in the Inspector's report at paragraph 224.
45. A copy of the Closing Submissions made by Counsel on behalf of the College at the public inquiry is attached at pages ~~164~~²⁰⁵⁻²¹⁶ to ... of DAB1.
46. The National Planning Policy Framework ("Framework") was published on 27 March 2012 and sets out the Government's planning policies for England and how these are expected to be applied. A copy of the Framework is attached at pages ~~164~~²¹⁷⁻²⁸¹ ... of DAB1.
47. On 6 March 2014 the Department for Communities and Local Government (DCLG) also launched planning practice guidance web-based resource known as the Planning Practice Guidance (PPG). The PPG was accompanied by a Written Ministerial Statement which included a list of the previous planning practice guidance documents which were cancelled and replaced.
48. The Framework requires local planning authorities to:
- 48.1 *"use their evidence base to ensure that their Local Plan meets the full, objectively assessed needs for market and affordable housing in the housing market area, as far as is consistent with the policies set out in this Framework, including identifying key sites which are critical to the delivery of the housing strategy over the plan period;*
- 48.2 *identify and update annually a supply of specific deliverable sites sufficient to provide five years worth of housing against their housing requirements with an additional buffer of 5% (moved forward from later in the plan period) to ensure choice and competition in the market for land. Where there has been a record of persistent under delivery of housing, local planning authorities should increase the buffer to 20% (moved forward from later in the plan period)-to provide a realistic prospect of achieving the planned supply and to ensure choice and competition in the market for land;*
- 48.3 *identify a supply of specific, developable sites or broad locations for growth, for years 6-10 and, where possible, for years 11-15. (Paragraphs 47-48)*

1. Claimant
2. David Anthony Brammer
3. First
4. DAB1
5. 23.01.15

48.4 It goes on to state: "*Relevant policies*" - and hence the Local Plan and the Neighbourhood Plan - "*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.*" (Paragraphs 49)

48.5 The NPPF contains guidance on the weight to be given to policies in emerging plans (Paragraph 216):

"216. From the day of publication, decision-takers may also give weight relevant policies in emerging plans according to:

- *the stage of preparation of the emerging plan (the more advanced the preparation, the greater the weight that may be given);*
- *the extent to which there are unresolved objections to relevant policies (the less significant the unresolved objections, the greater the weight that may be given); and*
- *the degree of consistency of the relevant policies in the emerging plan to the policies in this Framework (the closer the policies in the emerging plan to the policies in the Framework, the greater the weight that may be given)."*

49. The PPG also includes specific guidance relevant to the determination of the College's Appeal. It was published on the last day of the public inquiry, but the parties were specifically requested by the Inspector to comment upon how the PPG affected their respective cases. Mr Bolton submitted representations on behalf of the College

The Recovery of the Appeal for determination by the Secretary Of State

50. On 20 March 2014 the Secretary of State wrote to Peter Diffey (at pages ²⁸²⁻²⁸³ ~~1-1~~ of DAB1). This letter informed the College that in exercise of his powers under section 79 and paragraph 3 of Schedule 6 of the Town and Country Planning Act 1990, of a direction that the Secretary of State intended to determine the appeal himself and that instead of writing a decision, the Inspector would now prepare a report and recommendation, which would be forwarded to the Secretary of State. The reason given for this direction was that the appeal involved proposals which raise important or novel issues of development control, and/or legal difficulties.

51. The College responded by letter on 24 March 2014 (see pages ²⁸⁴⁻²⁸⁵ ~~1-1~~ of DAB1). Within the College's response and in addition to other concerns, such as the very substantial delay that Government intervention makes to planning decisions, the College also raised an issue of transparency upon which reassurance was sought in the general public interest.

1. Claimant
2. David Anthony Brammer
3. First
4. DAB1
5. 23.01.15

52. This issue related to whether the Secretary of State would be making the decision personally in this case and a request that this responsibility should be passed to another minister such as the Parliamentary Under Secretary of State for Planning. This was due to the fact that the Secretary of State had recently acted as the best man at the wedding of the Member of Parliament for East Staffordshire, Andrew Griffiths who had made the request for this decision to be recovered.

Inspector's Report

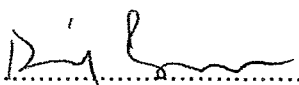
53. The Inspector's Report reached the overall conclusion (paragraph 252) that: *"Having regard to the context of the Framework and in particular the presumption in favour of sustainable development, I consider that the adverse impacts of granting planning permission would not significantly and demonstrably outweigh the benefits. Withholding permission on the grounds of prematurity is therefore not justified."*
54. Accordingly, the Inspector's Recommendation to the Secretary of State was that the College's appeal should be allowed and planning permission granted subject to the agreed planning conditions which were set out in the Annex to his Report and the section 106 agreement which had been submitted by the College in agreed form.

Secretary of State's Decision

60. The Secretary of State's Decision in respect of the College's appeal states at Paragraph 22 that the College's proposals to a significant degree would not be in conflict with the Neighbourhood Plan as proposed to be amended by the Examiner. I have some difficulty in understanding how that can be so, given he accepted that there would not be in direct conflict with policies in the Neighbourhood Plan as suggested following the Examiner's report, the Parish Council wish to progress with that version of the Plan (with the Examiner's Modifications) and the witness for the Parish Council accepted that the proposal to a significant degree would not be in conflict with the NP as proposed to be amended (as recorded in paragraph 229 of the Inspector's Report).

Statement of Truth

I believe that the facts stated in this witness statement are true.

Signed:.....

David Anthony Brammer

Date: 23 January 2015

1. Claimant
2. David Anthony Brammer
3. First
4. DAB1
5. 23.01.15

**CLAIM NO:
IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
BIRMINGHAM DISTRICT REGISTRY
PLANNING COURT**

**IN THE MATTER OF AN APPLICATION FOR
JUDICIAL REVIEW
BETWEEN:**

**THE QUEEN (ON THE APPLICATION OF THE
BURTON AND SOUTH DERBYSHIRE COLLEGE)
Claimant**

And

**SECRETARY OF STATE FOR COMMUNITIES
AND LOCAL GOVERNMENT
Defendant**

And

**EAST STAFFORDSHIRE BOROUGH
COUNCIL
First Interested Party**

And

**ROLLESTON ON DOVE PARISH COUNCIL
Second Interested Party**

**WITNESS STATEMENT OF DAVID ANTHONY
BRAMMER**

SGH Martineau LLP
No 1 Colmore Square,
Birmingham
B4 6AA

(Solicitors for the Claimant)

REF: DDB/PME/BU664.350